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Standard Clauses For A Personal Dental Services Agreement



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Standard Clauses For A Personal Dental Services (PDS) Agreement

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Equalities and health inequalities statement

"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 day of 20[ ]

BETWEEN

(1) The *integrated care board* whose name and address appears at Schedule 1 to this Agreement (called "the Commissioner") and

(2) The contractor(s) whose name(s) appear(s) at Schedule 1 to this Agreement (called "the Contractor")

BACKGROUND

A. The Commissioner is an *integrated care board* established under Chapter A3 of Part 2 of the National Health Service Act 2006.[1]

B. *NHS England* is a statutory body established by section 1H of the National Health Service Act 2006.[2] It is the duty of *NHS England* to exercise its powers so as to secure the provision of primary dental services throughout England.

C. In order to achieve this object, *NHS England* is empowered by Part 5 of the National Health Service Act 2006, and the regulations made thereunder[3], to enter into personal dental services agreements with specified categories of person.

D. Under section 65Z5(1) of the National Health Service Act 2006, *NHS England* has arranged for such functions to be exercised by the Commissioner in respect of the area for which the Commissioner is established. The details of those functions delegated by *NHS England* to the Commissioner, those functions reserved to *NHS England*, and on what terms, are set out within the delegation agreement between *NHS England* and the Commissioner as in force from time to time.

E. The Contractor falls within one of the specified categories of person.

[1] Chapter A3 of Part 2 is inserted by section 19(2) of the Health and Care Act 2022.
[2] Section 1H is inserted by section 9 of the Health and Social Care Act 2012.
[3] The National Health Service (Personal Dental Services Agreements) Regulations 2005.

F. The Commissioner and the Contractor wish to enter into a personal dental services agreement under which the Contractor is to provide personal dental services and other services in accordance with the provisions of this Agreement.[4]

PART 1[5]

DEFINITIONS AND INTERPRETATION

1. The following terms and phrases shall have the following meanings for the purposes of this Agreement:—

"the 1977 Act" means the National Health Service Act 1977;

"the 2006 Act" means the National Health Service Act 2006;

"additional services" means one or more of—

(a) *advanced mandatory services,*
(b) *dental public health services,*
(c) *domiciliary services,*
(d) *orthodontic services,* and
(e) *sedation services;*

"adjudicator" means the Secretary of State or a person or persons appointed by the Secretary of State under section 9(8) of *the 2006 Act* or paragraph 55(4) of Schedule 3 to *the Regulations*;

"advanced mandatory services" means any primary dental service that would fall within the services described in clauses 74 and 75, but by virtue of the high level

[4] For the avoidance of doubt, the Agreement should not be used in relation to Prototype Agreements.
[5] Part 1 is not required by *the Regulations*, but is recommended.

of facilities, experience or expertise required in respect of a particular patient, the service is provided as a *referral service;*

“agreement” means this agreement which is made under section 107 of *the 2006 Act* between the Commissioner and the Contractor named in Schedule 1;

"appropriate cover" means cover against liabilities that may be incurred by the Contractor in the performance of clinical services under the Agreement, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;

“Band 1 course of treatment” means a *course of treatment,* including a course of treatment consisting of *urgent treatment*, provided to a patient in respect of which a Band 1 *NHS Charge* is payable pursuant to the *NHS Charges Regulations*, or would be payable if the patient was not an *exempt person*;

“Band 2 course of treatment” means a *course of treatment , which is not a complex care pathway,* provided to a patient in respect of which a Band 2 *NHS Charge* is payable pursuant to the *NHS Charges Regulations*, or would be payable if the patient was not an *exempt person*;

“Band 3 course of treatment” means a *course of treatment* provided to a patient in respect of which a Band 3 *NHS Charge* is payable pursuant to the *NHS Charges Regulations*, or would be payable if the patient was not an *exempt person*;

“banded course of treatment” means a *Band 1, Band 2 or Band 3 course of treatment*, and excludes a *complex care pathway*;

“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;

“bridge” means a fixed or removable bridge which takes the place of any teeth;

"caries into dentine" means tooth decay that has progressed beyond the enamel and into the underlying dentine layer of the tooth;

“case assessment”, in respect of an *orthodontic course of treatment,* means a clinical examination of the patient, including the taking of such radiographs, colour photographs and models as are required in order to determine what *orthodontic treatment* (if any) is to be provided to the patient;

“charge exempt course of treatment” means a *course of treatment* that involves the examination and assessment of a patient leading to—

(a) the issue of a prescription,
(b) the repair of a *dental appliance*,
(c) the arrest of bleeding, or
(d) the removal of sutures,

which, by virtue of regulation 3(2)(d) or (e) of the *NHS Charges Regulations*, is provided free of charge to the patient;

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

“child” means a person who has not attained the age of 16 years;

“clinical governance arrangements” means arrangements through which the Contractor endeavours to continuously improve the quality of its services and safeguard high standards of care by creating an environment in which clinical excellence can flourish;

“community dental services” has the meaning given by regulation 5 of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012;[6]

[6] S.I. 2012/2996, amended by S.I. 2013/261 and 2023/1071; there are other amending instruments but none is relevant.

“complete”, in relation to—

(a) a *course of treatment,* means that—

(i) where no treatment plan has to be provided in respect of a *course of treatment* pursuant to clause 51:

i. where the treatment is a *standalone fluoride varnish treatment*, that single treatment has been provided;

ii. in every other case, all the treatment recommended to, and agreed with, the patient by the Contractor at the initial examination and assessment of that patient has been provided to the patient; or

(ii) where a treatment plan has to be provided to the patient pursuant to clause 47, all the treatment specified on that plan by the Contractor (or that plan as revised in accordance with clause 49) has been provided to the patient, and

(b) an *orthodontic course of treatment*, means that—

(i) where the Contractor determines in accordance with clause 144 that no *orthodontic treatment* should be provided following the *case assessment*, the completion of the *case assessment*; or

(ii) where the Contractor has determined that *orthodontic treatment* should be provided following the *case assessment*, all of the *orthodontic treatment* specified on the *orthodontic treatment* plan by the Contractor pursuant to clause 151 (or that plan as revised in accordance with clause 153) has been provided to the patient,

and “completed” shall be construed accordingly;

"complex care pathway" means *complex care pathway 1*, *complex care pathway 2* or *complex care pathway 3*;

"complex care pathway 1" means a course of treatment consisting of all of the required dental services specified in the appropriate entry in Table C in clause 127A;

"complex care pathway 2" means a course of treatment consisting of all of the required dental services specified in the appropriate entry in Table C in clause 127A;

"complex care pathway 3" means a course of treatment consisting of all of the required dental services specified in the appropriate entry in Table C in clause 127A;

“course of treatment” means—

(a) an examination of a *patient*, an assessment of that *patient's* oral health, and the planning of any treatment to be provided to that *patient* as a result of that examination and assessment; and
(b) the provision of any planned treatment (including any treatment planned at a time other than the time of the initial examination) to that *patient* up to the date on which-
(i) each and every component of the planned treatment has been provided to the *patient*,
(ii) the *patient* either voluntarily withdraws from, or is withdrawn by the provider from treatment, or
(iii) the treatment provided as part of a *complex care pathway* is terminated following a suspension,

by, unless the context otherwise requires, one or more providers of primary dental services, but except that it does not include the provision of any *orthodontic services* or *dental public health services* and in the case of a *standalone fluoride varnish treatment*, it does not include the steps mentioned in sub-clause (a);

“dental appliance” means a denture or *bridge* and for the purposes of this definition, a denture includes an obturator;

“dental care professional” means a person whose name is included in the register of dental care professionals or on the appropriate roll for dental auxiliaries established in accordance with Part II of the Dental Auxiliaries Regulations 1986;

“dental corporation” means a body corporate carrying on the business of dentistry in accordance with the Dentists Act;

“dental performers list” means a list of dental practitioners maintained by *NHS England* in accordance with regulations made under section 106 of *the 2006 Act*;

“dental public health services” means services provided by the contractor by virtue of section 111(2)(c) of *the 2006 Act*;

“Dentists Act” means the Dentists Act 1984;

“Dentists Act Order” means the Dentists Act 1984 (Amendment) Order 2005;

“Dentists Register” means the register maintained by the General Dental Council pursuant to section 14 of the *Dentists Act*;

“domiciliary services” means a *course of treatment*, or part of a *course of treatment*, provided at a location other than—

(a) the *practice premises* of any provider of primary dental services,
(b) a *mobile surgery* of any provider of primary dental services, or
(c) a *secure and detained estate*;

"electronic form" means the submission of information electronically via a computer system approved by *NHS England*;

"electronic submission" means the submission of information electronically via a computer system approved by *NHS England*;

“exempt person” means a person who is, by virtue of either section 177 of *the 2006 Act* or the *NHS Charges Regulations*, exempt from the need to pay an *NHS Charge* in respect of the services he has received under the Agreement;

“family member” means—

(a) a spouse,
(b) a civil partner,
(c) a person whose relationship with the registered patient has the characteristics of the relationship between husband and wife or civil partners,
(d) a parent or step-parent,
(e) a son,
(f) a daughter,
(g) a *child* of whom the person is—
    (i) the guardian, or
    (ii) the carer duly authorised by the local authority to whose care the *child* has been committed under the Children Act 1989, or
(h) a grandparent;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S of *the 1977 Act*;

“financial year” means a period of 12 months ending with 31st March in any year;

“fluoride varnish treatment” means the surface application of topical fluoride varnish;

"Friends and Family Test" means the arrangements that the Contractor is required by the Commissioner to implement to enable its *patients* to provide anonymous feedback about the patient experience at the Contractor's *practice*;

“health care professional” has the same meaning as in section 102 of *the 2006 Act* and “health care profession” shall be construed accordingly;

“health service body” has, unless the context otherwise requires, the meaning given to it in section 9(4) of *the 2006 Act*;

“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;

"indemnity arrangement" means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor;

“integrated care board” means an integrated care board established under Chapter A3 of Part 2 of *the 2006 Act*;

"intra-oral injury" means an injury not related to underlying unmanaged active disease, requiring reparative care;

“licensing body” means any body that licenses or regulates any profession;

“listed”, in relation to drugs medicines or appliances, means such drugs, medicines or appliances as are included in a list for the time being approved by *the Secretary of State* for the purposes of section 126 of *the 2006 Act*;

“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;

“mandatory services” means the services described in clauses 74 to 76;

“mandatory term” means a term required to be included in the Agreement by *the Regulations*;

“mobile surgery”, except where expressly provided otherwise in the Agreement, means any vehicle in which services under the Agreement are to be provided;

"modifiable risk factors" means behaviours or conditions that can be changed or managed to reduce a patient's risk of developing tooth decay or gum disease;

“monetary value of a unit of dental activity” means the *relevant contract value* divided by the total number of *units of dental activity* to be provided by the Contractor in a *financial year*, but excluding those *units of dental activity* that relate to *sedation services* and *domiciliary services*;

“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 Tribunal which is treated as a national disqualification by the *FHSAA* 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;

“NHS body” means *NHS England*, 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 or, a Health Board or Special Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;

“NHS Charge” means a charge made to the patient for provision of services pursuant to the *NHS Charges Regulations*;

“NHS Charges Regulations” means the National Health Service (Dental Charges) Regulations 2005 (as amended);

“NHS contract” has the meaning assigned to it in section 9(1) of *the 2006 Act*;

“NHS dispute resolution procedure” means the procedure for disputes specified in Part 21;

“NHS England” means the body corporate established under section 1H of *the 2006 Act*;

“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;

“normal surgery hours” means the times at which the contractor has agreed with the Commissioner (and specified in the agreement) that surgery will be open to patients for the provision of services;

“orthodontic appliance” means a device used in the mouth to move or immobilise the teeth in order to correct or prevent malocclusion;

“orthodontic course of treatment” means—

(a) a *case assessment* of a patient, and
(b) the provision of any *orthodontic treatment* that the Contractor determines should be provided to the patient in accordance with clauses 142 to 163;

“orthodontic services” means the provision of *orthodontic courses of treatment* or the services referred to in clause 146;

“orthodontic treatment” means treatment of, or treatment to prevent, malocclusion of the teeth and jaws, and irregularities of the teeth;

“parent”, in relation to any *child*, means a parent or other person who has parental responsibility for that *child*;

“patient” means a person to whom the Contractor is providing services under the Agreement;

“patient record” means a form supplied by *NHS England* for the purpose of maintaining a record of treatment;

“personal number” means a telephone number which starts with the number 070 followed by a further 8 digits;

“practice” means the business operated by the Contractor for the purpose of delivering services under the Agreement;

“practice premises”, except where expressly provided otherwise in the Agreement, means an address specified in the Agreement as one at which services are to be provided under the Agreement but does not include a *mobile surgery*;

“pre-2006 child-only contractor” means a contractor who—
(a) entered into the contract before 1st April 2006, and
(b) only provides dental services to children under that contract;

“prescriber” means a dental practitioner who is either engaged or employed by the Contractor or is a party to the Agreement;

“prescription form” means a form that is supplied by *NHS England* for the purposes of clauses 175 and 176;

“primary care list” means—

(a) a list of persons performing primary medical services, primary ophthalmic services, or primary dental services under sections 91, 106 or 123 of *the 2006 Act*,
(b) a list of persons undertaking to provide general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under sections 39, 42 or 43 of *the 1977 Act*,

(c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) or (d) prepared in accordance with regulations made under section 147A of *the 2006 Act*,
(d) a list of persons who undertook to provide general medical services or general dental services prepared in accordance with regulations made under sections 29 or 35 of *the 1977 Act*,
(e) a services list which fell within the meaning of section 8ZA of the National Health Service (Primary Care) Act 1997,
(f) 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
(g) a list corresponding to any of the above lists in Scotland or Northern Ireland;

"private", in the context of services or treatment, means otherwise than under the Agreement or Part 5 of *the 2006 Act*, and "privately" shall be construed accordingly;

"professional registration number" means the number against a dental practitioner's name in the *Dentists Register*;

"provision of sedation" means the provision of one or more drugs to a patient in order to produce a state of depression of the central nervous system to enable treatment to be carried out.

"referral notice" means the notice referred to in clause 56;

"referral service" means one or more of *advanced mandatory services, domiciliary services or sedation services* provided by the Contractor to a patient who has, during a *course of treatment*, been referred to the Contractor by—

(a) another contractor, or
(b) another provider of primary dental services under Part 5 of *the 2006 Act*,

for the provision of one or more of those services as part of that *course of treatment*;

"referral treatment plan" means a treatment plan provided pursuant to clause 164 or clause 165;

"register of dental care professionals" means the register maintained by the General Dental Council under section 36B of the Dentists Act (the dental care professionals register);

"the Regulations" means the National Health Service (Personal Dental Services Agreements) Regulations 2005 (S.I. 2005/3373);

"relevant contract value" means the amount agreed under the contract to be paid by the Commissioner to the Contractor for services that are required to be provided in a *financial year*, excluding *dental public health services*, *orthodontic services*, *sedation services* and *domiciliary services;*[7]

"relevant contractor" means a contractor who provides primary dental services other than—

(a) a contractor who is required to provide 99 or fewer *units of dental activity* every *financial year* under the contract;
(b) a contractor who only provides *community dental services*;
(c) a *pre-2006 child-only contractor*;
(d) a contractor who only provides either or both of the following—
  (i) *dental public health services*;
  (ii) dental services in a *secure and detained estate*.

"required number of urgent treatments" is calculated in accordance with Regulation 17A(2) of *the Regulations*;

"the Secretary of State" means the Secretary of State for Health;

[7] The amount agreed under the contract for all services is determined in accordance with section 2 of the General Dental Services Statement of Financial Entitlements 2013 signed on behalf of the Secretary of State on 28 March 2013. The General Dental Services Statement of Financial Entitlements 2013 and the various amendments to it are available online at https://www.gov.uk/government/collections/primary-dental-services-statements-of-financial-entitlements-directions. Hard copies of the documents can be obtained on request from the Dental Team, Department of Health and Social Care, 3rd Floor, 39 Victoria Street, London SW1H 0EU.

"secure and detained estate" means a prison or other accommodation as described in regulation 10(2)(b) to (e) of the National Health Service Commissioning Board and Clinical Commissioning Groups (Responsibilities and Standing Rules) Regulations 2012[8];

“sedation services” means a *course of treatment* provided to a patient during which the Contractor administers one or more drugs to a patient, which produce a state of depression of the central nervous system to enable treatment to be carried out, and during and in respect of that period of sedation—

(a) the drugs and techniques used to provide the sedation are deployed by the contractor in a manner that ensures loss of consciousness is rendered unlikely, and
(b) verbal contact with the patient is maintained insofar as is reasonably possible;

“standalone fluoride varnish treatment” means a course of treatment comprising a single *fluoride varnish treatment* in circumstances where—

(a) the treatment is delivered to a patient, who is a child, by a dental nurse in accordance with a prescription issued by a dental practitioner;
(b) a dental practitioner, dental therapist or dental hygienist, having conducted an initial assessment and examination as part of another *banded course of treatment*, has produced a schedule for the provision of—
    i a single *fluoride varnish treatment*; or
    ii a number of *fluoride varnish treatments* to be applied at regular intervals;
(c) each scheduled treatment is a single course of treatment to be delivered as part of that schedule and does not include examination and assessment; and
(d) where a number of treatments is scheduled, each interval in the schedule is not less than three months;

[8] S.I. 2012/2996; relevant amending instruments are S.I. 2013/261, 2014/452 and 2025/245.

"trauma" means damage to teeth, gingival tissues or alveoli caused by a force arising outside the mouth, resulting in mobility, luxation, subluxation or fracture of the hard tissues or injury to the soft tissues;

"unit of dental activity" means the unit of activity which is in this Agreement used to—

(a) express the amount of, and
(b) measure in accordance with clauses 79 to 82 the provision of,

mandatory services and *advanced mandatory services* provided under this Agreement;

"unit of orthodontic activity" means the unit of activity which is in this Agreement used to—

(a) express the amount of, and
(b) measure in accordance with clauses 119 to 123 the provision of,

orthodontic services provided under the Agreement; and

"urgent treatment" means a *course of treatment* that consists of one or more of the treatments listed in Schedule 4 to the *NHS Charges Regulations* (urgent treatment under Band 1 charge) that are provided to a person in circumstances where—

(a) a prompt *course of treatment* is clinically necessary because, in the opinion of the Contractor, that person's oral health is likely to deteriorate significantly, or the person's presentation indicates a need for treatment within seven days; and

(b) treatment is provided only to the extent that is necessary to prevent that significant deterioration or treat that need[9];

2. In this Agreement unless the context otherwise requires:—

2.1. Defined terms and phrases appear in italics, except for the terms "patient" and "Agreement".

2.2. Words denoting any gender include all genders and words denoting the singular include the plural and vice versa.

2.3. Reference to any person may include a reference to any firm, company or corporation.

2.4. References to forms supplied by the Commissioner or *NHS England* to a Contractor include electronic forms and forms which are generated electronically.

2.5. Reference to "day", "week", "month" or "year" means a calendar day, week, month or year, as appropriate.

2.6. The headings in this Agreement are inserted for convenience only and do not affect the construction or interpretation of this Agreement.

2.7. The Schedules to this Agreement are and shall be construed as being part of this Agreement.

2.8. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-

[9] Guidance has been issued by NHS England on urgent care entitled 'Clinical guidance: unscheduled urgent and non-urgent dental care' published on 1 May 2025. This can be accessed at https://www.england.nhs.uk/long-read/clinical-guidance-unscheduled-urgent-and-non-urgent-dental-care/. A hard copy of the guidance can be obtained on request from NHS England, Wellington House, 133-135 Waterloo Road, London SE1 8UG.

enacted or consolidated (whether before or after the date of this Agreement), and all statutory instruments or orders made pursuant to it.

2.9. Any obligation to send information to the Commissioner includes the obligation to complete the form supplied by the Commissioner or *NHS England* and the agreement may specify the format in which forms (except prescription forms) may be sent by or submitted to, the Commissioner (electronic, paper or otherwise).

2.10. Any obligation on the Contractor to have systems, procedures or controls includes the obligation effectively to operate them.

2.11. Where this Agreement imposes an obligation on the Contractor, the Contractor must comply with it and must take all reasonable steps to ensure that its personnel and contractors comply with it. Similarly, where this Agreement imposes an obligation on the Commissioner, the Commissioner must comply with it and must take all reasonable steps to ensure that its personnel and contractors (save for the Contractor) comply with it.

2.12. Where the Agreement makes reference to any announcement or advice of the *NHS England* that relates to a disease being, on in anticipation of a disease being imminently, pandemic and a serious risk or potentially serious risk to human health, it is to that announcement or advice, which may be withdrawn at any time, as amended from time to time.

2.13. Where under section 65Z5 of *the 2006 Act* a relevant body (as defined therein) has arranged for functions exercisable by it to be exercised by or jointly with one or more other bodies, a reference to that relevant body shall, as the context requires, include a reference to the body or bodies exercising the functions in question (and vice versa).

3. Where there is any dispute as to the interpretation of a particular term in the Agreement, the parties shall, so far as is possible, interpret the provisions of the

Agreement consistently with the European Convention on Human Rights, EC law, *the Regulations* and any other relevant regulations or orders made under *the 2006 Act*.

