

## SCHEDULE 5

### OTHER CONTRACTUAL TERMS

## PART 8

### VARIATION AND TERMINATION OF CONTRACTS

#### **Variation of a contract: general**

96.—(1) Subject to Schedule 2 and paragraphs 64(8), 65(8), 97, 98 and 109, no amendment or variation shall have effect unless it is in writing and signed by or on behalf of the Board and the contractor.

(2) In addition to the specific provision made in paragraphs 97(6), 98(6) and 109, the Board may vary the contract without the contractor's consent where it –

- (a) is reasonably satisfied that it is necessary to vary the contract so as to comply with the Order, any regulations made pursuant to that Order, or any direction given by the Department pursuant to that Order; 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 shall be not less than 14 days after the date on which the notice under head (b) is served on the contractor.

#### **Variation provisions specific to a contract with an individual medical practitioner**

97.—(1) If a contractor which is an individual medical practitioner proposes to practise in partnership with a person during the existence of the contract, the contractor shall notify the Board in writing of –

- (a) the name of the person with whom he proposes to practise in partnership; and
- (b) the date on which the contractor wishes to change his status as a contractor from that of an individual medical practitioner to that of a partnership, which shall be not less than 28 days after the date upon which he has served the notice on the Board pursuant to this sub-paragraph.

(2) A notice under sub-paragraph (1) shall in respect of the person with whom the contractor is proposing to practise in partnership, and also in respect of himself as regards the matters specified in head (c) –

- (a) confirm that he is either –
  - (i) a medical practitioner, or
  - (ii) a person who satisfies the conditions specified in Article 57B(2)(b)(i) to (iv) of the Order<sup>(1)</sup>;
- (b) confirm that he is a person who satisfies the conditions imposed by regulations 4 and 5; and
- (c) state whether or not it is to be a limited partnership, and if so, who is to be a limited and who a general partner,

and the notice shall be signed by the individual medical practitioner and by the person with whom he is proposing to practise in partnership.

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(1) Article 57 was inserted into the Order by Article 4 of the 2004 Order

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(3) The contractor shall ensure that any person who will practise in partnership with him is bound by the contract, whether by virtue of a partnership deed or otherwise.

(4) If the Board is satisfied as to the accuracy of the matters specified in sub-paragraph (2) that are included in the notice, the Board shall give notice in writing to the contractor confirming that the contract shall continue with the partnership entered into by the contractor and his partners, from a date that the Board specifies in that notice.

(5) Where it is reasonably practicable, the date specified by the Board pursuant to sub-paragraph (4) shall be the date requested in the notice served by the contractor pursuant to sub-paragraph (1), or, where that date is not reasonably practicable, the date specified shall be a date after the requested date that is as close to the requested date as is reasonably practicable.

(6) Where a contractor has given notice to the Board pursuant to sub-paragraph (1), the Board –

- (a) may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from an individual medical practitioner to a partnership; and
- (b) if it does propose to so vary the contract, it shall include in the notice served on the contractor pursuant to sub-paragraph (4) the wording of the proposed variation and the date upon which that variation is to take effect.

#### **Variation provisions specific to a contract with two or more individuals practising in partnership**

98.—(1) Subject to sub-paragraph (4), where a contractor consists of two or more individuals practising in partnership in the event that the partnership is terminated or dissolved, the contract shall only continue with one of the former partners if that partner is –

- (a) nominated in accordance with sub-paragraph (3); and
- (b) a medical practitioner who meets the condition in regulation 4(2)(a),

and provided that the requirements in sub-paragraphs (2) and (3) are met.

(2) A contractor shall notify the Board in writing at least 28 days in advance of the date on which the contractor proposes to change his status from that of a partnership to that of an individual medical practitioner pursuant to sub-paragraph (1).

(3) A notice under sub-paragraph (2) shall –

- (a) specify the date on which the contractor proposes to change his status from that of a partnership to that of an individual medical practitioner;
- (b) specify the name of the medical practitioner with whom the contract will continue, which must be one of the partners; and
- (c) be signed by all of the persons who are practising in partnership.

