



Ministry of
JUSTICE

Hosting

Schedule 8.3: Dispute Resolution Procedure

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1. INTRODUCTION

- 1.1 All Disputes will be dealt with under part B (Escalation and Dispute Procedures) of schedule 3 (Governance) of the Master Services Agreement, with appropriate changes for interpretation and with references to escalation being treated as referring to the various governance dispute escalation levels in schedule 8.1 (Governance) of this Agreement and/or schedule 3 of the Master Services Agreement, as applicable.
- 1.2 The parties hereby acknowledge that they are required to comply with the provisions set out in schedule 3 part B (Escalation and Dispute Procedures) of the Master Services Agreement as set out at Appendix 1 (Escalation and Dispute Procedures) to this schedule 8.3 (Dispute Resolution Procedure).
- 1.3 To the extent that the Hosting Supplier requires the support and input of its Key Sub-contractor(s) regarding any Dispute, the Hosting Supplier shall procure that its Key Sub-contractor(s) comply with the provisions at Appendix 1 (Escalation and Dispute Procedures).
- 1.4 The Authority acknowledges and agrees that in certain circumstances it will be appropriate and/or necessary for the Hosting Supplier Personnel, including personnel of any Key Sub-contractor(s), to be involved in a multi-supplier Dispute, provided always that clause 25.16 shall apply and the Hosting Supplier shall remain responsible for all acts and omissions of its Key-Subcontractor(s) and the acts and omissions of those employed or engaged by the Key Sub-contractor(s) as if they were its own.
- 1.5 Any input or support provided by any Key Sub-contractor in accordance with this paragraph 1 shall be included in the Service Charges and there shall be no additional cost to the Authority.

APPENDIX 1: ESCALATION AND DISPUTES PROCEDURE**Part B - ESCALATION AND DISPUTE PROCEDURES****4. General provisions applying to the Dispute Resolution Procedure**

- 4.1 Where, in the AUTHORITY's sole opinion, a Dispute also involves other Crown Bodies, including the Government Procurement Service (for example, under any framework or call-off agreements, such as public sector network agreements, that the AUTHORITY may be subject to), the AUTHORITY may require any or all of the Suppliers to:
- (a) participate and may include such other Crown Bodies as the AUTHORITY considers appropriate in any part of the Dispute Resolution Procedure (aligning, to the extent reasonably practicable, with dispute processes under such other agreements) in order for the Dispute to be resolved; and
 - (b) comply with decisions taken by such Crown Bodies where those Crown Bodies have contractual rights to make final decisions in relation to disputes which covers the same subject matter as the Dispute (whether or not the applicable Supplier is a party to that Dispute). In this situation, the AUTHORITY shall to the extent it is reasonably able to do so notify the relevant Suppliers that this may apply and shall make such representations on their behalf as it considers appropriate.
- 4.2 Where a Dispute appears to the AUTHORITY to be connected to or raise common issues with other issues or disputes affecting that Supplier or other Suppliers or Exiting Suppliers, at the AUTHORITY's request the Suppliers shall use all reasonable endeavours to ensure that the connected or common disputes are dealt with in an efficient, co-ordinated and consistent way.
- 4.3 Nothing in this Schedule shall prevent any party from seeking interim relief at any time or commencing proceedings to ensure that the claim falls within the relevant limitation period.
- 4.4 The AUTHORITY and the Hosting Supplier shall bear their own costs in complying with and participating in the Dispute Resolution Procedure unless:
- (a) otherwise agreed between the AUTHORITY and the Hosting Supplier in writing; or
 - (b) if a Court or other competent body orders one party to pay the costs of the other party.

