**[Pro Forma] Dispute Avoidance Board Agreement for [Name of Project] (One Person)**

[**Name of Principal**]

**ABN […]**

(**Principal**)

[**Name of Contractor**]
**ABN […]**

(**Contractor**)

[**Name of DAB Member**]
**ABN […]**

(**Dispute Avoidance Board** or **Member**)

**[This Pro Forma DAB Agreement document has been created by DRBF Region 3 for use by its Members and clients / users of the Dispute Board process. It is pro forma and needs to be adapted to suit the dispute resolution clauses of the underlying Project Deed / Contract / Agreement or the like.**

**Note that this document also assumes that:**

1. **there is a one-person Dispute Board;**
2. **the DAB Member contracts in his or her personal name;**
3. **the relevant project is not a PPP; and**
4. **there is or will be a Management Review Group (or equivalent) established for the Project**

**Each of these assumptions can be reversed and appropriate amendments made to the Pro Forma DAB Agreement]**

Dispute Avoidance Board Agreement for [Name of Project]

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**Dated:**

**Parties [Name of Principal] ABN …** (the **Principal**)

Address: [Address of Principal]

 Email address: [Email of Principal]

  **[Name of Contractor]** **ABN …**

Address: [Address of Contractor #1]

 Email address: [Email of Contractor #1]

(**Contractor**)

 **[Name of DAB Member]** **ABN …**

Address: [Address of DAB Member #1]

 Email address: [Email of DAB Member #1]

(**Dispute Avoidance Board** or **Member**)

Background

A. On or about [**date**], the Principal and the Contractor entered into the Contract for the design and construction by the Contractor of the [**description of the Project**].

B. This agreement sets out the rights, obligations and duties of the Member, the Principal and the Contractor in relation to the Dispute Avoidance Board and the Disputes.

Operative provisions

# Definitions and Interpretation

## Definitions

1. In this agreement:
2. **Confidential Information** means any Information in any way relating or pertaining to, or connected or associated with, or incidental to, the Project or the business activities of the Principal or the Contractor which is or has been obtained (in writing, orally or in any other form) from, or pursuant to discussions with the Principal or the Contractor or their related body corporates, advisors or agents.

**Contract** means the [Design and Construct] Contract between the Principal and Contractor dated on or about [**date**].

**Decision** means a decision of the Dispute Avoidance Board in accordance with Rules for Dispute Avoidance Board Decisions.

**Dispute Avoidance Board** means the Dispute Avoidance Board formed under clause 3 of this agreement.

**DRBF Code of Ethical Conduct** means the DRBF Code of Ethical Conduct, available at <https://drbf.memberclicks.net/code-of-ethical-conduct>.

1. **Information** means information, correspondence, data, reports, interpretations, forecasts, processes, formulae, procedures, techniques, computer programs, records, analysis, compilation, business plans, studies or other documents or material of whatever nature and embodied, contained, exhibited, displayed or conveyed in any form or manner (including in writing, orally, or in machine readable form, recorded or stored by or in any computer or information retrieval system, or recorded or stored by any electronic magnetic, electromagnetic or other means).

**Member** means the member appointed to the Dispute Avoidance Board in accordance with this agreement.

**Other Parties** means the Principal and the Contractor.

**Rules** **for Dispute Avoidance Board Decisions** means the rules to be followed by the Dispute Avoidance Board when making a Decision in respect of a Dispute, as set out in Appendix 2.

**Schedule of Fees and Disbursements** means the schedule of fees and disbursements set out in Appendix 3.

## Terms defined in the Contract

Words and phrases defined in the Contract and used in this agreement have the meaning given to them in the Contract.

## Interpretation

In this agreement:

### headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

### an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

### **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

### a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

### a reference to a document (including this agreement) is to that document as varied, novated, ratified or replaced from time to time;

### a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re‑enactments and replacements;

### a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

### a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;

### if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;

### **includes** in any form is not a word of limitation; and

### a reference to **$** or **dollar** is to Australian currency.

# Contract to prevail

### The parties agree that if there is any inconsistency between the terms of this Agreement and the Contract, the terms of the Contract will prevail to the extent of the inconsistency.

