

# Transport for London

## Revenue Collection Services

# **Schedule 15 – Dispute Resolution Procedure**

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# **1 Scope and Purpose**

- 1.1.1 The Parties shall resolve Disputes arising out of or in connection with the Contract in accordance with this Schedule 15 (Dispute Resolution Procedure).
- 1.1.2 Notwithstanding any provision of this Schedule, and subject to agreement by both Parties in writing, the Parties may, at their discretion, elect to waive this Dispute Resolution Procedure and seek determination of any Dispute or any part or parts of that Dispute by English High Court proceedings.
- 1.1.3 No provision of this Schedule shall impose any pre-condition on any Party or otherwise prevent or delay any Party from commencing proceedings in any court of competent jurisdiction in relation to any Dispute in which that Party seeks any one or more of the following orders or judgments:
  - (a) an order (whether interlocutory or final) restraining the other Party from doing any act or compelling the other Party to do any act; or
  - (b) summary judgment for a liquidated sum.

## 2 TCM Referral

- 2.1.1 Save as otherwise expressly provided in the Contract, all Disputes other than Serious Contract Payment Disputes shall be referred to and settled by the TCM (whether during the Term or after its expiry or after any termination or breach of the Contract) who shall state his decision in writing and give notice of the same to the Contractor. The TCM's decisions shall be final and binding upon the Parties unless and until as hereinafter provided the decision of the TCM is:
- (a) escalated through the Escalation Procedure in accordance with paragraph 3.1.1;
  - (b) revised by signed written agreement of the Parties; or
  - (c) revised by an Adjudicator or by a court in accordance with paragraph 5.
- 2.1.2 The TCM shall act fairly as between the Parties in carrying out his duties under this Schedule and shall do so in accordance with the terms of this Contract and shall reach his decision in accordance with English law.

### 3 Escalation Procedure

#### 3.1.1 Either Party may:

- (a) within twenty-one (21) days of the decision of the TCM being provided pursuant to paragraph 2.1.1; or
- (b) in the event that no decision is provided by the TCM within twenty-one (21) days of the date when the Dispute was referred to the TCM, within forty-two (42) days of the date when the Dispute was referred to the TCM; or
- (c) in the case of a Serious Contract Payment Dispute,

serve a written notice on the other Party to further escalate the Dispute to the TTL Director of Customer Experience and the Nominated Senior Officer of the Contractor. Such written notice shall:

- (d) contain sufficient details of the Dispute to enable the other Party to understand the nature of the Dispute and the issues arising; and
- (e) contain details of no less than three (3) periods each of two (2) hours within five (5) Business Days after the giving of the notice during which the TTL Director of Customer Experience or the Nominated Senior Officer (as applicable) will be available to meet with the other Party.

#### 3.1.2 The other Party shall as soon as reasonably practicable following receipt of such notice reply to confirm that the TTL Director of Customer Experience or the Nominated Senior Officer (as applicable) will meet with the other Party for a period being one of the periods of two (2) hours proposed by the complaining Party or such other period as may be agreed between the Parties.

#### 3.1.3 The meeting between the Parties' senior representatives shall take place at the offices of TTL as notified by TTL to the Contractor in writing from time to time. With the agreement of both Parties' senior representatives (not to be unreasonably withheld), other persons (including but not limited to the TCM and/or any employee or employees of TTL or the Contractor) may attend from time to time during the meeting for the purpose of assisting the Parties' senior representatives to understand the nature of the Dispute and the issues arising, but shall not participate in the discussions between the Parties' senior representatives.

#### 3.1.4 Where the Parties' senior representatives agree on the resolution of the Dispute or any aspect of it, such agreement shall be reduced to writing and signed by and on behalf of each Party at, or as soon as reasonably practicable after, such meeting.

#### 3.1.5 Where the Parties' senior representatives do not agree on the resolution of the Dispute, the Parties may (but neither Party shall be obliged to) agree a further meeting of both Parties' senior representatives (or of such other representatives of both Parties as the Parties may agree) to take place within seven (7) days (or such other period as may be agreed between the Parties) after the meeting referred to in paragraph 3.1.3 above. The arrangements for any such further meeting shall be as agreed jointly by the Parties.

