



**CI Arb**  
*evolving to resolve*

# DISPUTE BOARD RULES

## Chartered Institute of Arbitrators

Practice and Standards Committee | August (2014)



**DISPUTE BOARD RULES**

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The Chartered Institute of Arbitrators is a learned society that works in the public interest to promote and facilitate the use of Alternative Dispute Resolution (ADR) mechanisms. Founded in 1915 and with a Royal Charter granted in 1979, it is a UK-based membership charity that has gained international presence in more than 100 countries and has more than 13,000 professionally qualified members around the world.

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## INTRODUCTION

Dispute boards are created by contract and aid the parties in resolving their disagreements. In the last twenty years there has been an increasing demand for less adversarial dispute resolution methods such as mediation, conciliation and dispute boards. The great benefit of using a standing dispute board is that its members may be called upon as soon as a problem arises and help the parties resolve their differences before they become polarised in their views. The dispute avoidance role of the standing board should be emphasised: the dispute board encourages the parties to solve their own problems, creating an atmosphere where the parties communicate and recourse to the advisory role of the board. Resolving conflicts at an early stage, or even before they arise, is an obvious benefit that greatly minimises costs such as legal fees, and reduces loss of productive time and goodwill between the parties.

Dispute boards should be set up at the outset of a contract and remain in place throughout its duration. Thus the dispute board members will be familiar with the contract and its performance, and also be acquainted with the parties, making the board an effective dispute resolution mechanism with “real-time” value. Ideally, the dispute board members become part of the project team and are trusted to be fair and impartial, so that their advice will be readily accepted by all parties. The need for prompt, cost-effective and impartial dispute resolution can be found in many contractual relationships in several industries. In order to meet this need, the Chartered Institute of Arbitrators (the “CI Arb”) offers the international business community the CI Arb Dispute Board Rules, which cater to any medium or long-term project, whether construction, IT, commercial or otherwise.

*Nicholas Gould and Christina Lockwood*  
*Chair and Researcher of the Drafting Committee*



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# Dispute Board Rules

## Article 1

### Definitions

Applicable Law	means the law applicable to the Contract.
Contract	means the agreement of the Parties that contains provisions for establishing a Dispute Board under these Rules.
Decision	means a binding decision issued in writing by a Dispute Adjudication Board.
Determination	means either a Recommendation or a Decision issued by the Dispute Board as described in the Rules.
Dispute	means a disagreement (of any kind whatsoever) between the Parties arising out of, under or in connection with the Contract.
Dispute Board or DB	means a Dispute Review Board (“DRB”) or a Dispute Adjudication Board (“DAB”), composed of one or three Dispute Board members (“Members” or “DB Members”).
Dispute Board Clause(s)	means the standard CI Arb Dispute Board clauses which consist of two alternatives: a clause for DRBs and a clause for DABs. The Parties may choose to incorporate one of the standard CI Arb clauses in their Contract, depending on which kind of Dispute Board is most appropriate for them.
Party or Parties	means the parties to the Contract.
Position Statement	means a written statement of case produced by either Party for the purpose of referring a Dispute to the DB.

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Recommendation	means a formal report issued in writing by a Dispute Review Board, which is not binding on the Parties.
Response	means a written statement of case in response to a Position Statement.
Rules	means the CIArb Dispute Board Rules.
Tripartite Agreement	means the Model CIArb Dispute Board Tripartite Agreement between the Parties and each of the DB Members.

