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**I.**  
**GENERAL PROVISIONS**

**Article 1**

**Definition and Purpose of a Dispute Board (DB)**

1. These Rules shall be read together with the Public Procurement Law (LCE), the LCE Regulations (RLCE), and the current Directive of the Supervising Agency of Public Procurement (OSCE) on Dispute Boards which governs the use of Dispute Boards (DB) as mechanisms to avoid and overcome disagreements and disputes arising out of or in connection with the performance of public construction contracts.
2. The DB is an alternative dispute resolution mechanism aimed at assisting the parties in avoiding or, where appropriate, efficiently resolving disputes that may arise from the commencement of works up to their full acceptance.
3. For the purposes of these Rules and the implementation of the DB, the term “Disagreement” means any difference between the parties arising out of or in connection with the execution of a construction contract that has not yet been referred to the DB for a decision. It also includes Disagreements that are subject to the informal assistance under Article 26. On the other hand, the term “Dispute” means any Disagreement that is formally referred to the DB for its resolution.
4. Terms “project” and “public works” shall be used interchangeably.

**Article 2**

**DB Rules**

These Rules apply only to the type of DB established in the LCE, the RLCE and the current Directive: a standing DB administered by an institution and which, upon the request of any party, may informally assist the parties or issue binding decisions.

### **Article 3**

#### **Scope of Application of the Rules**

1. These Rules shall apply when the parties agree to establish a DB to avoid and/or efficiently resolve disputes arising out of or in connection with performance of a contract, and submit it to the administration of the Centre.
2. The Centre shall provide administrative services and organise procedures required by the DB. These services include appointing DB members, if applicable, and other administrative activities required in accordance with the provisions of the LCE, RLCE and the current Directive.
3. The Parties may establish more details on the work of the DB as deemed appropriate and as long as they are not inconsistent or contradictory with the Rules, the LCE, the RLCE and the current Directive. Any vague stipulation in the agreement between the parties regarding the DB's work shall be deemed not to have been made.

### **Article 4**

#### **Agreement to Submit to a DB under the Rules**

1. The parties must agree to submit to the DB either in the relevant contract or in a subsequent document. In both cases, the parties' intention must be express and specify that the parties agree to apply the Centre's Dispute Board Rules.
2. Through the submission to the Centre's Dispute Board Rules, the parties confer upon the Centre all prerogatives necessary to organise and administer the DB under its Rules. To this end, the parties may use the standard clause provided by the Centre.
3. DBs subject to these Rules shall be administered by the Centre and only the Centre shall be entitled to administer the DBs under these Rules.
4. The parties shall inform the Centre of their decision to designate the Centre as administering institution within five (5) business days from the conclusion of the contract referred to in Article 4(1) above.

## **Article 5**

### **Time Limits**

1. Unless otherwise stated, time limits specified in or fixed under these Rules shall be calculated in business days. A Saturday, a Sunday and any holiday, as well as any day officially declared a non-business day in the city where the parties are domiciled or at the worksite shall be considered non-business days for the purposes of these Rules.
2. Time limits shall start to run on the day following the date a notification is deemed to have been made. If the last day of the relevant period is a non-business day in the place where the notification is deemed to have been made, the time limit shall expire at the end of the first following business day.

## **II. DISPUTE BOARD**

## **Article 6**

### **Number of DB Members**

The DB may consist of a sole (1) member or three (3) members, as agreed by the parties. In the absence of agreement or in case of doubts, the DB members shall be appointed in accordance with the provisions of the special regulations.

## **Article 7**

### **DB Members' Qualifications and Impediments**

1. Where the DB is to consist of a sole (1) member, such member shall be an engineer or an architect with knowledge regarding public procurement and the national regulations applicable to the contract. When the DB is composed of three (3) members, the president shall also have the same qualifications required for the sole DB member. The other members shall be experts in contract performance and one of them shall be a lawyer by profession, unless otherwise agreed by the parties. The term "experts in contract performance" shall mean any professional, of any field, whose professional activity is related to any of the phase of the contract, such as development, implementation, or dispute resolution.

2. The impediments to act as a DB member shall be the same as those established in the RLCE to act as an arbitrator.

## **Article 8**

### **Appointment and Confirmation Procedure**

1. Where the DB shall have a sole member, the parties jointly appoint the sole DB member from the Centre's list of adjudicators within five (5) days after the conclusion of the agreement submitting disputes to the DB or of the contract itself, in case of a DB established at the conclusion of the contract.
2. The appointed member may accept or decline the appointment in a time limit of two (2) days. If the parties fail to appoint the member, the Centre, through its Joint Committee, shall make the appointment within a maximum time limit of five (5) days following the receipt of the request made by any party. The proposed member may accept or decline the appointment in a time limit of two (2) days.
3. When the DB is composed of three (3) members, the parties jointly appoint the first two members from the Centre's list of adjudicators within five (5) days after the conclusion of the agreement submitting disputes to the DB or of the contract itself, in case of a DB established at the conclusion of the contract.
4. The proposed members may accept or decline the appointment in a time limit of two (2) days. The third member, who acts as president of the DB, is appointed from the list of adjudicators by the party-appointed DB members within a maximum time limit of five (5) days from the acceptance made by the second of them. The third proposed member may accept or decline the appointment in a time limit of two (2) days. If the first two DB members fail to appoint the third member, the Centre, through the Joint Committee, shall appoint the proposed third member within a maximum time limit of five (5) days from the receipt of the request made by any party. The proposed member may accept or decline the appointment in a time limit of two (2) days.
5. If any of the proposed members does not accept the appointment or does not respond within the established time limits, the parties, the members that made the appointment or the Centre, through the Joint Committee, shall appoint a substitute member, as appropriate, following the same procedure as indicated in the preceding paragraphs.
6. If a period of twenty (20) days has elapsed from the conclusion of the agreement submitting disputes to the DB or from the commencement of performance in case of DB established at the

conclusion of the contract and the parties or the appointed members fail to obtain the acceptance of their proposed members, or they fail to carry out the appointment, the Centre, through the Joint Committee, shall appoint the member or members that have not been proposed, at the request of any party.

7. When appointing a member of the DB, the Joint Committee of the Centre shall consider the prospective DB member's qualifications and abilities in relation to the given case, as well as availability, knowledge and specialization, among other aspects.

## **Article 9**

### **Challenge**

1. All DB members must be and remain impartial and independent from the parties. When accepting the appointment, a DB member must disclose any facts or circumstances that occurred within five (5) years prior to their appointment that could give rise to justifiable doubts as to the DB member's independence or impartiality, or that may prevent them from exercising their functions with transparency and diligence. This duty to disclose also includes the obligation to inform the parties of any circumstance occurred after the acceptance that could affect the DB member's independence or impartiality.
2. Any party wishing to challenge a DB member's independence or impartiality, may, within five (5) days of learning of the facts upon which the challenge is based, submit to the Centre a request for a decision upon the challenge including a written statement of such facts or circumstances. The Centre forwards such request to the other party and to the challenged DB member within a maximum time limit of three (3) days, granting them five (5) days to comment on the challenge. Upon expiration of said time limit, the Centre, through the Joint Committee, issues its decision within a maximum time limit of fifteen (15) days, and notifies the parties within a maximum time limit of three (3) days. Such decision is final and subject to no appeal.
3. If a request for a decision upon the challenge of a DB member is submitted to the Centre and such challenged DB member resigns from the position, the Centre shall nevertheless decide upon such challenge. In such a case, the member is replaced, without prejudice to the continuation of the challenge proceedings.

## **Article 10**

### **Replacement of DB Members**

1. The Centre shall be responsible for the replacement of a DB member, if the Centre confirms any of the following grounds:
  - a) Physical or mental impairment, which prevents or hinders the development of the DB's work.
  - b) Death.
  - c) Successful challenge.
  - d) Termination of the Tripartite Agreement.
  - e) Resignation.
2. The party that appointed the DB member being replaced, the members who made the proposal or the Centre, through the Joint Committee, as appropriate, shall appoint a new member within a maximum time limit of five (5) days from date on which the former member ceases their functions.
3. When a DB member has to be replaced due to physical or mental incapacity that prevents or hinders the development of the DB's work, death, or resignation, the new DB member shall be appointed in the same manner as the DB member being replaced or, failing that, by the Centre, through the Joint Committee, within five (5) days from the day following the request of any party.
4. In the event of a well-founded challenge, the Centre, through the Joint Committee, appoints the substitute member directly.
5. If the acceptance of the new member is not obtained within ten (10) days from the date on which the replaced member ceases functions, the Centre, through the Joint Committee, shall make the respective appointment.
6. Until the DB member has been replaced, the other two (2) members shall refrain from conducting hearings and issuing decisions, unless the parties expressly agree otherwise, the matter is urgent or the decision resolves requests for provisional relief. Where the sole member, two (2) or all three (3) members must be replaced, the DB may not conduct any activity.