(4) If a partnership is terminated or dissolved because, in a partnership consisting of two individuals practising in partnership, one of the partners has died, sub-paragraphs (1), (2) and (3) shall not apply and –

- (a) the contract shall continue with the individual who has not died only if that individual is a medical practitioner who meets the condition in regulation 4(2)(a); and
- (b) that individual shall in any event notify the Board in writing as soon as is reasonably practicable of the death of his partner.

(5) When the Board receives a notice pursuant to sub-paragraph (2) or (4)(b), it shall acknowledge in writing receipt of the notice, and in relation to a notice served pursuant to sub-paragraph (2), the Board shall do so before the date specified pursuant to sub-paragraph (3)(a).

(6) Where a contractor gives notice to the Board pursuant to sub-paragraph (2) or (4)(b), the Board may vary the contract but only to the extent that it is satisfied is necessary to reflect the change in status of the contractor from a partnership to an individual medical practitioner.

(7) If the Board varies the contract pursuant to sub-paragraph (6), it shall notify the contractor in writing of the wording of the proposed variation and the date upon which that variation is to take effect.

### **Termination by agreement**

99. The Board and the contractor may agree in writing to terminate the contract, and if the parties so agree, they shall agree the date upon which that termination should take effect and any further terms upon which the contract should be terminated.

### **Termination by the contractor**

100.—(1) A contractor may terminate the contract by serving notice in writing on the Board at any time.

(2) Where a contractor serves notice pursuant to sub-paragraph (1), the contract shall, subject to sub-paragraph (3), terminate six months after the date on which the notice is served (“the termination date”), save that if the termination date is not the last calendar day of a month, the contract shall instead terminate on the last calendar day of the month in which the termination date falls.

(3) Where the contractor is an individual medical practitioner, sub-paragraph (2) shall apply to the contractor, save that the reference to “six months” shall instead be to “three months”.

(4) This paragraph and paragraph 101 are without prejudice to any other rights to terminate the contract that the contractor may have.

### **Late payment notices**

101.—(1) The contractor may give notice in writing (a “late payment notice”) to the Board if the Board has failed to make any payments due to the contractor in accordance with a term of the contract that has the effect specified in regulation 22, and the contractor shall specify in the late payment notice the payments that the Board has failed to make in accordance with that regulation.

(2) Subject to sub-paragraph (3), the contractor may, at least 28 days after having served a late payment notice, terminate the contract by a further written notice if the Board has still failed to make the payments due to the contractor, and that were specified in the late payment notice served on the Board pursuant to sub-paragraph (1).

(3) If, following receipt of a late payment notice, the Board refers the matter to the dispute resolution procedure within 28 days of the date upon which it is served with the late payment notice, and it notifies the contractor in writing that it has done so within that period of time, the contractor may not terminate the contract pursuant to sub-paragraph (2) until –

(a) there has been a determination of the dispute pursuant to paragraph 94 and that determination permits the contractor to terminate the contract; or

(b) the Board ceases to pursue the dispute resolution procedure,

whichever is the sooner.

### **Termination by the Board: general**

102. The Board may only terminate the contract in accordance with the provisions in this Part.

#### **Termination by the Board for breach of conditions in regulation 4**

103.—(1) The Board shall serve notice in writing on the contractor terminating the contract forthwith if the contractor is an individual medical practitioner and the medical practitioner no longer satisfies the condition specified in regulation 4(1).

(2) Where the contractor is –

- (a) two or more persons practising in partnership, and the condition specified in regulation 4(2)(a) is no longer satisfied; or
- (b) a company limited by shares, and the condition specified in regulation 4(3)(a) is no longer satisfied,

sub-paragraph (3) shall apply.

(3) Where sub-paragraph (2)(a) or (b) applies, the Board shall –

- (a) serve notice in writing on the contractor terminating the contract forthwith; or
- (b) serve notice in writing on the contractor confirming that the Board will allow the contract to continue, for a period specified by the Board of up to six months (the “interim period”), during which time the Board shall, with the consent of the contractor, employ or supply a general medical practitioner to the contractor for the interim period to assist the contractor in the provision of clinical services under the contract.

(4) Before deciding which of the options in sub-paragraph (3) to pursue, the Board shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for its area.

(5) If the contractor does not, pursuant to sub-paragraph (3)(b), consent to the Board employing or supplying a general medical practitioner during the interim period, the Board shall serve notice in writing on the contractor terminating the contract forthwith.

