Ministry of Defence

# Contract Number: DGM/1880

# Schedule 18: Dispute Resolution Procedure

# For:

# Next Generation Munitions Solution (NGMS) Programme

November 2020

## 1 INTRODUCTION

1.1 The Parties irrevocably agree to use the processes set out in this Schedule 18 to resolve any disputes or differences arising under or in connection with this Contract, provided that nothing in this Contract shall:

(a) prevent either Party applying to the courts for interim relief, subject to the Crown Proceedings Act 1947 in the case of any application by the Contractor; or

(b) prejudice the rights or obligations of either Party under the Defence Reform Act 2014 or the SSCR to make any application or reference to the SSRO for an opinion or determination.

1.2 Subject to Paragraph **{** REF _Ref20844339 \r \h **}**, the Parties agree that they shall each, in good faith, use all reasonable endeavours to reconcile and settle by mutual agreement, and with the minimum disruption to both Parties, any and all differences or disputes between them arising out of or in connection with the Contract.

1.3 The provisions of Paragraph **{** REF _Ref20844249 \r \h * MERGEFORMAT **}** (Dispute Resolution Procedure) and Paragraph 3 (Fast-Track Dispute Resolution Procedure) shall be subject to Paragraph 4 (Single Source Regulations Office).

1.4 The Parties shall continue to comply with, observe and perform all of their obligations under this Contract notwithstanding the referral of any dispute for resolution in accordance with this Schedule 18.

## 2 DISPUTE RESOLUTION PROCEDURE

### Notification of a dispute

2.1 If either Party (the "**Notifying Party**") believes that a dispute exists, where the Dispute Resolution Procedure is the appropriate route to resolution pursuant to Clause 43.2 (Dispute Resolution Procedure), it shall send written notice to the other Party (the "**Dispute Notice**") as soon as reasonably practicable, and in any event no later than 20 (twenty) Business Days (or such longer time period as may be agreed between the Parties) from the date on which the Notifying Party became, or ought reasonably to have become, aware that a dispute exists, setting out full available particulars (which shall be updated by the Notifying Party as more information becomes available) of the nature and circumstances of the dispute, including:

(a) the facts alleged to give rise to the dispute;

(b) the nature of any alleged failure or default;

(c) an impact statement of the anticipated effect on both Parties; and

(d) a statement of the manner in which the Notifying Party believes the dispute should be resolved.

2.2 The Dispute Notice shall be provided by the Notifying Party to the respective commercial representative(s) within the JRCC and copied to the JRCC Leads for notification purposes only.

**Management of a dispute**

2.3 Within 5 (five) Business Days of receipt of a Dispute Notice, each Party shall appoint one of its commercial representatives from the JRCC as a "**Dispute Owner**" and shall give written notice to the other Party of the name of its appointed Dispute Owner.

2.4 It is the responsibility of the Dispute Owners to facilitate and progress disputes including:

(a) recording the dispute and issuing the Dispute Resolution Document containing the information listed at the Annex to this Schedule 18;

(b) co-ordinating with the relevant stakeholders to resolve or escalate the dispute;

(c) updating the Dispute Resolution Document;

(d) facilitating the escalation and recording the outcomes of the dispute resolution at each of the escalation levels;

(e) informing the relevant teams and providing progress updates to the JRCC leads as appropriate; and

(f) recording the final resolution or agreement.

