

SCHEDULE 30
Dispute Resolution Procedure

1 DEFINITIONS

- 1.1 In this Schedule, capitalised terms shall have the meaning given to them in Schedule 1 (Definitions).

2 DISPUTE NOTICES

- 2.1 Any Dispute shall be resolved in accordance with this Schedule 30 (Dispute Resolution Procedure).
- 2.2 Each Party will use its reasonable endeavours to keep the number of Disputes to a minimum. If a Dispute arises, the Contractor and the Authority shall attempt in good faith to resolve such Dispute, as quickly as reasonably practicable and in accordance with the procedure set out in this Schedule 30 (Dispute Resolution Procedure) and shall use reasonable endeavours to participate fully in the Dispute Resolution Procedure set out in this Schedule 30 (Dispute Resolution Procedure).
- 2.3 Where either Party consider that a Dispute has arisen, that Party's Representative shall serve a Dispute Notice on the other Party's Representative.
- 2.4 The Dispute Notice will contain the following information:
- (a) the subject matter of the Dispute and the issues to be resolved;
 - (b) a statement of the facts, including relevant dates, and references to specific parts of relevant documents;
 - (c) the position the Party issuing the Dispute Notice believes is correct and its reasons for that position;
 - (d) copies of all the documents which the Party issuing the Dispute Notice considers to be important and relevant; and
 - (e) a statement of the determination, remedy or recourse which the Party issuing the Dispute Notice seeks.

3 ESCALATION

- 3.1 Within ten (10) Business Days of the receipt of the Dispute Notice by either Party's Representative, the Monthly Performance Review Board shall meet (either in person or

remotely) in good faith to seek a mutual resolution to the Dispute. Both Representatives will provide all additional written information to the other in advance which relates to the Dispute, as is reasonably requested by the other and which has not been included with the Dispute Notice. This information shall be provided in advance of the meeting (if reasonably practicable).

3.2 If the Monthly Performance Review Board fail to settle the Dispute within twenty (20) Business Days of receipt of the Dispute Notice (or such other reduced period of time as agreed in writing by the Parties) then either Party's Representative may refer the Dispute to the Strategic Board by written notice ("**Strategic Board Dispute Notice**") to all of the Strategic Board members, with such notice to include the Dispute Notice. The Strategic Board members will meet (either in person or remotely) as soon as reasonably practicable to discuss, and attempt to settle in good faith, the Dispute, but in any event they will meet not later than fifteen (15) Business Days following receipt of the Strategic Board Dispute Notice. That Parties agree that for the purpose of attempting to settle a Dispute only, the Strategic Board Chair will not have a casting vote.

3.3 If the Strategic Board fails to settle the Dispute within twenty (20) Business Days of receipt of the Strategic Board Dispute Notice, or such longer time as may be agreed between the Parties, then the provisions of paragraphs 4 to 5 shall apply.

4 **ADJUDICATION**

4.1 Without prejudice to the provisions of paragraph 3 to above, the Dispute may be referred to adjudication if the Parties so agree and the adjudicator shall be selected in accordance with paragraph 4.2 below ("**Adjudicator**").

4.2 A Dispute may be referred to an Adjudicator for resolution in the following manner:

- (a) one Party may serve a notice (an "**Adjudication Notice**") on the other Party stating that it wishes the Dispute to be resolved by an Adjudicator and nominate a neutral person to be an Adjudicator;
- (b) within three (3) Business Days of an Adjudication Notice being served, the Parties shall endeavour to agree on the identity of an Adjudicator;
- (c) if the Parties are unable to agree upon the identity of an Adjudicator within the time specified in paragraph 4.2(b), or such longer period as the Parties agree, either Party may refer the matter to the Centre for Effective Dispute Resolution, which shall be requested to nominate a person to be the Adjudicator who is independent of the Parties.

4.3 Subject to paragraph 4.4 and unless the Parties agree otherwise, no person may be an Adjudicator, or be appointed as an Adjudicator pursuant to this Contract, unless such person:

- (a) has appropriate expertise and qualifications (if any) in a discipline related to the issue(s) in respect of which a Dispute has arisen, or may arise during the course of resolving such Dispute;
 - (b) has not less than 7 years' continuous experience in the relevant discipline;
 - (c) is, at the time of nomination and appointment, currently employed in the relevant discipline;
 - (d) is independent of the Parties; and
 - (e) holds the required level of security clearance in accordance with the nature and sensitivity of the Dispute.
- 4.4 Once an Adjudicator is appointed, its appointment or determination may only be invalid on the grounds that such Adjudicator does not satisfy any of the requirements of paragraph 4.3.
- 4.5 Within seven (7) days of selection in relation to a particular Dispute, the Adjudicator shall require the Parties to submit in writing their respective arguments. The Adjudicator shall, in his absolute discretion, consider whether a hearing is necessary in order to resolve the Dispute.
- 4.6 In any event, the Adjudicator shall provide to both Parties his written decision on the Dispute, within twenty eight (28) days of selection to consider the Dispute (or such other period as the Parties may agree after the reference). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision.
- 4.7 The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, if not specified, equally by the Parties. Each Party shall bear its own costs arising out of the reference, including legal costs and the costs and expenses of any witnesses.
- 4.8 The Adjudicator shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudicator or his determination or the procedure by which he reached his determination.
- 4.9 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law. The Adjudicator shall have the power to open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Contract with the exception of opinions, certificates, instructions, determinations or decisions of the Authority or the Authority's Representative which are described in this Contract as being at the Authority's or Authority's Representative's absolute or sole discretion or opinion or at the discretion of a Senior Civil Servant of the Authority which the Adjudicator shall not be entitled to open up, review or revise.
- 4.10 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment as Adjudicator shall be treated as

confidential. The Adjudicator shall not disclose to any person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the Party disclosing or delivering the same and all copies shall be returned to such Party on completion of the Adjudicator's work.