### This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause [**●**] of the Contract.

# Formation of the Dispute Avoidance Board

## Appointment of Member

### Each of the Other Parties appoints the Member to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the Contract and this Agreement.

### The Member confirms his or her acceptance of the appointment referred to in clause 3.1(a).

## Formation

The parties acknowledge that the Dispute Avoidance Board:

### has been formed;

### is constituted by the Member; and

### must perform its obligations and functions under the Contract and this Agreement.

## Chair

The Member will be Chair.

# Establishment of procedures

### During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters (excluding the Rules for Dispute Avoidance Board Decisions) in accordance with the procedures included in Appendix 1 to this Agreement (unless otherwise agreed by the parties).

### The parties agree to comply with:

#### the general operating procedures in Appendix 1 to this Agreement; and

#### the Rules for Dispute Avoidance Board Decisions in respect of any Dispute referred to the Dispute Avoidance Board pursuant to clause [**●**] of the Contract.

# Dispute Avoidance Board Member's obligations

## Dispute Avoidance or Prevention

The Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in avoiding or preventing Disputes from arising under the Contract and if a Dispute cannot be avoided or prevented, to decide it in accordance with clause [**●**] of the Contract and this Agreement.

## Impartiality

The Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.

## Independence

The Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 5 of this Agreement.

## General duties

The Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

### with due care and diligence;

### in compliance with the DRBF Code of Ethical Conduct;

### in compliance with the Contract and this Agreement; and

### in compliance with all applicable Laws.

# Costs and fees

### The Other Parties are jointly and severally liable for the payment of the Member’s fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.

### The Other Parties agree as between themselves that:

#### they will each pay one half of:

##### the Member’s fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements;

##### any third-party costs incurred in holding any conference referred to in clause 2 of the Rules for Dispute Avoidance Board Decisions, including any booking fee, room hire and transcript costs; and

#### they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any Decision process of the Dispute Avoidance Board.

### The Member agrees that he or she will submit separate tax invoices to each of the Principal and the Contractor at the end of each month during which a meeting of the Dispute Avoidance Board is held (unless a different frequency is agreed by the Other Parties), covering the activities by the Member since the previous tax invoice submitted by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements. If either of the Other Parties is not satisfied that the amount payable is calculated in accordance with the Schedule of Fees and Disbursements, then either of the Other Parties may request clarification from the Member.

### The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(c) within 30 days of receipt.

### The Member is not entitled to engage any third-party consultants or advisers in the performance of their obligations under this Agreement unless the Other Parties agree in writing for he or she to do so, and on the terms on which he or she may do so.

# Principal's commitment and responsibilities

The Principal acknowledges and agrees that it must:

### act in good faith towards the Member and the Dispute Avoidance Board;

### comply with the reasonable requests and directions of the Dispute Avoidance Board; and

### except for its participation in the Dispute Avoidance Board's activities as provided in the Contract and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Member on matters dealing with the prevention and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

# Contractor's commitments and responsibilities

The Contractor acknowledges and agrees that it must:

### act in good faith towards the Member and the Dispute Avoidance Board;

### comply with the reasonable requests and directions of the Dispute Avoidance Board; and

### except for its participation in the Dispute Avoidance Board's activities as provided in the Contract and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Member on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

# Confidentiality

In relation to all Confidential Information disclosed to the Dispute Avoidance Board at any time the Member agrees:

### to keep that information confidential;

### not to disclose that information except if compelled by Law to do so;

### not to use that information for a purpose other than complying with the Member’s obligations under this Agreement or the resolution of any Dispute referred to the Dispute Avoidance Board; and

### to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

# Conflict of interest

### If the Member, during the term of appointment as the Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and the Contractor.