### Article 2

#### Dispute Board Documents and Standard Clauses

- 1 The framework for the establishment and operation of Dispute Boards comprises:
  - \* the CIArb Rules;
  - \* the CIArb Tripartite Agreement; and
  - \* the CIArb Dispute Board Clauses.
- 2 The Parties and the DB Members may amend the Tripartite Agreement as they may all agree, and as may be necessary for the enforceability of the Tripartite Agreement under Applicable Law.
- 3 The Rules provide for two types of Dispute Boards: *Dispute Review Boards* and *Dispute Adjudication Boards*. The Parties shall elect which alternative they favour and incorporate the corresponding Dispute Board Clause into their Contract: clause a) if they choose to have a DRB, and clause b) if they choose to have a DAB. The Parties should adapt the chosen clause to suit their needs and verify that it is enforceable under Applicable Law. The Dispute Board Clause does not in itself provide for arbitration. If the parties wish to provide for

arbitration they should ensure they have inserted the relevant provisions into their Contract as required under the Applicable Law.

a) Dispute Board Clause for DRBs

*The Parties hereby agree to establish a Dispute Review Board (“DRB”) in accordance with the Dispute Board Rules of the Chartered Institute of Arbitrators (the “Rules”). The DRB shall have [one/three] member[s] appointed in accordance with the Rules, which are incorporated herein by reference.*

*Any disputes between the Parties arising out of or in connection with this Contract shall be submitted to the DRB pursuant to the Rules. If the DRB issues a Recommendation and one of the Parties rejects it, either Party may submit the dispute to arbitration, if the Parties have so agreed, or to the courts. Pending a ruling by the arbitral tribunal or the court, the Parties may voluntarily comply with the Recommendation.*

b) Dispute Board Clause for DABs

*The Parties hereby agree to establish a Dispute Adjudication Board (“DAB”) in accordance with the Dispute Board Rules of the Chartered Institute of Arbitrators (the “Rules”). The DAB shall have [one/three] member[s] appointed in accordance with the Rules, which are incorporated herein by reference.*

*Any disputes between the Parties arising out of or in connection with this Contract shall be submitted to the DAB pursuant to the Rules. If the DAB issues a Decision and one of the Parties rejects or fails to comply with it, either Party may submit the dispute to arbitration for summary or other expedited relief, if the Parties have so agreed, or to the courts*

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*without prejudice to any other rights it may have. Pending a ruling by the arbitral tribunal or the court, the Parties must comply with the DAB's Decision.*

**Article 3**

**Dispute Review Boards**

- 1 If the Parties have chosen the implementation of a DRB, they are not bound by the DRB's Recommendations.
- 2 The DRB shall assist the Parties in the avoidance of Disputes and the timely resolution of Disputes. Any matter or disagreement arising under the Contract may be referred to the DRB by either Party.
- 3 The Parties shall duly consider each Recommendation, which carries great weight albeit it is non-binding.
- 4 If the DRB has issued a Recommendation in accordance with Article 15, each Party shall submit its written acceptance or rejection of the Recommendation to the other Party and the DRB within 21 days of receipt of the Recommendation.
- 5 After 21 days from receipt of the Recommendation, either Party may submit the Dispute to arbitration, if the Parties have so agreed, or the courts. Pending a ruling by the arbitral tribunal or the court, the Parties may voluntarily comply with the Recommendation.
- 6 Recommendations shall be admissible in any subsequent arbitral or judicial proceedings.

**Article 4**

**Dispute Adjudication Boards**

- 1 If the Parties have chosen the implementation of a DAB, they are bound by the DAB's Decisions.
- 2 The DAB shall assist the Parties in the avoidance of Disputes and the

timely resolution of Disputes. Any matter or disagreement arising under the Contract may be referred to the DAB by either Party.

- 3** A Decision is binding on the Parties upon its receipt and the Parties shall comply with it without delay. The Decision shall be enforceable and will stand unless superseded by agreement, arbitration or a judgment by the courts.
- 4** If the DAB has issued a Decision in accordance with Article 15, each Party shall submit its written acceptance or rejection of the Decision to the other Party and the DAB within 21 days of receipt of the Decision.
- 5** If one Party rejects the Decision or fails to comply with it, either Party may submit the Dispute to arbitration for summary or other expedited relief, if the Parties have so agreed, or the courts, without prejudice to any other rights it may have. Pending a ruling by the arbitral tribunal or the court, the Parties must comply with the Decision.
- 6** Decisions shall be admissible in any subsequent arbitral or judicial proceedings.

