

**Schedule 25**  
**Dispute Resolution Procedure**

**1. Amicable Dispute Settlement**

- a. The Parties shall attempt to reach an amicable settlement of any Dispute prior to referring such Dispute for resolution pursuant to Section 2 of this Schedule 25; provided that either Party may at any time elect in its discretion to directly refer such Dispute for resolution pursuant to Section 2 of this Schedule 25 if it determines that such a settlement is unlikely to occur. Any such attempt may be made by any representatives of the Parties, regardless of their level of seniority or position, provided that:
  - i. such representatives have the authority, capacity and competency to make such attempt; and
  - ii. any resulting written memorandum or similar document referenced in Section 1.b of this Schedule 25 is duly executed by such other representatives of the Parties as may be necessary with respect to such a written agreement.
- b. Upon agreement on any such amicable settlement, the Parties shall execute a written memorandum or similar document in a form to be prepared by the Enterprises (unless the Enterprises otherwise delegate such preparation to Developer, in which case Developer shall prepare such memorandum or document) setting out the details of such settlement, and such document shall be considered a binding settlement agreement.

**2. Designated Senior Representatives**

- a. Upon referral by either Party pursuant to Section 1.a of this Schedule 25, the Designated Senior Representatives shall confer and otherwise use Reasonable Efforts to resolve the Dispute for a period of at least 15 Working Days (or such longer period as is mutually agreed by the Parties in writing).
- b. If the Parties succeed in resolving a Dispute following such referral to their Designated Senior Representatives, they shall memorialize the resolution by executing a written memorandum or similar document in a form to be prepared by the Enterprises (unless the Enterprises otherwise delegate such preparation to Developer, in which case Developer shall prepare such memorandum or document) setting out the details of such resolution, and such document shall be considered a binding settlement agreement.
- c. If the Designated Senior Representatives are unable to resolve the Dispute within such 15 Working Day period (or such longer period as is mutually agreed by the Parties), either Party may refer the Dispute for resolution by the Dispute Resolution Panels in accordance with Section 5 of this Schedule 25.

**3. Advisory Opinions**

- a. Notwithstanding Section 2 of this Schedule 25, the Parties, acting jointly, may, at any time prior to formally referring a Dispute for resolution by the Dispute Resolution Panels pursuant to Section 5 of this Schedule 25, seek an advisory opinion regarding such Dispute from one or both Dispute Resolution Panels. The Parties shall do so by submitting a written request to the applicable Panel(s) containing:
  - i. a concise summary of the nature and background of the Dispute and of the facts relevant to the Dispute;
  - ii. a statement of the question or issue on which the Parties are seeking an advisory opinion; and
  - iii. copies of any correspondence, reports or other documents to which the Parties wish to refer.

- b. Any advisory opinion shall:
  - i. be given in writing (unless otherwise requested by both Parties);
  - ii. be non-binding; and
  - iii. not prejudice any further resolution of such Dispute.

**4. Treatment of Settlement Negotiations and Settlement Agreements**

- a. Statements made by the Parties, including by their Representatives and Designated Senior Representatives, during any meetings or in any communications related to efforts to amicably settle or resolve a Dispute pursuant to Sections 1 and 2 of this Schedule 25 (including by seeking an advisory opinion from the Dispute Resolution Panels pursuant to Section 3 of this Schedule 25), and documents containing statements or opinions specifically prepared in connection with the same (including any such advisory opinion given following a request of the Parties in accordance with Section 3 of this Schedule 25), shall be considered part of settlement negotiations and shall not be admissible as evidence in any proceeding between the Parties of any kind (including any subsequent referral to the Dispute Resolution Panels) without the mutual written consent of the Parties, provided that any Party:
  - i. that prepares demonstrative exhibits or summary exhibits of evidence; or
  - ii. that retains experts or other Persons employed in a professional capacity to provide expert opinions and/or reports, which opinions and/or reports are prepared for presentation to the Dispute Resolution Panels,shall be entitled to submit or otherwise use such work product in any subsequent proceeding.
- b. Unless otherwise agreed in writing by both Parties, neither Party may submit a settlement agreement entered into by the Parties pursuant to Sections 1.b, 2.b or 5.r of this Schedule 25 to a Dispute Resolution Panel in connection with any subsequent proceeding.

