

ARBITRATION RULES

**FOR USE WITH PUBLIC WORKS AND CONSTRUCTION SERVICES
CONTRACTS**

30 January 2008

1. The Contract

1.1. These rules apply according to the contract in which they are included (the **Contract**).

2. Commencement of Arbitration

2.1. If arbitration may be commenced according to the Contract, a party may commence arbitration proceedings by giving to the others a notice to refer the dispute to a sole arbitrator in accordance with the Contract and these rules.

2.2. No party may disclose to the arbitrator anything said or done at conciliation, its outcome, or (except in proceedings dealing with interest under rule 18 below) any payment made under a conciliator's recommendation.

3. Parties

3.1. In these rules the party giving the notice to refer is referred to as the **Referring Party** and every other party to the arbitration is referred to as a **Respondent**.

4. Notice to Refer

4.1. The notice to refer shall:

4.1.1. state the names, addresses and telephone numbers of the parties to the Contract

4.1.2. expressly state that it is a notice to refer a matter to arbitration

4.1.3. contain particulars of the nature of the claim and the facts supporting the claim and an indication of the amount in dispute, if any, and

4.1.4. contain particulars of the relief or remedies sought.

5. Appointment of Arbitrator

5.1. At the same time as giving a notice to refer, the Referring Party shall propose the name of one or more persons to act as arbitrator, giving the address of each. Within 14 days after receiving the notice, the Respondent shall either agree to the appointment of an arbitrator proposed by the Referring Party, or propose, in like manner, one or more alternatives, in which case the Referring Party shall, within 14 days after receiving the Respondent's proposal, either agree one of the alternatives proposed by the Respondent or notify the Respondent that it does not agree to any of them.

5.2. If an arbitrator has not been agreed within 28 days after the notice to refer was given (or earlier if agreed) any party may apply to the person or body named in the Contract for this purpose (the **Nominating Body**) who shall nominate the arbitrator. The party so applying shall pay any fees of the Nominating Body for the nomination, and those fees shall be considered costs of the arbitration.

6. Letter to the Arbitrator, Arbitrator's acceptance

6.1. After an individual to act as arbitrator (the **nominee**) is identified by agreement or nomination, either party may send a letter to the nominee seeking confirmation that the nominee is prepared to accept the appointment to act as single arbitrator of the dispute. The party sending the letter shall enclose two copies of the notice to refer and a copy of the Contract, and shall send copies of the letter and enclosures to the other parties.

6.2. If, within 14 days after a letter is sent under rule 6.1, the nominee notifies the party sending the letter that the nominee accepts the appointment as arbitrator, that party shall immediately so notify the other parties and the nominee shall stand appointed and have jurisdiction over all issues connected with and necessary to the determination of the dispute.

6.3. If, within 14 days after a letter is sent under rule 6.1, the nominee has not notified the party sending the letter that the nominee accepts the appointment as arbitrator, any party may apply to the Nominating

Body to make a further nomination, and rule 5.2 and this rule 6 shall apply. This process shall continue until an arbitrator has successfully been appointed and the appointment has been accepted.

- 6.4. Within 14 days after accepting appointment, the arbitrator shall send to the Department of Finance, National Public Procurement Policy Unit, Government Buildings Upper Merrion Street Dublin 2, notice of the appointment, together with one of the copies of the notice to refer sent to the arbitrator.

7. *Independence and Impartiality of Arbitrator*

- 7.1. Before accepting appointment the arbitrator shall notify the parties of any circumstances that might give rise to any justifiable doubts about the arbitrator's impartiality or independence. The arbitrator shall be under a continuing duty to disclose in writing to each party any such circumstances that may arise during the period of the arbitrator's appointment.

8. *Challenge to Arbitrator*

- 8.1. A party may raise a challenge to the appointment or continuation of the appointment of an arbitrator if circumstances exist that give rise to justifiable doubts about the arbitrator's impartiality or independence.
- 8.2. If an arbitrator has been appointed by agreement between the parties, a challenge may only be made for circumstances of which the challenging party became aware after the appointment was made.
- 8.3. A challenge to the arbitrator must be made in writing, and sent to the arbitrator and each other party, within 21 days after the party who intends to make the challenge became aware of the justifiable doubts. Any challenge must state reasons justifying the challenge.
- 8.4. If a challenge is made, if both parties agree, or if on application by a party, the Nominating Body so decides, the arbitrator shall forthwith resign. A replacement arbitrator shall then be appointed in accordance with these rules. If the parties do not agree or the Nominating Body dismisses the challenge, the arbitration shall proceed.

