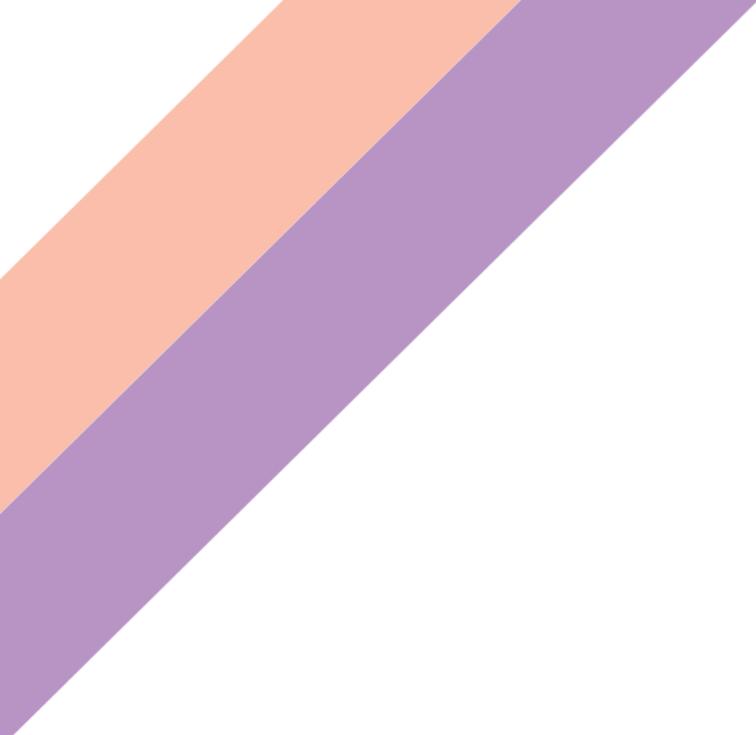


INTERNATIONAL
CENTRE
FOR ADR

LEADING DISPUTE
RESOLUTION
WORLDWIDE

DISPUTE BOARD RULES



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FOREWORD

A dispute board is a standing body typically set up upon the signature or commencement of performance of a mid- or long-term contract, to help the parties avoid or overcome any disagreements or disputes that arise during the implementation of the contract. Commonly used in construction projects, dispute boards are also found in other areas including research and development, intellectual property, production sharing and shareholder agreements. The ICC Dispute Board Rules consist of a comprehensive set of provisions for establishing and operating a dispute board. They cover such matters as the appointment of the dispute board member(s), the services they provide and the compensation they receive. Since their introduction in 2004, these Rules have been widely used throughout the world. After ten years, a revision was undertaken to attune them to modern practice and requirements. This booklet contains the result of that revision – the 2015 Rules.

One of the principal innovations of the 2015 Rules is to spell out the three basic functions of dispute boards, so as to emphasize the importance of informal as well as formal approaches to disputes. Now, the Rules explicitly provide that, upon perceiving a potential disagreement, the dispute board may (1) encourage the parties to overcome it on their own. If this is impossible or the disagreement too entrenched, the dispute board can (2) intervene with informal assistance to help

the parties resolve the matter by agreement or (3) determine a dispute through a recommendation or a decision issued after a procedure of formal referral. Each of these functions is of equal value in helping to reduce the risk and cost of disruption to the parties' contract.

The 2015 Rules continue to give parties a choice between three different types of dispute board, each distinguished by the type of conclusion it issues upon a formal referral. Dispute Adjudication Boards (DAB) issue decisions, which must be complied with immediately. Dispute Review Boards (DRB), on the other hand, issue recommendations, which are not immediately binding on the parties but become so if no party objects within 30 days. Combined Dispute Boards (CDB) offer an intermediate solution between the DRB and the DAB: they normally issue recommendations but may issue decisions if a party so requests and no other party objects, or the dispute board so decides on the basis of criteria set out in the Rules. The 2015 Rules have strengthened the obligation to comply with recommendations and decisions, when so required, by disallowing objections on the merits as a defence to non-compliance and through explicit use of the terms "final" and "binding".

FOREWORD

The ICC Dispute Board Rules may be applied without recourse to the ICC. However, the ICC proposes a number of administrative services to facilitate their application. These include appointing dispute board members, deciding on challenges against them, determining their fees, and reviewing dispute board decisions. These services are provided exclusively by the ICC International Centre for ADR under the conditions set out in the Rules.

Parties wishing to use the ICC Dispute Board Rules are advised to include an appropriate clause in their contract. For this purpose, three standard clauses, providing respectively for each of the three types of dispute board, can be found at the start of this booklet. At the end of the booklet there is also a model dispute board member agreement, covering such matters as the dispute board member's undertaking and remuneration and the duration of the agreement. All of these documents and translations thereof can be downloaded from the ICC website.

STANDARD ICC DISPUTE BOARD CLAUSES

STANDARD ICC DISPUTE BOARD CLAUSES

Below are standard clauses for use by parties who wish to set up and operate a dispute board under the Rules contained in this booklet.

ICC Dispute Review Board followed by ICC arbitration if required

The Parties hereby agree to establish a Dispute Review Board (“DRB”) in accordance with the Dispute Board Rules of the International Chamber of Commerce (the “Rules”), which are incorporated herein by reference. The DRB shall have [one/three/X] member[s] appointed in this Contract or appointed pursuant to the Rules.

All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the DRB in accordance with the Rules. For any given dispute, the DRB shall issue a Recommendation in accordance with the Rules.

If any Party fails to comply with a Recommendation, when required to do so pursuant to the Rules, the other Party may refer the failure itself, without having to refer it to the DRB first, to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. A Party that has failed to comply with a Recommendation, when required to do so pursuant to the Rules, shall not raise any issue as to the merits of the Recommendation as a defence to its failure to comply without delay with the Recommendation.

If any Party sends a written notice to the other Party and the DRB expressing its dissatisfaction with a Recommendation, as provided in the Rules, or if the DRB does not issue the Recommendation within the time limit provided in the Rules, or if the DRB is disbanded pursuant to the Rules prior to issuing the Recommendation, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

ICC Dispute Adjudication Board followed by ICC arbitration if required

The Parties hereby agree to establish a Dispute Adjudication Board (“DAB”) in accordance with the Dispute Board Rules of the International Chamber of Commerce (the “Rules”), which are incorporated herein by reference. The DAB shall have [one/three/X] member[s] appointed in this Contract or appointed pursuant to the Rules.

