

The following **JCT/CI Arb Dispute Adjudication Board Rules** are an extract from the **JCT Dispute Adjudication Board Documentation 2021 (DAB 2021)**.

DAB 2021 can be purchased from www.jctltd.co.uk/product/dispute-adjudication-board-documentation-2021

DAB 2021 enables Parties entering into a contract utilising the JCT 2016 Design and Build Contract (DB) and Major Project Construction Contract (MP) forms to establish and operate a Dispute Adjudication Board. **DAB 2021** comprises the following:

- JCT/CI Arb Dispute Adjudication Board Rules;
- JCT Model Dispute Adjudication Board Tripartite Agreement;
- Enabling Provisions for each of DB and MP.

The publication also includes the Guidance Notes.

Foreword to the JCT/CI Arb Dispute Adjudication Board Rules

Dispute boards ('DBs') have been used in international construction contracts for many years, and in that arena have come to be widely regarded as representing best practice in dispute avoidance and resolution. This has been reflected in how World Bank funded projects have required the use of DBs since the mid-1990s.

DBs have been used in different countries and institutions in various ways. In all cases, they involve a group (typically three) of experienced independent construction professionals who are available to help the parties to head off or resolve disputes. In its paradigm state the DB operates as a standing board, involved with the project periodically from the beginning, before any disputes have developed. However, sometimes the DB may be appointed ad hoc in response to disputes. Under some procedures (such as those commonly used in the USA), DBs provide non-binding recommendations to the parties in relation to their disputes; these are often termed 'Dispute Review Boards' or 'DRBs'. A different model of DB is one which provides binding decisions (typically not final) allowing the parties to proceed to final dispute resolution (arbitration or litigation) if they wish to pursue the matter further; these are often referred to as 'Dispute Adjudication Boards' or 'DABs'.

In the UK, so far, there has been limited use of DBs, given that statutory adjudication in the form of the Housing Grants, Construction and Regeneration Act 1996 (as amended) ('the Act') has been introduced and its successful use has reduced the necessity for the development of DB procedures in domestic construction contracts.

Statutory adjudication plays an important role in providing swift and effective dispute resolution in construction contracts in the UK. However, adjudication is a reactive form of dispute resolution, typically with no fixed adjudicator in place on a project, and is unable to provide a proactive mechanism for avoiding disputes in the first place, 'nipping them in the bud' before formal dispute resolution becomes necessary. By contrast, a standing DB is able to do this, also giving the parties greater certainty over who will decide their disputes (should they arise). A standing DB's presence should encourage the parties to moderate their behaviour on the project (knowing that they will otherwise have to explain themselves to the DB), and may reduce the scope for parties adopting adversarial positions, which can give rise to differences and damage project relationships.

While a number of UK bodies have developed DB procedures, these have generally not been designed as 'Act compliant', and have been aimed at non-UK based projects e.g. the DB rules of the Chartered Institute of Arbitrators (CI Arb). JCT recognised that there was a potential role for DBs to be used on UK-based projects (although perhaps on larger and longer-term projects) and that this could be done in a way that was consistent with and complemented the parties' statutory right to refer disputes to adjudication under the Act. The concept of a three-person board acting as an adjudicator under the Act was not considered by JCT to be inconsistent with the Act, or offensive in principle to the Act's objectives and intentions. It was noted that the language of the legislation did not require that an adjudicator under the Act should always be a single person. JCT concluded that it would be desirable and legally possible to develop a procedure for a standing DB for use in a UK construction contract subject to the Act. Such a procedure would include the DB performing its informal dispute avoidance role as the project develops, whilst also providing the vehicle for the parties' statutory right to refer disputes to adjudication.

In developing a set of rules to reflect this concept, JCT wished to avoid completely 'reinventing the wheel' and is pleased to have agreed with the CI Arb for its form of DB rules to be used as the basis for JCT's rules, albeit amended for use in a JCT contract form on UK projects. This approach is in fact similar to the approach JCT has adopted to the procedure for arbitration in its contracts, which is an amended form of the Construction Industry Model Arbitration Rules (CIMAR) published by the Society of Construction Arbitrators.

