

## **GENERAL OPHTHALMIC MANDATORY SERVICES MODEL CONTRACT**

**The text of the General Ophthalmic Mandatory Services Model Contract has been prepared by the Department of Health and approved by the Department, ABDO, AOP, BMA and FODO.**

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**THIS CONTRACT** is made on the          day of                                  20[ ]

**BETWEEN**

(1) The Primary Care Trust whose name and address appears at Schedule 1 to this Contract (called “the PCT”);

**AND**

(2) The contractor(s) whose name(s) appear(s) at Schedule 1 to this Contract (called “the Contractor”)

**BACKGROUND**

A. The PCT is a statutory body established by orders made pursuant to section 18 of the National Health Service Act 2006. It is the duty of the PCT to exercise its powers so as to provide or secure the provision of mandatory services of primary ophthalmic services within its area<sup>1</sup>.

B. In order to achieve this object, the PCT is empowered by the National Health Service Act 2006, and the regulations made there under<sup>2</sup>, to enter into a general ophthalmic services contract.

C. The PCT and the Contractor wish to enter into a general ophthalmic services contract under which the Contractor is to provide primary ophthalmic services in accordance with the provisions of this Contract.

**PART 1<sup>3</sup>**

**DEFINITIONS AND INTERPRETATION**

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

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<sup>1</sup> See section 115(1)(a) of the NHS Act 2006.

<sup>2</sup> See the General Ophthalmic Services Contracts Regulations 2008 (S.I. 2008/1185) (“*the Regulations*”) and please also see regulation 2 of the Primary Ophthalmic Services Transitional Provisions Regulations 2008 (SI 2008/1209) (“*the Transitional Regulations*”).

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

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

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

“the 1986 Regulations” means the National Health Service (General Ophthalmic Service) Regulations 1986 (SI 1986/975);

“adjudicator” means the *Secretary of State* or a person or persons appointed by the *Secretary of State* under section 9(8) of the *Act* or paragraph 32(4) of Schedule 1 to the *Regulations*;

“bank holiday” means any day that is specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971 and shall include Christmas Day and Good Friday;

“the Charges Regulations” means the National Health Service (Optical Charges and Payments) Regulations 1997 (SI 1997/818);

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

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

“the Complaints Regulations” means the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009 (SI 2009/309);

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

“contract disqualification order” means an order of the First-tier Tribunal, under regulation 6 of the *Regulations*, that a person be disqualified from entering into a contract;

“eligible person” means a person, who is entitled, by virtue of *the POS Regulations*, to receive *mandatory services*;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 169 of *the Act*;

“Financial Directions” means the directions given by *the Secretary of State* under section 120 of *the Act* (GOS contracts: payments) <sup>4</sup>;

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

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

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

“the health service” means the health service established in pursuance of section 1 of the National Health Service Act 1946 and continued under section 1(1) of *the Act*;

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

“Health Service Commissioner” means a Commissioner who conducts investigations in accordance with the Health Service Commissioners Act 1993 (c.46);

“immediate family member” means-

- (a) a spouse or civil partner,
- (b) a person (whether or not of the opposite sex) whose relationship with the *patient* has the characteristics of the relationship between husband and wife or civil partner,
- (c) a parent or step-parent,
- (d) a son,
- (e) a daughter, or
- (f) a *child* of whom the 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 Act 1989; or
- (g) a grandparent;

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

“limited partnership” means a partnership registered under the Limited Partnerships Act 1907 and “limited partner” shall be construed accordingly;

“local authority” means any of the bodies listed in section 1 of the Local Authority Social Services Act 1970, the Council of the Isles of Scilly or a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994;

“MHRA” means the Medicines and Healthcare products Regulatory Agency;

“mandatory services” means the primary ophthalmic services provided under section 115(1)(a) of *the Act* (sight-testing service) and described in Part 8 of this Contract to a person who falls within regulation 3(1) of the *POS Regulations* (except sight-testing services provided as mobile services under regulation 2A of the *POS Regulations*);”

“national disqualification” means –

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<sup>4</sup> The directions in respect of the financial year 2008-09 will be given before 31<sup>st</sup> March 2009 and will be available on the Department of Health’s web site ([www.doh.gov.uk](http://www.doh.gov.uk)).

- (a) a decision made by the First-tier Tribunal under section 159 of *the Act* or under any provision corresponding to that section,
- (b) a decision under provisions in force in Scotland or Northern Ireland corresponding to section 159 of *the Act*, or
- (c) a decision by the *NHS Tribunal* which is treated as a national disqualification by the First-tier Tribunal by virtue of regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001 or regulation 6(4)(b) of the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002;

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

“NHS dispute resolution procedure” means the procedure for resolution of disputes specified in paragraphs 33 and 34 of Schedule 1 to *the Regulations*;

“NHS Tribunal” means the Tribunal constituted under section 46 of the 1977 Act for England and Wales, and which, except for prescribed cases, had effect, in relation to England, only until 14<sup>th</sup> December 2001 and, in relation to Wales, only until 26<sup>th</sup> August 2002;

“normal hours” means those days and hours being the days on which and the times at which services under the Contract will normally be provided by the Contractor;

“notice” means a notice in writing (including electronically) and “notify” shall be construed accordingly;

“ophthalmic performers list” means a list of *ophthalmic practitioners* prepared in accordance with regulation 3(1)(c) of the Performers Lists Regulations 2004;

“ophthalmic practitioner” means, unless the context otherwise requires-

- (a) an optometrist, who is not a corporate body, whose name is included in *the register*; or



- (b) a registered medical practitioner who is recognised as an ophthalmic medical practitioner under regulations 36 to 38 of the Performers Lists Regulations 2004 (S.I. 2004/585);

“the Opticians Act” means the Opticians Act 1989;

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

“patient” means an *eligible person* to whom the Contractor is providing or proposes to provide *mandatory services*;

“patient records” means the record compiled in accordance with clause 52 (patient records);

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

“the POS Regulations” means the Primary Ophthalmic Services Regulations 2008 (SI 2008/1186);

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

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

“primary care list” means-

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

under sections 29, 36, 39, 42 or 43 of *the 1977 Act*, or, in the case of pharmaceutical services, under sections 126 to 131 of *the Act*;

- (c) a list of persons approved for the purposes of assisting in the provision of any services mentioned in paragraph (b) prepared in accordance with regulations made under section 43D of *the 1977 Act* or section 149 of *the Act*;
- (d) a services list referred to in section 8ZA of the National Health Service (Primary Care) Act 1997;
- (e) a list corresponding to a services list prepared by virtue of regulations made under section 41 of the Health and Social Care Act 2001; or
- (f) a list corresponding to any of the above lists in Scotland, Wales or Northern Ireland;

“professional registration number” means the number against an *ophthalmic practitioner’s* name in *the register*, with the prefix and suffix given to that number in the *ophthalmic performers list* in which his name is included;

“the register” means, except in Part 15 (gifts), the register kept -

- (a) in the case of a ophthalmic medical practitioner, under section 2(2) of the Medical Act 1983, or
- (b) in the case of an optometrist, under section 7(a) or 8B(1)(a) of the Opticians Act 1989;

“the Regulations” means the General Ophthalmic Services Contracts Regulations 2008 (S.I. 2008/1185);

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

“the Secretary of State” means, unless the context otherwise requires, one of Her Majesty’s Principal Secretaries of State ; and

“the Transitional Regulations” means the Primary Ophthalmic Services Transitional Provisions Regulations 2008 (SI 2008/1209).

2. In this Contract unless the context otherwise requires:
  - 2.1. Defined terms and phrases appear in italics, except for the terms “patient” and “Contract”;
  - 2.2. Words denoting any gender (or none) include all genders (or lack thereof) and words denoting the singular include the plural and vice versa.
  - 2.3. Reference to any person may include a reference to any firm, company or corporation.
  - 2.4. Reference to “day”, “week”, “month” or “year” means a calendar day, week, month or year, as appropriate, and reference to a working day means any day except Saturday, Sunday and any *bank holiday*.
  - 2.5. The headings in this Contract are inserted for convenience only and do not affect the construction or interpretation of this Contract.
  - 2.6. The Schedules to this Contract are and shall be construed as being part of this Contract.
  - 2.7. Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of this Contract), and all statutory instruments, directions, determinations or orders made pursuant to it.
  - 2.8. Any obligation relating to the completion and submission of any form that the Contractor is required to complete and submit to the PCT includes the obligation to complete and submit the form in such a format or formats (electronic, paper or otherwise) as the PCT may specify.

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

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

3. Where there is any dispute as to the interpretation of a particular term in the Contract, the parties shall, so far as is possible, interpret the provisions of the Contract consistently with the European Convention on Human Rights, EC law, *the Act, the Regulations, the Transitional Regulations* and any other relevant regulations, directions, determinations or orders made under *the Act*.
4. Where the parties have indicated in writing that a clause in the Contract is reserved, that clause is not relevant and has no application to the Contract<sup>5</sup>.
5. Where a particular clause or part of a 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), that clause is not relevant and has no application to the Contract.