- 3.1.6 Where the Parties' representatives agree on the resolution of the Dispute or any aspect of it at a further meeting held in accordance with paragraph 3.1.5 above, such agreement shall be reduced to writing and signed by one duly authorised representative of each Party at, or as soon as reasonably practicable after, such meeting.
- 3.1.7 Unless (and then only to the extent) otherwise provided in the signed written agreement referred to in paragraph 3.1.4 or paragraph 3.1.6, the Escalation Procedure shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings whatsoever (whether or not relating to the Contract, its subject matter or otherwise).
- 3.1.8 The Parties shall each bear their own costs of the Escalation Procedure.

## 4 ADR Procedure

### 4.1.1 In the event that:

- (a) the Parties' duly authorised representatives fail to reach agreement under the Escalation Procedure in accordance with paragraphs 3.1.4 or 3.1.6 within twenty-one (21) days of a written notice of escalation under paragraph 3.1.1 or such other period as agreed by the Parties; or
- (b) either Party is dissatisfied with any decision of the TCM under paragraph 2 of this Schedule and provided that the Dispute has not been resolved under the Escalation Procedure,

then, and in any such case, either Party may within three (3) months after the aforementioned event give a Notice of Dispute to the other Party and immediately thereafter the Parties shall seek to resolve the Dispute amicably by using the following procedure (the "**ADR Procedure**").

4.1.2 The Parties shall submit the Dispute to a Neutral Adviser appointed by agreement between the Parties to assist them in resolving the Dispute. Either Party may give written notice to the other proposing the name of a suitable person to be appointed as Neutral Adviser. If no such person is appointed by agreement between the Parties within fourteen (14) days after such notice is given (or, if no such notice is given, within twenty-eight (28) days after the Notice of Dispute is served), either Party may request the Centre for Effective Dispute Resolution (CEDR) to appoint a Neutral Adviser.

4.1.3 The terms of the remuneration of the Neutral Adviser shall be agreed by the Parties with the Neutral Adviser. Either Party may reject the terms of the remuneration of the Neutral Adviser within fourteen (14) days of his appointment in which case either Party may request CEDR to determine the remuneration of the Neutral Adviser. Each Party shall pay one half of the Neutral Adviser's remuneration in accordance with such terms.

4.1.4 The Parties shall, within fourteen (14) days of the appointment of the Neutral Adviser, meet with him in order to agree a programme for the exchange of any relevant information and the procedure to be adopted for the resolution of the Dispute. In default of agreement, the programme and procedure to be adopted shall be established by the Neutral Adviser.

4.1.5 At the conclusion of such procedure, the Neutral Adviser shall make recommendations as to the resolution of the Dispute.

4.1.6 If the Parties accept the Neutral Adviser's recommendations or otherwise reach agreement on the resolution of the Dispute or any aspect of it, such agreement shall be reduced to writing and signed by the duly authorised representatives of each Party.

4.1.7 Unless (and then only to the extent) otherwise provided in the signed written agreement referred to in paragraph 4.1.6, the ADR Procedure shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.

- 4.1.8 Failing agreement in accordance with paragraph 4.1.6, either Party may invite the Neutral Adviser to provide a non-binding opinion in writing. Such opinion shall be provided to both Parties on a without prejudice basis.
- 4.1.9 The Parties shall each bear their own costs in connection with the ADR Procedure.
- 4.1.10 In any case where a Dispute has been referred to the ADR Procedure, if a signed written agreement has not been reached in accordance with paragraph 4.1.6 within forty-two (42) days after the appointment of the Neutral Adviser then either Party, on or before the twenty-eighth (28<sup>th</sup>) day after the day on which the said period of forty-two (42) days has expired, may give Notice of Adjudication to the other Party. The Notice of Adjudication shall state that it is given under paragraph 4.1.10 of this Schedule and shall set out the matters in dispute in accordance with paragraph 5.1.2 (which shall be confined to the Dispute which is the subject of the Notice of Dispute given under paragraph 4).



