

## SCHEDULE 5

### OTHER CONTRACTUAL TERMS

#### PART 7

#### DISPUTE RESOLUTION

##### **Local resolution of agreement disputes**

**93.**—(1) Subject to sub-paragraph (2), in the case of any dispute arising out of or in connection with the agreement, the contractor and the relevant body must make every reasonable effort to communicate and cooperate with each other with a view to resolving the dispute, before referring the dispute for determination in accordance with the NHS dispute resolution procedure (or, where applicable, before commencing court proceedings).

(2) In the case of a dispute which falls to be dealt with under the procedure specified in paragraph 35, sub-paragraph (1) does not apply where it is not practicable for the parties to attempt local resolution before the expiry of the period specified in paragraph 35(4).

##### **Dispute resolution: non-NHS contracts**

**94.**—(1) In the case of an agreement which is not an NHS contract, any dispute arising out of or in connection with the agreement, except matters dealt with under the complaints procedure pursuant to Part 6 of this Schedule, may be referred for consideration and determination to the Secretary of State, if—

- (a) the relevant body so wishes and the contractor has agreed in writing; or
- (b) the contractor so wishes (even if the relevant body does not agree).

(2) In the case of a dispute referred to the Secretary of State under sub-paragraph (1)—

- (a) the procedure to be followed is the NHS dispute resolution procedure; and
- (b) the parties agree to be bound by any determination made by the adjudicator.

##### **NHS dispute resolution procedure**

**95.**—(1) Subject to sub-paragraph (2), the procedure specified in the following sub-paragraphs and paragraph 96 applies in the case of any dispute arising out of or in connection with the agreement which is referred to the Secretary of State—

- (a) in accordance with section 4(3) of the 1990 Act (where the agreement is an NHS contract); or
- (b) in accordance with paragraph 94(1) (where the agreement is not an NHS contract).

(2) The procedure specified in this paragraph and paragraph 96 does not apply where a contractor refers a matter for determination in accordance with paragraph 35(1) of this Schedule, and in such a case the procedure specified in that paragraph shall apply instead.

(3) Any party wishing to refer a dispute as mentioned in sub-paragraph (1) shall send to the Secretary of State 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.

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(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) Where the dispute relates to an agreement which is not an NHS contract, the Secretary of State may determine the matter himself or, if he considers it appropriate, appoint a person or persons to consider and determine it<sup>(1)</sup>.

(6) Before reaching a decision as to who should determine the dispute, either under sub-paragraph (5) or under section 4(5) of the 1990 Act, the Secretary of State shall, within the period of 7 days beginning with the date on which a matter was referred to him, 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 Secretary of State 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 Secretary of State 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 Secretary of State shall, if he decides to appoint a person or persons to hear the dispute—

- (a) inform the parties in writing of the name of the person or persons whom he has appointed; and
- (b) pass to the person or persons so appointed any documents received from the parties under or pursuant to sub-paragraph (3), (6) or (8).

(10) For the purpose of assisting him in his consideration of the matter, the adjudicator may—

- (a) invite representatives of the parties to appear before him 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 he wishes them to give special consideration; or
- (b) consult other persons whose expertise he considers will assist him in his consideration of the matter.

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

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(1) Where the dispute relates to an agreement which is an NHS contract, section 4(5) of the 1990 Act applies.

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(13) In this paragraph, “specified period” means such period as the Secretary of State shall specify in the request, being not less than two, nor more than four, weeks beginning with the date on which the notice referred to is given, but the Secretary of State may, if he considers that there is good reason for doing so, extend any such period (even after it has expired) and, where he 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 96 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.

### **Determination of dispute**

**96.**—(1) The adjudicator shall record his determination and the reasons for it in writing and shall give notice of the determination (including the record of the reasons) to the parties.

(2) Where the adjudicator makes a direction as to payments under section 4(7) of the 1990 Act (as it has effect as a result of regulation 9 or paragraph 94(1)), that direction is to be enforceable in a county court (if the court so orders) as if it were a judgment or order of that court.

(3) In the case of an agreement referred for determination in accordance with paragraph 94(1), subsection (8) of section 4 of the 1990 Act shall apply as that subsection applies in the case of an agreement referred for determination in accordance with subsection (3) of section 4 of that Act.

### **Interpretation of Part 7**

**97.**—(1) In this Part, “any dispute arising out of or in connection with the agreement” includes any dispute arising out of or in connection with the termination of the agreement.

(2) Any term of the agreement that makes provision in respect of the requirements in this Part shall survive even where the agreement has terminated.