

## Dispute Board Rules – 2017

### I – INTRODUCTION AND DEFINITIONS

**1.1** CAMARB – BUSINESS ARBITRATION CHAMBER – BRAZIL, hereinafter referred to as “CAMARB”, has as one of its objectives the promotion and dissemination of extrajudicial forms of prevention and resolution of disputes, one of which is the Dispute Resolution Boards, also known as Dispute Boards.

**1.2** The Dispute Review Board (“DRB”); and the Dispute Adjudication Board (“DAB”) are types of DB, and the provisions of these Rules are equally applicable to all of them.

**1.3** Within the scope of the DB, CAMARB will provide administrative services to the Parties, including the appointment of DB members and the decision on any challenge to the appointment of a DB member.

**1.4** CAMARB's actions do not involve any jurisdictional or secretarial act by the DB, which will conduct the procedure in accordance with these Rules and as provided for in the Contract.

**1.5** The CAMARB Dispute Board Rules, hereinafter referred to as “Rules”, shall apply whenever a Contract stipulates the adoption of the CAMARB DB rules.

**1.6** Unless otherwise provided, the Rules in force on the date the DB begins its activities, corresponding to the date on which all members of the DB and the Parties have signed the Dispute Board Constitution Instrument, shall apply.

**1.7** For the purposes of these Rules:

- (i) Dispute Board (“DB”): means the Dispute Review Board (“DRB”) or the Dispute Adjudication Board (“DAB”), formed by one or three members for the prevention and resolution of Disputes submitted to it by the Parties;
- (ii) Agreement: means the agreement entered into between the Parties that provides for the use of the Dispute Board;
- (iii) Controversy: means any dispute, conflict or divergence arising from the Agreement that is submitted to the DB for its deliberation;
- (iv) Decision: binding determination issued by the DB regarding the Dispute submitted to it, which must be immediately complied with by the Parties;
- (v) Party: means the party or parties to the Agreement providing for the use of the DB;
- (vi) Recommendation: non-binding statement issued by the DB regarding the Dispute submitted to it. If it is not contested by the Parties or submitted to arbitration, it will become binding;

(vii) DB Constitution Term: means the term signed between the Parties and the member or members of the Dispute Board, to begin the Board's activities;

## **II – OF SUMMONS, STATEMENTS AND DEADLINES**

**2.1** All statements and documents submitted by the Parties or by the DB must be sent simultaneously to the members of the Board and to the other Parties, as applicable, to the addresses provided by each member and by the Parties in the DB Formation Instrument.

**2.2** The deadlines set out in these Rules and those set by the DB shall begin on the business day following the date of receipt of the statement sent by the Party or the DB. The deadlines are continuous and shall not be suspended on holidays or non-business days. If the deadline expires on a holiday or non-business day, the deadline shall be extended to the first following business day.

**2.3** Statements must be sent electronically, or by other means provided by the Parties and the DB, provided that there is proof of their sending and receipt.

**2.4** All statements will be considered duly delivered on the date of receipt, in accordance with the proof referred to in item 2.3.

**2.5** The Parties, with the consent of the DB, may modify the deadlines provided for in these Rules.

## **III – OF THE INSTITUTION OF THE DISPUTE BOARD**

**3.1** The DB must be established within 30 (thirty) days, counting from the signing of the Contract, or within any other period defined by the Parties, upon signing of the DB Instrument of Incorporation.

**3.2** The DB must be established in accordance with these Rules, observing the provisions of the Contract.

**3.3** If the Contract does not provide for the number of DB members, it will consist of 3 (three) members.

**3.4** When the Parties opt to appoint a single member, this member must be appointed by consensus within 30 (thirty) days from the signing of the Agreement, or within any other period defined by the Parties. If they do not reach a consensus within the established period, the provisions of item 3.10 shall apply.

**3.5** Unless otherwise agreed, if the Parties opt to form a DB with 3 (three) members, each Party shall appoint one member within 7 (seven) days from the signing of the Agreement. Within 7 (seven) days after the referred members have expressed their availability, non-impediment, impartiality and independence, they shall jointly appoint the third member, who shall act as the DB's chairman.

**3.6** If either Party fails to appoint one of the members within the period provided for in the preceding item or in the event that consensus is not reached between the members appointed by the Parties, the appointment of the respective member will be the responsibility of the CAMARB Board of Directors, after payment of the respective service fee provided for in Annex II.

