



## SCOTTISH EXECUTIVE

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Health Department  
Human Resources Directorate

St Andrew's House  
2 Regent Road  
EDINBURGH  
EH1 3DG

Dear Colleague

### **DRAFT STANDARD GENERAL MEDICAL SERVICES CONTRACT**

#### **Summary**

1. This Circular introduces the draft General Medical Services Standard Contract for use in Scotland, a copy of which can be found in the links provided below.

#### **Background**

2. The Draft Standard Medical Services Contract is a working document which has been drafted with Counsel and approved by the Scottish Executive Health Department and the Scottish General Practitioners Committee.

3. The contract contains all of the mandatory terms for the GMS Contract that are required by virtue of the Primary Medical Services Act 2004 and the published draft of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004. The contract also contains further terms that, although not required by virtue of the Act or the Regulations, are strongly recommended to all Health Boards.

4. In addition to the draft Standard Contract, there is also attached a copy of the Draft Guidance: 'Using the Standard General Medical Services Contract.'

5. The Draft Standard Contract is a draft working document and is, therefore, subject to change.

6. An electronic copy of the Draft Standard Contract can be found at the Pay Modernisation Website at:

<http://www.show.scot.nhs.uk/sehd/paymodernisation/>

or the SHOW Website at:

[http://www.show.scot.nhs.uk/sehd/pca/PCA2004\(M\)06.pdf](http://www.show.scot.nhs.uk/sehd/pca/PCA2004(M)06.pdf)

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16 February 2004

#### **Addresses**

##### For action

Chief Executives of Primary Care  
Trusts  
Chief Executives of NHS Boards  
General Medical Practitioners

##### For information

Chief Executives of NHS Trusts  
Director of Practitioner Services  
Division,  
Common Services Agency

#### **Enquiries to:**

John Hannah  
1ER  
St Andrew's House  
EDINBURGH  
EH1 3DG

Tel: 0131-244 2465  
Fax: 0131-244 2461

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7. If you have any comments on the Draft Standard Contract, please send them to:

John Hannah  
1ER  
St Andrew's House  
EDINBURGH  
EH1 3DG

**Alternatively, you can e-mail comments to:**

[John.hannah@scotland.gsi.gov.uk](mailto:John.hannah@scotland.gsi.gov.uk)

**Action**

8. Primary Care Trusts/NHS Boards are requested to bring this Circular to the attention of GP practices in their area and their Area Medical Committee for the attention of the Secretary of the GP sub-committee.

Yours sincerely,



**MIKE PALMER**  
**Assistant Director (Workforce and Policy)**

# USING THE STANDARD GENERAL MEDICAL SERVICES CONTRACT

## EXPLANATORY NOTE FOR HEALTH BOARDS

### Introduction

- 1) The Standard General Medical Services Contract (“the Contract”) has been drafted with Counsel and approved by SEHD Solicitors and Solicitors acting for the Scottish General Practitioners Committee.
- 2) The Contract contains all of the mandatory terms for GMS Contracts that are required by virtue of the Primary Medical Services (Scotland) Act 2004 and the published draft of the National Health Service (General Medical Services Contracts)(Scotland) Regulations 2004 (“the Regulations”). The Contract also contains further terms, that, although not required by virtue of the Act or the Regulations, are strongly recommended to all Health Boards.
- 3) Accordingly, Health Boards need not do any more than adapt the Contract in accordance with the guidance given below.

### Adapting the Contract

- 4) In the paragraphs below, an overview is given in relation to each Part of the Contract indicating (in **bold text**) the main parts of the Contract where some adaptation will be needed to tailor the Contract to the particular Contractor with whom the Contract is to be made, and those parts where no such adaptation is needed.
- 5) In the text of the Contract, there are a number of explanatory footnotes which indicate in more detail than this guidance where there are options to choose from: footnotes also indicate whether terms are mandatory terms (originating from and required by the Regulations or the Act) or not. If a term is a mandatory term, it must be included in the Contract and cannot be omitted. In some Parts of the Contract, together with the explanatory footnotes, further explanations are given within the text of the Contract itself in [square brackets]. The explanatory footnotes and text in square brackets can be deleted from a Contract with a Contractor as they are there to assist in the task of adapting the Contract and should no longer be relevant once the Contract has been drafted by the Health Board and is ready to be signed by the Parties.

### The structure of the Contract

#### Introductory page and background

- 6) **The date that the Contract is made between the parties will need to be inserted on the introductory page (page 4).** This will be the date on which the Contract is signed by the parties to it.

Part 1 (definitions and interpretation)

- 7) Part 1 of the Contract contains relevant definitions and interpretation provisions. This Part should not need to be altered regardless of the status of the Contractor (i.e. whether the Contractor is an individual, a partnership or a company), and irrespective of the services the Contractor will be providing under the Contract. Any terms that are defined at clause 1 appear in *italics* throughout the Contract so that they can easily be identified.
- 8) Clause 4 provides that where a clause is marked as 'RESERVED', it is not relevant and has no application to the Contract. This has been included so that it is not necessary to alter the cross-referencing or clause numbering in the document. **Users should therefore simply delete the words of a clause that is not required in a particular contract and instead insert the word 'RESERVED' against that clause number.**

Part 2 (relationship between the parties)

- 9) Most of this Part should not need to be altered regardless of the status of the Contractor or the services the Contractor will be providing under the Contract. However, at clause 11, **some modification will need to be made and the footnote to clause 11 indicates what the various options are.**

Part 3 (NHS Contract)

- 10) Clause 13 **will need to be adapted** to indicate whether the Contractor has or has not elected to be a health service body. The footnotes to clause 13 indicate what the options are.

Part 4 (commencement of the contract and duration)

- 11) The commencement date for the Contract **will need to be inserted** at clause 14.
- 12) Clauses 15 and 16 (duration) **will need to be completed and adapted** and the footnotes to these clauses explain what the options are.

Part 5 (warranties)

- 13) Part 5 will not need to be altered.

Part 6 (level of skill and provision of services)

- 14) Clauses 25, 26, 27 and 28 (premises) **will need completing and adapting**; the footnotes explain what the options are. The remainder of this Part should not need to be altered regardless of the status of the Contractor or the services the Contractor will be providing under the Contract.

Part 7 (essential services)

15) Part 7 must be included in every Contract.

Part 8 (additional services)

16) **Part 8 will need to be included if the Contractor is providing any additional services under the Contract.**

17) Where the Contractor is going to be providing any one or more additional services, **this Part will need adapting and completing** and the explanatory footnotes and text in square brackets indicate what the options are. This Part includes options relating to additional services to be funded under the global sum and additional services that will not be funded under the global sum if these are also to be included in a Contract.

Part 9 (out of hours services)

18) **Part 9**: This part is currently being drafted as Transitional Provisions in the GMS Contract regulations. Further details will follow.

Part 10 (opt outs of additional and out of hours services)

19) **Part 10 will only need to be included if additional and out of hours services have been included** in the Contract pursuant to specified provisions in the Regulations: the explanatory footnotes explain what those categories are.

20) Part 10 needs to be included if the Contractor falls into one of the relevant categories, **and will need to be altered depending on whether the Contractor is providing additional services, out of hours services or both.** The explanatory footnotes set out which clauses need to be included in which circumstances.

Part 11 (enhanced services)

21) **Part 11 needs to be included if the Contractor is to provide enhanced services under the Contract. If so, details of the enhanced services will need to be included** in this Part, together with any relevant specifications. See the explanatory text in square brackets at clause 148, together with the explanatory footnote.

Part 12 (patients)

22) In this Part, **there is an optional provision indicated in square brackets at clause 155, a clause to be completed in relation to the patient registration area at clause 156 and clauses to be completed in relation to the status of the Contractor's list at clauses 157 and 158.** Otherwise, this Part will not need to be altered regardless of the status of the Contractor or the services the Contractor will be providing under the Contract.

Part 13 (prescribing and dispensing)

23) This Part will not need to be altered.

Part 14 (persons who perform services)

- 24) Subject to paragraph 26) below, this Part will not need to be altered.
- 25) **Clauses 360 to 375 need to be included if the Contractor is providing out of hours services under the Contract. Clauses 376 to 406 will need to be included if the Contractor is providing out of hours services under the Contract pursuant to specified provisions in the Regulations: see the explanatory footnotes to these clauses.**

Part 15 (records, information, notification and rights of entry)

- 26) Subject to paragraph 28) below, this Part will not need to be altered.
- 27) **Clauses 443 and 444 will need to be included if the Contractor is a company limited by shares. Clauses 445 and 446 will need to be included if the Contractor is a partnership: see explanatory footnotes to these clauses.**

Part 16 (certificates)

- 28) This Part will not need to be altered.

Part 17 (payment under the Contract)

- 29) Subject to paragraph 31, this Part will not need to be altered.
- 30) **Users will need to consider the options in relation to clauses 459 and 460 and adapt as appropriate: see the explanatory footnotes to clause 460.**

Part 18 (fees and charges)

- 31) This Part will not need to be altered.

Part 19 (clinical governance)

- 32) This Part will not need to be altered.

Part 20 (insurance)

- 33) This Part will not need to be altered.

Part 21 (compliance with legislation and guidance)

- 34) This Part will not need to be altered.

Part 22 (data protection and indemnity)

- 35) This Part will not need to be altered.

Part 23 (complaints)

36) This Part will not need to be altered.

Part 24 (dispute resolution procedures)

37) **There are options to be omitted or included in Part 24** depending on whether the Contract is an NHS Contract or not: see the explanatory footnotes.

Part 25 (variation and termination of the contract)

38) Subject to paragraph 40) below, this Part will not need to be altered.

39) **Clauses 507 to 512 only need to be included in a Contract with an individual medical practitioner, clauses 513 to 517, and 549 to 550 only need to be included in a Contract with a partnership, and clause 548 only needs to be included in a contract with a company limited by shares. If the Contractor is an individual medical practitioner, clause 521 should be included but clause 520 should be deleted: if the Contractor is a partnership or a company, clause 520 should be included but clause 521 should be deleted.**

Part 26 (various)

40) This Part will not need to be altered.

Schedule 1 (PCT and Contractor details – individual medical practitioner)

41) **Schedule 1 (individual) should be completed if the Contractor is an individual medical practitioner.**

42) **Schedule 1 (partnership) should be completed if the Contractor is a partnership.**

43) **Schedule 1 (company) should be completed if the Contractor is a company limited by shares.**

Schedule 2 (signature of the parties to the agreement)

44) **The Contract must be signed in Schedule 2 on behalf of both the Contractor and the Health Board.** A person who has power to bind the Contractor and the Health Board must sign. If the Contractor is a partnership, it is strongly recommended that all the partners comprising the partnership at the date the Contract is entered into should sign the Schedule.

Schedule 3 (information to be included in practice leaflets)

45) This Schedule will not need to be altered.

Schedule 4 (repeat dispensing forms)

46) This Schedule will not need to be altered.

Schedule 5 (closure notice)

47) This Schedule will not need to be altered.

Schedule 6 (plan for improvement of premises)

48) **This Schedule needs to be included and completed only if clauses 27 and 28 have been included: see the explanatory footnotes to clauses 27 and 28.**

Schedule 7 (payment schedule)

49) **This Schedule needs to be included and completed only if clause 460 is included: see the explanatory footnote to clause 460.**

**Varying the Contract once the Contract has been entered into**

50) The Contract can be varied in several ways. Specific provision in relation to varying the Contract is contained in Part 10 (opt out of additional and out of hours services) and clauses 358 and 368 (premises of sub-contractors) and where a variation falls within those provisions, the particular procedures in those provisions govern how the variation is to be made.

51) Where the parties vary the Contract because they have agreed that they wish to do so, clause 504 of the Contract applies: such variations have to be in writing and signed by both parties<sup>1</sup>.

**Next Steps**

52) The Guidance on the Contracting Process says that Health Boards will be responsible for completing the Contract in the light of local discussions, and for sending it to all GMS contractors by the end of February 2004. It is to be noted that this draft Contract published here will be revised once the draft GMS Contract Regulations have been finalised. A revised version of the Contract will therefore be published by 27 February 2004, or as soon as possible thereafter. Accordingly, it is the revised version of the Contract that should be used to draft the Contract – this draft is only to be used to assist in the discussion phase of the contracting process.

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<sup>1</sup> Depending on the extent of the variations to be made, users may wish to re-draft a particular Part or, if it is a particularly small amendment, simply provide a re-drafted clause. In either case, both parties will need to sign a document to indicate their agreement to the variation and any such amendments should then be kept with the Contract as they form part of the Contract. The document which the parties sign to indicate their agreement should also make clear the date upon which the agreed variation is to take effect.

1. STANDARD GENERAL MEDICAL SERVICES CONTRACT

The text of the Standard General Medical Services Contract has been prepared with Counsel and approved by the Scottish Executive Health Department's Solicitors and Solicitors acting for the GPC.

The Contract will need to be revised to reflect any further amendments to the published draft of the National Health Service (General Medical Services Contracts) (Scotland) Regulations, and a revised version of the Contract will therefore be published in February 2004.

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**THIS CONTRACT** is made on the \_\_\_\_\_ day of \_\_\_\_\_

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1.1.2 BETWEEN

- (1) The Health Board whose name and address appears at Schedule 1 to this Contract (called “the HB”) and
- (2) The contractor(s) whose name(s) appear(s) at Schedule 1 to this Contract (called “the Contractor”)

**1.1.3 BACKGROUND**

- A. The HB is a statutory body established by order made under section 2(1)(a) of the National Health Service (Scotland) Act 1978. It is the duty of the HB to provide or secure the provision of primary medical services as respects their area.
- B. In order to achieve this object, the HB is empowered by the National Health Service (Scotland) Act 1978, and the regulations made thereunder<sup>2</sup>, to enter into a general medical services contract with specified categories of person.
- C. The Contractor falls within one of the specified categories of person.
- D. The HB and the Contractor wish to enter into a general medical services contract under which the Contractor is to provide primary medical services and other services in accordance with the provisions of this Contract.

2. PART 1<sup>3</sup>

2.1.1 DEFINITIONS AND INTERPRETATION

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

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<sup>2</sup> The National Health Services (General Medical Services Contracts) (Scotland) Regulations 2004.

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

“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 (Scotland) Act 1978;

“additional services” means one or more of

- (a) *cervical screening services*;
- (b) *contraceptive services*;
- (c) *vaccinations and immunisations*;
- (d) *childhood vaccinations and immunisations*;
- (e) *child health surveillance services*;
- (f) *maternity medical services*; and
- (g) *minor surgery*;

““adjudicator” means–

- (a) in relation to dispute resolution where both parties are health service bodies, and where the Scottish Ministers consider it appropriate not to determine the matter themselves, a person appointed by the Scottish Ministers under section 17A(6) of *the Act* to consider and determine the dispute in accordance with the NHS dispute resolution procedure;
- (b) in relation to any other dispute resolution, the panel appointed by the Scottish Ministers in accordance with paragraph 84(4) of Schedule 5 (other contractual terms) of *the Regulations* to consider and determine the dispute in accordance with the NHS dispute resolution procedure;

“appliance” means an appliance which is included in a list for the time being approved by the Scottish Ministers for the purposes of section 27(1) of *the Act*;

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<sup>3</sup> Part 1 is not required by *the Regulations*, but is recommended.

“approved medical practice” has the same meaning as in section 11 of the Medical Act 1983;

“area medical committee” means any member or members of the committee of that name recognised under section 9 of the Act (local consultative committees) in the area of the Health Board who is or are included in a primary medical services performers’ list;

“assessment panel” means a committee or sub-committee of a Health Board (other than the HB which is a party to the contract in question) appointed to exercise functions under paragraph 26 or paragraph 29 of Schedule 5 to *the Regulations*;

“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;

“cervical screening services” means the services described in clause 64;

“chemist” means-

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

who is included in the list of a Health Board under *the Pharmaceutical Regulations*;

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

“child health surveillance services” means the services described in clause 72;

“childhood vaccinations and immunisations” means the services described in clauses 69 to 70;

“closed” in relation to the Contractor’s list of patients, means closed to application for inclusion in the list of patients other than from *immediate family members of registered patients*;

“contraceptive services” means the services described in clause 66;

“Contract” means this Contract between the HB and the Contractor named in Schedule 1;

“Contractor’s list of patients” means the list prepared and maintained by the HB under clause 0;

“core hours” means the period beginning at 8am and ending at 6.30pm on any day from Monday to Friday except Christmas Day, New Year’s Day and other public or local holidays agreed with the HB;

“disease” means a disease included in the list of three-character categories contained in the tenth revision of the International Statistical Classification of Diseases and Related Health Problems (published by the World Health Organisation, 1992 ISBN 92 4 1544 19 8 (v.I) NLM Classification WB 15).

“dispensing services” means the provision of drugs, medicines or appliances that may be provided by a medical practitioner in accordance with arrangements made under regulation 20 of the *Pharmaceutical Regulations*;

“Drug Tariff” means the statement published under regulation 9 (payments to pharmacists and standards of drugs and appliances) of the *Pharmaceutical Regulations*;

“enhanced services” means-

- a) medical services other than *essential services, additional services* or *out of hours services*;
- b) *essential services, additional services* or *out of hours services* or an element of such a service that a contractor agrees under a contract to provide in accordance with specifications set out in a plan, which requires of the contractor an enhanced level of service provision compared to that which it needs generally to provide in relation to that service or element of service;

“essential services” means the services described in clauses 45 to 51;

“general medical practitioner” means-

- (a) on 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 of 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*;

“General Practitioner Register” means the register kept by the General Medical Council under article 10 of *the 2003 Order*;

“global sum” has the meaning given to it in the *GMS Statement of Financial Entitlements*;

“GMS Statement of Financial Entitlements” means the directions given by the Scottish Ministers under section 17M of *the Act* (payments to Health Boards under general medical services contracts);

“GP Registrar”—

- (a) prior to the coming into force of article 5 of *the 2003 Order*, means a medical practitioner who is being trained in general practice by 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) (Scotland) Regulations 1998, and
  - ii. performs primary medical services, and
- (b) after the coming into force of that article, means a medical practitioner who is being trained in general practice by a *GP Trainer* whether as part of training leading to the award of a *CCT* or otherwise;

“GP Trainer” means a *general medical practitioner* who is?

- a) prior to the coming into force of article 4(5)(d) of *the 2003 Order*, approved as a GP Trainer 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; or
- b) after the coming into force of that article, approved by the Postgraduate Medical Education and Training Board under article 4(5)(d) of *the 2003 Order* for the purposes of providing training to a *GP Registrar* under article 5(1)(c)(i);

“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 Authority” means a Health Authority established under section 8 of *the 1977 Act*;

“health care professional” has the same meaning as in section 17L(5) of *the Act*, and “health care profession” shall be construed accordingly;

“health service body”, unless the context otherwise requires, means

- (a) any person or body referred to in section 17A(2) of *the Act*;
- (b) persons entering into a contract who are to be regarded as a health service body in accordance with regulation 10 (health service body status) of *the Regulations*;

“immediate family member” means-

- (a) a spouse,
- (b) a person (whether or not of the opposite sex) whose relationship with the registered patient has the characteristics of the relationship between husband and wife,
- (c) a parent,
- (d) a son,
- (e) a daughter, or
- (f) a *child* of whom the *registered patient* is-
  - a. the guardian, or
  - b. the carer duly authorised by a local authority; or
- (g) a grandparent;

“independent nurse prescriber” means-

- (a) a person whose name is registered-

- (i) in Part 1 or 12 of the *Nursing and Midwifery Register* and has a district nurse qualification additionally recorded in the professional register pursuant to rule 11 of the Nurses, Midwives and Health Visitors Rules 1983, or
- (ii) in Part 11 of the *Nursing and Midwifery Register* as a health visitor,

and against whose name is recorded in the *Nursing and Midwifery Register* an annotation signifying that the person is qualified to order drugs, medicines and appliances from the Nurse Prescribers' Formulary for District Nurses and Health Visitors in Part XVIIIB(i) of the *Drug Tariff*; or

(b) a person-

- (i) whose name is registered in Parts 1, 3, 5, 8, 10, 11, 12, 13, 14 or 15 of the professional register, and
- (ii) against whose name is recorded in the *Nursing and Midwifery Register* an annotation signifying that he is qualified to order drugs, medicines and appliances from the Nurse Prescribers' Extended Formulary in Part XVIIIB(ii) of the *Drug Tariff*;

“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;

“limited partnership” means a partnership registered under the Limited Partnerships Act 1907;

“List” has the meaning assigned to it in section 29(8) of the Act;

“Local Health Board” means a Local Health Board established under section 16B of *the 1977 Act*.

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

“maternity medical services” means the services described in clause 74;

“medical card” means a card issued by a Health Board Primary Care Trust, Local Health Board, Health Authority, or *Health and Social Services Board* to a person for the purpose of enabling that person to obtain, or establishing the person’s title to receive, primary medical services;

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

“minor surgery” means the services described in clauses 76 to 77;

“national disqualification” means—

- (a) a national disqualification by *the Tribunal*; or,

- (b) a decision under the provisions in force in England, Wales or Northern Ireland corresponding to a national disqualification by *the Tribunal*.

“NHS contract” has the meaning assigned to it in section 17A(3) of *the Act*;

“NHS dispute resolution procedure” means the procedure for resolution of disputes specified in-

- a) paragraphs 84(3) to (12) and 85 of Schedule 5 to *the Regulations*; or
- b) in a case to which paragraph 30 of Schedule 5 to *the Regulations* applies, in that paragraph.

“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 14<sup>th</sup> December 2001 and in relation to Wales only until 26<sup>th</sup> August 2002;

“normal hours” means those days and hours specified in the Contract as being the days on which and the times at which services under the Contract will normally be available and may be different for different services;

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

“open” in relation to the Contractor’s list of patients, means open to applications from patients in accordance with clauses 0 to 0;

“opt out notice” means a notice given under clause 0 to *permanently opt out* or *temporarily opt out* of the provision of the *additional service*;

“out of hours arrangement” means an arrangement under clause **Error! Reference source not found.** ;

“out of hours opt out notice” means a written notice served on the HB specifying that the Contractor wishes to terminate its obligation to provide *out of hours services* pursuant to clause 0 or 0 (as the case may be);

“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) Christmas Day, New Year’s Day and other public or local holidays agreed with the Health Board

and “part “ of an out of hours period means any part of one or more of periods described in paragraphs (a) to (c);

“out of hours services” means services required to be provided in all or part of the *out of hours period* which-

- (a) would be *essential services* if provided in core hours; and
- (b) are included in the Contract as *additional services* funded under the *global sum*.

