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A copy of the appropriate form for applying for the selection/appointment of a Dispute Board Member or Chairman by The Institution of Civil Engineers may be obtained from:

www.ice.org.uk/disputeresolution

The Dispute Resolution Services, The Institution of Civil Engineers, One Great George Street, Westminster, LONDON SW1P 3AA
Acknowledgements

The ICE Dispute Board Procedure has been produced by the Institution of Civil Engineers through its Disputes Resolution Panel.

This procedure was drafted by Mr Gordon Rees.

Mr Brian Totterdill acted as co-ordinating editor for this suite of Dispute Resolution Procedures.

This procedure was based on the ICE Dispute Resolution Board Procedure (2005) which was produced through the Conciliation and Adjudication Advisory Panel and drafted by Mr Brian Totterdill, Mr Gwyn Owen and Mr Peter Chapman who drew on the work of FIDIC in preparation of the 2005 procedure.

Members of the Dispute Resolution Panel were

Mr Alan Wilson (Chairman) MA LLB DipArb CEng FICE MIHT MCIWEM FCIArb
Mr Robert Fleming FInstCES FCIArb
Mr Gordon Rees BSc(Eng) CEng FICE FCIArb
Mr Andrew Worby BSc(Tech) LLB CEng FICE
Mr William Edwards BSc DipArb FICE FIHT MICES FCIArb
Dr Robert Hunter BSc MSc PhD CEng FICE MCIArb FInstCES
Mr Terrence Vaughan BSc CEng FICE FCIArb Barrister
Mr Peter Cousins BEng DipArb CEng MICE FCIArb MCMI

ICE Secretariat
Mr Brendan van Rooyen (Dispute Resolution Services Manager)
Introduction

i Dispute Board is the generic phrase used to include Dispute Adjudication Boards, Dispute Review Boards and Panels and Dispute Conciliation Boards. Construction and engineering disputes can take years to resolve with significant costs and diversion of resources. Dispute Boards (DB) provide an effective, economic and ‘user friendly’ system of dispute avoidance and dispute resolution.

ii A Dispute Board (DB) is a ‘site’ dispute adjudication or conciliation board, usually consisting of three experienced, respected and independent Adjudicators to whom disputes may be promptly referred when inter-Party negotiations at project level have reached impasse. DBs may also be able to provide advice or opinions on any issues prior to such issues maturing into disputes.

iii The Contract may require the DB to make a recommendation, which is not binding, or to make a decision, which is binding and enforceable and will stand unless superseded by agreement, arbitration or a judgement by the Courts.

iv The DB Members are provided with copies of the contract documents and kept abreast of project activities by receipt of routine reports and periodic visits to the job-site. During these visits, the DB acquaints itself with the progress of the construction works and meets with the Parties in order to understand current problems and to encourage the avoidance of disputes and the settlement of claims at project level. If provided by the Contract or if the Parties agree the DB may, during its routine visits, provide informal opinions or recommendations associated with dispute resolution.

v Formal referrals of disputes may be made to the DB by either of the Parties at any time. The DB shall then within a short period adjudicate the dispute and render its decision.

vi The DB process leaves intact the traditional dispute resolution provisions in the Contract in the event that either Party is dissatisfied with the DB’s decision.

vii The ICE considers that the earlier the DB becomes involved in contractual issues the more effective the process becomes. It is suggested that DBs are used as soon as project level negotiations reach an impasse and with the minimum of intermediate, pre-referral procedural steps.

viii Because the Parties empower the DB with authority to reach decisions with which the Parties are to comply, understandably, require the Members of the DB to have the requisite ability and experience to exercise such powers wisely, professionally and in accordance with the law and the Contract.

ix Within the UK, the Housing Grants, Construction and Regeneration Act 1996 (the Act) provides an adjudication regime that is to apply to construction contracts as defined by the Act.

x Two alternative procedural rules are contained in this document. One has been devised for use on international projects and UK contracts which are not subject to the provisions of the Act and the other such that it is in full compliance with the Act. These procedures and rules may need to be modified to comply with any statutory requirements in the applicable jurisdiction.