Amendments were required to be made to the CI Arb's DB rules, in particular to establish the Dispute Board as a Dispute Adjudication Board (DAB) and ensure that there was an Act compliant adjudication mechanism in place. Developing a dispute board procedure to work in compliance with the Act, and reflect other related issues in English law, gave rise to certain legal and procedural points that needed to be addressed in the rules. This included considering how the DAB's participation in resolving issues between the parties in its informal capacity would be addressed in the rules, to seek to avoid a situation where the DAB's involvement in a subsequent adjudication might give rise to challenge on the grounds of natural justice, due to it having been previously exposed to without

prejudice information (a problem that had caused difficulty in *Glencot Development and Design Co. Ltd v Ben Barrett & Son (Contractors) Limited* [2001] EWHC Technology 15).

More generally, working within the requirements of Section 108 of the Act JCT considered there still to be latitude within the rules for the parties to configure the DAB to the needs of their specific project. For example, the rules take into account that on smaller projects parties may consider it disproportionate to have the costs of a three-person DAB and they permit the appointment of a single person DAB.

In order to extract the full benefit of a dispute board, JCT and the CI Arb recommend that the board is appointed from the outset of the project. This is to ensure that the board becomes familiar with the project, and its standing presence with periodic visits to site are able to provide the most potential for dispute avoidance. It is to be noted the JCT rules include a fall back mechanism for disputes to be adjudicated under the Scheme, where at the time a party wishes to refer a dispute to the DAB, the DAB has not been established. The JCT rules also provide for institutional support from the CI Arb where a DAB member is no longer available to participate.

JCT's rules have been developed for use with the Design and Build Contract and Major Project Construction Contract forms, both of which are suitable for large, longer-term projects. It was thought that these contract forms would be the most appropriate, as the establishment of a DAB will generate costs that must be proportionate to the nature and size of the project. The rules are for use between the Employer and the Contractor under the main contract, nevertheless JCT recognises the practical benefits of a DAB could also be equally applicable to large and longer-term sub-contracts, and the development of rules for use at second tier level is a matter for future consideration by JCT.

JCT/CIArb Dispute Adjudication Board Rules

Article 1

Definitions

“**Act**” means the Housing Grants, Construction and Regeneration Act 1996 (as amended).

“**Adjudicator**” means the Dispute Adjudication Board appointed pursuant to these Rules.

“**Contract**” means the agreement of the Parties that contains provisions for establishing a Dispute Adjudication Board under these Rules.

“**Decision**” means a decision issued in writing by a Dispute Adjudication Board; a decision is binding on the Parties until the Dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or by agreement between the Parties.

“**Dispute**” means a dispute or difference between the Parties arising under the Contract.

“**Dispute Adjudication Board**” (also referred to in these Rules as “DAB”) means the board composed of one or three Dispute Adjudication Board members (“Members” or “DAB Members”) appointed in accordance with Article 4 of these Rules.

“**Notice**” means a written notice under Article 10.1 of a Party’s intention to refer a Dispute to the Dispute Adjudication Board for determination by rendering a Decision pursuant to Article 10.2 or a Recommendation pursuant to Article 14.1.

“**Party**” or “**Parties**” means the parties to the Contract.

“**Recommendation**” means a formal report issued in writing by a Dispute Adjudication Board, which is not binding on the Parties.

“**Referral**” means a written statement of the referring Party’s case in respect of a Dispute that has been referred to the Dispute Adjudication Board for determination, including a copy of the Notice and any evidence and/or supporting documents relied upon by the referring Party.

“**Response**” means a written statement of case in response to a Referral, including a summary of the responding Party’s position with respect to the Dispute, any evidence and/or supporting documents relied upon by the responding Party, and a statement of what the responding Party requests the DAB to determine and details of any redress sought.

“**Rules**” means Articles 1 to 16 of these Rules, otherwise referred to as “the JCT/CIArb Dispute Adjudication Board Rules”.

“**Scheme**” means Part 1 of the Schedule to The Scheme for Construction Contracts (England and Wales) Regulations 1998, as amended.

“**Tripartite Agreement**” means the JCT Model Dispute Adjudication Board Tripartite Agreement between the Parties and each of the DAB Members.