5. Escalation Process

- 5.1 This paragraph 5 is subject to Clause 17.1 and sets out an escalation process that the AUTHORITY and each Supplier will follow to seek to resolve Disputes (the "**Escalation Process**"). TSA Disputes shall, at the AUTHORITY's option, be dealt with under the Escalation Process; under the Escalation Process but not in full open Board session at the relevant level; or under any dispute escalation process under the Tower Services Agreement or Supply Agreement.
- 5.2 The relevant Suppliers will use best endeavours to:

- (a) ensure that the Escalation Process operates efficiently and flexibly;
 - (b) resolve all Disputes as quickly as possible and at the most appropriate level in their respective organisations;
 - (c) ensure that, where a Dispute appears to be connected to or raise common issues with other issues or disputes affecting them or other Suppliers or Exiting Suppliers, this is flagged to the AUTHORITY promptly.
- 5.3 Where any party reasonably considers that a Dispute cannot be resolved within reasonable timescales by following the ordinary processes under the FITS Governance Framework specified in Part A of this Schedule 3 (Governance), such party may escalate the Dispute by issuing an escalation notice to the parties involved in the Dispute and the AUTHORITY in accordance with paragraph 5.4 (each an "**Escalation Notice**"), provided that Suppliers shall not repeat this process in respect of a Dispute relating to any matter that has been escalated already in accordance with this Agreement.
- 5.4 Each Escalation Notice shall include the following information and any further information that may be specified by the AUTHORITY or be pertinent to the Dispute:
- (a) the name of the party that issued the Escalation Notice;
 - (b) a description and chronology of the Dispute;
 - (c) any actions taken by the party that issued the Escalation Notice to mitigate the dispute;
 - (d) the implications of the issue, its severity and the degree of urgency involved;
 - (e) an estimate of the current and projected financial impact that the Dispute may have on the party that issued the Escalation Notice; and
 - (f) the names of other Suppliers and third parties who may need to be consulted or who are connected.
- 5.5 Disputes shall be escalated to the most appropriate Board, as set out in Schedule 3 (Governance), having regard to the terms of reference for the Board and nature of the Dispute, in accordance with the following process:
- (a) the Dispute shall, in the first instance be referred, subject to paragraph 5.5(e), to the Operational Assurance Level for resolution at a meeting to be arranged as soon as practicable after the date of issue of the Escalation Notice (the "**Escalation Notice Date**"), but in any event within ten (10) Working Days of such issue;
 - (b) if the Dispute is not resolved at the Operational Assurance Level within ten (10) Working Days after the meeting referred to in paragraph 5.5(a), or within any longer period agreed by the parties, the Dispute shall be referred to the Executive Level for resolution at a meeting to be held within ten (10) Working Days after such referral, or within such longer period as the AUTHORITY may specify, in order to attempt to resolve the Dispute;
 - (c) if the dispute is not resolved at the Executive Level within ten (10) Working Days after the meeting referred to in paragraph 4.5(b), or within any longer period specified by the AUTHORITY, the Dispute shall be referred to the

Steering Level who shall meet within ten (10) Working Days after such referral or within such longer period as agreed by the parties , in order to attempt to resolve the Dispute; and

(d) after referral to the Steering Level, if the Dispute remains unresolved within ten (10) Working Days after the meeting referred to in paragraph 5.5(c) or within such longer period as agreed by the parties , the Dispute shall be resolved in accordance with the remainder of this Part B.

(e) Not used.

5.6 If the relevant Board is not due to convene within the timescales set out in paragraph 5.5, the AUTHORITY reserves the right to:

(a) escalate the Dispute to the next most appropriate governance board in the event that such a Board is scheduled to meet earlier; or

(b) schedule a meeting to resolve the Dispute out of committee provided that the AUTHORITY considers that a sufficient quorum exists for that Board and all interested parties are represented.

6. Mediation

6.1 If a Dispute is not resolved in accordance with paragraph 5.5, with the agreement of both parties, the parties can agree to refer the Dispute to mediation and in such case the parties shall attempt to settle such Dispute by mediation in accordance with paragraphs 6 to 16 of this Schedule and with CEDR's "Model Mediation Procedure".

