

ALTERNATIVE PROVIDER MEDICAL SERVICES**OUTLINE MODEL CONTRACT****FOR****PRIMARY MEDICAL SERVICES**

Under the Alternative Provider Medical Services Directions (No 2) 2004, all APMS contracts must include certain provisions. These provisions are underlined.

Clauses underlined with a solid line are mandatory and should not be amended. Clauses 6.2-6.4, 10.4-10.6, 28.1, 28.3 and 28.4, 29.3-29.9, 31.3 and 51.5 are only mandatory where Essential Services with a list of patients are or will be included.

Other Clauses are not mandatory and may or may not be appropriate to local circumstances. They are only included as suggestions and may be the subject of local discussions and negotiation.

Underline is not used for any other purpose in the draft and so can easily be removed using the "find and replace" function.

This example contract was drafted by Bevan Brittan with the assistance of colleagues from the Department of Health and PASA, in conjunction with the NHS Confederation APMS Forum. It will need to be developed to meet any specific circumstances. It does not purport to give definitive legal advice and users are commended to take their own advice on specific contracts. Bevan Brittan accepts no responsibility for loss which may arise as a result of reliance of this document.

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FORM OF AGREEMENT

THIS AGREEMENT is made on the day of 200[]

BETWEEN

- (1) [Name of Primary Care Trust] of [address] (called "the PCT") and
- (2) [Name of Contractor] having its main or registered address at [address] (called "the Contractor") (and hereinafter called the "Parties")

BACKGROUND

- A The PCT is a statutory body established by an order made pursuant to section 16A of the National Health Service Act 1977. It is the duty of the PCT to exercise its powers so as to provide or secure the provision of primary medical services within its area.
- B In order to achieve this object the PCT is empowered under section 16CC (2) (b) of the National Health Service Act 1977 to make such arrangements for the provision of primary medical services as it thinks fit.
- C The PCT and the Contractor wish to enter into a Contract under which the Contractor is to provide the Services in accordance with the provisions of the Contract.

1 DEFINITIONS AND INTERPRETATION

1.1 The following terms and phrases shall have the following meanings for the purposes of the Contract:

“1990 Act” means the National Health Service and Community Care Act 1990;

“2003 Order” means the General and Specialist Medical Practice (Education, Training and Qualifications) Order 2003;

“the Act” means the National Health Service Act 1977;

“advanced electronic signature” means an electronic signature which is—

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

“Affected Party” means, in the context of Clause 72, the Party whose obligations under the Contract have been affected by the Force Majeure Event;

“APMS Directions” means the Alternative Provider Medical Services (No 2) Directions 2004;

“Appliance” means an appliance which is included in a list for the time being approved by the Secretary of State for the purposes of section 41 of the Act;

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

“CCT” means Certificate of Completion of Training awarded under article 8 of the 2003 Order, including any such certificate awarded in pursuance of the competent authority functions of the Postgraduate Medical Education and Training Board specified in article 20(3)(a) of that Order;

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

“Chemist” means:

- (a) a registered pharmacist,
- (b) person lawfully conducting a retail pharmacy business in accordance with section 69 of the Medicines Act 1968;or
- (c) a supplier of Appliances

who is included in the list of a Primary Care Trust or a Local Health Board under section 42 of the Act, or who provides local pharmaceutical services in accordance with LPS arrangements;

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

"The Confidentiality Directions" means the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Provider Medical Services Directions 2004;

"The Contract" means this agreement concluded between the PCT and the Contractor;

"Core Hours" means the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Good Friday, Christmas Day or Bank Holidays;

"Dispute Resolution Procedure" means the procedure detailed in 61 of the Contract;

"electronic communication" has the same meaning as in section 15 of the Electronic Communications Act 2000;

"Essential Services" means the services described in regulation 15(3), (5), (6) and (8) of the National Health Service (General Medical Services Contracts) Regulations 2004, or services that are equivalent to those services, and which are provided during core hours;

"ETP service" means the electronic prescription service which forms part of the NHS Care Record Service;

"Force Majeure Event" means one or more of the following to the extent that it is not attributable to the Contractor or the Contractor's staff: war, civil war (whether declared or undeclared), riot or armed conflict; radioactive, chemical or biological contamination; pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speed; acts of terrorism; explosion; fire; flood; extraordinarily severe weather conditions which are both unforeseen and for which precautions are not customarily taken by prudent business organisations so as to avoid or mitigate the impact thereof; industrial action which affects the provision of the Services, but which is not confined to the workforce of the Contractor or is site specific; pestilence; the actions of governmental authorities to the extent that such actions are implemented either pursuant to emergency powers or otherwise outside the usual course of governmental business; or Act of God, or other event which is beyond the reasonable control of the Party in question and could not have been avoided or mitigated by the exercise of all reasonable care by that Party and further provided that such event materially affects the ability of the Party seeking to rely upon it to perform its obligations under the Contract

"General Medical Practitioner" means:

(a) from the coming into force of article 10 of the 2003 Order, a medical practitioner whose name is included in the General Practitioner Register otherwise than by virtue of paragraph 1(d) of Schedule 6 to that Order; and

(b) until the coming into force of that article, a medical practitioner who is either:

(i) until the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, suitably experienced within the meaning of section 31(2) of the Act, section 21 of the National Health Service (Scotland) Act 1978 or Article 8(2) of the Health and Personal Social Services (Northern Ireland) Order 1978, or

(ii) upon the coming into force of paragraph 22 of Schedule 8 to the 2003 Order, an eligible general practitioner pursuant to that paragraph other than by virtue of having an acquired right under paragraph 1(d) of Schedule 6 to the 2003 Order;

“GP Registrar” means a medical practitioner who is being trained in general practice by

(a) until the coming into force of article 4(5)(d) of the 2003 Order, a General Medical Practitioner who:

(i) has been approved for that purpose by the Joint Committee on Postgraduate Training for General Practice under regulation 7 of the National Health Service (Vocational Training for General Medical Practice) Regulations 1997, and

(ii) performs primary medical services; and

(b) from the coming into force of that article, means a medical practitioner who is approved under that article for the purposes of providing training under article 5 (1)(c) (i) of the 2003 Order whether as part of training leading to the award of a CCT or otherwise;

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

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

“Health Board” means a Health Board established under section 2 of the National Health Service (Scotland) Act 1978;

“Health Care Professional” has the same meaning as in section 28M of the Act;

“Health Service Body”, unless the context otherwise requires, has the meaning given to it in section 4(2) of the 1990 Act;

“Independent Nurse Prescriber” means a person:

(a) who is either engaged or employed by the Contractor;

(b) who is registered in the Nursing and Midwifery Register; and

(c) in respect of whom an annotation signifying that he is qualified to order drugs, medicines and Appliances from:

(i) the Nurse Prescribers’ Formulary for District Nurses and Health Visitors in Part XVIIIB(i) of the Drug Tariff; or

(ii) the Nurse Prescribers’ Extended Formulary in Part XVIIIB(ii) of the Drug Tariff, is also recorded in that register;

“Licensing Authority” shall be construed in accordance with section 6(3) of the Medicines Act 1968;

“Licensing Body” means any body that licenses or regulates any profession;

“Local Pharmaceutical Services” has the same meaning as in regulation 2 of the National Health Service (Local Pharmaceutical Services and Pharmaceutical Services) Regulations 2002;

“Mandatory Term” means a term required to be included in the Contract by the APMS Directions;

“Medical Officer” means a medical practitioner who is:

(a) employed or engaged by the Department for Work and Pensions; or

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

“Medical Performers List” means a list of medical practitioners prepared in accordance with regulations made under section 28X of the Act;

“Medical Register” means the registers kept under section 2 of the Medical Act 1983;

“National Disqualification” means:

(a) a decision made by the FHSAA under section 49N of the Act,

(b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 49N of the Act, or

(a) 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 Care Record” means the records relating to an individual patient held by the NHS Care Record Service;

“NHS Care Record Service” means the information technology systems procured by the Department of Health and used by the health service to hold medical records relating to patients;

“NHS Contract” has the meaning assigned to it in section 4 of the 1990 Act;

“NHS Tribunal” means the Tribunal constituted under section 46 of the Act for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales only until 26th August 2002;

“nominated dispenser” means a chemist, medical practitioner or contractor whom a patient has nominated in his NHS Care Record to dispense his electronic prescriptions;

“non-electronic prescription form” means a prescription form which falls within paragraph (a) of the definition of “prescription form”;

“non-electronic repeatable prescription” means a prescription which falls within paragraph (a)(i) of the definition of “repeatable prescription”;

“NPSA” means the National Patient Safety Agency established as a Special Health Authority by the National Patient Safety Agency (Establishment and Constitution) Order 2001

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

“Out of Hours Period” means:

(a) the period beginning at 6.30pm on any day from Monday to Thursday and ending at 8am on the following day;

(b) the period between 6.30pm on Friday and 8am on the following Monday; and

(c) Good Friday, Christmas Day and Bank Holidays;

“Out of Hours Services” means services required to be provided in all or part of the Out of Hours Period which would be essential services if provided by a contractor to its registered patients in core hours;

“Parent” includes, in relation to any Child, any adult who, in the opinion of the Contractor, is for the time being discharging in respect of that Child the obligations normally attaching to a parent in respect of a Child;

“Patient” means persons to whom the Contractor is required or has agreed to provide services under the Contract;

“PCT Patients’ Forum” means a Patients’ Forum established for the PCT under section 15 of the National Health Service Reform and Health Care Professions Act 2002;

“POM Order” means the Prescription Only Medicines (Human Use) Order 1997;

“Practice” means the business operated by the Contractor for the purpose of delivering services under the Contract;

“Practice Premises” means an address specified in the Contract as one at which services are to be provided under the Contract;

“Prescriber” means:

(a) a medical practitioner;

(b) an Independent Nurse Prescriber; and

(c) a Supplementary Prescriber

who is either engaged or employed by the Contractor”.

“prescription form” means -

(a) a form provided by the Primary Care Trust and issued by a prescriber, or

(b) where paragraph 39A(1) of Schedule 6 applies, data that are created in an electronic form, signed with a prescriber's advanced electronic signature and transmitted as an electronic communication to the ETP service,

to enable a person to obtain pharmaceutical services or local pharmaceutical services and does not include a repeatable prescription;”.

“Primary Care List” means:

a list of persons performing primary medical or dental services under section 28X of the Act;

(a) a list of persons undertaking to provide general medical services, general dental services, general ophthalmic services or, as the case may be, pharmaceutical services prepared in accordance with regulations made under sections 29, 36, 39, 42 or 43 of the Act;

(b) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) prepared in accordance with regulations made under section 43D of the Act,

(c) a services list referred to in section 8ZA of the National Health Service (Primary Care) Act 1997,

(d) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001; or

(e) a list corresponding to any of the above lists in Scotland or Northern Ireland;

“registered patient” means a person—

(a) who is recorded by the PCT pursuant to direction 13 as being on the Contractor’s list of patients, or

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

“Relevant Register” means:

(a) in relation to a nurse, the Nursing and Midwifery Register; and

(b) in relation to a pharmacist, the register maintained in pursuance of section 2(1) of the Pharmacy Act 1954 or the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976;

“Relevant Strategic Health Authority” means the Strategic Health Authority established for an area which includes the area for which the PCT is established;

“repeatable prescriber” means a prescriber who is—

(a) engaged or employed by the Contractor where the Contractor provides repeatable prescribing services under the terms of this agreement, or

(b) a party to this contract where such services are provided

“repeatable prescribing services” means services which involve the prescribing of drugs, medicines or appliances on a repeatable prescription;

“repeatable prescription” means a prescription which—

(a) either—

(i) is contained in a form provided by a Primary Care Trust and issued by a repeatable prescriber which, save for the omission of the name of the APMS contractor, is in the format specified in Part 1 of Schedule 1 to the PMS Agreements Regulations, and which is generated by a computer and signed in ink by a repeatable prescriber; or

(ii) where the requirements of paragraph 38A(1) of Schedule 5 to the PMS Agreements Regulations, as modified by direction 5(1)(e), apply, consists of data that are created in an electronic form, signed with a repeatable prescriber’s advanced electronic signature and transmitted as an electronic communication to the ETP service,

(b) is issued or created to enable a person to obtain pharmaceutical services or local pharmaceutical services, and

(c) indicates that the drugs, medicines or appliances ordered on that prescription may be provided more than once and specifies the number of occasions on which they may be provided.

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

“Scheduled Drug” means:

- (a) a drug, medicine or other substance specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under the Contract; or
- (b) except where the conditions in clause 27.1 are satisfied, a drug, medicine or other substance which is specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes;

“the Secretary of State” means the Secretary of State for Health;

“the Services” means the services to be provided by the Contractor in accordance with the terms of the Contract;

“Subsidiary” and “Holding Company” shall bear the same meanings as in section 736 of the Companies Act 1985;

“Supplementary Prescriber” means a person who:

- (a) who is either engaged or employed by the Contractor;
- (b) whose name is registered in:
 - (i) the Nursing and Midwifery Register;
 - (ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954;
 - (iii) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976, or
 - (iv) the part of the register maintained by the Health Professions Council in pursuance of article 5 of the Health Professions Order 2001[9] relating to -
 - (aa) chiropractors and podiatrists;
 - (bb) physiotherapists; or
 - (cc) radiographers: diagnostic or therapeutic, and

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

“System of Clinical Governance” means a framework through which the Contractor endeavours continuously to improve the quality of its services and safeguard high standards of care by creating an environment in which clinical excellence can flourish.