xi The ICE maintains a list of DB Members. Each is trained and assessed by the ICE’s Dispute Resolution Panel (DRP) as being qualified, experienced and capable of acting on DBs in the UK and/or overseas. Criteria for entry to the ICE list are available by application to the Disputes Resolution Service (DRS) of the ICE or
can be downloaded from the ICE website at:
www.ice.org.uk/disputeresolution

Upon application, the ICE will appoint DB Members from the published list. Application forms for such appointments are included within this document and are also available from the DRS or from the above website.
Institution of Civil Engineers Dispute Board Procedure

Procedural Rules – Procedure One

For use on International Projects and UK Contracts which are not subject to the provisions of the UK Housing Grants Construction and Regeneration Act 1996

Rule 1. General

1.1 Disputes may be referred by either Party and shall be adjudicated by a Dispute Board (DB) in accordance with these Procedural Rules.

Rule 2. Appointment of the Dispute Board

2.1 The DB shall be appointed by the date stated in the contract. If no date is so stated then the DB shall be appointed within 56 days after the Contract is formed. Failure to appoint within this time period shall not invalidate any appointment made either by agreement or by the procedure outlined at Rule 3.

2.2 The contract should state whether the DB shall comprise of one or three Members. If the number is not stated in the contract and the Parties do not agree otherwise, the DB shall comprise three Members.

2.3 The Parties may agree the identity of the DB Member in the case of a sole Member DB.

2.4 If the DB is to comprise three persons, each Party shall nominate one Member for approval by the other Party. The Parties shall consult both these Members and shall agree upon the third Member, who shall be appointed to act as chairman.

2.5 The DB Members shall be appointed on the terms and conditions set out in the attached Dispute Board Agreement – Tripartite Agreement (TPA) and Schedule. The DB Members shall be entitled to be paid reasonable fees together with expenses. The Parties shall sign the agreement within 7 days of being requested to do so.

2.6 The DB shall continue until the latest date for correction of defects stated in the contract or until such other date as the Parties agree. The appointment of any Member may be terminated by agreement of both Parties. The Member shall be given 28 days notice of such termination.

2.7 In the event that a Member is unable to act or has had his appointment terminated, then a replacement member shall be appointed in accordance with Rule 2.4.

Rule 3. Failure to Agree Dispute Board

3.1 If any of the following conditions apply, namely
(a) the Parties fail to agree upon the appointment of the sole Member of the DB by the date stated in the contract
(b) either Party fails to nominate or approve a Member or a replacement Member of a DB of three persons by such date
(c) the Parties fail to agree upon the appointment of a Member or the third Member (to act as chairman) of the DB by such date
(d) the Parties fail to agree upon the appointment of a replacement Member within 42 days after the date on which an existing Member’s appointment is terminated
(e) if there is no DB in place for any reason
then the ICE will within 14 days upon the request of either or both of the Parties, appoint the necessary Member(s) of the DB. Such selection and appointment(s) shall be final and conclusive.

Rule 4. Referral to a Dispute Board

4.1 If a dispute (of any kind whatsoever) arises between the Parties under or in connection with, or arising out of, the Contract or the execution of the Works, including any dispute as to any certificate, determination, instruction, opinion or valuation given under the Contract, either Party may at any time give notice of its intention to refer the dispute to the adjudication of the DB. This notice shall define
the issues which are being referred to the DB for decision together with the redress sought.

4.2 Either Party may within 14 days of any notice under Clause 4.1 refer the dispute in writing to each Member of the DB for its decision, with copies to the other Party and the contract administrator. The referral shall include a full statement of case and all of the necessary supporting documentation to be relied upon.

4.3 For a DB of three persons, the DB shall be deemed to have received such reference on the date when it is received by the chairman of the DB.

4.4 Both Parties shall promptly make available to the DB statements of case and all such additional information, access to the site, and appropriate facilities, as the DB may require for the purposes of making a decision on said dispute.

4.5 Within a period of 84 days after receiving such reference, or within such other period as may be agreed by both Parties, the DB shall give its decision, which shall be reasoned. The Parties shall be entitled to the relief and remedies set out in the decision and at the time set out in the decision. For the avoidance of doubt the service of a notice of arbitration or application to the courts shall not be a reason for either Party to fail to put into effect a DB decision.

