



Department  
of Energy &  
Climate Change

# Smart Meters Programme Schedule 8.3

(Dispute Resolution Procedure) (DSP version)

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Amendment History		
Version	Date	Status
v.1	Signature Date	Execution copy

**SCHEDULE 8.3  
DISPUTE RESOLUTION PROCEDURE**

**OVERVIEW**

This Schedule 8.3 comprises the following parts:

<b>Part</b>	<b>Scope</b>
Part A	General provisions
Part B	Escalation Process
Part C	Mediation
Part D	Expert determination
Part E	Arbitration
Part F	Fast Track Dispute Resolution Procedure
Part G	Multi-Party Disputes
Part H	SEC Disputes

## **PART A – GENERAL PROVISIONS**

### **1. SCOPE OF THIS SCHEDULE**

- 1.1 All Disputes shall be resolved in accordance with this Dispute Resolution Procedure except where they have been excluded from this procedure by an express term of this Agreement.
- 1.2 Subject to Parts F and G of this Schedule 8.3, the parties shall seek to resolve all Disputes as follows:
- (a) firstly, by good faith negotiations in accordance with the Escalation Process set out in Part B of this Schedule 8.3;
  - (b) then, by mediation in accordance with Part C of this Schedule 8.3;
  - (c) then, in respect of specified types of Disputes, and if agreed by the parties, by expert determination in accordance with Part D of this Schedule 8.3; and
  - (d) otherwise, by arbitration in accordance with Part E of this Schedule 8.3 (unless otherwise determined in accordance with paragraph 16 of Part E of this Schedule 8.3).
- 1.3 Nothing in this Schedule 8.3 shall prevent either party from:
- (a) applying to court for interim and/or final relief to prevent the violation by the other party of any proprietary interest, or any breach of the other party's obligations, which could cause irreparable harm to the first party or where the first party is ultimately unlikely to be compensated in damages in relation to such violation or breach; or
  - (b) bringing proceedings intended to result in the enforcement of a settlement agreement or a binding determination of a Dispute between the parties in accordance with this Dispute Resolution Procedure or otherwise.

### **2. CONTINUED PERFORMANCE BY THE PARTIES**

Unless otherwise agreed by the parties in writing, each party shall continue to comply with their respective obligations under this Agreement despite:

- (a) the existence of a Dispute (and regardless of the nature of the Dispute); and/or
- (b) the referral of a Dispute to this Dispute Resolution Procedure.

### **3. DISPUTE NOTICES**

If either party considers that a Dispute has arisen, it may notify the other party in writing in accordance with Clause 75 (the "**Dispute Notice**"). The Dispute Notice shall set out (in reasonable detail):

- (a) the particulars of the Dispute;
- (b) the reasons why the notifying party believes that the Dispute has arisen; and
- (c) the notifying party's proposed course of action to resolve the Dispute.

4. **SUB-CONTRACTORS**

- 4.1 The Contractor shall procure that any Sub-contractor involved in the provision of any Services which are the subject of a Dispute shall provide any information or assistance reasonably required by either party in order to resolve such Dispute (including the provision of any reasonable information, data or documentation and the reasonable attendance at any meetings or hearings).
- 4.2 Unless otherwise agreed by the parties in writing, responsibility for any costs incurred by any Sub-contractors participating in the resolution of any Dispute shall be determined by the relevant forum of dispute resolution.
- 4.3 For the avoidance of doubt, a Sub-contractor shall not have the authority to agree the outcome of any resolution of a Dispute or the procedures that shall apply in respect of the resolution of any Dispute.

