**Dispute Avoidance Board Agreement for [Name of Project]**

[**Name of Principal**]

**ABN […]**  
  
(**Principal**)

[**Name of Contractor**]  
**ABN […]**

(**Contractor**)

[**Name of DAB Member**]  
**ABN […]**

[**Name of DAB Member**]  
**ABN […]**

[**Name of DAB Member**]  
**ABN […]**

(each a **Member**)

**[This Pro Forma DAB Agreement document has been created by DRBF Region 3 for use by clients / users of the Dispute Board process. As it is a pro forma document it may need to be adapted to suit the dispute resolution clauses of the underlying Project Deed / Contract / Agreement or the like. It is suitable for use with Standards Australia’s suite of construction contracts.**

**This document assumes that:**

1. **there is a three-person Dispute Board;**
2. **the DAB Members contract in their personal names (and not through a service company);**
3. **the relevant project is not a PPP.]**

Dispute Avoidance Board Agreement for [Name of Project]

|  |  |  |
| --- | --- | --- |
| **Details** | | |
| **Date** |  | |
| **Parties** |  |  |
| **Principal** | Name |  |
|  | ABN |  |
|  | Address |  |
|  | Email |  |
|  | Attention |  |
| **Contractor** | Name |  |
|  | ABN |  |
|  | Address |  |
|  | Email |  |
|  | Attention |  |
| **DAB Members** | Name |  |
|  | ABN |  |
|  | Address |  |
|  | Email |  |
|  | Name |  |
|  | ABN |  |
|  | Address |  |
|  | Email |  |
|  | Name |  |
|  | ABN |  |
|  | Address |  |
|  | Email |  |
| **Project** | [Insert name and description of project] | |

Background

A. The Principal and the Contractor entered into the Contract for the [design and] construction of the Project.

B. The Contract contemplates the establishment of a Dispute Avoidance Board.

C. This agreement establishes the Dispute Avoidance Board and sets out how the Dispute Avoidance Board will operate.

Operative provisions

# Definitions and interpretation

## Definitions

1. Subject to clause 1.2, in this Agreement:
2. **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed.
3. **Chair** means the Chair of the Dispute Avoidance Board, as determined in accordance with clause 3.3.
4. **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 for the Project between the Principal and Contractor dated on or about [**date**].

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

**Decision** means a decision of the Dispute Avoidance Board in respect of a Dispute.

**Decision Making Rules** means, at any time, the rules agreed at that time between the Contract Parties and the Dispute Avoidance Board for the performance of the Decision-Making function of the Dispute Avoidance Board. As at the date of this Agreement, Decision Making Rules set out in Appendix 2 are agreed.

**Dispute** means a dispute which is the subject of a Notice of Dispute under the Contract.

**Dispute Avoidance Board** or **DAB** means the Dispute Avoidance Board established by this Agreement.

**Dispute Avoidance Procedures** means, at any time, the procedures agreed at that time between the Contract Parties and the Dispute Avoidance Board for the performance of the dispute avoidance function of the Dispute Avoidance Board. As at the date of this Agreement, the Dispute Avoidance Procedures set out in Appendix 1 are agreed.

**In Confidence and Without Prejudice** means, in respect of a meeting or communication, that the meeting or communication is confidential and cannot be disclosed in any dispute resolution proceedings.

**Project** means the project described in the Details.

**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 or appendix is a reference to a party, clause or appendix to or of this agreement, and a reference to this agreement includes all appendices 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 the Contract.

# Establishment of the Dispute Avoidance Board

## Appointment of DAB Members

### The Contract Parties appoint the DAB Members to perform the functions of the Dispute Avoidance Board under the Contract and this Agreement.

### Each DAB Member accepts the appointment.

## Establishment of Dispute Avoidance Board

The Dispute Avoidance Board is:

### constituted by the DAB Members; and

### established by this Agreement.

## Chair

The DAB Members will determine which of them will act as Chair from time to time.

# Functions of Dispute Avoidance Board

## Two functions

The Dispute Avoidance Board has the following two primary functions:

### a dispute avoidance function; and

### a Decision-Making function.

### This clause does not limit the functions that the Contract Parties may give to the Dispute Avoidance Board.

### The DAB Members will ensure that the Dispute Avoidance Board fulfils its functions in accordance with the Contract and this Agreement.

