

**This is Schedule 7 referred to in the foregoing M8 M73 M74 Motorway Improvements Agreement between the Scottish Ministers and Scot Roads Partnership Project Ltd**

**SCHEDULE 7  
DISPUTE RESOLUTION PROCEDURE**

1. **Adjudication**

- 1.1 Any dispute or difference (references to **Dispute** throughout this Schedule 7 shall include any difference) arising under this Agreement or with regard to any matter or thing whatsoever arising out of this Agreement or in connection therewith (**Dispute**) which is referred to an Adjudicator for adjudication shall be adjudicated in accordance with these adjudication rules (**Rules**).
- 1.2 The Rules meet the requirements of adjudication procedure as set out in Section 108 of the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the **Construction Act**); Part I of the Scheme for Construction Contracts (Scotland) Regulations 1998 as amended by the 2011 Regulations shall thus not apply.

2. **Commencement**

- 2.1 The Rules shall apply upon either party to the Agreement giving written notice (a **Notice Requiring Adjudication**) to the other party of its intention to refer a Dispute to adjudication, and identifying in sufficiently full terms the Dispute in respect of which adjudication is required (**Adjudication**). No Notice Requiring Adjudication shall refer more than one Dispute to Adjudication. The said notice shall be served in accordance with the provisions of Clause 69 (Notices).
- 2.2 Within 7 days from the date of such Notice Requiring Adjudication, and provided that he is willing and able to act, an agreed adjudicator identified and agreed upon under Rule 3.1 or nominated adjudicator under Rule 3.2 (**Adjudicator** which definition shall also include any replacement adjudicator under Rule 3.3) shall give written notice of his acceptance of appointment to both Parties.
- 2.3 The date of the referral of the Dispute shall be the date that the Adjudicator so confirms his acceptance.
- 2.4 Notices Requiring Adjudication may be given at any time and notwithstanding that legal proceedings have been commenced in respect of such Dispute.
- 2.5 More than one Notice Requiring Adjudication may be given arising out of this Agreement.

**3. Appointment**

- 3.1 Where the Parties agree within 3 days of the Notice Requiring Adjudication or have agreed in advance upon the identity of an Adjudicator who confirms within 4 days of the Notice Requiring Adjudication his readiness and willingness to embark upon the Adjudication within 7 days of the Notice Requiring Adjudication, then that person shall be the Adjudicator.
- 3.2 Where the Parties have not so agreed upon an Adjudicator, or where such person has not so confirmed his willingness to act, then the Party who is seeking the appointment of the Adjudicator and the referral of the Dispute to Adjudication may apply to the Chairman, Vice-Chairman, President or Vice-President of either the Royal Incorporation of Architects in Scotland or the Scottish Building Employers Federation or the Royal Institution of Chartered Surveyors in Scotland or Chartered Institute of Arbiters (Scottish Branch) or the National Specialist Contractors Council or the Law Society of Scotland or the Institute of Chartered Accountants of Scotland or the Institute of Chartered Accountants of England and Wales ("Nominator") for a nomination and the selection of the Nominator shall be made by the said Party at a time not earlier than when any Dispute arises. The following procedure shall apply:
- 3.2.1 The application shall be in writing, accompanied by a copy of this Agreement or other evidence of the agreement of the Parties that the Rules should apply and a copy of the Notice Requiring Adjudication; and
- 3.2.2 The Nominator shall endeavour to secure the appointment of an Adjudicator and the referral to him of the Dispute within seven (7) days from the date of the Notice Requiring Adjudication.
- 3.3 The Nominator may replace an Adjudicator with another nominated person as Adjudicator if and when it appears necessary to him to do so but only after giving written notice to the Parties of his intention to make such replacement. The Nominator may only exercise such power if either Party shall satisfy him that the Adjudicator is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the Adjudication, or that the Adjudicator is failing with necessary despatch to proceed with the Adjudication or make his decision. In the event that an Adjudicator is replaced by a Nominator in accordance with this Rule 3.3, the Parties agree that all timescales shall be re-calculated from the date of the replacement.
- 3.4 Where an Adjudicator has already been appointed in relation to another dispute arising out of this Agreement, the Nominator may appoint either the same or a different person as Adjudicator.

**4. Agreement**

An agreement to adjudicate in accordance with the Rules shall be treated as an offer made by each of the Parties to the Nominator and to any Adjudicator to abide by the Rules, which offer may be accepted by conduct by appointing an Adjudicator or embarking upon the Adjudication respectively.

**5. Scope of the Adjudication**

5.1 Subject to a Dispute having crystallised the scope of the Adjudication shall be the matters identified in the Notice Requiring Adjudication, together with any further matters which both Parties agree in writing should be within the scope of the Adjudication.