**3.7** Within 7 (seven) days, counting from the respective referral, the professional appointed to compose the DB must express their opinion in accordance with item 4.2.

**3.8** After receiving the statement of availability, accompanied by the declaration of non-impediment, impartiality and independence, the Parties will have 7 (seven) days to offer, with justification, any objection to the members.

**3.9** In the event of an objection, the formation of the DB will be suspended and the objected member will be summoned to respond within 5 (five) days, with the other Party being allowed to respond within the same period.

**3.10** The CAMARB Board of Directors will be responsible for making a final decision on the member's objection, after payment of the respective fee set out in Annex II.

**3.11** If any appointed member dies, resigns, is declared impeded or suspect or becomes unable to perform their duties, the replacement will be appointed in the manner and term applicable to the appointment of the replaced member.

**3.12** When there are multiple Parties to the Contract, the Parties shall attempt to reach a consensus for the joint appointment of all members of the DB. Should consensus in this regard prove unsuccessful, the CAMARB Board of Directors shall appoint all members of the DB, after payment of the respective fees set forth in Annex II.

#### **IV – OF THE MEMBERS OF THE DISPUTE BOARD**

**4.1** Any professionals may be appointed, regardless of whether they are part of CAMARB's reference lists, as long as they are capable, impartial, independent, and have availability and technical knowledge about the subject of the Contract.

**4.2** The person(s) appointed to act as member(s) shall sign a term declaring that they are capable, impartial, independent, and that they have technical knowledge of the subject matter of the Contract and the necessary availability to participate in the DB within the stipulated term. At the same time, any circumstance that may give rise to justifiable doubts regarding their impartiality or independence in relation to the Parties or the Contract submitted for their consideration must be reported.

**4.3** Among these circumstances, all causes of impediment and suspicion must be observed and, furthermore, any facts that indicate a connection, link or interest, even indirect, of the person indicated as a member of the DB with the Parties, with the Contract and with its object must be revealed.

**4.4** Should any event occur after the appointment of a member that raises doubts about their independence, impartiality, technical capacity and availability, the member must immediately inform the Parties and the other members of the DB. The member may, on account of this fact, resign, even when they were appointed by consensus of the Parties.

**4.5** Within 10 (ten) days, after becoming aware of a supervening fact that raises doubts regarding the independence, impartiality, technical capacity, availability and performance of the member,

the Party may file an objection to the appointment of the member, in accordance with the procedure provided for in these Rules.

**4.6** If the challenge to the DB member is accepted by the CAMARB Board, the Decisions and Recommendations issued until then may be validated and/or revised by the DB that will be formed with the participation of the new member.

**4.7** The DB member may not participate in any arbitration or judicial proceedings relating to the Contract in which they acted, whether as an arbitrator, expert, technical assistant, technical witness, witness, representative, advisor or attorney of the Parties.

## **V – POWERS AND DUTIES OF THE DISPUTE BOARD**

**5.1** Among others, the DB shall have the following powers, unless otherwise agreed by the Parties and the Board:

- a) request the Parties to send documents that it deems necessary for the smooth running of the DB;
- b) decide, on a final basis, procedural issues, always observing impartiality, neutrality and equality between the Parties;
- c) define the language(s) to be adopted by the DB in its statements, considering the language of the Contract;
- d) call meetings, visits to construction sites and hearings;
- e) hear the Parties to obtain clarifications, their representatives and listed witnesses;
- f) request the hiring of technical experts, at the expense of the Parties, to assist in resolving the Dispute;
- g) adopt all necessary measures for the smooth running of the DB.

**5.2** Among others, the DB will have the following duties:

- a) act in an impartial, independent, neutral and isonomic manner;
- b) if consulted by the Parties, the DB may always advise them jointly and informally, acting in a preventive manner;
- c) encourage amicable settlement between the Parties;
- d) have technical knowledge of the issues that they will have to decide;
- e) keep up to date with the main facts related to the works, based on the study of the documents sent by the Parties;
- f) attend meetings, site visits and hearings;

g) be available, within a maximum period of 15 (fifteen) days from the request submitted by the Party, to hold meetings or visits to construction sites that are not programmed in the schedule;

h) issue the Recommendation or Decision within the established period;

i) clearly justify, albeit succinctly, the Recommendation or Decision that is made.