4.6 The decision shall be binding on both Parties, who shall promptly give effect to it until it shall be revised by agreement, by an arbitral award or by a judgement of a competent court. Unless the Contract has already been abandoned, repudiated or terminated, the Contractor shall continue to proceed with the Works in accordance with the Contract.

4.7 If either Party is dissatisfied with the DB’s decision, then either Party may, within 28 days after receiving the decision, give notice to the other Party of its dissatisfaction. If the DB fails to give its decision within the period stated in Clause 4.5 above (or as otherwise agreed), then either Party may, within 28 days after the expiry of such period, give notice to the other Party of its dissatisfaction.

4.8 In either event, this notice of dissatisfaction shall state that it is given under Clause 4.7, and shall set out the matter in dispute and the reason(s) for dissatisfaction. Except as stated in Clauses 6 and 7 neither Party shall be entitled to commence arbitration of a dispute unless notice of dissatisfaction has been given in accordance with this Clause.

4.9 If the DB has given its decision as to a matter in dispute to both Parties, and no notice of dissatisfaction has been given by either Party within 28 days after receipt of the DB’s decision, then that decision shall become final and binding upon both Parties.

4.10 If at any time the Parties agree, they may jointly refer a matter to the DB for it to give its informal opinion. Neither Party shall consult the DB on any matter without the agreement of the other Party.

Rule 5.
Site Visits

5.1 Unless otherwise agreed by the Employer and the Contractor, the DB shall visit the site at intervals of not more than 120 days, including times of critical construction events, at the request of either the Employer or the Contractor. Unless otherwise agreed by the Employer, the Contractor and the DB, the period between consecutive visits shall not be less than 60 days, except as required to convene a hearing as described below.

5.2 The timing of and agenda for each site visit shall be as agreed jointly by the DB, the Employer and the Contractor, or in the absence of agreement, shall be decided by the DB. The purpose of site visits is to enable the DB to become and remain acquainted with the progress of the works and of any actual or potential problems or claims.

5.3 Site visits shall be attended by the Employer, the Contractor and the contract administrator and shall be co-ordinated by the Employer in co-operation with the
Contractor. The Employer shall ensure the provision of appropriate conference facilities and secretarial and copying services. At the conclusion of each site visit and within two weeks of leaving the site, the DB shall prepare a report on its activities during the visit and shall send copies to the Employer and the Contractor.

**Rule 6. Provision of Information**

6.1 The Employer shall furnish to the DB one copy of all relevant documents, including Contract documents, progress reports, variation instructions, certificates and other documents pertinent to the performance of the Contract. The Employer and the Contractor shall furnish to the DB one copy of all documents which the DB may request. All communications between the DB and the Employer or the Contractor shall be copied to the other Party. If the DB comprises three or more Members, the Employer and the Contractor shall send copies of these requested documents and these communications to each of these Members.

**Rule 7. Conduct of the Proceedings**

7.1 The DB may conduct a hearing on the dispute, in which event it will decide on the date and place for the hearing and may request that written documentation and arguments from the Employer and the Contractor be presented to it prior to or at the hearing.

7.2 Except as otherwise agreed in writing by the Employer and the Contractor, the DB shall have the power to adopt an inquisitorial procedure, to refuse admission to hearings to any persons other than representatives of the Employer, the Contractor and the contract administrator, and to proceed in the absence of any Party who the DB is satisfied received notice of the hearing. For the avoidance of doubt, the DB shall have the authority to decide whether and to what extent this power may be exercised.

7.3 If any dispute is referred to the DB in accordance with this procedure, the DB shall proceed in accordance with this Procedure and these Rules. Subject to the time allowed to give notice of a decision and other relevant factors, the DB shall
   (a) act fairly and impartially as between the Employer and the Contractor, giving each of them a reasonable opportunity of putting its case and responding to the other’s case
   (b) adopt procedures suitable to the dispute, avoiding unnecessary delay or expense.

7.4 The Employer and the Contractor empower the DB, among other things, to
   (a) establish the procedure to be applied in deciding a dispute
   (b) decide upon the DB’s own jurisdiction, and as to the scope of any dispute referred to it
   (c) conduct any hearing as it thinks fit, not being bound by any rules or procedures other than those contained in the Contract, this procedure and these Rules
   (d) take the initiative in ascertaining the facts and the law and any matters required for a decision
   (e) make use of its own specialist knowledge, if any
   (f) decide that any of the Parties to a dispute is liable to make a payment under the Contract and when that payment is due
   (g) decide upon the payment of financing charges in accordance with the Contract, including such matters as to whether, if interest is payable, it shall be simple or compound and the rests if interest is compounded
   (h) decide upon any provisional relief such as interim or conservatory measures
   (i) open up, review and revise any certificate, decision, determination, instruction, opinion or valuation made under the Contract, relevant to the dispute.

