



SCOTTISH EXECUTIVE

Health Department
Human Resources Directorate

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

Dear Colleague

DEFAULT CONTRACT 2004

Summary

1. This Circular introduces the Default Contract for use in Scotland, a copy of which can be found in the links provided below.

Background

2. The Default Contract is a solution of last resort where it has proved impossible for the potential GMS contractor and the NHS Board to enter into a standard GMS Contract by 31st March 2004. In these circumstances, the Default Contract will allow services to patients to continue and for contractors to continue to receive payment.

3. The Default Contract must be read in conjunction with the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 (*"the Transitional Order"*), and, in particular, Article 13 of that Order, which sets out who is entitled to the Default Contract.

4. NHS Boards should note that in entering into a Default Contract, they may only do so on the terms indicated in the Default Contract, and may only modify the text of the Default Contract where an express option to modify the Contract is indicated: see Article 13(4)(b) of *the Transitional Order*.

5. In addition to the Default Contract, there is also attached a copy of the Guidance: 'Using the Default Contract 2004.'

6. An electronic copy of the Default 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\(M\)10.pdf](http://www.show.scot.nhs.uk/sehd/pca/PCA2004(M)10.pdf)

29 March 2004

Addresses

For action

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Action

7. 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 DEFAULT CONTRACT 2004

A GUIDANCE NOTE FOR HEALTH BOARDS

Introduction

1. The basic purpose of the Default Contract is as a solution of last resort where it has proved impossible for the potential GMS Contractor and the Health Board to enter into a standard GMS Contract by 31st March 2004. In these circumstances, the Default Contract will allow services to patients to continue and for Contractors to continue to receive payment. Contractors should note that the Default Contract is less flexible, and offers a more limited range of remuneration, than the GMS contract. All prospective Contractors and Health Boards are strongly encouraged to sign a GMS Contract even where there remains a dispute between them. Contractors should read paragraphs 6.14-6.18 of the guidance document "Implementing the new GMS Contract in Scotland".
2. The Default Contract must be read in conjunction with the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004 (*"the Transitional Order"*), and, in particular, article 13 of that Order, which sets out who is entitled to the Default Contract.
3. Health Boards should note that in entering into a Default Contract, they may only do so on the terms indicated in the Default Contract, and may only modify the text of the Default Contract where an express option to modify the Contract is indicated: see article 13(4)(b) of *the Transitional Order*.

Finalising a Default Contract

4. In the paragraphs below, an overview is given in relation to the Parts of the Default Contract where some adaptation will be needed to tailor the Contract to the particular Default Contractor with whom the Default Contract is to be made. Because of the nature of the Default Contract and the limited circumstances in which it is intended it will be used, the options to modify the Default Contract are very limited.
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. 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 must be deleted from a Default Contract with a Default Contractor as they are there to assist in the task of adapting the Default Contract, they do not form part of the Default Contract, and should no longer be relevant once the Default Contract has been drafted by the Health Board and is ready to be signed by the Parties.

Page 4 (Introductory)

6. The date that the contract is signed should be inserted in the spaces at the top of the page.

Part 4 (commencement and duration)

7. The commencement date of the Contract needs to be inserted. This will normally be 1st April 2004 but the explanatory footnotes set out the circumstances in which a different date should be inserted.

Part 8 (additional services)

8. This Part will need adapting as indicated in the explanatory footnotes and square bracketed text. The footnotes explain which (if any) *additional services* a Default Contractor must provide under the Default Contract. Any clauses that are deleted should be marked as 'reserved'.

Part 9 (out of hours services)

9. This Part will only need adapting if the Default Contractor does not, pursuant to the *Transitional Order*, have to provide out of hours services: the footnotes indicate which persons do not have to provide out of hours services under a Default Contract. If the Default Contractor is one of the types of persons that does not have to provide out of hours services, this Part can omitted, and the clause numbers marked as 'reserved'. Where the Default Contractor does have to provide out of hours services, no amendment is needed to this Part.

Schedule 1 (individual)

10. If the Default Contractor is an individual medical practitioner, this Schedule must be completed as indicated. If not, it can be left blank.

Schedule 1 (partnership)

11. If the Default Contractor is a partnership, this Schedule must be completed. If not, it can be left blank.

Schedule 2 (specification of premises, practice area and status of Contractor's list)

12. The address or addresses of the Contractor's premises, the Contractor's practice area and the status of the Contractor's list of patients at the date the contract is entered into (i.e. whether it is open or closed) must be specified in this Schedule. The explanatory footnotes indicate which options must be selected.

Schedule 4 (plan for improvement of premises)

13. This Schedule should be completed if clause 26 applies to the premises of the Default Contractor. If that clause does not apply to the Default Contractor, this Schedule should be left blank.

DEFAULT CONTRACT 2004

This contract is issued by the
Scottish Executive Health Department on 23 March 2004

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DATE []

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

WHEREAS

- A. The HB is a statutory body established by order made under section 2(1)(a) of the National Health Service (Scotland) Act 1978.

- B. The HB is required by the Primary Medical Services (Scotland) Act 2004, and the Order made thereunder¹, to enter into a *default contract* for the provision of certain types of primary medical services with specified categories of person.

- C. The Contractor falls within one of the specified categories of person.

- D. The Contractor wishes to enter into a *default contract* under which the Contractor is to provide primary medical services and other services in accordance with the provisions of this Contract.

¹ The General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004

THEREFORE the parties **HAVE AGREED** and **DO HEREBY AGREE** as follows

PART 1

DEFINITIONS AND INTERPRETATION

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

“the Act” means the National Health Service (Scotland) Act 1978;

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

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

“2004 Act” means the Primary Medical Services (Scotland) Act 2004;

“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 the Scottish Ministers or a panel of 3 persons appointed by the Scottish Ministers in accordance with paragraph 91 of Schedule 5 of *the Regulations*

“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*;

“approved medical practice” shall be construed in accordance with section 11 of the Medical Act 1983;

“area medical committee” means the committee of that name recognised under section 9 of *the Act* (local consultative committees) in the area of the Health Board;

“armed forces GP” means a medical practitioner who is employed on a contract of service by the Ministry of Defence, whether or not as a member of the United Kingdom Armed Forces of Her Majesty

“care home service” has the same meaning as in section 2(3) of the Regulation of Care (Scotland) Act 2001;

“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 68;

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

“child health surveillance services” means the services described in clause 76;

“childhood vaccinations and immunisations” means the services described in clauses 73 to 74;

“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 70;

“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 166;

“core hours” means the period beginning at 8am and ending at 6.30pm on any *working day*

“default contract” means a contract with a Health Board made pursuant to article 13 of the *Transitional Order*;

“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 and appliances;

“disqualified” means, unless the context otherwise requires, *local or national disqualification* by the *Tribunal* (or a decision under provisions in

force in England, Wales or Northern Ireland corresponding to *local or national disqualification*), but does not include conditional disqualification;

“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) services other than *essential services, additional services or out of hours services*; or
- b) *essential services, additional services or out of hours services* or an element of such a service that a contractor agrees under the 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 services contract” means a contract under section 17J of *the Act*;

“general medical practitioner” means-

- (a) from the coming into force of article 10 of *the 2003 Order*, a medical practitioner whose name is included in the *General Practitioner Register* otherwise than by virtue of paragraph 1(d) of Schedule 6 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 21(2) of *the Act*, section 31(2) of the National Health Service Act 1977 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*;

“GP Registrar”—

- (a) until 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) from 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) until 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) (Scotland) Regulations 1998; or

- b) from 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) of that Order;

“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” means any person or body referred to in section 17A(2) of *the Act*;

“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* or step-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 the local authority to whose care the *child* has been committed under the Children (Scotland) Act 1995; or
- (g) a grandparent;

“independent nurse prescriber” means a person-

- (a) who is either engaged or employed by the contractor
- (b) who is registered in the *Nursing and Midwifery Register*, and
- (c) in respect of whom an annotation is also recorded in that register signifying that the person is qualified to order drugs, medicines and appliances from-
 - (i) the Nurse Prescribers’ Formulary for District Nurses and Health Visitors in Part 8B of the *Drug Tariff*, or
 - (ii) the Nurse Prescribers’ Extended Formulary in Part 8C 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, unless the context otherwise requires, the meaning assigned to it in section 29(8) of *the Act* and includes a list corresponding to such a list in England, Wales or Northern Ireland;

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

“local or national disqualification” has the meaning indicated in section 29B(2) of *the Act*;

“maternity medical services” means the services described in clause 78;

“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 80 to 81;

“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 dispute resolution procedure” means the procedure for resolution of disputes specified in paragraphs 91 and 92 of Schedule 5 to *the Regulations*, subject to the modification that references in paragraph 92(2) to paragraph 90(1) shall be read as references to article 33(1) of the *Transitional Order*;

“NHS foundation trust” has the same meaning as in section 1 of the Health and Social Care (Community Health and Standards) Act 2003;

“NHS trust” means, in England and Wales, a National Health Service trust established under section 5 of the National Health Service and Community Care Act 1990;

“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;

“open” in relation to the *Contractor’s list of patients*, means open to applications from patients in accordance with clauses 171 to 176;

“out of hours arrangement” means an arrangement under clause 351 ;

“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 any other public or local holiday

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*; or
- (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 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 clause 85; and

- (f) any other person to whom the Contractor is responsible under arrangements made with another contractor of the kind referred to in clause 363;

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

“pharmacist” means –

- a) a registered pharmacist within the meaning of the Medicines Act 1968 who provides pharmaceutical services, or
- b) a person lawfully conducting a retail pharmacy business in accordance with section 69 of that Act who provides such services, or
- c) a supplier of appliances,

who is included in the list of a Health board under section 27 of *the Act*;

“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 162;

“practice leaflet” means a leaflet drawn up in accordance with clause 391;

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

“prescriber” means-

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

who is either engaged or employed by the contractor or, where the contractor is a partnership, is a partner in that partnership

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

“prescription only medicine” means a medicine referred to in article 3 of the *POM Order*;

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

“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);

“public or local holiday” means a public or local holiday which is agreed in writing between the HB and the Contractor and which shall, in aggregate, be no less than those available to NHS staff employed by the HB;

“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;

“relevant service in the armed forces” means whole-time service in the armed forces of the Crown in a National emergency as a volunteer or otherwise, or compulsory whole-time service in those forces, including

service resulting from any reserve liability, or any equivalent service by a person liable for compulsory whole-time service in those forces;

“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 a *general medical services contract*, or
- (b) except where the conditions in clause 276 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 provider” means a person or body who is providing primary medical services in accordance with an agreement pursuant to section 17C of *the Act*;

“supplementary prescriber” means a person

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

(b) whose name is registered in

(i) the *Nursing and Midwifery Register*,

(ii) the Register of Pharmaceutical Chemists maintained in pursuance of section 2(1) of the Pharmacy Act 1954; or

(iii) 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 service and safeguard high standards of care by creating an environment in which clinical excellence can flourish;

“temporary resident” means a person accepted by the Contractor as a temporary resident under clauses 177 to 180 and for whom the Contractor’s responsibility has not been terminated in accordance with those clauses;

“transferee out of hours services provider” means a person referred to in clause 354 who has undertaken to carry out the obligations of the Contractor during all or part of the *out of hours period* in accordance with an *out of hours arrangement*

“Transitional Order” means the General Medical Services (Transitional and Other Ancillary Provisions) (Scotland) Order 2004

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

“working day” means any day apart from Saturday, Sunday, Christmas Day, New Year’s Day and any other *public or local holiday*.

1. In this Contract unless the context otherwise requires:
 - 1.1. Defined terms and phrases appear in italics, except for the terms “patient” and “Contract”;
 - 1.2. Words denoting any gender include all genders and words denoting the singular include the plural and vice versa.
 - 1.3. Reference to any person may include a reference to any firm, company or corporation.
 - 1.4. Reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate
 - 1.5. The headings in this Contract are inserted for convenience only and do not affect the construction or interpretation of this Contract.

1.6. The schedules to this Contract are and shall be construed as being part of this Contract.

1.7. 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.

