Schedule 8.3 - Dispute Resolution Procedure

1 **Definitions**

1.1 In this Schedule, the following definitions shall apply:

Adjudicator	the person named as such in this Agreement or appointed in accordance with Paragraph 7 of this Schedule;
CEDR	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
HGCRA	the Housing Grants, Construction and Regeneration Act 1996 (as amended by the Local Democracy, Economic Development and Construction Act 2009);
Mediator	the independent third party appointed in accordance with Paragraph 4.3.1 to mediate a Dispute;
Multi-Party Dispute	a Dispute which involves the Parties and one or more Related Third Parties;
Multi-Party Dispute Representatives	has the meaning given in Paragraph 10.7;
Multi-Party Dispute Resolution Board	has the meaning given in Paragraph 10.7;
Notice	a notice given under Paragraph 7.1.
Related Third Party	a party to: (a) another contract with the Authority or the Supplier which is relevant to this Agreement; or (b) a Sub-contract; and
Supplier Request	a notice served by the Supplier requesting that the Dispute be treated as a Multi-Party Dispute, setting out its grounds for that request and specifying each Related Third Party that it believes should be involved in the Multi-Dispute Resolution Procedure in respect of that Dispute.

2 **Dispute**

2.1 Any Dispute shall be resolved in accordance with this Schedule within 20 Working Days of either Party notifying the other of the Dispute and such efforts shall involve the escalation of the Dispute to the Project Board.

3 **Consultation**

3.1 If a Dispute arises, the Supplier and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the Dispute.

3.2 Nothing in this Agreement or in the Dispute Resolution Procedure set out in this Schedule shall prevent the Parties from:

3.2.1 referring a Dispute at any time to adjudication in accordance with the provisions of this Schedule;

3.2.2 seeking enforcement of an adjudicator's decision; or

3.2.3 seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

4 **Mediation**

4.1 If the Dispute cannot be resolved by the Parties pursuant to Paragraph 3.1 the parties shall refer it to mediation pursuant to the procedure set out in this Paragraph 4 unless:

4.1.1 the Authority considers that the Dispute is not suitable for resolution by mediation; or

4.1.2 the Supplier does not agree to mediation.

4.2 The obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a Dispute to mediation (or adjudication) and the Supplier and the Supplier Personnel shall comply fully with the requirements of this Agreement at all times.

4.3 The procedure for mediation and consequential provisions relating to mediation are as follows:

4.3.1 a neutral adviser or mediator (the **Mediator**) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to CEDR to appoint a Mediator;

4.3.2 the Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure;

4.3.3 unless otherwise agreed, all negotiations connected with the Dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings;

4.3.4 if the Parties reach agreement on the resolution of the Dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives;

4.3.5 if the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any Dispute or difference between them may be referred to the courts in accordance with Clause 48 (Governing Law and Jurisdiction);

4.3.6 the costs of the Mediator and all other costs connected with the mediation shall be equally apportioned between the Parties or as may otherwise be directed by the Mediator; and

4.3.7 each Party will bear its own costs and expenses of its preparation and participation in the mediation.

5 **Court Proceedings**

5.1 Subject to Paragraph 3.2, the Parties shall not institute court proceedings until the procedures set out in Paragraphs 3.1 and 4 have been completed.

6 Adjudication

6.1 In the event that a Party invokes its statutory right to adjudicate pursuant to the HCGRA the procedure set out in Paragraphs 6 to 9 of this Schedule shall apply.

6.2 The Adjudicator shall act impartially.

6.3 The Adjudicator may take the initiative in ascertaining the facts and the law. He may use his own knowledge and experience.

6.4 The Adjudicator's decision shall be binding until the Dispute is finally determined by the courts or by agreement under the Dispute Resolution Procedure under this Schedule.

6.5 The Parties shall implement the Adjudicator's decision without delay whether or not the Dispute is to be referred to court.

6.6 The adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties and the Adjudicator except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings.

7 Appointment of the Adjudicator

7.1 Either Party (the **Referring Party**) may give written notice (the **Notice**) to the other Party at any time of its intention to refer a Dispute arising under this Agreement to adjudication. The Notice shall include a brief statement of the issue or issues which it is desired to refer and the redress sought. The Referring Party shall send a copy of the Notice to the Adjudicator appointed pursuant to this Agreement. A Notice which does not comply with this rule shall be ineffective.

