

6.3 DISPUTE RESOLUTION PROCEDURE

1 GENERAL

- 1.1 This Schedule 6.3 (Dispute Resolution Procedure) sets out the Dispute Resolution Procedure for the purpose of this Agreement and is applicable throughout the Contract Term.
- 1.2 Unless agreed otherwise in writing by the Minister, NBPco shall continue to comply with its obligations under this Agreement regardless of the nature or cause of the Dispute (including where it disputes that it is responsible for the Dispute or its subject matter) and notwithstanding the referral of the Dispute to the Dispute Resolution Procedure, the issue of a Notice of Dispute or issue of a Multi-Party Dispute Procedure Initiation Notice.
- 1.3 Subject to the provisions of Paragraph 8 (Stay on Proceedings and Urgent Relief), NBPco is not entitled to commence arbitration or court proceedings unless and until it has first complied with the provisions of Paragraphs 2 (Initial Attempt to Resolve) to Paragraph 6 (Mediation) inclusive and, if applicable, Paragraph 9 (Multi-Party Disputes) and has attempted to first resolve the Dispute through mediation (by at least attending the first mediation session).
- 1.4 Despite any other provision in this Schedule, the Minister may, at any time after a Notice of Dispute has been issued by either Party in relation to a Dispute, commence arbitration or court proceedings by serving a notice on NBPco informing NBPco of this intention (in which case any Commercial Negotiations and mediation shall terminate, unless agreed otherwise by the Parties).

Request for Further Information

- 1.5 The Parties acknowledge that accurate information, provided in a timely manner, is critical to an efficient investigation and subsequent determination of a Dispute. The Parties further acknowledge that delays in the provision of information have a significant impact on the overall timescales for resolution of the Dispute. As such, following the issuing of a Notice of Dispute, and at any time during the implementation of the Dispute Resolution Procedure in respect of a particular Dispute, a Party may seek further information or clarification relating to the Dispute from the other Party. The Party receiving a request for further information or clarification shall cooperate fully with the requesting Party in relation to such a request and promptly provide all reasonably requested further information or clarification in an accurate, efficient and timely manner.

2 INITIAL ATTEMPT TO RESOLVE

Representatives Initial Attempt to Resolve

- 2.1 If a Dispute arises, the Minister's Representative and NBPco Representative shall use all reasonable endeavours, acting in good faith, to promptly resolve the Dispute.

Issuing a Notice of Dispute

- 2.2 If the Parties' attempts under Paragraph 2.1 (Initial Attempt to Resolve) are not successful within a reasonable period of time, such period of time commencing on the date the Minister's Representative and NBPco Representative first meet to discuss the Dispute (and in total such period of time not being longer than the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure), either Party may issue to the other a Notice of Dispute.

Extending Initial Attempt to Resolve

- 2.3 The Parties may, by written agreement, extend the period under Paragraph 2.2 (Initial Attempt to Resolve) to attempt to resolve the Dispute.

3 NOTICE OF DISPUTE

Contents of a Notice of Dispute

- 3.1 The Party that issues a Notice of Dispute shall include the following in the Notice of Dispute:
- 3.1.1 A list of all issues which are in dispute that is specific enough to properly describe the particulars of the Dispute and reflect the specific disagreement giving rise to the Dispute.
 - 3.1.2 Details of the background to the Dispute including the circumstances leading up to the Dispute and any attempts to resolve. This should be sufficiently detailed and comprehensive so as to avoid the requirement for the other Party to seek further information which on the face of it was related to the scope of the Dispute and could have been supplied at the initial stage.
 - 3.1.3 The reasons why the Party serving the Notice of Dispute believes that the Dispute has arisen.
 - 3.1.4 The outcome of the Dispute that the Party issuing the Notice of Dispute desires.
 - 3.1.5 All documentary evidence so that all assertions in the Notice of Dispute are, to the extent reasonably possible, supported by documentary evidence, including correspondence, notes of meetings, telephone calls and a chronological summary of events.
 - 3.1.6 The contact details of the individual(s) who are the contacts for the Party issuing the Notice of Dispute.
 - 3.1.7 If issued by the Minister, elect whether the Dispute should be dealt with:
 - (A) under the Standard Dispute Resolution Timetable or the Expedited Dispute Resolution Timetable; and
 - (B) as a Multi-Party Dispute or not.
 - 3.1.8 If issued by NBPco, recommend whether the Dispute should be dealt with:
 - (A) under the Standard Dispute Resolution Timetable or, subject to Paragraph 10.2 (Timetable for Dispute Resolution), the Expedited Dispute Resolution Timetable; and
 - (B) as a Multi-Party Dispute or not.
 - 3.1.9 If NBPco is recommending, in accordance with Paragraph 3.1.8 (Notice of Dispute) above, that the Dispute should be dealt with:
 - (A) under the Expedited Dispute Resolution Timetable; and/or

(B) as a Multi-Party Dispute,

the reasons why that procedure or those procedures, as applicable, should be followed with respect to the particular Dispute and, where applicable, the identity of each Related Third Party that it believes should be involved in the Multi-Party Dispute Resolution Procedure in respect of that Dispute.