1.8. Where, pursuant to the *Transitional Order* -

1.8.1. any matter or act that took place, or

1.8.2. any notice that was served ,

before the entry into force of the Contract is to be treated as if it took place pursuant to the Contract, it shall be so treated and the Contract, and obligations under the Contract, shall be interpreted consistently with that Order.

1.9. 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.

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

1.11. 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.

2. 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 *Transitional Order*, *the Regulations*, any other Order made under section 7 of the *2004 Act* and any other relevant regulations made under *the Act*.
3. 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 Contract².
4. Where a particular clause is included in the Contract but is not relevant to the Contractor because that clause relates to matters which do not apply to the Contractor (for example, if the clause only applies to partnerships and the Contractor is an individual medical practitioner), that clause is not relevant and has no application to the Contract.

² This provision has been included so that if, in relation to a particular default contract, a footnote indicates that a particular clause number or numbers are not relevant and should be deleted 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.

PART 2

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.
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]³ [and subject to specific provision made in clauses 351 to 378]⁴.
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.

³ 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.

⁴ The words indicated in square brackets only need to be included if clauses 351 to 378 are to be included in the Contract (see Part 14).

PART 3

NOT ALLOTTED

13. NOT ALLOTTED

PART 4

COMMENCEMENT OF THE CONTRACT

14. This Contract shall commence on [1ST April 2004] [insert a date that is within 14 days of the determination of an appeal under article 13(9) of the *Transitional Order*].⁵

DURATION OF THE CONTRACT

15. This Contract shall, subject to clauses 16, 17 and 18, and unless the Contractor falls within clause 19 or 20, subsist until 30th June 2004, unless it is otherwise terminated in accordance with the terms of the Contract.

16. If, before 30th June 2004, the Contractor notifies the HB in writing that it wishes the Contract to continue after 30th June 2004, the Contract shall subsist for a further three months, until 30th September 2004.

17. If clause 16 applies, and on 30th September 2004-

17.1. any dispute arising out of or in connection with the Contract has been referred to the Scottish Ministers in accordance with the *NHS dispute resolution procedure* but that dispute has not been determined or withdrawn; or

17.2. either party to the Contract has referred the terms of their proposed *general medical services contract* to the Scottish Ministers to

⁵ 1st April 2004 must be selected as the commencement date of the Contract unless the Contractor successfully appealed against the refusal of a default contract pursuant to article 13(9) of the *Transitional Order*, in which case the commencement date to be inserted is a date within 14 days of the determination of that appeal.

consider and determine under regulation 9 of *the Regulations* but that dispute has not been determined or withdrawn,

the Contract shall, unless it is terminated before that date in accordance with the terms of the Contract, continue until whichever is the later of the dates specified in clause 18.

18. The dates referred to in clause 17 are-

18.1. the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the Contract or that dispute was withdrawn; or

18.2. the end of the period of 28 days from the date on which the parties were notified of the determination of the dispute relating to the terms of the *general medical services contract* or that dispute was withdrawn.

19. If the Contractor is an individual medical practitioner or partnership-

19.1. with whom the HB has refused to enter into a *general medical services contract* because it is not satisfied as to the matters specified in article 3(4) or (7), or article 4(4) or (7) of *the Transitional Order*; or

19.2. who has been unable to enter into a *general medical services contract* on or before 30th September 2004 because he (or, in the case of a partnership, a partner) was performing *relevant service in the armed forces*,

clauses 15 to 18 shall not apply, and the Contract shall, unless it is terminated before that date in accordance with the terms of the Contract, continue for as

long as he or the partnership remains entitled to enter into a *general medical services contract* under article 6 of *the Transitional Order*.

20. If the Contractor is a medical practitioner who or partnership which has made an application under article 11 of *the Transitional Order*, clauses 15 to 19 shall not apply and the Contract shall, unless it is terminated before that date in accordance with the terms of the Contract, continue until-

20.1. the end of the period of 14 days after that application has been determined, or

20.2. if the application was successful and he or the partnership intends to enter into a *general medical services contract*, the end of the day immediately before the day on which he or the partnership is required to start providing services under the *general medical services contract* which he or the partnership has entered into with the HB.

**PART 5
WARRANTIES**

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

22. The Contractor warrants that:

22.1. 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.

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

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

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

23. The HB warrants that:

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

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

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

24. The 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.

PART 6

LEVEL OF SKILL

25. The Contractor shall carry out its obligations under the Contract with reasonable skill and care .

PROVISION OF SERVICES

Premises

26. 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 specified in Schedule 2.

27. Subject to any plan which is included in the Contract pursuant to clause 28, the Contractor shall ensure that premises used for the provision of services under the Contract shall be:

27.1. suitable for the delivery of those services; and

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

28. 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 26 met the requirements set out in clause 27, and consequently the HB and the Contractor have together drawn up a plan (contained in Schedule 4 to this Contract) which specifies-

- 28.1. the steps to be taken by the Contractor to bring the premises up to the relevant standard;
 - 28.2. any financial support that is available from the HB; and
 - 28.3. the timescale in which such steps will be taken⁶.
29. The Contractor shall comply with the plan specified in clause 28 and contained in Schedule 4 to this Contract as regards the steps to be taken by the Contractor to meet the requirements in clause 27 and the timescale in which those steps will be taken.

Attendance at *practice premises*

30. 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:

- 30.1. it is more appropriate for the patient to be referred elsewhere for services under *the Act*; or
- 30.2. 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.

Attendance outside *practice premises*

⁶ Schedule 4 need only be completed 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 27 at the date the contract is signed. If the premises do meet the standards, these clauses can be deleted.

31. In the case of a patient whose medical condition is such that in the reasonable opinion of the Contractor attendance on the patient is required and it would be inappropriate for the patient to attend at a place where services are provided in *normal hours* under the contract, the Contractor shall provide services to that patient at whichever in its judgement is the most appropriate of the following places:

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

31.2. 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;

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

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

32.1. 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

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

Newly registered patients

33. Where a patient has been accepted on the *Contractor's list of patients* under clauses 171 to 176 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 31. 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*.

34. Where a patient (or, in the case of a patient who is a *child*, where appropriate, his *parent*) agrees to participate in a consultation referred to in clause 33 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.

Patients not seen within 3 years

35. Where a *registered patient* who:

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

35.2. has attended neither a consultation with, nor a clinic provided by, the Contractor within the period of three years 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.

36. Where the Contractor provides a consultation referred to in clause 35, 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.

Patients aged 75 years and over

37. Where a *registered* patient who-

37.1. has attained the age of 75 years; and

37.2. 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.

38. A consultation under clause 37 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*.

Clinical reports

39. Where the Contractor provides any clinical services, other than under a private arrangement, to a patient who is not on its list of patients, it shall, as soon as reasonably practicable, provide a clinical report relating to the consultation, and any treatment provided, to the HB. The HB shall send any report received to the person with whom the patient is registered for the provision of *essential services* or their equivalent or if that person is not known to the HB, the Health Board in whose area the patient is resident.

Storage of vaccines

40. The Contractor shall ensure that-

- 40.1. all vaccines are stored in accordance with the manufacturer's instructions
- 40.2. all refrigerators in which vaccines are stored have a maximum/minimum thermometer and that readings are taken on all working days.

Infection control

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

Duty of co-operation in relation to *additional, enhanced and out of hours services*

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

- 42.1. a particular *additional service*;
- 42.2. a particular *enhanced service*; or
- 42.3. *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 43.

43. The requirements referred to in clause 42 are that the Contractor shall—
- 43.1. co-operate, insofar as is reasonable, with any person responsible for the provision of that service or those services;
 - 43.2. 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
 - 43.3. 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.
44. Nothing in clauses 42 and 43 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*.

PART 7

ESSENTIAL SERVICES

45. The Contractor must provide the services described in clauses 46 to 51 (*essential services*) at such times within *core hours* as are appropriate to meet the reasonable needs of its patients and to have in place arrangements for its patients to access such services throughout the *core hours* in case of emergency.

46. The Contractor must provide-

46.1. services required for the management of the Contractor's *registered patients* and *temporary residents* who are, or believe themselves to be-

46.1.1. 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
- 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. offering a consultation 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 immediately 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 181 to 184 and who is not

registered with another provider of *essential services* (or their equivalent) in the area of the HB;

50.2. whose application for acceptance as a *temporary resident* has been rejected under clauses 181 to 184; or

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

51. The period referred to in clause 49 is-

51.1. in the case of clause 50.1 14 days beginning with the date on which that person's application was refused 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 50.2, 14 days beginning with the date on which that person's application was rejected or until that person has been subsequently accepted elsewhere as a *temporary resident*, whichever occurs first; and

51.3. in the case of clause 50.3, 24 hours or such shorter period as the person is present in the Contractor's *practice area*.

PART 8'

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 properly to perform that service.

53. The Contractor must provide each *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*⁸ 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-

55.1. [*cervical screening services*];

55.2. [*contraceptive services*];

⁷ This Part only needs to be included in the Contract where the Contractor has to provide any one or more of the *additional services*. Article 16 of the *Transitional Order* provides that the Contractor must provide all of the *additional services* under the Contract except where-

- on 31st March 2004 (or on the date on which the *default contract* is signed, if earlier) the equivalent of that service is or was not being provided to his or their patients by-

- the medical practitioner who has entered into the *default contract*; or
- in the case of a *default contract* with a partnership, all of the medical practitioners comprising the partnership; and

- the Contractor does not wish to provide that service to its patients under a *general medical services contract* which it intends to enter into after 31st March 2004 pursuant to article 3 or 4 of the *Transitional Order*.

⁸ Delete from the list at clause 55 any of the *additional services* that the Contractor is not going to be providing under the Contract to the persons specified in clause 54.

- 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. [In addition to the *additional services* specified in clauses 54 and 55, the Contractor shall provide *child health surveillance services* to [specify here any patients/categories of patients (other than patients who are recorded as being on the Contractor's list of patients) to whom the Contractor (or any one of the persons comprising the partnership where the Contractor is a partnership) was providing *child health surveillance services* under regulation 29 of the National Health Service (General Medical Services)(Scotland) Regulations 1995 at the date this contract is to be entered into. See article 24 of the Transitional Order – the clause should be deleted if it is not relevant]]
57. [In addition to the *additional services* specified in clauses 54 and 55, the Contractor shall provide *contraceptive services* to [specify here any patients/categories of patients (other than patients who are recorded as being on the Contractor's list of patients) to whom the Contractor (or any one of the persons comprising the partnership where the Contractor is a partnership) was providing *contraceptive services* under regulation 30 of the National Health Service (General Medical Services)(Scotland) Regulations 1995 at the date this contract is to be entered into. See article 24 of the Transitional Order– the clause should be deleted if it is not relevant]]

58. [In addition to the *additional services* specified in clauses 54 and 55, the Contractor shall provide *maternity medical services* to *[specify here any patients/categories of patients (other than patients who are recorded as being on the Contractor's list of patients) to whom the Contractor (or any one of the persons comprising the partnership where the Contractor is a partnership) was providing contraceptive services under regulation 31 of the National Health Service (General Medical Services)(Scotland) Regulations 1995 at the date this contract is to be entered into. See article 24 of the Transitional Order– the clause should be deleted if it is not relevant]*]

59. [Nothing in clauses 56 to 58 shall prevent the Contractor from subsequently terminating its responsibility for a patient not registered with the Contractor pursuant to clauses 139 to 143]⁹.

60. [not allotted]

61. [not allotted]

62. [not allotted]

63. [not allotted]

64. [not allotted]

65. [not allotted]

66. [not allotted]

⁹ This clause only needs to be included if any of clauses 56 to 58 are included. If not, this clause should be deleted.

Cervical screening¹⁰

67. The Contractor shall-

- 67.1. provide the services described in clause 68; and
- 67.2. make such records as are referred to in clause 69.

68. The services referred to in clause 67 are-

- 68.1. 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 Scotland Cervical Screening Programme;
- 68.2. the performance of cervical screening tests on women who have agreed to participate in that Programme;
- 68.3. arranging for women to be informed of the results of the test;
- 68.4. ensuring that test results are followed up appropriately.

69. The records referred to in clause 67 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.

¹⁰ Clauses 67 to 69 are required 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.

