Expert Determination Agreement

**[FOR USE WITH MASCI-2023 AND MESCI-2023 ONLY]**

**Agreement made at on**

**Parties The person named in Item 1 of the Schedule ("Contractor")**

 **The person named in Item 2 of the Schedule ("Subcontractor")**

 **The person named in Item 3 of the Schedule ("Expert")**

**Recitals**

A. The Contractor and the Subcontractor have entered into the Subcontract described in Item 4 of the Schedule (**"Subcontract"**).

B. The Expert has been appointed by the Contractor and the Subcontractor to determine disputes or differences by the procedure described in clauses 15.2 to 15.10 of the Subcontract.

**Operative**

1. Interpretation

Words and phrases used in this Agreement, unless the contrary intention appears or they are otherwise defined in this Agreement, have the meaning attributed to those words and phrases in the Subcontract.

1. Decide on Disputes

The Expert must:

* + 1. determine disputes or differences referred to him or her in accordance with the procedures set out in the Subcontract; and
		2. in discharging his or her obligations under this Agreement, abide and be bound by the provisions of the Subcontract.
1. Confirmation that can Act

The Expert must, within 14 days after receiving notice from the person described in Item 5 of the Schedule (**"Contractor's Representative"**) of a dispute or difference, advise the Contractor's Representative whether he or she is available to act in resolving that dispute or difference.

1. Meeting

If the Expert advises the Contractor's Representative that he or she can act in resolving the dispute or difference, the Expert must meet with the parties to determine a procedure to resolve the dispute or difference.

1. The Expert Released

The Expert is not liable to the parties or either of them or to any third party or stranger for anything done or omitted by him or her under this Agreement and the parties release and indemnify the Expert from and against any claims for negligence, bias or other misconduct (other than actual fraud) in the course of discharging his or her obligations under this Agreement.

1. Expert's Powers

The Expert must in discharging his or her obligations under this Agreement:

* + 1. act as an expert and not as an arbitrator;
		2. proceed in such manner as the Expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
		3. take into consideration all documents, information and other written and oral material that the parties place before the Expert including documents, information and material relating to the facts in dispute and to arguments and submissions upon the matters in dispute;
		4. not be expected or required to obtain or refer to any other documents, information or material but may do so if the Expert so desires;
		5. without giving reasons, make a decision in such form as the Expert considers appropriate stating the determination of the matters in dispute; and
		6. act with expedition with a view to making a decision within the time period required by the Contract.
1. Meet with Parties

The Expert may, if he or she so desires, require as a part of the procedure to be determined under clause 4 to further meet with parties to discuss the dispute or difference and at and in connection with any such meeting:

* + 1. neither party may be accompanied by their legal representative; and
		2. the parties agree to be bound by such procedural directions as may be given by the Expert both in preparation for and during the course of the meeting.

The parties agree that any such meeting or meetings are not in any way to be regarded as a formal hearing.

1. Decision Binding

Subject to clause 15.10(c) of the Subcontract Conditions, the Expert's decision is final and binding.

1. Remuneration

In consideration of the Expert performing his or her obligations under this Agreement, the Subcontractor and the Contractor will jointly pay to the Expert the amount set out in Item 6 of the Schedule or such other amount as is agreed between all parties to this Agreement.

1. Confidentiality

The Expert must not at any time, whether before or after the expiration or sooner determination of this Agreement, without the consent of the Contractor and the Subcontractor divulge or suffer or permit his or her servants, consultants or agents to divulge to any person any:

* + 1. details concerning the subject matter of any dispute or difference referred to the Expert under this Agreement;
		2. of the contents of the Subcontract or this Agreement or any other agreements collateral or supplemental thereto or any of the commercial bases thereof or any information relating to the negotiations concerning the same; or
		3. information which may have come to the Expert's knowledge in the course of such negotiations or otherwise concerning the operations, dealings, transactions, contracts, commercial or financial arrangements or affairs of the Contractor and the Subcontractor as contemplated by the Subcontract.
1. Nature of Expert's Role
	* 1. The Expert:
			1. is to be independent from the Contractor and the Subcontractor; and
			2. without limitation, warrants that he or she has no conflict of interest in acting under this Agreement.
		2. Nothing in this Agreement will be deemed to make the Expert an agent, employee or partner of the Subcontractor or the Contractor.
		3. The Expert must assume full responsibility and liability for the payment of all taxes due on moneys received by him or her under this Agreement.
		4. The Subcontractor and the Contractor must not make any deductions for taxes, insurance or other benefits from any moneys paid to the Expert under this Agreement.
2. Termination
	* 1. This Agreement may be terminated by either the Contractor or the Subcontractor by giving the other parties 10 days' written notice in any of the following events:
			1. the Expert being declared of unsound mind or mentally ill;
			2. the Expert being declared bankrupt;
			3. the Expert committing any proven act of dishonesty or, by wilful act or omission or by gross neglect, behaving in a fashion clearly prejudicial to the interests of the Subcontractor or the Contractor or the Subcontractor's Activities;
			4. the Expert failing to observe and fulfil any of the substantive terms of this Agreement; or
			5. the Expert being prevented by prolonged illness or incapacity from performing his or her obligations under this Agreement.
		2. This Agreement may be terminated by the Expert giving the Contractor and the Subcontractor 60 days' written notice of his or her intention to terminate.
3. Notices

All notices to be given to the Expert under this Agreement will be deemed to be properly given if hand delivered to the Expert or if sent by certified or registered mail to the Expert's address set out in Item 7 of the Schedule or to such other address as the Expert may from time to time advise by notice in writing.

1. Governing Law

This Agreement is to be construed for all purposes in accordance with the laws applying to the Subcontract.

SCHEDULE

|  |  |  |
| --- | --- | --- |
| Item 1: | Contractor | ***[INSERT NAME AND ABN (IF APPLICABLE) OF CONTRACTOR]*** |
| Item 2: | Subcontractor | ***[INSERT NAME AND ABN (IF APPLICABLE) OF SUBCONTRACTOR]*** |
| Item 3: | Expert | ***[INSERT NAME OF EXPERT]*** |
| Item 4: | Details of Subcontract:(Recital A) | ***[INSERT DETAILS, INCLUDING PROJECT DESCRIPTION]*** |
| Item 5: | Contractor's Representative(Clause 3) | ***[INSERT NAME AND ABN (IF APPLICABLE) OF CONTRACTOR'S REPRESENTATIVE]*** |
| Item 6: | Expert's Remuneration(Clause 9) | ***[INSERT DETAILS]*** |
| Item 7: | Expert's Address(Clause 13) | ***[INSERT DETAILS]*** |

**Executed** as an agreement.

***[INSERT APPROPRIATE SIGNING BLOCKS FOR CONTRACTOR, SUBCONTRACTOR AND EXPERT, NOTING THAT LEGAL ADVICE SHOULD BE OBTAINED WITH REGARDS TO EXECUTION BY ENTITIES INCORPORATED OVERSEAS]***