

SCHEDULE 22
DISPUTE RESOLUTION PROCEDURE

1. Dispute

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Schedule 22.

2. Consultation

If a dispute arises in relation to any aspect of this Contract, the Contractor and the Authority shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

3. Adjudication

Without prejudice to paragraph 1 above, either Party may give the other notice of intention to refer the dispute to adjudication and the adjudicator shall be selected in accordance with paragraph 4 (Identity of Adjudicator) (the "Adjudicator").

4. Identity of adjudicator

The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts appointed in accordance with the following:

- 4.1 there shall be two panels of experts, one in respect of construction matters (the "Construction Panel") and one in respect of operational and maintenance matters (the "Operational Panel"). All the experts on each panel shall be wholly independent of the Contractor, the Authority, the relevant Sub-Contractor and any of the major competitors of the Contractor or relevant Sub-Contractor;
- 4.2 the Construction Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Restatement Date;
- 4.3 the Operational Panel shall be comprised of three (3) experts who shall be appointed jointly by the Contractor and the Authority. Such appointments shall take place within twenty (20) Business Days of the Restatement Date;
- 4.4 if any member of a panel resigns during the term of this Contract, a replacement expert shall be appointed by the Contractor and the Authority as soon as practicable;

4.5 if the Authority and the Contractor are unable to agree on the identity of the experts to be appointed to the panels, the President for the time being of the Chartered Institute of Arbitrators shall appoint such expert(s) within twenty (20) Business Days of any application for such appointment by either Party.

4.6 Upon the appointment of the Adjudicator, the Party referring the dispute pursuant to paragraph 3 above shall confirm the nature of the dispute in writing and the scope of the Adjudicator's appointment.

5. **Submission of arguments**

Within five (5) Business Days of appointment 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.

6. **Adjudicator's decision**

In any event, the Adjudicator shall provide to both Parties his written decision on the dispute, within twenty (20) Business Days of appointment (or such other period as the Parties may agree after the reference or thirty (30) Business Days from the date of reference if the Party which referred the dispute agrees). Unless the Parties otherwise agree, the Adjudicator shall give reasons for his decision. Unless and until revised, cancelled or varied by the Arbitrator, the Adjudicator's decision shall be binding on both Parties who shall forthwith give effect to the decision.

7. **Adjudicator's costs**

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, 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.

8. **Adjudicator as expert**

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.

9. **Adjudicator's powers**

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 opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

10. **Confidentiality**

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, save as permitted by Clause 84 (Confidentiality), 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.

11. **Liability of Adjudicator**

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.

12. **Reference to arbitration**

If:

12.1 there is any dispute in respect of matters referred to in Clauses 34 (Market Testing), 44 (Change in Law), 66 (Compensation on Termination for Authority Default), 68 (Compensation on Termination for Contractor Default), 70 (Compensation on Termination for Force Majeure), 72 (Compensation on Corrupt Gifts and Fraud), 74 (Compensation on Voluntary Termination by the Authority), 76 (Compensation on Termination for Breach of the Refinancing Provisions) or Schedule 21 (Change Protocol);

12.2 either Party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with paragraph 6 (Adjudicator's Decision); or

12.3 both Parties agree,

then either Party may (within twenty (20) Business Days of receipt of the Adjudicator's decision, where appropriate), 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 Parties are unable within ten (10) Business Days to agree the identity of the Arbitrator either Party may request the President of the Law Society to make the appointment.

13. **Arbitrator's powers**

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, to vary or cancel the decision of the Adjudicator and, where appropriate, to order financial compensation to be paid by one Party to the other. The arbitration shall take place in London.

14. **Directions of the Arbitrator**

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.

15. **Arbitrator's decision**

The Arbitrator shall deliver his decision on any matter referred to him within twenty (20) Business 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 arbitration will be in the discretion of the Arbitrator.

16. **Parties' obligations**

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 22 and shall give effect forthwith to every decision of the Adjudicator and the Arbitrator delivered under this Schedule 22.

17. **Similar disputes**

If any dispute arising under this Contract raises issues which relate to:

- 17.1 any dispute between the Contractor and the Construction Sub-Contractor arising under the Construction Sub-Contract or otherwise affects the relationship or rights of the Contractor and/or the Construction Sub-Contractor under the Construction Sub-Contract (the "Construction Sub-Contract Dispute"); or
- 17.2 any dispute between the Contractor and the Operating Sub-Contractor arising under the Operating Sub-Contract or otherwise affects the relationship or rights of the

Contractor and/or the Operating Sub-Contractor under the Operating Sub-Contract (the "Operating Sub-Contract Dispute"),

then the Contractor may include as part of its submissions made to the Adjudicator or to the Arbitrator, submissions made by the Construction Sub-Contractor or by the Operating Sub-Contractor as appropriate.

18. Jurisdiction over Sub-Contractors

The Adjudicator or the Arbitrator as appropriate shall not have jurisdiction to determine the Construction Sub-Contract Dispute or the Operating Sub-Contract Dispute but the decision of the Adjudicator or the Arbitrator shall, subject to paragraph 21, be binding on the Contractor and the Construction Sub-Contractor insofar as it determines the issues relating to the Construction Sub-Contract Dispute and on the Contractor and the Operating Sub-Contractor insofar as it determines the issues relating to the Operating Sub-Contract Dispute.

19. Sub-Contractors' submissions

Any submissions made by the Construction Sub-Contractor or the Operating Sub-Contractor shall:

- 19.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and
- 19.2 concern only those matters which relate to the dispute between the Authority and the Contractor under this Contract.

20. Costs

Where the Construction Sub-Contractor or the Operating Sub-Contractor makes submissions in any reference before:

- 20.1 the Adjudicator, the Adjudicator's costs of such reference shall be borne as the Adjudicator shall specify, or in default, one-third by the Authority and two-thirds by the Contractor; and
- 20.2 the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

21. Authority's liability

The Authority shall have no liability to the Construction Sub-Contractor or the Operating Sub-Contractor arising out of or in connection with any decision of the Adjudicator or the Arbitration or in respect of the costs of the Construction Sub-Contractor or the Operating Sub-Contractor in participating in the resolution of any dispute under this Contract.

22. Access to documents

The Contractor shall not allow the Construction Sub-Contractor or the Operating Sub-Contractor access to any document relevant to issues in dispute between the Authority and the Contractor save where:

- 22.1 the document is relevant also to the issues relating to the Construction Sub-Contract Dispute or the Operating Sub-Contract Dispute as the case may be; and
- 22.2 the Contractor has first delivered to the Authority a written undertaking from the Construction Sub-Contractor and/or the Operating Sub-Contractor (as appropriate) addressed to the Authority that they shall not use any such document otherwise than for the purpose of the dispute resolution proceedings under this Contract and that they shall not disclose such documents or any information contained therein to any third party other than the Adjudicator or the Arbitrator or any professional adviser engaged by the Construction Sub-Contractor or the Operating Sub-Contractor (as appropriate) to advise in connection with the dispute.