“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-

- (a) a *registered patient*,
- (b) a *temporary resident*,
- (c) persons to whom the Contractor is required to provide immediately necessary or necessary treatment under clause 46.3 or 49,
- (d) any other person to whom the Contractor has agreed to provide services under the Contract;

- (e) any person for whom the Contractor is responsible under regulation 20 of *the Regulations*; and
- (f) any other person to whom the Contractor is responsible under arrangements made with another contractor in accordance with clauses **Error! Reference source not found.** to **Error! Reference source not found.**;

“permanent opt out” in relation to the provision of an *additional service* that is funded through the *global sum*, means the termination of the obligation under the Contract for the Contractor to provide that service; and “permanently opt out” shall be construed accordingly;

“permanent opt out notice” means an *opt out notice to permanently opt out*;

“Pharmaceutical Regulations” means the National Health Service (Pharmaceutical Services) (Scotland) Regulations 1995;

“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 area” means the area referred to in clause 0;

“practice leaflet” means a leaflet drawn up in accordance with clause 0;

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

“preliminary opt out notice” means a notice given under clause 0 that the Contractor wishes to *temporarily opt out* or *permanently opt out* of the provision of an *additional service*;

“prescriber” means-

- (a) a medical practitioner;
- (b) an independent nurse prescriber; and
- (c) *a supplementary prescriber*;

“prescription form” means a form provided by the HB and issued by a *prescriber* to enable a person to obtain pharmaceutical services or local pharmaceutical services

“ Primary Care Trust” means a Primary Care Trust established under section 16A of *the 1977 Act*;

“primary carer” means, in relation to an adult, the adult or organisation primarily caring for him;

“primary medical services performers’ list” means the list of primary medical services performers prepared in accordance with regulations made under section 17P of *the Act* (persons performing primary medical services);

“registered patient” means-

- (a) a person who is recorded by the HB as being on the Contractor’s list of patients; or
- (b) a person whom the Contractor has accepted for inclusion on its list of patients, whether or not notification of that acceptance has been received by the HB and who has not been notified by the HB as having ceased to be on that list;

“Regulations” means The National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004;

“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;

“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 Scottish Ministers under section 17N(6) 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 0 are satisfied, a drug, medicines or other substance which is specified in any directions given by the Scottish Ministers under section 17N(6) of *the Act* as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes.

“section 17C arrangements” means arrangements made under section 17C of *the Act*;

“section 17C provider” means a person who is providing services in accordance with *section 17C arrangements*;

“supplementary prescriber” means a person whose name is registered in-

- (a) the *Nursing and Midwifery Register*;

(b) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954; or  
(c) the register maintained in pursuance of Articles 6 and 9 of the Pharmacy (Northern Ireland) Order 1976,  
and against whose name is recorded in the *relevant register* an annotation signifying that the person 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;

“temporary opt out” in relation to the provision of an *additional service* that is funded through the *global sum*, means the suspension of the obligation under the Contract for the Contractor to provide that service for a period of more than six months and less than twelve months and includes an extension of a temporary opt out and “temporarily opt out” and “temporarily opted out” shall be construed accordingly;

“temporary opt out notice” means an *opt out notice to temporarily opt out*;

“temporary resident” means a person accepted by the Contractor as a temporary resident under clauses 0 to 0 and for whom the Contractor’s responsibility has not been terminated in accordance with those clauses;

“Tribunal” has the meaning indicated in section 29 of *the Act* (the NHS Tribunal);

2. In this Contract unless the context otherwise requires:

2.1. Defined terms and phrases appear in italics, except for the terms “patient” and “Contract”;

- 2.2. Words denoting any gender include all genders and words denoting the singular include the plural and vice-versa.
- 2.3. Reference to any person may include a reference to any firm, company or corporation.
- 2.4. 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, Christmas Day, New Year’s Day and other public or local holidays agreed with the HB.
- 2.5. The headings in this Contract are inserted for convenience only and do not affect the construction or interpretation of this Contract.
- 2.6. The schedules to this Contract are and shall be construed as being part of this Contract.
- 2.7. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of this Contract), and all statutory instruments or orders made pursuant to it.
- 2.8. Any obligation relating to the completion and submission of any form that the Contractor is required to complete and submit to the HB includes the obligation to complete and submit the form in such a format or formats (electronic, paper or otherwise) as the HB may specify.
- 2.9. Any obligation on the Contractor to have systems, procedures or controls includes the obligation effectively to operate them.
- 2.10. Where this Contract imposes an obligation on the Contractor, the Contractor must comply with it and must take all reasonable steps to

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

3. Where there is any dispute as to the interpretation of a particular term in the Contract, 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 Regulations*, and any other relevant regulations made under *the Act*.
4. Where the parties have indicated in writing that a clause in the Contract is reserved, that clause is not relevant and has no application to the Contract<sup>4</sup>.

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<sup>4</sup> This provision has been included so that if, in relation to a particular contract, a particular clause number or numbers are not relevant (for example, because that clause or those clauses only need to be included in contracts with a partnership and the contractor concerned is an individual medical practitioner) the words of that clause can be deleted and the word ‘reserved’ can be inserted next to that clause number: this is to avoid renumbering the clauses or cross-references in the Contract.

3. PART 2<sup>5</sup>

3.1.1 RELATIONSHIP BETWEEN THE PARTIES

5. 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 HB. 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 HB.
6. The HB does not by entering into this Contract, and shall not as a result of anything done by the Contractor in connection with the performance of this Contract, incur any contractual liability to any other person.
7. This Contract does not create any right enforceable by any person not a party to it.<sup>6</sup>
8. In complying with this Contract, in exercising its rights under the Contract and in performing its obligations under the Contract, the Contractor must act reasonably and in good faith.
9. In complying with this Contract, and in exercising its rights under the Contract, the HB must act reasonably and in good faith and as a responsible public body required to discharge its functions under *the Act*.
10. Clauses 8 and 9 above do not relieve either party from the requirement to comply with the express provisions of this Contract and the parties are subject to all such express provisions.
11. The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this Contract, [save in accordance with Schedule 1]<sup>7</sup> [and subject to specific provision made in clauses **Error! Reference source not found.**

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<sup>5</sup> Except where indicated, Part 2 is not required by *the Regulations*, but is recommended.

<sup>6</sup> This clause is required by *the Regulations* (see paragraph 125 of Schedule 6).

to **Error! Reference source not found.**<sup>8</sup>. The Contract does not prohibit the Contractor from delegating its obligations arising under the Contract where such delegation is expressly permitted by the Contract.

12. The HB may give, sell, assign or otherwise dispose of the benefit of its rights under this Contract to another HB.

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<sup>7</sup> The words indicated in square brackets only need to be included if the Contractor is a partnership and Schedule 1 (partnerships) has therefore been utilised.

<sup>8</sup> The words indicated in square brackets only need to be included if clauses **Error! Reference source not found.** to **Error! Reference source not found.** are to be included in the Contract (see Part 14).

4. PART 3

4.1.1 NHS CONTRACT<sup>9</sup>

13. The Contractor has [not] elected to be regarded as a *health service body* for the purposes of 17A(2) of *the Act*. Accordingly, this Contract is [not] an *NHS contract*.<sup>10</sup>

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<sup>9</sup> If the Contractor has elected to be regarded as a *health service body* for the purposes of section 17A(2) of *the Act* pursuant to regulation 10 of *the Regulations*, then the Contract must state that it is an *NHS contract*: see regulation 12 of *the Regulations*.

<sup>10</sup> Where the contract is an *NHS contract*, it is not enforceable in the courts but instead is subject to the dispute resolution procedures set out in clauses 0 to 0 of the Contract and paragraph 36 and Part 7 of Schedule 6 to *the Regulations*. Therefore, the Contract must specify whether or not the Contractor has elected to be regarded as a *health service body*, and if it has, the Contractor must indicate that the Contract is an *NHS contract*.

5. PART 4

5.1.1

5.1.2 COMMENCEMENT OF THE CONTRACT

14. This Contract shall commence on [date].<sup>11</sup>

5.1.3 DURATION OF THE CONTRACT

15. [Subject to clause 16]<sup>12</sup> The Contract shall subsist until [insert date]/[it is terminated in accordance with the terms of this Contract or the general law.]<sup>13</sup>

16. [If the parties agree that the Contractor is going to provide services other than *essential services, additional services* funded under the *global sum* or *any out of hours services* that are not provided pursuant to regulation 29 or 30 of *the Regulations*, (for example, *enhanced services*) details in relation to the period for which each of those services is to be provided (and the obligation of the HB to make payment in respect of such services) should be inserted here: the period for which each of such services will be provided is a matter for negotiation between the parties]<sup>14</sup>

17. [ ]

18. [ ]

19. [ ]

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<sup>11</sup> The parties must insert the date of commencement, which must be a date no earlier than 1 April 2004: see Regulation 27 of *the Regulations*.

<sup>12</sup> The words in square brackets only need to be included if clause 16 et seq. are completed.

<sup>13</sup> This clause is required by *the Regulations*: see Regulation 15 of *the Regulations*. The option for the Contract to subsist until it is terminated in accordance with the terms of the Contract or the general law must be included unless the HB is entering into a temporary contract for a period not exceeding 12 months for the provision of services to the patients of the Contractor, following the termination of a previous contract that that Contractor held with the HB. The HB or the Contractor may, if it wishes to do so, invite the *Area Medical Committee* to participate in the negotiations intending to lead to a temporary contract.

<sup>14</sup> This clause needs to be adapted and completed as indicated – if it is not relevant because there are no such services to be provided under the Contract, it should be deleted.

6. PART 5<sup>15</sup>

6.1.1 WARRANTIES

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

21. The Contractor warrants that:

21.1. all information in writing provided to the HB in seeking to become a party to this Contract was, when given, true and accurate in all material respects, and in particular, that the Contractor satisfied the conditions set out in regulations 3 and 4 *the Regulations*;

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

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

21.4. it is not aware as at the date of this Contract of anything within its reasonable control which may or will materially adversely affect its ability to fulfil its obligations under this Contract.

22. The HB warrants that:

22.1. all information in writing which it provided to the Contractor specifically to assist the Contractor to become a party to this Contract was, when given, true and accurate in all material respects;

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

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<sup>15</sup> This Part is not required by *the Regulations*, but is recommended.

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

23. The HB 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.

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7. PART 6

7.1.1

7.1.2 LEVEL OF SKILL<sup>16</sup>

24. The Contractor shall carry out its obligations under the Contract in a timely manner and with reasonable care and skill.

7.1.3

7.1.4 PROVISION OF SERVICES<sup>17</sup>

7.1.5 Premises

25. 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 is as follows: [ ]<sup>18</sup>.

26. Subject to any plan which is included in the Contract pursuant to clause 27, the Contractor shall ensure that premises used for the provision of services under the Contract shall be:

26.1. suitable for the delivery of those services; and

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

27. Where, on the date on which the Contract was signed, the HB is not satisfied that all or any of the premises specified in clause 25 met the requirements set out in clause 26, and consequently the HB and the Contractor have together drawn up a plan (contained in Schedule 6 to this Contract) which specifies-

27.1. the steps to be taken by the Contractor to bring the premises up to the relevant standard;

27.2. any financial support that is available from the HB; and

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<sup>16</sup> This clause is required by *the Regulations* (see paragraph 65 of Schedule 6).

<sup>17</sup> Except where specifically indicated in a footnote, this whole section (Provision of Services) is required by *the Regulations* (see regulation 18(1)(b), (2) and (3), 25 and Part 1 of Schedule 6).

<sup>18</sup> All relevant addresses from which services under the Contract will be provided by the Contractor or any sub-contractor must be included here. It does not include the homes of patients or any other premises where services are provided on an emergency basis. This clause is required by regulation 18(1)(b) of *the Regulations*, together with regulation 18(2).

27.3. the timescale in which such steps will be taken<sup>19</sup>.

28. The Contractor shall comply with the plan specified in clause 27 and contained in Schedule 6 to this Contract as regards the steps to be taken by the Contractor to meet the requirements in clause 26 and the timescale in which those steps will be taken.

7.1.6 Attendance at *practice premises*

29. 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:

29.1. it is more appropriate for the patient to be referred elsewhere for services under *the Act*; or

29.2. 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.

7.1.7 Attendance outside *practice premises*

30. 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:

30.1. the place recorded in the patient's medical records as being his last home address;

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<sup>19</sup> Clause 27, clause 28 and Schedule 6 need only be included in the Contract if the HB is not satisfied that any or all of the premises at which services are to be provided meet the standards set out in clause 26 at the date the Contract is signed. If the premises do meet the standards, these clauses can be deleted.

30.2. such other place as the Contractor has informed the patient and the HB is the place where it has agreed to visit and treat the patient;

30.3. some other place in the Contractor's *practice area*.

31. Nothing in this clause or clause 30 prevents the Contractor from:

31.1. 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

31.2. visiting the patient in circumstances where this paragraph does not place it under an obligation to do so.

#### 7.1.8 Newly registered patients

32. Where a patient has been accepted on the Contractor's list of patients under clauses 0 to 0 or assigned to that list by the HB, the Contractor shall, in addition and without prejudice to its other obligations in respect of that patient under the Contract, invite the patient to participate in a consultation either at its *practice premises* or, if the medical condition of the patient so warrants, at one of the places referred to in clause 30. Such an invitation shall be issued within six months of the date of the acceptance of the patient on, or their assignment to, the Contractor's list of patients.

33. Where a patient (or, where appropriate, in the case of a patient who is a *child*, his *parent*) agrees to participate in a consultation referred to in clause 32 above, the Contractor shall, in the course of that consultation, make such inquiries and undertake such examinations as appear to it to be appropriate in all the circumstances.

#### 7.1.9 Patients not seen within 3 years

34. Where a *registered patient* who:

34.1. has attained the age of 16 years but has not attained the age of 75 years; and

34.2. within the preceding three years has attended neither a consultation with, nor a clinic provided by, the Contractor

requests a consultation the Contractor shall, in addition and without prejudice to its other obligations in respect of that patient under the Contract provide such a consultation.

35. Where the Contractor provides a consultation referred to in clause 34, the Contractor shall, in the course of that consultation, make such inquiries and undertake such examinations as appear to it to be appropriate in all the circumstances.

7.1.10 Patients aged 75 years and over

36. Where a *registered patient* who-

36.1. has attained the age of 75 years; and

36.2. has not participated in a consultation under this clause within the period of twelve months prior to the date of his request,

requests a consultation, the Contractor shall, in addition and without prejudice to its other obligations in respect of that patient under the Contract, provide such a consultation in the course of which it shall make such inquiries and undertake such examinations as appear to it to be appropriate in all the circumstances.

37. A consultation under clause 36 shall take place in the home of the patient where, in the reasonable opinion of the Contractor, it would be inappropriate, as a result of the patient's medical condition, for him to attend at the *practice premises*.

7.1.11 Clinical reports

38. Where the Contractor provides any clinical services to a patient who is not on its list of patients, it shall, unless the patient refuses his consent, as soon as reasonably practicable, provide a clinical report relating to the consultation, and any treatment provided, to the HB.

7.1.12 Storage of vaccines

39. The Contractor shall ensure that-

39.1. all vaccines are stored in accordance with the manufacturer's instructions

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

7.1.13

7.1.14 Infection control

40. The Contractor shall ensure that it has effective arrangements for infection control and decontamination.

7.1.15

7.1.16 Duty of co-operation in relation to *additional, enhanced and out of hours services*<sup>20</sup>

41. If the Contractor is not, pursuant to the Contract, providing to its *registered patients* or to persons whom it has accepted as *temporary residents*—

41.1. a particular *additional service*;

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<sup>20</sup> Although not every aspect of clauses 41 to 44 will be relevant to every Contractor, these clauses should be left in every GMS Contract as in many cases, a Contractor will not be providing each *additional service*, each *enhanced service* and *out of hours services*: these clauses have been drafted so

41.2. a particular *enhanced service*; or

41.3. *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 42.

42. The requirements referred to in clause 41 are that the Contractor shall—

42.1. co-operate with any person responsible for the provision of that service or those services;

42.2. comply in *core hours* with any reasonable request for information from such a person or from the HB relating to the provision of that service or those services; and

42.3. 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.

43. Nothing in clauses 41 and 42 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*.

44. If the Contractor ceases to be required to provide to its *patients*—

44.1. a particular *additional service*;

44.2. a particular *enhanced service*; or

---

that they can be left in the contract even if that were to be the case. These clauses are required by paragraph 12 of Schedule 6 to *the Regulations*.

44.3. *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 HB or by any person with whom the Trust intends to enter into a contract for the provision of such services.

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8. PART 7<sup>21</sup>

8.1.1

8.1.2 ESSENTIAL SERVICES

45. The Contractor must provide the services described in clauses 46 to 51 (*essential services*) at such times in *core hours* and to such extent as is necessary to meet the reasonable needs of its patients. The Contractor must also have in place arrangements for its patients to access such services throughout the *core hours* in case of emergency<sup>22</sup>.

46. The Contractor must provide-

46.1. services required for the management of the Contractor's *registered patients* and *temporary residents* who are-

46.1.1. ill, or believe themselves to be ill, with conditions from which recovery is generally expected;

46.1.2. terminally ill; or

46.1.3. suffering from *chronic disease*

delivered in the manner determined by the *practice* in discussion with the patient;

46.2. appropriate ongoing treatment and care to all *registered patients* and *temporary residents* taking account of their specific needs including-

46.2.1. the provision of advice in connection with the patient's health, including relevant health promotion advice; and

46.2.2. the referral of the patient for other services under *the Act*; and

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<sup>21</sup> This Part is required by *the Regulations* (see regulation 15). Every GMS Contract must require the Contractor to provide *essential services*..

<sup>22</sup> This clause is also required by regulation 20 of *the Regulations*.

46.3. primary medical services required in *core hours* for the immediately necessary treatment of any person to whom the Contractor has been requested to provide treatment owing to an accident or emergency at any place in its *practice area*.

47. For the purposes of clause 46.1, “management” includes-

47.1. offers of consultation to and, where appropriate, physical examination for the purpose of identifying the need, if any, for treatment or further investigation; and

47.2. the making available of such treatment or further investigation as is necessary and appropriate, including the referral of the patient for other services under *the Act* and liaison with other *health care professionals* involved in the patient’s treatment and care.

48. For the purposes of clause 46.3, “emergency” includes any medical emergency whether or not related to services provided under the Contract.

49. The Contractor must provide primary medical services required in *core hours* for the necessary treatment of any person falling within clause 50 who requests such treatment, for the period specified in clause 51.

50. A person falls within this clause if he is a person-

50.1. whose application for inclusion in the Contractor’s list of patients has been refused in accordance with clauses 0 to 0 and who is not registered with another provider of *essential services* (or their equivalent) in the area of the HB;

50.2. who has been removed from the Contractor’s list of patients under clauses 0 to 0;

50.3. whose application for acceptance as a *temporary resident* has been rejected under clauses 0 to 0; or

50.4. who is present in the Contractor's *practice area* for less than 24 hours.

51. The period referred to in clause 50 is-

51.1. in the case of clause 50.1 and 50.2, 14 days beginning with the date on which that person's application was rejected (or, as the case may be, with the date on which the Contractor requested the removal of that person from its list of patients) or until that person has been registered elsewhere for the provision of *essential services* (or their equivalent), whichever occurs first;

51.2. in the case of clause 50.3, 14 days beginning with the date on which that person's application was rejected or until that person has been accepted by another contractor or a section 17C provider as a *temporary resident*, whichever occurs first; and

51.3. in the case of clause 50.4, 24 hours or such shorter period as the person is present in the Contractor's *practice area*.

9. PART 8<sup>23</sup>  
9.1.1  
9.1.2 ADDITIONAL SERVICES

52. In relation to each *additional service* it provides, the Contractor shall provide such facilities and equipment as are necessary to enable it to properly perform that service.

53. Where an *additional service* is to be funded under the *global sum*, the Contractor must provide that *additional service* at such times, within *core hours*, as are appropriate to meet the reasonable needs of its patients. The Contractor must also have in place arrangements for its patients to access such services throughout the *core hours* in case of emergency.

54. The Contractor shall provide the *additional services*<sup>24</sup> set out in clause 55 to-

54.1. its *registered patients*; and

54.2. persons accepted by it as *temporary residents*;

55. The Contractor shall provide to the patients specified in clause 54-

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<sup>23</sup> This Part only needs to be included in the Contract where the Contractor is to provide any one or more of the *additional services*. Where the contract is with-

- an individual medical practitioner who, on 31<sup>st</sup> March 2004, was providing services under section 29 of *the Act*;
- a partnership at least one member of which was, on 31<sup>st</sup> March 2004, a medical practitioner providing services under section 29 of *the Act*; or
- a company in which one or more of the shareholders was, on 31<sup>st</sup> March 2004, a medical practitioner providing services under section 29 of *the Act*

and the contract commences on 1<sup>st</sup> April 2004, the contract must provide for the Contractor to provide in *core hours* to its *registered patients* and persons accepted by it as *temporary residents* such of the *additional services* as are equivalent to the services which that medical practitioner or practitioners was or were providing to his or their patients on the date that the Contract is entered into unless, prior to the signing of the Contract, the HB has accepted in writing a written request from the Contractor that the Contract should not require it to provide all or any of those *additional services* (see regulation 28 of *the Regulations*). In any other circumstances, it is for the Contractor and the HB to negotiate which *additional services* will be provided by the Contractor. If the Contractor is providing any one or more *additional services* under the Contract, then the clauses relating to that particular *additional service* are required to be inserted into the Contract: clause 52 must be included where any one or more additional services is being provided by the Contractor under the Contract. This section implements Regulation 16 and Schedule 2 to *the Regulations*.

55.1. [*cervical screening services*];

55.2. [*contraceptive services*];

55.3. [*vaccinations and immunisations*];

55.4. [*childhood vaccinations and immunisations*];

55.5. [*child health surveillance services*];

55.6. [*maternity medical services*];

55.7. [*minor surgery*].

56. The Contractor shall provide the *additional services*<sup>25</sup> set out in [ ] to [ ]<sup>26</sup>

57. The Contractor shall provide to the patients specified in clause 56-

57.1. [*cervical screening services*];

57.2. [*contraceptive services*];

57.3. [*vaccinations and immunisations*];

57.4. [*childhood vaccinations and immunisations*];

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<sup>24</sup> Delete from the list at clause 55 any of the *additional services* that the Contractor is not going to be providing under the Contract.

<sup>25</sup> Delete from the list at clause 55 any of the *additional services* that the Contractor is not going to be providing under the Contract.

<sup>26</sup> Clauses 56 and 57 only need to be included if the parties agree that the Contractor will provide *additional services* that are not funded by the *global sum*. If the parties do so agree, details need to be inserted at clause 56 of the patients to whom such services will be provided, and where particular *additional services* specified in clause 57 are to be provided to particular patients (for example *maternity medical services* is to be provided to one group of patients and *minor surgery* is to be provided to a different group of patients), the spaces in square brackets at clause 56 should be completed to make it clear which *additional services* included at clause 57 are to be provided to which

57.5. [*child health surveillance services*];

57.6. [*maternity medical services*];

57.7. [*minor surgery*].

58. [Clause 53 makes provision in respect of *additional services* funded by the *global sum* in respect of the times during which *additional services* are to be provided to patients. In relation to *additional services* that are not funded by the *global sum* (specified in clause 57), the parties will need to specify here the times during which such services are to be provided: there is further space in the clauses below to include such further detail as is necessary]

59. [ ]

60. [ ]

61. [ ]

62. [ ]

### 9.1.3 Cervical screening<sup>27</sup>

63. The Contractor shall-

63.1. provide the services described in clause 64; and

63.2. make such records as are referred to in clause 65,

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patients: any *additional services* that the Contractor will not be providing to patients specified in clause 56 need to be deleted from clause 57.