2.5 The escalation of a dispute under the Dispute Resolution Procedure is illustrated within Figure 1 below.

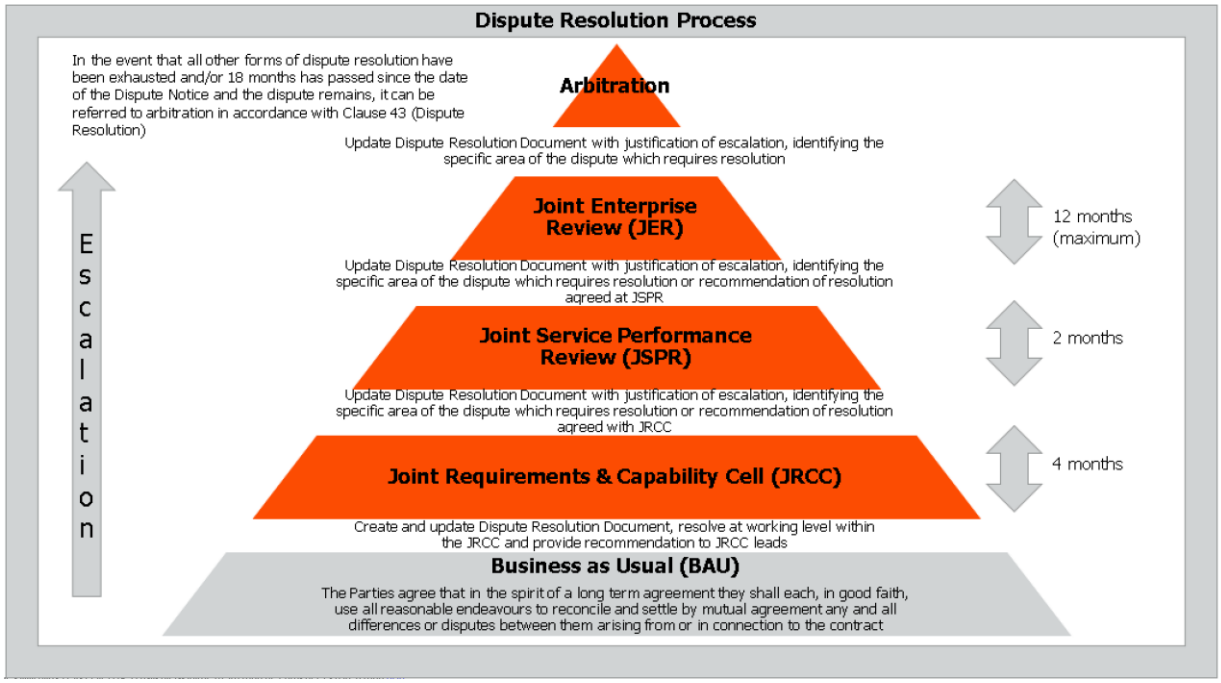


*Figure 1: Dispute Resolution Escalation*

**Resolving the dispute by the JRCC**

2.6 Upon receipt of a Dispute Notice, the Parties shall seek to resolve the dispute within the JRCC and agree a resolution in principle. The Parties shall meet as often and as promptly as reasonably deemed necessary to discuss and negotiate in good faith in an effort to resolve any dispute.

2.7 Upon agreement of a resolution in principle the Dispute Resolution Document shall be drafted, updated with the recommendation from the JRCC and escalated to the relevant Parties' delegation of authority for approval.

2.8 Where:

(a) the recommendation of the JRCC does not have any financial implication or require a Contract Change, the dispute shall be fully and finally resolved within the JRCC and the provisions of Paragraph **{** REF _Ref20902901 \r \h * MERGEFORMAT **}** shall apply; or

(b) in all other circumstances, final resolution shall exceed the delegation of authority of the JRCC and the dispute shall be escalated in accordance with Paragraphs **{** REF _Ref20901895 \r \h **}** to **{** REF _Ref20903028 \r \h **}**,

and in each case the Dispute Owners shall update the Dispute Resolution Document to record the resolution reached and/or recommendation made by the JRCC.

**Escalation**

2.9 Where the Parties are unable to resolve a dispute (in whole or in part) within the JRCC within 4 (four) calendar months of the date of the Dispute Notice, the dispute (or any unresolved part of it) shall be escalated:

(a) to the JSPR; and

(b) if the JSPR is unable to resolve the dispute (in whole or in part) within 2 (two) calendar months of the dispute being escalated to it, the dispute (or any unresolved part of it) shall be escalated to the JER.

The JSPR and/or JER shall, if required, meet on an ex-committee basis in addition to the regular Governance Reviews provided for in Schedule 17 (Governance and Contract Management) in order to satisfy the time periods set out in this Paragraph **{** REF _Ref20901895 \r \h **}**.