4. Where the parties have indicated in writing that a clause in the Agreement is reserved, that clause is not relevant and has no application to the Agreement[10].

5. Where a particular clause is included in the Agreement but is not relevant to the Contractor because that clause relates to matters which do not apply to the Contractor (for example, if the clause only applies to partnerships and the Contractor is an individual dental practitioner), that clause is not relevant and has no application to the Agreement.

PART 2[11]

RELATIONSHIP BETWEEN THE PARTIES

6. The Agreement is a contract for the provision of services. The Contractor is an independent provider of services and is not an employee, partner or agent of the Commissioner. The Contractor must not represent or conduct its activities so as to give the impression that it is the employee, partner or agent of the Commissioner.

7. The Commissioner 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.

8. This Agreement does not create any right enforceable by any person not a party to it.[12]

[10] This provision has been included so that if, in relation to a particular agreement, a particular clause number or numbers are not relevant (for example, because that clause or those clauses only need to be included in contracts with a partnership and the contractor concerned is an individual dental practitioner), the words of that clause can be deleted and the word 'reserved' can be inserted next to that clause number: this is to avoid renumbering the clauses or cross-references in the Agreement.

[11] Except where indicated, Part 2 is not required by *the Regulations*, but is recommended.

[12] This clause is required by *the Regulations* (see paragraph 83 of Schedule 3).

9. In complying with this Agreement, in exercising its rights under the Agreement and in performing its obligations under the Agreement, the Contractor must act reasonably and in good faith.

10. In complying with this Agreement, and in exercising its rights under the Agreement, the Commissioner must act reasonably and in good faith and as a responsible public body required to discharge its functions under *the 2006 Act*.

11. Clauses 9 and 10 above do not relieve either party from the requirement to comply with the express provisions of this Agreement and the parties are subject to all such express provisions.

12. The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this Agreement, [save in accordance with Schedule 1][13]. The Agreement does not prohibit the Contractor from sub-contracting its obligations arising under the Agreement where such sub-contacting is expressly permitted by the Agreement.

PART 3

NHS CONTRACT[14]

14. The Contractor has [not] elected to be regarded as a *health service body* for the purposes of section 9 of *the 2006 Act*. Accordingly, this Agreement is [not] an *NHS contract.*[15]

[13] The words indicated in square brackets only need to be included if the Contractor is a *dental corporation*, company limited by shares or limited liability partnership and Schedule 1 (*dental corporation*), (company limited by shares) or (limited liability partnership) has therefore been utilised.

[14] 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*: see regulation 10 of *the Regulations*.

[15] Where the agreement is an *NHS contract*, it is not enforceable in the courts but instead is subject to the dispute resolution procedures set out in Part 21 of the Agreement and paragraphs 55 and 56 of Schedule 3 to *the Regulations*. 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*.

PART 4

COMMENCEMENT OF THE AGREEMENT

15. This Contract shall commence on [date].[16]

Duration of the Agreement

16. [Subject to clause 17][17] the Agreement shall subsist until [insert date] or [it is terminated in accordance with the terms of this Agreement or the general law.] [18]

17. [The Agreement must specify whether mandatory services and/or *additional services* including *advanced mandatory services* are to be provided under the Agreement and that is a matter for negotiation between the parties. Details in relation to the period for which each of service is to be provided should be inserted here: the period for which each of such services will be provided is a matter for negotiation between the parties] [19]

18. Not Used.

19. Not Used.

20. Not Used.

PART 5[20]

WARRANTIES

21. Each of the parties warrants that it has power to enter into this Agreement and has obtained any necessary approvals to do so.

22. The Contractor warrants that:—

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[16] The parties must insert the date of commencement: services can only be provided under the Agreement on a date after 31st March 2006 (see regulation 22 of *the Regulations*)

[17] The words in square brackets may be needed depending on the terms of clause 17 et seq.

[18] The clause is required by *the Regulations*: see regulation 12.

[19] This clause and clauses 18, 19 or 20 if further space is needed, need to be adapted and completed as indicated.

[20] This Part is not required by *the Regulations*, but is recommended.

22.1 all information in writing provided to the Commissioner 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 regulations 4 [and 5] [21] of *the Regulations*;

22.2. no information has been omitted which would make the information that was provided to the Commissioner materially misleading or inaccurate;

22.3. no circumstances have arisen which materially affect the truth and accuracy of such information;

22.4 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.

23. The Commissioner warrants that:—

23.1. 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;

23.2. no information has been omitted which would make the information that was provided to the Contractor materially misleading or inaccurate;

23.3. no circumstances have arisen which materially affect the truth and accuracy of such information.

24. The Commissioner and the Contractor have relied on, and are entitled to rely on, information provided by one party to the other in the course of negotiating the Agreement.

[21] The words in square brackets only need to be included if the Contractor is a *dental corporation,* a company limited by shares, or a limited liability partnership.

PART 6[22]

PATIENTS
Persons to whom *mandatory* or *additional services* may be provided

25. The Contractor may agree to provide *mandatory services* and *additional services* under the Agreement to any person, unless clause 26 applies, if a request is made for such services by—

25.1. the person who requires the services; or

25.2. a person specified in clause 26, on behalf of the person who requires those services.

26. The Contractor shall provide mandatory services and *additional services* [for a period of][23] only to any person who is [ ][24].

27. A request may be made—

27.1. on behalf of any *child*—

27.1.1. by either *parent*,

27.1.2. by a person duly authorised by a local authority to whose care the *child* has been committed under the Children Act 1989, or

27.1.3. by a person duly authorised by a voluntary organisation by which the *child* is being accommodated under the provisions of that Act;

[22] Except where specifically indicated in a footnote, this Part is required by *the Regulations* if mandatory or *additional services* are to be provided under the Agreement: see regulation 20 and Part 1 of Schedule 3.
[23] A period may or may not be specified.
[24] The parties should set out details of the specified group of persons to whom services are to be provided.

27.2. on behalf of any adult who is incapable of making such an application or authorising such an application to be made on his behalf, by a relative or primary carer of that person.

28. The Contractor shall only refuse to provide services under this Agreement to a person if it has reasonable grounds for doing so which do not relate to—

28.1. a person's age, sex (reassigned or otherwise), religion or belief, sexual orientation, race, cultural and linguistic background, any disability they may have, or medical or dental condition, or

28.2. a person's decision or intended decision to accept private services in respect of himself or a *family member*.

29. Clause 25 does not apply where the Contractor is providing *mandatory services* or *additional services* in a *secure and detained estate* or to the provision of *dental public health services*. [25]

Patient preference of practitioner

30. Where the Contractor has agreed to provide services to a patient pursuant to clause 25 or 26, it shall—

30.1. inform the patient (or, in the case of a *child* or incapable adult, the person making the request on their behalf) of the patient's right to express a preference to receive services from a particular performer; and

30.2. record in writing any such preference expressed by or on behalf of the patient.

31. The Contractor shall endeavour to comply with any reasonable preference expressed under clause 30 but need not do so if the preferred performer has

[25] In these circumstances the parties may choose to set out in additional clauses the details of to whom such services are to be provided.

reasonable grounds for refusing to provide services to the patient, or does not routinely perform the service in question within the *practice*.

32. Clauses 30 and 31 do not apply where the Contractor is providing *mandatory services* or *additional services* in a *secure and detained estate* or to the provision of *dental public health services*. [26]

Violent patients

33. Where—

33.1. a patient of the Contractor has committed an act of violence against, or behaved in such a way against any of the persons specified in clause 34 as a consequence of which that person has feared for his safety; and

33.2. the Contractor has reported the incident to the police,

the Contractor may notify the Commissioner that it will no longer provide services to that patient under the Agreement.

34. The persons referred to in clause 33 are—

34.1. if the Agreement is with an individual dental practitioner, that individual;

34.2. any member of the Contractor's staff;

34.3. a person employed or engaged by the Contractor to perform or assist in the performance of services under the Agreement; or

34.4. any other person present on the *practice premises* or in the place where services where provided to the patient under the Agreement.

[26] In these circumstances the parties may choose to set out in additional clauses any obligations as regards patient preference of practitioner.

35. Notification under clause 33 may be given by any means including telephone or email but if not given in writing shall subsequently be confirmed in writing within seven days (and for this purpose an email notification is not a written one).

36. The time at which the Contractor notifies the Commissioner shall be the time at which it makes the telephone call or sends or delivers the notification to the Commissioner.

37. The Commissioner shall—

37.1. acknowledge in writing receipt of the notice from the Contractor under clause 33; and

37.2. take all reasonable steps to inform the patient concerned as soon as is reasonably practicable.

Patients who refuse to pay *NHS charges* prior to the commencement of, or during, treatment

38. The Contractor may—

38.1. refuse to begin a *course of treatment* or an *orthodontic course of treatment*; or

38.2. terminate a *course of treatment* or *orthodontic course of treatment* prior to its completion,

if the Contractor has, in accordance with the *NHS Charges Regulations*, requested that the patient pay a charge in respect of that *course of treatment* or *orthodontic course of treatment*, and that patient has failed to pay that charge.

Irrevocable breakdown in relationship between Contractor and patient

39. Where—

39.1. in the reasonable opinion of the Contractor, there has been an irrevocable breakdown in the relationship between *patient* and that Contractor, and

39.2. notice of such a breakdown has been given to the patient by the contractor,

the Contractor may notify the Commissioner that it will no longer provide services to that *patient* under the Agreement.

Friends and Family Test

39A. The Contractor 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*.

39B. The Contractor must-

39B.1 report the results of completed *Friends and Family Tests* to the Commissioner; and

39B.2 publish the results of such completed tests,

in the manner approved by the Commissioner.

PART 7
LEVEL OF SKILL[27]

40. The Contractor shall carry out its obligations under the Agreement with reasonable care and skill.

[27] This clause is required by the *Regulations* (see paragraph 29 of Schedule 3).

PROVISION OF SERVICES[28]

Course of treatment

41. Except in the case of *orthodontic services* and *dental public health services*, the Contractor shall provide *mandatory* and *additional services* to a patient by providing to that patient a *course of treatment*.

42. The Contractor shall use its best endeavours to ensure that a *course of treatment* that is not a *complex care pathway* is completed, and that it is so completed within a reasonable time from the date on which—

42.1. the treatment plan was written in accordance with clause 47; or

42.2. where a treatment plan is not required pursuant to clause 51, the initial examination and assessment of the patient took place.

42A. The Contractor shall *complete* a *course of treatment* that is a *complex care pathway* in accordance with the time frame specified in the appropriate row in Table C in clause 127A, unless the period for *completion* of the *complex care pathway* is extended in accordance with sub-clause 42B.

42B. The period for *completion* of a *course of treatment* that is a *complex care pathway* may be extended beyond the period specified in the appropriate row in Table C in clause 127A where there has been a suspension in accordance with clause 222CC, for the period of that suspension.

43. Where the Contractor provides *urgent treatment* to a patient, the *urgent treatment* provided shall constitute a *course of treatment* and no other services shall be provided during that *course of treatment*, unless the other services are provided as part of a *complex care pathway* and the *urgent treatment* is for an *intra-oral injury* which—

[28] This whole section (Provision of Services) is required by *the Regulations* (see regulation 24 and Part 2 of Schedule 3).

43.1 occurs suddenly;

43.2 is not related to caries or disease that is identified for the purposes of establishing eligibility for the *complex care pathway*; and

43.3 is clinically assessed as requiring reparative care within 7 days.

43A. Where the Contractor provides a *standalone fluoride varnish treatment* to a patient during, or within three months of, another *banded course of treatment*, the *standalone fluoride varnish treatment* is to be regarded as part of that other *banded course of treatment*, unless that other *banded course of treatment* is *urgent treatment*.

44. If a *course of treatment* is—

44.1. terminated before it has been completed; or

44.2. otherwise not completed within a reasonable time as required by clause 42,

any further services to be provided to that patient under the Agreement must be provided as a new *course of treatment*.

45. A *course of treatment* may only be terminated by—

45.1. the Contractor by virtue of—

45.1.1. a notice under clause 33;

45.1.2. clause 38;

45.1.3. clause 39; or

45.1.4. the Commissioner, where declarations for *complex care pathways* have been suspended for three months or more.

45.2. the patient; or

45.3. a person specified in clause 27 acting on the patient's behalf.

46. If the Contractor is unable to complete the *course of treatment* which has been commenced for reasons beyond his control, he shall give notice to the Commissioner of the extent of the treatment so provided and the reason for his inability to complete the remainder.

Treatment plans

47. Subject to clause 51, where the Contractor agrees to provide a *course of treatment* to a patient, it shall, at the time of the initial examination and assessment of that patient, ensure that the patient is provided with a treatment plan on a form supplied for that purpose by *NHS England* which shall specify—

47.1. the name of the patient;

47.2. the name of the Contractor;

47.3. particulars of the places where the patient will receive services;

47.4. the telephone number at which the Contractor may be contacted during *normal surgery hours*;

47.5. details of the services (if any) which are, at the date of the examination, considered necessary to secure the oral health of the patient;

47.6. the *NHS charge*, if any, in respect of those services if provided pursuant to the Agreement; and

47.7. any proposals the Contractor may have for *private* services as an alternative to the services proposed under the Agreement, including particulars of the cost to the patient if he were to accept the provision of *private* services.

48. If the patient, having considered the treatment plan provided pursuant to clause 47, decides to accept the provision of *private* services in place of all or part of services under the Agreement, the Contractor shall ensure that the patient signs the treatment plan in the appropriate place to indicate that he has understood the nature of the *private* services to be provided and his acceptance of those services.

49. Where the services included in the treatment plan need to be varied for clinical reasons, the Contractor shall provide the patient with a revised treatment plan in accordance with clause 47.

50. Subject to clause 45, the Contractor shall provide the services which are detailed in the treatment plan, or where the treatment plan is revised, the revised treatment plan.

51. The obligation to provide a treatment plan shall not apply to a *Band 1 course of treatment* or a *charge exempt course of treatment* unless—

51.1. the Contractor is providing *privately* any part of that *course of treatment* pursuant to clause 58 to 60; or

51.2. the patient has requested that he be provided with written details of the *course of treatment* to be provided or that has been provided to him, whether or not he specifically requests a treatment plan.

52. The Contractor shall provide the patient with a summary of the care and treatment provided under the treatment plan where the *patient* so requests because that patient intends to receive services from another contractor.

52.1. The summary shall be supplied to the patient on a form supplied by *NHS England* for that purpose within 28 days of the patient's request.

52A. Where, by virtue of clauses 47 to 52.1, a person is required to include anything in a treatment plan or summary, or to ensure a patient signs a treatment plan, but as a consequence of disease being, or in anticipation of a disease being, pandemic and a serious risk or potentially a serious risk to human health, *the Secretary of State* has made an announcement to the effect that, in order to assist in the management of the serious risk or potentially serious risk to human health, for the period specified in the announcement, that requirement is to be waived or modified in the manner specified in the announcement, that requirement is waived or is as modified in the specified manner for the specified period.

52B. Modifications under clause 52A may include modifications imposing requirements on a person other than the person who, but for the announcement, would be required to include anything in a treatment plan or a summary or to ensure a patient signs a treatment plan.

52C. An announcement under clause 52A may be withdrawn or amended at any time.

Completion of courses of treatment

53. The Contractor shall indicate on the form supplied by *NHS England* pursuant to clauses 0A, 222CB.4, 222CC.6 or 222CE.3 whether the *course of treatment* was completed, and if the *course of treatment* was not completed, provide the reason for the failure to complete the *course of treatment*.

54. If the Commissioner having considered the form mentioned in clause 53 or the relevant declaration in the case of a *complex care pathway*—

54.1. determines that the number of courses of treatment provided by the contractor which have not been completed is excessive; and

54.2. does not consider that the reasons given by the contractor for the failure to complete the courses of treatment are satisfactory,

it shall be entitled to exercise its powers under clause 97 on the grounds that the Contractor is not, pursuant to clause 42, using its best endeavours to ensure *courses of treatment* are completed.

Referral to another contractor, a hospital or other relevant service provider for *advanced mandatory, domiciliary* or *sedation services*

55. Where a patient requires *advanced mandatory services*, *domiciliary services* or *sedation services* that are not provided under the Agreement by the Contractor, it shall, if the patient agrees, refer that patient in accordance with clause 56 for the provision of a *referral service* by an alternative contractor, a hospital or other relevant service provider under Part 5 of *the 2006 Act*.

56. In referring a patient pursuant to clause 55, the Contractor shall provide—

56.1. to the patient being referred, a *referral notice* on a form supplied for that purpose by *NHS England* which shall specify the services detailed on the treatment plan which will be carried out by the alternative contractor, hospital or other relevant service provider; and

56.2. to the alternative contractor, hospital or other relevant service provider, either at the time of referral or as soon as reasonably practicable thereafter—

56.2.1. a copy of the treatment plan provided to the patient pursuant to clause 47,

56.2.2. a copy of the *referral notice*, and

56.2.3. a statement of the amount paid to it, or due to be paid to it, by the patient under *the NHS Charges Regulations* in respect of the *course of treatment* during which the referral is made.

57. Where the patient notifies the Contractor, whether verbally or in writing, that he does not wish to be referred to the alternative contractor, hospital or other relevant service provider selected by the Contractor, the Contractor shall, if requested to do so by the patient, use its best endeavours to refer the patient to another suitable contractor, hospital or other relevant service provider under Part 5 of *the 2006 Act* for the provision of the *referral service*.

Mixing of services provided under the Agreement with *private* services

58. Subject to clauses 60 and 60A and the requirements in clauses 47.7 and 48, the Contractor may, with the consent of the patient, provide privately any part of a *course of treatment* or *orthodontic course of treatment* for that patient, including in circumstances where that patient has been referred to the Contractor for a *referral service*.

59. The Contractor shall not, with a view to obtaining the agreement of a patient to undergo services *privately*—

59.1. advise a patient that the services which are necessary in his case are not available from the Contractor under the Agreement; or

59.2. seek to mislead the patient about the quality of the services available under the Agreement.

60. The Contractor when mixing services provided under the agreement with private services—

60.1. in respect of an *orthodontic course of treatment*—

60.1.1. shall provide the *case assessment* wholly *privately* or wholly under the Agreement, and

60.1.2. shall provide the *orthodontic treatment* wholly *privately* or wholly under the Agreement; and

60.1.3. may not provide privately any treatment that involves the administration of general anaesthesia or the *provision of sedation* or may not provide under the agreement any treatment that involves the administration of general anaesthesia or the *provision of sedation*.

60A. Where the Contractor is providing a *complex care pathway* to a patient, they—

60A.1. may not provide privately any periodontal treatment; and

60A.2. may provide privately any other part of the course of treatment,

provided that the Contractor provides treatment under the Agreement to at least five carious teeth.

Repair or replacement of restorations

61. Subject to clause 63, where a restoration specified in clause 62 needs to be repaired or replaced, the Contractor shall repair or replace the restoration at no charge to the patient.

62. The restorations referred to in clause 61 are—

62.1 any filling, root filling, inlay, porcelain veneer or crown provided by the Contractor to a patient in the course of providing services under the Agreement, which within the relevant period has to be repaired or replaced to secure oral health; and

62.2. is a *banded course of treatment* for the purposes of calculating the number of units of dental activity.

62A. The band in which a restoration specified in clause 62 falls shall be determined in accordance with *the NHS Charges Regulations* and, if such restoration falls within a *Band 2 course of treatment*, the applicable sub-band for the purpose of calculating the appropriate number of *units of dental activity* shall be determined in accordance with clauses 79 to 82D (including Table A and B).

63. Clause 61 shall not apply where—

63.1. within the relevant period, a person other than the Contractor has provided treatment on the tooth in respect of which the restoration was provided;

63.2. the Contractor advised the patient at the time of the restoration and indicated on the patient record that—

63.2.1. the restoration was intended to be temporary in nature; or

63.2.2. in its opinion, a different form of restoration was more appropriate to secure oral health but, notwithstanding that advice, the patient nevertheless requested the restoration which was provided;

63.3. in the opinion of the Contractor, the condition of the tooth in respect of which the restoration was provided is such that the restoration cannot satisfactorily be repaired or replaced and different treatment is now required; or

63.4. the repair or replacement is required as a result of trauma.

64. In clauses 62 and 63, “the relevant period” means the 12 month period beginning on the date on which the restoration was provided, and ceasing twelve months after that date.

Premises, facilities and equipment

65. The address of each of the premises to be used by the Contractor or any sub-contractor for the provision of services under the Agreement is as follows:

66. The Contractor shall ensure that the *practice premises* used for the provision of services under the Agreement are—

66.1. suitable for the delivery of those services; and

66.2. sufficient to meet the reasonable needs of the Contractor's patients.

67. The obligation in clause 66 includes providing proper and sufficient waiting-room accommodation for patients.

68. The Contractor shall provide, in relation to all of the services to be provided under the Agreement, such other facilities and equipment as are necessary to enable it to properly perform that service.

69. In clause 66, "practice premises" includes a mobile surgery.

Telephone services

70. The Contractor shall not be a party to any agreement or other arrangement under which the number for telephone services to be used by—

70.1. patients to contact the practice for any purpose related to the Agreement; or

70.2. 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.

National Institute for Clinical Excellence guidance

71. The Contractor shall provide services under the Agreement in accordance with any relevant guidance that is issued by the National Institute for Clinical Excellence, in particular the guidance entitled "Dental recall - Recall interval between routine dental examinations" (available at www.nice.org.uk).