## **PART B – ESCALATION PROCESS**

### **5. GENERAL**

- 5.1 The parties shall use all reasonable endeavours to resolve any Dispute between them in good faith in accordance with the escalation process set out in this Part B (the "**Escalation Process**").
- 5.2 Each party shall ensure that its relevant representatives attend any meetings convened under this Part B.
- 5.3 All meetings under this Part B shall be held at the times and locations (including, where appropriate, by telephone or video conference) agreed by the parties (or, if the parties have failed to agree such matters by the date which is two (2) Working Days before any meeting under this Part B, at the times and locations specified by the DCC).
- 5.4 Subject to paragraph 5.5, each party shall provide any information, data or documentation reasonably requested by the other party in relation to the attempted resolution of a Dispute under this Part B (excluding any documents which are protected by legal professional privilege).
- 5.5 Any communications between the parties during the Escalation Process shall be:
- (a) provided on a "without prejudice" basis and will not be admissible as evidence in any legal process unless the party providing such communications has otherwise agreed in writing; and
  - (b) treated as Confidential Information of the disclosing party for the purposes of this Agreement.
- 5.6 If the Dispute is resolved at any stage of the Escalation Process, each party shall ensure that the agreed resolution is:
- (a) documented in a settlement agreement (or other appropriate document) which is signed by the authorised representatives of each party; and
  - (b) implemented (including in accordance with the Change Control Procedure where applicable) as soon as reasonably practicable.

### **6. INITIAL REFERRAL TO OPERATIONAL MANAGEMENT TEAM**

- 6.1 Following the issue of any Dispute Notice, the DCC shall convene a meeting of the Operational Management Team to attempt to resolve the Dispute. The first such meeting shall be held by no later than ten (10) Working Days after the date of the Dispute Notice.
- 6.2 Each party shall ensure that its members of the Operational Management Team use all reasonable endeavours to resolve the Dispute within twenty (20) Working Days after the date of the Dispute Notice.

### **7. ESCALATION TO OPERATIONAL MANAGEMENT BOARD**

- 7.1 If the Dispute is not resolved by the Operational Management Team by the end of the period referred to in paragraph 6.2, it shall be referred to the

appropriate Operational Management Board (as determined by the DCC, acting reasonably and taking appropriate account of any representations from the Contractor in this regard).

7.2 By no later than five (5) Working Days after the end of the period referred to in paragraph 6.2, the DCC shall issue a notice to the Contractor (the "**First Escalation Notice**") which shall:

- (a) confirm that the Dispute has been referred to the Operational Management Board level;
- (b) identify the Operational Management Board to which the Dispute has been referred; and
- (c) confirm the date on which the first meeting of the parties' members of the applicable Operational Management Board in relation to the Dispute shall be held (which shall be no later than ten (10) Working Days after the date of the First Escalation Notice).

7.3 Each party shall ensure that its members of the applicable Operational Management Board use all reasonable endeavours to resolve the Dispute within twenty (20) Working Days after the date of the First Escalation Notice.

7.4 Where a Dispute relates to any of the matters referred to in paragraph 13.1(a) or 13.1(b), the parties' members of the applicable Operational Management Board may agree that such Dispute shall be referred to expert determination under Part D of this Schedule 8.3 rather than being escalated to the Partnership Management Board.

## 8. **ESCALATION TO PARTNERSHIP MANAGEMENT BOARD**

8.1 If the Dispute is not resolved by the applicable Operational Management Board by the end of the period referred to in paragraph 7.3, it shall, subject to paragraph 7.4, be referred to the Partnership Management Board. By no later than five (5) Working Days after the end of the period referred to in paragraph 7.3, the DCC shall issue a notice to the Contractor (the "**Second Escalation Notice**") which shall:

- (a) confirm that the Dispute has been referred to the Partnership Management Board; and
- (b) confirm the date on which the first meeting of the parties' members of the Partnership Management Board in relation to the Dispute shall be held (which shall be no later than ten (10) Working Days after the date of the Second Escalation Notice).

8.2 Each party shall ensure that its members of the Partnership Management Board use all reasonable endeavours to resolve the Dispute within twenty (20) Working Days after the date of the Second Escalation Notice.