### The Principal and the Contractor will, within ten Business Days of notification under clause 10(a), confer and inform the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the Other Parties believe that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

# Liability

Except in the case of fraud:

### the Member shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the Member; and

### the Other Parties jointly and severally hereby release the Member against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "claims") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:

#### under or in any connection with this Agreement;

#### in tort for negligence, negligent advice or otherwise; or

#### otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Project or the Dispute Avoidance Board’s activities or any other process conducted pursuant to this Agreement.

# Indemnity

The Principal and the Contractor hereby jointly and severally indemnify and keep indemnified the Member against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise):

### against the Other Parties, or any of them; and

### against the Member,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Member in the proper performance of their duties under this Agreement and the Contract.

# Termination of Agreement

### This Agreement may be terminated by written agreement of the Principal and the Contractor.

### Where:

#### the Member resigns under clause 10(b) or 14.1; or

#### the appointment of a Member is terminated by the Principal and the Contractor under clause 14.2,

then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

# Member’s termination

## Resignation

The Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

## Termination

The Member may be terminated at any time by written agreement of the Principal and the Contractor.

## Replacement

The parties acknowledge and agree that if:

### the Member resigns under clause 10(b) or 14.1; or

### the appointment of a Member is terminated by the Other Parties under clause 14.2,

then:

### a replacement Member may be appointed in accordance with clause [**●**] of the Contract; and

### The Principal, the Contractor and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Contract.

# Governing law

### This Agreement shall be governed by and construed in accordance with the Laws of the State of [New South Wales].

### Each party hereby submits to the non-exclusive jurisdiction of the courts of [New South Wales] and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

# Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Contractor and the Member as that of partners, joint venturers or any other fiduciary relationship.

# Notices

### Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the facsimile number or email address as set out in the parties' details on page 1 of this Agreement (or to any new address or facsimile number or email address that a party notifies to the others).

### A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.

### A notice sent by facsimile will be taken to have been received on the next day which is a Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a).

### A notice sent by email will be taken to have been received on the next day which is a Business Day after the day on which the email was issued, provided the sender does not receive a notification that the email was not successfully received in the recipient’s inbox.

# Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that another party may reasonably require to give full effect to this Agreement.

# Survival of terms

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

# Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

### no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

### a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

### the exercise of a right does not prevent any further exercise of that right or of any other right.

# Operation of this Agreement

### Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

### Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

### Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

# Goods and Services Tax

## Interpretation

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

## Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

## Gross up of consideration

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

### the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and

### the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

## Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

## Tax invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

## Adjustment event

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement, then the consideration payable in respect of the supply shall also be adjusted as follows:

### if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and

### if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 22.6 will be made within five Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

# Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

# Counterparts

### This Agreement may be executed in counterparts, which taken together constitute one instrument.

### A party may execute this Agreement by executing any counterpart.

# Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

# Continuous Improvement

If any Member or any of the Other Parties wishes to raise a confidential compliment, comment or complaint about the operation of the Dispute Avoidance Board, or a Member of the Dispute Avoidance Board, but is unwilling to raise the issue with the Chair of the Dispute Avoidance Board, and notwithstanding the confidentiality provisions of this Agreement, any such party is entitled to lodge a confidential compliment, comment or complaint to the DRBF Region 3 President by email at presidentau@drb.org. Any party lodging a confidential compliment, comment or complaint will have their identity kept confidential from the Dispute Avoidance Board participants.

SIGNED as an agreement

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of **[Name of Principal] ABN […]** (**Principal**)by its authorised signatory, in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of authorised signatory |
| Full name of witness |  |  | Full name of authorised signatory |

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for and on behalf of [**Name of Contractor]** **ABN […]** by its authorised signatory, in the presence of: |  |  |  |
|  |  |  |  |
| Signature of Witness |  |  | Signature of authorised signatory |
| Full name of witness |  |  | Full name of authorised signatory |

|  |  |  |  |
| --- | --- | --- | --- |
|  |  |  |  |
| **Signed** by **[Name of DAB Member] ABN […]** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of DAB Member  |
| Full name of witness |  |  | Full name of DAB Member  |

**APPENDIX 1**

**Dispute Avoidance Board General Operating Procedures**

**1. General**

1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the Contract in order to assist the Other Parties in firstly attempting to avoid or prevent and, if unable to avoid or prevent, in determining Disputes under clause [**●**] of the Contract in a timely manner.

