

SCHEDULE 3

OTHER CONTRACTUAL TERMS

PART 8

MID-YEAR REVIEW OF ACTIVITY UNDER AGREEMENTS

Mid-year reviews

58.—(1) This paragraph and paragraph 59 apply where services are to be provided under the agreement from 1 April in any financial year.

(2) In this paragraph and paragraph 59, references to requirements to provide units of dental activity or units of orthodontic activity are to such requirements under the terms of the agreement giving effect to regulation 13 (units of dental activity) or 14 (units of orthodontic activity).

(3) The Relevant Body will, by 31 October in each financial year, determine the number of—

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

that the contractor has provided between 1 April and 30 September of that financial year based on the data provided to it by virtue of paragraph 39.

(4) Where the Relevant Body determines under sub-paragraph (3) that the contractor has, between 1 April and 30 September, provided less than 30 per cent of the total number of—

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

that it is required to provide in that financial year, sub-paragraph (5) will apply.

(5) Where this sub-paragraph applies, the Relevant Body may—

- (a) notify the contractor that it is concerned about the level of activity provided under the agreement in the first half of the financial year, setting out—
 - (i) the number of units of dental activity or units of orthodontic activity (as the case may be) that it has determined that the contractor has provided; and
 - (ii) the percentage of the total number of units of dental activity or units of orthodontic activity (as the case may be) required to be provided during the financial year that the number in sub-paragraph (i) represents; and
- (b) require in that notification that the contractor participate in a mid-year review of its performance in relation to the agreement with the Relevant Body.

(6) Where a mid-year review is required by the Relevant Body pursuant to sub-paragraph (5), the Relevant Body and the contractor will discuss at that review—

- (a) any written evidence the contractor puts forward to demonstrate that it has performed a greater number of units of dental activity or units of orthodontic activity during the first half of the financial year than those notified to it pursuant to sub-paragraph (5)(a)(i); and
- (b) any reasons that the contractor puts forward for the level of activity in the first half of the financial year.

(7) The Relevant Body will prepare a draft record of the mid-year review for comment by the contractor and, having regard to such comments, will produce a final written record of the review.

(8) A copy of the final record of the mid-year review will be sent to the contractor.

Action the Relevant Body can take following a mid-year review

59.—(1) Where, following the mid-year review and the provision of the final record of that review to the contractor, the Relevant Body, having taken account of any evidence or reasons put forward by the contractor at that review, nevertheless has serious concerns that the contractor is unlikely to provide the number of—

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

that it is required to provide by the end of the financial year, the Relevant Body will be entitled to take either or both of the steps specified in paragraph (2).

(2) The Relevant Body may—

- (a) require the contractor to comply with a written plan drawn up by the Relevant Body to ensure that the level of activity during the remainder of the financial year is such that the contractor will provide the number of units of dental activity or units of orthodontic activity it is required to provide; or
- (b) withhold monies payable under the agreement.

(3) The maximum amount that may be withheld pursuant to sub-paragraph (2)(b) is—

- (a) the amount that is payable under the agreement in respect of the number of units of dental activity or units of orthodontic activity required to be provided in a financial year, less
- (b) the amount that would be payable under the agreement as a relevant proportion of that amount if the contractor provided in the whole of the financial year only twice the number of units of dental activity or orthodontic activity that provided between 1 April and 30 September.

(4) Nothing in this paragraph will prevent the Relevant Body and the contractor agreeing to vary the contract in accordance with paragraph 61 to adjust—

- (a) the level of activity to be provided under the agreement; or
- (b) the monies to be paid by the Relevant Body to the contractor under the agreement.

(5) Where the Relevant Body withholds monies pursuant to paragraph (2), it will ensure that it pays the withheld monies to the contractor as soon as possible following the end of the financial year where the contractor has—

- (a) provided the number of units of dental activity or units of orthodontic activity required to be provided; or
- (b) failed to provide that number of units of dental activity or units of orthodontic activity, but that failure amounts to 5 per cent or less of the total number of units of dental activity or units of orthodontic activity that ought to have been provided during that financial year (and therefore regulation 15 applies).