9. *Replacement of Arbitrator*

- 9.1. If an appointed arbitrator resigns, dies, refuses to act or is or becomes incapable of acting, a replacement arbitrator shall be appointed in accordance with these rules.
- 9.2. If an arbitrator is replaced the replacement arbitrator shall determine the procedure for taking matters forward and shall decide whether it is necessary to repeat any hearings previously held.

10. *Expedition*

- 10.1. The arbitrator shall at all times seek to move the arbitration process forward as quickly and efficiently as possible.

11. *Preliminary Matters*

- 11.1. Subject to these rules and the law, the arbitrator may conduct the arbitration in the manner the arbitrator considers appropriate.
- 11.2. All documents and information given to the arbitrator by one party shall at the same time be given by that party to all other parties. No party (or person acting on its behalf) shall have any private communication with the arbitrator relating to the substance of the matters in dispute.
- 11.3. Unless otherwise agreed by the parties, or directed by the arbitrator, all notices, statements and written communications between the parties shall be sent to the addresses noted in the Terms of Appointment of the arbitrator. If a party has a representative and so requests, communications shall instead be sent to the representative. All notices, statements and written communications with the arbitrator shall be as directed by the arbitrator. Notices, statements and written communications may be sent by electronic means when there is provision for this in the Terms of Appointment of the arbitrator, or this is agreed between the parties or directed by the arbitrator.

Statement of Defence

- 11.4. Within 30 days after receipt of the notice to refer or 14 days after appointment of the arbitrator, whichever is the later, the Respondent shall send a written statement of defence, responding to the issues raised in the notice to refer and raising any other relevant issues, including any counterclaims that are to form part of the proceedings.
- 11.5. The Respondent shall send the statement of defence to the arbitrator, the Referring Party and any other parties to the arbitration.
- 11.6. The arbitrator may extend the time for sending the statement of defence to allow the Respondent a reasonable time to prepare it having regard to the quantity, quality and timing of information given to the Respondent by the Referring Party in or before the arbitration.

Preliminary Meeting

- 11.7. As soon as possible after appointment the arbitrator shall summon the parties to a preliminary meeting for the purpose of establishing:
 - 11.7.1. the likely length of the arbitration
 - 11.7.2. directions for the conduct of the arbitration
 - 11.7.3. whether the short procedure in rule 16 should apply
 - 11.7.4. whether any party requires an oral hearing.
- 11.8. Whether or not the short procedure applies, any directions should be aimed at achieving an early resolution of the matters in dispute and to keep the costs of the arbitration to a minimum. The parties shall attempt to agree directions before this preliminary meeting.
- 11.9. The arbitrator may require parties to submit brief statements before a preliminary meeting outlining the directions they consider appropriate.

12. Jurisdiction

- 12.1. The arbitrator has the power to decide whether any of the following, or any combination, apply:
 - 12.1.1. there is a valid arbitration agreement
 - 12.1.2. he is properly appointed
 - 12.1.3. there is a dispute capable of being referred to arbitration
 - 12.1.4. the dispute has been validly referred to arbitration
 - 12.1.5. these rules apply to the conduct of the arbitration and the extent of its application
 - 12.1.6. he has complied with these rules
 - 12.1.7. he has jurisdiction under the Contract or these rules to hear a matter, and the extent of that jurisdiction.
- 12.2. If any of the items in rule 12.1, or any other issue concerning the arbitration, is referred to court, the arbitrator shall direct whether or not the arbitration proceedings will continue pending the decision of the court.
- 12.3. Neither party may challenge the arbitration process or ask either the arbitrator or the court to make a ruling on any of the items in rule 12.1 above later than 60 days after it became aware of a circumstance that might affect a ruling of the arbitrator on any of the matters listed in rule 12.1.

12.4. The arbitrator should rule on any of the items in rule 12.1 as a preliminary matter if this may avoid or reduce costs, but may give the ruling at any time as the arbitrator thinks fit.

13. *Procedural and Evidential Matters*

13.1. The arbitrator shall apply the burden of proof according to the law.

13.2. The arbitrator has the power to decide all procedural and evidential matters, including all of the following:

13.2.1. the adequacy of the notice to refer and defence and the extent to which they can be later amended

13.2.2. whether the arbitrator requires further written statements from the parties in addition to the notice to refer and defence, and when those statements are to be provided (If the arbitrator requires further written statements, the arbitrator should, if possible, direct that statements be provided within 30 days of the date of the direction.)