Infection control

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

Treatment under general anaesthesia: prohibition

73. The Contractor shall not provide any services under the Agreement that involve the provision of general anaesthesia.

PART 8[29]

MANDATORY SERVICES

Mandatory services

74. The Contractor must provide to its patients, during the period specified in clause 75, all proper and necessary dental care and treatment which includes—

74.1. the care which a dental practitioner usually undertakes for a patient and which the patient is willing to undergo;

74.2. treatment, including *urgent treatment*; and

[29] See regulation 12(1)(a) of the *Regulations.* Every Agreement must specify the services to be provided by the Contractor. Where the Board agrees with the Contractor that mandatory services should be provided under the Agreement, Part 8 must apply. The Agreement must specify the times at which the contractor has agreed with the Board that the surgery will be open to patients for the provision of services (*normal surgery hours)*.

74.3. where appropriate, the referral of the patient for *advanced mandatory services*, *domiciliary services*, *sedation services* or other relevant services provided under Part 5 of *the 2006 Act*.

75. The Contractor must provide—

75.1. *urgent treatment*, during the following periods/times[30]:—

75.1.1. *[ ]*

75.1.2. *[ ]*; and

75.1.3. all other services described in clause 76, during *normal surgery hours* to the extent that is necessary to meet the reasonable needs of its patients.

76. The care and treatment referred to in clause 74 includes—

76.1. examination;

76.2. diagnosis;

76.3. advice and planning of treatment;

76.4. preventative care and treatment;

76.5. periodontal treatment;

76.6. conservative treatment;

[30] It is recommended that the Agreement specifies the times during which the Contractor is to provide mandatory services including urgent treatment under the Agreement. If additional specified services are to be provided during *normal surgery hours* the Agreement should specify. See Part 10. Clauses 75.1.1 to 75.1.3 should be completed accordingly or if not all of these clauses are needed, they can be omitted.

76.7. surgical treatment;

76.8. supply and repair of *dental appliances*;

76.9. the taking of radiographs;

76.10. the supply of *listed* drugs and *listed* appliances; and

76.11. the issue of prescriptions,

but it does not include *additional services*.

***Units of dental activity* to be provided**[31]

77. [The Contractor shall provide [ ] *units of dental activity* during each financial year.][32].

78. [The Contractor shall provide [ ] *units of dental activity* during [*insert relevant period]* and [ ] *units of dental* activity in each financial year thereafter].

Calculation of the number of *units of dental activity* provided

79. Subject to clause 79A, where the Contractor provides a *Band 1* or *Band 3 course of treatment*, or a sub-band of a *Band 2 course of treatment* as set out in clauses 82B to 82D, the Contractor provides the number of *units of dental activity* specified in the appropriate row of Table A below.

[31] A *unit of dental activity* is the measure of the provision of *mandatory services* and *advanced mandatory services*. The number inserted here will represent both services if the Contractor is to provide both *mandatory services* and *advanced mandatory services*.

[32] This clause must be included if the Agreement begins on 1st April. If not it should be omitted. See regulation 13 of *the Regulations* and article 22 of the General Dental Services and Personal Dental Services Transitional Provisions Order 2005. If the Agreement begins on a date other than 1st April, clause 78 should be used. See regulation 13 of *the Regulations.*

79A. Subject to clause 82AA, where the Contractor provides a *complex care pathway*, the Contractor provides the number of *units of dental activity* to be calculated in accordance with the appropriate row in Table D in clause 127A.

80. Where the Contractor provides a *charge exempt course of treatment*, the Contractor provides the number of *units of dental activity* specified in the appropriate row of Table B below.

81. Where a *banded course of treatment* is provided by more than one contractor because a patient has been referred by or to the Contractor for part of that *course of treatment*, clause 79 shall apply in respect of the Contractor, irrespective of which parts of that *banded course of treatment* the Contractor provided.

82. Where a *banded course of treatment* is commenced but not completed, the appropriate number of *units of dental activity* provided shall be calculated on the basis of the components of the course of treatment which has been completed, or commenced but not completed.

82ZA.1 Where the *course of treatment* provided is a *complex care pathway* and is commenced but not completed for any reason, the appropriate number of *units of dental activity* provided shall be calculated on the basis of the monthly declarations provided by the Contractor, as described in clauses 222CA to 222CD.

82A. Where a *patient* is referred by the Contractor for *advanced mandatory services* to another provider of primary dental services, the appropriate number of *units of dental activity* provided by-

82A.1 the Contractor; and

82A.2 the other provider of primary dental services, if that provider is also a contractor under another primary dental services contract,

must be calculated on the basis of the components of the *course of treatment* which they actually provide or for a *complex care pathway* on the basis of declarations

provided, notwithstanding that the treatment constitutes a single *course of treatment* for charging purposes.

82AA.1 Where the Contractor provides either or both of the treatments specified in sub-clause 82AA.4 in addition to one or more of the treatments set out in clauses 82B.1 to 82B.12 and 82B.14 to 82B.20, 82C.1 and all subclauses, or 82D as part of a *course of treatment*, the Contractor provides a maximum of 2.0 *units of dental activity* in addition to the number of *units of dental activity* specified in the appropriate row of Table A below.

82AA.2 Where the Contractor provides a *complex care pathway*, they may provide—

82AA.2.1 either or both of the treatments specified in sub-clause 82AA.4, in which case an additional 2 *units of dental activity* are provided;

82AA.2.2 a repair of a dental appliance (denture), in which case the *units of dental activity* as specified in the first row of Table B below are provided,

during the *complex care pathway*, but the additional units described in either clauses 82AA.2.1 or 82AA.2.2 may only be provided once in addition to the number of *units of dental activity* for the *complex care pathway* to be calculated in accordance with the appropriate row of Table D in clause 127A.

82AA.3 Where the Contractor provides one or more of the treatments specified in sub-clause 82AA.4 during a *Band 3 course of treatment*, these will be provided as part of that *banded course of treatment*.

82AA.4 The treatments referred to in sub-clauses 82AA.1 to 82AA.3 are—

82AA.4.1 relining and rebasing dentures including soft linings;

82AA.4.2 addition of tooth, clasp, labial or buccal flange to dentures.

82AA.5 Where the Contractor provides a repair of a dental appliance (denture) as specified in the first row of Table B below during a *Band 3 course of treatment*, the denture repair will be provided as part of the *Band 3 course of treatment*.

82AA.6 Where the Contractor provides to a patient during, or within three months of the completion of, a *complex care pathway*, one or more of the treatments specified in sub-clause 82AA.7, and a *Band 3 course of treatment*, the Contractor provides the *units of dental activity* as specified in the last row of

Table A below in addition to the *units of dental activity* for the *complex care pathway* as specified in the appropriate row of Table D in clause 127A.

82AA.7 The treatments referred to in sub-clause 82AA.6 are—

82AA.7.1 a repair of a dental appliance (denture) as specified in the first row of Table B below;

82AA.7.2 relining and rebasing dentures including soft linings;

82AA.7.3 addition of tooth, clasp, labial or buccal flange to dentures.

82AB.1 A reference to the sum specified for payment in the second entry of the third column (*units of dental activity* provided) of Table A below is to the sum so specified for payment for an urgent *course of treatment* in directions given under section 103(1) of the *2006 Act*.

82AB.2 For the period of 1 April 2026 to 23 June 2026, the calculation of *units of dental activity* in the second entry of the third column (*units of dental activity* provided) of Table A below for an urgent *course of treatment* is not affected by an annual uprating of the Agreement value as determined by the *Secretary of State* applied retrospectively to that period.

82B. The following *Band 2 courses of treatments* are within sub-band 2a:

82B.1 non-surgical periodontal treatment including root-planing, deep scaling, irrigation of periodontal pockets and subgingival curettage and all necessary scaling and polishing;

82B.2 surgical periodontal treatment, including gingivectomy, gingivoplasty or removal of an operculum;

82B.3 surgical periodontal treatment, including raising and replacement of a mucoperiostal flap, curettage, root planing and bone resection;

82B.4 free gingival grafts;

82B.5 sealant restorations;

82B.6 pulpotomy;

82B.7 apicectomy;

82B.8 transplantation of teeth;

82B.9 oral surgery including surgical removal of cyst, buried root, unerupted tooth, impacted tooth or exostosed tooth and alvealectomy;

82B.10 soft tissue surgery in relation to the buccal cavity and lips;

82B.11 frenectomy, frenoplasty and frenotomy;

82B.12 relining and rebasing dentures including soft linings;

82B.13 addition of tooth, clasp, labial or buccal flange to dentures;

82B.14 splints (other than laboratory fabricated splints) in relation to periodontally compromised teeth and in connection with external trauma;

82B.15 bite raising appliances (other than laboratory fabricated appliances);

82B.16 permanent fillings in amalgam, composite resin, synthetic resin, glass ionomer, compomers, silicate or silico-phosphate, including acid etch retention, if delivered to less than 3 teeth in single course of treatment;

82B.17 extraction of one or two teeth;

82B.18 endodontic treatment of any retained deciduous teeth.

82B.19 surface application of fissure sealants on up to two teeth in a single course of treatment; and

82B.20 conservation treatment of up to two deciduous teeth in a patient.

82C.1 The following Band 2 courses of treatment are within sub-band 2b—

82C.1.1 permanent fillings in amalgam, composite resin, synthetic resin, glass ionomer, compomers, silicate or silico-phosphate, including acid etch retention;

82C.1.2 tooth extraction;

82C.1.3 surface application of fissure sealants; and

82C.1.4 conservation treatment of deciduous teeth in a patient,

if delivered on three or more teeth, whether as individual treatments or in combination with each other, in a single course of treatment.

82C.2 Endodontic treatment of any permanent teeth, excluding molar teeth, is within sub-band 2b where it is delivered as an individual treatment or in combination with any of the treatments listed in sub-clause 82C.1, in a single course of treatment.

82D. The *Band 2 course of treatment* within sub-band 2c is endodontic treatment of permanent molar teeth.

Table A
Units of dental activity* provided under the Agreement in respect of *banded courses of treatment

Type of course of treatment	Sub-band	Units of dental activity provided
Band 1 course of treatment (excluding urgent treatment and *standalone fluoride varnish treatment*)	-	1.0
Band 1 course of treatment (urgent treatment only)	-	the sum specified for payment divided by the monetary value of a *unit of dental activity*, rounded

		up to two decimal places
Band 1 course of treatment (*standalone fluoride varnish treatment* only)		0.5
Band 2 course of treatment	2a course of treatment	3.0
	2b course of treatment	5.0
	2c course of treatment	7.0
Band 3 course of treatment	-	12.0

Table B
Units of dental activity* provided under the Agreement in respect of *charge exempt courses of treatment

Type of charge exempt course of treatment	Units of dental activity provided
Repair of a dental appliance (denture)	2.0
Repair of a dental appliance (bridge)	1.2
Removal of sutures	1.0
Arrest of bleeding	1.2

Under provision of *units of dental activity*

83. The Commissioner shall not pursuant to Part 22 of this Agreement be entitled to take any action for breach of clause [77] [78][33] (including termination of the agreement) where clause 84 applies.

84. This clause applies where the Contractor has failed to provide the number of *units of dental activity* it is agreed to provide pursuant to clause [77] [78][34], where—

84.1. that failure amounts to 4 per cent or less of the total number of units of dental activity that ought to have been provided during a *financial year*, and

[33] This needs adapting depending on whether clause 77 or 78 has been utilised.
[34] This needs adapting depending on whether clause 77 or 78 has been utilised.

84.2 the Contractor agrees to provide the units it has failed to provide within such time period as the Commissioner specifies in writing, such period to consist of not less than 60 days.

84.3 [ ].[35]

85. Clauses 83 and 84 shall not prevent the Commissioner from taking action under Part 22 of this Agreement for breach of the Agreement (including terminating the Agreement) on other grounds.

86. When a *banded course of treatment* is commenced but not completed for whatever reason, the appropriate number of units of dental activity provided shall be calculated on the basis of the components of the course of the treatment which has been—

86.1. completed; or

86.2. commenced but not completed.

Mid-year review

87. Clauses 88 to 100 (except clause 95) only apply where services are to be provided under the Agreement from 1st April in the relevant *financial year*.

88. In clauses 89 to 100, "required to provide" or "required to be provided" in relation to *units of dental activity* means required to be provided in accordance with clause [77] [78][36].

89. The Commissioner shall, by 31st October in each *financial year*, determine the number of *units of dental activity* that the Contractor has provided between 1st April

[35] Insert here any variation to the period of 60 days referred to in clause 84.2. In the case of a temporary agreement a period of less than 60 days or no period may be appropriate and the contract should specify the period, if any, to apply in such circumstances. See regulation 15(4) of the *Regulations*.

[36] This needs adapting depending on whether clause 77 or 78 has been utilised.

and 30th September of that *financial year* based on the data provided to it by virtue of clause 221 and 222.

90. Where the Commissioner determines under clause 89 that the Contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of *units of dental activity* that it is required to provide in that *financial year*, clause 91 shall apply.

91. Where this clause applies, the Commissioner may—

91.1. notify the Contractor that it is concerned about the level of activity provided under the Agreement in the first half of the *financial year*, setting out—

91.1.1. the number of *units of dental activity* that it has determined that the Contractor has provided;

91.1.2. the percentage of the total number of *units of dental activity* required to be provided during the *financial year* that the number in clause 91.1.1 represents; and

91.2. require in that notification that the Contractor participate in a mid-year review of its performance in relation to the Agreement with the Commissioner.

92. Where a mid-year review is required by the Commissioner pursuant to clause 91, the Commissioner and the Contractor shall discuss at that review—

92.1. any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of *units of dental activity* during the first half of the *financial year* than those notified to it pursuant to clause 91.1.1; and

92.2. any reasons that the Contractor puts forward for the level of activity in the first half of the *financial year*.

93. The Commissioner shall prepare a draft record of the mid-year review for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review.

94. A copy of the final record of the mid-year review shall be sent to the Contractor.

95. [Where an agreement does not commence on 1st April clauses 87 to 94 and 96 to 99 are varied to the extent that—

[ ][37]

[ ]

[ ]

Action the Commissioner can take following a mid-year review

96. Where, following the mid-year review and the provision of the final record of that review to the Contractor, the Commissioner, having taken account of any evidence or reasons put forward by the Contractor at that review, nevertheless has serious concerns that the Contractor is unlikely to provide the number of *units of dental activity* that it is required to provide by the end of the *financial year*, the Commissioner shall be entitled to take either or both of the steps specified in clause 97.

97. The Commissioner may—

97.1. require the Contractor to comply with a written plan drawn up by the Commissioner to ensure that the level of activity during the remainder of the *financial year* is such that the Contractor will provide the number of *units of dental activity* it is required to provide; or

97.2. withhold monies payable under the Agreement.

[37] See regulation 20(3) of the *Regulations*.

98. The maximum amount that may be withheld pursuant to clause 97.2. is—

98.1. the amount that is payable under the Agreement in respect of the number of *units of dental activity* required to be provided in a *financial year*, less

98.2. the amount that would be payable under the Agreement as a relevant proportion of that amount if the Contractor provided in the whole of the *financial year* only twice the number of *units of dental activity* that it provided between 1st April and 30th September.

99. Nothing in clauses 96 to 98 shall prevent the Commissioner and the Contractor agreeing to vary the Agreement in accordance with clause 288 to adjust—

99.1. the level of activity to be provided under the Agreement; or

99.2. the monies to be paid by the Commissioner to the Contractor under the Agreement.

100. Where the Commissioner withholds monies pursuant to clause 97.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the *financial year* where the Contractor has—

100.1. provided the number of *units of dental activity* required to be provided; or

100.2. failed to provide that number of *units of dental activity*, but that failure amounts to 4 per cent or less of the total number of *units of dental activity* that ought to have been provided during that *financial year* (and therefore clauses 83 to 85 apply).

Required number of urgent treatments

100A.1 If the Contractor is a *relevant contractor*, they shall provide the *required number of urgent treatments* during each *financial year*.[38]

100A.2 Subject to sub-clause 100A.3, the Commissioner may, during the period beginning with 30th October and ending with 31st March, reduce the *required number of urgent treatments* for that *financial year*.

100A.3 Any reduction in the *required number of urgent treatments* in accordance with sub-clause 100A.2 must not exceed 15% of the number required to be specified under sub-clause 100A.1.

100A.4 Any reduction by the Commissioner in the *required number of urgent treatments* under sub-clause 100A.2 must be communicated to the Contractor in writing.

100A.5 If the *relevant contract value* is adjusted at any time in the *financial year*, except as a result of an annual uprating to the Agreement value as determined by the *Secretary of State*, the *required number of urgent treatments* under sub-clause 100A.1 must be recalculated in accordance with Regulation 17A(2) of *the Regulations* and adjusted accordingly.

Complex Care Pathways

100AA.1 Where the Contractor has determined that a patient satisfies the entry criteria for a *complex care pathway* as described in clauses 100AA.2 to 100AA.4 and should receive this *course of treatment*, the Contractor must provide the patient with the dental services described in the appropriate entry of Table C in clause 127A.

100AA.2 The entry criteria for *complex care pathway 1* are that the patient—

100AA.2.1 is aged 16 years or older; and

100AA.2.2 has five or more teeth with *caries into dentine* that require treatment.

100AA.3 The entry criteria for *complex care pathway 2* are that the patient—

100AA.3.1 is aged 16 years or older;

[38] This figure is calculated in accordance with Regulation 17A(2) of *the Regulations*;

100AA.3.2 has five or more teeth with *caries into dentine* that require treatment;

100AA.3.3 has generalised unstable disease affecting at least 30% of all teeth; and

100AA.3.4 has unstable periodontal disease, as evidenced by one of the presentations described in clause 100AA.5.

100AA.4 The entry criteria for *complex care pathway 3* are that the patient—

100AA.4.1 is aged 16 years or older;

100AA.4.2 has a periodontal probing depth of—

100AA.4.2.1 5mm or more;

100AA.4.2.2 between 5mm and 4mm with bleeding on probing; or

100AA.4.2.3 less than 4mm and bleeding on probing with a first diagnosis of Stage I Grade C periodontal disease;

100AA.4.3 has generalised unstable disease affecting at least 30% of all teeth; and

100AA.4.4 has a first diagnosis of either—

100AA.4.4.1 Stage III periodontal disease, which includes any of the grades of disease listed in clause 100AA.6; or

100AA.4.4.2 any of the diseases specified in clause 100AA.7.

100AA.5 The presentations that evidence unstable periodontal disease are—

100AA.5.1 periodontal probing depth of 5mm or more;

100AA.5.2 periodontal probing depth of between 5mm and 4mm with bleeding on probing and a diagnosis of Stage II Grade B periodontitis, or of a higher classification; or

100AA.5.3 periodontal probing depth of less than 4mm and bleeding on probing with a diagnosis of Stage I Grade C periodontitis.

100AA.6 A reference to Stage III periodontal disease includes Stage III of either Grade A, Grade B or Grade C periodontal disease.

100AA.7 The diseases referred to in clause 100AA.4.4.2 are—

100AA.7.1 Stage II Grade C;

100AA.7.2 Stage IV Grade A;

100AA.7.3 Stage IV Grade B;

100AA.7.4 Stage IV Grade C.

100AA.8 All references to stage and grade of periodontal disease in this regulation are to be read in accordance with the system of classification provided in the flowchart titled "Implementing the 2018 Classification of Periodontal Diseases to Reach a Diagnosis in Clinical Practice"[39], produced by the British Society of Periodontology and Implant Dentistry and published in 2024.

100AA.9 The date of commencement of the *complex care pathway* is the date of the initial examination and assessment of the patient at which it is determined by the Contractor that the patient satisfies the criteria for the *complex care pathway* and should receive this course of treatment.

Under provision of *required number of urgent treatments*

100B.1 The Commissioner shall not pursuant to Part 22 of this Contract be entitled to take any action for breach of clause 100A.1 (including termination of the Contract) where clause 100B.2 applies.

100B.2 This clause applies where the Contractor has failed to provide:

100B.2.1 the *required number of urgent treatments,* where—

100B.2.1.1 that failure amounts to 4 per cent or less of the *required number of urgent treatments* that ought to have been provided during a *financial year*, and

100B.2.1.2 the Contractor agrees to provide the *urgent treatments* it has failed to provide within such time period as the Commissioner specifies in writing, such period to consist of not less than 60 days.

100B.2.2 [ ].[40]

[39] This flowchart can be accessed at https://www.bsperio.org.uk/assets/downloads/BSP_Flowchart_Implementing_the_2018_Classification.pdf. A hard copy of this document may be inspected on request at the Department of Health and Social Care, 39 Victoria Street, London SW1H 0EU.

[40] Insert here any variation to the period of 60 days referred to in clause 100B.2.1.2. In the case of a temporary contract a period of less than 60 days or no period may be appropriate and the contract should specify the period, if any, to apply in such circumstances. See regulation 19(4) of the *Regulations*.

100B.3 Clauses 100B.1 and 100B.2 shall not prevent the Commissioner from taking action under Part 22 of this Contract for breach of contract (including terminating the Contract) on other grounds.

Mid-year review

100C.1 Clauses 100C.2 to 0D.5.2 only apply where services are to be provided under the Contract from 1st April in the relevant *financial year*.

