

Part 4

The Commercial Case

Appendix 4A - Dispute Resolution Procedure

Appendix 4A

Dispute Resolution Procedure

DISPUTE RESOLUTION PROCEDURE

ADJUDICATION

- 1 Any dispute or difference (references to “Dispute” throughout this Procedure shall include any difference) arising under this Agreement or with regard to any matter or thing whatsoever arising out of this Agreement or in connection therewith (“**Dispute**”) which is referred to an Adjudicator for adjudication shall be adjudicated in accordance with these adjudication rules (“**Rules**”).
- 1 The Rules meet the requirements of adjudication procedure as set out in Section 108 of the Housing Grants, Construction and Regeneration Act 1996; Part I of the Scheme for Construction Contracts (Scotland) Regulations 1998 shall thus not apply. The Local Democracy, Economic Development and Construction Act 2009, 1 October 2011 also applies.

COMMENCEMENT

- 2
 - 2.1 The Rules shall apply upon either party to the Agreement giving written notice (“**Notice Requiring Adjudication**”) of its intention to refer a Dispute to adjudication to the other party and identifying in sufficiently full terms the Dispute in respect of which adjudication is required (“**Adjudication**”). No Notice Requiring Adjudication shall refer more than one Dispute to Adjudication. The notice shall be served in accordance with the provisions of Clause 72.
 - 2.2 Within 7 days from the date of receipt of such notice calculated in accordance with the provisions of Clause 72, and provided that he is willing and able to act, an agreed adjudicator identified and agreed upon under Rule 6 or nominated adjudicator under Rule 7.2 or replacement adjudicator under Rule 8 (“**Adjudicator**”) shall give written notice of his acceptance of appointment to both parties.
 - 2.3 The date of the referral of the Dispute shall be the date that the Adjudicator so confirms his acceptance.
- 3 Notice Requiring Adjudication may be given at any time and notwithstanding that legal proceedings have been commenced in respect of such Dispute.
- 4 More than one such Notice Requiring Adjudication may be given arising out of this Agreement.

APPOINTMENT

- 5 Subject to the following provisions of this Rule 6, where the Parties have agreed upon the identity of an Adjudicator who confirms his readiness and willingness to embark upon the adjudication within 7 days of the Notice Requiring Adjudication, then that person shall be the Adjudicator. If any Dispute arises which raises issues which are substantially the same as or are connected with issues that have been or were raised in a Related Adjudication (as defined in Rule 46.1(ii)) (whether current or previous) between the Contractor and a Third Party (as defined in Rule 34.1), the Contractor and the Board agree that the Adjudicator shall be the Related Adjudicator appointed in relation to that Related Adjudication; and in such event the Board and the Contractor agree that it is their intention that the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and, insofar as is relevant, practicable and appropriate apply the same reasoning and analysis in reaching a decision on the Dispute as the Adjudicator's conclusions, reasoning and analysis in the Related Adjudication.
- 6 Where the parties have not so agreed upon an Adjudicator, or where such person has not so confirmed his willingness to act, then the party who is seeking the appointment of the Adjudicator and the referral of the Dispute to Adjudication may apply to the Chairman, Vice-Chairman, President or Vice-President of either the Royal Incorporation of Architects in Scotland or the Royal Institution of Chartered Surveyors in Scotland or the Law Society of Scotland or the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants of England and Wales ("**Nominator**") for a nomination and the selection of the Nominator shall be made by the said party at a time not earlier than when any Dispute arises. The following procedure shall apply:
 - 6.1 The application shall be in writing, accompanied by a copy of this Agreement or other evidence of the agreement of the parties that the Rules should apply and a copy of the written Notice Requiring Adjudication; and
 - 6.2 The Nominator shall endeavour to secure the appointment of an Adjudicator and the referral to him of the Dispute within seven (7) days from the application to the Nominator.
- 7 The Nominator may replace an Adjudicator with another nominated person as Adjudicator if and when it appears necessary to him to do so but only after giving written notice to the parties of his intention to make such replacement and in accordance with the terms of this Rule 8. The Nominator may only exercise such power if and when either party shall represent to him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the Adjudication, or that the Adjudicator is failing with necessary despatch to proceed with the Adjudication or make his decision. In the event that an Adjudicator is replaced by a Nominator in accordance with this Rule

8, the parties agree that any directions and decisions made by the Adjudicator shall remain in effect unless reviewed and replaced by the new Adjudicator, and all timescales shall be re-calculated from the date of the replacement.

