

IUS CONSOLIDATED CONTRACT SCHEDULE

CONSOLIDATED SCHEDULE 23  
DISPUTE RESOLUTION PROCEDURE

for Contract Number DCNS/119

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## **CONSOLIDATED SCHEDULE 23**

### **DISPUTE RESOLUTION PROCEDURE**

This Consolidated Schedule provides a consolidated version of the requirements of Schedule 6.3 (*Dispute Resolution Procedure*) of the Call-Off Terms and the Customer Authority's special terms relating to dispute resolution.

Capitalised terms used but not defined in this Consolidated Schedule are defined in Consolidated Schedule 1 (*Definitions*).

#### **1 INTRODUCTION AND GENERAL OBLIGATIONS**

**1.1** Except where this Consolidated Contract or the Parties by written agreement (such form of writing to refer to this Paragraph 1.1) expressly provide to the contrary, each Dispute shall be dealt with in accordance with this Consolidated Schedule.

**1.2** This Consolidated Schedule sets out provisions relating to:

**1.2.1** the procedure to be followed in the event of a Dispute arising between the Parties (the "**Dispute Resolution Procedure**"), as set out in Paragraphs 2, 3 and 4 below;

**1.2.2** the use of expert determination, as set out in Paragraph 5 below;

**1.2.3** arbitration, as set out in Paragraph 6 below;

**1.2.4** urgent relief, as set out in Paragraph 7 below;

**1.2.5** the cooperation expected from Sub-contractors, as set out in Paragraph 8 below;

**1.2.6** the Parties' obligations in relation to Disputes involving PSN Services Contractors, GCN Service Providers or Wider PSN Contractors, as set out in Paragraph 9 below; and

**1.2.7** the procedures generally applicable where third parties are involved in Disputes, as set out Paragraph 10 below.

**1.3** The Framework Authority may intervene in any Disputes (which may be at the request of the Customer Authority or as determined by the Framework Authority in its sole discretion) to support their resolution but, subject to Paragraph 1.4 below, the resolution of any Disputes shall:

**1.3.1** remain the responsibility of the Customer Authority and the Contractor; and

**1.3.2** be in accordance with this Consolidated Schedule.

Accordingly, the Customer Authority may share information (including the Contractor's Confidential Information and Commercially Sensitive Information) with the Framework Authority.

**1.4** Where the Framework Authority has intervened in a Dispute and the Framework Authority determines that such Dispute is a Multi-Party Dispute, the Contractor and the Customer Authority acknowledge and agree that the Framework Authority may manage such Multi-Party Dispute to ensure that a satisfactory resolution is achieved by the parties to the Multi-Party Dispute. In such instance, Paragraph 10 below shall apply as between the Contractor and the Customer Authority, and the dispute resolution procedure set out in the Framework Agreement shall also apply.

- 1.5** The Contractor acknowledges that the Framework Authority, in intervening or managing Disputes (whether in accordance with Paragraphs 1.3 or 1.4 above or otherwise), does not act on behalf of the Customer Authority (whether as its agent, representative or otherwise). In particular, no agreement made between the Framework Authority and the Contractor shall be binding on the Customer Authority. Representations, assurances, approvals, communications and courses of conduct made, or carried out, by or on behalf of the Framework Authority shall neither be construed as a waiver nor acquiescence by the Customer Authority, and nor shall any such representations, assurances, approvals communications or courses of conduct affect the Customer Authority's rights or remedies under this Consolidated Contract.
- 1.6** The Customer Authority and the Contractor shall provide such assistance, information and documentation to the Framework Authority as it may require to support the resolution of Disputes and Multi-Party Disputes.
- 1.7** The Contractor shall promptly (and in any event within two (2) Working Days of receiving each communication) notify the Customer Authority of any communication it receives from the Framework Authority in connection with the Services or this Consolidated Contract and (subject to any third party obligations of confidentiality) share with the Customer Authority the content of such communications. The Contractor shall use its best endeavours to ensure that the Customer Authority is invited (on reasonable notice) to participate in any meetings between the Contractor and the Framework Authority or any other relevant Customers in connection with the Services or this Consolidated Contract.
- 1.8** The Contractor shall promptly provide to the Customer Authority copies of any correspondence which is sent by or on behalf of the Contractor or its Sub-contractors to the Framework Authority or any other relevant Customers in connection with the Services or this Consolidated Contract, and in any event within one (1) Working Day of the date upon which such correspondence is sent.
- 1.9** The Contractor shall notify the Customer Authority promptly of any dispute or matter that it believes is likely to become a Multi-Party Dispute and which may involve or impact the Customer Authority, the Services or this Consolidated Contract.
- 1.10** The Contractor shall, notwithstanding that any Dispute (including any Third Party Dispute) is subject to the Dispute Resolution Procedure set out in this Consolidated Schedule, continue to carry out its obligations in accordance with this Consolidated Contract.