Article 2

Introduction

- 2.1 The DAB shall assist the Parties in the avoidance of Disputes and the timely resolution of Disputes. Any Dispute arising under the Contract may be referred to the DAB by either Party.
- 2.2 In accordance with Section 108 of the Act, the Parties may refer a Dispute to adjudication by the Dispute Adjudication Board pursuant to these Rules at any time.
- 2.3 The Parties agree that the term adjudicator as used in Section 108 of the Act shall apply to the Dispute Adjudication Board.

- 2.4** The Parties' intention in agreeing to and applying these Rules is for the establishment and operation of a Dispute Adjudication Board that shall comply with the requirements of Section 108 of the Act, and the Parties agree that provisions of these Rules comply with the requirements of Section 108 of the Act.
- 2.5** When referring a Dispute to the Dispute Adjudication Board under these Rules, a referring Party may require the DAB to determine the Dispute by the issue of a Recommendation under Article 14.1; a determination for the issue of a Recommendation shall not be an adjudication pursuant to Section 108 of the Act.

Article 3 Dispute Adjudication Board Documents

The framework for the establishment and operation of a Dispute Adjudication Board comprises:

- the JCT/CI Arb Dispute Adjudication Board Rules; and
- the JCT Model Dispute Adjudication Board Tripartite Agreement.

Article 4 Appointment of the Dispute Adjudication Board (DAB)

- 4.1** The DAB shall comprise either one or three DAB Members. If the number is not stated in the Contract and the Parties do not agree otherwise, the DAB shall be a sole Member DAB.
- 4.2** If the Parties agree to have a sole DAB Member, they shall specify the name of the sole DAB Member in the Contract, or they shall jointly appoint the sole Member by the date stated in the Contract or where no such date is stated within 28 days of the date the Contract is entered into.
- 4.3** If the DAB is to comprise three Members, the names of the DAB Members shall be specified in the Contract, or the Parties shall jointly appoint the DAB Members by the date stated in the Contract or where no such date is stated within 28 days of the date the Contract is entered into. In any case, unless the Parties otherwise agree, the DAB Members shall be appointed in the following way: each Party shall nominate one DAB Member for approval by the other Party; these two selected DAB Members then select the third DAB Member, who, with the approval of the Parties, shall act as chairperson.
- 4.4** The appointment of a DAB Member may be terminated by mutual agreement of both Parties, in accordance with Article 6.4, but not by either of the Parties acting alone. When a DAB Member declines to act or is unable to act as a result of illness, death, disability, resignation or termination of appointment, the Parties shall appoint a person to replace the DAB Member. The new DAB Member shall be appointed in the same manner as the replaced Member was required to have been appointed.
- 4.5** The DAB and/or each DAB Member shall not be liable for anything done or omitted in the discharge or purported discharge of its or their functions as adjudicator unless the act or omission is in bad faith, and this protection from liability shall similarly extend to any employee or agent of the DAB or any DAB Member.
- 4.6** If the Parties fail to establish a DAB in accordance with Article 4.2 or 4.3, or if the Parties fail to agree on a replacement DAB Member as described in Article 4.4, then the CI Arb shall, after due consultation with the Parties, appoint the DAB Member or DAB Members, or the whole DAB if needed, within 14 days of the written request of one or both Parties. This appointment shall be final and conclusive.
- 4.7** An application to the CI Arb means an application to the President or the President's designated person.
- 4.8** When appointing a DAB Member, the relevance of a prospective DAB Member's experience and qualifications should be considered, as well as any observations, comments or requests made by the Parties. It is recommended that the Parties co-ordinate their selection of DAB Members and chairperson in such a way as to provide the appropriate skills for the project. The DAB Members should be asked to confirm that they will be sufficiently available for the duration of the project.

- 4.9** The provisions of these Rules for a Dispute to be determined by the DAB shall not apply to a Dispute if at the time of the giving by either Party of a notice of its intention to refer a dispute or difference to adjudication a DAB has not been appointed or is no longer in place. In such event, that Dispute shall be referred to adjudication in accordance with the Scheme and for the purposes of the Scheme, the nominating body for the adjudicator for such Dispute shall be either: the Royal Institute of British Architects; the Royal Institution of Chartered Surveyors; constructionadjudicators.com; or the Chartered Institute of Arbitrators.