*All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the DAB in accordance with the Rules. For any given dispute, the DAB shall issue a Decision in accordance with the Rules.**

If any Party fails to comply with a Decision, when required to do so pursuant to the Rules, the other Party may refer the failure itself, without having to refer it to the DAB first, to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. A Party that has failed to comply with a Decision, when required to do so pursuant to the Rules, shall not raise any issue as to the merits of the Decision as a defence to its failure to comply without delay with the Decision.

If any Party sends a written notice to the other Party and the DAB expressing its dissatisfaction with a Decision, as provided in the Rules, or if the DAB does not issue the Decision within the time limit provided in the Rules, or if the DAB is disbanded pursuant to the Rules prior to issuing the Decision, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

[*The Parties may, if they wish, provide for review by the Centre of a DAB’s Decisions by inserting the following text in place of the asterisk above: *The DAB shall submit each Decision to the ICC for review in accordance with Article 23 of the Rules.*]

STANDARD ICC DISPUTE BOARD CLAUSES

ICC Combined Dispute Board followed by ICC arbitration if required

The Parties hereby agree to establish a Combined Dispute Board (“CDB”) in accordance with the Dispute Board Rules of the International Chamber of Commerce (the “Rules”), which are incorporated herein by reference. The CDB shall have [one/three/X] member[s] appointed in this Contract or appointed pursuant to the Rules.

*All disputes arising out of or in connection with the present Contract shall be submitted, in the first instance, to the CDB in accordance with the Rules. For any given dispute, the CDB shall issue a Recommendation, unless the Parties agree that it shall render a Decision or it decides to do so upon the request of a Party and in accordance with the Rules.**

If any Party fails to comply with a Recommendation or a Decision, when required to do so pursuant to the Rules, the other Party may refer the failure itself, without having to refer it to the CDB first, to arbitration under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. A Party that has failed to comply with a Recommendation or a Decision, when required to do so pursuant to the Rules, shall not raise any issue as to the merits of the Recommendation or the Decision as a defence to its failure to comply without delay with the Recommendation or the Decision.

If any Party sends a written notice to the other Party and the CDB expressing its dissatisfaction with a Recommendation or a Decision, as provided in the Rules, or if the CDB does not issue the Recommendation or the Decision within the time limit provided in the Rules, or if the CDB is disbanded pursuant to the Rules prior to issuing the Recommendation or the Decision, the dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration.

[*The Parties may, if they wish, provide for review by the Centre of a CDB’s Decisions by inserting the following text in place of the asterisk above: *The CDB shall submit each Decision to the ICC for review in accordance with Article 23 of the Rules.*]

How to use these clauses

Each of the above clauses provides for a different type of dispute board, followed by arbitration as the ultimate recourse if a dispute is not resolved through the dispute board.

The parties should choose whichever kind of dispute board is most appropriate, given the nature of their contract and their relationship. The ICC does not favour any one type of dispute board over the others.

It may be necessary or desirable for parties to adapt the chosen clause to their particular circumstances. For instance, they may wish to stipulate the number of arbitrators, in the event of arbitration. They may also wish to stipulate the language and place of the arbitration and the law applicable to the merits. Should they wish to exclude any recourse to an emergency arbitrator or the expedited arbitration procedure, or opt into the expedited procedure in higher-value cases, they must do so explicitly. Further information and suggesting wording can be found at **www.iccarbitration.org**.

At all times, care must be taken to avoid any risk of ambiguity in the drafting of the clause. Unclear wording causes uncertainty and delay and can hinder or even compromise the dispute resolution process.

When incorporating one of the clauses in their contract, parties are advised to verify its enforceability under applicable law.

Translations of the above clauses can be found at **www.iccdisputeboards.org**.

ICC DISPUTE BOARD RULES

Dispute Board Rules of the
International Chamber of Commerce

In force as from 1 October 2015

ICC DISPUTE BOARD RULES

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ARTICLE 1

Scope of the Rules

- 1 Dispute Boards established in accordance with the Dispute Board Rules of the International Chamber of Commerce (the “Rules”) aid the Parties in avoiding or resolving their Disagreements and Disputes. They may assist the Parties (i) in avoiding Disagreements under Article 16, (ii) in resolving Disagreements through informal assistance under Article 17, or (iii) in resolving Disputes by issuing Conclusions under Article 18.
- 2 Dispute Boards are not arbitral tribunals and their Conclusions are not enforceable like arbitral awards. Rather, the Parties contractually agree to be bound by the Conclusions under certain specific conditions set forth herein. In application of the Rules, the International Chamber of Commerce (the “ICC”), through its International Centre for ADR (the “Centre”), which is a separate administrative body within the ICC, can provide administrative services to the Parties. These services include appointing Dispute Board members (“DB Members”), deciding upon challenges against DB Members, determining the fees of DB Members, and reviewing Decisions.

ARTICLE 2

Definitions

In the Rules:

(i) "Contract" means the agreement of the Parties that contains or is subject to provisions for establishing a Dispute Board under the Rules.

(ii) "Conclusion" means either a Recommendation or a Decision, issued in writing by the Dispute Board, as described in the Rules.

(iii) "Disagreement" means any difference between the Parties arising out of or in connection with the Contract that has not yet become a Dispute, including Disagreements that are subject to avoidance under Article 16 of the Rules or informal assistance under Article 17 of the Rules.

(iv) "Dispute" means any Disagreement that is formally referred to a Dispute Board for a Conclusion under the terms of the Contract and pursuant to Article 18 of the Rules.

(v) "Dispute Board" ("DB") means a Dispute Review Board ("DRB"), a Dispute Adjudication Board ("DAB") or a Combined Dispute Board ("CDB"), composed of one, three or more DB Members.

(vi) "Party" means a party to the Contract and includes one or more parties, as appropriate.

ARTICLE 3

Agreement to Submit to the Rules

- 1 Unless otherwise agreed, the Parties shall establish the DB at the time of entering into the Contract. The Parties shall specify whether the DB shall be a DRB, a DAB or a CDB.
- 2 The Parties shall cooperate with each other and with the DB in the application of the Rules.