#### **Article 5**

##### **Scope of the Rules**

- 1** The Rules equally apply to both types of Dispute Board procedures. The only difference arising from the Parties' choice of a DRB or a DAB is that DRBs issue non-binding Recommendations as described in Article 3, whereas DABs issue binding Decisions as described in Article 4.

#### **Article 6**

##### **Appointment of the Dispute Board (DB)**

- 1** The DB shall comprise either one or three suitably qualified DB Members. If the number is not stated in the Contract and the Parties do

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not agree otherwise, the DB shall comprise three persons.

- 2** If the Parties agree to have a sole DB Member, they shall jointly appoint the sole Member by the date stated in the Contract or, where the Contract is silent, within 28 days of the effective date of the Contract.
- 3** If the DB is to comprise three Members, each Party shall nominate one Member for approval by the other Party. These two selected Members then select the third Member, who, with the approval of the Parties, shall act as chairperson. The DB composed of three Members must be established by the date stated in the Contract or, where the Contract is silent, within 28 days of the effective date of the Contract.
- 4** The appointment of a DB Member may be terminated by mutual agreement of both Parties, but not by either of the Parties acting alone. When a DB Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Parties shall appoint a suitably qualified person to replace the DB Member. The new DB Member shall be appointed in the same manner as the replaced Member was required to have been appointed.
- 5** Either Party may at any time make an application to the CI Arb for removal of a DB Member on the grounds of conflicts of interest or a failure to comply with the Tripartite Agreement. The CI Arb's decision on the removal of a DB Member shall be final and binding.
- 6** If the Parties fail to establish a DB in accordance with paragraphs 2 or 3 of this Article 6, or if the Parties fail to agree on a replacement Member as described in paragraph 4 of this Article 6, then the CI Arb shall, after due consultation with the Parties, appoint the DB Member or Members, or the whole DB if needed, within 28 days of the written

request of one or both Parties. This appointment shall be final and conclusive.

- 7 An application to the CI Arb means an application to the President or the President's designated person.
- 8 When appointing a DB Member, the prospective Member's qualifications relevant to the circumstances, nationality and relevant language skills should be considered, as well as any observations, comments or requests made by the Parties. It is recommended that the Parties co-ordinate their selection of DB Members and chairperson in such a way as to provide the maximum of appropriate skills for the project. The Members must confirm that they will be sufficiently available for the duration of the project.

**Article 7**

**DB Member's Qualifications and Obligations**

- 1 DB Members shall have expertise in the type of work or services to be performed under the Contract and be able to understand and interpret its contractual provisions. DB Members should have excellent management and communication skills and be fluent in the language for communications as defined in the Contract or as agreed by the Parties.
- 2 All information provided to the DB during the course of its service shall be treated as confidential and used only for the avoidance and settlement of Disputes, unless otherwise agreed by the Parties or required by Applicable Law.
- 3 The DB Members shall adhere to the ethical obligations set forth in the Rules and in the Tripartite Agreement.

**Article 8**

**Impartiality and Independence**

- 1** Every DB Member shall be impartial and independent of the Parties at the time of accepting an appointment to serve and must remain so until his or her appointment is terminated.
- 2** At the time of accepting an appointment to act as DB Member, he or she shall provide a written declaration that there is no conflict of interest and disclose any facts or circumstances which in the eyes of the Parties may give rise to justifiable doubts as to the Member's impartiality or independence. If the CIArb is to appoint a DB Member, the potential Member shall submit such written declaration of impartiality and independence to the CIArb.
- 3** DB Members must remain without any conflicts of interest and must also be seen to be acting impartially when a Determination is made. If facts or circumstances have arisen since the appointment that from a reasonable third person's point of view could be perceived as a conflict of interest, the Member shall promptly disclose such facts or circumstances.
- 4** Any doubt as to whether a Member should disclose certain facts or circumstances should be resolved in favour of disclosure. Disclosure is not an admission of a conflict of interest. A DB Member who makes a disclosure to the Parties must consider himself or herself to be impartial and independent of the Parties despite the disclosed facts or circumstances, or else the Member must decline the appointment or resign.
- 5** Deriving from the principle that no person can be his or her own judge, the following situations preclude a person from serving as DB