## 5 Reference to Adjudication

### 5.1 Notice of Adjudication

- 5.1.1 Subject to paragraph 1.1.3 above, if the Parties have been unable by means of the Escalation Procedure or ADR Procedure to resolve a Dispute, then either Party may at any time thereafter give written notice (a "**Notice of Adjudication**") to the other Party requiring the Dispute to be referred to an adjudicator (the "**Adjudicator**").
- 5.1.2 The Notice of Adjudication shall set out briefly:
- (a) the issues in dispute and in respect of which adjudication is required;
  - (b) a statement of the nature of the Dispute and the material facts to be relied on;
  - (c) the Clauses in the Contract to be relied on; and
  - (d) the redress sought (including the quantum of any monetary relief).
- 5.1.3 More than one Notice of Adjudication may be given in relation to Disputes arising out of the Contract. An Adjudicator may act in more than one (1) adjudication under the Contract at the same time.

### 5.2 Appointing the Adjudicator

- 5.2.1 The Parties should within five (5) days of the Notice of Adjudication seek to agree to appoint an Adjudicator from the list of Adjudicators at Appendix 1 to this Schedule, with the object of referring the Dispute to him within five (5) days of the date of the Notice of Adjudication.
- 5.2.2 If the Parties agree on the identity of the Adjudicator, the Party that gave the Notice of Adjudication (the "**Referring Party**") shall send to that person and to the other Party (the "**Responding Party**"):
- (a) a copy of the Notice of Adjudication;
  - (b) the Parties' names and addresses;
  - (c) a copy of this Schedule;
  - (d) a copy of the Contract with all other relevant Schedules; and
  - (e) a written request for him to confirm to the Parties his availability to act within two (2) days of receipt of the request from the Referring Party.
- 5.2.3 If such person named under paragraph 5.2.2 above confirms to the Parties within two (2) days of receipt of the request from the Referring Party his availability to act, he shall be the Adjudicator for any Dispute stated in the Notice of Adjudication.

- 5.2.4 If the Parties do not agree within five (5) days on the identity of the Adjudicator, or the person named under paragraph 5.2.2 above does not within two (2) days confirm to the Parties his availability to act, then the Referring Party requiring adjudication shall request the first person named in Appendix 1 to this Schedule to act as Adjudicator, and shall send to that person and the Responding Party the documents listed in paragraph 5.2.2 above.
- 5.2.5 If such person named under paragraph 5.2.4 above confirms to the Parties within two (2) days of receipt of the request from the Referring Party his availability to act, he shall be the Adjudicator for any Dispute stated within the Notice of Adjudication.
- 5.2.6 If such person named under paragraph 5.2.4 above does not confirm his availability to act, the Referring Party shall request the second person named in Appendix 1 to this Schedule to act as Adjudicator, and shall send to that person and the Responding Party the documents listed in paragraph 5.2.2 above. If such person does not confirm his availability to act, the Referring Party shall request the next named person in Appendix 1, and shall continue to request persons in the order that they appear in the list in Appendix 1 until a person confirms availability to act or until all persons listed in Appendix 1 have been requested to act as Adjudicator (in all instances sending to that person and the Responding Party the documents listed in paragraph 5.2.2 above.).
- 5.2.7 If no person named in the list of Adjudicators at Appendix 1 confirms within two (2) days of a request to do so his availability to act and the Parties cannot agree on an Adjudicator, the Referring Party shall request a nomination from the LCIA (London Court of International Arbitration, 70 Fleet Street, London EC4Y 1EU) to be made within five (5) days and shall send to the LCIA:
- (a) a copy of the Notice of Adjudication;
  - (b) the Parties' names and addresses;
  - (c) a copy of this Dispute Resolution Procedure; and
  - (d) anything else required by the LCIA for it to nominate an Adjudicator.
- 5.2.8 Following selection by the LCIA, the Referring Party shall send a written request to the selected Adjudicator for him to confirm to the Parties within two (2) days of receipt his availability to act. If he confirms to the Parties his availability to act within two (2) days, he shall be the Adjudicator for any Dispute stated within the Notice of Adjudication. If not, the Referring Party shall send a further request to the LCIA in accordance with paragraph 5.2.7 above.
- 5.2.9 If, for any reason, an Adjudicator:
- (a) resigns or is unable to act; or
  - (b) fails to reach his decision within the time required by this Schedule, and the Parties are unable to agree with the Adjudicator an extension of time and/or are unable to agree a replacement Adjudicator,

