

## **PART 26 OF THE SCHEDULE**

### **SECTION 2**

#### **Nominating Bodies**

##### **1. Nominating Bodies**

The following procedure shall be followed in appointing the Adjudicator.

- i. if the Dispute arises under, out of, or in connection with or is related to the provision or delivery of Services such as those anticipated in this Agreement the Adjudicator shall be nominated by or on behalf of the President for the time being of the British Institute of Facilities Management;
- ii. if the Dispute arises under, out of, in connection with or is related to financial matters or methods of accounting or otherwise to matters usually and properly within the knowledge of a chartered accountant then the Adjudicator shall be a chartered accountant who has been professionally qualified for not less than 10 (ten) years nominated by or on behalf of the President for the time being of the Institute of Chartered Accountants in Scotland;
- iii. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of a civil engineer then the Adjudicator shall be a civil engineer nominated by or on behalf of the President for the time being of the Institution of Civil Engineers;
- iv. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of an architect then the Adjudicator shall be an architect nominated by or on behalf of the President for the time being of the Royal Institute of Architects in Scotland;
- v. if the Dispute arises under, out of, in connection with or is related to building or construction matters usually and properly within the knowledge of a chartered surveyor then the Adjudicator shall be a chartered surveyor nominated by or on behalf of the President for the time being of the Royal Institute of Chartered Surveyors in Scotland;
- vi. if the Dispute arises in connection with or is related to the meaning or construction of this Agreement or the parties are unable to agree that the Dispute falls within Paragraphs 1.i to 1.v of this Section 2 of Part 26 of the Schedule then the Adjudicator shall be a Solicitor or Advocate of not less than ten (10) years' standing nominated by or on behalf of the President for the time being of the Law Society of Scotland;

##### **2. Qualifications of the Adjudicator**

The following provisions shall apply in respect of the qualification of the Adjudicator:

- i. no person shall be appointed to act as the Adjudicator unless he shall be qualified by education, experience and training to determine the Dispute. If within ten (10) days of appointment of an Adjudicator in accordance with Section 1 of this Part 26 of the Schedule either Party objects on the ground that the proposed Adjudicator is not so qualified then the person identified in paragraphs 1.i to 1.v of this Section 2 (whichever shall be appropriate) shall decide the issue and his decision shall be final and binding on the Parties. In so deciding he shall consider any submission either Party may wish to make. If he shall decide that the

proposed Adjudicator is not so qualified then the person identified in paragraphs 1.i to 1.vi of this Section 2 (whichever shall be appropriate) shall be requested to appoint a replacement in accordance with the provisions of Section 1 of this Part 26 of the Schedule.

- ii. unless both Parties otherwise agree, no person shall be appointed as the Adjudicator who at the time of appointment is (or within three years before such appointment has been) a director, office holder or an employee of or retained as consultant to either Party or any associated companies or Project Co or is the holder of shares in either Party or any associated companies or Project Co (unless it is a company quoted on a recognised stock exchange and his shareholding is less than one per cent of the issued shares capital (of any class) in such company);
- iii. no person shall be appointed as the Adjudicator or continue to act as the Adjudicator if at the time of appointment or at any time before he gives his determination under such appointment he or his employer has or may have some interest or duty which conflicts or may conflict with his function under such appointment unless:-
  - (a) before accepting such appointment he shall have disclosed such interest or duty stating that it conflicts or may conflict with his function under such appointment; and
  - (b) in respect of any such interest or duty arising after his appointment he shall have disclosed such interest or duty immediately he becomes aware of it; and
  - (c) in the opinion of the parties there is no material risk of such interest or duty prejudicing his decision as Adjudicator;
- iv. if either Party objects to a proposed appointment of an Adjudicator or to an appointed Adjudicator continuing to act as such, on the grounds of a matter referred to in Paragraphs 2.i to 2.iii of this Section 2, within four (4) Days of either such matter being disclosed, or becoming aware of a matter which has not hitherto been disclosed, then that Party may apply to the person identified in paragraphs 1.i to 1.vi of this Section 2 (whichever shall be appropriate) who shall decide if there is a material risk that the decision of the proposed Adjudicator would be prejudiced and therefore whether he should not make or terminate the appointment (as the case may be). In so deciding he shall consider any submissions either party or the Adjudicator may wish to make. If he shall so decide then the appointment of the Adjudicator shall not be made or shall cease forthwith (as the case may be) and he shall appoint a replacement in accordance with the provisions of Section 1 of this Part 26 of the Schedule.

### **Confidentiality**

All information, data or documentation disclosed or delivered by a Party to the Adjudicator or to the other Party in consequence of or in connection with the appointment of the Adjudicator hereunder shall be treated as confidential save to the extent that it is already in the public domain and the Adjudicator and the Parties shall not disclose any such information, data or documentation to any person or company save with the consent of the Party providing any such information, data or documentation. All such information, data or documentation shall remain the property of the Party disclosing or delivering the same, and it and all copies thereof shall be returned on completion of the Adjudicator's work.