## Dispute avoidance function

The dispute avoidance function involves doing everything practicable in accordance with this Agreement to assist the Contract Parties to avoid or prevent issues arising under the Contract from becoming Disputes. Such activities may include:

### encouraging the Contract Parties to provide joint presentations on Project progress and issues;

### discussing issues raised by the Contract Parties with a view to assisting the Contract Parties to amicably resolve them;

### encouraging the Contract Parties to look ahead to identify potential issues;

### raising issues that the Dispute Avoidance Board considers are not being reported or addressed by the Contract Parties;

### requesting and reviewing a broader range of documentation or specific reports and materials from either Contract Party;

### requesting special presentations on specific issues or potential risk areas;

### encouraging and/or facilitating additional meetings and workshops to resolve issues; and

### encouraging the Contract Parties to consider and, if agreed between them, request a written advisory opinion from the Dispute Avoidance Board.

## Decision-Making function

The Decision-Making function involves making a Decision in respect of a Dispute that is referred under the Contract to the Dispute Avoidance Board for a Decision.

# Dispute Avoidance Procedures

### During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board and the Contract Parties:

#### will discuss the procedures for the performance of the dispute avoidance function;

#### confirm, or agree upon adjustments to, the procedures included in Appendix 1.

### The procedures included in Appendix 1 will be the Dispute Avoidance Procedures until such time as adjustments are agreed between the Dispute Avoidance Board and the Contract Parties.

### The Contract Parties must comply with the Dispute Avoidance Procedures.

# Decision Making Rules

The rules for the making a Decision in respect of a Dispute are set out the Decision- Making Rules included in Appendix 2. The Contract Parties must comply with the Decision-Making Rules.

# In Confidence and Without Prejudice

## Dispute avoidance communications

All Dispute Avoidance Board meetings held for the purposes of exercising the dispute avoidance function will be held on an In Confidence and Without Prejudice basis to encourage full and frank disclosure and discussions.

All other communications between a Contract Party and the Dispute Avoidance Board, or between the Contract Parties in the presence of the Dispute Avoidance Board, incidental to the exercise of the dispute avoidance function are In Confidence and Without Prejudice and may not be adduced as evidence in any dispute resolution process.

## Decision-Making communications

Communications that occur as part of the Dispute Avoidance Board’s Decision-Making function, including the written submissions, the conference and the Decision, are not In Confidence and Without Prejudice.

# DAB Member’s commitment and responsibilities

## Impartiality

Each DAB Member agrees to act impartially and without bias in performing the Dispute Avoidance Board’s functions.

## Independence

Each Member agrees to act independently of the Contract Parties (and any of their subcontractors or consultants) in performing the Dispute Avoidance Board’s functions.

## General duties

Each DAB Member agrees to carry out his or her obligations under this Agreement:

### honestly;

### with due care and diligence;

### in compliance with the DRBF Code of Ethical Conduct available at <https://drbf.memberclicks.net/code-of-ethical-conduct>;

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

### in compliance with all applicable laws.

# Principal's commitments and responsibilities

The Principal agrees to:

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

### ensure it is 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;

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

### except as provided in the Contract and this Agreement, not do anything that may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

# Contractor's commitments and responsibilities

The Contractor agrees to:

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

### ensure it is 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;

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

### except as provided in the Contract and this Agreement, not do anything that may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

# Costs and fees

### The Contract Parties are jointly and severally liable for the payment of the DAB Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements.

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

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

##### the Members' 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 3 of the Decision-Making Rules, including any booking fee, room hire and transcript costs; and

#### they will each bear their own costs in preparing this Agreement (and any replacement) and participating in any process of the Dispute Avoidance Board.

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

### The Principal must pay the amount payable in each tax invoice issued to it in accordance with clause 11(c) within 20 Business Days of receipt.

### The Contractor must pay the amount payable in each tax invoice issued to it in accordance with clause 11(c) within 20 Business Days of receipt.

### Neither the Dispute Avoidance Board nor a DAB Member may engage any third-party consultant or adviser in the performance of its obligations under this Agreement unless the Contract Parties agree in writing.

# Confidentiality

In relation to all Confidential Information disclosed to the Dispute Avoidance Board at any time each DAB 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 its 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 a DAB Member, during the term of appointment to the Dispute Avoidance Board, becomes aware of any circumstance that might reasonably be considered to affect the DAB Member's capacity to act independently, impartially and without bias, the Member must inform the Contract Parties and the other DAB Members.