## **PART 2<sup>6</sup>**

### **RELATIONSHIP BETWEEN THE PARTIES**

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<sup>5</sup> This provision has been included so that if, in relation to a particular contract, a particular clause number or numbers are not relevant (for example, because that clause or those clauses only need to be included in contracts with a partnership and the contractor concerned is an individual) 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.

<sup>6</sup> Except where indicated, Part 2 is not required by *the Regulations*, but is recommended.

6. The Contract is a contract for the provision of primary ophthalmic services. The Contractor is an independent provider of services and is not an employee, partner or agent of the PCT. The Contractor must not represent or conduct its activities so as to give the impression that it is the employee, partner or agent of the PCT.
7. The PCT 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.
8. This Contract does not create any right enforceable by any person not a party to it.<sup>7</sup>
9. 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.
10. In complying with this Contract, and in exercising its rights under the Contract, the PCT must act reasonably and in good faith and as a responsible public body required to discharge its functions under *the Act*.
11. Clauses 9 and 10 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.
12. The Contractor shall not give, sell, assign or otherwise dispose of the benefit of any of its rights under this Contract.
13. The PCT may give, sell, assign or otherwise dispose of the benefit of its rights under this Contract to another Primary Care Trust.

### **PART 3**

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<sup>7</sup> This clause is required by *the Regulations* (see paragraph 58 of Schedule 1).

## NHS CONTRACT<sup>8</sup>

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

## PART 4

### PROVISIONS AS TO TIME

#### Commencement of the Contract

15. This Contract shall commence on [date].<sup>10</sup>

#### Duration of the Contract

16. [Except in the circumstances specified in clause 17<sup>11</sup>,] the Contract shall subsist until it is terminated in accordance with the terms of this Contract or the general law.<sup>12</sup>

17. [The circumstances referred to in clause 16 are that the PCT has terminated the Contract of another provider of primary ophthalmic services, and as a result of that termination, it wishes to enter into a temporary Contract for a period specified in the Contract for the provision of services.]

18. [ Where a Contract is entered into pursuant to clause 17 -

18.1. clause 144 (termination by the Contractor) shall not apply to the Contract; and

18.2. the parties to the temporary Contract may include such terms as to termination by notice as they may agree.].

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<sup>8</sup> If the Contractor has elected to be regarded as a *health service body* for the purposes of section 9 of the *Act* pursuant to regulation 8 of the *Regulations*, then the Contract must state that it is an *NHS contract*: see regulation 10 of the *Regulations*.

<sup>9</sup> Where the contract is an *NHS contract*, it is not enforceable in the courts but instead is subject to the dispute resolution procedures set out in Part 18 of the Contract and Part 6 of Schedule 1 to the *Regulations*. Therefore, the Contract must specify whether or not the Contractor has elected to be regarded as a *health service body*, and if it has, the Contractor must indicate that the Contract is an *NHS contract*.

<sup>10</sup> The parties must insert the date of commencement: services can only be provided under the Contract on a date after 31<sup>st</sup> July 2008 (see regulation 20 of the *Regulations*).

<sup>11</sup> The words in square brackets only need to be included if clause 17 et seq. are completed.

<sup>12</sup> This clause is required by the *Regulations*: see regulation 12 of the *Regulations*. The option for the Contract to subsist until it is terminated in accordance with the terms of the Contract or the general law must be included unless the PCT is entering into a temporary contract for a period for the provision of services to the patients of the Contractor, following the termination of contract that another Contractor held with the PCT.

## PART 5<sup>13</sup>

### WARRANTIES

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

20. The Contractor warrants that:

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

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

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

20.4. 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.

21. The PCT warrants that:

21.1. 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;

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<sup>13</sup> This Part is not required by *the Regulations*, but is recommended. It reflects preconditions for entering into a contract.

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

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

22. The PCT and the Contractor have relied on, and are entitled to rely on, information provided by one party to the other in the course of negotiating the Contract.

## **PART 6**

### **LEVEL OF SKILL<sup>14</sup>**

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

## **PART 7**

### **PROVISION OF SERVICES<sup>15</sup>**

#### **Premises**

24. The address of each of the premises to be used by the Contractor for the provision of services under the Contract is as follows: [ ]<sup>16</sup>.

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<sup>14</sup> This clause is required by *the Regulations* (see paragraph 10 of Schedule 1).

<sup>15</sup> Except where specifically indicated in a footnote, this whole section (Provision of Services) is required by *the Regulations* (see regulation 14 and Part 2 of Schedule 1).

<sup>16</sup> All relevant addresses from which services under the Contract will be provided by the Contractor must be included here. This clause is required by regulation 14(a) of *the Regulations*.

However, where an ophthalmic practitioner who, on 30<sup>th</sup> June 2008, is providing general ophthalmic services under sections 38 & 39 of *the 1977 Act*, enters into a *general ophthalmic services contract* on or before 30<sup>th</sup> June 2008 (whether as an individual ophthalmic practitioner, as one or two or more individuals practising in partnership, or if that person is a corporate body entered on the Register of the GOC which enters into a *general ophthalmic services contract* on or before 30<sup>th</sup> June 2008) the *practice premises* specified in the Contract at its commencement must, unless the PCT and the Contractor agree otherwise in writing, be:-

- if the Contractor is an individual ophthalmic practitioner, who was included in the ophthalmic list on 30<sup>th</sup> June 2008 (or on the date on which the contract is signed, if earlier), all the premises which were specified in relation to that ophthalmic practitioner in that ophthalmic lists pursuant to regulation 6(3)(b) of and paragraph 3 of Schedule 1 to the 1986 Regulations;



25. The Contractor shall ensure that premises and equipment used for the provision of services under the Contract are:

25.1. suitable for the delivery of those services; and

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

25.3. the obligation in clause 25.1 and 25.2 includes the provision of proper and sufficient waiting-room accommodation for patients; and

the Contractor shall provide in relation to *mandatory services* such other facilities as are necessary for it to properly perform those services.

#### **Patient preference of performer**

25A. The Contractor must-

25A.1. where it has agreed to provide services to a patient, notify the patient (or, in the case of a *child* or incapable adult, the person who made the application on their behalf) of the patient's right to express a preference to receive services from a particular performer where more than one performer is available;

25A.2. try to comply with any reasonable preference expressed by the patient under 25A.1. but need not do so if the preferred performer has reasonable grounds for refusing to provide services to the patient.

#### **Mixing of mandatory services with private services**

- 
- if the Contractor is a partnership, whose partners were included in the ophthalmic list on 30<sup>th</sup> June 2008 (or on the date on which the contract is signed, if earlier), all the premises which were specified in relation to those ophthalmic practitioners in that ophthalmic lists pursuant to regulation 6(3)(b) of and paragraph 3 of Schedule 1 to the 1986 Regulations; or
  - if the Contractor is a corporate body, which was included in the ophthalmic list on 30<sup>th</sup> June 2008 (or on the date on which the contract is signed, if earlier), all the premises which were specified in relation to that ophthalmic practitioner in that ophthalmic list pursuant to regulation 6(3)(b) of and paragraph 3 of Schedule 1 to the 1986 Regulations.

26. A Contractor shall not, with a view to obtaining the agreement of a patient to undergo services privately-
- 26.1. advise a patient that *mandatory services* are not available from the Contractor under the Contract; or
  - 26.2. seek to mislead a patient about the availability, quality or extent of services available under the Contract.

**Telephone services**

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

27.1 patients to contact the *practice* for any purpose related to the Contract; or

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

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

**Safety of the Public**

28. The Contractor shall ensure–

28.1. that it –

28.1.1. has appropriate arrangements for infection control and decontamination;

28.1. 2. has regard to any relevant requirements of the *MHRA* or of the Health and Safety Executive; and

28.2 that it establishes and operates arrangements applicable to all the persons specified in clause 28.3.

28.3. The specified persons are –

28.3.1. any ophthalmic practitioner who performs services under the contract;  
and

28.3.2. any other person employed by the contractor to perform or assist in the performance of services under the contract.

28.4. In this clause “arrangements” means arrangements to ensure that –

28.4.1. effective measures of infection control are used;

28.4.2. all legal requirements relating to health and safety in the workplace are satisfied; and

28.4.3. any requirements of or recommendations by the MHRA are adhered to.

## **PART 8<sup>17</sup>**

### **MANDATORY SERVICES**

29. This Contract is to provide the *mandatory services* of primary ophthalmic services. The Contractor must provide the services described in clauses 30 to 34 at the *practice premises* [here insert hours and address of premises]<sup>18</sup>.