ARTICLE 4

Dispute Review Boards (DRBs)

- 1 DRBs may assist the Parties in avoiding Disagreements, in resolving them through informal assistance, and by issuing Conclusions with respect to Disputes upon formal referral. In formal referrals, DRBs render Recommendations with respect to Disputes.
- 2 Upon receipt of a Recommendation, the Parties may comply with it voluntarily but are not required to do so.
- 3 The Parties agree that if no Party has given a written notice to the other Party and the DRB expressing its dissatisfaction with a Recommendation within 30 days of receiving it, the Recommendation shall become final and binding on the Parties. The Parties shall comply without delay with a Recommendation that has become final and binding and agree not to contest that Recommendation, unless such agreement is prohibited by applicable law.
- 4 If any Party fails to comply with a Recommendation when required to do so pursuant to this Article 4, the other Party may refer the failure itself, without having to refer it to the DRB first, either to arbitration, if the Parties have so agreed, or, if not, to any court of competent jurisdiction. A Party that has failed to comply with a Recommendation, when required to do so, shall not raise any issue as to the merits of the Recommendation as a defence to its failure to comply without delay with the Recommendation.
- 5 Any Party that is dissatisfied with a Recommendation shall, within 30 days of receiving it, give written notice expressing its dissatisfaction to the other Party and the DRB. Such notice may specify the reasons for the Party's dissatisfaction, in the absence of which the DRB may request the Party to provide the DRB and the other Party with brief reasons for its dissatisfaction.
- 6 If any Party gives such a written notice expressing its dissatisfaction with a Recommendation, or if the DRB does not render its Recommendation within the time limit prescribed in Article 22, or if the DRB is disbanded pursuant to the Rules before a Recommendation regarding a Dispute has been rendered, the Dispute in question shall be finally settled by arbitration, if the parties have so agreed, or, if not, by any court of competent jurisdiction.

ARTICLE 5

Dispute Adjudication Boards (DABs)

- 1 DABs may assist the Parties in avoiding Disagreements, in resolving them through informal assistance, and by issuing Conclusions with respect to Disputes upon formal referral. In formal referrals, DABs render Decisions with respect to Disputes.
- 2 A Decision is binding on the Parties upon its receipt. The Parties shall comply with it without delay, notwithstanding any expression of dissatisfaction pursuant to this Article 5.
- 3 The Parties agree that if no Party has given written notice to the other Party and the DAB expressing its dissatisfaction with the Decision within 30 days of receiving it, the Decision shall remain binding and shall become final. The Parties agree not to contest a Decision that has become final, unless such agreement is prohibited by applicable law.
- 4 If any Party fails to comply with a Decision rendered pursuant to this Article 5, whether it be binding or both final and binding, the other Party may refer the failure itself, without having to refer it to the DAB first, either to arbitration, if the Parties have so agreed, or, if not, to any court of competent jurisdiction. A Party that has failed to comply with a Decision shall not raise any issue as to the merits of the Decision as a defence to its failure to comply without delay with the Decision.
- 5 Any Party that is dissatisfied with a Decision shall, within 30 days of receiving it, give written notice expressing its dissatisfaction to the other Party and the DAB. Such notice may specify the reasons for the Party's dissatisfaction, in the absence of which the DAB may request the Party to provide the DAB and the other Party with brief reasons for its dissatisfaction.

- 6 If any Party gives such written notice expressing its dissatisfaction with a Decision, or if the DAB does not render its Decision within the time limit prescribed in Article 22, or if the DAB is disbanded pursuant to the Rules before a Decision regarding a Dispute has been rendered, the Dispute in question shall be finally settled by arbitration, if the Parties have so agreed, or, if not, by any court of competent jurisdiction. Until the Dispute is finally settled by arbitration or otherwise, or unless the arbitral tribunal or the court decides otherwise, the Parties remain bound to comply with any Decision rendered within the prescribed time limit.

ARTICLE 6

Combined Dispute Boards (CDBs)

- 1 CDBs may assist the Parties in avoiding Disagreements, in resolving them through informal assistance, and by issuing Conclusions with respect to Disputes upon formal referral. In formal referrals, CDBs render Recommendations with respect to Disputes pursuant to Article 4, but may render Decisions pursuant to Article 5, as provided in paragraphs 2 and 3 of this Article 6.
- 2 If any Party requests a Decision with respect to a given Dispute and no other Party objects thereto, the CDB shall render a Decision.
- 3 If any Party requests a Decision and another Party objects thereto, the CDB shall make a final decision as to whether it will render a Recommendation or a Decision. In so deciding, the CDB shall consider, without being limited to, the following factors:
 - whether, due to the urgency of the situation or other relevant considerations, a Decision would facilitate the performance of the Contract or prevent substantial loss or harm to any Party;
 - whether a Decision would prevent disruption of the Contract; and
 - whether a Decision is necessary to preserve evidence.
- 4 Any request for a Decision by the Party referring a Dispute to the CDB shall be made in the Statement of Case pursuant to Article 19. Any such request by another Party should be made in writing no later than in its Response pursuant to Article 20.

ARTICLE 7

Appointment of the DB Members

- 1 The DB shall be established in accordance with the provisions of the Contract or, where the Contract is silent, in accordance with the Rules.
- 2 Where the Parties have agreed to establish a DB in accordance with the Rules but have not agreed on the number of DB Members, the DB shall be composed of three members.
- 3 Where the Parties have agreed that the DB shall have a sole DB Member, they shall jointly appoint the sole DB Member. If the Parties fail to appoint the sole DB Member within 30 days after signing the Contract or within 30 days after the commencement of any performance under the Contract, whichever occurs earlier, or within any other time period agreed upon by the Parties, the sole DB Member shall be appointed by the Centre upon the request of any Party.
- 4 When the DB is composed of three DB Members, the Parties shall jointly appoint the first two DB Members. If the Parties fail to appoint one or both DB Members within 30 days after signing the Contract or within 30 days after the commencement of any performance under the Contract, whichever occurs earlier, or within any other time period agreed upon by the Parties, both DB Members shall be appointed by the Centre upon the request of any Party.
- 5 The third DB Member shall be proposed to the Parties by the first two DB Members within 30 days following the appointment of the second DB Member. If the Parties do not appoint the proposed third DB Member within 15 days of receiving the proposal, or if the first two DB Members fail to propose the third DB Member, the third DB Member shall be appointed by the Centre upon the request of any Party. The third DB Member shall act as president of the DB unless all DB Members agree upon another president with the consent of the Parties.