- 8 Subject to Rule 6, where an Adjudicator has already been appointed in relation to another dispute arising out of this Agreement, the Nominator may appoint either the same or a different person as Adjudicator.

AGREEMENT

- 9 An agreement to adjudicate in accordance with the Rules shall be treated as an offer made by each of the parties to the Nominator and to any Adjudicator to abide by the Rules, which offer may be accepted by conduct by appointing an Adjudicator or embarking upon the Adjudication respectively. Without prejudice to the generality of the foregoing sentence, it shall be a condition of any appointment of an Adjudicator that, where so required, the Adjudicator will act as adjudicator in an adjudication under a Related Agreement (subject always to the requirements of Rule 22.6) or in the circumstances described in Rules 34 to 56 inclusive (*Consolidation of Disputes*), including without limitation where a Third Party (as defined in Rule 34) is convened as a third party to the Adjudication and/or where a Related Dispute (as defined in Rule 46.1(i)) is consolidated with the Dispute.

SCOPE OF THE ADJUDICATION

- 10 The scope of the Adjudication shall be the matters identified in the Notice Requiring Adjudication, together with any further matters which both parties agree in writing should be within the scope of the Adjudication.
- 11 [Not used]

THE PURPOSE OF THE ADJUDICATION AND THE ROLE OF THE ADJUDICATOR

- 12 The underlying purpose of the Adjudication is to resolve disputes between the parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.
- 13 Decisions of the Adjudicator shall be binding until the Dispute is finally determined by legal proceedings, or by agreement between the parties.
- 14 The decision of the Adjudicator shall reflect the legal entitlements and obligations of the parties.
- 15 The Adjudicator shall have the like power to open up and review any Certificates, or other things issued or made pursuant to this Agreement as would a Court or arbiter given such powers and the power to award damages.

- 16 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbiter.

CONDUCT OF THE ADJUDICATION

- 17 The Adjudicator shall establish the procedure and timetable for the Adjudication.
- 18 Without prejudice to the generality of Rule 18, the Adjudicator may if he thinks fit:
- 18.1 require the delivery of written statements relating to matters in issue in the Dispute;
 - 18.2 require either party to produce a bundle of key documents, whether helpful or otherwise to that party's case, and to draw such inference as may seem proper from such bundle that may become apparent;
 - 18.3 require the delivery to him and/or the other party of copies of any documents other than documents that would be privileged from production to a court;
 - 18.4 limit the length of any written or oral submission;
 - 18.5 subject always to Rule 22.3 below, require the attendance before him for questioning of either party or employee or agent of either party;
 - 18.6 make site visits;
 - 18.7 make use of his own specialist knowledge;
 - 18.8 obtain advice from specialist consultants, provided that at least one of the parties so requests or consents;
 - 18.9 review and revise any of his own previous directions; and
 - 18.10 conduct the Adjudication in an inquisitorial manner, and take the initiative in ascertaining the facts and the law.
- 19 The Adjudicator may reach his decision with or without the holding of an oral hearing.
- 20 The Adjudicator shall exercise such powers fairly and impartially, giving each party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.
- 21 The Adjudicator may not:-
- 21.1 require any advance payment of or security for his fees;
 - 21.2 receive any written submissions from one party that are not also made available to the other

- 21.3 attend any meeting or take part in any telephone discussion with one party in the absence of the other;
 - 21.4 permit any specialist consultant to attend any meeting with the parties at which the Adjudicator is not also present;
 - 21.5 refuse any party the right at any hearing or meeting to be represented by a representative of that party's choosing who is present;
 - 21.6 act or continue to act in the face of a conflict of interest (whether in relation to either of the parties or any third party having an interest in the outcome or subject-matter of the Dispute);
 - 21.7 require any party to pay or make contribution to the legal costs of the other party arising in the Adjudication.
- 22 The Adjudicator shall reach a decision within 28 days of referral of the Dispute or such longer period as is agreed by the parties after the Dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the party by whom the Dispute was referred. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of the decision to each of the parties. Upon becoming aware that the Dispute is the same or arises out of substantially the same facts as a dispute which has previously been referred to Adjudication under this Agreement, and a decision has been issued in that Adjudication, the Adjudicator shall immediately resign.

