SCHEDULE 1

CONTENT OF AGREEMENTS

PART 7

DISPUTE RESOLUTION

NHS dispute resolution procedure

56.—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 57 applies in the case of any dispute arising out of or in connection with the agreement, which is referred to the Scottish Ministers–

(a) (where the agreement is an NHS contract) for the purposes of section 17A(4) of the Act; or

(b) (where the agreement is not an NHS contract) in accordance with paragraph 55(1).

(2) In the case where–

(a) a dispute is referred to the Scottish Ministers in accordance with regulation 7(1) (pre agreement disputes); or

(b) a provider (or providers) refers a matter for determination in accordance with paragraph 28(1) or (2) of Schedule 2,

the procedure specified in the following sub paragraphs and paragraph 57 is modified as mentioned in regulation 7 or, as the case may be, paragraph 28 of Schedule 2.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1), shall send to the Scottish Ministers a written request for dispute resolution which shall include or be accompanied by–

(a) the names and addresses of the parties to the dispute;

(b) a copy of the agreement; and

(c) a brief statement describing the nature and circumstances of the dispute.

(4) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) must send the request under sub-paragraph (3) within a period of three years beginning with the date on which the matter giving rise to the dispute happened or should reasonably have come to the attention of the party wishing to refer the dispute.

(5) The Scottish Ministers may determine the dispute themselves or, if they consider it appropriate, appoint a panel consisting of three persons (referred to as “the panel”) to consider and determine the dispute.

(6) Before reaching a decision as to who should determine the dispute under sub paragraph (5),the Scottish Ministers shall, within the period of 7 days beginning with the date on which the dispute was referred to them, send a written request to the parties to make in writing, within a specified period, any representations which they may wish to make about the matter.

(7) The Scottish Ministers shall give, with the notice given under sub-paragraph (6), to the party other than the one which referred the matter to dispute resolution a copy of any document by which the matter was referred to dispute resolution.

(8) The Scottish Ministers shall give a copy of any representations received from a party to the other party and shall in each case request (in writing) a party to whom a copy of the representations is given to make within a specified period any written observations which it wishes to make on those representations.

(9) Following receipt of any representations from the parties or, if earlier, at the end of the period for making such representations specified in the request sent under sub-paragraph (6) or (8), the Scottish Ministers shall, if they decide to appoint a panel to hear the dispute–

(a) inform the parties in writing of the names of the persons whom he has appointed on the panel; and

(b) pass to the panel any documents received from the parties under or pursuant to paragraph (3), (6) or (8).

(10) For the purpose of assisting it in its consideration of the matter, the adjudicator may–

(a) invite representatives of the parties to appear before the adjudicator to make oral representations either together or, with the agreement of the parties, separately, and may in advance provide the parties with a list of matters or questions to which it wishes them to give special consideration; or

(b) consult other persons whose expertise the adjudicator considers will assist the adjudicator in the adjudicator's consideration of the matter.

(11) Where the adjudicator consults another person under sub-paragraph (10)(b), the adjudicator shall notify the parties accordingly in writing and, where the adjudicator considers that the interests of any party might be substantially affected by the result of the consultation, the adjudicator shall give to the parties such opportunity as it considers reasonable in the circumstances to make observations on those results.

(12) In considering the matter, the adjudicator shall consider–

(a) any written representations made in response to a request under sub-paragraph (6), but only if they are made within the specified period;

(b) any written observations made in response to a request under sub-paragraph (8), but only if they are made within the specified period;

(c) any oral representations made in response to an invitation under sub-paragraph (10)(a);

(d) the results of any consultation under sub-paragraph (10)(b); and

(e) any observations made in accordance with an opportunity given under sub-paragraph (11).

(13) In this paragraph, "specified period" means such period as the Scottish Ministers shall specify in the request under sub-paragraph (6) or (8), being not less than 2, nor more than 4, weeks beginning with the date on which the request is sent, but the adjudicator may, if the adjudicator considers that there is good reason for doing so, extend any such period (even after it has expired) and, where it does so, a reference in this paragraph to the specified period is to the period as so extended.

(14) Subject to the other provisions of this paragraph and paragraph 57 and to any agreement by the parties, the adjudicator shall have wide discretion in determining the procedure of the dispute resolution to ensure the just, expeditious, economical and final determination of the dispute.

(15) Where the adjudicator is a panel, any decision or determination by the panel for the purposes of this paragraph and paragraph 57 may be by a majority.