

SCHEDULE 15
DISPUTES RESOLUTION PROCEDURE

1. CONSULTATION

If a Dispute arises, whether before or after the Commencement Date and whether before or after termination of this Agreement, then (except where a Dispute is expressly stated in this Agreement to be referable to an Expert) the Dispute shall first be referred by notice in writing to the Chairman of the DBFO Co and the official of the Welsh Office nominated for that purpose by the Secretary of State, who shall meet and endeavour to resolve the issues between them. Any joint and unanimous decision of the said Chairman and the said official shall be binding upon the Parties.

2. REFERRAL TO EXPERT

If the Chairman and the official referred to in paragraph 1 above are unable to agree on any matter comprised in the Dispute within 28 days of the reference to them or if a Dispute is expressly stated in this Agreement to be referable to an Expert, then either Party may require such matter to be referred to an Expert.

3. APPOINTMENT OF THE EXPERT

The procedure for the appointment of the Expert shall be as follows:

- 3.1 the Party wishing the appointment to be made shall give notice to that effect to the other Party and with such notice shall give details of the matter which it is proposed shall be resolved by the Expert;
- 3.2 the Parties shall meet in an endeavour to agree upon a single Expert to whom the matter in dispute shall be referred for determination;
- 3.3 if within 14 days from the service of the said notice the Parties have failed to agree upon the Expert then the matter may forthwith be referred by either Party wishing the appointment to be made to the Chairman for the time being of the Bar Council who shall be requested to make the appointment of the Expert within 28 days and in so doing may take such independent advice as he thinks fit;
- 3.4 upon the Expert being agreed or selected under the foregoing provisions of this paragraph 3 the Parties or either of them shall forthwith notify the Expert of his selection and shall request him to confirm to both Parties within 14 days whether or not he is willing and able to accept the appointment and whether or not there is any conflict as mentioned in paragraph 4;
- 3.5 if the Expert shall be either unwilling or unable to accept such appointment or shall not have confirmed his willingness and ability to accept such appointment and the terms of such appointment within the said period of 14 days then (unless the Parties are able to agree upon the appointment of another Expert) the matter shall be referred (by either Party) to the said Chairman of the Bar Council who shall be requested to make an appointment or (as the case may be)

a further appointment and the process shall be repeated until an Expert is found who accepts appointment;

- 3.6 the Parties will co-operate with each other to ensure that the terms of the contract of appointment of the Expert are agreed with him within the 14 day period referred to in paragraph 3.5 above and agree that if there shall be any dispute between the Parties as to the amount of remuneration to be offered to the Expert or any other terms of his appointment then such amount or terms shall be determined by the said Chairman of the Bar Council whose decision shall be final and binding on them.

4. **QUALIFICATION OF THE EXPERT**

- 4.1 No person shall be appointed to act as the Expert unless he shall be qualified by education, experience and training to determine the matter in dispute. If within 7 days of appointment of an Expert by the Chairman of the Bar Council in accordance with paragraph 3.3 above either Party objects on the grounds that the proposed Expert is not so qualified, then the Chairman of the Bar Council shall decide the issue and his decision shall be final and binding on the Parties. In so deciding he shall consider any submissions either Party may wish to make. If he shall decide that the proposed Expert is not so qualified then he shall (if necessary) appoint a replacement in accordance with the provisions of paragraph 3.3 above.
- 4.2 Unless both Parties otherwise agree, no person shall be appointed the Expert who at the time of appointment is (or within 3 years before such appointment has been) a director, office holder or an employee of or retained as consultant to either Party or any Funder or any Associated Company of either Party or any Funder or is the holder of shares in a Party (unless it is a company quoted on a recognised stock exchange and his shareholding is less than 1 per cent of the issued share capital (of any class) in the Party).
- 4.3 Any person appointed as the Expert shall be entitled to act as the Expert notwithstanding that at the time of the appointment or at any time before he gives his determination under such appointment he has or may have some interest or duty which materially conflicts or may materially conflict with his function under such appointment provided that he shall, whether before or after accepting such appointment, immediately disclose any interest or duty of which he is or becomes aware which conflicts or may conflict with his function under such appointment and the Parties shall after such disclosure have confirmed his appointment or continuing appointment.
- 4.4 If either Party objects:
- 4.4.1 to a proposed appointment of an Expert on grounds of a disclosed conflicting interest or duty within 7 days of that disclosure, or
- 4.4.2 to an appointment of an Expert (which has already been made) within 7 days of becoming aware of a conflicting interest or duty which has not hitherto been disclosed,

because in either case it considers that there is a material risk of such interest or duty prejudicing the decision of the Expert or proposed Expert, then either Party may apply to the said Chairman of the Bar Council, who shall decide whether if such person were to continue as Expert or were to be appointed as Expert (as the case may be) such a material risk would exist. In so deciding he shall consider any submissions either Party may wish

to make. If he shall so decide then he shall (if necessary) appoint a replacement in accordance with the provisions of paragraph 3.