## 9. **ESCALATION TO EXECUTIVE MANAGEMENT BOARD**

- 9.1 If the Dispute is not resolved by the Partnership Management Board by the end of the period referred to in paragraph 8.2, it shall be referred to the Executive Management Board. By no later than five (5) Working Days after the end of the period referred to in paragraph 8.2, the DCC shall issue a notice to the Contractor (the "**Final Escalation Notice**") which shall:
- (a) confirm that the Dispute has been referred to the Executive Management Board; and
  - (b) confirm the date on which the first meeting of the parties' members of the Executive Management Board in relation to the Dispute shall be held (which shall be no later than ten (10) Working Days after the date of the Final Escalation Notice).
- 9.2 Each party shall ensure that its members of the Executive Management Board use all reasonable endeavours to resolve the Dispute within twenty (20) Working Days after the date of the Final Escalation Notice.



## **PART C – MEDIATION**

### **10. SCOPE OF THIS PART C**

If a Dispute is not resolved by the parties in accordance with the Escalation Process, then the parties shall attempt to resolve the Dispute by mediation in accordance with the model mediation procedure of the Centre for Effective Dispute Resolution ("CEDR"), unless either party (acting reasonably) considers that the Dispute is not suitable for mediation.

### **11. APPOINTMENT OF MEDIATOR**

11.1 Where a Dispute has been referred for mediation under this Part C, there shall be a single mediator who shall be appointed by agreement in writing between the parties.

11.2 If:

- (a) the person appointed by the agreement of the parties is unable or unwilling to act; or
- (b) the parties are unable to agree on the identity of an agreed mediator within fifteen (15) Working Days after the end of the period referred to in paragraph 9.2,

then the mediator shall be appointed by CEDR on the application of either party.

### **12. MEDIATION REQUIREMENTS**

12.1 The mediation shall be conducted in London, United Kingdom and in the English language.

12.2 The mediation shall be conducted in private and without prejudice to the rights of the parties in any future proceedings.

12.3 The mediation shall be held within thirty (30) days of the appointment of the mediator in accordance with paragraph 11.

12.4 The fees of the mediator (and CEDR, if any) and the other expenses of the mediation shall be borne equally by the parties. Each party shall bear its own costs and expenses of its participation in the mediation.

## **PART D – EXPERT DETERMINATION**

### **13. SCOPE OF THIS PART D**

13.1 If a Dispute has not been resolved in accordance with Part C of this Schedule 8.3 and it relates to:

- (a) any aspect of the technology underlying the provision of the Services or is otherwise of a technological or technical nature; or
- (b) the calculation of the Charges or any other amount payable under this Agreement,

then either party may request by written notice to the other that the Dispute is referred to expert determination in accordance with this Part D. The other party shall not unreasonably withhold or delay its agreement to such request.

13.2 This Part D shall also apply where this Agreement expressly states that the relevant Dispute shall be referred to expert determination, including:

- (a) paragraph 7.4 of Part B of this Schedule 8.3;
- (b) paragraph 20.1 of Part E of Schedule 6.3 (Development Process);
- (c) paragraph 5.8 of Part A of Schedule 7.3 (Value for Money); and
- (d) paragraph 4.10 of Part F of Schedule 8.2 (Change Control).

### **14. APPOINTMENT OF EXPERT**

14.1 Where the parties have agreed to refer a Dispute to expert determination under this Part D (or where this Agreement expressly states that a Dispute shall be referred to expert determination), the Expert shall be appointed by agreement in writing between the parties.

14.2 If:

- (a) the person appointed by the agreement of the parties is unable or unwilling to act; or
- (b) the parties are unable to agree on the identity of an agreed Expert within ten (10) Working Days after the date of the relevant party's notice under paragraph 13.1 or paragraph 7.4 requesting an expert determination,

then the Expert shall be appointed by:

- (c) where the Dispute falls within paragraph 13.1(a), the President for the time being of the Institution of Engineering and Technology; or
- (d) where the Dispute falls within paragraph 13.1(b), the President of the Institute of Chartered Accountants for England and Wales.