13.2.3. the classes of documents and information to be disclosed between the parties (if any) and the time when disclosure will be made

13.2.4. whether any questions should be answered in writing by a party in advance of the hearing

13.2.5. the extent of oral and written evidence (including the exclusion of repetitive or irrelevant testimony or other evidence)

13.2.6. the extent of expert evidence

13.2.7. whether or not evidence will be given under oath or by affirmation

13.2.8. the admissibility, relevance, materiality and weight of the evidence offered by any party

13.2.9. whether documents are to be translated

13.2.10. the time and place of any proceedings

13.2.11. the time in which directions are to be complied with

13.2.12. the extension of any deadlines for compliance with directions

13.3. The arbitrator may direct that evidence is given by way of signed witness statement and that oral evidence be limited to cross-examination and re-examination.

Compliance with directions of the arbitrator

13.4. If a party fails to comply with any direction made under these rules the arbitrator may make a further direction to the same effect providing time for compliance with it as the arbitrator considers appropriate.

13.5. If a party fails in the opinion of the arbitrator to comply with any request under rule 13.4, the arbitrator shall have the power to do any of the following, or any combination:

13.5.1. prevent that party from relying on the matters in respect of which it is in default

13.5.2. draw adverse inferences from the act of non-compliance that the circumstances justify

13.5.3. proceed to an award on the basis of materials that have been properly provided.

Expert Evidence, Inquiries, Tests, Investigations

13.6. No expert evidence shall be admissible except by leave of the arbitrator. Leave may be given on terms the arbitrator thinks fit. Unless the arbitrator expressly directs otherwise leave shall include a

requirement that a report from any expert be provided to the other party in good time, and in any event at least 30 days, before any hearing.

- 13.7. The arbitrator may appoint one or more independent experts to report to the arbitrator, in writing, on specific issues designated by the arbitrator and communicated to the parties. The parties shall provide all reasonable assistance to this expert, including providing any documents or goods that the expert may require. If a party disputes the relevance of any information requested by the expert then the dispute shall be referred to the arbitrator for decision. The arbitrator shall send a copy of any expert's report to the parties and give the parties an opportunity to:

13.7.1. express their opinion on the report in writing

13.7.2. examine any documents upon which the expert has relied

13.7.3. question the expert at any hearing or in writing or both, as the arbitrator directs.

1.1.1.

- 13.8. The arbitrator may direct that inquiries, tests or investigations be conducted by the arbitrator, a party or parties, or an expert, and any further particulars such as:

13.8.1. purposes, methods or observers

13.8.2. agreeing, disagreeing, recording or reporting the results.

If the arbitrator directs that inquiries, tests or investigations are conducted by an expert appointed by the arbitrator, rule 13.7 above shall apply.

1.2. *Protective and Interim Measures*

- 13.9. The arbitrator has the power to:

13.9.1. direct the preservation of evidence

13.9.2. make directions relating to any property which is the subject of the arbitration or as to which any question arises in the arbitration, including the inspection, photographing, preservation, custody, detention, sampling, observation or experimentation upon the property

13.9.3. give directions for the detention, storage, sale or disposal of the whole or any part of the subject matter of the dispute at the cost of both or any of the parties and

13.9.4. give any other directions the arbitrator considers necessary in respect of the subject-matter of the dispute.

14. ***Requirement and preparation for hearing***

- 14.1. Except when the sort procedure in rule 16 is followed, a hearing shall be held if any party requires it by notice given to the arbitrator and the other parties no later than 30 days after the statement of defence was been sent.

14.2. A hearing shall be held if the arbitrator so decides.

1.3.

- 14.3. If a hearing is required the arbitrator shall give the parties reasonable notice of the date, time and place of the hearing.

14.4. If documents are necessary for a hearing the arbitrator may direct the parties to have prepared an agreed and paginated bundle of all documents to be relied upon by the parties at least 7 days before the date of the hearing. The agreed bundle shall stand as entered in evidence without further proof and without being read out at the hearing; however, the inclusion of any document within the agreed bundle shall not establish its genuineness or admissibility.