100C.2 In clauses 100C.2 to 0D.5.2, "required to provide" or "required to be provided" in relation to *urgent treatments* means required to be provided in accordance with clause 100A.1.

100C.3 The Commissioner shall, by 31st October in each *financial year*, determine the *required number of urgent treatments* that the Contractor has provided between 1st April and 30th September of that *financial year* based on the data provided to it by virtue of clauses **Error! Reference source not found.** and 0.

100C.4 Where the Commissioner determines under clause 100C.3 that the Contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of *urgent treatments* that it is required to provide in that *financial year*, clause 100C.5 shall apply.

100C.5 Where this clause applies, the Commissioner may—

100C.5.1 notify the Contractor that it is concerned about the level of activity provided under the Contract in the first half of the *financial year*, setting out—

100C.5.1.1 the number of *urgent treatments* that it has determined that the Contractor has provided, and

100C.5.1.2 the percentage of the total number of *urgent treatments* required to be provided during the *financial year* that the number in clause 100C.5.1.1 represents; and

100C.5.2 require in that notification that the Contractor participate in a mid-year review of its performance in relation to the Contract with the Commissioner.

100C.6 Where a mid-year review is required by the Commissioner pursuant to clause 100C.5, the Commissioner and the Contractor shall discuss at that review—

100C.6.1 any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of *urgent treatments* during the first half of the *financial year* than those notified to it pursuant to clause 100C.5.1.1; and

100C.6.2 any reasons that the Contractor puts forward for the level of activity in the first half of the *financial year*.

100C.7. The Commissioner shall prepare a draft record of the mid-year review for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review.

100C.8 A copy of the final record of the mid-year review shall be sent to the Contractor.

100C.9 [Where a contract does not commence on 1st April clauses 100C.1 to 100C.8 and 100D.1 to 100D.4 are varied to the extent that-

[ ][41]

[ ]

[ ]

Action the Commissioner can take following a mid-year review

[41] See regulation 24(3) of the Regulations.

100D.1 Where, following the mid-year review and the provision of the final record of that review to the Contractor, the Commissioner, having taken account of any evidence or reasons put forward by the Contractor at that review, nevertheless has serious concerns that the Contractor is unlikely to provide the *required number of urgent treatments* that it is required to provide by the end of the *financial year*, the Commissioner shall be entitled to take either or both of the steps specified in clause 100D.2.

100D.2 The Commissioner may—

100D.2.1 require the Contractor to comply with a written plan drawn up by the Commissioner to ensure that the level of activity during the remainder of the *financial year* is such that the Contractor will provide the number of *urgent treatments* it is required to provide; or

100D.2.2 withhold monies payable under the Contract.

100D.3 The maximum amount that may be withheld pursuant to clause 100D.2.2 is—

100D.3.1 the amount that is payable under the Contract in respect of the number of *urgent treatments* required to be provided in a *financial year*, less

100D.3.2 the amount that would be payable under the Contract as a relevant proportion of that amount if the Contractor provided in the whole of the *financial year* only twice the number of *urgent treatments* that it provided between 1st April and 30th September.

100D.4 Nothing in clauses 100D.1 to 100D.3 shall prevent the Commissioner and the Contractor agreeing to vary the Contract in accordance with clause 0 to adjust—

100D.4.1 the level of activity to be provided under the Contract; or

100D.4.2 the monies to be paid by the Commissioner to the Contractor under the Contract.

100D.5 Where the Commissioner withholds monies pursuant to clause 100D.2.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the *financial year* where the Contractor has—

100D.5.1 provided the number of *urgent treatments* required to be provided; or

100D.5.2 failed to provide that number of *urgent treatments*, but that failure amounts to 4 per cent or less of the *required number of urgent treatments* that ought to have been provided during that *financial year* (and therefore clauses 100B.1 to 100B.3 apply).

PART 9[42]

ADDITIONAL SERVICES

Advanced mandatory services[43]

101. The Contractor may only provide *advanced mandatory services* under the Agreement as a *referral service*.

[42] This Part only needs to be included in the Agreement where the Contractor is to provide any one or more of *advanced mandatory services, sedation services, domiciliary services* or *orthodontic services*. It is for the Contractor and the Board to negotiate which of these services will be provided by the Contractor. If the Contractor is providing any one or more *additional services* under the Agreement, then the clauses in this Model Agreement relating to that particular *additional service* are required to be inserted into the Agreement. This reflects the requirements of regulation 11 of, and Schedule 1 to *the Regulations*.

[43] Clauses 101 to 103 only need to be included if the Contractor has agreed to provide *advanced mandatory services* under the agreement.

102. When the Contractor provides *advanced mandatory services,* the activity undertaken will count towards the number of *units of dental activity* specified in clause [77] [78][44] in accordance with the provisions of clauses 79 to 82.

103. The Contractor shall provide *advanced mandatory services* [at the following times/during the following periods]: [*to be completed as appropriate by the parties*].[45]

Sedation services[46]

104. [The Contractor shall provide [ ] *courses of treatment* that involve the provision of *sedation services* during each financial year.][47].

105. [The Contractor shall provide [ ] *courses of treatment* that involve the provision of *sedation services* during [*insert relevant period*] and [ ] *courses of treatment* that involve the provision of *sedation services* in each financial year thereafter.][48].

106. The Contractor shall provide *sedation services* [at the following times/during the following periods]: [*to be completed as appropriate by the parties*].[49].

107. The Contractor shall only provide *sedation services* under this Agreement—

107.1. to a person to whom it is providing an entire *course of treatment*, during that *course of treatment*; or

107.2. as a *referral service,*

and in this clause, "entire *course of treatment*" means a *course of treatment* provided by only the Contractor.

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[44] This needs adapting depending on whether clause 77 or 78 has been utilised.
[45] There is no requirement that the hours during which non mandatory services are to be provided should be specified in the Agreement but it is advisable to provide so in the Agreement.
[46] Clauses 104 to 109 only need to be included if the Contractor is to provide *sedation services*.
[47] This clause must be included if the Agreement begins on 1st April. If not it should be omitted. See regulation 16 of *the Regulations*.
[48] This clause must be included if the Agreement begins on a date other than 1st April. If not, it should be omitted. See regulation 16 of *the Regulations*.
[49] It is recommended that the hours during which services that are not *mandatory services* are to be provided are specified in the Agreement.

108. The Contractor shall only provide *sedation services* to a patient in accordance with the recommendations contained in the report of the Standing Dental Advisory Committee entitled "Conscious Sedation in the Provision of Dental Care", insofar as those recommendations and guidelines are relevant to—

108.1. the type of sedation being administered; and

108.2. the patient to whom the sedation is being administered.

109. A copy of the Report referred to in clause 108 can be obtained at http://webarchive.nationalarchives.gov.uk/+/www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4069257.

Domiciliary services

110. [The Contractor shall provide [ ] *courses of treatment* that involve the provision of *domiciliary services* during each financial year.][50]

111. [The Contractor shall provide [ ] *courses of treatment* that involve the provision of *domiciliary services* during [*insert relevant period*] and [ ] *courses of treatment* that involve the provision of *domiciliary services* in each financial year thereafter.][51].

112. The Contractor shall provide *domiciliary services* [at the following times/during the following periods]: [*to be completed as appropriate by the parties*].[52].

113. The Contractor shall only provide *domiciliary services* under this Agreement—

113.1. to a person to whom it is providing an entire *course of treatment*, during that *course of treatment*; or

[50] This clause must be included if the Agreement begins on 1st April. If not it should be omitted. See regulation 16 of *the Regulations*.

[51] This clause should be included if the Agreement begins on a date other than 1st April. If not, it should be omitted. See regulation 16 of *the Regulations*.

[52] It is recommended that the hours during which services that are not *mandatory services* are to be provided are specified in the Agreement.

113.2. as a *referral service,*

and in this clause, "entire *course of treatment*" means a *course of treatment* provided by only the Contractor.

Dental Public Health Services

114. [T*he parties will need to specify the details of the arrangement where the Commissioner and Contractor have agreed that the Contractor will provide Dental Public Health Services. Details of payments to be made in respect of such services will also need to be included in Schedule 4 to the Agreement*]

115. The Contractor shall provide *dental public health services* [at the following times/during the following periods]: [*to be completed as appropriate by the parties*].[53]

Orthodontic services

Units of orthodontic activity to be provided

116. [The Contractor shall provide [ ] *units of orthodontic activity* during each *financial year*.][54]

117. [The Contractor shall provide [ ] *units of orthodontic activity* during [*insert relevant period*] and [ ] *units of orthodontic activity* in each *financial year* thereafter.][55]

118. The Contractor shall provide *orthodontic services* [at the following times/during the following periods]: [*to be completed as appropriate by the parties*].[56]

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[53] It is recommended that the hours during which Dental Public Health Services, if provided, are specified in the Agreement.

[54] This clause should be included if the Agreement begins on 1st April. If not it should be omitted. See regulation 14 of *the Regulations*.

[55] This clause should be included if the Contract begins on a date other than 1st April. If not, it should be omitted. See regulation 18 of *the Regulations*.

[56] If orthodontic services are to be provided under the Agreement, it is recommended that the hours during which such services are provided are specified in the Agreement.

Calculation of the number of *units of orthodontic activity* provided

119. Where the Contractor provides an *orthodontic course of treatment* to a patient that solely consists of a *case assessment*, the Contractor provides 1.0 *units of orthodontic activity*.

120. Where the Contractor provides an *orthodontic course of treatment* to a patient who is aged under 10 years that consists of—

120.1. a *case assessment*; and

120.2. the provision of *orthodontic treatment* to the patient following the *case assessment*,

the Contractor provides 4.0 *units of orthodontic activity*.

121. Where the Contractor provides an *orthodontic course of treatment* to a patient aged between 10 and 17 years that consists of—

121.1. a *case assessment*; and

121.2. the provision of *orthodontic treatment* to the patient,

the Contractor provides 21.0 *units of orthodontic activity*.

122. Where the Contractor provides an *orthodontic course of treatment* to a patient who is aged 18 years or over that consists of—

122.1. *a case assessment*; and

122.2. the provision of *orthodontic treatment* following the *case assessment*,

the Contractor provides 23.0 *units of orthodontic activity.*

123. Where the Contractor—

123.1. provides a repair to an orthodontic appliance of a patient; and

123.2. the *orthodontic course of treatment* in which that orthodontic appliance was provided is being provided by another contractor, hospital or relevant service provider under Part 5 of *the 2006 Act*,

the Contractor provides 0.8 *units of orthodontic activity*.

Under provision of units of orthodontic activity

124. The Commissioner shall not pursuant to Part 22 of this Agreement be entitled to take any action for breach of clause [116][117][57] (including termination of the Agreement) where clause 125 applies.

125. This clause applies where the Contractor has failed to provide the number of *units of orthodontic activity* it is contracted to provide pursuant to clause [116][117][58] where—

125.1. that failure amounts to 4 per cent or less of the total number of *units of orthodontic activity* that ought to have been provided during a *financial year*, and

125.2. the Contractor agrees to provide the units it has failed to provide within such time period as the Commissioner specifies in writing, such period to consist of not less than 60 days.

126. [ ][59]

[57] This needs adapting depending on whether clause 116 or 117 has been utilised.
[58] This needs adapting depending on whether clause 116 or 117 has been utilised.
[59] Insert here any variation to the period of 60 days referred to in 125.2. In the case of an agreement with a duration period of less than 12 months, a period of less than 60 days or no period may apply. See regulation 15(4) of the *Regulations*.

127. Clauses 124 and 125 shall not prevent the Commissioner from taking action under Part 22 of this Agreement for breach of the Agreement (including terminating the Agreement) on other grounds.

Complex care pathways

127A. Care to be provided under a *complex care pathway*

Where the Contractor provides a *complex care pathway* in accordance with clause 100AA, the dental services that must be provided under each *complex care pathway*, and the duration of each *complex care pathway*, is specified in the appropriate row of Table C.

Table C

Care to be provided under each *complex care pathway*

Type of *complex care pathway*	**Duration of *complex care pathway***	**Dental services that must be provided under *complex care pathway***
Complex care pathway 1	6 months from date of initial examination and assessment	(i) Oral health assessment including clinically appropriate radiographs (ii) Recording of diagnosis and depth of active carious lesions (iii) Identification and recording of *modifiable risk factors* (iv) Development of a treatment plan in line with findings from the oral health assessment, which must be shared with the patient (v) Provision of clinically evidenced preventative advice and support for the duration of the *complex care pathway* (vi) Provision of clinically appropriate restorations of all relevant and a minimum of 5 teeth and, if required, endodontic therapy

Type of *complex care pathway*	Duration of *complex care pathway*	Dental services that must be provided under *complex care pathway*
		(vii) Re-evaluation of the patient prior to completion of the *complex care pathway*, to include recording how the *modifiable risk factors* identified have been addressed (viii) Assessment to determine the clinically appropriate interval for a risk-based recall after the dental services in (i) to (vii) are complete
Complex care pathway 2	12 months from date of initial examination and assessment	(i) Oral health assessment including clinically appropriate radiographs (ii) Recording of diagnosis and depth of active carious lesions (iii) Recording of the diagnosis statement for periodontitis (iv) Identification and recording of *modifiable risk factors* (v) Development of a treatment plan in line with findings from the oral health assessment, which must be shared with the patient (vi) Provision of clinically evidenced preventative advice and support for the duration of the *complex care pathway*, to include recording how the *modifiable risk factors* identified have been addressed (vii) Provision of a minimum of 3 cycles of periodontal treatment to address periodontitis, in line with the patient's treatment plan and clinically evidenced care

Type of *complex care pathway*	Duration of *complex care pathway*	Dental services that must be provided under *complex care pathway*
		(viii) Provision of clinically appropriate restorations of all relevant and a minimum of 5 teeth and, if required, endodontic therapy (ix) Assessment to determine the clinically appropriate interval for a risk-based recall after the dental services in (i) to (viii) are complete
Complex care pathway 3	6 months from date of initial examination and assessment	(i) Oral health assessment including clinically appropriate radiographs (ii) Recording of the diagnosis statement for periodontitis (iii) Identification and recording of *modifiable risk factors* (iv) Development of a treatment plan in line with findings from the oral health assessment, which must be shared with the patient (v) Provision of clinically evidenced preventative advice and support for the duration of the *complex care pathway*, to include recording how the *modifiable risk factors* identified have been addressed (vi) Provision of a minimum of 2 cycles of periodontal treatment to address periodontitis, in line with the patient's treatment plan and clinically evidenced care (vii) Assessment to determine the clinically appropriate interval for a risk-based recall after the

Type of *complex care pathway*	Duration of *complex care pathway*	Dental services that must be provided under *complex care pathway*
		dental services in (i) to (vi) are complete

Table D

Units of dental activity* provided under the Agreement in respect of completed *complex care pathways

Type of complex care pathway	Units of dental activity provided
Complex care pathway 1	the sum specified for payment for *complex care pathway 1* divided by the monetary value of a unit of dental activity, rounded up to two decimal places
Complex care pathway 2	the sum specified for payment for *complex care pathway 2* divided by the monetary value of a unit of dental activity, rounded up to two decimal places
Complex care pathway 3	the sum specified for payment for *complex care pathway 3* divided by the monetary value of a unit of dental activity, rounded up to two decimal places

A reference to the sum specified for payment in Table D is to the sum so specified for the applicable *complex care pathway* in directions given under section 103(1) of *the 2006 Act*.

Mid-year review

128. Clauses 129 to 140 (except clause 136) only apply where services are to be provided under the Agreement from 1st April in the relevant *financial year*.

129. In clauses 130 to 141, "required to provide" or "required to be provided" in relation to *units of orthodontic activity* means required to be provided in accordance with clause [116] [117][60].

[60] This needs adapting depending on whether clause 116 or 117 has been utilised.

130. The Commissioner shall, by 31st October in each *financial year*, determine the number of *units of orthodontic activity* that the Contractor has provided between 1st April and 30th September of that *financial year* based on the data provided to it by virtue of clauses 221 and 222.

131. Where the Commissioner determines under clause 130 that the Contractor has, between 1st April and 30th September, provided less than 30 per cent of the total number of *units of orthodontic activity* that it is required to provide in that *financial year*, clause 132 shall apply.

132. Where this clause applies, the Commissioner may—

132.1 notify the Contractor that it is concerned about the level of activity provided under the Agreement in the first half of the *financial year*, setting out—

132.1.1. the number of *units of orthodontic activity* that it has determined that the Contractor has provided;

132.1.2. the percentage of the total number of *units of orthodontic activity* required to be provided during the *financial year* that the number in clause 132.1.1 represents; and

132.2. require in that notification that the Contractor participate in a mid-year review of its performance in relation to the Agreement with the Commissioner.

133. Where a mid-year review is required by the Commissioner pursuant to clause 132.2, the Commissioner and the Contractor shall discuss at that review—

133.1. any written evidence the Contractor puts forward to demonstrate that it has performed a greater number of *units of orthodontic activity* during the first half of the *financial year* than those notified to it pursuant to clause 132.1.1; and

133.2. any reasons that the Contractor puts forward for the level of activity in the first half of the *financial year*.

134. The Commissioner shall prepare a draft record of the mid-year review for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review.

135. A copy of the final record of the mid-year review shall be sent to the Contractor.

136. [Where an Agreement does not commence on 1st April, clauses 128 to 135 and 137 to 140 are varied to the extent that—

[ ][61]

[ ]

[ ]

Action the Commissioner can take following a mid-year review

137. Where, following the mid-year review and the provision of the final record of that review to the Contractor, the Commissioner, having taken account of any evidence or reasons put forward by the Contractor at that review, nevertheless has serious concerns that the Contractor is unlikely to provide the number of *units of orthodontic activity* that it is required to provide by the end of the *financial year*, the Commissioner shall be entitled to take either or both of the steps specified in clause 138.

138. The Commissioner may—

138.1. require the Contractor to comply with a written plan drawn up by the Commissioner to ensure that the level of activity during the remainder of

[61] See regulation 20 of the *Regulations*.

the *financial year* is such that the Contractor will provide the number of *units of orthodontic activity* it is required to provide; or

138.2. withhold monies payable under the Agreement.

139. The maximum amount that may be withheld pursuant to clause 138.2 is—

139.1. the amount that is payable under the Agreement in respect of the number of *units of orthodontic activity* required to be provided in a *financial year*, less

139.2. the amount that would be payable under the Agreement as a relevant proportion of that amount if the Contractor provided in the whole of the *financial year* only twice the number of *units of orthodontic activity* that he provided between 1st April and 30th September.

140. Nothing in clauses 137 to 139 shall prevent the Commissioner and the Contractor agreeing to vary the Agreement in accordance with clause 288 to adjust—

140.1. the level of activity to be provided under the Agreement; or

140.2. the monies to be paid by the Commissioner to the Contractor under the Agreement.

141. Where the Commissioner withholds monies pursuant to clause 138.2, it shall ensure that it pays the withheld monies to the Contractor as soon as possible following the end of the *financial year* where the Contractor has—

141.1. provided the number of *units of orthodontic activity* required to be provided; or

141.2. failed to provide that number of *units of orthodontic activity*, but that failure amounts to 4 per cent or less of the total number of *units of*

orthodontic activity that ought to have been provided during that *financial year* (and therefore clauses 124 to 126 to apply).

Patients to whom *orthodontic services* may be provided

142. The Contractor may provide *orthodontic services* to—

142.1. [only] persons who are under the age of 18 years at the time of the *case assessment*; [and]

142.2. [only] persons who have attained or are over the age of 18 years at the time of the *case assessment*.[62]

143. The Contractor may only provide *orthodontic services* to a person aged 18 or over at the time of the *case assessment* if [*the Agreement has to specify the circumstances in which or criteria that need to be satisfied before orthodontic services are provided to a person who is over the age of 18 years at the time of the case assessment*].[63]

144. The Contractor shall only provide *orthodontic treatment* to a person who is assessed by the Contractor following a *case assessment* as having a treatment need in—

144.1. grade 4 or 5 of the Dental Health Component of the Index of Orthodontic Treatment Need (see *The Development of an Index for Orthodontic Treatment Priority*: European Journal of Orthodontics 11, p309-332, 1989 Brooke, PH and Shaw WC - the article is also available at www.dh.gov.uk) or

144.2. grade 3 of the Dental Health Component of that Index with an Aesthetic Component of 6 or above,

[62] This clause needs to be adapted depending on what the parties agree – see paragraph 4(1) of Schedule 1 to *the Regulations*.

[63] Clause 143 only needs to be included if the Contractor is, pursuant to clause 142, entitled to provide *orthodontic services* to persons over the age of 18 at the date of the *case assessment*.

unless the Contractor is of the opinion, and has reasonable grounds for its opinion, that *orthodontic treatment* should be provided to a person who does not have such a treatment need by virtue of the exceptional circumstances of the dental and oral condition of the person concerned.

Orthodontic course of treatment

145. Subject to clause 146, the Contractor shall provide *orthodontic services* to a patient by providing to that patient an *orthodontic course of treatment*.

146. The Contractor may provide *orthodontic services* that are not provided by virtue of an *orthodontic course of treatment* where—

146.1. it provides a repair to an orthodontic appliance of a person; and

146.2. the *orthodontic course of treatment* in which that orthodontic appliance was provided is being provided by another contractor, hospital or relevant service provider under Part 5 of *the 2006 Act*.