## **VI – OF THE DISPUTE REVIEW BOARD (DRB)**

**6.1** The Dispute Review Board (“DRB”) makes Recommendations to the Parties.

**6.2** The Party that disagrees with the DRB Recommendation must submit a written objection, with the respective grounds, within 15 (fifteen) days from the respective receipt, to be forwarded to the DRB and to the other Party. In this case, when submitting the objection, the Party must request the institution of arbitration, before CAMARB, within the same period.

**6.3** If neither Party files an objection under item 6.2, the Recommendation shall be binding and must be complied with immediately.

**6.4** If either Party fails to comply with a Recommendation that has become binding, the other Party may request the institution of arbitration alleging the respective non-compliance.

**6.5** In the event that an objection has been filed to the Recommendation; if the Board fails to issue a Recommendation within the stipulated period, or if the DRB is dismissed by joint decision of the parties, the Dispute will be finally decided by arbitration.

## **VII – OF THE DISPUTE ADJUDICATION BOARD (“DAB”)**

**7.1** The Dispute Adjudication Board (“DAB”) issues Decisions that are binding on the Parties and must be immediately complied with.

**7.2** The DAB Decision is binding upon receipt by the Parties, regardless of any objections filed.

**7.3** If either Party fails to comply with the Decision, the other Party may request the institution of arbitration alleging the respective non-compliance.

**7.4** The Party that disagrees with the DAB Decision must submit a statement of disagreement to be forwarded to the DAB and to the other Party within 15 (fifteen) days of receipt of the Decision.

**7.5** In the event of a statement of disagreement with the Decision, of the Board failing to issue a Decision within the stipulated period, or of the DAB being dismissed by joint decision of the parties, the Dispute shall be finally decided by arbitration. Until a final decision is made in the arbitration, the Parties shall continue to be obliged to comply with the DAB Decision.

## **VIII – OF THE DISPUTE BOARD CONSTITUTION TERMS**

**8.1** The Parties and the members of the Board must sign the Instrument of Incorporation, through which the DB will be established.

**8.2** In any case, the DB Constitution Term must contain, at least:

- a) full qualification, name, profession, marital status, registered office and address of the Parties and members of the DB;
- b) the identification of the main contract that provides for the establishment of the DB, with the characterization of its object;
- c) the object of the Term, which is the provision of services as members of the DB;
- d) the monthly remuneration of DB members (“monthly fees”), equivalent to 3 (three) times the value of the daily fees;
- e) the remuneration of DB members for visits to construction sites (“daily fees”), established by mutual agreement;
- f) the term of validity of the Term, which must be linked to that of the main contract;
- g) the language(s) in which the DB procedure will be conducted;
- h) exemption from liability of DB members, when exercising their functions as members of the Board, except in cases of acts of bad faith;
- i) the signature of 2 (two) witnesses.

**8.3** The Dispute Board Constitution Agreement may be terminated at any time, by agreement of the Parties, upon payment to the DB members of an amount equivalent to 3 (three) months of monthly fees, unless otherwise stipulated between the Parties and the Board members.

**8.4** The DB member may resign from his/her participation in the Dispute Board, provided that his/her resignation is communicated 2 (two) months in advance, unless otherwise agreed with the Parties.

**8.5** The Parties may adopt the attached draft Dispute Board Constitution (Annex I).

## **IX – OF THE PARTIES AND THE ATTORNEYS**

**9.1** The Parties have the duty to keep the DB informed about the progress of the works and the occurrence of potential Disputes, through (i) sending the main contractual documents, monthly progress reports, minutes of monitoring meetings, schedule control reports, relevant correspondence exchanged between them; and (ii) holding meetings and visiting the works.

## **X – MEETINGS AND VISITS TO CONSTRUCTION SITE**

**10.1** As soon as the DB is established, it, together with the Parties, must define a schedule of meetings to monitor the progress of the work and visits to the construction sites, as well as the procedure to be adopted by the DB.

**10.2** Considering the nature of the work, the DB, at its discretion, must carry out at least 2 (two) annual visits to the construction sites.

**10.3** Either Party may request a meeting or visit to the construction sites outside the dates provided for in the schedule, with the DB and the other Party being responsible for holding the meeting or visit within a maximum of 15 (fifteen) days of the request.

