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PROSPECTIVE

SCHEDULE 3

Other contractual terms

PART 12

Miscellaneous

Clinical governance

128.—(1) The contractor must have in place an effective system of clinical governance which includes appropriate standard operating procedures in relation to the management and use of controlled drugs.

(2) The contractor must nominate a person who has responsibility for ensuring the effective operation of the system of clinical governance.

(3) The contractor must engage in discussion and peer review of clinical incidents that have occurred within the practice and local services.

(4) Components of the ‘system of clinical governance’ include, but are not limited to, the contractor—

(a) undertaking annually by 31 March—

- (i) the Clinical Governance Practice Self-Assessment Tool, and
- (ii) the Information Governance Toolkit,

and submitting evidence of completion to the Local Health Board on request, and

(b) complying with the Assurance Framework and the Local Health Board’s use of that Assurance Framework in relation to the contractor.

(5) The person nominated under sub-paragraph (2) must be a person who performs or manages performance of services under the contract.

(6) In this paragraph—

“system of clinical governance” (“*system llywodraethu clinigol*”) means a framework through which the contractor endeavours continuously to improve the quality of its services and safeguard high standards of care by creating an environment in which clinical excellence can flourish;

“controlled drugs” (“*cyffuriau a reolir*”) has the meaning given in section 2 of the Misuse of Drugs Act 1971 (which relates to controlled drugs and their classification for the purposes of that Act).

Commencement Information

II Sch. 3 para. 128 in force at 1.10.2023, see [reg. 1\(2\)](#)

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Co-operation with Health Education and Improvement Wales

129. The contractor must co-operate with Health Education and Improvement Wales where Health Education and Improvement Wales is discharging functions it has been directed to exercise by the Welsh Ministers relating to—

- (a) the provision of services under Part 4 of the Act, or
- (b) persons who are employed or engaged, or who are considering becoming employed or engaged, in any activity which involves or is connected with the provision of services under Part 4 of the Act.

Commencement Information

I2 Sch. 3 para. 129 in force at 1.10.2023, see [reg. 1\(2\)](#)

Insurance

130.—(1) The contractor must at all times have in force in relation to it an indemnity arrangement which provides appropriate cover under the contract.

(2) The contractor must not sub-contract its obligations to provide clinical services under the contract unless it has satisfied itself that the sub-contractor has in force in relation to it an indemnity arrangement which provides appropriate cover.

(3) The Local Health Board, to the extent it considers reasonable and to the extent it may be reimbursed in accordance with the Clinical Negligence Scheme for NHS Trusts and Local Health Boards established by regulation 3 of the 2019 Regulations, must indemnify the contractor in respect of that contractor’s qualifying liabilities as specified in regulation 9(4) of the 2019 Regulations, provided the contractor—

- (a) complies with the Local Health Board’s claims management protocol for contractors (as amended from time to time); and
- (b) does not have any other indemnity arrangement in force in connection with clinical services which the contractor provides under the contract at the time the qualifying liability arose.

(4) For the purposes of this paragraph a contractor is regarded as having in force in relation to it an indemnity arrangement—

- (a) if there is an indemnity arrangement in force in relation to a person employed or engaged by it in connection with clinical services which that person provides under the contract or, as the case may be, sub-contract, or
- (b) for its qualifying liabilities specified in regulation 9(4) of the 2019 Regulations, to the extent provided for under sub-paragraph (3).

(5) In this paragraph—

“the 2019 Regulations” (“*Rheoliadau 2019*”) means the National Health Service (Clinical Negligence Scheme) (Wales) Regulations 2019(1);

“appropriate cover” (“*yswariant priodol*”) means cover against liabilities that may be incurred by the contractor in the performance of clinical services under the contract, which is appropriate, having regard to the nature and extent of the risks in the performance of such services;

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“indemnity arrangement” (“*trefniant indemnïad*”) means a contract of insurance or other arrangement made for the purpose of indemnifying the contractor.

Commencement Information

I3 Sch. 3 para. 130 in force at 1.10.2023, see [reg. 1\(2\)](#)

Public liability insurance

131. The contractor must at all times hold adequate public liability insurance in relation to liabilities to third parties arising under or in connection with the contract which are not covered by the indemnity arrangement referred to in paragraph 130.

