

### SCHEDULE 3

#### Other contractual terms

### PART 7

#### Sub-contracting

##### **Sub-contracting**

76.—(1) Subject to sub-paragraph (2), the contractor must not sub-contract any of its rights or duties under the contract in relation to clinical matters, or non-clinical matters directly affecting patients, unless—

- (a) in all cases it has taken reasonable steps to satisfy itself that—
  - (i) it is reasonable in all the circumstances to do so, and
  - (ii) that person to whom any of those rights or duties is sub-contracted is qualified and competent to provide the service, and
- (b) the contractor has given notice in writing to the Local Health Board of its intention to sub-contract as soon as reasonably practicable before the date on which the proposed sub-contract is intended to come into effect.

(2) Sub-paragraph (1)(b) does not apply to—

- (a) a contract for services with a health care professional for the provision by that professional personally of clinical services, or
- (b) a contract between the contractor and another practice in the contractor's GP Collaborative under which that other practice is to provide, as part of that GP Collaborative's activities, primary medical services to the contractor's patients.

(3) A notice given under sub-paragraph (1)(b) must include—

- (a) the name and address of the proposed sub-contractor,
- (b) the duration of the proposed sub-contract,
- (c) the services to be covered by the proposed sub-contract, and
- (d) the address of any premises to be used for the provision of services under the proposed sub-contract.

(4) On receipt of a notice given under sub-paragraph (1)(b), the Local Health Board may request further information relating to the proposed sub-contract as appears to it to be reasonable, and the contractor must supply that information to the Local Health Board promptly.

(5) The contractor must not proceed with the sub-contract or, if the sub-contract has already taken effect, the contractor must take all reasonable steps to terminate it, where the Local Health Board gives notice in writing of its objection to the sub-contract on the grounds that—

- (a) the sub-contract would—
  - (i) put the safety of the contractor's patients at risk, or
  - (ii) put the Local Health Board at risk of material financial loss,

(b) the sub-contractor would be unable to meet the contractor's obligations under the contract, and such notice is given by the Local Health Board before the end of the period of 28 days beginning with the date on which the Local Health Board received a notice from the contractor under sub-paragraph (1)(b).

*Status: This is the original version (as it was originally made).*

(6) A notice given by the Local Health Board under sub-paragraph (5)(a) must include a statement of the reasons for the Local Health Board's objection.

(7) Sub-paragraphs (1) and (3) to (6) also apply in relation to any renewal or material variation of a sub-contract in relation to clinical matters.

(8) Where the notification by the contractor pursuant to sub-paragraph (3) relates to clinical matters and the Local Health Board does not give notice of an objection under sub-paragraph (5), the parties to the contract are deemed to have agreed a variation of the contract which, subject to any notice served under sub-paragraph (1)(b), has the effect of adding to the list of practice premises any premises the address of which was notified to the Local Health Board under sub-paragraph (3) (d) and, in these circumstances, paragraph 109(1) does not apply.

(9) Subject to sub-paragraph (10), a sub-contract entered into by a contractor must prohibit the sub-contractor from sub-contracting any of the clinical services that it has agreed with the contractor to provide under the sub-contract.

(10) A sub-contract entered into by the contractor falling within sub-paragraph (2)(b) may allow the sub-contractor to sub-contract clinical services provided the contractor obtains the written approval of the Local Health Board prior to the sub-contractor sub-contracting those services.

(11) The contractor must not sub-contract any of its rights or duties under the contract in relation to the provision of unified services to a company or firm—

- (a) owned wholly or partly by the contractor, or by any former or current employee of, or partner or shareholder in, the contractor,
- (b) formed by or on behalf of the contractor, or from which it derives or may derive a pecuniary benefit, or
- (c) formed by or on behalf of a former or current employee of, or partner or shareholder in, the contractor, or from which such a person derives or may derive a pecuniary benefit,

where sub-paragraph (12) applies to that company or firm.

(12) This sub-paragraph applies to a company or firm which is or was formed wholly or partly for the purpose of avoiding the restrictions on the sale of goodwill of a medical practice in regulation 3 of the Primary Medical Services (Sale of Goodwill and Restrictions on Sub-contracting) (Wales) Regulations 2004(1).

### **Withdrawal and variation of approval and right to subsequently object to a sub-contract under paragraph 76**

77.—(1) Without prejudice to any other remedies which it may have under the contract, where a Local Health Board is deemed to have approved an application made under paragraph 76, it is entitled to serve notice on the contractor withdrawing or varying that approval with immediate effect if—

- (a) it is no longer satisfied that the proposed arrangement enables the contractor to satisfactorily meet its obligations under the contract, or
- (b) it is satisfied that immediate withdrawal of variation is necessary to protect—
  - (i) the safety of the contractor's patients, or
  - (ii) the Local Health Board from material financial loss.

(2) A notice served under this paragraph takes effect on the date on which it is received by the contractor.

---

(1) S.I. 2004/1017 (W. 114).