## **Article 11**

### **Tripartite Agreement**

After the DB has been constituted, the parties shall conclude a Tripartite Agreement with each DB member and with the participation of the Centre within five (5) days of the acceptance made by the last DB member or the sole member. The standard agreement included in the Rules as Annex 3 shall be used.

## **Article 12**

### **Removal or Resignation**

1. The parties may, at any time, without cause and any additional liability, jointly terminate the Tripartite Agreement of any DB member by giving a seven (07) days' notice. The parties shall pay any outstanding fee to such DB member up to the date of termination.
2. Every DB member may, without cause and any additional liability, terminate the Tripartite Agreement at any time by giving a twenty-eight (28) days' notice. The DB member concerned shall reimburse any fees paid for services not rendered.

## **Article 13**

### **Ethical Guidelines**

DB members shall perform their duties with integrity and in good faith as well as with complete and absolute independence and impartiality. They shall comply with the ethical guidelines established in the Directive and the Code of Ethics applicable to the DBs administered by the Centre, as well as with the following obligations:

- a) To have no financial, economic, or other interest in relation to the Entity, the Contractor, or the Supervisor, or any financial or economic interest relating to the Construction Contract, except for the payment to which they will be entitled as DB members.
- b) Not to have been previously engaged as a consultant or in any other position by the Entity, the Contractor, or the Supervisor, except for the circumstances disclosed in writing to the Entity and the Contractor prior to entering into the Tripartite Agreement.
- c) To have informed the Entity, the Contractor and the other DB members, in writing, prior to entering into the Tripartite Agreement and to the best of their knowledge, of any professional or personal relationship with the Entity, the Contractor, the

Supervisor, the other DB members or staff or employees of the Entity, the Contractor or the Supervisor whose work is or has been related to the Construction Contract.

- d) To refrain from maintaining, during the term of the Tripartite Agreement, any relationship of subordination or dependence, directly or indirectly, as a consultant or otherwise with the Entity, the Contractor or the Supervisor, unless otherwise authorised in writing by the Entity, the Contractor and the other DB members; as well as refrain from entering into negotiations or selection processes to work or provide services to them.
- e) To ensure they are and remain impartial and independent from the Entity, the Contractor, and the Supervisor. To this end, they shall promptly inform the Entity, the Contractor, and the other DB members of any circumstance that occurs or comes to their attention that affects their independence and impartiality or that could give the impression that it is so affected.
- f) To avoid providing any type of advice to the Entity, the Contractor, the Entity's, or the Contractor's personnel in connection with the Construction Contract.
- g) To guarantee that they will remain available to perform their duties as DB members and will remain up-to-date and familiar with the Construction Contract and its progress by studying all the documents received.
- h) To avoid requesting or receiving any type of benefit, in cash or in kind, from the parties.

## **Article 14**

### **Confidentiality**

1. By accepting the appointment, DB members undertake to carry out their responsibilities in accordance with these Rules.
2. Decisions on challenges against DB members, as well as decisions issued by the DB, are publicly available. The Centre shall make them available to the public on its website.
3. Notwithstanding the foregoing, the information obtained by a DB member and the Centre in discharging their work is confidential and may not be disclosed, unless authorised in writing by both parties, or otherwise required by any competent adjudicating body or by the OSCE. The Centre's or DB member's staff are also bound by the duty of confidentiality.

4. The DB may take measures to protect trade secrets and confidential information.
5. No DB member may participate in any judicial or arbitration proceeding concerning a dispute submitted to its decision or recommendation, whether as a judge, arbitrator, witness, expert, representative or advisor of a party.

**Article 15**  
**Functions**

1. DB members shall perform the following functions:
  - a) To issue binding decisions regarding Disputes submitted by the parties.
  - b) To issue decisions on requests for conservatory, interim or provisional measures.
  - c) To provide informal assistance by giving non-binding opinions on any contractual and/or technical issue that may cause a potential Disagreement, which is previously consulted with the Supervisor and the Designer, as appropriate.
  - d) To regularly visit the site where the Public Works are being performed.
  - e) To comply with other duties established in the Contract, the Directive or the Rules.

### **III. DB PROCEEDINGS**

#### **Article 16**

##### **Minutes of Commencement of Functions**

1. The DB begins its work once the Minutes of Commencement of Functions has been signed by all DB members, the parties and a representative of the Centre within five (5) days of the acceptance of the last DB member or sole DB member. Said Minutes may be executed at the same time by all parties, at separate times, or by electronic means.
2. The Minutes of Commencement of Work shall establish a schedule of meetings and regular visits to the worksite, which may be amended from time to time by the DB, in coordination with the parties. Such schedule is mandatory. It shall also include an agreement on the nature, form, and frequency of the progress reports to be sent by the parties to the DB.

#### **Article 17**

##### **Reporting Duty of the Parties**

1. As soon as the DB has been established, the parties shall fully cooperate with it and inform it in a timely manner about the Contract and its performance by the parties as well as any possible Disagreement.
2. The DB may request any party to submit information relating to the Public Works in order to conduct its functions. In the absence of an agreement, such information shall be provided at the frequency determined by the DB and sent by the representatives of each party.

#### **Article 18**

##### **Further Obligations of the Parties**

1. The parties are bound to each other and to the DB members to comply with the following obligations:
  - a) The parties shall not appoint members of the DB as arbitrators during the term of the Tripartite Agreement.

- b) The parties shall not call the DB members as witnesses if any dispute relating to the Construction Contract is submitted to arbitration.
- c) The parties shall take adequate measures to safeguard the personal safety and well-being of each DB member when they are required to conduct a site visit, a hearing or a meeting.
- d) The parties shall pay their share of the fees and expenses of the DB members.
- e) The parties shall provide the DB members with all relevant information and documentation relating to the Construction Contract and the progress of the Public Works, so that the DB can perform its functions being fully informed about the Public Works and its progress in a timely manner.
- f) The parties shall provide the DB with any information that may in any way jeopardise the DB's work.

## **Article 19**

### **Meetings and Site Visits**

1. At the beginning of its work and in coordination with the parties, the DB shall establish a schedule of regular Site visits and additional meetings, if necessary. The parties shall attend all such meetings and Site visits. In case the DB requires an additional meeting or visit and either party considers that this is not efficient, such party may ask the DB to reconsider such request. In any case, the DB shall decide whether to go ahead with the visit.
2. The frequency of the scheduled meetings and Site visits shall be sufficient to keep the DB informed of the performance of the Public Works and of any Disagreements from the outset. The Centre shall coordinate these meetings and visits, and the parties shall cooperate with the Centre.
3. If requested by the DB, the parties must provide appropriate working space, accommodation, means of communication, office and computer equipment, and all necessary elements to make the meetings or visits feasible in an efficient manner, trying to minimise expenses and time required.
4. Site visits occur where the Public Works are performed. Meetings can be held in the manner agreed by the parties and the DB, including by videoconference. In case of disagreement, the meetings shall be held in the manner established by the DB.

5. During meetings or Site visits, the DB shall review with the parties the progress of the Construction Contract and identify any potential or possible issues in Disagreement in order to prevent a Dispute.
6. Any party may request one or more meetings or Site visits in addition to the scheduled meetings and Site visits, upon not less than seven (7) days' notice.
7. A Site visit shall occur at the time of acceptance of the Public Works.
8. The parties shall attend all meetings and Site visits organised by the DB. If a party fails to attend, the DB may nevertheless decide to proceed with such meeting or visit, provided that both parties have been informed thereof at least three (3) days before the meeting or visit. The DB shall inform the absent party of the results or conclusions of the meeting and/or visit within seven (7) days thereof.
9. If a DB member fails to attend, the other members may decide to proceed with the meeting or visit.