Contraceptive services¹¹

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

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

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

70.3. the treatment of such patients for contraceptive purposes and the prescribing of contraceptive substances and appliances (excluding the fitting and implanting of intrauterine devices and implants);

70.4. 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;

70.5. 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;

¹¹ Clause 70 is required only where the Contract includes the provision of *contraceptive services*. If the Contractor is not providing *contraceptive services*, this clause should be deleted.

70.6. the giving of initial advice about sexual health promotion and sexually transmitted infections; and

70.7. the referral as necessary for specialist sexual health services, including tests for sexually transmitted infections.

Vaccinations and immunisations¹²

71. The Contractor shall-

71.1. offer to provide to patients all 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.;

71.2. provide appropriate information and advice to patients about such vaccinations and immunisations;

71.3. record in the patient's record kept in accordance with clauses 379 to 387 any refusal of the offer referred to in clause 71.1;

71.4. where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with clause 379 to 387

¹² Clauses 71 and 72 are required 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.

71.4.1. 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;

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

71.4.3. the date of administration;

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

71.4.5. any contraindications to the vaccination or immunisation; and

71.4.6. any adverse reactions to the vaccination or immunisation.

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

Childhood vaccinations and immunisations¹³

73. The Contractor shall-

73.1. offer to provide to children all 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

¹³ Clauses 73 to 74 are required 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.

regulation 35 of the National Health Service (General Medical Services) (Scotland) Regulations 1995;

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

73.3. record in the patient's record kept in accordance with clause 379 to 387 any refusal of the offer referred to in clause 73.1;

73.4. where the offer is accepted, administer the vaccinations and immunisations and include in the patient's record kept in accordance with clauses 379 to 387-

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

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

73.4.3. the date of administration;

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

73.4.5. any contraindications to the vaccination or immunisation; and

73.4.6. any adverse reactions to the vaccination or immunisation.

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

Child health surveillance¹⁴

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

75.1. provide the services described in clause 76, 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

75.2. maintain such records as are specified in clause 77.

76. The services referred to in clause 75.1 are-

76.1. the monitoring-

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

76.1.2. on any occasion when the child is examined or observed by or on behalf of the Contractor (whether pursuant to clause 76.2 or otherwise),

of the health, well-being and physical, mental and social development (all of which characteristics are referred to in clauses 76 to 78 as

¹⁴ Clauses 75 to 77 are required 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.

“development”) of the child while under the age of 5 years with a view to detecting any deviations from normal development;

76.2. 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 0-19-85188-X).

77. The records referred to in clause 75.2 are an accurate record of-

77.1. 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

77.2. the responses (if any) to offers made to the child’s *parent* for the child to undergo any examination referred to in clause 76.2.

Maternity medical services¹⁵

78. The Contractor shall provide -

78.1. to female patients who have been diagnosed as pregnant all necessary *maternity medical services* throughout the antenatal period;

78.2. to female patients and their babies all necessary *maternity medical services* throughout the postnatal period other than neonatal checks;

¹⁵ Clauses 78 to 79 are required 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.

78.3. 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.

79. In clause 78, “antenatal period” means the period from the start of the pregnancy to the onset of labour, “*maternity medical services*” , in relation to female patients (other than babies) means all primary medical services relating to pregnancy, excluding intra partum care, and in relation to babies, any primary medical services necessary in their first 14 days of life, and “postnatal period” means the period starting from the conclusion of delivery of the baby or the patient’s discharge from secondary care services, whichever is the later, and ending on the fourteenth day after the birth.

Minor surgery¹⁶

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

81. The Contractor shall ensure that its record of any treatment provided pursuant to clause 80 includes the consent of the patient to that treatment.

¹⁶ Clauses 80 and 81 are required only where the Contract includes the provision of *minor surgery*. If the Contractor is not providing *minor surgery*, these clauses should be deleted.

PART 9

OUT OF HOURS SERVICES

Note : If the Contractor is an individual medical practitioner who is, or was, on 31st March 2004, 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, or if the Contractor is a partnership in which all of the partners are, or were on 31st March 2004, relieved of responsibility for providing services to their patients under that paragraph of those Regulations, the Contractor does not have to provide *out of hours services* and this Part can be deleted in its entirety. See article 19(1) of the *Transitional Order*.

82. Subject to clause 83, the Contractor shall provide-

82.1. the services which must be provided in *core hours* pursuant to clauses 45 to 51; and

82.2. such *additional services* (if any) as are included in the Contract pursuant to clauses 54 and 55

during the *out of hours period*.

83. The Contractor shall only be required to provide the services specified in clause 82 during the *out of hours period* to a patient if, in the reasonable opinion of the Contractor in the light of the patient's medical condition, it would not be reasonable in all the circumstances for the patient to wait for the services required until the next time at which he could obtain such services during *core hours*.

84. From 1st January 2005, the Contractor must, in the provision of *out of hours services*, meet the national quality standards set out from time to time in guidance which has been issued to Health Boards by NHS Quality Improvement Scotland and notified in writing to the contractor by the HB.

85. Where the Contractor is

85.1. an individual medical practitioner who is, or was on 31st March 2004, responsible for providing services during all or part of the out of hours period to the patients of a medical practitioner (“exempt contractor”) who meets the requirements specified in article 19 (4) of the *Transitional Order*; or;

85.2. is a partner in a partnership at least one of whom is, or was on 31st March 2004, a medical practitioner responsible for providing such services to such patients,.

The Contractor shall continue to provide such services to the patients of the exempt contractor for as long as the contract subsists

86. [not allotted]

87. [not allotted]

PART 10

NOT ALLOTTED

PART 11

NOT ALLOTTED

(Clauses 88 – 160 not allotted)

PART 12

PATIENTS

Persons to whom services are to be provided

161. Except and unless it is stated otherwise elsewhere in the Contract in respect of particular services the Contractor shall provide services under the Contract to:

161.1 registered patients,

161.2 temporary residents,

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

161.4 any person for whom the Contractor is responsible under clause 85;

161.5 any other person to whom the Contractor is responsible under arrangements made with another contractor of the kind referred to in clause 363; and

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

Patient registration area

162. 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 specified in schedule 2.

List of patients

163. The status of the *Contractor's list of patients* is specified in schedule 2.

164 [not allotted]

165. If it is specified in Schedule 3 that the Contractor's list is *closed* on the commencement of the Contract, it shall remain *closed* for as long as the Contract subsists unless the Contractor notifies the PCT in writing of its intention to re-open the list before the end of that period and of the date on which it will re-open. If the Contractor does re-open its list pursuant to this clause, it shall not be entitled to close it again during the subsistence of the Contract.

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

166.1 who have been accepted by the Contractor for inclusion in its list of patients under clause 171 to 176 who have not subsequently been removed from that list under clauses 187 to 224; and

166.2 who have been assigned to the Contractor under clauses 254 and 255.

and the HB shall also include in the *Contractor's list of patients*, from the commencement of the Contract, those patients specified in clauses 167 and 168 (where those clauses are relevant to the Contractor)

167 The patients specified for the purposes of clause 166 are-

167.1 those patients who, on 31st March 2004, were recorded by the HB pursuant to regulation 27 of the National Health Service (General Medical Services) (Scotland) Regulations 1995 as being on the list of-

167.1.1 the Contractor, if the Contractor is an individual medical practitioner, or

167.1.2 any of the two or more medical practitioners who are partners in a partnership which has entered into the contract, if the Contractor is a partnership; and

167.2 any patient who, on or before 31st March 2004, had been assigned to the Contractor, or any one of the persons specified in clause 84.1.2, under regulation 4 of the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998 but not yet included in the list of the Contractor referred to in clause 167.1¹⁷

168 If the Contractor is an individual medical practitioner for whom or a partnership, one of the partners for whom, immediately prior to commencement of the Contract, the HB had in place temporary arrangements under regulation 24(2) or (7) of the National Health Service (General Medical Services) (Scotland) Regulations 1995, the patients specified for the purpose of clause 166 are all of the patients who, on the date on which the temporary arrangements came to an end, were-

¹⁷ Clause 167.2 is required by article 28 of *the Transitional Order*.

168.1 temporarily re-assigned to other medical practitioners under paragraph 17 of regulation 24 of the National Health Service (General Medical Services) (Scotland) Regulations 1995; or

168.2 included on the list of that medical practitioner (for whom the temporary arrangements were in place.¹⁸

169 [not allotted]

170 [not allotted]

Application for inclusion in a list of patients

171. The Contractor may 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

172. [not allotted]

173. Subject to clause 174, 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 a person authorised by the applicant to sign on the applicant's behalf.

174. An application may be made-

174.1 on behalf of any *child*-

¹⁸ Clause 85 is required by article 30 of *the Transitional Order*.

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

174.1.2 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, or

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

174.2 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 the primary carer of that person or by the person authorised under the Adults with Incapacity (Scotland) Act 2000 to act on the patient's behalf.

175. 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.

176. On receipt of a notice under clause 175, 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.

Temporary residents

177. The Contractor may accept a person as a *temporary resident* provided it is satisfied that the person is-

177.1 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

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

178. For the purposes of clause 177, 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.

179. 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 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.

180. 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*.

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

181. The Contractor shall only refuse an application made under clause 171 to 180 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.

182. The reasonable grounds referred to in clause 181 shall, in the case of applications made under clauses 171 to 176 include the ground that the applicant does not live in the Contractor's *practice area*.

183. If the Contractor refuses an application made under clauses 171 to 180, 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.

184. The Contractor shall keep a written record of refusals of applications made under clauses 171 to 176 and of the reasons for them and shall make this record available to the HB on request.

Patient preference of practitioner

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

185.1 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

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

186. The Contractor shall endeavour to comply with any preference expressed under clause 185 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*.

Removals from the list at the request of the patient

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

188. Where the HB receives notification from the Contractor under clause 187, 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*.

189. A removal under clause 188 shall take effect-

189.1 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

189.2 14 days after the date on which the notification or request made under clause 187 or 188 respectively is received by the HB,

whichever is the sooner.

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

190.1 the patient; and

190.2 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 189.

191. In clauses 190, 192, 201.1, 207, 208, 213, 214 and 220 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-

191.1 in the case of a patient who is a *child*, a *parent* or other person referred to in clause 174.1; or

191.2 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.

Removals from the list at the request of the Contractor

192. Subject to clauses 202 to 208, 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-

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

192.2 subject to clause 193, notify the patient in writing of its specific reasons for requesting removal.

193. Where, in the reasonable opinion of the Contractor, the circumstances of the removal are such that it is not appropriate for a more specific reason to be given and there has been an irrevocable breakdown in the relationship between the patient and the Contractor, the reason given under clause 192 may consist of a statement that there has been such a breakdown in the relationship between the patient and the Contractor.

194. Except in the circumstances specified in clause 195, the Contractor may only request a removal under clause 192 if, within the period of 12 months prior to the date of its request to the HB, it has warned the patient that he is at risk of removal and explained to him the reasons for this.

195. The circumstances referred to in clause 194 are that-

195.1 the reason for removal relates to a change of address;

195.2 the Contractor 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 one or more of the persons specified in clause 196; or

195.3 it is, in the opinion of the Contractor, not otherwise reasonable or practical for a warning to be given.

196 The persons referred to in clause 195 are-

196.1 if the Contractor is an individual medical practitioner, the Contractor;

196.2 if the Contractor is a partnership, a partner in the partnership;

196.3 [not allotted]

196.4 a member of the Contractor's staff;

196.5 a person engaged by the Contractor to perform or assist in the performance of services under the Contract; or

196.6 any other person present on the *practice premises* or in the place where services are being provided to the patient under the Contract.

197. The Contractor shall record in writing the date of any warning given in accordance with clause 194 and the reasons for giving such a warning as explained to the patient, or the reason why no such warning was given.

198. The Contractor shall keep a written record of removals under clause 192 which shall include the reason for removal given to the patient, the circumstances of the removal and in cases where clause 193 applies, the grounds for a more specific reason not being appropriate, and the Contractor shall make this record available to the HB on request.

199. A removal requested in accordance with clause 192 shall, subject to clause 200, take effect from the date on which the HB receives notification of the registration of the person with another provider of *essential services* (or their equivalent), or the eighth day after the HB receives the notice, whichever is the sooner.