#### **Testing of Sight**

30. The Contractor shall, having accepted an application from or on behalf of an *eligible person* for the testing of sight –

30.1. secure the testing of the patient’s sight to determine whether he needs to wear or use an optical appliance; and

30.2 in so doing, secure the fulfilment of any duty imposed on a tester of sight by, or in regulations made under, section 26 of the Opticians Act (duties to be performed on sight testing).

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<sup>17</sup> This Part is required by *the Regulations* (see regulation 9(b)).

<sup>18</sup> Here insert the hours agreed by the parties in relation to each premises, also giving the address of the premises; this clause is required by regulations 9(b) and 14(b) of *the Regulations*. In the case of a Contract to which regulation 4 of *the Transitional Regulations* applies, this will be the hours noted in the ophthalmic list for the Contractor pursuant to regulation 6(3)(c) of *the 1986 Regulations*.

31. Where the Contractor or an *ophthalmic practitioner* employed or engaged by it to perform the Contract is of the opinion that a patient whose sight has been tested pursuant to clause 30—

31.1. shows on examination signs of injury, disease or abnormality in the eye or elsewhere which may required medical treatment; or

31.2. is not likely to attain a satisfactory standard of vision notwithstanding the application of corrective lenses,

it shall, if appropriate, and with the consent of the patient—

31.3. refer the patient to an ophthalmic hospital, which includes an ophthalmic department of a hospital,

31.4. inform the patient's doctor or GP practice that it has done so, and

31.5. give the patient a written statement that it has done so, with details of the referral.

32. Where a Contractor or an *ophthalmic practitioner* employed or engaged by it to perform the Contract tests the sight of a patient diagnosed as suffering from diabetes or glaucoma, it shall inform the patient's doctor or GP practice of the results of the test.

33. Where a Contractor or an *ophthalmic practitioner* employed or engaged by it to perform the Contract issues to a patient a prescription for an optical appliance, it shall, immediately thereafter, require the patient to acknowledge its receipt on a sight test form.

34. A prescription for glasses issued following a testing of sight under the Contract shall be completed by the method recommended in *Appendix A to British Standard BS 2738 Part 3: 2004 (Glossary of Terms relating to Ophthalmic Lenses and Spectacle Frames)* published by the British Standards Institution <sup>(19)</sup>, as effective on the date of its publication, and shall comply with any requirements as to its form specified in a direction made under section 120 for the purposes of payment in respect of the sight test.

## **PART 9**<sup>20</sup>

### **PATIENTS**

#### **Persons to whom services are to be provided**<sup>21</sup>

35. The Contractor may provide mandatory services under the Contract to *eligible persons* –

35.1. who make application to it for their sight to be tested; or

35.2. on whose behalf an application is made by a person specified in clause 36, and that application shall be made on a form provided for that purpose to the Contractor by the PCT and shall contain a written declaration signed by the applicant to the effect that he is an *eligible person*.

#### **Applications**

36. For the purposes of clause 35.2, a request for services may be made –

36.1 on behalf of any *child* by –

36.1.1. either *parent*;

36.1.2. a person duly authorised by a *local authority* which is accommodating the child under the Children Act 1989;

36.1.3. a person duly authorised by a voluntary organisation which is accommodating the child under the provisions of that Act; or

36.1.4. the guardian or other adult person who has the care of the child; or

36.2. 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 a relative or the primary carer of that person.

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19. Copies can be obtained from the British Standards Institute, 389 Chiswick High Road, London, W4 4AL or online at [www.bsi-global.com/en/Standards-and-Publications/](http://www.bsi-global.com/en/Standards-and-Publications/).

<sup>20</sup> Except where specifically indicated in a footnote, this Part is required by *the Regulations*: see regulation 13 and Part 1 of Schedule 1.

37. Subject to clause 38, the Contractor shall—

37.1. satisfy himself that the person is an *eligible person* by asking for satisfactory evidence of entitlement, unless the Contractor, in cases other than where the patient is a person specified in regulation 3(1)(d) of the POS Regulations (person of limited resources), already has satisfactory evidence of that available to it; or

37.2. where the patient has been asked for, but not produced, satisfactory evidence that the patient is an *eligible person*, record that fact on the patient's sight test form;

37.3. ensure that particulars of the patient and the approximate date of the last testing, if any, of the patient's sight are inserted in a sight test form by or on behalf of the patient; and

37.4.1. satisfy itself that the testing of sight is necessary.

38. Where a person is unable to inform the Contractor of the information required under clause 37.3, the Contractor may, instead of satisfying itself that those requirements are met, satisfy itself that the person is an *eligible person* by referring to its own records or by measuring the power of the lenses of the person's existing optical appliance by means of a focimeter or other suitable means.

39. The Contractor shall only refuse to provide services under the Contract to an *eligible person* if it has reasonable grounds for doing so, and those grounds cannot relate to a person's—

39.1. race, gender, social class, age, religion, sexual orientation, appearance, disability or medical or ophthalmic condition; or

39.2. decision or intended decision to accept or refuse private services in respect of himself or a family member.

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<sup>21</sup> This provision is required by Part 1 of Schedule 1 to *the Regulations*, which requires the Contract to specify to whom services under the Contract are to be provided.

40. If the Contractor refuses to provide services under the Contract on any ground other than that it is not satisfied that –

40.1. the person to whom it has refused to provide services is an *eligible person*; or

40.2. the testing of sight is necessary,

it shall keep a record of that refusal, specifying in that record its grounds for doing so and shall make this record available to the PCT on request.

**[Clauses 41 to 44 are spare]**

## **PART 10<sup>22</sup>**

### **PERSONS WHO PERFORM SERVICES**

#### **Qualifications of performers**

45. No *ophthalmic practitioner* shall perform ophthalmic services under the Contract unless -

45.1. included in an *ophthalmic performers list* of a Primary Care Trust in England;

45.2. not suspended from that list or from the *register*; and

45.3. not subject to interim suspension under section 41A of the Medical Act 1983 or section 13L of the *Opticians Act*.

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

46. The Contractor shall not employ or engage an *ophthalmic practitioner* to perform ophthalmic services under the Contract unless-

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<sup>22</sup> Except where footnotes indicate otherwise, this Part is required by *the Regulations* (see Part 3 of Schedule 1).

46.1. that practitioner has provided it with his *professional registration number* and the name and address of the Primary Care Trust on whose *ophthalmic performers list* the practitioner appears; and

46.2. the Contractor has checked that the *ophthalmic practitioner* meets the requirements in clause 45.

47. The Contractor shall not employ or engage an *ophthalmic practitioner* to perform ophthalmic services under the Contract, other than an *ophthalmic practitioner* falling within clause 48, unless the Contractor has obtained and is satisfied with the practitioner's clinical references.

48. Where the employment or engagement of an *ophthalmic practitioner* is urgently needed and it is not possible to be satisfied of the matters referred to in clause 47 before employing or engaging him, he may be employed or engaged on a temporary basis for a single period of up to 14 days whilst such references are obtained and considered and for an additional period of a further 14 days if the Contractor has good reason to believe that the referee is ill, on holiday or otherwise temporarily unavailable.

49. Where the Contractor employs or engages the same *ophthalmic practitioner* on more than one occasion within a period of 6 months, it may rely on the references provided on the first occasion, provided that those references are not more than 12 months old.

50. Where the Contractor has employed or engaged an *ophthalmic practitioner* to perform ophthalmic services under the Contract, whose inclusion in the *register* or an *ophthalmic performers list*, as the case may be, is subject to conditions, the Contractor shall ensure that those conditions are complied with, in so far as those conditions are relevant to the Contract or the delivery of services under it.

51. 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 such persons are both suitably qualified and competent to discharge the duties for which they are to be employed or engaged and shall have regard, in particular, to their -

51.1. academic and vocational qualifications;

51.2. education and training; and

51.3. previous employment or work experience.

## **PART 11**

### **RECORDS, INFORMATION, NOTIFICATION, RIGHTS OF ENTRY AND SIGNATURES<sup>23</sup>**

#### **Patient records**

52. The Contractor shall ensure that a full, accurate and contemporaneous record, which may be in electronic form, is kept in respect of each patient to whom it supplies services under the Contract, giving appropriate details of sight testing.

53. The record required by clause 52 may be kept in electronic form .

54. The Contractor shall keep that record for a period of at least 7 years.

**[DN clause 55 is spare]**

#### **Confidentiality of personal data**

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

#### **Patient information**

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<sup>23</sup> Except where it is expressly indicated in a footnote that a particular clause is only required in certain types of GOS Contract, this section is required by *the Regulations*: see Part 4 of Schedule 1.