5. CONFIDENTIALITY

All information, data or documentation disclosed or delivered by a Party to the Expert in consequence of or in connection with his appointment as Expert hereunder shall be treated as confidential and the Expert shall not disclose to any person or company any such information, data or documentation and all such information, data and documentation shall remain the property of the Party disclosing or delivering the same and all copies thereof shall be returned on completion of the Expert's work.

6. PROCEDURE FOR EXPERT DETERMINATION

6.1 The terms of reference of the Expert shall contain (inter alia) provisions that:

- 6.1.1 the Expert shall not later than 7 days after his appointment call the Parties to a meeting at which he shall raise any matters requiring clarification (whether arising out of his contract of appointment or otherwise) and lay down the procedural rules to be applied, which rules shall be in accordance with the terms of this paragraph;
- 6.1.2 the Parties shall be entitled to supply data and information and make submissions to the Expert within 21 days after his appointment;
- 6.1.3 either Party shall be entitled to make a reply submission within 21 days of receiving the submission of the other Party in accordance with paragraph 6.1.2 above;
- 6.1.4 subject to paragraph 6.1.8, the Expert shall ignore data, information and submissions supplied and made after such 21 day period referred to in paragraph 6.1.3 unless the same are furnished in response to a specific request from him;
- 6.1.5 the Expert shall be entitled to obtain such independent professional and/or technical advice as he may reasonably require and to obtain any secretarial assistance as is reasonably necessary;
- 6.1.6 any and all communications between and submissions made by either of the Parties and the Expert shall be made in writing and a copy thereof provided simultaneously to the other Party and no meeting between the Expert and the Parties or either of them shall take place unless both Parties have a reasonable opportunity to attend any such meeting;
- 6.1.7 the Expert shall give full written reasons for his determination; and
- 6.1.8 the Expert shall provide to each of the Parties a draft of his decision and the Parties shall be given a period of not less than 3 Working Days to make comments on such draft.

- 6.2 The Expert shall make his decision as soon as reasonably practicable and in any event within 42 days after his appointment. If within such period the Expert shall not have rendered his determination then at the request of either Party another Expert shall be appointed hereunder, and on acceptance of such appointment the appointment of the previous Expert shall cease unless prior to the date the new Expert is appointed the previous Expert shall have rendered his determination hereunder, in which case such determination shall be binding on the Parties and the instruction of the new Expert shall be withdrawn.
- 6.3 The Expert shall be deemed not to be an arbitrator but shall render his decision as an expert and the provisions of the Arbitration Acts 1950 to 1996 (as amended from time to time) and the law relating to arbitration shall not apply to the Expert or his determination or the procedure by which he reaches his determination.
- 6.4 Each Party shall bear the costs of providing all data, information and submissions given by it and the costs and expenses of all witnesses and persons retained by it but the costs and expenses of the Expert and any independent advisers to the Expert and any costs of his appointment if he is appointed by the said Chairman of the Bar Council shall be borne as to one half by the Secretary of State and as to one half by the DBFO Co.

7. REFERRAL TO THE COURTS

- 7.1 Nothing in paragraphs 1 to 6 above shall prevent either Party at any time seeking any interim or interlocutory relief from the Court.
- 7.2 In the case of any Dispute referred to an Expert pursuant to any of Clauses 42.4.5, 43.1.3, 43.5.3 and 43.5.5 and Part 5 of Schedule 9, paragraph 5.2 of Part 1 of Schedule 12, and paragraph 4.5 of Part 5 of Schedule 12, the decision of the Expert shall be final and binding on the Parties, save in the case of fraud, manifest error or failure by the Expert to disclose any relevant interest under paragraph 4 above.
- 7.3 In all other cases, either Party may, within 90 days after receipt of the determination of the Expert, refer any matter comprised in the Dispute to the Court for determination, and the Court shall have jurisdiction to determine the rights of the Parties in respect of such matters. For the avoidance of doubt, the Court shall have full power to open up, review and revise any endorsement, decision, opinion, instruction, notice, statement of objection, finding, determination, requirement or certificate of the Department's Agent or the Department's Representative related to the Dispute and any determination of the Expert.

8. CONTINUING OBLIGATIONS

Unless the Agreement has already been terminated, the DBFO Co shall in every case continue to proceed with the Works and Operations with all due diligence and the Parties shall continue to comply with all their obligations under this Agreement regardless of the nature of the Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule 15.

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