“Vocational; training scheme” means a vocational training scheme as set out in paragraph 21 (2) of the National Health service (Performers List) Regulations 2004.

1.2 In the Contract unless the context otherwise requires:

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

- 1.2.2 reference to any person may include a reference to any firm, company or corporation;
- 1.2.3 reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate, and reference to a working day means any day except Saturday, Sunday, Good Friday, Christmas Day and any Bank Holiday.
- 1.2.4 The headings in the Contract are inserted for convenience only and do not affect the construction or interpretation of the Contract.
- 1.2.5 The schedules to the Contract are and shall be construed as being part of the Contract.
- 1.2.6 Reference to any statute or statutory provision or direction includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of the Contract), and all statutory instruments or orders made pursuant to it.
- 1.2.7 Any obligation relating to the completion and submission of any form that the Contractor is required to complete and submit to the PCT includes the obligation to complete and submit the form in such a format or formats (electronic, paper or otherwise) as the PCT may specify.
- 1.2.8 Any obligation on the Contractor to have systems, procedures or controls includes the obligation effectively to operate them.
- 1.2.9 Where the Contract imposes an obligation on a Party, that a Party must comply with it and must take all reasonable steps to ensure that its personnel and contractors (except the other Party) comply with it.
- 1.2.10 The Parties shall, so far as is possible, interpret the provisions of the Contract consistently with the European Convention on Human Rights, EC law, the APMS Directions, and any other relevant regulations, orders or directions made under the Act.

2 STATUS OF CONTRACT

- 2.1 The Contractor [is] [is not] a Health Service Body for the purposes of section 4 of the 1990 Act. Accordingly, the Contract is [not] an NHS Contract.

3 COMMENCEMENT AND DURATION OF THE CONTRACT

- 3.1 The Contract shall commence on [date]
- 3.2 Unless terminated earlier, the Contract will terminate on [date]

4 WARRANTIES

- 4.1 Each of the Parties warrants that it has power to enter into this Contract and has obtained any necessary approvals to do so.
- 5.2 The Contractor warrants that the Contractor satisfies the conditions set out in Direction 3 of the AMPS Directions.
- 5.3 Each Party warrants to the other that it is not relied on any representation or agreement whether written or oral not expressly set out or referred to in the contract.

Or

(Where more substantial warranties are required)

- 4.2 *The Contractor warrants that it has used reasonable endeavours to ensure :*
 - 4.2.1 *all information in writing provided to the PCT in seeking to become a Party to the Contract was, when given, true and accurate in all material respects, and in particular, that the Contractor satisfied the conditions set out in Direction 3 of the APMS Directions;*
 - 4.2.2 *no information has been omitted which would make the information that was provided to the PCT materially misleading or inaccurate;*
 - 4.2.3 *no circumstances have arisen which materially affect the truth and accuracy of such information;*
 - 4.2.4 *it is not aware as at the date of the Contract of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Contract.*
 - 4.2.5 *Capability*
 - 4.2.6 *insolvency*
- 4.3 *The PCT warrants that it has used all reasonable endeavours to ensure:*
 - 4.3.1 *all information in writing which it provided to the Contractor specifically to assist the Contractor to become a Party to the Contract was, when given, true and accurate in all material respects;*
 - 4.3.2 *no information has been omitted which would make the information that was provided to the Contractor materially misleading or inaccurate;*
 - 4.3.3 *no circumstances have arisen which materially affect the truth and accuracy of such information.*
- 4.4 *The PCT 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 Contract.*

5 SERVICES AND ATTENDANCE ON PATIENTS

- 5.1 The contractor shall provide the services as set out in Schedule 1
- 5.2 The Contractor shall take reasonable steps to ensure that any patient who has not previously made an appointment and attends at the practice premises during the normal hours for essential services is provided with such services by an appropriate health care professional during that surgery period except where:
- 5.2.1 it is more appropriate for the patient to be referred elsewhere for services under the Act; or
- 5.2.2 the patient is then offered an appointment to attend again within a time which is reasonable having regard to all the circumstances and his health would not thereby be jeopardised.
- 5.3 In the case of a patient whose medical condition is such that in the reasonable opinion of the Contractor the provision of services in core hours is needed and it would be inappropriate for the patient to attend at a place where services are provided in normal hours under the Contract, the Contractor shall provide services to that patient at whichever is appropriate of the following places:
- 5.3.1 the place recorded in the patient's medical records as being his last home address;
- 5.3.2 such other place as the Contractor has informed the patient and the PCT is the place where it has agreed to visit and treat the patient;
- 5.3.3 some other place in the Contractor's practice area.
- 5.4 Nothing in this clause or clause 6.3 prevents the Contractor from:
- 5.4.1 arranging for the referral of a patient without first seeing the patient, in a case where the medical condition of that patient makes that course of action appropriate; or
- 5.4.2 visiting the patient in circumstances where this paragraph does not place it under an obligation to do so.

6 QUALITY STANDARDS

- 6.1 Without prejudice to the Contractor's obligations to meet all performance requirements under the Contract the Contractor shall meet all NHS requirements notified to it and in particular the core quality standards set out in Standards for Better Health to the extent that they apply to the services.
- 6.2 The Contractor shall meet to the extent relevant to the Services, the minimum quality standards set out in schedule 1 part 3

7 LEVEL OF SKILL

- 7.1 Without prejudice to the Contractor's obligations to meet all performance requirements under the Contract, the Contractor shall carry out its obligations under

the Contract in a timely manner and using a reasonable degree of care and skill, including where appropriate such level of care and skill as would be expected from a competent professional carrying out the relevant obligation

8 PREMISES

8.1 The address of [each of] the premises to be used by the Contractor [or any sub-contractor] for the provision of services under the Contract shall be detailed in Schedule 2.

8.2 Subject to any remedial action to be taken as described in clause 9.3 the Contractor shall ensure that premises used for the provision of services under the Contract are in all ways:

8.2.1 suitable for the delivery of those services; and

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

8.3 The Contractor shall carry out the remedial works set out in Schedule 2 Part 2 in accordance with the timescale that is set out or such other period as may be agreed.

9 TELEPHONE SERVICES

9.1 The contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used by -

9.1.1 patients to contact the practice for any purpose related to the contract; or

9.1.2 any other person to contact the practice in relation to services provided as part of the health service,

starts with the digits 087, 090 or 091 or consists of a personal number, unless the service is provided free to the caller.

9.2 In this paragraph, "personal number" means a telephone number which starts with the number 070 followed by a further 8 digits

10 CLINICAL REPORTS & CO-OPERATION

10.1 Where the Contractor provides clinical services under this contract to any Patient, other than under a private arrangement with that Patient, it shall prepare a Clinical Report relating to the consultation and any treatment provided and shall, as soon as reasonably practicable, provide a copy of the Clinical Report to the PCT. The PCT shall send any Clinical Report received to either

10.1.1 the person with whom the Patient is registered for the provision of Essential Services or their equivalent, or,

10.1.2 if the person referred to in clause 10.1.1 is not known to the Primary Care Trust, Local Health Board, Health Board or Health and Social Services Board in whose area the Patient is resident, unless it is the PCT.

This paragraph does not apply in relation to out of hours services provided by the Contractor.

- 10.2 The Contractor must take all reasonable steps to co-operate with other clinicians also providing clinical services to any Patient in the interests of providing an integrated pathway for a patient.
- 10.3 The PCT will use its reasonable endeavours to ensure the co-operation of any such other clinician as is mentioned in 10.2 above with the Contractor.
- 10.4 If the Contractor is not, pursuant to the Contract, providing to its registered patients or to persons whom it has accepted as temporary residents—
 - 10.4.1 a particular additional service;
 - 10.4.2 a particular enhanced service; or
 - 10.4.3 out of hours services, either at all or in respect of some periods or some services.

the Contractor shall comply with the requirements specified in clause 10.5

- 10.5 The requirements referred to in clause 10.4 are that the Contractor shall—
 - 10.5.1 co-operate with any person responsible for the provision of that service or those services;
 - 10.5.2 comply in core hours with any reasonable request for information from such a person or from the PCT relating to the provision of that service or those services; and
 - 10.5.3 in the case of out of hours services, take reasonable steps to ensure that any patient who contacts the practice premises during the out of hours period is provided with information about how to obtain services during that period.
 - 10.5.4 Nothing in clauses 10.4 and 10.5 shall require the Contractor (if it is not providing out of hours services under the Contract) to make itself available during the out of hours period.
- 10.6 If the Contractor ceases to be required to provide to its patients—
 - 10.6.1 a particular additional service;
 - 10.6.2 a particular enhanced service; or
 - 10.6.3 out of hours services, either at all or in respect of some periods or some services;

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

11 STORAGE OF VACCINES

11.1 The Contractor shall ensure that:

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

11.1.2 all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that readings are taken on all working days.

12 INFECTION CONTROL

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

13 PERSONS WHO SHALL PERFORM THE SERVICES

13.1 Qualifications of Performers

Subject to Clause 13.2, no medical practitioner shall perform primary medical services under the Contract unless he is:

13.1.1 included in a Medical Performers List for a Primary Care Trust in England; and

13.1.2 not suspended from that list or from the Medical Register; and

13.1.3 not subject to interim suspension under section 41A of the Medical Act 1983.

13.2 Clause 13.1 shall not apply in the case of:

13.2.1 a person who is provisionally registered under section 15, 15A or 21 of the Medical Act 1983 acting in the course of his employment in a resident medical capacity in an approved medical practice; or

13.2.2 a GP Registrar who has applied to the PCT to have his name included in its medical Performers list until either the PCT notifies him of its decision on that application, or the end of two months starting with the date on which his Vocational Training Scheme began, whichever is the sooner.

13.3 No Health Care Professional other than one to whom Clauses 13.1 and 13.2 apply shall perform clinical services under the Contract unless he is registered with his relevant professional body and his registration is not currently suspended.

13.4 Where the registration of a Health Care Professional or, in the case of a medical practitioner, his inclusion in a Primary Care List is subject to conditions, the Contractor shall ensure compliance with those conditions insofar as they are relevant to the Contract.

13.5 No Health Care Professional shall perform any clinical services unless he has such clinical experience and training as are necessary to enable him properly to perform such services.

- 13.6 Before employing or engaging any person to assist it in the provision of the Services under the Contract, the Contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he is to be employed or engaged.
- 13.7 When considering the competence and suitability of any person for the purpose of Clause 13.6, the Contractor shall have regard, in particular, to:
- 13.7.1 that person's academic and vocational qualifications;
 - 13.7.2 his education and training; and
 - 13.7.3 his previous employment or work experience.
- 13.8 The Contractor shall notify the PCT as soon as possible in the event that any Health Care Professional is:
- 13.8.1 referred to the relevant professional body for alleged misconduct; or
 - 13.8.2 removed from the relevant register

14 TRAINING

- 14.1 The Contractor shall ensure that for any Health Care Professional who is:
- 14.1.1 performing clinical services under the Contract; or
 - 14.1.2 employed or engaged to assist in the performance of such services
- there are in place arrangements for the purpose of maintaining and updating his skills and knowledge in relation to the services which he is performing or assisting in performing.
- 14.2 The Contractor shall afford to each employee reasonable opportunities to undertake appropriate training with a view to maintaining that employee's competence.

15 ARRANGEMENTS FOR GP REGISTRARS

- 15.1 The Contractor shall only employ a GP Registrar subject to the conditions in Clause 15.2.
- 15.2 The conditions referred to in Clause 15.1 are that the Contractor shall not, by reason only of having employed or engaged a GP Registrar, reduce the total number of hours for which other medical practitioners perform primary medical services under the contract or for which other staff assist them in the performance of those services.
- 15.3 Where the Contractor employs a GP Registrar, the Contractor shall:
- 15.3.1 offer him terms of employment in accordance with the rates and subject to the conditions contained in any directions given by the Secretary of State to Strategic Health Authorities under section 17 of the Act concerning the grants, fees, travelling and other allowances payable to GP Registrars; and

- 15.3.2 take into account any guidance issued by the Secretary of State in relation to the GP Registrar scheme.