5.2 The Adjudicator may rule upon his own substantive jurisdiction, and as to the scope of the Adjudication.

**6. The Purpose of the Adjudication and the Role of the Adjudicator**

6.1 The underlying purpose of the Adjudication is to resolve disputes between the Parties that are within the scope of the Adjudication as rapidly and economically as is reasonably possible.

6.2 Subject to Rule 12.6, decisions of the Adjudicator shall be binding until the Dispute is finally determined by legal proceedings, by arbitration (where the Parties so elect) or by agreement between the Parties.

6.3 The decision of the Adjudicator shall reflect the legal entitlements and obligations of the Parties.

6.4 The Adjudicator shall have the like power to open up review and revise any certificates, or other things issued or made pursuant to this Agreement as would a court or arbiter given such powers and the power to award damages.

6.5 The Adjudicator shall act fairly and impartially, but shall not be obliged or empowered to act as though he were an arbiter.

**7. Conduct of the Adjudication**

7.1 The Adjudicator shall establish the procedure and timetable for the Adjudication.

7.2 Without prejudice to the generality of Rule 7.1, the Adjudicator may if he thinks fit:

7.2.1 require the delivery of written statements relating to matters in issue in the Dispute;

- 7.2.2 require either Party to produce a bundle of key documents, whether helpful or otherwise to that Party's case, and to draw such inference as may seem proper from such bundle that may become apparent;
  - 7.2.3 require the delivery to him and/or the other party of copies of any documents other than documents that would be privileged from production to a court;
  - 7.2.4 limit the length of any written or oral submission;
  - 7.2.5 require the attendance before him for questioning of either party or employee or agent of either Party;
  - 7.2.6 make site visits;
  - 7.2.7 make use of his own specialist knowledge;
  - 7.2.8 obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;
  - 7.2.9 review and revise any of his own previous directions; and
  - 7.2.10 take the initiative in ascertaining the facts and the law.
- 7.3 The Adjudicator may reach his decision with or without the holding of an oral hearing.
- 7.4 The Adjudicator shall exercise such powers fairly and impartially, giving each Party a reasonable opportunity, in light of the timetable, of putting his case and dealing with that of his opponent.
- 7.5 The Adjudicator may not:
- 7.5.1 require any advance payment of or security for his fees;
  - 7.5.2 receive any written submissions from one Party that are not also made available to the other;
  - 7.5.3 refuse any Party the right at any hearing or meeting to be represented by a representative of that Party's choosing who is present;
  - 7.5.4 act or continue to act in the face of a conflict of interest;
  - 7.5.5 require any Party to pay or make contribution to the legal costs of the other Party arising in the Adjudication.

7.6 The Adjudicator shall reach a decision within 28 days of referral of the Dispute or such longer period as is agreed by the Parties after the Dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Party by whom the Dispute was referred. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of the decision to each of the Parties. Upon becoming aware that the Dispute is the same or substantially the same (in all material respects) as a dispute which has previously been referred to Adjudication under this Agreement and a decision has been issued in that Adjudication, the Adjudicator shall immediately resign.

**8. Adjudicator's Fees and Expenses**

The Adjudicator's costs of any reference shall be borne as the Adjudicator shall specify or, in default, equally by the Parties. Each Party shall bear its own costs arising out of the adjudication, including legal costs and the costs and expenses of any witnesses.

**9. Decisions**

9.1 The Adjudicator may in any decision direct the payment of such compound or simple interest as may be permitted by this Agreement.

9.2 All decisions shall be in writing. If requested by either Party, not later than 7 days from the date of delivery of his decision to both Parties, the Adjudicator shall provide reasons for that decision.

9.3 The Adjudicator is permitted to correct his decision so as to remove a clerical or typographical error arising by accident or omission.

**10. Enforcement**

Every decision of the Adjudicator shall be implemented without delay. The Parties shall be entitled to such relief and remedies as are set out in the decision, and shall be entitled to enforcement thereof including to take further proceedings.

**11. Immunity, Confidentiality and Non Compellability**

11.1 Neither the Nominator, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of their functions, whether in negligence or otherwise, unless the act or omission is in bad faith.

11.2 The Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings under this Agreement or an adjudication concerning a Related Dispute under a Related Agreement and save insofar as required by law.

11.3 All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator and each party to the Adjudication (save as otherwise agreed between the Parties) save to the extent it is necessary for the adjudicator to disclose such information data or documentation for the purposes of an adjudication under a Related Agreement which he is appointed to determine.