### The other DAB Members will, within five Business Days of notification under clause 13(a), confer and inform the Principal, the Contractor and the DAB Member, whether they believe the circumstances notified are such that the DAB Member should be replaced. If one or both of the other DAB Members believe that the Member should be replaced, the DAB Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 18.3.

# Continuous improvement

If any DAB Member or the Principal or the Contractor wishes to raise a confidential compliment, comment or complaint about the operation of the Dispute Avoidance Board, or a DAB Member, 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 other parties.

# Liability

Except in the case of fraud:

### the DAB Members will not be liable to the Principal or the Contractor upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the DAB Members; and

### the Principal and the Contractor jointly and severally hereby release the DAB Members 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 jointly and severally indemnify and keep indemnified the DAB Members against all claims including without limitation claims by third parties upon any of the bases set out in clause 15 (or otherwise):

### against the Contract Parties, or either of them; and

### against the DAB Members or any of them,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Members in the proper performance of their functions under this Agreement.

# Termination

## By agreement

## This Agreement may be terminated by written agreement of the Contract Parties.

## Time of termination

## Where:

### a DAB Member resigns under clause 13(b) or 18.1; or

### the appointment of a Member is terminated by the Contract Parties under clause 18.2,

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 18.3(d), at which time this Agreement terminates.

# Members' termination

## Resignation

A Member may resign from the Dispute Avoidance Board by providing 20 Business Days' written notice to the other Members, the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

## Termination

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

## Replacement

The parties acknowledge and agree that if:

### a Member resigns under clause 13(b) or 18.1; or

### the appointment of a Member is terminated by the Contract Parties under clause 18.2,

then:

### a replacement DAB Member may be appointed in accordance with the Contract (or, if the Contract does not prescribe a process for appointing a replacement, by agreement between the Contract Parties); and

### the Contract Parties and the DAB Members 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.

# Goods and Services Tax

## Interpretation

Words or expressions used in this clause 19 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 19.6 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.

# Governing law and jurisdiction

## Governing law

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

## Jurisdiction

## 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 DAB Members as that of partners, joint venturers or any other fiduciary relationship.

# Notices

## Requirements for notices

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

## By post

## 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.

## By email

## 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) that another party may reasonably require to give full effect to this Agreement.

# Survival of terms

The parties agree that clauses 11, 12, 15, 16, 19 and 20 and this clause 24 (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.

# Entire 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.

# Rights cumulative

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.

# Severance

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.

# 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.

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 #1] ABN […]** in the presence of: |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of DAB Member #1 |
| Full name of witness |  |  | Full name of DAB Member #1 |
| **Signed** by **[Name of DAB Member #2] ABN […]** in the presence of |  |  |  |
|  |  |  |  |
| Signature of witness |  |  | Signature of DAB Member #2 |
| Full name of witness |  |  | Full name of DAB Member #2 |
|  |  |  |  |
| **Signed** by **[Name of DAB Member #3] ABN […]** in the presence of |
|  |
| Signature of witness |
| Full name of witness |
|  |

**APPENDIX 1**

**Dispute Avoidance Procedures**

1. **General** 
   1. The Dispute Avoidance Board has two primary functions. Its first function is to assist the Contract Parties to amicably resolve issues that arise under the Contract and thereby avoid or prevent such issues from becoming Disputes under the Contract. This is commonly referred to as the dispute avoidance function. The Dispute Avoidance Board’s second function is, for those issues that become Disputes, to determine the Dispute in a timely manner.
   2. These Dispute Avoidance Procedures set out the procedures that apply to the dispute avoidance function of the Dispute Avoidance Board. The procedures that apply to the Dispute determination function are separately documented in the Decision-Making Rules.
   3. The Contract Parties will furnish to each of the Dispute Avoidance Board Members, 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 project control group meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Avoidance Board Members of matters in relation to the Project.
   4. The individual Dispute Avoidance Board Members are not the representative of the party which appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
   5. Each of the DAB Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention, and which might give rise to a conflict of interest or apprehension of bias.
   6. Communications incidental to the exercise of the dispute avoidance function are In Confidence and Without Prejudice and may not be adduced as evidence in any dispute resolution process.
   7. Terms defined in the Dispute Avoidance Board Agreement have the same meaning in these Dispute Avoidance Procedures.
2. **Frequency of Regular Meetings and Construction Site Visits** 
   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, the Principal and the Contractor.
   2. In the case of a failure to agree between the Dispute Avoidance Board and the Contract Parties, the Dispute Avoidance Board will schedule the meetings and visits as it sees fit.
   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 of any management review group (however named) under the Contract, so that the DAB Members can attend the management review group meeting (as observers), and the management review group can attend the Dispute Avoidance Board meeting. The Dispute Avoidance Board meeting schedule may also be influenced by work progress, unusual events and the number and complexity of potential Disputes. Accordingly, Dispute Avoidance Board meetings may be convened separately to any management review group meeting or other such meeting.
   4. The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.
3. **Representation**