ADJUDICATOR'S FEES AND EXPENSES

- 23 The parties shall be jointly and severally liable for the Adjudicator's reasonable fees and expenses including those of any specialist consultant appointed under the Rules ("**Costs of Adjudication**"), and the Adjudicator shall have the discretion to make directions regarding the apportionment of the Costs of Adjudication. If no such directions are made, the parties shall bear the Costs of Adjudication in equal shares. Refer to The Local Democracy, Economic Development and Construction Act 2009, 1 October 2011.
- 24 Not used.

DECISIONS

- 25 The Adjudicator may in any decision direct the payment of such interest as is in accordance with this Agreement.
- 26 All decisions shall be in writing. If requested by either party, not later than 7 days from the date of delivery of his decision to both parties, the Adjudicator shall provide reasons for that decision within 7 days of request.

ENFORCEMENT

- 27 Every decision of the Adjudicator shall be implemented without delay. The parties shall be entitled to such relief and remedies as are set out in the decision, and shall be entitled to enforcement thereof including to take further proceedings, regardless of whether such decision is or is to be the subject of any challenge or review. Where either party or the Adjudicator wishes to register the decision for execution in the Books of Council and Session, the other party shall, on being requested to do so, forthwith consent to such registration by subscribing the decision before a witness which failing within 7 days of such request, the same may be subscribed on behalf of the defaulting party by the Deputy Principal Clerk of the Court of Session.

IMMUNITY, CONFIDENTIALITY AND NON-COMPELLABILITY

- 28 Neither the Nominator, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of their functions, whether in negligence or otherwise, unless the act or omission is in bad faith.
- 29 The Adjudication and all matters arising in the course thereof are and will be kept confidential by the parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings and except insofar as required by law.
- 30 In the event that either party seeks to challenge or review any decision of the Adjudicator in any subsequent legal proceedings, the Adjudicator shall not be joined as a party to, nor shall be cited or otherwise required to give evidence or provide his notes in such legal proceedings except where required by law.
- 31 Not used.
- 32 All information, data or documentation disclosed or delivered by a party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator (except where it becomes necessary or appropriate for the Adjudicator to disclose any such information as a consequence of the Adjudicator being appointed as an Adjudicator in a Related Dispute (as hereinafter defined)) and each party to the Adjudication (save as otherwise agreed between the parties) and shall be returned to the owner on completion of the Adjudication proceedings.

CONSOLIDATION OF DISPUTES

- 34 Third Party Proceedings
- 34.1 If, in relation to any Dispute arising under, out of or in connection with this Agreement, the Contractor claims (without any admission of liability being made) that:

34.1.1 the Contractor would have in respect of the subject matter of the Dispute a right of relief, contribution or indemnity against a third party or third parties under any Related Agreement (as hereinafter defined);

34.1.2 not used;

34.1.3 a third party would be liable to the Contractor in respect of a claim arising out of, or in connection with, the Contractor's liability (if any) to the Board in respect of the subject matter of the Dispute; and/or

34.1.4 the Contractor would be liable to a third party in respect of a claim arising out of or in connection with the Board's liability (if any) to the Contractor in respect of the subject matter of the Dispute;

(each a “**Third Party**”);

in each case, whether or not a dispute or difference has actually arisen between the Contractor and the Third Party (such circumstances, where (i) no dispute or difference has actually arisen between the Contractor and the Third Party; or (ii) where a Related Dispute (as defined in Rule 46) has arisen between the Contractor and a Third Party but has not yet been referred to adjudication being hereinafter referred to as a “**Deemed Dispute**”), then the Contractor may by written notice request the Adjudicator to order that the Third Party shall be convened as a third party to the Adjudication, with a view to allowing all questions between (i) the Board and the Contractor and (ii) the Contractor and the Third Party arising out of the subject-matter of the Dispute and the Deemed Dispute to be disposed of in the Adjudication.