Member:

- a) there is an identity between a Party and the prospective Member, or the prospective Member is a legal representative of one of the Parties;
- b) the prospective Member is a manager, director or member of the supervisory board, or has a similar controlling influence in one of the Parties;
- c) the prospective Member has a significant financial or personal interest in one of the Parties or in the matter at stake;
- d) the prospective Member regularly advises one of the Parties or an affiliate of one of the Parties, and the prospective Member or his or her firm derives a significant financial income therefrom.

The situations listed in this article are non-exhaustive examples of specific situations which give rise to justifiable doubts as to a person's impartiality and independence. Disclosure of any of these situations cannot cure the objective conflict of interest.

- 6** If within 21 days after the receipt of a disclosure by a DB Member or after a Party learns of facts that could constitute a potential conflict of interest for a DB Member, a Party does not raise an express objection with regard to that Member, the Party is deemed to have waived any potential conflict of interest based on such facts and may not raise any objection to such facts at a later stage, provided that the disclosed or discovered facts do not constitute one of the situations listed in Article 8, paragraphs 5 a) to d) above. Any waiver by a Party of the conflicts of interest described in paragraphs a), b), c) or d) of this Article 8, paragraph 5 shall be regarded as invalid.

**Article 9**

**Tripartite Agreement**

- 1 Prior to commencing DB activities, each DB Member shall sign a Tripartite Agreement with all of the Parties. If there are three DB Members, the substantive terms of their respective Tripartite Agreements shall be identical, unless otherwise agreed by all DB Members.
- 2 The date of the Tripartite Agreement shall be the date of the DB Member's appointment.
- 3 If the CIArb appoints a DB Member in accordance with Article 6, the Parties and the Member are bound by the Rules and the terms of the Tripartite Agreement as if the Parties had appointed the DB Member.
- 4 The Parties may at any time agree to terminate a DB Member's appointment without cause by giving at least one month written notice to the Member, but must act jointly if they decide to terminate the appointment of a DB Member.
- 5 Each DB Member may at any time terminate its Tripartite Agreement by giving at least two months written notice to the Parties, unless otherwise agreed by the Parties and the DB Member concerned.

**Article 10**

**Periodic Meetings and Site Visits**

- 1 An initial meeting of the DB and the Parties shall be held as soon as practicable after the commencement of the Contract.
- 2 When site visits are relevant to the Contract, the DB will visit the project site every 4 months or as agreed between the Parties and the DB depending on the progress of the work. The timing and schedule of each site visit shall be as agreed jointly by the Parties and the DB, or in

the absence of agreement, shall be decided by the DB.

- 3 Regular site visits enable the DB Members to become conversant with the project and to witness the site's conditions and progress of the works. The purpose of site visits and other meetings is also to keep the DB informed of any actual or potential problems or disagreements. Meetings may be held at any location agreed by the Parties and the DB, including via telephone or other communication methods, or in the absence of agreement, venue and timing shall be decided by the DB after consultation with the Parties.
- 4 Site visits shall be attended by the Parties and the DB, who may engage in informal conversations with any of the attendees, in the presence of both Parties, about the performance of the Contract and any pending claims. If appropriate, site visits may be combined with hearings of Disputes.
- 5 At the conclusion of each site visit or meeting, the DB will prepare a report on the site visit or meeting and send a copy of the report to each Party.

#### **Article 11**

##### **Information and Communication**

- 1 The Parties shall provide each DB Member with a copy of the Contract documents, and any other documents pertinent to the performance of the Contract which the DB may request, and keep the DB informed of the project's development by furnishing the DB with relevant information such as progress reports.
- 2 The Parties shall communicate relevant information and copy all documents and notifications to all Parties in a timely manner.
- 3 If a Dispute has been referred to the DB for a Determination, the DB

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may at any time request a Party to submit additional information or allow access to the site to assist the DB in preparing its Determination. The DB shall communicate to the Parties each such request in writing.