**Rule 8. The Decision**

8.1 The DB shall not express any opinions during any hearing concerning the merits of any arguments advanced by the Parties. Thereafter, the DB shall make its decision in accordance with this Clause, or as otherwise agreed by the Employer and the Contractor in writing.
8.2 If the DB comprises three persons
   (a) it shall convene in private after a hearing, in order to have discussions and prepare its decision
   (b) it shall endeavour to reach a unanimous decision: if this proves impossible the applicable decision shall be made by a majority of the Members
   (c) two members may proceed to make a decision where a Member fails to attend a meeting or hearing, or fulfil any required functions
   (d) a decision signed by the majority of the DB shall be deemed to be a decision of the DB.

Rule 9. Definitions

9.1 The ‘Party’ or ‘Parties’ means the Employer/Owner and or the Contractor, who have entered into the Contract and are named in the Dispute Board Agreement.

9.2 Each Dispute Board Agreement is a Tripartite Agreement (TPA) by and between the Parties to the Contract and the Member namely
   (a) the ‘Employer’/‘Owner’
   (b) the ‘Contractor’
   (c) the ‘Member’ who is defined in the TPA.

9.3 A Member is one of the three or more persons (or Adjudicators) who are jointly called the DB (or Dispute Board) and, where this is the case, the other persons are called the ‘Other Members’, or the sole Member of the DB (or Adjudicator) and, where this is the case, all references to the ‘Other Members’ do not apply.

9.4 The Employer/Owner and the Contractor have entered (or intend to enter) into a contract, which is called the ‘Contract’ and is changed by the TPA, which incorporates this Procedure.
Procedural Rules – Procedure Two

For use on UK Contracts which are subject to the provisions of the UK Housing Grants
Construction and Regeneration Act 1996

Rule 1.
Introduction

1.1 Parties to a construction contract as defined by s104 of the Housing Grants,
Construction and Regeneration Act 1996 (the Act) may refer disputes to
Adjudication at any time.

1.2 The Parties agree that in s108 of the Act the term adjudicator shall equally apply to
a Dispute Board (DB).

1.3 In this procedure Adjudicator and Dispute Board shall have the same meaning.

1.4 The ICE Dispute Board Procedure Two complies with the requirements of the Act.

Rule 2.
Appointment of
the Dispute Board
before issue of a
Notice of
Adjudication is
issued

2.1 The DB shall be appointed by the date stated in the contract. If no date is so stated
then the DB shall be appointed within 56 days after the Contract is formed.

2.2 The contract shall state whether the DB shall comprise of one or three Members. If
the number is not so stated and the Parties do not agree otherwise, the DB shall
comprise three Members.

2.3 The Parties may agree the identity of the DB Member in the case of a sole Member
DB.

2.4 If the DB is to comprise three persons, each Party shall nominate one Member for
approval by the other Party. The Parties shall consult both these Members and
shall agree upon the third Member, who shall be appointed to act as chairman.

2.5 A Dispute Board Agreement – Tripartite Agreement (TPA) as contained in this
procedure, with such amendments as are agreed between them, shall be entered into
between the Parties and either the sole Member (Adjudicator) or each of the three
Members.

2.6 The appointment of the DB or any Member may be terminated by mutual
agreement of both Parties, but not by the Employer or the Contractor acting alone.
The appointment may be terminated by agreement of the Parties by giving the
Member 28 days notice of such intended termination. Otherwise the DB shall
continue until the expiry of the Contract or until all disputes referred prior to the
expiry of the Contract have been resolved.

2.7 In the event that a Member is unable to act or has had his appointment terminated
the Parties shall appoint a suitably qualified person to replace that Member. Unless
the Parties agree otherwise, the replacement Member will take over the functions
of the existing Member.