- 14.5. The arbitrator may, as soon as the arbitrator considers it appropriate, require each parties to provide before any hearing the following, or any combination:

- 14.5.1. a summary of the documents and other evidence that the party intends to rely upon to support its position
- 14.5.2. a statement or summary of the issues between the parties
- 14.5.3. any points of law, with references to any authorities relied upon
- 14.5.4. a statement or summary of any other matters likely to assist the resolution of the dispute
- 14.5.5. any other document or statement that the arbitrator considers necessary.
- 14.6. At least 30 days before any hearing, the arbitrator will, as far as is possible, require that any witnesses who will give evidence at the hearing have produced a witness statement which will have been exchanged between the parties.
- 14.7. The arbitrator may direct that any experts whose reports have been provided to the parties meet before the hearing and prepare a joint report identifying:
 - 14.7.1. areas of agreement of fact and opinion and
 - 14.7.2. areas of disagreement and the reasons for disagreement

15. Procedure at any hearings

- 15.1. The arbitrator may give directions about the manner in which any hearing will be conducted. These directions may include the order in which:
 - 15.1.1. the parties will present their cases and
 - 15.1.2. the issues will be heard and determined
- 15.2. Hearings shall be private unless the parties agree otherwise.
- 15.3. The arbitrator may proceed with the hearing in the absence of a party who has been given adequate notice of the hearing.
- 15.4. The arbitrator may inquire of the parties whether they have any further proof to offer or witnesses to be heard or submissions to make and, if they have none, may declare the hearings closed.
- 15.5. The arbitrator may, if it the arbitrator considers it necessary due to exceptional circumstances, on the arbitrator's own initiative or on the application of a party, reopen a hearing at any time before the award is made.

16. Short Procedure

- 16.1. The arbitration shall be conducted according to this rule unless all the parties agree or the arbitrator, on the application of a party, considers that it should not apply because of the complexity of the issues.
- 16.2. Within 30 days after the preliminary meeting held under rule 11.7, or within 30 days after the Respondent has sent its statement of defence (whichever is later), the parties shall agree and provide a file to the arbitrator containing the materials referred to in rules 14.4 to 14.6, inclusive. To the extent that they fail to agree, each party shall, within the same period, provide to the arbitrator and each other party a separate file containing:
 - 16.2.1. the documents on which it intends to rely, identifying the origin and date of each
 - 16.2.2. the information referred in rule 14.3 and
 - 16.2.3. statements of any witnesses on whose evidence it intends to rely.
- 16.3. The arbitrator may view any site or works, with or without the parties, and may permit or require the parties to submit additional information.

16.4. Within 30 days after the steps in rule 16.2 (and, if applicable, rule 16.3) have been taken the arbitrator shall either:

16.4.1. make the award or

16.4.2. schedule a meeting for the purpose of:

(1) receiving any oral submissions the parties wish to make and

(2) the arbitrator asking questions of the parties, their representatives, or their witnesses, or any combination. If the arbitrator wants to ask questions of any particular person at this meeting, the arbitrator shall so notify both parties, but no person is bound to appear.

16.4.3. If a meeting as referred to in rule 16.4.2 is held, within 30 days after the end of the meeting the arbitrator should make the award.

17. Award

17.1. In addition to making a final award, the arbitrator shall be entitled to make interim awards.

17.2. The arbitrator shall make each award in writing and sent it to the parties promptly. Awards of the arbitrator shall be final and binding on the parties. The parties undertake to carry out the arbitrator's awards without delay. Within 14 days of having sent an award to the parties the arbitrator shall send a copy to: Department of Finance, National Public Procurement Policy Unit, 15 Lower Hatch Street, Dublin 2.

17.3. An award may, among other things:

17.3.1. order the payment of money to one or more of the parties or

17.3.2. order a party to do or refrain from doing something or

17.3.3. order specific performance or

17.3.4. make a declaration about any matter to be determined or

17.3.5. make an order for the setting aside, cancellation or rectification of a deed or other document and or

17.3.6. be a consent award in the event of a settlement, which may include an allocation of the costs of the arbitration or

17.3.7. include any combination of the above.

17.4. An award may be made public only with the consent of all parties or as required by law or as permitted by the Contract.

17.5. The arbitrator shall state in an award the reasons upon which the award is based, unless all parties have agreed that no reasons are to be given.

17.6. The arbitrator shall not withhold an award pending payment of fees but may require a deposit from one or more parties as security for costs during the arbitration proceedings. If the deposits requested are not paid in full within 30 days after the issue of the request, the arbitrator shall so inform the parties, in order that one or more parties may make the required payment. If the payments are not made, the arbitrator may direct the suspension or termination of the proceedings until the payments are made. After the award has been made the arbitrator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

18. Interest

- 18.1. In the final award the arbitrator shall have power to award interest in accordance with the Contract and the law.
- 18.2. The arbitrator shall consider interest only after all other matters (except costs) to be dealt with in the award have been dealt with by interim award.

