

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 9

VARIATION AND TERMINATION OF AGREEMENTS

60.—(1) Subject to paragraph 32(3), no amendment or variation will have effect unless it is in writing and signed by or on behalf of the Relevant Body and the contractor.

(2) In addition to the specific provision made in paragraph 73, the Relevant Body may vary the agreement without the contractor's consent where it—

- (a) is reasonably satisfied that it is necessary to vary the agreement so as to comply with the Act, any regulations made pursuant to that Act, or any direction given by the Assembly pursuant to that Act; and
- (b) notifies the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect,

and, where it is reasonably practicable to do so, the date that the proposed variation is to take effect will be not less than 14 days after the date on which the notice under paragraph (b) is served on the contractor.

Variation of an agreement: activity under the agreement

61.—(1) Where the contractor or the Relevant Body is of the opinion that there needs to be a variation to the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

to be provided under the agreement, sub-paragraphs (2) and (3) will apply.

(2) The contractor or the Relevant Body will notify the other party to the agreement in writing of its opinion of the need for a variation, specifying in that notice the variation that it considers necessary, together with its reasons.

(3) Following service of the notice referred to in sub-paragraph (2), both parties will use their best endeavours to communicate and co-operate with each other with a view to determining what (if any) variation should be made to the number of—

- (a) units of dental activity; or
- (b) units of orthodontic activity,

and any related variations to the agreement, including to the monies to be paid to the contractor under the agreement, and will, where appropriate, effect the variation in accordance with paragraph 60.

Termination by agreement

62. The Relevant Body and the contractor may agree in writing to terminate the agreement, and if the parties so agree, they will agree the date upon which that termination should take effect and any further terms upon which the agreement should be terminated.

Termination on the death of an individual

63.—(1) Where the agreement is with a single individual and that individual dies, the agreement will terminate at the end of the period of seven days after the date of his or her death unless, before the end of that period—

- (a) subject to sub-paragraph (2), the Relevant Body has agreed in writing with that individual’s personal representatives that the agreement should continue for a further period, not exceeding three months after the end of the period of seven days; and
- (b) that individual’s personal representatives have confirmed in writing to the Relevant Body that they are employing or engaging one or more dental practitioners to assist in the provision of dental services under the agreement throughout the period for which it continues.

(2) Where the Relevant Body is of the opinion that another individual may wish to enter into an agreement in respect the mandatory services which were provided by the deceased, the three month period referred to in sub-paragraph (1)(a) may be extended by a period not exceeding six months as may be agreed.

(3) Sub-paragraph (1) does not affect any other rights to terminate the agreement which the Relevant Body may have under paragraphs 67 to 71.

Termination by the contractor

64.—(1) A contractor may terminate the agreement by serving notice in writing on the Relevant Body at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the agreement will terminate three months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the agreement will instead terminate on the last calendar day of the month in which the termination date falls.

(3) This paragraph and paragraph 65 are without prejudice to any other rights to terminate the agreement that the contractor may have.

Late payment notices

65.—(1) The contractor may give notice in writing (a “late payment notice”) to the Relevant Body if the Relevant Body has failed to make any payments due to the contractor in accordance with a term of the agreement that has the effect specified in regulation 17 (finance), and the contractor will specify in the late payment notice the payments that the Relevant Body has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least twenty eight days after having served a late payment notice, terminate the agreement by a further written notice if the Relevant Body has still failed to make the payments that were due to the contractor and that were specified in the late payment notice served on the Relevant Body pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Relevant Body refers the matter to the NHS dispute resolution procedure within twenty eight days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the agreement pursuant to sub-paragraph (2) until—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the contractor to terminate the agreement; or
- (b) the Relevant Body ceases to pursue the NHS dispute resolution procedure;
- (c) whichever is the sooner.

Termination by the Relevant Body: general provisions

66. The Relevant Body may only terminate the agreement in accordance with the provisions in this Part.

Termination by the Relevant Body: notice

67.—(1) The Relevant Body may terminate the agreement by serving notice in writing on the contractor at any time.