12. **Consolidation of Disputes**

12.1 Where a Dispute arising under, out of or in connection with this Agreement is in the opinion of the Company related to a dispute or potential dispute or difference (**Related Dispute**) arising under, out of, or in connection with any other agreement between the Company and a third party (all such agreements being referred to as the **Related Agreements**) and the Related Dispute has been referred to an adjudicator for determination under an adjudication procedure (**Related Procedure**) which meets the requirements set out in Section 108 of the Construction Act and is in all material respects equivalent to the adjudication procedure in this Schedule 7, the Company may or may procure that the other party to the Related Dispute shall as soon as practicable, and in any case within fourteen (14) days of the referral of the Dispute to the Adjudicator, give to the Adjudicator conducting the adjudication under this Agreement and also to the other parties to the Dispute and the Related Dispute the particulars set out in Rule 12.2 below.

12.2 The particulars referred to in Rule 12.1 above are:

12.2.1 a copy of the Related Agreement;

12.2.2 a preliminary statement from the Company and/or, as the case may be, the other party to the Related Dispute setting out:

(a) the basis and grounds for consolidation of the Related Dispute and the Dispute;

(b) the cases of the parties to the Related Dispute;

- (c) any relief sought by the parties to the Related Dispute; and
- (d) a list of any documents served in relation to the Related Dispute.

Any such particulars sent by the Company to the Adjudicator and the Scottish Ministers shall be sent at the same time to the other party to the Related Dispute.

- 12.3 On receiving the particulars set out in Rule 12.2 above and within fourteen (14) days of the referral of the Dispute to the Adjudicator, the Adjudicator shall immediately request that the parties to the Dispute and the other party to the Related Dispute attend a meeting with the Adjudicator with a view to determining whether or not the Dispute and the Related Dispute should be consolidated. If the Adjudicator and all the relevant parties agree, they may hold a telephone conference call instead of a meeting, and in such an event references in Rules 12.4 to 12.7 to a meeting or to attending a meeting shall mean a telephone conference call and taking part in such a telephone conference call.
- 12.4 The Company shall use its reasonable endeavours to procure that an authorised representative of the other party to the Related Dispute shall attend the meeting with the Adjudicator referred to in Rule 12.3 above. The Company and the Scottish Ministers each agree to send an authorised representative or nominee to any meeting of this kind under this Agreement or under a Related Agreement, which they may be requested to attend.
- 12.5 At the meeting referred to in Rule 12.3 above, the Scottish Ministers' authorised representative shall, as a preliminary matter, either:
- 12.5.1 confirm to the Adjudicator that the Scottish Ministers accept the proposed consolidation of the Related Dispute with the Dispute; or
  - 12.5.2 inform the Adjudicator that the Scottish Ministers do not accept the proposed consolidation of the Related Dispute with the Dispute.
- 12.6 Where Rule 12.5.1 above applies, the Adjudicator shall immediately order consolidation of the Dispute and the Related Dispute and shall have the authority and the power referred to in Rule 12.9 below.
- 12.7 Where Rule 12.5.2 above applies, the Adjudicator shall issue within one (1) day of the meeting referred to in Rule 12.3 above his written decision, which shall not include any reasons, as to whether or not there is demonstrably a basis or ground for consolidation of the Dispute and the Related Dispute. If the Adjudicator determines that there is demonstrably a basis or ground for consolidation of the Dispute and the Related Dispute, the Dispute and the



Related Dispute shall be ordered to be consolidated and the Adjudicator shall have the authority and the power referred to in Rule 12.9 below. If the Adjudicator determines otherwise, or if the Adjudicator has failed or is unable to reach a decision within one (1) day of the meeting referred to in Rule 12.3 above, the Adjudicator shall not order consolidation of the Dispute and the Related Dispute.

- 12.8 Notwithstanding anything to the contrary, a Related Dispute may only be consolidated with a Dispute under this Agreement if the Adjudicator receives the particulars set out in Rule 12.3 above within fourteen (14) days of the referral of the Dispute under this Agreement to the Adjudicator.
- 12.9 The Adjudicator shall have the authority and the power to consolidate the Dispute and the Related Dispute and to direct that all procedural and/or evidential matters arising in both the Dispute and the Related Dispute are consolidated in whatever manner the Adjudicator considers shall lead to the fair and expeditious resolution of both the Dispute and the Related Dispute and the parties (including the party to the Related Dispute) shall thereafter abide by and implement such consolidation and any such direction.
- 12.10 In the event that the Related Dispute is consolidated with the Dispute, the Adjudicator shall reach a decision on the Dispute and the Related Dispute at the same time and in any event within twenty eight (28) days of the earlier of the referral of the Dispute or the referral of the Related Dispute, or such longer period as is agreed by the parties to the Dispute and the Related Dispute after the date that the Related Dispute has been consolidated with the Dispute. The Adjudicator shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the party by whom the Dispute was referred.
- 12.11 Without fettering or restricting the Adjudicator's power and authority in any way, it is the intention of the Company and the Scottish Ministers that in the event that the Related Dispute is consolidated with the Dispute, the Adjudicator shall, insofar as is relevant, practicable and appropriate, come to the same conclusion as to the facts and apply the same reasoning and analysis in reaching a decision on both the Dispute and the Related Dispute.
- 12.12 In the event that an adjudicator under a Related Agreement (**Related Adjudicator**) orders that a Dispute under this Agreement be consolidated with a Related Dispute with which he is dealing under the Related Agreement, then:
- 12.12.1 notwithstanding anything in the Rules with effect from the time of such order, the Adjudicator shall cease to have authority or jurisdiction to determine the Dispute

