

Schedule 33 – Modification to the Expert Determination Rules

(clause 63.6(b))

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications to Part I, Part II or Part III of the Rules are underlined or ~~struck out~~. Modifications to Schedule B of the Rules are described.

1. RULE 1 DEFINITIONS

'Business Days' means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December or any day on which banks are not open for business generally in New South Wales.

'IDAR Panel Agreement' means the agreement titled 'Independent Dispute Avoidance and Resolution Panel Agreement' between the Principal, the Members and any other party that accedes to the agreement from time to time.

'Member' has the meaning given in the IDAR Panel Agreement.

'SSTOM Project Deed' means the deed titled 'SSTOM Project Deed' between the Principal and OpCo.

'Party A' has the meaning given in clause 63.3 of the SSTOM Project Deed.

'Party B' has the meaning given in clause 63.3 of the SSTOM Project Deed.

'Relevant Proportionate Liability Legislation' means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

'Relevant Security of Payment Legislation' means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

2. RULE 2 Appointment of the Expert

2.1 Unless otherwise agreed in writing by the parties, the Process shall be conducted:

- (a) by a person agreed between the parties; or
- (b) if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration (ACICA) Resolution Institute, who is not a Member and accepts appointment as Expert.

2.2 Rule 2.2 is deleted in its entirety.

2.3 [no modification]

2.4 [no modification]

2.5 [no modification]

3. RULE 3 Agreement to be bound

3.1 [no modification]

3.2 Rule 3.2 is deleted in its entirety.

4. RULE 5 Role of the Expert

4.1 The Expert shall determine the Dispute as an expert in accordance with these Rules, the SSTOM Project Deed, the requirements of procedural fairness and according to law.

4.2 [no modification]

4.3 [no modification]

- (a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.
- (b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.
- (c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.
- (d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

4.4 [no modification]

5. RULE 9 Conduct of the Process

5.1 [no modification]

5.2 [no modification]

5.3 ~~If the~~The parties agree in writing (in the Agreement or otherwise), that the procedure in Schedule B shall will apply.

5.4 The rules of evidence do not apply to the Process.

6. RULE 10 The Expert's Determination

6.1 ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, the~~ Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the SSTOM Project Deed.

6.2 [no modification]

6.3 ~~Subject to any rule of law or equity or written agreement of the parties to the contrary, Unless otherwise agreed by the parties,~~ the Expert's determination:

- (a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
- (b) must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;
- (c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and
- (d) to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

6.4 [no modification]

7. RULE 12 Waiver of Right to Object

7.1 Rule 12 is deleted in its entirety.

8. RULE 14 Extension of Limitation Period

8.1 Rule 14 is deleted in its entirety.

Schedule B

1. The reference to 'twenty one (21) days' is replaced by 'ten Business Days'.
2. The reference to 'twenty one (21) days' is replaced by 'twenty Business Days'.
3. The reference to 'twenty one (21) days' is replaced by 'five Business Days'.
4. [no modification]
5. [no modification]
6. [no modification]
7. [no modification]
8. [no modification]