## **Article 20**

### **Regular Visits**

1. Both a meeting and an inspection shall take place whenever there is a regular Site visit. Each party's representative, the Supervisor and the Centre's representative shall participate in these visits. The DB may require, on its own initiative or upon the request of any party, the presence of Subcontractors or Suppliers at such visits.
2. The order of business of such visits shall include, at least, the following items:
  - a) Opening of the meeting by the president of the DB or by the sole member, as appropriate.
  - b) Presentation by the Contractor of the work carried out since the last meeting, the current status of the Public Works and its progress compared to the contractual schedule, potential difficulties and solutions proposed therefor.
  - c) Presentation by Supervisor of their points of view regarding the items mentioned by the Contractor and any other situation.
  - d) Comments by the Entity regarding the Contractor's and Supervisor's statements, including any potential difficulties it anticipates and the solutions proposed therefor.

- e) Explanation by the Contractor and/or the Entity regarding the areas of the Public Works to be inspected and comments by the Supervisor, the Entity and the DB members.
  - f) Site inspection, specially focusing on the areas of greatest activity or relevance.
  - g) Presentation of plans and actions proposed by the DB to avoid disputes or disagreements based on the previous points.
  - h) Conclusions and actions to be taken.
  - i) Setting or confirming the date of the next visit.
3. After every meeting or Site visit, the DB shall prepare a summary of the meeting or Site visit, including the list of those present. This summary shall be sent to the parties within seven (7) days following the meeting or visit, as applicable.
  4. The Centre shall prepare minutes of each regular visit and shall make them available to the parties and the DB within three (3) days of the visit for their comments and/or approval. The minutes shall be signed at the latest at the next Site visit. These minutes do not replace the report to be prepared by the DB.

## **Article 21**

### **Written Communications and File**

1. All communications between the parties and the DB shall be made through the Centre in the manner agreed by the parties and the DB or as otherwise provided by the DB in the Minutes of Commencement of Functions. Communications shall be made in Spanish.
2. All communications made by email shall be communicated simultaneously to all parties, without prejudice of sending hard copies of such communication in those cases agreed between the parties or when so ordered by the DB. The Centre shall promptly send any notice or communication it receives and keep track of the file.
3. A hard copy of communications shall be deemed to have been delivered on the date that it was received by the intended recipient or by its representative if made at the address on file for each party. If a party has not provided an address, the notification shall be deemed to have been made on the date a hard copy is delivered at the address indicated in the Construction Contract or, failing that, at the registered office or place of business. Any change of address

shall become effective on the day after the receipt of the corresponding communication by the Centre. The Centre shall keep track of the respective file.

4. When hard copies of notices or communications are submitted to the Centre, the parties shall provide sufficient copies of all the documents for each party and for each DB member.
5. A communication shall be deemed to have been made on the day on which it was received electronically or physically, as appropriate, by the intended recipient or by its representative. A communication sent by email shall be deemed to have been made on the date it is sent, unless otherwise proven.
6. The Centre shall retain the file containing the DB's proceedings for a period of ten (10) years from the completion of the DB's work. An electronic copy of the file may be retained.
7. The Entity, the Contractor, and the Supervisor shall not engage or contact the DB or any of its members by any means of communication to consult, seek opinion, or advice on any matter. Similarly, DB members shall not give suggestions or opinions only to one of the parties or to the Supervisor.

## **Article 22**

### **Beginning and End of the DB's Activities**

1. The DB shall begin its work once the Minutes of Commencement of Functions have been signed. The DB shall end its activities:
  - a) Upon issuance of the Certificate of Completion of the Works or another document ending this stage.
  - b) Upon issuance and notification of the last decision or correction or clarification of a decision (or upon expiration of the respective time limit), as appropriate, if there are Disputes pending DB's decision at the time of acceptance of the Works.
  - c) Upon confirmation of other reasons set out in the LCE, RLCE, the Directive or the Construction Contract.
2. Following termination of the Construction Contract, the DB retains powers to decide on any disputes that arise until the Entity completes the physical inspection and inventory of the Works. In that case, the DB shall end its work upon the issuance of the decision on the pending

Disputes or of the non-binding opinion, as appropriate. DB members' fees shall be paid until the issuance of the pending decisions or opinions.

### **Article 23**

#### **Suspension of the DB's Activities**

1. Where the term of performance of a Contract is suspended as provided for in the RLCE, the DB shall continue to perform its work, unless otherwise agreed by the parties. During such period, the fees of the DB members and the Centre's administrative expenses shall be paid in accordance with these Rules and, if applicable, the Tripartite Agreement.
2. Should the parties agree to suspend the work of the DB, such agreement shall consider any dispute pending decision and any requests for informal assistance made by the parties in order to determine the duration of the suspension period and the DB members' fees or the Centre's administrative expenses to be paid during such period.

### **Article 24**

#### **Powers of the DB**

1. The proceedings before the DB are governed by these Rules and, in the absence of an express provision, by the most appropriate rules the DB may determine.
2. In the absence of an agreement of the parties, the DB has the power to require the parties to produce any documents that it deems necessary, to call meetings, Site visits, and hearings that it deems necessary, to decide on all procedural matters arising during any meetings, to question or examine the parties, their representatives, and any witnesses it may deem relevant; and to take any measures necessary for it to fulfil its functions as a DB.
3. The DB must develop its activities considering the needs of the Public Works and be flexible to adapt to the various situations that may arise, adopting rules and criteria that facilitate the internal functioning of the DB. The DB must function as efficiently as possible and proactively invite the parties not to undertake actions that may entail avoidable burdens and costs in order to resolve disputes in a timely and cost-effective manner. Likewise, DB members must use all their professional and personal skills to prevent Disputes and favour the development of the project.
4. Sound and/or video recordings of hearings and meetings are made. During the Site visits, visual evidence of relevant information, such as photos, videos, or otherwise, are collected.

5. If there are more than two parties to the Contract, the application of the Rules may be adapted, as appropriate, to the multiparty situation by agreement of all the parties or, failing such agreement, by the DB.
6. If any party refuses or fails to take part in the DB procedure or any stage thereof, the DB may proceed notwithstanding such refusal or failure.

## **Article 25**

### **Matters that May Be Resolved by the DB**

Any Disagreement on matters that may be resolved by the DB and that arise during the performance of the Contract up to the full acceptance of the Public Works may be brought before the DB. The following matters may not be resolved by the DB: disputes regarding the nullity, inexistence, inefficacy or invalidity of the Contract, decisions of the Entity or the Comptroller General of the Republic to approve or deny the performance of additional services, as set out in the LCE, claims for damages for items not provided for in the public procurement regulations in accordance with the RLCE, or disputes regarding the failure to make the final payment.

**Article 26**  
**Informal Assistance**

1. Upon the request of any party or on the DB's own initiative, and in either case with the agreement of all the parties, the DB may informally assist the parties in resolving any Disagreements that have arisen during the performance of the Contract. Such informal assistance shall consist of helping the parties by issuing non-binding opinions on any issue that may cause a Disagreement or that the parties may wish to clarify for any reason.
2. Such informal assistance may occur at any time, including during any meeting or Site visit. A written record of the parties' request to the DB shall be kept.
3. The response to this non-binding opinion shall be made within a maximum period of five (5) days or within the term proposed by the DB and accepted by the parties. Opinions given by the DB may be included in a DB's report, as provided for in Article 20.
4. When providing informal assistance, the DB may hold meetings and visits, as provided for under these Rules. Similarly, the DB may call a hearing with the participation of certain representatives of the parties, in which case, the summoned representatives shall be required to attend. The DB must ensure that any meetings held for this purpose are recorded in writing.
5. Non-binding opinions must state the date of their issuance and findings and reasons upon which they are based, including, without limitation, and not necessarily in the following order: a summary of the potential dispute submitted to informal assistance; the parties' positions and requests; a summary of the relevant provisions of the Contract; a chronology of relevant facts; a summary of the procedure followed by the DB; a list of the submissions and documents delivered by the parties during the procedure; and the opinion, clearly written.
6. If called upon to issue a decision in connection with a Disagreement or a specific issue on which it has provided informal assistance, the DB shall not be bound by any opinions that it may have given during its informal assistance.

