

DIS

DIS Adjudication Rules

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(in force as from July 1, 2010)

DIS

Deutsche Institution für
Schiedsgerichtsbarkeit

ADJUDICATION AND ARBITRATION CLAUSE*

The German Arbitration Institute (Deutsche Institution für Schiedsgerichtsbarkeit e.V., DIS) advises all parties wishing to agree on a project-accompanying adjudication by reference to the DIS Adjudication Rules for purposes of the settlement of differences and disputes in connection with one or several contracts to use the following adjudication and arbitration clause:

“For purposes of the settlement of all differences and disputes between the parties in connection with the contract (... description of the contract ...) a project-accompanying adjudication shall be conducted pursuant to the Adjudication Rules of the German Arbitration Institute (DIS-AVO).

Upon termination of the adjudication proceedings, all disputes shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law; if the binding effect of a decision under the DIS-AVO is not observed, the Supplementary Rules for Expedited Proceedings (Annex 4 of the DIS Arbitration Rules) shall apply, in which case the entitled party may also have recourse to the ordinary courts of law.”

The following points should be considered:

- In the proceedings pursuant to the DIS-AVO, the number of adjudicators is ...;
- The place of arbitration is ...;
- The number of arbitrators is ...;
- The applicable substantive law is ...;
- The language of the arbitral proceedings is

Deutsche Institution für Schiedsgerichtsbarkeit
German Arbitration Institute
www.dis-arb.de
dis@dis-arb.de

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* Translation from German. Only the German text is authoritative.

**DIS-ADJUDICATION RULES (DIS-AVO)
(Project-accompanying, with preliminary binding
decision)**

**PART 1 – SCOPE OF APPLICATION OF THE RULES
AND COMMENCEMENT OF THE PROJECT-
ACCOMPANYING ADJUDICATION**

**Section 1
Scope of application**

- 1.1 The Adjudication Rules set forth herein apply where the parties have agreed upon a project-accompanying adjudication for purposes of the settlement of differences and disputes in connection with one or several contracts pursuant to these rules. The contract which forms the basis of the project (Main Contract) may also contain the adjudication agreement.
- 1.2 Unless otherwise agreed by the parties, the Adjudication Rules in effect on the date of commencement of the project-accompanying adjudication shall apply to the dispute.

**Section 2
Commencement of the project-accompanying
adjudication**

The party wishing to nominate the adjudicators at the commencement of the project-accompanying adjudication shall notify the other party in writing thereof. A copy of this notice shall be sent to the DIS Main Secretariat. The project-accompanying adjudication commences upon receipt of the copy of the written notice by the DIS Main Secretariat. The DIS Main Secretariat informs the parties of the date of receipt.

**Section 3
Number and qualifications of the adjudicators**

- 3.1 Depending upon the agreement of the parties, the adjudication shall be conducted by one adjudicator (sole adjudicator) or three adjudicators (Dispute Adjudication Board, DAB). If the parties have not agreed on the number of adjudicators, a panel consisting of three adjudicators (DAB) will be constituted.
- 3.2 Only natural persons may be nominated as adjudicators. Upon request of a party, the DIS will make suggestions for the selection of adjudicators.

- 3.3 Unless otherwise agreed by the parties, the chairman of the DAB or the sole adjudicator shall be a lawyer.
- 3.4 Insofar as the following rules refer to the DAB or the chairman, they shall apply mutatis mutandis to the sole adjudicator in proceedings with a sole adjudicator.

**Section 4
Nomination and confirmation of the adjudicators**

- 4.1 The following applies to a project-accompanying adjudication with a sole adjudicator:
- (1) Within 30 days after commencement of the project-accompanying adjudication (section 2), the parties shall agree on the sole adjudicator and notify the DIS thereof.
 - (2) If the parties have not agreed on the sole adjudicator within a time-limit of 30 days after commencement of the proceedings, each party may request the nomination of the sole adjudicator by the DIS Appointing Committee. The fee for nomination of an adjudicator pursuant to the schedule of costs (appendix 1 to section 30) in force on the date of receipt of the request by the DIS Main Secretariat shall be paid with the request.
- 4.2 The following applies to a project-accompanying adjudication with three adjudicators:
- (1) Within 30 days after commencement of the project-accompanying adjudication (section 2), the parties shall jointly nominate two adjudicators to the DIS. If no joint nomination of two adjudicators is made within this time-limit, or if the parties jointly nominate only one adjudicator, each party may request the nomination of the missing adjudicator(s) by the DIS Appointing Committee. The fee for nomination of an adjudicator for each adjudicator to be nominated pursuant to the schedule of costs (appendix 1 to section 30) in force on the date of receipt of the request by the DIS Main Secretariat shall be paid to the DIS with the request.
 - (2) The two adjudicators nominated pursuant to no. (1) shall jointly make proposals to the parties for the chairman of the DAB within a time-limit of 30 days after confirmation (subsection 7) of the last of the two adjudicators. If both parties agree on a proposal, one of the parties shall nominate the proposed person to the DIS. If the adjudicators nominated pursuant to no. (1) do not make a joint