200. Where, on the date on which the removal would take effect under clause 199, the Contractor is treating the patient at intervals of less than seven days, the Contractor shall notify the HB in writing of that fact and the removal shall take effect on the eighth day after the HB receives notification from the Contractor that the person no longer needs such treatment, or on the date on which the person Health Board receives notification of the registration of the person with another provider of *essential services*, (or their equivalent) whichever is the sooner.

201. The HB shall notify in writing-

201.1 the patient; and

201.2 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 199 or 200.

Removal of violent patients from the list

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

202.1 the patient has committed an act of violence against any of the persons specified in clause 203 or behaved in such a way that any such person has feared for that person's own safety; and

202.2 the contractor has reported the incident to the police or the Procurator Fiscal.

the Contractor shall notify the HB in accordance with clause 204.

203. The persons referred to in clause 202 are-

203.1 if the Contract is with an individual medical practitioner, that individual;

203.2 if the Contract is with a partnership, a partner in that partnership;

203.3 [not allotted]

203.4 a member of the Contractor's staff;

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

203.6 any other person present on the *practice premises* or in the place where services were provided to the patient under the Contract.

204. Notification under clause 202 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).

205. The HB shall acknowledge in writing receipt of a request from the Contractor under clause 202.

206. A removal requested in accordance with clause 202 shall take effect at the time the Contractor makes the telephone call to the HB, or sends or delivers the notification to the HB.

207. Where, pursuant to clauses 202 to 206, the Contractor has notified the HB that it wishes to have a patient removed from its list of patients, it shall inform the patient concerned unless-

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

207.2 it has reasonable grounds for believing that to do so would be harmful to the physical or mental health of the patient or would put at risk the safety of one or more of the persons specified in clause 203.

208. Where the HB has removed a patient from the *Contractor's list of patients* in accordance with clause 206 it shall, give written notice of the removal to that patient.

209. Where a patient is removed from the *Contractor's list of patients* in accordance with clauses 202 to 208, 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.

Removals from the list of patients registered elsewhere

210. 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.

211. A removal in accordance with clause 210 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.

212. The HB shall notify the Contractor in writing of persons removed from its list of patients under clause 210.

Removals from the list of patients who have moved

213. Subject to clause 214, 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,

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

213.2 advise the patient in writing either to obtain the Contractor's agreement to the continued inclusion of the patient on its list of patients or to apply for registration with another provider of *essential services* (or their equivalent); and

213.3 inform the patient that if, after the expiration of 30 days from the date of the letter of advice referred to in clause 213.2, 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*.

214. If, at the expiration of the period of 30 days referred to in clause 213.3, the HB has not been notified of the action taken, it shall remove the patient from the *Contractor's list of patients* and inform the patient and the Contractor accordingly.

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

215.1 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

215.2 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.

Removals from the list of patients absent from the United Kingdom etc

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

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

216.2 is in Her Majesty's Forces;

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

216.4 has died.

217. A removal in accordance with clause 216 shall take effect-

217.1 in the cases referred to in clauses 216.1 to 216.2 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;

217.2 in the cases referred to in clauses 216.3 and 216.4 from the date on which the HB first receives notification of the absence or death.

218. The HB shall notify the Contractor in writing of patients removed from its list of patients under clause 216.

Removals from the list of patients accepted elsewhere as temporary residents

219. 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-

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

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

220. The HB shall notify in writing the Contractor and where practicable, the patient, of a removal under clause 219.

221. A notification to the patient under clause 220 shall inform the patient of-

221.1 the patient's entitlement to make arrangements for the provision to the patient of *essential services* (or their equivalent), including by the Contractor by whom the patient has been treated as a *temporary resident*; and

221.2 the name and address of the HB in whose area the patient is resident.

Removals from the list of pupils etc at a school

222. Where the Contractor provides *essential services* under the Contract to persons on the grounds that they are pupils at or staff, or residents 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, or residents, of that school provided by that school.

223 . Where the HB has made a request to a school to provide the particulars mentioned in clause 222 and has not received them, it shall consult the Contractor as to whether it should remove from its list of patients any persons appearing on that list as pupils at, or staff, or residents of, that school.

224. The HB shall notify the Contractor in writing of patients removed from its list of patients under clause 222.

Termination of responsibility for patients not registered with the Contractor

225. Where the Contractor-

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

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

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

225.1.3 on behalf of a person mentioned in clause 225.1.1 or 225.1.2, from one of the persons specified in clause 174; and

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

its responsibility for that patient shall be terminated in the circumstances referred to in clause 226.

226. The circumstances referred to in clause 225 are-

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

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

226.3 it comes to the notice of the Contractor that the patient-

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

226.3.2 is no longer included in the list of patients of another Contractor to whose *registered patients* the Contractor has agreed to provide that service.

227. If the Contractor wishes to terminate its responsibility for a patient under clause 226.2, it shall notify the patient of the termination and the reason for it.

228. The Contractor shall keep a written record of terminations under clause 225 to 227 and of the reasons for them and shall make this record available to the HB on request.

229. A termination under clause 226.2 shall take effect-

229.1 from the date on which the notice is given where the grounds for termination are those specified in clause 202; or

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

(Clauses 230-253 not allotted)

Assignment of patients to open lists

254. The HB may, subject to clause 258, assign a new patient to the Contractor whose list of patients is *open*.

255. In this clause a “new” patient means a person who-

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

255.2 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

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

(Clauses 256-257 not allotted)

Factors relevant to assignments

258. In making an assignment to the Contractor under clause 254 , the HB shall have regard to-

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

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

258.3 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 192 to 201 or the equivalent provision in relation to a *section 17C provider* in the area of the HB;

258.4 whether the patient's name has been removed from the list of patients of any contractor in the area of the HB under clauses 202 to 209 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;

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

(Clauses 259 – 268 not allotted)

PART 13

PRESCRIBING AND DISPENSING

269. 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 a *general medical services contract*.

Prescribing

270. The Contractor shall ensure that any *prescription form* for drugs, medicines or appliances issued by a *prescriber* complies as appropriate with the requirements in clauses 271 to 274.

271. Subject to clauses 275 to 283, 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.

272. In issuing any *prescription form* the *prescriber* shall sign the *prescription form* in ink with the prescriber's initials, or forenames and surname in the prescriber's 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-

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

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

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

273.1 that drug is not a *Scheduled drug*;

273.2 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

273.3 the *prescriber* undertakes to furnish the *pharmacist*, within 72 hours, with a *prescription form* completed in accordance with clause 272.

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

274.1 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;

274.2 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

274.3 the *prescriber* undertakes to furnish the *pharmacist*, within 72 hours, with a *prescription form* completed in accordance with clause 272.

Restrictions on prescribing by medical practitioners

275. In the course of treating a patient to whom a medical practitioner 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 a *general medical services contract* but may, subject to clause 429, prescribe such a drug or other substance for that patient in the course of that treatment under a private arrangement.

276. 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-

276.1 that patient is a person of the specified description;

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

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

but may, subject to clause 429, prescribe such a drug, medicine or other substance for that patient in the course of that treatment under a private arrangement.

277. In the course of treating a patient to whom a medical practitioner is providing treatment under the Contract, a medical practitioner shall not order on a *prescription form a restricted availability appliance* unless-

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

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

but may, subject to clause 429, prescribe such an appliance for that patient in the course of that treatment under a private arrangement.

Restrictions on prescribing by *supplementary prescribers*

278. The Contractor shall have arrangements in place to secure that a supplementary prescriber will –

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

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

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

as a *supplementary prescriber* only under the conditions set out in clause 279.

279. The conditions referred to in clause 278 are that -

279.1 the *supplementary prescriber* 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;

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

279.3 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 a *general medical services contract*;

279.4 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 -

279.4.1 the patient is a person of the specified description,

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

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

280. 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 -

280.1 an appliance; or

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

as a *supplementary prescriber* under the conditions set out in clause 281.

281. The conditions referred to in clause 280 are that -

281.1 the *supplementary prescriber* acts in accordance with a clinical management plan which is in effect at the time the *supplementary prescriber* acts and which contains the following particulars -

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

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

281.1.3 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,

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

281.1.5 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,

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

281.1.7 the arrangements for notification of -

281.1.7.1 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,

281.1.7.2 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

281.1.7.3 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;

281.2 *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;

281.3 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;

281.4 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 a *general medical services contract*;

281.5 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 -

281.5.1 the patient is a person of the specified description,

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

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

281.6 if it is a prescription for a medicine -

281.6.1 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

281.6.2 subject to clause 283, the use of the medicine is for the purposes of a clinical trial, and either the trial is the subject of a clinical trial certificate issued in accordance with the Medicines Act 1968, or a clinical trial certificate is not needed in respect of that trial by virtue of any exemption conferred by or under that Act

281.7 if it is a prescription for an appliance, the appliance is listed in Parts 2 to 6 and Part 8 to 10 of the *Drug Tariff*, and

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

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

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

281.8.3 when giving the prescription, the *supplementary prescriber* endorses the face of the form with the reference **SLS**.

282. In clause 281.1, “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—

282.1 the patient to whom the plan relates;

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

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

283 In relation to any time from the coming into force of any regulations made by *the Secretary of State* under section 2(2) of the European Communities Act 1972 to implement Directive 2001/83/EC on the Community code relating to medicinal products for human use, clause 281.6.2 shall be read as if it referred to a clinical trial which has been authorised, or is treated as having been authorised by the *licensing authority* for the purposes of those Regulations.

Excessive prescribing

284. The Contractor shall not prescribe drugs, medicines or appliances whose cost or quantity, in relation to any patient, is, by reason of the character of the drug, medicine or appliance in question, in excess of that which was reasonably necessary for the proper treatment of that *patient*. In considering whether a Contractor has breached its obligations under this clause, the HB shall seek the views of the *area medical committee* for its area.

Provision of dispensing services

285. 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 HB in accordance with clauses 286 to 289.

286. Where the HB is satisfied after consultation with the area pharmaceutical committee, that a person, who is a *registered patient* of the Contractor, by reason of distance, inadequacy of means of communication or other exceptional circumstances will have serious difficulty in obtaining from a *pharmacist* any drugs, medicines or appliances other than Scheduled drugs, required for that person's treatment, the HB shall require or authorise the Contractor to supply such drugs, medicines and appliances to that person until further notice ;

287. Notwithstanding anything contained in clause 286 –

287.1 the Contractor shall not be required to undertake the supply of drugs, medicines and appliances under clause 286 if the Contractor satisfies the Health Board that the Contractor is not in the habit of dispensing drugs, medicines and appliances for the Contractor's patients, and

287.2 the Contractor shall be entitled to receive reasonable notice from the Health Board that the Contractor is required to undertake the supply of drugs, medicines and appliances under clause 286 or that such supply is to be discontinued.

288. Unless drugs, medicines or appliances have been ordered on a *prescription form* by a *supplementary prescriber* or an *independent nurse prescriber*, a Contractor, who is required by the HB to supply drugs, medicines and appliances under clause 286 to a patient, in the course of treating that patient –

288.1 shall, subject to clause 291 record on a *prescription form* completed in accordance with clause 272, an order for supply of any drugs, medicines or appliances which are needed for the treatment of that patient, but shall not be required to issue that form to that patient;

288.2 shall supply those drugs, medicines or appliances for that patient under clause 286 but –

288.2.1 shall not supply under clause 286 for that patient any *Scheduled drug* specified as being a drug, medicine or other substance which may not be ordered for patients in the provision of medical services under the Contract, except that, where the Contractor has ordered a drug which has an appropriate non-proprietary name either by that name or by its formula, the Contractor may supply a drug which has the same specification notwithstanding that it is such a *Scheduled drug* (but in the case of a drug which combines more than one drug, only if the combination has an appropriate non-proprietary name);

288.2.2 shall supply under clause 286 for that patient any *Scheduled drug* specified as being a drug, medicine or other substance which may only be ordered for specific patients and purposes only where that patient is a person of the specified description and that drug, medicine or other substance is supplied to that patient only for the specified purpose.

288.2.3. shall supply under clause 286 for that patient a *restricted availability appliance* only if it is for a patient in a category or persons or a purpose specified in the *Drug Tariff*

288.3 may supply for that patient with the Contractor's consent, in respect of that treatment but otherwise than under clause 286, any *Scheduled drug*.

