

SCHEDULE P
DISPUTE RESOLUTION PROCEDURE

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SCHEDULE P**DISPUTE RESOLUTION PROCEDURE****1. INTRODUCTION**

- 1.1 Throughout the Term, the Parties will use Commercially Reasonable Efforts, as quickly as the circumstances allow, to attempt to resolve any dispute or claim between the Parties at the level at which such dispute or claim originates. If the relevant dispute or claim continues to remain unresolved, the Parties will comply with the procedures set out in this Schedule.
- 1.2 Subject to any separate procedures set out in the other Schedules of the Contract, any dispute or claim under the Contract shall be resolved in accordance with the escalation procedures set out in Clauses 2, 3 and 4 below ("**Escalation Procedures**"), excluding any matters relating to Intellectual Property Rights and confidentiality, unless otherwise agreed by the Parties.
- 1.3 At any time up to the resolution of any dispute or claim under the Escalation Procedures or under any other procedure for settling disputes as identified in the other Schedules of the Contract, nothing in this Schedule shall prevent either Party from referring such dispute or claim to the courts of England save for when arbitration has been commenced in accordance with Clauses 3.7 or 3.8 and Clause 4 below in which case the Arbitrator shall be seized with the matter (thereafter any application for interim or interlocutory relief is to be governed by the London Court of International Arbitration ("**LCIA**")).
- 1.4 If either Party wishes to refer a dispute or claim to the courts of England in accordance with Clause 1.3 above, that Party shall promptly notify the other Party in writing of its intention of doing so. From the date of such notice, the Parties are no longer required to follow the procedures set out in this Schedule.
- 1.5 The Authority and the Contractor shall continue to perform their respective obligations under the Contract pending the resolution of a dispute or a claim, provided that, at any time, nothing in this Schedule prevents or restricts either Party from lawfully exercising any of its rights pursuant to the Termination provisions of Clause 43 of Schedule B ("**Conditions of Contract**").

2. INTERNAL ESCALATION PROCEDURE

- 2.1 The escalation procedure set out in this Clause 2 ("**Internal Escalation Procedure**") is not intended to be operated so inflexibly by the Parties that it prevents an issue being resolved at the most appropriate level as quickly as possible and is for guidance only.
- 2.2 The levels of the Internal Escalation Procedure are set out below in this Clause 2.2.
- 2.2.1 In the first instance, any dispute or claim shall be referred to the Authorised Commercial Representatives of the Parties.
- 2.2.2 If any such dispute or claim is not settled within thirty (30) days of referral to the Authorised Commercial Representatives, it may be referred by either Party (in the case of the Authority) to the Authority's commercial director, or (in the case of the Contractor) to the Contractor's Director of Contracts and Pricing for its Commercial State and Local Solutions Business Unit by written notice to the other Party.
- 2.2.3 If the dispute or claim is not then resolved within 30 (thirty) days of the referral under Clause 2.2.2 above, either Party may refer the dispute or claim (in the case of the

Authority) to the Authority's chief executive, or (in the case of the Contractor) to the Contractor's Civil State and Local Solutions Business Unit President by written notice to the other Party.

- 2.3 Where a resolution and/or an implementation plan are agreed by the Parties, the resolution plan and/or implementation plan will be reported in writing.
- 2.4 Where the dispute or claim cannot be resolved within fourteen (14) days after the referral under Clause 2.3 above, either Party may refer the dispute or claim to a mediator in accordance with Clause 3 below.
- 2.5 Notwithstanding the provisions of Clause 2.4 above, the Parties may agree at any time to progress to mediation in accordance with Clause 3 below without completing the procedure described in this Clause 2.

3. MEDIATION

- 3.1 In the event a dispute or a claim cannot be settled in accordance with Clause 2 above, a mediator will be appointed by agreement of the Parties. In the event of a failure to agree a mediator within three days of a proposal by one Party, a mediator will be appointed by the Centre for Dispute Resolution ("CEDR").
- 3.2 Within fourteen (14) days of the appointment of the mediator, the Parties will meet with the mediator in order to agree the procedure to be adopted for the negotiations.
- 3.3 Unless concluded within a legally binding agreement, all negotiations connected with the dispute or claim will be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 3.4 If the Parties reach agreement on the resolution of the dispute or claim the agreement will be put into writing and once signed by the Parties will be binding on them.
- 3.5 If the Parties fail to reach agreement within 60 (sixty) days of the mediator being appointed, then either Party may exercise any remedy that it has under the Contract including, in the case of the Authority, the Authority's right to terminate in accordance with the termination provision of Clause 43 of Schedule B (**Conditions of Contract**).
- 3.6 Unless otherwise agreed by the Parties, each Party will bear its own costs and expenses associated with participating in the Internal Escalation Procedure and the mediation process and any third party costs, including fees payable to the mediator and in relation to the hiring of a venue, will be split equally between the Parties.
- 3.7 In the event that the dispute or claim is not resolved under the procedures set out in this Clause 3, then subject to the agreement of both Parties, either Party may initiate arbitration in accordance with Clause 4 below.
- 3.8 Notwithstanding the provisions of Clause 3.7 above, the Parties may agree at any time to initiate arbitration in accordance with Clause 4 below without completing the procedure described in Clause 3 above.

4. ARBITRATION

If the Parties agree to refer a dispute or claim to arbitration in accordance with Clauses 3.7 or 3.8 above, the provisions set out below shall apply.

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- 4.1 Either Party may commence an arbitration by sending a written request for arbitration to the registrar of the LCIA.
- 4.2 The seat of the arbitration shall be London, England and the arbitration shall be conducted in English. Save to the extent varied in this Clause 4 or by the Parties, the rules for any arbitration shall be the London Court of International Arbitration Rules.
- 4.3 The sole arbitrator, who shall be a solicitor, barrister or arbitrator qualified in England and recognised by the Chartered Institute of Arbitrators of not less than fifteen (15) years standing, and under the age of 70 nominated to consider the relevant dispute or claim referred to him shall be selected by agreement between the Parties (the “**Arbitrator**”). If the Parties are unable to agree within twenty-one (21) days of the initial reference to arbitration, the identity of the Arbitrator either Party may request the President of the Law Society to make the appointment.
- 4.4 Save for any matters relating to Intellectual Property Rights and confidentiality that are excluded in accordance with Clause 1.2 above, the Arbitrator shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.
- 4.5 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.
- 4.6 The Arbitrator shall have the interim and conservatory powers set out in Article 25.1 of the London Court of International Arbitration Rules. For the purposes of Article 25.3 of the London Court of International Arbitration Rules, the reference to “*exceptional cases*” in which either Party may apply to any court for interim or conservatory measures after the formation of the “Arbitral Tribunal” (as defined by the London Court of International Arbitration Rules) shall be construed as meaning “*to exercise any interim or conservatory rights not expressly granted to the Arbitral Tribunal pursuant to Article 25.1*”.
- 4.7 The Arbitrator shall deliver his decision on any matter referred to him within 21 (twenty-one) days after 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) after his appointment. The Arbitrator's decision shall be in writing and shall include the reasons for his decision, and it shall be final and binding on both Parties. The costs of the arbitration, including the Parties' costs, shall be in the discretion of the Arbitrator.
- 4.8 The Parties shall continue to comply with, observe and perform all their obligations under the Contract regardless of the nature of the dispute or claim and notwithstanding the referral of the dispute or claim for resolution under this Clause 4 and shall give effect immediately to every decision of the Arbitrator delivered under this Clause 4.