2.10 Prior to any escalation in accordance with Paragraph **{** REF _Ref20901895 \r \h **}**, the Dispute Resolution Document shall be updated to:

(a) document any part of the dispute which has been resolved;

(b) reflect any other agreements made in principle;

(c) clearly identify the specific elements of the dispute that are being escalated; and

(d) provide reasonable justification for the escalation.

2.11 In the event that the Parties have not followed the requirements set out in Paragraphs **{** REF _Ref20903393 \r \h **}** to **{** REF _Ref20901944 \r \h **}** above prior to referring a dispute to the JSPR or JER, the respective co-chairs shall refer such dispute back to the appropriate stage in the Dispute Resolution Procedure for good faith discussions and negotiation.

2.12 Where either:

(a) a dispute has been escalated to the JER; and/or

(b) 18 (eighteen) calendar months have elapsed since the date of the Dispute Notice,

and the Parties have been unable to resolve the dispute, either Party may refer the dispute to arbitration in accordance with Clause 43 (Dispute Resolution).

**Resolution or agreement**

2.13 Where a dispute has been resolved in accordance with the process set out in this Paragraph **{** REF _Ref20844249 \r \h * MERGEFORMAT **}**:

(a) the resolution shall be binding on the Parties and no further action shall be taken by either Party in relation to that dispute;

(b) if the resolution requires either a contract amendment or baseline change request the Change Procedure shall be followed; and

(c) the Dispute Resolution Document shall be updated to reflect the resolution.

## 3 FAST-TRACK DISPUTE RESOLUTION PROCEDURE

### Notification of a dispute

3.1 If either Party (the "**Notifying Party**") believes that a dispute exists, where the Fast-Track Dispute Resolution Procedure is the appropriate route to resolution pursuant to Clause 43.2 (Dispute Resolution Procedure), it shall send written notice to the other Party (the "**Fast-Track Dispute Notice**") as soon as reasonably practicable, and in any event no later than 10 (ten) Business Days (or such longer time period as may be agreed between the Parties) from the date on which the Notifying Party became, or ought reasonably to have become, aware that a dispute exists, setting out full available particulars (which shall be updated by the Notifying Party as more information becomes available) of the nature and circumstances of the dispute, including:

(a) the facts alleged to give rise to the dispute;

(b) the nature of any alleged failure or default;

(c) an impact statement of the anticipated effect on both Parties; and

(d) a statement of the manner in which the Notifying Party believes the dispute should be resolved.

3.2 The Fast-Track Dispute Notice shall be provided by the Notifying Party to the respective commercial representative(s) within the JRCC and copied to the JRCC Leads for notification purposes only.

### Management of a dispute

3.3 Within 5 (five) Business Days of receipt of a Fast-Track Dispute Notice, each Party shall appoint one of its commercial representatives from the JRCC as a "**Dispute Owner**" and shall give written notice to the other Party of the name of its appointed Dispute Owner.

3.4 It is the responsibility of the Dispute Owners to facilitate and progress disputes including:

(a) recording the dispute and issuing the Fast-Track Dispute Resolution Document containing the information listed at the Annex to this Schedule 18;

(b) co-ordinating with the relevant stakeholders to resolve or escalate the dispute;

(c) updating the Fast-Track Dispute Resolution Document;

(d) facilitating the escalation and recording the outcomes of the dispute resolution at each of the escalation levels;

(e) informing the relevant teams and providing progress updates to the JRCC leads as appropriate; and

(f) recording the final resolution or agreement.