proposal for the chairman to the parties within the time-limit of 30 days, or if the parties fail to agree on the nomination of a proposed person to the DIS within 15 days after receipt of a joint proposal by the last of the two parties, each party may request the nomination of the chairman by the DIS Appointing Committee. The fee for nomination of an adjudicator pursuant to the schedule of costs (appendix 1 to section 30) in force on the date of receipt of the request by the DIS Main Secretariat shall be paid with the request.

- 4.3 Each adjudicator must be impartial and independent. He shall exercise his office to the best of his knowledge and abilities, and in doing so is not bound by any directions.
- 4.4 Each person who is nominated as adjudicator shall without undue delay notify the DIS Main Secretariat of his acceptance of the office as adjudicator and declare whether he fulfills the qualifications, if any, agreed upon by the parties. Such person shall disclose all circumstances which are likely to give rise to doubts as to his impartiality or independence. The DIS Main Secretariat informs the parties accordingly.
- 4.5 If circumstances are apparent from an adjudicator's declaration, which are likely to give rise to doubts as to his impartiality or independence or his fulfillment of agreed qualifications, the DIS Main Secretariat grants the parties an opportunity to comment within an appropriate time-limit.
- 4.6 An adjudicator shall disclose to the parties circumstances likely to give rise to doubts as to his impartiality or independence without undue delay throughout the entire period of his activity.
- 4.7 The DIS Secretary General may confirm the nominated adjudicator as soon as the DIS Main Secretariat receives the adjudicator's declaration of acceptance and no circumstances likely to give rise to doubts regarding his impartiality or independence or his fulfillment of agreed qualifications are apparent from the declaration, or if within the time-limit set by subsection 5 no party objects to the confirmation of that adjudicator. In all other cases the DIS Appointing Committee decides upon application on the confirmation of the nominated adjudicator. The fee for the confirmation of an adjudicator pursuant to the schedule of costs (appendix 1 to section 30) in force on the date of receipt of the request by the DIS Main

Secretariat shall be paid with the request for nomination.

- 4.8 Upon confirmation of all adjudicators, the DAB is constituted. The DIS Main Secretariat informs the parties of the constitution of the DAB. The adjudicators' office commences upon constitution of the DAB.
- 4.9 The confirmed adjudicators and the parties should conclude a written adjudication services agreement on the basis of the model contained in appendix 2.

Section 5

Challenge of an adjudicator

- 5.1 An adjudicator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess the qualifications agreed upon by the parties. A party may challenge an adjudicator nominated by it, or in whose nomination it has participated, only for reasons of which it becomes aware after the nomination has been made.
- 5.2 The challenge shall be notified and substantiated to the DIS within two weeks of being advised of the constitution of the DAB pursuant to section 4 subsection 8 or of the time at which the party learns of the reason for challenge. The DIS Main Secretariat informs the adjudicators and the other party of the challenge and sets a reasonable time-limit for comments from the challenged adjudicator and the other party. If the challenged adjudicator does not withdraw from his office or the other party does not agree to the challenge within the time-limit fixed, the challenging party may apply to the DIS Main Secretariat within two weeks for a decision by the DIS Appointing Committee on the challenge, unless otherwise agreed by the parties. Upon filing the request the requesting party shall pay the fee for the decision on the challenge of an adjudicator pursuant to the schedule of costs (appendix 1 to section 30) in force on the date of receipt of the application by the DIS Main Secretariat. The decision of the DIS Appointing Committee is not subject to appeal.
- 5.3 If the other party agrees to the challenge, or if the adjudicator withdraws from his office after being challenged, or if the application of challenge has been granted, a substitute adjudicator shall be nominated. Section 4 applies mutatis mutandis to the nomination and confirmation of the substitute adjudicator.