4 DISPUTE RESOLUTION PROCEDURE STRUCTURE

Process

4.1 Following the issue of a Notice of Dispute, the Parties shall, subject to the provisions of Paragraph 8 (Stay on Proceedings and Urgent Relief) and Paragraph 1 (General), seek to resolve a Dispute:

4.1.1 by Commercial Negotiation in accordance with the provisions of Paragraph 5 (Commercial Negotiations);

4.1.2 if either Party issues a Mediation Notice in accordance with Paragraph 6.1 (Mediation), by mediation in accordance with the provisions of Paragraph 6 (Mediation); and

4.1.3 by recourse to arbitration or litigation in accordance with the provisions of Paragraph 7 (Commencing Arbitration or Court Proceedings),

unless the Minister issues a Multi-Party Dispute Procedure Initiation Notice at any time in which case the provisions of Paragraph 9 (Multi-Party Disputes) shall apply.

Expedited Dispute Resolution Timetable

4.2 The Expedited Dispute Resolution Timetable shall apply to a Dispute:

4.2.1 if the Notice of Dispute issued by the Minister elects for the Dispute to be dealt with under the Expedited Dispute Resolution Timetable;

4.2.2 if the Notice of Dispute issued by NBPCo recommends for the Dispute to be dealt with under the Expedited Dispute Resolution Timetable and the Minister agrees in writing that the Dispute shall be dealt with under the Expedited Dispute Resolution Timetable; or

4.2.3 where a provision of this Agreement expressly provides for the Expedited Dispute Resolution Procedure to apply to a Dispute, including the following provisions:

(A) Clause 18.12 (Relief Event);

(B) Clause 31.10 (Compensation Events);

(C) Clause 78.23 (Non-Default Termination);

(D) Clause 80.2 (Consequences of Termination or Expiry);

(E) Schedule 5.1 (Subsidy Payments);

(F) Schedule 5.3 (The Project Financial Model); and/or

(G) Schedule 5.4 (Eligibility Requirements for ERDF Funding).

De-Escalation at any Time

- 4.3 At any time during any stage of the Dispute Resolution Procedure, the Parties may, by written agreement, de-escalate the Dispute and return it to be resolved at a lower level of the Dispute Resolution Procedure in the manner agreed by the Parties.

5 COMMERCIAL NEGOTIATIONS

- 5.1 Following the issuing of a Notice of Dispute, the Parties shall use all reasonable endeavours to settle promptly any Dispute between them as soon as possible through commercial negotiation conducted by each Party:

5.1.1 in good faith;

5.1.2 acting reasonably; and

5.1.3 in accordance with the procedure set out in the provisions of this Paragraph 5 (Commercial Negotiations),

(“**Commercial Negotiations**”).

Level 1 Representatives

- 5.2 Following the issuing of a Notice of Dispute, the Parties shall first refer the Dispute to the Level 1 Representatives.
- 5.3 The Parties shall procure that the Level 1 Representatives meet as soon as practicable after the service of the Notice of Dispute (but, in any event, within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure) and continue to engage in order to attempt to resolve the Dispute.

Level 2 Representatives

- 5.4 If the Dispute is not resolved by the Level 1 Representatives within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure or, in either case, within such longer period agreed in writing by the Parties, or if the Level 1 Representatives fail to engage in Commercial Negotiations to resolve the Dispute, either Party may by notice in writing to the other Party refer the Dispute to the Level 2 Representatives for resolution.
- 5.5 The Parties shall procure that the Level 2 Representatives meet and continue to engage within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure (or, in either case, within such longer period as the Parties may agree in writing for the Level 2 Representatives to engage in Commercial Negotiations to resolve the Dispute) in order to attempt to resolve the Dispute.

Documenting Commercial Negotiations Settlement

- 5.6 Any settlement reached during Commercial Negotiations shall not be legally binding on the Parties unless and until:

- 5.6.1 it has been documented in writing and signed by, or on behalf of, the authorised representative of each Party; and
- 5.6.2 if the settlement involves a Change to this Agreement, a Change Authorisation has been executed by the Parties in respect of that Change.

5.7 The Parties agree that the settlement document shall confirm that the settlement is in full and final settlement of the Dispute and shall record all matters in issue and all material factual details of the Dispute and the terms of settlement. A signed copy shall be supplied to both the Minister and NBPco.

6 MEDIATION

Commencing Mediation

6.1 If:

- 6.1.1 either Party is of the reasonable opinion that the resolution of a Dispute by Commercial Negotiations, or the continuance of Commercial Negotiations, will not result in an appropriate solution;
- 6.1.2 the Parties have already held discussions of a nature and intent (or otherwise were conducted in the spirit) that would equate to the conduct of Commercial Negotiations in accordance with the provisions of Paragraph 5 (Commercial Negotiations); or
- 6.1.3 the Level 2 Representatives have not settled the Dispute in accordance with the provisions of Paragraph 5 (Commercial Negotiations) within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure (or, in either case, such longer period as the Parties agreed in writing for the Level 2 Representatives to engage in Commercial Negotiations to resolve the Dispute before escalation to mediation),

either Party may serve a written notice to proceed to mediation in accordance with the provisions of this Paragraph 6.1 (Mediation) (a “**Mediation Notice**”).