- 4 For a DB of three Members, the DB shall be deemed to have received any communication from the Parties, including the formal referral of a Dispute, on the date when it is received by the DB's chairperson.

### **Article 12**

#### **Informal Advice**

- 1 The true mission of a Dispute Board is not judicial; rather it is to prevent formal Disputes. The Parties may at any time jointly refer a matter or Dispute to the DB for it to give an informal advisory opinion as a means of Dispute avoidance and/or informally discuss and attempt to resolve any disagreement that may have arisen between the Parties during the performance of the Contract. The DB may provide the requested advisory opinion during a conversation with the Parties, during any meeting or site visit in the presence of both Parties or in a written note to the Parties, or, with the prior agreement of the Parties, provide informal assistance to resolve a disagreement in any other form. The Parties are not bound to act upon any advice given during the informal assistance process.
- 2 The DB may on its own initiative raise an issue with the Parties in order to establish a dialogue between them and to clarify matters in the presence of the DB. The Parties have the right to stop the DB's initiative if they regard it as unnecessary, provided that they notify the DB promptly, jointly and in writing.
- 3 If the DB is later called upon to make a Determination concerning a matter with respect to which it has provided an informal advisory

opinion, the DB shall not be bound by any views expressed in such verbal or written advisory opinion.

**Article 13**

**Referral to a Dispute Board**

- 1** The Parties shall comply with any contractual pre-review requirements or prior dispute resolution process as provided for by the Contract, as applicable.
- 2** If a Dispute arises, either Party may at any time give notice of its intention to refer the Dispute to the DB by submitting a Position Statement to the other Party or Parties and simultaneously to the DB. The Position Statement shall include a summary of the Dispute, a list of the issues submitted to the DB for a Recommendation or Decision, depending on whether the Parties have chosen a DRB or DAB, and the referring Party's position thereon together with the redress sought, and any evidence supporting the referring Party's position.
- 3** The other Party shall submit a Response to the referring Party and the DB within 28 days of receiving the Position Statement. The Response shall include a summary of the responding Party's position with respect to the Dispute, any evidence supporting the responding Party's position, and a statement of what the responding Party requests the DB to determine.
- 4** Subject to the DB granting permission, the referring Party may reply to the Response in writing within 14 days of receiving the Response by submitting such reply to the other Party or Parties and simultaneously to the DB.
- 5** The Parties remain free to settle the Dispute at any time, with or without the DB's assistance.

**Article 14**

**Conduct of Hearings**

- 1 The Parties and the DB shall meet for a hearing of the Dispute within 21 days of the Response being received by the DB, unless the DB decides otherwise.
- 2 If a Party fails to attend the hearing, the DB may nevertheless proceed with the hearing if the DB is satisfied that the absent Party received notice of the hearing.
- 3 The DB shall act fairly and impartially as between the Parties, giving each of them a reasonable opportunity to present its case. The DB shall not express any opinions during a hearing concerning the merits of arguments put forward by the Parties.
- 4 The DB shall avoid unnecessary delay or expense and adopt procedures suitable to the value, nature and complexity of the Dispute.

**Article 15**

**Recommendations and Decisions**

- 1 For the avoidance of doubt, the procedure of rendering a Recommendation is identical to the procedure of rendering a Decision. The only difference between DRBs and DABs under the Rules concerns the binding nature of their respective Determination. If the Parties have chosen the implementation of a DRB, they are not bound by the DRB's Recommendations (Article 3). If the Parties have chosen the implementation of a DAB, they are contractually bound by the DAB's Decisions (Article 4).
- 2 Within 84 days of the DB receiving the Position Statement, the DB shall issue its Determination, which shall state the DB's findings and the reasons upon which they are based.