16 INDEPENDENT NURSE PRESCRIBERS AND SUPPLEMENTARY PRESCRIBERS

- 16.1 Where the Contractor employs or engages a person who is an Independent Nurse Prescriber or a Supplementary Prescriber whose functions will include prescribing; or the functions of a nurse who is an Independent Nurse Prescriber a Supplementary Prescriber whom the Contractor already employs or has already engaged are extended to include prescribing, it shall notify the PCT within the period of seven (7) days beginning with the date on which the Contractor employed or engaged the person, or the person's functions were extended, as the case may be.
- 16.2 Where the Contractor ceases to employ or engage a person who is an Independent Nurse Prescriber or a Supplementary Prescriber whose functions included prescribing in its practice; or the functions of a person who is an Independent Nurse Prescriber or a Supplementary Prescriber whom the Contractor employs or engages in its practice are changed so that they no longer include prescribing in its practice; or the Contractor becomes aware that a person who is an Independent Nurse Prescriber or a Supplementary Prescriber whom it employs or engages has been removed or suspended from the Relevant Register, it shall notify the PCT within 10 working days after the day when the event occurred.
- 16.3 The Contractor shall provide the following information when it notifies the PCT in accordance with Clause 16.1:
- 16.3.1 the person's full name;
 - 16.3.2 his professional qualifications;
 - 16.3.3 his identifying number which appears in the relevant register;
 - 16.3.4 the date on which his entry in the relevant register was annotated to the effect that he was qualified to order drugs, medicines and Appliances for patients;
 - 16.3.5 the date on which he was employed or engaged, if applicable, or the date on which one of his functions became to prescribe in its Practice.
- 16.4 The Contractor shall provide the following information when it notifies the PCT in accordance with Clause 16.2:
- 16.4.1 the person's full name;
 - 16.4.2 his identifying number which appears in the Relevant Register;
 - 16.4.3 the date on which he ceased to carry out prescribing functions

17 SIGNING OF DOCUMENTS

- 17.1 In addition to any other requirements relating to such documents whether in the Contract or otherwise, the Contractor shall ensure that the documents specified in Clause 17.2 include:
- 17.1.1 the clinical profession of the Health Care Professional who signed the document; and
 - 17.1.2 the name of the Contractor.
- 17.2 The documents referred to in Clause 17.1 are:
- 17.2.1 certificates issued in accordance with Clause 43.1, unless regulations relating to particular certificates provide otherwise;
 - 17.2.2 Prescription Forms and repeatable prescriptions; and
 - 17.2.3 any other clinical documents.
- 17.3 The requirement for the name of the contractor to be included in the documents referred to in Clause 17.2 shall not apply to Prescription forms and repeatable prescriptions.

18 APPRAISAL AND ASSESSMENT

The Contractor shall ensure that any medical practitioner performing services under the Contract: participates in an appropriate appraisal system and co-operates with an assessment by the NCAA when requested to do so by the PCT.

19 SUB-CONTRACTING

- 19.1 The Contractor shall not assign, sub-contract or in any way dispose of any of its rights or duties under the Contract in relation to the Services or any part thereof without the prior written authorisation of the PCT and subject to such conditions as the PCT may impose
- 19.2 A contract with a sub-contractor must, unless the PCT agrees otherwise in writing, prohibit the sub-contractor from sub-contracting the services it has agreed with the Contractor to provide.
- 19.3 If the Contractor has a list of Registered Patients or a list of Registered Patients is held in respect of it, the Contractor shall not sub-contract any of its rights or duties under the Agreement in relation to the provision of Essential Services to a company or firm:
- 19.3.1 owned wholly or partly by the Contractor, or by any former or current employee or partner or shareholder in, the Contractor;
 - 19.3.2 formed by or on behalf of the Contractor, or from which it derives or may derive pecuniary benefit;
 - 19.3.3 formed by or on behalf of a former or current employee of, or partner or shareholder in, the Contractor, or from which such a person derives or may derive pecuniary benefit,

where that company or firm is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in section 54 of the National Health Service Act 1977 or any Regulations made wholly or partly under that section.

20 PRESCRIBING

- 20.1 The Contractor shall ensure that any Prescription Form for drugs, medicines or Appliances issued by a Prescriber complies as appropriate with the requirements in Clauses 20.3 to 25.3.
- 20.2 For the purposes of Clauses 20.1 to 25.3 drugs include contraceptive substances and Appliances include contraceptive appliances.
- 20.3 Subject to Clauses 6.3,6.4,and 22 a Prescriber shall order any drugs, medicines or Appliances which are needed for the treatment of any Patient who is receiving treatment under the contract by issuing to that Patient a Prescription Form and such a Prescription Form shall not be used in any other circumstances.
- 20.4 In issuing any Prescription Form the Prescriber shall sign the Prescription Form in ink with his initials and surname, or his forenames and surname, in his own handwriting and not by means of a stamp, and shall so sign only after particulars of the order have been inserted in the Prescription Form, and:
- 20.4.1 the Prescription Form shall not refer to any previous Prescription Form; and
- 20.4.2 a separate Prescription Form shall be used for each Patient, except where a bulk prescription is issued for a school or institution under Clauses 25.1 to 25.3.
- 20.5 Where a Prescriber orders the drug buprenorphine or a drug specified in Schedule 2 to the Misuse of Drugs Regulations 2001 (controlled drugs to which regulations 14, 15, 16, 18, 19, 20, 21, 23, 26 and 27 of those regulations apply) for supply by instalments for treating addiction to any drug specified in that Schedule, he shall-
- 20.5.1 use only the Prescription Form provided specially for the purposes of supply by instalments;
- 20.5.2 specify the number of instalments to be dispensed and the interval between each instalment; and
- 20.5.3 order only such quantity of the drug as will provide treatment for a period not exceeding fourteen (14) days.
- 20.6 The Prescription Form provided specially for the purpose of supply by instalments shall not be used for any purpose other than ordering drugs in accordance with Clause 20.5.
- 20.7 In a case of urgency a Prescriber may request a Chemist to dispense a drug or medicine before a Prescription Form, but only if:
- 20.7.1 that drug or medicine is not a Scheduled Drug;

- 20.7.2 that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001; and
- 20.7.3 he undertakes to furnish the Chemist, within seventy two (72) hours, with a Prescription Form completed in accordance with Clause 20.4.
- 20.8 In a case of urgency a Prescriber may request a Chemist to dispense an Appliance before a Prescription Form is issued, but only if:
- 20.8.1 that Appliance does not contain a Scheduled Drug or a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedule 5 to the Misuse of Drugs Regulations 2001;
- 20.8.2 in the case of a Restricted Availability Appliance, the Patient is a person, or it is for a purpose, specified in the Drug Tariff; and
- 20.8.3 he undertakes to furnish the Chemist, within seventy two (72) hours, with a Prescription Form completed in accordance with Clause 20.4.

21 RESTRICTIONS ON PRESCRIBING BY MEDICAL PRACTITIONERS

- 21.1 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Prescription Form a drug, medicine or other substance specified in any directions given by the Secretary of State under section 28U of the Act as being drugs, medicines or other substances which may not be ordered for Patients in the provision of medical services under a general medical services contract but may, subject to Clause 45.1, prescribe such a drug, medicine or other substance for that Patient in the course of that treatment under a private arrangement.
- 21.2 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Prescription Form a drug, medicines or other substance specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes unless:
- 21.2.1 that Patient is a person of the specified description;
- 21.2.2 that drug, medicine or other substance is prescribed for that Patient only for the specified purpose; and
- 21.2.3 the practitioner includes on the prescription form with the reference "SLS",
- but may, subject to Clause 45.1, prescribe such a drug, medicine or other substance for that Patient in the course of that treatment under a private arrangement.
- 21.3 In the course of treating a Patient to whom he is providing treatment under the Contract, a medical practitioner shall not order on a Prescription Form a Restricted Availability Appliance unless:

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

21.3.2 the practitioner includes on the prescription form with the reference "SLS",

but may, subject to Clause 45.1, prescribe such an Appliance for that Patient in the course of that treatment under a private arrangement.

22 RESTRICTIONS ON PRESCRIBING BY SUPPLEMENTARY PRESCRIBERS

22.1 Where the Contractor employs or engages a Supplementary Prescriber and that person's functions include prescribing, the Contractor shall have arrangements in place to secure that a Supplementary Prescriber will:

22.1.1 Issue or create a prescription for a prescription only medicine;

22.1.2 administer a prescription only medicine for parenteral administration;
or

22.1.3 give directions for the administration of a Prescription Only Medicine for parenteral administration,

as a Supplementary Prescriber only under the conditions set out in Clause 22.2.

22.2 The conditions referred to in Clause 22.1 are that:

22.2.1 the person satisfies the applicable conditions set out in article 3B(3) of the POM Order (prescribing and administration by Supplementary Prescribers), unless those conditions do not apply by virtue of any of the exemptions set out in the subsequent provisions of that Order;

22.2.2 the drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under a general medical services contract ;

22.2.3 the drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes unless:

22.2.4 the Patient is a person of the specified description,

22.2.5 the medicine is prescribed for that Patient only for the specified purposes, and

22.2.6 if the Supplementary Prescriber is issuing or creating a prescription, he includes on the prescription form the reference "SLS".

23 ARRANGEMENTS FOR SUPPLEMENTARY PRESCRIBERS

Where the functions of a Supplementary Prescriber include prescribing, the Contractor shall have arrangements in place to secure that that person will only issue or create a prescription for an Appliance or a medicine which is not a prescription only medicine as a Supplementary Prescriber under the conditions set out in Clause 24.

24 CONDITIONS APPLYING TO CLAUSE 23

The conditions referred to in Clause 23 are that:

- 24.1 the Supplementary Prescriber acts in accordance with a clinical management plan which is in effect at the time he acts and which contains the following particulars:
 - 24.1.1 the name of the Patient to whom the plan relates,
 - 24.1.2 the illness or conditions which may be treated by the Supplementary Prescriber,
 - 24.1.3 the date on which the plan is to take effect, and when it is to be reviewed by the medical practitioner or dentist who is a party to the plan,
 - 24.1.4 reference to the class or description of medicines or types of Appliances which may be prescribed or administered under the plan,
 - 24.1.5 any restrictions or limitations as to the strength or dose of any medicine which may be prescribed or administered under the plan, and any period of administration or use of any medicine or Appliance which may be prescribed or administered under the plan,
 - 24.1.6 relevant warnings about known sensitivities of the Patient to, or known difficulties of the Patient with, particular medicines or Appliances,
 - 24.1.7 the arrangements for notification of suspected or known adverse reactions to any medicine which may be prescribed or administered under the plan, and suspected or known adverse reactions to any other medicine taken at the same time as any medicine prescribed or administered under the plan
 - 24.1.8 the arrangements for notification of incidents occurring with the Appliance which might lead, might have led or has led to the death or serious deterioration of state of health of the Patient, and
 - 24.1.9 the circumstances in which the Supplementary Prescriber should refer to, or seek the advice of, the medical practitioner or dentist who is a party to the plan;
- 24.2 he has access to the health records of the Patient to whom the plan relates which are used by any medical practitioner or dentist who is a Party to the plan;
- 24.3 if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Secretary of State

under section 28U of the Act as being a drug, medicine or other substance which may not be ordered for Patients in the provision of medical services under the Contract;

24.4 if it is a prescription for a drug, medicine or other substance, that drug, medicine or other substance is not specified in any directions given by the Secretary of State under section 28U of the Act as being a drug, medicine or other substance which can only be ordered for specified Patients and specified purposes unless:

24.4.1 the Patient is a person of the specified description,

24.4.2 the medicine is prescribed for that Patient only for the specified purposes, and

24.4.3 when issuing or creating a prescription, he includes on the prescription form, the reference "SLS";

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

24.5.1 if it is a prescription for a Restricted Availability Appliance:

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

24.5.3 the Appliance is prescribed only for the purposes specified in respect of that person in that entry, and

24.5.4 when issuing or creating a prescription, he includes on the prescription form the reference "SLS".

24.6 In Clause 24.1 "clinical management plan" means a written plan (which may be amended from time to time) relating to the treatment of an individual Patient agreed by:

24.6.1 the Patient to whom the plan relates;

24.6.2 the medical practitioner or dentist who is a party to the plan; and

24.6.3 any Supplementary Prescriber who is to prescribe, give directions for administration or administer under the plan.

25 BULK PRESCRIBING

25.1 Where the Contractor is responsible under the Contract for the treatment of ten (10) or more persons in a school or other institution in which at least twenty (20) persons normally reside, and a Prescriber orders, for any two (2) or more of those persons for whose treatment the Contractor is responsible, drugs, medicines or Appliances to which this Clause 25.1 and Clause 25.2 apply, the Prescriber may use a single non-electronic Prescription Form for the purpose.

25.2 Where a Prescriber uses a single non-electronic Prescription Form for the purpose mentioned in Clause 25.1, he shall (instead of entering on the form the names of the

persons for whom the drugs, medicines or Appliances are ordered) enter on the form-

25.2.1 the name of the school or institution in which those persons reside; and

25.2.2 the number of persons residing there for whose treatment the Contractor is responsible.

25.3 Clauses 25.1 and 25.2 apply to any drug, medicine or Appliance which can be supplied as part of pharmaceutical services or local pharmaceutical services and which:

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

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

26 EXCESSIVE PRESCRIBING

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.

27 PROVISION OF DRUGS, MEDICINES AND APPLIANCES FOR IMMEDIATE TREATMENT OR PERSONAL ADMINISTRATION

27.1 The Contractor shall provide to a Patient any drug, medicine or Appliance, not being a Scheduled Drug, where such provision is needed for the immediate treatment of that Patient before a provision can otherwise be obtained; and may provide to a Patient any drug, medicine or Appliance, not being a Scheduled Drug, which a person employed or engaged by the Contractor personally administers or applies to that Patient, but shall, in either case, provide a Restricted Availability Appliance only if it is for a person or a purpose specified in the Drug Tariff.