## **2 INITIATING THE DISPUTE RESOLUTION PROCEDURE**

- 2.1** Either Party may initiate the Dispute Resolution Procedure by serving a Notice of Dispute on the other Party.
- 2.2** The Notice of Dispute shall:
- 2.2.1** set out the material particulars of the Dispute;
  - 2.2.2** set out the reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen; and
  - 2.2.3** in the case of a Notice of Dispute served by the Contractor:
    - (i) set out the identities of any other parties that the Contractor believes may be involved in, or may be impacted by, the Dispute (including the Framework Authority or any Customer, Customer Authority Third Party,

Other PSN Services Contractor, GCN Service Provider or Wider PSN Contractor), whether or not one or more of those parties may have contributed to the matters giving rise to the Dispute; and

- (ii) in the case of a Notice of Dispute served by the Contractor, contain a high level description of the reason that the Contractor believes each of the other parties referred to in this Paragraph 2.2.3 may be involved in, or may be impacted by, the Dispute.

**2.3** The Parties shall seek to resolve Disputes in the first instance by Internal Resolution (as prescribed in Paragraph 3 below), then in accordance with this Consolidated Schedule.

**2.4** The time periods set out in this Consolidated Schedule shall apply to all Disputes unless the Parties agree that an alternative timetable should apply in respect of a specific Dispute.

**2.5** If at any point it becomes clear that an applicable deadline set out in the Dispute Resolution Timetable cannot be met or has passed, the Parties may agree in writing to extend the deadline. Any agreed extension shall have the effect of delaying the start of one or more subsequent stages set out in the Dispute Resolution Timetable by the period agreed in the extension for the relevant stage(s).

### **3 INTERNAL RESOLUTION**

**3.1** In the first instance, the Customer Authority and the Contractor will attempt to resolve all Disputes through discussion by the following individuals:

<b>Escalation level</b>	<b>Customer Authority / Contractor personnel</b>
<b>1.</b>	The Deputy Head of Commercial of the Customer Authority and the Commercial Director of the Contractor who shall meet to resolve the Dispute, and if they cannot resolve the Dispute unanimously within five (5) Working Days of the Dispute being referred to them, then
<b>2.</b>	The Service Review Board or Implementation Board, as appropriate, shall convene to resolve the Dispute, and if they cannot resolve the Dispute unanimously within five (5) Working Days of the Dispute being referred to them, then
<b>3.</b>	The Service Operations Board shall convene to resolve the Dispute, and if they cannot resolve the Dispute unanimously within five (5) Working Days of the Dispute being referred to them, then
<b>4.</b>	The Supply Chain Operations Board shall convene to resolve the Dispute, and if they cannot resolve the Dispute unanimously within five (5) Working Days of the Dispute being referred to them, then
<b>5.</b>	The Dispute shall promptly be referred by either Party to the Director of ISS of the Customer Authority and the Executive of the Contractor.

**3.2** Except where a Dispute requires rapid resolution, including where the Customer Authority reasonably considers that its operations are or could be adversely affected or where either the Customer Authority or the Contractor could incur significant costs as a result of non-

resolution of the Dispute, escalation of a Dispute shall be referred to each subsequent level by the Party escalating the Dispute.

**3.3** The Customer Authority or the Contractor may initially escalate the Dispute to whichever escalation level set out in Paragraph 3.1 above it reasonably considers most appropriate given the circumstances.

**3.4** Where the Dispute requires rapid resolution, the Customer Authority may in its sole discretion elect to refer the Dispute immediately to mediation under Paragraph 4 below, expert determination under Paragraph 5 below or arbitration under Paragraph 6 below.

## **4 OPTIONAL MEDIATION**

**4.1** The Customer Authority (at its option) may, pursuant to Paragraph 3.4 above, or if within ten (10) Working Days of the Dispute having been referred to the individuals specified for escalation level 5 in Paragraph 3.1 of this Consolidated Schedule no agreement has been reached, refer the relevant Dispute to mediation in accordance with the model procedure of the CEDR. The identity of the mediator shall be:

**4.1.1** agreed between the Parties acting reasonably; or

**4.1.2** if the Parties fail to reach such agreement within ten (10) Working Days, determined by CEDR,

provided that the mediator shall have no power to make any determination or otherwise bind the Parties.

