

OFFICIAL - SENSITIVE - COMMERCIAL
PCSS Call-Off Terms
Schedule 5.4 (Dispute Resolution Procedure)

Primary Care Support Services Call-Off Terms

Schedule 5.4

Dispute Resolution Procedure

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1. Definitions

Unless defined within this Schedule, or in the Call-Off Order Form applicable to this Call-Off Agreement, the definitions in Schedule 1 of the Framework Agreement shall apply.

2. Dispute Notices

2.1 If a Dispute arises then:

2.1.1 the Customer Representative, the Supplier 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 twenty (20) Working Days:

(a) the Customer (if the Dispute arises under the Call-Off Agreement, or if directed to do so by the Framework Authority in respect of a Dispute under the Framework Agreement) may initiate the Dispute Resolution Procedure by serving a Dispute Notice on the Supplier; or

(b) the Supplier may initiate the Dispute Resolution Procedure by serving a Dispute Notice on the Customer.

2.2 Where the Customer serves a Dispute Notice on the Supplier or receives a Dispute Notice from the Supplier, it shall also be entitled to provide a copy of the Dispute Notice to the Framework Authority at the same time.

2.3 A Dispute Notice:

2.3.1 shall set out:

(a) the material particulars of the Dispute;

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

(c) if the Party serving the Dispute Notice believes that the Dispute should be dealt with under the Expedited Dispute Timetable, the reason why; and

2.3.2 may specify in accordance with the requirements of Paragraphs 9.2 and 9.3 that the Party issuing the Dispute Notice has determined (in the case of the Customer) or considers (in the case of the Supplier) that the Dispute is a Multi-Party Dispute, in which case Paragraph 2.4 shall apply.

2.4 If a Dispute Notice specifies that the Dispute has been determined or is considered to be a Multi-Party Dispute pursuant to Paragraph 2.3.2, then:

2.4.1 if it is served by the Framework Authority (if the Dispute arises under the Framework Agreement) or by the Customer (if the Dispute arises under the Call-Off Agreement) it shall be treated as a Multi-Party Procedure Initiation Notice; and

2.4.2 if it is served by the Supplier it shall be treated as a Supplier Request,

and in each case the provisions of Paragraph 9 shall apply.

2.5 Subject to Paragraphs 2.4 and 3.2 and so long as the Customer has not served a Multi-Party

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Procedure Initiation Notice in respect of the relevant Dispute, following the issue of a Dispute Notice the parties shall seek to resolve the Dispute:

- 2.5.1 first by commercial negotiation (as prescribed in Paragraph 4);
 - 2.5.2 then, if either Party serves a Mediation Notice, by mediation (as prescribed in Paragraph 5); and
 - 2.5.3 lastly by recourse to arbitration (as prescribed in Paragraph 7) or litigation (in accordance with Clause 62 (Governing Law and Jurisdiction) of the Call-Off Agreement (as appropriate).
- 2.6 Specific issues shall be referred to Expert Determination (as prescribed in Paragraph 6) where specified under the provisions of this Call-Off Agreement (if the Dispute arises under the Call-Off Agreement) and may also be referred to Expert Determination where otherwise appropriate as specified in Paragraph 6.1.
- 2.7 Unless agreed otherwise in writing, the parties shall continue to comply with their respective obligations under the Call-Off Agreement, and (where relevant) the Framework Agreement, regardless of the nature of the Dispute and notwithstanding any issue of a Dispute Notice or a Multi-Party Procedure Initiation Notice.

3. Expedited Dispute Timetable

- 3.1 In exceptional circumstances where the use of the times in this Schedule would be unreasonable, including (by way of example) where one Party to a Dispute would be materially disadvantaged by a delay in resolving the Dispute, the parties may agree to use the Expedited Dispute Timetable. If the parties are unable to reach agreement on whether to use the Expedited Dispute Timetable within five (5) Working Days of the issue of a Dispute Notice, the use of the Expedited Dispute Timetable shall be at the sole discretion of the Customer.
- 3.2 If the Expedited Dispute Timetable is to be used pursuant to the provisions of Paragraph 3.1 or is otherwise specified under the provisions of this Call-Off Agreement then the following periods of time shall apply in lieu of the time periods specified in the applicable Paragraphs:
- 3.2.1 in Paragraph 4.2.3, ten (10) Working Days;
 - 3.2.2 in Paragraph 5.2, ten (10) Working Days;
 - 3.2.3 in Paragraph 6.2, five (5) Working Days; and
 - 3.2.4 in Paragraph 7.2, ten (10) Working Days.
- 3.3 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the parties to a Dispute may (but shall be under no obligation to) agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

4. Commercial Negotiation

- 4.1 Following the service of a Dispute Notice, then, so long as the Customer has not served a Multi-Party Procedure Initiation Notice in respect of the relevant Dispute, the parties to the Dispute shall make reasonable endeavours to resolve the Dispute as soon as possible by commercial negotiation between the Customer Representative (as applicable) and the Supplier Representative.
- 4.2 If:

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- 4.2.1 either Party to the Dispute is of the reasonable opinion that the resolution of the Dispute by commercial negotiation, or the continuance of commercial negotiation, will not result in an appropriate solution;
- 4.2.2 the parties to the Dispute 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 4; or
- 4.2.3 the parties to the Dispute have not settled the Dispute in accordance with Paragraph 4.1 within thirty (30) Working Days of service of the Dispute Notice,

either Party to the Dispute may serve a written notice to proceed to mediation in accordance with Paragraph 5 (a "**Mediation Notice**").