(2) Where a notice is served pursuant to sub-paragraph (1), the agreement will terminate on the date provided for in the agreement.

Termination by the Relevant Body for the provision of untrue etc. information

68. The Relevant Body may serve notice in writing on the contractor terminating the agreement forthwith, or from such date as may be specified in the notice if, after the agreement has been entered into, it comes to the attention of the Relevant Body that written information provided to it by the contractor before the agreement was entered into in relation to the conditions set out in regulation 4 or 5 (and compliance with those conditions) was, when given, untrue or inaccurate in a material respect.

Termination by the Relevant Body on grounds of suitability etc

69.—(1) The Relevant Body may serve notice in writing on the contractor terminating the agreement forthwith, or from such date as may be specified in the notice if—

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

(b) in the case of an agreement with a qualifying body—

(i) the qualifying body; or

(ii) any director, chief executive or secretary of the qualifying body, falls within sub-paragraph (2) during the existence of the agreement.

(2) A person falls within this sub-paragraph if—

(a) he, she or it is the subject of a national disqualification;

(b) subject to sub-paragraph (3), he, she 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 sub-paragraph (4), he or she has been dismissed (otherwise than by reason of redundancy) from any employment by a health service body unless before the Relevant Body has served a notice terminating the agreement pursuant to this paragraph, he or she is employed by the health service body that dismissed him or her or by another health service body;

(d) he, she or it is removed from, or refused admission to, a primary care list by reason of inefficiency, fraud or unsuitability (within the meaning of section 49F(2), (3) and (4) of the Act⁽¹⁾ respectively) unless his or her name has subsequently been included in such a list;

(e) he or she has been convicted in the United Kingdom of—

(i) murder, or

(ii) a criminal offence other than murder, committed on or after 26 August 2002, and has been sentenced to a term of imprisonment of over six months;

(1) Section 49F was inserted into the Act by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 3, paragraph 21 and the 2003 Act, Schedule 14, Part 2.

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- (f) subject to sub-paragraph (5), he or she has been convicted outside the United Kingdom of an offence—
- (i) which would, if committed in England and Wales, constitute murder, or
 - (ii) committed on or after 26 August 2002, 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 or she has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons Act 1933⁽²⁾ (offences against children and young persons with respect to which special provisions of this Act apply) or Schedule 1 to the Criminal Procedure (Scotland) Act 1995⁽³⁾ (offences against children under the age of 17 years to which special provisions apply);
- (h) he, she or it has—
- (i) been adjudged bankrupt or had sequestration of his or her estate awarded unless (in either case) he or she 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⁽⁴⁾, 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, her or its creditors unless he, she 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 administrator, 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⁽⁵⁾;
- (j) he or she has been—
- (i) 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 or she was responsible or to which he or she was privy, or which he or she by his or her conduct contributed to or facilitated, or
 - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990⁽⁶⁾ (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;
- (k) he or she is subject to a disqualification order under the Company Directors Disqualification Act 1986⁽⁷⁾, the Companies (Northern Ireland) Order 1986⁽⁸⁾ 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 or she has refused to comply with a request by the Relevant Body for him or her to be medically examined on the ground that it is concerned that he or she is incapable of adequately providing services under the agreement.

⁽²⁾ 1933 c. 12.

⁽³⁾ 1995 c. 46.

⁽⁴⁾ 1986 c. 45. Schedule 4A was inserted by section 257 of, and Schedule 3 to, the Enterprise Act 2002 (c. 40).

⁽⁵⁾ Schedule B1 was inserted by section 248 of, and Schedule 16 to, the Enterprise Act 2002.

⁽⁶⁾ 1990 c. 40.

⁽⁷⁾ 1986 c. 46 as amended by the Insolvency Act 2000 (c. 39).

⁽⁸⁾ S.I. 1986/1032 (N.I. 6).