The Contractor shall (or may procure that the Third Party shall) as soon as practicable, and in any case within ten (10) days of the referral of the Dispute to the Adjudicator, give to the Adjudicator conducting the Adjudication under this Agreement the particulars set out in Rule 35 below.

“**Related Agreement**” means the Building Contract, the FM Agreement, the Co-operation Agreement and/or the Technical Adviser’s Appointment Agreement (which shall contain dispute resolution procedures substantially equivalent to this Schedule Part 18).

35 The particulars referred to in Rule 34 above are:

35.1 a copy of any relevant Related Agreement;

35.2 a preliminary statement from the Contractor and/or, as the case may be, the Third Party setting out the basis and grounds for convening the

Third Party as a third party to the Adjudication together with (where applicable);

35.2.1 the cases of the parties to the Deemed Dispute;

35.2.2 any relief sought by the parties to the Deemed Dispute;

35.2.3 a list of any relevant documents in relation to the Deemed Dispute; and

35.2.4 the cases of the Contractor and the Third Party in relation to any relevant matter referred to in Rules 34.1.1 to 34.1.4.

Any such particulars sent by the Contractor or the Third Party (as the case may be) to the Adjudicator shall be sent at the same time to the Board and Third Party or the Contractor (as the case may be).

36 Not used.

37 On receiving the particulars set out in Rule 35 above provided that such particulars have been received by the Adjudicator within ten (10) days of the referral of the Dispute to the Adjudicator, and on receiving a request from the Contractor under Rule 34 above, the Adjudicator shall immediately request that the parties to the Dispute and any relevant Third Party attend a meeting with the Adjudicator with a view to determining whether or not the Third Party should be convened as a third party to the Adjudication. If the Adjudicator and all the relevant parties agree, they may hold a telephone conference call instead of a meeting, and in such an event references in Rules 38 to 41 to a meeting or to attending a meeting shall mean a telephone conference call and taking part in such a telephone conference call.

38 The Contractor shall use its reasonable endeavours to procure that an authorised representative or nominee of the Third Party shall attend the meeting with the Adjudicator referred to in Rule 37 above. The Contractor and the Board each agree to send an authorised representative or nominee to any meeting of this kind (which they may be requested to attend) under this Agreement or under a Related Agreement.

39 At the meeting referred to in Rule 37 above, the Board's authorised representative shall, as a preliminary matter, either:

39.1 confirm to the Adjudicator that the Board accepts that the Third Party should be convened as a third party to the Adjudication; or

39.2 inform the Adjudicator that the Board does not accept that the Third Party should be convened as a third party to the Adjudication.

40 Where Rule 39.1 above applies, or if the Board's authorised representative or nominee fails to attend the meeting referred to in Rule 37 above, the Adjudicator shall immediately order that the Third Party

should be convened as a third party to the Adjudication and the Adjudicator shall have the Board and the power referred to in Rule 43 below.