57. The Contractor shall ensure that there is displayed in a prominent position in its practice premises (in a part to which patients have access) -

57.1. a notice supplied or approved by the PCT, indicating the services available under the Contract;

57.2. in respect of the Contractor's arrangements under clause 28, a written statement relating to its commitment to those arrangements;

57.3. a notice supplied or approved by the PCT, indicating to which descriptions of *patients* a payment may be made under the *Charges Regulations*; and

57.4 information about the complaints procedure which it operates in accordance with Part 5 of Schedule 1 to *the Regulations*, giving the name and title of the person nominated by the contractor in accordance with clause 108.1.

**Provision of information**

58. Subject to clause 59, the Contractor shall, at the request of the PCT, produce to the PCT or to a person authorised in writing by the PCT or allow it, or a person authorised in writing by it, to access, on request the information specified in clause 59 at such intervals or within such period as the PCT may specify.

59. The information referred to in clause 58 is -

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

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

including the Contractor's *patient records*.

**[DN: Clauses 60 to 64 are spare.]**

**Use of disqualified name**

65. The Contractor shall not use in any manner whatsoever the name or part of the name or the trading name, either alone or in combination with any other words or letters of, or used by, any person subject to a national disqualification or contract disqualification order, but nothing in this clause shall prevent the Contractor, other than a body corporate, from using its own name or, being a body corporate, from using the name by which it is registered pursuant to the provisions of the Opticians Act.

**Notifications to the PCT**

66. In addition to any requirements of notification elsewhere in the Contract, the Contractor shall *notify* the PCT -

66.1. as soon as reasonably practicable, of 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;

66.2. as soon as reasonably practicable, of any circumstances which give rise to the PCT's right to terminate the contract under clauses 152 to 154;

66.3. within 28 days (unless it is impracticable to do so) of any occurrence requiring a change in the information about it published by the PCT in accordance with regulations made under section 115(5) of the Act; and

66.4. when an *ophthalmic practitioner* who is performing or will perform, as the case may be, services under the Contract-

66.4.1. leaves the Contractor and the date on which the practitioner left or is to leave, or

66.4.2. is or is to be employed or engaged by the Contractor,

and the notification shall include the name of the *ophthalmic practitioner* who has left, or who has been or is to be employed or engaged, together with the *professional*

*registration number* and the name and address of the Primary Care Trust in whose *ophthalmic performers list* he is included.

**Notice provision specific to a Contractor that is a corporate body<sup>24</sup>**

67. The Contractor, if a corporate body, shall give *notice* to the PCT forthwith when-

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

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

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

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

67.5. a new director, chief executive or secretary of the corporate body is appointed.

68. A *notice* under clause 67.5 shall confirm that the new director, chief executive or, as the case may be, secretary of that corporate body meets the conditions imposed on such persons by virtue of regulation 4 of *the Regulations* and shall contain an application form in accordance with Schedule 3 to *the Regulations* in relation to each such person.

**Notice provision specific to a Contractor that is a partnership<sup>25</sup>**

69. The Contractor shall give *notice* to the PCT forthwith when-

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<sup>24</sup> Clauses 67 and 68 only need to be included in the Contract if the Contractor is a corporate body. If the Contractor is not a corporate body, these clauses can be deleted.

<sup>25</sup> Clauses 69 and 70 only need to be included in the Contract if the Contractor is a partnership. If the Contractor is not a partnership, these clauses can be deleted.

69.1. a partner leaves or informs the partners that of an intention to leave the partnership, and the date upon which that partner left or will leave the partnership; and

69.2. a new partner joins or proposes to join the partnership.

70. A notice under clause 69 shall-

70.1. state the date that the new partner joined or it is proposed will join the partnership;

70.2. state whether the new partner is an *ophthalmic practitioner*;

70.3. confirm that the new partner meets the conditions imposed by regulation 4 of and shall contain an application form in accordance with Schedule 3 to *the Regulations*, in relation to the new partner; and

70.4. state whether the new partner is or is to be a general or *limited partner*.

**Entry and inspection by the PCT**

71. The Contractor shall allow persons authorised in writing by the PCT to enter and inspect the *practice premises* at any reasonable time, provided that-

71.1. reasonable warning of the intended entry has been given;

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

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

**Entry and viewing under the LiNKs Regulations**

72. The Contractor must comply with regulation 3 of the Local Involvement Networks (Duty of Services-Providers to allow entry) Regulations 2008 (SI 2008/915) in so far as it applies to the Contractor.

**Entry and inspection by other bodies**

73. The Contractor shall allow any person who has a legal right to enter and inspect the *practice premises* to do so.

**Signing of documents**

74. In addition to any other requirement relating to any forms that are required to be completed as a consequence of the Contract or any clinical documents (if either require a signature), the Contractor shall ensure that any such document or form includes-

74.1. the name of anyone who signed it;

74.2. if the signatory is a member of a clinical profession that fact and of which profession he is a member; and

74.3. the name of the Contractor.

**PART 12<sup>26</sup>**

**PAYMENT UNDER THE CONTRACT**

75. The PCT shall make any payments under the Contract promptly and in accordance with both the terms of the Contract and any other conditions relating to the payment contained in the *Financial Directions* or any directions for the time being in force under section 8 of *the Act*, subject to any right the PCT may have to set off against any amount payable to the Contractor under the Contract any amount-

75.1. that is owed by the Contractor to the PCT under the Contract;

75.2. that has been paid to the Contractor owing to an error or in circumstances when it was not due; or

75.3. that the PCT may withhold from the Contractor in accordance with the terms of the Contract or any applicable provisions contained in the *Financial Directions*.

**[DN: clause 76 is spare]**

77. The contractor shall make payments to the PCT promptly and in accordance with both the terms of the contract and any other conditions relating to payment contained in the *Financial Directions*.

78. The PCT shall make payments to the Contractor in such amount and in such manner as specified in the *Financial Directions* or any directions for the time being in force under section 8 of *the Act*. Where, pursuant to any such directions, the PCT is required to make a payment to the Contractor under the Contract, but subject to conditions, those conditions are to be a term of the Contract.

79. Where the PCT has a right to set off under clause 75, the PCT may also recover that amount, or any part of it that has not been recovered by set off, as a civil debt, whether or not the contract has been terminated.

## **PART 13<sup>27</sup>**

### **FEES AND CHARGES**

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<sup>26</sup> Part 12 is required by regulation 15 of *the Regulations* and section 120 of *the Act*.

<sup>27</sup> This Part is required by *the Regulations* (see regulation 16 and Schedule 1).

80. The Contractor shall not, either itself or through any other person, demand or accept, from any patient of its or any person who has requested services under the contract for that patient or a family member, a fee or other remuneration for its own or another's benefit—

80.1. for the provision of any treatment under the Contract, or

80.2. as a prerequisite to providing services under the Contract.

81. The Contractor in making a decision—

81.1. as to what services to recommend or provide to a patient who has sought services under the Contract; or

81.2. to refer a patient for other services within the National Health Service, must do so without regard to its own financial interests.

82. Any claim by the Contractor for fees in respect of the provision of *mandatory services* shall be made by completing or securing the completion of a sight test form and sending it to the PCT within 6 months after the date of completion of the provision of the services.

83. Any such claim shall be—

83.1. signed by the *ophthalmic practitioner* who performed the sight test in respect of which the claim is made, who shall also supply, with that signed claim, his *professional registration number*; and

83.2. in a case where the *ophthalmic practitioner* is not the Contractor, counter-signed on behalf of the Contractor by a person (who may be the *ophthalmic practitioner*), duly authorised by the Contractor to counter-sign, whom the Contractor has previously notified the PCT is so authorised.



84. A signatory or counter-signatory shall sign any such claim in ink with their initials or forename and with their surname in their own handwriting and not by means of a stamp.

[Clause 85 is spare].

86. The Contractor shall not demand or accept from the PCT the payment of any fee or other remuneration in respect of any item of service –

86.1. which has not been provided under the Contract; or

86.2. for which another claim has already been submitted to the PCT.

87. This Part shall survive the expiry or termination of the Contract to the extent that it prohibits the Contractor from, either itself or through any other person, demanding or accepting from any of its patient a fee or other remuneration for its own or another's benefit.

[DN: clause 88 is spare]

## **PART 14<sup>28</sup>**

### **INSURANCE**

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

90. 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 89.

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<sup>28</sup> This Part is required by *the Regulations* (see paragraph 51 of Schedule 1).

91. For the purposes of this Part-

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

91.2. if insurance is held by a person employed or engaged by it in connection with clinical services which that person provides under the contract, the Contractor shall be regarded as holding insurance in relation to that person.

## **PART 15<sup>29</sup>**

### **GIFTS**

92. The Contractor shall keep a register of gifts which-

92.1. are given to any of the persons specified in clause 93 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

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

93. The persons referred to in clause 92 are-

93.1. the Contractor;

93.2. if the Contractor is a partnership, any partner;

93.3. if the Contractor is a corporate body, any director, chief executive or secretary of that body;

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<sup>29</sup> This Part is required: see paragraph 52 of Schedule 1 to *the Regulations*.