- 6 When a DB Member has to be replaced due to death, resignation, termination or removal, the new DB Member shall be appointed in the same manner, *mutatis mutandis*, as the DB Member being replaced, unless otherwise agreed by the Parties. All actions taken by the DB prior to the replacement of a DB Member shall remain valid. When the DB is composed of three or more DB Members and when one of the DB Members is to be replaced, the other members shall continue to be DB Members. Prior to the replacement of the DB Member, the remaining DB Members shall not hold hearings or issue Conclusions without the agreement of all of the Parties.
- 7 The appointment of any DB Member shall be made by the Centre upon the request of any Party if the Centre is satisfied that doing so is justified in order to ensure the proper application of the Rules.
- 8 When appointing a DB Member, the Centre shall consider the prospective DB Member's attributes, including but not limited to nationality, residence, language skills, training, qualifications and experience, availability and ability to conduct the work to be carried out, as well as any observations, comments or requests made by the Parties. The Centre shall make all reasonable efforts to appoint a DB Member having the attributes, if any, that have been agreed upon by all of the Parties.

ARTICLE 8

Independence

- 1 Every DB Member must be and remain impartial and independent of the Parties.
- 2 Every prospective DB Member shall sign a statement of acceptance, availability, impartiality and independence and disclose in writing to the Parties, the other DB Members, and to the Centre if such DB Member is to be appointed by the Centre, any facts or circumstances which might be of such a nature as to call into question the DB Member's independence in the eyes of the Parties, as well as any circumstances that could give rise to reasonable doubts as to the DB Member's impartiality.
- 3 A DB Member shall immediately disclose in writing to the Parties and the other DB Members any facts or circumstances of a similar nature to those referred to in Article 8(2) concerning the DB Member's impartiality or independence which may arise in the course of such DB Member's tenure.
- 4 Should any Party wish to challenge a DB Member on the basis of an alleged lack of impartiality, independence or otherwise, it may, within 15 days of learning of the facts upon which the challenge is based, submit to the Centre a request for a decision upon the challenge including a written statement of such facts. The Centre will finally decide the challenge after having given the challenged DB Member, any other DB Members and the other Party an opportunity to comment on the challenge.
- 5 If a DB Member is successfully challenged, that DB Member shall be removed forthwith and the DB Member Agreement, if any, between that DB Member and the Parties shall be terminated.

ARTICLE 9

Work of the DB and Confidentiality

- 1 By accepting to serve, DB Members undertake to carry out their responsibilities in accordance with the Rules.
- 2 Unless otherwise agreed by the Parties or otherwise required by applicable law, any information obtained by a DB Member during the course of the DB's activities shall be used by the DB Member only for the purposes of the DB's activities and shall be treated by the DB Member as confidential.
- 3 Unless otherwise agreed in writing by all of the Parties, a DB Member shall not act nor shall have acted in any judicial, arbitral or similar proceedings relating to the Contract, whether as a judge, an arbitrator, an expert or a representative or adviser of a Party.

ARTICLE 10

DB Member Agreement

- 1 Before commencing DB activities, every DB Member shall sign with all of the Parties a DB Member Agreement. If there are three or more DB Members, each DB Member Agreement shall have substantive terms that are identical to the other DB Member Agreements, unless otherwise agreed by the Parties and the DB Member concerned.
- 2 The Parties may at any time, without cause and with immediate effect, jointly terminate the DB Member Agreement of any DB Member but shall pay the monthly management fee to such DB Member for a minimum of three months following the termination, unless otherwise agreed by the Parties and the DB Member concerned.
- 3 Every DB Member may terminate the DB Member Agreement at any time by giving a minimum of three months' written notice to the Parties, unless otherwise agreed by the Parties and the DB Member concerned.

ARTICLE 11

Providing of Information

- 1 The Parties shall fully cooperate with the DB and communicate information to it in a timely manner. In particular, the Parties and the DB shall cooperate to ensure that, as soon as possible after the DB has been constituted, the DB becomes fully informed about the Contract and its performance by the Parties.
- 2 The Parties shall ensure that the DB is kept informed of the performance of the Contract and of any Disagreements arising in the course thereof by such means as progress reports, meetings and, if relevant to the Contract, site visits.
- 3 The DB shall, after consultation with the Parties, inform them in writing of the nature, format and frequency of any progress reports that the Parties shall send to the DB.
- 4 If requested by the DB, the Parties shall provide the DB, during meetings and site visits, with adequate working space, accommodation, means of communication, typing facilities and all necessary office and information technology equipment allowing the DB to fulfil its functions.

ARTICLE 12

Meetings and Site Visits

- 1 At the beginning of its activities the DB, in consultation with the Parties, shall establish a schedule of meetings and, if relevant to the Contract, site visits. The frequency of scheduled meetings and site visits shall be sufficient to keep the DB informed of the performance of the Contract and of any Disagreements. Unless otherwise agreed by the Parties and the DB, when site visits are relevant to the Contract there shall be a minimum of three such visits per year. The Parties and the DB shall attend all such meetings and site visits, during which the DB Members may engage in informal conversations with one or more representatives of the Parties. In the event that a Party fails to attend, the DB may nevertheless decide to proceed. In the event that a DB Member fails to attend, the DB may proceed if the Parties so agree or the DB so decides.
- 2 Site visits occur at the site or sites where the Contract is being performed. Meetings can be held at any location or by telephone or videoconference, as agreed by the Parties and the DB. If they do not agree on where or how to hold a meeting, such matters shall be decided by the DB after consultation with the Parties.
- 3 During scheduled meetings and site visits the DB shall review the performance of the Contract with the Parties and may assist the Parties in avoiding Disagreements pursuant to Article 16 or may provide informal assistance with respect to any Disagreements pursuant to Article 17.
- 4 Any Party may request an urgent meeting or site visit in addition to the scheduled meetings and site visits. The DB Members shall accommodate such a request at the earliest possible time and shall use their best efforts to make themselves available for urgent physical meetings or site visits within 30 days of the request.
- 5 After every meeting and site visit, the DB shall prepare a written summary of the meeting or site visit, including a list of those present.