- 41 Where Rule 39.2 above applies, and/or where the Third Party's authorised representative or nominee informs the Adjudicator that the Third Party does not accept that the Third Party should be convened as a third party to the Adjudication, or if the Board's authorised representative or nominee attends such a meeting but fails to confirm to the Adjudicator whether or not the Board accepts that the Third Party should be convened as a third party to the Adjudication, the Adjudicator shall issue within one (1) day of the meeting referred to in Rule 37 above, his written decision, which shall not include any reasons, as to whether or not there is demonstrably no basis or ground for the Contractor's claim or claims as set out in Rule 34.1 above for convening the Third Party as a third party to the Adjudication. If the Adjudicator determines that there is demonstrably no basis or ground for the Contractor's claim or claims for convening the Third Party, the Third Party shall not be convened as a third party to the Adjudication. If the Adjudicator has failed or is unable to reach a decision within one (1) day of the meeting referred to in Rule 37 above, the Adjudicator shall immediately order that the Third Party shall be convened as a third party to the Adjudication and the Adjudicator shall have the Board and the power referred to in Rule 43 below.
- 42 Notwithstanding anything to the contrary in the Rules, a Third Party may only be convened as a third party to the Adjudication, if (i) the request to the Adjudicator pursuant to Rule 34 above is made within 5 Business Days of the referral of the Dispute under this Agreement to the Adjudicator and (ii) the Adjudicator receives the particulars set out in Rule 35 above within ten (10) days of the referral of the Dispute under this Agreement to the Adjudicator.
- 43 The Adjudicator shall have the Board and the power to convene the Third Party as a third party to the Adjudication and to direct that all procedural and/or evidential matters arising in both the Dispute and the Deemed Dispute are dealt with in whatever manner the Adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and the Deemed Dispute and the parties (including the Third Party) shall thereafter abide by and implement such consolidation and any such direction and any decision of the Adjudicator. For the foregoing purposes:-
 - 43.1 unless the context otherwise requires, the provisions of the Rules shall, with the necessary modifications, apply as between the Contractor and the Third Party in relation to the Deemed Dispute as they apply between the Board and the Contractor in relation to the Dispute; and
 - 43.2 the Adjudicator shall have the same Board and powers in relation to the Deemed Dispute, in relation to which the Third Party has been

convened as a third party to the Adjudication, as he has in relation to a Dispute under this Agreement.

- 44 In the event that a Third Party is convened as a third party to the Adjudication, the Adjudicator shall reach a decision on all relevant matters at the same time and in any event within twenty eight (28) days of the referral of the Dispute or within such longer period as is agreed by the parties to the Dispute and the Third Party after the date that the Third Party was convened as a third party to the Adjudication. The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the party by whom the Dispute was referred.
- 45 Without fettering or restricting the Adjudicator's power and Board in any way, it is the intention of the Contractor and the Board that in the event that a Third Party is convened as a third party to the Adjudication, the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Deemed Dispute.

CONJOINING OF DISPUTE AND RELATED DISPUTE WHICH HAS BEEN REFERRED TO ADJUDICATION

46

- 46.1 If, in relation to any Dispute arising under, out of or in connection with this Agreement, which has been referred to Adjudication under this Agreement:
- (i) which in the reasonable opinion of the Contractor is substantially the same as or connected with a dispute or difference arising out of or in connection with any Related Agreement ("**Related Dispute**"); and
 - (ii) where the Related Dispute is referred to adjudication ("**Related Adjudication**") in terms of section 108 of the Housing Grants, Construction and Regeneration Act 1996 ("**Related Procedure**") after the date of referral of the Dispute to the Adjudicator pursuant to this Agreement,
- 46.2 (iii) The Local Democracy, Economic Development and Construction Act 2009, 1 October 2011 applies.

then the Contractor may by written notice request the Adjudicator (copied to the Board and to the other party to the Related Dispute) to consolidate the Related Dispute with the Dispute with a view to allowing all questions arising out of the subject-matter of the Dispute and the Related Dispute to be disposed of in the Adjudication.

46.3 The Contractor shall (or may procure that the other party to the Related Dispute shall) as soon as practicable, and in any case within ten (10) days of the referral of the Dispute to the Adjudicator, give to the Adjudicator conducting the Adjudication under this Agreement the particulars set out in Rule 47 below.

47 The particulars referred to in Rule 46 above are:

47.1 a copy of any relevant Related Agreement;

47.2 a preliminary statement from the Contractor and/or, as the case may be, the other party to any Related Agreement setting out the basis and grounds for consolidation of the Related Dispute and the Dispute;

together with (where applicable):

47.2.1 the cases of the parties to the Related Dispute;

47.2.2 any relief sought by the parties to the Related Dispute;

47.2.3 a list of any documents served in relation to the Related Dispute;
and

Any such particulars sent by the Contractor or the other party to the Related Dispute (as the case may be) to the Adjudicator shall be sent at the same time to the Board and the other party to the Related Dispute or the Contractor (as the case may be).