(6) If, at the end of the interim period, the contractor still falls within sub-paragraph (2)(a) or (b), the Board shall serve notice in writing on the contractor terminating the contract forthwith.

#### **Termination by the Board for the provision of untrue etc. information**

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

#### **Other grounds for termination by the Board**

105.—(1) The Board may serve notice in writing on the contractor terminating the contract forthwith, or from such date as may be specified in the notice if –

- (a) in the case of a contract with a medical practitioner, that medical practitioner;
- (b) in the case of a contract with two or more individuals practising in partnership, any individual or the partnership; and
- (c) in the case of a contract with a company limited by shares –
  - (i) the company,
  - (ii) any person legally and beneficially owning a share in the company, or
  - (iii) any director or secretary of the company,falls within sub-paragraph (2) during the existence of the contract.

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

- (a) it does not satisfy the conditions prescribed in Article 57B(2)(b) or (3)(b) of the Order;
- (b) he is the subject of a general or national disqualification;
- (c) subject to sub-paragraph (3), he 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;
- (d) subject to sub-paragraph (4), he has been dismissed (otherwise than by reason of redundancy) from any employment by a health services body unless before the Board has served a notice terminating the contract pursuant to this paragraph, he is employed by the health services body that dismissed him or by another health and social services body;
- (e) he is disqualified from a primary medical services performers list unless his name has subsequently been included in such a list;
- (f) he has been convicted in the United Kingdom of murder;
- (g) he has been convicted in the United Kingdom of a criminal offence other than murder and has been sentenced to a term of imprisonment of over six months;
- (h) subject to sub-paragraph (5), he has been convicted elsewhere of an offence which would if committed in Northern Ireland –
  - (i) constitute murder; or
  - (ii) constitute a criminal offence other than murder, and been sentenced to a term of imprisonment of over six months;
- (i) he has been convicted of an offence referred to in Schedule 1 to the Children and Young Persons (Northern Ireland) Act 1968<sup>(2)</sup>, Schedule 1 to the Children and Young Persons Act 1933<sup>(3)</sup> or Schedule 1 to the Criminal Procedure (Scotland) Act 1995<sup>(4)</sup>;
- (j) he 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<sup>(5)</sup>, 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 creditors unless he has been discharged in respect of it,
  - (iv) been wound up under Part V of the Insolvency (Northern Ireland) Order 1989<sup>(6)</sup>;
- (k) there is –
  - (i) an administrator, administrative receiver or receiver appointed in respect of him, or
  - (ii) an administration order made in respect of him under Part III of the Insolvency (Northern Ireland) Order 1989;
- (l) that person is a partnership and –
  - (i) a dissolution of the partnership is ordered by any competent court, tribunal or arbitrator, or

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(2) [c. 34 \(N.I.\)](#)

(3) [1933 c. 12](#) as amended by the Criminal Justice Act 1988 ([1988 c. 33](#)), section 170, Schedule 15, paragraph 8 and Schedule 16, paragraph 16; Sexual Offences Act 1956 ([1956 c. 69](#)), sections 48 and 51 and Schedule 3 and as modified by the Criminal Justice Act 1988, section 170(1), Schedule 15, paragraph 9

(4) [1995 c. 46](#)

(5) [1986 c. 45](#). Schedule 4A was inserted by section 257 of and Schedule 2 to the Enterprise Act 2002 ([c. 40](#))

(6) [S.I. 1989/2405 \(N.I. 19\)](#)