Form of Mediation

6.2 If a Mediation Notice is served, the Parties shall attempt to resolve the Dispute in accordance with CEDR's Model Mediation Agreement (using the most recent edition at the time the Mediation Notice is served), which shall be deemed to be incorporated by reference into this Agreement and the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Timetable.

Appointment of a Mediator

6.3 The Parties shall, within the relevant time period specified in the Standard Dispute Resolution Timetable (or, as applicable, Expedited Dispute Resolution Procedure), agree on the joint appointment of one of the independent third party mediators listed in Appendix 3 (List of Approved Mediators) to mediate the Dispute (“**Mediator**”). If the Parties are unable to agree on the joint appointment of one of the mediators within this timescale, then either Party may apply to CEDR to nominate such a person.

6.4 If, during or before the mediation:

- 6.4.1 the Mediator decides he or she should retire or withdraw for any reason, including for reasons of compliance with any applicable professional code of conduct or regulatory standards;
- 6.4.2 both Parties agree in writing that the Mediator should be replaced (for any or no reason); or
- 6.4.3 the Mediator does not convene the mediation meeting before the expiry of the relevant time period specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure or comply with the timetable for the meeting set out in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure (and this is not due to the acts or omissions of either Party), the Minister may determine that,

a replacement Mediator shall be appointed by the Parties in accordance with Paragraph 6.3 (Mediation).

Mediator Obligations

- 6.5 The Parties shall use all reasonable endeavours to ensure that the Mediator, after consultation with the Parties where appropriate, shall:
 - 6.5.1 attend any meetings with the Parties preceding the mediation, if this is either requested by the Parties, or the Mediator decides this is appropriate and the Parties agree;
 - 6.5.2 read before the mediation each Case Summary and all the documents sent to him;
 - 6.5.3 chair, and determine the procedure for the mediation;
 - 6.5.4 assist the Parties in drawing up any written settlement agreement; and
 - 6.5.5 abide by the terms of CEDR's 'Model Mediation Procedure' and CEDR's 'Code of Conduct for Third Party Neutrals' (using the most recent editions at the time the Mediation Notice is served).
- 6.6 The Mediator's fees 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.
- 6.7 The Mediator shall not be liable to the Parties for any act or omission in connection with the services provided by it in, or in relation to, the mediation, unless the act or omission is shown to have been in bad faith.

No Conflict of Interest

- 6.8 The Parties shall ensure that the Mediator (and any member of the Mediator's firm or company) shall not act for either of the Parties individually in connection with the Dispute in any capacity during the Contract Term. The Parties accept that, in relation to the Dispute, neither the Mediator nor CEDR is an agent of, or acting in any capacity for, any of the Parties. Furthermore, the Parties and the Mediator accept that the Mediator (unless an employee of CEDR) is acting as an independent contractor and not as an agent or employee of CEDR.

- 6.9 Neither Party to the mediation shall call the Mediator (or any employee, consultant, officer or representative of the Mediator) as a witness, consultant, arbitrator or expert in any litigation or other proceedings whatsoever. Each Party shall procure that the Mediator shall not voluntarily act in any such capacity without the written agreement of both of the Parties.

Mediation Arrangements

- 6.10 The Parties shall procure that the Mediator shall chair, and determine the procedure at, the mediation.
- 6.11 The mediation meeting shall take place in either Dublin (Ireland) or London (UK), as agreed between the Parties, and, in the absence of prompt agreement between the Parties, at a location determined by the Minister.
- 6.12 The Parties shall ensure that CEDR, in conjunction with the Mediator, shall make the necessary arrangements for the mediation including, as necessary:
- 6.12.1 organising a suitable venue and arranging dates and times;
 - 6.12.2 organising exchange of the Case Summaries and documents;
 - 6.12.3 meeting with either or both of the Parties (and the Mediator if appointed), either together or separately, to discuss any matters or concerns relating to the mediation; and
 - 6.12.4 general administration in relation to the mediation.
- 6.13 The Parties shall use reasonable endeavours, acting in good faith, to promptly agree all issues about the conduct of the mediation.
- 6.14 No recording or transcript of the mediation shall be made by either Party or the Mediator or CEDR, unless the Parties agree in writing otherwise.

Mediation Timetable

- 6.15 The Parties agree to notify the Mediator that they wish to observe the relevant timescales agreed in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Timetable.
- 6.16 The Parties agree to notify the Mediator that the Mediator must convene the mediation meeting no later than the relevant time period specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure and comply with the timetable for the meeting set out in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure. If the Mediator fails to comply with the notification with respect to the convening of the mediation meeting and compliance with the timetable for the meeting (and this is not due to a failure by either Party) and the Mediator is not replaced in accordance with Paragraph 6.4 (Mediation), the timescales will be extended by the Mediator by notice in writing to the Parties for a period equal to the extent of the Mediator's delay.

