

Dated

2009

(1) **DORSET PRIMARY CARE TRUST**

- and -

(2) **PRACTICE**

PERSONAL DENTAL SERVICES PLUS AGREEMENT

DRAFT - NOT AVAILABLE FOR ACCEPTANCE

CONTENTS

Clause	Heading	Page
1	Definitions and Interpretation	1
2	Status of Agreement	3
3	Commencement and Duration of Agreement	4
4	Warranties	4
5	Services and Attendance on Patients	5
6	Quality Standards	6
7	Level of Skill.....	7
8	Premises	7
9	Telephone Services	8
10	Clinical Reports and Co-operation	8
11	Not Used	9
12	Infection Control	9
13	Persons who shall Perform the Services	9
14	Training	12
15	Not Used	12
16	Not Used	12
17	Signing of Documents	12
18	Appraisal and Assessment	12
19	Sub-Contracting	12
20	Prescribing	13
21	Not Used	14
22	Not Used	14
23	Not Used	14
24	Not Used	14
25	Not Used	14
26	Excessive Prescribing	14
27	Not Used	14
28	Patients.....	14
29	Patient Records	15
30	Confidentiality of Personal Data	15
31	Provision of Patient Information and Practice Leaflet.....	16
32	Not Used	16
33	Inquiries about Prescriptions and Referrals	16
34	Fees, Charges and Financial Interests of the Contractor	17
34A	Termination by the PCT	17
35	Notification of a Course of Treatment and Orthodontic Course of Treatment	18
36	Annual Report and Review	18
37	Notifications to the PCT	19
38	Notification of Deaths	20
39	Entry and Inspection by the PCT	21
40	Entry and Inspection by Local Involvement Network Representatives	21
41	Entry and Inspection by Care Quality Commission	21
42	Counter Fraud and Security Management	21
43	Not Used	22
44	Payment under this Agreement	22
45	Not Used	22
46	Clinical Leadership and Governance	22
47	Indemnity and Limitation of Liability	23
48	Insurance.....	25
49	Complaints	26
50	Co-operation with Investigations.....	26
51	Variation	26
52	Termination by Agreement.....	26
53	Termination by the Contractor	26
54	Termination by the PCT for Provision of Untrue or Inaccurate Information ..	27

55	Termination by the PCT on grounds of suitability	27
55A	Termination on death	30
56	Termination by the PCT: Patient Safety and Material Financial Loss.....	30
57	Termination by the PCT: Remedial Notices and Breach Notices	30
58	Agreement Sanctions.....	32
59	Not Used	33
60	Termination and the Dispute Resolution Procedure	33
61	Consequences of Termination.....	33
62	Dispute Resolution.....	36
63	The Employment Regulations.....	37
64	Gifts.....	37
65	Compliance with Legislation and Guidance	38
66	Survival of Terms	38
67	Entire Agreement.....	39
68	Governing Law and Jurisdiction.....	39
69	Waiver, Delay or Failure to Exercise Rights	39
70	Relationship between the Parties	39
71	Force Majeure	40
72	Severance.....	40
73	Notices.....	41
74	Not Used	41
75	Data Protection	41
76	Freedom of Information	41
77	Confidentiality.....	42
78	Inducements to Purchase.....	43
79	Advertising and NHS Branding.....	44
80	Sponsorship.....	44
81	Administration	44
82	Major Incidents	44
83	Onward Referral to Related Parties	44
Schedule 1	Definitions	
Schedule 2	Service Requirements	
Schedule 3	Payment Mechanism	
Schedule 4	Staffing and Registration	
Schedule 5	IM&T	
Schedule 6	Premises and Equipment	
Schedule 7	Agreement and Performance Management	
Schedule 8	Change Schedule	
Schedule 9	Insurance Requirements	
Schedule 10	Not Used	
Schedule 11	Administration	
Schedule 12	Patient Information Leaflet	
Schedule 13	Not Used	
Schedule 14	Operational Management Plan	
Schedule 15	Compensation on Termination	
Schedule 16	Approved Sub-Contractors	
Schedule 17	Not Used	
Schedule 18	Staff Transfer	
Schedule 19	Partnership Provisions	
Schedule 20	Dispute Resolution	

THIS AGREEMENT is made on the [] day of []

BETWEEN

[(1) **NHS Dorset of Hillfort House, Poundbury Road, Dorchester, DT1 2PN** (called the “PCT”); and

(2) **[Name of Contractor]** having its main or registered address at **[insert address] [insert company number reserved]** (called the “Contractor”).]¹

OR

[(1) The Commissioning Arm of the **[insert name]** PCT of **[insert address]** (called the “PCT”); and

(2) The Providing Arm of the **[insert name]** PCT of **[insert address]** (called the “Contractor”).]² **Reserved**

OR

[(1) **[Insert name of PCT]** of **[insert address]** (called the “PCT”); and

(2) **The several persons whose names and addresses are set out in Schedule 19** (called the “Contractor”).]³ **Reserved**

BACKGROUND

(A) The PCT is a statutory body established by an order 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 primary dental services within its area.

(B) In order to achieve this object the PCT is empowered by the National Health Service Act 2006, and the regulations made thereunder⁴ to make such arrangements for the provision of primary dental services as it thinks fit.

(C) The Contractor falls within one of the specified categories of person set out within the Regulations.

(D) The PCT and the Contractor wish to enter into this Agreement under which the Contractor is to provide primary dental services in accordance with the provisions of this Agreement.

THE PARTIES AGREE as follows:

1 Definitions and Interpretation

1.1 This Agreement shall be interpreted according to the provisions of Schedule 1 (Definitions).

1.2 In this Agreement unless the context otherwise requires:

(a) words denoting any gender include all genders and words denoting the singular include the plural and vice versa;

(b) reference to spouse shall include reference to civil partnership;

¹ Please complete as appropriate to reflect the status of the Contractor

² To be used only in relation to PCT Provider Arms

³ To be used only where contract is being entered into with individuals.

⁴ The National Health Service (Personal Dental Services Agreements) Regulations 2005

- (c) reference to any person may include a reference to any firm, company or corporation;
- (d) reference to the "Parties" means the parties to this Agreement and reference to a "Party" means either of them;
- (e) references in this Agreement to a "Schedule", "Clause" or "Annex" are references to a schedule, annex or a clause of this Agreement and all schedules to it;
- (f) a reference in a schedule, or annex to a "Paragraph" is a reference to a paragraph of that schedule or annex;
- (g) the words and phrases "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible;
- (h) references to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over both or either of the functions and/or responsibilities of such public organisation;
- (i) references to forms supplied by the PCT to a Contractor includes electronic forms and forms which are generated electronically, but does not include Prescription Forms.
- (j) reference to "Day", "Week", "Month" or "Year" means a calendar day, week, month or year, as appropriate;
- (k) the headings, footnotes and table of contents in this Agreement are inserted for convenience only and do not affect the construction or interpretation of this Agreement;
- (l) the schedules to this Agreement are and shall be construed as being part of this Agreement;
- (m) reference to any statute or statutory provision or direction includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of the Agreement), and all statutory instruments or orders made pursuant to it;
- (n) any obligation to send information to the PCT includes the obligation to complete the form supplied by the PCT and this Agreement may specify the format in which forms (except Prescription Forms) may be sent by or submitted to, the PCT (electronic, paper or otherwise);
- (o) 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;
- (p) any obligation on the Contractor to have systems, procedures or controls includes the obligation to effectively operate them;
- (q) where this Agreement imposes an obligation on a Party, that Party must comply with it and must take all reasonable steps to ensure that its personnel and contractors (except the other Party) comply with it;
- (r) the Parties shall, so far as is possible, interpret the provisions of this Agreement consistently with the European Convention on Human Rights, EU law, the

Regulations, and any other relevant regulations, orders or directions made under the Act; and

- (s) where the Parties have indicated in writing that a Clause is not used, that Clause is not relevant and has no application to this Agreement.

1.3 In the case of conflict or ambiguity, the order of precedence for this Agreement and the documents attached to or referred to in this Agreement shall be as follows:

- (a) the provisions required by the Regulations;
- (b) then this Agreement;
- (c) then the Schedules to this Agreement; and
- (d) then the Annexes to this Agreement.

2 Status of Agreement⁵

2.1 The Contractor is [not] a Health Service Body for the purposes of section 9 of the Act. Accordingly, this Agreement is [not] an NHS Contract [and shall be legally enforceable].

2.2 In the event that the Contractor (at any time during the term of this Agreement for whatever reason) ceases to be a Health Service Body, then this Agreement shall no longer be deemed to be an NHS Contract and shall be legally enforceable with immediate effect.

2.3 [In order to ensure the terms of this Agreement can take effect, the Parties acknowledge and agree that where the Contractor is the providing arm of the PCT which has not been externalised and remains a part of the PCT, the following shall apply:

- (a) the providing arm of the PCT shall be deemed to be a separate and independent Party distinct from the commissioning part of the PCT and in performing the Services, the provider arm shall operate as and have the standing of an independent contractor; and
- (b) each Party shall comply with its respective rights and obligations under this Agreement as if they are separate bodies.]⁶ **Reserved**

2.4 [Where the Contractor is the providing arm of the PCT and remains a part of the PCT, the Parties acknowledge that Clauses 48.1, 48.2, 48.5, 48.6, 48.7 and 70.1 and Schedule 9 shall not apply.]⁷ **Reserved**

2.5 [Where the Contractor is the persons whose names are set out in Schedule 19 then:

- (a) the persons whose names are set out in Schedule 19 shall be jointly and severally liable for the obligations and liabilities of the Contractor arising under this Agreement; and
- (b) the PCT may take action against, or release or compromise the liability of, any of the persons whose names are set out in Schedule 19, or grant time or other indulgence, without affecting the liability of any other person whose name is set out in Schedule 19; and

⁵ To be amended as appropriate to the circumstances.

⁶ To be removed and marked 'Not Used' where the Contractor is not the Provider Arm of the PCT

⁷ To be removed and marked 'Not Used' where the Contractor is not the Provider Arm of the PCT

(c) the provisions of Schedule 19 shall apply.]⁸ **Reserved if Sole Practitioner**

3 Commencement and Duration of Agreement

3.1 This Agreement shall commence on the Commencement Date and unless terminated earlier in accordance with this Agreement, it shall terminate on the **Expiry Date.**⁹

3.2 The PCT may, by giving the Contractor not less than six (6) months' written notice prior to the Expiry Date, request the extension of this Agreement in respect of the whole or part of the Services for a period of up to **[15]**¹⁰ **years** from the Expiry Date. If the Parties wish to extend this Agreement then they shall hold a review meeting to determine the nature of the Services required and any revisions required in any extended period not more than nine (9) but not less than six (6) months prior to the Expiry Date.

4 Warranties

4.1 Without prejudice to any warranties or conditions implied by law, the Contractor warrants that:

- (a) it is eligible to enter into this Agreement at all times, pursuant to the Regulations and where appropriate the Dentists Act;
- (b) it has the power to own its assets used in connection with the performance of the Services and carry on its business;
- (c) all consents, licences, filings, approvals, notifications or authorisations of, exemptions by or registrations or declarations with or other requirements whatsoever of, any governmental, judicial or other authority which are necessary in connection with the provision of the Services by the Contractor have been obtained or made, are valid and subsisting and will not be contravened by the execution or performance of the same;
- (d) it has satisfied the conditions set out in Regulations 3 and 4 [and 5¹¹ **Reserved for non qualifying body**] of the Regulations;**
- (e) no claim against it or any of its assets used in connection with the performance of the Services is presently being assessed and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of the knowledge of the Contractor, pending or threatened against the Contractor or any of its assets used in connection with the performance of the Services which will have, or is likely to have, a material adverse effect on the ability of the Contractor to perform its obligations under this Agreement;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Contractor threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator or similar officer in relation to any of its assets used in connection with the performance of the Services or revenues;
- (g) all information supplied by it to the PCT during the award procedure leading to the execution of this Agreement is, to the reasonable knowledge and belief of the Contractor, true and accurate in all material aspects and the Contractor is not

⁸ To be removed and marked 'Not Used' where the Contractor is not a number of individuals together

⁹ PCT to insert desired term of Agreement by completing definition of Expiry Date at Schedule 1 (Definitions). A term of between 5 and 10 years is recommended.

¹⁰ PCT to insert number of years of any extension of the Agreement. A period of between 5 and 10 years is recommended.

¹¹ Regulation 5 relates to qualifying bodies only.

aware of any material facts or circumstances which have not been disclosed to the PCT and which would, if disclosed, be likely to have an adverse effect on a reasonable public sector entity's decision whether or not to contract with the Contractor;

- (h) in entering into this Agreement it has not committed a Prohibited Act; and
- (i) it has not and having made all due enquiries is not aware that any Contractor Staff have committed a Prohibited Act relating to this Agreement.

4.2 The warranties by the Contractor under:

- (a) Clause 4.1(g) and (h) above are given only at the date of this Agreement; and
- (b) all other warranties in Clause 4.1 above are continuous during the term of this Agreement.