27.2 Nothing in this Clause 27.1 authorises a person to supply any drug or medicine to a Patient otherwise than in accordance with Part 3 of the Medicines Act 1968, or any regulations or orders made under that Act.

28 PATIENTS

28.1 Where a Contractor is to provide essential services the provisions of Schedule 1 part 2 shall have effect in respect of maintaining a list of practice patients, and the Contractor shall provide essential services to all patients included on its list of patients, and to temporary patients accepted by the contractor in accordance with that part of that schedule.

28.2 In any event the Contractor shall provide the additional and enhanced services to those persons identified in accordance with schedule 1 part 2 .

- 28.3 Where the Contractor has accepted an application for inclusion in its list of patients, it shall-
- 28.3.1 notify the patient (or, in the case of a child or incapable adult, the person making the application on their behalf) of the patient's right to express a preference to receive services from a particular performer or class of performer either generally or in relation to any particular condition; and
- 28.3.2 record in writing any such preference expressed by or on behalf of the patient.
- 28.4 The Contractor shall endeavour to comply with any preference expressed under clause 28.3 but need not do so if the preferred performer has reasonable grounds for refusing to provide services to the patient, or does not routinely perform the service in question within the practice.

RECORDS, INFORMATION, NOTIFICATION AND RIGHTS OF ENTRY

29 PATIENT RECORDS

- 29.1 In this clause " computerised records " means records created by way of entries on a computer.
- 29.2 The Contractor shall keep adequate records of its attendance on and treatment of its patients and shall do so-
- 29.2.1 on forms supplied to it for the purpose by the PCT; or
- 29.2.2 with the written consent of the PCT, by way of computerised records, or in a combination of those two ways.
- 29.3 The Contractor shall include in the records referred to in clause 29.2 clinical reports sent in accordance with clause 10.1 or from any other health care professional who has provided clinical services to a person on its list of patients.
- 29.4 The consent of the PCT required by clause 29.2.2 shall not be withheld or, once given, withdrawn provided the PCT is satisfied, and continues to be satisfied, that-
- 29.4.1 the computer system upon which the Contractor proposes to keep the records has been accredited by the Secretary of State or another person on his behalf in accordance with "General Medical Practice Computer Systems - Requirements for Accreditation – RFA99" version 1.0, 1.1 or 1.2 (DTS/Nurse prescribing);
- 29.4.2 the security measures audit and system management functions incorporated into the computer system as accredited in accordance with clause 29.4.1 have been enabled; and
- 29.4.3 the Contractor is aware of, and has signed an undertaking that it will have regard to the guidelines contained in "Good Practice Guidelines for General Practice Electronic Patient Records" published on 26th September 2003 or in any document which it has been notified by the PCT has replaced that document.

- 29.5 Where a patients records are computerised records the Contractor shall, as soon as possible following a request from the PCT, allow the PCT to access the information recorded on its computer system by means of the audit function referred to in clause 29.4.2 to the extent necessary for the PCT to check that the audit function is enabled and functioning correctly.
- 29.6 The Contractor shall send the complete records relating to a patient to the PCT-
- 29.6.1 as soon as possible, at the request of the PCT;
- 29.6.2 where a person on its list dies, before the end of the period of 14 days beginning with the date on which it was informed by the PCT of the death, or (in any other case) before the end of the period of one month beginning with the date on which it learned of the death
- and the Contractor's obligations pursuant to this clause, and clause 29.7 below shall survive the termination or expiry of the Contract.
- 29.7 To the extent that a patient's records are computerised records, the Contractor complies with clause 29.6 if it sends to the PCT a copy of those records-
- 29.7.1 in written form; or
- 29.7.2 with the written consent of the PCT in any other form.
- 29.8 The consent of the PCT to the transmission of information other than in written form for the purposes of clause 29.7.2 shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters-
- 29.8.1 the Contractor's proposals as to how the record will be transmitted;
- 29.8.2 the Contractor's proposals as to the format of the transmitted record;
- 29.8.3 how the Contractor will ensure that the record received by the PCT is identical to that transmitted; and
- 29.8.4 how a written copy of the record can be produced by the PCT.
- 29.9 Where the Contractor keeps computerised records, the Contractor shall not disable, or attempt to disable, either the security measures or the audit and system management functions referred to in clause 29.4.2.

30 CONFIDENTIALITY OF PERSONAL DATA

- 30.1 The Contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of personal data held by it.
- 30.2 The Contractor shall maintain the confidentiality of personal data entrusted to it in accordance with the provisions of the Data Protection Act 1998.
- 30.3 The Contractor shall have regard to the Provisions of the Confidentiality and Disclosure of Information: General Medical Services, Personal Medical Services and Alternative Provider Medical Services Code of Practice (as amended or reissued from time to time).

31 PROVISION OF INFORMATION AND PRACTICE LEAFLET

31.1 The Contractor shall, at the request of the PCT, produce within 28 days or such other period as may be agreed as reasonable by the contractor and the PCT, to the PCT or to a person authorised in writing by the PCT or allow it, or a person authorised in writing by it, to access, on request:

31.1.1 any information which is reasonably required by the PCT for the purposes of or in connection with the Contract; and

31.1.2 any other information which is reasonably required in connection with the PCT's functions.

but the Contractor shall not be required to comply with any request made in accordance with this Clause 31.1 unless it has been made by the PCT in accordance with the Confidentiality Directions and the parts of the Code of Practice referred to therein.

31.2 The provisions of Schedule 5 (contract Monitoring) shall have effect.

31.3 The Contractor shall-

31.3.1 compile a practice leaflet which shall include the information specified in Schedule 7;

31.3.2 review its practice leaflet at least once in every period of 12 months and make any amendments necessary to maintain its accuracy; and

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

32 PROVISION OF INFORMATION TO PATIENTS FORUMS

32.1 Subject to Clause 32.2, if the Contractor receives a written request from the PCT Patients' Forum established for the PCT to produce any information which appears to the Forum to be necessary for the effective carrying out of its functions, it shall comply with that request promptly and in any event no later than the twentieth (20) working day following the date the request was made.

32.2 The Contractor shall not be required to produce information under Clause 32.1 which:

32.2.1 is confidential and relates to a living individual, unless at least one of the conditions specified in Clause 32.3 applies; or

32.2.2 is prohibited by disclosure by or under any enactment or any ruling of a court of competent jurisdiction or is protected by the common law, unless Clause 32.4 applies.

32.3 The conditions referred to in Clause 32.2.1 are:

32.3.1 the information can be disclosed in a form from which the identity of the individual cannot be ascertained taking account of other information which is in the possession of, or likely to come into the

possession of, the person to whom the information is to be disclosed;
or

32.3.2 the individual consents to the information being disclosed.

32.4 This Clause 32.4 and Clause 32.5 apply where:

32.4.1 the prohibition of the disclosure of the information arises because the information is capable of identifying an individual; and

32.4.2 the information is or can be disclosed in a form from which the identity of the individual cannot be ascertained.

32.5 In a case where the information falls within:

32.5.1 Clause 32.2.1 and the condition in Clause 32.3.1 applies; or

32.5.2 Clause 32.2.2 and Clause 32.4 applies,

the PCT Patients' Forum may require the Contractor to put the information in a form from which the identity of the individual concerned cannot be ascertained.

33 INQUIRIES ABOUT PRESCRIPTIONS AND REFERRALS

33.1 The Contractor shall, subject to Clauses 33.2 and 33.3, sufficiently answer any inquiries whether oral or in writing from the PCT concerning:

33.1.1 any Prescription Form or repeatable prescription issued or created by a Prescriber;

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

33.1.3 the referral by or on behalf of the Contractor of any Patient to any other services provided under the Act; or

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

33.2 An inquiry referred to in Clause 33.1 may only be made for the purpose either of obtaining information to assist the PCT to discharge its functions or of assisting the Contractor in the discharge of its obligations under the Contract.

33.3 The Contractor shall not be obliged to answer any inquiry referred to in Clause 33.1 unless it is made

33.3.1 in the case of Clause 33.1.1 or 33.1.2 by an appropriately qualified Health Care Professional; or

33.3.2 in the case of Clause 33.1.3 or 33.1.4, by an appropriately qualified medical practitioner,

appointed in either case by the PCT to assist it in the exercise of its functions under Clause 33.1 and 33.2 who produces, on request, written evidence that that person is authorised by the PCT to make such an inquiry on its behalf.

34 FINANCIAL INTERESTS

- 34.1 in making a decision to refer a Patient for other services under the Act, or in making a decision to prescribe any drug, medicine or other Appliance to any Patient the Contractor shall have regard to all relevant clinical considerations as well as the provisions of clauses 221 to 27 and disregard its own financial interests and other inappropriate financial interests.
- 34.2 The Contractor shall not inform Patients that any prescription for any drug, medicine or other Appliance must be dispensed only by the Contractor or a person with whom the Contractor is associated.

35 REPORTS TO A MEDICAL OFFICER

- 35.1 The Contractor shall, if it is satisfied that the Patient consents:
- 35.1.1 supply in writing to a Medical Officer within such reasonable period as that officer, or an officer of the Department for Work and Pensions on his behalf and at his direction, may specify, such clinical information as the Medical Officer considers relevant about a Patient to whom the Contractor or a person acting on the Contractor's behalf has issued or has refused to issue a medical certificate; and
- 35.1.2 answer any inquiries by a Medical Officer, or by an officer of the Department for Work and Pensions on his behalf and at his direction, about a Prescription Form or medical certificate issued or created by the Contractor or on its behalf or about any statement which the Contractor or a person acting on the Contractor's behalf has made in a report,

and for the purposes of satisfying itself that the Patient has consented, the Contractor may (unless it has reason to believe the Patient does not consent) rely on an assurance in writing from the Medical Officer, or any officer of the Department for Work and Pensions, that he holds the Patient's written consent.

36 ANNUAL RETURN AND REVIEW

- 36.1 Without prejudice to the Contractor's obligation to meet all review requirements under the Contract and in particular those contained in Schedule 5 (Contract Monitoring), the Contractor shall submit within 28 days of receiving a request or such other reasonable period as the Contractor and the PCT shall agree, an Annual Return to the PCT detailing such matters as the PCT may require.
- 36.2 The PCT may require one such annual return during each period of 12 months ending on 31 March in relation to such period (not including any period covered by a previous annual return) as the PCT may specify.
- 36.3 Following the PCT's receipt of the Annual Return required under Clause 36.1, the PCT shall arrange with the Contractor an annual review of its performance under the Contract.
- 36.4 The PCT shall prepare a draft record of the annual review required under Clause 36.3 for comment by the Contractor and, having regard to such comments, shall

produce a final written record of the annual review which shall be sent to the Contractor.

36.5 The provisions set out in Schedule 5 (contract monitoring) shall have effect.

37 NOTIFICATIONS TO THE PCT

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

37.1.1 any serious incident that, in the reasonable opinion of the Contractor, affects or is likely to affect the Contractor's performance of its obligations under the Contract;

37.1.2 any circumstances which give rise to the PCT's right to terminate the Contract under Clauses 54.1 or 55.2;

37.1.3 any circumstances which give rise to the PCT's right to terminate the contract under any other provision of the Contract;

37.1.4 any appointments system which it proposes to operate and the proposed discontinuance of any such system;

37.1.5 any change of which it is aware in the address of a registered Patient; and

37.1.6 the death of any Patient of which it is aware.

37.1.7 The Contractor shall, unless it is impracticable for it to do so, notify the PCT in writing within twenty eight (28) days of any occurrence requiring a change in the information about it published by the PCT in accordance with regulations made under section 16CC(3) of the Act.

37.2 Where the Contractor is a company, it shall give notice in writing to the PCT forthwith when:

37.2.1 it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;

37.2.2 circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;

37.2.3 circumstances arise which would enable the court to make a winding up order in respect of the Contractor; or

37.2.4 the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

37.3 Where the Contractor is an Industrial & Providence Society it shall give notice to the PCT forthwith:

37.3.1 it receives notice of a petition to wind up or winding up order is made by a Court of competent jurisdiction;

- 37.3.2 it is unable to pay its debts as a going concern;
- 37.3.3 a deed of dissolution is approved by it for signature by its members or such a deed is circulated for signature.

38 NOTIFICATION OF DEATHS

- 38.1 The Contractor shall report in writing to the PCT the death on its Practice Premises of any Patient no later than the end of the first Working Day after the date on which the death occurred. The report shall include:
 - 38.1.1 the Patient's full name;
 - 38.1.2 the Patient's National Health Service number where known;
 - 38.1.3 the date and place of death;
 - 38.1.4 a brief description of the circumstances, as known, surrounding the death;
 - 38.1.5 the name of any doctor or other person treating the Patient whilst on the Practice Premises; and
 - 38.1.6 the name, where known, of any other person who was present at the time of the death.
- 38.2 The Contractor shall send a copy of the report referred to in Clause 38.1 to any other PCT in whose area the deceased was resident at the time of his death as well as to any other PCT with whom it has an agreement to provide primary medical services.