289. The contractor shall comply with any arrangements made by the Scottish Ministers, or made by a Health Board after consultation with the area medical committee and the area pharmaceutical committee and

approved by the Scottish Ministers, under which the Contractor may obtain and have available any drugs, medicines or appliances which the Contractor is required or entitled to supply in terms of this paragraph.

290. Where a patient presents an order on a *prescription form* for listed drugs or medicines, or appliances, signed by a *supplementary prescriber* or an *independent nurse prescriber*, to a Contractor who is required under clause 286 to provide drugs or appliances to that patient the Contractor may provide to the patient such drugs, medicines or appliances so ordered as the Contractor supplies in the normal course of the Contractor's *practice*.

291. A drug supplied by a Contractor unless administered in person shall be supplied in a suitable container.

292. Before supplying the drugs, medicines or appliances recorded on a *prescription form* in accordance with clause 288 or providing the drugs or medicines or appliances ordered on a *prescription form* signed by a *supplementary prescriber* or an *independent nurse prescriber* in accordance with clause 290 a Contractor who is required by the Health Board under clause 286 to provide drugs, medicines or appliances to a patient shall request any person who makes a declaration on the *prescription form* claiming either charge exemption under regulation 7 of the National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2001 ("the 2001 Regulations) or charge remission under the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No.2) Regulations 2003 to produce evidence of the patient's entitlement to such exemption or remission.

293. Clause 292 shall not apply in respect of claims for exemption under regulation 7(1)(a) to (f) of the 2001 Regulations where the Contractor has information in the Contractor's possession at the time of supplying the item which confirms that the patient is entitled to the exemption claimed.

294. Where the person presenting the *prescription form* does not show valid evidence of entitlement and the Contractor, in respect of a claim for exemption made under regulation 7(1)(a) to (f) of the 2001 Regulations, does not have evidence in the Contractor's possession to confirm that the patient is entitled to make that claim, the Contractor shall mark the patient's *prescription form* accordingly before supplying the prescribed item.

295. The provisions of clause 429 apply in respect of the provision of any drugs, medicines or appliances by the Contractor providing *dispensing services* as they apply in respect of prescriptions for drugs, medicines and appliances.

296. Nothing in clauses 285 to 295 shall prevent the Contractor providing a *Scheduled drug* or a *restricted availability appliance* in the course of treating a patient under a private arrangement.

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

296. The contractor

296.1 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

296.2 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*. Nothing in this clause authorises a person to supply any drug or medicine to a patient otherwise than in accordance with Part 3 of the Medicines Act 1968, or any regulations or orders made under that Act.

PART 14

PERSONS WHO PERFORM SERVICES

Qualifications of performers

297. Subject to clause 298, no medical practitioner shall perform medical services under the Contract unless the medical practitioner is-

297.1 included in a *primary medical services performers list* for the Health Board which is under a duty to provide or secure the provision of the service to be performed;

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

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

298. Clause 297.1 shall not apply in the case of –

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

298.2 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

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

299 No *health care professional* other than one to whom clauses 297 and 298 apply shall perform clinical services under the Contract unless the *health care professional* is appropriately registered with the health care professional's relevant professional body and the health care professional's registration is not currently suspended.

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

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

Conditions for employment and engagement

302. Subject to clauses 303 and 304, the Contractor shall not employ or engage a medical practitioner (other than one falling within clause 298.2) unless-

302.1 that practitioner has provided it with the name and address of the Health Board on whose *primary medical services performers list* the practitioner appears; and

302.2 the Contractor has checked that the practitioner meets the requirements in clause 297.

303 Where the employment or engagement of a medical practitioner is urgently needed and it is not possible to check the matters referred to in clause 297 in accordance with clause 302.1 before employing or engaging the practitioner, the practitioner may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

304. Where the prospective employee is a *GP Registrar*, the requirements set out in clause 302 shall apply with the modifications that-

304.1 the name and address provided under 302.1 may be the name and address of the Health Board on whose *primary medical services performers list* the *GP Registrar* has applied for inclusion; and

304.2 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.

305 The Contractor shall not employ or engage-

305.1 a *health care professional* other than one to whom clauses 297 and 298 apply unless the Contractor has checked that the *health care professional* meets the requirements in clause 299; or

305.2 a *health care professional* to perform clinical services unless the Contractor has taken reasonable steps to satisfy himself that the *health care professional* meets the requirements in clause 301.

306. 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 299 in accordance with clause 305 before employing or engaging the practitioner, the *health care professional* may be employed or engaged on a temporary basis for a single period of up to 7 days whilst such checks are undertaken.

307. When considering a *health care professional's* experience and training pursuant to clause 305.2, the Contractor shall have regard to any post-graduate or post-registration qualification held by the *health care professional*, and any relevant training undertaken by the *health care professional* and any relevant clinical experience gained by the *health care professional*.

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

308.1 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

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

309. 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 308.1 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.

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

311. 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. This duty is in addition to the duties imposed by clause 302 to 310.

312. When considering the competence and suitability of any person for the purpose of clause 311, the Contractor shall have regard, in particular, to-

312.1 that person's academic and vocational qualifications;

312.2 the person's education and training; and

312.3 the person's previous employment or work experience.

Training

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

313.1 performing clinical services under the Contract; or

313.2 employed or engaged to assist in the performance of such services

there are in place arrangements for the purpose of maintaining and updating the health care professional's skills and knowledge in relation to

the services which the *health care professional* is providing or assisting in performing.

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

Terms and conditions

315. 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.

Arrangements for *GP Registrars*

316. 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 317.

317. The conditions referred to in clause 316 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.

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

318.1 offer the *GP Registrar* terms of employment in accordance with the rates and subject to the conditions contained in any Directions given by the Scottish Ministers to Health Boards under 17M of *the Act* concerning the grants, fees, travelling and other allowances payable to GP Registrars; and

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

Independent nurse prescribers and supplementary prescribers

319. Where-

319.1 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

319.2 [not allotted]

319.3 the functions of a person who is an *independent nurse prescriber* or a *supplementary prescriber* whom it already employs or has already engaged are extended to include prescribing,
it shall notify the HB in writing within the period of seven days beginning with the date on which the Contractor employed or engaged the person, or the person's functions were extended, as the case may be

320 Where-

320.1 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

320.2 [not allotted]

320.3 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

320.4 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.

321. The Contractor shall provide the following information when it notifies the HB in accordance with clause 319-

321.1 the person's full name;

321.2 the person's professional qualifications;

321.3 the person's identifying number which appears in the *relevant register*;

321.4 the date on which the person's entry in the *relevant register* was annotated to the effect that the person was qualified to order drugs, medicines and appliances for patients;

321.5 the date-

321.5.1 on which the person was employed or engaged, if applicable; or

321.5.2 [not allotted]

321.5.3 on which one of the person's functions became to prescribe in its *practice*.

322. The Contractor shall provide the following information when it notifies the HB in accordance with clause 320-

322.1 the person's full name;

322.1 the person's professional qualifications;

322.3 the person's identifying number which appears in the *relevant register*;

322.4 the date-

322.4.1 the person ceased to be employed or engaged in its *practice*,

322.4.2 [not allotted]

322.4.3 the person's functions changed so as no longer to include prescribing, or

322.4.4 on which the person was removed or suspended from the relevant register.

Signing of documents

323 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 324 include –

323.1 the clinical profession of that *health care professional* who signed the document; and

323.2 the name of the Contractor on whose behalf it is signed.

324 The documents referred to in clause 323 are-

324.1 certificates issued in accordance with clause 417 unless regulations relating to a particular certificate provide otherwise;

324.2 *prescription forms*; and

324.3 any other clinical documents.

Appraisal and assessment

325. The Contractor shall ensure that any medical practitioner performing services under the Contract-

325.1 participates in the appraisal system provided by the HB unless the practitioner participates in an appropriate

appraisal system provided by another *health service body* or is an *armed forces GP*; and

325.2 co-operates with any assessment process which the HB operates in relation to poorly performing doctors, as set out in NHS circular PCA(M)(2001)17.

326. The HB shall provide an appraisal system for the purposes of clause 325.1 after consultation with the *area medical committee* and such other persons as appear to it to be appropriate.

Sub-contracting of clinical matters

327. Subject to clauses 328 and 329 the Contractor shall not sub-contract any of its rights or duties under the Contract.

328. Clause 327 shall not apply to a contract for services with a *health care professional* for the provision by that professional personally of clinical services.

329. The Contractor shall be entitled to sub-contract its rights or duties under the Contract if

329.1 on 31st March 2004, in relation to equivalent services it was providing under section 19 of *the Act*, the Contractor had sub-contracted rights or duties in relation to those services; and

329.2 that sub-contract is still in force on 1st April 2004

save that the Contractor shall only be entitled to continue sub-contracting those services under the Contract until the date that sub-contract is to terminate, which shall be the date specified in the term of that sub-contract that governs its duration as it appeared in that sub-contract on 31st March 2004.

(Clauses 330 – 350 not allotted)

Temporary arrangements for transfer of obligations and liabilities in relation to certain *out of hours services*

351 Where the Contractor is required to provide *out of hours services* under the Contract pursuant to the *Transitional Order*, it may, with the approval of the HB, make an arrangement with one of the persons specified in clause 354 to transfer the contractor's obligations under these regulations.

352 Any arrangement made pursuant to clause 351 shall cease to have effect on 1st January 2005.

353 An arrangement made in accordance with clause 351 shall, for so long as it continues relieve the Contractor of-

353.1 its obligations to provide *out of hours services* pursuant to the Contract; and

353.2 all liabilities under the Contract in respect of those services.

354 The persons referred to in clause 351 are-

354.1 a person who holds a *general medical services contract*, a section 17C agreement or a *default contract* with the HB which includes the provision of *out of hours services* or a person who is a party to contractual arrangements under article 15 of the *Transitional Order*

355. The Contractor may make more than one *out of hours arrangement* and may do so (for example) with different contractors or providers of primary medical services and in respect of different patients, different times and different parts of its *practice area*.

356 The Contractor may retain responsibility for, or make separate *out of hours arrangements* in respect of, the provision to any patients of *maternity medical services* during the *out of hours period* which the Contractor is required to provide pursuant to clauses 82 and 85 and any separate *out of hours arrangements* it makes may encompass all or any part of the *maternity medical services* it provides.

357 Nothing in clauses 351 to 356 shall prevent the Contractor from retaining or resuming its obligations in relation to named patients.

Application for approval of an *out of hours arrangement*

358 An application to the HB for approval of an *out of hours arrangement* shall be made in writing and shall state-

358.1 the name and address of the proposed *transferee out of hours services provider*;

358.2 the periods during which the Contractor's obligations under the Contract are to be transferred;

358.3 how the proposed *transferee out of hours services provider* intends to meet the Contractor's obligations during the periods specified in clause 358.2;

358.4 the arrangements for the transfer of the Contractor's obligations under the Contract to and from *the transferee out of hours services provider* at the beginning and end of the period specified under clause 358.2;

358.5 whether the proposed arrangement includes the Contractor's obligations in respect of *maternity medical services*; and

358.6 how long the proposed arrangements are intended to last and the circumstances in which the Contractor's obligations under the Contract during the periods specified in clause 358.2 would revert to it.

359 The HB shall determine the application before the end of the period of 28 days beginning with the day on which the HB received it.

360 The HB shall grant approval to a proposed *out of hours arrangement* if it is satisfied-

360.1 having regard to the overall provision of primary medical services provided in the *out of hours period* in its area, that the arrangement is reasonable and will contribute to the efficient provision of such services in the area;

360.2 having regard, in particular, to the interests of the Contractor's patients, that the arrangement is reasonable;

360.3 having regard, in particular, to all reasonably foreseeable circumstances that the arrangement is practicable and will work satisfactorily;

360.4 that it will be clear to the Contractor's patients how to seek primary medical services during the *out of hours period*;

360.5 where *maternity medical services* are to be provided under the *out of hours arrangement*, that they will be performed by a medical practitioner who has such medical experience and training as are necessary to enable him properly to perform such services; and

360.6 that if the arrangement comes to an end, the Contractor has in place proper arrangements for the immediate resumption of its responsibilities,

and shall not refuse to grant approval without first consulting the *area medical committee* for its area.