Documentation Parties must Submit

- 6.17 Each Party shall send to the Mediator (through CEDR) at least forty eight (48) hours before the mediation meeting, or such other date as may be agreed between the Parties and CEDR, the names of:

- 6.17.1 the person(s) who shall be the lead negotiator(s) for that Party, who must have full authority to settle the Dispute for the purpose of the mediation; and
 - 6.17.2 any other person(s) (such as professional advisers, employees or subcontractors) who shall also be present at, and/or participating in, the mediation on that Party's behalf.
- 6.18 Each Party shall send to the Mediator (through CEDR) at least two (2) weeks before the mediation, or such other date as may be agreed between the Parties and CEDR, sufficient copies of:
- 6.18.1 its Case Summary; and
 - 6.18.2 all the documents to which the Case Summary refers and any others to which it may want to refer in the mediation.
- 6.19 In addition, each Party may send to the Mediator (through CEDR) and/or bring to the mediation further documentation which it wishes to disclose in confidence to the Mediator but not to any other Party, clearly stating in writing that such documentation is confidential to the Mediator and CEDR.
- 6.20 The Parties shall procure that the Mediator is responsible for sending a copy of each Party's Case Summary and supporting documents (but not any documents disclosed in confidence to the Mediator) to the other simultaneously.
- 6.21 The Parties shall, in consultation with the Mediator, endeavour to agree:
- 6.21.1 the maximum number of pages of each Case Summary; and
 - 6.21.2 a joint set of supporting documents or the maximum length of each set of supporting documents.

Requirements for a Valid Settlement Agreement

- 6.22 Any settlement reached in the mediation shall not be legally binding on the Parties unless and until:
- 6.22.1 it has been documented in writing and signed by, or on behalf of, the Parties; and
 - 6.22.2 if the settlement involves a Change to this Agreement, a Change Authorisation has been executed by the Parties in respect of that Change.
- 6.23 Any settlement agreement must be finalised within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, the Expedited Dispute Resolution Procedure, unless:
- 6.23.1 the Parties otherwise agree to an extension to the timetable;
 - 6.23.2 there is a delay by the Mediator and the timetable is extended by operation of Paragraph 6.16 (Mediation); or
 - 6.23.3 the timetable is otherwise extended by operation of the provisions of Paragraph 10 (Timetable for Dispute Resolution).

- 6.24 The settlement document shall confirm that the settlement is in full and final settlement of the Dispute and shall record all matters in issue and all material factual details of the Dispute and the terms of settlement and a signed copy shall be supplied to both the Minister and NBPco.

Non-Binding Recommendation on Terms of Settlement

- 6.25 If the Parties are unable to reach a settlement in the negotiations at the mediation, and only if both Parties so request and the Mediator agrees, the Mediator shall produce for the Parties a non-binding recommendation on terms of settlement. This shall not attempt to anticipate what a court might order but shall set out what the Mediator suggests is appropriate settlement terms in all of the circumstances.
- 6.26 The Parties may agree to resolve the Dispute by following all or any part of the recommendation. The Parties shall inform the Mediator within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure as to whether they have reached agreement with respect to any aspect of the recommendation.
- 6.27 Where the Parties fail to reach agreement on a settlement, the Mediator may decide that the mediation is unlikely to result in a settlement and the mediation shall terminate in accordance with Paragraph 6.28 (Mediation).

Termination of Mediation

- 6.28 The mediation shall terminate when:
- 6.28.1 a Party withdraws from the mediation;
 - 6.28.2 a written settlement agreement is concluded in accordance with Paragraphs 6.22 (Mediation) to 6.24 (Mediation) (inclusive); or
 - 6.28.3 the Mediator decides that continuing the mediation is unlikely to result in a settlement such as where, for instance, the Parties have failed to reach agreement with respect to any proposed settlement agreement or non-binding recommendation provided by the Mediator within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure.

Requirement for Confidentiality

- 6.29 The Parties shall keep confidential and not use for any collateral or ulterior purpose:
- 6.29.1 information that the mediation is to take place or has taken place, other than to inform a court dealing with any litigation relating to the Dispute of that fact; and
 - 6.29.2 all information (whether given orally, in writing or otherwise and on any media) and documentation arising out of, or in connection with, the mediation including the fact of any settlement and its terms.
- 6.30 All information and documentation (whether given orally, in writing or otherwise and on any media) arising out of, or in connection with, the mediation is without prejudice, privileged and not admissible as evidence or disclosable in any current or subsequent litigation or other proceedings whatsoever. The foregoing does not apply to any information or documentation which would have been admissible or disclosable in any such proceedings but for its use in the mediation.

- 6.31 Paragraphs 6.29 (Mediation) and 6.30 (Mediation) do not apply insofar as any such information is necessary to provide and/or enforce any settlement agreement arising out of the mediation.

7 COMMENCING ARBITRATION OR COURT PROCEEDINGS

Notice from the Minister

- 7.1 The Minister may at any time after a Notice of Dispute has been issued by either Party in relation to a Dispute, refer that Dispute to arbitration or commence court proceedings in relation to that Dispute by serving a notice to NBPco informing NBPco of this intention (in which case any Commercial Negotiations and mediation shall terminate, unless agreed otherwise by the Parties).