5 Services and Attendance on Patients

5.1 The Contractor shall provide the Services to Patients from the Commencement Date in accordance with and subject to the provisions of this Agreement and, in particular, the KPIs.

5.2 The Contractor shall provide the units of dental activity [and the units of orthodontic activity **Reserved**]¹² during each Financial Year as more particularly set out at Paragraph 2.1 of Part 2 of Schedule 2 (Service Requirements) and Paragraph 3.1 of Schedule 3 (Payment Mechanism).¹³

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

5.4 The Contractor shall take steps to ensure that any Patient who has not previously made an appointment and who attends at the Practice Premises during the Opening Hours for Mandatory Services is provided with such services during that surgery period except where:

- (a) it is more appropriate for the Patient to be referred elsewhere for services under the Act or in accordance with the PCT's referral policy as amended from time to time; or
- (b) the Patient is then offered an appointment to attend again within a time which is appropriate and reasonable having regard to all the circumstances and his health would not thereby be jeopardised.

5.5 The Contractor shall:

- (a) following consultation with the PCT develop and implement a continuous improvement plan in relation to the Services, utilising an agreed evaluation process and Patient satisfaction surveys to ensure that the quality of the Services is improved and, together with the PCT, review the KPIs in accordance with Schedule 7 (Agreement and Performance Management) to ensure that the performance of the Services is improved, in both cases such improvements to be made throughout the term of this Agreement;

¹² Delete as appropriate

¹³ Where the Agreement commences on a date other than 1 April the Agreement will need to specify the number of units of activity during the first year and each Financial Year thereafter

- (b) inform the PCT promptly, giving details of the circumstances, reasons and likely duration, in the event it becomes aware of anything of whatsoever nature and whether or not the result of any act or omission on the part of the Contractor or Contractor Staff or sub-contractors which may prevent the Contractor fulfilling its obligations in accordance with this Agreement;
- (c) [procure that (where appropriate) each agreement, lease, licence or other arrangement entered into with a third party by the Contractor for the purposes of providing or supporting the Services other than the [Underlease/Lease] of the Practice Premises is assignable and is able to be novated or assigned to the PCT (at the PCT's option) on the termination or expiry of this Agreement on terms and conditions no less favourable than those enjoyed by the Contractor and at no cost to the PCT or a New Contractor;]¹⁴
- (d) ensure that the Services are at all times performed:
 - i. in accordance with Good Practice and/or any applicable Care Quality Commission requirements (as appropriate);
 - ii. with full regard to the safety of all persons at the Practice Premises (whether lawfully or not);
 - iii. in co-operation with local and national Health Service Bodies and relevant local government authorities; and
 - iv. so as to aspire to achieving in each Agreement Month an 'A' performance rating in the KPIs; and
- (e) if and to the extent that the Contractor and/or the Practice Premises are required to be registered with the Care Quality Commission in order for the Contractor to perform the Services, obtain and at all times maintain registration of the Contractor and/or the Practice Premises in accordance with Care Quality Commission requirements.

5.6 The Contractor shall develop and comply with the Operational Management Plan in accordance with Schedule 14 (Operational Management Plan).

5.7 The Contractor shall comply with the provisions of Schedule 5 (IM&T).

6 Quality Standards

6.1 The Contractor shall establish, and operate in accordance with Clause 6.2, a Practice Based Quality Assurance System which is applicable to any dental practitioner who performs Services under this Agreement or any other person employed or engaged by the Contractor to perform or assist in the performance of Services under this Agreement.

6.2 The Contractor shall ensure that in respect of its Practice Based Quality Assurance System, it has nominated a person (who need not be connected with the Contractor's practice) to be responsible for operating that system.

6.3 Without prejudice to the Contractor's obligations to meet all performance requirements under this Agreement the Contractor shall meet all NHS Requirements notified to it by the PCT.

¹⁴ This provision will need to be reviewed depending on the premises solution. For example, where the Contractor is using existing dental premises for the Services, this is unlikely to be appropriate and should therefore be amended or removed to reflect local agreement. PCTs are referred to the Premises Guide for further information.

- 6.4 The Contractor shall meet to the extent relevant to the Services, the minimum quality standards set out in Schedule 2 (Service Requirements).
- 6.5 The Contractor shall comply with the provisions of Schedule 7 (Agreement and Performance Management).
- 6.6 The Contractor shall comply with the core quality and developmental standards set out in Standards for Better Health to the extent that they apply to the Services.

7 Level of Skill

- 7.1 Without prejudice to the Contractor's obligations to meet all performance requirements under this Agreement, the Contractor shall carry out its obligations under this Agreement in a timely manner and with reasonable care and skill, including where appropriate such level of care and skill as would be expected from a competent professional carrying out the relevant obligation.

8 Premises¹⁵

8.1 [The [Underlease/Lease/Practice Premises Documents]¹⁶ shall be entered into by the Parties on the Commencement Date.]¹⁷ **Reserved**

8.2 The address of the Practice Premises to be used by the Contractor for the provision of Services under this Agreement is detailed in Schedule 6 (Premises and Equipment).

8.3 The Contractor shall ensure that the Practice Premises are:

- (a) suitable for the delivery of the Services;
- (b) sufficient to meet the reasonable needs of the Contractor's Patients; and
- (c) where required by Law, shall meet any and all regulatory standards (as appropriate) including but not limited to the Disability Discrimination Act 1995, the Care Standards Act 2000 and the Private and Voluntary Healthcare (England) Regulations 2001, together with any applicable NHS standards in force from time to time.

8.3A The Contractor shall provide, in relation to all of the Services, such other facilities and equipment as are necessary to enable the Contractor to properly perform the Services.

8.4 [The Contractor shall ensure that if any works are required to be made to the Practice Premises, details of such works shall be set out in the Operational Management Plan and in accordance with the terms of the [Underlease/Lease/Practice Premises Documents].¹⁸] **Reserved**

8.5 The Parties shall comply with the obligations set out in Schedule 6 (Premises and Equipment).

¹⁵ This Clause 8 will need to be tailored to reflect local arrangements. Please refer to the premises guidance for further details. References to Underlease/Lease will be marked as optional and for removal where the Contractor owns the Practice Premises – in these circumstances appropriate due diligence will need to be carried out by the PCT to confirm this situation.

¹⁶ The premises provisions need to be reviewed once a preferred bidder has been appointed and the premises solution has been agreed.

¹⁷ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

¹⁸ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

- 8.6 [The Parties shall comply with their obligations as to insurance of the Practice Premises as referred to in the [Underlease/Lease/Practice Premises Documents]⁵ of the Practice Premises and in Schedule 9 (Insurance Requirements).]
- 8.7 [The PCT has served on the Contractor a notice dated [] in the form set out in Schedule 1 to The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the “Order”) in relation to the tenancy to be created by the [Underlease/Lease].]
- 8.8 [The Contractor, or a person duly authorised by the Contractor, has in relation to the notice set out in Clause 8.7 made a statutory declaration dated [] in the form set out in paragraph 8 of Schedule 2 to the Order.]¹⁹ **Reserved**
- 8.9 [Where the declaration described in Clause 8.8 above was made by a person other than the Contractor, the Contractor confirms that the declarant was duly authorised by the Contractor to make the declaration on the Contractor’s behalf.]²⁰ **Reserved**
- 8.10 [The PCT and the Contractor confirm that the notice and declaration referred to in Clauses 8.7 and 8.8, were respectively served on and made by the Contractor or the duly authorised person before the Contractor became contractually bound to enter into the tenancy to be created by the [Underlease/Lease]⁵.]²¹ **Reserved**
- 8.11 [The PCT and the Contractor agree that the provisions of sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954 are to be excluded in relation to the tenancy to be created by the [Underlease/Lease]⁵.]²² **Reserved**

9 Telephone Services

- 9.1 The Contractor shall not be a party to any contract or other arrangement under which the number for telephone services to be used by:
- (a) Patients to contact the Practice for any purpose related to this Agreement; or
 - (b) 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.

10 Clinical Reports and Co-operation

- 10.1 Where the Contractor provides any Services under this Agreement to a Patient who is a regular patient at another dental practice, it shall with the consent of the Patient prepare a clinical report relating to the consultation and any treatment provided and shall, as soon as reasonably practicable, provide a copy of the clinical report to the relevant Patient’s Regular Dentist as soon as reasonably practicable.
- 10.2 The Contractor shall take all reasonable steps to co-operate with other Health Care

¹⁹ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

²⁰ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

²¹ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

²² This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

Professionals also providing clinical services to any Patient in the interests of providing an integrated care pathway for a Patient.

- 10.3 The PCT shall use its reasonable endeavours to ensure the co-operation of any such other Health Care Professional as is mentioned in Clause 10.2 with the Contractor.
- 10.4 If the Contractor ceases to be required to provide a particular Service to its Patients it shall comply with any reasonable request for clinical reports or related information relating to the provision of that Service or those Services made by the PCT or by any person with whom the PCT intends to enter into a contract for the provision of such services or any primary care trust in whose area its Patients reside.

11 Not Used

12 Infection Control

- 12.1 The Contractor shall ensure that it has appropriate arrangements for infection control and decontamination and shall comply with:
- (a) the essential requirements of the Department of Health Decontamination Health Technical Memorandum 01-05 Decontamination in primary care dental practices;
 - (b) the PCT's infection control policies insofar as they are consistent with Clause 12.1(a) above (as provided to the Contractor by the PCT); and
 - (c) Good Practice for infection control and decontamination.

12.2 [The Contractor shall comply with the best practice provisions set out within the Health Technical Memorandum referred to at Clause 12.1 (a) within [24]²³ Agreement Months of the Commencement Date.]

13 Persons who shall Perform the Services

Dental Practitioners

- 13.1 The Contractor shall not allow any Dental Practitioner to perform primary dental services under this Agreement unless the dental practitioner:
- (a) Is included in a Dental Performers List for a primary care trust in England; and
 - (b) his inclusion in that list is not subject to a suspension.

Dental Care Professionals

- 13.2 The Contractor shall not allow any dental hygienist, a dental therapist or a professional or member of a class as specified in Regulations made under Section 36A(2) of the Dentists Act to perform dental services under this Agreement unless that person:
- (a) is a Dental Care Professional; and

²³ Practices should comply with the full best practice provisions of the HTM. Where agreement is reached locally for the Contractor to become compliant with the best practice provisions of the HTM during the term of this Agreement, Clause 12.2 should be amended to reflect this local agreement. For new practices or new premises, it is expected that the best practice provisions will be utilised wherever reasonably practicable. Otherwise, compliance within 24 months has been suggested in the template agreement but may be amended by the PCT if necessary to reflect local circumstances.

- (b) his registration in the Register of Dental Care Professionals is not subject to a suspension.

Performers: Further Requirements

- 13.3 The Contractor shall ensure that no Health Care Professional or other person other than one to whom Clauses 13.1 to 13.2 apply shall perform clinical services under this Agreement unless he is appropriately registered with his relevant professional body and his registration is not currently suspended.
- 13.4 Where the registration of a dental practitioner, Dental Care Professional or other Health Care Professional or, in the case of a dental practitioner, his inclusion in a Dental Performers List is subject to conditions, the Contractor shall ensure compliance with those conditions insofar as they are relevant to this Agreement.
- 13.5 The Contractor shall ensure that no Health Care Professional or other person shall perform any clinical services under this Agreement unless he has such clinical experience and training as are necessary to enable him to properly perform such services.

Conditions for employment and engagement of dental practitioners performing dental services

- 13.6 Subject to Clause 13.7 the Contractor shall not employ or engage a dental practitioner to perform dental services under this Agreement unless:
 - (a) that practitioner has provided the Contractor with the name and address of the primary care trust on whose Dental Performers List he appears; and
 - (b) the Contractor has checked that the practitioner meets the requirements in Clause 13.1.
- 13.7 Where the employment or engagement of a dental practitioner is urgently needed and it is not possible to check the matters referred to in Clause 13.1 in accordance with Clause 13.6(b) before employing or engaging him, the Contractor may employ or engage the dental practitioner on a temporary basis for a single period of up to seven (7) days whilst such checks are undertaken.

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

- 13.8 The Contractor shall not employ or engage a Dental Care Professional to perform dental services unless it has taken reasonable steps to satisfy itself that the Dental Care Professional has the clinical experience and training necessary to enable him to properly perform dental services, and the Contractor has checked that:
 - (a) his name is included in the Register of Dental Care Professionals; and
 - (b) his registration in the Register of Dental Care Professionals is not subject to a suspension.
- 13.9 Where the employment or engagement of a person specified in Clause 13.8 is urgently needed and it is not possible to confirm the matters referred to in Clause 13.8 (where it applies) before employing or engaging him, the Contractor may employ or engage the Dental Care Professional on a temporary basis for a single period of up to seven (7) days whilst such checks are undertaken.

- 13.10 When considering a person's experience and training for the purposes of Clause 13.8, the Contractor shall have regard in particular to:
- (a) any post-graduate or post-registration qualification held by that person; and
 - (b) any relevant training undertaken by him and any relevant clinical experience gained by him.