6.2 Not used.

6.3 Unless otherwise agreed by the parties to the Dispute within the timescale specified in the Mediation Timetable, the mediator will be nominated by CEDR.

6.4 The parties to the mediation shall procure that the Mediator, after consultation with the parties where appropriate, will:

(a) attend any meetings with either or both of the parties preceding the mediation, if requested or if the Mediator decides this is appropriate and the parties agree;

(b) read before the mediation each Case Summary and all the documents sent to him;

(c) chair, and determine the procedure for the mediation;

(d) assist the parties in drawing up any written settlement agreement; and

(e) abide by the terms of CEDR's model mediation procedure and CEDR's code of conduct for mediators.

6.5 The Mediator (and any member of the Mediator's firm or company) will not act for any of the parties individually in connection with the Dispute in any capacity during the term of this Agreement. The parties accept that in relation to the Dispute neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the parties. Furthermore, the parties and the Mediator accept that the Mediator (unless an

employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

7. CEDR

7.1 The parties involved in the mediation will procure that CEDR, in conjunction with the Mediator, will make the necessary arrangements for the mediation including, as necessary:

- (a) nominating, and obtaining the agreement of the parties to, the Mediator;
- (b) organising a suitable venue and dates;
- (c) organising exchange of the Case Summaries and documents;
- (d) meeting with either or both of the parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
- (e) general administration in relation to the mediation.

7.2 If there is any issue about the conduct of the mediation upon which the parties cannot agree within a reasonable time, CEDR will, at the request of any party, decide the issue for the parties, having consulted with them.

7.3 The parties agree to notify the Mediator and CEDR that they wish to observe the relevant timescales agreed in the Mediation Timetable.

8. Participants

8.1 Each party will state the names of:

- (a) the person(s) who will be the lead negotiator(s) for that party; and
- (b) any other person(s) (such as professional advisers, colleagues or sub-contractors) who will also be present at, and/or participating in, the mediation on that party's behalf.

8.2 Each party shall ensure that the person(s) named in accordance with paragraph 8.1(a) has full authority to settle the Dispute.

8.3 Each Supplier shall procure that any sub-contractors involved in the provision of the Services which are the subject of a Dispute shall, at the request of the Mediator or the AUTHORITY, provide any assistance reasonably required in order to resolve the relevant Dispute, including the provision of any information, data or documentation and the attendance at any meetings or hearings.

9. Exchange of Information

9.1 Each party will send to CEDR at least 2 (two) weeks before the mediation, or such other date as may be agreed between the parties and CEDR, sufficient copies of:

- (a) its Case Summary; and

- (b) all the documents to which the Case Summary refers and any others to which it may want to refer in the mediation.
- 9.2 In addition, each party may send to the Mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR. Such documents shall not be disclosed to any third party, including any other parties to the mediation without the disclosing party's consent.
- 9.3 The Mediator will be responsible for sending a copy of each party's Case Summary and supporting documents (provided to the mediator pursuant to paragraph 9.1) to the other simultaneously.
- 9.4 The parties shall try to agree:
- (a) the maximum number of pages of each Case Summary; and
 - (b) a joint set of supporting documents or the maximum length of each set of supporting documents.

10. The Mediation

- 10.1 The mediation will take place at the time and place arranged by CEDR. The parties agree to request that CEDR arrange the time and place for the mediation within the timescale specified in the applicable section of the Mediation Timetable. If the mediation cannot be arranged within the relevant timescale the parties may agree in writing to extended timescales, in consultation with CEDR and in line with CEDR's guidance.
- 10.2 The Mediator will chair, and determine the procedure at, the mediation.
- 10.3 No recording or transcript of the mediation will be made.
- 10.4 If the parties are unable to reach a settlement in the negotiations at the mediation, and only if all the parties so request and the Mediator agrees, the Mediator will produce for the parties a non-binding recommendation on terms of settlement. This will not attempt to anticipate what a court might order but will set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.
- 10.5 The parties agree to notify CEDR that the maximum duration for the mediation meeting shall be as set out in the applicable section of the Mediation Timetable.