3.5 The escalation of a dispute under the Fast-Track Dispute Resolution Procedure is illustrated within Figure 2 below.

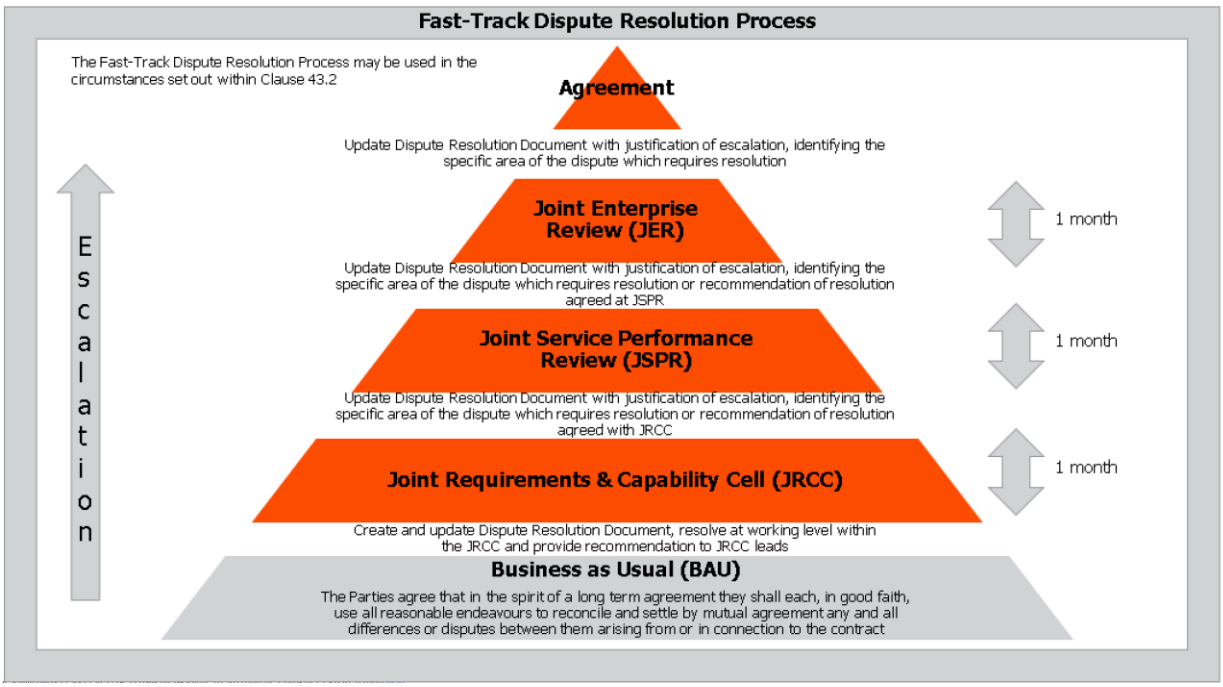


*Figure 2: Fast-Track Dispute Resolution Escalation*

**Resolving the dispute by the JRCC**

3.6 Upon receipt of a Fast-Track Dispute Notice, the Parties shall seek to resolve the dispute within the JRCC and agree a resolution in principle. The Parties shall meet as often and as promptly as reasonably deemed necessary to discuss and negotiate in good faith in an effort to resolve any dispute.

3.7 Upon agreement in principle the Fast-Track Dispute Resolution Document shall be drafted, updated with the recommendation from the JRCC and escalated to the relevant Parties' delegation of authority for approval.

3.8 Where:

(a) the recommendation of the JRCC does not have any financial implication or require a Contract Change, the dispute shall be fully and finally resolved within the JRCC and the provisions of Paragraph **{** REF _Ref49341051 \r \h **}** shall apply; or

(b) in all other circumstances, final resolution shall exceed the delegation of authority of the JRCC and the dispute shall be escalated in accordance with Paragraphs **{** REF _Ref49341069 \r \h **}** to **{** REF _Ref49341074 \r \h **}**,

and in each case the Dispute Owners shall update the Fast-Track Dispute Resolution Document to record the resolution reached and/or recommendation made by the JRCC.

**Escalation**

3.9 Where the Parties are unable to resolve a dispute (in whole or in part) via the Fast-Track Dispute Resolution Procedure within the JRCC within 1 (one) calendar month of the date of the Dispute Notice, the dispute (or any unresolved part of it) shall be escalated:

(a) to the JSPR; or

(b) if the JSPR is unable to resolve the dispute (in whole or in part) within 1 (one) calendar month of the dispute being escalated to it, the dispute (or any unresolved part of it) shall be escalated to the JER; and

(c) the JER shall resolve any dispute escalated to it via the Fast-Track Dispute Resolution Procedure within 1 (one) calendar month or within such time as agreed between the parties.