**5. Dispute Resolution Panels**

- a. Two separate Dispute Resolution Panels shall be created pursuant to the Project Agreement and this Schedule 25: a “Technical Panel” and a “Commercial Panel”. Subject to Sections 1 and 2 of this Schedule 25, any Dispute may be referred by either Party in accordance with this Section 5 of this Schedule 25:
  - i. to the extent such Dispute is of a technical nature, for resolution by the Technical Panel; or
  - ii. to the extent such Dispute is of a financial, commercial and/or legal nature, for resolution by the Commercial Panel,provided that the Parties shall not refer Disputes with respect to the existence or legal validity of the Project Agreement to either Panel for determination nor shall either Panel make any determination relating to any such matter.
- b. Either Party, acting reasonably, may initially refer any Dispute (or a relevant part thereof, with the remainder to be considered by a single Panel) to the Commercial Panel and the Technical Panel jointly. Alternatively, if a Dispute was initially referred to a single Panel, such Panel or either Party, acting reasonably, may subsequently request the other Panel to jointly consider such Dispute (or relevant part thereof, with the remainder to be considered by the Panel to which the Dispute was initially referred).
- c.
  - i. Each Panel shall consist of three persons who shall be and remain independent of the Parties, impartial and without any conflict of interest or any appearance of a conflict of interest.

- ii. No later than the date provided in Section 5.d of this Schedule 25 and otherwise, if the relevant Panel is not then in existence, no later than 15 Working Days after a Dispute is referred to a Panel, each Party shall appoint one person as a member of each Panel. If either Party fails to appoint a person as a member of either Panel, the relevant member of the Panel shall be appointed by the International Institute for Conflict Prevention and Resolution, upon the request of the other Party. Any person appointed pursuant to this Section 5.c.ii of this Schedule 25:
  - A. if appointed to the Commercial Panel, shall have relevant experience on similar projects (for certainty, such experience need not be on projects that fall within the definition of Similar Projects in Part A of Annex A (Definitions and Abbreviations) to the Project Agreement) and shall be an expert in financial and commercial matters relevant to the Project; and
  - B. if appointed to the Technical Panel, shall have relevant experience on Similar Projects and shall be, if appointed during the Construction Period, an expert in engineering and construction matters relevant to the Project and, if appointed during the Operating Period, an expert in operations and maintenance matters relevant to the Project (including in relation to Renewal Work and Handback Work).
- iii. A third person (the "Chairperson") (which person, with respect to the Commercial Panel only, shall be a lawyer barred and in good standing in the State of Colorado and shall have been so for not less than eight years), shall be jointly appointed by agreement of the two members of the Panel as previously appointed pursuant to Section 5.c.ii of this Schedule 25 no later than 10 Working Days following their appointment. In the event of a failure to agree on the appointment of the Chairperson of the relevant Panel, such Chairperson shall be appointed by the International Institute for Conflict Prevention and Resolution, upon the request of either Party.
- iv. Subject to the following, the costs and expenses payable to the members of each Panel shall be agreed by the Parties and, absent agreement, shared equally between the Parties. Responsibility for the fees of the Panel members incurred in connection with a Dispute referred to such Panel pursuant to this Section 5 of this Schedule 25 shall be determined by such Panel and shall be aligned with the determination of the Dispute by such Panel.
- v. In the event of death, resignation, disqualification, inability or refusal to act by one of the members of either Panel, a new member of the Panel shall be appointed by the Person(s) who appointed the original member within 10 Working Days of the occurrence of such event.
- d. The Parties shall initially establish each Panel by each appointing a member pursuant to Section 5.c.ii of this Schedule 25 no later than 15 Working Days following NTP1.
- e. The Persons initially selected to comprise the Technical Panel shall comprise such Panel until such Panel is re-established following the Final Acceptance Date pursuant to Section 5.f of this Schedule 25 unless such Panel is dissolved or reconstituted earlier in accordance with Section 5.t of this Schedule 25.
- f. Promptly following the Final Acceptance Date, the Parties shall re-establish the Technical Panel by each appointing a member pursuant to Section 5.c.ii of this Schedule 25 no later than 60 Calendar Days following the Final Acceptance Date. Following completion of this appointment process, the previously existing Technical Panel shall be automatically dissolved (provided that such dissolution shall be delayed until it renders its decision on any Dispute then pending before it).