11. Settlement Agreement

Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties (in accordance with the Change Control Procedure where appropriate). In any event any settlement agreement must be finalised within the timescales specified in the Mediation Timetable unless the parties agree in writing an extension to the Mediation Timetable, in consultation with CEDR and in line with CEDR's guidance. The Mediator will assist the parties in recording the outcome of the mediation.

12. Termination**12.1** The mediation will terminate when:

- (a) a party withdraws from the mediation;
- (b) a written settlement agreement is concluded;
- (c) the Mediator decides that continuing the mediation is unlikely to result in a settlement; or
- (d) the Mediator decides he should retire for any of the reasons in CEDR's code of conduct.

13. Confidentiality**13.1** Every person involved in the mediation:

- (a) will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement or to notify the parties' insurers, insurance brokers and/or accountants; and
- (b) acknowledges that all such information passing between the parties, the mediator and/or CEDR, however communicated, is agreed to be without prejudice to any party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.

13.2 None of the parties to the mediation will call the Mediator or CEDR (or any employee, consultant, officer or representative of CEDR) as a witness, consultant, arbitrator or expert in any litigation, arbitration or other proceedings whatsoever relating to the Dispute. The Mediator and CEDR will not voluntarily act in any such capacity without the written agreement of all the parties.**14. Mediators fees and expenses****14.1** CEDR's fees (which include the Mediator's fees) and the other expenses of the mediation will be borne equally by the parties to the Dispute. Payment of these fees and expenses will be made to CEDR in accordance with its fee schedule and terms and conditions of business.**15. Exclusion of Liability**

Neither the Mediator nor CEDR shall be liable to the parties for any act or omission in connection with the services provided by them in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

16. Mediation Timetable**16.1** The following timetable shall apply to mediations under paragraph 6, unless otherwise agreed by the parties:

Stage	Timetable
Period of time in which Dispute is to be referred to mediation in accordance with paragraph 6.1	ten (10) Working Days
Time permitted in paragraph 6.5 to agree the appointment of the Mediator, from the date of the Mediation Notice	ten (10) Working Days
Period of time in which Mediator may convene the mediation meeting from the date of appointment in accordance with paragraph 6.1	thirty (30) Working Days
Maximum duration of mediation meeting in accordance with paragraph 10.1	two (2) Working Days
Period of time in which the mediation settlement is to be recorded in writing and signed by the parties in accordance with paragraph 11	five (5) Working Days

16.2 Nothing in paragraphs 6 to 16 shall prejudice the right of any party to bring proceedings intended to result in the enforcement of a settlement agreement or of a binding determination of a Dispute between any or all the parties in accordance with the foregoing provisions of this Part B or otherwise.

16.3 Each Supplier acknowledges that its obligations to perform the Services shall not be affected by this procedure, or by any other procedure for the resolution of Disputes referred to in this Part B.

17. Arbitration

17.1 Notwithstanding Clause 48 (or any equivalent provision in a Tower Services Agreement or Supply Agreement), the parties may agree to refer any Dispute that is not resolved within six (6) Months of the relevant Escalation Notice Date to arbitration under the LCIA Rules.

17.2 The arbitration shall proceed under the LCIA Rules which Rules are deemed to be incorporated by reference into this paragraph.

(a) The number of arbitrators shall be three. Where there are two parties to the Dispute, each party shall be entitled to nominate an arbitrator and the Chair shall be appointed by the LCIA Court. Where there are more than two parties to the Dispute, Article 8 of the LCIA Rules shall apply.

(b) The seat, or legal place, of arbitration shall be London, UK.

(c) The language to be used in the arbitral proceedings shall be English.

