

OPTIONS W4 AND W5

Description	Ref No.	W clauses	Remarks
-	-	<u>General</u> Options W4 and W5 are new dispute avoidance clauses to cater to local public sector dispute resolution processes and practices. GPEs are required to adopt either Option W4 or W5, depending on specific project requirements. Private sector can take reference and adopt if they wish to.	-
Option W4		Used when disputes are first referred to <i>Senior Representatives</i> , then mediation, before being referred to arbitration.	W4 uses <i>Senior Representatives</i> as the method of dispute resolution and includes SOPA adjudication process.
	W4 W4.1	Resolving disputes (1) In the event of any dispute arising out of or relating to this contract or its subject matter or formation (a “ Dispute ”), the Parties refer the Dispute to the <i>Senior Representatives</i> . (2) The Party referring a Dispute notifies the <i>Senior Representatives</i> , the other Party and the <i>Project Manager</i> of the nature of the Dispute. Each Party submits to the other their statement of case within one week of the notification. Each statement of case is limited to no more than ten sides of A4 paper together with supporting evidence, unless otherwise agreed by the Parties. (3) The <i>Senior Representatives</i> attend as many meetings and use any procedure they consider necessary to try to resolve the dispute over a period of up to three weeks. At the end of this period the <i>Senior Representatives</i> produce a list of the issues agreed and issues not agreed. The <i>Project Manager</i> and the <i>Contractor</i> put into effect the issues agreed. (4) If such Dispute is not resolved by agreement between the <i>Senior Representatives</i> within four weeks after the date of referral of the Dispute to the <i>Senior Representatives</i> , any Party may proceed to refer the Dispute to arbitration after giving the other Party notice of its intention to do so.	W4.1(5) is intended for the discussions between <i>Senior Representatives</i> to be conducted on a without prejudice basis. This is to encourage open and frank discussions between the parties, allowing them to explore potential settlement options without the risk of their statements being used against them in court.

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		(5) No evidence of the statement of case or discussions is disclosed, used or referred to in any subsequent arbitration proceedings.	
	W4.2	Reference to Arbitration (1) Any Dispute referred to arbitration shall be finally resolved by arbitration administered by the Singapore International Arbitration Centre (“SIAC”) in accordance with the Arbitration Rules of the SIAC for the time being in force which rules are deemed to be incorporated by reference into this clause. (2) The seat and venue of the arbitration shall be Singapore. The language of the arbitration shall be English. The tribunal shall consist of one arbitrator. (3) The arbitrator shall be agreed upon between the Parties, or on the failure to agree within thirty (30) days after a written proposal by one Party to the other Party, be appointed by the SIAC acting in accordance with the SIAC Rules. (4) Neither prior reference of the dispute to the <i>Senior Representatives</i> nor prior reference of the dispute to mediation shall be a condition precedent to the reference of such dispute to arbitration by either Party. Further, any such prior reference shall not affect either Party’s right to refer the dispute to arbitration under this clause W4.2 forthwith. (5) This clause W4.2 shall be governed by and construed in accordance with the laws of the Republic of Singapore.	Clause W4.2(1) provides that if a dispute has been referred to arbitration, it must be resolved finally by arbitration (i.e. the other party cannot, after a dispute has been referred to arbitration, argue that it wants the dispute to be referred to the courts instead). Clause W4.2(2) makes it clear that the arbitration clause is also governed by Singapore law. Clause W4.2(4) makes it clear that pre-arbitration steps (e.g. reference to <i>Senior Representatives</i>, mediation or SIDP) are not conditions precedent to the reference of the dispute to arbitration. This does not affect parties’ obligation to resolve any dispute arising out of the contract in accordance with W4.1.
	W4.3	Adjudication under the Building and Construction Industry Security of Payment Act 2004 (1) Notwithstanding clause W4.1 and W4.2, if a Dispute is a payment claim dispute in respect of which an adjudication application under the Building and Construction Industry Security of Payment Act 2004 may be made, the <i>Contractor</i> may make an adjudication application in accordance with such Act, in which case the provisions of such Act apply.	-
	W4.4	Mediation	W4.4(1) includes mediation as an additional dispute resolution mechanism, before the disputes