Notice from NBPco

- 7.2 NBPco may, subject to having first complied with Paragraph 1.3 (General), refer a Dispute to arbitration or commence court proceedings in relation to a Dispute in the Irish Courts, which shall (in those circumstances) have exclusive jurisdiction, by serving a notice to the Minister informing the Minister of this intention. For the avoidance of doubt, NBPco shall not commence court proceedings or arbitration in connection with any Dispute or this Agreement except as expressly permitted under this Paragraph 7.2 (Commencing Arbitration or Court Proceedings).

Arrangements for Arbitration

- 7.3 The Parties agree that if any Dispute is referred to arbitration in accordance with this Schedule:
- 7.3.1 the arbitration shall be governed by the provisions of the Arbitration Act 2010 and shall be conducted in accordance with the “Arbitration Procedure 2011” published by the Dispute Resolution Board of Engineers Ireland (or its successor from time to time) as that specific arbitration procedure may be updated or replaced by Engineers Ireland from time to time (hereinafter referred to as the “**Arbitration Procedure**”);
 - 7.3.2 the decision of the arbitrator shall be binding on the Parties (in the absence of any material failure by the arbitrator to comply with the provisions of the Arbitration Act 2010);
 - 7.3.3 subject to Paragraph 7.3.4 (Commencing Arbitration or Court Proceedings), the tribunal shall consist of a sole arbitrator to be agreed by the Parties (or if the Parties fail to agree the appointment of the arbitrator within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure or, if the person appointed is unable or unwilling to act, at the Minister’s discretion, either the sole arbitrator shall be appointed by the High Court (or, at the Minister’s discretion, other independent person acceptable to the Parties) or the Dispute shall be resolved through court proceedings instead of arbitration);
 - 7.3.4 if the Dispute is of a complex nature, the Parties may agree, or the Minister at its sole discretion may direct, that the tribunal shall consist of three (3) arbitrators, to be agreed by the Parties (or, if the Parties fail to agree the appointment of the arbitrators within the timescales specified in the Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution

Procedure or, if the persons appointed are unable or unwilling to act, the three (3) arbitrators shall be appointed by the High Court);

- 7.3.5 the seat of the arbitration shall be Ireland;
- 7.3.6 the language of the arbitration shall be English;
- 7.3.7 the arbitration proceedings shall take place in Dublin or another part of Ireland, as agreed by the Parties (or, failing such agreement, within two (2) Working Days, as specified by the Minister); and
- 7.3.8 the arbitrators' costs and the Parties' costs shall be borne as the arbitrator shall specify or, in default, the arbitrators' costs shall be borne equally by the Parties and each Party shall bear its own costs including legal costs and costs and expenses of any witnesses.

Arbitrating Connected Issues

- 7.4 If:
 - 7.4.1 the Dispute to be referred to arbitration under this Agreement raises issues which are substantially the same as or connected with issues raised in related disputes between any Party to this Agreement and any other person; and
 - 7.4.2 the related dispute has already been referred for determination to an arbitrator,
- the Parties agree that both such disputes shall be combined into one arbitration process and that the arbitrator shall have power to make such directions and all necessary awards as provided under the Arbitration Procedure.

8 STAY ON PROCEEDINGS AND URGENT RELIEF

- 8.1 The Dispute Resolution Procedure does not limit or affect the Minister's right to commence or continue proceedings or seek remedies before any court or tribunal of competent jurisdiction or commence or continue arbitration in relation to a Dispute.
- 8.2 Either Party may at any time take proceedings or seek remedies before any court or tribunal of competent jurisdiction:
 - 8.2.1 for interim or interlocutory remedies in relation to this Agreement; and/or
 - 8.2.2 subject to and without limiting or affecting the provisions of Paragraph 7 (Commencing Arbitration or Court Proceedings), where compliance with Paragraph 2 (Initial Attempt to Resolve) and/or referring the Dispute to mediation pursuant to Paragraph 6.1 (Mediation) will leave insufficient time for that Party to commence proceedings before the expiry of the limitation period.

9 MULTI-PARTY DISPUTES

Multi-Party Dispute Resolution Procedure

- 9.1 Subject to Paragraph 9.3 (Multi-Party Disputes), if a Notice of Dispute elects or recommends that the Dispute is dealt with as a Multi-Party Dispute and:
 - 9.1.1 the Notice of Dispute is served by the Minister, it shall be treated as a Multi-Party Dispute Procedure Initiation Notice; or

9.1.2 the Notice of Dispute is served by NBPco, it shall be treated as a NBPco request for the Dispute to be dealt with under the Multi-Party Dispute Resolution Procedure (a “**NBPco Request**”),

and in each case the provisions of this Paragraph 9 (Multi-Party Disputes) shall apply (the “**Multi-Party Dispute Resolution Procedure**”).

9.2 The Minister may, at any time, determine that a Dispute shall cease to be treated as a Multi-Party Dispute by notice in writing to NBPco despite the prior issue of a Multi-Party Dispute Procedure Initiation Notice in respect of the Dispute concerned, in which case if NBPco wishes to commence or continue arbitration or commence court proceedings it shall issue a notice to the Minister in accordance with Paragraph 7.2 (Commencing Arbitration or Court Proceedings) and the provisions of Paragraph 7 (Commencing Arbitration or Court Proceedings) shall apply.