48 On receiving the particulars set out in Rule 47 above, provided that such particulars have been received by the Adjudicator within ten (10) days of the referral of the Dispute to the Adjudicator, and on receiving a request from the Contractor under Rule 46 above, the Adjudicator shall immediately request that the parties to the Dispute and any other party to a Related Dispute attend a meeting with the Adjudicator with a view to determining whether or not the Dispute and the Related Dispute are substantially the same or connected to the other and whether they should be so consolidated. If the Adjudicator and all the relevant parties agree, they may hold a telephone conference call instead of a meeting, and in such an event references in Rules 49 to 52 to a meeting or to attending a meeting shall mean a telephone conference call and taking part in such a telephone conference call.

49 The Contractor shall use its reasonable endeavours to procure that an authorised representative or nominee of the other party to a Related Dispute shall attend the meeting with the Adjudicator referred to in Rule 48 above. The Contractor and the Board each agree to send an authorised representative or nominee to any meeting of this kind which they may be requested to attend under this Agreement or under a Related Agreement.

50 At the meeting referred to in Rule 48 above, the Board's authorised representative or nominee shall, as a preliminary matter, either:

- 50.1 confirm to the Adjudicator that the Board accepts that the Related Dispute should be consolidated with the Dispute; or
- 50.2 inform the Adjudicator that the Board does not accept that the Related Dispute should be consolidated with the Dispute.
- 51 Where Rule 50.1 above applies, or if the Board's authorised representative or nominee fails to attend the meeting referred to in Rule 48 above and/or where the authorised representative or nominee of the other party to the Related Dispute accepts that the Related Dispute should be so consolidated or such authorised representative or nominee has failed to attend the meeting referred to in Rule 48 above, the Adjudicator shall immediately order that the Dispute and the Related Dispute should be consolidated, and the Adjudicator shall have the Board and the power referred to in Rule 54 below.
- 52 Where Rule 50.2 above applies, and/or where the authorised representative or nominee of the other party to the Related Dispute has informed the Adjudicator that such party does not accept that the Related Dispute be so consolidated or where the Board's authorised representative or nominee attends the meeting referred to in Rule 48 above but fails to confirm to the Adjudicator whether or not the Board or, as the case may be, the other party to the Related Dispute accepts that the Related Dispute should be consolidated with the Dispute, the Adjudicator shall issue, within one (1) day of the meeting referred to in Rule 48 above, his written decision, which shall not include any reasons, as to whether or not in his or her opinion the Dispute and the Related Dispute are substantially the same or connected one to the other and whether it is reasonably practicable to consolidate the Dispute with a Related Dispute. If the Adjudicator determines that the Dispute is substantially the same or connected with the Related Dispute and that it is reasonably practicable to consolidate the Dispute with the Related Dispute he shall immediately order that the Dispute and the Related Dispute shall be consolidated, and the Adjudicator shall have the Board and the power referred to in Rule 54 below. If the Adjudicator determines that the Dispute and the Related Dispute are not substantially the same or connected or that it is not reasonably practicable to consolidate the Dispute with a Related Dispute, they shall not be consolidated. If the Adjudicator has failed or is unable to reach a decision within one (1) day of the meeting referred in Rule 48 above, the Adjudicator shall immediately order that the Dispute and Related Dispute be consolidated and the Adjudicator shall have the Board and the power referred to in Rule 54 below.
- 53 Notwithstanding anything to the contrary in the Rules, a Related Dispute may only be consolidated with a Dispute under this Agreement, if the Adjudicator receives the particulars set out in Rule 47 above within ten (10) days of the referral of the Dispute under this Agreement to the Adjudicator.

54 The Adjudicator shall have the Board and the power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are dealt with in whatever manner the Adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and Related Dispute and the parties (including the other party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction and any decision of the Adjudicator. For the foregoing purposes:-

54.1.1 unless the context otherwise requires, the provisions of the Rules shall, with the necessary modifications, apply as between the Contractor and the other party to the Related Dispute, as they apply between the Board and the Contractor in relation to the Dispute; and

54.1.2 the Adjudicator shall have the same Board and powers in relation to the Related Dispute as he has in relation to a Dispute under this Agreement.