Conditions for employment or engagement: all persons performing dental services

- 13.11 The Contractor shall not employ or engage a person to perform dental services under this Agreement unless:
- (a) that person has provided two clinical references that relate to two recent posts (which may include any current post) exercising the profession in which he seeks employment or engagement with the Contractor which lasted for three (3) months or more without a significant break, or where this is not possible, that person has provided a full explanation and alternative referees; and
 - (b) the Contractor has checked and is satisfied with the references.
- 13.12 Where the employment or engagement of a person falling within Clause 13.11 is urgently needed and it is not possible for the Contractor to check the references in accordance with Clause 13.11(b) before employing or engaging him, the Contractor may employ or engage that person on a temporary basis for a single period of up to fourteen (14) days whilst his references are checked and considered, and for an additional period of a further seven (7) days if the Contractor believes the person supplying those references is ill, on holiday or otherwise temporarily unavailable.
- 13.13 Where the Contractor employs or engages the same person on more than one occasion within a period of three (3) months, it may rely on the references provided on the first occasion, provided that those references are not more than twelve (12) months old.

Conditions for employment or engagement: persons assisting in the provision of Services

- 13.14 Before employing or engaging any person to assist it in the provision of the Services, the Contractor shall take reasonable care to satisfy itself that the person in question is both suitably qualified and competent to discharge the duties for which he is to be employed or engaged.
- 13.15 For the avoidance of doubt, the requirements set out at Clause 13.14 are additional to any other requirements set out within this Clause 13.
- 13.16 When considering the competence and suitability of any person for the purpose of Clause 13.14, the Contractor shall have regard, in particular, to:
- (a) that person's academic and vocational qualifications;
 - (b) his education and training; and
 - (c) his previous employment or work experience.
- 13.17 The Contractor shall notify the PCT as soon as possible in the event that any Dental Professional is:
- (a) referred to the relevant professional body for alleged misconduct; or
 - (b) suspended or removed from the Relevant Register.

13.18 The Contractor shall comply with the provisions of Schedule 4 (Staffing and Registration).

14 Training

14.1 The Contractor shall ensure that for any dental practitioner or Dental Care Professional who is:

- (a) performing dental services under this Agreement; or
- (b) employed or engaged to assist in the performance of such services,

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

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

15 Not Used

16 Not Used

17 Signing of Documents

17.1 In addition to any other requirements relating to such documents whether in this Agreement or otherwise, the Contractor shall ensure that the documents specified in Clause 17.2 include:

- (a) the name and clinical profession of the professional who signed the document; and
- (b) the name of the Contractor on whose behalf it is signed.

17.2 The documents referred to in Clause 17.1 are:

- (a) forms that are required to be completed pursuant to this Agreement, where such forms require a signature; and
- (b) Prescription Forms; and
- (c) any other clinical documents.

18 Appraisal and Assessment

18.1 The Contractor shall ensure that any dental practitioner performing Services under this Agreement participates in the appraisal system provided by the PCT or (where the Contractor is a primary care trust) by it unless it participates in the appraisal system provided by another primary care trust and co-operates with an assessment by the NPSA when requested to do so by the PCT (or where the Contractor is a primary care trust by that primary care trust).

19 Sub-Contracting

19.1 Subject to Clause 19.2, the Contractor shall not delegate its obligations, give, sell, assign, sub-contract or otherwise dispose of the benefit of any of its rights or obligations under this Agreement without the prior written consent of the PCT.

19.2 The Contractor is permitted to sub-contract its rights or obligations under this Agreement if:

- (a) the Contractor uses, or uses the assistance of, the sub-contractors specified in Schedule 16 (Approved Sub-Contractors); or
- (b) the Contractor is otherwise permitted to do so in accordance with Clause 19A.

19A Sub-Contracting of Clinical Matters

19A.1 The Contractor shall not sub-contract any of its rights or obligations under this Agreement to any person in relation to clinical matters unless:

- (a) it has taken reasonable steps to satisfy itself that:
 - i. it is reasonable in all the circumstances; and
 - ii. that the person is qualified and competent to provide the service; and
- (b) it is satisfied that the sub-contractor holds adequate insurance in accordance with Clause 48.

19A.2 Where the Contractor sub-contracts any of its rights or duties under this Agreement in relation to clinical matters, it shall:

- (a) inform the PCT of the sub-contract as soon as is reasonably practicable; and
- (b) provide the PCT with such information in relation to the sub-contract as it reasonably requests.

19A.3 Where the Contractor sub-contracts clinical services in accordance with Clause 19A.1 the Parties shall be deemed to have agreed a variation to this Agreement which has the effect of adding to the list of the Contractor's premises any premises which are to be used by the sub-contractor for the purpose of the sub-contract and Clause 51.1 shall not apply.²⁴

19A.4 A contract with a sub-contractor must prohibit the sub-contractor from sub-contracting the clinical services it has agreed with the Contractor to provide.

20 Prescribing

20.1 A Prescriber may:

- (a) supply to a Patient such Listed drugs, medicines or appliances as are required for immediate use before the issue of a prescription for such drugs, medicines or appliances in accordance with Clauses 20.2 and 20.3; or
- (b) personally administer to a Patient any drug or medicine required for the treatment of that Patient.

20.2 The Contractor shall ensure that any Prescription Form for Listed drugs or medicines or appliances issued by a Prescriber complies as appropriate with the requirements in Clauses 20 to 26.

20.3 A Prescriber shall order Listed drugs, medicines or appliances (other than those supplied under Clause 20.1) as are needed for the treatment of any Patient to whom it is providing Services under this Agreement by issuing to the Patient a Prescription Form.

20.4 Every Prescription Form shall:

²⁴ Consider addition of Sub-Contractor to Schedule 16 list in addition to this requirement. BDA to provide alternative drafting

- (a) be signed by the Prescriber; and
- (b) be issued separately to each Patient to whom the Contractor is providing Services under this Agreement,

and a separate Prescription Form shall be issued for each Patient.

20.5 In issuing any Prescription Form:

- (a) the Prescriber shall sign the Prescription Form:
 - (i) in ink with his initials and surname, or his forenames and surname; and
 - (ii) in his own handwriting and not by means of a stamp; andonly after particulars of the order have been inserted in the Prescription Form; and
- (b) a Prescription Form shall not refer to any previous Prescription Form.

20.6 By reason of an emergency, a dentist may request a Chemist to dispense a prescription only medicine before a Prescription Form is issued or created, but only if:

- (a) that drug is not a controlled drug within the meaning of the Misuse of Drugs Act 1971, other than a drug which is for the time being specified in Schedules 4 or 5 to the Misuse of Drugs Regulations 2001;
- (c) that the Pharmacist by or under whose supervision the prescription only medicine is to be sold or supplied is satisfied that the sale or supply has been requested by a dentist who by reason or an emergency is unable to furnish a prescription immediately; and
- (d) he undertakes to furnish the Chemist, within seventy two (72) hours, with a Prescription Form completed in accordance with Clauses 20.4 and 20.5.

21 Not Used

22 Not Used

23 Not Used

24 Not Used

25 Not Used

26 Excessive Prescribing

26.1 A Prescriber shall not prescribe drugs, medicines, or appliances whose cost or quantity, in relation to any Patient, is, by reason of the character of that drug, medicine or appliance in question, in excess of that which was reasonably necessary for the proper treatment of that Patient.

27 Not Used

28 Patients

28.1 The Contractor shall provide the Services to those persons identified in accordance with Schedule 2 (Service Requirements).

29 Patient Records

- 29.1 The Contractor shall ensure that a full, accurate and contemporaneous record is kept in the Patient Record in respect of the care and treatment given to each Patient under this Agreement, including treatment given to a Patient who is referred to the Contractor.
- 29.2 The Patient Record may be kept in electronic form.
- 29.3 The Patient Record shall include details of any Private treatment (to the extent that they are provided with Services under this Agreement) and shall be kept with:
- (a) a copy of any Treatment Plan or Referral Treatment Plan given to the Patient pursuant to Paragraph 7 or 17 of Part 4 of Schedule 2 (Service Requirements);
 - (b) all radiographs, photographs and study casts taken or obtained by it as part of the Services provided to that Patient;
 - (c) where an Orthodontic Course of Treatment has been provided to a Patient, a copy of the Orthodontic Treatment Plan;
 - (d) where information is required to be notified to the PCT (or where the Contractor is a primary care trust, collated by that Trust) in accordance with Clause 35, and that information is submitted or collated electronically:
 - i. the written declaration form in respect of exemption under section 177(1) of the Act duly made and completed in accordance with regulations made under sections 176 and 177(5) of the Act; and
 - ii. a note of the evidence in support of that declaration; and
 - (e) the statement concerning any custom-made devices provided by any person as a consequence of regulation 15 of the Medical Devices Regulations 2002 in respect of services being provided to that Patient.
- 29.4 The Patient Record and the items referred to in Clause 29.3, shall be retained for a period of eleven (11) years or up to the date of the Patient's twenty-fifth birthday (whichever is the later) beginning with:
- (a) the date on which:
 - i. a Course of Treatment or Orthodontic Course of Treatment is terminated; or
 - ii. a Course of Treatment or an Orthodontic Course of Treatment is completed; or
 - (b) in respect of Courses of Treatment or Orthodontic Courses of Treatment not falling within Clause 29.4(a)(i) or 29.4(a)(ii) the date by which no more Services can be provided as part of that Course of Treatment or Orthodontic Course of Treatment by virtue of Paragraph 6.4(b) or Paragraph 13.4(b) of Part 4 of Schedule 2 (Service Requirements).
- 29.5 Nothing in this Clause 29 shall affect any property right which the Contractor may have in relation to the records, radiographs, photographs and study models referred to in this Clause 29.

30 Confidentiality of Personal Data

- 30.1 The Contractor shall nominate a person with responsibility for practices and procedures relating to the confidentiality of Personal Data held by it.

30.2 The Contractor shall maintain the confidentiality of Personal Data entrusted to it in accordance with the provisions of Data Protection Legislation.

30.3 The Contractor shall comply with the principles of the current British Dental Association Good Practice Scheme in respect of confidentiality of Personal Data.

31 Provision of Patient Information and Practice Leaflet

31.1 The Contractor shall ensure that there is displayed in a prominent position in its Practice Premises, in a part to which Patients have access:

- (a) in respect of its Practice Based Quality Assurance System, a written statement relating to its commitment to the matters described in Clauses 6.1 and 6.2;
- (b) such information relating to NHS Charges:
 - i. as is supplied by the PCT for the purposes of providing information to patients; or
 - ii. where the Contractor is a primary care trust, that it supplies to other contractors for this purpose; and
- (c) information about the complaints procedure which it operates in accordance with Clause 49.

31.2 The Contractor shall, at the request of the PCT, produce in such a format and at such intervals or within such time as the PCT shall specify and/or allow the PCT or a person authorised in writing by the PCT to access, on request:

- (a) any information which is reasonably required by the PCT for the purposes of or in connection with this Agreement; and
- (b) any other information which is reasonably required in connection with the PCT's functions and this shall include Patient Records.

31.3 The Contractor shall:

- (a) compile a Patient Information Leaflet to be approved by the PCT prior to issue as to the content and form, which shall include the information specified in Schedule 12 (Patient Information Leaflet);
- (b) review its Patient Information Leaflet at least once in every period of twelve (12) months and make any amendments necessary to maintain its accuracy; and
- (c) make available a copy of the Patient Information Leaflet, and any subsequent updates, to its Patients and prospective Patients and to the PCT.

31.4 Clause 31.3 shall not apply in respect of Services provided to persons detained in Prison.

31.5 The Contractor shall comply with the provisions of Schedule 7 (Agreement and Performance Management) in relation to provision of information and submission of the Contractor Performance Report.

32 Not Used

33 Inquiries about Prescriptions and Referrals

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

- (a) any Prescription Form issued by a Prescriber;
 - (b) the considerations by reference to which Prescribers issue such forms;
 - (c) the referral by or on behalf of the Contractor of any Patient for any other services provided under the Act; or
 - (d) the considerations by which the Contractor makes such referrals or provides for them to be made on its behalf.
- 33.2 An inquiry referred to in Clause 33.1 may only be made for the purpose either of obtaining information to assist the PCT to discharge its functions or of assisting the Contractor in the discharge of its obligations under this Agreement.
- 33.3 The Contractor shall not be obliged to answer any inquiry referred to in Clause 33.1 unless it is made:
- (a) in the case of Clause 33.1(a) or 33.1(b) by an appropriately qualified Health Care Professional; or
 - (b) in the case of Clause 33.1(c) or 33.1(d), by an appropriately qualified dental practitioner,
- appointed in either case by the PCT to assist it in the exercise of its functions under Clauses 33.1 and 33.2 who produces, on request, written evidence that that person is authorised by the PCT to make such an inquiry on its behalf.
- 33.4 The Contractor shall cooperate with any PCT Pharmacist who submits an enquiry to the Contractor in relation to the matters set out in Clauses 33.1(a) and 33.1(b).