Article 5

Impartiality and Independence

- 5.1** Every DAB Member shall be independent of the Parties at the time of accepting an appointment to serve and must remain so until their appointment is terminated. The DAB shall act impartially.
- 5.2** At the time of accepting an appointment to act as DAB Member, the DAB Member shall provide a written declaration that there is no conflict of interest and disclose any facts or circumstances which may give rise to justifiable doubts as to the DAB Member's impartiality or independence. If the CI Arb is to appoint a DAB Member, the potential DAB Member shall submit such written declaration of impartiality and independence to the CI Arb.
- 5.3** DAB Members must remain without any conflicts of interest for the duration of their appointment. If facts or circumstances have arisen since the appointment that from a reasonable third person's point of view could be perceived as a conflict of interest, the DAB Member shall promptly disclose such facts or circumstances.
- 5.4** Any doubt as to whether a DAB Member should disclose certain facts or circumstances should be resolved in favour of disclosure. Disclosure is not an admission of a conflict of interest. A DAB Member who makes a disclosure to the Parties must consider themselves to be impartial and independent of the Parties despite the disclosed facts or circumstances, or else the Member must decline the appointment or resign.
- 5.5** The following situations preclude a person from serving as DAB Member:
- 5.5.1** the prospective DAB Member is a manager, director or member of the supervisory board of one of the Parties, or has a similar controlling influence in one of the Parties;
 - 5.5.2** the prospective DAB Member has a significant financial or personal interest in one of the Parties or in the matter at stake;
 - 5.5.3** the prospective DAB Member regularly advises one of the Parties or an affiliate of one of the Parties, or the prospective DAB Member or their firm derives a significant financial income therefrom.

The situations listed in this Article 5.5 are non-exhaustive examples of specific situations which give rise to justifiable doubts as to a person's impartiality and independence. Disclosure of any of these situations cannot cure the objective conflict of interest.

- 5.6** If, within 21 days after the receipt of a disclosure by a DAB Member or after a Party learns of facts that could constitute a potential conflict of interest for a DAB Member, a Party does not raise an express objection with regard to that DAB Member, the Party is deemed to have waived any potential conflict of interest based on such facts and may not raise any objection to such facts at a later stage, provided that the disclosed or discovered facts do not constitute one of the situations listed in Articles 5.5.1 to 5.5.3. In the case of disclosure of any conflicts of interest described in Article 5.5.1, 5.5.2 or 5.5.3, the Parties would have to expressly waive any objection thereto for the DAB Member or prospective DAB Member to be appointed to or to continue to serve on the DAB, in which event Article 5.5 shall be regarded as no longer applicable in relation to the listed conflict that has been waived.

Article 6

Tripartite Agreement

- 6.1** Prior to commencing DAB activities, each DAB Member shall sign a Tripartite Agreement with the Parties. If there are three DAB Members, the substantive terms of their respective Tripartite Agreements shall be identical, unless otherwise agreed by all DAB Members.
- 6.2** The date of the Tripartite Agreement shall be the date of the DAB Member's appointment.

- 6.3 If the CI Arb appoints a DAB Member in accordance with Article 4, the Parties and the DAB Member are bound by the Rules and the terms of the Tripartite Agreement as if the Parties had appointed the DAB Member and entered into the Tripartite Agreement with the DAB Member.
- 6.4 The Parties may at any time agree to terminate a DAB Member's appointment without cause by giving at least one month's written notice to the Member, but must act jointly if they decide to terminate the appointment of a DAB Member.
- 6.5 Each DAB Member may at any time terminate their Tripartite Agreement by giving at least 2 months' written notice to the Parties, unless otherwise agreed by the Parties and the DAB Member concerned.