<sup>27</sup> Clauses 63 to 65 are required by *the Regulations* only where the Contract includes the provision of *cervical screening services*. If the Contractor is not providing *cervical screening services*, these clauses should be deleted.

[in accordance with guidance relating to the NHS Scotland Cervical Screening Programme issued from time to time by the Scottish Ministers

64. The services referred to in clause 63 are-

64.1. the provision of any necessary information and advice to assist women identified by the HB as recommended nationally for a cervical screening test in making an informed decision as to participation in the NHS Cervical Screening Programme;

64.2. the performance of cervical screening tests on women who have agreed to participate in that Programme;

64.3. arranging for women to be informed of the results of the test;

64.4. ensuring that test results are followed up appropriately.

65. The records referred to in clause 63 are an accurate record of the carrying out of a cervical screening test, the address where it was done, the result of the test and any clinical follow up requirements.

#### 9.1.4 Contraceptive services<sup>28</sup>

66. The Contractor shall make available the following services to all of its patients who request such services:

66.1. the giving of advice about the full range of contraceptive methods;

66.2. where appropriate, the medical examination of patients seeking such advice;

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<sup>28</sup> Clause 66 is required by *the Regulations* only where the Contract includes the provision of *contraceptive services*. If the Contractor is not providing *contraceptive services*, this clause should be deleted.

- 66.3. the treatment of such patients for contraceptive purposes and the prescribing of contraceptive substances and appliances (excluding the fitting and implant of intrauterine devices and implants);
- 66.4. the giving of advice about emergency contraception and where appropriate, the supplying or prescribing of emergency hormonal contraception or, where the Contractor has a conscientious objection to emergency contraception, prompt referral to another provider of primary medical services who does not have such conscientious objections;
- 66.5. the provision of advice and referral in cases of unplanned or unwanted pregnancy, including advice about the availability of free pregnancy testing in the *practice area* and, where appropriate, where the Contractor has a conscientious objection to the termination of pregnancy, prompt referral to another provider or primary medical services who does not have such conscientious objections;
- 66.6. the giving of initial advice about sexual health promotion and sexually transmitted infections; and
- 66.7. the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections.

#### 9.1.5 Vaccinations and immunisations<sup>29</sup>

67. The Contractor shall-

- 67.1. offer to provide to patients all necessary vaccinations and immunisations (excluding *childhood vaccinations and immunisations*) of a type and in the circumstances for which a fee was provided for under the 2003-04 Statement of Fees and Allowances made under regulation 35 of the National Health Service (General Medical Services) (Scotland) Regulations 1995 other than influenza vaccination.;

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<sup>29</sup> Clauses 67 and 68 are required by *the Regulations* only where the Contract includes the provision of *vaccinations and immunisations*. If the Contractor is not providing *vaccinations and immunisations*, these clauses should be deleted.

67.2. provide necessary information and advice to patients about such vaccinations and immunisations;

67.3. record in the patient's record kept in accordance with clauses 0 to 0 any refusal of the offer referred to in clause 67.1;

67.4. where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with clause 0 to 0-

67.4.1. the patient's consent to the vaccination or immunisation or the name of the person who gave consent to the vaccination or immunisation and his relationship to the patient;

67.4.2. the batch numbers, expiry date and title of the vaccine;

67.4.3. the date of administration;

67.4.4. in a case where two vaccines are administered in close succession, the route of administration and the injection site of each vaccine;

67.4.5. any contraindications to the vaccination or immunisation; and

67.4.6. any adverse reactions to the vaccination or immunisation.

68. The Contractor shall ensure that all staff involved in administering vaccines are trained in the recognition and initial treatment of anaphylaxis

9.1.6

9.1.7 Childhood vaccinations and immunisations<sup>30</sup>

69. The Contractor shall-

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<sup>30</sup> Clauses 69 to 70 are required by *the Regulations* only where the Contract includes the provision of *childhood vaccinations and immunisations*. If the Contractor is not providing *childhood vaccinations and immunisations*, these clauses should be deleted.

69.1. offer to provide to children all necessary vaccinations and immunisations of a type and in the circumstances for which a fee was provided for under the 2003-04 Statement of Fees and Allowances made under regulation 35 of the National Health Service (General Medical Services) (Scotland) Regulations 1995;

69.2. provide necessary information and advice to patients and, where appropriate, their parents about such vaccinations and immunisations;

69.3. record in the patient's record kept in accordance with clause 0 to 0 any refusal of the offer referred to in clause 69.1;

69.4. where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with clauses 0 to 0-

69.4.1. the name of the person who gave consent to the vaccination or immunisation and his relationship to the patient;

69.4.2. the batch numbers, expiry date and title of the vaccine;

69.4.3. the date of administration;

69.4.4. in a case where two vaccines are administered in close succession, the route of administration and the injection site of each vaccine;

69.4.5. any contraindications to the vaccination or immunisation; and

69.4.6. any adverse reactions to the vaccination or immunisation.

70. The Contractor shall ensure that all staff involved in administering vaccines are trained in the recognition and initial treatment of anaphylaxis

9.1.8 Child health surveillance<sup>31</sup>

71. The Contractor shall, in respect of any child under the age of five for whom it has responsibility under the Contract-

71.1. provide the services described in clause 72, other than any examination so described which the parent refuses to allow the child to undergo, until the date upon which the child attains the age of five years; and

71.2. maintain such records as are specified in clause 73.

72. The services referred to in clause 71.1 are-

72.1. the monitoring-

72.1.1. by the consideration of any information concerning the child received by or on behalf of the Contractor, and

72.1.2. on any occasion when the child is examined or observed by or on behalf of the Contractor (whether pursuant to clause 72.2 or otherwise),

of the health, well-being and physical, mental and social development (all of which characteristics are referred to in clauses 72 to 74 as “development”) of the child while under the age of 5 years with a view to detecting any deviations from normal development;

72.2. the examination of the child at a frequency that has been agreed with the HB in accordance with the nationally agreed evidence based programme set out in the fourth edition of “Health for all Children (Hall and Elliman, 2003 ISBN [ ]).

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<sup>31</sup> Clauses 71 to 73 are required by *the Regulations* only where the Contract includes the provision of *child health surveillance services*. If the Contractor is not providing *child health surveillance services*, these clauses should be deleted.

73. The records referred to in clause 71.2 are an accurate record of-

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

73.2. the responses (if any) to offers made to the child's *parent* for the child to undergo any examination referred to in clause 72.2.

9.1.9 Maternity medical services<sup>32</sup>

74. The Contractor shall-

74.1. provide to female patients who have been diagnosed as pregnant all necessary maternity medical services throughout the ante-natal period;

74.2. provide to female patients and their babies all necessary maternity medical services throughout the post natal period other than neo-natal checks;

74.3. provide all necessary maternity medical services to female patients whose pregnancy has terminated as a result of miscarriage or abortion or, where the Contractor has a conscientious objection to the termination of pregnancy, prompt referral to another provider of primary medical services, who does not have such conscientious objections.

75. In clause 74, “ante-natal period” means the period from the start of the pregnancy to the onset of labour, “maternity medical services” means all primary medical services relating to pregnancy, and “post natal period” means the period starting from the conclusion of delivery of the baby or the patient’s discharge from

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<sup>32</sup> Clauses 74 to 75 are required by *the Regulations* only where the Contract includes the provision of *maternity medical services*. If the Contractor is not providing *maternity medical services*, these clauses should be deleted.

secondary care services, whichever is the later, and ending on the fourteenth day after the birth.

9.1.10 Minor surgery<sup>33</sup>

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

77. The Contractor shall ensure that its record of any treatment provided pursuant to clause 76 includes the consent of the patient to that treatment.

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<sup>33</sup> Clauses 76 and 77 are required by *the Regulations* only where the Contract includes the provision of *minor surgery*. If the Contractor is not providing *minor surgery*, these clauses should be deleted.

10. PART 9

**Transitional provisions covering temporary arrangements for transfer of obligations and liabilities in relation to certain out-of-hours services to cover the interim period from 1 April 2004 to 1 January 2005 are currently being drafted for the GMS Contract (Scotland) Regulations. Once completed, appropriate text will be drafted to complete this section of the Standard Contract.**

**REVISION AS REQUIRED TO FOLLOW**

**OUT OF HOURS SERVICES**

11. PART 10

11.1.1

11.1.2 OPT OUTS OF ADDITIONAL AND OUT OF HOURS SERVICES<sup>34</sup>

**11.1.3** Opt outs of additional services: general

82. Where the Contractor wishes to *permanently opt out* or *temporarily opt out* of the provision of one or more *additional services* (referred to in clauses 0 to 0 below as “*additional service*”), the Contractor shall give to the HB in writing a *preliminary opt out notice* which shall state the reasons for wishing to opt out.

83. As soon as is reasonably practicable and in any event within the period of 7 days beginning with the receipt of the *preliminary opt out notice* by the HB, the HB shall enter into discussions with the Contractor concerning the support which the HB may give the Contractor, or other changes which the HB or the Contractor may make, which would enable the Contractor to continue to provide the *additional service*. The HB and the contractor shall use reasonable endeavours to achieve this aim.

84. The discussions referred to in clause 0 shall be completed within the period of 10 days beginning with the date of the receipt of the *preliminary opt out notice* by the HB or as soon as reasonably practicable thereafter. If, following the discussions, the

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<sup>34</sup> These provisions are required by *the Regulations* in certain circumstances (see regulation 17 and Schedule 3):-

- if the contract provides for the Contractor to provide an *additional service* that is to be funded through the *global sum*, clauses 0 to 0 are required;
- if the Contract is entered into before 1<sup>st</sup> October 2004 and it provides for the Contractor to provide *out of hours services* pursuant to regulation 29 or 30 of *the Regulations*, clauses 0 to 0 are required;
- if the Contract is entered into on or after 1<sup>st</sup> October 2004 and the Contract provides for the Contractor to provide *out of hours services* pursuant to regulation 29 or 30 of *the Regulations*, clauses 0 to 0 are required.

If any of the provisions relating to opt outs of *additional* and *out of hours services* are included, clauses 0 to 0 are required.

Contractor still wishes to opt out of the provision of the *additional service*, it shall send an *opt out notice* to the HB.

85. An *opt out notice* shall specify-

85.1 the *additional service* concerned;

85.2 whether the Contractor wishes to *permanently opt out* or *temporarily opt out*;

85.3 the reasons for wishing to opt out;

85.4 the date from which the Contractor would like the opt out to commence, which must in the case of a *temporary opt out* be at least 14 days after the date of service of the *opt out notice*, and in the case of a *permanent opt out* must be the day either 3 or 6 months after the date of service of the *opt out notice*; and

85.5 in the case of a *temporary opt out*, the desired duration of the opt out.

86. Where the Contractor has given two previous *temporary opt out notices* within the period of three years ending with the date of the service of the latest *opt out notice* (whether or not the same *additional service* is concerned), the latest *opt out notice* shall be treated as a *permanent opt out notice* even if the *opt out notice* says that it wishes to *temporarily opt out*.

87. The Contractor may not serve a *temporary opt out notice* prior to 1 April 2004.

11.1.4 Temporary opt outs and permanent opt outs following temporary opt outs

88. Clauses 0 to 0 apply following the giving of a *temporary opt out notice*.

89. As soon as is reasonably practicable and in any event within the period of 7 days beginning with the date of receipt of a *temporary opt out notice* under clause 0, the HB shall-

89.1 approve the *opt out notice* and specify in accordance with clauses 0 and 0 the date on which the *temporary opt out* is to commence and the date that it is to come to an end (“the end date”); or

89.2 reject the *opt out notice* in accordance with clause 0,

and shall notify the Contractor of its decision as soon as possible, giving reasons for its decision.

90 The HB may reject the *opt out notice* on the ground that the Contractor-

90.1 is providing *additional services* to *patients* other than its own *registered patients*, or *enhanced services*, or

90.2 has no reasonable need to *temporarily opt out* having regard to its ability to deliver the *additional service*.

91 The date specified by the HB for the commencement of the *temporary opt out* shall wherever reasonably practicable be the date requested by the Contractor in its *opt out notice*.

92 Before determining the end date, the HB shall make reasonable efforts to reach agreement as to the end date with the Contractor.

93 Where the HB approves an *opt out notice*, the Contractor’s obligation to provide the *additional service* specified in the notice shall be suspended from the date specified by the HB in its decision under clause 0 and shall remain suspended until the end date unless-

93.1 the Contractor and the HB agree an earlier date in writing, in which case the suspension shall come to an end on the earlier date agreed;

93.2 the HB specifies a later date under clause 0 in which case the suspension shall end on the later date specified;

93.3 clause 95 applies, and the Contractor refers the matter to the *NHS dispute resolution procedure* or the court, in which case the suspension shall end-

93.3.1 where the outcome of the decision is to uphold the decision of the HB, on the day after the date of the decision of the Scottish Ministers or the court;

93.3.2 where the outcome of the dispute is to overturn the decision of the HB, 28 days after the decision of the Scottish Ministerse or the court, or

93.3.3 where the Contractor ceases to pursue the *NHS dispute resolution procedure* or court proceedings, on the day after the date that the Contractor withdraws its claim or the procedure is or proceedings are otherwise terminated by the Scottish Ministers or the court.

93.4 Clause 0 applies and-

93.4.1 the HB refuses the Contractor's request for a *permanent opt out* within the period of 28 days ending with the end date, in which case the suspension shall come to an end 28 days after the end date;

93.4.2 the HB refuses the Contractor's request for a *permanent opt out* after the end date, in which case the suspension shall come to an end 28 days after the date of service of the notice; or

93.4.3 the HB notifies the Contractor after the end date that the *relevant Strategic Health Authority* has not approved its proposed decision to refuse the Contractor's request to *permanently opt out* under clause 0 after the end date, in which case the suspension shall come to an end 28 days after the date of service of the notice.

94 Before the end date, the HB may, in exceptional circumstances and with the agreement of the Contractor, notify the Contractor in writing of a later date on which

the *temporary opt out* is to come to an end, being a date no more than six months later than the end date.

95 Where the HB considers that-

95.1 the Contractor will be unable to satisfactorily provide the *additional service* at the end of the *temporary opt out*; and

95.2 it would not be appropriate to exercise its discretion under clause 94 to specify a later date on which the *temporary opt out* is to come to an end or the Contractor does not agree to a later date

the HB may notify the Contractor in writing at least 28 days before the end date that a *permanent opt out* shall follow a *temporary opt out*.

96 Where the HB notifies the Contractor under clause 0 that the *permanent opt out* shall follow a *temporary opt out*, the *permanent opt out* shall take effect immediately after the end of the *temporary opt out*.

97 Where the Contractor has *temporarily opted out*, the Contractor may at least three months prior to the end date notify the HB in writing that it wishes to *permanently opt out* of the *additional service* in question.

98 Where the Contractor has notified the HB under clause 0 that it wishes to *permanently opt out*, the *temporary opt out* shall be followed by a *permanent opt out* beginning on the day after the end date unless the HB refuses the Contractor's request to *permanently opt out* by giving a notice in writing to the Contractor to this effect.

99 The HB may only give a notice under clause 0 with the approval of the *assessment panel*. Where the HB seeks the approval of *the assessment panel* to a proposed decision to refuse a *permanent opt out* under this clause, it shall notify the Contractor of having done so.

100 If the *assessment panel* has not reached a decision as to whether or not to approve the HB's proposed decision to refuse a *permanent opt out* before the end

date, the Contractor’s obligation to provide the *additional service* shall remain suspended until the date specified in clause 0 or 0 (whichever is applicable).

101. Where after the end date the *assessment panel* notifies the HB that it does not approve the HB’s proposed decision to refuse a *permanent opt out*, the HB shall notify the Contractor in writing of this fact as soon as is reasonably practicable.

102. A *temporary opt out* or *permanent opt out* commences, and a *temporary opt out* ends at 08.00 on the day the relevant day unless-

102.1 the day is a Saturday, Sunday, Christmas Day, Easter or a public or local holiday agreed with the Health Board, in which case the opt out shall take effect on the next working day at 08.00; or

102.2 the HB and the Contractor agree a different day or time.

#### 11.1.5 Permanent opt outs

103 In clauses 0 to 0-

“A Day” is the day specified by the Contractor in its *permanent opt out notice* to the HB for the commencement of the *permanent opt out*;

“B Day” is the day six months after the date of service of the *permanent opt out notice*; and

“C Day” is the day nine months after the date of service of the *permanent opt out notice*.

104 As soon as is reasonably practicable and in any event within the period of 28 days beginning with the date of receipt of a *permanent opt out notice* under clause 0 (or *temporary opt out notice* which is treated as a *permanent opt out notice* under clause 0), the HB shall-

104.1 approve the *opt out notice*; or

104.2 reject the *opt out notice* in accordance with clause 0,

and shall notify the Contractor of its decision as soon as possible, including reasons for its decision where its decision is to reject the *opt out notice*.

105 A HB may reject the *opt out notice* on the ground that the Contractor is providing an *additional service* to patients other than its *registered patients* or *enhanced services*.

106 The Contractor may not withdraw an *opt out notice* once it has been approved by the HB in accordance with clause 0 without the HB's agreement.

107 If the HB approves the *opt out notice* under clause 0, it shall use its reasonable endeavours to make arrangements for the Contractor's *registered patients* to receive the *additional service* from an alternative provider from A day.

108 The Contractor's duty to provide the *additional service* shall terminate on A Day unless the HB serves a notice under clause 0 (extending A day to B day or C day).

109 If the HB is not successful in finding an alternative provider to take on the provision of the *additional service* from A day, then it shall notify the Contractor in writing of this fact no later than one month before A day, and-

109.1 in a case where A Day is three months after service of the *opt out notice*, the Contractor shall continue to provide the *additional service* until B Day unless at least one month before B Day it receives a notice in writing from the HB under clause 0 that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the *additional service* from B Day;

109.2 in a case where A Day is six months after the service of the *opt out notice*, the Contractor shall continue to provide the *additional service* until C Day unless at least one month before C Day it receives a notice from the HB

under clause 0 that it has made an application to the *assessment panel* under clause 0 seeking its approval of a decision to refuse a *permanent opt out* or to delay the commencement of a *permanent opt out* until after C Day.

110 Where in accordance with clause 0 the *permanent opt out* is to commence on B Day and the HB, despite using its reasonable endeavours, has failed to find an alternative provider to take on the provision of the *additional service* from that day, it shall notify the Contractor in writing of this fact at least one month before B Day, in which case the Contractor shall continue to provide the *additional service* until C Day unless at least one month before C Day it receives a notice from the HB under clause 0 that it has applied to the *assessment panel* under clause 0 seeking the approval of the *assessment panel* to a decision to refuse a *permanent opt out* or to postpone the commencement of a *permanent opt out* until after C Day.

111. As soon as is reasonably practicable and in any event within 7 days of the HB serving a notice under clause 0, the HB shall enter into discussions with the Contractor concerning the support that the HB may give to the Contractor or other changes which the HB or the Contractor may make in relation to the provision of the *additional service* until C Day.

112. The HB may, if it considers that there are exceptional circumstances make an application to the *assessment panel* for approval of a decision to-

112.1 refuse a *permanent opt-out*; or

112.2 postpone the commencement of a *permanent opt-out* until after C Day.

113. As soon as practicable after making an application under clause 0 to the *assessment panel* the HB shall notify the Contractor in writing that it has made such an application.

114. Where the *assessment panel*-

114.1 approves a decision to refuse an opt out pursuant to paragraph 3(15)(a) of Schedule 2 to *the Regulations*; or

114.2 recommends that a *permanent opt out* be refused pursuant to paragraph 3(16)(b)(ii) of Schedule 2 to *the Regulations*,

the HB shall notify the Contractor in writing that it may not opt out of the *additional service*.

115. Where the HB notifies the Contractor under clause 0, the Contractor may not serve a *preliminary opt out notice* in respect of that *additional service* for a period of 12 months beginning with the date of service of the HB's notice under that clause unless there has been a change in the circumstances of the Contractor.

116. Where the *assessment panel*-

116.1 recommends a different date for the commencement of the *permanent opt-out*;

116.2 approves the HB's application to postpone a *permanent opt out*; or

116.3 recommends an earlier date to that proposed by the HB in its application,

the HB shall in accordance with the decision of the *assessment panel* notify the Contractor in writing of its decision and the notice shall specify the date of the commencement of the *permanent opt out*. The *permanent opt out* shall commence from that date.

117 Where the *assessment panel* rejects the HB's application, the HB shall notify the Contractor in writing that there shall be a *permanent opt out* and the *permanent opt out* shall commence on C Day or 28 days after the date of service of the HB's notice, whichever is the later.

118 If the *assessment panel* has not reached a decision on the HB's application under clause 0 before C Day, the Contractor's obligation to provide the *additional service* shall continue until a notice is served on it by the HB under clause 0 or 0.

119 Nothing in clauses 0 to 0 above shall prevent the Contractor and the HB from agreeing a different date for the termination of the Contractor's duty under the Contract to provide the *additional service* and, accordingly, varying the Contract in accordance with clause 0.

120 The *permanent opt out* takes effect at 08.00 on the relevant day unless-

120.1 the day is a Saturday, Sunday, Christmas Day, Easter or a public or local holiday agreed with the Health Board, in which case the opt out shall take effect on the next working day at 08.00; or

120.2 the HB and the Contractor agree a different day or time.

11.1.6 Out of hours opt outs where the opt out notice is served after 30<sup>th</sup> September 2004

121. Clause 0 to 0 apply where the Contractor wishes to serve or serves an *out of hours opt out notice* after 30<sup>th</sup> September 2004.

122. Where the Contractor wishes to terminate its obligation to provide *out of hours services* which was included in the Contract pursuant to regulation 29 of *the Regulations*, the Contractor shall notify the relevant HB in writing to that effect (an *out of hours opt out notice*).

123. An *out of hours opt out notice* shall specify the date from which the Contractor would like the opt out to take effect, which must be either three or six months after the date of service of the *out of hours opt out notice*.

124. As soon as is reasonably practicable and in any event within 28 days of receiving the *out of hours opt out notice*, the HB shall approve the notice and specify in accordance with clause 0 the date on which the out of hours opt out is to commence ("OOH Day"). The HB shall notify the Contractor of its decision as soon as possible.

125. The date specified under clause 0 shall be the date specified in the *out of hours opt out notice*.

126. The Contractor may not withdraw an *out of hours opt out notice* once it has been approved by the HB under clause 0 without the HB's agreement.

127. Following receipt of the *out of hours opt out notice*, the HB must use its reasonable endeavours to make arrangements for the Contractor's *registered patients* to receive the *out of hours services* from an alternative provider from OOH Day.

128. Clauses 0 to 0 shall apply to an out of hours opt out as they apply to a *permanent opt out* and as if the reference to "A Day" was a reference to OOH day and the reference in clause 0 to a *preliminary opt out notice* was a reference to an *out of hours opt out notice*.