### **15. SCOPE OF EXPERT'S APPOINTMENT**

The Expert shall act on the following basis:

- (a) he/she shall act as an expert and not as an arbitrator and shall act fairly and impartially;

- (b) the Expert shall decide the procedure to be followed in the determination (taking reasonable account of any representations made by either party regarding such procedure) and shall notify the parties accordingly;
- (c) the Expert shall be requested to make his/her determination in writing within thirty (30) Working Days after his/her appointment or as soon as reasonably practicable thereafter and the parties shall assist and provide such documentation as the Expert requires for the purpose of the determination;
- (d) the Expert's determination shall be final and binding on the parties, except where there is:
  - (i) a material failure by the Expert to follow the procedure referred to in paragraph 15(b); and/or
  - (ii) any manifest error in the Expert's determination;
- (e) any amount payable by one party 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;
- (f) the process shall be conducted in private and shall be confidential; and
- (g) the costs of the determination, including the Expert's fees, shall be borne equally by the parties. Each party shall bear its own costs and expenses of its participation in the Expert determination process.

## **PART E – ARBITRATION**

### **16. SCOPE OF THIS PART E**

In respect of any Dispute that has not been resolved in accordance with Parts B to D (inclusive) of this Schedule 8.3 but without prejudice to each party's rights under paragraph 1.3 of Part A of this Schedule 8.3:

- (a) either party may, at any time before court proceedings are commenced, serve a notice on the other party requiring that the Dispute be referred to arbitration in accordance with this Part E, and the other party shall comply with such requirement; and
- (b) if either party (the "**Notifying Party**") intends to commence any court proceedings in relation to the Dispute, it shall first serve written notice on the other party confirming its intention to do so, and the other party shall have fifteen (15) Working Days from the date of receipt of the Notifying Party's notice under this paragraph 16(b) in which to reply to the Notifying Party in writing, requiring that the Dispute be referred to arbitration in accordance with this Part E, and the Notifying Party shall comply with such requirement.

### **17. ARBITRATION REQUIREMENTS**

The following provisions shall apply to any arbitration proceedings commenced under this Part E:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) the London Court of International Arbitration ("**LCIA**") procedural rules shall be applied to the arbitration and are deemed to be incorporated into this Agreement (provided that, in the event of any conflict between those rules and this Agreement, this Agreement shall prevail);
- (c) the decision of the arbitrators shall be final and binding on the parties except where:
  - (i) there is a material failure by the arbitrators to comply with the LCIA procedural rules;
  - (ii) there is a serious irregularity (as defined in section 68(2) of the Arbitration Act 1996) affecting the arbitration; or
  - (iii) either party successfully appeals the arbitral award on a point of law in accordance with section 69 of the Arbitration Act 1996;
- (d) the number of arbitrators shall be three (3). The arbitral panel shall comprise:
  - (i) one (1) arbitrator appointed by the DCC;
  - (ii) one (1) arbitrator appointed by the Contractor; and
  - (iii) one (1) arbitrator appointed by the LCIA in accordance with the LCIA procedural rules;
- (e) the seat, or legal place, of the arbitration shall be London, United Kingdom;
- (f) the language to be used in the arbitral proceedings shall be English;
- (g) the arbitral proceedings and any award shall be confidential; and

- (h) the arbitrators shall determine how and by whom the costs of the arbitral proceedings, including their fees and expenses, are to be paid.

## **PART F – FAST TRACK DISPUTE RESOLUTION PROCEDURE**

### **18. APPLICATION OF THIS PART F**

18.1 This Part F shall apply:

- (a) in relation to any Dispute which is expressly stated in this Agreement to be subject to the Fast Track Dispute Resolution Procedure; or
- (b) in relation to any other Dispute where the parties agree in writing that the Fast Track Dispute Resolution Procedure shall apply,  
  
(each a "**Fast Tracked Dispute**").

18.2 This Part F provides for two (2) alternative procedures in respect of Fast Tracked Disputes:

- (a) initial referral of the Fast Tracked Dispute to the Operational Management Team followed by escalation directly to the Partnership Management Board (and then, if required, escalation to the Executive Management Board); and
- (b) referral of the Fast Tracked Dispute directly to the Executive Management Board.