Section 6
Information and communication, regular meetings
and informal settlement of differences

- 6.1 As soon as the DAB is constituted, the parties shall ensure that each adjudicator is provided with a complete text of the Main Contract, as well as further information about the project, where applicable. Each adjudicator shall familiarize himself therewith. The parties and the adjudicators shall provide each other with their respectively binding contact details (including email addresses) within a week after the constitution of the DAB.
- 6.2 Without undue delay after fulfillment of the requirements set out in subsection 1, the adjudicators and the parties shall agree on a meeting to enable the adjudicators to obtain detailed knowledge of the project and to determine issues relevant for the adjudicators' activity.
- 6.3 The parties shall regularly provide, unless agreed otherwise, on a monthly basis each adjudicator with written reports on the progress of the project. The adjudicators may request additional information with respect to the project-accompanying adjudication from the parties at any time.
- 6.4 Correspondence between the adjudicators and the parties shall be conveyed to each adjudicator and each party and may be conducted by email.
- 6.5 The adjudicators and the parties shall agree on regular meetings; these meetings shall be held at the site or sites of the project execution, if possible. Unless agreed otherwise or is necessary, these regular meetings shall take place every six months. The parties shall ensure that adequate rooms for these meetings are available.
- 6.6 The chairman of the DAB shall jointly agree on a meeting agenda with all participants in advance of the meeting and shall send the agenda to the participants in due time prior to the meeting.
- 6.7 At the meetings, the parties shall inform the adjudicators about the progress of the project and about existing differences and problems, as the case may be. If desired by one of the parties or upon its own initiative, the DAB may work towards an amicable settlement of differences between the parties. In the event of subsequent dispute-related adjudication proceedings, the DAB is not bound by any preliminary view which it may have expressed in order to settle differences.

- 6.8 The chairman of the DAB chairs the meetings and determines the keeper of the record. The chairman shall ensure the dispatch of the record to the parties and to the other adjudicators within one week after the meeting. Each adjudicator and each party may raise objections to points contained in the record within one week after receipt thereof. Otherwise, the content of the record is deemed to provide a proper account of the meeting.

PART 2 – DISPUTE-RELATED ADJUDICATION PROCEEDINGS

Section 7

Institution and commencement of dispute-related adjudication proceedings, substantiation of the request

- 7.1 Each party is entitled to institute dispute-related adjudication proceedings with respect to a dispute.
- 7.2 The party wishing to institute dispute-related adjudication proceedings (applicant) shall convey a written request to institute adjudication proceedings to the adjudicators and to the other party (opponent). The request shall be fully substantiated.
- 7.3 The dispute-related adjudication proceedings commence upon receipt of the request by the chairman of the DAB. The chairman of the DAB shall inform the parties of the commencement of the proceedings without undue delay.

Section 8

Adjudication proceedings with more than two parties

- 8.1 If the request for institution of the dispute-related adjudication proceedings provides that more than one other party within the meaning of section 7 subsection 2 or further parties who are not a party to the adjudication agreement pursuant to section 1 subsection 1 shall be involved in the proceedings, the request shall be sent to each of these parties.
- 8.2 The involvement of further parties who are not parties to the agreement pursuant to section 1 subsection 1 requires their consent and the consent of the parties to the adjudication agreement pursuant to section 1 subsection 1 who are involved in the proceedings.
- 8.3 The proceedings are carried out between the applicant and the parties involved in the proceedings pursuant to section 8 subsections 1 and 2 (opponents).

Section 9

Reply to the request

The opponent shall reply in writing to the request within six weeks after commencement of the proceedings (section 7 subsection 3) and shall send its reply to the applicant and the adjudicators.

Section 10

Further briefs

- 10.1 The applicant may comment in writing on the reply to the request within three weeks after its receipt. The opponent may answer the comment in writing within three weeks after its receipt.
- 10.2 Further briefs are only admissible if the adjudicators expressly request the parties to file them (section 15 subsection 3).

Section 11

Submissions of the parties, correspondence

- 11.1 The submission in the substantiation of the request and the reply to the request, respectively, shall be complete. The adjudicators are free to disregard submissions which according to the adjudicators' evaluation could have been made in an earlier brief.
- 11.2 The parties shall file briefs and exhibits in hardcopy; additional copies in electronic form are permissible.
- 11.3 Correspondence between the adjudicators and the parties may be conducted by email.
- 11.4 All briefs, documents or other communications which are submitted to the adjudicators by one of the parties shall be simultaneously submitted to the other party.

Section 12

Compliance with time-limits

- 12.1 The time-limits for the reply to the request (section 9) and for further briefs (section 10) are binding upon the parties. They are not subject to any extension, even if serious reasons are submitted, unless otherwise agreed by the parties. Section 13 subsection 2 remains unaffected.
- 12.2 The adjudicators are free to disregard briefs which have been filed late.

Section 13

Documents, expert reports

- 13.1 The parties may enclose documents, written witness statements and expert reports with their briefs.
- 13.2 The following applies to the submission of expert reports:

- (1) The applicant may enclose an expert report with its request. In such case, the opponent will be granted an adequate time-limit for obtaining a counter-report.
- (2) In the event that the opponent submits an expert report which in the adjudicators' opinion is not limited to a reply to the applicant's expert report, the applicant shall, upon its request, be granted an appropriate time-limit for obtaining a counter-report.
- (3) Further expert reports may not be submitted with further briefs or in any other way; expert reports which are nonetheless submitted shall be disregarded by the adjudicators.
- (4) The time-limits granted pursuant to nos. (1) and (2) may not cause the five-month time-limit set forth in section 26 subsection 2 to be exceeded.