**IV.**  
**PROCEEDINGS WHEN DISPUTES ARE SUBMITTED TO DB FOR A DECISION.**

**Article 27**

**Request to the DB for a Decision**

1. To refer a Dispute to the DB, the interested party shall submit to the Centre a request that shall include, at least:
  - a) A clear and concise description of the nature and circumstances of the Dispute.
  - b) A list of issues to be submitted to the DB for decision.
  - c) A statement of the referring party's position thereon.
  - d) Any relevant support for the position, such as documents, drawings, activity schedules or programmes, correspondence, etc.
  - e) The answer given by the opposing party, if any.
2. The date on which the written request is made to the Centre shall be deemed to be the date of submission of the Dispute to the DB. The parties may jointly refer a request if they deem it appropriate. The parties remain free to settle the Dispute at any time.
3. The parties may only request decisions to the DB until the date of issuance of the Certificate of Completion of the Work or another document ending this stage.
4. The parties must comply with the time limits and procedures set forth in the LCE and the RLCE in relation to all contractual obligations, including extensions of time, variations to the work, additional work, deductions, modifications of the Construction Contract, clarifications to the technical file and any other type of uncertainty, doubt or controversy that may arise, without prejudice to deciding to refer any Dispute on such items to the DB.

## **Article 28**

### **Response to the Request for a Decision**

1. Where the request meets the requirements set forth in the preceding Article, the Centre sends to the other party a notice of the request within three (3) days of its receipt.
2. The responding party shall respond within fifteen (15) days of receiving such notice sent by the Centre. The response shall include a clear and concise statement of the responding party's position with respect to the Dispute, as well as relevant support for its position, such as documents, drawings, schedules or activity programmes, and relevant correspondence, if any.

## **Article 29**

### **Additional Documentation and Information**

1. The DB may at any time request a party to submit additional information or documentation to assist the DB in preparing its decision.
2. The DB may authorise the filing of further written submissions in addition to the request and response described in Articles 27 and 28, within such time limits as it deems appropriate.

## **Article 30**

### **Hearings**

1. After receiving the response, the DB shall determine whether it is necessary to hold a hearing for each party to present its position and supporting evidence, depending on the complexity of the disputed issue or other aspects. If a party requests a hearing, it shall be held.
2. The hearing shall be held promptly. A period of no more than ten (10) days must elapse between the receipt of the response and the date for the hearing. Hearings may be divided into one or more sessions; subsequent sessions must be held within ten (10) days from the date of the previous session.
3. When a hearing is to be held on a date other than that of a regular visit, the date and venue shall be mutually agreed upon by the parties and the DB. If no such agreement is reached, the hearing shall be held at a date and place to be determined by the DB.

4. The hearing shall be held in the presence of all the DB members and a representative of the Centre, unless the DB decides, in the circumstances of the case and after consultation with the parties, that it is appropriate to hold the hearing in the absence of a DB member.
5. The DB is in full charge of the hearings and ensures that each party has a reasonable opportunity to present its case. The parties shall appear in person or through duly authorised representatives. Unless the DB decides otherwise, the hearing proceed as follows:
  - a) Presentation of the case by the referring party.
  - b) Presentation of the responding party.
  - c) Identification by the DB of any matters that need further clarification.
  - d) Clarification by the parties concerning the matters identified by the DB.
  - e) Responses of each party to the clarifications made by the other party.
  - f) Intervention of witnesses or experts.
  - g) Final conclusions by the parties.
  - h) The DB's conclusions related to the procedure and actions to be taken.
6. The DB may call witnesses and expert witnesses and may request their intervention in a hearing on its own initiative or upon request of any party or require any evidence it deems convenient or necessary. The DB may request the parties to submit their arguments and supporting documentation before or after the hearing.
7. The hearing are held in the presence of all DB members, the parties and a representative of the Centre, unless the DB decides, in the circumstances of the case and after consultation with the parties, that it is appropriate to hold the hearing in the absence of a DB member.
8. If any party refuses or fails to take part in the DB procedure or any stage thereof, the DB may proceed notwithstanding such refusal or failure.
9. The DB may request the parties to provide written summaries of their positions.

## **Article 31**

## **Further Necessary Measures**

The DB may make decisions on any urgent matter on a temporary or interim basis, subject to Article 33. Failure to comply with these decisions constitutes a breach of contract.

## **Article 32**

### **Decision**

1. When the DB is composed of more than one member, the decision is adopted unanimously. If this cannot be achieved, the decision is rendered by favourable vote of at least two (2) members. In the absence of a majority of two (2) members, the vote of the president of the DB shall be decisive.
2. Members cannot abstain from voting on any decision. If they abstain, it is understood that they adhere to the decision of the majority or the president, as the case may be.
3. Any DB member who disagrees with the decision must give the reasons for such disagreement in a separate written report that does not form part of the decision but is communicated to the parties together with or subsequent to the decision. The failure of a DB member to give such reasons does not prevent the decision from being issued or taking effect.

## **Article 33**

### **Issuing and Contents of a Decision**

1. Following the hearing, the DB may deliberate in private at any time and location it deems appropriate. The deliberations are confidential and should not be included in the decision rendered.
2. The DB issues its decision in writing, indicating the date on which it was issued and the reasons upon which it is based. The decision must include:
  - a) A summary of the Dispute, the respective positions of the parties and their requests.
  - b) A summary of the relevant provisions of the Construction Contract and governing law.
  - c) A chronology of relevant facts.
  - d) A summary of the procedure followed by the DB.

- e) A list of the documents produced by the parties during the procedure, as well as others taken into consideration in the DB's decision.
  - f) The decision itself and the reasons upon which it is based.
3. For each decision, the DB may consider other documents or information about the project to which it had access as a result of the reporting duty under Article 17 or of the meetings and visits referred to in Articles 19 and 20, even if the parties have not provided them in the context of the Dispute. In that case, the DB shall first give the parties the opportunity to comment on the documents or information in question.
  4. The DB shall draft the decision in such a way that it is enforceable in practice by the parties and in accordance with the LCE, the RLCE, and the Construction Contract, anticipating any potential complication or doubt arising out of or in connection with its application.

#### **Article 34**

##### **Time Limit for Issuing a Decision**

1. The DB shall notify the Centre of its decision within fifteen (15) days of the date of the last or only session of the respective hearing. The DB may extend such time limit; any such extension shall not exceed fifteen (15) days whenever such extension is deemed convenient, at the DB's sole discretion and unless otherwise agreed by the parties.
2. The Centre must notify the parties of said decision within three (3) days of its receipt. The parties, in turn, must notify the On-Site Manager and the Supervisor, as soon as possible.
3. Decisions issued and notified to the parties outside the time limit established in the Rules are ineffective, and the Disputes subject to them may be submitted to arbitration within thirty (30) business days after the expiration of the term for their notification.

#### **Article 35**

##### **Correction and Clarification of a Decision**

1. On its own initiative, the DB may correct any typographical, computational or transcription error, or any errors of a similar nature contained in a decision, within five (5) days of its notification to the parties.

2. Any party may apply to the DB for the correction of any error of the kind referred to in Article 35(1) or for the clarification of a decision within five (5) days of the date of receipt of such decision. The Centre shall notify the DB of such application within three (3) days of receipt of the request.
3. When the DB receives any such applications detailed in Article 35(2), the DB shall grant the other party a period of five (5) days to submit any comments thereon. Any correction or clarification made by the DB shall be issued within five (5) days following the expiration of the time limit for the receipt of any comments from the other party and shall be notified by the Centre within three (3) days of receipt thereof.