361 The HB shall give notice to the Contractor of its determination and, where it refuses an application, it shall send to the Contractor a statement in writing of the reasons for its determination.

362 If the Contractor wishes to refer the matter in accordance with the *NHS dispute resolution procedure*, it must do so before the end of the period of 30 days beginning with the day on which the HB's notification under clause 361 was sent.

Effect of approval of an arrangement with a transferee out of hours service provider

363 If the Contractor acts as a *transferee out of hours services provider*, in accordance with an *out of hours arrangement* approved by the HB in relation to another Contractor the HB and the Contractor shall be deemed to have agreed a variation of their contract which has the effect of including in it, from the date on which the *out of hours arrangement* commences, and for so long as that arrangement continues, the services covered by that arrangement, and clause 475 shall not apply.

Review of approval

364 Where it appears to the HB that it may no longer be satisfied of any of the matters referred to in clauses 360.1 to 360.6, it may give notice to the Contractor that it proposes to review its approval of the *out of hours arrangement*.

365 On any review under clause 364, the HB shall allow the Contractor a period of 30 days, beginning with the day on which the HB sent the notice, within which to make representations in writing to the HB.

366 After considering representations made in accordance with clause 365, the HB may determine to-

366.1 continue its approval,

366.2 withdraw its approval following a period of notice; or

366.3 if it appears to the HB that it is necessary in the interests of the Contractor's patients, withdraw its approval immediately.

367 Except in the case of an immediate withdrawal of approval, the HB shall not withdraw its approval without first consulting the *area medical committee* for its area.

368 The HB shall give notice to the Contractor of its determination under clause 366.

369 Where the HB withdraws its approval, whether immediately or on notice, it shall include with the notice a statement in writing of the reasons for its determination.

370 If the Contractor wishes to refer the matter in accordance with the *NHS dispute resolution procedure*, it must do so before the end of 30 days beginning with the day on which the HB's notification under clause 368 was sent.

371 Where the HB determines to withdraw its approval following a period of notice, the withdrawal shall take effect at the end of the period of two months beginning with-

371.1 the date on which the notice referred to in clause 369 was sent, or,

371.2 where there has been a dispute which has been referred under the *NHS dispute resolution procedure* and the dispute is determined in favour of withdrawal, the date on which the Contractor receives notice of the determination.

372 Where the HB determines to withdraw its approval immediately, the withdrawal shall take effect on the day on which the notice referred to in clause 368 is received by the Contractor.

Immediate withdrawal of approval other than following review

373 The HB shall withdraw its approval of an *out of hours arrangement* immediately-

373.1 in the case of an arrangement with a person referred to in clause 354.1, if the person with whom it is made ceases to hold a *general medical services contract*, a section 17C agreement, or a *default contract* for the provision of primary medical services with the HB which includes the provision of *out of hours services*, or ceases to be a party to contractual arrangements under article 15 of the *Transitional Order*; or

373.2 where, without any review having taken place under clauses 369 to 372, it appears to the HB that it is necessary in the interests of the Contractor's patients to withdraw its approval immediately.

374 The HB shall give notice to the Contractor of a withdrawal of approval under clause 373.1 or 373.2 and shall include with the notice a statement in writing of the reasons for its determination.

375 An immediate withdrawal of approval under clause 373 shall take effect-

375.1 on the day on which the notice referred to in clause 374 is received by the Contractor.

376 The HB shall notify the *area medical committee* for its area of a withdrawal of approval under clause 373.2.

377 If the Contractor wishes to refer a withdrawal of approval under clause 373.2 in accordance with the *NHS dispute resolution procedure*, it must do so before the end of the period of 30 days beginning with the day on which the HB's notification under clause 374 was sent.

Termination of an *out of hours arrangement*

378 The Contractor shall terminate an *out of hours arrangement* made under clause 351 with effect from the date of the taking effect of the withdrawal of the HB's approval of that arrangement under clauses 364 to 372 or clauses 373 to 377.

PART 15

RECORDS, INFORMATION, NOTIFICATION AND RIGHTS OF ENTRY

Patient records

379. In this part, “computerised records” means records created by way of entries on a computer.

380. The Contractor shall keep adequate records of its attendance on and treatment of its patients and shall do so-

380.1 on forms supplied to it for the purpose by the HB; or

380.2 with the written consent of the HB, by way of computerised records,

or in a combination of those two ways.

381. The Contractor shall include in the records referred to in clause 380 clinical reports sent in accordance with clause 39 or from any other *health care professional* who has provided clinical services to a person on its list of patients.

382. The consent of the HB required by clause 380.2 shall not be withheld or, once given, withdrawn provided the HB is satisfied, and continues to be satisfied, that-

382.1 the computer system upon which the Contractor proposes to keep the records has been accredited by the Scottish Ministers or another

person on their behalf as suitable for that purpose in accordance with “RFA V.1 – Requirements for Accreditation in General Practice Computer Systems in Scotland”;

382.2 the security measures, audit and system management functions incorporated into the computer system as accredited in accordance with clause 382.1 have been enabled; and

382.3 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 HB concerning good practice in the keeping of electronic patient records.

383. Where a patient’s records are computerised, the Contractor shall, as soon as possible following a request from the HB, allow the HB to access the information recorded on the computer system on which those records are held by means of the audit function referred to in clause 382.2 to the extent necessary for the HB to check that the audit function is enabled and functioning correctly.

384. The Contractor shall send the complete records relating to a patient to the HB-

384.1 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

384.2 in any other case where the person is no longer registered with the Contractor, as soon as possible, at the request of the HB

and the Contractor's obligations pursuant to this clause, and clause 385 below shall survive the termination or expiry of the Contract.

385. To the extent that a patient's records are computerised records, the Contractor complies with clause 384 if it sends to the HB a copy of those records-

385.1 in written form; or

385.2 with the written consent of the HB in any other form.

386 The consent of the HB to the transmission of information other than in written form for the purposes of clause 385.2 shall not be withheld or withdrawn provided it is satisfied, and continues to be satisfied, with the following matters-

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

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

386.3 how the Contractor will ensure that the record received by the HB is identical to that transmitted; and

386.4 how a written copy of the record can be produced by the HB.

387. Where the Contractor's patient records are computerised records, the Contractor shall not disable, or attempt to disable, either the security measures or the audit and system management functions referred to in clause 382.2.

(Clauses 388-389 not allotted)

Confidentiality of personal data

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

Practice leaflet

391. The Contractor shall-

391.1 compile a *practice leaflet* which shall include the information specified in Schedule 3;

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

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

Provision of information

392. Subject to clause 393, the Contractor shall, at the request of the HB, produce to the HB or to a person authorised in writing by the HB or allow it, or a person authorised in writing by it, to access, on request-

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

392.2 any other information which is reasonably required in connection with the HB's functions.

393. The Contractor shall not be required to comply with any request made in accordance with clause 392 unless it has been made by the HB in accordance with directions relating to the provision of information by contractors given to it by the Scottish Ministers under section 2(5) of *the Act*.

Inquiries about prescriptions and referrals

394. The Contractor shall, subject to clauses 395 and 396, sufficiently answer any inquiries whether oral or in writing from the HB concerning-

394.1 any *prescription form* issued by a *prescriber* ;

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

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

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

395. An inquiry referred to in clause 394 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.

396. The Contractor shall not be obliged to answer any inquiry referred to in clause 394 unless it is made-

396.1 in the case of clause 394.1 or 394.2 by an appropriately qualified *health care professional*; or

396.2 in the case of clause 394.3 or 394.4, by an appropriately qualified medical practitioner,

appointed in either case by the HB to assist it in the exercise of its functions under clause 394 and 395 who produces, on request, written evidence that the person is authorised by the HB to make such an inquiry on its behalf.

Reports to a *medical officer*

397. The Contractor shall, if it is satisfied that the patient consents-

397.1 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

397.2 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.

398 For the purpose of satisfying itself that the patient has consented as required by clause 397, 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.

Annual return and review

Note : Clauses 399-402 shall only apply to the Contractor if the Contract subsists after 30th June 2004

399 The Contractor shall submit an annual return relating to the Contract to the HB which shall require the same categories of information from all persons who hold contracts with the HB.

400 Following receipt of the return referred to in clause 399, the HB shall arrange with the Contractor an annual review of its performance in relation to the Contract.

401. Either the Contractor or the HB may, if it wishes to do so, invite the *area medical committee* for the area of the HB to participate in the annual review.

402. The HB shall prepare a draft record of the review referred to in clause 399 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.

Notifications to the HB

403. 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-

403.1 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;

403.2 any circumstances which give rise to the HB's right to terminate the contract under clauses 487 and 494;

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

403.4 any change of which it is aware in the address of a *registered patient*; and

403.5 the death of any patient of which it is aware.

404. The Contractor shall, unless it is impracticable for it 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*.

405. 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.

(Clauses 406-407 not allotted)

Notice provision specific to a Contractor that is a partnership

408. The Contractor shall give notice in writing to the HB forthwith when-

408.1 a partner leaves or informs the other members of the partnership that the partner intends to leave the partnership, and the date upon which the partner left or will leave the partnership; and

408.2 a new partner joins the partnership.

409 A notice under clause 408.2 shall-

409.1 state the date that the new partner joined the partnership;

409.2 confirm that the new partner is a *general medical practitioner*;

409.3 confirm that the new partner meets the conditions imposed by regulations 4 and 5 of *the Regulations* and

409.4 state whether the new partner is a general or limited partner.

Notification of deaths

410. 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.

411. The report shall include-

411.1 the patient's full name;

411.2 the patient's National Health Service number where known;

411.3 the date and place of death;

411.4 a brief description of the circumstances, as known, surrounding the death;

411.5 the name of any medical practitioner or other person treating the patient whilst on the *practice premises*, and

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

412. The Contractor shall send a copy of the report referred to in clause 410 to any other HB in whose area the deceased was resident at the time of his death.

(Clause 413 not allotted)

Entry and inspection by the HB

414. Subject to the conditions in clause 415, the Contractor shall allow persons authorised in writing by the HB to enter and inspect the *practice premises* at any reasonable time.

415 The conditions referred to in clause 414 are that-

415.1 reasonable notice of the intended entry has been given;

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

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

416 Either the Contractor or the HB may, if it wishes to do so, invite the *areal medical committee* for the area of the HB to be present at an inspection of the *practice premises* which takes place under clause 414.

PART 16

CERTIFICATES

417. 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-

417.1 is being attended by a medical practitioner who is not-

417.1.1 employed or engaged by the Contractor,

417.1.2 if this Contract is with a partnership, one of the partners,
or

417.1.3 [not allotted]

417.2 is not being treated by or under the supervision of a
health care professional.

418. The exception in clause 417.1 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>
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 21 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (special provision as to registration of still-birth)
4. To enable payment to be made to an institution or other person in case of mental disorder of persons entitled to payment from public funds.	Section 142 of the Mental Health Act 1983 (pay, pensions etc. of mentally disordered persons)
5. To establish unfitness for jury service	Criminal Procedure (Scotland) Act 1995 Court of Session Act 1988
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

Default Contract (23.03.04)

8. To support applications for certificates conferring exemption from charges in respect of drugs, medicines and appliances. National Health Service (Scotland) Act 1978
9. To support a claim by or on behalf of a severely mentally impaired person for exemption from liability to pay the Council Tax or eligibility for a discount in respect of the amount of Council Tax payable. Local Government Finance Act 1992. Schedule 1, paragraph 2(1)(b)
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PART 17

PAYMENT UNDER THE CONTRACT

419. The HB shall make payments to the Contractor under the Contract promptly and in accordance with the terms of the Contract and articles 36 to 39 of the *Transitional Order* subject to any right the HB may have to set off against any amount payable to the Contractor under the Contract any amount-

419.1 that is owed by the Contractor to the HB under the Contract; or

419.2 that the HB may withhold or deduct from the Contractor in accordance with the terms of the Contract or any other applicable provisions contained in directions given by the Scottish Ministers under section 17M of *the Act*.