- 3 If the Parties wish to agree on an extension of time for rendering a Recommendation or Decision, they shall consult with the DB and then agree on an appropriate extension of time, taking into account the nature and complexity of the Dispute and other relevant circumstances.
- 4 When the DB is composed of three Members, it shall make every effort to achieve unanimity. If this cannot be achieved, a Recommendation or Decision is given by majority vote. If there is no majority, the Recommendation or Decision shall be made by the DB's chairperson alone. Any DB Member who disagrees with the issued Determination will give the reasons for such disagreement in a separate report that shall not form part of the Determination, but will be communicated to the Parties.

#### **Article 16**

##### **Powers of the Dispute Board**

- 1 Where the Rules are silent and in the absence of an agreement of the Parties with respect thereto, the DB is empowered to:
  - a) establish the procedure to be applied in making a Determination;
  - b) decide upon the DB's own jurisdiction, and as to the scope of a Dispute referred to it;
  - c) call meetings, site visit and hearings, and conduct hearings as it thinks fit, being bound only by the Rules and the Contract;
  - d) take the initiative in ascertaining the facts, law and documents required for a Determination, and question the Parties, their representatives and any witnesses they may call in the sequence it chooses;
  - e) make use of its own specialist knowledge and determine the language of the proceedings before the DB, taking into account all

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- relevant circumstances including the language of the Contract; and
- f) take any measures necessary for it to fulfil its function as a DB.
- 2 When the DB is composed of three Members, it shall make every effort to achieve unanimity in deciding which proceedings to follow. If unanimity cannot be achieved, the procedure shall be established by majority vote.

### **Article 17**

#### **Remuneration**

- 1 The fees and expenses of the DB Members shall be shared equally by the Parties.
- 2 The terms and rate of remuneration for each of the DB Members shall be mutually agreed upon by the Parties when agreeing the terms of appointment and recorded in the Tripartite Agreement.
- 3 If the Parties and a DB Member fail to agree on the Member's remuneration, or if one Party challenges any part of the DB's remuneration, then the CIArb shall, after due consultation with the Parties, within 28 days of the written request of one or both Parties, decide what the reasonable remuneration of each DB Member shall be. The CIArb's decision shall be final and binding on the Parties and DB Members. If the CIArb decides on a Member's remuneration, the DB Member shall be paid a Retainer Fee and Daily Fee as per *Alternative 1* of the Tripartite Agreement.
- 4 In the event that the CIArb decides on the DB Member's remuneration, the DB shall be a Dispute Adjudication Board in accordance with Article 4 of the Rules.



**Article 18**

**Administrative expenses of the CI Arb**

- 1** Each request for appointment of a DB Member pursuant to Article 6 (6) of these Rules must be accompanied by a non-refundable fee.\* This amount shall represent the total cost for the appointment of one DB Member by the CI Arb. The CI Arb shall not proceed with the appointment unless the specified payment has been received.
- 2** Each request for a decision on the remuneration of a DB Member pursuant to Article 17 (3) of these Rules must be accompanied by a non-refundable fee.\* This amount shall represent the total cost for the decision by the CI Arb. The CI Arb shall not proceed with the decision unless the specified payment has been received.
- 3** Each application to the CI Arb for removal of a DB Member shall be accompanied by a non-refundable fee.\* This amount shall represent the total cost for the decision by the CI Arb. The CI Arb shall not proceed with the decision unless the specified payment has been received.
- 4** The Parties shall equally share the cost of each appointment or decision by the CI Arb.

\* For current fees, please refer to the Chartered Institute of Arbitrators' website, i.e. [www.ciarb.org](http://www.ciarb.org)

## Tripartite Agreement for a Dispute Board

Each tripartite agreement (“TPA”) is an agreement by and between the Parties to the contract specified below and a Member of a Dispute Board. The identical TPA is used for all DB Members.

This TPA is made this [ ] day of [ ] in the year [ ] by and between:

**Name and address of Party 1** (including contact details)

**Name and address of Party 2** (including contact details)

and

**Name and address of DB Member** (including contact details)

Notice to the Parties and the DB Member shall be given at the above addresses. Any changes in these contact details shall be immediately communicated to all concerned.