34 Fees, Charges and Financial Interests of the Contractor

- 34.1 The Contractor shall not, either itself or through any other person, demand or accept a fee or other remuneration for its own or another's benefit from:
- (a) any of its Patients for the provision of any treatment, except as otherwise provided in the NHS Charges Regulations; or
 - (b) any person who has requested the Services for himself or a Family Member, as a prerequisite to providing the Services to that person or his Family Member.
- 34.2 The Contractor shall only collect from any patient (as set out in regulation 2(1) of the NHS Charges Regulations) any charge which that patient is required to pay by virtue of the NHS Charges Regulations, in accordance with the requirements of those regulations.
- 34.3 Obligations imposed on the Contractor by virtue of the NHS Charges Regulations shall be terms of this Agreement.
- 34.4 In making a decision:
- (a) as to what Services to recommend or provide to a Patient who has sought the Services; or
 - (b) to refer a Patient for other services by another Health Care Contractor or other relevant service provider under Part 1 of the Act; or
 - (c) to prescribe any drug, medicine or appliance to any Patient,
- the Contractor shall do so having regard to all relevant clinical considerations and

disregarding its own financial interests.

34A Termination by the PCT

34A.1 Subject to Clause 34A.2 the Contractor shall ensure that it requests evidence in support of all declarations of exemption from charges under the NHS Charges Regulations.

34A.2 The Contractor shall ensure that a note of the type of evidence submitted is made or where no evidence is submitted a note of that fact is made.

34A.3 Clauses 34A.1 and 34A.2 do not apply where the Contractor is satisfied that the person in respect of whom the declaration is made is under the age of 18 years.

35 Notification of a Course of Treatment and Orthodontic Course of Treatment

35.1 Subject to Clause 35.2 the Contractor shall, within two (2) months of the date upon which:

- (a) it completes a Course of Treatment in respect of Mandatory Services or Additional Services;
- (b) it completes a Case Assessment in respect of an Orthodontic Course of Treatment that does not lead to a Course of Treatment; **Reserved**
- (c) it provides an Orthodontic Appliance following a Case Assessment in respect of orthodontic treatment; **Reserved**
- (d) it completes a Course of Treatment in respect of orthodontic treatment; **Reserved**
- (e) a Course of Treatment in respect of Mandatory Services or Additional Services or Orthodontic Course of Treatment is terminated; or
- (f) in respect of a Course of Treatment not falling within Clause 35.1(d) or 35.1(e) no more Services can be provided by virtue of paragraph 13.4(b) of Part 4 of Schedule 2 (Service Requirements) or paragraph 6.4(b) of Part 4 of Schedule 2 (Service Requirements),

send to the PCT, on a form supplied by the PCT, the information specified in Clause 35.2.

35.2 Where the Contractor is a primary care trust, the Trust shall collate the information specified in Clause 35.3.

35.3 The information referred to in Clause 35.1 is:

- (a) details of the Patient to whom it provides the Services;
- (b) details of the Services provided [(including any Dental Appliances)] to that Patient;
- (c) details of any NHS Charge payable and paid by that Patient; and
- (d) in the case of a Patient exempt from NHS Charges and where such information is not submitted electronically, the written declaration form and note of evidence in support of that declaration.

36 Annual Report and Review

36.1 Without prejudice to the Contractor's obligation to meet all review requirements under this

Agreement and in particular those contained in Schedule 7 (Agreement and Performance Management), the PCT shall provide to the Contractor an annual report relating to this Agreement containing the same categories of information for all contractors holding such agreements with the PCT.

- 36.2 Following the Contractor's receipt of the annual report referred to in Clause 36.1, the PCT shall arrange an annual review with the Contractor of its performance under this Agreement.
- 36.3 The PCT shall prepare a draft record of the annual review referred to in Clause 36.2 for comment by the Contractor and, having regard to such comments, shall produce a final written record of the review which shall be sent to the Contractor.

37 Notifications to the PCT

- 37.1 In addition to any requirements of notification elsewhere in this Agreement, the Contractor shall notify the PCT in writing, as soon as reasonably practicable, of:
- (a) 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 this Agreement;
 - (b) any circumstances which give rise to the PCT's right to terminate this Agreement under Clauses 54;
 - (c) the death of any Patient during or immediately after treatment by the Contractor of which the Contractor is aware in accordance with Clause 38;
 - (d) the departure (which shall include the retirement) of any dental practitioner performing or who will perform wholly or mainly on the Services including the name of the dental practitioner, his Professional Registration Number and the date of his departure;
 - (e) the employment or engagement of a dental practitioner who will perform the Services, including the name of the dental practitioner and his Professional Registration Number;
 - (f) anything affecting the status of any Contractor Staff in relation to the Dental Performers List;
 - (g) any criminal investigations or proceedings (other than the issuing of a fixed penalty notice where the offence is not any form of anti-social behaviour or disorder offence) in relation to Contractor Staff;
 - (h) any damage to the Practice Premises save that the Contractor shall not be obliged to notify the PCT in accordance with this Clause 37.1 if the Contractor or a third party owns the Practice Premises unless the damage to the Practice Premises poses a risk to patient safety or delivery of the Services;²⁵ **Reserved**
 - (i) any violent incidents relating to the Services;
 - (j) any change to or breach of the warranties given by the Contractor in Clause 4; or
 - (k) any loss or withdrawal of its registrations with the Care Quality Commission.

37.2 The Contractor shall, unless it is impracticable for it to do so, notify the PCT in writing

²⁵ This clause will be applicable where the Practice premises are owned or leased by the PCT and then let/sub-let to the Contractor

within twenty eight (28) days of any occurrence requiring a change in the information about the Contractor published by the PCT in accordance with regulations made under section 99(3) of the Act.

- 37.3 Where the Contractor is a Qualifying Body, it shall give notice in writing to the PCT forthwith when:
- (a) any share in the Contractor is transmitted or transferred (whether legally or beneficially) to another person on a date after this Agreement has been entered into;
 - (b) a new director or secretary is approved;
 - (c) it passes a resolution or a court of competent jurisdiction makes an order that the Contractor be wound up;
 - (d) circumstances arise which might entitle a creditor or a court to appoint a receiver, administrator or administrative receiver for the Contractor;
 - (e) circumstances arise which would enable the court to make a winding up order in respect of the Contractor; or
 - (f) the Contractor is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986.

38 Notification of Deaths

- 38.1 The Contractor shall report in writing to the PCT the death on its Practice Premises of any Patient no later than the end of the first Business Day after the date on which the death occurred. The report shall include:
- (a) the Patient's full name;
 - (b) the Patient's National Health Service number where known;
 - (c) the date and place of death;
 - (d) a brief description of the circumstances, as known, surrounding the death;
 - (e) the name of any dental practitioner or Dental Care Professional treating the Patient whilst on the Practice Premises; and
 - (f) the name, where known, of any other person who was present at the time of the death.
- 38.2 The Contractor shall send a copy of the report referred to in Clause 38.1 to any other primary care trust in whose area the deceased was resident at the time of his death as well as to any other primary care trust with whom it has an agreement to provide primary dental services.

38A Notifications to patients following a variation of the Agreement

Where the Agreement is varied in accordance with Clauses 51 to 60 and as a result of that variation there is to be a change in the range of Services provided by the Contractor the Contractor shall ensure that there is displayed in a prominent position in its Practice Premises in a part to which patients have access written details of that change.

39 Entry and Inspection by the PCT

39.1 The Contractor shall allow persons authorised in writing by the PCT to enter and inspect the Practice Premises at any reasonable time provided that:

- (a) reasonable notice of the intended entry has been given;
- (b) written evidence of the authority of the person seeking entry is produced to the Contractor on request; and
- (c) entry is not made to any premises or part of the premises used as residential accommodation without the consent of the resident.

39.2 Where the Contractor is providing Services in a Prison, the Contractor shall not be obliged to comply with Clause 39.1 or Clause 41.1 if the Contractor has used its best endeavours to allow the PCT or the Care Quality Commission to enter and inspect the Practice Premises but entry and inspection has been prevented by the prison authorities despite the Contractor's best endeavours.

39.3 "Practice Premises", for the purpose of Clauses 39.1 and 32.2 shall include a mobile surgery.

39.4 The PCT shall have the right from time to time at its own cost to conduct an audit or investigation of the Contractor's operations and facilities and its quality, environmental and health and safety procedures and systems to ensure that the Contractor has the facilities, procedures, systems and personnel appropriate to and as may be required for the Contractor to perform the Services in accordance with this Agreement and for that purpose shall be entitled to have access to the Contractor's premises (including, without limitation, the Practice Premises) and to any premises of the Contractor's sub-contractors or agents subject to the conditions in Clause 39.1.

40 Entry and Inspection by Local Involvement Network Representatives

40.1 The Contractor must comply with Regulation 3 of the Local Involvement Networks (Duty of Services – Providers to Allow Entry) Regulations 2008 insofar as it applies to the Contractor.

41 Entry and Inspection by Care Quality Commission

41.1 Subject to Clause 39.3, the Contractor shall allow persons authorised by the Care Quality Commission to enter and inspect the Practice Premises in accordance with section 62 of the Health and Social Care Act 2008 and Section 66 of the Health and Social Care (Community Health and Standards) Act 2003.²⁶

42 Counter Fraud and Security Management

42.1 Upon the request of the NHS Counter Fraud and Security Management Service (the "CFSMS") or any authorised officer of the Secretary of State, the Contractor shall ensure that the CFSMS is given access to:

- (a) all property, premises, information (including records and data) owned or controlled by the Contractor relevant to the detection and investigation of cases of fraud and/or corruption directly or indirectly connected to this Agreement; and
- (b) all members of the Contractor's Staff who may have information to provide that is relevant to the detection and investigation of cases of fraud and/or corruption

²⁶ The references include the current Health and Social Care Act 2008 which has not yet been updated in the Regulations

directly or indirectly in connection with this Agreement,

in accordance with Part 10 of the Act (where applicable) or otherwise as soon as is reasonably practicable and in any event not later than seven (7) days from the date of any request under this Clause 42.1.

- 42.2 The Contractor shall put in place appropriate arrangements to:
- (a) ensure the security of Patients whilst in the Practice Premises; and
 - (b) prevent and detect fraud by or in relation to Patients and/or in relation to public funds.
- 42.3 The Contractor shall, on request by the PCT, permit the PCT or its authorised representative which may be a person authorised to act on behalf of the CFSMS, to review the arrangements put in place by the Contractor pursuant to Clause 42.2.
- 42.4 The Contractor shall promptly upon becoming aware of any suspected fraud or corruption involving Patients or public funds, report such matter to the PCT.

43 Not Used

44 Payment under this Agreement

- 44.1 The PCT shall pay the Contractor the sums due under this Agreement promptly and in accordance with Schedule 3 (Payment Mechanism) and any other conditions relating to payment contained in directions given by the Secretary of State under section 109(4) of the Act such conditions being terms of this Agreement. The Charges shall be calculated in accordance with Schedule 3 (Payment Mechanism).
- 44.2 The Contractor shall pay to the PCT any sums due, promptly and in accordance with any other conditions relating to payment contained in directions given by the Secretary of State under Section 109(4) of the Act.

45 Not Used

46 Clinical Leadership and Governance

- 46.1 Without prejudice to the Contractor's obligation to meet all performance requirements under this Agreement and comply with the PCT's reasonable instructions from time to time, the Contractor shall have in place an effective System of Clinical Governance.
- 46.2 The Contractor shall nominate a person who will have responsibility for ensuring the effective operation of a System of Clinical Governance and a System of Integrated Governance and shall notify the PCT of the identity of this individual. The person nominated by the Contractor shall be a person who performs or manages the Services.
- 46.3 ²⁷The Contractor shall ensure that there are appropriate persons within the Practice to each of the levels set out below in relation to the Services:
- (a) an organisational clinical director whose main responsibilities include:
 - i. to provide organisational clinical leadership and accountability for primary dental care services;

²⁷ Revise as applicable depending on the levels which the PCT require. PCT to consider whether there is a requirement for a lead on System of Integrated Governance under this Clause. Some elements of this Clause may be removed if they are not applicable to the PCT's scheme

- ii. ensuring that the quality of care is central to the Contractor's aims; and
 - iii. providing a System of Clinical Governance in accordance with Clause 46.1; and
- (b) a regional clinical lead whose responsibilities include:
- i. providing clinical leadership for the delivery of the Services at a regional level; and
 - ii. ensuring that key systems are in place for quality primary dental care within the region; and
- (c) a practice clinical lead whose responsibilities include:
- i. providing clinical leadership for the delivery of clinical services at a Practice level; and
 - ii. identifying the key processes that should be in place to deliver the Services,

and shall ensure that the name of the person appointed to organisational clinical director is on the Dentists Register of the General Dental Council. For the avoidance of doubt the same person may fulfil multiple roles under this Clause 46.3.