ARTICLE 13

Written Notifications or Communications; Time Limits

- 1 All written notifications or communications from a Party to the DB or from the DB to the Parties, together with any enclosures and attachments, shall be communicated simultaneously to all Parties and DB Members at the address on file for each of them.
- 2 Written notifications or communications shall be sent in the manner agreed between the Parties and the DB or in any manner that provides the sender with a record of the sending thereof.
- 3 All written notifications or communications from a Party to the Centre shall be communicated simultaneously to all Parties at the address on file for each Party.
- 4 A notification or communication shall be deemed to have been made on the date that it was received by the intended recipient or by its representative or would have been received if made in accordance with this Article 13.
- 5 Periods of time specified in or fixed under the Rules shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with the preceding paragraph. When the day next following such date is an official holiday or non-business day in the country in which the notification or communication is deemed to have been made, the period of time shall commence on the first following business day. Official holidays and non-business days are included in the calculation of the period of time. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication is deemed to have been made, the period of time shall expire at the end of the first following business day.

ARTICLE 14

Beginning and End of the DB's Activities

- 1 The DB shall begin its activities after every DB Member and the Parties have signed the DB Member Agreement(s).
- 2 Unless otherwise agreed by the Parties, the DB shall end its activities upon receiving notice from the Parties of their joint decision to disband the DB.
- 3 A DB Member may resign from the DB at any time by giving three months' written notice to the Parties, unless otherwise agreed in the DB Member Agreement(s).
- 4 Any dispute that may arise after the DB has been disbanded shall be finally settled by arbitration, if the Parties have so agreed, or, if not, by any court of competent jurisdiction.

ARTICLE 15

Powers of the DB

- 1 The proceedings before the DB shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the DB may settle on. In particular, in the absence of an agreement of the Parties with respect thereto, the DB shall have the power, *inter alia*, to:
 - determine the language or languages of the proceedings before the DB, due regard being given to all relevant circumstances, including the language of the Contract;
 - require the Parties to produce any documents that the DB deems necessary in order to fulfil its function;
 - call meetings, site visits and hearings;
 - decide on all procedural matters arising during any meeting, site visit or hearing;
 - question the Parties, their representatives and any witnesses they may call, in the sequence it chooses;

- appoint one or more experts, with the agreement of the parties;
 - issue a Conclusion even if a Party fails to comply with a request of the DB;
 - decide upon any provisional relief such as interim or conservatory measures; and
 - take any measures necessary for it to fulfil its function as a DB.
- 2 Decisions of the DB regarding the rules governing the proceedings shall be taken by the sole DB Member or, when there are three or more DB Members, by a majority vote. If there is no majority, the decision shall be made by the president of the DB alone.
 - 3 The DB may take measures for protecting trade secrets and confidential information.
 - 4 If there are more than two Parties to the Contract, the application of the Rules may be adapted, as appropriate, to the multiparty situation by agreement of all of the Parties or, failing such agreement, by the DB.

ARTICLE 16

Avoidance of Disagreements

If at any time, in particular during meetings or site visits, the DB considers that there may be a potential Disagreement between the parties, the DB may raise this with the Parties with a view to encouraging them to avoid the Disagreement on their own without any further involvement of the DB. In so doing, the DB may assist the Parties in defining the potential Disagreement. The DB may suggest a specific process that the Parties could follow to avoid the Disagreement, while making it clear to the Parties that it stands ready to provide informal assistance or to issue a Conclusion in the event that the Parties are unable to avoid the Disagreement on their own.

ARTICLE 17

Informal Assistance with Disagreements

- 1 On its own initiative or upon the request of any Party and in either case with the agreement of all of the Parties, the DB may informally assist the Parties in resolving any Disagreements that have arisen during the performance of the Contract. Such informal assistance may occur during any meeting or site visit. A Party proposing informal assistance from the DB shall endeavour to inform the DB and the other Party thereof well in advance of the meeting or site visit during which such informal assistance would occur.
- 2 The informal assistance of the DB may take the form of a conversation among the DB and the Parties; one or more separate meetings between the DB and any Party with the prior agreement of all of the Parties; informal views given by the DB to the Parties; a written note from the DB to the Parties; or any other form of assistance that may help the Parties resolve the Disagreement.
- 3 If called upon to issue a Conclusion in connection with a Disagreement on which it has provided informal assistance, the DB shall not be bound by any views, whether expressed orally or in writing, that it may have given in the course of its informal assistance, nor shall it take into account any information that has not been available to all Parties.

ARTICLE 18

Formal Referral for a Conclusion

Any Party may at any time formally refer a Disagreement to the DB for a Conclusion, at which point the Disagreement becomes a Dispute. During the formal referral there shall be no informal conversations and no separate meetings between any DB Member and any Party with respect to any of the issues covered by the formal referral. The procedures set forth below shall apply to formal referrals.

ARTICLE 19

Statement of Case

- 1 Any Party shall refer a Dispute to the DB by submitting a concise written statement of its case (the “Statement of Case”) to the other Party and the DB. The Statement of Case shall include:
 - a clear and concise description of the nature and circumstances of the Dispute;
 - a list of the issues submitted to the DB for a Conclusion and a statement of the referring Party’s position thereon, including any relevant facts and law;
 - relevant support for the referring Party’s position such as documents, drawings, schedules and correspondence;
 - a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
 - any request for interim or conservatory measures; and
 - in the case of a CDB, if the referring Party wishes the CDB to render a Decision, its request for a Decision and the reasons why it believes that the CDB should render a Decision rather than a Recommendation.
- 2 The date on which the Statement of Case is received by the sole DB Member or the president of the DB, as the case may be, shall, for all purposes, be deemed to be the date of the commencement of the referral (the “Date of Commencement”).
- 3 The Parties remain free to settle the Dispute at any time, with or without the assistance of the DB.

ARTICLE 20

Response and Additional Documentation

- 1 Unless the Parties agree otherwise or the DB orders otherwise, within 30 days of receiving the Statement of Case the responding Party shall respond in writing (the “Response”). The Response shall include:
 - a clear and concise statement of the responding Party’s position with respect to the Dispute;
 - relevant support for its position such as documents, drawings, schedules and correspondence;
 - a statement of the issues on which the responding Party requests the DB’s Conclusion, including any request for interim or conservatory measures;
 - in the case of a CDB, a response to any request for a Decision made by the referring Party or, if the referring Party has not made such a request, any request for a Decision by the responding Party, including the reasons why it believes that the CDB should issue the type of Conclusion it desires.
- 2 The DB may at any time request a Party to submit additional written statements or documentation to assist the DB in preparing its Conclusion. Each such request shall be communicated in writing by the DB to the Parties.

