

Schedule 19

Dispute Resolution Procedure

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1 Definitions

In each part of this Schedule 19 the following expressions (in addition to those specified in Schedule 1 (Definitions, Interpretation and Construction)) shall, save where the context or the express provisions of this Contract otherwise requires or admits, have the following meanings:

Adjudicator means the expert selected from the Expert Panel pursuant to paragraph 3.1 of this Schedule 19

Arbitrator shall have the meaning given to it in paragraph 5.1 of this Schedule 19

Dispute Notice shall have the meaning given to it in paragraph 4.1 of this Schedule 19

Expert Panel shall have the meaning given to it in paragraph 3.1 of this Schedule 19

Referring Party shall have the meaning given to it in paragraph 4.2 of this Schedule 19

Sub-Contract Dispute shall have the meaning given to it in paragraph 6.1 of this Schedule 19

2 General

2.1 Dispute Resolution

Any dispute arising in relation to any aspect of this Contract shall be resolved in accordance with this Schedule 19.

2.2 Duty to Consult

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

2.3 Obligations of Parties

The parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of the dispute and notwithstanding the referral of the dispute for resolution under this Schedule 19 and shall give effect forthwith to every decision of the Adjudicator and/or the Arbitrator delivered under this Schedule 19.

3 Expert Panel

- 3.1 The Adjudicator nominated to consider a dispute referred to him shall be selected on a strictly rotational basis in accordance with the following provisions:
- (a) there shall be one (1) panel of experts (the **Expert Panel**). All persons on the Expert Panel shall be wholly independent of the Service Provider, the Authority, the Sub-Contractors and any of the major competitors of the Service Provider;
 - (b) the Expert Panel shall be comprised of three (3) experts who shall be appointed jointly by the Service Provider and the Authority. Such appointments shall take place within one (1) Month of the date of this Contract;
 - (c) each expert shall have not less than ten (10) years experience of the installation, operation and maintenance of street furniture;
 - (d) if any member of the Expert Panel resigns during the term of this Contract, a replacement expert shall be appointed jointly by the Service Provider and the Authority as soon as practicable; and
 - (e) if the Authority and the Service Provider are unable to agree on the identity of the expert to be appointed to the Expert Panel, or which member of the Expert Panel should be appointed as Adjudicator, the President for the time being of the Chartered Institute of Arbitrators shall appoint such Adjudicator(s) within twenty (20) Business Days of such application for such appointment by either party.

4 Adjudication

- 4.1 Notwithstanding any other provision of this Contract, either party may, at any time, give the other notice of intention to refer the dispute to expert adjudication (the **Dispute Notice**) and the Adjudicator shall be selected in accordance with paragraph 3.

4.2 Referral to Expert Adjudication

The party who serves the Dispute Notice (the **Referring Party**) shall ensure that the Dispute Notice contains the following information:

- (a) the nature of the dispute; and
- (b) the determination sought.

The recipient of the Dispute Notice shall acknowledge receipt in writing within three (3) Business Days of receipt of the Dispute Notice.

4.3 Written Arguments

Within seven (7) 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.

4.4 Written Decision

In any event, the Adjudicator shall provide to both parties his written decision on the dispute, within twenty-eight (28) days of appointment (or such other period as the parties may agree after the reference, or forty-two (42) days from the date of reference if the Referring Party 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.

4.5 Adjudicator 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.

4.6 Adjudicator Decision

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.

4.7 Duties

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.

4.8 Duty of 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 36 (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.

4.9 No Liability

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.

5 Arbitration

5.1 Reference to Arbitration

If:

- (a) there is any dispute in respect of matters referred to in clause 25 (Change in Law), Schedule 13 (Compensation on Termination) or Schedule 16 (Change Protocol); or
- (b) either party is dissatisfied with or otherwise wishes to challenge the Adjudicator's decision made in accordance with paragraph 4.4; or
- (c) both parties agree,

then either party may (within twenty-eight (28) 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 (10) years' standing (the **Arbitrator**). If the parties are unable within fourteen (14) days to agree the identity of the Arbitrator either party may request the President of the Law Society to make the appointment.

5.2 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.

5.3 Procedural Directions

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 Arbitrator's Decision

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 in the discretion of the Arbitrator.

6 Sub-Contractor Disputes

6.1 Sub-Contractor Disputes

If any dispute arising under this Contract raises issues which relate to any dispute between the Service Provider and any Sub-Contractor arising under the relevant Sub-Contract or otherwise affects the relationship or rights of the Service Provider and/or such Sub-Contractor under the relevant Sub-Contract (the **Sub-Contract Dispute**) then the Service Provider may include as part of its submissions made to the Adjudicator or to the Arbitrator where the dispute is referred to arbitration, submissions made by such Sub-Contractor.

6.2 Binding Decision

The Adjudicator or the Arbitrator, as appropriate, shall not have jurisdiction to determine the Sub-Contract Dispute but the decision of the Adjudicator (subject to paragraph 5.1) or the Arbitrator shall be binding on the Service Provider and the relevant Sub-Contractor insofar as it determines the issues relating to the Sub-Contract Dispute.

6.3 Submissions

Any submissions made by a Sub-Contractor shall:

- (a) be made within the time limits applicable to the delivery of submissions by the Service Provider; and
- (b) concern only those matters which relate to the dispute between the Authority and the Service Provider under this Contract.

6.4 Allocation of Costs

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

- (a) 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 Service Provider; and
- (b) the Arbitrator, the costs of the arbitration shall be in the discretion of the Arbitrator.

6.5 No Liability to Sub-Contractor

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

6.6 No Access to Documents

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

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