47 Indemnity and Limitation of Liability

47.1 Nothing in this Agreement shall in any way exclude or limit either Party's liability for death or personal injury caused by the defaulting Party's negligence or for fraudulent misrepresentation.

47.2 Subject to Clauses 47.1 and 47.3 and save for the Contractor's liability under the indemnities contained in Clause 47.4 and 47.6 which shall be unlimited, the total aggregate liability of each Party arising out of, or in connection with this Agreement, whether for negligence or breach of contract or any case whatsoever in each Agreement Year, shall in no event exceed [twice] the Charges paid or payable by the PCT in accordance with this Agreement in the Agreement Year to which the claim relates.²⁸

47.3 The total aggregate liability of the Contractor arising out of, or in connection with, this Agreement set out in Clause 47.2 shall be increased by the greater of:

- (a) the amount which was covered by the insurance required pursuant to Schedule 9 (Insurance Requirements) or should have been covered pursuant to Schedule 9 (Insurance Requirements) but for the Contractor's or its agents' act, omission or default including any failure to maintain such insurance in respect of the claim or insurers avoiding the policy or any element thereof; or
- (b) any amount actually recovered in respect of any claim under the Contractor's insurance.

47.4 The Contractor acknowledges that the PCT places particular reliance upon the provisions of this Agreement and in addition to any other remedy available to the PCT, the Contractor irrevocably and unconditionally agrees to indemnify the PCT its employees, sub-contractors and agents and any New Contractor in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all direct and indirect damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees, economic loss, loss of profit, future revenue, reputation, goodwill, anticipated savings) and any consequential loss and made against or incurred

²⁸ PCT to consider whether a fixed value limit would be more appropriate.

or suffered by any of them and whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences were foreseeable at the date of the entering into of this Agreement:

- (a) any claim by a third party that the provision of the Services by the Contractor or the use by or on behalf of the PCT in relation to this Agreement of any assets used by the Contractor in connection with the performance of the Services infringes the Intellectual Property rights of that third party, save to the extent that the liability arises from any wrongful act by the PCT or its employees outside of its rights and obligations under this Agreement;
 - (b) any claim or proceedings by any Trade Union, elected employee representative or staff association made against the PCT in respect of any or all of the Transferring Employees or any other employee of the Contractor Staff and which arises from or is connected with any failure by the Contractor to comply with its legal obligations in relation thereto whether under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or the Employment Regulations, save to the extent that the liability arises from any wrongful act by the PCT or its employees;
 - (c) any loss connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any Contractor Staff or of any other person at any time employed by (or engaged as a consultant or other self employed basis by) the Contractor made against the PCT at any time for breach of such contract, policy or any such collective agreement, pay, unfair dismissal, statutory or contractual redundancy pay, discrimination on the grounds of sex, marital status, race, disability, religion or belief, sexual orientation or age, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Contractor or their engagement on a self-employed basis and which results from any act, fault or omission of the Contractor while such Contractor Staff were or such other person was employed or engaged by the Contractor, save to the extent that the liability arises from any wrongful act by the PCT or its employees;
 - (d) any loss incurred from any change or proposed change made or offered by the Contractor to the terms and conditions of employment of any Contractor Staff where such change is or is proposed to be effected following the transfer of any such person pursuant to this Agreement and in respect of any loss incurred by the PCT arising from the employment or proposed employment of any such Contractor Staff otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer; and
 - (e) any liability incurred by the PCT arising from any failure by the Contractor to comply with its obligations under the Employment Regulations, save to the extent that the liability arises from any wrongful act by the PCT or its employees.
- 47.5 The PCT shall not be liable to the Contractor for any loss of profit of whatever nature (whether or not such loss or damage was foreseen, direct, foreseeable, known or otherwise) or for any indirect, special or consequential loss or damage howsoever caused, including loss of anticipated profits, loss of actual profits (direct or indirect), loss of anticipated savings, loss of business, loss of revenue, loss of opportunity, loss of goodwill, loss of reputation or any losses arising as a result of any third party bringing a claim against the Contractor in respect of any such matters.
- 47.6 The Contractor shall at all times remain liable for all dental medical or clinical negligence, or alleged dental medical or clinical negligence, on the part of the Contractor, any Contractor Party, any Staff, any Trainer or Trainee in the course of or in connection with the provision or receipt of Training.

48 Insurance

- 48.1 The Contractor shall at all times procure and maintain the Insurances in accordance with the provisions of Schedule 9 (Insurance Requirements).
- 48.2 The Contractor shall upon the PCT's request provide the PCT with a copy of all Insurances obtained pursuant to Clause 48.1 within fifteen (15) Business Days of receipt of such request.
- 48.3 The Contractor may change the insurers with whom the Insurances are held on an annual basis upon written notice to the PCT at least ten (10) Business Days prior to any such change. In the event that such a change results in revisions to the terms or cover of the Insurances, the PCT's consent will be required before the change can be implemented.
- 48.4 The Contractor shall not sub-contract its obligations to provide clinical services under this Agreement (and in accordance with Clause 19A.1(b)) unless:
- (a) it is satisfied that the sub-contractor holds adequate insurance in the sum of not less than [five million pounds sterling (£5,000,000)] or as otherwise set out in Schedule 9 (Insurance Requirements) against liability arising from negligent performance of such services; and
 - (b) it complies with its obligations under Clauses 19 and 19A.
- 48.5 ²⁹The Contractor shall ensure that appropriate insurance cover is in place in respect of any training activities in the Practice Premises.
- 48.6 The Contractor shall be liable to make good any deficiency in the event that the proceeds of any Insurance are insufficient to cover the settlement of any claim.
- 48.7 The Contractor warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action as a result of which the Insurance may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part or which may otherwise render any sum paid out under such policy of insurance repayable in whole or in part.
- 48.8 The Contractor shall use reasonable endeavours to notify the PCT as soon as reasonably practicable when it becomes aware of any relevant fact, circumstance or matter which has caused, or is reasonably likely to provide grounds to cause, the relevant insurer to give notice to cancel, rescind, suspend or avoid any Insurance, or any cover or claim under any Insurance, or any cover or claim under any Insurance in whole or in part.
- 48.9 For the purposes of Clauses 48.1 to 48.8:
- (a) "insurance" means a contract of insurance or other arrangement made for the purpose of indemnifying the Contractor for the purpose set out in this Clause 48 and may also include membership of a dental defence organisation established for the purpose set out in this Clause 48 provided that the Contractor demonstrates to the reasonable satisfaction of the PCT that the terms of this cover satisfy the requirements of this Clause 48 and Schedule 9 (Insurance); and
 - (b) the Contractor or a subcontractor shall be regarded as holding insurance if it is held by a person employed in connection with clinical services which that employee provides under this Agreement or, as the case may be, sub-contract provided that that insurance is adequate and is in the sum set out in Schedule 9

²⁹ PCT advised to consider the position in respect of insurance cover and whether any further provisions (including more detailed indemnity protection in respect of various affected parties) are required.

(Insurance Requirements).

49 Complaints

- 49.1 The Contractor shall have in place a complaints procedure which meets the requirements of the Local Authority Social Services and National Health Service Complaints (England) Regulations 2009.
- 49.2 The Contractor (other than where it is a primary care trust) shall inform the PCT at such intervals as the PCT requires, of the number of complaints it has received under the procedure it has established in accordance with Clause 49 and Clause 50.

50 Co-operation with Investigations

- 50.1 The Contractor (other than where it is a primary care trust) shall co-operate with:
- (a) any investigation of a complaint in relation to any matter reasonably connected with the provision of the Services, undertaken by the PCT; and
 - (b) any investigation of a complaint by an NHS Body or Local Authority which relates to a Patient or former Patient of the Contractor.
- 50.2 The co-operation referred to in Clause 50.1 shall include:
- (a) answering questions reasonably put to the Contractor by the PCT;
 - (b) providing any information relating to the complaint reasonably required by the PCT; and
 - (c) attending any meeting to consider the complaint (if held at a reasonably accessible place and at a reasonable hour, and due notice has been given) if the Contractor's presence at the meeting is reasonably required by the PCT.

51 Variation

- 51.1 Subject to the PCT's rights under Clause 19A.3, no amendment or variation to this Agreement shall have effect unless it is in writing and signed by or on behalf of the PCT and the Contractor.
- 51.2 The Contractor shall comply with the provisions set out in Schedule 8 (Change Schedule).

52 Termination by Agreement

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

53 Termination by the Contractor

- 53.1 The Contractor may terminate this Agreement by serving notice in writing on the PCT at any time.
- 53.2 Where the Contractor serves notice pursuant to Clause 53.1, this Agreement shall terminate three (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, this Agreement shall instead terminate on the last calendar day of the month in which the termination date falls.

53.3 The rights of the Contractor under Clause 53 and Clause 53A shall be without prejudice to any other rights the Contractor may have to terminate this Agreement.

53.A Late Payment Notices

53.A.1 The Contractor may give notice in writing (a "late payment notice") to the PCT if the PCT has failed to make any payments due to the Contractor in accordance with a term of this Agreement that has the effect specified in Schedule 3 (Payment Mechanism) and the Contractor shall specify in the Late Payment Notice, the payments that the PCT has failed to make in accordance with Schedule 3 (Payment Mechanism).

53.A.2 subject to clause 53.A.3 the Contractor may, at least twenty eight (28) days after having served a Late Payment Notice, terminate this Agreement by a further written notice if the PCT has still failed to make payments that were due to the Contractor and which were specified in the Late Payment Notice served on the PCT pursuant to Clause 53.A.1.

53.A.3 If, following receipt of a Late Payment Notice, the PCT refers the matter to the NHS Dispute Resolution Procedure within twenty eight (28) days of the date upon which it is served with the Late Payment Notice, and it notifies the Contractor in writing that it has done so within that period of time, the Contractor may not terminate this Agreement pursuant to Clause 53.A.2 until:

(a) there has been a determination of the Dispute pursuant to Schedule 20 (Dispute Resolution) and that determination permits the Contractor to terminate this Agreement; or

(b) the PCT ceases to pursue the NHS Dispute Resolution Procedure,

whichever is the earlier.

53.B Termination by the PCT³⁰

53B.1 The PCT may terminate this Agreement by serving notice in writing on the Contractor at any time.

53B.2 Where notice is served pursuant to Clause 53B.1, this Agreement shall terminate on the date provided for in this Agreement.

54 Termination by the PCT for Provision of Untrue or Inaccurate Information

54.1 The PCT may serve notice in writing on the Contractor terminating this Agreement forthwith, or from such date as may be specified in the notice if, after this Agreement was entered into, it has come to the attention of the PCT that written information provided to the PCT by the Contractor before this Agreement was entered into in relation to the conditions set out in Regulations 4 and 5 of the Regulations (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

55 Termination by the PCT on grounds of suitability

55.1 The PCT may serve notice in writing on the Contractor terminating this Agreement forthwith, or from such date as may be specified in the notice if:

(a) in the case of an agreement with an individual, that individual;

³⁰ This Clause is required by regulation 20 and paragraph 67 of Schedule 3 of the Regulations. Further guidance on this clause will be provided in the Contract User Guide.

- (b) in the case of an agreement with a Qualifying Body;
 - i. the Qualifying Body; or
 - ii. a director, chief executive or secretary of the Qualifying Body,

falls within Clause 55.2 during the existence of this Agreement.

55.2 A person falls within this clause if:

- (a) he or it is the subject of a National Disqualification;
- (b) subject to Clause 55.3, he or it is disqualified or suspended (other than by an interim suspension order or direction pending an investigation or a suspension on the grounds of ill-health) from practising by any Licensing Body anywhere in the world;
- (c) subject to Clause 55.4, he has been dismissed (otherwise than by reason of redundancy) from any employment by a Health Service Body unless before the PCT has served a notice terminating this Agreement pursuant to this clause, he is employed by the Health Service Body that dismissed him or by another Health Service Body;
- (d) he or it is removed from, or refused admission to, a Primary Care List by reason of inefficiency, fraud or unsuitability (within the meaning of section 151(2), (3) and (4) of the Act respectively) unless his name has subsequently been included in such a list;
- (e) he has been convicted in the United Kingdom of:
 - i. murder; or
 - ii. a criminal offence other than murder, committed on or after 14 December 2001, and has been sentenced to a term of imprisonment of over six months;
- (f) subject to Clause 55.5 he has been convicted outside the United Kingdom of an offence:
 - i. which would, if committed in England and Wales, constitute murder;
 - ii. committed on or after 14 December 2001, which would if committed in England and Wales, constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (g) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933 or Schedule 1 to the Criminal Procedure (Scotland) Act 1995;
- (h) he or it has:
 - i. been adjudged bankrupt or had sequestration of his estate awarded unless (in either case) he has been discharged or the bankruptcy order has been annulled;
 - ii. 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;

- iii. made a composition or arrangement with, or granted a trust deed for, his or its creditors unless he or it has been discharged in respect of it; or
- iv. been wound up under Part IV of the Insolvency Act 1986;
- (i) there is:
 - i. an administration, administrative receiver or receiver appointed in respect of it; or
 - ii. an administration order made in respect of it under Schedule B1 to the Insolvency Act 1986;
- (j) he has been:
 - iii. removed from the office of Charity Trustee or trustee for a charity by an order made by the Charity Commissioners or the High Court on the grounds of any misconduct or mismanagement in the administration of the charity for which he was responsible or to which he was privy, or which he by his conduct contributed to or facilitated; or
 - iv. removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990, from being concerned in the management or control of any body;
- (k) he is subject to a disqualification order under the Company Directors Disqualification Act 1986, the Companies (Northern Ireland) Order 1986 or to an order made under section 429(2)(b) of the Insolvency Act 1986 (failure to pay under County Court administration order); or
- (l) he has refused to comply with a request by the PCT for him to be medically examined on the ground that the PCT is concerned that he is incapable of adequately providing Services under this Agreement.