93.4. any person employed by the Contractor for the purposes of the Contract;

93.5. any *ophthalmic practitioner* engaged by the Contractor for the purposes of the Contract;

93.6 any spouse or civil partner of the Contractor (if the Contractor is an individual) or of a person specified in this clause; or

93.7. any person (whether or not of the opposite sex) whose relationship with the Contractor (where the Contractor is an individual) or with a person specified in this clause has the characteristics of the relationship between husband and wife or between civil partners.

94. A gift need not be entered in the register if -

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

94.2. the Contractor is not aware of the gift; or

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

95. The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within clause 92 and which are given to the persons specified in clauses 93.

96. The register referred to in clause 92 shall include the following information-

96.1. the name of the donor;

96.2. 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;

96.3. in any other case, the address of the donor;

96.4. the nature of the gift;

96.5. the estimated value of the gift; and

96.6. the name of the person or persons who received the gift.

97. The Contractor shall make the register available to the PCT on request.

## **PART 16<sup>30</sup>**

### **COMPLIANCE WITH LEGISLATION AND GUIDANCE**

98. The Contractor shall comply with any requirement that the *Charges Regulations* and any determination made under section 180(11) of *the Act* place upon contractors.

99. The Contractor shall ensure that any *ophthalmic practitioner* employed or engaged by it to perform services under the Contract complies with any requirement that the *Charges Regulations* and any determination made under section 180(11) of *the Act* place upon *ophthalmic practitioners*.

100. The Contractor shall comply with all relevant legislation and have regard to all relevant guidance issued by the PCT, the Strategic Health Authority established for an area which includes the area for which the PCT is established or *the Secretary of State*.

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<sup>30</sup> This Part is required by *the Regulations* (see regulation 16(3) and paragraph 53 of Schedule 1).

## **PART 17<sup>31</sup>**

### **COMPLAINTS**

#### **Complaints procedure before 1st April 2009**

101. 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 which are received before 1st April 2009.

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

102.1. the complaints procedure;

102.2. the role of the PCT and other bodies in relation to complaints about services under the Contract, and

102.3 the right to assistance with any complaint from independent advocacy services provided under section 248 of *the Act*.

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

#### **Complaints procedure for complaints received on or after 1st April 2009**

103A. As regards complaints relating to any matter reasonably connected with the provision of services under the Contract which are received on or after 1st April 2009, the Contractor shall establish and operate a complaints procedure that meets the requirements of the *Complaints Regulations*.

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<sup>31</sup> This Part is required by *the Regulations*: see Part 4A and Part 5 of Schedule 1.

**Making of complaints**

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

104.1 where the patient is a *child*, by-

104.1.1. either *parent*,

104.1.2. a person duly authorised by a *local authority* which is accommodating the *child* under the provisions of the Children Act 1989; or

104.1.3. a person duly authorised by a voluntary organisation which is accommodating the *child* under the provisions of that Act; or

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

105. 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 104.1.2 or .3 by the *local authority* or voluntary organisation, as the case may be.

**Period for making complaints**

106. Subject to clause 107, the period for making a complaint is-

106.1. 6 months from the date on which the matter which is the subject of the complaint occurred; or

106.2. 6 months from the date on which the matter which is the subject of the complaint comes to the complainant's attention, 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.

107. Where a complaint is not made during the period specified in clause 106, it shall be referred to the person specified in clause 108, who may, if of the opinion that-

107.1. 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

107.2. 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 106.

**Further requirements for complaints procedure**

108. The Contractor shall nominate-

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

108.2. 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.

109. All complaints shall be-

109.1. either made or recorded in writing;

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

109.3. properly investigated.

110. Within the period of 10 working days beginning with the day on which the complaint was received by the person specified under clause 108.1 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.

111. Where the investigation of the complaint requires consideration of the patient's ophthalmic records, the person specified under clause 108.1 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.

112. The Contractor shall keep a record of all complaints and copies of all correspondence relating to complaints for a period of at least 2 years from the date on which the complaint was made, but such records must be kept separate from patients' ophthalmic records.

#### **Co-operation with investigations**

113. The Contractor shall co-operate with-

113.1. any investigation of a complaint in relation to any matter reasonably connected with the provision of services under the Contract undertaken by the PCT or the Health Service Commissioner;

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



113.3 in clause 113.2 "NHS body" means a Primary Care Trust, an NHS trust, an NHS foundation trust, a Strategic Health Authority, a Local Health Board, a *Health Board*, a *Health and Social Services Board*, or a *Health and Social Services Trust*.

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

114.1. answer questions reasonably put to the Contractor by the PCT;

114.2. provide any information relating to the complaint reasonably required by the PCT; and

114.3. attend any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the Contractor's presence at the meeting is reasonably required by the PCT.

115. The Contractor shall inform the PCT, at such intervals as shall be agreed/[AS MAY BE SPECIFIED HERE]<sup>32</sup>, of the number of complaints it has received under the procedure established in accordance with this Part of the Contract.

116. This Part of this Contract shall survive the expiry or termination of the Contract insofar as it relates to any complaint or investigation reasonably connected with the provision of services under the contract before it terminated<sup>33</sup>.

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<sup>32</sup> This clause is required, but the Parties may either specify that interval here or agree it later. It is recommended that it be specified in the contract, but time may not permit that in relation to the transitional arrangements.

<sup>33</sup> This clause is not a required term, but it is recommended to ensure that the Contractor is still under an obligation to comply with the investigation of a complaint or with any relevant investigation where the Contract has terminated or expired.

## **PART 18<sup>34</sup>**

### **DISPUTE RESOLUTION**

#### **Local resolution of contract disputes**

117. In the case of any dispute arising out of or in connection with the Contract, the Contractor and the PCT must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the *NHS dispute resolution procedure* (or, where applicable, before commencing court proceedings).

#### **Dispute resolution: non-NHS Contracts<sup>35</sup>**

118. Any dispute arising out of or in connection with the Contract, except matters dealt with under the complaints procedure set out in Part 18 of this Contract, may be referred for consideration and determination to *the Secretary of State*, if:

118.1. the PCT so wishes and the Contractor has agreed in writing; or

118.2. the Contractor so wishes (even if the PCT does not agree).

119. In the case of a dispute referred to the *Secretary of State* under clause 118, 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***

120. 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 Secretary*

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<sup>34</sup> Except where specifically indicated in the footnotes, this Part is required by *the Regulations* (see Part 6 of Schedule 1).

<sup>35</sup> These clauses are required terms only if the contract is not an *NHS contract*. Otherwise, the clauses should be deleted from the Contract.

of State in accordance with [section 9(6) of the Act / clause 118 above]<sup>36</sup>, and the PCT and the Contractor shall participate in the *NHS dispute resolution procedure* as set out in paragraphs 30 and 31 of Schedule 1 to *the Regulations*.

121. Any party wishing to refer a dispute shall send to *the Secretary of State* a written request for dispute resolution within a period of 3 years, beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute, which shall include or be accompanied by-

121.1. the names and addresses of the parties to the dispute;

121.2. a copy of the Contract; and

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

122. In this Part “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.

123. This Part shall survive the expiry or termination of the Contract.

## **PART 19<sup>37</sup>**

### **VARIATION AND TERMINATION OF THE CONTRACT**

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<sup>36</sup> If the contract is an NHS contract, the parties must select the phrase “section 9(6) of the Act”. If the contract is not an NHS contract, the parties must select the phrase “clause 118 above”.

<sup>37</sup> Except where it is indicated in a footnote that a particular provision is only required in certain types of contract, this Part is required by *the Regulations*: see Part 7 of Schedule 1.

**Variation of the Contract: general**

124. Subject to this Part of the Contract, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the PCT and the Contractor.

125. In addition to the specific provision made in clauses 127 to 138, the PCT may vary the Contract without the Contractor's consent so as to comply with *the Act*, any regulations made pursuant to *the Act*, or any direction or determination given by *the Secretary of State* pursuant to *the Act* where it-

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

125.2. *notifies* the Contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

126. 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 125.2 is served on the Contractor.

**Variation provisions specific to a contract with an individual<sup>38</sup>**

127. Where the Contractor is an individual and proposes to practise in partnership with one or more persons during the existence of the Contract, the Contractor shall *notify* the PCT of-

127.1. the name of the person or persons with whom he proposes to practise in partnership;

127.2. the date on which the Contractor wishes to change his status from that of an individual to that of a partnership, which shall be not less than 28 days

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<sup>38</sup> If the Contractor is not an individual, then this clause does not need to be included.

after the date upon which he has served the *notice* on the PCT pursuant to this clause.