420. As a condition of entering into the Contract, the Contractor has surrendered all rights to further payments from the PCT under article 41(1) of *the Transitional Order*, and the Contractor acknowledges that any such rights were extinguished when the Contractor entered into the Contract

421. For the purposes of payment under the Contract, the Contract shall be treated as if it commenced on 1st April 2004

(Clauses 422 – 428 not allotted)

PART 18

FEES AND CHARGES

429. The Contractor shall not, either itself or through any other person, demand or accept from any of its patients a fee or other remuneration for its own or another's benefit-

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

429.2 for any prescription for any drug, medicine or appliance,

except in the circumstances set out in clause 430.

430. The Contractor may demand or accept a fee or other remuneration—

430.1 from any statutory body for services rendered for the purposes of that body's statutory functions;

430.2 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;

430.3 for treatment which is not primary medical services or otherwise required to be provided under the Contract and which is given-

430.3.1 pursuant to the provisions of section 57 of *the Act*, or

430.3.2 in accommodation provided by a *care home service* which is not providing services under *the Act*

if, in either case, the person providing the treatment 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;

430.4 under section 158 of the Road Traffic Act 1988 (payment for emergency treatment of traffic casualties);

430.5 when the contractor treats a patient under clause 431, in which case it shall be entitled to demand and accept a reasonable fee from the patient (recoverable in certain circumstances under clause 432) for any treatment given, if it gives the patient a receipt;

430.6 for attending and examining (but not otherwise treating) a patient-

430.6.1 at the patient's request at a police station in connection with possible criminal proceedings against the patient,

430.6.2 at the request of a commercial, educational or not-for-profit organisation for the purpose of creating a medical report or certificate, or

430.6.3 for the purpose of creating a medical report required in connection with an actual or potential claim for compensation by the patient

430.7 for treatment consisting of an immunisation for which no remuneration is payable by the HB and which is requested in connection with travel abroad;

430.8 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;

430.9 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;

430.10 for testing the sight of a person to whom none 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);

430.11 where the Contractor is authorised or required by a Health Board under the contract in accordance with clause 286 to provide drugs, medicines or appliances to a patient and provides for that patient, otherwise than under pharmaceutical services, any *Scheduled drug*;

430.12 for prescribing or providing drugs for malaria chemoprophylaxis.

431 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 reasonable fee in accordance with clause 430.5, subject to the provision for repayment contained in clause 432.

432. Where a person from whom the Contractor received a fee under clause 430.5 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.

433. Part 18 shall survive the expiry or termination of the Contract.

PART 19

CLINICAL GOVERNANCE

434. 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.

PART 20

INSURANCE

435. The Contractor shall at all times hold adequate insurance against liability arising from negligent performance of clinical services under the Contract.

436. 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. This clause applies to any sub-contract specified in clause 329.

437. For the purposes of clauses 435 to 437.2-

437.1 “insurance” means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor; and

437.2 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.

438. 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 435.

PART 21

GIFTS

439 The Contractor shall keep a register of gifts which-

439.1 are given to any of the persons specified in clause 440 by, or on behalf of, a patient, a relative of a patient or any person who provides or wishes to provide services to the Contractor or its patients in connection with the Contract; and

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

440. The persons referred to in clause 439 are-

440.1 the Contractor;

440.2 if the Contractor is a partnership, any partner;

440.3 [not allotted]

440.4 any person employed by the Contractor for the purposes of the Contract;

440.5 any *general medical practitioner* engaged by the Contractor for the purposes of the Contract;

440.6 any spouse of the Contractor (if the Contractor is an individual medical practitioner) or of a person specified in clauses 440.2 to 440.5; or

440.7 any person (whether or not of the opposite sex) whose relationship with the Contractor (where the Contractor is an individual medical practitioner) or with a person specified in clauses 440.2 to 440.5 has the characteristics of the relationship between husband and wife.

441. Clause 439 does not apply where-

441.1 there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the Contractor;

441.2 the Contractor is not aware of the gift; or

441.3 the Contractor is not aware that the donor wishes to provide services to the Contractor.

442. The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within clause 439 and which are given to the persons specified in clauses 440.2 to 440.7;

443. The register referred to in clause 439 shall include the following information-

443.1 the name of the donor;

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

- 443.3 in any other case, the address of the donor;
- 443.4 the nature of the gift;
- 443.5 the estimated value of the gift; and
- 443.6 the name of the person or persons who received the gift.

444. The Contractor shall make the register available to the HB on request.

PART 22

COMPLIANCE WITH LEGISLATION AND GUIDANCE

445. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the HB, and the Scottish Ministers.

PART 23

COMPLAINTS

Complaints procedure

446. 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.

447. The complaints procedure referred to above shall-

447.1 comply with the requirements in clauses 450 to 458, and clause 462;

448. The Contractor shall take reasonable steps to ensure that patients are aware of-

448.1 the complaints procedure;

448.2 the role of the HB and other bodies in relation to complaints about services under the Contract, and

449. The Contractor shall take reasonable steps to ensure that the complaints procedure is accessible to all patients.

Making of complaints

450. A complaint may be made by or, with the patient's consent, on behalf of a patient, or former patient, who is receiving or has received services under the Contract, or

450.1 where the patient is a *child*-

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

450.1.2 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.

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

450.2 where the patient is incapable of making a complaint, by a relative or other adult who has an interest in the patient's welfare.

451. Where a patient has died a complaint may be made by a relative or other adult person who had an interest in the patient's welfare or, where the patient fell within clause 450.1.2 or 450.1.3, by the authority or voluntary organisation, as the case may be.

Period for making complaints

452. Subject to clause 453, the period for making a complaint is-

452.1 six months from the date on which the matter which is the subject of the complaint occurred; or

452.2 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.

453 Where a complaint is not made during the period specified in clause 452, it shall be referred to the person nominated in clause 454.1 and if the person is of the opinion that-

453.1 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

453.2 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 452.

Further requirements for complaints procedures

454. The Contractor shall nominate-

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

454.2 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.

455. All complaints shall be-

455.1 either made or recorded in writing,

455.2 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

455.3 properly investigated.

456 Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under clause 454.1 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.

457. Where the investigation of the complaint requires consideration of the patient's medical records, the person specified under clause 454.1 must inform the patient or person acting on the patient's 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.

458. 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.

Co-operation with investigations

459. The Contractor shall co-operate with-

459.1 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

459.2 any investigation of a complaint by an NHS body or local authority which relates to a patient or former patient of the Contractor.

460. In the previous clause-

460.1 “NHS body” means, in Scotland, any Health Board in England and Wales, a *Primary Care trust*, a *NHS trust*, a *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

460.2 “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*.

461. In co-operating with any investigation, the Contractor shall, by way of example,-

461.1 answer questions reasonably put to the Contractor by the HB;

461.2 provide any information relating to the complaint reasonably required by the HB;

461.3 attend any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice

has been given) if the Contractor's presence at the meeting is reasonably required by the HB.

462. The Contractor shall inform the HB, at such intervals as required, of the number of complaints it has received under the procedure established in accordance with Part 23 of the Contract

463 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.

PART 24

DISPUTE RESOLUTION PROCEDURES

Local resolution of contract disputes

464 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).

465. 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 464,

466. [not allotted]

Dispute resolution

467. Any dispute arising out of or in connection with the Contract, except matters dealt with under the complaints procedure set out in clauses 446 to 462 of this Contract, may be referred for consideration and determination to the Scottish Ministers, if:

467.1 the HB so wishes and the Contractor has agreed in writing; or

467.2 the Contractor so wishes (even if the HB does not agree).

468. In the case of a dispute referred to the Scottish Ministers under clause 467, 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*.

NHS dispute resolution procedure

469. 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 clause 467 above and the HB and the Contractor shall participate in the *NHS dispute resolution procedure* as set out in paragraphs 91 and 92 of Schedule 5 to *the Regulations*, subject to the modifications in article 33(2) of the *Transitional Order*.

470. [not allotted]

471. 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-

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

471.2 a copy of the Contract; and

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

472. Any party wishing to refer a dispute as mentioned in clause 469 must send the request under clause 471 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.

473. In clauses 464 to 472 “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.

474. Part 24 shall survive the expiry or termination of the Contract.

PART 25

VARIATION AND TERMINATION OF THE CONTRACT

Variation of the Contract: general

475. Subject to clause 363, and this Part (variation and termination of the Contract), no amendment or variation shall be made to the Contract.

476. The HB may vary the Contract without the Contractor's consent so as to comply with *the Act*, any order or regulations made pursuant to that Act, or any direction given by the Scottish Ministers pursuant to that Act where it-

476.1 is reasonably satisfied that it is necessary to vary the Contract in order so to comply; and

476.2 notifies the Contractor in writing (other than transmission by electronic means) of the wording of the proposed variation and the date upon which that variation is to take effect.

477. 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 476.2 is served on the Contractor.

Termination by agreement

478. 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.

Termination by the Contractor

479. [not allotted]

480. [not allotted]

481. [not allotted]

482. 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 17 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 17 of the Contract.

483. 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 482.

484. 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 483 until-

484.1 there has been a determination of the dispute in accordance with the procedure specified in Part 24 of the Contract; or

484.2 the HB ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

485. Clauses 479 to 484 are without prejudice to any other rights to terminate the Contract that the Contractor may have.

Termination by the HB: general

486. The HB may only terminate the Contract in accordance with the provisions of Part 25 of this Contract.

Termination by the HB where the individual medical practitioner, or any one of the partners, is no longer a general medical practitioner

487. The HB shall serve notice in writing on the Contractor terminating the Contract forthwith if the Contractor is an individual, and that person is no longer a *general medical practitioner*.

488. The HB shall serve notice in writing on the Contractor terminating the Contract forthwith if the Contractor is a partnership, and one of the partners is no longer a general medical practitioner.

(Clauses 489 – 493 not allotted)

Other grounds for termination by the HB

494. 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-

494.1 in the case of a contract with a medical practitioner, that medical practitioner;

494.2 in the case of a contract with a partnership, any partner or the partnership; and

falls within clause 495 during the existence of the Contract.

495. A person falls within this clause if-

495.1 [not allotted]

495.2 the person is the subject of a *national disqualification*;

495.3 subject to clause 496, 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;

495.4 subject to clause 497, the person 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, the person is employed by the *health service body* that dismissed the person or by another *health service body*;

495.5. the person is *disqualified* from a *list* unless the person's name has subsequently been included in such a *list*;

495.6 the person has been convicted in the United Kingdom of murder

495.7 the person has been convicted in the United Kingdom of a criminal offence, other than of murder, and has been sentenced to a term of imprisonment of over six months;

495.8 subject to clause 499, the person has been convicted elsewhere of an offence which would, if committed in Scotland, constitute murder; or constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;

495.9 the person has been convicted of an offence referred to in Schedule 1 to the Criminal Procedure (Scotland) Act 1995 or Schedule 1 to the Children and Young Persons Act 1933

495.10 the person, has-

495.10.1 had sequestration of the person's estate awarded or been adjudged bankrupt unless (in either case) the person has been discharged or the bankruptcy order has been annulled;

495.10.2 been made the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order under Schedule 4A to the Insolvency Act 1986, unless that order has ceased to have effect or has been annulled

495.10.3 made a composition or arrangement with, or granted a trust deed for, the person's creditors unless the person has been discharged in respect of it or the person makes any conveyance or assignation for the benefit of its creditors;

495.11 that person is a partnership and-

495.11.1 a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or

495.11.2 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;

495.12 the person has been-

495.12.1 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

495.12.2 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 the person was privy, or which the person by the person's conduct contributed to or facilitated;

495.13 the person 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);

495.14. 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;

496. The HB shall not terminate the Contract pursuant to clause 495.3 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 or a partner, as the case may be.

497. The HB shall not terminate the Contract pursuant to clause 495.4 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.

498 [not allotted]

499. The HB shall not terminate the Contract pursuant to clause 495.8 where the HB is satisfied that the conviction does not make the person unsuitable to be a contractor or a partner, as the case may be.

Termination by the HB for a serious breach

500. 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-

500.1 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

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

Termination by the HB: remedial notices and breach notices

501. Where the Contractor has breached the Contract other than as specified in clauses 487 to 500 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").