Multi-Party Dispute Procedure Initiation Notice

9.3 If at any time following the issue of a Notice of Dispute, the Minister considers that the matters giving rise to the Dispute involve one or more Related Third Parties, then the Minister is entitled to:

9.3.1 determine that the Dispute is to be treated as a Multi-Party Dispute; and

9.3.2 serve a notice on NBPco which sets out the Minister’s determination that the Dispute is to be treated as a Multi-Party Dispute and specifies the Related Third Parties which are to be involved in the Multi-Party Dispute Resolution Procedure (a “**Multi-Party Dispute Procedure Initiation Notice**”).

NBPco Request for Multi-Party Dispute

9.4 If, following the issue of a Notice of Dispute, NBPco has reasonable grounds to believe that the matters giving rise to the Dispute have been contributed to by one or more Related Third Parties, NBPco may serve an NBPco Request on the Minister to proceed on the basis that the Dispute is to be treated as a Multi-Party Dispute.

9.5 The Minister shall consider each NBPco Request and shall determine whether the Dispute is:

9.5.1 to be treated as a Multi-Party Dispute, in which case the Minister shall serve a Multi-Party Dispute Procedure Initiation Notice on NBPco; or

9.5.2 not to be treated as a Multi-Party Dispute, in which case the Minister shall serve written notice of such determination upon NBPco and the Dispute shall be treated in accordance with Paragraphs 2 (Initial Attempt to Resolve) to 8 (Stay on Proceedings and Urgent Relief) and 10 (Timetable for Dispute Resolution) of this Schedule.

9.6 If the Minister has determined, following a request from NBPco under Paragraph 9.4 (Multi-Party Disputes), that a Dispute is not to be treated as a Multi-Party Dispute, NBPco may not make another request under Paragraph 9.4 (Multi-Party Disputes) with reference to the same Dispute.

Multi-Party Dispute Resolution Board and Representatives

9.7 Following service of a Multi-Party Dispute Procedure Initiation Notice, a Multi-Party Dispute shall be dealt with by a board (in relation to such Multi-Party Dispute, the “**Multi-**

Party Dispute Resolution Board”) comprising representatives from the following parties to the Multi-Party Dispute, each of whom shall be of a suitable level of experience and seniority to finalise any agreement with the other parties to settle the Multi-Party Dispute:

- 9.7.1 the Minister;
- 9.7.2 NBPco;
- 9.7.3 each Related Third Party involved in the Multi-Party Dispute; and
- 9.7.4 any other representatives of any of the Parties and/or any Related Third Parties whom the Minister considers necessary,

(together, “**Multi-Party Dispute Representatives**”).

NBPco obligations

- 9.8 NBPco shall, and shall use reasonable endeavours to procure that its Key Subcontractors and any Subcontractor that is a project manager or owners engineer involved or connected to a Dispute shall, fully participate in the Multi-Party Dispute Resolution Procedure and provide all assistance required in connection with the Multi-Party Dispute Resolution Procedure, including the provision of any information, data or documentation or attendance at any meetings or hearings.
- 9.9 NBPco shall procure that any of its Related Third Parties comply with the provisions of Clause 60 (Confidentiality) of the Agreement.

Multi-Party Dispute principles and procedures

- 9.10 The Parties agree that the Multi-Party Dispute Resolution Board shall seek to resolve the relevant Multi-Party Dispute in accordance with the following principles and procedures:
 - 9.10.1 the Parties shall procure that their Multi-Party Dispute Representatives attend, and shall endeavour to (or, in the case of a Subcontractor, NBPco shall use reasonable endeavours to) procure that the Multi-Party Dispute Representatives of each Related Third Party attend, all meetings of the Multi-Party Dispute Resolution Board in respect of the Multi-Party Dispute;
 - 9.10.2 the Multi-Party Dispute Resolution Board shall first meet within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure, at such time and place as the Parties may agree in writing (provided that if the Parties do not reach agreement on the time and place within the timeframe specified in the Standard Dispute Resolution Timetable or, as applicable, the Expedited Dispute Resolution Procedure for the Multi-Party Dispute Resolution Board to meet, the Multi-Party Dispute Resolution Board shall meet at the time and place agreed in writing by the Parties or failing such agreement within two (2) Working Days, the Parties shall meet at the time and place specified by the Minister, provided such place is at a neutral location in Dublin and that the meeting is to take place between 9.00am and 5.00pm on a Working Day); and
 - 9.10.3 in seeking to resolve or settle any Multi-Party Dispute, the members of the Multi-Party Dispute Resolution Board shall have regard to the principle that a Multi-Party Dispute should be determined based on the contractual rights and obligations between the Parties and the Related Third Parties and that any

apportionment of costs should reflect the separate components of the Multi-Party Dispute.