18.3 Where:

- (a) this Agreement states that any Dispute is to be subject to the Fast Track Dispute Resolution Procedure, it shall specify which of the procedures in paragraph 18.2 shall apply (provided that, if the Agreement does not do so, the DCC, acting reasonably, may determine which of the procedures in paragraph 18.2 shall apply); or
- (b) the parties agree in writing that the Fast Track Dispute Resolution Procedure shall apply, they shall agree which of the procedures in paragraph 18.2 shall apply.

### **19. ESCALATION PROCESS**

19.1 The parties shall use all reasonable endeavours to expedite the resolution of Fast Tracked Disputes.

#### **Initial referral to Operational Management Team**

19.2 Without limiting paragraph 19.1, the following arrangements shall apply to Fast Tracked Disputes to which paragraph 18.2(a) applies:

- (a) the first meeting of the Operational Management Team shall be held by no later than five (5) Working Days after the date of the Dispute Notice and each party shall ensure that its members of the Operational Management Team use all reasonable endeavours to resolve the Dispute within seven (7) Working Days after the date of the Dispute Notice;
- (b) if the Dispute is not resolved by the Operational Management Team by the end of the period referred to in paragraph 19.2(a), it shall be referred directly to the Partnership Management Board;
- (c) the first meeting of the Partnership Management Board shall be no later than ten (10) Working Days after the date of the Dispute Notice and each party shall

ensure that its members of the Partnership Management Board use all reasonable endeavours to resolve the Dispute within twelve (12) Working Days after the date of the Dispute Notice;

- (d) if the Dispute is not resolved by the Partnership Management Board by the end of the period referred to in paragraph 19.2(c), it shall be referred to the Executive Management Board; and
- (e) the first meeting of the Executive Management Board shall be no later than fifteen (15) Working Days after the date of the Dispute Notice and each party shall ensure that its members of the Executive Management Board use all reasonable endeavours to resolve the Dispute within twenty (20) Working Days after the date of the Dispute Notice.

#### **Referral directly to the Executive Management Board**

- 19.3 Without limiting paragraph 19.1, where paragraph 18.2(b) applies, the first meeting of the Executive Management Board shall be no later than five (5) Working Days after the date of the Dispute Notice and each party shall ensure that its members of the Executive Management Board use all reasonable endeavours to resolve the Dispute within ten (10) Working Days after the date of the Dispute Notice.

#### **20. EXPERT DETERMINATION AND MEDIATION**

If a Fast Tracked Dispute has not been resolved in accordance with paragraph 19 (Escalation Process), then:

- (a) if the Dispute relates to:
  - (i) any aspect of the technology underlying the provision of the Services or is otherwise of a technological or technical nature; or
  - (ii) the calculation of the Charges or any other amount payable under this Agreement,

then it shall be referred directly to an Expert for determination in accordance with Part D of this Schedule 8.3, except that the time periods in Part D of this Schedule 8.3 shall be reduced as follows:

- (iii) in paragraph 14.2(b), the relevant time period shall be two (2) Working Days; and
  - (iv) in paragraph 15(c), the relevant time period shall be ten (10) Working Days; or
- (b) otherwise, the Dispute shall be referred to mediation in accordance with Part C of this Schedule 8.3 (unless either party, acting reasonably, considers that the Dispute is not suitable for mediation), except that the time periods referred to in Part C of this Schedule 8.3 shall be reduced as follows:
    - (i) in paragraph 11.2(b), the relevant time period shall be two (2) Working Days; and
    - (ii) in paragraph 12.3, the relevant time period shall be ten (10) Working Days.

21. **ARBITRATION**

Part E of this Schedule 8.3 shall apply to any Fast Tracked Dispute which has not been resolved after following the applicable process in paragraph 20 (Expert Determination and Mediation).



## **PART G – MULTI-PARTY DISPUTES**

### **22. DETERMINATION BY THE DCC**

22.1 If at any time following the occurrence of a Dispute (whether before or after the issue of a Dispute Notice under paragraph 3 (Dispute Notices) of Part A of this Schedule 8.3), the DCC (acting reasonably) considers that the matters giving rise to the Dispute have been contributed to by one (1) or more of the Prime CSPs and/or any other DCC Service Provider (each, for the purposes of this Schedule 8.3, a "**Relevant Provider**"), then:

- (a) the DCC shall be entitled to determine that the Dispute is a "**Multi-Party Dispute**"; and
- (b) if so, the DCC shall notify the Contractor and the Relevant Providers accordingly (the "**Multi-Party Dispute Notice**").