the Referring Party shall follow the procedure set out in paragraph 5.2.6 above to ask the next named person in Appendix 1 to act as Adjudicator, or follow the procedure in paragraph 5.2.7 above to request a nomination from the LCIA.

- 5.2.10 An Adjudicator shall declare to the Parties and shall not act if he is or has been an employee, agent or consultant of either Party, save where both Parties consent, and shall declare any interest, financial or otherwise, in any Dispute referred to in the Notice of Adjudication.
- 5.2.11 Subject to paragraph 5.2.10 above, if a Party objects to a person selected as Adjudicator by the LCIA, that objection shall not prevent the Adjudicator being appointed and it shall not invalidate the appointment or any decision he may reach.
- 5.2.12 The Adjudicator shall provide to the Parties, at the same time as confirming his availability to act, a copy of the terms on which he is prepared to act, including information regarding fees and expenses.

### **5.3 Scope of the Adjudication**

- 5.3.1 The scope of the Adjudication shall be the Dispute identified in the Notice of Adjudication, together with:
- (a) any further matters which all Parties agree should be within the scope of the Adjudication; and
  - (b) any further matters which the Adjudicator determines must be included in order that the Adjudication may be effective and/or meaningful.
- 5.3.2 The Adjudicator may decide upon his own substantive jurisdiction and as to the scope of the Adjudication.

### **5.4 Purpose of the Adjudication**

- 5.4.1 The underlying purpose of the Adjudication is to decide Disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.

### **5.5 Role of the Adjudicator**

- 5.5.1 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as arbitrator.
- 5.5.2 The Adjudicator shall have the power to open up and review any certificates or other things issued or made pursuant to the Contract as would a court.

### **5.6 Referral of the Dispute**

- 5.6.1 Within five (5) days of the Notice of Adjudication, or within two (2) days of receipt of an Adjudicator's confirmation of his availability to act (whichever is the latest), the Referring Party shall refer the Dispute by notice in writing (the "**Referral Notice**") to the Adjudicator.
- 5.6.2 The Referral Notice shall include:

- (a) details of the circumstances giving rise to the Dispute;
- (b) the reasons for entitlement to the remedy sought; and
- (c) any documentary or other evidence that the Referring Party intends to rely upon in the adjudication.

5.6.3 The Referring Party shall, at the same time as it sends to the Adjudicator the Referral Notice and documents referred to in paragraph 5.6.2 above, send a copy of the Referral Notice and copies of those documents to every other party to the Dispute.

5.6.4 The date of the referral of the Dispute shall be the date on which the Referral Notice is received by the Adjudicator (the "**Date of Referral**"). The Adjudicator shall confirm to the Parties in writing the date of receipt of the Referral Notice.

5.6.5 Each Party to whom the Referral Notice is sent in accordance with paragraph 5.6.3 above shall be entitled to send a response to the Adjudicator, which shall at the same time be copied to every other party to the Dispute, within fourteen (14) days of the Date of Referral.

## **5.7 The Adjudication**

5.7.1 The Adjudicator shall establish the timetable and procedure for the adjudication, with which the Parties will comply, subject always to the time limits in paragraph 5.8 of this Schedule, and may proceed if one Party does not participate or cooperate.