55.3 The PCT shall not terminate this Agreement pursuant to Clause 55.2(b) where the PCT is satisfied that the disqualification or suspension imposed by a Licensing Body outside the United Kingdom does not make the person unsuitable to be:

- (a) a contractor; or
- (b) in the case of an agreement with a Qualifying Body, a director, chief executive or secretary of the Qualifying Body.

55.4 The PCT shall not terminate this Agreement pursuant to Clauses 55.2(c):

- (a) until a period of at least three (3) months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in Clause 55.4(a) 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 this Agreement at the end of the period specified in Clause 55.4(b) if there is no finding of unfair dismissal.

55.5 The PCT shall not terminate this Agreement pursuant to Clause 55.2(f) where the PCT is satisfied that the conviction does not make the person unsuitable to be:

- (a) a contractor; or
- (b) in the case of an Agreement with a Qualifying Body, a director, chief executive or secretary of that Qualifying Body.

55A Termination on death³¹

55A.1 Where the Contractor is a single individual and the Contractor dies, this Agreement shall terminate at the end of the period of seven (7) days after the date of his death unless, before the end of that period:

- (a) subject to Clause 55A.2, the PCT has agreed in writing with the Contractor's personal representatives that this Agreement should continue for a further period, not exceeding three months after the end of the period of seven (7) days; and
- (b) that individual's personal representatives have confirmed in writing to the PCT that they are employing or engaging one or more dental practitioners to assist in the provision of the dental services throughout the period for which it continues. .
Reserved if not an individual

55A.2 Where the PCT is of the opinion that another individual may wish to enter into an agreement in respect of the Mandatory Services which were provided by the deceased, the three (3) month period referred to in Clause 55A.1(a) may be extended by a period not exceeding six (6) months as may be agreed. . **Reserved if not an individual**

55A.3 Clause 55A.1 does not affect any other rights to terminate this Agreement which the PCT may have under Clauses 54, 55, 56 and 57. **Reserved if not an individual**

56 Termination by the PCT: Patient Safety and Material Financial Loss

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

- (a) the Contractor has breached this Agreement and as a result of that breach, the safety of the Contractor's Patients, is at serious risk if this Agreement is not terminated; or
- (b) the Contractor's financial situation is such that the PCT considers that the PCT is at risk of material financial loss.

57 Termination by the PCT: Remedial Notices and Breach Notices

57.1 Where the Contractor has breached this Agreement other than as specified in Clauses 54, 55 or 56 and the breach is capable of remedy, the PCT shall, before taking any action it is otherwise entitled to take by virtue of this Agreement, serve a notice on the Contractor requiring it to remedy the breach (a "Remedial Notice").

57.2 A Remedial Notice shall specify:

- (a) details of the breach;
- (b) the steps the Contractor must take to the satisfaction of the PCT in order to remedy the breach; and

³¹ The clauses under this heading are only relevant if the Agreement is made with an individual.

- (c) the period during which the steps must be taken (the "Remedial Notice Period").
- 57.3 The Remedial Notice Period shall, unless the PCT is satisfied that a shorter period is necessary to protect the safety of the Contractor's Patients or protect itself from material financial loss, be no less than twenty eight (28) days from the date that the Remedial Notice is given.
- 57.4 Where the PCT is satisfied that the Contractor has not taken the required steps to remedy the breach by the end of the Remedial Notice Period, the PCT may terminate this Agreement with effect from such date as the PCT may specify in a further notice to the Contractor.
- 57.5 Where the Contractor has breached this Agreement other than as specified in Clauses 54, 55 or 56 and the breach is not capable of remedy, the PCT may serve notice on the Contractor requiring it not to repeat the breach (a "Breach Notice").
- 57.6 If, following a Breach Notice or a Remedial Notice, the Contractor:
- (a) repeats the breach that was the subject of the Breach Notice or the Remedial Notice; or
 - (b) otherwise breaches this Agreement resulting in either a Remedial Notice or a further Breach Notice,
- the PCT may serve notice on the Contractor terminating this Agreement with effect from such date as may be specified in that notice.
- 57.7 The PCT shall not exercise its right to terminate this Agreement under Clause 57.6 unless it is satisfied that the cumulative effect of the breaches is such that the PCT considers that to allow this Agreement to continue would be prejudicial to the efficiency of the Services provided under this Agreement.
- 57.8 If the Contractor is in breach of any obligation and a Breach Notice or a Remedial Notice in respect of that default has been given to the Contractor, the PCT may withhold or deduct monies which would otherwise be payable under this Agreement in respect of that obligation which is the subject of the default.
- 57A **Termination by the PCT: additional provisions specific to agreements with Qualifying Bodies³²**
- 57A.1 Where the Contractor is a Qualifying Body, 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 this Agreement:
- (a) the PCT shall be entitled to give notice to the Contractor requiring that the Qualifying Body ceases carrying on that business before the end of a period of not less than twenty eight (28) days beginning on the day on which the notice is given (the "Qualifying Body Notice Period"); and
 - (b) if the Contractor has not satisfied the PCT that the Qualifying Body has ceased carrying on that business by the end of the Qualifying Body Notice Period, the PCT may, by a further written notice, terminate this Agreement forthwith or from such date as may be specified in the notice.

. Reserved for non Qualifying Bodies

³² The clauses under this heading are only relevant if the Agreement is made with a Qualifying Body.

57A.2 Where the Contractor is a Qualifying Body and:

- (a) the majority of the directors of the Qualifying Body cease to be either dental practitioners or Dental Care Professionals;
- (b) the Qualifying Body has been convicted of an offence under section 43(1) of the Dentists Act; or
- (c) the Qualifying Body, or a director or former director of that Qualifying Body, has had a financial penalty imposed on it or him by the General Dental Council pursuant to section 43B or 44 of the Dentists Act,

the PCT may, by written notice, terminate this Agreement if it considers that as a consequence the Qualifying Body is no longer suitable to be a contractor. **Reserved for non Qualifying Bodies**

58 Agreement Sanctions

58.1 Where the PCT is entitled to terminate this Agreement pursuant to Clauses 54, 55, 56, 57.4, 57.6 or 57A, it may instead impose any of the Agreement Sanctions if the PCT is reasonably satisfied that the Agreement Sanction to be imposed is appropriate and proportionate to the circumstances which provide grounds for the PCT to terminate this Agreement.

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

58.3 Subject to Clause 58A, the PCT shall not impose the Agreement Sanction until at least twenty eight (28) days after it has served notice on the Contractor pursuant to Clause 58.2 unless the PCT is satisfied that it is necessary to do so in order to -

- (a) protect the safety of the Contractor's Patients; or
- (b) protect itself from material financial loss.

58.4 Where the PCT imposes an Agreement 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 Agreement Sanction.

58A. Agreement Sanctions and the NHS Dispute Resolution Procedure

58A.1. If there is a Dispute between the PCT and the Contractor in relation to an Agreement Sanction that the PCT is proposing to impose, the PCT shall not, subject to Clause 58A.4, impose the proposed Agreement Sanction except in the circumstances specified in Clause 58A.2.

58A.2 If the Contractor refers the Dispute relating to the Agreement Sanction to the NHS Dispute Resolution Procedure within twenty eight (28) days beginning on the date on which the PCT served notice on the Contractor in accordance with Clause 58A.3 (or such longer period as may be agreed in writing with the PCT), and notifies the PCT in writing that it has done so, the PCT shall not impose the Agreement Sanction unless:

- (a) there has been a determination of the Dispute pursuant to Schedule 3 paragraph 56 of the Regulations and that determination permits the PCT to impose the Agreement Sanction; or

(b) the Contractor ceases to pursue the NHS Dispute Resolution Procedure,
whichever is the earlier.

58A.3 If the Contractor does not invoke the NHS Dispute Resolution Procedure within the time specified in Clause 58A.2, the PCT shall be entitled to impose the Agreement Sanction forthwith.

58A.4 If the PCT is satisfied that it is necessary to impose the Agreement Sanction before the NHS Dispute Resolution Procedure is concluded in order to:

(a) protect the safety of the Contractor's Patients; or

(b) protect itself from material financial loss,

the PCT shall be entitled to impose the Agreement Sanction forthwith, pending the outcome of that procedure.

59 Not Used

60 Termination and the Dispute Resolution Procedure

60.1 Where the PCT is entitled to serve written notice on the Contractor terminating this Agreement pursuant to Clauses 54, 55, 56, 57.4, 57.6 or 57A the PCT shall, in the notice served on the Contractor pursuant to those Clauses, specify a date on which this Agreement terminates that is not less than twenty eight (28) days after the date on which the PCT has served that notice on the Contractor unless Clause 60.2 applies.

60.2 This Clause 60.2 applies if the PCT is satisfied that a period of less than twenty eight (28) days is necessary in order to;

(a) protect the safety of the Contractor's Patients; or

(b) protect itself from material financial loss.

60.3 In a case falling within Clause 60.1 where the exceptions in Clause 60.2 do not apply, if the Contractor invokes the NHS Dispute Resolution Procedure before the end of the period of notice referred to in Clause 60.1, and the Contractor notifies the PCT in writing that it has done so, this Agreement shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in Clause 60.4.

60.4 Where the Contractor has invoked the NHS Dispute Resolution Procedure in accordance with Clause 60.3 above this Agreement shall only terminate if and when there has been a determination of the Dispute pursuant to Schedule 3, paragraph 56 of the Regulations and that determination permits the PCT to terminate this Agreement or the Contractor ceases to pursue the NHS Dispute Resolution Procedure, whichever is the sooner.

60.5 If the PCT is satisfied that it is necessary to terminate this Agreement before the NHS Dispute Resolution Procedure is concluded in order to protect the safety of the Patients or protect itself from material financial loss, Clauses 60.3 and 60.4 shall not apply and the PCT shall be entitled to confirm by written notice to be served on the Contractor, that this Agreement will nevertheless terminate at the end of the period of the notice it served pursuant to Clauses 54, 55, 56, 57.4, 57.6 or 57A.

61 Consequences of Termination

61.1 The termination of this Agreement, for whatever reason, is without prejudice to the accrued rights of either Party under this Agreement.

- 61.2 On the termination of this Agreement (or any part of this Agreement) for any reason, as far as it is relevant to the extent of the termination in question:
- (a) the Contractor shall, subject to the requirements of this Clause 61.2, cease performing any work or carrying out any obligations under this Agreement;
 - (b) the Contractor shall co-operate with the PCT to enable any outstanding matters under this Agreement to be dealt with or concluded in a satisfactory manner;
 - (c) subject to any final reconciliation or payments due under Schedule 3 (Payment Mechanism), the PCT's obligation to make payments to the Contractor in accordance with this Agreement shall cease on the Termination Date.
 - (d) the Contractor shall take reasonable steps to mitigate any costs which the PCT incurs as a result of the termination or expiry of this Agreement;
 - (e) subject to the Contractor's obligations to retain any Confidential Information and other data and documents within this Agreement, the Contractor shall promptly return to the PCT or dispose of in accordance with the PCT's instructions all Confidential Information and other data and documents and copies of them disclosed or supplied to the Contractor pursuant to or in relation to this Agreement;
 - (f) the Contractor shall at the PCT's request make available to the PCT and/or to the New Contractor such of the Contractor's Staff or self employed consultants engaged by it in the performance of the Services prior to termination as the PCT and/or the New Contractor shall reasonably require for such assistance in handing over the Services or services similar to the Services as the PCT or the New Contractor may reasonably require in the period of three (3) months following the expiry or termination of this Agreement (and who do not transfer to the PCT or a New Contractor pursuant to the Employment Regulations) subject to the PCT (or the New Contractor) paying the costs of the salary and any employer's costs in respect of any such Contractor Staff or self-employed consultants for the period during which they are providing services to the PCT or the New Contractor;

[Drafting Note: the remaining sections of this Clause 61.2 are optional and should be used where relevant to the specific circumstances]

- (g) [the Contractor shall deliver up to the PCT all property belonging to the PCT including all documents, forms, computer hardware and software, drugs, or medical equipment which may be in the Contractor's possession or control;]³³
Reserved if not applicable
- (h) the Contractor shall at the PCT's request, use all reasonable endeavours to procure the assignment or novation of all contracts entered into with third parties to deliver the Services to the PCT, or to such third party as the PCT shall nominate;
- (i) [the [Underlease/Lease] shall terminate and the Contractor shall vacate any Practice Premises forthwith provided to it by the PCT;]³⁴ **Reserved** and
- (j) [the Contractor shall reimburse the PCT for any costs incurred in restoring the Practice Premises to the state and condition in which it was prior to its occupation

³³ This Clause will not apply where no property, equipment or drugs are to be provided by the PCT.