55 In the event that a Related Dispute is consolidated with the Dispute, the Adjudicator shall reach a decision on all relevant matters at the same time and in any event within twenty eight (28) days of (a) the earlier of the referral of the Dispute and (b) the date of referral of the Related Dispute, or within such longer period as is agreed by the parties to the Dispute and the other party to the Related Dispute after the date that the Related Dispute was consolidated with the Dispute. The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of both the parties by whom the Dispute and (where applicable) the Related Dispute were referred.

56 Without fettering or restricting the Adjudicator's power and Board in any way, it is the intention of the Contractor and the Board that in the event that a Related Dispute is consolidated with the Dispute, the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning in reaching a decision on the Dispute and the Related Dispute (as applicable).

CONVENING OF THE BOARD AS A THIRD PARTY TO A RELATED ADJUDICATION

57 In the event that an adjudicator under a Related Agreement (“**Related Adjudicator**”) orders applying the same criteria set out in Rule 41 hereof (but subject to the proviso in Rule 57.4 and Rule 57A below), that the Board be convened as a third party to the Related Adjudication then:

57.1 Not used

- 57.2 Such order shall be binding on the Contractor and the Board and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Deemed Dispute (as defined in Rule 34 hereof, save that for the purposes of this Rule 57 any reference to “Third Party” shall be deleted and replaced with “the Board”) giving rise to the convening of the Board as a third party to the Related Adjudication, with the Contractor using its best endeavours to procure that the third party who is a party to the Related Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Deemed Dispute; and
- 57.3 Notwithstanding Rule 24, the Contractor and the Board shall be jointly and severally liable with the third party who is a party to the Related Agreement for the Related Adjudicator’s reasonable fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the period from the date on which the Board is convened as a third party to the Related Adjudication (“**Third Party Adjudication Costs**”). The Contractor and the Board agree that the Related Adjudicator shall have the discretion to make directions to require the Contractor, the Board and the third party who is a party to the Related Agreement to pay or make contribution to the Third Party Adjudication Costs in different proportions. If no such directions are made, the Contractor, the Board and the third party who is a party to the Related Agreement shall bear the Third Party Adjudication Costs in equal shares, and if the Contractor, the Board or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and
- 57.4 The Board and the Contractor agree that the decision of the Related Adjudicator in relation to any Deemed Dispute between the Board and the Contractor shall be binding on the Board and the Contractor as if the Deemed Dispute had been a Dispute referred to adjudication pursuant to the Schedule Part 18.
- 57A. Provided always that the Board shall not be convened as a third party to a Related Adjudication unless:
- (i) the Board is provided with a copy of the notice of adjudication served by a Third Party pursuant to a Related Adjudication within 5 Business Days of receipt of such notice by the Contractor; and
 - (ii) the Board is provided with a copy of the referral notice served by a Third Party pursuant to a Related Adjudication together with all supporting documents as soon as practicable and in any event no later than 10 Business Days after the date of referral of the dispute by any Third Party pursuant to a provision equivalent to

Rule 3.3 hereof and thereafter the Contractor ensures that any orders, submissions and supporting documentation are copied to the Board within 5 Business Days of the Contractor's receipt or issue of the same until such time as an order is made pursuant to Rule 57 by the adjudicator appointed under the Related Agreement either convening the Board as a third party to the Related Adjudication or finding that there are no reasonable grounds to so convene the Board.

- 57B Without prejudice to the provisions of Rule 57A, if the Contractor becomes aware of any circumstances which, in the Contractor's opinion, acting reasonably, may give rise to the Board being convened as a third party to a Related Adjudication, the Contractor shall inform the Board without delay.
- 58 Notwithstanding anything to the contrary in the Rules above, the Contractor shall pay the Board's reasonable costs arising from the request of the Contractor to convene the Board as a third party to the Related Adjudication where it is subsequently determined by the Related Adjudicator that there was no basis or ground for the Board to be so convened.