### Whereas:

The Parties have entered into a contract dated [ ] (the “Contract”) for [specify scope of work/services to be provided at which location/name of project].

In this TPA, words and expressions shall have the same meanings as are assigned to them in the Rules.

The Parties have agreed to establish a [Dispute Review Board (“DRB”)] [Dispute Adjudication Board (“DAB”)] in accordance with the Dispute Board Rules of the Chartered Institute of Arbitrators (the “Rules”) and to refer their Disputes to the DB in accordance with the Rules.

The Parties desire jointly to appoint the undersigned person to act as [sole DB Member/one of three DB Members] [and desire the Member to act as chairperson of the DB], hereinafter referred to as the DB Member. The date of this TPA shall be the date of the DB Member’s appointment.

If the CI Arb appoints the undersigned DB Member, the Parties and the DB Member are bound by the Rules and the terms of this TPA as if the Parties had appointed the DB Member.

**The Parties and DB Member jointly agree as follows:**

**1 Purpose and Role of Dispute Board**

- 1.1 The DB shall assist the Parties in the avoidance or mitigation of Disputes and the timely resolution of Disputes in accordance with the Rules, which are incorporated herein by reference. Any matter or disagreement arising under the Contract may be referred to the DB by either Party.
- 1.2 The true mission of a Dispute Board is not judicial; rather it is to prevent formal Disputes. The Parties may at any time jointly refer a matter or Dispute to the DB for it to give an informal advisory opinion as a means of Dispute avoidance or provide informal assistance to resolve a disagreement in any other form deemed appropriate by the DB.
- 1.3 Upon referral of a Dispute, the DB shall confer with the Parties to schedule and conduct a timely hearing process.
- 1.4 All DB Members shall communicate or meet as needed to review and discuss the Dispute and issue timely Recommendations or Decisions to the Parties in accordance with the Rules.
- 1.5 The DB Member is not liable for anything done or omitted in the discharge or purported discharge of his/her functions as DB Member unless the act or omission is in bad faith, and that any employee or agent of the DB Member is similarly protected from liability.
- 1.6 If a Dispute is submitted to arbitration or to the courts, the DB

Member shall not be called as a witness in any of the proceedings.

**2 DB Member's Qualifications and Obligations**

- 2.1 The DB Member undertakes to perform his/her duties in accordance with the Rules and the terms of this TPA and confirms that he/she is impartial and independent of the Parties and shall remain so until his/her appointment is terminated. If facts or circumstances arise that from a reasonable third person's point of view could be perceived as a conflict of interest, the DB Member shall promptly disclose such facts or circumstances to the Parties.
- 2.2 The Parties hereby agree that the appointed DB Member has the necessary expertise in the type of work or services to be performed under the Contract and has the language skills needed to fulfil the duties as DB Member.
- 2.3 The DB Member shall keep confidential all information provided to the DB during the course of its service and use such information only for the avoidance and settlement of Disputes, unless otherwise agreed by the Parties or required by applicable law.

**3 Parties' Obligations**

- 3.1 The Parties shall provide each DB Member with a copy of the Contract documents, and any other documents pertinent to the performance of the Contract and necessary for the DB's operations, and keep the DB informed of the project's development by furnishing the DB with relevant information such as progress reports or minutes of meetings.
- 3.2 The Parties jointly and severally undertake to pay the DB Member, in consideration of the carrying out of the services under this TPA and the Rules, in accordance with Clause 4 below. The

fees and expenses of the Member shall be shared equally by the Parties.

- 3.3 The Parties shall communicate relevant information and copy all documents and notifications to all Parties in a timely manner.
- 3.4 The Parties undertake to observe the Rules and the terms of this TPA.