ARTICLE 21

Organization and Conduct of Hearings

- 1 A hearing regarding a Dispute shall be held unless the Parties and the DB agree otherwise.
- 2 Unless the DB orders otherwise, hearings shall be held within 15 days of the date on which the sole DB Member or the president of the DB, as the case may be, receives the Response.
- 3 Hearings shall be held in the presence of all DB Members unless the DB decides, in the circumstances and after consultation with the Parties, that it is appropriate to hold the hearing in the absence of a DB Member. Prior to the replacement of a DB Member, a hearing may be held with the remaining DB Members only with the agreement of all of the Parties pursuant to Article 7(6).

ICC DISPUTE BOARD RULES

PROCEDURE FOR FORMAL REFERRAL OF DISPUTES

- 4 If any of the Parties refuses or fails to take part in the DB procedure or any stage thereof, the DB may proceed notwithstanding such refusal or failure.
- 5 The DB shall be in full charge of the hearings.
- 6 The DB shall act fairly and impartially and ensure that each Party has a reasonable opportunity to present its case.
- 7 The Parties shall appear in person or through duly authorized representatives who are in charge of the performance of the Contract. In addition, they may be assisted by advisers.
- 8 Unless the DB decides otherwise, the hearing shall proceed as follows:
 - presentation of the case, first by the referring Party and then by the responding Party;
 - identification by the DB of any matters that need further clarification;
 - clarification by the Parties concerning the matters identified by the DB;
 - responses by each Party to clarifications made by the other Party, to the extent that new issues have been raised in such clarifications.
- 9 The DB may request the Parties to provide written summaries of their presentations.
- 10 The DB may deliberate at any location it considers appropriate before issuing its Conclusion.

ARTICLE 22

Time Limit for Issuing a Conclusion

- 1 The DB shall issue its Conclusion promptly and, in any event, within 90 days of the Date of Commencement as defined in Article 19(2). However, the DB may extend the time limit with the agreement of the Parties. In the absence of such agreement, the DB may, after consulting the Parties, extend the time limit by the shortest time it considers necessary, provided, however, that the total duration of any such extensions shall not exceed 20 days. In deciding whether to extend the time limit, the DB and the Parties shall take into account the nature and complexity of the Dispute and other relevant circumstances.
- 2 Where the Parties have agreed to submit Decisions to the ICC for review, the time limit for rendering a Decision shall be extended by the time required for the Centre to review the Decision. The Centre shall complete its review within 30 days of its receipt of the Decision or of the payment of the filing fee referred to in Article 3 of the Appendix, whichever occurs later. However, if additional time is required for such review, the Centre shall notify the DB and the Parties thereof in writing before the expiration of the 30 days, specifying the new date by which the Centre's review shall be completed.

ARTICLE 23

Review of Decisions by the Centre

Where the Parties have provided for review by the Centre of the Decisions of a DAB or a CDB, the DB shall submit the Decision in draft form to the Centre before it is signed. Each Decision shall be accompanied by the filing fee referred to in Article 3 of the Appendix. The Centre may lay down modifications only as to the form of the Decision. No Decision shall be signed by the DB Members or communicated to the Parties until it has been approved by the Centre.

ARTICLE 24

Contents of a Conclusion

Conclusions shall indicate the date on which they are issued and shall state the findings of the DB as well as the reasons upon which they are based. Conclusions may also include, without limitation and not necessarily in the following order:

- a summary of the Dispute, the respective positions of the Parties and the Conclusion requested;
- a summary of the relevant provisions of the Contract;
- a chronology of relevant events;
- a summary of the procedure followed by the DB; and
- a list of the submissions and documents produced by the Parties in the course of the procedure.

ARTICLE 25

Issuing the Conclusion

When the DB is composed of three or more DB Members, the DB shall make every effort to achieve unanimity. If this cannot be achieved, a Conclusion is rendered by a majority of the DB Members. If there is no majority, the Conclusion shall be rendered by the president of the DB alone. Any DB Member who disagrees with the Conclusion shall give the reasons for such disagreement in a separate written document that shall not form part of the Conclusion but shall be communicated to the Parties. The failure of a DB Member to give such reasons shall not prevent the Conclusion from being issued or taking effect.

ARTICLE 26

Correction and Interpretation of Conclusions

- 1 On its own initiative, the DB may correct a clerical, computational or typographical error, or any errors of a similar nature contained in a Conclusion, provided such correction is submitted to the Parties within 30 days of the date of such Conclusion.
- 2 Any Party may apply to the DB for the correction of an error of the kind referred to in Article 26(1), or for the interpretation of a Conclusion. Such application shall be made to the DB within 30 days of the receipt of the Conclusion by such Party. After receipt of the application by the sole DB Member or the president of the DB, as the case may be, the DB shall grant the other Party a short time limit from the receipt of the application by that Party, to submit any comments thereon. Any correction or interpretation made by the DB shall be issued within 30 days following the expiration of the time limit for the receipt of any comments from the other Party. However, the Parties may agree to extend the time limit for issuing any correction or interpretation.
- 3 Should the DB issue a correction or interpretation of the Conclusion, all time limits associated with the Conclusion shall start to run afresh upon receipt by the Parties of the correction or interpretation of the Conclusion.

ARTICLE 27

Admissibility of Conclusions in Subsequent Proceedings

Unless otherwise agreed by the Parties, any Conclusion, and any separate written document issued pursuant to Article 25, shall be admissible in any judicial or arbitral proceedings in which all of the parties thereto were Parties to the DB proceedings in which the Conclusion was issued.