39 ENTRY AND INSPECTION BY THE PCT

- 39.1 Subject to the conditions in Clause 39.2, the Contractor shall allow persons authorised in writing by the PCT to enter and inspect the Practice Premises at any reasonable time.
- 39.2 The conditions referred to in Clause 39.1 are that:
 - 39.2.1 reasonable notice of the intended entry has been given;
 - 39.2.2 written evidence of the authority of the person seeking entry is produced to the Contractor on request; and
 - 39.2.3 entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

40 ENTRY AND INSPECTION BY MEMBERS OF PATIENTS' FORUMS

- 40.1 The Contractor shall allow members of a Patients' Forum authorised by or under regulation 3 of the Patients' Forums (Functions) Regulations 2003 to enter and inspect the Practice Premises for the purpose of any of the Forum's functions in accordance with the requirements of that Regulation.

41 ENTRY AND INSPECTION BY THE COMMISSION FOR HEALTHCARE AUDIT AND INSPECTION

41.1 The Contractor shall allow persons authorised by the Commission for Healthcare Audit and Inspection to enter and inspect the premises in accordance with section 66 of the Health and Social Care (Community Health and Standards) Act 2003.

42 COUNTER FRAUD AND SECURITY MANAGEMENT

42.1 Upon the request of the PCT or the NHS Counter Fraud and Security Management Service ("the CFSMS") the Contractor shall ensure that the CFSMS is given access as soon as is reasonably practicable and in any event not later than seven (7) days from the date of the request to:

42.1.1 all property, premises, information (including records and data) owned or controlled by the Provider relevant to the detection and investigation of cases of fraud and/or corruption directly or indirectly connected to the Contract;

42.1.2 all members of the Contractor's staff who may have information to provide that is relevant to the detection and investigation of cases of fraud and/or corruption directly or indirectly connection to the Contract.

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

42.3 The Contractor shall, on request by the PCT permit the PCT or its authorised representative or a person duly authorised to act on behalf of the CFSMS, to review the arrangements put in place by the Contractor pursuant to Clause 42.2.

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

42.5 The provisions of Clauses 42.1 and 42.4 shall continue following termination of the Contract for any reason whatsoever and without limit in time.

43 CERTIFICATES

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

43.1.1 is being attended by a medical practitioner who is not employed or engaged by the Contractor,

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

Table – List of Prescribed Medical Certificates

<u>Description of medical certificate</u>	<u>Enactment under or for the purpose of which certificate required</u>
1. <u>To support a claim or to obtain payment either personally or by proxy; to prove inability to work or incapacity for self-support for the purposes of an award by the Secretary of State; or to enable proxy to draw pensions etc.</u>	<u>Naval and Marine Pay and Pensions Act 1865</u> <u>Air Force (Constitution) Act 1917</u> <u>Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939</u> <u>Personal Injuries (Emergency Provisions) Act 1939</u> <u>Pensions (Mercantile Marine) Act 1942</u> <u>Polish Resettlement Act 1947</u> <u>Social Security Administration Act 1992</u> <u>Social Security Contributions and Benefits Act 1992</u> <u>Social Security Act 1998</u>
2. <u>To establish pregnancy for the purpose of obtaining welfare foods</u>	<u>Section 13 of the Social Security Act 1988 (schemes for distribution etc of welfare foods)</u>
3. <u>To secure registration of still-birth</u>	<u>Section 11 of the Births and Deaths Registration Act 1953 (special provision as to registration of still-birth)</u>
4. <u>To enable payment to be made to an institution or other person in case of mental disorder of persons entitled to payment from public funds.</u>	<u>Section 142 of the Mental Health Act 1983 (pay, pensions etc of mentally disordered persons)</u>
5. <u>To establish unfitness for jury service.</u>	<u>Juries Act 1974</u>
6. <u>To support late application for reinstatement in civil employment or notification of non-availability to take up employment owing to sickness.</u>	<u>Reserve Forces (Safeguarding of Employment) Act 1985.</u>
7. <u>To enable a person to be registered as an absent voter on grounds of physical incapacity</u>	<u>Representation of the People Act 1983</u>
8. <u>To support applications for certificates conferring exemption from charges in respect of drugs, medicines and appliances.</u>	<u>National Health Service Act 1977</u>
9. <u>To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable.</u>	<u>Local Government Finance Act 1992</u>

43.2 The exceptions referred to in Clauses 43.1.1 and 43.1.2 shall not apply where the certificate is issued pursuant to regulation 2(1)(b) of the Social Security (Medical Evidence) Regulations 1976 (which provides for the issue of a certificate in the form of a special statement by a doctor on the basis of a written report made by another doctor).

44 PAYMENT UNDER THE CONTRACT

The PCT will pay the Contractor the sums due under this contract in accordance with schedule 3

45 FEES AND CHARGES

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

45.1.1 for the provision of any treatment under the Contract, or

45.1.2 for any prescription or repeat prescription for any drug, medicine or Appliance in connection with that treatment.

45.2 Where a person applies to the Contractor for the provision of Services and claims to be entitled to be treated by the Contractor without paying a fee or other remuneration and the Contractor has reasonable doubts about that person's claim, the Contractor shall give any necessary treatment and shall be entitled to demand and accept a reasonable fee subject to the provision for repayment contained in Clause 45.3.

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

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

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

45.4.2 where the other services are available to the Patient as part of the health service established pursuant to section 1 of the Act, inform the Patient:

45.4.2.1 that the services are so available;

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

45.4.2.3 how to access those health services.

45.5 This Clause 45 shall survive the expiry or termination of the Contract.

46 CLINICAL GOVERNANCE

Without prejudice to the Contractor's obligation to meet all performance requirements under the Contract, the Contractor shall have in place an effective System of Clinical Governance. The Contractor shall nominate a person who will have responsibility for ensuring the effective operation of the System of Clinical Governance. The person nominated shall be a person who performs or manages services under the Contract.

47 INDEMNITY

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

48 INSURANCE

48.1 The Contractor shall at all times hold adequate insurance in the sum of not less than £5m in respect of any incident against:

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

48.1.2 all public liabilities in relation to liabilities to third Parties arising under or in connection with the Contract;

48.1.3 all liabilities as an employer in respect of all Staff.

48.2 The Contractor shall provide the PCT with a copy of all insurance policies obtained pursuant to Clause 48.1 upon the PCT's request.

48.3 The Contractor shall not sub-contract its obligations to provide clinical services under the Contract unless it is satisfied that the sub-contractor holds adequate insurance against liability arising from negligent performance of such services.

48.4 For the purposes of Clauses 48.1 to 48.3:

48.4.1 "insurance" means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor; and includes membership of a medical defence organisation established for the purpose set out in this clause

48.4.2 the Contractor shall be regarded as holding insurance if it is held by a person employed or engaged by it in connection with clinical services which that employee provides under the contract or, as the case may be, sub-contract.

49 COMPLAINTS

49.1 The Contractor shall establish and operate a complaints procedure in the form set out in Schedule 4 or otherwise as approved by the PCT to deal with any complaints in relation to any matter reasonably connected with the provision of services under the Contract.

- 49.2 The Contractor shall take reasonable steps to ensure that Patients are aware of:
- 49.2.1 the complaints procedure;
 - 49.2.2 the role of the PCT and other bodies in relation to complaints about services under the Contract, and
 - 49.2.3 the right to assistance with any complaint from independent advocacy services provided under section 19A of the Act.
- 49.3 The Contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all Patients.
- 49.4 The Contractor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from Patients' medical records.

50 CO-OPERATION WITH INVESTIGATIONS

50.1 The Contractor shall co-operate with:

- 50.1.1 any investigation of a complaint in relation to any matter reasonably connected with the provision of the Services by the Contractor undertaken in accordance with directions given under section 17 of the Act by the PCT and the Commission for Healthcare Audit and Inspection; and
- 50.1.2 any investigation of a complaint by an NHS body or local authority which relates to a Patient or former Patient of the Contractor.

50.2 In Clause 50.1:

- 50.2.1 "NHS body" means a Primary Care Trust, (in England and Wales and Scotland) an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Local Health Board, a Health Board, a Health and Social Services Board or a Health and Social Services Trust; and
- 50.2.2 "local authority" means any of the bodies listed in section 1 of the Local Authority Social Services Act 1970, the Council of the Isles of Scilly or a council constituted under section 2 of the Local Government etc (Scotland) Act 1994.

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

- 50.3.1 answer questions reasonably put to the Contractor by the PCT;
- 50.3.2 provide any information relating to the complaint reasonably required by the PCT; and
- 50.3.3 attend any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the Contractor's presence at the meeting is reasonably required by the PCT.

51 VARIATION OF THE CONTRACT

- 51.1 Subject to the PCT's rights under Clause 51.2, and 58, no amendment or variation to the Contract shall have effect unless it is in writing and signed by or on behalf of the PCT and the Contractor.
- 51.2 The PCT may vary the Contract without the Contractor's consent so as to comply with the Act, any regulations made pursuant to the Act, any direction given by the Secretary of State pursuant to the Act (which, for the avoidance of doubt, includes any amendments to the APMS Directions) where it:
- 51.2.1 is reasonably satisfied that it is necessary to vary the Contract in order so to comply; and
- 51.2.2 notifies the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.
- 51.3 Where it is reasonably practicable to do so, the date that the proposed variation under Clause 51.2.2 is to take effect shall be not less than fourteen (14) days after the date on which the notice under Clause 51.2.2 is served on the Contractor.
- 51.4 Where any variation is imposed under clause 51.2, the contractor and the PCT shall agree if possible any variation to the contract price consequent upon the variation to the contract, and in default of agreement the dispute may be referred to Dispute resolution under clause 62.
- 51.5 Where the Contract is varied in accordance with this clause 51 and, as a result of that variation-
- 51.5.1 there is to be a change in the range of services provided to the Contractor's patients; or
- 51.5.2 patients who are on the Contractor's list of patients are to be removed from that list,
- the PCT shall notify those patients in writing of the variation and its effect and inform them of the steps they can take to obtain elsewhere the services in question or, as the case may be, register elsewhere for the provision of essential services (or their equivalent).

TERMINATION OF THE CONTRACT

52 TERMINATION BY AGREEMENT

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

53 TERMINATION BY THE CONTRACTOR

- 53.1 The Contractor may terminate the Contract by serving not less than [12] months notice in writing on the PCT at any time.

- 53.2 The Contractor may give notice in writing (“late payment notice”) to the PCT if the PCT has failed to make any payments properly due to the Contractor in accordance with clause 44 of the Contract. The Contractor shall specify in the late payment notice the payments that the PCT has failed to make in accordance with 44 of the Contract.
- 53.3 The Contractor may, at least [twenty eight (28)] days after having served a late payment notice, terminate the contract by a further written notice if the PCT has still failed to make payments properly due to the Contractor, and that were specified in the late payment notice served on the PCT pursuant to Clause 53.2.
- 53.4 If, following receipt of a late payment notice, the PCT refers the matter to the Dispute Resolution Procedure detailed in 61 of the Contract within [twenty eight (28)] days of the date upon which it is served with the late payment notice, and it notifies the Contractor in writing that it has done so within that period of time, the Contractor may not terminate the Contract pursuant to Clause 53.3 until:
- 53.4.1 there has been a determination of the dispute pursuant to the Dispute Resolution Procedure; or
- 53.4.2 the PCT ceases to pursue the Dispute Resolution Procedure, whichever is the sooner.

Clauses 53.1 to 53.4 are without prejudice to any other rights to terminate the Contract that the Contractor may have.

54 TERMINATION BY THE PCT FOR PROVISION OF UNTRUE ETC INFORMATION

- 54.1 The PCT may serve notice in writing on the Contractor terminating the Contract forthwith, or from such date as may be specified in the notice if, after the Contract was entered into, it has come to the attention of the PCT that written information provided to the PCT by the Contractor before the Contract was entered into in relation to the conditions set out in APMS Direction 3 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

55 OTHER GROUNDS FOR TERMINATION BY THE PCT

- 55.1 The PCT may terminate the contract by serving not less than [12] months notice in writing on the Contractor at any time.
- 55.2 The PCT may serve notice in writing on the Contractor terminating the APMS Contract forthwith, or from such date as may be specified in the notice if:
- 55.2.1 In the case of an APMS contract with an individual, the individual;
- 55.2.2 In the case of an APMS contract with a company, the company or any director or company secretary of the company;
- 55.2.3 In the case of an APMS contract with a partnership, any individual member of the partnership or the partnership; or
- 55.2.4 In the case of an APMS contract with an Industrial & Providence Society, a Friendly Society or a voluntary organisation or any other body, the Society organisation or other body or an officer trustee or

any other person concerned with the management of the Society organisation or body,

falls within clause 55.3 during the existence of the APMS contract.