Article 7 **Periodic Meetings and Site Visits**

- 7.1 An initial meeting of the DAB and the Parties shall be held as soon as practicable after the commencement of the works pursuant to the Contract.
- 7.2 Unless stated otherwise in the Contract, the DAB shall visit the project site every 2 months or as agreed between the Parties and the DAB depending on the progress of the work and having regard to the nature of the Disputes (if any) referred to the DAB. The timing and schedule of each site visit shall be as agreed jointly by the Parties and the DAB, or in the absence of agreement, shall be decided by the DAB.
- 7.3 Regular site visits enable the DAB Members to become conversant with the project and to witness the site's conditions and progress of the works. The purpose of site visits and other meetings is also to keep the DAB informed of any actual or potential problems or disagreements. Meetings may be held at any location agreed by the Parties and the DAB, including via telephone or other communication methods, or in the absence of agreement, venue and timing shall be decided by the DAB after consultation with the Parties.
- 7.4 Site visits shall be attended by the Parties and the DAB, during which the DAB may engage in informal conversations with any of the attendees, in the presence of both Parties, about the performance of the Contract and any pending claims. If appropriate, site visits may be combined with hearings of any Disputes that have been referred by either of the Parties.
- 7.5 At the conclusion of each site visit or meeting, the DAB will prepare a report on the site visit or meeting and send a copy of the report to each Party.
- 7.6 In relation to any meeting or any other communication with the Parties pursuant to this Article 7 or otherwise under these Rules, the DAB and/or any DAB Member shall not engage in any meetings or any communications (whether orally or in writing, formal or informal) with one Party in the absence of the other Party, and shall not receive, consider or otherwise take account of any information or communication from either Party (including any information or communication that exists or is made on a "without prejudice" basis) that has not also been provided to the other Party on an open basis.

Article 8 **Information and Communication**

- 8.1 The Parties shall provide each DAB Member with a copy of the Contract documents, and any other documents pertinent to the performance of the Contract which the DAB may request, and keep the DAB informed of the project's development by furnishing the DAB with relevant information such as progress reports.
- 8.2 The Parties shall communicate relevant information and copy all documents and notifications to each other in a timely manner. All communications, information and any other documents to be sent to the DAB by a Party shall be copied to the other Party at the same time.
- 8.3 If a Dispute has been referred to the DAB for a determination, the DAB may at any time request a Party to submit additional information or allow access to the site to assist the DAB. The DAB shall communicate to the Parties each such request in writing.
- 8.4 For a DAB of three Members, the DAB shall be deemed to have received any communication from the Parties, including the formal referral of a Dispute under Article 10.3, on the date when it is received by the DAB's chairperson.
- 8.5 All information provided to the DAB during the course of its service shall be treated as confidential and used only for the avoidance, settlement and determination of Disputes, unless otherwise agreed by the Parties or required by the applicable law as provided in the Contract.

Article 9**Informal Advice**

- 9.1** The Parties or either of them may at any time refer a matter or Dispute to the DAB for the DAB to give an informal advisory opinion as a means of dispute avoidance and/or informally discuss and attempt to resolve any disagreement that may have arisen between the Parties during the performance of the Contract. The DAB may provide the requested advisory opinion during a conversation with the Parties, during any meeting or site visit in the presence of both Parties or in a written note to the Parties, or, with the prior agreement of the Parties, provide informal assistance to resolve a disagreement in any other form. The Parties are not bound to act upon any advice given during the informal assistance process.
- 9.2** The DAB may on its own initiative raise an issue with the Parties in order to establish a dialogue between them and to clarify matters in the presence of the DAB. Where the Parties so agree, the Parties have the right to stop the DAB's initiative if they regard it as unnecessary, provided that they notify the DAB promptly, jointly and in writing.
- 9.3** If the DAB is later called upon to make a Decision or Recommendation concerning a matter with respect to which it has provided an informal advisory opinion, the DAB shall not be bound by any views expressed in such verbal or written advisory opinion, and shall base its Decision or Recommendation solely upon the information, documents, submissions and evidence that have been formally submitted to the DAB following the formal referral of the relevant Dispute under Article 10.