**10.4** Meetings may be held at a location other than the construction site, provided that there is consensus between the Parties and the DB. In the event of no consensus, the DB will define the location of the meeting.

**10.5** The Parties and the DB shall attend meetings and construction sites visits. If one of the Parties fails to attend, the DB may proceed with the meeting or construction sites visit. If one of the members of the DB fails to attend, the Board may proceed with the meeting or construction sites visit, provided that there is no objection from either Party.

**10.6** The DB must draw up minutes containing the main points discussed and verified at each meeting or visit to the construction sites.

## **XI – OF THE PROCEDURE IN CASE OF DISPUTE**

**11.1** After the establishment of the DB, the interested Party may submit any dispute relating to the Contract to the Board for consideration by means of the Dispute Resolution Request ("Request"), which must be submitted in writing, accompanied by the respective supporting documentation.

**11.2** The Application must contain:

- a) identification and qualification of the requesting Party;
- b) account of the facts that gave rise to the Controversy;
- c) documentation supporting the allegations;
- d) the requests.

**11.3** The Request must be sent to all members of the DB and to the opposing Party, with the date of receipt by the DB chairman being considered for the purposes of establishing the start of the procedure.

**11.4** The requested Party may submit its Response within 30 (thirty) days from receipt of the Request, which must contain:

- a) the identification and qualification of the requested Party;
- b) report of the facts relating to the Dispute presented by the opposing Party;
- c) supporting documentation for the allegations or objections;
- d) the requests.

**11.5** The Parties may, at any time, negotiate and reach an agreement regarding the Dispute.

**11.6** By communicating with all Parties, the DB may request clarifications related to the Request or Response from any of them. The DB may also request additional documentation submitted.

**11.7** The DB may, at its discretion, set a date for a clarification hearing, after receiving the Response from the requested Party or the clarifications provided for in item 11.6.

## **XII – OF INFORMAL ASSISTANCE**

**12.1** The Parties may jointly request informal assistance from the DB to resolve Disputes that have not yet been formally submitted to the procedure provided for in Clause XI.

**12.2** Informal assistance may be provided orally or in writing when the DB visits the works or during any meeting between the Parties and the DB.

**12.3** The request for informal assistance must be submitted by the Parties at least 7 (seven) days in advance, and must inform the DB, at the time, of the subject and documents related to the object of the assistance.

**12.4** Informal assistance provided by the DB does not bind any future Decision or Recommendation of the DB to be issued.

## **XIII – OF THE HEARING**

**13.1** By mutual agreement with the Parties, the clarification hearing will be scheduled by the DB within a maximum period of 30 (thirty) days from the submission of the response by the responding Party.

**13.2** If the Parties fail to reach an agreement, the DB will set a date for the hearing.

**13.3** In the event of the absence of any member of the DB, the Board may proceed with the hearing, provided that there is no opposition from either Party.

**13.4** Failure to appear or refusal by either Party to participate in a previously scheduled hearing or proceeding will not prevent the DB from continuing the procedure.

**13.5** The hearing, whose main purpose is to provide clarifications to the DB, will be conducted in a respectful and informal manner, observing the following guidelines:

- a) the DB will consult the Parties on the possibility of an agreement;



- b) if an agreement is not possible, the DB will detail the procedure to be followed at the hearing;
- c) each Party may present the case, within a maximum time set by the DB, starting with the requesting Party;
- d) hearing of witnesses, starting with those appointed by the requesting Party and then by the requested Party;
- e) the DB, at its sole discretion, may question the Parties and witnesses and request that the Parties submit additional documents and clarifications on the issues discussed;
- f) the DB may request that the Parties provide, in printed or digital form, at its discretion, the presentations used.

**13.6** The DB may issue a Decision or Recommendation at the hearing itself or later, within the regulatory time limit.

**13.7** The procedure may be changed by consensus of the Parties and the DB.

#### **XIV – OF THE DECISION OR RECOMMENDATION**

**14.1** The Decision or Recommendation shall be issued within 30 (thirty) days from the conclusion of the investigation, in accordance with the schedule established by the DB, with the Board being authorized to extend the period for a period of 15 (fifteen) days. The aforementioned deadlines may be changed by agreement between the Parties and the Board.