## **Article 36**

### **Effect of a Decision**

1. The decision issued by a DB shall be binding and therefore of immediate and mandatory compliance by the parties once it is notified and the time limit for its correction or clarification has expired, or once the decision has been corrected or clarified, if applicable.
2. The parties shall comply without delay with the decision, notwithstanding any party's expression of dissatisfaction and desire to submit the Dispute to arbitration.
3. If any party fails to comply with the decision as of the day following its notification or within such period as the latter may determine, such failure shall be considered a serious breach of the Contract and shall entitle the affected party to resort to the relevant contractual remedies or to arbitration to request its enforcement. The Entity shall be empowered to claim the performance bond and/or terminate the Contract. The Contractor may suspend the Works and/or terminate the Contract. If the Contract is terminated, a prior notarised notice shall be sent to the other party, granting a period of fifteen (15) days to remedy its breach, under penalty of termination of the Contract by operation of law. The parties may agree on other coercive measures in the event of non-compliance.
4. Any party disagreeing in whole or in part with a binding decision must, within seven (7) days of receiving notice of the decision, express its dissatisfaction by written communication to the Centre and the opposing party stating its reasons and its reservation to submit the Dispute to arbitration. If none of the parties communicates its total or partial dissatisfaction with the decision within the established time limit or if, having communicated it, the respective arbitration is not initiated within the respective period, the decision becomes final and subject to no appeal.

5. If the Dispute is submitted to arbitration, the Arbitral Tribunal shall have full power to review, challenge and decide on the Dispute, without being bound or constrained by the DB's decision.

## **V.**

### **SUBMISSION OF DISPUTES TO ARBITRATION**

#### **Article 37**

##### **Disputes Submitted to Arbitration**

1. The exhaustion of the procedure before the DB is a condition of arbitrability of matters within the DB's jurisdiction. With respect to disputes that the parties decide to submit to arbitration after acceptance of the public works, the Arbitral Tribunal shall verify whether such submission fulfils the arbitrability condition.
2. The DB is not a party to the arbitration proceedings.
3. All Disputes covered by the DB's decisions may be submitted to arbitration provided that the disagreeing party has duly expressed its dissatisfaction or reservation, and the arbitration proceeding is filed within thirty (30) business days following acceptance of the Public Works. In these cases, a single arbitration shall be proposed, regardless of the number of the DB's decisions that are disputed. Disputes arising after acceptance of the Public Works may be submitted directly to arbitration in accordance with the provisions of the RLCE.
4. If at the time of full acceptance of the Public Works, a decision is still pending to be issued and notified by the DB, the period of thirty (30) business days to initiate the sole arbitration in relation to all or part of the DB's decisions is computed from the day following the date of notification of the last decision to the parties or from the date of issuance of the respective correction or clarification (or the expiration of the term for such), as the case may be.
5. Any party may initiate an arbitration: if the DB has not been constituted; or if constituted, the DB fails to issue and notify the parties of its decision within the time limit provided in the respective rules of procedure; or if the DB is dissolved before the issuance of a decision; or if the Public Works have been fully accepted, unless the DB is dissolved for non-payment of its fees. In such circumstances, the available dispute resolution method is arbitration.

**VI.**  
**FEES AND EXPENSES OF THE DB AND THE CENTRE**

**Article 38**

**General Provisions**

1. The costs of the DB include monthly management fees and travel and other operating expenses reimbursable to the DB members, as well as administrative and operating expenses of the Centre, in accordance with the provisions of these Rules.
2. All fees and expenses mentioned in Article 38(1) shall be shared equally by the parties.
3. Monthly management fees and administrative expenses shall be fixed by the Centre according to the Centre's Schedule of Fees based on the value of the Construction Contract. Reimbursable operating costs shall be supported by the corresponding payment receipts and verified by the Centre, prior to their settlement and notification to the parties.
4. The monthly management fees and administrative expenses may be adjusted when deemed appropriate at the discretion of the Centre, based on additional actions required, evolution of the degree of difficulty and/or complexity of the matter, among others. The parties shall be bound by the Centre's determination.

**Article 39**

**Monthly Management Fees**

1. Each DB member shall receive a monthly management fee to cover the time devoted to discharging their regular activities and fulfilling their on-going duty to accompany the performance of a contract, such as: being available to attend all DB meetings with the parties and all Site visits; being available to attend DB internal meetings; becoming and remaining conversant with the Contract and with the progress of its performance; studying progress reports; and reviewing all correspondence between the parties within the framework of DB's work; and other expenses DB members may incur at their place of residence.
2. The monthly management fees shall also include the following activities: meetings and Site visits; hearings; travel time; DB's internal meetings; reviewing documents submitted by the parties during the proceedings; preparing decisions or recommendations; and coordinating and organising activities.

3. Unless otherwise agreed in the Tripartite Agreement, each DB member shall receive the same monthly management fees and those shall be payable from the date of signature of the Tripartite Agreement until the termination of their duties.

#### **Article 40**

##### **Reimbursable Operating Expenses**

1. Reasonable operating expenses incurred by the DB members in DB's work such as transportation whether by land, air or otherwise, accommodation, meals, telephone calls, courier expenses, photocopies, mail, visa, etc. shall be reimbursed by the parties at cost, unless otherwise agreed in the Tripartite Agreement.
2. The Centre, in accordance with these Rules, establishes the rules to reimburse said expenses, after consulting with the parties and the DB members.

#### **Article 41**

##### **Taxes and Charges**

The fees received by the DB members shall be subject to taxes levied by the applicable legislation.

#### **Article 42**

##### **Payment Arrangements**

1. The Centre collects and pays monthly management fees and reimbursable operating expenses on behalf of the parties. This task is administrative in nature and does not imply, in any circumstances, any assumption of liability by the Centre for the acts or omissions of the DB members in performing their duties.
2. The Centre shall make interim settlements of estimated reimbursable management fees, administrative and operating expenses and the parties shall pay them to the Centre, which shall keep funds and administer them as required to cover said items. The Centre may require the parties to make additional payments on account.
3. Monthly management fees shall be invoiced and paid on a quarterly basis in advance for the next three-month period, unless otherwise agreed in the Tripartite Agreement.

4. Reimbursable operating expenses shall be reimbursed upon verification by the Centre.

#### **Article 43**

##### **Failure to Pay Fees and Expenses**

1. In case of failure of any party to pay its share of fees and expenses within fourteen (14) days of receiving the invoice for the provisional settlement, the Centre may request the DB to suspend its work after providing a notice of suspension to the parties. Such suspension shall remain in effect until receipt of full payment of the outstanding amounts.
2. If a party fails to pay its share of the fees and expenses when payment of the provisional settlement of its share of fees and expenses is due, the other party may, without waiving its rights, pay the outstanding amount. The party making such payment, in addition to any other rights, is entitled to reimbursement from the non-paying party of all such sums paid, plus interest. If failure to pay remains, the DB is entitled to dissolve itself.

#### **Article 44**

##### **Administrative Expenses of the Centre**

1. The Centre's administrative expenses shall include expenses incurred in organising and administering the DB procedure. Reimbursable operating expenses incurred by the Centre for travel and other expenses referred to in Article 40 of these Rules shall be added to such fees.
2. The Centre's administrative expenses and reimbursable operating expenses shall be shared equally by the parties and shall be deducted from the advances received by the Centre at the time of initiation of the procedure or submitting provisional settlements. If the parties have observations on any invoice or receipt with respect to reimbursable operating expenses, the Centre shall collect the unchallenged amount, while reviewing with the parties the remaining amount.
3. Any failure to pay shall entitle the Centre, in addition to any other rights, to suspend work after providing a notice of suspension to the parties and the DB members. Such suspension shall remain in effect until receipt of full payment of the outstanding amounts.

## **VII.**

### **FINAL PROVISIONS**

## **Article 45**

### **Confidentiality**

1. Unless otherwise agreed by the parties, the parties, their counsel and representatives and, as appropriate, witnesses, experts, and any other person intervening in the DB, are bound to keep confidential all decisions rendered during the organization and administration of the DB, as well as all information derived therefrom. Such disclosure may only be excepted when required by an adjudicating body or the OSCE.
2. The DB members and the staff and directors of the Centre shall keep confidential all matters related to the administration and organization of the DB.

## **Article 46**

### **Limitation of Liability**

Adjudicators, experts or any other person appointed by the DB members, the Centre and its directors, staff and employees shall not be liable to any person or authority for any fact, act or omission related to the administration and organisation of the DB, except to the extent that such limitation of liability is prohibited by applicable law.

## **Article 47**

### **General Rule**

In all cases not expressly provided for in the Rules, the Centre, the DB members, and the parties shall act in the spirit of the Rules and contractual principle of good faith, making every effort to ensure that each decision is enforceable at law.