55.3 A person falls within this Clause 55.2 if:

- 55.3.1 he or it is the subject of a National Disqualification;
- 55.3.2 subject to Clause 55.4, he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any Licensing Body anywhere in the world;
- 55.3.3 subject to Clause 55.4, he has been dismissed (otherwise than by reason of redundancy) from any employment by a Health Service Body unless before the PCT has served a notice terminating the Contract pursuant to Clause 54.1, he is employed by the Health Service Body that dismissed him or by another Health Service Body;
- 55.3.4 he or it is removed from, or refused admission to, a Primary Care List by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act respectively) unless his or its name has subsequently been included in such a list;
- 55.3.5 he has been convicted in the United Kingdom of murder or an offence referred to in Schedule 1 to the Children and Young Persons Act 1933;
- 55.3.6 he has been convicted in the United Kingdom of a criminal offence other than murder, and has been sentenced to a term of imprisonment of over six (6) months;
- 55.3.7 subject to Clause 55.3, he has been convicted elsewhere of an offence which would, if committed in England and Wales:
 - 55.3.7.1 constitute murder, or
 - 55.3.7.2 constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six (6) months;
- 55.3.8 he or it has:
 - 55.3.8.1 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;
 - 55.3.8.2 been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, unless that order has ceased to have effect or has been annulled;
 - 55.3.8.3 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;

- 55.3.8.4 been wound up under Part IV of the Insolvency Act 1986;
 - 55.3.8.5 had an administrator, administrative receiver or receiver appointed in respect of it; or
 - 55.3.8.6 had an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986.
 - 55.3.9 he has been:
 - 55.3.9.1 removed from the office of charity trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;
 - 55.3.9.2 removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, from being concerned in the management or control of any body;
 - 55.3.10 he is subject to a disqualification order under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986;
 - 55.3.11 he has refused to comply with a request by the PCT for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the contract and, the PCT is not satisfied that the Contractor is taking adequate steps to deal with the matter.
- 55.4 Where the agreement is with a single individual and that individual dies, the agreement shall terminate at the end of the period of seven days after the date of his death unless, before the end of that period the Primary Care Trust has agreed in writing with the contractor's personal representatives that the agreement should continue for a further period, not exceeding 28 days after the end of the period of seven days.
- 55.5 Clause 55.4 does not affect any other rights to terminate the agreement which the Primary Care Trust may have under this agreement
- 55.6 The PCT shall not terminate the Contract pursuant to Clause 55.2.2 where the PCT is satisfied that the disqualification or suspension imposed by a Licensing Body outside the United Kingdom does not make the person unsuitable to be a contractor, or a director or secretary of the company or such other office as is specified in Clause 55.1, as the case may be.
- 55.7 The PCT shall not terminate the Contract pursuant to Clause 55.2.3 until a period of at least three (3) months has elapsed since the date of the dismissal of the person concerned; or if, during that period of time, the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded. The PCT may only terminate the Contract in the latter situation if there is no finding of unfair dismissal at the end of those proceedings.

55.8 The PCT shall not terminate the Contract pursuant to Clause 55.2.7 where the PCT is satisfied that the conviction does not make the person unsuitable to be a contractor or a director or secretary of the company or such other office as is specified in Clause 55.1, as the case may be.

56 TERMINATION BY THE PCT FOR A SERIOUS BREACH

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

56.1.1 the Contractor has breached the Contract and the PCT considers that as a result of that breach, the safety of the Contractor's Patients is at serious risk if the Contract is not terminated; or

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

56.2 If the Contractor breaches the condition specified in Clauses 19.1 to 19.3 and it comes to the PCT's attention that the Contractor has done so, the PCT shall serve notice in writing on the Contractor:

56.2.1 terminating the Contract forthwith; or

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

57 TERMINATION BY THE PCT: REMEDIAL NOTICES AND BREACH NOTICES

57.1 Where the Contractor has breached the Contract other than as specified in Clauses 54.1 to 56.2 and the breach is capable of remedy, the PCT shall, before taking any action it is otherwise entitled to take by virtue of the Contract, serve a notice on the Contractor requiring it to remedy the breach ("remedial notice").

57.2 A remedial notice shall specify:

57.2.1 details of the breach;

57.2.2 the steps the Contractor must take to the satisfaction of the PCT in order to remedy the breach; and

57.2.3 the period during which the steps must be taken ("the notice period").

57.3 The notice period shall, unless the PCT is satisfied that a shorter period is necessary to protect the safety of the Contractor's Patients or protect itself from material financial loss, be no less than [twenty eight (28)] days from the date that notice is given.

57.4 Where the PCT is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the notice period, the PCT may terminate the Contract with effect from such date as the PCT may specify in a further notice to the Contractor.

57.5 Where the Contractor has breached the Contract other than as specified in Clauses 54.1 to 56.2 and the breach is not capable of remedy, the PCT may serve notice on the Contractor requiring it not to repeat the breach (“breach notice”).

57.6 If, following a breach notice or a remedial notice, the Contractor:

57.6.1 repeats the breach that was the subject of the breach notice or the remedial notice; or

57.6.2 otherwise breaches the Contract resulting in either a remedial notice or a further breach notice,

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

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

58 CONTRACT SANCTIONS

58.1 In Clauses 58.2 to 59.4 “contract sanction” means:

58.1.1 termination of any part of the Contract; and/or

58.1.2 suspension of any part of the Contract, and/or

58.1.3 the temporary replacement of the Contractor with another service provider(s) of the PCT’s choosing or by the PCT’s staff) for a period of up to six (6) months; and/or

58.1.4 withholding or deducting monies otherwise payable under the Contract.

58.2 Where the PCT is entitled to terminate the Contract pursuant to Clauses 54.1, 55.1, 56.1, 56.2, 57.4 and 57.6, it may instead impose any of the contract sanctions if the PCT is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the PCT’s entitlement to terminate the Contract.

58.3 If the PCT decides to impose a contract sanction, it must notify the Contractor of the contract 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.

58.4 Subject to Clauses 58.5 and 59.1 to 59.4, the PCT shall not impose the contract sanction, until at least [twenty eight (28)] days after it has served notice on the Contractor pursuant to Clause 58.3 unless the PCT is satisfied that it is necessary to do so in order to protect the safety of the Contractor’s Patients, or protect itself from material financial loss.

- 58.5 Where the PCT is entitled to terminate the Contract for serious breach pursuant to Clause 56.1 or 56.2, it may impose any contract sanction on the Contractor with immediate effect upon notification to it under Clause 58.3 and shall not be required to grant notice under Clause 58.4.
- 58.6 Where the PCT imposes a contract sanction, the PCT shall be entitled to charge the Contractor the reasonable costs of additional administration that the PCT has incurred in order to impose, or as a result of imposing, the contract sanction.
- 58.7 Where the PCT imposes a contract sanction under clause 58.1.4 the amount deducted shall be a reasonable estimate of the PCTs losses, including where applicable the cost of providing alternative services, or the amount due to the Contractor in respect of the obligations which the Contractor has breached, whichever is the greater.

59 CONTRACT SANCTIONS AND THE DISPUTE RESOLUTION PROCEDURE

- 59.1 If there is a dispute between the PCT and the Contractor in relation to a contract sanction that the PCT is proposing to impose, the PCT shall not, subject to Clause 59.4, impose the proposed contract sanction except in the circumstances specified in Clause 59.2.1 or 59.2.2.
- 59.2 If the Contractor refers the dispute relating to the contract sanction to the Dispute Resolution Procedure within [twenty eight (28)] days beginning on the date on which the PCT served notice on the Contractor in accordance with Clause 58.3 (or such longer period as may be agreed in writing with the PCT), and notifies the PCT in writing that it has done so, the PCT shall not impose the contract sanction unless:
- 59.2.1 there has been a determination of the dispute and that determination permits the PCT to impose the contract sanction; or
- 59.2.2 the Contractor ceases to pursue the Dispute Resolution Procedure,
- whichever is the sooner.
- 59.3 If the Contractor does not invoke the Dispute Resolution Procedure within the time specified in Clause 59.2, the PCT shall be entitled to impose the contract sanction forthwith.
- 59.4 If the PCT is satisfied that it is necessary to impose the contract sanction before the Dispute Resolution Procedure is concluded in order to protect the safety of the Contractor's Patients or protect itself from material financial loss, the PCT shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

60 TERMINATION AND THE DISPUTE RESOLUTION PROCEDURE

- 60.1 Where the PCT is entitled to serve written notice on the Contractor terminating the contract pursuant to Clauses 54.1, 55.2, 56.1, 57.4 or 57.6, the PCT shall, in the notice served on the Contractor pursuant to those Clauses, specify a date on which the Contract terminates that is not less than [twenty eight (28)] days after the date on which the PCT has served that notice on the Contractor unless Clause 60.2 applies.

- 60.2 This Clause 60.2 applies if the PCT is satisfied that a period less than [twenty eight (28)] days is necessary in order to protect the safety of the Contractor's Patients or protect itself from material financial loss.
- 60.3 In a case falling within Clause 60.1 where the exception in Clause 60.2 does not apply, where the Contractor invokes the Dispute Resolution Procedure before the end of the period of notice referred to in Clause 60.1, and it notifies the PCT in writing that it has done so, the Contract shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in Clause 60.4.
- 60.4 The Contract shall only terminate pursuant to this Clause 60.4 if and when there has been a determination of the dispute and that determination permits the PCT to terminate the Contract or the Contractor ceases to pursue the Dispute Resolution Procedure, whichever is the sooner.
- 60.5 If the PCT is satisfied that it is necessary to terminate the Contract before the Dispute Resolution Procedure is concluded in order to protect the safety of the Contractor's Patients or protect itself from material financial loss, Clauses 60.3 and 60.4 shall not apply and the PCT shall be entitled to confirm by written notice to be served on the Contractor, that the Contract will nevertheless terminate at the end of the period of the notice it served pursuant to Clauses 54.1, 55.2, 56.1, 57.4 or 57.6.

61 CONSEQUENCES OF TERMINATION

- 61.1 The termination of the Contract, for whatever reason, is without prejudice to the accrued rights of either Party under the Contract.
- 61.2 On the termination of the Contract for any reason, the Contractor shall:
- 61.2.1 subject to the requirements of this Clause 61.2, cease performing any work or carrying out any obligations under the Contract;
 - 61.2.2 co-operate with the PCT to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner;
 - 61.2.3 deliver up to the PCT all property belonging to the PCT including all documents, forms, computer hardware and software, drugs, Appliances or medical equipment which may be in the Contractor's possession or control.
 - 61.2.4 Subject to Clauses 61.3 to 61.5, the PCT's obligation to make payments to the Contractor in accordance with the Contract shall cease on the date of termination of the Contract.
- 61.3 On termination of the Contract or termination of any obligations under the Contract for any reason, the PCT shall perform a reconciliation of the payments made by the PCT to the Contractor and the value of the work undertaken by the Contractor under the Contract. The PCT shall serve the Contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than [twenty eight (28)] days after the termination of the Contract.
- 61.4 If the Contractor disputes the accuracy of the reconciliation, the Contractor may refer the dispute to the Dispute Resolution Procedure in accordance with the terms of the Contract within [twenty eight (28)] days beginning on the date on which the

PCT served the Contractor with written details of the reconciliation. The Parties shall be bound by the determination of the dispute.

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

61.6 Should the Contractor:

61.6.1 breach the Contract entitling the PCT to serve written notice on the Contractor terminating the contract pursuant to clauses 54, 55, 56 or 57; or

61.6.2 issue the PCT with notice of termination under Clause 53.1 but cease to perform all or a material part of the Services before the expiry of the notice period; or

61.6.3 issue the PCT notice of termination under Clause 53.1 but fail to perform the Services to the PCT's reasonable satisfaction during the notice period until the due termination date; or

61.6.4 otherwise cease to provide all or a material part of the Services without notice to the PCT in accordance with Clause 53.1,

then, without prejudice to all other remedies available to the PCT, the PCT shall be entitled to perform all part of the Services itself and/or (at its sole discretion) engage (a) replacement provider(s) for the provision of all or part of the Services on such terms and conditions as the PCT sees fit and the Contractor shall immediately pay the PCT the cost of engaging the replacement provider(s) together with all additional expenditure incurred by the PCT (including the all costs incurred of performing all or part of the Services itself) throughout the remainder of the unexpired portion of the due notice period in the case of Clauses 61.6.2 and 61.6.3 or in the case of Clauses 61.6.1 and 61.6.4 for the full notice period.

61.7 The obligations contained in Clauses 61.1 to 61.6 shall continue to apply notwithstanding the termination of the Contract.

62 DISPUTE RESOLUTION

62.1 All negotiations and proceedings connected with any dispute, claim or settlement arising out of or relating to this Agreement ("dispute") shall be conducted in confidence. The Contractor shall continue its performance of the provisions of the Contract (unless the PCT requests in writing that the Contractor does not do so).

62.2 The Parties will attempt in good faith to resolve any dispute promptly through negotiation between their authorised representatives.

62.3 If the negotiation referred to in Clause 62.2 does not resolve the matter in question then the Parties will attempt to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the Parties. To initiate a mediation the Parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organisation as agreed by the Parties asking them to nominate a mediator. The mediation shall commence within [twenty eight (28)] days of the Mediation Notice being served. The Parties will co-operate with any person appointed as mediator

providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

- 62.4 If the matter has not been resolved by the mediation procedure detailed in clause 62.3 within [one (1) month] of the initiation of such procedure, the dispute shall be referred to a single arbitrator to be agreed upon by the Parties or in default of agreement within [fourteen (14)] days to be nominated by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1996. The arbitration shall take place in London and shall be in accordance with the Arbitration Act 1996 and in accordance with such arbitration rules as the Parties may agree or, in default of agreement, in accordance with the Rules of the London Court of International Arbitration which Rules are deemed to be incorporated by reference into this Clause 62.4.
- 62.5 The decision of the Arbitrator shall be final and binding on the Parties.
- 62.6 Clause 62 shall survive the expiry or termination of the Contract.