- g. A Dispute is referred to an appropriate Dispute Resolution Panel by, and on the date of, service of a notice of reference to such Dispute Resolution Panel by the referring Party upon the other Party. Such service of notice shall include:
  - i. an initial concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
  - ii. an initial statement of the relief (including any compensation) which the referring Party is seeking; and
  - iii. any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
- h. A copy of such notice of reference shall also be served by the referring Party or, as applicable, the referring Panel (where a Panel makes a reference in accordance with Section 5.b of this Schedule 25) upon the Chairperson of the applicable Dispute Resolution Panel. Each Party shall be entitled within 10 Working Days following the notice of reference, to deliver to the applicable Panel:
  - i. a concise summary of the nature and background of the Dispute, of the facts relevant to the Dispute and of the issues to be decided;
  - ii. if applicable, a statement of the relief (including any compensation) which such Party is seeking;
  - iii. copies of correspondence, reports and such other documents to which the Party wishes to refer or upon which it relies; and
  - iv. any reasonable request for the Dispute Resolution Panel to consider, or not consider, such Dispute together with any other previously or simultaneously submitted Dispute.
- i. Each Party shall promptly deliver such other information as the Dispute Resolution Panel(s) may from time to time reasonably require for the purposes of resolving the Dispute.
- j. Subject to Section 5.k of this Schedule 25, each Dispute Resolution Panel shall fix its own rules of procedure, either generally or on an ad hoc basis, and shall notify the Parties of such rules of procedure.
- k. Each Dispute Resolution Panel shall have the following powers:
  - i. the Chairperson of the Dispute Resolution Panel shall decide whether or not to convene a hearing or otherwise to take oral evidence or whether the Panel shall determine the Dispute on a documents-only basis;
  - ii. the Chairperson may order the evidence of a witness to be presented in written form by way of a signed statement and may order the production of any drawing, certificate, specification, report, study, written information and data and any other document (including a record of such document in digital form) (or copies thereof) in the possession of any Party; and
  - iii. the Chairperson of the Technical Panel may request any samples of materials to be taken and analyzed or tests to be made on site by experts.
- l. Unless a Dispute Resolution Panel decides otherwise, the Chairperson shall fix the date, time and place of any hearing (which shall be in the State) before such Dispute Resolution Panel and the rules of procedure of the hearing, identify the Dispute(s) (or relevant parts thereof) to be considered at such hearing (taking into consideration any Party's request made pursuant to Sections 5.b, 5.g.iii or 5.h.iv of this Schedule 25) and shall require the attendance of the Parties. Each Party may appear before such Dispute

Resolution Panel accompanied by or represented by technical, financial or other relevant consultants (excluding, for certainty, representation before such Panel by legal counsel).