22.2 In this Schedule 8.3, "**Relevant Contracts**" means each agreement in connection with which a Relevant Provider acts as a DCC Service Provider.

### **23. CONTRACTOR REQUEST**

23.1 If at any time following the occurrence of a Dispute (whether before or after the issue of a Dispute Notice under paragraph 3 (Dispute Notices) of Part A of this Schedule 8.3), the Contractor has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more of the Relevant Providers, the Contractor shall notify the DCC accordingly ("**Contractor Request**"):

- (a) setting out its grounds for such belief;
- (b) specifying the Relevant Providers that it believes have contributed to the matters giving rise to the Dispute; and
- (c) requesting that the Dispute be treated as a Multi-Party Dispute.

23.2 Within ten (10) Working Days after the date of receipt of a Contractor Request, the DCC (acting reasonably) shall either:

- (a) determine that the Dispute is a Multi-Party Dispute (in which case, the DCC shall issue a Multi-Party Dispute Notice in accordance with paragraph 22.1(b)); or
- (b) determine that the Dispute is not a Multi-Party Dispute (in which case, the Dispute shall be resolved in accordance with Parts A to F of this Schedule 8.3, as applicable).

### **24. LATER DETERMINATION OF MULTI-PARTY DISPUTE**

For the avoidance of doubt, a determination by the DCC that a Dispute is not a Multi-Party Dispute shall not preclude:

- (a) a subsequent determination by the DCC under paragraph 22 that the Dispute is a Multi-Party Dispute; or
- (b) the issue of a Contractor Request under paragraph 23,

in respect of the same Dispute as a result of additional information subsequently becoming available to the parties.

25. **DUTY TO PARTICIPATE**

The parties acknowledge and agree that:

- (a) the Relevant Contracts with the Prime CSPs contain equivalent procedures to this Part G relating to Multi-Party Disputes and the DCC shall use reasonable endeavours to ensure that any other Relevant Party complies with equivalent procedures to this Part G relating to Multi-Party Disputes;
- (b) where the DCC (acting reasonably) considers that the matters giving rise to a dispute under a Relevant Contract ("**Relevant Dispute**") have been contributed to by the Contractor, the DCC may issue a Multi-Party Dispute Notice to the Contractor in relation to the Relevant Dispute; and
- (c) where the DCC issues a Multi-Party Dispute Notice to the Contractor under paragraph 25(b), the Relevant Dispute shall be deemed to be a Multi-Party Dispute under this Agreement and the Contractor shall comply with the provisions of this Part G.

26. **ESCALATION PROCESS**

26.1 The parties shall comply with the Escalation Process set out in Part B of this Schedule 8.3 in respect of any Multi-Party Dispute, provided that:

- (a) the discussions under paragraph 6 (Initial Referral to Operational Management Team) of Part B of this Schedule 8.3 shall be between the DCC Operational Management Team, the Contractor Operational Management Team and the equivalent operational management team of the Relevant Providers;
- (b) a reference to a Dispute Notice in paragraph 6 (Initial Referral to Operational Management Team) shall, for the purpose of this paragraph 26, be deemed to be a reference to the relevant Multi-Party Dispute Notice;
- (c) for the purpose of any discussions under paragraphs 7 to 9 of Part B of this Schedule 8.3, the applicable Operational Management Board, the Partnership Management Board and/or the Executive Management Board shall include appropriate representatives of the Relevant Providers (in the manner further described in Schedule 8.1 (Governance)); and
- (d) a reference in Part B of this Schedule 8.3 to a "party" or "parties" shall, for the purpose of this paragraph 26, be deemed to include the Relevant Providers.