**4.2** If the Customer Authority has:

**4.2.1** opted to refer the relevant Dispute to mediation in accordance with Paragraph 4.1 above, and no agreement between the Parties has been reached within thirty (30) Working Days of signature of the CEDR mediation agreement; or

**4.2.2** confirmed to the Contractor in writing that it does not wish to refer the relevant Dispute to mediation, and no agreement between the Parties has been reached within thirty (30) Working Days of such confirmation,

then the Dispute Resolution Procedure shall be deemed to have been exhausted in respect of the Dispute, and each Party shall be free to pursue the rights granted to it by this Consolidated Contract in respect of such Dispute (including in accordance with Clause 63 (*Governing Law*) of this Consolidated Contract) without further reference to the Dispute Resolution Procedure.

## **5 EXPERT DETERMINATION**

**5.1** If the Dispute has not been resolved using the Internal Resolution process pursuant to Paragraph 3 above or mediation pursuant to Paragraph 4 above (if applicable), then the Customer Authority may request by written notice to the Contractor that the Dispute is referred to one or more Expert(s) for determination (consent to such request not to be unreasonably withheld or delayed).

**5.2** The Expert(s) shall be appointed by agreement in writing between the Parties, but in the event of a failure to agree within ten (10) Working Days, or if the person(s) appointed is/are unable or unwilling to act, the Expert(s) shall be appointed on the instructions of either the president for the time being of the Institute of Engineering and Technology (or any other

association that the Parties reasonably understand to have replaced it) (in relation to a technical Dispute), to the president for the time being of the Institute of Chartered Accountants in England and Wales (in relation to a pricing Dispute) or to the president for the time being of the Law Society in relation to all other Disputes.

**5.3** The Expert(s) shall act on the following basis:

- 5.3.1** he/she/they shall act as an expert and not as an arbitrator and shall act fairly and impartially;
- 5.3.2** the Experts'/Expert's determination shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
- 5.3.3** the Expert(s) shall decide the procedure to be followed in the determination and shall be requested to make his/her/their determination within the time period reasonably requested by the Customer Authority, or as soon as reasonably practicable thereafter, and the Parties shall assist and provide the documentation that the Expert requires for the purpose of the determination;
- 5.3.4** the process shall be conducted in private and shall be confidential; and
- 5.3.5** the Expert(s) shall determine how and by whom the costs of the determination, including his/her/their fees and expenses, are to be paid.

**6 ARBITRATION**

**6.1** If:

- 6.1.1** the Dispute has not been resolved using the Internal Resolution process pursuant to Paragraph 3 above, mediation pursuant to Paragraph 4 above (if applicable), or expert determination pursuant to Paragraph 5 above (if applicable); or
- 6.1.2** the Customer Authority elects to refer the Dispute to arbitration pursuant to Paragraph 3.4 above,

each of the Parties irrevocably agrees that such Dispute shall be resolved by arbitration in accordance with this Paragraph 6.

**6.2** Unless otherwise agreed in writing (such form of writing to refer to this Paragraph 6.2) between the Parties:

- 6.2.1** the arbitration shall be governed by the provisions of the Arbitration Act 1996 and the LCIA procedural rules shall be applied and are deemed to be incorporated into this Consolidated Contract (save that in the event of any conflict between those rules and this Consolidated Contract, this Consolidated Contract shall prevail);
- 6.2.2** the decision of the arbitrator shall be final and binding on the Parties (in the absence of any material failure by the arbitrator to comply with the LCIA procedural rules);
- 6.2.3** the tribunal shall consist of a sole arbitrator to be agreed by the Parties and in the event that the Parties fail to agree the appointment of the arbitrator within ten (10) Working Days or, if the person appointed is unable or unwilling to act, as appointed by the LCIA;
- 6.2.4** the arbitration proceedings shall be conducted in the English language and take place in London;

6.2.5 the arbitrator shall be and remain independent and impartial of each Party; and

6.2.6 the Parties agree to waive any right of appeal against the arbitration award.

## **7 URGENT RELIEF**

Nothing in this Consolidated Schedule shall prevent either Party from seeking injunctive relief at any time or instituting proceedings to ensure that the relevant claim falls within the relevant limitation period.

## **8 SUB-CONTRACTORS**

8.1 The Contractor shall procure that any Sub-contractor involved in the provision of Services which are the subject of a Dispute shall, at the request of either Party, provide any assistance 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.

8.2 The Customer Authority shall not be responsible for any costs incurred by any Sub-contractor participating in the resolution of any Dispute.

## **9 OTHER PSN SERVICES CONTRACTORS**

9.1 Where the Customer Authority believes that an Other PSN Services Contractor is relevant to a Dispute which is being dealt with through the Dispute Resolution Procedure, Paragraph 10 below shall apply and the Customer Authority shall use reasonable endeavours to procure that, subject to entering into appropriate mutual confidentiality agreements with the Customer Authority and the Contractor, the Other PSN Services Contractor shall participate in and submit to each stage of the Dispute Resolution Procedure in an appropriate capacity.