5. Mediation

- 5.1 If a Mediation Notice is served, the parties to the Dispute shall attempt to resolve the Dispute in accordance with CEDR's Model Mediation Agreement which shall be deemed to be incorporated by reference into this Call-Off Agreement.
- 5.2 If the parties to a Dispute are unable to agree on the joint appointment of an independent person to mediate the Dispute within twenty (20) Working Days from (and including) the service of a Mediation Notice, then either Party may apply to CEDR to nominate such a person.
- 5.3 If the parties to the mediation are unable to reach a settlement in the negotiations at the mediation, and only if all the parties to the mediation so request and the Mediator agrees, the Mediator shall produce for the parties to the mediation 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.
- 5.4 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 to the mediation (in accordance with the Change Control Procedure of this Call-Off Agreement). The Mediator shall assist the parties to the mediation in recording the outcome of the mediation.

6. Expert Determination

- 6.1 If a Dispute relates to any aspect of the technology underlying the provision of the Services or otherwise relates to a matter of an IT technical, financial technical or other technical nature (as the parties to the Dispute may agree) and the Dispute has not been resolved by commercial negotiation in accordance with Paragraph 4 or, if applicable, mediation in accordance with Paragraph 5, then either Party to the Dispute may by written notice to the other request (agreement to which request shall not be unreasonably withheld or delayed) that the Dispute be referred to the Expert for determination.
- 6.2 Following agreement of the parties to refer a Dispute to an Expert in accordance with paragraph 6.1 above, the Expert shall be appointed by agreement in writing between the parties to the Dispute, but in the event of a failure to agree the identity of the Expert within ten (10) Working Days of the relevant request made pursuant to Paragraph 6.1, or if the person appointed is unable or unwilling to act, the Expert shall be appointed:
 - 6.2.1 if the Dispute relates to any aspect of the technology underlying the provision of the Services or a matter of an IT technical nature, on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society);

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- 6.2.2 if the Dispute relates to a matter of a financial technical nature, on the instructions of the President of the Institute of Chartered Accountants of England and Wales; or
- 6.2.3 if the Dispute relates to a matter of a technical nature not falling within Paragraphs 6.2.1 or 6.2.2, on the instructions of the president (or equivalent) of:
- (a) an appropriate body agreed between the parties to the Dispute; or
 - (b) if the parties to the Dispute do not reach agreement on the relevant body within fifteen (15) Working Days of the relevant request made pursuant to Paragraph 6.1, such body as may be specified by the President of the Law Society on application by either Party to the Dispute.
- 6.3 The Expert shall act on the following basis:
- 6.3.1 he/she shall act as the Expert and not as an arbitrator and shall act fairly and impartially;
- 6.3.2 the Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the parties to the Dispute;
- 6.3.3 the Expert shall:
- (a) document the procedure to be followed in the determination and shall submit such procedure to both parties for agreement (not to be unreasonably withheld or delayed); and
 - (b) shall be requested to make his/her determination within thirty (30) Working Days of agreement of the procedure, or as soon as reasonably practicable thereafter, and the parties to the Dispute shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 6.3.4 any amount payable by one Party to the Dispute to another as a result of the Expert's determination shall be due and payable within twenty (20) Working Days of the Expert's determination being notified to the parties to the Dispute;
- 6.3.5 the process shall be conducted in private and shall be confidential; and
- 6.3.6 the Expert shall determine how and by whom the costs of the determination, including his/her fees and expenses, are to be paid.