- (d) The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under applicable law. The right to appeal on a point of law under section 69 of the Arbitration Act 1996 is hereby waived and excluded.
- 17.6 The parties agree that if arbitration is commenced, any court proceedings relating to the Dispute in respect of which the arbitration has commenced shall be discontinued.
- 18. Expert determination**
- 18.1 Any Dispute that is not resolved within six (6) Months of the relevant Escalation Notice Date and which:
- (a) relates to any aspect of the technology underlying the provision of the Services or relates purely to an ICT technical or financial matter (and not in any way to contractual interpretation or liability); and
- (b) the parties agree shall be subject to expert determination,
- shall be referred to and finally resolved by an Expert in accordance with this paragraph 18. In this event, paragraph 17 above shall not apply.
- 18.2 The parties shall agree on the appointment of an independent Expert and shall agree with the Expert the terms of his appointment. If the parties are unable to agree on an Expert or the terms of his appointment within ten (10) Working Days of the date that the last party provided its consent to Expert Determination, any party to the Dispute may request the president for the time being of the Institution of Engineering and Technology to appoint an Expert with the appropriate expertise (in the case of a purely ICT technical dispute) or to the president of the Law Society in relation to all other Disputes.
- 18.3 The Expert is required to prepare a written decision and give notice (including a copy) of the decision to the parties within 30 Working Days of the matter being referred to the Expert, or such other period as may be agreed in writing by the parties. Any amount payable by one party to another as a result of the Expert's decision shall be due and payable within twenty (20) Working Days of the Expert's decision being notified to the parties.
- 18.4 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
- (a) any party may apply to the relevant president under paragraph 18.2 to discharge the Expert and to appoint a replacement Expert with the appropriate expertise; and
- (b) this clause shall apply to the new Expert as if he were the first Expert appointed.
- 18.5 All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.

- 18.6 The parties are entitled to make submissions to the Expert including oral submissions and will provide (or procure that others provide) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 18.7 To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he considers just or appropriate.
- 18.8 Each party shall with reasonable promptness supply each other with all information and give each other access to all documentation and personnel and/or things as the other party may reasonably require to make a submission under this clause.
- 18.9 The Expert shall act as an expert and not as an arbitrator. The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- 18.10 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination shall be paid by another party. The Expert's fees and any costs properly incurred by him in arriving at his determination shall be borne by the parties equally or in such other proportions as the Expert shall direct.
- 18.11 All matters concerning the process and result of the determination by the Expert shall be kept private and confidential among the parties and the Expert.
- 18.12 Each party shall act reasonably and co-operate to give effect to the provisions of this clause and otherwise do nothing to hinder or prevent the Expert from reaching his determination.
- 19. Framework Authority Intervention**
- 19.1 The parties acknowledge that the PSN framework authority may intervene in any Dispute to support its resolution. Subject to paragraph 19.2, the resolution of such Dispute shall remain the responsibility of the parties to the Dispute, and the Dispute Resolution Procedure set out in this Schedule will continue to apply.
- 19.2 Where the PSN framework authority has intervened in a Dispute and the PSN framework authority determines that such dispute is a "Multi-Customer Dispute" under the PSN framework agreement:
- (a) the parties acknowledge that the PSN framework authority may manage such Dispute with the purpose of ensuring a satisfactory resolution for the parties;
 - (b) the provisions of paragraphs 5 to 18 of this Schedule shall not apply; and
 - (c) the dispute resolution procedure set out in Clauses 41.1 to 41.5 (inclusive) of the PSN framework agreement shall apply.
- 19.3 The AUTHORITY and the parties to the Dispute undertake to take all reasonable steps to procure that the PSN framework authority makes its determination whether or not a dispute is a "Multi-Customer Dispute" as soon as possible after the Escalation Notice is issued.

- 19.4 The AUTHORITY and the Suppliers shall provide such assistance, information and documentation to the PSN framework authority as it may require to support the resolution of the Dispute.

End of Schedule