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- (ii) an event happens that makes it unlawful for the business of the partnership to continue, or for members of the partnership to carry on in partnership;
  - (m) he 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 was responsible or to which he was privy, or which he by his conduct contributed to or facilitated, or
    - (ii) removed under section 7 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990<sup>(7)</sup> (powers of the Court of Session to deal with management of charities), from being concerned in the management or control of any body;
  - (n) he is subject to a disqualification order under the Company Directors Disqualification (Northern Ireland) Order 2002<sup>(8)</sup>, the Company Directors Disqualification Act 1986<sup>(9)</sup> or to an order made under section 429(2)(b) of the Insolvency Act 1986<sup>(10)</sup> (failure to pay under county court administration order);
  - (o) he has refused to comply with a request by the Board for him to be medically examined on the grounds that it is concerned that he is incapable of adequately providing services under the contract and, in a case where the contract is with two or more individuals practising in partnership or with a company, the Board is not satisfied that the contractor is taking adequate steps to deal with the matter.
- (3) A Board shall not terminate the contract pursuant to sub-paragraph (2)(c) where the Board 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) a partner, in the case of a contract with two or more individuals practising in partnership; or
  - (c) in the case of a contract with a company limited by shares –
    - (i) a person legally and beneficially holding a share in the company, or
    - (ii) a director or secretary of the company,
 as the case may be.
- (4) A Board shall not terminate the contract pursuant to sub-paragraph (2)(d) –
- (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 head (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 Board may only terminate the contract at the end of the period specified in head (b) if there is no finding of unfair dismissal at the end of those proceedings.
- (5) A Board shall not terminate the contract pursuant to sub-paragraph (2)(h) where the Board is satisfied that the conviction does not make the person unsuitable to be –
- (a) a contractor;
  - (b) a partner, in the case of a contract with two or more individuals practising in partnership; or
  - (c) in the case of a contract with a company limited by shares –

<sup>(7)</sup> 1990 c. 40

<sup>(8)</sup> S.I. 2002/3150 (N.I. 4)

<sup>(9)</sup> 1986 c. 46 as amended by the Insolvency Act 2000 (2000 c. 39)

<sup>(10)</sup> 1986 c. 45

- (i) a person legally and beneficially holding a share in the company, or
  - (ii) a director or secretary of the company,
- as the case may be.

106. The Board may serve notice in writing on the contractor terminating the contract forthwith or with effect from such date as may be specified in the notice if –

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

#### **Termination by the Board: remedial notices and breach notices**

107.—(1) Where a contractor has breached the contract other than as specified in paragraphs 103 to 106 and the breach is capable of remedy, the Board shall, before taking any action it is otherwise entitled to take by virtue of the contract, serve a notice on the contractor requiring it to remedy the breach (“remedial notice”).

(2) A remedial notice shall specify –

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

(3) The notice period shall, unless the Board 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 28 days from the date that notice is given.

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

(5) Where a contractor has breached the contract other than as specified in paragraphs 103 to 106 and the breach is not capable of remedy, the Board 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 contract resulting in either a remedial notice or a further breach notice,

the Board may serve notice on the contractor terminating the contract with effect from such date as may be specified in that notice.

(7) The Board shall not exercise its right to terminate the contract under sub-paragraph (6) unless it is satisfied that the cumulative effect of the breaches is such that the Board considers that to allow the contract to continue would be prejudicial to the efficiency of the services to be provided under the contract.

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

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**Termination by the Board: additional provisions specific to contracts with two or more individuals practising in partnership and companies limited by shares**

108.—(1) Where the contractor is a company limited by shares, if the Board becomes aware that the contractor is carrying on any business which the Board considers to be detrimental to the contractor's performance of his obligations under the contract –

- (a) the Board shall be entitled to give notice to the contractor requiring that he ceases carrying on that business before the end of a period of not less than 28 days beginning on and including the day on which the notice is given ("the notice period"); and
- (b) if the contractor has not satisfied the Board that he has ceased carrying on that business by the end of the notice period, the Board may, by a further written notice, terminate the contract forthwith or from such date as may be specified in the notice.

(2) Where the contractor is two or more persons practising in partnership, the Board shall be entitled to terminate the contract by notice in writing on such date as may be specified in that notice where one or more partners have left the practice during the existence of the contract if in its reasonable opinion, the Board considers that the change in membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform its obligations under the contract.

(3) A notice given to the contractor pursuant to sub-paragraph (2) shall specify –

- (a) the date upon which the contract is to be terminated; and
- (b) the Board's reasons for considering that the change in the membership of the partnership is likely to have a serious adverse impact on the ability of the contractor or the Board to perform his obligations under the contract.