11.1.7 Out of hours opt out where the opt out notice is served before 1<sup>st</sup> October 2004

129. Clause 0 to 0 shall apply where the Contractor wishes to serve or serves an out of hours opt out notice before 1<sup>st</sup> October 2004 and in those clauses-

129.1 "OOH day" is the day specified by the HB for the commencement of the out of hours opt out in its decision under clause 0;

129.2 "OOHB day" is the day six months after the date of service of the out of hours opt out notice;

129.3 "OOHC day" is the day specified by the HB in its decision under clause 0 to 0 (which must be nine months after the date of service of the *out of hours opt out notice* or before 2<sup>nd</sup> January 2005);

130 If the Contractor wishes to terminate its obligation to provide *out of hours services*, and that obligation was included in this Contract pursuant to regulation 29 of *the Regulations*, it shall notify the HB in writing to that effect (*out of hours opt out notice*).

131 An *out of hours opt out notice* shall state the date on which the Contractor would like the opt out to take effect, which must be at least three months after the date of service of the *out of hours opt out notice* but no later than 1<sup>st</sup> January 2005.

132. As soon as is reasonably practicable and in any event within 28 days of receiving the *out of hours opt out notice*, the HB shall approve the notice and specify in accordance with clause 0 and 0 the date on which the out of hours opt out is to commence (“OOH Day”). The HB shall notify the Contractor of its decision as soon as possible, including reasons for its decision.

133. Subject to clause 0, OOH day shall be-

133.1 the date specified in the *out of hours opt out notice*; or

133.2 any other date before 2<sup>nd</sup> January 2005.

134. A HB may not specify under clause 0 a date earlier than the date specified in the *out of hours opt out notice*.

135. The Contractor may not withdraw an *out of hours opt out notice* once it has been approved by the HB under clause 0 without the HB’s agreement.

136. Following receipt of the *out of hours opt out notice*, the HB must use its reasonable endeavours to make arrangements for the Contractor’s *registered patients* to receive *out of hours services* from an alternative provider from OOH day.

137. The Contractor’s duty to provide *out of hours services* shall terminate on OOH day unless the HB-

137.1 serves a notice under clause 0 (extending OOH day to OOHB day or OOHC day); or

137.2 makes an application under clause 0 (seeking approval of the *assessment panel* to a decision to refuse an opt out or to delay the taking effect of an opt out until after OOH day).

138 If the HB is not successful in finding an alternative provider to take on the provision of the *out of hours services* from OOH Day, then it shall notify the Contractor in writing of this fact no later than one month before OOH Day, and-

138.1 in a case where OOH day is three months after service of the opt out notice, the Contractor shall continue to provide the *out of hours services* until OOHB day unless at least one month before OOHB day the contractor receives a notice in writing from the HB under clause 0 that despite using its reasonable endeavours, it has failed to find an alternative provider to take on the provision of the *out of hours services* from OOHB day;

138.2 in a case where OOH day is after the day three months after the service of the opt out notice, the Contractor shall continue to provide the *out of hours services* until OOHC day (which shall be specified by the HB in accordance with clause 0 and included in its notice to the Contractor under this Clause) unless at least one month before OOHC day [ the Contractor ] receives a notice from the HB under clause 0 that it has made an application to the *assessment panel* under clause 0 seeking its approval to a decision to refuse an opt out or to delay the commencement of the opt out until after OOHC day.

139. OOHC day shall be any day before 2<sup>nd</sup> January 2005 or the day nine months after the service of the *out of hours opt out notice*.

140. Where in accordance with clause 0 the out of hours opt out is to commence on OOHB day and the HB, despite using its reasonable endeavours has failed to find an alternative provider to take on the provision of *out of hours services* from that day, it shall notify the Contractor in writing of this fact at least one month before OOHB day, in which case the Contractor shall continue to provide *the out of hours services* until OOHC day (which shall be specified by the HB in accordance with clause 0 and included in its notice to the Contractor under this clause) unless at least one month before OOHC day it receives a notice from the HB under clause 0 that it has applied to the *assessment panel* under clause 0 seeking the approval of the *assessment panel* to a decision to refuse an opt out or to postpone the commencement of an opt out until after OOHC day.

141. The HB may, if it considers there are exceptional circumstances, make an application to the *assessment panel* for approval of a decision to-

141.1 refuse an opt out; or

141.2 postpone the commencement of an opt out until after-

141.3 OOHC day, or

141.4 OOH day where OOH day is nine months after the service of the opt out notice.

142. Where OOH day is nine months after the service of the opt out notice, an application under clause 0 shall be made at least one month before OOH day.

143. As soon as practicable after making an application under clause 0 the HB shall notify the Contractor in writing that it has made such an application.

144. Clauses 0 to 0 shall apply to an out of hours opt out as they apply to a *permanent opt out* and as if the reference to “C day” was a reference to OOHC day or OOH day where OOH day is 1<sup>st</sup> January 2005.

#### 11.1.8 Informing patients of opt outs

145. Prior to any opt out taking effect, the HB and the Contractor shall discuss how to inform patients of the proposed opt out.

146. The Contractor shall, if requested by the HB inform its *registered patients* of an opt out and the arrangements made for them to receive the *additional service* or *out of hours services* by-

146.1 placing a notice in the practice’s waiting room; or

146.2 including the information in the *practice leaflet*.

147. In clauses 0 and 0 “opt out” means an out of hours opt out, a *permanent opt out* or a *temporary opt out*.

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## PART 11<sup>35</sup>

### 11.1.9 ENHANCED SERVICES

148. [The parties should insert here the details of the *enhanced services* that the Contractor has agreed to provide under the Contract (if any) including details of to whom each of such services will be provided].

149. [ ]

150. [ ]

151. [ ]

152. [ ]

153. [ ]

154. [ ]

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<sup>35</sup> This Part is not required by *the Regulations* but if the parties agree that the Contractor is going to provide *enhanced services* under the GMS Contract, or any relevant Directions direct the HB to include particular *enhanced services* if the Contractor so requests, details of such services, together with any relevant specifications, should be incorporated in this Part.

## PART 12<sup>36</sup>

11.1.10

11.1.11 PATIENTS

11.1.12

11.1.13 Persons to whom services are to be provided<sup>37</sup>

155. [Except where specifically stated otherwise in respect of particular services]<sup>38</sup>

The Contractor shall provide services under the Contract to:

*155.1 registered patients,*

*155.2 temporary residents,*

155.3 persons to whom the Contractor is required to provide emergency or immediately necessary treatment under clause 46.3 or 49,

155.4 any person for whom the Contractor is responsible under regulation 30 of the Regulations<sup>39</sup>;

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<sup>36</sup> Except where specifically indicated in a footnote, this Part is required by *the Regulations*: see regulation 18, regulation 25 and Part 2 of Schedule 6.

<sup>37</sup> This provision is required by regulation 18(1)(c) of *the Regulations* which requires the Contract to specify to whom services under the contract are to be provided.

<sup>38</sup> The words in square brackets may be required where the Contractor is providing *additional services* not funded by the *global sum, enhanced services* or *out of hours services* only to specific categories of patients (and not all of the patients specified in clauses 0 to 0 other than its *registered patients* other than by virtue of regulation 30 of *the Regulations*).

<sup>39</sup> 1. Regulation 30 of *the Regulations* provides that if the Contract is with any of the persons specified in a) to c) below, the Contract must require the Contractor to continue providing *out of hours services* to patients of an exempt contractor where the Contractor is -

- a) an individual medical practitioner who, on 31<sup>st</sup> March 2004, was, or will be, responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner who meets the requirements set out in paragraph 2 below (“exempt contractor”);
  - b) a partnership where at least one of the partners was, or will be, on 31<sup>st</sup> March 2004, a medical practitioner responsible for providing such services; or
  - c) a company in which one or more of the shareholders was, or will be, on 31<sup>st</sup> March 2004, a medical practitioner responsible for providing such services.
2. The requirements are that-
- a) the medical practitioner was relieved of responsibility for providing services to his patients under paragraph 17(2) of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995; and
  - b) he-
    - a. has entered or will be entering into a contract which does not include *out of hours services* pursuant to paragraph 1(b) above,

155.5 any other person to whom the Contractor is responsible under arrangements made with another contractor in accordance with clauses **Error! Reference source not found.** to **Error! Reference source not found.**; and

155.6 any other person to whom the Contractor has agreed to provide services under the Contract.

11.1.14

11.1.15 Patient registration area

156. The area in respect of which persons resident in it will, subject to any other terms of the Contract relating to patient registration, be entitled to register with the Contractor, or seek acceptance by the Contractor as a *temporary resident*, is [ ]<sup>40</sup>.

11.1.16 List of patients

157. The Contractor's list of patients is [open/closed]<sup>41</sup>.

158. The period of time for which the Contractor's list of patients will be closed is [please specify a period of time, which may not exceed 12 months]. The current number of the Contractor's *registered patients* is [please specify]. The number of *registered patients* (lower than the current number of such patients and expressed either in absolute terms or as a percentage of the current number of patients) which if that number were reached would trigger the re-opening of the Contractor's list of patients is [please specify]. The number of *registered patients* (expressed either in absolute terms or as a percentage of the number of current patients) which, if that

- 
- b. is one of two or more individuals practising in partnership who have entered or will be entering into a contract which does not include *out of hours services* pursuant to paragraph 1(b) above;
  - c. is the owner of shares in a company which has entered or will be entering into a contract which does not include *out of hours services* pursuant to paragraph 1(b) above.

<sup>40</sup> The *practice area* needs to be specified here – this is required by regulation 18(1)(d) of the *Regulations*.

<sup>41</sup> The Contract must specify whether, at the date the Contract comes into force, its list of patients will be *open* or *closed*. Please delete as appropriate. This clause is required by regulation 18(1)(e) of the *Regulations*.

number were reached, would trigger the re-closure of the Contractor's list of patients is [please specify]<sup>42</sup>.

159. The HB shall prepare and keep up to date a list of the patients-

159.1 who have been accepted by the Contractor for inclusion in its list of patients under clause 0 to 0 who have not subsequently been removed from that list under clauses 0 to 0; and

159.2 who have been assigned to the Contractor under clauses 0 and 0, or clause 0 and 0 and whose assignment has not subsequently been rescinded.

11.1.17 Application for inclusion in a list of patients

160. The Contractor may, if its list of patients is *open*, accept an application for inclusion in its list of patients made by or on behalf of any person, whether or not resident in its *practice area* or included, at the time of that application, in the list of patients of another contractor or provider of primary medical services

161. The Contractor may, if its list of patients is *closed*, only accept an application for inclusion in its list of patients from a person who is an *immediate family member* of a *registered patient* whether or not resident in its *practice area* or included, at the time of that application, in the list of patients of another contractor or provider of primary medical services.

162. Subject to clause 0, an application for inclusion in the Contractor's list of patients shall be made by delivering to the *practice premises* a *medical card* or an application signed (in either case) by the applicant or person authorised by the applicant to sign on his behalf.

163. An application may be made-

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<sup>42</sup> This clause is only required if the Contract specifies in accordance with clause 0 that the Contractor's list of patients is *closed*: see regulation 18(4) of *the Regulations*. The parties are required to incorporate

163.1 on behalf of any *child*-

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

163.3 by a person duly authorised by a local authority to whose care the *child* has been committed under the Children (Scotland) Act 1995, or

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

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

164. Where the Contractor accepts an application for inclusion in its list of patients, the Contractor shall notify the HB in writing as soon as possible.

165. On receipt of a notice under clause 0, the HB shall include that person in the Contractor's list of patients from the date on which the notice is received, and shall notify the applicant (or, in the case of a *child* or incapable adult, the person making the application on their behalf) in writing of the acceptance.

#### 11.1.18 *Temporary residents*

166. The Contractor may if its list of patients is *open* accept a person as a *temporary resident* provided it is satisfied that the person is-

166.1 temporarily resident away from his normal place of residence and is not being provided with *essential services* (or their equivalent) under any other arrangement in the locality where he is temporarily residing; or

166.2 moving from place to place and not for the time being resident in any place.

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the information indicated in square brackets.

167. For the purposes of clause 0, a person shall be regarded as temporarily resident in a place if, when he arrives in that place, he intends to stay there for more than 24 hours but not more than three months.

168. Where the Contractor wishes to terminate its responsibility for a person accepted as a *temporary resident* before the end of three months or such shorter period for which it had agreed to accept him as a patient, the Contractor shall notify the patient either orally or in writing and its responsibility for that person shall cease 7 days after the date on which the notification was given.

169. At the end of three months, or on such earlier date as its responsibility for the patient has come to an end, the Contractor shall notify the HB in writing of any person whom it accepted as a *temporary resident*.

11.1.19

11.1.20 Refusal of applications for inclusion in the list of patients or for acceptance as a *temporary resident*

170. The Contractor shall only refuse an application made under clause 0 to 0 if it has reasonable grounds for doing so which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition.

**11.1.21 171. The reasonable grounds referred to in clause 0 shall, in the case of applications made under clauses 0 to 0 include the ground that the applicant does not live in the Contractor's *practice area*.**

172. If the Contractor refuses an application made under clauses 0 to 0, it shall, within 14 days of its decision, notify the applicant (or, in the case of a child or incapable adult, the person making the application on their behalf) in writing of the refusal and the reason for it.

173. The Contractor shall keep a written record of refusals of applications made under clauses 0 to 0 and of the reasons for them and shall make this record available to the HB on request.

11.1.22 Patient preference of practitioner

174. Where the Contractor has accepted an application for inclusion in its list of patients, it shall-

174.1 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

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

175. The Contractor shall endeavour to comply with any preference expressed under clause 0 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*.

11.1.23 Removals from the list at the request of the patient

176. The Contractor shall notify the HB in writing of any request for removal from its list of patients received from a *registered patient*.

177. Where the HB receives notification from the Contractor under clause 0, or receives a request from the patient to be removed from the Contractor's list of patients, it shall remove that person from the Contractor's list of patients.

178. A removal under clause 0 shall take effect-

178.1 on the date on which the HB receives notification of the registration of the person with another provider of *essential services* (or their equivalent); or

178.2 14 days after the date on which the notification or request made under clause 0 or 0 respectively is received by the HB,

whichever is the sooner.

179. The HB shall, as soon as practicable, notify in writing-

179.1 subject to clause 0, the patient; and

179.2 the Contractor

that the patient's name will be or has been removed from the Contractor's list of patients on the date referred to in clause 0.

180. In clauses 0, 0, 0, 0, 0, 0, 0 and 0 a reference to a request received from, or advice, information or notification required to be given to, a patient shall include a request received from or advice, information or notification required to be given to-

180.1 in the case of a patient who is a *child*, a *parent* or other person referred to in clause 0; or

180.2 in the case of an adult patient who is incapable of making the relevant request or receiving the relevant advice, information or notification, a relative or the *primary carer* of the patient.

11.1.24

11.1.25 Removals from the list at the request of the Contractor

181. Subject to clauses 0 to 0, where the Contractor has reasonable grounds for wishing a patient to be removed from its list of patients which do not relate to the applicant's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor shall-

181.1 notify the HB in writing that it wishes to have the patient removed; and

181.2 subject to clause 0, notify the patient in writing of its specific reasons for requesting removal.

182. Where the circumstances of the removal are such that it is not appropriate for a more specific reason to be given, and in the reasonable opinion of the Contractor, there has been an irrevocable breakdown of trust between the patient and the Contractor, the reason given under clause 0 may consist of a statement that there has been such a breakdown in the relationship between the patient and the Contractor.

183. Before the Contractor can request a removal in accordance with clause 0, it shall, except where the reason for removal relates to a change of address, issue a warning to the patient that he is at risk of removal unless-

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

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

184. The Contractor shall record in writing the date of any warning given in accordance with clause 0 or the reason why no such warning was given.

185. The Contractor shall keep a written record of removals under clause 0 which shall include the reason for removal given to the patient, the circumstances of the removal and in cases where clause 0 applies, the grounds for a more specific reason not being appropriate, and the Contractor shall make this record available to the HB on request.

186. A removal requested in accordance with clause 0 shall, subject to clause 0, take effect from the date on which the person is registered with another provider of *essential services*, or the eighth day after the Trust receives the notice, whichever is the sooner.

187. Where, on the date on which the removal would take effect under clause 0, the Contractor is treating the patient at intervals of less than seven days, the Contractor shall inform the HB in writing of that fact and the removal shall take effect on the

eighth day after the Trust receives notification from the Contractor that the person no longer needs such treatment, or on the date on which the person is registered with another provider of *essential services*, (or their equivalent) whichever is the sooner.

188. The HB shall notify in writing-

188.1 subject to clause 0, the patient; and

188.2 the Contractor

that the patient's name has been or will be removed from the Contractor's list of patients on the date referred to in clause 0 or 0.

#### 11.1.26 Removal of violent patients from the list

189. Where the Contractor wishes a patient to be removed from its list of patients with immediate effect on the grounds that-

189.1 the patient has committed an act of violence against any of the persons specified in clause 0 or behaved in such a way that any such person has feared for that person's own safety; and

189.2 the contractor has reported the incident to the police or the procurator fiscal.

the Contractor shall notify the HB in accordance with clause 0.

190. The persons referred to in clause 0 are-

190.1 a medical practitioner;

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

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

190.4 any member of the Contractor's staff;

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

190.6 any other person present on the *practice premises* or in the place where the attendance of the medical practitioner or other *health care professional* occurs.

191. Notification under clause 0 may be given by any means including telephone or fax but if not given in writing shall subsequently be confirmed in writing within seven days (and for this purpose a faxed notification or transmission by electronic means is not a written one).

192. The HB shall acknowledge in writing receipt of a request from the Contractor under clause 0.

193. A removal requested in accordance with clause 0 shall take effect at the time the Contractor makes the telephone call to the HB, or sends or delivers the notification to the HB.

194. Where, pursuant to clauses 0 to 0, the Contractor has notified the HB that it wishes to have a patient removed from its list of patients with immediate effect, it shall, subject to clause 0, inform the patient concerned unless-

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

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

195. Where the HB has removed a patient from the Contractor's list of patients in accordance with clause 0 it shall, subject to clause 0, give written notice of the removal to that patient.

196. Where a patient is removed from the Contractor's list of patients in accordance with clauses 0 to 0, the Contractor shall record in the patient's medical records that the patient has been removed under this paragraph and the circumstances leading to his removal.

#### 11.1.27 Removals from the list by the HB

197. The HB shall remove a patient from the Contractor's list of patients if he has subsequently been registered with another provider of essential services (or their equivalent) in the area of the HB or it has received notice from another Health Board, a *Primary Care Trust*, a *Local Health Board* or a *Health and Social Services Board* that the patient has subsequently been registered with a provider of *essential services* (or their equivalent) outside the area of the HB.

198. A removal in accordance with clause 0 shall take effect on the date on which notification of registration of the person by the new provider was received or with the consent of the HB, on such other date as has been agreed between the Contractor and the new provider.

199. The HB shall notify the Contractor in writing of persons removed from its list of patients under clause 0.

200. Subject to clause 0, where the HB is satisfied that a person on the Contractor's list of patients no longer resides in that Contractor's *practice area*, the HB shall, subject to clause 0-

200.1 inform that patient and the Contractor that the Contractor is no longer obliged to visit and treat the patient;

200.2 advise the patient either to obtain the Contractor's agreement to the continued inclusion of the patient on its list of patients or to apply for

registration with another provider of *essential services* (or their equivalent);  
and

200.3 inform the patient that if, after the expiration of 30 days from the date of the letter of advice referred to in clause 0, he has not acted in accordance with the advice and informed it accordingly, the HB will remove him from the Contractor's list of patients.

201. If, at the expiration of the period of 30 days referred to in clause 0, the HB has not been notified of the action taken, it shall remove the patient from the Contractor's list of patients and, subject to clause 0, inform him and the Contractor accordingly.

202. Where the address of a patient who is on the Contractor's list is no longer known to the HB, the HB shall-

202.1 give to the Contractor notice in writing that it intends, at the end of the period of six months commencing with the date of the notice, to remove the patient from the Contractor's list of patients; and

202.2 at the end of that period, remove the patient from the Contractor's list of patients unless, within that period, the Contractor satisfies the HB that it is still responsible for providing *essential services* to that patient.

203. The HB shall remove a patient from the Contractor's list of patients where it receives notification that that patient-

203.1 intends to be away from the United Kingdom for a period of at least three months;

203.2 is in Her Majesty's Forces;

203.3 has been absent from the United Kingdom for a period of more than three months; or

203.4 has died.

204. A removal in accordance with clause 0 shall take effect-

204.1 in the cases referred to in clauses 0 to **Error! Reference source not found.** from the date of the departure or enlistment or the date on which the HB first receives notification of the departure, enlistment whichever is the later;

204.2 in the cases referred to in clauses 0 and 0 from the date on which the HB first receives notification of the absence or death.

205. The HB shall notify the Contractor in writing of patients removed from its list of patients under clause 0.

206. The HB shall remove from the Contractor's list of patients a patient who has been accepted as a *temporary resident* by another contractor or other provider of *essential services* (or their equivalent) where it is satisfied, after due inquiry-

206.1 that the patient's stay in the place of temporary residence has exceeded three months; and

206.2 that the patient has not returned to his normal place of residence or any other place within the Contractor's *practice area*.

207. The HB shall notify the Contractor and, subject to clause 0, where practicable, the patient, of a removal under clause 0.

208. A notification to the patient under clause 0 shall inform him of-

208.1 his entitlement to make arrangements for the provision to him of *essential services* (or their equivalent), including by the Contractor by whom he has been treated as a *temporary resident*; and

208.2 the name and address of the HB in whose area he is resident.

209. Where the Contractor provides *essential services* under the Contract to pupils at or staff of a school, the HB shall remove from the Contractor's list of patients any such patients who do not appear on particulars of persons who are pupils at or staff of that school provided by that school.

210. Where the HB has made a request to a school to provide the particulars mentioned in clause 0 and has not received them, it shall consult the Contractor as to whether it should remove from its list of patients any persons appearing on that list as pupils at, or staff of, that school.

211. The HB shall notify the Contractor in writing of patients removed from its list of patients under clause 0.

11.1.28 Termination of responsibility for patients not registered with the Contractor

212. Where the Contractor-

212.1 has received an application for the provision of medical services other than *essential services*-

212.2 from a person who is not included in its list of patients,

212.3 from a person whom it has not accepted as a *temporary resident*, or

212.4 on behalf of a person mentioned in clause 0 or 0, from one of the persons specified in clause 0; and

212.5 has accepted that person as a patient for the provision of the service in question

its responsibility for that patient shall be terminated in the circumstances referred to in clause 0.

213. The circumstances referred to in clause 0 are-

213.1 the patient informing the Contractor that he no longer wishes it to be responsible for provision of the service in question;

213.2 subject to clause 0, in cases where the Contractor has reasonable grounds for terminating its responsibility which do not relate to the person's race, gender, social class, age, religion, sexual orientation, appearance, disability or medical condition, the Contractor informing the patient that it no longer wishes to be responsible for providing him with the service in question; or

213.3 it coming to the notice of the Contractor that the patient-

213.4 no longer resides in the area for which the Contractor has agreed to provide the service; or

213.5 is no longer included in the list of patients of the other Contractor to whose *registered patients* the Contractor has agreed to provide the service in question.