³⁴ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

by the Contractor.] **Reserved**³⁵

- 61.3 Within fifteen (15) Business Days after notice of termination (or partial termination so far as is relevant) or any time in the twelve (12) months prior to the Expiry Date of being so requested by the PCT, the Contractor shall provide and thereafter keep updated, in an indexed and catalogued format, all the information requested by the PCT and which is reasonably necessary to enable the PCT to issue invitations to offer for the future provision of the Services or to provide the Services itself.
- 61.4 The Contractor shall co-operate fully with the PCT during the handover arising from the expiry or earlier termination (or partial termination so far as is relevant) of this Agreement. This co-operation, during the setting-up operations period of the New Contractor (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition without disruption to the routine operational requirements.
- 61.5 Within ten (10) Business Days of being so requested by the PCT, the Contractor shall transfer to the PCT, or any person designated by the PCT, free of charge, all computerised filing, recordings, documentation held on software and utilised in the provision of the Services. The transfer shall be made in an indexed and catalogued disk format to operate on a proprietary software package identical to that used by the PCT, or in such other form as is reasonably acceptable to the PCT to enable it to access the information from the disk.
- 61.6 Should the Contractor:
- (a) breach this Agreement entitling the PCT to serve written notice on the Contractor terminating this Agreement;
 - (b) issue the PCT with notice of termination but cease to perform all or a material part of the Services before the expiry of the notice period;
 - (c) issue the PCT with notice of termination but fail to perform the Services to the PCT's reasonable satisfaction during the notice period until the due termination date; or
 - (d) otherwise cease to provide all or a material part of the Services without notice to the PCT,

then, without prejudice to all other remedies available to the PCT, the PCT shall be entitled to perform all or part of the Services itself and/or (at its sole discretion) engage a replacement Contractor(s) for the provision of all or part of the Services on such terms and conditions as the PCT sees fit and the Contractor shall immediately pay the PCT the cost of engaging the replacement Contractor(s) together with all additional expenditure incurred by the PCT (including all the costs incurred in performing all or part of the Services itself) throughout the remainder of the unexpired portion of the due notice period in the case of Clauses 61.6(b) or in the case of Clauses 61.6(a) and 61.6(d) for the full notice period.

- 61.7 [On the expiry or termination of this Agreement for any reason whatsoever the following provisions shall apply as relevant and to the extent of the termination in question:
- (a) (subject to Clause 61.1 above) the relationship of the Parties shall cease and any rights or licences granted under or pursuant to this Agreement shall cease to have effect save as (and to the extent) expressly provided for in this Agreement in Clause 61 and Clause 66;

³⁵ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub-let to the Contractor.

(b) where appropriate, the PCT shall be entitled at its option to require the Contractor to sell to the PCT, the New Contractor or such other Qualifying Body as the PCT may nominate any or all assets whether or not of a capital nature owned by the Contractor and used by the Contractor exclusively for the purpose of providing the Services at a price equal to their Net Book Value in the Contractor's books or, (if greater), their then market value, (such value if not agreed by the Parties to be referred to the Dispute Resolution Procedure);³⁶ ? **Reserved**

(c) the PCT shall be entitled at its option to require the Contractor to assign or novate (or to procure the assignment or novation) to the PCT or (at the PCT's request) to the New Contractor [any of the Practice Premises Documents and] **Reserved**³⁷ [any underlease, rental or maintenance agreements relating to any assets sold in accordance with Clause 61.7(b) above between the Contractor and any third party at the same rates paid by the Contractor as at the date of expiry or termination] **Reserved**³⁸ provided that the Contractor shall use its best endeavours to obtain the relevant third party's consent to the assignment or novation of the rental or maintenance agreement in question but, in the event that third party refuses its consent, the Contractor shall remain liable under that agreement for any payments or other obligations notwithstanding the expiry or termination of this Agreement; **Reserved**³⁹ and

(d) subject to the Employment Regulations the PCT or the New Contractor shall be entitled but not obliged to offer any Contractor Staff a contract of employment or a contract for services with the PCT or the New Contractor and the Contractor agrees that if such person accepts such offer the Contractor shall and shall procure that its sub-contractors shall release such person from any breach of contract which such acceptance may otherwise involve.⁴⁰] **Reserved**

61.8 During the term of this Agreement the Parties shall maintain a plan to exit the Services in accordance with Schedule 14 (Operational Management Plan) and no later than twelve (12) months prior to the expiry of this Agreement or within seven (7) days of receipt of any notice of termination in the event this Agreement is terminated early the Parties shall hold a review meeting at which appropriate representatives (including the Agreement Managers and Board Directors) shall be present, the sole purpose of which will be to discuss arrangements for the hand-over of the Services from the Contractor to the PCT or to a New Contractor and to agree and implement a plan to exit the Services and thereafter the Parties shall hold at least one similar review meeting in each month until this Agreement expires or terminates. The plan to exit the Services shall include the obligations and principles set out in Schedule 14 (Operational Management Plan) and shall take effect as set out in paragraph 1.2 of Part 3 of Schedule 14 (Operational Management Plan).

62 Dispute Resolution

62.1 The Parties shall comply with the obligations set out in Schedule 20 (Dispute Resolution) in relation to any dispute arising out of or in connection with this Agreement which shall

³⁶ This Clause may not be required depending on the local scheme. For example, where the Contractor delivers private or other NHS services with the same assets, then it would be likely to be impractical to try and separate out the equipment. Please refer to the Premises Guide for further guidance.

³⁷ The words in square brackets should be removed where either the Practice Premises are owned or leased by the Contractor or the Practice Premises are owned by a third party and only part of the whole of the third party premises are used for the delivery of the Services.

³⁸ The words in square brackets should be removed where either the Practice Premises are owned or leased by the Contractor or the Practice Premises are owned by a third party and only part of the whole of the third party premises are used for the delivery of the Services.

³⁹ This Clause may not be required depending on the local scheme. Please refer to the Premises Guide for further guidance.

⁴⁰ This Clause will be applicable where the Practice Premises are owned or leased by the PCT and then let/sub let to the Contractor.

include any dispute arising out of or in connection with termination of this Agreement.

63 The Employment Regulations

63.1 Where there is a relevant transfer as defined by the Employment Regulations, Schedule 18 (Staff Transfer) shall apply.

64 Gifts

64.1 The Contractor shall keep a register of gifts which:

- (a) are given to any of the persons specified in Clause 64.2 by, or on behalf of,
 - i. a Patient,
 - ii. a relative of a Patient; or
 - iii. any person who provides or wishes to provide services to the Contractor or its Patients in connection with this Agreement; and
- (b) have, in the reasonable opinion of the Contractor, a value of more than one hundred pounds sterling (£100.00).

64.2 The persons referred to in Clause 64.1 are:

- (a) any person employed by the Contractor for the purposes of this Agreement;
- (b) any dental practitioner engaged by the Contractor for the purposes of this Agreement;
- (c) where the Contractor is a Qualifying Body, any director, chief executive or company secretary of the corporation;
- (d) the Contractor;
- (e) any spouse or civil partner of the Contractor (where the Contractor is an individual) of a person specified in Clauses 64.2 (a) to 64.2(c); or
- (f) any person whose relationship with the Contractor (where the Contractor is an individual) or with a person specified in Clause 64.2(a) to 64.2(c) has the characteristics of the relationship between husband and wife or civil partners.

64.3 Clause 64.1 does not apply where:

- (a) there are reasonable grounds for believing that the gift is unconnected with services provided or to be provided by the Contractor;
- (b) the Contractor is not aware of the gift; or
- (c) Clause 64.1(a)(iii) applies but the Contractor is not aware that the donor wishes to provide services to the Contractor.

64.4 The Contractor shall take reasonable steps to ensure that it is informed of gifts which fall within Clause 64.1 and which are given to the persons specified in Clauses 64.2(a) to 64.2(c) and 64.2(e) to 64.2(f).

64.5 The register referred to in Clause 64.1 shall include the following information:

- (a) the name of the donor;

- (b) 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;
- (c) in any other case, the address of the donor;
- (d) the nature of the gift;
- (e) the estimated value of the gift; and
- (f) the name of the person or persons who received the gift.

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

65 Compliance with Legislation and Guidance

65.1 The Parties shall comply with all relevant legislation and have regard to all relevant guidance issued by the PCT, the relevant SHA or the Secretary of State in performing their obligations under this Agreement.

66 Survival of Terms

66.1 Termination or expiry of this Agreement (howsoever occasioned) shall not affect the coming into force or continuation in force of the following listed provisions or any other provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination or expiry:

- (a) Clause 19 (Sub-Contracting);
- (b) Clause 29.4 (Patient Records);
- (c) Clause 30 (Confidentiality of Personal Data);
- (d) Clause 33 (Enquiries about Prescriptions and Referrals);
- (e) Clause 34 (Fees, Charges and Financial Interests of the Contractor);
- (f) Clause 42 (Counter Fraud and Security Management);
- (g) Clause 47 (Indemnity and Limitation of Liability);
- (h) Clause 48 (Insurance);
- (i) Clause 49 (Complaints);
- (j) Clause 50 (Co-operation with Investigations);
- (k) Clauses 61 (Consequences of Termination);
- (l) Clause 62 (Dispute Resolution);
- (m) Clause 63 (The Employment Regulations);
- (n) Clause 64 (Gifts);
- (o) Clause 66 (Survival of Terms);
- (p) Clause 68 (Governing Law and Jurisdiction);
- (q) Clause 69 (Waiver, Delay or Failure to Exercise Rights);

- (r) Clause 70 (Relationship between the Parties);
- (s) Clause 72 (Severance);
- (t) Clause 73 (Notices);
- (u) Clause 75 (Data Protection);
- (v) Clause 76 (Freedom of Information); and
- (w) Clause 77 (Confidentiality).

67 Entire Agreement

- 67.1 Subject to Clause 67.2 this Agreement constitutes the entire agreement and understanding of the Parties and supersedes any previous agreement between the Parties relating to the subject matter of this Agreement, except for any contract entered into between the PCT and the Contractor to the extent that it relates to the same or similar services and is designed to remain effective until the Commencement Date under this Agreement.
- 67.2 The Parties acknowledge that the Statement of Financial Entitlements has the force of Directions and shall apply, except in relation to the Access Payment and Performance Payment which are additional to the requirements of the Statement of Financial Entitlements.
- 67.3 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on and shall have no remedy in respect of any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement as a warranty or in any document agreed by the Parties to be contractually binding.
- 67.4 Nothing in this Clause 67 (Entire Agreement) shall exclude any liability for fraud or any fraudulent misrepresentation.

68 Governing Law and Jurisdiction

- 68.1 This Agreement shall be governed by and construed in accordance with the laws of England.
- 68.2 Subject to Clause 62, all disputes and claims arising out of, relating to or in connection with this Agreement shall be subject to the exclusive jurisdiction of the English courts, to which the Parties irrevocably submit.

69 Waiver, Delay or Failure to Exercise Rights

- 69.1 Any relaxation or delay of any Party in exercising any right under this Agreement shall not be taken as a waiver of that right and shall not affect the ability of that Party subsequently to exercise that right.

70 Relationship between the Parties

- 70.1 This Agreement is a contract for the provision of services. The Contractor is an independent Contractor 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.
- 70.2 The PCT does not by entering into this Agreement, and shall not as a result of anything done by the Contractor in connection with the performance of this Agreement, incur any

contractual liability to any other person.

- 70.3 A person who is not a party to this Agreement (including any employee, officer, agent, representative or sub-contractor of either Party) shall not have the right, (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise), to enforce any provision of this Agreement which expressly or by implication confers a benefit on that person.
- 70.4 The PCT shall not assign or otherwise dispose of the benefit of the whole or part of this Agreement save:
- (a) to the Secretary of State, any other National Health Service trust, a Strategic Health Authority, a Special Health Authority, a Primary Care Trust or any other person or body replacing any of the foregoing or to whom the Secretary of State exercising his statutory rights would be entitled to transfer such benefits provided any such entity is covered by the National Health Service (Residual Liabilities) Act 1966; or
 - (b) with the prior written consent of the Contractor (such approval not to be unreasonably withheld or delayed).
- 70.5 The Contractor shall not at any time, permit a Change of Control to occur without the prior written consent of the PCT, such consent not to be unreasonably withheld.