Section 14 **Oral hearing**

- 14.1 An oral hearing shall be held if requested by a party. In the absence of such a request, the adjudicators decide at their discretion whether to hold an oral hearing.
- 14.2 The parties shall ensure that at the hearings they are represented by employees who are sufficiently familiar with the subject-matter in dispute. They may bring third persons who can contribute to clarifying the facts to the oral hearing. This shall be notified to the DAB and the other party in due time before the hearing.
- 14.3 Each party may make the participation of third persons dependent upon that person's written undertaking to keep the contents of the oral hearing confidential.
- 14.4 The adjudicators may interview any person who they believe can contribute to the clarification of the facts.
- 14.5 The adjudicators shall have discretion to decide upon such an interview and upon its recording. They shall also have discretion to decide whether to allow questions by the parties or by their representatives at such an interview.
- 14.6 The oral hearing may also be carried out if a party fails to appear at the oral hearing even though such party has been timely informed of the date of the hearing.

Section 15 **Further organization of proceedings**

- 15.1 Apart from the rules set forth above in this part, the adjudicators may organize the proceedings at their discretion. They may request the submission of documents, carry out a site inspection and make proposals for amicable settlement.
- 15.2 The appointment of experts or other specialists by the adjudicators is possible only with the parties' consent.
- 15.3 The adjudicators may grant the parties an opportunity to comment in writing on certain questions within a time-limit fixed by the adjudicators.
- 15.4 The chairman of the DAB presides over the proceedings. He may decide alone on individual procedural questions, if so authorized by the other adjudicators.

Section 16 **Equal treatment, due process**

The parties shall be treated equally. Each party shall be given full opportunity to present its case.

Section 17 **Decisions**

- 17.1 In the event that a party does not make any written submissions or exceeds time-limits for the submission of briefs, the adjudicators may make a decision based on the record.
- 17.2 The adjudicators shall provide reasons in writing for all decisions which do not merely relate to procedural questions.
- 17.3 In adjudication proceedings with three adjudicators, any decision of the DAB shall be made by the majority of its members, unless otherwise agreed by the parties.
- 17.4 An overruled adjudicator may record his dissenting opinion in writing; this dissenting opinion shall be sent to the parties together with the majority vote.
- 17.5 The adjudicators may make an order for payment dependent upon the provision of a security by the advantaged party.
- 17.6 Decisions shall be made as quickly as possible, normally within four weeks after the oral hearing or after

receipt of the last brief, as the case may be, and at the latest five months after commencement of proceedings (section 7 subsection 3), unless both parties have agreed to an extension (section 26 subsection 2).

- 17.7 The chairman shall send an original of all decisions to the parties (the sending by advance email is possible) and shall inform the parties without undue delay of the date on which the respective other party has received the decision.

Section 18

Correction and interpretation of a decision

- 18.1 Any party may request the chairman to correct computation errors, clerical errors or misprints or any errors of a similar nature in a decision by the adjudicators, or to give an interpretation of the decision.
- 18.2 Such a request shall be made to the chairman within one month after receipt of the decision; otherwise, the request is not admissible.
- 18.3 The adjudicators may also make a correction of the decision on their own initiative.
- 18.4 The other party shall be granted the opportunity to comment on the request to the extent necessary and within a short time-limit fixed by the chairman.
- 18.5 The adjudicators shall decide on the request within one month after expiry of the time-limit pursuant to subsection 4. In the event that no such decision is rendered within one month, the request shall be deemed to have been dismissed.

Section 19

Applicable law

The adjudicators shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the subject-matter of the dispute. Failing such designation by the parties, the adjudicators shall apply the law of the state which they deem appropriate.

PART 3 – PRELIMINARY RULINGS

Section 20

Preliminary rulings

- 20.1 Upon a party's request, the adjudicators may issue preliminary rulings in the following cases:
- (1) Continuation of works necessary for an orderly performance of the contract;
 - (2) Performance of services necessary for an orderly performance of the contract and over which the parties are in dispute with respect to additional payment obligations;
 - (3) Performance of acceleration measures in order to avoid or reduce delays;
 - (4) Partial payments for services rendered;
 - (5) Prohibition of the liquidation of securities (bonds, guarantees, bails, etc.);
 - (6) In other cases where the effects on the performance of the contract is tantamount to the above-mentioned cases.

Such preliminary rulings must be related to the subject-matter of the dispute-related adjudication proceedings.