214. If the Contractor wishes to terminate its responsibility for a patient under clause 0, it shall notify the patient of the termination and the reason for it.

215. The Contractor shall keep a written record of terminations under clause 0 to 0 and of the reasons for them and shall make this record available to the HB on request.

216. A termination under clause 0 shall take effect-

216.1 from the date on which the notice is given where the grounds for termination are those specified in clause 0; or

216.2 in all other cases, 14 days from the date on which the notice is given.

11.1.29

11.1.30 Closure of lists of patients

217. Where the Contractor wishes to close its list of patients, it shall notify the HB in writing to that effect.

218. As soon as is practicable and normally within a period of 7 days beginning with the date of receipt of the notification referred to in clause 0, the HB shall enter into discussions with the Contractor concerning the support which the HB may give the Contractor, or other changes which the HB or the Contractor may make, which would enable the Contractor to keep its list of patients *open*. In these discussions, both parties shall use reasonable endeavours to achieve the aim of keeping the Contractor's list of patients *open*.

219. The discussions referred to in clause 0 shall be completed within a period of 28 days beginning with the date of the HB's receipt of the notification referred to in clause 0, or within such longer period as the parties may agree.

220. If, following the discussions referred to in clause 0, the HB and the Contractor reach agreement that the Contractor's list of patients should remain *open*, the HB shall send full details of the agreement in writing to the Contractor. The HB and the Contractor shall comply with the terms of any agreement reached.

221. If, following the discussions referred to in clause 0-

221.1 the HB and the Contractor reach agreement that the Contractor's list of patients should close; or

221.2 the HB and the Contractor fail to reach agreement and the Contractor still wishes to close its list of patients,

the Contractor shall send a closure notice to the HB.

222. A closure notice shall be submitted in the form specified in Schedule 5 to this Contract, and shall include the following details which (in a case falling within clause 0) have been agreed between the parties or (in a case falling within clause 0) are proposed by the Contractor-

222.1 the period of time (which may not exceed 12 months) for which the Contractor's list of patients will be *closed*;

222.1 the current number of the Contractor's *registered patients*;

222.3 the number of *registered patients* (lower than the current number of such patients, and expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to clause 0) which, if that number were reached, would trigger the re-opening of the Contractor's list of patients;

222.4 the number of *registered patients* (expressed either in absolute terms or as a percentage of the number of such patients specified pursuant to clause 0) which, if that number were reached, would trigger the re-closure of the Contractor's list of patients; and

222.5 any withdrawal from or reduction in provision of any *additional or enhanced services* which had previously been provided under the Contract.

223. The HB shall forthwith acknowledge receipt of the closure notice in writing to the Contractor.

224. Before the HB reaches a decision as to whether to approve or reject the closure notice under clause 0, the HB and the Contractor may enter into further discussions concerning the details of the closure notice as specified in clause 0, with a view to reaching agreement: and, in particular, if the parties are unable to reach agreement regarding the period of time for which the Contractor's list of patients will be *closed*, that period shall be twelve months.

225. The Contractor may not withdraw a closure notice for a period of three months beginning with the date on which the HB has received the notice, unless the HB has agreed otherwise in writing.

226. Within a period of 14 days beginning with the date of receipt of the closure notice, the HB shall approve or reject the closure notice and shall notify the Contractor of its decision in writing as soon as possible.

227. Approval of the closure notice under clause 0 includes approval of the details specified in accordance with clause 0 (or, where those details are revised following discussions under clause 0, approval of those details as so revised).

11.1.31 Approval of closure notice by the HB

228. If the HB approves the closure notice in accordance with clause 0, the Contractor shall close its list of patients-

228.1 with effect from a date agreed between the HB and the Contractor; or

228.2 if no such agreement has been reached, with effect from the date on which the Contractor receives notification of the HB's decision to approve the closure notice.

229. Subject to clause 0, the Contractor's list of patients shall remain *closed* for the period specified in the closure notice in accordance with clause 0 (or, where a period of 12 months has been fixed in accordance with clause 0, for that period).

230. The Contractor's list of patients shall re-open before the expiry of the period referred to in clause 0 if-

230.1 subject to clause 0, the number of the Contractor's *registered patients* falls to the number specified in the closure notice in accordance with clause 0;

or

230.2 the HB and the Contractor agree that the list of patients should re-open.

231. The Contractor's list of patients may re-open in accordance with clause 0 only once during the period of 12 months beginning with the date on which the Contractor's list of patients was *closed* in accordance with clause 0, unless, in exceptional circumstances, the HB and the Contractor have agreed otherwise following consultation with the *Area Medical Committee*.

232. If the Contractor's list of patients has re-opened pursuant to clause 0, it shall nevertheless close again if the number of the Contractor's *registered patients* rises to the number specified in the closure notice in accordance with clause 0; but this may happen only once during the period of 12 months beginning with the date on which the Contractor's list of patients was *closed* in accordance with clause 0, unless, in exceptional circumstances, the HB and the Contractor have agreed otherwise following consultation with the *Areal Medical Committee*.

233. The HB shall notify the Contractor in writing shortly before the expiry of the period of closure specified in clause 0, confirming the date on which the Contractor's list of patients will re-open.

234. Where the details specified in the closure notice in accordance with clause 0 have been revised following discussions under clause 0, references in this paragraph to details specified in the closure notice are references to those details as so revised.

#### 11.1.32 Rejection of closure notice by the HB

235 Clause 0 to 0 apply where the HB rejects the closure notice in accordance with clause 0.

236. The Contractor or the HB shall not refer the matter for determination in accordance with the *NHS dispute resolution procedure* (or, where applicable, commence court proceedings) until the *assessment panel* has given its determination in accordance with clauses 0 to 0 and paragraph 26(6) and (7) of Schedule 6 to *the Regulations*.

237. The HB must ensure that the *assessment panel* is appointed as soon as is practicable to consider and determine whether the Contractor should be permitted to close its list of patients, and if so, the terms on which it should be permitted to do so.

238. The HB shall provide the *assessment panel* with such information as the *assessment panel* may reasonably require to enable it to reach a determination and shall include in such information any written observations received from the Contractor.

239. The members of the *assessment panel* shall be-

239.1 the Chief Executive of a Health Board of which the *assessment panel* is a committee or sub-committee;

239.2 a person representative of the Contractor's *patients*; and

239.3 a person representative of the *area medical committee*.

240. Where the *assessment panel* determines pursuant to paragraph 31(7)(a) of Schedule 5 to *the Regulations* that the Contractor's list of patients may close-

240.1 that list shall close on the date specified by the *assessment panel* pursuant to paragraph 31(8)(a) of Schedule 5 to *the Regulations*; and

240.2 that list shall re-open in accordance with the details specified by the *assessment panel* pursuant to paragraph 31(8)(b) of Schedule 5 to *the Regulations*.

241. Where the *assessment panel* determines pursuant to paragraph 31(7)(b) of Schedule 5 to *the Regulations* that the Contractor's list of patients may not close-

241.1 that list shall remain *open*, and the HB and the Contractor shall enter into discussions with a view to ensuring that the Contractor receives support

from the HB which will enable it to continue to provide services safely and effectively;

241.2 the Contractor may not submit a further closure notice as described in clause 0 until-

241.3 the expiry of a period of three months beginning with the date of the *assessment panel's* determination; or

241.4 (if applicable) the final determination of the *NHS dispute resolution procedure* (or any court proceedings),

whichever is the later, unless there has been a change in the circumstances of the Contractor which affects its ability to deliver services under the Contract.

#### 11.1.33 Assignment of patients to lists: open lists

242. The HB may, subject to clause 0, assign a new patient to the Contractor whose list of patients is *open*.

243. In this clause, and in clauses 0 to 0 and clauses 0 to 0, a “new” patient means a person who-

243.1 is resident (whether or not temporarily) within the area of the HB;

243.1 has been refused inclusion in a list of patients of, or has not been accepted as a *temporary resident* by a contractor whose premises are within such an area; and

243.3 wishes to be included in the list of patients of the Contractor whose *practice premises* are within that area.

#### 11.1.34 Assignment of patients to lists: closed lists

244. The HB may not assign a patient to the Contractor where it has *closed* its list of patients except in the circumstances specified in clause 0.

245. The HB may, subject to clause 0, assign a new patient to the Contractor when it has *closed* its list of patients if the Contractor's *practice premises* are within the HB's area, and-

245.1 most or all of the providers of *essential services* (or their equivalent) whose *practice premises* are within the HB's area have *closed* their lists of patients;

245.1 the *assessment panel* has determined under paragraph 35(7) of Schedule 5 to *the Regulations* that patients may be assigned to the Contractor, and that determination has not been overturned either by a determination of *the Scottish Ministers or the adjudicator* under paragraph 36(15) of Schedule 5 to *the Regulations* or (where applicable) by a court; and

245.3 the HB has entered into discussions with the Contractor in question regarding the assignment of a patient if such discussions are required under clause 0.

#### 11.1.35 Factors relevant to assignments

246. In making an assignment to the Contractor under clauses 0 to 0, the HB shall have regard to-

246.1 the wishes and circumstances of the patient to be assigned;

246.2 the distance between the patient's place of residence and the Contractor's *practice premises*;

246.3 whether, during the six months ending on the date on which the application for assignment is received by the HB, the patient's name has been removed from the list of patients of any contractor in the area of the HB under

clauses 0 to 0 or the equivalent provision in relation to a *section 17C provider* in the area of the HB;

246.4 whether the patient's name has been removed from the list of patients of any contractor in the area of the HB under clauses 0 to 0 or the equivalent provision in relation to a *section 17C provider* in the area of the HB and, if so, whether the Contractor has appropriate facilities to deal with such a patient;

246.5 such other matters as the HB considers to be relevant.

11.1.36 Assignments to closed lists: determination of the *assessment panel*

247. Clause 0 to 0 apply where most or all of the providers of *essential services* (or their equivalent) whose *practice premises* are within the area of the HB have *closed* their lists of patients and the HB proposes to assign patients to contractors who have *closed* their lists (including the Contractor).

248. If the HB wishes to assign new patients to the contractors specified in clause 0, it must prepare a proposal to be considered by the *assessment panel*, and the proposal must include details of those contractors to which the HB wishes to assign new patients.

249. The HB must ensure that the *assessment panel* is appointed to consider and determine its proposal made under clause 0, and the composition of the *assessment panel* shall be as described in clause 0.

250. The HB shall notify in writing-

250.1 contractors or *section 17C providers* whose *practice premises* are within the HB's area which-

250.2 have *closed* their list of patients, and

250.3 may, in the opinion of the HB, be affected by the determination of the *assessment panel*; and

250.4 the *area medical committee*,

that it has referred the matter to the *assessment panel*.

11.1.37 Assignments to closed lists: *NHS dispute resolution procedure* relating to determinations of the *assessment panel*

251. Where the *assessment panel* determines in accordance with paragraph 35(5) to (9) of Schedule 5 to *the Regulations* that the HB may assign new patients to contractors which have *closed* their lists of patients, and the Contractor is specified in that determination, the Contractor may refer the matter to *the Scottish Ministers* to review the determination of the *assessment panel* pursuant to paragraph 36(2) to (19) of Schedule 5 to *the Regulations*.

252. Where, pursuant to clause 0, the Contractor wishes to refer the matter to *the Scottish Ministers* either by itself, or jointly with other contractors specified in the determination of the *assessment panel*, it must, either by itself or together with the other contractors, within the period of 7 days beginning with the date of the determination of the *assessment panel*, send to *the Scottish Ministers* a written request for dispute resolution which shall include or be accompanied by-

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

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

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

253. Where a matter is referred to the *Scottish Ministers* in accordance with paragraph 36 of Schedule 5 to *the Regulations*, it shall be reviewed in accordance with the procedure specified in that paragraph.

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

254. Before the HB may assign a patient to the Contractor where it has *closed* its list, it shall, subject to clause 0, enter into discussions with the Contractor regarding additional support that the HB can offer the Contractor, and the HB shall use its best endeavours to provide appropriate support.

255. In the discussions referred to in clause 0, both parties shall use reasonable endeavours to reach agreement.

256. The requirement in clause 0 to enter into discussions applies-

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

256.2 to any subsequent assignment to that Contractor to the extent that it is reasonable and appropriate having regard to the numbers of patients who have been or may be assigned to it and the period of time since the last discussions under clause 0 took place.

12. PART 13

12.1.1

12.1.2 PRESCRIBING AND DISPENSING<sup>43</sup>

257. The Contractor shall comply with any directions given by *the Scottish Ministers* for the purposes of section 17N(6) of *the Act* as to the drugs, medicines or other substances which may or may not be ordered for patients in the provision of medical services under the Contract<sup>44</sup>.

12.1.3 Prescribing

258. The Contractor shall ensure that any *prescription form* or for drugs, medicines or appliances issued by a *prescriber* complies as appropriate with the requirements in clauses 0 to 0 and clauses **Error! Reference source not found.** to **Error! Reference source not found.**

259. Subject to clauses **Error! Reference source not found.** to **Error! Reference source not found.**, 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.

260. In issuing any *prescription form* the *prescriber* shall sign the *prescription form* or in ink with his initials and surname, or forenames, and surname in his own handwriting and not by means of a stamp, and shall so sign only after particulars of the order have been inserted in the *prescription form* and-

260.1 the *prescription form* shall not refer to any previous *prescription form*;  
and

260.2 a separate *prescription form* shall be used for each patient.

260.3

261. 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

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<sup>43</sup> This Part is required by *the Regulations* (see Part 3 of Schedule 5) and where indicated in the footnotes by *the Act*.

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-

261.1 specify the number of instalments to be dispensed and the interval between each instalment; and

261.2 order only such quantity of the drug as will provide treatment for the period required

264. In a case of urgency a *prescriber* may request a pharmacist to dispense a drug before a *prescription form* is issued, but only if:

264.1 that drug is not a *Scheduled drug*;

264.2 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

264.3 he undertakes to furnish the pharmacist, within 72 hours, with a *prescription form* completed in accordance with clause 0.

265. In a case of urgency a *prescriber* may request a pharmacist to dispense an appliance before a *prescription form* is issued, but only if-

265.1 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;

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<sup>44</sup> This clause is required by section 17N(6) of the Act.

265.2 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

265.3 he undertakes to furnish the pharmacist, within 72 hours, with a *prescription form* completed in accordance with clause 0.

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

277. 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 Scottish Ministers under section 17N(6) of *the Act* as being drugs, medicines or other substances which may not be ordered for patients in the provision of medical services under the Contract but may, subject to clause 0, prescribe such a drug or other substance for that patient in the course of that treatment under a private arrangement.

278. 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 Scottish Ministers under section 17N(6) of *the Act* as being a drug which can only be ordered for specified patients and specified purposes unless-

278.1 that patient is a person of the specified description;

278.2 that drug is prescribed for that patient only for the specified purpose;  
and

278.3 the practitioner endorses the form with the reference **SLS**,

but may, subject to clause 0, prescribe such a drug for that patient in the course of that treatment under a private arrangement.

279. 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-

279.1 the patient is a person, or it is for a purpose, specified in the *Drug Tariff*; and

279.2 the practitioner endorses the face of the form with the reference **SLS**,

but may, subject to clause 0, prescribe such an appliance for that patient in the course of that treatment under a private arrangement.

12.1.4 Restrictions on prescribing by *supplementary prescribers*

281. 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 that person will only –

281.1 give a prescription for a *prescription only medicine*;

281.2 administer a *prescription only medicine* for parenteral administration; or

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

as a *supplementary prescriber* under the conditions set out in clause 0.

282. The conditions referred to in clause 0 are that -

282.1 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;

282.2 the medicine is not a controlled drug within the meaning of the Misuse of Drugs Act 1971;

282.3 the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) 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;

282.4 the drug, medicine or other substance is not specified in any directions given by the Scottish Ministers under section 17N(6) of *the Act* as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes unless -

282.5 the patient is a person of the specified description,

282.6 the medicine is prescribed for that patient only for the specified purposes, and

282.7 if the *supplementary prescriber* is giving a prescription, he endorses the face of the form with the reference **SLS**.

283. Where the functions of a *supplementary prescriber* include prescribing, the Contractor shall have arrangements in place to secure that that person will only give a prescription for -

283.1 an appliance; or

283.2 a medicine which is not a *prescription only medicine*,

as a *supplementary prescriber* under the conditions set out in clause 0.

284. The conditions referred to in clause 0 are that -

284.1 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 -

284.1.1 the name of the patient to whom the plan relates,

284.1.2 the illness or conditions which may be treated by the *supplementary prescriber*,

284.1.3 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,

284.1.4 reference to the class or description of medicines or types of appliances which may be prescribed or administered under the plan,

284.1.5 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,

284.1.6 relevant warnings about known sensitivities of the patient to, or known difficulties of the patient with, particular medicines or appliances,

284.1.7 the arrangements for notification of -

284.1.7.1 suspected or known adverse reactions to any medicine which may be prescribed or administered under the plan, and suspected or known adverse reactions to any other medicine taken at the same time as any medicine prescribed or administered under the plan,

284.1.7.2 incidents occurring with the appliance which might lead, might have led or has led to the death or serious deterioration of state of health of the patient, and

284.1.7.3 the circumstances in which the *supplementary prescriber* should refer to, or seek the advice of, the medical practitioner or dentist who is a party to the plan;

284.2 the *supplementary prescriber* 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;

284.3 if it is a prescription for a medicine, the medicine is not a controlled drug within the meaning of the Misuse of Drugs Act 1971;

284.4 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 Scottish Ministers under section 17N(6) 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;

284.5 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 Scottish Ministers under section 17N(6) of *the Act* as being a drug, medicine or other substance which can only be ordered for specified patients and specified purposes unless -

284.5.1 the patient is a person of the specified description,

284.5.2 the medicine is prescribed for that patient only for the specified purposes, and

284.5.3 when giving the prescription, he endorses the face of the form with the reference **SLS**;

284.6 if it is a prescription for a medicine -

284.6.1 the medicine is the subject of a product licence, a marketing authorisation or a homeopathic certificate of registration granted by the licensing authority or the European Commission, or

284.6.2 the use of the medicine is for the purposes of a clinical trial which has been authorised by the licensing authority for the purposes of the Medicines for Human Use (Clinical Trials) Regulations 2003,

284.7 if it is a prescription for an appliance, the appliance is listed in Parts 2 to 6 and Part 9 of the *Drug Tariff*; and

284.8 if it is a prescription for a *restricted availability appliance* -

284.8.1 the patient is a person of a description mentioned in the entry in Part 3 of the *Drug Tariff* in respect of that appliance,

284.8.2 the appliance is prescribed only for the purposes specified in respect of that person in that entry, and

284.8.3 when giving the prescription, he endorses the face of the form with the reference **SLS**.

285. In clause 221.1, “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—

285.1 the patient to whom the plan relates;

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

285.3 any *supplementary prescriber* who is to prescribe, give directions for administration or administer under the plan.

#### 12.1.5 Bulk prescribing

##### **Excessive prescribing**

290. The Contractor shall not prescribe drugs and appliances whose cost or quantity, in relation to any patient, is, by reason of the character of the drug or appliance in question, in excess of that which was reasonably necessary for the proper treatment of that *patient*.

#### 12.1.6

#### 12.1.7 Provision of dispensing services

291. The Contractor may secure the provision of *dispensing services* to its *registered patients* under the Contract only if it is authorised or required to do so by the Health Board in accordance with clause **Error! Reference source not found.**

292. The Health Board may authorise or require the Contractor to secure the provision of *dispensing services* to a *registered patient* where the Health Board is satisfied, after consultation with the area pharmaceutical committee that a *patient*—satisfies one of the conditions in clause 0;

293. The conditions referred to in clause 292 are that the patient satisfies the Health Board that he would have serious difficulty in obtaining any necessary drugs, medicines or appliances, other than scheduled drugs from a pharmacy by reason of distance or inadequacy of means of communication; or other exceptional circumstances

294. A contractor shall not be required to undertake the supply of drugs and appliances if the contractor satisfies the Health Board that the contractor is not in the habit of dispensing drugs for the contractor's patients

295. A contractor shall be entitled to receive reasonable notice from the Health Board that the contractor is required to undertake the supply of drugs and appliances or that such supply is to be discontinued

#### 12.1.8 Terms relating to the provision of *dispensing services*

311. Subject to clauses 0 and 0, a medical practitioner providing *dispensing services* shall –

311.1 record an order for the provision of any drugs, medicines or appliances which are needed for the treatment of the patient on a *prescription form* completed in accordance with clause 0;

311.2 provide those drugs, medicines or appliances in a suitable container;

311.3 provide for the patient a drug or medicine specified in any directions given by the Scottish Ministers under section 17N(6) of *the Act* as being a drug or medicine which can only be ordered for specified patients and specified purposes only if –

311.1.1 that patient is a person of the specified description, and

311.1.2 the drug or medicine is supplied for that patient only for the specified purpose; and

311.1.3 provide for the *patient* a *restricted availability appliance* only if the patient is a person, or it is for a purpose, specified in the *Drug Tariff*.

312. Clause 0 does not apply to drugs, medicines or appliances ordered on a *prescription form* by an *independent nurse prescriber*.

313. Where a patient presents an order on a *prescription form* for drugs, medicines or appliances signed by an *independent nurse prescriber*, or an order for a *restricted availability appliance* signed by and endorsed on its face with the reference “SLS” by an *independent nurse prescriber*, to a medical practitioner who may provide *dispensing services*, the medical practitioner may provide to the patient such of the drugs, medicines or appliances so ordered as that medical practitioner supplies in the normal course of his practice.

314. Drugs, medicines or appliances provided under clause 0 shall be provided in a suitable container.

315. A medical practitioner providing *dispensing services* shall not provide for a patient a drug or medicine specified in any directions given by the Scottish Ministers under section 17N(6) of *the Act* as being drugs or medicines which may not be ordered for patients in the provision of medical services under the Contract, except that, where he has ordered a drug or medicine which has an appropriate non-proprietary name either by the name or by its formula, he may provide a drug or medicine which has the same specification notwithstanding that it is a drug or medicine specified in such directions (but, in the case of a drug or medicine which combines more than one drug, only if the combination has an appropriate non-proprietary name).

316. Subject to clause **Error! Reference source not found.**, nothing in clauses **Error! Reference source not found.** to 0, **Error! Reference source not found.** and **Error! Reference source not found.** shall prevent a medical practitioner providing a *Scheduled drug* or a *restricted availability appliance* in the course of treating a patient under a private arrangement.

12.1.9 Provision of drugs, medicines and appliances for immediate treatment or personal administration

320. A medical practitioner—

320.1 shall provide to a patient any drug, medicine or appliance, not being a *Scheduled drug*, where such provision is needed for the immediate treatment of that patient before a provision can otherwise be obtained; and

320.2 may provide to a patient any drug, medicine or appliance, not being a *Scheduled drug*, which he personally administers or applies to that patient,

but shall, in either case, provide a *restricted availability appliance* only if it is for a person or a purpose specified in the *Drug Tariff*.