## **Transitional Provisions**

**One:** These Rules are effective as of 24 November 2020.

**Two:** Pending the adaptation of the Statutes of the National and International Arbitration Centre of the Lima Chamber of Commerce to include the service of the Dispute Board, the Joint Committee referred to in these Rules may only perform the duties entrusted to it by the Superior Council of Arbitration. For this purpose, the Joint Committee shall be composed of a member of the Superior Council of Arbitration, who shall preside over it, an engineer appointed by the same Council, and the Secretary General of the Centre.

## Annex 1 - Glossary of Terms

Minutes of Commencement of Functions	means the Minutes that the DB, the parties, and the Centre sign at the commencement of the DB's work.
Centre	means the National and International Arbitration Centre of the Lima Chamber of Commerce
Contractor	means the Contractor participating in the Construction Contract
Contract or Construction Contract	means the Construction contract concluded by the Contractor and the Entity.
Tripartite Agreement	means the Tripartite Agreement concluded by the parties and the DB members
Directive	means Directive No. 012-2019-OSCE/CE issued by the OSCE, as may be amended or replaced from time to time.
Entity	Means any public entity that participates in the Construction Contract.
DB	means Dispute Board.
LCE	means the Public Procurement Law ( <i>Ley de Contrataciones del Estado</i> ) – Supreme Decree No. 082-2019-EF, as amended.
RLCE	means the LCE Regulations – Supreme Decree No. 344-2018-EF, as amended.
Public Works	means any Public Works that are subject matter of the Contract.
OSCE	means the Supervising Agency of Public Procurement ( <i>Organismo Supervisor de las Contrataciones del Estado</i> ).
Designer	means Project Works Designer.

Rules	means the Rules of the Centre governing the DB's work under the Public Procurement Law.
Regulations	comprise the Rules, the Centre's Statutes, the Code of Ethics applicable to the DB, and the DB's Schedule of Fees.
Site	means the place or places where the Contract is being performed.
Supervisor	means any Public Works Supervisor.

## **Annex 2 - Standard Clause**

The parties hereby agree that all disputes arising out of or in connection with the performance of this Contract shall be submitted first to the Dispute Board (DB) in accordance with the Dispute Board Rules under the Public Procurement Law of the National and International Arbitration Centre of the Lima Chamber of Commerce (the Rules).

The DB shall be composed of [one/three] member(s) appointed from the Centre's list of adjudicators.

The National and International Arbitration Centre of the Lima Chamber of Commerce shall be responsible for organising and administering the DB; this task shall be discharged in accordance with the provisions set out in the Rules, which the parties fully acknowledge and accept.

The decision issued by the DB shall be immediately binding on the parties. If any party fails to comply with a decision issued by the DB, the other party may apply any relevant contractual remedies or resort to arbitration, in accordance with the Rules. Similarly, in the event any party disagrees with the decision issued by the DB, it may submit the dispute to arbitration, in accordance with the Rules.

The arbitration initiated shall be conducted in accordance with the Arbitration Rules of the National and International Arbitration Centre of the Lima Chamber of Commerce.

### **Annex 3 - Standard Tripartite Agreement**

This Agreement for the Location of Services (the “Tripartite Agreement”) is concluded between:

1. \_\_\_\_\_, (hereinafter referred to as the “Entity”),
2. \_\_\_\_\_, (hereinafter referred to as the “Contractor”), and
3. \_\_\_\_\_, (hereinafter referred to as the “Dispute Board Member” or “DB Member”)

Hereinafter collectively referred to as the “Parties”.

The Parties have agreed to include the \_\_\_\_\_ Centre (hereinafter referred to as the “Centre”), with place of business at its institutional premises at \_\_\_\_\_, to this Tripartite Agreement.

This Agreement is concluded under the terms and conditions set forth hereinafter:

#### **ONE – RECITALS**

Whereas: The Entity is \_\_\_\_\_.

The Contractor is \_\_\_\_\_.

The DB Member is an independent professional with extensive experience in resolving disputes related to construction contracts.

The Entity has awarded the Contractor the construction contract for \_\_\_\_\_ (hereinafter, the “Construction Contract”).

The Construction Contract provides the establishment and operation of a Dispute Board (DB), governed by the Law, Regulations, and directives issued by the OSCE (hereinafter, the “Rules Applicable to the DB”). The DB shall be responsible for resolving disputes arising out of or in connection with the Construction Contract.

The DB Member has agreed to join the Dispute Board (the “DB”) which addresses issues regarding the Construction Contract, and hereby accepts to perform these duties in accordance with the terms and conditions of the Rules Applicable to the DB and this Tripartite Agreement.

The Entity and the Contractor have agreed that the DB Member shall be a member of the DB, in accordance with the terms and conditions of the Applicable Rules and this Agreement.

The purpose of the DB is to seek to avoid disputes relating to the Construction Contract and, if necessary, to be an impartial dispute resolution mechanism issuing binding, but not final, decisions on such disputes, in accordance with the rules applicable to the DB.

The DB Member hereby confirms not being barred from participating as such and having the necessary qualifications to undertake the duties of a DB Member, in accordance with the provisions of the Law, the Regulations, and this Tripartite Agreement.

## **TWO – PURPOSE**

By this Tripartite Agreement, the Entity and the Contractor hereby engage the services of the DB Member, in their individual capacity, to serve as a DB Member and prevent and decide disputes relating to the Construction Contract in an independent manner. All DB Members agree to comply with their obligations individually and shall not be liable for the actions performed by the other DB Members.

The actions taken by the DB member to comply with the obligations assumed by virtue of this Agreement, shall be carried out at their own risk.

## **THREE - DB MEMEBER'S OBLIGATIONS**

The DB Member shall comply with all the guidelines established in the Directive, especially the ethical guidelines, which are included in their entirety herein.

The Entity and the Contractor expressly acknowledge that, by virtue of this Tripartite Agreement, neither is granting powers of representation to the DB Member or the DB before any authority or third parties; consequently neither the DB Member nor the DB shall assume any representation of the Entity or the Contractor.

The Parties expressly state that the services provided in favour of the Entity and the Contractor hereunder are not exclusive, therefore the DB Member may provide their services to any other individual or legal entity that they deem appropriate to the extent that this does not interfere with this Tripartite Agreement.

#### **FOUR - PAYMENT ARRENGEMENTS**

As consideration for the performance of the services set out hereunder, the Entity and the Contractor shall pay the DB Member a monthly management fee and travel expenses and any other applicable monies as established in the Rules and those determined by the Centre.

The Parties hereby agree that the DB Member shall not receive any extraordinary bonus payment. Similarly, the DB Member undertakes not to receive under this Tripartite Agreement any type of bonus, commission, percentage, or additional payment of any nature in addition to the items described in the preceding paragraph.

#### **FIVE – TERM**

The DB Member shall provide their services from the date of execution of the Minutes of Commencement of Functions up to the full acceptance of the Public Works.

#### **SIX – TERMINATION**

[The Parties shall establish, by mutual agreement, the grounds, and procedures for terminating this agreement].

#### **SEVEN – DISPUTES**

[The parties establish, by mutual agreement, the means of dispute resolution deemed relevant, including conciliation and/or arbitration].

#### **EIGHT – ADDRESSES OF THE PARTIES:**

For the purposes of this Agreement, the Parties state as their addresses those mentioned in the introduction of this instrument. Any change of address shall be informed through a prior notice sent by the interested Party to the Centre at least seven (7) business days prior to the effective change of the address.

If such formalities for the change of address are not followed, the notifications made at the addresses indicated in the introduction of this document shall take effect.

Any amendment, clarification, extension, or termination of this Agreement shall be in writing so that it is valid between the Parties.

In witness whereof, the Parties executed \_\_\_\_ () counterparts of this Agreement.

....., on \_\_\_\_\_ \_\_\_\_, 20\_ .

## **Annex 4 - Standard Minutes of Commencement of Functions**

In the city of [...], on [...] [...], (...), the following people held a meeting:

- [...], as [SOLE MEMBER / PRESIDENT] of the Dispute Board, [...], as a Dispute Board Member.
- [...], as a Dispute Board Member.
- [...], as Representative of the Centre responsible for administering the Dispute Board.
- [...] (hereinafter, The Entity), represented by [...], identified with [...], as authorised by [...] that is in the file.
- [...] (hereinafter, The Contractor), represented by [...], identified with [...], as authorised by [...] that is in the file.