Where required by the Dispute Avoidance Board, the Contract 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 Contract 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.

1. **Agenda for Regular Meetings** 
   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.
   2. Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by this clause 4, the Dispute Avoidance Board will generally inspect the construction works with representatives of the Principal and the Contractor. Any aspects of the construction works that are or may become the subject of an issue or Dispute will be pointed out by the Contract Parties.
2. **Minutes of Meetings** 
   1. 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 of the Dispute Avoidance Board meeting for comments, additions and corrections. The minutes will be marked “In Confidence and Without Prejudice”.
   2. Minutes as may be amended will be adopted by the Dispute Avoidance Board Members at the next meeting.
3. **Communications** 
   1. Except when participating in the Dispute Avoidance Board's activities as contemplated by the Contract and this Agreement, the Contract Parties shall not communicate with the Dispute Avoidance Board or any DAB Member on matters dealing with the conduct of the work or resolution of issues.
   2. There must be no communication between a DAB Member and representatives of the Contract Parties during the life of the Dispute Avoidance Board without the DAB Member informing the Contract Parties and the other DAB Members. The Contract Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the Chair of the Dispute Avoidance Board.
   3. All communications to the Dispute Avoidance Board by the Principal or the Contractor outside the Dispute Avoidance Board meetings should be directed in writing to the Chair and copied to the other DAB Members and to the other Contract Party. All communications by the Dispute Avoidance Board to the Contract Parties should be addressed to the Principal's representative and the Contractor's representative.
4. **Advisory Opinions**
   1. Where requested in writing by the Principal or the Contractor, and approved by the other Contract Party and the Dispute Avoidance Board, the Dispute Avoidance Board will provide a written advisory opinion on any issue referred to it. Any such advisory opinion is In Confidence and Without Prejudice and will not be a Decision.
   2. The Contract 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.
5. **Other Attendees**

Where requested by the Principal or the Contractor, and approved by the Dispute Avoidance Board, or where requested by the Dispute Avoidance Board, and approved by the Principal and the Contractor, other persons who may be involved in the Project (such as the design manager, independent verifier or a subcontractor) may be invited to attend meetings and/or make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.