- 4.11 The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith. Any employee or agent of the Adjudicator is similarly protected from liability.
- 4.12 The Adjudicator's decision shall (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties unless either Party disagrees with the decision and, within twenty (20) Business Days of receiving the Adjudicator's decision in accordance with paragraph 4.6 gives notice to the other Party of its intent to refer the Dispute to arbitration in accordance with paragraph 5.1(b).

5 ARBITRATION

- 5.1 In the event that:

- (a) the Dispute is not resolved pursuant to paragraph 3 (Escalation); or
- (b) the Dispute is not resolved pursuant to paragraph 4 (Adjudication); or (c) either

Party wishes to refer the Dispute directly to arbitration,

then either Party may notify the other Party of its intention to refer the Dispute to arbitration. Such notification shall invite the other Party to concur in the appointment of a sole arbitrator who shall be a solicitor, barrister or arbitrator recognised by the Chartered Institute of Arbitrators of not less than ten years' standing (the "**Arbitrator**"). If the identity of the Arbitrator is not agreed within ten (10) Business Days of such notification, either Party may (within five (5) Business Days) refer the appointment of the Arbitrator to the President of the Chartered Institute of Arbitrators for determination. The arbitration shall take place in London, England and shall be governed by the provisions of the Arbitration Act 1996.

- 5.2 The Arbitrator shall have the power to:

- (a) open up, review and revise any certificate, instruction, determination or decision of whatever nature given or made under this Contract with the exception of opinions, certificates, instructions, determinations or decisions of the Authority or the Authority's Representative or of a Senior Civil Servant of the Authority which are described in this Contract as being at the Authority's or Authority's Representative's absolute or sole discretion or opinion or at the discretion of a Senior Civil Servant of the Authority, which the Arbitrator shall not be entitled to open up, review or revise; and

- (b) to vary or cancel the decision of the Adjudicator; and
 - (c) where appropriate, to order financial compensation to be paid by one Party to the other; and
 - (d) to make provisional awards as provided for in section 39 of the Arbitration Act 1996.
- 5.3 The Arbitrator shall in his absolute discretion, make such procedural directions as he considers necessary such as ordering the Parties to provide written submissions within such time period as he considers appropriate and/or to attend such hearings as he deems necessary.
- 5.4 The Arbitrator shall deliver his decision on any matter referred to him within twenty-eight (28) days of concluding any hearings which may have been held in connection with the matter and in any event within three (3) months (or such other period as the Parties may agree) of his appointment. The Arbitrator's decision shall be in writing and shall state his reasons for his decision. The decision of the Arbitrator shall be final and binding on both Parties. The costs of the arbitration will be at the discretion of the Arbitrator.

6 MULTI-PARTY DISPUTES

- 6.1 All Multi-Party Disputes shall be resolved in accordance with the procedure set out in this paragraph 6 (the "**Multi-Party Dispute Resolution Procedure**").
- 6.2 If at any time following the issue of a Dispute Notice, 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 Contractor which sets out the Authority's determination that the Dispute is a MultiParty 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**".
- 6.3 If following the issue of a Dispute Notice but before the Dispute has been referred to adjudication or to arbitration in accordance with paragraphs 4 or 5, the Contractor 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 Contractor may serve a Contractor Request on the Authority.
- 6.4 The Authority shall (acting reasonably) consider each Contractor Request and shall determine within five (5) Business Days whether the Dispute is:
- (a) a Multi-Party Dispute, in which case the Authority shall serve a Multi-Party Procedure Initiation Notice on the Contractor; or

- (b) not a Multi-Party Dispute, in which case the Authority shall serve written notice of such determination upon the Contractor and the Dispute shall be treated in accordance with paragraphs 4 to 5.

6.5 If the Authority has determined, following a Contractor Request, that a Dispute is not a MultiParty Dispute, the Contractor may not serve another Contractor Request with reference to the same Dispute.

6.6 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:

- (a) the Authority;
- (b) the Contractor;
- (c) each Related Third Party involved in the Multi-Party Dispute; and
- (d) any other representatives of any of the Parties and/or any Related Third Parties whom the Authority considers necessary,

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

6.7 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:

- (a) the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall use their best endeavours 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;
- (b) the Multi-Party Dispute Resolution Board shall first meet within ten (10) Business 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 five (5) Business 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

9.00 am and 5.00 pm on a Business Day; and

- (c) 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.

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

- (a) either Party may request that the Multi-Party Dispute is referred to an adjudicator in which case paragraph 4 shall apply; and/or
- (b) subject to paragraph 6.9, paragraph 5 shall apply to the Multi-Party Dispute,

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

6.9 If a Multi-Party Dispute is referred to arbitration in accordance with paragraph 5 or a Dispute becomes a Multi-Party Dispute during the course of arbitration proceedings and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Authority or the Contractor may discontinue such arbitration proceedings and instead initiate court proceedings. The costs of any such discontinued arbitration proceedings shall be borne by the Party which is in a direct contractual relationship with the Related Third Party or, where the Related Third Party is a Sub-Contractor, by the Contractor.

7 CONTINUING COMPLIANCE WITH OBLIGATIONS

7.1 The Parties shall continue to comply with, observe and perform all their obligations hereunder regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule 30 (Dispute Resolution Procedure) and shall give effect forthwith

to every decision of the Arbitrator delivered under this Schedule 30 (Dispute Resolution Procedure) and to those decisions of the Adjudicator that are accepted by the Parties.