26.2 The DCC shall ensure that any Prime CSPs involved in the Multi-Party Dispute are subject to confidentiality obligations to the DCC which protect the Contractor's Confidential Information and which are substantially similar to Clause 50 (Confidentiality). The DCC shall use reasonable endeavours to ensure that any other Relevant Party complies with similar confidentiality obligations to those in Clause 50 (Confidentiality). Such obligations may either be included within the applicable Relevant Contract or be in a separate written agreement with the DCC.

27. **MEDIATION**

If a Multi-Party Dispute is not resolved in accordance with paragraph 26 (Escalation Process), then the DCC, the Contractor and the Relevant

Providers shall attempt to resolve the Multi-Party Dispute by mediation in accordance with the model mediation procedure of CEDR, unless any of the DCC, the Contractor or the Relevant Providers (acting reasonably) considers that the Multi-Party Dispute is not suitable for mediation. The provisions of Part C of this Schedule 8.3 shall apply to any mediation under this paragraph 27 (provided that a reference in Part C of this Schedule 8.3 to a "party" or "parties" shall, for the purpose of this paragraph 27, be deemed to include the Relevant Providers).

**28. EXPERT DETERMINATION**

If a Multi-Party Dispute has not been resolved in accordance with paragraph 27 (Mediation) and it relates to:

- (a) any aspect of the technology underlying the provision of the Services (or the services provided under the Relevant Contract) or is otherwise of a technological or technical nature; or
- (b) the calculation of the Charges or any other amount payable under this Agreement,

then any of the DCC, the Contractor or the Relevant Providers may request, by written notice to the others, that the Multi-Party Dispute is referred to expert determination. The other parties shall not unreasonably withhold or delay their agreement to such request. The provisions of Part D shall apply to any expert determination process under this paragraph 28 (provided that a reference in Part D of this Schedule 8.3 to a "party" or "parties" shall, for the purpose of this paragraph 28, be deemed to include the Relevant Providers).

**29. ARBITRATION**

29.1 This paragraph 29 shall apply in respect of any Multi-Party Dispute that has not been resolved in accordance with paragraphs 26 (Escalation Process), 27 (Mediation) or 28 (Expert Determination) (as applicable) but without prejudice to each party's rights under paragraph 1.3 of Part A of this Schedule 8.3 (and the equivalent provisions of the Relevant Contracts).

29.2 In this paragraph 29, a "**Relevant Entity**" means the DCC, the Contractor or any of the Relevant Providers (and "**Relevant Entities**" shall be construed accordingly).

29.3 The parties acknowledge and agree that:

- (a) any Relevant Entity may, at any time before any court proceedings in relation to the Multi-Party Dispute are commenced, serve a notice on the other Relevant Entities requiring that the Multi-Party Dispute be referred to arbitration, and the other Relevant Entities shall comply with such requirement; and
- (b) if any Relevant Entity (the "**Notifying Entity**") intends to commence any court proceedings in relation to the Multi-Party Dispute, it shall first serve written notice on the other Relevant Entities confirming its intention to do so, and any of the other Relevant Entities may, within fifteen (15) Working Days from the date of receipt of the Notifying Entity's notice under this paragraph 29.3(b), reply to the Notifying Entity and the other Relevant Entities in writing, requiring that the Multi-Party Dispute be referred to arbitration, and the Notifying Party and the other Relevant Entities shall comply with such requirement.

- 29.4 The DCC and the Contractor consent to being joined to:
- (a) any arbitration commenced pursuant to a Relevant Contract for the purposes of paragraph 29.3; or
  - (b) subject to their respective rights under this Part G of Schedule 8.3, any court proceedings commenced pursuant to a Relevant Contract in relation to a Multi-Party Dispute.
- 29.5 The parties acknowledge and agree that, pursuant to the terms of the Relevant Contract(s), the Relevant Providers shall be required to comply with provisions equivalent to paragraphs 29.3 and 29.4.
- 29.6 All arbitral proceedings relating to Multi-Party Disputes shall be subject to the requirements of Part E of this Schedule 8.3 unless otherwise agreed by the Relevant Entities in writing and provided that:
- (a) a reference in Part E of this Schedule 8.3 to a "party" or "parties" shall, for the purpose of this paragraph 29 be deemed to include the Relevant Providers; and
  - (b) for the purposes of paragraph 17(d) of Part E of this Schedule 8.3, the arbitral panel shall be agreed by the Relevant Entities (acting reasonably) (and, if the Relevant Entities are unable to agree on the arbitral panel within ten (10) Working Days after the date on which the Multi-Party Dispute was referred to arbitration, the arbitral panel shall be appointed by the LCIA in accordance with the LCIA procedural rules).