CONJOINING OF A DISPUTE UNDER THIS AGREEMENT WITH A RELATED DISPUTE

- 59 In the event that a Related Adjudicator (as defined above) orders that a Dispute under this Agreement be consolidated with a Related Dispute with which the Related Adjudicator is dealing under the Related Agreement, then:
- 59.1 notwithstanding anything in the Rules with effect from the time of such order, the Adjudicator shall cease to have Board or jurisdiction to determine the Dispute which shall instead be determined by the Related Adjudicator and the appointment of the Adjudicator under this Agreement shall cease; and
- 59.2 such order shall be binding on the Contractor and the Board and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with the Contractor using its best endeavours to procure that the third party who is a party to the Related Agreement shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Dispute; and
- 59.3 notwithstanding Rule 24, the Contractor and the Board shall be jointly and severally liable with the third party to the relevant Related Agreement for the Related Adjudicator's reasonable fees and expenses including those of any specialist consultant appointed under the adjudication procedure in the Related Agreement, in respect of the

period from the date on which the Dispute is consolidated with the Related Dispute pursuant to an order of the Related Adjudicator ("**Consolidated Adjudication Costs**"). The Contractor and the Board agree that the Related Adjudicator shall have the discretion to make directions to require the Contractor, the Board and the third party to the relevant Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, the Contractor, the Board and the third party to the relevant Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if the Contractor, the Board or the third party to the relevant Related Agreement has paid more than such equal share, that party shall be entitled to a contribution from the other party or parties as the case may be.

60 Notwithstanding anything to the contrary in the Rules, the Contractor shall pay the Board's reasonable costs arising from the consolidation of the Dispute and the Related Dispute in circumstances where the Contractor has requested the Related Adjudicator to order the consolidation of the Dispute and the Related Dispute and it is subsequently determined by the Related Adjudicator that they should not be consolidated.

61 If, in respect of any Dispute to which Rules 34 to 59 of this Schedule Part 18 applies, any provision thereof is held to be or is rendered void or ineffective or will otherwise be unenforceable, then the Contractor and the Board agree that the terms of Rules 62 to 63 below shall apply.

62 If any Dispute raises issues which relate to:

62.1 Any dispute between the Contractor and the Building Contractor arising under the Building Contract or otherwise affects the relationship or rights of the Contractor and/or the Building Contractor under the Building Contract (the "**Building Contract Dispute**"); or

62.2 Any dispute between the Contractor and the FM Contractor arising under the FM Contract or otherwise affects the relationship or rights of the Contractor and/or the FM Contractor under the FM Contract (the "**FM Contract Dispute**"); or

62.3 Any dispute between the Contractor and the Technical Adviser arising under the Technical Adviser's Appointment or otherwise affects the relationship or rights of the Contractor and/or the Technical Adviser under the Technical Adviser Appointment Agreement (the "**Technical Adviser Appointment Dispute**");

then the Contractor may include as part of its submissions made to the Adjudicator submissions made by the Building Contractor, the FM Contractor or the Technical Adviser as appropriate and if such submissions are included by the Contractor, the Building Contractor, the FM Contractor, or the Technical Adviser shall be permitted to

attend any hearings or meetings convened during the course of the relevant Dispute.

63 Any submissions made in terms of Rule 62.3 above by the Building Contractor, the FM Contractor or the Technical Adviser shall:

63.1 be made within the time limits applicable to the delivery of submissions by the Contractor; and

63.2 concern only those matters which relate to the dispute between the Board and the Contractor arising out of this Agreement or in connection therewith.

64 Notwithstanding Rules 14 and 32, neither party shall make any application whatsoever to the Court of Session in relation to the conduct of the Adjudication or the decision of the Adjudicator after the date ninety (90) days from the later of the date of the decision of the Adjudicator and, where requested under Rule 27, the date reasons are provided.

Nothing in this Rule 64 shall restrict the rights of either party to make application to the Court of Session to enforce the decision of the Adjudicator.

65 In the Rules, periods of time shall be reckoned in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996.