7.2 The object of the procedure in Paragraphs 7.1 to 7.5 is to secure the appointment of the Adjudicator and referral of the Dispute to him within 7 days of the Notice.

7.3 The Referring Party shall request the president for the time being of the Royal Institute of Chartered Surveyors (the **RICS President**), to nominate an adjudicator within 5 days of receipt of the request. The request shall be in writing, accompanied by a copy of the Notice and the appropriate fee. Alternatively the Parties may, within 2 days of the Notice, appoint the Adjudicator by agreement.

7.4 If, for any reason, the Adjudicator is unable to act, or fails to reach his decision within the time required by this procedure, either Party may request the RICS President, to nominate a replacement Adjudicator. No such request shall be made after the Adjudicator has notified the Parties that he has reached his decision in relation to the Dispute.

7.5 If a Party objects to the appointment of a particular person as Adjudicator, that objection shall not invalidate the Adjudicator's appointment or any decision he may reach.

8 Conduct of Adjudication

8.1 The Referring Party shall send to the Adjudicator within 7 days of the giving of the Notice (or as soon thereafter as the Adjudicator is appointed), and at the same time copy to the other Party, a statement of its case including a copy of the Notice, this Agreement, details of the circumstances giving rise to the Dispute, the reasons why it is entitled to the redress sought, the evidence upon which it relies and the evidence in the Referring Party's possession or control upon which the other Party may reasonably be expected to rely in its defence. The statement of case shall be confined to the issues raised in the Notice, shall present a fair and balanced view of the matters in Dispute and shall not exceed, unless the Parties otherwise agree, 10 sides of A4 paper, typewritten with double spacing in a character size no smaller than elite. The bundle of evidence provided by the Referring Party in support of both Parties' position on the Dispute shall not exceed one lever arch file.

8.2 The date of referral shall be the first date on which:

8.2.1 the Adjudicator has in his possession the statement of case; and

8.2.2 Paragraphs 7 and 8.1 have been complied with.

8.3 The Adjudicator shall reach his decision within 28 days of the date of referral, or such longer period as is agreed by the Parties after the Dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days with the consent of the Referring Party. If the date of the Notice is more than 28 days from the first event relevant to the Dispute then the Referring Party shall be deemed to have agreed to the 14 day extension. The Parties shall act reasonably in deciding such longer period as is, in all the circumstances, appropriate.

8.4 The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable, subject to any limitation there may be in the Agreement or the HGCRA. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court or tribunal. Without prejudice to the generality of these powers, he may:

8.4.1 request a written defence, further argument or counter argument;

8.4.2 request the production of documents or the attendance of people whom he considers could assist;

8.4.3 visit any relevant site;

8.4.4 meet and question the Parties and their representatives;

8.4.5 meet the Parties separately;

8.4.6 limit the length, or time for submission, of any statement, defence or argument;

8.4.7 proceed with the adjudication and reach a decision even if a Party fails to comply with a request or direction of the Adjudicator; and/or

8.4.8 issue such further directions as he considers to be appropriate.

8.5 The Parties shall comply with any request or direction of the Adjudicator in relation to the adjudication.

8.6 The Adjudicator may obtain legal or technical advice, provided that he has notified the Parties of his intention first. He shall provide the Parties with copies of any written advice received.

8.7 The Adjudicator shall decide the matters set out in the Notice, together with any other matters which the Parties and the Adjudicator agree shall be within the scope of the adjudication.

8.8 The Adjudicator shall determine the rights and obligations of the Parties in accordance with the governing law of this Agreement.

8.9 Any Party may at any time ask that additional parties shall be joined in the adjudication. Joining of additional parties shall be subject to the agreement of the Adjudicator and the existing Parties and those additional parties. An additional party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Adjudicator and the Parties. The Adjudicator shall not agree to the joining of additional parties unless the original Parties to the Dispute agree an amended timetable for the adjudication which is, in all the circumstances, reasonable.