**Contract sanctions**

109.—(1) In this paragraph and paragraph 110, "contract sanction" means –

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

(2) Where the Board is entitled to terminate the contract pursuant to paragraph 104, 105, 106 or 107(4) or (6) or paragraph 108, it may instead impose any of the contract sanctions if the Board is reasonably satisfied that the contract sanction to be imposed is appropriate and proportionate to the circumstances giving rise to the Board's entitlement to terminate the contract.

(3) The Board shall not, under sub-paragraph (2), be entitled to impose any contract sanction that has the effect of terminating or suspending any obligation to provide, or any obligation that relates to, essential services.

(4) If the Board decides to impose a contract sanction, it must notify the contractor of the contract sanction that it proposes to impose, the date upon which that sanction will be imposed and provide in that notice an explanation of the effect of the imposition of that sanction.

(5) Subject to paragraph 110, the Board shall not impose the contract sanction until at least 28 days after it has served notice on the contractor pursuant to sub-paragraph (4) unless the Board 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.



(6) Where the Board imposes a contract sanction, the Board shall be entitled to charge the contractor the reasonable costs of additional administration that the Board has incurred in order to impose, or as a result of imposing, the contract sanction.

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

110.—(1) If there is a dispute between the Board and the contractor in relation to a contract sanction that the Board is proposing to impose, the Board shall not, subject to sub-paragraph (4), impose the proposed contract sanction except in the circumstances specified in sub-paragraph (2) (a) or (b).

(2) If the contractor refers the dispute relating to the contract sanction to the dispute resolution procedure within 28 days beginning on and including the date on which the Board served notice on the contractor in accordance with paragraph 109(4) (or such longer period as may be agreed in writing with the Board), and notifies the Board in writing that he has done so, the Board shall not impose the contract sanction unless –

- (a) there has been a determination of the dispute pursuant to paragraph 94 and that determination permits the Board to impose the contract sanction; or
- (b) the contractor ceases to pursue the dispute resolution procedure,

whichever is the sooner.

(3) If the contractor does not invoke the dispute resolution procedure within the time specified in sub-paragraph (2), the Board shall be entitled to impose the contract sanction forthwith.

(4) If the Board is satisfied that it is necessary to impose the contract sanction before the 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 Board shall be entitled to impose the contract sanction forthwith, pending the outcome of that procedure.

### **Termination and the dispute resolution procedure**

111.—(1) Where the Board is entitled to serve written notice on the contractor terminating the contract pursuant to paragraph 104, 105, 106, 107(4) or (6) or 108, the Board shall, in the notice served on the contractor pursuant to those provisions, specify a date on which the contract terminates that is not less than 28 days after the date on which the Board has served that notice on the contractor unless sub-paragraph (2) applies.

(2) This sub-paragraph applies if the Board is satisfied that a period less than 28 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 the exceptions in sub-paragraph (2) do not apply, where the contractor invokes the dispute resolution procedure before the end of the period of notice referred to in sub-paragraph (1), and he notifies the Board in writing that he has done so, the contract shall not terminate at the end of the notice period but instead shall only terminate in the circumstances specified in sub-paragraph (4).

(4) The contract shall only terminate if and when –

- (a) there has been a determination of the dispute pursuant to paragraph 94 and that determination permits the Board to terminate the contract; or
- (b) the contractor ceases to pursue the dispute resolution procedure,

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whichever is the sooner.

(5) If the Board is satisfied that it is necessary to terminate the contract before the 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) shall not apply and the Board shall be entitled to confirm, by written notice to be served on the contractor, that the contract will nevertheless terminate at the end of the period of the notice it served pursuant to paragraph 104, 105(1), 106, 107(4) or (6) or 108.

### **Consultation with the Local Medical Committee**

112.—(1) Whenever the Board is considering –

- (a) terminating the contract pursuant to paragraph 104, 105, 106, 107(4) or (6) or 108; or
- (b) imposing a contract sanction,

it shall, whenever it is reasonably practicable to do so, consult the Local Medical Committee (if any) for its area before it terminates the contract or imposes a contract sanction.

(2) Whether or not the Local Medical Committee has been consulted pursuant to sub-paragraph (1), whenever the Board imposes a contract sanction on a contractor or terminates a contract pursuant to this Part, it shall, as soon as reasonably practicable, notify the Local Medical Committee in writing of the contract sanction imposed or of the termination of the contract (as the case may be).