502 A remedial notice shall specify-

502.1 details of the breach;

502.1 the steps the Contractor must take to the satisfaction of the HB in order to remedy the breach; and

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

503. 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.

504. 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.

505. Where the Contractor has breached the Contract other than as specified in clauses 487 to 500 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”).

506. If, following a breach notice or a remedial notice, the Contractor-

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

506.2 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.

507. 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 to allow the Contract to continue would be prejudicial to the efficiency of the services to be provided under the Contract.

508. 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.

(Clause 509 not allotted)

Termination by the HB: additional provisions specific to Contracts with a partnership

510. 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.

511. A notice given to the Contractor pursuant to clause 510 shall specify-

511.1 the date upon which the Contract is to be terminated; and

511.2 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.

Contract sanctions

512. In clauses 513, 521, 527 and 528, "contract sanction" means withholding or deducting monies otherwise payable under the Contract.

513 Where the HB is entitled to terminate the Contract pursuant to clauses 494, 500, 504 and 506, 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.

514 [not allotted]

515. If the HB decides to impose a contract sanction, it must notify the Contractor of the details of the contract sanction that it proposes to impose and the date upon which that sanction will be imposed.

516. Subject to clauses 518 to 521, the HB shall not impose the contract sanction until at least 28 days after it has served notice on the Contractor pursuant to clause 514 unless the HB is satisfied that it is necessary to do so in order to protect itself from material financial loss.

517. 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.

Contract sanctions and the *NHS dispute resolution procedure*

518. 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 521, impose the proposed contract sanction except in the circumstances specified in clause 519.1 or 519.2.

519. 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 515 (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-

519.1 there has been a determination of the dispute in accordance with Part 21 of the Contract and that determination permits the HB to impose the contract sanction; or

519.2 the Contractor ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

520. If the Contractor does not invoke the *NHS dispute resolution procedure* within the time specified in clause 519, the HB shall be entitled to impose the contract sanction forthwith.

521. 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 itself from material financial loss, the HB shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

Termination and the *NHS dispute resolution procedure*

522. Where the HB is entitled to serve written notice on the Contractor terminating the contract pursuant to clauses 494, 500, 504 or 506, 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 523 applies.

523. 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.

524 In a case falling within clause 522 where the exception in clause 523 does not apply, where the Contractor invokes the *NHS dispute resolution procedure* before the end of the period of notice referred to in clause 522, 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 525.

525. The Contract shall only terminate pursuant to this clause if and when there has been a determination of the dispute in accordance with Part 24 of the Contract 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.

526. 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 524 and 525 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 494, 500, 504 or 506.

Consultation with the *area medical committee*

527. Whenever the HB is considering terminating the Contract pursuant to clauses 494, 500, 504, 506, or 510 or imposing a contract sanction, it shall, whenever it is reasonably practicable to do so, consult the *area medical*

committee for its area before it terminates the Contract or imposes a contract sanction.

528. Whether or not the *area medical committee* has been consulted pursuant to clause 527, 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.

(Clauses 529-539 not allotted)

Consequences of termination

540. The termination of the Contract, for whatever reason, is without prejudice to the accrued rights of either party under the Contract.

541. On the termination of the Contract for any reason, the Contractor shall-

541.1 subject to the requirements of this clause, cease performing any work or carrying out any obligations under the Contract;

541.2 co-operate with the HB to enable any outstanding matters under the Contract to be dealt with or concluded in a satisfactory manner;

541.3 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-

541.3.1 providing reasonable information about individual patients, and

541.3.22 delivering patient records

to such other appropriate person or persons as the HB specifies.

541.4 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;

542. Subject to clauses 543 to 545, 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.

543. 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.

544. 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 the Contractor with written details of the reconciliation. The parties shall be bound by the determination of the dispute.

545. 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.

546. The obligations contained in clauses 540 to 545 shall continue to apply notwithstanding the termination of the Contract.

PART 26

NON-SURVIVAL OF TERMS

547. Unless expressly provided and where so expressly provided, subject to clause 548, no term of this Contract shall survive expiry or termination of this Contract. Express provision is made in relation to-

- 547.1 clauses 384 and 385 (patient records);
- 547.2 Part 18 (fees and charges);
- 547.3 Part 23 (complaints);
- 547.4 Part 24 (dispute resolution procedures);
- 547.5 clause 528; (notifications to the *area medical committee*)
- 547.6 clauses 540 to 545 (consequences of termination); and
- 547.7 clauses 551 and 552. (governing law and jurisdiction)

548. The terms specified in clauses 547.1 to 547.3 and 547.6 shall not survive the expiry or termination of the Contract where the Contractor, immediately following the expiry or termination of the Contract, is a party to a *general medical services contract* with the HB

ENTIRE AGREEMENT

549. Subject to clause 363 and any variations made in accordance with Part 25, this Contract constitutes the entire agreement between the parties with respect to its subject matter.

550. The Contract supersedes any prior agreements, negotiations, promises, conditions or representations, whether written or oral, and the parties confirm that they did not enter into the Contract on the basis of any representations that are not expressly incorporated into the Contract. However, nothing in this Contract purports to exclude liability on the part of either party for fraudulent misrepresentation.

GOVERNING LAW AND JURISDICTION

551. This Contract shall be governed by and construed in accordance with Scots law.

552. 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.

553. Clauses 551 and 552 shall continue to apply notwithstanding the termination of the Contract.

WAIVER, DELAY OR FAILURE TO EXERCISE RIGHTS

554. 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.

FORCE MAJEURE

555. 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:

555.1 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

555.2 make all reasonable endeavours to take action within its power to comply with the terms of this Contract as fully and promptly as possible.

556. Unless the affected party takes such steps, clause 555 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.

557. 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).

558. 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 557 above, or if the other party otherwise consents.

(Clauses 559-560 not allotted)

SERVICE OF NOTICE

561. 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:

561.1 personally;

561.2 by post, or in the case of any notice served pursuant to Part 25, by registered or recorded delivery post;

561.3 by telex, or facsimile transmission (the latter confirmed by telex or post);

561.4 unless the context otherwise requires and except in clause 475, electronic mail; or

561.5 by any other means which the HB specifies by notice to the Contractor.

562 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.

563 Any notice or other information shall be deemed to have been served or given:

563.1 if it was served personally, at the time of service;

563.2 if it was served by post, two *working days* after it was posted; and

563.3 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*.

564 Where notice or other information is not given or sent in accordance with clauses 561 to 563, such notice or other information is invalid unless the person receiving it elects, in writing, to treat it as valid. **IN WITNESS WHEREOF** the parties hereto have caused this Agreement to be executed on the day and year underwritten by their duly authorised officers before witnesses:

Signed on behalf of the HB at _____ on the _____ day of
Two Thousand and _____ before the witness hereto subscribing:

Signed _____ Date _____
Name _____
Designation _____

Witness

Signed _____
Full Name _____
Address _____

Signed on behalf of the Contractor at _____ on the _____ day of
Two Thousand and _____ before the witness hereto subscribing:

Signed _____ Date _____
Name _____
Designation _____

Witness

Signed _____
Full Name _____
Address _____

[The Contract must be signed by a person with power to bind the Contractor]

(Note : Although not a contractual requirement, 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 these partners are general partners or limited partners) should sign the Contract)

SCHEDULE 1¹⁹ (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)²⁰ 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.

¹⁹ Please use this form of Schedule if the Contractor is an individual medical practitioner.

²⁰ Please provide the address to which official correspondence and notices should be sent..

SCHEDULE 1²¹ (PARTNERSHIP)

Part 1

The HB whose name, address, telephone number, fax number and email address (if any) is:

Part 2

The Contractor is a [limited]²² partnership under the name of []
carrying on business at [address of place of business]

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:

²¹ Please use this form of Schedule if the Contractor is a general or *limited partnership*.

²² Please delete if this is not applicable.

	GENERAL / LIMITED
	GENERAL / LIMITED
	GENERAL / LIMITED
	GENERAL / LIMITED
	GENERAL / LIMITED
	GENERAL / LIMITED
	GENERAL / LIMITED

The Contract is made with the partnership as it is from time to time constituted and shall 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.

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.

SCHEDULE 2

SPECIFICATION OF PREMISES, PRACTICE AREA AND STATUS OF CONTRACTOR'S LIST

1. Pursuant to clause 26, 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 are:

[INSERT DETAILS HERE]²³ .

2. Pursuant to clause 162, 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:

[INSERT DETAILS HERE]²⁴.

3. Pursuant to clause 163, the *Contractor's list of patients* is [open/ closed]²⁵.

²³ If the Contractor is an individual medical practitioner, unless the HB agrees otherwise in writing, there should be inserted in this space the addresses of all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the HB under paragraph 24 or 27 of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995 in respect of that practitioner and whose approval has not been withdrawn. If the Contractor is a partnership, unless the HB agrees otherwise in writing, there should be inserted in this space all the premises which, on 31st March 2004 were approved (whether with or without conditions) by the HB under paragraph 24 of Schedule 1 to the National Health Service (General Medical Services) (Scotland) Regulations 1995 in respect of any of the practitioners comprising the partnership and whose approval has not been withdrawn. See article 26 of *the Transitional Order*

²⁴ If the Contractor is an individual medical practitioner, insert here the area which was that practitioner's practice area on 31st March 2004 for the purposes of his arrangements under section 19 of *the Act*. If the Contractor is a partnership, insert here the area which covers all of the areas which were the practice areas of the practitioners comprising the partnership for the purposes of each of their arrangements under section 19 of the Act. This is required by article 27 of *the Transitional Order*

²⁵ The word 'open' should be selected: the word "closed" may only be selected if-

- on 31st March 2004-

-
- if the Contractor is an individual medical practitioner, that practitioner is or was exempt from the liability to have persons (other than a specified person) assigned to him under regulation 4(8) of the National Health Service (Choice of Medical Practitioner) (Scotland) Regulations 1998; or
 - if the Contractor is a partnership, all of the medical practitioners comprising the partnership are or were exempt from such liability; and
 - the HB has determined, in the light of circumstances in which it granted the exemption or exemptions referred to above, that the Contractor's list of patients should, from the commencement of the Contract, be *closed* to applications for inclusion in the list other than from the *immediate family members* of *registered patients*. See article 31 of *the Transitional Order*.

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. The full name of each person performing services under the Contract.
4. In the case of each *health care professional* performing services under the Contract that person's professional qualifications.
5. Whether the Contractor undertakes the teaching or training of *health care professionals* or persons intending to become *health care professionals*.
6. The contractor's *practice area*, by reference to a sketch diagram, plan or postcode.
7. The address of each of the *practice premises*.
8. The Contractor's telephone and fax number and the address of its website (if any).
9. Whether the *practice premises* have suitable access for all disabled patients and, if not, the alternative arrangements for providing services to such patients.
10. How to register as a patient.
11. The right of patients to express a preference of practitioner in accordance with clause 185 and the means of expressing such a preference.
12. The services available under the Contract.
13. The opening hours of the *practice premises* and the method of obtaining access to services throughout the *core hours*.
14. The criteria for home visits and the method of obtaining such a visit.

15. The consultations available to patients under clauses 35 and 36, and 37 and 38.
16. The arrangements for services in the out of hours period and how the patient may contact such services.
17. If the services in paragraph 16 are not provided by the contractor, the fact that the Health Board referred to in paragraph 25 is responsible for commissioning the services.
18. The telephone number of NHS 24 and details of the NHS 24 website.
19. The method by which patients are to obtain repeat prescriptions.
20. If the Contractor is a dispensing contractor the arrangements for dispensing prescriptions.
21. How patients may make a complaint or comment on the provision of service.
22. The rights and responsibilities of the patient, including keeping appointments.
23. The action that may be taken where a patient is violent or abusive to the contractor, its staff or other persons on the *practice premises* or in the place where treatment is provided under the Contract or other persons specified in clause 203.
24. Details of who has access to patient information (including information from which the identity of the individual can be ascertained) and the patient's rights in relation to disclosure of such information.
25. The name, address and telephone number of the HB which is a party to the contract and from whom details of primary medical services in the area may be obtained

SCHEDULE 4
PLAN FOR IMPROVEMENT OF PREMISES