**APPENDIX 2**

**Decision-Making Rules**

1. **Referral and Preliminary Conference**
   1. If any Dispute is referred to the Dispute Avoidance Board for a Decision in accordance with the Contract, the Dispute Avoidance Board shall proceed in accordance with these Decision-Making Rules, or as otherwise agreed by the Contract Parties in writing.
   2. The Dispute Avoidance Board shall act fairly and impartially between the Contract Parties and, with due regard for any time requirements for the Dispute Avoidance Board to render its Decision and other relevant circumstances, the Dispute Avoidance Board shall:
2. give each Contract Party a reasonable opportunity (consistent with the expedited nature of the Dispute Avoidance Board proceedings) of putting forward its case and responding to the other Contract Party’s case; and
3. adopt a Decision-Making process that is appropriate for the Dispute, consistent with the Decision-Making Rules and avoiding unnecessary delay and/or expense.
   1. Within seven Business Days after the reference of a Dispute to the Dispute Avoidance Board is made in accordance with Contract, the Dispute Avoidance Board will convene a Preliminary Conference with the Contract Parties to issue directions for the conduct of the reference.
4. **Directions**
   1. Following the Preliminary Conference in Rule 1.3, the Dispute Avoidance Board will issue procedural directions which will include reasonable times for Party A (i.e., the party who referred the Dispute to the Dispute Avoidance Board under the Contract) to give the other party (Party B) and the Dispute Avoidance Board:
   2. a written Statement of the Dispute referred to the Dispute Avoidance Board;
   3. a draft statement of agreed facts and (relevant) documents (SAFD); and
   4. a written Submission (which may include witness statements and/or expert reports) on the Dispute, in support of Party A’s contentions.
   5. Within five Business Days of receiving the draft SAFD, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party B must give Party A and the Dispute Avoidance Board, a final draft of the SAFD.
   6. Within five Business Days of receiving the final draft SAFD, Party A must provide to the Dispute Avoidance Board and Party B an electronic (and hard) copy of the SAFD, and the agreed documents referred to in the SAFD.
   7. Within ten Business Days after the written Statement and written Submission in Rule 2.1 is served by Party A, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party B must give Party A and the Dispute Avoidance Board, a written Response to Party A’s Submission. That written Response may include witness statements and/or expert reports.
   8. If the Dispute Avoidance Board considers it appropriate, Party A may give a written Reply to Party B’s Response in Rule 2.4 within the time allowed by the Dispute Avoidance Board. Any such Reply is to be given to both Party B and the Dispute Avoidance Board.
   9. 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 the Contract Parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
   10. A Contract Party must simultaneously provide to the other Contract Party the same documents as it provides to the Dispute Avoidance Board.
   11. Any failure by a Contract Party to make a written Submission, Response or Reply will not terminate or discontinue the Decision-Making process.
5. **Conference**
   1. Either Contract Party may, in writing, request the Dispute Avoidance Board to call a conference of the parties (**Conference**). Any such request shall include a summary of the matters the relevant Contract Party considers should be included in the Conference.
   2. If neither Contract Party requests the Dispute Avoidance Board to call a Conference, the Chair of the Dispute Avoidance Board may nevertheless call a Conference if the Dispute Avoidance Board considers it appropriate.
   3. Unless the Dispute Avoidance Board and the Contract Parties agree otherwise, the Conference will be held at the construction site.
   4. At least five Business Days before the Conference, the Dispute Avoidance Board must inform the Contract Parties in writing of the date, venue and agenda for the Conference.
   5. The Contract Parties must appear at the Conference and may make submissions on the subject matter of the Conference.
   6. If a Contract Party fails to appear at a Conference of which that Contract Party had been notified under Rule 3.4, the Dispute Avoidance Board and the other Contract Party may nevertheless proceed with the Conference and the absence of that Contract Party will not terminate or discontinue the Decision-Making process.
   7. The Contract Parties
6. may be accompanied at a Conference by legal or other advisers; and
7. 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.
   1. The Conference must be held in private.
   2. If agreed between the Dispute Avoidance Board and the Contract Parties, transcripts of the Conference proceedings may be taken and made available to the Dispute Avoidance Board and the Contract Parties.
8. **The Decision**
   1. As soon as possible after receipt of the submissions referred to in Rule 2 or after any Conference referred to in Rule 3 and, in any event not later than 20 Business Days after receipt of the Submissions referred to in Rule 2 (or such other period as the Contract Parties may agree or as the Dispute Avoidance Board reasonably requires in the circumstances), the Dispute Avoidance Board must:
9. publish its Decision in respect of the Dispute; and
10. notify the Contract Parties of that Decision.
    1. The Decision of the Dispute Avoidance Board must:
11. be in writing, clearly stating the Decision and giving reasons;
12. be made on the basis of the Submissions (if any) of the Contract Parties provided pursuant to Rule 2, the Conference (if any) held under Rule 3, and the Dispute Avoidance Board's own expertise; and
13. meet the requirements of the Contract.
    1. 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.
14. **Modification**

These rules may be modified only by agreement in writing of the Contract Parties and the Dispute Avoidance Board.

**APPENDIX 3**

**Schedule of Fees and Disbursements**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No.** | **Work Description/Scope** | **[Name of Member#1]** | **[Name of Member#2]** | **[Name of Member#3]** |
|  | **Monthly retainer**  (including initial review of contract documentation, routine review of Project minutes and reports, preparation for DAB meetings and internal communications between DAB Members) | $ | $ | $ |
|  | **Daily fee for routine DAB meetings/site visits**  (nominal frequency of 2 or 3 monthly intervals, including travel time). This fee is in addition to the Item 1 Monthly retainer. | $ | $ | $ |
|  | **Hourly fee** (to be charged for time spent on advisory opinions, Conferences and 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 | [x]% increase | [x]% increase |
|  | **Expenses**  (Reimbursed at cost, supported by receipts. Mode or standard of travel and accommodation may be agreed separately.) | At cost | At cost | At cost |