63 RE-TENDERING AND HANDOVER

- 63.1 Within [twenty one (21)] days of being so requested by the PCT, the Contractor shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the PCT to issue invitations to offer for the future provision of the Services or to provide the Services itself.
- 63.2 Where, in the opinion of the PCT, the Transfer of Undertakings (Protection of Employment) Regulations 1981 are likely to apply on the termination or expiration of the Contract, the information to be provided by the Contractor under Clause 62.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under those Regulations, including in particular (but not limited to):
- 63.2.1 the number of employees who would be transferred, but with no obligation on the Contractor to specify their names;
 - 63.2.2 in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment;
 - 63.2.3 the general terms and conditions applicable to those employees, including Whitley Council provisions, probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.
 - 63.2.4 Where the Services are to be retendered or offered to another external supplier, the PCT shall take all necessary precautions to ensure that the information referred to in Clause 62.1 is given only to Replacement Contractors who have qualified to offer for the future

provision of Services. The PCT shall require that such Replacement Contractors shall treat that information in confidence, that they shall not communicate it except to such persons within their organisation and to such extent as may be necessary for the purpose of preparing a response to an invitation to offer issued by the PCT and that they shall not use it for any other purpose.

63.2.5 The Contractor shall indemnify the PCT against any claim made against the PCT at any time by any person in respect of the liability incurred by the PCT arising from any deficiency or inaccuracy in information, which the Contractor is required to provide under Clause 63.1.

63.3 The Contractor shall co-operate fully with the PCT during the handover arising from the completion or earlier termination of the Contract. This co-operation, during the setting up operations period of the new Contractor (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.

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

64 TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 1981

64.1 The Contractor shall indemnify and keep indemnified the PCT against any Loss incurred by the PCT connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the PCT in respect of any or all of the Employees or any other employee of the Contractor and which arises from or is connected with any failure by the Contractor to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or Regulation 10 or 10A of TUPE.

64.2 The Contractor shall indemnify and keep indemnified the PCT against any Loss incurred by the PCT connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any Employee or of any other person at any time employed by (or engaged as a consultant by) the Contractor made against the PCT at any time for breach of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Contractor and which results from any act, fault or omission of the Contractor while such Employees were or such other person was employed by the Contractor, save to the extent that the liability arises from any wrongful act by the PCT or its employees.

64.3 The Contractor shall indemnify and keep indemnified the PCT against any Loss incurred from any change or proposed change to the terms and conditions of employment of any Employees where such change is or is proposed to be effected

following the transfer of any such person pursuant to the Contract and in respect of any Loss incurred by the PCT arising from the employment or proposed employment of any such Employee otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

- 64.4 Upon the day which is six (6) months before the Termination Date or as soon as the Contractor is aware of the proposed termination of the Contract or the provision by it of the Services the Contractor shall upon the request of the PCT and to the extent permitted by law, supply to the PCT all information required by the PCT as to the terms and conditions of employment and employment history of any employees then assigned by the Contractor to the provision of the Services and shall warrant the accuracy of such information.
- 64.5 Except with the prior written consent of the PCT, the Contractor shall not vary any terms and conditions of employment of any employee or any policy or collective agreement applicable to any employee then assigned by the Contractor to the provisions of the Services (provided always that this provision shall not affect the right of the Contractor to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Contractor shall replace such person with another person of similar skills, qualifications and experience) after the PCT has served notice of the termination of the Contract or after the Contractor shall have otherwise become aware of the proposed termination of the Contract or the provision by it of the Services.

65 GIFTS

- 65.1 The Contractor shall keep a register of gifts which: are given to any of the persons specified in Clause 65.2 by, or on behalf of, a Patient, a relative of a Patient or any person who provides or wishes to provide services to the Contractor or its Patients in connection with the Contract; and have, in its reasonable opinion, a value of more than £100.00.
- 65.2 The persons referred to in Clause 65.1 are:
- 65.2.1 any person employed by the Contractor for the purposes of the Contract;
 - 65.2.2 any General Medical Practitioner engaged by the Contractor for the purposes of the Contract;
 - 65.2.3 if the Contractor is a company, any directors or company secretary of the company;
 - 65.2.4 if the Contractor is an Industrial and Provident Society, Friendly Society, Voluntary Organisation as defined in the NHS Act 1977 or other body any officer, trustee or any other person concerned with the management of the Contractor;
 - 65.2.5 the Contractor;
 - 65.2.6 any spouse of a person specified in Clauses 65.2.1 to 65.2.2; or

- 65.2.7 any person (whether or not of the opposite sex) whose relationship with a person specified in Clauses 65.2.3 to 65.2.2 has the characteristics of the relationship between husband and wife.
- 65.3 Clause 64.1 does not apply where:
- 65.3.1 there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the Contractor;
- 65.3.2 the Contractor is not aware of the gift; or
- 65.3.3 the Contractor is not aware that the donor wishes to provide services to the Contractor.
- 65.4 The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within Clause 65.1 and which are given to the persons specified in Clauses 65.2.3 to 65.2.7.
- 65.5 The register referred to in Clause 65.1 shall include the following information:
- 65.5.1 the name of the donor;
- 65.5.2 in a case where the donor is a Patient, the Patient's National Health Service number or, if the number is not known, his address;
- 65.5.3 in any other case, the address of the donor;
- 65.5.4 the nature of the gift;
- 65.5.5 the estimated value of the gift; and
- 65.5.6 the name of the person or persons who received the gift.
- 65.6 The Contractor shall make the register available to the PCT on request.

66 COMPLIANCE WITH LEGISLATION AND GUIDANCE

- 66.1 The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the PCT, the Relevant Strategic Health Authority or the Secretary of State.

OTHER PROVISIONS

67 NON-SURVIVAL OF TERMS

- 67.1 Unless expressly provided, no term of the Contract shall survive expiry or termination of the Contract. Express provision is made in relation to:
- 67.1.1 Clause 42(Counter Fraud and Security Management);
- 67.1.2 Clause 45 (Fees and Charges);
- 67.1.3 Clause47 (Indemnity)

- 67.1.4 Clause 48 (Insurance) ;
- 67.1.5 Clause 49 (Complaints);
- 67.1.6 Clauses 61.1 to 61.6 (Consequences of Termination); and
- 67.1.7 Clause 62 (Dispute Resolution Procedures);
- 67.1.8 Clause 64(TUPE Indemnities);
- 67.1.9 Clause 69(Governing Law and Jurisdiction);
- 67.1.10 Clause 78 (Confidentiality).

68 ENTIRE AGREEMENT

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

69 GOVERNING LAW AND JURISDICTION

- 69.1 The Contract shall be governed by and construed in accordance with English law.
- 69.2 Without prejudice to the dispute resolution procedures contained in the Contract, in relation to any legal action or proceedings to enforce the Contract or arising out of or in connection with this Contract, each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.
- 69.3 Clauses 69.1 and 69.2 shall continue to apply notwithstanding the termination of the Contract.

70 WAIVER, DELAY OR FAILURE TO EXERCISE RIGHTS

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

71 RELATIONSHIP BETWEEN THE PARTIES

- 71.1 The Contract is a contract for the provision of services. The Contractor is an independent provider of services and is not an employee, partner or agent of the PCT. 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 PCT.
- 71.2 The PCT does not by entering into the Contract, and shall not as a result of anything done by the Contractor in connection with the performance of the Contract, incur any contractual liability to any other person.

- 71.3 The Contract does not create any right enforceable by any person not a party to it under the Contracts (Rights of Third Parties) Act 1999.
- 71.4 The Contractor shall not delegate its obligations or otherwise give, sell, assign or otherwise dispose of the benefit of any of its rights, under the Contract without the prior written authorisation of the PCT in accordance with Clauses 19.1 to 19.3.
- 71.5 The PCT may give, sell, assign or otherwise dispose of the benefit of its rights under the Contract to another Primary Care Trust.

72 FORCE MAJEURE

- 72.1 No Party shall be entitled to bring a claim for a breach of obligations under the Contract by the other Party or incur any liability to the other Party for any losses or damages incurred by that Party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that event of force majeure.
- 72.2 In the occurrence of a Force Majeure Event, the Affected Party shall notify the other Party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on its obligations of the Affected Party and any action proposed to mitigate its effect.
- 72.3 As soon as practicable, following such notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Contract.
- 72.4 Unless the affected Party takes such steps, Clause 72.1 shall not have the effect of absolving it from its obligations under this Contract. For the avoidance of doubt, any actions or omissions of either Party's personnel or any failures of either Party's systems, procedures, premises or equipment shall not be deemed to be circumstances or events beyond the reasonable control of the relevant Party for the purposes of this Clause 72.4 unless the cause of failure was beyond reasonable control.
- 72.5 If the affected Party is delayed or prevented from performing its obligations and duties under the Contract for a continuous period of [three (3)] months, then either Party may terminate the Contract by notice in writing within such period as is reasonable in the circumstances (which shall be no shorter than [twenty eight (28) days]).
- 72.6 The termination shall not take effect at the end of the notice period if the affected Party is able to resume performance of its obligations and duties under the Contract within the period of notice specified in accordance with Clause 72.35 or if the other Party otherwise consents.

73 SEVERANCE

- 73.1 Subject to Clauses 73.2 and 73.3, if any term of the Contract is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such term shall, to the extent required, be deemed to be deleted from the Contract and shall not affect the validity, lawfulness or enforceability of any other terms of the Contract.

- 73.2 If, in the reasonable opinion of either Party, the effect of such a deletion is to undermine the purpose of the Contract or materially prejudice the position of either Party, the Parties shall negotiate in good faith in order to agree a suitable alternative term to replace the deleted term or a suitable amendment to the Contract.
- 73.3 If the Parties are unable to reach agreement as to the suitable alternative term or amendment within a reasonable period of commencement of the negotiations, then the Parties may refer the dispute for determination in accordance with the Dispute Resolution Procedure set out in Clauses 61.1 to 61.6

74 SERVICE OF NOTICE

- 74.1 Save as otherwise specified in the Contract or where the context otherwise requires, any notice or other information required or authorised by the Contract to be given by either Party to the other Party must be in writing and may be served:
- 74.1.1 personally;
 - 74.1.2 by post, or in the case of any notice served pursuant to clause 50 (Variation) and clauses 51 to 56 (Termination), registered or recorded delivery post;
 - 74.1.3 by telex, or facsimile transmission (the latter confirmed by telex or post);
 - 74.1.4 unless the context otherwise requires and except in Clause 50.1 electronic mail; or
 - 74.1.5 by any other means which the PCT specifies by notice to the Contractor.
- 74.2 Any notice or other information shall be sent to the address specified in the Contract or such other address as the PCT or the Contractor has notified to the other.
- 74.3 Any notice or other information shall be deemed to have been served or given:
- 74.3.1 if it was served personally, at the time of service;
 - 74.3.2 if it was served by post, two (2) Working Days after it was posted; and
 - 74.3.3 if it was served by telex, electronic mail or facsimile transmission, if sent during Core Hours then at the time of transmission and if sent outside Core Hours then on the following Working Day.
- 74.4 Where notice or other information is not given or sent in accordance with Clauses 74.1 to 74.3, such notice or other information is invalid unless the person receiving it elects, in writing, to treat it as valid.

75 DISCRIMINATION

- 75.1 Without prejudice to the generality of clause 66 above, The Contractor shall not discriminate without reasonable cause in the performance of the Services under the Contract on the grounds of a person's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

- 75.2 The Contractor shall comply with section 71(1) of the Race Relations Act 1976 (as amended) (Race Relations Act) as if it were a body within the meaning of Schedule 1A of the Act (or any European equivalent) which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. Notwithstanding the foregoing, the Contractor shall not be required to comply with specific duties imposed on public authorities by virtue of an Order under section 71(2) of the Act.
- 75.3 The Contractor shall impose on any sub-contractor obligations substantially similar to those imposed on the Contractor by Clauses 75.1 and 75.2.

76 DATA PROTECTION

- 76.1 The Contractor shall comply with the Data Protection Act 1998 ("the 1998 Act") and any other applicable data protection legislation. In particular the Contractor agrees to comply with the obligations placed on the PCT by the seventh data protection principle ("the Seventh Principle") set out in the 1998 Act, namely:
- 76.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the PCT by the Seventh Principle;
 - 76.1.2 only to process Personal Data for and on behalf of the PCT, in accordance with the instructions of the PCT and for the purpose of performing the Services in accordance with the Contract and to ensure compliance with the 1998 Act;
 - 76.1.3 to allow the PCT to audit the Contractor's compliance with the requirements of this Clause 76.1 on reasonable notice and/or to provide the PCT with evidence of its compliance with the obligations set out in this Clause 76.1.
- 76.2 Both Parties agree to use all reasonable efforts to assist each other to comply with the 1998 Act. For the avoidance of doubt, this includes the Contractor providing the PCT with reasonable assistance in complying with subject access requests served on the PCT under Section 7 of the 1998 Act and the Contractor consulting with the PCT prior to the disclosure by the Contractor of any Personal Data in relation to such requests.

