

Draft CIArb 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 CIArb 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 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.

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 **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 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 two months 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 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)

(Signature)

(Name and designation)

(Name and designation)

SIGNED FOR AND ON BEHALF OF DB MEMBER

(Signature)

(Name and designation)