19. Costs

- 19.1. The arbitrator shall fix the costs of the arbitration. Whilst the costs of arbitration shall in principle follow the event the arbitrator may do any one or more of the following:
 - 19.1.1. allocate the costs between the parties in a manner the arbitrator considers appropriate
 - 19.1.2. order the basis upon which the costs are to be determined
 - 19.1.3. in default of agreement by the parties, determine the amount of the recoverable costs
 - 19.1.4. order payment of costs in relation to an interim award, including ordering that those costs be paid forthwith.
- 19.2. Costs may include any of the following, and any combination:
 - 19.2.1. the fees and expenses of the arbitrator
 - 19.2.2. the costs of assistance required by the arbitrator, including experts
 - 19.2.3. reasonable fees for legal representation
 - 19.2.4. costs incurred in connection with an application for interim or emergency relief
 - 19.2.5. other costs reasonably incurred as part of the arbitration process that would be recoverable in court proceedings.
- 19.3. The arbitrator may direct that security for the costs of one or more parties be provided by way of deposit.

Limitation of Recoverable Costs

- 19.4. If the parties agree, after the arbitrator was appointed, to give the arbitrator this power, the arbitrator may limit the recoverable costs of the arbitration, or any part, to an amount specified by the arbitrator, or by the parties in so agreeing.

20. Correction of Award

- 20.1. Within 30 days after receipt of an award, any party, with notice to the other parties, may request the arbitrator to interpret the award or correct any clerical, typographical or computation errors or make an additional award about claims presented but omitted from the award.
- 20.2. If the arbitrator considers such a request to be justified, after considering the parties' submissions, the arbitrator shall comply with the request within 30 days after the request.

21. Dismissal of Claim

- 21.1. If the arbitrator is satisfied that a party has inexcusably delayed in pursuing a claim in the arbitration, and that delay
 - 21.1.1. gives rise, or is likely to give rise, to substantial risk that it is not possible to have a fair resolution of the issues in that claim or
 - 21.1.2. has caused, or is likely to cause, serious prejudice to the other party

the arbitrator may dismiss the relevant claim.

22. Concurrent hearings

- 22.1. The arbitrator may be engaged to arbitrate on another contract to which a party to the arbitration is a party. If that arbitration is connected to the arbitration, the arbitrator may join the arbitrations on terms the arbitrator considers appropriate and the parties agree.

23. Applications to Court

- 23.1. If any party applies to court for any relief in relation to or connected with the arbitration proceedings or an award issued by the arbitrator (whether in connection with a case to be stated to the court or to set aside an award) or for the removal of the arbitrator or otherwise, that party shall, at the same time, notify the arbitrator of the application.
- 23.2. The arbitrator may proceed with the arbitration proceedings, including making further awards, pending a decision by the court.
- 23.3. Once any award or decision has been made or taken up, the arbitrator shall be under no obligation to make any statement in connection with it other than in compliance with an order of court.
- 23.4. The powers of the arbitrator under these rules are additional to the powers of the arbitrator and the court under the Arbitration Acts 1954 to 1998.

24. Exclusion of liability

- 24.1. The arbitrator shall not be liable for any act or omission in connection with any arbitration conducted under these rules, except that the arbitrator may be liable for the consequences of acting in bad faith.

25. Waiver of rules

- 25.1. A party who knows that any provision of, or requirement under, these rules has not been complied with and yet proceeds with the arbitration without promptly stating the objection to the non-compliance, shall be deemed to have waived the right to object.

Terms of Appointment of Arbitrator

This agreement is made between

1. [name] (the **Employer**)
2. [name] whose registered office is at [address] (the **Contractor**) and
3. [Arbitrator] of [address] (the **Arbitrator**)

Whereas:

- A. The Employer and Contractor have entered into a contract dated • (the **Contract**) for [insert description of Works].
- B. The Contract provides for the appointment of an arbitrator for the resolution of disputes.

NOW IT IS HEREBY AGREED as follows:

1. *The Arbitrator shall act in accordance with the terms of the Contract and the terms of the arbitration rules referred to in the Contract.*
2. *For all purposes related to this agreement the Employer's, Contractor's and Arbitrator's addresses are as follows:*
 - 2.1. The Employer []
 - 2.2. The Contractor []
 - 2.3. The Arbitrator []
3. *The Arbitrator's fees [and expenses] shall be as follows: [set out agreed terms or refer to separate].*
4. *This agreement remains in effect for as long as the Arbitrator continues to act in that capacity.*
5. *This agreement is governed by and construed in accordance with the laws of Ireland.*
6. *Any dispute or claim arising out of or in connection with these Terms of Appointment or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the arbitration rules referred to in the Contract, amended as required.*

Signed for the Employer

in the presence of

Signed for the Contractor

in the presence of

Signed by the Arbitrator

in the presence of