147. The Contractor shall use his best endeavours to ensure that an *orthodontic course of treatment* is completed, and that it is so completed within a reasonable time from the date on which the orthodontic treatment plan was written in accordance with clause 151.

148. If an *orthodontic course of treatment* is—

148.1. terminated before it has been completed; or

148.2. otherwise not completed within a reasonable time.

149. An *orthodontic course of treatment* may only be terminated by—

149.1. the Contractor by virtue of—

149.1.1. a notice under clause 33;

149.1.2. clause 38;

149.1.3. clause 39;

149.2. the patient; or

149.3. a person specified in clause 27 acting on the patient's behalf.

150. If the Contractor is unable to *complete* the *course of treatment* which has been commenced for reasons beyond his control, he shall give notice to the Commissioner of the extent of the treatment so provided and the reason for his inability to complete the remainder.

Orthodontic treatment plans

151. Where the Contractor has, following a *case assessment*, determined that *orthodontic treatment* should be provided to a patient, it shall, at the time of that *case assessment*, ensure that the patient is provided with an orthodontic treatment plan on a form supplied for that purpose by *NHS England* which shall specify—

151.1. the name of the patient;

151.2. the name of the Contractor;

151.3. particulars of the places where the patient will receive *orthodontic treatment*;

151.4. the telephone number at which the Contractor may be contacted during *normal surgery hours*;

151.5. details of the *orthodontic treatment* which is, at the date of the examination, considered necessary to secure the oral health of the patient;

151.6. the *NHS charge*, if any, in respect of those services if provided pursuant to the Agreement; and

151.7. subject to clause 60.1, any proposals the Contractor may have for *private* services as an alternative to the services proposed under the Agreement, including particulars of the cost to the patient if he were to accept the provision of *private* services.

152. If the patient, having considered the treatment plan provided pursuant to clause 151, decides to accept the provision of *private* services in place of *orthodontic services* under the Agreement, the Contractor shall ensure that the patient signs the treatment plan in the appropriate place to indicate that he has understood the nature of private services to be provided, and his acceptance of those *private* services.

153. Where, for clinical reasons, the services included in the orthodontic treatment plan under clause 151 need to be varied, the Contractor shall provide the patient with a revised orthodontic treatment plan in accordance with that clause.

154. Subject to clauses 147 and 149, the Contractor shall provide the *orthodontic services* which are detailed in the orthodontic treatment plan provided pursuant to clause 151 or, where the orthodontic treatment plan is revised, pursuant to the revised orthodontic treatment plan.

Monitoring outcomes

155. The Contractor shall monitor, in accordance with clauses 156 to 160, the outcome of the *orthodontic treatment* it provides.

156. The Contractor shall, in respect of *orthodontic courses of treatment* it provides in which *orthodontic treatment* is provided following the *case assessment*, monitor the outcome of that *orthodontic treatment* in accordance with clause 157.

157. The Contractor shall, in respect of—

157.1. where the total number of orthodontic courses of treatment provided is 20 or fewer, all the cases of orthodontic courses of treatment it provides; or

157.2. where the total number of orthodontic courses of treatment provided is greater than 20—

(i) 20 of the cases; and
(ii) in addition, 10 per cent of the number of cases over 20,

monitor the outcome of that *orthodontic treatment* in accordance with "Methods to determine outcome of orthodontic treatment in terms of improvement and standards" (see the European Journal of Orthodontics 14, p125-139, 1992 Richmond S., Shaw W.C., Anderson M. and Roberts C.T. - the article is also available at www.dh.gov.uk).

158. The following time period is specified as the relevant time period for calculating the number of *orthodontic courses of treatment* that need to be monitored in accordance with clause 157: [*the parties need to specify here the time period during which the outcomes need to be monitored which may, if the parties so agree, link to the financial year to match the time period during which the obligation to provide units of orthodontic activity relates*].

159. As part of its monitoring of the outcome of *orthodontic treatment*, the Contractor shall, in respect of the patients whose courses of treatment are monitored for the purposes of clause 158, calculate a Peer Assessment Rating of the patient's study casts—

159.1. taken at or after the *case assessment* but prior to the commencement of *orthodontic treatment*; and

159.2. taken at the completion of the *orthodontic course of treatment*,

using either the Clinical Outcome Monitoring Program software (See Clinical Outcome Monitoring Program – Version 3.1 for Windows 98, XP and 2000. See also Weerakone S and Dhopatkar "A: Clinical Outcome Monitoring Program (COMP): a new application for use in orthodontic audits and research", American Journal of Orthodontics and Dentofacial Orthopaedics 2003;123:503-511) or by applying the methodology set out in "*An introduction to Occlusal Indices*" (see Richmond, O'Brien, Buchanan and Burden, 1992, Victoria, University of Manchester, ISBN 1-898922-00-4).

160. In clause 159, "Peer Assessment Rating" means an index of treatment standards in which individual scores for the components of alignment and occlusion are summed to calculate an overall score comparing pre and post treatment. A description of this methodology can be found in the European Journal or Orthodontics 14, p180-187, 1992, Richmond S, Shaw WC, Roberts CT and Andrews M: "Methods to determine the outcome of orthodontic treatment in terms of improvement and standards".

<u>Completion of orthodontic courses of treatment</u>

161. The Contractor shall indicate on the form supplied to the Commissioner pursuant to clause 221 and clause 222 whether or not the *orthodontic course of treatment* was completed.

162. If the Commissioner requests in writing that the Contractor provides reasons for the failure to complete one or more *orthodontic courses of treatment*, the Contractor shall, within such time period as the Commissioner may specify, provide the reason or reasons for the failure to complete that *course of treatment* or those courses of treatment.

163. If the Commissioner—

163.1. determines that the number of *orthodontic courses of treatment* provided by the Contractor which have not been completed is excessive; and

163.2. does not consider that the reasons given by the Contractor for the failure to complete the *orthodontic courses of treatment* are satisfactory,

it shall be entitled to exercise its powers under clauses 308 to 315 on the grounds that the Contractor is not, pursuant to clause 147, using its best endeavours to ensure *orthodontic courses of treatment* are completed.

***Referral services*[64]**

164. If the Contractor provides *advanced mandatory services*, *domiciliary services* or *sedation services* as a *referral service*, it shall, at the time of the first examination of the patient, ensure that the patient is provided with a referral treatment plan on a form supplied for that purpose by *NHS England* which shall specify—

164.1. the name of the patient;

164.2. the name of the Contractor;

164.3. the particulars of the places where the patient will receive the *referral service* to be provided to him by the Contractor;

164.4. the telephone number at which the Contractor may be contacted during its *normal surgery hours*;

164.5. details of the services which are at the date of that examination considered to be necessary for the Contractor to provide having regard to the reason for the referral; and

[64] Clauses 164 to 167 need to be included if the Contractor is providing any one or more of *advanced mandatory services, domiciliary services or advanced mandatory services*.

164.6. any proposals the Contractor may have for *private* services as an alternative to the services proposed under the Agreement, including particulars of the cost to the patient if he were to accept the provision of *private* services.

165. Where the services included in the referral treatment plan need to be varied for clinical reasons, the Contractor shall provide the patient with a revised referral treatment plan in accordance with clause 164.

166. The Contractor shall, subject to the termination of a *course of treatment* in accordance with clause 45, provide the services which are detailed in the referral treatment plan, or where a revised treatment plan is provided pursuant to clause 165, pursuant to that revised treatment plan.

167. Clauses 164 to 166 shall not apply where a patient has been referred to the Contractor for *advanced mandatory services* limited only to examination and advice, and the Contractor only provides examination and advice in respect of that patient.

PART 10
FURTHER SERVICES[65]

168. Not Used.

169. Not Used.

170. Not Used.

171. Not Used.

[65] There is no obligation to provide out of hours services pursuant to *the Regulations*. However, it is open to the Contractor and the Board to agree that the Contractor should provide such services and any further services during and outside normal surgery hours, the details should be set out here.

172. Not Used.

PART 11
SUPPLY OF DRUGS AND PRESCRIBING[66]

General

173. The Contractor shall ensure that any prescription form for *listed* drugs, medicines or appliances issued by a *prescriber* complies as appropriate with the requirements in this Part.

Supply of drugs

174. A *prescriber* may—

174.1. supply to a patient such *listed* drugs, medicines or appliances as are required for immediate use before a supply can otherwise be obtained under clause 175; or

174.2. personally administer to a patient any drug or medicine required for the treatment of that patient.

175.

175.1. A *prescriber* shall order listed drugs, medicines or appliances (other than those supplied under clause 174) as are required for the treatment of any patient to whom it is providing services under the Agreement by issuing to the patient a *prescription form*.

175.2 Every *prescription form* shall—

175.2.1. be signed by the *prescriber*;

175.2.2. be issued separately to each patient to whom the Contractor is providing services under the Contract; and

[66] If the Contractor is to supply drugs and prescribe, this Part is required by *the Regulations* (see regulation 20 and Part 3 of Schedule 3).

175.2.3. be issued—

175.2.3.1. to the patient as a *non-electronic prescription form*; or

175.2.3.2. as an *electronic prescription form* in accordance with sub-clause 175.3.

175.3. A prescriber may order drugs, medicines or appliances by means of an *electronic prescription form*, except in circumstances where—

175.3.1. the prescription is for a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971 (which relates to controlled drugs and their classification for the purposes of that Act)[67]; and

175.3.2. the drug is not for the time being specified in Schedules 2 to 5 to the Misuse of Drugs Regulations 2001[68].

175.4 Where a prescription is for—

175.4.1. a controlled drug within the meaning of section 2 of the Misuse of Drugs Act 1971; and

175.4.2. the drug is not for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001,

the words "for dental treatment only" must appear on the *prescription form*.

175.5 For the purposes of this clause—

"advanced electronic signature" means an electronic signature which meets the following requirements—

(a) it is uniquely linked to the signatory;

(b) it is capable of identifying the signatory;

(c) it is created using electronic signature creation data that the signatory can, with a high level of confidence, use under the signatory's sole control; and

(d) it is linked to the data signed in such a way that any subsequent change in the data is detectable;

[67] 1971 c. 38, amended by paragraphs 1 and 2 of Schedule 17 to the Police Reform and Social Responsibility Act 2011 (c. 13).

[68] S.I. 2001/3998, amended by S.I. 2003/1432, 2005/2864, 2007/2154, 2009/3136, 2011/448, 2012/973 and 1311, 2013/625, 2014/1275 and 3277, 2015/891, 2016/1125, 2018/1055 and 1383, 2020/559, 2023/1099 and 2024/248 and 1369.

"electronic prescription form" means data created in an electronic form for the purpose of ordering a drug, medicine or appliance, which—

(a) is signed, or is to be signed, with a prescriber's advanced electronic signature;

(b) is transmitted, or is to be transmitted, via the NHS Electronic Prescription Service; and

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

"NHS Electronic Prescription Service" means the service of that name which is managed by the Commissioner;

"non-electronic prescription form" means a form that is not in an electronic format but which is for the purpose of ordering a drug, medicine or appliance and is supplied for the purposes of this clause by the Commissioner.

176. Not Used.

Excessive prescribing

177. 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.

PART 12[69]

PERSONS WHO PERFORM SERVICES

Qualifications of performers: dental practitioners

178. A dental practitioner may perform dental services under the Agreement provided—

[69] Where the PDS Agreement is of a type where a particular clause can apply, this Part is required by *the Regulations* (see regulation 24 and Part 4 of Schedule 3).

178.1. that dental practitioner is included in the *dental performers list* held by *NHS England*; and

178.2. that dental practitioner's inclusion in that list is not subject to a suspension.

179. …

180. Upon the coming into force of the first regulations under section 36A(2) of the *Dentists Act* —

180.1. a dental hygienist;

180.2. a dental therapist; or

180.3. a professional or member of a class as specified in regulations made under section 36A(2) of the *Dentists Act*,

may perform dental services under the Agreement provided he is—

180.3.1 a *dental care professional*; and

180.3.2. his registration in the dental care professional register established under section 36B of the Dentists Act is not subject to a suspension.

Performers: further requirements

181. No *health care professional* or other person other than one to whom clause 178 and 179 applies may perform clinical services under the Agreement unless he is appropriately registered with his relevant professional body and his registration is not subject to a suspension.

182. Where—

182.1. the registration of a dental practitioner, *dental care professional* or other *health care professional*; or

182.2. a dental practitioner's inclusion in the *dental performers list* held by *NHS England*,

is subject to conditions, the Contractor shall ensure compliance with those conditions in so far as they are relevant to the Agreement.

183. No *health care professional* or other person may perform any clinical services under the Agreement unless he has such clinical experience and training as are necessary to enable him properly to perform such services.

Conditions for employment and engagement: dental practitioners performing dental services

184. The Contractor must not employ or engage a dental practitioner to perform dental services under the Agreement unless the Contractor has checked that the practitioner meets the requirements in clause 178.

185. Where the employment or engagement of a dental practitioner is urgently needed and it is not possible to check the matters referred to in clause 178 in accordance with clause 184.2 before employing or engaging him he may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

Conditions for employment and engagement: persons performing dental services other than dental practitioners

186. The Contractor shall not employ or engage a person (other than one to whom clauses 184 and 185 apply) to perform dental services unless from the coming into force of the first Regulations under section 36A(2) of the *Dentists Act*, the Contractor has checked that—

186.1. his name is included in the *register of dental care professionals*, and

186.2. his registration in the dental care professional register is not subject to a suspension,

if that person is being employed or engaged to practise a profession that has been specified in Regulations made under that section; and

186.3. he has taken reasonable steps to satisfy himself that he has the clinical experience and training necessary to enable him to properly perform dental services.

187. Where the employment or engagement of a person specified in clause 186 is urgently needed and it is not possible to check his registration in accordance with clause 186.1 (where it applies) before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

188. When considering a person's experience and training for the purposes of clause 186.3, the Contractor shall have regard in particular to—

188.1. any post-graduate or post-registration qualification held by that person; and

188.2. any relevant training undertaken by him and any relevant clinical experience gained by him.

Conditions for employment and engagement: all persons performing dental services

189. The Contractor shall not employ or engage a person to perform dental services under the Agreement unless—

189.1. that person has provided two clinical references that relate to two recent posts (which may include any current post) exercising the profession in which he seeks employment or engagement with the Contractor which lasted for three months or more without a significant break, or where this is not possible, that person has provided a full explanation and alternative referees; and

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

190. Where the employment or engagement of a person falling within clause 189 is urgently needed and it is not possible for the Contractor to obtain and check the references in accordance with clause 189.2. before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to 14 days whilst his references are checked and considered, and for an additional period of a further 7 days if the Contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

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

Conditions for employment or engagement: persons assisting in the provision of services under the Agreement

192. Before employing or engaging any person to assist it in the provision of services under the 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.

193. The duty imposed by clause 192 is in addition to the duties imposed by clauses 184 to 191.

194. When considering the competence and suitability of any person for the purpose of clause 192, the Contractor shall have regard in particular to:—

194.1. that person's academic and vocational qualifications;

194.2. his education and training; and

194.3. his previous employment or work experience.

Training

195. The Contractor shall ensure that for any dental practitioner or *dental care professional* who is—

195.1. performing dental services under the Agreement; or

195.2. employed or engaged to assist in the performance of such services,

arrangements are in place for the purpose of maintaining and updating his skills and knowledge in relation to the services which he is performing or assisting in performing.

196. The Contractor shall afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

Appraisal and assessment

197. The Contractor shall ensure that any dental practitioner performing services under the Agreement—

197.1. participates in the appraisal system (if any) provided by the Commissioner; and

197.2. co-operates with the Commissioner in relation to patient safety.

Sub-contracting of clinical matters

198. The Contractor shall not sub-contract any of its rights or duties under the Agreement to any person in relation to clinical matters unless—

198.1. it has taken reasonable steps to satisfy itself that—

198.1.1. it is reasonable in all the circumstances, and

198.1.2. that the person is qualified and competent to provide the service; and

198.2. it is satisfied in accordance with clauses 250 to 253 that the sub-contractor holds adequate insurance.

199. Where the Contractor sub-contracts any of its rights or duties under the Agreement in relation to clinical matters, it shall—

199.1. inform the Commissioner of the sub-contract as soon as is reasonably practicable; and

199.2. provide the Commissioner with such information in relation to the sub-contract as it reasonably requests.

200. Where the Contractor sub-contracts clinical services in accordance with clause 198, 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 286 shall not apply.

201. An Agreement with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the Contractor to provide.

PART 13
RECORDS, INFORMATION, NOTIFICATION AND RIGHTS OF ENTRY[70]

Patient records

202. The Contractor shall ensure that a full, accurate and contemporaneous record is kept in the patient record in respect of the care and treatment given to each patient under the Agreement, including treatment given to a patient who is referred to the Contractor.

203. The patient record may be kept in electronic form.

204. The patient record shall include details of any *private* services (to the extent that they are provided with services under the Agreement) and shall be kept with—

204.1. a copy of any treatment plan or referral treatment plan given to the patient pursuant to clause 47 or clause 164;

204.2. all radiographs, photographs and study casts taken or obtained by it as part of the services provided to that patient;

204.3. where an *orthodontic course of treatment* has been provided to a patient, a copy of the orthodontic treatment plan;

204.4. where information is required to be notified to the Commissioner in accordance with clause 221, and that information is to be submitted electronically—

204.4.1. the written declaration form in respect of exemption under section 177(1) of *the 2006 Act* duly made and completed in accordance with regulations made under sections 176 and 177(5) of that Act; and

[70] Where the PDS Agreement is of a type where a particular clause can apply, this Part is required by *the Regulations*: see regulation 20 and Part 5 of Schedule 3.

204.4.2. a note of the evidence in support of that declaration;

204.4A where a declaration is to be submitted to the Commissioner in accordance with clauses 222CA to 222CE, a copy of the declaration; and

204.5. the statement concerning any custom-made device provided by any person as a consequence of regulation 15 of the Medical Devices Regulations 2002 in respect of services being provided to that patient.

205. The patient record and the items referred to in clause 204.1 to 204.5 shall be retained for a period of 2 years beginning with—

205.1. the date on which—

205.1.1. a *course of treatment* or *orthodontic course of treatment* is terminated; or

205.1.2. a *course of treatment* or an *orthodontic course of treatment* is completed; or

205.1.3. in respect of *courses of treatment* or *orthodontic courses of treatment* not falling within clause 205.1.1 or 205.1.2, the date by which no more services can be provided as part of that *course of treatment* or *orthodontic course of treatment* by virtue of clause 44.2 or clause 148.2.

206. Nothing in clauses 202 to 205 shall affect any property right which the Contractor may have in relation to the records, radiographs, photographs and study models referred to in those clauses.

Confidentiality of personal data

207. The Contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.

Patient information

208. The Contractor shall ensure that there is displayed in a prominent position in its *practice premises*, in a part to which patients have access—

208.1. in respect of its practice based quality assurance system referred to in clauses 246 to 249, a written statement relating to its commitment to the matters referred to in clause 249;

208.2. such information relating to *NHS charges* as is supplied by the Commissioner for the purposes of providing information to the patients; and

208.3. information about the complaints procedure which it operates in accordance with Part 20, giving the name and title of the person nominated by the Contractor in accordance with the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

209. The Contractor shall—

209.1. compile a document (in this paragraph called a "patient information leaflet") which shall include the information specified in Schedule 3 to this Agreement;

209.2. review its patient information leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and

209.3. make available a copy of the leaflet, and any subsequent updates, to its patients and prospective patients.

210. The requirements in clause 209 do not apply to the Contractor to the extent that it provides services to persons detained in a *secure and detained estate*.

210A. The Contractor must ensure that a comprehensive and accurate profile in respect of its practice is provided to *NHS England* for the purpose of display on the NHS.uk website.

210B. The Contractor must review the information contained in the profile referred to in clause 210A at least once in every period of 90 days from the date the profile is provided in accordance with clause 210A.

210C. If, on such a review, it appears to the Contractor that any of that information is inaccurate or incomplete, the contractor must provide *NHS England* with an updated profile in respect of its practice.

Provision of and access to information: the Commissioner

211. The Contractor shall, at the request of the Commissioner—

211.1. produce to the Commissioner or to a person authorised in writing by the Commissioner in such format, and at such intervals or within such time period, as the Commissioner specifies; or

211.2. allow the Commissioner, or a person authorised in writing by it to access,

the information specified in clause 212.

212. The information specified for the purposes of clause 211 is—

212.1. any information which is reasonably required by the Commissioner for the purposes of or in connection with the Agreement; and

212.2. any other information which is reasonably required in connection with the Commissioner's functions,

and includes the Contractor's patient records.

213. Not Used.

214. Not Used.

215. Not Used.

216. Not Used.

217. Not Used.

Inquiries about prescriptions and referrals

218. The Contractor shall, subject to clauses 219 and 220, sufficiently answer any inquiries whether oral or in writing from the Commissioner concerning—

218.1. any prescription form issued by a *prescriber*;

218.2. the considerations by reference to which *prescribers* issue such forms;

218.3. the referral by or on behalf of the Contractor of any patient to any other services provided under *the 2006 Act*; or

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

219. An inquiry referred to in clause 218 may only be made for the purpose either of obtaining information to assist the Commissioner to discharge its functions or of assisting the Contractor in the discharge of its obligations under the Agreement.