**14.2** The Decision or Recommendation must be in writing, dated, indicate the place where it was given and contain:

- a) the account of the Controversy with a chronology of events;
- b) summary of the reasons given by the requesting Party and the response given by the requested Party;
- c) the technical and contractual basis, supported by the documents presented by the Parties and at the hearing, if one was held;
- d) the conclusion, in which the DB will resolve the Dispute submitted to it;

**14.3** The Decision or Recommendation shall be limited solely to the resolution of the Dispute submitted by the Parties to the DB. Any Decision or Recommendation unrelated to the Dispute that has been submitted shall be null and void and shall not produce any effect.

**14.4** The Decision or Recommendation shall be deliberated in a conference, by majority, with each member having one vote, including the DB president. If there is no majority decision in the vote, the vote of the DB president shall prevail.

**14.5** Any member of the DB who disagrees may issue their Decision or Recommendation separately. Regardless of the issuing of a dissenting Decision or Recommendation, the Board's Decision or Recommendation shall have full effect.

**14.6** In the event of a material error, omission, obscurity, doubt or contradiction in the Decision or Recommendation, the Parties shall have a period of 10 (ten) days, counted from the date of receipt, to formulate a request for clarification, which shall interrupt the period for any objection.

**14.7** Upon receipt of the request for clarification, the DB will summon the opposing Party to respond within 10 (ten) days, after which the DB will deliberate within 20 (twenty) days.

**14.8** The Decision or Recommendation will be admitted as evidence in any judicial or arbitration proceedings between the Parties related to the Dispute resolved by the DB.

## **XV – CAMARB FEES, EXPENSES AND DB MEMBERS FEES**

**15.1** All CAMARB fees, Board expenses and DB members' fees will be borne equally between the Parties.

**15.2** Unless otherwise provided, the Contracted Party to the Agreement shall pay the full monthly fees of each DB member and shall include in the measurement of the Agreement half of such fees, which shall be reimbursed to it by the Contracting Party.

**15.3** The Fee Schedule (Annex II) sets the amounts due to CAMARB for the services of appointing DB members and challenging Board members. The CAMARB Board of Directors may update or change the Fee Schedule at any time.

**15.4** Expenses relating to travel and accommodation for DB members, as well as rental of equipment and a location for holding the hearing, if this does not take place at the construction site, will be borne equally by the Parties, who must pay them in advance, unless otherwise provided.

**15.5** The fees of the DB members will be set by mutual agreement between the Parties, in the DB Constitution Instrument.

**15.6** In the event of failure by either Party to pay CAMARB Fees, Expenses or DB Members' Fees, within the time and amounts stipulated in the DB Instrument of Incorporation, the other Party may advance the respective amount in order to allow the DB to continue, with the accounts being settled at the end of the procedure.

**15.7** The Party that makes the aforementioned payment, without this meaning novation or waiver of its rights, will be reimbursed by the defaulting Party for all amounts paid, plus a fine of 10% (ten percent) and interest on arrears of 1% (one percent) per month.

**15.8** In the event of non-payment of Expenses or Fees of DB Members for more than 60 (sixty) days, the DB may suspend its services.

**15.9** Suspension for non-payment may not exceed 90 (ninety) days, after which the DB will be dissolved and the DB Constitution Term will be considered resolved for all legal purposes, with the exception of the overdue credit of the DB members.

## XVI – FINAL PROVISIONS

**16.1** The DB procedure will be confidential, and CAMARB, the members of the Board and the Parties themselves are prohibited from disclosing any information to which they have access as a result of their office or their participation in the procedure, without the consent of all Parties, except in cases where there is a legal obligation to disclose.

**16.2** It will be up to the DB, once constituted, to interpret and apply these Rules. It will be up to the CAMARB Board of Directors, prior to the constitution of the DB, to interpret and apply the Rules.

**16.3** Any dispute between members of the DB concerning the interpretation or application of these Rules shall be resolved by majority, or, if a majority decision is not possible, by the president of the DB, whose decision in this regard shall be final.

## ANNEX 2

### CAMARB (Dispute Board) Fee Schedule

DB Member Referral Fee*	R\$ 3.000,00 (three thousand reais) *for each member
Fee for decision on DB member challenge*	R\$ 3.000,00 (three thousand reais) *by decision on challenge
Fee for other CAMARB decisions on the DB*	R\$ 3.000,00 (three thousand reais) *by decision

\* Base: October 2016