8.10 The Adjudicator may resign at any time on giving notice in writing to the Parties.

9 The Decision

9.1 The Adjudicator may withhold delivery of his decision until his fees and expenses have been paid. He shall be required to give reasons unless both parties agree at any time that he shall not be required to give reasons.

9.2 If the Adjudicator fails to reach his decision within the time permitted by this procedure, his decision shall nonetheless be effective if reached before the referral of the Dispute to any replacement adjudicator under Paragraph 7.4 but not otherwise. If he fails to reach such an effective decision, he shall not be entitled to any fees or expenses (save for the cost of any legal or technical advice subject to the Parties having received such advice).

9.3 The Adjudicator may open up, review and revise any certificate, decision, direction, instruction, notice, opinion, requirement or valuation made in relation to this Agreement unless this Agreement states that the certificate or decision is final and conclusive.

9.4 The Adjudicator may in any decision direct the payment of such simple or compound interest from such dates, at such rates and with such rests, as he considers appropriate.

9.5 The Parties shall bear their own costs and expenses incurred in the adjudication. The Parties shall be jointly and severally liable for the Adjudicator's fees and expenses including those of any legal or technical adviser appointed under Paragraph 8.6, but the Adjudicator may direct a Party to pay all or part of the fees and expenses. In deciding whether or not to make such a direction, the Adjudicator shall take into consideration the conduct of the Parties in relation to the adjudication. If he makes no such direction, the Parties shall pay them in equal shares. The Party requesting the adjudication shall be liable for the Adjudicator's fees and expenses if the adjudication does not proceed.

9.6 The Parties shall be entitled to the redress set out in the decision and to seek summary enforcement, whether or not the Dispute is to be finally determined by legal proceedings. No issue decided by the Adjudicator may subsequently be referred for decision by another adjudicator unless so agreed by the Parties.

9.7 In the event that the Dispute is referred to litigation or adjudication, the Adjudicator's decision shall not inhibit the right of the court or an adjudicator to determine the Parties' rights or obligations as if no adjudication had taken place.

9.8 The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission. Any correction of a decision must be made within 5 days of the delivery of the decision to the Parties. As soon as possible after correcting a decision in accordance with this Paragraph 9.8, the Adjudicator must deliver a copy of the corrected decision to each of the Parties to the Agreement. Any correction of a decision forms part of the decision.

10 Multi-party Disputes

10.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 10 (the **Multi-Party Dispute Resolution Procedure**).

10.2 If, at any time, the Authority reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Authority shall be entitled to determine that the Dispute is a Multi-Party Dispute and to serve a notice on the Supplier which sets out the Authority's determination that the Dispute is a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure, such notice (a **Multi-Party Procedure Initiation Notice)**.

10.3 Without prejudice to the generality of Paragraph 10.2 the Authority may specify that the Supply Chain Integrator is, by virtue of its role, a Related Third Party and is to be involved in the Multi-Party Dispute Resolution Procedure pursuant to Paragraph 10.2 of this Schedule 8.3 (Dispute Resolution Procedure).

10.4 If, at any time, the Supplier has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, the Supplier may serve a Supplier Request on the Authority.

10.5 The Authority shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:

10.5.1 a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or

10.5.2 not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 9.

10.6 If the Authority has determined, following a Supplier Request, that a Dispute is not a Multi-Party Dispute, the Supplier may not serve another Supplier Request with reference to the same Dispute.

10.7 Following service of a Multi-Party Procedure Initiation Notice a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the **Multi-Party Dispute Resolution Board**) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

10.7.1 the Authority;

10.7.2 the Supplier;

10.7.3 each Related Third Party involved in the Multi-Party Dispute; and

10.7.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

(together **Multi-Party Dispute Representatives**).

10.8 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:

10.8.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;

10.8.2 the Multi-Party Dispute Resolution Board shall first meet within 10 Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the Parties may agree or, if the Parties do not reach agreement on the time and place within 5 Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by the Authority, provided such place is at a neutral location within England and that the meeting is to take place between 9.00am and 5.00pm on a Working Day; and

10.8.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

10.9 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within 25 Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the Parties may agree in writing), then either Party may refer the Multi-Party Dispute to mediation in which case Paragraph 4 shall apply and references to the **Supplier** or the **Parties** in such provisions shall include a reference to all Related Third Parties.