2.8 If any of these circumstances occur, a replacement Member shall be appointed in
the same manner as the replaced Member was required to have been nominated or
agreed upon, as described in this Clause.

Rule 3.
Failure to Agree
Dispute Board

3.1 If any of the following conditions apply, namely

   (1) the Parties fail to agree upon the appointment of the sole Member of the DB
       by the date stated in the contract
   (2) either Party fails to nominate or approve a Member or a replacement Member
       of a DB of three persons by such date
   (3) the Parties fail to agree upon the appointment of a Member or the third
       Member (to act as chairman) of the DB by such date
   (4) the Parties fail to agree upon the appointment of a replacement Member
       within 42 days after the date on which an existing Member appointment is
       terminated
   (5) if there is no DB in place for any reason
Rule 4. Appointment of the Dispute Board after the issue of a Notice of Adjudication

4.1 This procedure shall not apply if a DB has not been appointed and a Notice of Adjudication has been issued by either Party.

Rule 5. Referral to a Dispute Board

5.1 Any Party may give notice at any time of its intention to refer a dispute arising under the Contract to adjudication by giving a written Notice of Adjudication to the other Party. The Notice of Adjudication shall include
(a) the details and date of the Contract between the Parties
(b) the issues which the Adjudicator is being asked to decide
(c) details of the nature and extent of the redress sought.

Rule 6. Referral

6.1 The referring Party shall within seven days of the date of the Notice of Adjudication send to the DB with a copy to the other Party, a full statement of his case which shall include
(a) a copy of the Notice of Adjudication
(b) the information upon which he relies, including supporting documents.

6.2 For a DB of three persons, the DB shall be deemed to have received the referral on the date when it is received by the chairman of the DB.

6.3 The date of referral of the dispute to the DB shall be the date upon which the DB receives the documents referred to in Rule 6.1. The DB shall notify the Parties forthwith of the date.

Rule 7. Conduct of the Referral

7.1 The DB shall reach their decision within 28 days of the date of referral, or such longer period as is agreed by the Parties after the dispute has been referred. The period of 28 days may be extended by up to 14 days with the consent of the referring Party.

7.2 The DB shall determine the matters set out in the Notice of Adjudication, together with any other matters which the Parties and the DB agree should be within the scope of the adjudication. The Parties and the DB agree that any question regarding the substantive jurisdiction of the DB, raised in an objection during the adjudication proceedings by a Party, shall be a matter to be determined by the DB and within the scope of the adjudication. Provided that, unless the Parties and the DB agree otherwise, the DB may reach a decision only on
(a) whether there is a dispute arising under the contract
(b) whether the Adjudicator has been properly appointed.

This agreement does not affect the right of the DB to determine whether or not it has jurisdiction on other matters of substantive jurisdiction not within the scope of the agreement under this rule.

7.3 The DB may open up review and revise any decision, (other than that of an adjudicator unless agreed by the Parties), opinion, instruction, direction, certificate or valuation made under or in connection with the Contract and which is relevant to the dispute. The DB may order the payment of a sum of money, or other redress but no decision of the DB shall affect the freedom of the Parties to vary the terms of the Contract or other authorised person to vary the Works in accordance with the Contract.

7.4 The other Party may submit their response to the statement under Rule 6.1 within 14 days of the date of referral. The period of response may be extended by agreement between the Parties and the DB.
7.5 The DB shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable, subject to any limitation that there may be in the Contract or the Act. The DB shall not be required to observe any rule of evidence, procedure or otherwise, of any court. Without prejudice to the generality of these powers, it may:

(a) ask for further written information
(b) meet and question the Parties and their representatives
(c) visit the site
(d) request the production of documents or the attendance of people whom the DB considers could assist
(e) set times for (a) – (d) and similar activities
(f) proceed with the adjudication and reach a decision even if a Party fails:
   (i) to provide information
   (ii) to attend a meeting
   (iii) to take any other action requested by the DB
   and proceed in the absence of the Party or, as the case may be, without any written evidence or submissions on his behalf, and make its decision on the basis of the evidence before him
(g) issue such further directions as it considers to be appropriate.

7.6 The DB may obtain legal or technical advice having first notified the Parties of its intention.

7.7 Any Party may at any time ask that additional Parties shall be joined in the adjudication. Joinder of additional Parties shall be subject to the agreement of the DB and the existing and additional Parties. An additional Party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the DB and the Parties.