1.2 The Other Parties will furnish to the Dispute Avoidance Board Member all documents necessary for the Dispute Avoidance Board to perform its functions, including copies of all Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Avoidance Board Member of matters in relation to the Project.

1.3 The Dispute Avoidance Board Member is not the representative of the party which appointed the Member. The Dispute Avoidance Board must function as an objective, impartial and independent body at all times.

1.4 The Member shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to his or her attention and which might give rise to a conflict of interest or apprehension of bias.

1.5 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are "without prejudice" communications and may not be adduced as evidence in any dispute resolution process under clause [**●**] of the Contract.

**2. Frequency of Regular Meetings and Construction Site Visits**

2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.

2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Dispute Avoidance Board will schedule the meetings and visits as it sees fit.

2.3 The frequency of meetings of the Dispute Avoidance Board should generally be two or three monthly and coincide with the same day as meetings (which the Member will attend) of the Management Review Group under the Contract, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of the Dispute Avoidance Board may be convened separately to meetings of the Management Review Group.

2.4 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.

**3. Agenda for Regular Meetings**

3.1 The Chair of the Dispute Avoidance Board will develop an agenda for each regular meeting in accordance with the requirements of the Contract and this Agreement.

3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Member on performance and progress of the work under the Contract and issues or potential issues arising between the Other Parties shall be held on an “In-Confidence and Without Prejudice" basis to encourage full and frank disclosure and discussions.

3.3 The provisions of clause 3.2 of this Appendix 1 as they relate to a "without prejudice" basis shall not apply to any inspection or conference convened in accordance with the Rules for Dispute Avoidance Board Decisions in relation to a Dispute referred to the Dispute Avoidance Board for a Decision.

3.4 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will generally inspect the Works, the Temporary Works and the Construction Site in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works or the Construction Site that are or may be the subject of any potential issue or Dispute will be pointed out by the Other Parties.

**4. Minutes of Meetings**

4.1 The Management Review Group, under clause [**●**] of the Contract, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Dispute Avoidance Board Member for information only.

4.2 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings, held other than in accordance with the Rules for Dispute Avoidance Board Decisions, shall be marked "In-Confidence and Without Prejudice". The minutes of Dispute Avoidance Board meetings will be prepared by the Chair of the Dispute Avoidance Board and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.

4.3 Minutes as may be amended will be adopted by the Dispute Avoidance Board Member at the next meeting.

**5. Communications**

5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the Contract and this Agreement, the Other Parties shall not communicate with the Member on matters dealing with the conduct of the work or resolution of issues or problems.

5.2 There must be no communication between Dispute Avoidance Board Member and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Member informing the Other Parties. The Other Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the Member.

5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the Chair and copied to the other party. All communications by the Member to the Other Parties should be addressed to the Principal's Representative and the Contractor's Representative.

5.4 Except as required under this Agreement or under the Contract, communication by email is an acceptable alternative to physical delivery or facsimile transmission.

**6. Representation**

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

**7. Advisory Opinions**

Where jointly requested in writing by the Other Parties, the Dispute Avoidance Board may provide an advisory opinion on any issue referred to it by the Other Parties. Any such advisory opinion is provided on a “Without Prejudice” basis and will not be a Decision as that term is referred to in Appendix 2.

The Other Parties agree that nothing said or done by the Dispute Avoidance Board in providing any such advisory opinion shall prevent a Dispute, including a dispute the subject of the advisory opinion, from being referred to the Dispute Avoidance Board for a Decision pursuant to the Rules for Dispute Avoidance Board Decisions.