220. The Contractor shall not be obliged to answer any inquiry referred to in clause 218 unless it is made—

220.1. in the case of clause 218.1 or 218.2, by an appropriately qualified *health care professional*; or

220.2. in the case of clause 218.3 or 218.4, by an appropriately qualified dental practitioner,

appointed in either case by the Commissioner to assist it in the exercise of its functions under paragraph 38 of Schedule 3 of *the Regulations* and that person produces, on request, written evidence that he is authorised by the Commissioner to make such inquiry on its behalf.

Notification of *course of treatment* or *orthodontic course of treatment* when the treatment has completed on or before 30 April 2019

221. The Contractor shall, within 2 months of the date upon which—

221.1. it *completes* a *course of treatment* in respect of *mandatory* or *additional services*;

221.2. it completes a *case assessment* in respect of an *orthodontic course of treatment* that does not lead to a *course of treatment*;

221.3. it provides an orthodontic appliance following a *case assessment* in respect of *orthodontic treatment*;

221.4. it *completes* a *course of treatment* in respect of *orthodontic treatment*;

221.5. a *course of treatment* in respect of *mandatory services* or *additional services* or *orthodontic course of treatment* is terminated; or

221.6. in respect of a *course of treatment* not falling within clause 221.4 or 221.5, no more services can be provided by virtue of clause 44.2 or 148.2

send to the Commissioner, on a form supplied by *NHS England*, the information specified in clause 222.

222. The information referred to in clause 221 is—

222.1. details of the patient to whom it provides services;

222.2. details of the services provided (including any appliances provided) to that patient;

222.3. details of any NHS charge payable and paid by that patient; and

222.4. in the case of a patient exempt from NHS charges and where such information is not submitted electronically, the written declaration form and note of evidence in support of that declaration.

Notification of *course of treatment* or *orthodontic course of treatment* when the treatment has completed on or after 1 May 2019

222A. The Contractor shall, within 2 months of the date upon which—

222A.1. it completes a *course of treatment* in respect of *mandatory* or *additional services*;

222A.2. it completes a *case assessment* in respect of an o*rthodontic course of treatment* that does not lead to a *course of treatment*;

222A.3. it provides an orthodontic appliance following a *case assessment* in respect of *orthodontic treatment*;

222A.4. it completes a *course of treatment* in respect of *orthodontic treatment*;

222A.5. a *course of treatment* in respect of *mandatory services* or *additional services* or *orthodontic course of treatment* is terminated; or

222A.6. in respect of a *course of treatment* not falling within clause 222A.4 or 222A.5, no more services can be provided by virtue of clause 44.2 or 148.2

send to the Commissioner, by means of *electronic submission*, the information specified in clause 222.

222B. The information referred to in clause 222A is—

222B.1. details of the *patient* to whom it provides services;

222B.2. details of the services provided (including any appliances provided) to that *patient*;

222B.3. details of any *NHS Charge* payable and paid by that *patient*; and

222B.4. in the case of a *patient* exempt from *NHS Charges*, the information required under clause 222B.5.

222B.5. In the case of a *patient* who is exempt from *NHS Charges*, the Contractor must provide the Commissioner with-

222B.5.1 such details of the exemption as the Commissioner may reasonably request; and

222B.5.2 the written declaration.

222B.6. The Commissioner may accept submission of the information in clause 222A in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

222B.6A. This clause does not apply to a *course of treatment* that is a *complex care pathway*.

Notification of *course of treatment or orthodontic course of treatment*- Transition Period

222C. Where a *course of treatment* has completed on or before 30 April 2019, the Commissioner may accept submission of the information set out in clause 222B in paper form up to and including 30 June 2019.

***Complex care pathway* initial declaration**

222CA.1. The Contractor must, within two months of the date of commencement of a *complex care pathway*, as described in clause 100AA.9, submit an initial declaration to the Commissioner by means of *electronic submission* containing the information specified in sub-clause 222CA.2.

222CA.2. The information referred to in sub-clause 222CA.1 is—

222CA.2.1. details of the patient to whom the Contractor is providing dental services under the *complex care pathway*;

222CA.2.2. confirmation of the *complex care pathway* onto which the patient has been entered;

222CA.2.3. confirmation that the patient meets the relevant entry criteria set out in clause 100AA.2. to 100AA.4 for that *complex care pathway*;

222CA.2.4. the date of commencement of the *complex care pathway*;

222CA.2.5. confirmation that the patient has been provided with a treatment plan in accordance with clause 47 and has agreed that treatment plan;

222CA.2.6. details of any NHS Charge payable by that patient;

222CA.2.7. in the case of a patient who is exempt from *NHS Charges*, confirmation that the patient has completed a written or electronic

declaration in respect of the exemption made in accordance with regulation 7 of the *NHS Charges Regulations*;

222CA.2.8. clinical data to support the recording of *modifiable risk factors*, including but not limited to—

222CA.2.8.1. use of tobacco products or smoking;

222CA.2.8.2. alcohol consumption regularly exceeding 14 units per week;

222CA.2.8.3. high-frequency sugar or acid intake;

222CA.2.8.4. suboptimal fluoride exposure;

222CA.2.8.5. poor oral hygiene resulting in inadequate plaque (biofilm) control and accumulation;

222CA.2.8.6. plaque retentive local factors and orthodontic appliances reducing cleanability;

222CA.2.8.7. dry mouth (xerostomia) due to medication, disease or radiation;

222CA.2.8.8. prolonged or intense exposure to high stress levels;

222CA.2.8.9. poorly controlled diabetes.

222CA.3. The Commissioner may accept submission of the information in this clause in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

***Complex care pathway* interim declarations**

222CB.1. Except where the *complex care pathway* has been suspended in accordance with clause 222CC, the Contractor must submit an interim declaration to the Commissioner—

222CB.1.1. subject to sub-clause 222CB.5, by means of an *electronic submission*;

222CB.1.2. for each month of the duration of the *complex care pathway*, excluding the months in which a declaration is submitted pursuant to clauses 222CA, 222CC, 222CD and 222CE; and

222CB.1.3. in date order, regardless of whether the patient has received dental services in the month of submission.

222CB.2. An interim declaration must contain the following information—

222CB.2.1. confirmation that the Contractor is actively providing dental services to the patient under the *complex care pathway*;

222CB.2.2. where during the *complex care pathway* the Contractor has completed a *Band 3 course of treatment*, confirmation that a notification of this *Band 3 course of treatment* will be submitted in accordance with clauses 221 and 222;

222CB.2.3. where during the *complex care pathway* the Contractor has completed a repair of a denture, confirmation that a notification of this *course of treatment* will be submitted in accordance with clauses 221 and 222;

222CB.2.4. where during the *complex care pathway* the Contractor has completed a denture relining, rebasing or modification in accordance with clauses 82AA.2. and 82AA.4., confirmation that the denture relining, rebasing or modification has been completed; and

222CB.2.5. where the Contractor has completed an *urgent treatment* for an *intra-oral injury* as described in clause 43, confirmation that a notification of this *urgent treatment* will be submitted in accordance with clauses 221 and 222.

222CB.3. Where the patient is entered onto *complex care pathway 2*, the sixth interim declaration submitted to the Commissioner must also contain—

222CB.3.1. confirmation of the extent of the treatment that has been provided to the patient as part of the *complex care pathway* up to and including the date of the interim declaration; and

222CB.3.2. the information specified in clause 222CA.2.7.

222CB.4. If the Contractor does not submit all interim declarations in accordance with this clause—

222CB.4.1. in the case of *complex care pathway 1* and *complex care pathway 3*, before the end of the period of 9 months beginning with the date of commencement of the *complex care pathway*; and

222CB.4.2. in the case of *complex care pathway 2*, before the end of the period of 15 months beginning with the date of commencement of the *complex care pathway*;

the *complex care pathway* will be declared incomplete and terminated.

222CB.5. The Commissioner may accept submission of the information in this clause in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

Suspension of *complex care pathway*s

222CC.1. Subject to sub-clause 222CC.4, the Contractor may suspend a *complex care pathway* by submitting to the Commissioner a declaration of suspension by

means of *electronic submission* containing the information specified in sub-clause 222CC.2.

222CC.2. The information referred to in sub-clause 222CC.1 is—

222CC.2.1. the reason for the suspension of the *complex care pathway*;

222CC.2.2. the extent of treatment that has been provided to the patient as part of the *complex care pathway* up to and including the date of the declaration of suspension; and

222CC.2.3. the information set out at clause 222CA.2.7.

222CC.3. The Contractor may only suspend the *complex care pathway* once and for a period of up to three months.

222CC.4. A declaration of suspension must not be submitted after the expiry of the period of—

222CC.4.1. in the case of dental services provided under *complex care pathway 1* or *complex care pathway 3*, 6 months beginning with the date of commencement of the *complex care pathway*;

222CC.4.2. in the case of dental services provided under *complex care pathway 2*, 12 months beginning with the date of commencement of the *complex care pathway*.

222CC.5. Within three months of the date of submission of the declaration of suspension, the Contractor must submit an interim declaration confirming that the provision of dental services under the *complex care pathway* has, or will be, resumed and the date of this resumption.

222CC.6. If the Contractor fails to submit an interim declaration in accordance with sub-clause 222CC.5., the *complex care pathway* will be declared incomplete and terminated.

222CC.7. The Commissioner may accept submission of the information in this clause in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

Declaration of incomplete *complex care pathway*

222CD.1. If the *complex care pathway* is brought to an end before all the dental services set out in the appropriate entry in Table C in clause 127A have been completed, the Contractor must submit a declaration of incomplete *complex care pathway* to the Commissioner by means of *electronic submission* containing the information specified in sub-clause 222CD.2., subject to sub-clause 222CD.4.

222CD.2. The information referred to in sub-clause 222CD.1 is—

222CD.2.1. the reason the *complex care pathway* is incomplete;

222CD.2.2. the extent of treatment that has been provided to the patient as part of the *complex care pathway* up to and including the date of the declaration of incomplete *complex care pathway*; and

222CD.2.3. details of which *modifiable risk factors* have been addressed.

222CD.3. The Contractor must submit the declaration of incomplete *complex care pathway* within two months of—

222CD.3.1. the date the Contractor ceased to provide dental services under the *complex care pathway*; or

222CD.3.2. the end of the—

222CD.3.2.1. 6 month period beginning with the date of commencement of the *complex care pathway*, in the case of dental services provided under *complex care pathway 1* or *complex care pathway 3*;

222CD.3.2.2. 12 month period beginning with the date of commencement of the *complex care pathway*, in the case of dental services provided under *complex care pathway 2*,

whichever is the earlier.

222CD.4. The Contractor must not submit a declaration of incomplete *complex care pathway* where—

222CD.4.1. the patient has not been provided with any dental services under the *complex care pathway* following a period of suspension; or

222CD.4.2. all interim declarations in accordance with clause 222CB have been submitted.

222CD.5. The Commissioner may accept submission of the information in this clause in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

***Complex care pathway* final declaration**

222CE.1. The Contractor must, within two months of the date of completion of a *complex care pathway* and submission of all interim declarations, submit a final declaration to the Commissioner by means of *electronic submission* containing the information specified in sub-clause 222CE.2. and in accordance with clauses 42A and 42B.

222CE.2. The information referred to in sub-clause 222CE.1 is—

222CE.2.1. confirmation that the patient's treatment plan has been discharged and that all the treatment set out in the appropriate entry of Table C in clause 127A has been completed;

222CE.2.2. where the Contractor has completed a *Band 3 course of treatment* or a denture repair during the period of the *complex care pathway*, confirmation that a notification of this *course of treatment* will be submitted in accordance with clauses 221 and 222, unless this information has already been provided in an interim declaration;

222CE.2.3. where during the period of the *complex care pathway* the Contractor has also completed a denture relining, rebasing or modification in accordance with clauses 82AA.2. and 82AA.4., confirmation that this denture relining, rebasing or modification has been completed, unless this information has already been provided in an interim declaration;

222CE.2.4. where during the period of the *complex care pathway* the Contractor has also completed an *urgent treatment* for an *intra-oral injury* in accordance with clause 43, confirmation that a notification of this *urgent treatment* will be submitted in accordance with clauses 221 and 222, unless this information has already been provided in an interim declaration; and

222CE.2.5. where the patient is entered onto *complex care pathway 3*, confirmation that—

222CE.2.5.1. the patient has been referred to a *level 2* or *level 3 service for treatment of periodontal disease*;

222CE.2.5.2. the patient has not been referred to a *level 2* or *level 3 service for treatment of periodontal disease*, because it is not clinically required; or

222CE.2.5.3. the patient has not been referred to a *level 2* or *level 3 service for treatment of periodontal disease*, because a service is not available.

222CE.3. Where the Contractor fails to submit a final declaration in accordance with this clause, the *complex care pathway* will be treated as complete on the day after the date of submission of the last declaration.

222CE.4. The Commissioner may accept submission of the information in this clause in paper form in such exceptional circumstances as the Commissioner may reasonably determine.

222CE.5. For the purposes of this clause—

"level 2 service for treatment of periodontal disease" means a procedure for the treatment of complex periodontal disease which is provided by a dentist with validated enhanced skills or by an appropriately trained dental care professional;
"level 3 service for treatment of periodontal disease" means a procedure for the treatment of the most complex periodontal disease which is provided by a recognised specialist or a suitably registered consultant.

Annual report and review

223. The Commissioner shall provide to the Contractor an annual report relating to the Agreement which shall contain the same categories of information for all persons who hold agreements with the Commissioner.

224. Once the Commissioner has provided the report referred to in clause 223, the Commissioner shall arrange with the Contractor an annual review of its performance in relation to the Agreement.

225. The Commissioner shall prepare a draft record of the review referred to in clause 224 for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review.

226. A copy of the final record referred to in clause 225 shall be sent to the Contractor.

Notifications to the Commissioner

227. In addition to any requirements of notification elsewhere in the *Regulations*, the Contractor shall notify the Commissioner in writing, as soon as reasonably practicable, of—

227.1. any serious incident that in the reasonable opinion of the contractor affects or is likely to affect the Contractor's performance of its obligations under the Agreement; or

227.2. any circumstances which give rise to the Commissioner's right to terminate the Agreement under clause 302 or 303.

228. The Contractor shall, unless it is impracticable for it to do so, notify the Commissioner in writing within 28 days of any occurrence requiring a change in the information about it published by the Commissioner in accordance with regulations made under section 99(3) of *the 2006 Act*.

229. The Contractor shall give notice in writing to the Commissioner when a dental practitioner who is performing or will perform services under the Agreement (as the case may be)—

229.1. leaves the Contractor, and the date upon which he left; or

229.2. is employed or engaged by the Contractor,

which shall include the name of the dental practitioner who has left, or who has been employed or engaged, together with his *professional registration number*.

Notice provisions specific to an agreement with a *dental corporation*[71]

[71] Clause 230 only needs to be included if the Contractor is a *dental corporation*.

230. The Contractor shall give notice in writing to the Commissioner forthwith when—

230.1. it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;

230.2. circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;

230.3. circumstances arise which would enable the court to make a winding up order in respect of the Contractor; or

230.4. the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

Notice provisions specific to an agreement with a company limited by shares[72]

230A. The Contractor shall give notice in writing to the Commissioner forthwith when—

230A.1. it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;

230A.2. circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;

230A.3. circumstances arise which would enable the court to make a winding up order in respect of the Contractor;

230A.4. the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

[72] Clause 230A only needs to be included if the Contractor is a company limited by shares

230A.5. changes take place in relation to the ownership of shares in the company.

230B. A notice under clause 230A.5 must—

230B.1. provide the name of any person ceasing to own a share in the company;

230B.2. provide the name of any new person acquiring a share in the company; and

230B.3. confirm that following any changes in share ownership, that the company continues to meet the conditions in section 108(1A) of *the 2006 Act*.

Notice provisions specific to an agreement with a limited liability partnership[73]

230C. The Contractor shall give notice to the Commissioner forthwith when—

230C.1. it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;

230C.2. circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;

230C.3. circumstances arise which would enable the court to make a winding up order in respect of the Contractor;

230C.4. the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

[73] Clause 230C only needs to be included if the Contractor is a limited liability partnership

230C.5. any membership changes are notified in accordance with section 9 of the Limited Liability Partnership Act 2000 to the registrar (within the meaning of that Act) in relation to a person who becomes or ceases to be a member or designated member (within the meaning of that Act) and the notice must specify the date on which that person becomes or ceases to be a member or designated member (as the case may be).

230D. A notice under clause 230C.5 must confirm—

230D.1. that any new member joining the partnership meets the conditions imposed by regulation 4 of *the Regulations*; and

230D.2. following the membership changes, that subsections 108(1B) or 108(1C) of *the 2006 Act* continue to apply to the partnership.

Notifications to patients following variation of the Agreement

231. Where the Agreement is varied in accordance with Part 22 of this Agreement and, as a result of that variation there is to be a change in the range of services provided by the Contractor, the Contractor shall ensure that there is displayed in a prominent position in its *practice premises*, in a part to which patients have access, written details of that change.

Entry and inspection by the Commissioner

232. Subject to—

232.1. the conditions in clause 233; and

232.2. clause 234, the Contractor shall allow persons authorised in writing by the Commissioner to enter and inspect the *practice premises* at any reasonable time.

233. The conditions referred to in clause 232.1 are that—

233.1. reasonable notice of the intended entry has been given;

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

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

234. Where the Contractor is providing services under the Agreement in a *secure and detained estate*, the Contractor shall not be obliged to comply with clause 232, or clauses 235 or 236, if—

234.1. the Contractor has used its best endeavours to allow the Commissioner or the Care Quality Commission to enter and inspect the *practice premises*; but

234.2. entry and inspection has been prevented by the authorities for the *secure and detained estate* despite the Contractor's best endeavours.

Entry and viewing by Local Healthwatch organisations

235. Subject to clause 234, 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 of the Local Government and Public Involvement Health Act 2007.

Entry and inspection by the Care Quality Commission

236. Subject to clause 234, the Contractor shall allow persons authorised by the Care Quality Commission to enter and inspect premises in accordance with section 66 of the Health and Social Care (Community Health and Standards) Act 2003 (right of entry).

PART 14[74]

PAYMENT UNDER THE AGREEMENT

237. The Commissioner shall make payments to the Contractor under the Agreement promptly and in accordance with both the terms of the Agreement (including, for the avoidance of doubt, any payment due pursuant to clause 238), and any other conditions relating to the payment contained in directions given by *the Secretary of State* under section 109(4) of *the 2006 Act* subject to any right the Commissioner may have to set off against any amount payable to the Contractor under the Agreement any amount—

237.1. that is owed by the Contractor to the Commissioner under the Agreement;

237.2. has been paid to the Contractor owing to an error in circumstances when it was not due; or

237.3. that the Commissioner may withhold from the Contractor in accordance with the terms of the Agreement or any other applicable provisions contained in directions given by *the Secretary of State* under section 109(4) of *the 2006 Act*.

237.4. Subject to clause 238, the Commissioner shall make payments to the Contractor in such amount and in such manner as specified in any directions for the time being in force under section 114A or 109(4) of *the 2006 Act.* Where, pursuant to directions made under section 114A or 109(4) of *the 2006 Act*, the Commissioner is required to make a payment to the Contractor under the Agreement but subject to conditions, those conditions are to be a term of the Agreement.

[74] Part 14 is required by regulations 17 and 18 of *the Regulations* and section 109(4) of *the 2006 Act*.

238. Payments to be made to the Contractor (and any relevant conditions to be met by the Contractor in relation to such payments) in respect of services where payments, or the amount of any such payments, are not specified in directions pursuant to clause 237.4 are set out in Schedule 4 to this Agreement.[75]

239. The Contractor shall make payments to the Commissioner under the Agreement promptly and in accordance with the terms of the Agreement and any other conditions relating to the payment contained in directions given by *the Secretary of State* under section 109(4) of *the 2006 Act* subject to any right the Commissioner has to set off against any amount referred to in clause 237.1, 237.2 or 237.3.

239A. The Commissioner is under an obligation to publish the information about earnings specified in Regulation 17A of *the Regulations*. The Contractor acknowledges and consents to the publication of this information.

PART 15[76]

FEES, CHARGES AND FINANCIAL INTERESTS OF THE CONTRACTOR

240. The Contractor shall not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another's benefit from—

240.1. any patient of its for the provision of any treatment under the Agreement, except as otherwise provided in the *NHS Charges Regulations*; or

240.2. any person who has requested services under the Agreement for himself or a family member, as a prerequisite to providing services under the agreement to that person or his family member.

241. The Contractor shall—

[75] Clause 238 needs to be included as some of the details in respect of payments to the Contractor will need to be set out. *See* Schedule 4.

[76] Except where expressly indicated in the footnote, this Part is required by *the Regulations* (see regulation 18).

241.1. only collect from any patient of its any charge that that patient is required to pay by virtue of the *NHS Charges Regulations*, in accordance with the requirements of those Regulations; and

241.2. obligations imposed on the Contractor by virtue of the *NHS Charges Regulations* shall be terms of this Agreement.

242. In making a decision—

242.1. as to what services to recommend or provide to a patient who has sought services under the Agreement; or

242.2. to refer a patient for other services by another contractor, hospital or other relevant service provider under Part 5 of *the 2006 Act*,

the Contractor shall do so without regard to its own financial interests.