For the functions of the Dispute Board (hereinafter, DB) to be deemed commenced, the following shall be stated:

1. [THE MEMBER / MEMBERS] of the DB hereby state(s) that their appointment has been made in accordance with the applicable rules and regulations, accepted by the Parties, and confirm(s) compliance with the requirements set out in the applicable laws.
2. The Parties have not expressed any objection or disagreement with respect to [THE MEMBER / MEMBERS] of the DB nor have they reported any grounds that could result in any challenge.

Therefore, the DB's functions are hereby officially commenced:

### **CENTRE IN CHARGE OF THE ADMINISTRATION OF THE DB**

3. In accordance with the provisions of [INDICATE APPLICABLE INTERNAL REGULATIONS], [INDICATE NAME AND POSITION] shall be in charge of processing the DB directly or through secretariats.

**PROCEDURE**

- The procedure is subject to the applicable laws, to the Tripartite Agreement concluded between the DB Members and the Parties, the provisions issued by the Dispute Board, and additionally to the Rules and Directives of the Centre, in said order of priority.

**SUBMISSIONS AND NOTICES**

- Communications or notices between the Parties and the DB shall be made through the Centre. Such communications or notices shall be made and notified only electronically to the following email addresses:

<b><u>DB Members</u></b>	
_____:	_____@_____
_____:	_____@_____
_____:	_____@_____
<b><u>Representative of the Centre</u></b>	
_____:	_____@camaralima.org.pe
<b><u>Entity:</u></b>	
_____:	_____@_____
<b><u>Contractor:</u></b>	
_____:	_____@_____

- Any notice sent physically shall be subject to the applicable laws, as well as the Centre’s Dispute Board Rules.

## **SCHEDULE OF MEETINGS AND REGULAR SITE VISITS**

7. The visits are made in the place or places where the Contract is being performed. Meetings can be held in person or virtually, as set out in the following schedule:

DATE(S)	VISIT / MEETING
(DATE 1)	FIRST VISIT
(DATE 2)	SECOND VISIT
...	...

In the event any visit or meeting cannot take place on the agreed dates, the Parties and the DB members shall agree to rescheduling such visits or meetings with due advance notice.

[The Parties include any additional provisions deemed relevant in view of the particularities of the public works and needs of the signatories]

With no further issue to be discussed, the DB declares the commencement of its functions. At [...], after reading these Minutes, [THE MEMBER / MEMBERS] of the DB, the representative of the Centre and the Parties proceeded to sign the Minutes as a sign of acceptance and conformity. These Minutes shall also act as a notice served to the Parties.

## **Annex 5 – Code of Ethics for DBs in the Public Procurement Law**

### **Article 1 - Scope of Application**

1. The Code of Ethics (“Code”) shall be binding on all the DB members.
2. The Code is also applicable, as appropriate, to the Secretariat, the representatives of the Centre and to the parties, their representatives, counsel, and advisors; and any other actor participating therein.
3. This Code sets out the general principles intended to establish standards of behaviour during the work of the DB. This Code does not limit or exclude other rules stipulated by the LCE, the RLCE, and the current OSCE Directive on DBs, or those that may be determined during the operation of the DB, or those inherent to the professions of the persons involved.
4. In the event of any dispute in connection with the scope of this Code, the Centre or the Joint Committee interprets the Code in accordance with its general purpose and in the manner deemed most appropriate in the particular case.
5. Where justified by the circumstances, these principles and duties of conduct may be supplemented with international customs and practice.

### **Article 2 - General Duties**

A DB member accepts their appointment only if they are convinced that they:

1. Are able to comply with the work acting impartially and independently, as well as with good faith and integrity.
2. Have no financial, economic or other interest in relation to the parties or, as appropriate, the Supervisor, or any financial or economic interest in relation to the Construction Contract, except for the payment to which they will be entitled as a DB member. They shall avoid requesting or receiving any type of benefit, in cash or in kind, from the parties.
3. Are available to devote the time and attention the parties may expect within reason to comply with their obligations as a DB member.

4. Are available to conduct this dispute prevention and resolution mechanism in accordance with the provisions of the Rules, or any other requirement agreed upon by the parties, as well as to devote necessary time and attention until its conclusion.
5. Possess the necessary experience and knowledge to promote the prevention and, if necessary, the dispute resolution; and shall become conversant with the Construction Contract and with the progress of the works, among other relevant aspects of the works or project implementation, through the study of all the documents received.

### **Article 3 - Independence**

All DB members shall comply with the following:

1. Once the DB members accept the position and while exercising their functions, the DB members must avoid having or entering any type of business, professional or personal relationship, or acquiring any economic or personal interest with the parties that might give rise to justifiable doubts as to their independence.
2. During the term of the Tripartite Agreement, all DB members must refrain from being employees, maintaining any relationship of subordination or dependence, directly or indirectly, as a consultant or otherwise with the Entity, the Contractor or the Supervisor, unless otherwise authorised in writing by the Entity, the Contractor, and the other DB members, as well as refrain from entering into negotiations or selection processes to work for or provide services to them.
3. A person that has acted as a DB member must observe the same duty established in this article for a reasonable time after the conclusion of the functions.

### **Article 4 - Impartiality**

During the work of the DB, the DB members must:

1. Act impartially and ensure that each party has sufficient opportunity to explain its position and be heard.
2. Treat the parties fairly and impartially, regarding the documents submitted and assertions made.

3. Conduct this prevention mechanism and, as the case may be, dispute resolution mechanism on the basis of the principles of objectivity, impartiality, and neutrality, guaranteeing equal treatment of the parties.
4. Allow and promote the effective participation of the other DB members as well as the parties and other stakeholders involved, in the various matters of the mechanism, as provided for in the Rules.

#### **Article 5 - Duty of Disclosure**

1. A person appointed as a DB member that is affected by facts or circumstances that compromise their independence or impartiality, must refrain from accepting the appointment and communicate this fact promptly within the time limit for expressing the acceptance.
2. A person appointed as a DB member that is affected by facts or circumstances that may give rise to justifiable doubts as to their independence or impartiality, must disclose such facts or circumstances to the parties and the other DB members prior to or jointly with the acceptance. These facts or circumstances include, among others:
  - a. Any direct or indirect economic, personal or other interest in relation to the parties or, as the case may be, the Supervisor; and/or in relation to the Construction Contract.
  - b. Any business, economic, professional or personal relationship, present or past, with any party, its representatives, counsel and relatives, partners or employees, that may reasonably give rise to justifiable doubts as to their independence or impartiality in the eyes of the parties.
  - c. Any professional or personal relationship with the parties, their staff, or employees or, as the case may be, the Supervisor, its staff or employees, whose work is or was related to the Construction Contract; or the other DB members.
  - d. The nature and extent of any prior knowledge the DB member may have about the Construction Contract.
  - e. The previous appointments as a DB member as well as any information on other DB proceedings in which the DB member participates or has participated with the other DB members or with the parties or, as the case may be, with the Supervision.

3. The DB member shall disclose any facts or circumstances described above that occurred within five (5) years prior to making the declaration. Any facts prior to those five (5) years must be disclosed when they are of such importance or nature that they may affect the DB's decision.
4. Any person appointed as a DB member shall make a reasonable effort to inquire about any interest or relationship described in Article 5(2) above.
5. The obligation to disclose any interest or relationship described in Article 5(2) above is a continuous duty that requires the person who agrees to act as a DB member to disclose, as soon as applicable, any interest or relationship that may arise, or that they become aware of.

A person appointed as a DB member shall promptly inform the parties and each of the other DB members of any circumstance that affects their independence and impartiality or that could give the impression that it is so affected.

6. Any doubt as to whether a disclosure should be made, must be resolved in favour of disclosure.
7. The omission to disclose situations such as those mentioned in the previous paragraphs or other similar situations, does not constitute a breach in itself but shall be examined according to the nature of the omitted facts or circumstances.
8. In any case, the parties can exempt a DB member from any impediment that has been disclosed.

