

## SCHEDULE 6.3

### DISPUTE RESOLUTION PROCEDURE

#### 1. DEFINITIONS

In this Schedule, the following definitions shall apply:

<b>"CEDR"</b>	the Centre for Effective Dispute Resolution of International Dispute Resolution Centre, 70 Fleet Street, London, EC4Y 1EU;
<b>"Counter Notice"</b>	has the meaning given in Paragraph 5.2;
<b>"Mediation Notice"</b>	has the meaning given in Paragraph 3.2; and
<b>"Mediator"</b>	the independent third party appointed in accordance with Paragraph 4.2 to mediate a Dispute.

#### 2. DISPUTE NOTICES

2.1 If a Dispute arises then:

2.1.1 the Ofwat Representative and the Delivery Partner Representative shall attempt in good faith to resolve the Dispute; and

2.1.2 if such attempts are not successful within a reasonable period, not being longer than 20 Working Days, either Party may issue to the other a Dispute Notice.

2.2 A Dispute Notice:

2.2.1 shall set out:

(a) the material particulars of the Dispute; and

(b) the reasons why the Party serving the Dispute Notice believes that the Dispute has arisen; and

2.3 Following the issue of a Dispute Notice the Parties shall seek to resolve the Dispute:

2.3.1 first by commercial negotiation (as prescribed in Paragraph 3);

2.3.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 4); and

2.3.3 lastly by recourse to arbitration (as prescribed in Paragraph 5) or litigation (in accordance with Clause 46 (Governing Law and Jurisdiction)).

2.4 Unless agreed otherwise in writing, the Parties shall continue to comply with their respective obligations under this Agreement and any Workstream regardless of the

nature of the Dispute and notwithstanding any issue of a Dispute Notice or proceedings under Paragraph 6 (Urgent Relief).

### 3. **COMMERCIAL NEGOTIATION**

3.1 Following the service of a Dispute Notice, Ofwat and the Delivery Partner shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between Ofwat's Contract Manager and the Delivery Partner's Account Manager.

3.2 If:

3.2.1 either Party is of the reasonable opinion that the resolution of a Dispute by commercial negotiation, or the continuation of commercial negotiation, will not result in an appropriate solution;

3.2.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of commercial negotiation in accordance with this Paragraph 3; or

3.2.3 the Parties have not settled the Dispute in accordance with Paragraph 3.1 within 30 Working Days of service of the Dispute Notice,

either Party may serve a written notice to proceed to mediation in accordance with Paragraph 4 (a "**Mediation Notice**").

### 4. **MEDIATION**

4.1 If a Mediation Notice is served, the Parties shall attempt to resolve the dispute in accordance with the version of CEDR's Model Mediation Procedure which is current at the time the Mediation Notice is served (or such other version as the Parties may agree).

4.2 If the Parties are unable to agree on the joint appointment of an independent person to mediate the Dispute within 20 Working Days from (and including) the service of a Mediation Notice then either Party may apply to CEDR to nominate such a person.

4.3 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests are appropriate settlement terms in all of the circumstances.

4.4 Any settlement reached in the mediation shall 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). The Mediator shall assist the Parties in recording the outcome of the mediation.

### 5. **ARBITRATION**

5.1 Subject to compliance with its obligations under Paragraphs 3.1 and 4, Ofwat may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 5.5.

5.2 Before the Delivery Partner commences court proceedings or arbitration, it shall serve written notice on Ofwat of its intentions and Ofwat shall have 15 Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Delivery Partner requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 5.5 or be subject to the exclusive jurisdiction of the courts

of England and Wales. The Delivery Partner shall not commence any court proceedings or arbitration until the expiry of such 15 Working Day period.

- 5.3 If Ofwat serves a Counter Notice, then:
- 5.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 5.5 shall apply; or
  - 5.3.2 if the Counter Notice requires the Dispute to be subject to the exclusive jurisdiction of the courts of England and Wales, the Dispute shall be so referred to those courts and the Delivery Partner shall not commence arbitration proceedings.
- 5.4 If Ofwat does not serve a Counter Notice within the 15 Working Day period referred to in Paragraph 5.2, the Delivery Partner may either commence arbitration proceedings in accordance with Paragraph 5.5 or commence court proceedings in the Courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 5.5 The Parties hereby confirm that if any arbitration proceedings are commenced pursuant to Paragraphs 5.1 to 5.4:
- 5.5.1 the Dispute shall be referred to and finally resolved by arbitration under the rules of the London Court of International Arbitration ("**LCIA**") (subject to Paragraphs 5.5.5, 5.5.6 and 5.5.7));
  - 5.5.2 the arbitration shall be administered by the LCIA;
  - 5.5.3 the LCIA procedural rules in force at the date that the Dispute was referred to arbitration shall be applied and are deemed to be incorporated by reference into this Agreement and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
  - 5.5.4 if the Parties fail to agree the appointment of the arbitrator within 10 Working Days from the date on which arbitration proceedings are commenced or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
  - 5.5.5 the chair of the arbitral tribunal shall be British;
  - 5.5.6 the arbitration proceedings shall take place in London and in the English language; and
  - 5.5.7 the seat of the arbitration shall be London.

## 6. **URGENT RELIEF**

Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:

- 6.1 for interim or interlocutory remedies in relation to this Agreement or any Workstream or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 6.2 where compliance with Paragraphs 2.1 and 3.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.