Article 10**Referral of a Dispute to the Dispute Adjudication Board**

- 10.1** If a Dispute arises, either Party may at any time give notice of its intention to refer the Dispute to adjudication by the DAB by submitting a Notice to the other Party and simultaneously to the DAB. The Notice shall include a summary of the Dispute, a list of the issues submitted to the DAB to determine and the referring Party's position thereon together with the redress sought.
- 10.2** The DAB shall (unless the referring Party's Notice requires a Recommendation in accordance with Article 14.1) act as an adjudicator for the purposes of Section 108 of the Act and determine the Dispute by reaching a Decision.
- 10.3** The referring Party shall within 7 days of the date of the Notice serve the Referral on the DAB and the other Party. The date of the referral of the Dispute to the DAB shall be the date upon which the DAB receives the Referral which in the case of a three Member DAB shall be the date upon which the DAB's chairperson receives the Referral. The DAB shall forthwith confirm that date in writing to the Parties.
- 10.4** The other Party shall submit a Response to the referring Party and the DAB at a date to be directed by the DAB.
- 10.5** If so directed by the DAB having regard to the period required for the DAB to render its Decision, the DAB may receive further submissions.

Article 11**Conduct of Hearings**

- 11.1** If so directed by the DAB having regard to the period required for the DAB to render its Decision, and having regard to Article 11.4, the Parties and the DAB shall meet for a hearing of the Dispute at such time as the DAB shall direct. Otherwise, no hearing shall take place in respect of the Dispute.
- 11.2** If a Party fails to attend the hearing, the DAB may nevertheless proceed with the hearing if the DAB is satisfied that the absent Party received notice of the hearing.
- 11.3** The DAB shall act fairly and impartially as between the Parties, giving each of them a reasonable opportunity to present its case.
- 11.4** The DAB shall avoid unnecessary delay or expense and adopt procedures suitable to the value, nature and complexity of the Dispute and its determination as quickly and as efficiently as reasonably possible.

- 12.1** The DAB shall reach and issue its Decision in respect of any Dispute referred to it within 28 days of the date that the DAB received the Referral, or such longer period as may be agreed by the Parties after the Dispute has been referred. The period of 28 days may be extended by up to 14 days, with the consent of the referring Party. The DAB's Decision in respect of a Dispute shall state the DAB's findings and the reasons upon which they are based.
- 12.2** If the Parties wish to agree on an extension of time for rendering a Decision after the Dispute has been referred, they shall consult with the DAB and then agree on an appropriate extension of time, taking into account the nature and complexity of the Dispute and other relevant circumstances.
- 12.3** When the DAB is composed of three Members, it shall make every effort to achieve unanimity. If this cannot be achieved, a Decision may be given by majority vote. If there is no majority, the Decision shall be made by the DAB's chairperson alone. Any DAB Member who disagrees with the issued Decision will give the reasons for such disagreement in a separate report that shall not form part of the Decision, but will be communicated to the Parties.
- 12.4** The DAB may on its own initiative, or at the request of either Party, correct a Decision so as to remove a clerical or typographical error arising by accident or omission provided that the DAB notifies the Parties of any corrections pursuant to its own initiative within 14 days of the issue of the Decision to the Parties or the request from either Party is made within 14 days of the issue of the Decision to the Parties. The DAB shall issue any corrections within 7 days of a request by a Party.
- 12.5** The DAB's Decision shall be binding on the Parties until the Dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or by agreement between the Parties.
- 12.6** The Parties shall, without prejudice to their other rights under the Contract, comply with the DAB's Decision without delay.
- 12.7** If either Party does not comply with the Decision the other Party shall be entitled to take legal proceedings for summary or expedited relief to secure such compliance pending any final determination of the referred Dispute pursuant to Article 12.5.
- 12.8** Decisions shall be admissible in any subsequent arbitral or legal proceedings.
- 12.9** As stated in Articles 14.2 and 14.4 a Recommendation is not an adjudication and is non-binding, and as such the provisions of Articles 12.5 to 12.7 shall not apply to a Recommendation issued by the DAB.