Referring to Mediation or Arbitration

9.11 If a Multi-Party Dispute is not resolved between the Parties and all Related Third Parties within the timescales specified in the Standard Dispute Resolution Timetable or, as applicable, Expedited Dispute Resolution Procedure (or such longer period as the Parties may agree in writing), then:

9.11.1 either Party may serve a Mediation Notice in respect of the Multi-Party Dispute in which case the provisions of Paragraph 6.1 (Mediation) shall apply in respect of the Dispute; and

9.11.2 subject to Paragraph 9.12 (Multi-Party Disputes) below, the provisions of Paragraph 7 (Commencing Arbitration or Court Proceedings) shall apply to the Multi-Party Dispute (unless the Minister notifies NBPco that the Dispute shall instead be subject to the exclusive jurisdiction of the Irish courts),

and in each case references to “NBPco”, the “Minister” or the “Parties” in such provisions shall include a reference to all Related Third Parties of the Party concerned.

Initiating Court Proceedings

9.12 If:

9.12.1 a Multi-Party Dispute is referred to arbitration in accordance with the provisions of Paragraph 7 (Commencing Arbitration or Court Proceedings); or

9.12.2 a Dispute is determined to be a Multi-Party Dispute by the Minister during the course of arbitration proceedings,

and either Party is unable to compel a Related Third Party to submit to such arbitration proceedings, the Minister may discontinue and cease to participate in such arbitration proceedings and instead initiate or, as applicable, permit NBPco to initiate court proceedings. If NBPco is in a direct contractual relationship with the Related Third Party that would not submit to such arbitration proceedings or, where the Related Third Party is a Subcontractor, the costs of any such discontinued arbitration proceedings shall be borne by NBPco.

10 TIMETABLE FOR DISPUTE RESOLUTION

Timetable for Dispute Resolution

10.1 Without limiting or affecting Paragraphs 10.4 (Timetable for Dispute Resolution) or 10.5 (Timetable for Dispute Resolution), the time periods set out in the Standard Dispute Resolution Timetable apply to all Disputes unless the Expedited Dispute Resolution Timetable is being used in accordance with Paragraph 10.2 (Timetable for Dispute Resolution) or Paragraph 4.2.1 (Expedited Dispute Resolution Timetable) or Paragraph 4.2.3 (Expedited Dispute Resolution Timetable) in which case the Expedited Dispute Resolution Timetable applies.

Use of Expedited Dispute Resolution Timetable

10.2 NBPco may only recommend, in accordance with Paragraph 3.1.8(A) (Notice of Dispute), use of the Expedited Dispute Resolution Timetable in exceptional circumstances where

the use of the Standard Dispute Resolution Timetable would be unreasonable due to the fact that NBPco would be materially disadvantaged by a delay in resolving the Dispute. Any such proposal is subject to the Minister's prior written approval and whether or not the Expedited Dispute Resolution Timetable is used is at the sole discretion of the Minister (acting reasonably and with such approval to be given by the Minister as soon as reasonably practicable).

10.3 If use of the Expedited Dispute Resolution Timetable is:

10.3.1 approved by the Minister pursuant to Paragraph 10.2 (Timetable for Dispute Resolution);

10.3.2 elected by the Minister pursuant to Paragraph 3.1.7(A) (Notice of Dispute); or

10.3.3 is otherwise specified under the provisions of this Agreement,

then, without limiting or affecting Paragraphs 10.4 or 10.5 (Timetable for Dispute Resolution), the Expedited Dispute Resolution Timetable time periods as set out in Appendix 2 (Dispute Resolution Timetable) of this Schedule shall apply in the Paragraphs identified in Appendix 2 (Dispute Resolution Timetable) of this Schedule.

Minister's discretion to amend or substitute the timetable

10.4 The Minister may:

10.4.1 at the Minister's discretion, in response to a request from NBPco to amend the timetable;

10.4.2 at the Minister's discretion (except where the Expedited Dispute Resolution Procedure has been approved by the Minister pursuant to Paragraph 10.2 (Timetable for Dispute Resolution));

10.4.3 following prior 'agreement in principle' with NBPco; or

10.4.4 as otherwise specified under the provisions of this Agreement,

by notice in writing to NBPco amend the Standard Dispute Resolution Timetable or Expedited Dispute Resolution Timetable by substituting alternative timelines in respect of a specific Dispute.

Extension of timetable by Minister

10.5 If at any point it becomes clear that an applicable deadline cannot be met or has passed, the Minister may (but is under no obligation to) extend the deadline by written notice to NBPco. Any extension agreed in writing by the Parties or specified by the Minister in accordance with the provisions of this Schedule shall have the effect of delaying the start of the subsequent stages by the period agreed in the extension.