The JSPR and/or JER shall, if required, meet on an ex-committee basis in addition to the regular Governance Reviews provided for in Schedule 17 (Governance and Contract Management) in order to satisfy the time periods set out in this Paragraph **{** REF _Ref49341069 \r \h * MERGEFORMAT **}**.

3.10 Prior to any escalation in accordance with Paragraph **{** REF _Ref49341069 \r \h **}**, the Fast-Track Dispute Resolution Document shall be updated to:

(a) document any part of the dispute which has been resolved;

(b) reflect any other agreements made in principle;

(c) clearly identify the specific elements of the dispute that are being escalated; and

(d) provide reasonable justification for the escalation.

3.11 In the event that the Parties have not followed the requirements set out in Paragraphs 3.6 to **{** REF _Ref56522214 \r \h **}** above prior to referring a dispute to the JSPR or JER, the respective co-chairs shall refer such dispute back to the appropriate stage in the Fast-Track Dispute Resolution Procedure for good faith discussions and negotiation.

**Resolution or agreement**

3.12 Where a dispute has been resolved in accordance with the process set out in this Paragraph 3:

(a) the resolution shall be binding on the Parties and no further action shall be taken by either Party in relation to that dispute;

(b) if the resolution requires either a contract amendment or baseline change request the Change Procedure shall be followed; and

(c) the Fast-Track Dispute Resolution Document shall be updated to reflect the resolution.

3.13 Where a dispute has not been resolved within 3 (three) calendar months of the date of the Dispute Notice, either Party may refer the dispute to arbitration in accordance with Clause 43 (Dispute Resolution) provided that:

(a) the subject matter of the dispute is capable of being determined by arbitration; and

(b) the Party seeking to refer the dispute has complied with its obligations under this Paragraph **{** REF _Ref56522152 \r \h * MERGEFORMAT **}** and has acted reasonably, in good faith and in a timely manner in seeking to reach a resolution through the escalation steps detailed in Paragraph **{** REF _Ref49341069 \r \h * MERGEFORMAT **}** above.

## 4 SINGLE SOURCE REGULATIONS OFFICE

4.1 Either Party may refer a matter to the SSRO under the SSCR and the Defence Reform Act 2014 for:

(a) a non-binding opinion on:

(i) if the Contract Price were to be re-determined in accordance with Clause 25.2:

(A) the appropriate amount of adjustment that should be made under Step 2 (Cost Risk Adjustment), Step 3 (POCO Adjustment) or Step 5 (Capital Servicing Adjustment) of the calculation of the Contract Profit Rate (pursuant to Regulation 51(2)(a)(i) and Section 35(1)(a));

(B) the appropriate amount of a group cost risk adjustment (Regulation 13(2)), group POCO adjustment (Regulation 13(4)) or group capital servicing adjustment (Regulation 13(5)) (pursuant to Regulation (51(2)(a)(ii) and Section 35(1)(a));

(C) any question relevant to the cost recovery rates that should be used to estimate likely allowable costs (pursuant to Regulation 51(2)(a)(iii) and Section 35(1)(a)); or

(D) the extent to which a particular cost would be an Allowable Cost (pursuant to Regulation 51(2)(a)(iv) and Section 35(1)(a)); or

(ii) whether the Authority has acted reasonably in exercising a power to require the Contractor to provide information in an On-Demand Contract Report (pursuant to Regulation 51(2)(b) and Section 35(1)(a)); or

(b) a binding determination on:

(i) the extent to which a particular cost is an Allowable Cost under this Contract (pursuant to Section 20(5));

(ii) whether the amount of an adjustment agreed under Step 2 (Cost Risk Adjustment), Step 3 (POCO Adjustment) or Step 5 (Capital Servicing Adjustment) of the calculation of a Contract Profit Rate is appropriate (pursuant to Regulation 18(2) and Section 18(3));