243. [This Part of the Agreement shall survive the expiry or termination of the Agreement to the extent that it prohibits the Contractor from, either itself or through any other person, demanding or accepting a fee or other remuneration for its own or another's benefit from—

243.1. any patient of its for the provision of any treatment under the Agreement, except as otherwise provided in the *NHS Charges Regulations*; and

243.2. any person who has requested services under the Agreement for himself or a family member, as a prerequisite to providing services under the Agreement to that person or his family member.][77]

[77] Clause 243 is not mandatory but it is recommended.

PART 16[78]

CLINICAL GOVERNANCE AND QUALITY ASSURANCE

Clinical governance arrangements

244. The Contractor shall co-operate with such *clinical governance arrangements* as the Commissioner may establish in respect of contractors providing services under a PDS Agreement.

245. The Contractor shall nominate a person who manages services under the agreement to have responsibility for ensuring compliance with *clinical governance arrangements*.

Quality assurance system

246. The Contractor shall establish, and operate in accordance with clauses 248 and 249, a practice based quality assurance system which is applicable to all the persons specified in clause 247.

247. The specified persons are—

247.1. any dental practitioner who performs services under the Agreement;

247.2. any other person employed or engaged by the Contractor to perform or assist in the performance of services under the Agreement.

248. The Contractor shall ensure that in respect of his practice based quality assurance system, he has nominated a person (who need not be connected with the Contractor's practice) to be responsible for operating that system.

249. In clauses 246 to 248, "practice based quality assurance system" means one which comprises a system to ensure that—

[78] This Part is required by *the Regulations* (see paragraphs 77 and 78 of Schedule 3).

249.1. effective measures of infection control are used;

249.2. all legal requirements relating to health and safety in the workplace are satisfied;

249.3. all legal requirements relating to radiological protection are satisfied;

249.4. any requirements of the General Dental Council in respect of the continuing professional development of dental practitioners are satisfied; and

249.5. the requirement to display in a prominent position the written statement relating to the quality assurance system (see clause 208) is satisfied.

DUTY AS TO EDUCATION AND TRAINING

249A. The Contractor must co-operate with *the Secretary of State* in the discharge of *the Secretary of State's* duty under section 1F of *the 2006 Act*, or co-operate with *NHS England* where *NHS England* is discharging that duty by virtue of a direction under section 7 of that Act.

PART 17[79]

INSURANCE

Insurance: negligent performance

250. The Contractor shall at all times have in force in relation to it an *indemnity arrangement* which provides *appropriate cover*.

[79] This Part is required by *the Regulations* (see paragraphs 79 and 80 of Schedule 3).

251. The Contractor shall not sub-contract its obligations to provide clinical services under the Agreement unless it has satisfied itself that the sub-contractor has in force in relation to it an *indemnity arrangement* which provides *appropriate cover*.

252. The Contractor or a sub-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 it an employee of its in connection with clinical services which that employee provides under the Agreement or, as the case may be, sub-contract.

Public liability insurance

253. The Contractor shall at all times hold adequate public liability *insurance* in relation to liabilities to third parties arising under or in connection with the agreement which are not covered by an *indemnity arrangement* referred to in clauses 250 to 252.

PART 18[80]

GIFTS

254. The Contractor shall keep a register of gifts which—

254.1. are given to any of the persons specified in clause 255 by or on behalf of—

254.1.1. patient,

254.1.2. a relative of a patient, or

254.1.3. any person who provides or wishes to provide services to the Contractor or its patients in connection with the Agreement; and

254.2. have, in its reasonable opinion, an individual value of more than £100.00.

[80] This Part is required by *the Regulations*: see paragraph 81 of Schedule 3 to *the Regulations*.

255. The persons referred to in clause 254.1 are—

255.1. the Contractor;

255.2. where the Agreement is with a *dental corporation*, a director, chief executive or secretary of the *dental corporation*;

255.2A. where the Agreement is with a company limited by shares, a director, chief executive or secretary of the company;

255.2B. where the Agreement is with a limited liability partnership, a member of the partnership;

255.3. any person employed by the Contractor for the purposes of the Agreement;

255.4. any dental practitioner engaged by the Contractor for the purposes of the Agreement;

255.5. any spouse or civil partner of the Contractor (where the Contractor is an individual dental practitioner) or of a person specified in clauses 255.2 to 255.4; or

255.6. any person whose relationship with the Contractor (where the contractor is an individual dental practitioner) or with a person specified in clauses 255.2 to 255.4 has the characteristics of the relationship between husband and wife or civil partners.

256. Clause 254 does not apply where—

256.1. there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the Contractor;

256.2. the Contractor is not aware of the gift; or

256.3. the Contractor is not aware that the donor wishes to provide services to the Contractor.

257. The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within clause 254 and which are given to the persons specified in clauses 255.

258. The register referred to in clause 254 shall include the following information—

258.1. the name of the donor;

258.2. 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;

258.3. in any other case, the address of the donor;

258.4. the nature of the gift;

258.5. the estimated value of the gift; and

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

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

PART 19[81]

COMPLIANCE WITH LEGISLATION AND GUIDANCE

260. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by *NHS England* and *the Secretary of State*.

[81] This Part is required by *the Regulations* (see paragraph 82 of Schedule 3).

PART 20[82]

COMPLAINTS

Complaints procedure

261. The Contractor must have in place a complaints procedure which meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.

Co-operation with investigations

262. The Contractor shall co-operate with—

262.1. any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the Agreement taken by –

262.1.1 *NHS England;*

262.1.2 the Commissioner; and

262.1.3 the *Health Service Commissioner*; and

262.2 any investigation of a complaint by an *NHS body* or *local authority* which relates to a patient or former patient of the Contractor.

263. The co-operation required by clause 262 includes—

263.1 answering questions reasonably put to the Contractor by the Commissioner;

[82] This Part is required by *the Regulations*: see Part 6 of Schedule 3.

263.2 providing any information relating to the complaint reasonably required by the Commissioner; and

263.3 attending 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 is reasonably required by the Commissioner.

Provision of information

264. The Contractor shall inform the Commissioner, at such intervals as the Commissioner requires, of the number of complaints it has received under the procedure established in accordance with this Part.

265. Not Used.

266. Not Used.

267. Not Used.

268. Not Used.

269. Not Used.

270. Not Used.

271. Not Used.

272. Not Used.

273. Not Used.

274. Not Used.

275. Not Used.

276. Not Used.

277. This Part of the Agreement shall survive the expiry or termination of the Agreement in so far as it relates to any complaint or investigation reasonably connected with the provision of services under the agreement before it terminated[83].

PART 21[84]

DISPUTE RESOLUTION

Local resolution of Agreement disputes

278. In the case of any dispute arising out of or in connection with the Agreement, the Contractor and the Commissioner must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the *NHS dispute resolution procedure* (or, where applicable, before commencing court proceedings).

Dispute resolution: non-NHS Contracts[85]

279. Where legal proceedings have commenced before 1 July 2015, which relate to any dispute arising out of or in connection with the Agreement, except matters dealt with under the complaints procedure set out in Part 20 of this Agreement, may be referred for consideration and determination to *the Secretary of State*, if:—

279.1 the Commissioner so wishes and the Contractor has agreed in writing; or

[83] This clause is not mandatory but it is recommended to ensure that the Contractor is still under an obligation to comply with the investigation of a complaint or with any relevant investigation where the Agreement has terminated or expired.

[84] Except where specifically indicated in the footnotes, this Part is required by *the Regulations* (see Part 7 of Schedule 3).

[85] These clauses are mandatory terms only if the agreement is not an *NHS contract*. Otherwise, the clauses should not be included in the Agreement.

279.2 the Contractor so wishes (even if the Commissioner does not agree).

279.A Any dispute arising out of or in connection with the Agreement where clause 279 does not apply, except matters dealt with under the complaints procedure set out in Part 20 of this Agreement, may be referred for consideration and determination to *the Secretary of State*, if:—

279A.1. if it relates to a period of when the Contractor was a *health service body*, by the Contractor or by the Commissioner; or

279A.2. in any other case, by the Contractor or, if the Contractor agrees in writing, by the Commissioner.

280. In the case of a dispute referred to the *Secretary of State* under clause 279 or clause 279A, the procedure to be followed is the *NHS dispute resolution procedure*, and the parties agree to be bound by a determination made by the *adjudicator*.

280A. Where the Contractor or the Commissioner –

280A.1 has referred the matter to the *NHS dispute resolution procedure* before the Contractor ceases to be a *health service body*, or

280A.2 refers any matter to the *NHS dispute resolution procedure* in accordance with paragraph 54(1)(a) of Schedule 3 of the Regulations, after the Contractor ceases to be a *health service body*,

the Contractor is to continue to be treated as a *health service body* (and accordingly the Agreement is to continue to be regarded as a *NHS contract*) for the purpose of the consideration and determination of the dispute.

NHS dispute resolution procedure

281. The *NHS dispute resolution procedure* applies 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(5) of *the 2006 Act* / clause 279 or clause 279A above][86], and the Commissioner and the Contractor shall participate in the *NHS dispute resolution procedure* as set out in paragraphs 55 and 56 of Schedule 3 to *the Regulations*.

282. Any party wishing to refer a dispute shall send to *the Secretary of State* a written request for dispute resolution which shall include or be accompanied by—

282.1. the names and addresses of the parties to the dispute;

282.2. a copy of the Agreement; and

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

283. Any party wishing to refer a dispute as mentioned in clause 282 must send the request under that clause within a period of three 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.

284. In clauses 278 to 283 "any dispute arising out of or in connection with the Agreement" includes any dispute arising out of or in connection with the termination of the Agreement.

285. This Part shall survive the expiry or termination of the Agreement.

PART 22[87]

VARIATION AND TERMINATION OF THE AGREEMENT

[86] If the Agreement is an NHS contract, the parties must select the phrase "section 9(5) of *the 2006 Act*". If the Agreement is not an NHS contract, the parties must select the phrase "clause 279 above".

[87] Except where it is indicated in a footnote that a particular provision is only required in certain types of Agreement, this Part is required by *the Regulations*: see Part 9 of Schedule 3.

Variation of the Agreement: general

286. Subject to clause 200, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Commissioner and the Contractor.

287. In addition to the specific provision made in clauses 288, 290A and 318 to 322, the Commissioner may vary the Agreement without the Contractor's consent where it—

287.1. is reasonably satisfied that it is necessary to vary the agreement so as to comply with *the 2006 Act*, any regulations made pursuant to that Act, or any direction given by the *Secretary of State* pursuant to that Act; and

287.2. notifies the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect shall be not less than 14 days after the date on which the notice under clause 287.2 is served on the Contractor.

Variation of the Agreement: activity under the Agreement

288. Where the Contractor or the Commissioner is of the opinion that there needs to be a variation to the number of—

288.1. *units of dental activity*; or

288.2. *units of orthodontic activity*,

to be provided under the Agreement, clauses 289 and 290 shall apply.

289. The Contractor or the Commissioner shall notify the other party to the Agreement in writing of its opinion of the need for a variation, specifying in that notice the variation that it considers necessary, together with its reasons.

290. Following service of the notice referred to in clause 289, both parties shall use their best endeavours to communicate and cooperate with each other with a view to determining what (if any) variation should be made to the—

290.1. *units of dental activity*; or

290.2. *units of orthodontic activity*,

and any related variations to the Agreement, including to the monies to be paid to the Contractor under the Agreement, and shall, where appropriate, effect the variation in accordance with clause 286.

Variation of the Agreement: rebasing for persistent under performance

290A.1. In this clause—

"contracted activity" means the number of *units of dental activity* or *units of orthodontic activity* the Contractor is required to provide under the Agreement,

"Covid years" means the *financial years* ending on 31st March 2021 and 31st March 2022,

"rebasing" means a permanent variation of the Agreement pursuant to sub-clause 290A.2 and *"rebase"* is to be read accordingly,

"rebasing date" means the date, notified by the Commissioner under a *rebasing notice*, from which the *rebasing* takes effect,

"rebasing notice" means a notice in writing sent by the Commissioner to the Contractor, notifying the Contractor of the wording of a proposed *rebasing* and the *rebasing date*,

"relevant financial years" means any three consecutive *financial years*, save for the *Covid years*, which—

290A.1.1. are not before the *financial year* ending on 31st March 2020, and

290A.1.2. immediately precede the *financial year* in which the *rebasing notice* is served on the Contractor.

290A.2 If all the conditions in sub-clause 290A.3. are met, the Commissioner may *rebase* the Agreement to—

290A.2.1. reduce the *contracted activity*, and

290A.2.2. carry out any related variations of the Agreement, including in relation to the monies to be paid to the Contractor under the Agreement, but the *rebasing* must not result in the *contracted activity* being reduced to less than the highest number of *units of dental* or *orthodontic activity* provided by the Contractor in any one of the *relevant financial years*.

290A.3 The conditions referred to in sub-clause 290A.2. are—

290A.3.1. in respect of each *relevant financial year*—

290A.3.1.1. The Commissioner invited the Contractor to participate in a mid-year review of its performance under the Agreement, pursuant to clause 91.2 (for UDA activity) or clause 132.2 (for UOA activity), whether the Contractor has engaged with this procedure or not,

290A.3.1.2. the Contractor provided less than 96% of *contracted activity*,

290A.3.1.3. there have not been circumstances to which clause 350 applies, which have caused the under delivery pursuant to sub-clause 290A.3.1.2,

290A.3.1.4. The Commissioner issued a breach notice to the Contractor by reason of under delivery pursuant to sub-clause 290A.3.1.2, which has not been set aside, and no formal dispute is pending in

respect of the circumstances that have given rise to the breach notice, and

290A.3.2. The Commissioner has not been able to agree with the Contractor a permanent variation of the Agreement under clause 290.

290A.4 If the Commissioner decides to *rebase* the Agreement—

290A.4.1. it must serve a *rebasing notice* on the Contractor and allow a minimum of 28 days, starting with the day the *rebasing notice* is served on the Contractor, before taking any action pursuant to that notice, and

290A.4.2. it must specify in the *rebasing notice* a *rebasing date* it considers appropriate, which must be no earlier than 1st April in the *financial year* immediately following the *financial year* in which the *rebasing notice* is served on the Contractor.

Termination by agreement

291. The Commissioner and the Contractor may agree in writing to terminate the 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 the Agreement should be terminated.

Termination on the death of an individual[88]

292. Where the Agreement is with a single individual and that individual dies, the Agreement shall terminate at the end of the period of 28 days after the date of his death unless, before the end of that period—

292.1. subject to clause 293, the Commissioner has agreed in writing with the contractors' personal representative that the Agreement should

[88] Clauses 292 and 293 only need to be included if the Contractor is an individual. If not, these clauses should be omitted.

continue for a further period, not exceeding 6 months after the end of the period of 28 days; and

292.2. the Contractor's personal representatives have confirmed in writing to the Commissioner that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the Agreement throughout the period for which it continues.

293. Where the Commissioner is of the opinion that another contractor may wish to enter into an agreement in respect of the mandatory services which were provided by the deceased, the 6 month period referred to in clause 292.1 may be extended by a period not exceeding 6 months as may be agreed.

294. Clause 292 does not affect any other rights to terminate the Agreement which the Commissioner may have under clauses 301 to 315.

Termination by the Contractor

295. The Contractor may terminate the Agreement by serving notice in writing on the Commissioner at any time.

296. Where the Contractor serves notice pursuant to clause 295, the Agreement shall terminate three months after the date on which the notice is served ("the termination date"), save that if the termination date is not the last calendar day of a month, the Agreement shall instead terminate on the last calendar day of the month in which the termination date falls.

297. Clauses 295, 296, 298 to 300 are without prejudice to any other rights to terminate the Agreement that the Contractor may have.

Late payment notices

298. The Contractor may give notice in writing (a "late payment notice") to the Commissioner if the Commissioner has failed to make any payments due to the

Contractor in accordance with Part 14 of this Agreement, and the Contractor shall specify in the late payment notice the payments that the Commissioner has failed to make in accordance with the Agreement.

299. Subject to clause 300, the Contractor may, at least 28 days after having served a late payment notice, terminate the Agreement by a further written notice if the Commissioner has still failed to make the payments that were due to the Contractor and that were specified in the late payment notice served on the Commissioner pursuant to clause 298.

300. If, following receipt of a late payment notice, the Commissioner refers the matter to the *NHS dispute resolution procedure* within 28 days of the date upon which it is served with the late payment notice, and it notifies the Contractor in writing that it has done so within that period of time, the Contractor may not terminate the Agreement pursuant to clause 299 until—

300.1. there has been a determination of the dispute pursuant to paragraph 56 of Schedule 3 to *the Regulations* and that determination permits the Contractor to terminate the Agreement; or

300.2. the Commissioner ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

Termination by the Commissioner: general

301. The Commissioner may only terminate the Agreement in accordance with this Part.

Termination by the Commissioner for the provision of untrue etc. information

302. The Commissioner may serve notice in writing on the Contractor terminating the Agreement forthwith, or from such date as may be specified in the notice if, after

the Agreement has been entered into, it comes to the attention of the Commissioner that written information provided to the Commissioner by the Contractor before the Agreement was entered into in relation to the conditions set out in regulation 4 or 5 of *the Regulations* (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Termination by the Commissioner on grounds of suitability etc.

303. The Commissioner may serve notice in writing on the Contractor terminating the Agreement forthwith, or from such date as may be specified in the notice if —

303.1. in the case of an agreement with an individual, that individual;

303.2. in the case of an agreement with a *dental corporation*, any director, chief executive or secretary of that corporation;

303.3. in the case of an agreement with a company limited by shares, any director, chief executive or secretary of that company; or

303.4 in the case of a limited liability partnership, any member of that partnership,

falls within clause 304 during the existence of the Agreement.

304. A person falls within this clause if—

304.1. he or it is the subject of a national disqualification;

304.2. subject to clause 305, 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;

304.3. subject to clause 306, he has been dismissed (otherwise than by reason of redundancy) from any employment by a *health service body* unless before the Commissioner has served a notice terminating the Agreement pursuant to this clause, he is employed by the *health service body* that dismissed him or by another *health service body*;

304.5. he or it is removed from, or refused admission to, a *primary care list* by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of *the 2006 Act* respectively) unless his name has subsequently been included in such a list;

304.5. he has been convicted in the United Kingdom of—

304.5.1. murder; or

304.5.2. a criminal offence other than murder, committed on or after 14th December 2001, and has been sentenced to a term of imprisonment of over six months;

304.6. subject to clause 307 he has been convicted outside the United Kingdom of an offence—

304.6.1. which would, if committed in England and Wales, constitute murder, or

304.6.2. committed on or after 14th December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;

304.6.3. he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 or Schedule 1 to the Criminal Procedure (Scotland) Act 1995;

304.6.4. he or it has—

304.6.4.1. been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;

304.6.4.2. been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, unless that order has ceased to have effect or has been annulled;

304.6.4.3. 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; or

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

304.6.5. there is—

304.6.5.1. an administrator, administrative receiver or receiver appointed in respect of it; or

304.6.5.2. an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;

304.6.6. he has been—

304.6.6.1. 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; or

304.6.6.2. removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 or under section 34 of the Charities and Trustee Investment (Scotland) Act 2005, from being concerned in the management or control of any body;

304.6.7 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

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

305. The Commissioner shall not terminate the Agreement pursuant to clause 304.2 where the Commissioner is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be—

305.1. the Contractor;

305.2. in the case of an agreement with a *dental corporation*, any director, chief executive or secretary of that corporation:

305.3 in the case of a company limited by shares, any director, chief executive or secretary of that company; or

305.4 in the case of a limited liability partnership, any member of that partnership,

as the case may be.

306. The Commissioner shall not terminate the Agreement pursuant to clause 304.3—

306.1. until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or

306.2. if, during the period of time specified in clause 306.1, 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 Commissioner may only terminate the Agreement at the end of the period specified in clause 306.2 if there is no finding of unfair dismissal at the end of those proceedings.

307. The Commissioner shall not terminate the Agreement pursuant to clause 304.6.1 and 304.6.2 where the Commissioner is satisfied that the conviction does not make the person unsuitable to be—

307.1. the Contractor; or

307.2. in the case of an agreement with a *dental corporation*, any director, chief executive or secretary of that corporation;

307.3 in the case of a company limited by shares, any director, chief executive or secretary of that company; or

307.4 in the case of a limited liability partnership, any member of that partnership,

as the case may be.

Termination by the Commissioner: patient safety and material financial loss

308. The Commissioner may serve notice in writing on the Contractor terminating the Agreement forthwith or with effect from such date as may be specified in the notice if—

308.1. the Contractor has breached the Agreement and as a result of that breach, the safety of the Contractor's patients is at serious risk if the Agreement is not terminated; or

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

Termination by the Commissioner: remedial notices and breach notices

309. Where the Contractor has breached the Agreement other than as specified in clauses 302 to 308 and the breach is capable of remedy, the Commissioner shall, before taking any action it is otherwise entitled to take by virtue of the Agreement, serve a notice on the Contractor requiring it to remedy the breach ("remedial notice").

310. A remedial notice shall specify—

310.1. details of the breach;

310.2. the steps the Contractor must take to the satisfaction of the Commissioner in order to remedy the breach; and

310.3. the period during which the steps must be taken ("the notice period").