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13. PART 14<sup>45</sup>  
13.1.1  
13.1.2 PERSONS WHO PERFORM SERVICES

13.1.3 Qualifications of performers

321. Subject to clause 0, no medical practitioner shall perform medical services under the Contract which a Health Board is, under section 2C(1) of *the Act*, under a duty to provide unless that medical practitioner is-

321.1 included in a *primary medical services performers' list* for that Health Board;

321.2 not suspended from that list or from the *Medical Register*; and

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

322. Clause 0 shall not apply in the case of –

322.1 a medical practitioner employed by a Health Board, an *NHS trust*, an *NHS foundation trust*, or (in Northern Ireland) a *Health and Social Services Trust*, who is providing services other than primary medical services at the *practice premises*;

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

322.3 a *GP Registrar* during the first two months of the GP Registrar's training period.

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<sup>45</sup> Except where footnotes indicate otherwise, this Part is required by *the Regulations* (see Part 4 of Schedule 6).

323. No *health care professional* other than a medical practitioner shall perform clinical services under the Contract unless that professional is registered with that professional's relevant professional body and that professional's registration is not currently suspended.

324. Where the registration of a *health care professional* or, in the case of a medical practitioner, that professional's inclusion in a *primary medical services performers' list* is subject to conditions, the Contractor shall ensure compliance with those conditions insofar as they are relevant to the Contract.

325. No *health care professional* shall perform any clinical services unless the Contractor is satisfied that he has such clinical experience and training as are necessary to enable him properly to perform such services.

326. In satisfying itself as to the requirements in clause 0, the Contractor shall have regard in particular to-

326.1 any post-graduate or post-registration qualification held by the health care professional; and

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

#### 13.1.4 Conditions for employment and engagement

327. Subject to clauses 0 and 0, the Contractor shall not employ or engage a medical practitioner (other than one falling within clause 0) unless-

327.1 that practitioner has provided it with the name and address of the Health Boards on whose *primary medical services performers' list* he appears; and

327.2 the Contractor has verified that he meets the requirements in clause 0.

328. Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to verify the matters referred to in clause 0 in accordance with clause 0 before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

329. Where the prospective employee is a *GP Registrar*, the requirements set out in clause 0 shall apply with the modifications that-

329.1 the name and address provided under 0 may be the name and address of the Health Boards on whose primary medical services performers' list the GP Registrar has applied for inclusion; and

329.2 confirmation that the GP Registrar's name appears on those lists shall not be required until the end of the first two months of the GP Registrar's training period.

330. The Contractor shall not employ or engage a *health care professional* other than a medical practitioner unless the Contractor has verified that he meets the requirements in clause 0.

331. Where the employment or engagement of a *health care professional* is urgently needed and it is not possible to check the matters referred to in clause 0 in accordance with clause 0 before employing or engaging the professional, the professional may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

332. The Contractor shall not employ or engage a *health care professional* to perform medical services under the Contract unless-

332.1 that person has provided two clinical references, relating to two recent posts (which may include any current post) as a *health care professional* which lasted for three months without a significant break, or where this is not possible, a full explanation and alternative referees; and

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

333. Where the employment or engagement of a *health care professional* is urgently needed and it is not possible to obtain and check the references in accordance with clause 0 before employing or engaging the professional, the professional may be employed or engaged on a temporary basis for a single period of up to 14 days whilst the professional's references are checked and considered, and for an additional single period of a further 7 days if the Contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.

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

335. Before employing or engaging any person to assist it in the provision of 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.

336. When considering the competence and suitability of any person for the purpose of clause 0, the Contractor shall have regard, in particular, to-

336.1 that person's academic and vocational qualifications;

336.2 the person's education and training; and

336.3 the person's previous employment or work experience.

#### 13.1.5 Training

337. The Contractor shall ensure that for any *health care professional* who is-

337.1 performing clinical services under the Contract; or

337.2 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 providing or assisting in performing.

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

#### 13.1.6 Terms and conditions

339. The Contractor shall only offer employment to a general medical practitioner on terms and conditions which are no less favourable than those contained in the "Model terms and conditions of service for a salaried general practitioner employed by a GMS practice" published in the British Medical Association and the NHS Confederation as item 1.2 of the supplementary documents to the new GMS contract 2003 or in any document which it has been notified in writing by the HB has replaced that document.

#### 13.1.7 Arrangements for *GP Registrars*

340. The Contractor shall only employ a *GP Registrar* for the purpose of being trained by a *GP Trainer* with the agreement of the Scottish Ministers and subject to the conditions in clause 0.

341. The conditions referred to in clause 0 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.

342. Where the Contractor employs a *GP Registrar*, the Contractor shall-

342.1 offer the GP Registrar terms of employment in accordance with the rates and subject to the conditions contained in any Directions to Health Boards .

342.2 take into account any guidance issued by the Scottish Ministers in relation to the GP Registrar scheme.

13.1.8 *Independent nurse prescribers and supplementary prescribers*

343. Where-

343.1 the Contractor employs or engages a person who is an *independent nurse prescriber* or a *supplementary prescriber* whose functions will include prescribing in its practice; or

343.2 the functions of a person who is an *independent nurse prescriber* a *supplementary prescriber* whom it already employs or has already engaged are extended to include prescribing,

it shall notify the HB within the period of seven days beginning with the date on which the event occurred.

344. Where-

344.1 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

344.2 the functions of a person who is an *independent nurse prescriber* or a *supplementary prescriber* whom it employs or engages in its practice are changed so that they no longer include prescribing in its practice; or

344.3 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 HB by the end of the second working day after the day when the event occurred.

345. The Contractor shall provide the following information when it notifies the HB in accordance with clause 0-

345.1 the person's full name;

345.2 the person's professional qualifications;

345.3 the person's identifying number which appears in the relevant register;

345.4 the date on which the person's entry in the relevant register was annotated to the effect that he was qualified to order drugs, medicines and appliances for patients;

345.5 the date-

345.5.1 on which he was employed or engaged, if his functions include prescribing in its *practice*, or

345.5.2 on which one of his functions became to prescribe in its *practice*.

346. The Contractor shall provide the following information when it notifies the HB in accordance with clause 0-

346.1 the person's full name;

346.2 the person's professional qualifications;

346.3 the person's identifying number which appears in the *relevant register*;

346.4 the date-

346.4.1 the person ceased to be employed or engaged in its practice,

346.4.2 the person's functions changed so as no longer to include prescribing, or

346.4.3 on which the person was removed or suspended from the *relevant register*.

#### 13.1.9 Signing of documents

347. In addition to any other requirements relating to such documents whether in this Contract or otherwise, the Contractor shall ensure that the documents specified in clause 0 include –

347.1 the clinical profession of that *health care professional* who signed the document; and

347.2 the name of the Contractor on whose behalf it is signed.

348 The documents referred to in clause 0 are-

348.1 certificates issued in accordance with clause 0 unless regulations relating to a particular certificate provide otherwise;

348.2 *prescription forms*; and

348.3 any other clinical documents.

#### 13.1.10 Appraisal and assessment

349. The Contractor shall ensure that any medical practitioner performing services under the Contract-

349.1 participates in the appraisal system provided by the HB; and

349.2 co-operates with an assessment by or on behalf of the Health Board of the services performed by that practitioner under the contract.

350. The HB shall provide an appraisal system for the purposes of clause 0 after consultation with the *area medical committee* and such other persons as appear to it to be appropriate.

#### 13.1.11 Sub-contracting of clinical matters

351. Subject to clause 0 and clauses 0 to 0, the Contractor shall not sub-contract any of its rights or duties under the Contract unless-

351.1 it has taken reasonable steps to satisfy itself that it is reasonable in all the circumstances and that person is qualified and competent to provide the service; and

351.2 it has served notice of its intention to sub-contract on the HB as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into force.

352. Clause 0 shall not apply to a contract for services with a *health care professional* for the provision by that professional personally of clinical services.

353. The notification referred to in clause 0 shall include-

353.1 the name and address of the proposed sub-contractor;

353.2 the duration of the proposed sub-contract;

353.3 the services to be covered; and

353.4 the address of any premises to be used for the provision of services.

354. Following receipt of a notice in accordance with clause 0, the HB may request such further information relating to the proposed sub-contract as appears to it to be reasonable and the Contractor shall supply such information promptly.

355. The Contractor shall not proceed with the sub-contract or, if it has already taken effect, shall take steps to terminate it, where, within 28 days of the notice referred to in clause 0, the HB has served a notice of objection to the sub-contract on the grounds that-

355.1 the sub-contract would-

355.1.1 put at serious risk the safety of the Contractor's *patients*, or

355.1.2 put the HB at risk of material financial loss; or

355.2 the sub-contractor would be unable to meet the Contractor's obligations under the contract.

356. Where the HB objects to a proposed sub-contract in accordance with clause 0, it shall include with the notice of objection a statement in writing of the reasons for its objection.

357. Clauses 0, 0 to 0 shall also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

358. Where the HB does not object to a proposed sub-contract under clause 0, the parties to the Contract shall be deemed to have agreed to a variation of the contract which has the effect of adding to the list of *practice premises* any premises whose address was notified to it under clause 0 and clause 0 shall not apply.

359. A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the Contractor to provide.

13.1.12

13.1.13 Sub-contracting out of hours services<sup>46</sup>

360. A Contractor may sub-contract all or part of its duty to provide *out of hours services* to-

360.1 a person who holds a general medical services contract with a HB which includes *out of hours services*;

360.2 a *section 17C provider* who provides services to their patients during all or part of the *out of hours period*;

360.3 a medical practitioner who is acting as a locum and is not employed by the Contractor; or

360.4 a group of medical practitioners, whether in partnership or not, who provide *out of hours services* for each other under informal rota arrangements.

361. Where the Contractor so sub-contracts, it shall notify the HB in writing of having done so.

362. The Contractor shall not, without the written approval of the HB, sub-contract all or part of its duty to provide *out of hours services* to any person other than those listed in clause 0 other than on a short-term occasional basis.

363. An application for approval under clause 0 shall be made by the Contractor in writing to the HB and shall state-

363.1 the name and address of the proposed sub-contractor;

363.2 the address of any premises used for the provision of services;

363.3 the periods during which the duty is to be transferred;

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<sup>46</sup> Clauses 0 to 0 only need to be included in the Contract if the Contractor is providing *out of hours services* under the Contract.

363.4 the services to be covered by the arrangement; and

363.5 how it is proposed that the sub-contractor will meet the Contractor's obligations under the Contract in respect of the services covered by the arrangement.

364 Within 7 days of receipt of an application under clause 0, the HB may request such further information relating to the proposed arrangements as seem to it to be reasonable.

365 Within 28 days of receipt of an application which meets the requirements of clause 0 or the further information requested under clause 0 (whichever is the later), the HB shall-

365.1 approve the application;

365.2 approve the application with conditions; or

365.3 refuse the application.

366. The HB shall approve the application (with or without conditions) if it is satisfied that the proposed arrangement will, in respect of the services to be covered, enable the Contractor to meet satisfactorily its obligations under the Contract.

367. The HB shall inform the Contractor by notice in writing of its decision on the application and, where it refuses an application, it shall include in the notice a statement of the reasons for its refusal.

368. Where the HB approves a sub-contract under clause 0 the parties to the Contract shall be deemed to have agreed a variation of the contract which has the effect of adding to the list of *practice premises* any premises whose address was notified to it under clause 0 and clause 0 shall not apply.

369. Clauses 0 to 0 shall also apply in relation to any renewal or material variation of a sub-contract in relation to *out of hours services*.

370. A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the *out of hours services* it has agreed with the Contractor to provide.

371. Without prejudice to any other remedies which it may have under the Contract, where the HB has approved an application made under clause 0 it shall, subject to clauses 0 and 0, be entitled to serve notice on the Contractor withdrawing or varying that approval from a date specified in the notice if it is no longer satisfied that the proposed arrangement will enable the Contractor to meet satisfactorily its obligations under the Contract.

372. The date specified pursuant to clause 0 shall be such as appears reasonable in all the circumstances to the HB.

373. The notice referred to in clause 0 shall take effect on whichever is the later of

373.1 the date specified in the notice; or

373.2 the date on which any dispute relating to the notice is finally determined.

374. Without prejudice to any other remedies which it may have under the Contract, where the HB has approved an application made under clause 0 it shall be entitled to serve notice on the Contractor withdrawing or varying that approval with immediate effect if-

374.1 it is no longer satisfied that the proposed arrangement will enable the Contractor to meet satisfactorily its obligations under the Contract; and

374.2 it is satisfied that immediate withdrawal or variation is necessary to protect the safety of the Contractor's patients.

375. An immediate withdrawal of approval under clause 0 shall take effect on the date on which the notice referred to in that clause is received by the Contractor.

**Temporary arrangements for transfer of obligations and liabilities in relation to certain *out of hours services*<sup>47</sup>**

**Transitional provisions covering temporary arrangements for transfer of obligations and liabilities in relation to certain out-of-hours services to cover the interim period from 1 April 2004 to 1 January 2005 are currently being drafted for the GMS Contract (Scotland) Regulations. Once completed, appropriate text will be drafted to complete this section of the Standard Contract.**

14. PART 15

14.1.1

14.1.2 RECORDS, INFORMATION, NOTIFICATION AND RIGHTS OF ENTRY<sup>48</sup>

14.1.3 Patient records

407. In this part, “computerised records” means records created by way of entries on a computer.

408. The Contractor shall keep adequate records of its attendance on and treatment of its patients and shall do so-

408.1 on forms supplied to it for the purpose by the HB; or

408.2 with the written consent of the HB, by way of computerised records,

or in a combination of those two ways.

409. The Contractor shall include in the records referred to in clause 0 clinical reports sent in accordance with clause 38 or from any other *health care professional* who has provided clinical services to a person on its list of patients.

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<sup>47</sup> Clauses **Error! Reference source not found.** to **Error! Reference source not found.** only need to be included in the Contract if the Contractor is providing *out of hours services* under the Contract pursuant to Regulations 29 or 30 of *the Regulations*: see Schedule 7 to *the Regulations*.

<sup>48</sup> Except where it is expressly indicated in a footnote that a particular clause is only required in certain types of GMS Contract, this section is required by the Regulations: see Part 5 of Schedule 5.

410. The consent of the HB required by clause 0 shall not be withheld or, once given, withdrawn provided the HB is satisfied, and continues to be satisfied, that-

410.1 the computer system upon which the Contractor proposes to keep the records has been accredited by the Scottish Ministers or another person on his behalf in accordance with “General Medical Practice Computer Systems - Requirements for Accreditation – RFA Scotland v1”;

410.2 the security measures and the audit function incorporated into the computer system as accredited in accordance with clause 0 have been enabled; and

410.3 the Contractor is aware of, and has signed an undertaking that it will have regard to any guidelines issued by the Scottish Ministers and notified to the contractor by the Health Board concerning good practice in the keeping of electronic patient records.

411. Where the Contractor keeps computerised records it shall, as soon as possible following a request from the HB, allow the HB to access the information recorded on its computer system by means of the audit function referred to in clause 0 to the extent necessary for the HB to check that the audit function is enabled and functioning correctly.

412. The Contractor shall send the complete records relating to a patient to the HB-

412.1 as soon as possible, at the request of the HB;

412.2 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 HB 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 0 below shall survive the termination or expiry of the Contract]<sup>49</sup>.

413. To the extent that a patient's records are computerised records, the Contractor complies with clause 0 if it sends to the HB a copy of those records-

413.1 in written form; or

413.2 with the written consent of the HB in any other form.

414. The consent of the HB to the transmission of information other than in written form for the purposes of clause 0 shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters-

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

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

414.3 how the Contractor will ensure that the record received by the HB is identical to that transmitted; and

414.4 how a written copy of the record can be produced by the HB.

415. Where the Contractor keeps computerised records, the Contractor shall not disable, or attempt to disable, either the security measures or the audit function referred to in clause 0.

416. The Contractor must provide access to its patient records on request to any person with whom the HB has made arrangements for the provision of the information preparation scheme referred to in section 7 of the *GMS Statement of Financial Entitlements*.

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<sup>49</sup> The words in square brackets are not mandatory but they are recommended to ensure that an obligation to provide patient records to the HB continues to apply even where the Contract has ended.

417. The Contractor shall not be obliged to grant access to a person referred to in clause 0 unless he produces, on request, written evidence that he is authorised by the HB to act on its behalf.

14.1.4 Confidentiality of personal data

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

14.1.5 Practice leaflet

419. The Contractor shall-

419.1 compile a *practice leaflet* which shall include the information specified in Schedule 3;

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

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

14.1.6 Provision of information

420. Subject to clause 0, the Contractor shall produce to the HB or allow the HB to access, on request-

420.1 any information (including clinical records) which is reasonably required by the HB for the purposes of or in connection with the Contract; and

420.2 any other information reasonably required in connection with its duty to provide primary medical services.

421. The information referred to in clause 0 may include information required for the purposes of workforce planning.

422. Information provided under clause 0 shall be in the form requested by the HB and shall not include information which-

422.1 is confidential and relates to a living individual, unless one or more of the conditions specified in clause 0 applies; or

422.2 is prohibited from disclosure by or under any enactment or any ruling of a court of competent jurisdiction or is protected by the common law, unless clause 0 applies.

423. The conditions referred to in clause 0 are-

423.1 the information is or can be disclosed in a form in 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;

423.2 the individual consents explicitly to the information being disclosed;

423.3 in a case where the HB is investigating the provision or quality of clinical care-

423.3.1 it is not practicable to disclose the information in a form in 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;

423.3.2 the HB considers that there is a serious risk to the health and safety of patients arising out of the matters which are the subject of the investigation; and

423.3.3 having regard to that risk and the urgency of the exercise of those functions, the HB considers that the information should be disclosed without the consent of the individual.

423.4 in a case where the HB is taking steps to satisfy itself that the terms of the Contract have been complied with or that payments made under the Contract are accurate-

423.4.1 it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained; and

423.4.2 the HB considers that it is in the public interest that the information should be disclosed without the consent of the individual.

424. This clause and clause 0 apply where-

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

424.2 the information is or can be disclosed in a form in 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.

425. In a case where the information falls within-

425.1 clause 0, and the condition in clause 0 applies; or

425.2 clause 0 and clause 0 applies,

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

14.1.7 Inquiries about prescriptions and referrals

431. The Contractor shall, subject to clauses 0 and 0, sufficiently answer any inquiries whether oral or in writing from the HB concerning-

431.1 any *prescription form* issued by it or by a *prescriber* employed or engaged by it;

431.2 the considerations by reference to which it or *prescribers* employed or engaged by it issue such forms;

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

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

432. An inquiry referred to in clause 0 may only be made for the purpose either of obtaining information to assist the HB to discharge its functions or of assisting the Contractor in the discharge of its obligations under the Contract.

433. The Contractor shall not be obliged to answer any inquiry referred to in clause 0 unless it is made-

433.1 in the case of clause 0 or 0 by an appropriately qualified *health care professional*; or

433.2 in the case of clause 0 or 0, by an appropriately qualified medical practitioner,

appointed in either case by the HB to assist it in the exercise of its functions under clause 0 and 0 who produces, on request, written evidence that the professional or practitioner is authorised by the HB to make such an inquiry on its behalf.

14.1.8 Reports to a *medical officer*

434. The Contractor shall, if it is satisfied that the patient consents-

434.1 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 that officer's behalf and at that officer's 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

434.2 answer any inquiries by a *medical officer*, or by an officer of the Department for Work and Pensions on that officers behalf and at that officers direction, about a *prescription form* or medical certificate issued by the Contractor or on the Contrator's behalf or about any statement which the Contractor or a person acting on the Contractor's behalf has made in a report.

435. For the purpose of satisfying itself that the patient has consented as required by clause 0, 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 that officer holds the patient's written consent.

14.1.9 Annual return and review

436. The Contractor shall submit an annual return relating to the Contract to the HB which shall be in the same format for all persons who hold contracts with the HB.

437. Following receipt of the return referred to in clause 0, the HB shall arrange with the Contractor an annual review of its performance in relation to the Contract.

438. The Contractor or the HB may, if it so requests, have a representative of the *Area Medical Committee* present at the annual review.

439. The HB shall prepare a draft record of the review referred to in clause 0 for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review. A copy of the final record shall be sent to the Contractor.

14.1.10 Notifications to the HB

14.1.11

440. In addition to any requirements of notification elsewhere in the Contract, the Contractor shall notify the HB in writing, as soon as reasonably practicable, of

440.1 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;

440.2 any circumstances which give rise to the HB's right to terminate the contract under clauses 0 and 0;

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

440.4 any change of which it is aware in the address of a registered patient;  
and

440.5 the death of any patient of which it is aware.

441. The Contractor shall, unless it is impracticable to do so, notify the HB in writing within 28 days of any occurrence requiring a change in the information about it published by the HB in accordance with regulations made under section 2C(3) of *the Act*.

442. The Contractor shall notify the HB in writing of any person other than a *registered patient* or a person whom it has accepted as a *temporary resident* to whom it has provided the *essential services* described in clauses 46.3 or 49 within the period of 28 days beginning on the day that the services were provided.

14.1.12

14.1.13 Notice provision specific to a Contractor that is a company limited by shares<sup>50</sup>

443. The Contractor shall give notice in writing to the HB forthwith when-

443.1 any share in the Contractor is transmitted or transferred (whether legally or beneficially) to another person on a date after the Contract has been entered into;

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

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

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

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

**14.1.14 444.A notice under clause 0 shall confirm that the new shareholder, or, as the case may be, the personal representative of a deceased shareholder-**

444.1 is a medical practitioner, or that the new shareholder satisfies the conditions specified in section 17L(2)(c)(i)to(viii) of *the Act*; and

444.2 meets the further conditions imposed on shareholders by virtue of regulations 3 and 4 of the Regulations.

14.1.15 Notice provision specific to a Contractor that is a partnership<sup>51</sup>

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<sup>50</sup> Clauses 0 and 14.1.14 only need to be included in the Contract if the Contractor is a company limited by shares. If the Contractor is not a company limited by shares, these clauses can be deleted.

<sup>51</sup> Clauses 0 and 0 only need to be included in the Contract if the Contractor is a partnership. If the Contractor is not a partnership, these clauses can be deleted.

445. The Contractor shall give notice in writing to the HB forthwith when-

445.1 a partner leaves or informs his partners that he intends to leave the partnership, and the date upon which he left or will leave the partnership; and

445.2 a new partner joins the partnership.

446. A notice under clause 0 shall-

446.1 state the date that the new partner joined the partnership;

446.2 confirm that the new partner is a medical practitioner, or that he satisfies the condition specified in section 17L(2)(c)(i) to (viii) of *the Act*;

446.3 confirm that the new partner meets the conditions imposed by regulations 3 and 4 and

446.4 state whether the new partner is a general or limited partner.

#### 14.1.16 Notification of deaths

447. The Contractor shall report in writing to the HB the death on the contractor's *practice premises* of any patient no later than the end of the first working day after the date on which the death occurred.