(3) A Relevant Body will not terminate the agreement pursuant to sub-paragraph (2)(b) where it 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;
- (b) in the case of an agreement with a qualifying body, a director, chief executive or secretary of the corporation.

(4) A Relevant Body will not terminate the agreement pursuant to sub-paragraph (2)(c)—

- (a) until a period of at least three months has elapsed since the date of the dismissal of the person concerned; or
- (b) if, during the period of time specified in paragraph (a), the person concerned brings proceedings in any competent tribunal or court in respect of his or her dismissal, until proceedings before that tribunal or court are concluded,

and the Relevant Body may only terminate the agreement at the end of the period specified in paragraph (b) if there is no finding of unfair dismissal.

(5) A Relevant Body will not terminate the agreement pursuant to sub-paragraph (2)(f) where it is satisfied that the conviction does not make the person unsuitable to be—

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

Termination by the Relevant Body: patient safety and material financial loss

70. The Relevant Body may serve notice in writing on the contractor terminating the agreement forthwith or with effect from such date as may be specified in the notice if—

- (a) the contractor has breached the agreement and as a result of that breach, the safety of the contractor's patients is at serious risk if the agreement is not terminated; or
- (b) the contractor's financial situation is such that the Relevant Body considers that the Relevant Body is at risk of material financial loss.

Termination by the Relevant Body: remedial notices and breach notices

71.—(1) Where a contractor has breached the agreement other than as specified in paragraphs 68 to 70 and the breach is capable of remedy, the Relevant Body will, before taking any action it is otherwise entitled to take by virtue of the agreement, serve a notice on the contractor requiring it to remedy the breach ("remedial notice").

(2) A remedial notice will specify—

- (a) details of the breach;
- (b) the steps the contractor must take to the satisfaction of the Relevant Body in order to remedy the breach; and
- (c) the period during which the steps must be taken ("the notice period").

(3) The notice period will, unless the Relevant Body is satisfied that a shorter period is necessary to—

- (a) protect the safety of the contractor's patients; or
- (b) protect itself from material financial loss,

be no less than twenty eight days from the date that notice is given.

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(4) Where a Relevant Body is satisfied that the contractor has not taken the required steps to remedy the breach by the end of the notice period, the Relevant Body may terminate the agreement with effect from such date as the Relevant Body may specify in a further notice to the contractor.

(5) Where a contractor has breached the agreement other than as specified in paragraphs 68 to 70 and the breach is not capable of remedy, the Relevant Body may serve notice on the contractor requiring the contractor not to repeat the breach (“breach notice”).

(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 the agreement resulting in either a remedial notice or a further breach notice,

the Relevant Body may serve notice on the contractor terminating the agreement with effect from such date as may be specified in that notice.

(7) The Relevant Body will not exercise its right to terminate the agreement under subparagraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Relevant Body considers that to allow the agreement to continue would be prejudicial to the efficiency of the services to be provided under the agreement.

(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 Relevant Body may withhold or deduct monies which would otherwise be payable under the agreement in respect of that obligation which is the subject of the default.

Termination by the Relevant Body: additional provisions specific to contracts with qualifying bodies

72.—(1) Where a party to the agreement is a qualifying body, if the Relevant Body becomes aware that the qualifying body is carrying on any business which the Relevant Body considers to be detrimental to the contractor’s performance of its obligations under the agreement—

- (a) the Relevant Body will 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 days beginning on the day on which the notice is given (“the notice period”); and
- (b) if the contractor has not satisfied the Relevant Body that the qualifying body has ceased carrying on that business by the end of the notice period, the Relevant Body may, by a further written notice, terminate the agreement forthwith or from such date as may be specified in the notice.

(2) Where the contractor is a qualifying body and on or after the coming into force for all purposes of article 39 of the Dentists Act Order during the existence of the agreement—

- (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⁽⁹⁾ (directors of bodies corporate); 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 or her by the General Dental Council pursuant to section 43B (financial penalties in relation to bodies corporate) or 44⁽¹⁰⁾ (further financial penalties on bodies corporate) of the Dentists Act,

⁽⁹⁾ Section 43 of the Dentists Act 1984 is substituted by the Dentists Act Order, article 39.