#### **4 DB Member's Fees and Expenses**

- 4.1 The Parties and the DB Member shall select either *Alternative 1* or *Alternative 2* in Clause 4.4, and complete and delete as appropriate.
- 4.2 If the Parties and the DB Member fail to agree on the Member's remuneration, or if one Party challenges any part of the DB's remuneration, then the CI Arb shall, after due consultation with the Parties, within 28 days of the written request of one or both Parties, decide what the reasonable remuneration of the DB Member shall be. The CI Arb's decision shall be final and binding on the Parties and the DB Member.
- 4.3 In the event that the CI Arb decides on a DB Member's remuneration, the DB Member shall be paid a Retainer Fee and Daily Fee as per *Alternative 1* in clause 4.4 below.

#### **4.4 Alternatives 1 and 2**

*Alternative 1:* The DB Member shall be paid a retainer fee of [ ] per month (the "Retainer Fee"), plus a daily fee of [ ] per day (the "Daily Fee").

The Retainer Fee shall be considered as payment in full for:

- (i) being available for all site visits, meetings and hearings;
- (ii) becoming and remaining conversant with the Contract

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documents and the project's developments and maintaining relevant files;

(iii) all office and overhead expenses incurred in connection with the DB Member's duties, including secretarial services, photocopying and office supplies; and

(iv) all services performed under the TPA except those covered by the Daily Fee and incurred Expenses.

The Daily Fee shall be considered as payment in full for:

(i) each day spent reading the Parties' submissions in preparation for a hearing;

(ii) one day's travel time in each direction for the journey between the DB Member's home and the project's site or location of a hearing; and

(iii) each working day spent on site visits, hearings or preparation of Recommendations or Decisions.

The DB Member shall be reimbursed for the actual cost of telephone calls, postage and courier charges reasonably incurred in connection with the Member's duties; all reasonable and necessary travel expenses including business class airfare by the most direct route to the destination, subsistence and other direct travel expenses (the "Expenses"). The Expenses shall be reimbursed in the same currency as that in which the Retainer and Daily Fees are payable. Original receipts shall be provided for all Expenses.

The Retainer and Daily Fees shall remain fixed for the initial 12-month period of service of the DB Member. Thereafter they shall be adjusted by agreement between the Parties and the DB Member at each anniversary of the execution of this TPA.

*Alternative 2:* Payment made to the DB Member shall be for services rendered plus expenses. The DB Member shall submit an invoice for work completed plus expenses, based on the hourly rate of [ ] and the number of hours spent, together with a list of expenses supported by copies of bills and invoices. The Member's invoice shall include a description of activities performed during that period.

- 4.5 All payments to the DB Member shall be made without deductions or restrictions to the following account: [insert account details]. The transfer charges shall be borne by the Party making the transfer.
- 4.6 All fees and expenses shall be invoiced to and paid by each of the Parties in equal shares. All payments shall be made within 30 days of receiving the Member's invoice.

#### **5 Termination**

- 5.1 The Parties may jointly terminate this TPA or the whole Dispute Board at any time by giving one month written notice to each DB Member.
- 5.2 The DB Member may resign from the Dispute Board at any time by giving two months written notice to the Parties.

#### **6 Arbitration and Applicable Law**

- 6.1 This TPA shall be governed by the laws of [specify applicable law].
- 6.2 Any dispute or difference arising out of or in connection with this TPA shall be determined by a single arbitrator to be appointed by the Parties, or failing agreement between the Parties within 14 days, after either Party has given to the other a written request to

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concur in the appointment of an arbitrator, by an arbitrator to be appointed by the President or a Deputy President of the Chartered Institute of Arbitrators.

- 6.3 The arbitration shall be conducted under the Arbitration Rules of the Chartered Institute of Arbitrators. The place of arbitration shall be [specify city and country]. The language of the arbitration shall be [specify language]. The arbitrator shall determine the law and place of the arbitration if the Parties cannot agree on this.

**Signed for and on behalf of Party 1**

**Signed for and on behalf of Party 2**

\_\_\_\_\_

(Signature)

\_\_\_\_\_

(Name and designation)

\_\_\_\_\_

(Signature)

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(Name and designation)

**Signed for and on behalf of DB Member**

\_\_\_\_\_

(Signature)

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(Name and designation)