Commencement Information

I4 Sch. 3 para. 131 in force at 1.10.2023, see [reg. 1\(2\)](#)

Gifts

- 132.**—(1) The contractor must keep a register of gifts which—
- (a) are given to any of the persons specified in sub-paragraph (2) by or on behalf of—
 - (i) a patient,
 - (ii) a relative of a patient, or
 - (iii) any person who provided or wishes to provide services to the contractor or its patients in connection with the contract, and
 - (b) have, in its reasonable opinion, an individual value of more than £100.00.
- (2) The persons referred to in sub-paragraph (1) are—
- (a) the contractor,
 - (b) where the contract is with two or more individuals practising in partnership, any partner;
 - (c) where the contract is with a company limited with shares—
 - (i) any person legally or beneficially holding a share in the company, or
 - (ii) a director or secretary of the company,
 - (d) any person employed by the contractor for the purposes of the contract,
 - (e) any general medical practitioner engaged by the contractor for the purposes of the contract,
 - (f) any spouse or civil partner of a contractor (where the contractor is an individual medical practitioner) or of a person specified in paragraphs (b) to (e), or
 - (g) any person whose relationship with a contractor (where the contractor is an individual medical practitioner) or with a person specified in paragraphs (b) to (e) has the characteristics of the relationship between spouses.
- (3) Sub-paragraph (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

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- (c) the contractor is not aware that the donor wishes to provide services to the contractor or its patients.
- (4) The contractor must take reasonable steps to ensure that it is informed of gifts which fall within sub-paragraph (1) and which are given to the persons specified in sub-paragraph (2)(b) to (g).
- (5) The register referred to in sub-paragraph (1) must 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, the patient’s 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.
- (6) The contractor must make the register available to the Local Health Board on request.

Commencement Information

I5 Sch. 3 para. 132 in force at 1.10.2023, see [reg. 1\(2\)](#)

Bribery Act

133.—(1) The contractor must not commit any prohibited act.

(2) If the contractor or its employees or agents (or anyone acting on its or their behalf) commits any prohibited act in relation to the contract with or without the knowledge of the Local Health Board, the Local Health Board is entitled to—

- (a) exercise its right to terminate under paragraph 119 and to recover from the contractor the amount of any loss resulting from the termination,
- (b) recover from the contractor the amount or value of any gift, consideration or commission concerned, and
- (c) 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.

Commencement Information

I6 Sch. 3 para. 133 in force at 1.10.2023, see [reg. 1\(2\)](#)

Advertising private services

134. A contractor who offers private services which are not available to patients through the NHS must advertise those private services clearly and separately to the services available under the contract.

Commencement Information

I7 Sch. 3 para. 134 in force at 1.10.2023, see [reg. 1\(2\)](#)

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Compliance with legislation and guidance

135.—(1) The contractor must comply (and the contractor must ensure that those it employs or engages comply) with—

- (a) all relevant legislation, and
- (b) all relevant guidance and codes of practice issued from time to time by—
 - (i) the Local Health Board, Welsh Ministers or local authorities in respect of the exercise of their functions under the Act, or
 - (ii) any regulatory or supervisory body.

(2) The contractor must provide the services under the contract in a manner that assists the Local Health Board to comply with the Health and Care Standards and Duty of Quality Guidance in which those standards are set.

Commencement Information

18 Sch. 3 para. 135 in force at 1.10.2023, see [reg. 1\(2\)](#)

Third party rights

136. The contract must not create any right enforceable by any person who is not a party to it.

Commencement Information

19 Sch. 3 para. 136 in force at 1.10.2023, see [reg. 1\(2\)](#)

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Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 3 para. 16(3) inserted by [S.I. 2023/1421 reg. 18\(b\)](#)
- Sch. 5 para. 2(2)(a)(iv)(aa) omitted by [S.I. 2023/1421 reg. 20\(d\)](#)
- Sch. 5 para. 2(2)(a)(i)(aa) word substituted by [S.I. 2023/1421 reg. 20\(c\)](#)