- 20.2 Before issuing a preliminary ruling, the parties shall normally be granted the opportunity to present their case within a time-limit fixed by the adjudicators. In the exceptional case where a preliminary ruling is issued without granting the parties the opportunity to present their case, the parties shall be granted this opportunity without undue delay after the issuing of the preliminary ruling. Apart from that, the adjudicators organize the proceedings at their discretion.
- 20.3 The parties shall comply with the preliminary rulings until the adjudicators' final decision is rendered.
- 20.4 The adjudicators may impose conditions on a preliminary ruling; in particular, they may issue an order for payment dependent upon the provision of security by the advantaged party or fix a provisional remuneration for services to be performed.
- 20.5 The adjudicators shall decide on a request for the issuing of a preliminary ruling by way of order. Section 17 subsection 7 applies mutatis mutandis.

- 20.6 The non-observance of a preliminary ruling constitutes an intentional and severe breach of contract. The consequences of the breach are determined by the provisions of the Main Contract. Such breach of contract exists irrespective of whether a(n) (arbitration) court declares the adjudicators' preliminary decision to be justified or unjustified. In the event that the non-observance causes a delay of the project, the contractual party obligated to perform shall be in default even if the (arbitration) court confirms a right to refuse performance.
- 20.7 No intentional and severe breach of contract shall be assumed only in those cases where the proceedings regarding the request for a preliminary ruling suffer from a defect which, in corresponding arbitration proceedings, would lead to the setting-aside of an award (section 1059 subsection 2 no. 2 German Code of Civil Procedure).
- 20.8 An intentional and severe breach of contract pursuant to subsection 6 does not, as such, justify a termination of the Main Contract for good cause. Further grounds for termination remain unaffected.
- 20.9 Preliminary rulings lose their effect upon the rendering of the final decision by the adjudicators. To the extent that a regulation is still necessary, the adjudicators shall make the necessary determinations in their final decision.

PART 4 – CONTENT AND EFFECTS OF DECISIONS

Section 21 Counterclaims, partial decisions

- 21.1 The opponent may only assert counterclaims or declare a set-off of a counterclaim in its reply to the request. Counterclaims or declarations of set-off which are made after the reply to the request shall not be considered by the adjudicators.
- 21.2 If the opponent asserts counterclaims in the context of the same dispute-related adjudication proceedings, the provisions from Part 2 onwards of these Adjudication Rules apply mutatis mutandis. The applicant shall comment on the counterclaims asserted in the reply to the request within six weeks after its receipt. The opponent may answer the applicant's comment to the asserted counterclaims within three weeks after its receipt; the applicant may respond to this answer within three weeks after its receipt.
- 21.3 The adjudicators may render partial decisions on such claims or counterclaims that are ready to be decided.

Section 22 Binding effect

- 22.1 Decisions within the meaning of sections 17 and 21 subsection 3 are binding on the parties. Their binding effect ceases if and insofar as they are set aside or altered by a decision of a(n) (arbitration) court. In addition, the binding effect of a preliminary ruling also ceases in such cases where it is set aside by a decision of the adjudicators.
- 22.2 The non-observance of a decision of the adjudicators by a party constitutes an intentional and severe breach of contract. The consequences of the breach are determined by the rules of the Main Contract. Such a breach of contract persists irrespective of whether a(n) (arbitration) court declares the decision by the adjudicators to be justified or unjustified. In the event that the non-observance of a decision leads to a delay of the project, the contractual party who is obligated to perform shall be in default even if the (arbitration) court later confirms that the party obligated to perform has a right to refuse performance.
- 22.3 No intentional and severe breach of contract shall be assumed only in those cases where the proceedings suffer from a defect which in corresponding arbitration

proceedings would lead to the setting-aside of an award (section 1059 subsection 2 no. 2 German Code of Civil Procedure).

- 22.4 A party who has carried out or refrained from carrying out legal acts in accordance with the decision in reliance upon the binding effect of that decision, is not obligated to pay damages to the other party.

Section 23 Declaration of non-recognition

- 23.1 A party wishing to have a decision reviewed in (arbitration) court proceedings shall notify the other party in writing that it does not recognize the decision in full or in part (declaration of non-recognition). A copy of this notification shall be sent to the chairman of the DAB.
- 23.2 The declaration of non-recognition must be received by the other party within a month following receipt of the decision by the non-recognizing party (section 17 subsection 7). Otherwise the decision becomes final and binding. It is no longer subject to appeal by (arbitration) action, not even with the assertion of an obvious inequity or obvious incorrectness or a breach of the right to be heard or other procedural breach.
- 23.3 The time-limit of one month for the declaration of non-recognition is not extended by the filing of a request for correction or interpretation (section 18).
- 23.4 Both parties are entitled to file a claim (in arbitration) if a declaration of non-recognition is made. A declaration of non-recognition may only be withdrawn with the other party's consent.
- 23.5 In the event that the binding effect pursuant to subsection 2 is not observed, the entitled party may seek the performance of the obligation established by the adjudicators in court proceedings even if there is an arbitration agreement. In the event that arbitration proceedings pursuant to the DIS Arbitration Rules are instituted on the basis of an arbitration agreement, expedited proceedings (Annex 4 of the DIS Arbitration Rules) pursuant to the Supplementary Rules for Expedited Proceedings shall be carried out.