128. A *notice* under clause 127 shall, in respect of the person or each of the persons with whom the Contractor is proposing to practise in partnership, and also in respect of the Contractor as regards the matters specified in clause 128.4-

128.1. state whether that person is an *ophthalmic practitioner*,

128.2. contain an application form from that person, completed in accordance with Schedule 3 of *the Regulations*;

128.3. confirm that that person satisfies the conditions imposed by regulation 4 of *the Regulations*; and

128.4. state whether or not it is to be a *limited partnership*, and if so, who is to be a *limited partner* and who a general partner,

and the *notice* shall be signed by the Contractor, and by the person or each of the persons with whom it proposes to practice in partnership.

129. The Contractor shall ensure that any person who will practise in partnership with it is bound by the Contract, whether by virtue of a partnership deed or otherwise.

130. If the PCT is satisfied as to the accuracy of the matters specified or contained in the *notice* referred to in clause 127 and of the suitability of that person or persons, the PCT shall give *notice* to the Contractor confirming that the Contract shall continue with the partnership entered into by the Contractor and its partners, from a date that the PCT specifies in that *notice*.

131. The date specified by the PCT pursuant to clause 130 shall be the date requested in the *notice* served by the Contractor pursuant to clause 127 or, where

that date is not reasonably practicable, the date closest to the requested date as is reasonably practicable.

132. Where the Contractor has given *notice* to the PCT pursuant to clause 127, the PCT may vary the Contract, but only to the extent that it is satisfied is necessary to reflect the change in status of the Contractor from an individual to a partnership. If the PCT does propose so to vary the Contract, it shall include in the notice served on the Contractor pursuant to clause 130 the wording of the proposed variation and the date upon which that variation is to take effect.

**Variation provisions specific to a contract with a Partnership<sup>39</sup>**

133. Subject to clause 135, where the Contractor consists of two or more individuals practising in partnership, in the event that the partnership is terminated or dissolved, the Contract shall only continue with one of the former partners if that partner is nominated in accordance with clause 134 and provided that the other requirements in clause 136 are met.

134. The Contractor shall *notify* the PCT at least 28 days in advance of the date on which it proposes to change its status from that of a partnership to that of an individual. The *notice* shall:

134.1. specify the date on which the Contractor proposes to change its status from that of a partnership to that of an individual;

134.2. specify the name of the individual with whom the Contract will continue, who must be one of the partners; and

134.3. be signed by all the persons who are practising in partnership.

135. If the partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has

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<sup>39</sup> If the Contractor is not a partnership, then these clauses do not need to be included.

died, the remaining individual shall *notify* the PCT as soon as is reasonably practicable of the death of the partner.

136. When the PCT receives a *notice* pursuant to clause 133 or 135, it shall acknowledge in writing receipt of the *notice*, and in relation to a *notice* served pursuant to clause 135, the PCT shall do so as soon as reasonably practicable, and in any event before the date specified pursuant to clause 133.

137. Where the Contractor gives *notice* to the PCT pursuant to clause 133 or 135, the PCT may vary the Contract, but only to the extent that it is satisfied is necessary to reflect the change in status of the Contractor from a partnership to an individual. If the PCT varies the Contract, it shall *notify* the Contractor of the wording of the proposed variation and the date upon which that variation is to take effect.

#### **Additional Partners**

138. Where the Contractor gives *notice* to the PCT pursuant to clause 69 of Part 11 (Information), if the PCT is satisfied as to the accuracy of the matters specified or contained in the notice referred to in clause 69 and of the suitability of that proposed new partner or partners, the PCT shall give *notice* to the Contractor confirming that the Contract shall continue with the partnership entered into by the Contractor and its partners, from a date that the PCT specifies in that notice.

139. Where the Contractor gives *notice* to the PCT pursuant to clause 69, and the PCT has given *notice* under clause 136, the PCT may vary the Contract, but only to the extent that it is satisfied is necessary to reflect the change in the partnership. If the PCT varies the Contract, it shall *notify* the Contractor of the wording of the proposed variation and the date upon which that variation is to take effect.

**Termination by agreement**

140. The PCT 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 on the death of an individual contractor<sup>40</sup>**

141. Where the Contract is with an individual who later dies, the Contract shall terminate at the end of the period of 7 days after the date of death unless, before the end of that period –

141.1. the PCT has agreed in writing with the Contractor's personal representatives that the Contract should continue for a further period, not exceeding 3 months, after the end of the period of 7 days; and

141.2. the Contractor's personal representatives *notify* the PCT that they are employing or supplying one or more *ophthalmic practitioners* to perform ophthalmic services under the Contract throughout the period for which it continues.

142. Clause 141 does not affect any other rights to terminate the Contract which the Primary Care Trust may have under this Part.

143. If the PCT is of the opinion that another contractor may wish to enter into a contract in respect of the services which were provided by the deceased, the 3 months period referred to in clause 141.1 may be extended by a period, not exceeding 3 months, as may be agreed between the PCT and the personal representatives.

**Termination by the Contractor**

144. The Contractor may terminate the Contract by serving *notice* on the PCT at any time.



145. Where the Contractor serves *notice* pursuant to clause 144, the Contract shall terminate 3 months after the date on which the *notice* is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the Contract shall instead terminate on the last calendar day of the month in which the termination date falls.

**Late payment Notice**

146. The Contractor may give *notice* (“late payment notice”) to the PCT if the PCT has failed to make any payments due to the Contractor in accordance with Part 12 of this Contract. The Contractor shall specify in the late payment notice the payments that the PCT has failed to make in accordance with that Part.

147. Subject to clause 148, the Contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further *notice* if the PCT has still failed to make payments due to the Contractor that were specified in the late payment notice served on the PCT pursuant to clause 146.

148. If, following receipt of a late payment notice, the PCT 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 that it has done so within that period of time, the Contractor may not terminate the Contract pursuant to clause 147 until-

148.1. there has been a determination of the dispute pursuant to paragraph 31 of Schedule 1 to *the Regulations*; or

148.2. the PCT ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

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<sup>40</sup> If the Contractor is not an individual, then this clause does not need to be included.

149. Clauses 146 to 148 are without prejudice to any other rights to terminate the Contract that the Contractor may have.

**Termination by the PCT: general**

150. The PCT shall terminate the contract in a case to which paragraph 17(3)(b) or 18(3)(b) of Schedule 1 to *the Regulations* apply, but otherwise may only terminate the Contract in accordance with the provisions of this Part of this Contract.

**Termination by the PCT: Contractor's inability to perform services<sup>41</sup>**

151. Where the Contractor is an individual who is an *ophthalmic practitioner*, and ceases to be able to perform primary ophthalmic services as an *ophthalmic practitioner*, by virtue of a suspension specified in clause 151.3, the PCT shall serve notice on the Contractor terminating the Contract forthwith unless the Contractor is able to satisfy the PCT that –

151.1. the Contractor has in place adequate arrangements for the provision of ophthalmic services under the Contract for so long as the suspension continues; and

151.2. the PCT is satisfied that the circumstances of the suspension are such that if the contract is not terminated forthwith –

151.2.1. the safety of the Contractor's patients is not at serious risk; and

151.2.2. the PCT is not at risk of material financial loss;

151.3. the suspension referred to in clause 151 is suspension of the Contractor –

151.3.1. by its *licensing body*; or

151.3.2. from an *ophthalmic performers list*.

[DN clause 152 is spare]

**Termination by the PCT for the provision of untrue etc information**

153. The PCT may serve *notice* on the Contractor terminating the Contract forthwith, or from such date as may be specified in the *notice* if, after the Contract has been entered into, it comes to the attention of the PCT that written information—

153.1. provided to the PCT by the Contractor before the contract was entered into;

153.2. provided to the PCT by the Contractor pursuant to clause 66, 67 or 69; or

153.3. which should have been notified under clause 66,

in relation to the conditions set out in regulation 4 of *the Regulations*, the information as to suitability in Schedule 3 to *the Regulations* and compliance with those conditions or that information was, when given, untrue or inaccurate in a material respect or, in a case to which clause 153.3 applies, the information that was not *notified* was material.

**Termination by the PCT for breach of conditions in regulation 4 of *the Regulations***

154. Subject to clause 159, the PCT shall serve notice on the Contractor terminating the Contract forthwith if the Contractor is –

154.1. an individual, who;

154.2. a partnership, and any partner;

154.3. a corporate body, and the chief executive, any director or the secretary of that corporate body,

falls within clause 155 during the existence of the contract.