**Rule 8. The Decision**

8.1 The DB shall reach their decision and so notify the Parties within the time limits in Rule 7.1 and may reach a decision on different aspects of the dispute at different times. They shall not be required to give reasons.

8.2 The DB may in any decision direct the payment of such simple or compound interest at such rate and between such dates or events as they consider appropriate.

8.3 Should the DB fail to reach their decision and notify the Parties in the due time either Party may give seven days notice of its intention to refer the dispute to a replacement adjudicator appointed in accordance with the ICE Adjudication Procedure.

8.4 If the Parties are not notified of the decision of the DB in accordance with Rule 7.1 then the decision shall be of no effect and the DB shall not be entitled to any fees or expenses but the Parties shall be responsible for the fees and expenses of any legal or technical adviser appointed under Rule 7.6 subject to the Parties having been notified of such appointment.

8.5 The Parties shall bear their own costs and expenses incurred in the adjudication. The Parties shall be jointly and severally responsible for the DB’s fees and expenses, including those of any legal or technical adviser appointed under Rule 7.6, but in their decision the DB may direct a Party to pay all or part of their fees and expenses. If the DB makes no such direction the Parties shall pay them in equal shares.

8.6 The Parties shall be entitled to the relief and remedies set out in the decision and to seek summary enforcement thereof, regardless of whether the dispute is to be referred to legal proceedings or arbitration. No issue decided by the DB may subsequently be laid before another adjudicator unless so agreed by the Parties.

8.7 The DB may at their own initiative, or at the request of either Party, correct a decision so as to remove any clerical mistake, error or ambiguity provided that the initiative is taken, or the request is made within 14 days of the notification of the
decision to the Parties. The Adjudicator shall make his corrections within 7 days of any request by a Party.

**Rule 9. Definitions**

9.1 The ‘Party’ or ‘Parties’ means the Employer and/or the Contractor, who have entered into the Contract and are named in the Dispute Board Agreement.

9.2 Each Dispute Board Agreement is a Tripartite Agreement (TPA) by and between the Parties to the Contract and the Member namely

(a) the ‘Employer’
(b) the ‘Contractor’
(c) the ‘Member’ who is defined in the TPA.

9.3 A Member is one of the three or more persons (or Adjudicators) who are jointly called the DB (or Dispute Board) and, where this is the case, the other persons are called the ‘Other Members’, or the sole Member of the DB (or Adjudicator) and, where this is the case, all references to the ‘Other Members’ do not apply.

9.4 The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the ‘Contract’ and is changed in the TPA, which incorporates this Procedure.

9.5 Where the Act applies, the DB shall be deemed to be the Adjudicator.
Dispute Board Agreement Tripartite Agreement (TPA)

The Contract: name and details ................................................

Employer: name and address ................................................

Contractor: name and address ................................................

Member: name and address ................................................

Whereas: the Employer and Contractor have entered into the Contract and desire jointly to appoint the Member to act as a Member/Sole Member/Chairman of a Dispute Board.

The Employer, Contractor and Member jointly agree as follows:

1. The Dispute Board Procedural Rules are as annexed to this agreement.

2. The Employer and Contractor hereby appoint the Member to act as DB Member/Sole Member/Chairman of the DB and the Member hereby accepts such appointment in respect of the DB identified by this Agreement.

3. In consideration of the fees and other payments to be made by the Employer and the Contractor in accordance with this Agreement the Member undertakes to act as DB Member in accordance with this Agreement.

4. The Member shall observe the DB Procedural Rules as if they were set out in full in this Agreement.

5. The Employer and the Contractor jointly and severally undertake to pay the Member in consideration of the carrying out of his services and for all expenses reasonably incurred by him in accordance with the following conditions.

   (a) The timing and submission of fee notes shall be monthly or as otherwise stated in the DB Procedural Rules or as otherwise agreed by the Parties and other DB Members and may include sums in advance representing fees and estimated travel, hotel and other expenses.

   (b) Retainer Fee. A retainer fee of £ per calendar month in accordance with Clauses 17 and 18.

   (c) Daily Fee. A daily fee of £ per day month in accordance with Clause 19.