Section 24 Interest

- 24.1 In the event that payment obligations which have been determined by the adjudicators are not fulfilled,

the payer shall pay default interest in the amount of 10 percentage points above the base interest rate per year starting from the date of receipt of the decision by the adjudicators. The same applies to the decision on costs.

- 24.2 If services have been performed on the basis of a decision by the adjudicators without remuneration, for which according to the decision of the (arbitration) court there was a claim for remuneration, the claim for remuneration shall bear interest at the rate of 5 percentage points above the base interest rate per year as from the date of the billable performance of the services.
- 24.3 If payments have been effected on the basis of a decision by the adjudicators to which the recipient of these payments was not according to the decision of the (arbitration) court entitled, the repayment claim shall bear interest at the rate of 5 percentage points above the base interest rate per year from the date of receipt of payment.
- 24.4 Further-reaching statutory or contractual claims for interest remain unaffected.

Section 25 Temporary waiver of action

- 25.1 The parties shall not bring an (arbitration) action for such claims that are still subject to pending adjudication proceedings.
- 25.2 This does not apply to claims for which the adjudicators have not dispatched a decision to the parties within five months after commencement of dispute-related adjudication proceedings, unless both parties have agreed to an extension.
- 25.3 The adjudication agreement does not preclude the parties from applying to a court for interim or securing measures relating to the subject-matter of the adjudication proceedings before or after the commencement of the adjudication proceedings.

Section 26 Termination of proceedings

- 26.1 The dispute-related adjudication proceedings are terminated upon receipt of the adjudicators' decision by the parties or, in the case of a partial decision, upon

receipt of the final decision; the date of receipt by the last receiving party is decisive.

- 26.2 The dispute-related adjudication proceedings are terminated at the latest five months after commencement of the proceedings (section 7 subsection 3), unless both parties have agreed to an extension. The five-month time-limit is complied with if the adjudicators have dispatched the decision to the parties pursuant to section 26 subsection 1 prior to expiry of the five-month time-limit.
- 26.3 An early termination of dispute-related adjudication proceedings by withdrawal of the request requires the opponent's consent.

Section 27 **Statute of limitations**

- 27.1 The period of limitation is suspended for such claims that are subject to adjudication proceedings from the commencement of the dispute-related adjudication proceedings (section 7 subsection 3).
- 27.2 The suspension ceases six months after the end of the month in which the dispute-related adjudication proceedings have been terminated.

PART 5 – MISCELLANEOUS

Section 28 **Confidentiality**

- 28.1 The adjudicators are obligated to keep secret documents and information which they have received from a party in the course of their activity as adjudicator and shall not forward them to third parties. The parties, the adjudicators and the persons at the DIS Main Secretariat involved in the administration of the adjudication proceedings shall maintain confidentiality towards all persons regarding the adjudication proceedings and, in particular, regarding the parties involved and the documents exchanged. Persons acting on behalf of any person involved in the proceedings shall be obligated to maintain confidentiality.
- 28.2 This does not apply to information or documents which were known to them before the adjudication proceedings or which demonstrably would otherwise have become known.
- 28.3 Contractual confidentiality or secrecy obligations remain unaffected.
- 28.4 Each party is entitled to submit briefs or other documents which are filed in the dispute-related adjudication proceedings, as well as decisions by the adjudicators in subsequent (arbitration) court proceedings. Records pursuant to section 6 subsection 8 may also be used in a(n) (arbitration) court proceeding. However, oral statements of the parties or persons who have been interviewed for informational reasons may not be cited in (arbitration) court proceedings. In the event that statements are so cited, the (arbitrators) judges may not consider them.
- 28.5 The adjudicators may not be called as witnesses for facts which were disclosed to them in relation to their adjudication activity. This does not apply to such facts which have become known to the adjudicators on the occasion of a site inspection.
- 28.6 The DIS may publish information on adjudication proceedings in a compilation of statistical data, provided such information excludes identification of the persons involved.

Section 29 **Exclusion of liability**

The adjudicator, the DIS, its officers and employees are only liable for intentional misconduct.