- m. In determining any Dispute referred to it, each Dispute Resolution Panel shall act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of presenting its case and responding to the case of the other Party, and shall adopt procedures appropriate to the circumstances of the particular case avoiding unnecessary delay, so as to provide a fair and expeditious means for determination of the Dispute.
- n. All decisions of each Dispute Resolution Panel shall be made, and notified in writing (with reasons for the decision) to the Parties, as soon as possible but in any event no later than 60 Calendar Days (or such other period of time as the Parties may agree in writing) following the later of (i) the Dispute being referred and (ii) the constitution of the relevant Dispute Resolution Panel(s) pursuant to Section 5.c.ii and Section 5.c.iii of this Schedule 25. Every Dispute Resolution Panel decision shall identify the specific issues to which it relates and the bases for such decision, and state whether it is a unanimous decision of the Dispute Resolution Panel. In the event of lack of unanimity, reasons for any dissenting opinion shall be given. Unless subsequently incorporated into a settlement agreement entered into by the Parties pursuant to Section 5.r of this Schedule 25, a Dispute Resolution Panel decision shall not toll any statute of limitations or otherwise limit the time within which any Party may avail itself of any remedy under Law or contract.
- o. Within 10 Working Days of being notified of such decision, Developer shall notify the Enterprises if it intends to accept or reject such decision (in whole or in part), and the Enterprises shall, within 10 Working Days after receipt of Developer's notification, likewise notify Developer if they intend to accept or reject such decision (in whole or in part). Any such notice of intention by either Party shall be considered a non-binding indication of intent with respect to potential settlement or further Dispute resolution proceedings
- p. If a Dispute Resolution Panel fails to notify its decision to the Parties within the 60 Calendar Day (or such other) period referred to in Section 5.n of this Schedule 25, such Dispute Resolution Panel shall be deemed to have failed to reach a decision in the matter. Any decision of a Dispute Resolution Panel notified to the Parties after the expiry of such 60 Calendar Day (or such other) period shall be ineffective unless the Parties mutually agree otherwise in writing.
- q. Upon the earliest of:
  - i. expiry of such 60 Calendar Day (or such other) period without a notification of a decision by a Dispute Resolution Panel to the Parties;
  - ii. the Enterprises' delivery of a notice to Developer pursuant to Section 5.o of this Schedule 25; and
  - iii. the expiry of the relevant time period set out in Section 5.o of this Schedule 25 without the Enterprises having delivered a notification to Developer pursuant thereto,either Party may refer the Dispute for court resolution in accordance with Section 37 of the Project Agreement.
- r. The Parties may, at any time following notification of a decision by a Dispute Resolution Panel or otherwise, memorialize settlement of the Dispute by executing a written memorandum or similar document in a form to be prepared by the Enterprises (unless the Enterprises otherwise delegate such preparation to Developer, in which case Developer shall prepare such memorandum or document) setting out the details of such settlement, and such document shall be considered a binding settlement agreement.
- s. Subject to Section 4.b of this Schedule 25, decisions of a Dispute Resolution Panel are admissible in subsequent proceedings but shall be prefaced with the following statement:

“This decision may be taken under consideration with the understanding that: (1) The Dispute was a mediation proceeding based on presentations by the Parties. (2) The Parties were not represented by legal counsel in front of the Dispute Resolution Panel(s). (3) No fact or expert witnesses presented sworn testimony or were subject to cross-examination. (4) The Parties to the Dispute Resolution Panel(s) were not provided with the right to any discovery, such as production of documents or depositions. (5) There is no record of any Dispute Resolution Panel hearing other than the written decision.”

- t. Each of the Technical Panel and the Commercial Panel shall be dissolved on mutual agreement between the Parties, provided that new Dispute Resolution Panel(s) may be constituted by the Parties at any time thereafter (and shall be constituted pursuant to Section 5.c.ii and Section 5.c.iii of this Schedule 25 in the event of a Dispute), in which case the provisions of this Schedule 25 shall apply as to its or their appointment, constitution and functioning (except in relation to the period of its or their appointment, which shall be decided in each case by the Parties).
- u. Neither Dispute Resolution Panel shall be deemed to be arbitrators, but both shall render their decisions as experts.

6. **No Joinder**

No proceedings to resolve any Dispute arising out of or relating to the Project Agreement shall include, by consolidation or joinder or in any other manner, any additional Person, including any Principal Subcontractor or Subcontractor, not a Party to the Project Agreement, except with the written consent of each Party and any other Person sought to be so joined.

7. **Equitable Relief**

Subject to Section 37.1.a of the Project Agreement, either Party shall be entitled to seek equitable relief in respect of any Dispute before the United States District Court of Colorado or State District Court of Colorado for the City and County of Denver at any time after the conclusion of the 15 Working Day period referred to in Section 2.a of this Schedule 25 (or such longer period as is mutually agreed by the Parties).

8. **Continuation of Work**

During the course of resolving any Dispute pursuant to this Schedule 25 and the Project Agreement, Developer will continue with the Work (including any Work that is the subject of the Dispute) in accordance with the Project Agreement.

9. **Costs of Dispute Resolution**

Each Party shall bear its own costs and expenses, including attorneys' fees, in any Dispute arising out of the Project Agreement, except as expressly provided therein or pursuant to the terms of any binding Dispute resolution.