**30. GENERAL PROVISIONS**

- 30.1 Part A of this Schedule 8.3 shall apply to all Multi-Party Disputes (provided that a reference in Part A of this Schedule 8.3 to a "party" or "parties" shall, for the purpose of this paragraph 30.1, be deemed to include the Relevant Providers).
- 30.2 Each party shall be responsible for their own costs in complying with this Part G (unless otherwise determined in the relevant forum of dispute resolution).

## **PART H – SEC DISPUTES**

### **31. APPLICATION OF THIS PART H**

The Contractor acknowledges that:

- (a) the DCC is subject to a dispute resolution framework with the SEC Parties pursuant to the SEC, the DCC Licence and the Multi-Party Framework Agreement (the "**SEC Dispute Resolution Procedure**");
- (b) the SEC Dispute Resolution Procedure may involve some or all of the following:
  - (i) non-binding discussions between the DCC and the relevant SEC Parties;
  - (ii) in relation to certain technical disputes, referral of the dispute to an appropriate sub-committee of the SEC Panel (and possible escalation of the dispute to the SEC Panel itself);
  - (iii) referral of the relevant dispute to the SEC Panel;
  - (iv) in relation to disputes which have a particular regulatory and/or compliance significance, referral of the dispute to the Authority for determination;
  - (v) mediation;
  - (vi) expert determination; and/or
  - (vii) arbitration; and
- (c) while the Contractor is not required to directly participate in the SEC Dispute Resolution Procedure (except as set out in paragraph 33 (Joinder of Proceedings)), it shall support, and otherwise co-operate with, the DCC in relation to the DCC's participation in the SEC Dispute Resolution Procedure, as further described in this Part H.

### **32. PROVISION OF ASSISTANCE TO THE DCC**

**32.1** Without limiting the Contractor's other obligations under this Agreement, the Contractor shall:

- (a) provide any information or assistance requested by the DCC from time to time in relation to the DCC's participation in the SEC Dispute Resolution Procedure;
- (b) ensure that appropriate representatives of the Contractor (or, where applicable, any Key Sub-contractor), including any representatives specifically identified by the DCC, attend any hearings or other meetings requested by the DCC from time to time in relation to the DCC's participation in the SEC Dispute Resolution Procedure (including any of the hearings and other meetings referred to in paragraph 31(b) above);
- (c) comply with any procedural rules relating to the SEC Dispute Resolution Procedure that are applicable to the Contractor (as notified to the Contractor by the DCC); and
- (d) otherwise promptly comply with any reasonable instructions from the DCC from time to time in relation to the DCC's participation in the SEC Dispute Resolution Procedure.

- 32.2 To the extent that compliance by the Contractor with paragraph 32.1 above requires the Contractor to incur any material additional costs (being costs which it would not have otherwise incurred under this Agreement), then the Contractor may notify the DCC accordingly and the parties (acting reasonably) shall agree any necessary Change to the Charges in accordance with the Change Control Procedure.
- 32.3 Any Change under paragraph 32.2 shall be deemed to be a Specific Change in Mandatory Requirements.

33. **JOINDER OF PROCEEDINGS**

Where requested by the DCC, the Contractor consents to being joined to any arbitration or court proceedings commenced under the SEC Dispute Resolution Procedure which relate to any act or omission of the Contractor (subject, where applicable, to the relevant arbitral panel consenting to the Contractor being so joined) and expressly agrees to accept and be bound by such joined arbitration or court proceedings.