PART 6 – COSTS OF THE ADJUDICATION AND TERMINATION OF THE ADJUDICATION ACTIVITY

Section 30 Costs of the adjudication

- 30.1 The remuneration of the adjudicators consists of a monthly base fee and a variable fee on an hourly basis. The base fee is paid to the adjudicator as remuneration for his availability and for becoming acquainted with the project and the Main Contract and keeping himself informed. Unless otherwise agreed between the parties and the adjudicators, an adjudicator is entitled to the base fee as established in the schedule of costs.
- 30.2 The variable fee is paid to the adjudicator for the time he spends in participating in meetings (including travel time) and his activities in the course of dispute-related adjudication proceedings. Unless otherwise agreed by the parties and the adjudicators, an adjudicator is entitled to claim the hourly rate established in the schedule of costs.
- 30.3 Unless otherwise agreed by the DAB and the parties, each adjudicator is entitled to the same base fee and may apply the same hourly rate for the variable remuneration.
- 30.4 Adjudicators who are liable for VAT are entitled to charge the parties with VAT.
- 30.5 In addition, the adjudicators are entitled to reimbursement of expenses incurred in connection with their adjudication activity. Expenses are reimbursable only if they are reasonable and appropriate; the adjudicators and the parties may conclude specific agreements with regard to the reimbursement of expenses.
- 30.6 The parties shall pay the base fee on a quarterly basis in advance at the beginning of each calendar quarter.
- 30.7 The adjudicators shall invoice the parties with the variable fee and expenses at the latest after the expiry of three months. Copies of the details of the activities performed and the receipts for the expenses shall be included with the invoices.
- 30.8 The adjudicators are entitled to claim appropriate advances on the variable fee and expenses.
- 30.9 Unless otherwise agreed by the adjudicators and the parties, the adjudicators are only entitled to an

adjustment of the remuneration to the extent there is an adjustment of the respective amount in the schedule of costs of the DIS.

- 30.10 Each of the parties shall pay half of the amounts invoiced by the adjudicators. The parties are jointly and severally liable to the adjudicators for payment of the fees, the reimbursement of expenses and the advances. The adjudicators are entitled to suspend their activities if such due claims are not paid after having granted a reasonable extension of time for payment.
- 30.11 The DIS is entitled to charge a fee (fees) for the nomination or decision on the appointment or challenge of an adjudicator including any VAT, if applicable. The parties are jointly and severally liable to the DIS for payment of these fees, notwithstanding any claim for reimbursement by one party against the other. The amount of the fees ensues from the appendix which is part of these adjudication rules.
- 30.12 Each party shall bear its own costs (handling charges, legal fees) in connection with the activity of the DAB and the dispute-related adjudication proceedings.

Section 31 Termination of the adjudication activity

- 31.1 The activity of the DAB terminates if the time set in the adjudication services agreement expired or if the parties conclude a written agreement to this effect and notify the DAB accordingly. In all other cases, the activity of the DAB terminates provided that the project is based on a contract for work and services at the end of one year after the acceptance in the context of the Main Contract (“provisional acceptance”). In the event that dispute-related adjudication proceedings are still pending at this time, the adjudicators shall bring them to a close and shall be entitled to the corresponding remuneration and the corresponding reimbursement of expenses.
- 31.2 The parties may agree in writing at any time that the activity of a single adjudicator is terminated.
- 31.3 Unless otherwise regulated in the adjudication services agreement, an adjudicator is only entitled to resign from his office for good cause, for which he should observe a notice period of two months, if possible. Dispute-related adjudication proceedings pending at the time of resignation in which the

adjudicator giving notice does not participate until their termination will be brought to a close by the remaining adjudicators; the nomination of a substitute adjudicator shall not be required.

- 31.4 If the activity of an adjudicator is terminated, a substitute adjudicator must be nominated and appointed. For the nomination and appointment of the substitute adjudicator the provisions of section 4 shall apply mutatis mutandis. All measures taken by the DAB until the substitution of the adjudicator remain effective.
- 31.5 If an adjudicator resigns pursuant to section 5 subsection 2 or if a party consents to the termination of the adjudicator's office, this does not constitute recognition of a reason to resign as established in section 5 subsection 1.

APPENDIX 1 TO SECTION 30 SUBSECTIONS 1 AND 11 DIS ADJUDICATION RULES

TABLE OF COSTS FOR DIS ADJUDICATION PROCEEDINGS

1. DIS fees

- 1.1 The fee for the nomination of an adjudicator by the DIS Appointing Committee (section 4 subsection 1 no. (2) and subsection 2 nos. (1) and (2)) amounts to € 250.00 per adjudicator.
- 1.2 The fee for the decision on the appointment (section 4 subsection 7) or challenge (section 5 subsection 2) of an adjudicator amounts to € 250.00.