(iii) the amount of the adjustment made to calculate a Service Year Price Payable (pursuant to Section 16(2)(b));

(iv) the amount of any final price adjustment where the price payable under a defined component of the Contract has been determined by the firm pricing method or the fixed pricing method (pursuant to Regulation 16(7) and Section 21(3)(b)); or

(v) the defined pricing structure and output metrics that the Contractor must use in the reports provided for under Part 5 (Reports on Qualifying Defence Contracts) of the SSCR for the Contract (pursuant to Regulation 52(1) and Section 35(1)(b)).

4.2 The Contractor may apply to the SSRO under the SSCR and the Defence Reform Act 2014 for:

(a) a binding determination on certain matters relating to a penalty notice given by the Authority under Section 32 of the Defence Reform Act (pursuant to Section 32(8)); or

(b) a review of the way in which the Authority has acted in exercising its functions relating to the examination of relevant records under Section 23(5) (pursuant to Section 23(6)).

4.3 The Authority may refer a matter to the SSRO under the SSCR and the Defence Reform Act 2014 for investigation if the Authority reasonably suspects that an obligation of confidentiality that prevents the Contractor from complying with the reporting requirements under the SSCR has been entered into otherwise than for genuine commercial reasons (pursuant to Section 27(3) and Regulations 47(3) and 47(4)).

4.4 The Parties may jointly refer any matter relating to this Contract to the SSRO under the SSCR and the Defence Reform Act 2014 for a non-binding opinion (pursuant to Section 35(3)), but the Parties acknowledge that it is at the SSRO's discretion as to whether to give such an opinion.

4.5 The Parties acknowledge that the SSRO may determine an appeal made by a prospective Sub-Contractor against an assessment by the Contractor that a proposed Sub-Contract would be a Qualifying Sub-Contract (pursuant to Regulation 62(7) and Section 29(5)(a)), or overrule a notice given by a Sub-Contractor that Part 2 of the Defence Reform Act 2014 and the SSCR should cease to apply to a Qualifying Sub-Contract (pursuant to Regulation 63(5) and Section 30(4)).

4.6 Subject to Paragraph **{** REF _Ref460856113 \r \h * MERGEFORMAT **}** below, following any application or reference by either Party to the SSRO for a determination or opinion under the Defence Reform Act 2014 or the SSCR, neither Party shall take any steps under the process set out at either Paragraph **{** REF _Ref20844249 \r \h **}** (Dispute Resolution Procedure) or Paragraph 3 (Fast-Track Dispute Resolution Procedure) to escalate, or further escalate, any dispute relating to the subject matter of that application or reference unless and until the SSRO has made its determination or issued its opinion.

4.7 Where either Party refers a matter to the SSRO for a binding determination in accordance with Paragraph 4.1(b) or Paragraph 4.2(a), any such determination made by the SSRO under the Defence Reform Act 2014 or SSCR shall be binding on the Parties. Following any such determination, the Parties shall give effect forthwith to such determination.

4.8 Nothing in Paragraphs **{** REF _Ref53518898 \r \h **}** or **{** REF _Ref460856113 \r \h **}** shall prevent either Party from applying for judicial review of any decision or determination of the SSRO.

## 5 GENERAL

5.1 All discussions and negotiations connected with the resolution of any dispute as provided for in this Schedule 18 shall be conducted in confidence and, with the exception of any binding resolutions reached in accordance with Paragraph 2.13 or 3.12, without prejudice to the rights of either Party in any further proceedings.

## Annex

### Content of Dispute Resolution Document / Fast-Track Dispute Resolution Document

Part 1:

Issue title
Date raised
Raised by
Detail of issue
Suggested resolution (if any)
Point of contact for organisation raised

Part 2:

Point of contact for organisation responding
Response to detail of issue
Response to suggested solution / alternatives

Part 3:

Record of level dispute raised to (governance body level), date and outcome/actions/timeline for resolution

Part 4:
Final resolution or agreement