ARTICLE 28

General Considerations

- 1 All fees and expenses of the DB Members shall be shared equally by the Parties, unless otherwise agreed by the Parties.
- 2 Unless otherwise agreed by the Parties, when there are three or more DB Members, they shall all be treated equally and shall receive the same monthly management fee and the same daily fee for work performed as a DB Member.
- 3 Unless otherwise provided in the DB Member Agreement(s), the fees shall be fixed for the first 24 months following the signature of the DB Member Agreement(s) and thereafter shall be adjusted on each anniversary of the DB Member Agreement(s) in accordance with the terms thereof.
- 4 If the Parties and the DB Members cannot agree upon the fees of the DB Members, the Centre, at the request of any Party or any DB Member, shall fix such fees after consulting the Parties and the DB Members. The Parties shall be bound by the Centre's determination. The DB Members shall either accept the determination or decline the appointment.

ARTICLE 29

Monthly Management Fee

- 1 Unless otherwise provided in the DB Member Agreement(s), each DB Member shall receive a monthly management fee, as set out in the DB Member Agreement(s), to cover the following:
 - becoming and remaining conversant with the Contract and the progress of its performance;
 - activities in managing and coordinating the operation of the DB;
 - studying progress reports in order, *inter alia*, to evaluate the progress of performance and identify potential Disagreements;

- reviewing all correspondence between the Parties copied to the DB;
 - being available to attend all DB meetings with the Parties, internal DB meetings, and site visits; and
 - fixed office overhead expenses.
- 2 Unless otherwise agreed in the DB Member Agreement(s), the monthly management fee shall be equal to three times the daily fee set out in the DB Member Agreement(s) and shall be payable from the date of signature of the DB Member Agreement(s) until termination of the DB Member Agreement(s), except as provided in Article 10(2).

ARTICLE 30

Daily Fee

Unless otherwise agreed in the DB Member Agreement(s), each DB Member shall receive a daily fee, as set out in the DB Member Agreement(s), to cover time spent on the following activities:

- meetings and site visits;
- travel;
- internal meetings of the DB;
- study of documents submitted by the Parties in connection with procedures before the DB;
- work in connection with avoidance of Disagreements;
- work in connection with informal assistance with Disagreements; and
- work in connection with a formal referral for a Conclusion, including hearings.

ARTICLE 31

Travel Costs and Other Expenses

- 1 Unless otherwise provided in the DB Member Agreement(s), air travel expenses shall be reimbursed at unrestricted business class rates between a DB Member's home and the destination. Expenses incurred for hotels and meals when travelling shall be reimbursed at cost.
- 2 Unless otherwise provided in the DB Member Agreement(s), expenses incurred in DB work for ground transport, long distance telephone calls, courier services, photocopying, postage, visas, etc., shall be reimbursed at cost.

ARTICLE 32

Taxes and Charges

- 1 No taxes and charges, except for value added tax (VAT), levied in connection with the services rendered by a DB Member by the country of the residence or nationality of the DB Member shall be reimbursed by the Parties.
- 2 All taxes and charges levied in connection with such services by any country other than the DB Member's country of residence or nationality, as well as VAT wherever levied, shall be reimbursed by the Parties.

ARTICLE 33

Payment Arrangements

- 1 Unless otherwise agreed, invoices shall be submitted by each DB Member to each Party for payment as follows:
 - monthly management fees shall be invoiced and paid on a quarterly basis in advance for the next three-month period.
 - daily fees and travel expenses shall be invoiced and paid after each meeting, site visit, hearing or Conclusion.
- 2 Invoices of DB Members shall be paid within 30 days of receipt.
- 3 The failure of any Party to pay its share of fees and expenses within 30 days of receiving a DB Member's invoice shall entitle the DB Member, in addition to any other rights, to suspend work 15 days after providing a notice of suspension to the Parties and any other DB Members, such suspension remaining in effect until receipt of full payment of all outstanding amounts plus simple interest at one-year LIBOR plus two per cent, or the twelve-month prime interest rate in the currency agreed between the Parties and the DB Members.
- 4 In the event that a Party fails to pay its share of the fees and expenses of a DB Member when due, any other Party, without waiving its rights, may pay the outstanding amount. The Party making such payment, in addition to any other rights, shall be entitled to reimbursement from the non-paying Party of all such sums paid, plus, unless prohibited by applicable law, simple interest at one-year LIBOR plus two per cent, or the twelve-month prime interest rate in the currency agreed between the Parties and the DB Members.
- 5 Upon signing the DB Member Agreement, the Parties shall provide the DB Member with the form of the invoice to be sent by DB Members, including the invoicing address, number of copies of invoices required, and VAT number, if applicable.

ARTICLE 34

Administrative Expenses of the Centre

- 1 The Centre's administrative expenses include an amount for each appointment of a DB Member, an amount for each request for the Centre to fix the fees of the DB Members, an amount for each decision upon a challenge of a DB Member and, when the Parties have agreed to submit Decisions of a DAB or a CDB to the Centre for review, an amount for each such review.
- 2 For each request for appointment of a DB Member, the Centre shall receive the non-refundable amount specified in Article 1 of the Appendix. This amount shall represent the total cost for the appointment of one DB Member by the Centre. The Centre shall not proceed with the appointment unless the requisite payment has been received. The cost of each appointment by the Centre shall be shared equally by the Parties.
- 3 For each decision upon a challenge of a DB Member, the Centre shall fix administrative expenses in an amount not exceeding the maximum sum specified in Article 2 of the Appendix. This amount shall represent the total cost for the Centre's decision upon one challenge of a DB Member. The Centre shall not proceed with the rendering of its decision, and the making of the challenge shall have no effect, unless the said amount has been received by the Centre. The cost of each decision by the Centre shall be borne by the Party making the challenge.
- 4 Where the Parties have provided for the review by the Centre of a DAB's or a CDB's Decisions, the Centre shall fix administrative expenses for the review of each Decision in an amount not exceeding the maximum sum specified in Article 3 of the Appendix. This amount shall represent the total cost for the review of one Decision by the Centre. The Centre shall not approve a Decision unless the said amount has been received by the Centre. The cost of reviewing each Decision shall be shared equally by the Parties.

- 5 For each request for the Centre to fix the fees of the DB Members, the Centre shall receive the non-refundable amount specified in Article 4 of the Appendix. This amount shall represent the total cost for determination of the DB members' fees by the Centre. The Centre shall not proceed with fixing the fees of the DB Members unless the requisite payment has been received. The cost of the Centre's services in fixing the DB Members' fees shall be shared equally by the Parties.
- 6 If a Party fails to pay its share of the administrative expenses of the Centre, the other Party shall be free to pay the entire amount of such administrative expenses.