2. Adjudicators' fees

- 2.1 The hourly rate of the variable fee of an adjudicator amounts to € 300.00.
- 2.2 The monthly base fee of an adjudicator is eight times the hourly rate.

3. VAT

The fees and rates specified in nos. 1 and 2 are subject to the applicable VAT.

APPENDIX 2: MODEL OF AN ADJUDICATION SERVICES AGREEMENT

Adjudication Services Agreement

between

(hereinafter referred to as “Adjudicator”)

on the one hand and

represented by

(hereinafter referred to as “Project Principal”)

and

represented by

(hereinafter referred to as “Project Agent/Contractor”)

(together, hereinafter referred to as “Project Partners”)

on the other hand.

Preamble

The Project Principal and the Project Agent/Contractor have concluded a contract concerning _____ [subject-matter] (hereinafter referred to as “the Project”) on _____ [date] (hereinafter referred to as the “Main Contract”). The Main Contract provides for project-accompanying adjudication pursuant to the Adjudication Rules of the German Arbitration Institute (hereinafter referred to as “DIS-AVO”) for the settlement of disputes and differences.

Section 1 Appointment as Adjudicator

The Project Partners and Mr./Mrs. _____ agree that Mr./ Mrs. _____ shall assume the following functions:*

- Chairman of the Dispute Adjudication Board
- Other member of the Dispute Adjudication Board
- Sole Adjudicator

Section 2 General duties, rights and declarations of the Adjudicator

The Adjudicator declares that he is independent of each of the Project Partners.

The Adjudicator declares that he is not aware of any circumstances which would impede his sufficient availability in the context of the adjudication. He will use his best endeavors to ensure a sufficient availability for the duration of this Agreement.

The Adjudicator undertakes to comply with his duties resulting from the Adjudication Services Agreement of the Project Partners and the DIS-AVO. He is entitled to the rights, objections and exceptions arising from the Adjudication Services Agreement of the Project Partners and the DIS-AVO.

Section 3 Remuneration of the Adjudicator

The Adjudicator is entitled to the remuneration resulting from section 30 of the DIS-AVO.

- * An adjustment of the fees pursuant to section 30 subsection 9 DIS-AVO shall take place after acceptance. The Adjudicator will then be entitled to a monthly base fee equivalent to double the hourly rates (appendix 1 to section 30 subsections 1 and 11 DIS-AVO).

Section 4 Reimbursement of expenses

The Adjudicator is entitled to the remuneration resulting from section 30 of the DIS-AVO.

* Please mark if applicable

Section 5
Right to advances

The Adjudicator is entitled to appropriate advances pursuant to section 30 subsection 8 DIS-AVO.

Section 6
Time sheets/receipts

The Adjudicator shall enclose a sufficiently detailed time sheet with each invoice on the variable remuneration. For each expense billed in the amount of more than € _____ **, the Adjudicator shall include a copy of the receipt.

Section 7
Billing/joint and several liability

The Adjudicator will bill each Project Partner with its claims under Sections 3–5 of this Agreement one half each. In the event that one of the Project Partners does not fully or partially satisfy these claims, the other Project Partner is jointly and severally liable for these claims.

Section 8
Contact details

The Adjudicator's contact details are as follows:

Postal address: _____

Telephone no.: _____

Telefax no.: _____

Email address: _____

The contact details of the Project Principal are as follows:

Postal address: _____

Telephone no.: _____

Telefax no.: _____

Email address: _____

** Please complete amount

The contact details of the Project Agent/Contractor are as follows:

Postal address: _____

Telephone no.: _____

Telefax no.: _____

Email address: _____

Section 9
Duration of the agreement and its termination

The duration of this Agreement can be ascertained from section 31 DIS-AVO. It is extended automatically in the event of section 31 subsection 1 sentence 3 DIS-AVO.

An early termination of this Agreement only occurs pursuant to sections 5 and 31 DIS-AVO.

Section 10
Storage of files

The Adjudicator is not obliged to store the files for longer than three years after the termination of the adjudication activity.

Section 11
Applicable law

This Agreement is subject to German substantive law***.

Section 12
Dispute resolution

All disputes arising out of or in connection with the Adjudication Services Agreement or its validity shall be finally settled according to the Arbitration Rules and the Supplementary Rules for Expedited Proceedings (Annex 4 of the DIS Arbitration Rules) of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.

*** Select the law of another state if desired

Section 13
Severability clause

Should any provision of this agreement be found to be invalid, the legal validity of the remaining provisions shall remain unaffected. The invalid provision shall be replaced by a valid provision which is as close as possible to the intent of the invalid provision.

DIS

Deutsche Institution für Schiedsgerichtsbarkeit e.V.
German Arbitration Institute
www.disarb.org
dis@disarb.org