448. The report shall include-

448.1 the patient's full name;

448.2 the patient's National Health Service number where known;

448.3 the date and place of death;

448.4 a brief description of the circumstances, as known, surrounding the death;

448.5 the name of any medical practitioner or other person treating the patient whilst on the *practice premises*; and

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

449. The Contractor shall send a copy of the report referred to in clause 0 to any other HB in whose area the deceased was resident at the time of his death.

14.1.17 Notifications to patients following a variation of the Contract

450. Where the Contract is varied in accordance with Part 24 of this Contract and, as a result of that variation-

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

450.2 patients who are on the Contractor's list of patients are to be removed from that list,

the HB 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).

14.1.18 Rights of entry

451. Subject to the conditions in clause 0, the Contractor shall allow persons authorised in writing by the HB to enter and inspect the *practice premises* at any reasonable time.

452. The conditions referred to in clause 0 are that-

452.1 reasonable notice of the intended entry has been given;

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

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

453 Representatives of the HB carrying out an inspection under clause 0 shall, unless the Contractor otherwise requests, be accompanied by a member of the *area medical committee*.

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15. PART 16

15.1.1

15.1.2 CERTIFICATES<sup>52</sup>

456. 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-

456.1 is being attended by a medical practitioner other than one employed or engaged by the Contractor or who-

456.1.1 if this Contract is with a partnership, is one of the partners, or

456.1.2 if this Contract is with a company limited by shares, is one of the persons legally or beneficially owning shares in the company; or

456.2 is not being treated by or under the supervision of a *health care professional*.

457. The exception in clause 0 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

## LIST OF PRESCRIBED MEDICAL CERTIFICATES

<i>Description of medical certificate</i>	<i>Short title of enactment under or for the purpose of which certificate required</i>
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<sup>52</sup> This Part is required by *the Regulations* (see regulation 21 and Schedule 4).

1. 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.  
Naval and Marine Pay and Pensions Act 1865  
Air Force (Constitution) Act 1917  
Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939  
Personal Injuries (Emergency Provisions) Act 1939  
Pensions (Mercantile Marine) Act 1942  
Polish Resettlement Act 1947  
Social Security Administration Act 1992  
Social Security Contributions and Benefits Act 1992  
Social Security Act 1998
2. To establish pregnancy for the purpose of obtaining welfare foods  
Section 13 of the Social Security Act 1988 (schemes for distribution etc of welfare foods)
3. To secure registration of still-birth  
Section 11 of the Births and Deaths Registration Act 1953 (special provision as to registration of still birth)
4. To enable payment to be made to an institution or other person in case of mental disorder of persons entitled to payment from public funds.  
Section 142 of the Mental Health Act 1983
5. To establish unfitness for jury service  
Juries Act 1974
6. To support late application for reinstatement in civil employment or notification of non-availability to take up employment owing to sickness.  
Reserve Forces (Safeguarding of Employment) Act 1985.
7. To enable a person to be registered as an absent voter on grounds of physical incapacity  
Representation of the People Act 1983
8. To support applications for certificates conferring exemption from charges in respect of drugs, medicines and appliances.  
National Health Service Act 1977

9. To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable. Local Government Finance Act 1992.

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16. PART 17<sup>53</sup>

17.

17.1.1 PAYMENT UNDER THE CONTRACT

458. The HB shall make payments to the Contractor under the Contract promptly and in accordance with the terms of the Contract and any other terms based on which the payment is made (including, for the avoidance of doubt, any payment due pursuant to clause 0), subject to any right the HB may have to set off against any amount payable to the Contractor under the Contract any amount-

458.1 that is owed by the Contractor to the HB under the Contract; or

458.2 that the HB may withhold from the Contractor in accordance with the terms of the Contract or any other terms based on which the payment is made.

459. [Subject to clause 0]<sup>54</sup> The HB shall make payments to the Contractor in such amount and in such manner as specified in any directions for the time being in force under section 17M of *the Act*. Where, pursuant to directions made under section 17M of *the Act*, the HB is required to make a payment to the Contractor under the Contract but subject to conditions, those conditions are to be a term of the Contract.

460. [Payments to be made to the Contractor (and any relevant conditions to be met by the Contractor in relation to such payments) in respect of services where payments, or the amount of any such payments, are not specified in directions pursuant to clause 0, are set out in Schedule 7 to this Contract.]<sup>55</sup>

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<sup>53</sup> Part 17 is required by regulations 22 and 23 of *the Regulations* and section 28T(2) of *the Act*.

<sup>54</sup> The words in square brackets only need to be included if clause 0 is to be included.

<sup>55</sup> Clause 0 needs to be included if, pursuant to the Contract (Parts 8,9 or 11), the Contractor is providing:-

- *additional services* that are not funded by the *global sum* or *out of hours services*; and/or
- *enhanced services*

and in either case, the payments to be made in respect of such services, and the conditions upon which payment is to be made, are not specified in Directions made under section 17M of *the Act*. It will also need to be included if there are any other payments to be made, where the detail of such payments is not specified in directions, for example payments in respect of premises.

18. PART 18<sup>56</sup>  
18.1.1  
18.1.2 FEES AND CHARGES

461. The Contractor shall not, directly or indirectly, demand or accept a fee or other remuneration from any of the contractor's patients for the provision of any treatment whether under the Contract or otherwise, or any prescription or repeat prescription for any drug or appliance, except in the circumstances set out in clause 0.

462. The Contractor may demand or accept a fee or other remuneration—

462.1 from any statutory body for services rendered for the purposes of that body's statutory functions;

462.2 from any body, employer or school for a routine medical examination of persons for whose welfare the body, employer or school is responsible, or an examination of such persons for the purpose of advising the body, employer or school of any administrative action they might take;

462.3 for treatment which is not primary medical services or otherwise required to be provided under the Contract and which is given-

462.3.1 pursuant to the provisions of section 57 of *the Act*, or

462.3.2 in accommodation provided by a care home service which is not providing services under the Act

if, in either case, the Contractor is serving on the staff of a hospital providing services under *the Act* as a specialist providing treatment of the kind the patient requires and if, within 7 days of giving the treatment, the Contractor or the person providing the treatment supplies the HB, on a form provided by it for the purpose, with such information about the treatment as it may require;

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<sup>56</sup> This Part is required by *the Regulations* (see regulation 24 and Schedule4).

462.4 under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);

462.5 when the contractor treats a patient under clause 0, in which case it shall be entitled to demand and accept a reasonable fee from the patient (recoverable in certain circumstances under clause 0) for any treatment given, if it gives the patient a receipt;

462.6 for attending and examining (but not otherwise treating) a patient-

462.6.1 at his request at a police station in connection with possible criminal proceedings against the patient,

462.6.2 at the request of a commercial, educational or not-for-profit organisation for the purpose of creating a medical report or certificate, or

462.6.3 for the purpose of creating a medical report required in connection with an actual or potential claim for compensation

462.7 for treatment consisting of an immunisation for which no remuneration is payable by the HB and which is requested in connection with travel abroad;

462.8 for prescribing or providing drugs or appliances (including a collection of such drugs and appliances in the form of a travel kit) which a patient requires to have in his possession solely in anticipation of the onset of an ailment or occurrence of an injury while he is outside the United Kingdom but for which he is not requiring treatment when the medicine is prescribed;

462.9 for a medical examination to enable a decision to be made whether or not it is inadvisable on medical grounds for a person to wear a seat belt, or for the purpose of creating a report relating to a road traffic accident or criminal assault, or that offers an opinion as to whether a patient is fit to travel;

462.10 where the person is not one to whom any of paragraphs (a), (b) or (c) of section 26(1) of *the Act* applies (including by reason of regulations under section 26(1E)) of that Act), for testing the sight of that person;

462.11 where the Contractor is authorised or required by a Health Board under the contract in accordance with paragraph 38 of Schedule 5 to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than under pharmaceutical services, any Scheduled drug;

462.12 for prescribing or providing drugs for malaria chemoprophylaxis.

463. Where a person applies to the Contractor for the provision of essential services and claims to be on the Contractor's list of patients, but fails to produce that person's *medical card* on request 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 fee accordingly under clause 0, subject to the provision for repayment contained in clause 0.

464. Where a person from whom the Contractor received a fee under clause 0 applies to the HB for a refund within 14 days of payment of the fee (or such longer period not exceeding a month as the HB may allow if it is satisfied that the failure to apply within 14 days was reasonable) and the HB is satisfied that the person was on the Contractor's list of patients when the treatment was given, the HB may recover the amount of the fee from the Contractor, by deduction from its remuneration or otherwise, and shall pay that amount to the person who paid the fee.

465. Part 18 shall survive the expiry or termination of the Contract<sup>57</sup>.

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<sup>57</sup> This clause is not mandatory but it is recommended.

- 19. PART 19<sup>58</sup>
  - 19.1.1
  - 19.1.2 CLINICAL GOVERNANCE

466. The Contractor shall have 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.

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<sup>58</sup> This Part is required by *the Regulations* (see paragraph 121 of Schedule 5).

- 20. PART 20<sup>59</sup>
  - 20.1.1
  - 20.1.2 INSURANCE

467. The Contractor shall at all times hold adequate insurance against liability arising from negligent performance of clinical services under the Contract.

468. 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.

469. For the purposes of clauses 0 to 0-

469.1 “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor; and

469.2 the Contractor shall be regarded as holding insurance if it is held by an employee of the Contractor in connection with clinical services which that employee provides under the contract or, as the case may be, sub-contract.

470. The Contractor shall at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with the Contract which are not covered by the insurance referred to in clause 0.

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<sup>59</sup> This Part is required by *the Regulations* (see paragraph 122 and 123 of Schedule 5).

21. PART 21<sup>60</sup>

21.1.1 COMPLIANCE WITH LEGISLATION AND GUIDANCE

471. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the HB, *and* the Scottish Ministers.

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<sup>60</sup> This Part is required by *the Regulations* (see paragraph 125 of Schedule 5).

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22. PART 23<sup>61</sup>

22.1.1

22.1.2 COMPLAINTS

22.1.3 Complaints procedure

475. The Contractor shall establish and operate a complaints procedure to deal with any complaints in relation to any matter reasonably connected with the provision of services under the Contract.

476. The complaints procedure referred to above shall-

476.1 comply with the requirements in clauses 0 to 0;

477. The Contractor shall take reasonable steps to ensure that patients are aware of-

477.1 the complaints procedure;

477.2 the role of the HB and other bodies in relation to complaints about services under the Contract, and

477.3 the right to assistance with any complaint from independent advocacy services..

478. The Contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

479. 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

479.1 where the patient is a child-

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

479.1.2 by a person duly authorised by a local authority , where the child is in the care of a local authority under the Children (Scotland) Act 1995.

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

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

480. 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.

481. Subject to clause 0, the period for making a complaint is-

481.1 six months from the date on which the matter which is the subject of the complaint occurred; or

481.2 six 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 12 months after the date on which the matter which is the subject of the complaint occurred.

482. Where a complaint is not made during the period specified in clause 0, the person referred to in clause 0 may, if he is of the opinion that-

482.1 having regard to all the circumstances of the case, it would have been unreasonable for the complainant to make the complaint within that period; and

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<sup>61</sup> This Part is required by *the Regulations*: see Part 6 of Schedule 5.

482.2 notwithstanding the time that has elapsed since the date on which the matter which is the subject matter of the complaint occurred, it is still possible to investigate the complaint properly

treat the complaint as if it had been received during the period specified in clause 0.

483. The Contractor shall nominate-

483.1 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 whom complaints shall be directed, and to be responsible for the operation of the complaints procedure and the investigation of complaints; and

483.2 a partner, or other 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.

484. All complaints shall be-

484.1 either made or recorded in writing,

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

484.3 properly investigated.

485. Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under clause 0 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.

486. Where the investigation of the complaint requires consideration of the patient's medical records, the person specified under clause 0 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.

487. 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.

#### 22.1.4 Co-operation with investigations

488. The Contractor shall co-operate with-

488.1 any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the Contract undertaken by the HB and the Scottish Public Services Ombudsman ; and

488.2 any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the Contractor.

489. In the previous clause-

489.1 "NHS body" means (in Scotland) any Health Board or NHS Trust, (in England and Wales), a Primary Care Trust, *an NHS trust, an NHS foundation trust*, a Strategic Health Authority, *a Local Health Board*, and (in Northern Ireland) *a Health and Social Services Board or a Health and Social Services Trust*; and

489.2 "local authority" means a council constituted under section 2 of the Local Government etc, (Scotland) Act 1994 (constitution of councils), any of the bodies listed in section 1 of the Local Authority Social Services Act 1970 or the Council of the Isles of Scilly.

490. In co-operating with any investigation, the Contractor shall, by way of example,-

490.1 answer questions reasonably put to the Contractor by the HB;

490.2 provide any information relating to the complaint reasonably required by the HB;

490.3 attend any meeting to consider the complaint (if held at a place and time as reasonably required by the HB, and due notice has been given) if the Contractor's presence at the meeting is reasonably required by the HB.

491. The Contractor shall provide to the HB, at such intervals as required by the HB, such information relating to the number, subject matter and handling of complaints as is reasonably required by the HB.

492. Part 23 of this Contract shall survive the expiry or termination of the Contract insofar as it relates to any complaint or investigation reasonably connected with the provision of services under the contract before it terminated<sup>62</sup>.

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<sup>62</sup> This clause is not mandatory but it is recommended to ensure that the Contractor is still under an obligation to comply with the investigation of a complaint or with any relevant investigation where the Contract has terminated or expired.

23. PART 24<sup>63</sup>

23.1.1 DISPUTE RESOLUTION PROCEDURES

23.1.2 Local resolution of contract disputes

493. Subject to clause 0, in the case of any dispute arising out of or in connection with the Contract, the Contractor and the HB must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the *NHS dispute resolution procedure* (or, where applicable, before commencing court proceedings).

494. Either the Contractor or the HB may, if it wishes to do so, invite the *Area Medical Committee* to participate in discussions which take place pursuant to clause 0,

495. In the case of a dispute which falls to be dealt with under the procedure specified in paragraph 36 of Schedule 5 to *the Regulations*, clause 0 does not apply where it is not practicable for the parties to attempt local resolution before the expiry of the 7-day period specified in paragraph 36(4) of Schedule 5 to *the Regulations*.

23.1.3 Dispute resolution: non-NHS Contracts<sup>64</sup>

496. Any dispute arising out of or in connection with the Contract, except matters dealt with under the complaints procedure set out in clauses 0 to 0 of this Contract, may be referred for consideration and determination to the Scottish Ministers, if:

496.1 the HB so wishes and the Contractor has agreed in writing; or

496.2 the Contractor so wishes (even if the HB does not agree).

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<sup>63</sup> Except where specifically indicated in the footnotes, this Part is required by *the Regulations* (see Part 7 of Schedule 5).

<sup>64</sup> These clauses are mandatory terms only if the contract is not an *NHS contract*. Otherwise, the clauses should be deleted from the Contract.

497. In the case of a dispute referred to the Scottish Ministers under clause 0, the procedure to be followed is the *NHS dispute resolution procedure*, and the parties agree to be bound by a determination made by the *adjudicator*.

#### 23.1.4 *NHS dispute resolution procedure*

498. Subject to clause 0, the *NHS dispute resolution procedure* applies in the case of any dispute arising out of or in connection with the Contract which is referred to the Scottish Ministers in accordance with [Section 17A(4) of *the Act*/ clause 0 above]<sup>65</sup>, and the HB and the Contractor shall participate in the *NHS dispute resolution procedure* as set out in paragraphs 101 and 102 of Schedule 5 to *the Regulations*.

499. The *NHS dispute resolution procedure* does not apply where the Contractor refers a matter for determination in accordance with clause 0, and in such a case the procedure specified in paragraph 36 of Schedule 5 to *the Regulations* shall apply instead.

500. Any party wishing to refer a dispute shall send to the Scottish Ministers a written request for dispute resolution which shall include or be accompanied by-

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

500.2 a copy of the Contract; and

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

501. Any party wishing to refer a dispute as mentioned in clause 0 must send the request under clause 0 within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

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<sup>65</sup> If the contract is an NHS contract, the parties must select the phrase “section 17A(4) of *the Act*”. If the contract is not an NHS contract, the parties must select the phrase “clause 0 above”.

502. In clauses 0 to 0 “any dispute arising out of or in connection with the contract” includes any dispute arising out of or in connection with the termination of the contract.

503. Part 24 shall survive the expiry or termination of the Contract<sup>66</sup>.

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<sup>66</sup> This clause is not mandatory but it is recommended to ensure that the dispute resolution procedures set out in this Part can still apply in relation to any dispute commenced after or continuing at the termination or expiry of the Contract.

24. PART 25<sup>67</sup>

24.1.1 VARIATION AND TERMINATION OF THE CONTRACT

24.1.2 Variation of the Contract: general

504. Subject to Part 10 (opts out of *additional* and *out of hours services*), clauses 0, 0 and **Error! Reference source not found.**, and this Part (variation and termination of the Contract), no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the HB and the Contractor.

505. In addition to the specific provision made in clauses 0, 0 and 0, the HB may vary the Contract without the Contractor's consent so as to comply with *the Act*, any regulations made pursuant to that Act, or any direction given by the Scottish Ministers pursuant to that Act where it-

505.1 is reasonably satisfied that it is necessary to vary the Contract in order so to comply; and

505.2 notifies the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

506. Where it is reasonably practicable to do so, the date that the proposed variation is to take effect shall be not less than 14 days after the date on which the notice under clause 0 is served on the Contractor.

**Variation provisions specific to a contract with an individual medical practitioner<sup>68</sup>**

507. Where the Contractor is an individual medical practitioner and proposes to practise in partnership with one or more persons during the existence of the Contract, the Contractor shall notify the HB in writing of-

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<sup>67</sup> Except where it is indicated in a footnote that a particular provision is only required in certain types of contract, this Part is required by *the Regulations*: see Part 8 of Schedule 5.

507.1 the name of the person or persons with whom it proposes to practise in partnership;

507.2 the date on which the Contractor wishes to change its status from that of an individual medical practitioner to that of a partnership, which shall be not less than 28 days after the date upon which it has served the notice on the HB pursuant to this clause.

508. A notice under clause 0 shall, in respect of the person or each of the persons with whom the Contractor is proposing to practise in partnership, and also in respect of the Contractor as regards the matters specified in clause 0-

508.1 confirm that he is either a medical practitioner or a person who satisfies the conditions specified in section 17L(2)(c)(i) to (viii) of *the Act*,

508.2 confirm that he is a person who satisfies the conditions imposed by regulations 3 and 4 of *the Regulations*; and

508.3 state whether or not it is to be a *limited partnership*, and if so, who is to be a limited partner and who a general partner,

and the notice shall be signed by the Contractor, and by the person or each of the persons with whom it is proposing to practice in partnership.

509. The Contractor shall ensure that any person who will practise in partnership with it is bound by the Contract, whether by virtue of a partnership deed or otherwise.

510. If the HB is satisfied as to the accuracy of the matters specified in the notice referred to in clause 0, the HB shall give notice in writing to the Contractor confirming that the Contract shall continue with the partnership entered into by the Contractor and its partners, from a date that the HB specifies in that notice.

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<sup>68</sup> If the Contractor is not an individual medical practitioner, then this clause does not need to be included.

511. The date specified by the HB pursuant to clause 0 shall be the date requested in the notice served by the Contractor pursuant to clause 0, or, where that date is not reasonably practicable, the date closest to the requested date as is reasonably practicable.

512. Where the Contractor has given notice to the HB pursuant to clause 0, the HB may vary the Contract but only to the extent that it is satisfied is necessary to reflect the change in status of the Contractor from an individual medical practitioner to a partnership. If the HB does propose so to vary the Contract, it shall include in the notice served on the Contractor pursuant to clause 0 the wording of the proposed variation and the date upon which that variation is to take effect.

**Variation provisions specific to a contract with a Partnership<sup>69</sup>**

513. Subject to clause 0, where the Contractor consists of a partnership, in the event that the partnership is terminated or dissolved, the Contract shall only continue with one of the former partners if that partner is-

513.1 nominated in accordance with clause 0; and

513.2 a medical practitioner who meets the condition in regulation 3(2)(a) of *the Regulations*,

and provided that the other requirements in clause 0 are met.

514. The Contractor shall notify the HB in writing at least 28 days in advance of the date on which the Contractor proposes to change its status from that of a partnership to that of an individual medical practitioner. The notice shall:

514.1 specify the date on which the Contractor proposes to change its status from that of a partnership to that of an individual medical practitioner;

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<sup>69</sup> If the Contractor is not a partnership, then this clause does not need to be included.

514.2 specify the name of the medical practitioner with whom the Contract will continue, which must be one of the partners; and

514.3 be signed by all the persons who are practising in partnership.

515. If the partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has died-

515.1 clauses 0 and 0 shall not apply; and

515.2 the Contract shall continue with the individual who has not died only if that individual is a medical practitioner who meets the conditions in regulation 3(2)(a) of *the Regulations*, and that individual shall in any event notify the HB in writing as soon as is reasonably practicable of the death of his partner.

516. When the HB receives a notice pursuant to clause 0 or 0, it shall acknowledge in writing receipt of the notice, and in relation to a notice served pursuant to clause 0, the HB shall do so as soon as reasonably practicable, and in any event before the date specified pursuant to clause 0.

517. Where the Contractor gives notice to the HB pursuant to clause 0 or 0, the HB may vary the Contract but only to the extent that it is satisfied is necessary to reflect the change in status of the Contractor from a partnership to an individual medical practitioner. If the HB varies the Contract, it shall notify the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

#### 24.1.3 Termination by agreement

518. The HB and the Contractor may 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.

#### 24.1.4 Termination by the Contractor

519. The Contractor may terminate the Contract by serving notice in writing on the HB at any time.

520. [Where the Contractor serves notice pursuant to clause 0, the Contract shall terminate six months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the Contract shall instead terminate on the last calendar day of the month in which the termination date falls.]<sup>70</sup>

521. [Where the Contractor serves notice pursuant to clause 0, the Contract shall terminate three months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the Contract shall instead terminate on the last calendar day of the month in which the termination date falls.]<sup>71</sup>

522. The Contractor may give notice in writing (“late payment notice”) to the HB if the HB has failed to make any payments due to the Contractor in accordance with Part 16 of this Contract. The Contractor shall specify in the late payment notice the payments that the HB has failed to make in accordance with Part 16 of the Contract.

523. The Contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the HB has still failed to make payments due to the Contractor, and that were specified in the late payment notice served on the HB pursuant to clause 0.

524. If, following receipt of a late payment notice, the HB refers the matter to the *NHS dispute resolution procedure* within 28 days of the date upon which it is served with the late payment notice, and it notifies the Contractor in writing that it has done so within that period of time, the Contractor may not terminate the Contract pursuant to clause 0 until-

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<sup>70</sup> This clause should be included where the Contractor is a partnership or a limited company. Where the Contractor is an individual medical practitioner, this clause should be deleted.