**8 Other Attendees**

Where requested by the Other Parties, and approved by the Member, or where requested by the Member, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or independent verifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project

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**APPENDIX 2**

**Rules for Dispute Avoidance Board Decisions**

**1. Written submissions**

1.1 Within seven days after the referral of a Dispute to the Dispute Avoidance Board under clause [**●**] of the Contract, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party A (i.e. the party who gave the Notice of Referral to DAB under clause [**●**] of the Contract) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DAB, give the other party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts, and a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.

1.2 Within 14 days after the statement in clause 1.1 is served, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the other party (Party B) must give Party A and the Dispute Avoidance Board a written response to Party A's submissions. That written response may include witness statements and/or expert reports.

1.3 If the Dispute Avoidance Board considers it appropriate, Party A may reply in writing to Party B's response in clause 1.2 within the time allowed by the Dispute Avoidance Board.

1.4 If the Dispute Avoidance Board decides further information or documentation is required for a Decision in respect of the Dispute, the Dispute Avoidance Board may direct one or more of the Other Parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.

1.5 The Dispute Avoidance Board must disclose to both of the Other Parties all submissions, further submissions, information and documents received.

1.6 Any failure by a party to make a written submission will not terminate or discontinue the Decision-Making process.

**2. Conference**

2.1 Either of the Other Parties may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.

2.2 If neither of the Other Parties requests the Dispute Avoidance Board to call a conference, the Chair of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.

2.3 Unless the Member and the Other Parties agree otherwise, the conference will be held at the Construction Site.

2.4 At least five days before the conference, the Dispute Avoidance Board must inform the Other Parties in writing of the date, venue and agenda for the conference.

2.5 The Other Parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2.4, the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the Decision-Making process.

2.6 The Other Parties:

(a) may be accompanied at a conference by legal or other advisers; and

(b) will be bound by any procedural directions as may be given by the Dispute Avoidance Board in relation to the conference both before and during the course of the conference.

2.7 The conference must be held in private.

2.5 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the Other Parties.

**3. The Decision**

3.1 As soon as possible after receipt of the submissions referred to in Rule 1 or after any conference referred to in Rule 2 and, in any event not later than 21 days after receipt of the submissions referred to in Rule 1 (or such other period as the parties may agree or as the Dispute Avoidance Board reasonably requires in the circumstances), the Dispute Avoidance Board must:

(a) decide the Dispute between the Other Parties; and

(b) notify the Other Parties of that Decision.

3.2 The Decision of the Dispute Avoidance Board must:

(a) be in writing stating the Dispute Avoidance Board's Decision and giving reasons;

(b) be made on the basis of the submissions (if any) of the Other Parties, the conference (if any), and the Dispute Avoidance Board's own expertise; and

(c) meet the requirements of the Contract.

3.3 If the Dispute Avoidance Board's Decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the Decision.

**4. Modification**

These rules may be modified only by agreement in writing of the Principal and the Contractor.

**APPENDIX 3**

**Schedule of Fees and Disbursements**

|  |  |  |
| --- | --- | --- |
| **No.** | **Work Description/Scope** | **[Name of Member]** |
|  | **Monthly retainer** (including initial review of contract documentation, routine review of Project minutes and reports, preparation for DAB meetings) | $ |
|  | **Daily fee for routine DAB meetings** (nominal frequency of 2 or 3 monthly intervals, including travel time).This fee is in addition to the Monthly retainer of (1) above. | $ |
|  | **Hourly fee**(this hourly fee is to be charged for advisory opinions, Decisions relating to actual disputes and other activities which are not covered by the item 1 Monthly retainer or the item 2 Daily fee) | $ |
|  | **Escalation provision** (Annual adjustment from the anniversary of date of DAB Agreement) | [x]% increase |
|  | **Expenses** (Reimbursed at cost, supported by receipts. Mode or standard of travel and accommodation may be agreed separately.) | At cost |