310.4. The notice period shall, unless the Commissioner is satisfied that a shorter period is necessary to—

310.4.1. protect the safety of the Contractor's patients; or

310.4.2. protect itself from material financial loss,

be no less than 28 days from the date that notice is given.

311. Where the Commissioner is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the notice period, the Commissioner may terminate the Agreement with effect from such date as the Commissioner may specify in a further notice to the Contractor.

312. Where the Contractor has breached the Agreement other than as specified in clauses 302 to 308 and the breach is not capable of remedy, the Commissioner may serve notice on the Contractor requiring the Contractor not to repeat the breach ("breach notice").

313. If, following a breach notice or a remedial notice, the Contractor—

313.1. repeats the breach that was the subject of the breach notice or the remedial notice; or

313.2. otherwise breaches the Agreement resulting in either a remedial notice or a further breach notice,

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

314. The Commissioner shall not exercise its right to terminate the Agreement under clause 313 unless it is satisfied that the cumulative effect of the breaches is such that the Commissioner considers that to allow the Agreement to continue would be prejudicial to the efficiency of the services to be provided under the Agreement.

315. 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 Commissioner may withhold or deduct monies which would otherwise be payable under the Agreement in respect of that obligation which is the subject of the default.

Termination by the Commissioner: additional provisions specific to agreements with *dental corporations*, companies limited by shares and limited liability partnerships[89]

316. Where the Contractor is a *dental corporation*, company limited by shares, or limited liability partnership, if the Commissioner becomes aware that the Contractor is carrying on any business which the Commissioner considers to be detrimental to the Contractor's performance of its obligations under the Agreement—

316.1. the Commissioner shall be entitled to give notice to the Contractor requiring that the *dental corporation*, company limited by shares, or limited liability partnership ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given ("the notice period"); and

316.2. if the contractor has not satisfied the Commissioner that the *dental corporation*, company limited by shares, or limited liability partnership has ceased carrying on that business by the end of the notice period, the Commissioner may, by a further written notice, terminate the Agreement forthwith or from such date as may be specified in the notice.

317. Where the Contractor is a *dental corporation* or company limited by shares and on or after the coming into force for all purposes of article 39 of the *Dentists Act Order* during the existence of the Agreement—

[89] The clauses under this heading are only relevant if the Agreement is made with a *dental corporation*, company limited by shares, or limited liability partnership.

317.1. the majority of the directors of the *dental corporation* or company limited by shares cease to be either dental practitioners or *dental care professionals*;

317.2. the *dental corporation* or company limited by shares has been convicted of an offence under section 43(1) of the *Dentists Act*; or

317.3. the *dental corporation* or company limited by shares, or a director or former director of that corporation or company, has had a financial penalty imposed on it or him by the General Dental Council pursuant to section 43B or 44 of the *Dentists Act*,

the Commissioner may, by written notice, terminate the Agreement if it considers that as a consequence the *dental corporation* or company limited by shares is no longer suitable to be a contractor.

317A. Where the Contractor is a company limited by shares and the company ceases—

317A.1. to be a company limited by shares; or

317A.2. to satisfy the conditions in section 108(1A) of *the 2006 Act*,

the Commissioner shall serve notice in writing on the Contractor terminating the Agreement forthwith.

317B. Where the Contractor is a limited liability partnership and—

317B.1. the partnership ceases to be a limited liability partnership; or

317B.2. section 108(1B) or (1C) of *the 2006 Act* ceases to apply in respect of that partnership,

the Commissioner shall serve notice in writing on the Contractor terminating the Agreement forthwith.

Agreement sanctions

318. In clauses 319 to 326, "agreement sanction" means—

318.1. termination of specified reciprocal obligations under the Agreement;

318.2. suspension of specified reciprocal obligations under the Agreement for a period of up to six months; or

318.3. withholding or deducting monies otherwise payable under the Agreement.

319. Where the Commissioner is entitled to terminate the Agreement pursuant to clauses 302, 303, 308, 311, 313, 316 or 317, it may instead impose any of the agreement sanctions if the Commissioner is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Commissioner's entitlement to terminate the Agreement.

320. If the Commissioner 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 sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

321. Subject to clauses 323 to 326, the Commissioner shall not impose the agreement sanction until at least 28 days after it has served notice on the Contractor pursuant to clause 320 unless the Commissioner is satisfied that it is necessary to do so in order to—

321.1. protect the safety of the Contractor's patients; or

321.2. protect itself from material financial loss.

322. Where the Commissioner imposes an agreement sanction, the Commissioner shall be entitled to charge the Contractor the reasonable costs of additional administration that the Commissioner has incurred in order to impose, or as a result of imposing, the agreement sanction.

Agreement sanctions and the NHS dispute resolution procedure

323. If there is a dispute between the Commissioner and the Contractor in relation to an agreement sanction that the Commissioner is proposing to impose, the Commissioner shall not, subject to clause 326, impose the proposed agreement sanction except in the circumstances specified in clause 324.1 or 324.2.

324. If the Contractor refers the dispute relating to the agreement sanction to the *NHS dispute resolution procedure* within 28 days beginning on the date on which the Commissioner served notice on the Contractor in accordance with clause 320 (or such longer period as may be agreed in writing with the Commissioner), and notifies the Commissioner in writing that it has done so, the Commissioner shall not impose the agreement sanction unless—

324.1. there has been a determination of the dispute pursuant to paragraph 56 of Schedule 3 to *the Regulations* and that determination permits the Commissioner to impose the agreement sanction; or

324.2. the Contractor ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

325. If the Contractor does not invoke the *NHS dispute resolution procedure* within the time specified in clause 324, the Commissioner shall be entitled to impose the agreement sanction forthwith.

326. If the Commissioner is satisfied that it is necessary to impose the agreement sanction before the *NHS dispute resolution procedure* is concluded in order to—

326.1. protect the safety of the Contractor's patients; or

326.2. protect itself from material financial loss,

the Commissioner shall be entitled to impose the agreement sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

327. Where the Commissioner is entitled to serve written notice on the Contractor terminating the Agreement pursuant to clauses 302, 303, 308, 311, 313, 316 or 317, the Commissioner shall, in the notice served on the Contractor pursuant to those provisions, specify a date on which the Agreement terminates that is not less than 28 days after the date on which the Commissioner has served that notice on the Contractor unless clause 328 applies.

328. This clause applies if the Commissioner is satisfied that a period less than 28 days is necessary in order to—

328.1. protect the safety of the Contractor's patients; or

328.2. protect itself from material financial loss.

329. In a case falling within clause 327, where the exceptions in clause 328 do not apply, where the Contractor invokes the *NHS dispute resolution procedure* before the end of the period of notice referred to in clause 327, and it notifies the Commissioner 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 330.

330. The Agreement shall only terminate if and when—

330.1. there has been a determination of the dispute pursuant to paragraph 56 of Schedule 3 to *the Regulations* and that determination permits the Commissioner to terminate the Agreement; or

330.2. the Contractor ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

331. If the Commissioner is satisfied that it is necessary to terminate the Agreement before the *NHS dispute resolution procedure* is concluded in order to—

331.1. protect the safety of the Contractor's patients; or

331.2. protect itself from material financial loss,

clauses 329 and 330 shall not apply and the Commissioner 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 clause clauses 302, 303, 308, 311, 313, 316 or 317.

Consequences of termination[90]

332. The termination of the Agreement, for whatever reason, is without prejudice to the accrued rights of either party under the Agreement.

333. On the termination of the Agreement for any reason, the Contractor shall—

333.1. subject to the requirements of this clause, cease performing any work or carrying out any obligations under the Agreement;

[90] The parties are required to make suitable provision for arrangements on the termination of the Agreement, including the consequences (whether financially or otherwise) of the Agreement ending, subject to any specific requirements of *the Regulations* (see regulation 19). Subject to this requirement, the parties could draft their own provisions dealing with the consequences of termination.

333.2. co-operate with the Commissioner to enable any outstanding matters under the Agreement to be dealt with or concluded in a satisfactory manner;

333.3. co-operate with the Commissioner to enable the Contractor's patients to be transferred to one or more other contractors or providers of primary dental services, which include providing reasonable information about individual patients to such other appropriate person or persons as the Commissioner specifies;

333.4. [*If the Commissioner has lent any property such as computer hardware and software, drugs, appliances or dental equipment which may be in the Contractor's possession or control, the agreement may include provision for the return of such property here*];

334. Subject to clauses 335 to 337, the Commissioner's obligation to make payments to the Contractor in accordance with the Agreement shall cease on the date of termination of the Agreement.

335. On termination of the Agreement or termination of any obligations under the Agreement for any reason, the Commissioner shall perform a reconciliation of the payments made by the Commissioner to the Contractor and the value of the work undertaken by the Contractor under the Agreement. The Commissioner shall serve the Contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than four months after the termination of the Agreement, in respect of all outstanding payments due to the contractor from the Commissioner and any patient charges due to be paid by the contractor to the Commissioner (pursuant to paragraph 11.19 of the Personal Dental Services Statement of Financial Entitlement).

336. If the Contractor disputes the accuracy of the reconciliation, the Contractor may refer the dispute to the *NHS dispute resolution procedure* in accordance with the terms of the Agreement within 28 days beginning on the date on which the Commissioner

served the Contractor with written details of the reconciliation. The parties shall be bound by the determination of the dispute.

336A Pursuant to paragraph 11.21 of the Personal Dental Services Statement of Financial Entitlement, if after 2 months of the reconciliation statement being produced by the Commissioner the Contractor has not disputed the reconciliation statement, that reconciliation statement will be the amount either payable to the Contractor or recoverable from the Contractor, whether or not, if the reconciliation statement had been disputed, that would have led to an amended reconciliation.

337. Each party shall pay the other any monies due within three months of the date on which the Commissioner served the Contractor with written details of the reconciliation, or the conclusion of the *NHS dispute resolution procedure*, as the case may be.

338. The obligations contained in clauses 333 to 337 shall continue to apply notwithstanding the termination of the Agreement.

Suspension of Agreement terms or of enforcement of Agreement terms while a disease is or in anticipation of a disease being imminently pandemic etc.

338A.1 Any term that is part of the Agreement as a consequence of action taken under Part 5 of *the Regulations* or by agreement between the parties is temporarily not part of the Agreement, in the particular circumstances mentioned in clause 338A.1.3 and during the period mentioned in 338A.1.3, in the following circumstances:

338A.1.1 As a consequence of a disease being, or in anticipation of a disease being imminently, pandemic and a serious risk or potentially a serious risk to human health, *NHS England* with the agreement of *the Secretary of State* has made an announcement in respect of the prioritisation of

services to be provided in, or in any part of, England as part of the health service;

338A.1.2 The prioritisation is in order to assist in the management of the serious risk or potentially serious risk to human health;

338A.1.3 As part of the announcement, *NHS England* with the agreement of *the Secretary of State* has issued advice to the effect that contractors are not to comply with a specified type of term of personal dental services agreements in the area to which the announcement relates, in the particular circumstances specified in the announcement, and during the period specified in the announcement; and

338A.1.4 The Contractor is situated in the area to which the announcement relates and compliance with the term (it being of the specified type) would, but for the effect of this clause, be a requirement of the Agreement.

338A.2 The Commissioner must not take enforcement action, as provided for in the Agreement, in respect of a breach of a term of the Agreement in the following circumstances:

338A.2.1 As a consequence of a disease being, or in anticipation of a disease being imminently, pandemic and a serious risk or potentially a serious risk to human health, *NHS England* with the agreement of *the Secretary of State* has made an announcement in respect of the prioritisation of services to be provided in, or in any part of, England as part of the health service;

338A.2.2 The prioritisation is in order to assist in the management of the serious risk or potentially serious risk to human health;

338A.2.3 As part of the announcement, *NHS England* with the agreement of *the Secretary of State* has issued advice to the effect that contractors need not comply with a specified type of term of personal dental services agreements in the area to which the announcement relates, in the particular circumstances specified in the announcement, and during the period specified in the announcement; and

338A.2.4 The Contractor is situated in the area to which the announcement relates, and has not complied with the term (it being of the specified type) in the particular circumstances mentioned in clause 338A.2.3.

PART 23

EVIDENCE

339. The Contractor shall request in respect of a person who makes a declaration relating to an exemption under section 177(1) of *the 2006* Act evidence in support of that declaration.

340. The Contractor shall make a note of the type of evidence submitted.

341. If no evidence is submitted, the contractor shall make a note of that fact.

342. Clauses 339 to 341 do not apply where the contractor is satisfied that the person in respect of whom the declaration is made is under the age of 18 years.

NON-SURVIVAL OF TERMS[91]

[91] This clause is not required by *the Regulations*, but is recommended.

343. Unless expressly provided, no term of this Agreement shall survive expiry or termination of this Agreement. Express provision is made in relation to—

[Part 15 (fees, charges and financial interests)];

[Part 20 (complaints)];

[Part 21 (dispute resolution procedure)];

[consequences of termination];

[governing law and jurisdiction]

ENTIRE AGREEMENT[92]

344. Subject to clause 200 and any variations made in accordance with Part 22, this Agreement constitutes the entire agreement between the parties with respect to its subject matter.

345. The Agreement supersedes any prior agreements, negotiations, promises, conditions or representations, whether written or oral, and the parties confirm that they did not enter into the Agreement on the basis of any representations that are not expressly incorporated into the Agreement. However, nothing in this Agreement purports to exclude liability on the part of either party for fraudulent misrepresentation.

GOVERNING LAW AND JURISDICTION[93]

346. This Agreement shall be governed by and construed in accordance with English law.

[92] This clause is not required by *the Regulations*, but is recommended.
[93] This clause is not required by *the Regulations*, but is recommended.

347. Without prejudice to the dispute resolution procedures contained in this Agreement, in relation to any legal action or proceedings to enforce this Agreement or arising out of or in connection with this Agreement, each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

348. Clauses 346 and 347 shall continue to apply notwithstanding the termination of the Agreement.

WAIVER, DELAY OR FAILURE TO EXERCISE RIGHTS[94]

349. 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.

FORCE MAJEURE[95]

350. Neither party shall be responsible to the other for any failure or delay in performance of its obligations and duties under this Agreement which is caused by circumstances or events beyond the reasonable control of a party. However, the affected party must promptly on the occurrence of such circumstances or events—

350.1. inform the other party in writing of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and

350.2. take all action within its power to comply with the terms of this Agreement as fully and promptly as possible.

351. Unless the affected party takes such steps, clause 350 shall not have the effect of absolving it from its obligations under this Agreement. For the avoidance of doubt, any actions or omissions of either party's personnel or any failures of either party's systems, procedures, premises or equipment shall not be deemed to be

[94] This clause is not required by *the Regulations*, but is recommended.
[95] This clause is not required by *the Regulations*, but is recommended.

circumstances or events beyond the reasonable control of the relevant party for the purposes of this clause, unless the cause of failure was beyond reasonable control.

352. If the affected party is delayed or prevented from performing its obligations and duties under the Agreement for a continuous period of 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 28 days)

353. The termination shall not take effect at the end of the notice period if the affected party is able to resume performance of its obligations and duties under the Agreement within the period of notice specified in accordance with clause 352 above, or if the other party otherwise consents.

SEVERANCE[96]

354. Subject to clauses 355 and 356, if any term of this Agreement, other than a *mandatory term*, is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such term shall, to the extent required, be deemed to be deleted from this Agreement and shall not affect the validity, lawfulness or enforceability of any other terms of the Agreement.

355. If, in the reasonable opinion of either party, the effect of such a deletion is to undermine the purpose of the 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 term or a suitable amendment to the Agreement.

356. If the parties are unable to reach agreement as to the suitable alternative term or amendment within a reasonable period of commencement of the negotiations, then the parties may refer the dispute for determination in accordance with the *NHS dispute resolution procedure* set out in Part 21.

SERVICE OF NOTICE[97]

[96] This clause is not required by *the Regulations*, but is recommended.
[97] This clause is not required by *the Regulations*, but is recommended.

357. 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:—

357.1. personally;

357.2. by post, or in the case of any notice served pursuant to Part 22, registered or recorded delivery post;

357.3. by telex, or facsimile transmission (the latter confirmed by telex or post);

357.4. electronic mail; or

357.5. by any other means which the Commissioner specifies by notice to the Contractor

358. Any notice or other information shall be sent to the address specified in the Agreement or such other address as the Commissioner or the Contractor has notified to the other.

359. Any notice or other information shall be deemed to have been served or given:—

359.1. if it was served personally, at the time of service;

359.2. if it was served by post, two *working days* after it was posted; and

359.3. if it was served by telex, electronic mail or facsimile transmission, if sent during *normal surgery hours* then at the time of transmission and if sent outside *normal surgery hours* then on the following *working day*.

360. Where notice or other information is not given or sent in accordance with clauses 357 and 358, such notice or other information is invalid unless the person receiving it elects, in writing, to treat it as valid.

PART 24

SIGNING OF DOCUMENTS

361. In addition to any other requirements relating to such documents whether in this Agreement or otherwise, the Contractor shall ensure that the documents specified in clause 362 include—

361.1. the name and clinical profession of the professional who signed the document;

361.2. the name of the contractor on whose behalf it is signed.

362. The documents referred to clause 361 are—

362.1.1. forms that are required to be completed pursuant to these Regulations, where such forms require a signature;

362.2. prescription forms; and

362.3. any other clinical documents.

SCHEDULE 1[98]

(INDIVIDUAL)

Part 1

The Commissioner whose name, address, telephone number, fax number and email address (if any) is:—

Part 2

The Contractor is a dental practitioner whose name, address, telephone number, fax number (if any) and email address (if any)[99] is:

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

[98] It is recommended that this form is used if the Contractor is an individual.
[99] Please provide the address to which official correspondence and notices should be sent.

SCHEDULE 1[100]

(DENTAL CORPORATION)

Part 1

The Commissioner whose name, address, telephone number, fax number and email address (if any) is:

Part 2

The Contractor is a dental corporation whose name and address of the registered office is:

The address to which official correspondence and notices may be sent is, and the contact telephone number, fax number (if any) and email address (if any) is:

[100] It is recommended that this form is used if the Contractor is a *dental corporation*.

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

SCHEDULE 1[101]

(COMPANY LIMITED BY SHARES)

Part 1

The Commissioner whose name, address, telephone number, fax number and email address (if any) is:

Part 2

The Contractor is a company limited by shares whose name and address of the registered office is:

The address to which official correspondence and notices may be sent is, and the contact telephone number, fax number (if any) and email address (if any) is:

[101] It is recommended that this form is used if the Contractor is a company limited by shares.

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

SCHEDULE 1[102]

(LIMITED LIABILITY PARTNERSHIP)

Part 1

The Commissioner whose name, address, telephone number, fax number and email address (if any) is:

Part 2

The Contractor is a limited liability partnership whose name and address of the registered office is:

The address to which official correspondence and notices may be sent is, and the contact telephone number, fax number (if any) and email address (if any) is:

[102] It is recommended that this form is used if the Contractor is a limited liability partnership.

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

SCHEDULE 2

SIGNATURES OF THE PARTIES TO THE AGREEMENT

Signed by

For and on behalf of the Commissioner

Signed by

In the presence of

[The Agreement must be signed by all persons with power to bind the Contractor.]

SCHEDULE 3

INFORMATION TO BE INCLUDED IN PATIENT LEAFLETS

A patient leaflet shall include—

1. The name of the Contractor.

2. In the case of an Agreement with a *dental corporation*—

   (a) the names of the directors, chief executive and secretary of that corporation, in so far as those positions exist in relation to the *dental corporation*; and

   (b) the address of the corporation's registered office.

2A. In the case of an Agreement with a company limited by shares—

   (a) whether or not it is a company limited by shares;

   (b) the names of the directors, chief executive and secretary of the company, in so far as those positions exist in relation to the company; and

   (c) the address of the company's registered office.

2B. In the case of an agreement with a limited liability partnership—

   (a) whether or not it is a limited liability partnership;

   (b) the names of the members of the partnership; and

   (c) the registered premises address of the limited liability partnership.

3. The full name of each person performing services under the Agreement.

4. In the case of each person performing dental services under the Agreement, his professional qualifications.

5. Whether the Contractor undertakes the teaching or training of persons who provide dental services or who intend to do so.

6. The address of each of the *practice premises*.

7. The Contractor's telephone and fax numbers and the address of its website (if any).

8. Whether the *practice premises* have suitable access for disabled patients and, if not, the alternative arrangements for providing services to such patients.

9. How to request services as a patient.

10. The rights of a patient to express a preference of practitioner, and the means of expressing such a preference.

11. The services available under the Agreement.

12. The normal surgery days and hours of the practice.

13. The arrangements for dental services for the hours and days that fall outside normal surgery hours (whether or not provided by the Contractor) and how the patient may contact such services.

14. If the services in paragraph 13 are not provided by the Contractor, the fact that the Commissioner is responsible for commissioning the services.

15. Not used.

16. How patients may make a complaint or comment on the provision of service.

17. The rights and responsibilities of the patient, including keeping appointments.

18. The action that may be taken where a patient is violent or abusive to the contractor, its staff, persons present on the practice premises or in the place where treatment is provided under the Agreement or other persons specified in clause 34.

19. 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.

20. The full name, postal, email and website address, and telephone number of the Commissioner.

SCHEDULE 4

PAYMENT SCHEDULE

[*include payments in respect of services or the amounts of such payments that are not specified in directions pursuant to clause 237.4.*]