5.7.2 Without prejudice to the generality of paragraph 5.7, the Adjudicator may if he thinks fit:

- (a) require the delivery of written statements of case;
- (b) require any Party to produce a bundle of key documents (other than documents that would be privileged from production to a court), whether helpful or otherwise to that Party's case, and to draw such inference as may seem proper from any imbalance in such bundle that may become apparent;
- (c) require the delivery to him and/or the other Parties of copies of any documents (other than documents that would be privileged from production to a court);
- (d) limit the length of any written or oral submission;
- (e) require the attendance before him for questioning of any Party or employee or agent of any Party;
- (f) make site visits;
- (g) subject to paragraph 5.7.4(b), make use of his own specialist knowledge;
- (h) make directions for the conduct of the Adjudication orally or in writing, and if made orally the directions shall be confirmed by the Adjudicator in writing;

- (i) review and revise any of his own previous directions;
- (j) conduct the Adjudication inquisitorially, and take the initiative in ascertaining the facts and the law;
- (k) proceed with the Adjudication and reach a decision even if a Party fails to comply with a request or direction with which he has been given the opportunity to comply; and
- (l) reach his decision(s) with or without holding an oral hearing.

5.7.3 The Adjudicator may, at any time, obtain legal or technical advice on any matter provided that the Parties are informed with reasons beforehand. Prior to making the decision, the Adjudicator shall provide the Parties with copies of any written advice so obtained.

5.7.4 The Adjudicator shall:

- (a) decide on the Dispute referred to in the Notice of Adjudication, and any other matters as identified under paragraph 5.3, on the basis of the Parties' legal entitlements;
- (b) act fairly and impartially, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponents;
- (c) in reaching his decision, take into account the fact that the Services relate to services provided to the public and should continue to operate in a timely, economic, efficient and reliable manner; and
- (d) avoid incurring unnecessary expense.

5.7.5 The Adjudicator shall not:

- (a) request and/or require any advance payment of or security for his fees;
- (b) receive any submissions from one Party that are not also made available to the others;
- (c) except in the event of misconduct by that representative, refuse any Party the right at any hearing or meeting to be represented by any representative of that Party's choosing who is present;
- (d) act or continue to act if he has a conflict of interest; and/or
- (e) require any Party to pay or make contribution to the legal costs of another Party arising in the Adjudication.

5.7.6 The Adjudicator may, in any decision, direct the payment of such interest from such dates and at such rates as permitted by the Contract or if no such rate is set out in the Contract, the Adjudicator may apply a commercially reasonable rate.

5.7.7 All information of whatever nature provided to the Adjudicator by any Party shall be copied to the other Parties or (where copying is not practicable) the other Party shall be entitled to inspect it.

5.7.8 The Parties shall continue to observe and perform all obligations contained in the Contract, notwithstanding any reference to the Adjudicator.

## **5.8 The Adjudicator's decision**

5.8.1 The Adjudicator shall reach a decision on the Dispute set out in the Notice of Adjudication, and any other matters as identified under paragraph 5.3, within twenty-eight (28) days of the Date of Referral, as confirmed to the Parties in accordance with paragraph 5.6.4.

5.8.2 The twenty-eight (28) day period may be extended:

- (a) to such longer period as may be agreed by the Parties after the Dispute has been referred to the Adjudicator;
- (b) by the Adjudicator by up to fourteen (14) days with the consent of the Referring Party.

5.8.3 Any decision of the Adjudicator shall be in writing. The Adjudicator shall provide written reasons for his decision.

5.8.4 Any decision of the Adjudicator shall be binding unless and until the Dispute is finally determined by the English High Court pursuant to paragraph 5.11 of this Schedule or by written agreement of the Parties.

5.8.5 Any Party to the Dispute may apply to the English High Court for enforcement of the Adjudicator's decision. Neither any form of enforcement of the Adjudicator's decision nor any form of challenge to the enforcement of the Adjudicator's decision nor any Dispute arising out of or in connection with such enforcement or challenge shall be regarded and treated as a Dispute for the purposes of this Schedule.

## **5.9 Joinder of Disputes**

5.9.1 Where a dispute arises out of, under, or in connection with each of the Contract and any Sub-Contract relating to the Contract, and both the Contract and the Sub-Contract allow for, or the Parties and Sub-Contractor agree to provide, written consent to a joint adjudication, at the same time as the Dispute under the Contract is referred to the Adjudicator, a Party may request that the Sub-Contract dispute is joined into the adjudication for a decision in relation to both the Contract and its Sub-Contract.