9.2 Where the Customer Authority believes that a GCN Service Provider or Wider PSN Contractor is (or both are) relevant to a Dispute which is being dealt with through the Dispute Resolution Procedure, Paragraph 10 below shall apply and the Contractor shall use reasonable endeavours to procure that, through its contractual relationship with GCN Service Providers or Wider PSN Contractors (or both), and subject to the GCN Service Provider or Wider PSN Contractor (or both, in each case as appropriate) entering into appropriate confidentiality agreements with the Customer Authority and the Contractor, the GCN Service Provider or Wider PSN Contractor (or both, in each case as appropriate) shall participate in and submit to each stage of the Dispute Resolution Procedure in an appropriate capacity.

## **10 DISPUTES INVOLVING THIRD PARTIES**

10.1 The provisions of this Paragraph 10 shall apply to any Dispute that involves or impacts any party other than the Parties (including the Framework Authority or any Customer, Customer Authority Third Party, Other PSN Services Contractor, GCN Service Provider or Wider PSN Contractor) (each an “**Other Disputing Party**”), whether or not one or more of those parties may have contributed to the matters giving rise to the Dispute (each a “**Third Party Dispute**”). Such provisions are in addition to, and not in substitution for, any other parts of the Dispute Resolution Procedure. Each Multi-Party Dispute shall also be a Third Party Dispute.



- 10.2** If after issuing a Notice of Dispute, the Contractor becomes aware that a Dispute is or is likely to become a Third Party Dispute, the Contractor shall notify the Customer Authority of that fact promptly and in any event within one (1) Working Day of becoming aware of that fact, such notice to identify the relevant Other Disputing Parties and to provide a high level description of the reason that the Contractor believes that each Other Disputing Party may be involved in, or may be impacted by, the Dispute.
- 10.3** At the Customer Authority's request from time to time during a Third Party Dispute, the Contractor shall promptly and in any event within five (5) Working Days of the date of such request:
- 10.3.1** provide evidence which the Customer Authority can use to evaluate the Contractor's, Other Disputing Parties' and (if relevant) the Customer Authority's contribution(s) or involvement (or both), including in order to determine a preliminary view on the allocation of fault ("**Evidence**"); and
- 10.3.2** provide a draft dispute resolution proposal (a "**Dispute Resolution Proposal**"), which contains, as a minimum, detailed descriptions of:
- (i) the impact of the Third Party Dispute on the Services under this Consolidated Contract;
  - (ii) details of the extent to which and the manner in which each of the Contractor, each Other Disputing Party and (if relevant) the Customer Authority is contributing to any impact on the Services in connection with the Dispute;
  - (iii) proposals for resolving the Third Party Dispute and remediating any adverse impact on the Services; and
  - (iv) a timetable of activities required by the Parties and any Other Disputing Parties to resolve the Third Party Dispute.
- 10.4** The Contractor shall act reasonably and in good faith in compiling the Evidence and the Dispute Resolution Proposal.
- 10.5** If requested by the Customer Authority from time to time, the Contractor shall use its best endeavours to coordinate with, and facilitate, the Other Disputing Parties to ensure that each of them also provides, within five (5) Working Days of such request, Evidence or a draft Dispute Resolution Proposal (or both, as relevant).
- 10.6** The Contractor shall meet at times reasonably specified by the Customer Authority to discuss any Evidence and Dispute Resolution Proposals provided by the Contractor or any Other Disputing Party, or any evidence or proposals provided by the Customer Authority.
- 10.7** If required by the Customer Authority, the Contractor shall work with the Other Disputing Parties to prepare and deliver a joint final plan for the resolution of the Third Party Dispute for Approval by the Customer Authority. Once Approved by the Customer Authority, such plan shall be known as the "**Dispute Resolution Plan**". The Contractor shall perform the activities in accordance with the timetable specified in the Dispute Resolution Plan and shall use its reasonable endeavours to ensure that where it has a contractual relationship with any Other Disputing Party (other than the Framework Authority or a Customer), that that Other Disputing Party shall perform the activities in accordance with the timetable set out in the Dispute Resolution Plan.

- 10.8** If requested by the Customer Authority from time to time, the Contractor shall ensure that appropriately empowered representatives shall meet within five (5) Working Days of such request (or such shorter period agreed by the Parties in writing, acting reasonably) to discuss responsibility for the Third Party Dispute, with a view to agreeing the charges payable by the Parties or any Other Disputing Parties (or both) with respect to the Third Party Dispute. The Customer Authority shall be entitled to invite the Framework Authority and any Other Disputing Parties to such meetings and the Contractor to participate in such meetings in a constructive manner, with a view to resolving the Third Party Dispute efficiently and effectively.
- 10.9** The Contractor acknowledges that the Customer Authority does not have the right to act on behalf of any Other Disputing Party (including the Framework Authority or any Customer).