7. Arbitration

- 7.1 Subject to compliance with its obligations under Paragraph 4.1 and to the provisions of Paragraph 6, the Customer may at any time before court proceedings are commenced refer the Dispute to arbitration in accordance with the provisions of Paragraph 7.5.
- 7.2 Before the Supplier commences court proceedings or arbitration, it shall serve written notice on the Customer of its intentions and the Customer shall have fifteen (15) Working Days following receipt of such notice to serve a reply (a "**Counter Notice**") on the Supplier requiring the Dispute to be referred to and resolved by arbitration in accordance with Paragraph 7.5 or be subject to the exclusive jurisdiction of the courts of England and Wales. The Supplier shall not commence any court proceedings or arbitration until the expiry of such fifteen (15) Working Day period.
- 7.3 If the Customer serves a Counter Notice, then:

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- 7.3.1 if the Counter Notice requires the Dispute to be referred to arbitration, the provisions of Paragraph 7.5 shall apply; or
- 7.3.2 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 Supplier shall not commence arbitration proceedings.
- 7.4 If the Customer does not serve a Counter Notice within the fifteen (15) Working Day period referred to in Paragraph 7.2, the Supplier may either commence arbitration proceedings in accordance with Paragraph 7.5 or commence court proceedings in the courts of England and Wales which shall (in those circumstances) have exclusive jurisdiction.
- 7.5 If any arbitration proceedings are commenced pursuant to Paragraphs 7.1 to 7.4:
- 7.5.1 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 7.5.5, 7.5.6 and 7.5.7;
- 7.5.2 the arbitration shall be administered by the LCIA;
- 7.5.3 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 Call-Off Agreement and the decision of the arbitrator(s) shall be binding on the parties to the Dispute in the absence of any material failure to comply with such rules;
- 7.5.4 if the parties to the Dispute fail to agree the appointment of the arbitrator(s) within ten (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(s) shall be appointed by the LCIA;
- 7.5.5 the chair of the arbitral tribunal shall be British;
- 7.5.6 the arbitration proceedings shall take place in London and in the English language; and
- 7.5.7 the seat of the arbitration shall be London.

8. Urgent Relief

- 8.1 A Party to a Dispute may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
- 8.1.1 for interim or interlocutory remedies in relation to this Call-Off Agreement or infringement by the other Party of that Party's Intellectual Property Rights; and/or
- 8.1.2 where compliance with Paragraph 2.1 and/or referring the Dispute to mediation may leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9. Multi-Party Disputes

- 9.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this Paragraph 9 (the "**Multi-Party Dispute Resolution Procedure**").
- 9.2 If at any time following the issue of a Dispute Notice, the Customer reasonably considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Customer

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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 Customer'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**".

- 9.3 If following the issue of a Dispute Notice but before the Dispute has been referred to Expert Determination or to arbitration in accordance with Paragraph 7, 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 Customer (if the Dispute arises under the Call-Off Agreement).
- 9.4 The Customer shall (acting reasonably) consider each Supplier Request and shall determine within 5 Working Days whether the Dispute is:
- 9.4.1 a Multi-Party Dispute, in which case the Customer (as applicable) shall serve a Multi-Party Procedure Initiation Notice on the Supplier; or
- 9.4.2 not a Multi-Party Dispute, in which case the Customer shall serve written notice of such determination upon the Supplier and the Dispute shall be treated in accordance with Paragraphs 3 to 8.
- 9.5 If the Customer 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.
- 9.6 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:
- 9.6.1 the Customer;
- 9.6.2 the Supplier;
- 9.6.3 each Related Third Party involved in the Multi-Party Dispute; and
- 9.6.4 any other representatives of any of the parties to the Dispute and/or any Related Third Parties whom the Customer considers necessary,
- (together "**Multi-Party Dispute Representatives**").
- 9.7 The parties to the Dispute 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:
- 9.7.1 the parties to the Dispute 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;
- 9.7.2 the Multi-Party Dispute Resolution Board shall first meet within ten (10) Working Days of service of the relevant Multi-Party Procedure Initiation Notice at such time and place as the parties to the Dispute may agree or, if the parties to the Dispute do not reach agreement on the time and place within five (5) Working Days of service of the relevant Multi-Party Procedure Initiation Notice, at the time and place specified by

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the Customer, provided such place is at a neutral location within England and that the meeting is to take place between 9.00 am and 5.00 pm on a Working Day; and

9.7.3 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 to the Dispute and the Related Third Parties and that any apportionment of costs should reflect the separate components of the Multi-Party Dispute.

9.8 If a Multi-Party Dispute is not resolved between the parties to the Dispute and all Related Third Parties within twenty five (25) Working Days of the issue of the Multi-Party Procedure Initiation Notice (or such longer period as the parties to the Dispute may agree in writing), then:

9.8.1 a Party to the Dispute may serve a Mediation Notice in respect of the Multi-Party Dispute in which case Paragraph 5 shall apply;

9.8.2 a Party to the Dispute may request that the Multi-Party Dispute is referred to the Expert in which case Paragraph 6 shall apply; and/or

9.8.3 subject to Paragraph 9.9, Paragraph 7 shall apply to the Multi-Party Dispute,

and in each case references to a "Party" or the "parties" in such provisions shall include a reference to all Related Third Parties.

9.9 If a Multi-Party Dispute is referred to arbitration in accordance with Paragraph 7 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party to the Dispute is unable to compel a Related Third Party to submit to such arbitration proceedings, the Customer or the Supplier may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party to the Dispute which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-contractor, by the Supplier.