5.9.2 In the event of such joinder, the Adjudicator shall decide the dispute under both contracts in accordance with the provisions of this Schedule, and references in this Schedule to "Parties" shall in such circumstances include the Sub-Contractor.

## 5.10 Costs

- 5.10.1 Each Party shall bear its own costs. The Adjudicator may not decide the Parties' legal and other costs arising out of or in connection with the adjudication unless the Parties otherwise agree.
- 5.10.2 Unless the Adjudicator resigns before sending the Parties his decision, he shall be entitled to charge the Parties his fees and expenses for the Adjudication.
- 5.10.3 The Parties shall be jointly and severally responsible for the Adjudicator's fees and expenses, including the fees and expenses of any legal or technical adviser instructed by him under paragraph 5.7.3.
- 5.10.4 In the decision, the Adjudicator shall have discretion to apportion liability for the Adjudicator's fees and expenses referred to in paragraph 5.10.3. The Parties agree to be bound by the Adjudicator's costs direction unless and until the costs direction of the Adjudicator is set aside or revised in accordance with paragraph 5.11.
- 5.10.5 Notwithstanding anything to the contrary in any contract between the Parties, the Adjudicator shall have no jurisdiction to require the Party which referred the Dispute to adjudication to pay the costs of any other Party solely by reason of having referred the Dispute to adjudication.

## 5.11 Court proceedings

- 5.11.1 If any Party to the Dispute is dissatisfied with the Adjudicator's decision, then on or before twenty-eight (28) days from the date of such decision (the "**Appropriate Period**"), it may give written notice to the other Party that it intends to issue court proceedings for the determination of the Dispute. Any Party which gives such notice must then issue proceedings in the English High Court on or before twenty-eight (28) days from the expiry of the Appropriate Period.
- 5.11.2 In relation to court proceedings commenced pursuant to paragraph 5.11:
- (a) no Party shall be limited in the proceedings before the English High Court to the evidence or arguments put before the Adjudicator;
  - (b) the Adjudicator shall not be called as a witness nor required to give evidence before the English High Court on any matter whatsoever; and
  - (c) any Party can request the English High Court to set aside or revise a direction by the Adjudicator in respect of payment to the Parties of the costs or fees of the adjudication (including payment of the remuneration and expenses of the Adjudicator).



## **5.12 Enforcement**

- 5.12.1 Every decision of the Adjudicator shall be implemented without delay subject to final determination by the English High Court in accordance with paragraph 5.11. The Parties shall be entitled to such relief and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, even if the decision is or becomes the subject of any court proceedings. No issue decided by one Adjudicator may be referred to another Adjudicator for a decision unless agreed by the Parties.

## **5.13 Independence**

- 5.13.1 The Adjudicator, and any legal or technical adviser instructed by him under paragraph 5.7.3 are and shall remain independent of the Parties, neutral and impartial, and do not and shall not act as advisers to the Parties.

## **5.14 Confidentiality**

- 5.14.1 Each adjudication shall be private and confidential. The Parties and the Adjudicator (and any expert and/or professional adviser appointed by him under paragraph 5.7.3 above) shall keep the existence of and subject matter of each adjudication and each decision private and confidential, except to the extent that it is necessary in order to implement or enforce a decision or is required by law.

## **5.15 No Liability**

- 5.15.1 The Adjudicator (and any legal or technical adviser instructed by him under paragraph 5.7.3) shall not be liable for anything done or omitted to be done in the discharge or purported discharge of their appointment, unless the act or omission is shown to be fraudulent or in bad faith. However, nothing in this foregoing exclusion shall relieve the Adjudicator (and any legal or technical adviser instructed by him under paragraph 5.7.3) of their duty to provide their decision in accordance with the agreed timetable.

## **5.16 Law and jurisdiction**

- 5.16.1 This Dispute Resolution Procedure shall be governed by and construed in accordance with English law and shall be subject to the exclusive jurisdiction of the English courts.
- 5.16.2 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the Adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision.



## Appendix 1

### LIST OF ADJUDICATORS

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