   (d) Hourly Fee. If at any time in order to render short assignments to be more economic than by the application of a day rate fee then a fee of £ per hour will apply.

   (e) Expenses. In accordance with Clause 20.

   (f) Local Taxes. In accordance with Clause 21.

   (g) The above fees shall apply for the year up to [. . . date . . . ]. Should the DB continue for a period after [. . . date . . . ] then the rates will be subject to revision by a factor as determined by the DB but not greater than 10% per year.

   (h) Fees and charges shall be paid within 28 days of the dates of submissions of fee notes after which interest shall accrue at an interest rate of 8% over the official base rate of the Bank of England, compounded monthly.

6. The Employer and Contractor undertake to each other and to each Member that the Member shall not except as otherwise agreed in writing by the Employer the Contractor and the Member and the Other Member (if any):

   (a) be appointed as arbitrator in any arbitration under the Contract other than that provided for in the Procedural Rules.
(b) be called as a witness to give evidence concerning any dispute before the arbitrator(s) appointed for any arbitration under the Contract.
(c) be called as a witness to give evidence concerning any dispute before the court;
(d) be liable for anything done or omitted in the discharge or purported discharge of the Member’s functions unless the act or omission is shown to have been in bad faith.

7. The Employer and the Contractor and the Member shall at all times maintain the confidentiality of the DB and shall endeavour to ensure that anyone acting on their behalf or through them will do likewise save as agreed otherwise by the Employer, the Contractor and the Member.

8. This Tripartite Agreement shall be governed by the law of England and Wales unless expressly stated otherwise.

9. Any dispute or claim arising out of or in connection with this Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Institution of Civil Engineer’s Arbitration Procedure current at the date of the Notice to Refer the dispute to arbitration.

10. In this Agreement, words and expressions, which are not otherwise defined, shall have the meaning assigned to them in the Contract.

General Provisions

11. 1. Unless otherwise stated in the TPA, each of the TPAs shall take effect on the latest of the following dates:
   a. the Commencement Date defined in the Contract,
   b. when the Employer/Owner, the Contractor and the Member have each signed the TPA,
   or
   c. when the Employer/Owner, the Contractor, and each of the other members (if any) have respectively each signed a TPA.

2. The employment of the Member is a personal appointment. At any time, the Member may give not less that 28 days’ notice of resignation to the Employer/Owner and to the Contractor, and the TPA for that Member shall terminate upon the expiry of this period.

3. Neither the TPA or its duties shall be assigned or subcontracted.

12. The Member undertakes that he/she is and shall be impartial and independent of the Employer/Owner, the Contractor and the contract administrator. The Member shall promptly disclose, to each of them and to the other members (if any), any fact or circumstance, which might appear inconsistent with his/her undertaking of impartiality and independence.

Warranties

13. The Member represents to the Employer/Owner and the Contractor that he/she is:
   (a) experienced in the type of work which the Contractor is to carry out under the Contract,
   (b) experienced in the interpretation of contract documentation, and
   (c) fluent in the language of the Contract.

General Obligations of the Member

14. The Member shall:
   1. have no interest financial or otherwise in the Employer/Owner, the Contractor or the contract administrator, nor any financial interest in the Contract except for payment under the TPA;
   2. not previously have been employed as a consultant or otherwise by the Employer/Owner, the Contractor or the contract administrator, except in such circumstance as were disclosed in writing to the Employer/Owner and the Contractor before they signed the TPA;
   3. have disclosed in writing to the Employer/Owner, the Contractor and the other members (if any), before entering into the TPA, and thereafter throughout its duration, to his/her best knowledge and recollection, any professional or personal relationships with any director,
officer or employee of the Employer/Owner, the Contractor, or of the contract administrator or any other project participants and any previous involvement in the overall project of which the Contract forms part;
4. not, for the duration of the TPA, be employed as a consultant or otherwise by the Employer/Owner, the Contractor and the other members (if any);
5. comply with these procedural rules;
6. not give advice to the Employer/Owner, the Contractor, the Employer’s/Owner’s personnel or the Contractor’s personnel concerning the conduct of the Contract, other than in accordance with these Procedural Rules;
7. not enter into discussions or make any agreement with the Employer/Owner, the Contractor or the contract administrator regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the TPA;
8. endeavour to ensure his/her availability for all site visits and hearings as are necessary;
9. become conversant with the Contract and with the progress of the works (and of any other parts of the project of which the Contract forms part) by studying all documents received which shall be maintained in a current working file;
10. treat the details of the Contract and all the DB’s activities and hearing as private and confidential, and not publish or disclose the decision without the prior written consent of the Employer/Owner, the Contractor and the Other Members (if any); and
be available to give an informal opinion, on any matter relevant to the Contract when the DRB is requested by both the Employer and the Contractor to do so.