⁽¹⁰⁾ Section 43B is inserted into, and section 44 is, substituted by the Dentists Act Order, article 39.

the Relevant Body may, by written notice, terminate the agreement if it considers that as a consequence the qualifying body is no longer suitable to be a contractor.

Agreement sanctions

73.—(1) In this paragraph and paragraph 74, “agreement sanction” means—

- (a) termination of specified reciprocal obligations under the agreement;
- (b) suspension of specified reciprocal obligations under the agreement for a period of up to six months; or
- (c) withholding or deducting monies otherwise payable under the agreement.

(2) Where the Relevant Body is entitled to terminate the agreement pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72, it may instead impose any of the agreement sanctions if the Relevant Body is reasonably satisfied that the agreement sanction to be imposed is appropriate and proportionate to the circumstances which provide grounds for the Relevant Body to terminate the agreement.

(3) If the Relevant Body decides to impose a 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.

(4) Subject to paragraph 74, the Relevant Body will not impose the agreement sanction until at least twenty eight days after it has served notice on the contractor pursuant to sub-paragraph (3) unless it 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.

(5) Where the Relevant Body imposes an agreement sanction, it will be entitled to charge the contractor the reasonable costs of additional administration that the Relevant Body has incurred in order to impose, or as a result of imposing, the agreement sanction.

Agreement sanctions and the NHS dispute resolution procedure

74.—(1) If there is a dispute between the Relevant Body and the contractor in relation to an agreement sanction that the Relevant Body is proposing to impose, the Relevant Body will not, subject to sub-paragraph (4), impose the proposed agreement sanction except in the circumstances specified in sub-paragraph (2).

(2) If the contractor refers the dispute relating to the agreement sanction to the NHS dispute resolution procedure within twenty eight days beginning on the date on which the Relevant Body served notice on the contractor in accordance with paragraph 73(3) (or such longer period as may be agreed in writing with the Relevant Body), and notifies the Relevant Body in writing that it has done so, the Relevant Body will not impose the agreement sanction unless—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Relevant Body to impose the agreement sanction; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the NHS dispute resolution procedure within the time specified in sub-paragraph (2), the Relevant Body will be entitled to impose the agreement sanction forthwith.

(4) If the Relevant Body 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

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(b) protect itself from material financial loss,
the Relevant Body will be entitled to impose the agreement sanction forthwith, pending the outcome of that procedure.

Termination and the NHS dispute resolution procedure

75.—(1) Where the Relevant Body is entitled to serve written notice on the contractor terminating the agreement pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72, it will, in the notice served on the contractor pursuant to those provisions, specify a date on which the agreement terminates that is not less than twenty eight days after the date on which the Relevant Body has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Relevant Body is satisfied that a period less than twenty eight days is necessary in order to—

- (a) protect the safety of the contractor’s patients; or
- (b) protect itself from material financial loss.

(3) In a case falling with sub-paragraph (1), where—

- (a) the exceptions in sub-paragraph (2) do not apply;
- (b) the contractor invokes the NHS dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1); and
- (c) the contractor notifies the Relevant Body in writing that it has done so,

the agreement will not terminate at the end of the notice period but instead will only terminate in the circumstances specified in sub-paragraph (4).

(4) The agreement will only terminate if and when—

- (a) there has been a determination of the dispute pursuant to paragraph 56 and that determination permits the Relevant Body to terminate the agreement; or
- (b) the contractor ceases to pursue the NHS dispute resolution procedure,

whichever is the sooner.

(5) If the Relevant Body is satisfied that it is necessary to terminate the agreement 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,

sub-paragraphs (3) and (4) will not apply and the Relevant Body will be entitled to confirm, by written notice to be served on the contractor, that the agreement will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 68, 69, 70, 71(4), 71(6) or 72.