71 Force Majeure

- 71.1 Where a Party is (or claims to be) affected by a Force Majeure Event, it shall take all reasonable steps to mitigate the consequences of it, resume performance of its obligations as soon as practicable and use all reasonable efforts to remedy its failure to perform.
- 71.2 Subject to Clause 71.1, the Party claiming relief shall be relieved from liability under this Agreement to the extent that because of the Force Majeure Event it is not able to perform its obligations under this Agreement.
- 71.3 The Affected Party shall serve initial written notice on the other Party immediately it becomes aware of the Force Majeure Event. This initial notice shall give sufficient details to identify the particular event. The Affected Party shall then serve a detailed written notice within a further five (5) Business Days. This detailed notice shall contain all relevant available information relating to the failure to perform as is available, including the effect of the Force Majeure Event, the mitigating action being taken and an estimate of the period of time required to overcome it and resume full delivery of Services.
- 71.4 Either Party may terminate this Agreement in its entirety by written notice to take effect immediately if the other Party suffers an Event of Force Majeure and such event persists for a continuous period of three (3) months or more without the Parties agreeing alternative arrangements.

72 Severance

- 72.1 Subject to Clauses 72.2 and 72.3, if any provision this Agreement is held to be invalid, illegal or unenforceable by any court, tribunal or other competent authority, such provision shall, to the extent required, be deemed to be deleted from this Agreement and shall not affect the validity, lawfulness or enforceability of any other provisions of this Agreement.
- 72.2 If, in the reasonable opinion of either Party, the effect of such a deletion is to undermine the purpose of this Agreement or materially prejudice the position of either Party, the Parties shall negotiate in good faith in order to agree suitable alternative provisions to replace the deleted provisions or a suitable amendment to this Agreement.

72.3 If the Parties are unable to reach agreement as to the suitable alternative provisions or amendment within a reasonable period of commencement of the negotiations, then the Parties may refer the Dispute for determination in accordance with Clause 62.

73 Notices

73.1 Any notice given under or in relation to this Agreement shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by fax to the address set out in paragraph 2 of Schedule 11 (Administration).

73.2 Unless expressly stated otherwise notices shall not be sent by e-mail.⁴¹

73.3 A notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) if sent by pre-paid first class post or recorded delivery, at 0900 hours on the second Business Day after posting; or
- (c) if sent by fax, on the day of transmission if sent before 1600 hours of any Business Day and otherwise at 0900 hours on the next Business Day and provided that, at the time of transmission of such fax, an error-free transmission report has been received by the sender.

74 Not Used

75 Data Protection

75.1 The Parties shall comply with their respective duties under the Data Protection Legislation and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

76 Freedom of Information

76.1 The Contractor acknowledges that the PCT is subject to the requirements of the Code of Practice on Government Information and the Freedom of Information Act 2000 (the "FOI Act") and shall assist and co-operate with the PCT to enable the PCT to comply with its Disclosure obligations. Accordingly the Contractor agrees that:

- (a) this Agreement is subject to the obligations and commitments of the PCT under the Code of Practice on Openness in the NHS and the FOI Act as the same may be amended or replaced from time to time;
- (b) subject to Clause 76.1(a), the decision on whether any exemption to the general obligations of public access to information applies to any Request for Information (as defined in the FOI Act) is a decision solely for the PCT;
- (c) where the PCT is managing a Request for Information, it shall only be obliged to consult with the Contractor in accordance with any code of practice issued under section 45 of the FOI Act and from time to time in force; and
- (d) where a Request for Information is received by the Contractor, it will transfer the Request for Information to the PCT's Agreement Manager as soon as practicable and in any event within two (2) Business Days of receiving a Request for Information.

⁴¹ Clauses 73.2 and 73.3 will need to be amended if the PCT is agreeable to notices being served by e-mail

- 76.2 The PCT shall be responsible for determining (without in any way fettering its discretion) whether any Commercially Sensitive Information should be disclosed in response to Requests for Information, but shall (subject to Clause 76.1(c) above) use all reasonable endeavours to advise the Contractor of such Request for Information as soon as reasonably possible and take any representations the Contractor may make into account when determining whether the Commercially Sensitive Information should be disclosed.
- 76.3 The Contractor shall use all reasonable endeavours to assist the PCT in complying with such obligations as may be imposed upon the PCT by the FOI Act including:
- (a) providing all necessary assistance to the PCT in complying with any Request For Information served on the PCT under the FOI Act within the time for compliance set out in section 10 of the FOI Act;
 - (b) processing information provided by the PCT in accordance with a record management system which complies with the Lord Chancellor's Code of Practice at the Management of Records issued under section 46 of the FOI Act as amended from time to time; and
 - (c) providing the PCT with a copy of all information in its possession, or power in the form that the PCT requires within five (5) Business Days (or such other period as the PCT may specify) of the PCT's request in order to satisfy any Request for Information.

77 Confidentiality

- 77.1 Other than as allowed in this Agreement, Confidential Information is owned by the Party that discloses it (the "Disclosing Party") and the Party that receives it (the "Receiving Party") has no right to use it.
- 77.2 Subject to clauses 77.3 and 77.4, the Receiving Party agrees:
- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
 - (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
 - (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.
- 77.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:
- (a) in connection with any dispute resolution under Clause 62 (Dispute Resolution);
 - (b) in connection with any litigation between the Parties;
 - (c) to comply with the Law;
 - (d) to a Regulator as required;
 - (e) to its professional advisors and staff, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in Clause 77.2; and
 - (f) to NHS Bodies for the purpose of carrying out their duties (insofar as such disclosure is permitted under Clause 75.1).

- 77.4 The obligations in Clauses 77.1 and 77.2 shall not apply to any Confidential Information which:
- (a) is in or comes into the public domain other than by breach of this Agreement;
 - (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
 - (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.
- 77.5 The Contractor authorises the PCT to disclose its Confidential Information to such person(s) as may be notified to the Contractor in writing by the PCT from time to time to for the purposes of (and to the extent necessary for) auditing and collating information so as to ascertain a realistic market price for the Services supplied in accordance with this Agreement. The PCT shall use reasonable endeavours to ensure that any person(s) receiving Confidential Information under this Clause 77.5 maintain the confidentiality of such information and do not use the Confidential Information for any unauthorised purpose.
- 77.6 The Disclosing Party does not warrant the accuracy or completeness of the Confidential Information.
- 77.7 The Receiving Party shall indemnify the Disclosing Party and shall keep the Disclosing Party indemnified against Losses and Indirect Losses suffered or incurred by the Disclosing Party as a result of any breach of this Clause 77.
- 77.8 The Parties acknowledge that damages would not be an adequate remedy for any breach of this Clause 77 by the Receiving Party, and in addition to any right to damages the Disclosing Party shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of this Clause 77.
- 77.9 The Contractor shall not make any, or permit or procure to be made, any public announcement or disclosure (whether for publication in the press, the radio, television screen or any other medium) of any Confidential Information unless otherwise required by any law or any regulatory or governmental authority (but only to that extent) or otherwise publicise the existence of or disclose to any person the provisions of this Agreement without the prior written consent of the PCT.
- 77.10 This Clause 77 shall survive the expiry or the termination of this Agreement for any reason, for a period of five (5) years.

78 Inducements to Purchase

- 78.1 The Contractor shall not offer to the PCT or its representatives as a variation of this Agreement, or as an agreement collateral to it, any advantage other than a cash discount against the Charges.
- 78.2 If the Contractor or its employees or agents (or anyone acting on its or their behalf) commits any Prohibited Act or commits any offence under the Prevention of Corruption Acts 1889 - 1916 with or without the knowledge of the PCT in relation to this Agreement or any other contract with the PCT, the PCT shall be entitled:
- (a) to recover from the Contractor the amount or value of any gift, consideration or commission concerned; and
 - (b) to recover from the Contractor any loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence.

79 Advertising and NHS Branding

79.1 The Contractor shall ensure that:

- (a) the Practice Premises (including but not limited to signage, badges, uniforms and stationery) are clearly designated and branded to Patients and visitors as facilities at which NHS services are to be provided;
- (b) all communications about the provision of the Services to Patients (including but not limited to Patient information, recruitment advertising, websites and marketing materials) are clearly NHS branded, and comply with:
 - (i) the NHS Brand Guidelines for Dentistry, updated or re-issued from time to time by the Department of Health, and which are located at www.nhsidentity.nhs.uk; and
 - (ii) the Code of Practice for Promotion of NHS Services, as issued by the Department of Health and as amended from time to time; and
- (c) any changes to the Opening Hours of the Practice Premises are notified to the PCT's Patient Advice and Liaison Service as soon as reasonably practicable and details of revised Opening Hours are provided to the PCT to enable the NHS Choices Website to be updated in a timely manner.

79.2 The Contractor shall seek approval in writing from the PCT to any change to the name to be used by the Contractor for the Practice.

79.3 The Contractor shall comply with all General Dental Council rules in relation to branding and advertising.

80 Sponsorship

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

81 Administration

81.1 The provisions of Schedule 11 (Administration) shall have effect for the purposes of identifying the Parties' representatives.

82 Major Incidents

82.1 The Parties shall comply with the provisions of the PCT's Major Incident Plan in the event that a Major Incident arises during the term of this Agreement.

82.2 In the event of a Major Incident, the Contractor shall not be required to provide any service which it is not qualified or competent to provide, and the Contractor shall be relieved of its other Services obligations to the extent necessary to provide the additional or alternative services for the period of the Major Incident.

83 Onward Referral to Related Parties

83.1 The Contractor acknowledges that the provision of the Referral Information to the PCT is to ensure that:

- (a) during the Referral process:

- (i) there remains sufficient Patient choice and competition;
 - (ii) a high quality standard of care is provided to Patients in accordance with the terms of this Agreement;
 - (iii) the Services provide value for money; and
 - (b) the Referrer is not unduly or improperly influencing the Patient in their choice of Health Care Provider.
- 83.2 The Contractor acknowledges and agrees that Referrers shall not be entitled to refer and shall not refer a Patient to a Contractor Related Party without:
- (a) having implemented robust and proportionate safeguards to the satisfaction of the PCT;
 - (b) at all times acting in the best clinical interests of the Patient and ensuring compliance with any applicable ethical and professional rules or procedures relating to such Referrals; and
 - (c) ensuring that the Patient has been made aware of all of the choices available to them to receive NHS treatment.
- 83.3 The Contractor shall provide to the PCT the Referral Information for each Quarter within 10 Business Days of the end of the relevant Quarter.
- 83.4 The PCT may audit the Referral Information provided by the Contractor to assess the Referral Rates and compare such Referral Rates to those which the PCT might reasonably expect from the Contractor, taking into account such factors as geographical location, Patient satisfaction, reputation, convenience and familiarity.
- 83.5 If after carrying out an audit under Clause 83.4 the PCT assesses the Referral Rates as inconsistent with those which the PCT might reasonably expect from the Contractor, taking into account the factors set out in Clause 83.4, the PCT may request such further written information from the Contractor as it considers necessary to explain the inconsistency PROVIDED THAT if the PCT is not satisfied with the Contractor's explanation of any unusual referral pattern in relation to Referrals to a Contractor Related Party, the PCT shall be entitled to take one of the actions set out in Clause 83.7 immediately and shall provide written notice to the Contractor of such action.
- 83.6 The Contractor shall provide any further information requested by the PCT under Clause 83.5 within 10 Business Days of receiving the PCT's request.
- 83.7 If the PCT, acting reasonably, deems that the further information provided under Clause 83.5 does not provide an adequate explanation of the inconsistency in Referral Rates, the PCT may:
- (a) restrict the number of Referrals to any particular Health Care Provider; or
 - (b) require the Contractor to take such steps or actions as it considers reasonable to ensure that Referrals are in the best interests of Patients; or
 - (c) monitor the situation by carrying out further audits as it deems necessary for a period to be determined by the PCT.
- 83.8 If, after monitoring the situation for a period of six months under Clause 83.7(c),

the PCT remains of the opinion that the Referral Rates are inconsistent with those which the PCT might reasonably expect from the Contractor, taking into account the factors set out in Clause 83.4, then the PCT may take one of the actions set out in Clauses 83.7(a) or 83.7(b) inclusive.

IN WITNESS OF THE ABOVE the Parties have signed this Agreement on the date written at the head of this Agreement.

⁴²**SIGNED** by)
for and on behalf of)
)
NHS DORSET)
)

SIGNED by)
for and on behalf of)
CONTRACTOR)

OR

⁷**SIGNED** by)
for and on behalf of)
THE COMMISSIONING ARM)
OF PCT)

SIGNED by)
for and on behalf of)
THE PROVIDING ARM)
OF PCT)

OR

⁴³**SIGNED** by [●])
for and on behalf of)
)
NHS DORSET)

SIGNED by [Name])
)

SIGNED by [Name])
)

⁴² Delete options as appropriate. The PCT should consider the appropriate execution clause and signatories in accordance with its Standing Orders and Standing Financial Instructions.

⁴³ Option to be used where the Contractor is individuals. Delete options as appropriate. The PCT should consider the appropriate execution clause and signatories in accordance with its Standing Orders and Standing Financial Instructions.

SIGNED by [Name])
)

SIGNED by [Name])
)

as the **CONTRACTOR**