524.1 there has been a determination of the dispute pursuant to paragraph 101 of Schedule 5 to *the Regulations*; or

524.2 the HB ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

525. Clauses 0 to 0 are without prejudice to any other rights to terminate the Contract that the Contractor may have.

#### 24.1.5 Termination by the HB: general provisions

526. The HB may only terminate the Contract in accordance with the provisions of Part 25 of this Contract.

527. The HB shall serve notice in writing on the Contractor terminating the Contract forthwith if the Contractor is an individual medical practitioner, and the medical practitioner no longer satisfies the condition specified in regulation 3(1) of *the Regulations*.

528. Where the Contractor is-

528.1 a partnership, and the condition specified in regulation 3(2)(a) of *the Regulations* is no longer satisfied; or

528.2 a company limited by shares, and the condition specified in regulation 3(3)(a) of *the Regulations* is no longer satisfied

clause 0 shall apply.

529. Where clause 0 or 0 applies, the HB shall, subject to clause 0-

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<sup>71</sup> This clause should be included where the Contractor is an individual medical practitioner. Where the Contractor is a partnership or a limited company, this clause should be deleted.

529.1 serve notice in writing on the Contractor terminating the Contract forthwith; or

529.2 serve notice in writing on the Contractor confirming that the HB will allow the Contract to continue, for a period specified by the HB of up to six months (the “interim period”), during which time the HB shall, with the consent of the Contractor, employ or supply one or more *general medical practitioners* to the Contractor for the interim period to assist the Contractor in the provision of clinical services under the Contract.

530. Before deciding which of the options in clause 0 to pursue, the HB shall, whenever it is reasonably practicable to do so, consult the *area Medical Committee* for its area.

531. If the Contractor does not, pursuant to clause 0, consent to the HB employing or supplying a *general medical practitioner* during the interim period, the HB shall serve notice in writing on the Contractor terminating the Contract forthwith.

532. If, at the end of the interim period, the Contractor still falls within clause 0 or 0, the HB shall serve notice in writing on the Contractor terminating the Contract forthwith.

533. The HB 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 this Contract was entered into, it has come to the attention of the HB that written information provided to the HB by the Contractor before the contract was entered into in relation to the conditions set out in regulation 3 and 4 of *the Regulations* (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

534. The HB may serve notice in writing on the Contractor terminating the Contract forthwith, or from such date as may be specified in the notice if-

534.1 in the case of a contract with a medical practitioner, that medical practitioner;

534.2 in the case of a contract with a partnership, any partner or the partnership; and

534.3 in the case of a contract with a company limited by shares, the company, any person legally and beneficially owning a share in the company, or any director or secretary of the company,

falls within clause 0 during the existence of the Contract.

535. A person falls within this clause if-

535.1 the person does not satisfy the conditions prescribed in section 17L(2)(c) or (3)(b) of *the Act*;

535.2 the person or it is the subject of a *national disqualification*;

535.3 subject to clause 0, the person 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;

535.4 subject to clause 0, he has been dismissed (otherwise than by reason of redundancy) from any employment by a *health service body* unless before the HB has served a notice terminating the Contract pursuant to this clause, he is employed by the *health service body* that dismissed him or by another *health service body*;

535.5. the person is disqualified from a list unless the person's name has subsequently been included in such a list;

535.6 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;

535.7 he has been convicted in the United Kingdom of a criminal offence, and has been sentenced to a term of imprisonment of over six months;

535.8 subject to clause 0, he has been convicted elsewhere of an offence which would if committed in Scotland constitute a criminal offence, and been sentenced to a term of imprisonment of over six months;

535.9 he or it has-

535.9.1 been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) the person has been discharged or the bankruptcy order has been annulled;

535.9.2 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;

535.9.3 an administrator, administrative receiver or receiver appointed in respect of it;

535.9.4 an administration order made in respect of it under Part II of the Insolvency Act 1986, or

535.9.5 been wound up under Part IV of the Insolvency Act 1986.

535.10 that person is a partnership and-

535.10.1 a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or

535.10.2 an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership together;

535.11 he has been-

535.11.1 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 the person was responsible or to which he was privy, or which he by his conduct contributed to or facilitated;

535.11.2 removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;

535.12 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 (failure to pay under county court administration order);

535.13. that person has refused to comply with a request by the HB for that person to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the contract and, in a case where the contract is a partnership or with a company, the HB is not satisfied that the Contractor is taking adequate steps to deal with the matter.

536. The HB shall not terminate the Contract pursuant to clause 0 where the HB 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, a partner, a person legally and beneficially holding a share in the company, or a director or secretary of the company, as the case may be.

537. The HB shall not terminate the Contract pursuant to clause 0 until a period of at least three 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 HB may only terminate the Contract in the latter situation if there is no finding of unfair dismissal at the end of those proceedings.

538. The HB shall not terminate the Contract pursuant to clause 0 where the HB is satisfied that the conviction does not make the person unsuitable to be a contractor, a partner, a person legally and beneficially holding a share in the company, or a director or secretary of the company, as the case may be.

539. The HB 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-

539.1 the Contractor has breached the Contract and the HB 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

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

#### 24.1.6 Termination by the HB: remedial notices and breach notices

540. Where the Contractor has breached the Contract other than as specified in clauses 0 to 0 and the breach is capable of remedy, the HB 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").

541. A remedial notice shall specify-

541.1 details of the breach;

541.2 the steps the Contractor must take to the satisfaction of the HB in order to remedy the breach; and

541.3 the period during which the steps must be taken (“the notice period”).

542. The notice period shall, unless the HB 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 28 days from the date that notice is given.

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

544. Where the Contractor has breached the Contract other than as specified in clauses 0 to 0 and the breach is not capable of remedy, the HB may serve notice on the Contractor requiring the contractor not to repeat the breach (“breach notice”).

545. If, following a breach notice or a remedial notice, the Contractor-

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

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

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

546. The HB shall not exercise its right to terminate the Contract under the previous clause unless it is satisfied that the cumulative effect of the breaches is such that it would be prejudicial to the efficiency of the services to be provided under the Contract to allow the Contract to continue.

547. If the Contractor is in breach of any obligation and a breach notice or a remedial notice in respect of that default has been given to the Contractor, the HB 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.

**Termination by the HB: additional provisions specific to Contracts with companies limited by shares<sup>72</sup>**

548. If the HB becomes aware that the Contractor is carrying on any business which the HB considers to be detrimental to the Contractor’s performance of its obligations under the Contract-

548.1 the HB shall be entitled to give notice to the Contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the notice is given (“the notice period”); and

548.2 if the Contractor has not satisfied the HB that it has ceased carrying on that business by the end of the notice period, the HB may, by a further written notice, terminate the Contract forthwith or from such date as may be specified in the notice.

**Termination by the HB: additional provisions specific to Contracts with a partnership<sup>73</sup>**

549. Where the Contractor is a partnership, the HB shall be entitled to terminate the Contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the Contract if in its reasonable opinion, the HB considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the Contractor or the HB to perform its obligations under the Contract.

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<sup>72</sup> If the Contractor is not a company limited by shares, this clause should be deleted.

550. A notice given to the Contractor pursuant to clause 0 shall specify-

550.1 the date upon which the Contract is to be terminated; and

550.2 the HB's reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the Contractor or the HB to perform its obligations under the Contract.

#### 24.1.7 Contract sanctions

551. In clauses 0 to 0, “contract sanction” means-

551.1 termination of specified obligations under the Contract;

551.2 suspension of specified obligations under the Contract for a period of up to six months; or

551.3 withholding or deducting monies otherwise payable under the Contract.

552 Subject to clause 0, where the HB is entitled to terminate the Contract pursuant to clauses 0, 0, 0, 0 and 0, it may instead impose any of the contract sanctions if the HB is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the HB's entitlement to terminate the Contract.

553. The HB shall not, under clause 0, be entitled to impose any contract sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, *essential services*.

554. If the HB 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

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<sup>73</sup> If the Contractor is not a partnership, this clause should be deleted.

will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

555. Subject to clauses 0 to 0, the HB shall not impose the contract sanction until at least 28 days after it has served notice on the Contractor pursuant to clause 0 unless the HB 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.

556. Where the HB imposes a contract sanction, the HB shall be entitled to charge the Contractor the reasonable costs of additional administration that the HB has incurred in order to impose, or as a result of imposing, the contract sanction.

24.1.8 Contract sanctions and the *NHS dispute resolution procedure*

557. If there is a dispute between the HB and the Contractor in relation to a contract sanction that the HB is proposing to impose, the HB shall not, subject to clause 0, impose the proposed contract sanction except in the circumstances specified in clause 0 or 0.

558. If the Contractor refers the dispute relating to the contract sanction to the *NHS dispute resolution procedure* within 28 days beginning on the date on which the HB served notice on the Contractor in accordance with clause 0 (or such longer period as may be agreed in writing with the HB), and notifies the HB in writing that it has done so, the HB shall not impose the contract sanction unless-

558.1 there has been a determination of the dispute pursuant to paragraph 101 of Schedule 5 to *the Regulations* and that determination permits the HB to impose the contract sanction; or

558.2 the Contractor ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

559. If the Contractor does not invoke the *NHS dispute resolution procedure* within the time specified in clause 0, the HB shall be entitled to impose the contract sanction forthwith.

560. If the HB is satisfied that it is necessary to impose the contract sanction before *the NHS dispute resolution procedure* is concluded in order to protect the safety of the Contractor's patients or protect itself from material financial loss, the HB shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

#### 24.1.9 Termination and the *NHS dispute resolution procedure*

561. Where the HB is entitled to serve written notice on the Contractor terminating the contract pursuant to clauses 0, 0, 0, 0 or 0, the HB 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 28 days after the date on which the HB has served that notice on the Contractor unless clause 0 applies.

562. This clause applies if the HB is satisfied that a period less than 28 days is necessary in order to protect the safety of the Contractor's patients or protect itself from material financial loss.

563. In a case falling within clause 0 where the exception in clause 0 does not apply, where the Contractor invokes the *NHS dispute resolution procedure* before the end of the period of notice referred to in clause 0, and it notifies the HB 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 0.

564. The Contract shall only terminate pursuant to this clause if and when there has been a determination of the dispute pursuant to paragraph 101 of Schedule 5 to *the Regulations* and that determination permits the HB to terminate the Contract or the Contractor ceases to pursue the *NHS dispute resolution procedure*, whichever is the sooner.

565. If the HB is satisfied that it is necessary to terminate the Contract before the *NHS dispute resolution procedure* is concluded in order to protect the safety of the Contractor’s patients or protect itself from material financial loss, clauses 0 and 0 shall not apply and the HB 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 0, 0, 0, 0 or 0.

#### 24.1.10 Consultation with the *Area Medical Committee*

566. Whenever the HB is considering terminating the Contract pursuant to clauses 0, 0, 0, 0, 0, 0 or 0 or imposing a contract sanction, it shall, whenever it is reasonably practicable to do so, consult the *Areal Medical Committee* for its area before it terminates the Contract or imposes a contract sanction.

567. Whether or not the *Area Medical Committee* has been consulted pursuant to clause 0, whenever the HB imposes a contract sanction on the Contractor or terminates the Contract pursuant to this Part, it shall, as soon as reasonably practicable, notify the *Area Medical Committee* in writing of the contract sanction imposed or of the termination of the Contract (as the case may be). The obligation to notify the *Area Medical Committee* of the matters set out in this clause shall survive the termination of the Contract.

#### 24.1.11 Consequences of termination<sup>74</sup>

568. The termination of the Contract, for whatever reason, is without prejudice to the accrued rights of either party under the Contract.

569. On the termination of the Contract for any reason, the Contractor shall-

569.1 subject to the requirements of this clause, cease performing any work or carrying out any obligations under the Contract;

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<sup>74</sup> The parties are required to make suitable provision for arrangements on the termination of the Contract, including the consequences (whether financially or otherwise) of the Contract ending, subject to any specific requirements of *the Regulations*: see paragraph 116 of Schedule 5 to *the Regulations*.

569.2 co-operate with the HB to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner;

569.3 co-operate with the HB to enable the Contractor's patients to be transferred to one or more other contractors or providers of *essential services* (or their equivalent), which shall include-

569.3.1 providing reasonable information about individual patients, and

569.3.2 delivering patient records in any form

to such other persons as the HB specifies.

569.4 deliver up to the HB all property belonging to the HB including all documents, forms, computer hardware and software, drugs, appliances or medical equipment which may be in the Contractor's possession or control;

570. Subject to clauses 0 to 0, the HB's obligation to make payments to the Contractor in accordance with the Contract shall cease on the date of termination of the Contract.

571. On termination of the Contract or termination of any obligations under the Contract for any reason, the HB shall perform a reconciliation of the payments made by the HB to the Contractor and the value of the work undertaken by the Contractor under the Contract. The HB shall serve the Contractor with written details of the reconciliation as soon as reasonably practicable, and in any event no later than 28 days after the termination of the Contract.

572. If the Contractor disputes the accuracy of the reconciliation, the Contractor may refer the dispute to the *NHS dispute resolution procedure* in accordance with the terms of the Contract within 28 days beginning on the date on which the HB served

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Subject to this requirement, the parties could draft their own provisions dealing with the consequences

the Contractor with written details of the reconciliation. The parties shall be bound by the determination of the dispute.

573. Each party shall pay the other any monies due within three months of the date on which the HB served the Contractor with written details of the reconciliation, or the conclusion of the *NHS dispute resolution procedure*, as the case may be.

574. The obligations contained in clauses 0 to 0 shall continue to apply notwithstanding the termination of the Contract.

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of termination.

25. PART 26

25.1.1 NON-SURVIVAL OF TERMS<sup>75</sup>

575. Unless expressly provided, no term of this Contract shall survive expiry or termination of this Contract. Express provision is made in relation to-

- 575.1 clauses 0 and 0 (patient records);
  - 575.2 Part 18 (fees and charges);
  - 575.3 Part 23 (complaints);
  - 575.4 Part 24 (dispute resolution procedures);
  - 575.5 clause 567;
  - 575.6 clauses 0 to 0 (consequences of termination); and
  - 575.7 clauses 0 and 0.
- 25.1.2
  - 25.1.3
  - 25.1.4
  - 25.1.5
  - 25.1.6 ENTIRE AGREEMENT<sup>76</sup>

576. Subject to Part 10 (opts outs of *additional* and *out of hours services*), clauses 0, 0, and **Error! Reference source not found.** and any variations made in accordance with Part 25, this Contract constitutes the entire agreement between the parties with respect to its subject matter.

577. The Contract supersedes any prior agreements, negotiations, promises, conditions or representations, whether written or oral, and the parties confirm that

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<sup>75</sup> This clause is not required by the Regulations, but is recommended.

<sup>76</sup> This clause is not required by the Regulations, but is recommended.

they did not enter into the Contract on the basis of any representations that are not expressly incorporated into the Contract. However, nothing in this Contract purports to exclude liability on the part of either party for fraudulent misrepresentation.

#### **25.1.7 GOVERNING LAW AND JURISDICTION<sup>77</sup>**

578. This Contract shall be governed by and construed in accordance with Scots law.

579. Without prejudice to the dispute resolution procedures contained in this Contract, in relation to any legal action or proceedings to enforce this Contract or arising out of or in connection with this Contract, each party agrees to submit to the exclusive jurisdiction of the Scottish courts.

580. Clauses 0 and 0 shall continue to apply notwithstanding the termination of the Contract.

#### **25.1.8 WAIVER, DELAY OR FAILURE TO EXERCISE RIGHTS<sup>78</sup>**

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

#### **25.1.9 FORCE MAJEURE<sup>79</sup>**

582. Neither party shall be responsible to the other for any failure or delay in performance of its obligations and duties under this Contract which is caused by circumstances or events beyond the reasonable control of a party. However, the affected party must promptly on the occurrence of such circumstances or events:

582.1 inform the other party in writing of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and

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<sup>77</sup> This clause is not required by the Regulations, but is recommended.

<sup>78</sup> This clause is not required by the Regulations, but is recommended.

<sup>79</sup> This clause is not required by the Regulations, but is recommended.

582.2 take all action within its power to comply with the terms of this Contract as fully and promptly as possible.

583. Unless the affected party takes such steps, clause 0 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, unless the cause of failure was beyond reasonable control.

584. If the affected party is delayed or prevented from performing its obligations and duties under the Contract for a continuous period of 3 months, then either party may terminate this Contract by notice in writing within such period as is reasonable in the circumstances (which shall be no shorter than 28 days).

585. 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 0 above, or if the other party otherwise consents.

#### 25.1.10 SEVERANCE<sup>80</sup>

586. Subject to clauses 0 and 0, if any term of this Contract, other than a mandatory term, is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such term shall, to the extent required, be deemed to be deleted from this Contract and shall not affect the validity, lawfulness or enforceability of any other terms of the Contract.

587. 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.

588. If the parties are unable to reach agreement as to the suitable alternative term or amendment within a reasonable period of commencement of the negotiations, then the parties may refer the dispute for determination in accordance with the *NHS dispute resolution procedure* set out in clauses 0 to 0 .

#### 25.1.11 SERVICE OF NOTICE<sup>81</sup>

589. Save as otherwise specified in this Contract or where the context otherwise requires, any notice or other information required or authorised by this Contract to be given by either party to the other party must be in writing and may be served:

589.1 personally;

589.2 by registered or recorded delivery post;

589.3 by telex, or facsimile transmission (the latter confirmed by telex or post);

589.4 unless the context otherwise requires and except in clause 0, electronic mail; or

589.5 by any other means which the HB specifies by notice to the Contractor.

590 Any notice or other information shall be sent to the address specified in the Contract or such other address as the HB or the Contractor has notified to the other.

591 Any notice or other information shall be deemed to have been served or given:

591.1 if it was served personally, at the time of service;

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<sup>80</sup> This clause is not required by the Regulations, but is recommended.

<sup>81</sup> This clause is not required by the Regulations, but is recommended.

591.2 if it was served by post, two *working days* after it was posted;  
and

591.3 if it was served by telex, electronic mail or facsimile transmission, if sent during *normal hours* then at the time of transmission and if sent outside *normal hours* then on the following *working day*.

592 Where notice or other information is not given or sent in accordance with clauses 0 to 0, such notice or other information is invalid unless the person receiving it elects, in writing, to treat it as valid.

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**SCHEDULE 1<sup>82</sup> (INDIVIDUAL)**

**Part 1**

The HB whose name, address, telephone number, fax number and email address (if any) is:

**Part 2**

The Contractor is a medical practitioner whose name, address, telephone number, fax number (if any) and email address (if any)<sup>83</sup> is:

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

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<sup>82</sup> Please use this form of Schedule if the Contractor is an individual medical practitioner.

<sup>83</sup> Please provide the address to which official correspondence and notices should be sent..

**SCHEDULE 1<sup>84</sup> (PARTNERSHIP)**

**Part 1**

The HB whose name, address, telephone number, fax number and email address (if any) is:

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**Part 2**

The Contractor is a [limited]<sup>85</sup> partnership under the name of [ ] car

The telephone number, fax number (if any) and email address (if any) of the Contractor are as follows:-

[insert details here]

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

The names of the partners at the date of signature of this Contract are:

	GENERAL / LIMITED <sup>86</sup>
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<sup>84</sup> Please use this form of Schedule if the Contractor is a general or *limited partnership*.

<sup>85</sup> Please delete if this is not applicable. Regulation 10(b)(i) of *the Regulations* requires that the Contract specify in the case of a partnership whether or not it is a *limited partnership*.

<sup>86</sup> Please delete whichever is not applicable. Regulation 10(b)(ii) requires that the Contract specify in the case of a partnership the names of the partners and, in the case of a *limited partnership*, their status as a general or limited partner.

	GENERAL / LIMITED

The Contract is made with the partnership as it is from time to time constituted and shall, subject to clause 0, continue to subsist notwithstanding:

- (1) the retirement, death or expulsion of any one or more partners; and/or
- (2) the addition of any one or more partners.<sup>87</sup>

The Contractor shall ensure that any person who becomes a partner in the partnership after the Contract has come into force is bound automatically by the Contract whether by virtue of a partnership deed or otherwise.

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<sup>87</sup> This provision is required by Regulation 12 of *the Regulations*.

**SCHEDULE 1<sup>88</sup> (COMPANY)**

**Part 1**

The HB whose name, address, telephone number, fax number and email address (if any) is:

**Part 2**

The Contractor is a company limited by shares whose name and registered office is:

The address to which official correspondence and notices may be sent is, and the contact telephone number, fax number (if any) and email address (if any) is:

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice in writing to the other party as soon as is reasonably practicable.

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<sup>88</sup> Please use this form of Schedule if the Contractor is a company limited by shares.

**SCHEDULE 2**

25.2 **SIGNATURES OF THE PARTIES TO THE AGREEMENT**

**Signed by**

For and on behalf of the HB

**Signed by**

In the presence of

[The Contract must be signed by a person with power to bind the Contractor. If the Contractor is a partnership, it is recommended that all of the partners comprising the partnership at the date the Contract is signed (whether those partners are general partners or limited partners) sign the Contract]

**SCHEDULE 3**  
**INFORMATION TO BE INCLUDED IN PRACTICE LEAFLETS**

A practice leaflet shall include—

1. The name of the Contractor.
2. In the case of a Contract with a partnership—
  - (a) whether or not it is a *limited partnership*; and
  - (b) 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 that person's 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 in accordance with clause 0 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.

15. The criteria for home visits and the method of obtaining such a visit.
16. The consultations available to patients under clauses 34 and 35, and 36 and 37.
17. The arrangements for services in the out of hours period and how the patient may contact such services.
18. .
19. The telephone number of NHS 24 and details of the NHS 24 website.
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 HB.

Note: If the services in paragraph 17 are not provided by the contractor, the fact that the Health Board referred to in paragraph 27 is responsible for commissioning the services

**SCHEDULE 5**  
**CLOSURE NOTICE**

<b>Application for List Closure</b>	
From: <i>Name of Contractor</i>	To: <i>Name of Health Board</i>
	Date:

In accordance with paragraph 29 of Schedule 5 to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004, on behalf of the above named contractor I/we wish to make of formal application for our list to be closed to new patients and assignments , as follows:

(1) Length of period of closure ( <i>which may not exceed 12 months and, in the absence of any agreement, shall be 12 months</i> )	
(2) Date from which closure will take effect	
(3) Date from which closure will cease to have effect	
(4) Current number of registered patients	
(5) Reduction in terms of either percentage of the number indicated in (4) above or an actual number of patients which would trigger a re-opening (or suspension of list closure) of the list*	
(6) Increase in terms of either percentage of the number indicated in (4) above or actual number of patients which would trigger a re-closure (or lifting of the suspension of list closure) of the list*	
(7) Any withdrawal or reduction of additional or enhanced services	

\* Please note that list re-opening and re-closure in these circumstances can occur only once during any period of list closure unless agreed between practices and the HB in exceptional circumstances – details as follows

Signed.....

For [Name of contractor]

**SCHEDULE 6**  
**PLAN FOR IMPROVEMENT OF PREMISES**

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**SCHEDULE 7**  
**PAYMENT SCHEDULE**

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