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Handling Instruction – Commercial in Confidence  
SCHEDULE E: DISPUTE RESOLUTION PROCEDURE  
**SCHEDULE E**

**DISPUTE RESOLUTION PROCEDURE**

**1. INTERPRETATION AND CONSTRUCTION**

- 1.1 Defined terms in this Dispute Resolution Procedure shall have the meanings given to them in and, unless the context otherwise requires, the following terms shall have the meanings given below:

**"Adjudicator"** has the meaning given to it in Paragraph 5.2;

**"Adjudication Notice"** has the meaning given to it in Paragraph 5.3;

**"Existing Dispute"** means any Dispute;

**"LCIA Court"** means the London Court of International Arbitration;

**"LCIA Rules"** means the LCIA Rules of Arbitration;

**"Parties Representatives"** means the Delivery Partner Steering Group.

**"Request for Arbitration"** has the meaning given to it in the LCIA Rules;

**"Representatives' Dispute Notice"** has the meaning given to it in Paragraph 3.1;

**"Representatives' Dispute Settlement Agreement"** has the meaning given to it in Paragraph 3.3;

**"Senior Dispute Notice"** has the meaning given to it in Paragraph 4.1;

**"Senior Representative"** means the Delivery Partner Performance Committee and the expression **"Senior Representatives"** shall be construed accordingly;

**"Senior Representative Dispute Settlement Agreement"** has the meaning given to it in Paragraph 4.3; and

**"Tribunal"** means an arbitral tribunal appointed in respect of an Existing Dispute.

**2. OUTLINE OF THE DISPUTE RESOLUTION PROCEDURE**

- 2.1 Save as otherwise expressly provided in this Agreement, and following seeking to resolve any potential dispute at the Engineering Hub Operations Board, in the event a Dispute arises:

2.1.1 the Parties shall first seek to resolve the Dispute by convening a meeting of the Parties' Representatives, who shall seek to resolve the Dispute in accordance with Paragraph 3 (Parties' Representatives);

2.1.2 if the Parties' Representatives are unable to resolve the Dispute in accordance with a meeting held under Paragraph 3 (Parties Representatives), the Parties shall seek to resolve the Dispute by convening a meeting of the Senior Representatives of the Parties in accordance with Paragraph 4 (Senior Representatives);

OFFICIAL  
Handling Instruction – Commercial in Confidence

SCHEDULE E: DISPUTE RESOLUTION PROCEDURE

- 2.1.3 if the Senior Representatives are unable to resolve the Dispute in accordance with Paragraph 4 (Senior Representatives) then, subject to Paragraph 2.1.4, either Party may refer the Dispute to adjudication in accordance with Paragraph 5 (Adjudication) or arbitration in accordance with Paragraph 6 (Arbitration). If the Dispute is referred to adjudication in accordance with Paragraph 5 (Adjudication), then the decision issued in the adjudication shall be binding upon the Parties unless within twenty (20) Business Days of service of the decision, the matter is referred by either Party to arbitration in accordance with Paragraph 6 (Arbitration); and
- 2.1.4 if the Dispute relates to any matter which the Authority may (in accordance with the terms of this Agreement) determine in its sole discretion, then the Parties shall attempt to resolve that Dispute in accordance with Paragraphs 2.1.1 and 2.1.2 but shall not be entitled to refer the Dispute to either or both adjudication or arbitration under Paragraph 2.1.3. For the avoidance of doubt, should the Senior Representatives not be able to agree a Senior Representative Dispute Settlement Agreement for such a Dispute, then the Authority shall determine in its sole discretion that Dispute.
- 2.2 Notwithstanding any other provision of this Schedule E (Dispute Resolution Procedure), a Party may at any time serve a Request for Arbitration so as to prevent the expiry of any applicable limitation period.
- 2.3 Any notice given under this Schedule E (Dispute Resolution Procedure) shall comply with Clause 13 (Notices) of this Agreement.
3. **PARTIES' REPRESENTATIVES**
- 3.1 A Party may refer any Dispute by notice in writing to the other Party (a "**Representatives' Dispute Notice**"). The Representatives' Dispute Notice shall include the following details:
- 3.1.1 the subject matter of the Dispute and the issues to be resolved;
- 3.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
- 3.1.3 copies of any documents in the referring Party's possession which the referring Party considers to be important and relevant; and
- 3.1.4 a statement of the determination, remedy or recourse which the referring Party seeks.
- 3.2 The Parties to the Dispute shall procure that the Representatives shall meet during the period within five (5) Business Days from date of service of the Representatives' Dispute Notice, and if necessary shall meet more than once, to seek to resolve the Dispute by agreement.
- 3.3 Any agreement reached by the Representatives which resolves the Dispute must be in writing (which for these purposes shall not include email) and signed by the Representatives (the "**Representatives' Dispute Settlement Agreement**").
- 3.4 If the Representatives do not resolve the Dispute within fifteen (15) Business Days of the date of service of the Representatives' Dispute Notice (or within such further time as the Representatives may agree) then either Party may refer the Dispute to the Senior Representatives in accordance with this Schedule E (Dispute Resolution Procedure).