- 13.1** Save where otherwise stated or required by these Rules and in the absence of an agreement of the Parties with respect thereto, the DAB is empowered to:
- 13.1.1 establish the procedure to be applied in making a Decision;
 - 13.1.2 decide upon the DAB's own jurisdiction, and as to the scope of a Dispute referred to it;
 - 13.1.3 call meetings, site visits and hearings, and conduct hearings as it thinks fit, being bound only by the Rules and the Contract;
 - 13.1.4 take the initiative in ascertaining the facts, law and documents required for a Decision, which may include requiring from the Parties further information than that contained in the Referral or any written statement provided by the Parties, and questioning the Parties, their representatives and any witnesses they may call in the sequence it chooses;
 - 13.1.5 open up, review and revise any decision (other than that of the DAB or any other binding adjudication decision, unless agreed by the Parties), opinion, instruction (although the DAB shall not affect the ability of either Party or any duly authorised person to vary the works in accordance with the Contract), direction, certificate or valuation made under or in connection with the Contract and which is relevant to the Dispute unless pursuant to the Contract such decision, opinion, instruction, direction, certificate or valuation is final and conclusive;

- 13.1.6 order the payment of a sum of money (including interest thereon as determined in the discretion of the DAB) or other redress;
- 13.1.7 make use of its own specialist knowledge;
- 13.1.8 if appropriate make directions in its Decision concerning whether and/or how the DAB's fees and expenses in relation to the referred Dispute shall be apportioned between the Parties; and
- 13.1.9 take any other measures necessary for it to fulfil its function as a DAB in accordance with these Rules.

When the DAB is composed of three Members, it shall make every effort to achieve unanimity in deciding the procedure. If unanimity cannot be achieved, the procedure shall be established by majority vote.

- 13.2 The Parties shall meet their own costs of the determination of a referred Dispute by the DAB.

Article 14 Recommendations

- 14.1 If a Party referring a Dispute to the DAB wishes the DAB to determine the Dispute by the issue of a Recommendation, it shall expressly state in the Notice of intention to refer the Dispute to the DAB under Article 10.1 that it requires a Recommendation, otherwise the DAB shall acting as an adjudicator for the purposes of Section 108 of the Act determine the Dispute by reaching a Decision.
- 14.2 A determination for the issue of a Recommendation under Article 14.1 shall not be an adjudication pursuant to Section 108 of the Act.
- 14.3 Subject to Article 14.2 and save where otherwise stated or required by these Rules, the procedure set out in these Rules (including the provisions relating to the powers of the DAB) for the conduct of a determination for rendering a Decision shall apply equally to the conduct of the process for rendering a Recommendation.
- 14.4 A Recommendation shall be duly considered by the Parties, albeit it is non-binding.
- 14.5 Recommendations shall be admissible in any subsequent arbitral or legal proceedings.

Article 15 Remuneration

- 15.1 The Parties shall be jointly and severally responsible for the fees and expenses of the DAB Members. Subject to any direction of the DAB pursuant to Article 13.1.8, the fees and expenses of the DAB Members shall be paid equally by the Parties.
- 15.2 The terms and rate of remuneration for each of the DAB Members shall be mutually agreed upon by the Parties when agreeing the terms of appointment and recorded in the Tripartite Agreement.
- 15.3 If this Article 15.3 is stated in the Contract to apply, in circumstances where the Parties and a DAB Member fail to agree on the DAB Member's remuneration, or if one Party challenges any part of the DAB's remuneration, then the CI Arb shall, after due consultation with the Parties, within 28 days of a written request of one or both Parties, decide what the reasonable remuneration of each DAB Member shall be. The CI Arb's decision shall be final and binding on the Parties and DAB Members. If the CI Arb decides on a DAB Member's remuneration, the DAB Member shall be paid a Retainer Fee and Daily Fee as per Alternative A of the Tripartite Agreement.

Article 16 Administrative expenses of the CI Arb

- 16.1 Each request to the CI Arb for appointment of a DAB Member pursuant to Article 4.6 must be accompanied by the relevant non-refundable fee^[1]. This amount shall represent the total cost for the appointment of one DAB Member by the CI Arb. The CI Arb shall not proceed with the appointment unless the specified payment has been received.

[1] For current fees, please refer to the Chartered Institute of Arbitrators' website, i.e. <https://www.ciarb.org/disputes/dispute-appointment-service/dispute-boards>.

- 16.2** Any request for a decision on the remuneration of a DAB Member pursuant to Article 15.3 (where that Article applies) must be accompanied by the relevant non-refundable fee^[1]. This amount shall represent the total cost for the decision by the CI Arb. The CI Arb shall not proceed with the decision unless the specified payment has been received.
- 16.3** The Parties shall equally share the cost of each appointment or decision by the CI Arb.