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		(1) The Parties agree that before referring any Dispute to arbitration, they may by mutual agreement first refer the Dispute to mediation at any time. (2) The Parties may mutually agree to resolve the Dispute through mediation in accordance with the mediation procedure of the Singapore Mediation Centre.	are referred to arbitration. Mediation is not mandatory and is subject to contract parties' mutual agreement. W4.4(2) provides that the mediation to be in accordance with the mediation procedure of the Singapore Mediation Centre. Such mediation procedures include procedure on the appointment of a mediator.
Option W5		Used when disputes are first referred to a Dispute Board appointed pursuant to the Singapore Infrastructure Dispute-Management Protocol 2018 before being referred to arbitration.	W5 uses the Dispute Board as the method of dispute resolution, in accordance with the Singapore Infrastructure Dispute-Management Protocol ("SIDP") and includes SOPA adjudication process.
	W5 W5.1	Dispute Board under the Singapore Infrastructure Dispute-Management Protocol 2018 (1) Within 60 days after the <i>starting date</i>, the Parties establish a dispute board (the "Dispute Board") in accordance with the Singapore Infrastructure Dispute-Management Protocol 2018 ("SIDP"), which is hereby incorporated by reference into this clause. The Dispute Board shall consist of one member. (2) The Dispute Board shall assist the Parties in preventing, managing and resolving differences or disputes by providing assistance or mediation, or by rendering an opinion or formal determination in accordance with the terms of the SIDP.	W5.1(1) provides that the Dispute Board consists of one member.
	W5.2	Reference to Dispute Board (1) In the event of any dispute arising out of or relating to this contract or its subject matter or formation (a "Dispute"), the Parties refer the Dispute to the Dispute Board.	-

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		(2) Unless and until resolved by adjudication under the Building and Construction Industry Security of Payment Act 2004, an arbitrator or the court, the Parties remain bound to comply with all outcomes of the Dispute Board which are expressed to be binding. (3) Nothing in this clause W5.2 or in the SIDP shall limit, restrict or derogate from the <i>Project Manager's</i> duties and powers under this contract. (4) In the event of any inconsistency between the SIDP and this contract, this contract shall prevail to the extent of such inconsistency. (5) If any Party is dissatisfied with the outcomes of the Dispute Board or the other Party's non-compliance with that outcome, that Party may within 4 weeks from the date of that outcome or non-compliance, refer the Dispute to arbitration after giving the other Party notice of its intention to do so.	
	W5.3	Reference to Arbitration (1) Any dispute arising out of or relating to this contract or its subject matter or formation (including any dispute regarding an opinion, decision or determination of the Dispute Board or any dispute regarding compliance with Article 10 of the SIDP) shall be finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") for the time being in force which rules are deemed to be incorporated by reference into this clause. (2) The seat and venue of the arbitration shall be Singapore. The language of the arbitration shall be English. The tribunal shall consist of one arbitrator. (3) The arbitrator shall be agreed upon between the Parties, or on the failure to agree within thirty (30) days after a written proposal by one Party to the other Party, be appointed by the SIAC acting in accordance with the SIAC Rules. (4) Prior reference of the dispute to the Dispute Board shall not be a condition precedent to the reference of such dispute to arbitration by either Party. Further, any such prior reference shall not affect either Party's right to refer the dispute to arbitration under this clause W5.3 forthwith.	Under the SIDP, any order or award made in relation to a binding but not final mediated settlement agreement, opinion or determination of the Dispute Board shall not prejudice either Party's right to have the merits of the dispute finally determined in court or arbitration. Clause W5.3(4) makes it clear that pre-arbitration steps (e.g. reference to <i>Senior Representatives</i>, mediation or SIDP) are not conditions precedent to the reference of the dispute to arbitration. This does not affect parties' obligation to resolve any dispute arising out of the contract in accordance with W4.1.

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		(5) This clause W5.3 shall be governed by and construed in accordance with the laws of the Republic of Singapore.	
	W5.4	Adjudication under the Building and Construction Industry Security of Payment Act 2004 (1) Notwithstanding clauses W5.1 to W5.3, if a dispute is a payment claim dispute in respect of which an adjudication application under the Building and Construction Industry Security of Payment Act 2004 may be made, the <i>Contractor</i> may make an adjudication application in accordance with such Act, in which case the provisions of such Act apply.	-