General Obligations of the Employer/Owner and the Contractor

15. The Employer/Owner, the Contractor, the Employer’s/Owner’s personnel and the Contractor’s personnel shall
1. not request advice from or consultation with the Member regarding the Contract, otherwise than in the normal course of the DB’s activities under the Contract and the TPA, and except to the extent that prior agreement is given by the Employer/Owner, the Contractor and the Other Members (if any).
2. be responsible for compliance with this provision, by the Employer’s/Owner’s personnel and the Contractor’s personnel respectively
3. undertake to each other and to each Member that the Member shall not, except as otherwise agreed in writing by the Employer/Owner, the Contractor, the Member and the Other Members (if any):
   (a) be appointed as an arbitrator in any arbitration under the Contract;
   (b) be called as a witness to give evidence concerning any dispute before arbitrator(s) appointed for any arbitration under the Contract;
   (c) be called as a witness to give evidence concerning any dispute before the court;
   (d) be liable for anything done or omitted in the discharge or purported discharge of the Member’s functions, unless the act or omission is shown to have been in bad faith.
The Employer/Owner and the Contractor hereby jointly and severally indemnify and hold the Member harmless against and from claims from which he/she is relieved from liability under this subsection
4. provide appropriate security for a sum equivalent to the reasonable expenses to be incurred by the Member should the Member be required to make a site visit and/or attend a hearing. No account shall be taken of any other payments due or paid to the Member.
5. The Member shall be paid a retainer fee per calendar month, which shall be considered as payment in full for:
   (a) being available for all site visits and hearings;
   (b) becoming and remaining conversant with all project developments and maintaining relevant files;
   (c) all office and overhead expenses including secretarial services, photocopying and supplies incurred in connection with his duties.

Payment

16. Each Party shall be responsible for paying one-half of the remuneration of each of the DB Members or in such proportion as is determined by the DB.
17. The Member shall be paid in the currency named in the TPA.

18. The retainer fee shall be paid with effect from the last day of the calendar month in which the TPA becomes effective until its termination or expiry.

19. With effect from the first day of the calendar month following the month in which the whole of the works are taken over by the Employer/Owner the retainer fee shall be reduced by 50%. This reduced fee shall be paid until the first day of the calendar month in which the Member resigns or the TPA is otherwise terminated or expires.

20. The Member shall be paid a daily or hourly fee which shall be considered a payment in full for:
   (a) each day or part of a day up to maximum of two days’ travel time in each direction for the journey between the Member’s home and the site, or another location of a meeting with the other members (if any);
   (b) each working day on site visits, hearings or preparing decisions or opinions; and
   (c) each day spent reading submissions in preparation for a hearing.

21. The Member shall be paid all reasonable expenses incurred in connection with the Member’s duties, including the cost of telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs: a receipt shall be required for each item in excess of five percent of the daily fee.

22. All fees and expenses paid to the Member shall be free of all taxes and encumbrances other than personal or corporate taxation in the Member’s country of residence. Any applicable taxes and encumbrances relating to the fees and expenses shall be payable to the Member in addition to those fees and expenses.

Termination

23. If the Employer/Owner or the Contractor fails to comply with the TPA, the Member may, without prejudice to his/her other rights, terminate it by notice to the Employer and the Contractor. The notice shall take effect when received by them both.
Signed by ........................................
For and on behalf of the Employer
In the presence of
Witness ........................................
Name .............................................
Address ...........................................

Date .............................................

Signed by ........................................
For and on behalf of the Contractor
In the presence of
Witness ........................................
Name .............................................
Address ...........................................

Date .............................................

Signed by ........................................
For and on behalf of the Member
In the presence of
Witness ........................................
Name .............................................
Address ...........................................

Date .............................................