OFFICIAL  
Handling Instruction – Commercial in Confidence

SCHEDULE E: DISPUTE RESOLUTION PROCEDURE

- 3.5 Unless the Parties otherwise agree in writing, referring expressly to this Paragraph 3.5, all Representatives' meetings shall be held on a without prejudice basis and all communications prior to and during any such meeting (including any concessions, waivers or agreements (other than a Representatives Dispute Settlement Agreement and any evidence required to establish that a Representatives Dispute Settlement Agreement has been signed) made by a Party in the course of discussions pursuant to this Paragraph 3.5) and all documents produced for, used in or made available for any such meeting, and which are not otherwise available, known or subject to other obligations of disclosure, are privileged and shall not be disclosable or raised by the Parties in any subsequent Legal Proceedings. Notwithstanding this Paragraph 3.5, either Party may enforce the terms of a Representatives' Dispute Settlement Agreement and cite evidence of such Representatives' Dispute Settlement Agreement having been signed in any proceedings.

4. **SENIOR REPRESENTATIVES**

- 4.1 If permitted by Paragraph 3 (Parties' Representatives), a Party may refer any Dispute by notice in writing to the other Party (a "**Senior Dispute Notice**"). The Senior Dispute Notice shall include the following details:
- 4.1.1 the subject matter of the Dispute and the issues to be resolved;
  - 4.1.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
  - 4.1.3 the identity of the referring Party's Senior Representative;
  - 4.1.4 copies of any documents in the referring Party's possession which the referring Party considers to be important and relevant; and
  - 4.1.5 a statement of the determination, remedy or recourse which the referring Party seeks.
- 4.2 The Parties shall procure that the Senior Representatives of each Party shall meet during the period within fifteen (15) Business Days from date of service of the Senior Dispute Notice, and if necessary shall meet more than once, to seek to resolve the Dispute by agreement.
- 4.3 Any agreement reached by the Senior Representatives which resolves the Dispute must be in writing (which for these purposes shall not include email) and signed by the Senior Representatives (the "**Senior Representative Dispute Settlement Agreement**").
- 4.4 If the Senior Representatives do not resolve the Dispute within fifteen (15) Business Days of the date of service of the Senior Dispute Notice (or within such further time as the Senior Representatives of the Parties may agree in writing) then, subject to Paragraph 2.1.4, either Party may refer the Dispute to adjudication or arbitration in accordance with this Schedule E (Dispute Resolution Procedure).

OFFICIAL  
Handling Instruction – Commercial in Confidence

SCHEDULE E: DISPUTE RESOLUTION PROCEDURE

- 4.5 Unless the Parties otherwise agree in writing, referring expressly to this Paragraph 4.5, all Senior Representatives' meetings shall be held on a without prejudice basis and all communications prior to and during any such meeting (including any concessions, waivers or agreements (other than a Senior Representative Dispute Settlement Agreement and any evidence required to establish that such Senior Representative Dispute Settlement Agreement has been signed) made by a Party in the course of discussions pursuant to this Paragraph 4.5) and all documents produced for, used in or made available for any such meeting, and which are not otherwise available, known or subject to other obligations of disclosure, are privileged and shall not be disclosable or raised by the Parties in any subsequent Legal Proceedings. Notwithstanding this Paragraph 4.5, either Party may enforce the terms of a Senior Representative Dispute Settlement Agreement and cite evidence of any such Senior Representative Dispute Settlement Agreement having been signed in any proceedings.