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<sup>41</sup> If the Contractor is not an individual who is an ophthalmic practitioner, then this clause does not need to be

155. Persons falls within this clause if –

155.1. they are the subject of a *national disqualification order* or a *contract disqualification order*;

155.2. subject to clause 156, they are 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;

155.3. subject to clause 157, they have been dismissed (otherwise than by reason of redundancy) from any employment by a *health service body* unless, before the PCT has served a *notice* terminating the Contract pursuant to this paragraph, they have been employed by the *health service body* that dismissed them or by another *health service body*;

155.4. they are removed from, or refused admission to, a *primary care list* by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of *the Act* respectively) unless their name has subsequently been included in such a list;

155.5. they have been convicted in the United Kingdom of –

155.5.1. murder; or

155.5.2. a criminal offence other than murder, committed on or after 14th December 2001, and been sentenced to a term of imprisonment of over six months;

155.6. subject to clause 158, they have been convicted outside the United Kingdom of an offence, which would if committed in England and Wales constitute –

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included.

155.6.1. murder; or

155.6.2. a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;

155.7. they have been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 (offences against children and young persons with respect to which special provisions apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995 (offences against children under the age of 17 years to which special provisions apply);

155.8. they have-

155.8.1. been adjudged bankrupt or had sequestration of their estate awarded unless (in either case) they have been discharged or the bankruptcy order has been annulled;

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

155.8.3. made a composition of arrangement with, or granted a trust deed for, their creditors unless they have been discharged in respect of it; or

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

155.9. there is—

155.9.1. an administrator, administrative receiver or receiver appointed in respect of it; or

155.9.2. an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;

155.10. that person is a partnership and—

155.10.1. a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator; or

155.10.2. an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;

155.11. they have been –

155.11.1. removed from the office of *charity trustee* or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which they were responsible or to which they were privy, or which they by their conduct contributed to or facilitated; or

155.11.2. removed under–

(a) section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (powers of the Court of Session to deal with management of charities), or

(b) section 34(5)(e) of the Charities and Trustee Investment (Scotland) Act 2005 (powers of the Court of Session),

from being concerned with the management or control of any body; or

155.12. it 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).

156. A PCT shall not terminate the Contract pursuant to clause 155.2 where the PCT is satisfied that the disqualification or suspension imposed by a licensing body outside the United Kingdom does not make the person unsuitable to be –

156.1 the Contractor;

156.2. a partner, where the Contract is with two or more individuals practising in partnership; or

156.3. where the Contract is with a corporate body, a director, chief executive or secretary of that body.

157. A PCT shall not terminate the Contract pursuant to clause 155.3 -

157.1. until a period of at least 3 months has elapsed since the date of the dismissal of the person concerned; or

157.2 if during the period of time specified in clause 157.1 the person concerned brings proceedings in any competent tribunal or court in respect of his dismissal, until proceedings before that tribunal or court are concluded,

and the PCT may only terminate the Contract at the end of the period specified in clause 157.2 if there is no finding of unfair dismissal at the end of those proceedings.

158. A PCT shall not terminate the Contract pursuant to clause 155.6 where the PCT is satisfied that the conviction does not make the person unsuitable to be –

158.1. the Contractor;

158.2. a partner, where the Contract is with two or more individuals practising in partnership; or

158.3. where the Contract is with a corporate body, a director, chief executive or the secretary of that body.

159. Where the Contractor is a corporate body, clause 154 shall not apply if, within 14 days of a person specified in clause 154.3 ceasing to satisfy the condition referred in clause 155, the Contractor has removed that person from that office.

[DN: clause 160 is spare]

**Immediate Termination by the PCT**

161. The PCT may serve *notice* on the Contractor terminating the Contract forthwith or with effect from such date as may be specified in the *notice* if-

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

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

161.3. the Contractor has breached the Contract and, in the judgment of the PCT, that breach is so significant that it is inappropriate that the Contract should continue; or

161.4. the Contractor is-

161.4.1. an individual, who is a registered optometrist;

161.4.2. a partnership, one of whose members is a registered optometrist; or

161.4.3. a corporate body and it or a director, chief executive or secretary of the body, and

is the subject of a direction pursuant to section 13F (powers of the fitness to practice committee) or an order pursuant to section 13H (financial penalty order) of the *Opticians Act* and the PCT considers that as a consequence the Contractor is no longer suitable to be a contractor.

**Termination by the PCT: remedial notices and breach notices**

162. Where the Contractor has breached the Contract other than as specified in clauses 151, 154 or 161 and the breach is capable of remedy, the PCT shall, before taking any action it is otherwise entitled to take by virtue of the



Contract, serve a *notice* on the Contractor requiring it to remedy the breach (“remedial notice”).

163. A remedial notice shall specify-

163.1. details of the breach;

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

163.3. the period during which the steps must be taken (“the notice period”).

164. The notice period shall, unless the PCT is satisfied that a shorter period is necessary to protect the safety of the Contractor’s patients or protect itself from material financial loss, be no less than 28 days from the date that *notice* is given.

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

166. Where the Contractor has breached the Contract other than as specified in clauses 151, 154 or 161 and the breach is not capable of remedy, the PCT may serve *notice* on the Contractor requiring it not to repeat the breach (“breach notice”).

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

167.1. repeats the breach that was the subject of the breach notice or the remedial notice; or

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

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

168. The PCT shall not exercise its right to terminate the Contract under clause 167 unless it is satisfied that the cumulative effect of the breaches is such that the PCT considers that it would be prejudicial to the efficiency of the services to be provided under the Contract to allow the Contract to continue.

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

**Termination by the PCT: additional provisions**

170. If the PCT becomes aware that the Contractor is carrying on any business which the PCT considers to be detrimental to the Contractor's performance of its obligations under the Contract-

170.1. the PCT shall be entitled to give *notice* to the Contractor requiring that it ceases carrying on that business before the end of a period of not less than 28 days beginning on the day on which the *notice* is given ("the notice period"); and

170.2. if the Contractor has not satisfied the PCT that it has ceased carrying on that business by the end of the notice period, the PCT may, by a further *notice*, terminate the Contract forthwith or from such date as may be specified in the *notice*.

**Termination by the PCT: additional provisions specific to Contracts with two or more individuals practising in partnership<sup>42</sup>**

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<sup>42</sup> If the Contractor is not two or more individuals practising in partnership, this clause should be deleted.

171. Where the Contractor is two or more persons practising in partnership, the PCT shall be entitled to terminate the Contract by notice 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 PCT 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 PCT to perform its obligations under the Contract.

172. A notice given to the Contractor pursuant to clause 171 shall specify-

172.1. the date upon which the Contract is to be terminated; and

172.2. the PCT'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 PCT to perform its obligations under the Contract.

**Contract sanctions**

173. In clauses 174 to 180, "contract sanction" means-

173.1. termination of specified reciprocal obligations under the Contract;

173.2. suspension of specified reciprocal obligations under the Contract for a period of up to 6 months; or

173.3. withholding or deducting monies otherwise payable under the Contract.

174. Where the PCT is entitled to terminate the Contract pursuant to any provision of this Part of this Contract, it may instead impose any of the contract sanctions if the PCT is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the PCT's entitlement to terminate the Contract.

175. If the PCT decides to impose a contract sanction, it must *notify* the Contractor of the contract sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that *notice* an explanation of the effect of the imposition of that sanction.

176. Subject to clause 179, the PCT shall not impose the contract sanction until at least 28 days after it has served notice on the Contractor pursuant to clause 175, unless the PCT is satisfied that it is necessary to do so in order to protect the safety of the Contractor's patients, or protect itself from material financial loss.

177. Where the PCT imposes a contract sanction, the PCT shall be entitled to charge the Contractor the reasonable costs of additional administration that the PCT has incurred in order to impose, or as a result of imposing, the contract sanction.

**Contract sanctions and the NHS *dispute resolution procedure***

178. If there is a dispute between the PCT and the Contractor in relation to a contract sanction that the PCT is proposing to impose, the PCT shall not, subject to clause 181, impose the proposed contract sanction except in the circumstances specified in clause 179 or 180.

179. 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 PCT served *notice* on the Contractor in accordance with clause 175 (or such longer period as may be agreed in writing with the PCT), and *notifies* the PCT that it has done so, the PCT shall not impose the contract sanction unless-

179.1. there has been a determination of the dispute pursuant to paragraph 31 of Schedule 1 to *the Regulations* and that determination permits the PCT to impose the contract sanction; or

179.2. the Contractor ceases to pursue the *NHS dispute resolution procedure*,

whichever is the sooner.

180. If the Contractor does not invoke the *NHS dispute resolution procedure* within the time specified in clause 179, the PCT shall be entitled to impose the contract sanction forthwith.

181. If the PCT is satisfied that it is necessary to impose the contract sanction before the *NHS dispute resolution procedure* is concluded in order to protect the safety of the Contractor's patients or protect itself from material financial loss, the PCT shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

**Termination and the *NHS dispute resolution procedure***

182. Where the PCT is entitled to serve *notice* on the Contractor terminating the contract pursuant to this Part, the PCT shall, in the *notice* served on the Contractor pursuant to those provisions, specify a date on which the Contract terminates ("the notice period"), that is not less than 28 days after the date on which the PCT has served that *notice* on the Contractor, unless clause 183 applies.