APPENDIX 1 (COMMERCIAL NEGOTIATION REPRESENTATIVES)

The following table sets out the Level 1 Representative and Level 2 Representative of each Party for the purposes of Commercial Negotiations under Paragraph 5 (Commercial Negotiations)

Level	For the Minister	For NBPco
Level 1	such person as may be appointed by the Minister for the time being	COO, NBI Infrastructure DAC
Level 2	such person as may be appointed by the Minister for the time being	CEO, NBI Infrastructure DAC

APPENDIX 2 (DISPUTE RESOLUTION TIMETABLE)

The following timetable applies to Disputes under this Schedule:

#	Dispute Resolution Phase	Paragraph	Description	Standard Dispute Resolution Timetable	Expedited Dispute Resolution Timetable
1	Initial Discussions / Notice of Dispute	Paragraph 2.2 (Initial Attempt to Resolve)	Period of time permitted for Parties to resolve Dispute before a Notice of Dispute is issued. Measured from the date the Minister Representative and NBPCo Representative first meet to discuss the Dispute	Ten (10) Working Days	Three (3) Working Days
2	Commercial Negotiations	Paragraph 5.3 (Level 1 Representatives)	Period of time permitted for the Level 1 Representatives to meet. Measured from the date of the service of the Notice of Dispute	Ten (10) Working Days	Three (3) Working Days
3	Commercial Negotiations	Paragraph 4 (Level 2 Representatives)	Period of time permitted for resolution of the Dispute by the Level 1 Representatives. Measured from the date the Level 1 Representatives first meet to discuss the Dispute.	Ten (10) Working Days	Three (3) Working Days
4	Commercial Negotiations	Paragraph 5.5 (Level 2 Representatives)	Period of time permitted for resolution of the Dispute by the Level 2 Representatives. Measured from	Ten (10) Working Days	Three (3) Working Days

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			the date of referral to them		
5	Commercial Negotiations	Paragraph 5.5 (Level 2 Representatives)	Period of time permitted for the Level 2 Representatives to meet. Measured from the date of referral to them	Five (5) Working Days	Three (3) Working Days
6	Commercial Negotiations / Mediation	Paragraph 6.1.3 (Mediation Notice)	Period of time permitted for resolution of the Dispute by the Level 2 Representatives. Measured from the date of referral to them. Following expiry of this period of time either Party may serve a written notice to proceed to mediation	Ten (10) Working Days	Five (5) Working Days
7	Mediation	Paragraph 6.3 (Appointment of Mediator)	Period of time permitted to agree the appointment of the Mediator. Measured from the date of the Mediation Notice	Five (5) Working Days	Three (3) Working Days
8	Mediation	Paragraph 6.16 (Mediation Timetable)	Period of time in which Mediator may convene the mediation meeting. Measured from the date of appointment of the Mediator	Fifteen (15) Working Days	Ten (10) Working Days
9	Mediation	Paragraph 6.16 (Mediation Timetable)	Maximum duration of mediation meetings. Measured from the date the mediation meeting first	Three (3) Working Days	One (1) Working Day

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			convenes.		
10	Mediation	Paragraph 6.23 (Requirements for a valid settlement agreement)	Period of time permitted for the mediation settlement to be recorded in writing and signed by the Parties and/or the recommendations provided by the Mediator. Measured from the last day of the mediation meeting.	Ten (10) Working Days	Five (5) Working Days
11	Mediation	Paragraph 6.26 (Non-Binding Recommendation on Terms of Settlement)	Period of time permitted for the Parties to inform the Mediator whether they have reached agreement with respect to any aspect of the Mediator's recommendation. Measured from the date of receipt of the Mediator's recommendation	Five (5) Working Days	Two (2) Working Days
12	Arbitration	Paragraph 7.3.3 (Arrangements for Arbitration)	Period of time permitted for the Parties to agree the appointment of the sole arbitrator. Measured from the date the Dispute is referred to arbitration	Ten (10) Working Days	Five (5) Working Days
13	Arbitration	Paragraph 7.3.4 (Arrangements for Arbitration)	Period of time permitted for the Parties to agree the appointment of three (3) arbitrators. Measured from the date the Dispute is	Ten (10) Working Days	Five (5) Working Days

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			referred to arbitration		
14	Multi-Party Dispute	Paragraph 9.10.2 (Multi-Party Dispute principles and procedures)	Period of time permitted for Multi-Party Dispute Resolution Board to meet. Measured from the date of issue of the Multi-Party Dispute Procedure Initiation Notice	Ten (10) Working Days	Five (5) Working Days
15	Multi-Party Dispute	Paragraph 9.11 (Referring to Mediation or Arbitration)	Period of time permitted to resolve a Multi-Party Dispute between the Parties and all Related Third Parties. Measured from the date of issue of the Multi-Party Dispute Procedure Initiation Notice	Twenty-Five (25) Working Days	Fifteen (15) Working Days

APPENDIX 3 (LIST OF APPROVED MEDIATORS)

The Parties have not set out in this Appendix the list of Approved Mediators at the Commencement Date. The Parties shall, acting reasonably and in good faith, seek to agree the list of the Approved Mediators as soon as reasonably practicable following the Commencement Date. The Parties shall set out the list of Approved Mediators in this Appendix once agreed by the Parties.

If, prior to the Parties having set out the list of Approved Mediators in this Appendix, a Dispute is referred to mediation in accordance with Paragraph 6.1 (Mediation), the Parties shall, acting reasonably and in good faith, try to agree on the identify of the Mediator for the mediation within the timeline that normally applies for appointment of the Mediator under Paragraph 6.3 (Mediation).

If the Parties do not agree on the appointment of the Mediator by that time, the Parties may agree that an independent third party may nominate a person to act as the Mediator in which case the Parties shall accept that third party's nomination.