5. **ADJUDICATION**

- 5.1 If permitted by Paragraph 4 (Senior Representatives), either Party has the right to refer a Dispute to adjudication under Paragraph 5 (Adjudication) or arbitration under Paragraph 6 (Arbitration). In addition, either Party may commence an arbitration following adjudication, subject always to the time limit set out in Paragraph 5.7. If the Party not commencing the adjudication opposes the resolution of the Dispute by adjudication or refuses to participate in the adjudication (including in respect of the appointment of the Adjudicator), then the Dispute shall be resolved by arbitration under Paragraph 6 (Arbitration).
- 5.2 In the event of adjudication, the selection and appointment of the adjudicator (the "**Adjudicator**") shall be by agreement between the Parties. If a Dispute involves issues arising under more than one area of expertise, the Parties may refer the Dispute to more than one Adjudicator in succession. If there are separate adjudications relating to the same Dispute, the later Adjudicator shall be bound by the decisions (including any reasoning) of the previous Adjudicator in so far as is relevant to its area of the Dispute.
- 5.3 A Party may refer a matter to adjudication by serving a notice on the other Party (an "**Adjudication Notice**"). The Adjudication Notice shall include the following details:
- 5.3.1 the subject matter of the Dispute and the issues to be resolved;
  - 5.3.2 the position the referring Party believes is correct and the referring Party's reasons for that position;
  - 5.3.3 the name and details of a proposed Adjudicator;
  - 5.3.4 copies of any documents in the referring Party's possession which the referring Party considers to be important and relevant; and
  - 5.3.5 a statement of the determination, remedy or recourse which the referring Party seeks.
- 5.4 Each Adjudicator, when appointed to resolve a Dispute, shall be required to conduct himself in accordance with the following:
- 5.4.1 Within five (5) Business Days of selection in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.

OFFICIAL  
Handling Instruction – Commercial in Confidence

SCHEDULE E: DISPUTE RESOLUTION PROCEDURE

- 5.4.2 In any event, the Adjudicator shall provide to both Parties his written decision on the Dispute, within fifteen (15) Business Days of selection (or such other period as the Parties may agree after referral). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision.
- 5.4.3 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including the costs and expenses of any witnesses.
- 5.4.4 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 5.4.5 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Agreement with the exception of opinions, certificates, instructions, determinations or decisions of the Authority which are described as being at the Authority's discretion which the Adjudicator shall not be entitled to open up, review or revise.
- 5.5 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence or in connection with his appointment as Adjudicator shall be treated as confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.
- 5.6 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 5.7 The decision of the Adjudicator shall be binding upon the Parties unless within thirty (30) days of service of the decision of the Adjudicator on the Parties, the matter referred to Adjudication is, upon the filing of a Request for Arbitration by either Party, referred to arbitration in accordance with Paragraph 6 (Arbitration).
- 6. ARBITRATION**
- 6.1 If permitted by Paragraph 4 (Senior Representatives) or Paragraph 5 (Adjudication), any Dispute shall be referred to and finally resolved by arbitration under the LCIA Rules, which are deemed to be incorporated by reference into this Paragraph 6 (Arbitration).
- 6.2 There shall be three arbitrators, selected as follows:
- 6.2.1 the claimant (or claimant parties jointly) shall appoint one arbitrator and the respondent (or respondent parties jointly) shall appoint one arbitrator for appointment by the LCIA Court;
- 6.2.2 if the claimant or claimant parties or the respondent or respondent parties fail to appoint an arbitrator, an arbitrator shall be appointed on their behalf by the LCIA Court in accordance with the LCIA Rules. In such circumstances, any existing appointment of the arbitrator chosen by the parties on the other side of the proposed arbitration shall be unaffected; and

OFFICIAL  
Handling Instruction – Commercial in Confidence

SCHEDULE E: DISPUTE RESOLUTION PROCEDURE

- 6.2.3 the two arbitrators appointed in accordance with Paragraph 6.2.1 (and, if necessary, Paragraph 6.2.2) shall choose the third arbitrator, who shall be chairman of the Tribunal. In the absence of agreement between the two arbitrators as to the third arbitrator within fifteen (15) Business Days, the third arbitrator shall be appointed by the LCIA Court in accordance with the LCIA Rules.
- 6.3 The seat, or legal place, of arbitration shall be London, England.
- 6.4 The language to be used in the arbitral proceedings shall be English.
- 6.5 The law of the arbitration agreement shall be the laws of England and Wales.
- 6.6 The Parties shall not be entitled to call any individual who was previously appointed as an Adjudicator in connection with any aspect of the Dispute, in accordance with Paragraph 5 (Adjudication), to act as witness in the arbitration.
- 6.7 All Awards of the Tribunal shall be final and binding on the Parties.

**7. ONGOING COMPLIANCE**

Subject to Clause 56 (Disputed Amounts), the Parties shall continue to comply with, observe and perform all their obligations under the Agreement regardless of the nature of any Dispute and notwithstanding the referral of a Dispute for resolution and shall give effect forthwith to every decision of the Tribunal delivered under Paragraph 6 (Arbitration).