which shall instead be determined by the Related Adjudicator and the appointment of the Adjudicator under this Agreement shall cease; and

12.12.2 such order shall be binding on the Company and the Scottish Ministers and both of them shall acknowledge the appointment of the Related Adjudicator as the adjudicator of the Dispute, with the Company using its best endeavours to procure that the third party who is a party to the Related Dispute shall with effect from the time of such order comply with the requirements of the Related Agreement (including if applicable any requirement or direction of the Related Adjudicator appointed under such Related Agreement) as to the future conduct of the determination of the Dispute and the Related Dispute; and

12.12.3 notwithstanding Rule 8 the Company and the Scottish Ministers shall be jointly responsible with the third party who is a party to the Related Dispute for the Related Adjudicator's fees and expenses including those of any specialist consultant (excluding legal) appointed under the adjudication procedure in the Related Agreement, in respect of the period in which the Dispute is consolidated with the Related Dispute pursuant to an order of the Related Adjudicator (**Consolidated Adjudication Costs**). The Company and the Scottish Ministers agree that the Related Adjudicator shall have the discretion to make directions to require the Company, the Scottish Ministers and the third party who is a party to the Related Agreement to pay or make contribution to the Consolidated Adjudication Costs in different proportions. If no such directions are made, the Company, the Scottish Ministers and the third party who is a party to the Related Agreement shall bear the Consolidated Adjudication Costs in equal shares, and if the Company, the Scottish Ministers or the third party has paid more than such equal share, that party or third party shall be entitled to a contribution from the other party, parties or third party, as the case may be; and

12.12.4 notwithstanding anything to the contrary a Dispute under this Agreement shall only be consolidated with a Related Dispute, if the Adjudicator in the Related Dispute has been appointed (in the absence of agreement by the Scottish Ministers) by one of the nominating bodies listed at Rule 3.2 above, and if the Related Adjudicator receives particulars of the Dispute within fourteen (14) days of the referral of the Related Dispute to the Related Adjudicator under the Related Agreement.

12.13 Notwithstanding anything to the contrary in the Rules and in particular Rules 12.1 to 12.12 above, the Company shall pay the Scottish Ministers' reasonable costs arising from the consolidation of the Dispute and the Related Dispute in circumstances where the Company

has requested the Adjudicator to order consolidation of the Dispute and the Related Dispute and it is subsequently determined by the Adjudicator that there was no basis or ground for the Company to request the Adjudicator to order consolidation of the Related Dispute and the Dispute.

12.14 If any dispute arising under this Agreement raises issues which relate to:

12.14.1 Any dispute between the Company and the New Works Contractor arising under the New Works Agreement or otherwise affects the relationship or rights of the Company and/or the New Works Contractor under the New Works Agreement (the **New Works Agreement Dispute**); or

12.14.2 Any dispute between the Company and the O&M Works Contractor arising under the O&M Works Agreement or otherwise affects the relationship or rights of the Company and/or the O&M Works Contractor under the O&M Works Agreement (the **O&M Works Agreement Dispute**);

then the Company may include as part of its submissions made to the Adjudicator submissions made by the New Works Contractor or by the O&M Works Contractor as appropriate, and if such submissions are included by the Company, the New Works Contractor (in the case of a New Works Agreement Dispute) or the O&M Works Contractor (in the case of an O&M Works Agreement Dispute) shall be permitted to attend any hearings or meetings convened during the course of the relevant Dispute.

12.15 Any submissions made by the New Works Contractor or the O&M Works Contractor shall:

12.15.1 be made within the time limits applicable to the delivery of submissions by the Company; and

12.15.2 concern only those matters which relate to the Dispute between the Scottish Ministers and the Company arising out of this Agreement or in connection therewith.