183. This clause applies if the PCT is satisfied that a notice period less than 28 days is necessary in order to-

183.1. protect the safety of the Contractor's patients;

183.2. protect itself from material financial loss; or

183.3. otherwise protect the interest of the public.

184. In a case falling within clause 182, where the exception in clause 183 does not apply, where the Contractor invokes the *NHS dispute resolution procedure* before the end of the notice period referred to in clause 182, and it *notifies* the PCT 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 185.

185. The Contract shall only terminate pursuant to this clause if and when there has been a determination of the dispute pursuant to paragraph 34 of Schedule 1 to *the Regulations* and that determination permits the PCT to terminate the Contract or the Contractor ceases to pursue the *NHS dispute resolution procedure*, whichever is the sooner.

186. If the PCT 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 184 and 185 shall not apply and the PCT shall be entitled to confirm by *notice* to be served on the Contractor, that the Contract will nevertheless terminate at the end of the notice period it served pursuant to clauses 182 or 183.

**Consequences of termination<sup>43</sup>**

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

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

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

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

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<sup>43</sup> The parties are required to make suitable provision for arrangements on the termination of the Contract, including the consequences (whether financially or otherwise) of the Contract ending, subject to any specific requirements of *the Regulations*: see regulation 17 of *the Regulations*. Subject to this requirement, the parties could draft their own provisions dealing with the consequences of termination.

188.3. co-operate with the PCT to enable the patients seeking or likely to seek the Contractor's services under the Contract to be referred to one or more other contractors or providers of *mandatory services* (or their equivalent), which shall include-

188.3.1. providing reasonable information about individual patients, and

188.3.2. delivering *patient records*

to such other appropriate person or persons as the PCT specifies; and

188.4. deliver up to the PCT all property belonging to the PCT including all documents, forms, computer hardware and software, drugs, appliances or optical equipment which may be in the Contractor's possession or control.

189. Subject to clauses 190 to 192, the PCT's obligation to make payments to the Contractor in accordance with the Contract shall cease on the date of termination of the Contract.

190. On termination of the Contract or termination of any obligations under the Contract for any reason, the PCT shall perform a reconciliation of the payments made by the PCT to the Contractor and the value of the work undertaken by the Contractor under the Contract. The PCT shall *notify* the Contractor of the reconciliation as soon as reasonably practicable, and in any event no later than 28 days after the termination of the Contract.

191. 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 PCT served the Contractor with *notice* of the reconciliation. The parties shall be bound by the determination of the dispute.

192. Each party shall pay the other any monies due within 3 months of the date on which the PCT served the Contractor with *notice* of the reconciliation, or the conclusion of the *NHS dispute resolution procedure*, as the case may be.

193. The obligations contained in clauses 187 to 192 shall continue to apply notwithstanding the termination of the Contract.

## **PART 20**

### **NON-SURVIVAL OF TERMS<sup>44</sup>**

194. Unless expressly provided, no term of this Contract shall survive expiry or termination of this Contract. Express provision is made in relation to-

194.1. clauses 52 to 55 (*patient records*);

194.2. Part 13 (*fees and charges*), to the extent specified in clause 87;

194.3. Part 17 (*complaints*);

194.4. Part 18 (*dispute resolution procedures*);

194.5. clauses 187 to 193 (*consequences of termination*); and

194.6. clauses 197 and 198 (*governing law and jurisdiction*).

### **ENTIRE AGREEMENT<sup>45</sup>**

195. Subject to Part 16 and any variations made in accordance with Part 19, this Contract constitutes the entire agreement between the parties with respect to its subject matter.

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<sup>44</sup> This clause is not required by *the Regulations*, but is recommended.

<sup>45</sup> This clause is not required by *the Regulations*, but is recommended.



196. 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<sup>46</sup>**

197. This Contract shall be governed by and construed in accordance with English law.

198. 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 courts of England and Wales.

199. Clauses 197 and 198 shall continue to apply notwithstanding the termination of the Contract.

#### **WAIVER, DELAY OR FAILURE TO EXERCISE RIGHTS<sup>47</sup>**

200. 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<sup>48</sup>**

201. 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

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<sup>46</sup> This clause is not required by *the Regulations*, but is recommended.

<sup>47</sup> This clause is not required by *the Regulations*, but is recommended.

<sup>48</sup> This clause is not required by *the Regulations*, but is recommended.

circumstances or events beyond the reasonable control of a party. However, the affected party must promptly on the occurrence of such circumstances or events:

201.1. *notify* the other party of such circumstances or events and of what obligation or duty they have delayed or prevented being performed; and

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

202. Unless the affected party takes such steps, clause 201 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.

203. 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 within such period as is reasonable in the circumstances (which shall be no shorter than 28 days).

204. 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 203 above, or if the other party otherwise consents.

#### **SEVERANCE<sup>49</sup>**

205. Subject to clauses 206 and 207, if any term of this Contract, other than a *required term*, is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such term shall, to the extent required, be deemed to be

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<sup>49</sup> This clause is not required by *the Regulations*, but is recommended.

deleted from this Contract and shall not affect the validity, lawfulness or enforceability of any other terms of the Contract.

206. If, in the reasonable opinion of either party, the effect of such a deletion is to undermine the purpose of the Contract or materially prejudice the position of either party, the parties shall negotiate in good faith in order to agree a suitable alternative term to replace the deleted term or a suitable amendment to the Contract.

207. If the parties are unable to reach agreement as to the suitable alternative term or amendment within a reasonable period of commencement of the negotiations, then the parties may refer the dispute for determination in accordance with the *NHS dispute resolution procedure* set out in Part 20 of this Contract.

#### **SERVICE OF NOTICE<sup>50</sup>**

208. Save as otherwise specified in this Contract or where the context otherwise requires, any *notice* required or authorised by this Contract to be given by either party to the other party may be served:

208.1. personally;

208.2. by post, or in the case of any notice served pursuant to Part 7, registered or recorded delivery post;

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

208.4. unless the context otherwise requires, electronic mail (to be confirmed by post or personal delivery); or

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<sup>50</sup> This clause is not required by *the Regulations*, but is recommended.

208.5. by any other means which the PCT specifies by *notice* to the Contractor.

209. Any *notice* or other information shall be sent to the address specified in the Contract or such other address as the PCT or the Contractor has notified to the other.

210. Any *notice* or other information shall be deemed to have been served or given:

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

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

210.3. 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*.

211. Where *notice* or other information is not given or sent in accordance with clauses 208 to 210, such *notice* or other information is invalid, unless the person receiving it elects, in writing, to treat it as valid.

**SCHEDULE 1<sup>51</sup> (INDIVIDUAL)**

**Part 1**

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

**Part 2**

The Contractor is an individual whose name, address, telephone number, fax number (if any) and email address (if any)<sup>52</sup> is:

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice to the other party as soon as is reasonably practicable.

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<sup>51</sup> Please use this form of Schedule if the Contractor is an individual.

<sup>52</sup> Please provide the address to which official correspondence and notices should be sent..

**SCHEDULE 1<sup>53</sup> (PARTNERSHIP)**

**Part 1**

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

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**Part 2**

The Contractor is a [limited]<sup>54</sup> 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 to the other party as soon as is reasonably practicable.

The names of the partners at the date of signature of this Contract are:

	GENERAL / LIMITED <sup>55</sup>
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<sup>53</sup> Please use this form of Schedule if the Contractor is a general or *limited partnership*.

<sup>54</sup> Please delete if this is not applicable. Regulation 9(c)(i) of *the Regulations* requires that the Contract specify in the case of a partnership whether or not it is a *limited partnership*.

	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, except as provided otherwise, 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 member of the partnership after the Contract has come into force is bound automatically by the Contract whether by virtue of a partnership deed or otherwise.

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<sup>55</sup> Please delete whichever is not applicable. Regulation 9(c)(ii) requires that the Contract specify in the case of a partnership the names of the partners and, in the case of a *limited partnership*, their status as a general or limited partner.

**SCHEDULE 1 (CORPORATE BODY)**

**Part 1**

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

**Part 2**

The Contractor is a corporate body whose name and registered office is:

The address to which official correspondence and notices may be sent is, and the contact telephone number, fax number (if any) and email address (if any) is:

If there is any change to the addresses and contact details specified in Part 1 or Part 2 of this Schedule, the party whose details have changed must give notice to the other party as soon as is reasonably practicable.



**SCHEDULE 2**

**SIGNATURES OF THE PARTIES TO THE AGREEMENT**

**Signed by**

For and on behalf of the PCT

**Signed by**

In the presence of

[The Contract must be signed by a person with power to bind the Contractor. If the Contractor is a partnership, it is recommended that all of the partners comprising the partnership at the date the Contract is signed (whether those partners are general partners or limited partners) sign the Contract]