77 FREEDOM OF INFORMATION

- 77.1 The Contractor shall use all reasonable efforts to assist the PCT to comply with such obligations as are imposed on the PCT by the Freedom of Information Act 2000 ("the 2000 Act") and the Code of Openness in the NHS ("the Code") including providing the PCT with reasonable assistance in complying with any request for information in connection with the Services served on the PCT under the 2000 Act or the Code and processing information provided by the PCT in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct under section 46 of the Act.

78 CONFIDENTIALITY

- 78.1 Subject always to the obligations of the Parties under statute or common law, in respect of such Confidential Information of the type specified in schedule 6 it may receive from the other Party ("the Discloser"), each Party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that:
- 78.1.1 the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of the Contract;
- 78.2 the provisions of this Clause 78.1 shall not apply to any Confidential Information which:
- 78.2.1 is in or enters the public domain other than by breach of the Contract or other act or omissions of the Recipient;
 - 78.2.2 is obtained by a third party who is lawfully authorised to disclose such information; or
 - 78.2.3 is authorised for release by the prior written consent of the Discloser.
 - 78.2.4 Is identified as no longer needing to be regarded as confidential in accordance with any relevant timescale set out in schedule 6 relating to that class of information
- 78.3 Nothing in this Clause 78.1 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law or, where the Contractor is the Recipient, to the Contractor's immediate or ultimate holding company provided that the Contractor procures that such holding company complies with this Clause 78.1 as if any reference to the Contractor in this Clause 78.1 were a reference to such holding company.
- 78.4 The Contractor authorises the PCT to disclose the Confidential Information to such person(s) as may be notified to the Contractor in writing by the PCT from time to time to the extent only as is necessary for the purposes of auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with the Contract, such exercise being commonly referred to as "benchmarking". The PCT shall use all reasonable endeavours to ensure that such person(s) keeps the Confidential Information confidential and does not make use of the Confidential Information except for the purpose for which the disclosure is made. The PCT shall not without good reason claim that the lowest price available in the market is the realistic market price.
- 78.5 The provisions of Clauses 78.1 and 78.4 shall continue following termination of the Contract for any reason whatsoever and without limit in time.

79 INDUCEMENTS TO PURCHASE

- 79.1 The contractor shall not offer to the PCT or its representatives as a variation of the conditions of the contract, or as an agreement collateral to it, any advantage other than a cash discount against the contract price.
- 79.2 The PCT shall be entitled to terminate the contract and to recover from the contractor the amount of any loss resulting from such termination in the following circumstances:
- 79.2.1 if the contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of the contract or any other contract with the PCT , or for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the PCT
 - 79.2.2 if the like acts shall have been done by any person employed by it or acting on its behalf (whether with or without the knowledge of the contractor)
 - 79.2.3 if in relation to the contract or any other contract with the PCT the contractor or any person employed by it or acting on its behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or shall have given any fee or reward to any officer of the PCT which shall have been exacted or accepted by such officer under colour of his office or employment and is otherwise than such officer's proper remuneration.

80 NHS BRANDING

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

81 SPONSORSHIP

- 81.1 The Contractor shall not enter into any arrangements for the sponsorship by any person of the Practice Premises, the Services or anything connected to this Contract without the written consent of the PCT, which the latter in its absolute discretion may withhold.

82 ADMINISTRATION

- 82.1 The provisions of Schedule 7 shall have effect for the purposes of identifying the parties representatives.

**Schedule 1
SPECIFICATION**

Specification

To include, for example:

- 1 Address of Premises from which Contractor will provide Services (required by Clause 10.1 of Section 2 (Conditions of Contract)).
- 2 Patients to whom the Contractor will provide Services (required by Clause 0 of Section 2 (Conditions of Contract)).
- 3 Services to be provided.
- 4 Additional provisions relating to the Services, for example: using the GMS provisions regarding definitions of essential additional and standard enhanced services.
- 5 Additional provisions relating to the use of PCT premises, for example:
 - “(a) The PCT shall during the Contract Period permit the Contractor to use in connection with the provision of the Services the premises (“the Sites”) set out below:

[LIST SITES]

- (b) The Contractor shall use the Sites only in connection with the provision of the Services and shall ensure that the Contractor’s staff use the Sites only for that purpose.
 - (c) The Contractor shall ensure that the Sites have a clean, tidy and professional appearance and are kept secure at all times.
 - (d) The permission given to the Contractor to use the said Sites is personal to the Contractor and the Contractor’s staff and shall cease immediately the Contract ceases to be in force. Only the Contractor’s own staff and persons making deliveries to the Contractor in connection with the provision of the Services may enter or use any part of the Sites without the prior written permission of the PCT.
 - (e) For the avoidance of doubt it is hereby declared that the permission to enter and use the said Sites is not the grant of a tenancy of any part of the Sites. The PCT retains full possession and control over such Sites at all times and the Contractor shall not receive exclusive possession of, or any estate or interest in, any such Sites.
 - (f) The PCT reserves the right at all times to permit third parties to use the Sites, subject to the rights granted to the Contractor pursuant to the Contract.
 - (g) The Contractor will not alter or modify any part of the Sites without the written permission of the PCT.”
6. Other conditions of use where Contractor to provide services from PCT premises (e.g. security, health and safety, use of PCT equipment, etc).
 7. Training opportunities for GP Registrars.
 8. Provisions requiring the Contractor to maintain computer systems capable of meeting requirements of the Services including choose and book electronic transcription of prescriptions and GP to GP transmission.

Part 2
Provisions regarding practice lists [where Essential Services Provided]

The parties must provide for how patients may be assigned to the list and how the list may be declared closed or opened. One option would be to replicate the existing terms under the standard GMS contract. PCTs may wish to be more explicit about the circumstances where lists can be declared closed to reflect the nature of the arrangements.

Categories of persons to whom enhanced or additional services are to be provided.

[part 3 local quality thresholds]

**Schedule 3
PRICING**

Pricing

To include, for example:

- 1 Contract Price (VAT inclusive/exclusive, as applicable) – including risk sharing arrangements (where appropriate).
- 2 Time of payment.
- 3 Method of payment.
- 4 .Provisions relating to the above and pricing generally, for example:
 - “(a) The only sums payable by the PCT to the Contractor for the provision of the Services shall be the Contract Price. All other costs, charges, fees and expenses of whatever kind arising out of or in connection with the Contract shall be the responsibility of the Contractor.
 - (b) In accordance with the Contract, where the Contractor is required to provide Deliverables, the PCT shall be entitled to withhold payment of the Contract Price pending receipt and acceptance of the Deliverables in accordance with the Specification.
 - (c) Unless otherwise agreed in writing by the PCT, within 15 days of the end of each calendar month, the Contractor shall invoice the PCT for any Services provided by the Contractor in that calendar month. Such invoice shall be rendered on the Contractor's own invoice form clearly marked with the PCT's order number (if any). Invoices must show the period to which they relate and the aspects of the Services for which payment is claimed together with the agreed charging rates and any other details the PCT may require. Failure to provide such information will entitle the PCT to delay payment of the Contract Price until such information is provided.
 - (d) Subject to (b), (c), (d) and (e), the PCT shall pay any invoice submitted by the Contractor in accordance with (c) above within 30 days of receipt by the PCT of such invoice. The PCT shall pay such invoice(s) by BACS (Bank Automated Clearing System) if it so chooses or any alternate means as agreed between the PCT and the Contractor.
 - (e) The PCT shall be entitled to deduct from any monies due or to become due to the Contractor any monies owing to the PCT from the Contractor.
 - (f) Where the performance of the Contractor does not meet the required standard then a deduction as set out in the Specification or as agreed by the Parties may be made.
 - (g) Except where otherwise stated in the Order, the Contract Price is exclusive of VAT which shall be payable, if applicable, by the PCT in addition to such Contract Price. The invoice provided to the Authority or any Beneficiary by the Contractor in accordance with (c) above shall show the VAT calculations separately.
 - (h) In the event that the Contract is varied in such a way as to affect the Contract Price and if agreement between the Parties cannot be reached on the adjustment to the Contract Price within 3 months both Parties shall jointly act to resolve the dispute in accordance with the Dispute Resolution Procedure.”
- 5 Any other financial (or other) support to be provided by the PCT, a and the terms on which it is to be provided.
- 6 Any cross reference to contract monitoring or annual review.

Schedule 4 COMPLAINTS PROCEDURE

The complaints procedure should include terms equivalent to the following:

Making of Complaints

A complaint may be made by or, with his consent, on behalf of a Patient, or former Patient, who is receiving or has received services under the Contract, or

where the Patient is a *Child*:

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

by a person duly authorised by a local authority to whose care the child has been committed under the provisions of the Children Act 1989; or

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

where the Patient is incapable of making a complaint, by a relative or other adult who has an interest in his welfare.

Where a Patient has died a complaint may be made by a relative or other adult person who had an interest in his welfare or, where the Patient fell within Clause 0 or 0, by the authority or voluntary organisation, as the case may be.

Period for Making Complaints

Subject to Clause [] , the period for making a complaint is:

six (6) months from the date on which the matter which is the subject of the complaint occurred; or

six (6) months from the date on which the matter which is the subject of the complaint comes to the complainant's notice, provided that the complaint is made no later than twelve (12) months after the date on which the matter which is the subject of the complaint occurred.

Where a complaint is not made during the period specified in Clause, it shall be referred to the person specified in Clause who may, if he is of the opinion that having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly treat the complaint as if it had been received during the period specified in Clause.

Further Requirements for Complaints Procedure

The Contractor shall nominate:

a person (who need not be connected with the Contractor and who, in the case of an individual, may be specified by his job title) to be responsible for the operation of the complaints procedure and the investigation of complaints; and

a senior person associated with the Contractor to be responsible for the effective management of the complaints procedure and for ensuring that action is taken in the light of the outcome of any investigation.

All complaints shall be:

either made or recorded in writing,

acknowledged in writing within the period of three (3) working days beginning with the day on which the complaint was made or, where that is not possible, as soon as reasonably practicable; and

properly investigated.

Within the period of ten (10) working days beginning with the day on which the complaint was received by the person specified under Clause or, where that is not possible, as soon as reasonably practicable, the complainant shall be given a written summary of the investigation and its conclusions.

Where the investigation of the complaint requires consideration of the Patient's medical records, the person specified under Clause must inform the Patient or person acting on his behalf if the investigation will involve disclosure of information contained in those records to a person other than the Contractor or an employee of the Contractor.

The Contractor shall keep a record of all complaints and copies of all correspondence relating to complaints, but such records must be kept separate from Patients' medical records

Schedule 5
CONTRACT MONITORING

**Schedule 6
ADMINISTRATION**

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

Name: - _____

Title: - _____

The Contractor's Representative shall be:

Name: - _____

Title: - _____

Correspondence, for example:

“(a) All correspondence relating to the Contract shall be sequentially numbered and sent to the PCT's representative at the address shown below:

[ADD ADDRESS]

All correspondence relating to individual invoice issues shall be sent for the attention of the PCT's.

All correspondence from the PCT's Representative to the Contractor shall be sequentially numbered and sent to the following address:

[ADD ADDRESS]

Schedule 7
Particulars for Practice leaflet

(a) **A practice leaflet shall include—**

1. The name of the Contractor.
2. In the case of a Contract with a partnership—
whether or not it is a *limited partnership*; and
the names of all the partners and, in the case of a *limited partnership*, their status as a general or limited partner.
3. In the case of a Contract with a company—
 - (a) the names of the directors, the company secretary and the shareholders of that company; and
 - (b) the address of the company's registered office.
4. The full name of each person performing services under the Contract.
5. In the case of each *health care professional* performing services under the Contract his professional qualifications.
6. Whether the Contractor undertakes the teaching or training of *health care professionals* or persons intending to become *health care professionals*.
7. The contractor's practice area, by reference to a sketch diagram, plan or postcode.
8. The address of each of the practice premises.
9. The Contractor's telephone and fax number and the address of its website (if any).
10. Whether the *practice premises* have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such patients.
11. How to register as a patient.
12. The right of patients to express a preference of practitioner and the means of expressing such a preference.
13. The services available under the Contract.
14. The opening hours of the practice premises and the method of obtaining access to services throughout the core hours.
 - (i) The criteria for home visits and the method of obtaining such a visit.
 - (ii) The consultations available to patients.
17. The arrangements for services in the out of hours period and how the patient may contact such services.
18. The name and address of any local *walk-in centre* .
19. The telephone number of NHS Direct and details of NHS Direct online.
20. The method by which patients are to obtain repeat prescriptions.

21. If the Contractor offers repeatable prescribing services, the arrangements for providing such services.
22. If the Contractor is a dispensing contractor the arrangements for dispensing prescriptions.
23. How patients may make a complaint or comment on the provision of service.
24. The rights and responsibilities of the patient, including keeping appointments.
25. The action that may be taken where a patient is violent or abusive to the contractor or his staff or other persons on the practice premises.
26. 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.
27. The name, address and telephone number of the PCT.

IN WITNESS WHEREOF, the Parties have executed this Form of Agreement in duplicate

For: **[Name of PCT]** For: **[Name of Contractor]**

By: _____

By: _____

Full Name: _____

Full Name: _____

of: _____

of: _____

Title: _____

Title: _____