ARTICLE 35

General Provisions

- 1 Where the parties have agreed upon the application of the Rules after the date of the entry into force of the 2015 ICC Dispute Board Rules, they shall be deemed to have agreed upon the application of that version of the Rules, unless they have agreed otherwise.
- 2 The DB Members, the Centre, the ICC and its employees, the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with the DB proceedings, except to the extent such limitation of liability is prohibited by applicable law.
- 3 In all matters not expressly provided for in the Rules, the DB and the Centre shall act in the spirit of the Rules and the DB shall make every effort to make sure that Conclusions are issued in accordance with the Rules.

ARTICLE 1

Each request for appointment of a DB Member must be accompanied by a filing fee of US\$ 5,000 per DB Member to be appointed. The filing fee is non-refundable. No request for appointment of a DB Member shall be processed unless accompanied by the requisite payment.

ARTICLE 2

Each request for a decision upon a challenge of a DB Member must be accompanied by a filing fee of US\$ 5,000. No request for a decision upon a challenge of a DB member shall be processed unless accompanied by the requisite payment. The filing fee is non-refundable and shall be credited to the administrative expenses for a decision upon a challenge. The Centre shall fix said administrative expenses in an amount not exceeding the maximum sum of US\$ 10,000.

ARTICLE 3

Each Decision of a DAB or a CDB submitted to the Centre for review must be accompanied by a filing fee of US\$ 5,000. No Decision shall be reviewed unless accompanied by the requisite payment. The filing fee is non-refundable and shall be credited to the administrative expenses for the review of each Decision. The Centre shall fix said administrative expenses in an amount not exceeding the maximum sum of US\$ 10,000.

ARTICLE 4

Each request for the Centre to fix the fees of the DB Members must be accompanied by a filing fee of US\$ 5,000. The filing fee is non-refundable. No request for the Centre to fix the fees of the DB Members shall be processed unless accompanied by the requisite payment.

MODEL DISPUTE BOARD MEMBER AGREEMENT

MODEL DISPUTE BOARD MEMBER AGREEMENT

This Agreement is entered into between:

DB Member [full name, title and address]
hereinafter the “Dispute Board Member” or “DB Member”

and

Party 1: [full name and address]

Party 2: [full name and address],

hereinafter collectively referred to as the “Parties”.

Whereas:

The Parties have entered into a contract dated
(the “Contract”) for [scope of work and/or name of project], which is to be performed in [city and country of performance];

The Contract provides that the Parties must refer their disputes to a [DRB, DAB or CDB] under the ICC Dispute Board Rules (the “Rules”); and

The undersigned individual has been appointed to serve as a DB Member.

The DB Member and the Parties therefore agree as follows:

1. Undertaking

The DB Member shall act as [sole DB Member, president of the DB or DB Member] and hereby accepts to perform these duties in accordance with the terms of the Contract, the Rules and the terms of this Agreement. The DB Member confirms that he/she is and shall remain impartial and independent of the Parties

2. Composition of the DB and Contact Details

- First alternative: The sole DB Member can be contacted as follows:
[name, address, telephone, email and any other contact details]
- Second alternative: The DB Members are those listed below and can be contacted as follows:

President:

[name, address, telephone, email and any other contact details]

Additional DB Members:

[name, address, telephone, email and any other contact details of each person mentioned]

The Parties to the Contract are those indicated above with the following contact details:

Party 1: *[name, person responsible for the Contract, address, telephone, email and any other contact details]*

Party 2: *[name, person responsible for the Contract, address, telephone, email and any other contact details]*

Any changes in these contact details shall be immediately communicated to all concerned.

3. Qualifications

With respect to any DB Member appointed by the Parties, the undersigned Parties recognize that such DB Member has the necessary attributes, including professional qualifications and language ability, to undertake the duties of a DB Member.

4. Fees

- The monthly management fee shall be *[specify currency and full amount]*, i.e. *[specify multiple]* times the daily fee.
- The daily fee shall be *[specify currency and full amount]* based upon a *[specify number of hours]*-hour day

For days on which the DB Member works less than *[specify number]* hours *[set out agreement]*.

For days on which the DB Member works more than *[specify number]* hours *[set out agreement]*.

- These fees shall be fixed for the first 24 months after the signing of the DB Member Agreement and thereafter shall be adjusted automatically on each anniversary of the DB Member Agreement using the following index *[specify index]*.
- For days spent travelling *[set out agreement]*.
- Expenses of the DB Member, as described in Article 31(2) of the Rules, shall be reimbursed *[at cost/on the basis of a fixed per diem of ...]*.

5. Payment of Fees and Expenses

- First alternative: All fees and expenses shall be invoiced to *[Party X]* with copies to the other Party and shall be paid to the DB Member by *[Party X]*. *[Party X]* shall be reimbursed by the other Party for the latter's share of the fees and expenses so that they are borne equally by both Parties.

MODEL DISPUTE BOARD MEMBER AGREEMENT

- Second alternative: All fees and expenses shall be invoiced to and paid by each of the Parties in equal shares.

All payments to the DB Member shall be made, without deductions or restrictions, to the following account: [*name of bank, account no., SWIFT code, etc.*]. The transfer charges shall be borne by the party making the transfer.

All payments shall be made within 30 days of receipt by a Party of the invoice from the DB Member.

6. Duration and Termination of the Agreement

Subject to the provisions of this Article 6, the DB Members agree to serve for the duration of the DB.

The Parties may jointly terminate this Agreement or disband the whole DB at any time, with immediate effect, subject to payment of the monthly management fee for a period of [*three*] months.

The DB Member may resign from the Dispute Board at any time by giving [*three*] months' written notice to the Parties.

7. Indemnity

The Parties shall jointly and severally indemnify and hold harmless every DB Member from any claims of third parties for anything done or omitted in the discharge or purported discharge of the DB Member's activities, unless the act or omission is shown to have been in bad faith.

8. Disputes and Applicable Law

All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules of Arbitration. This Agreement shall be governed by [*specify applicable law*]. The place of arbitration shall be [*name of city/country*]. The language of the arbitration shall be [*specify language*].

This Agreement is entered into on [*specify date*] at [*specify place*].

DB Member	Party 1	Party 2
[<i>signature</i>]	[<i>signature</i>]	[<i>signature</i>]

ICC International Centre for ADR

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