#### **Article 6 - Efficiency**

1. A DB member must conduct the procedure so that it allows prevention or, as the case may be, fair and efficient resolution of the disputes submitted to their decision.
2. A DB member must make all reasonable efforts to prevent dilatory tactics, pressure exercised by the parties or other participants, or any other abuse or disruption during the DB's work.
3. A DB member must not be swayed by outside pressure, public or media pressure, fear of criticism, or self-interest. A DB member must avoid conducts or statements that give an appearance of partiality in favour of a party.

#### **Article 7 - Communication with the Parties**

1. During the work of the DB, DB members must avoid unilateral communications about the matter in dispute or, as the case may be, about the dispute with any party, its representatives,

counsel or advisors. If such communications take place, the Centre, the other party or parties, and the other DB members must be informed of their content.

2. DB members must be especially careful to avoid significant personal dealings with any party, its representatives, counsel, or advisors.
3. The situations expressly permitted in accordance with rules stipulated by the LCE, RLCE and the current OSCE Directive on DBs are exempted from this rule.

### **Article 8 - Confidentiality**

1. DB members has a relationship of trust with the parties and must not, at any time, use confidential information acquired during the DB process to gain personal advantage or advantage for others, or to affect the interests of others.
2. DB members must maintain strict confidentiality of all matters related to the prevention of disputes or, as the case may be, to the dispute resolution, as well as of their respective decisions. This duty remains until the DB concludes its work, or the relevant proceedings are published.
3. The deliberations and opinions expressed by the DB members are confidential, even after the DB has ended its work, and shall not be disclosed by any of the DB members to the parties or, as the case may be, to the Supervisor.
4. DB members may not delegate their duty to decide to any other person.

### **Article 9 - Violation of the Code of Ethics by a DB Member**

A DB member is subject to disciplinary measures, in the following cases, among others:

- 1. Regarding the Principle of Independence:**

- a.** When a DB member is involved in the following situations of conflict of interests:
- i.** There is an identity between a DB member and one of the parties.
  - ii.** A DB member becomes a counsel of one of the parties.
  - iii.** A DB member is or has been a manager, administrator, director, staff of one of the parties or has been in a similar position of control over one of the parties or over a subsidiary, branch, office or similar thereof and, in general, any other similar position denoting significant control and decision-making power within the structure of the legal entity, within five (5) years prior to accepting the appointment as a DB member.
  - iv.** A DB member or their company or firm provides counselling services on a regular basis to one of the parties, its counsel, advisors or representatives and receives significant income from this activity.
  - v.** A DB member or their company or firm maintained or maintains a significant personal, business, dependency or professional relationship with a party, its counsel, advisors, representatives or with other DB members that may affect that DB member's performance as a DB member, within five (5) years prior to accepting the appointment.
  - vi.** A DB member and a counsel, advisor, or representative of a party are part of the same firm or company, or have, *de jure* or *de facto*, business partnerships or strategic alliances.
- b.** In addition to the cases mentioned in Article 9(1)(a) above, any other type of direct or indirect relationship, present or past, with the parties, the other DB members, and with any person related to or helping in the work of the DB, which due to its relevance may affect their independence.
- c.** Failure to comply with, partial compliance with, or untimely compliance with, the duty of disclosure at the time of acceptance of the appointment regarding circumstances that occurred within five (5) years prior to their appointment or those that occurred thereafter, with respect to the following cases:

- i.** A DB member or their company or firm, prior to their appointment or at the present time, represents, advises or maintains any relevant relationship with any party, its counsel, advisors or representatives, or with other DB members.
- ii.** The company or firm of a DB member provides professional services to one of the parties, without the intervention of the such DB member, prior to their appointment or at the present time.
- iii.** DB members are or have been employees or counsel of the same firm or company.
- iv.** A DB member is or has been a partner or associate of another member of the same DB involved in current DB proceeding or work.
- v.** A lawyer of the firm or an advisor of the company of a DB member is acting as such in another DB where one of the parties is involved.
- vi.** A relative of a DB member, up to the fourth degree of consanguinity and second degree of affinity, is a partner, associate or employee of the law firm representing one of the parties but is not involved in the DB work or proceedings.
- vii.** A DB member, in their past capacity as a judge, officer or other position, heard and resolved an important dispute, but not related to the dispute or, as the case may be, disputes to be brought before the DB, in which one of the parties was involved.
- viii.** A DB member holds or has held a position of leadership, management, supervision, and, in general, any other similar position that denotes significant control and decision-making power in a subsidiary, branch or affiliate of one of the parties.
- ix.** A DB member has a close personal or social relationship with one of the parties, its counsel, advisors, or representatives, which is manifested in the fact that such professional or the DB member and the aforementioned individuals often share considerable time in activities that are neither related to their work nor to professional or social associations.
- x.** A DB member participated or participates also as a DB member in other DB proceedings or work where any party is also involved.

- d.** In addition to the cases mentioned in Article 9(1)(c) above, failure to comply with, partial compliance with, or untimely compliance with, the duty of disclosure regarding any other type of circumstances that may give rise to reasonable doubts as to their independence, at the time of accepting the position due to events that occurred within five (5) years prior to their appointment or those that occurred thereafter.

## **2. Regarding the Principle of Impartiality:**

- a.** When a DB member is involved in the following situations of conflict of interests:
  - i.** Significant economic interest of a DB member or their relatives, up to the fourth degree of consanguinity and second degree of affinity, in one of the parties.
  - ii.** A DB member or their company or firm issued a report, opinion, judgement, or recommendation, or advised any party on a dispute or, as the case may be, disputes submitted to the DB for its decision.
  - iii.** A DB member or their company or firm represents or has relevant disputes with any party, its counsel, advisors, or representatives.
- b.** In addition to the cases mentioned in Article 9(2)(a) above, having assumed, or generated any type of situation or action that, based on reasonable and proven elements, may show some kind of differential treatment, position, interest, predisposition, hostility and any subjective attitude of a DB member towards the parties, the proceedings or work of the DB or the subject matter of the dispute or, as the case may be, that may affect their impartial performance.
- c.** Failure to comply with, partial compliance with, or untimely compliance with, the duty of disclosure at the time of acceptance of the appointment regarding circumstances that occurred within five (5) years prior to their appointment or those that occurred thereafter, with respect to the following cases:
  - i.** A DB member has previously and publicly stated their position on an issue directly related to and forming part of the matter in dispute or, as the case may be, of the dispute that may be brought to the decision of the DB, by means of a publication, speech or otherwise.
  - ii.** A DB member or their company or firm has maintained relevant disputes with any party, its counsel, advisors or representatives.

- iii. A DB member and any party, its counsel, advisors or representatives, or another DB member served or serve jointly as members of another DB, in matters unrelated to the matters in dispute or, as the case may be, to the disputes brought to the DB's decision and/or the Construction Contract – project or work.
- d. In addition to the cases mentioned in Article 9(2)(c) above, failure to comply with, partial compliance with, or untimely compliance with, the duty of disclosure regarding any other type of circumstances that may give rise to reasonable doubts as to their impartiality, at the time of accepting the position due to events that occurred within five (5) years prior to their appointment or those that occurred thereafter.

**3. Regarding the Principle of Procedural Due Process:** The breach or non-observance of the following duties constitutes an infraction:

- a. Duty to avoid using, for their own benefit or that of a third party, information obtained during their functions, except for academic purposes.
- b. Duty to refrain from physically or verbally assaulting the parties, their representatives, counsel and/or advisors, the Centre's representatives, and other administrative personnel involved in the DB development or performance.
- c. Duty to refrain from holding meetings or communications with only one party, its counsel, representatives and/or advisors. It is particularly serious if the meeting or communication is used to inform, in advance, on the deliberations or decisions that may be issued or have been issued in the exercise of the function.
- d. Duty to avoid incurring, without justified cause, in an unreasonable shutdown of the DB performance or development.
- e. Duty not to participate in a DB if the DB member is subject to any of the impediments set out in Article 231 of the RLCE.

## **Article 10 Sanctions**

The disciplinary sanctions applicable to the DB members are as follows:

1. Suspension, temporary or permanent, from the Centre's list of adjudicators.
2. Where warranted by the circumstances, a DB member may be required to reimburse all or part of the fees received.