
ICE Arbitration Procedure

Institution of Civil Engineers

Published by ICE Publishing, 40 Marsh Wall, London E14 9TP.

Full details of ICE Publishing sales representatives and distributors can be found at:
www.icevirtuallibrary.com/info/printbooksales

Also available from ICE Publishing

ICE Adjudication Procedure. Institution of Civil Engineers. ISBN 978-0-7277-5779-1

ICE Mediation/Conciliation Procedure. Institution of Civil Engineers. ISBN 978-0-7277-5781-4

ICE Dispute Board Procedure. Institution of Civil Engineers. ISBN 978-0-7277-5785-2

www.icevirtuallibrary.com

A catalogue record for this book is available from the British Library

ISBN 978-0-7277-5780-7

© Institution of Civil Engineers 2012

ICE Publishing is a division of Thomas Telford Ltd, a wholly-owned subsidiary of the Institution of Civil Engineers (ICE).

All rights, including translation, reserved. Except as permitted by the Copyright, Designs and Patents Act 1988, no part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying or otherwise, without the prior written permission of the Publisher, ICE Publishing, 40 Marsh Wall, London E14 9TP.

This book is published on the understanding that the author is solely responsible for the statements made and opinions expressed in it and that its publication does not necessarily imply that such statements and/or opinions are or reflect the views or opinions of the publishers. Whilst every effort has been made to ensure that the statements made and the opinions expressed in this publication provide a safe and accurate guide, no liability or responsibility can be accepted in this respect by the author or publishers.

Associate Commissioning Editor: Victoria Thompson
Production Editor: Imran Mirza
Market Development Executive: Catherine de Gatacre

Typeset by Academic + Technical, Bristol

Contents

Introduction	1
Part A Objectives, Reference and Appointment	2
Part B Arrangements for the Arbitration	4
Part C Control of the Proceedings	4
Part D Procedures before the Hearing	6
Part E Procedure at the Hearing	7
Part F Short Procedure	9
Part G The Expedited Procedure	9
Part H Special Procedure for Experts	10
Part I Awards	11
Part J Miscellaneous	13
Sample documents	14

A copy of the appropriate form for applying for the appointment by the ICE is available on the ICE Dispute Resolution Services webpage:

www.ice.org.uk/disputeresolution

The Dispute Resolution Services, The Institution of Civil Engineers, One Great George Street, Westminster, LONDON SW1P 3AA

Acknowledgements The ICE Arbitration Procedure has been produced by the Institution of Civil Engineers through its Disputes Resolution Panel.

This procedure was drafted by Mr Terence Vaughan.

Mr Brian Totterdill acted as co-ordinating editor for this suite of Dispute Resolution Procedures.

This procedure was based on the Arbitration Procedure (2006) which was produced through the Arbitration Advisory Panel and drafted by Mr Guy Cottam, Mr Neville Tait, Mr Alan Turner and Mr Geoffrey Hawker.

The Arbitration Procedure (2006) was based on the Arbitration Procedure (1997) which was drafted by Mr Guy Cottam with the assistance of Mr Geoffrey Hawker.

The Arbitration Procedure (1997) was based on the Arbitration Procedure (1983) which was drafted by Mr Geoffrey Hawker, Professor John Uff and Mr Charles Timms.

Members of the Dispute Resolution Panel were

Mr Alan Wilson (Chairman) MA LLB DipArb CEng FICE MIHT MCIWEM FCIArb

Mr Robert Fleming FInstCES FCIArb

Mr Gordon Rees BSc(Eng) CEng FICE FCIArb

Mr Andrew Worby BSc(Tech) LLB CEng FICE

Mr William Edwards BSc DipArb FICE FIHT MICES FCIArb

Dr Robert Hunter BSc MSc PhD CEng FICE MCIArb FInstCES

Mr Terence Vaughan BSc CEng FICE FCIArb Barrister

Mr Peter Cousins BEng DipArb CEng MICE FCIArb MCFI

ICE Secretariat

Mr Brendan van Rooyen (Dispute Resolution Services Manager)

Introduction

- i. It is inherent in the nature of construction projects that disputes will arise. If properly managed, arbitration can provide an effective means of resolving those disputes and the ICE sets out in this Procedure rules which will enable parties to resolve disputes in a cost and time effective manner.
- ii. To achieve these objectives, the Procedure recognises that proportionality can be achieved by tailoring the procedures to reflect the value and complexity of the claims being referred to the Arbitrator.
- iii. For claims of modest value, Part F Short Procedure may be appropriate; for claims of value between £50 000 and £250 000, Part G Expedited Procedure may be appropriate and for claims of greater value the full procedure may be appropriate.
- iv. While not prescriptive, the values of claims appropriate to the various types of procedure are set out in Table 1 of the Procedure and will be updated from time to time by the ICE. The latest version of Table 1 can be found at www.ice.org.uk/law
- v. Although this Procedure has been prepared by the Institution of Civil Engineers principally for use with the family of ICE Conditions of Contract and NEC3 Contracts in England and Wales for arbitrations conducted under the Arbitration Act 1996, it is suitable for use with other contracts and in other jurisdictions.
- vi. Sample Documents are included to provide guidance to parties in the commencement and the appointment of an Arbitrator under this Procedure.
- vii. The ICE maintains a list of members who are suitably trained and assessed by the ICE Dispute Resolution Panel as being qualified and capable as acting as arbitrators. A list of members who are included in the ICE list and the criteria for inclusion in that list may be found at www.ice.org.uk/law
- viii. The ICE Arbitration Procedure (2010) is based on the ICE Arbitration Procedure (2006) which was drafted by Mr Guy Cottam (chairman), Mr Geoffrey Hawker and Mr Alan Turner.
- ix. Where reference is made in this Procedure to ‘the Act’ it is a reference to the Arbitration Act 1996 unless otherwise stated.

This Procedure has been prepared by The Institution of Civil Engineers for use under any construction and engineering contracts where its use is appropriate.

Institution of Civil Engineers Arbitration Procedure

Part A. Objectives, Reference and Appointment

Rule 1. Aims and objectives

- 1.1 The objective of these Rules is to provide a fair, impartial and cost effective means of resolving disputes while providing each party with a reasonable opportunity of putting its case and dealing with that of its opponent.
- 1.2 Where the Arbitration Act 1996 applies, the Rules of this Procedure are institutional rules for the purposes of s4(3).
- 1.3 Except where there are express modifications in the Contract, or in the arbitration agreement, no alterations shall be made to this Procedure without the consent of the Arbitrator and both parties.
- 1.4
 - (a) Where the total of the sums claimed is within Band A of Table 1, **Part F – The Short Procedure** and all other Parts except Parts B, D, E and G shall apply subject to 1.4(e) below.
 - (b) Where the total sum of the sums claimed is within Band B of Table 1, **Part G – The Expedited Procedure** and all other Parts except Parts D, E and F shall apply subject to 1.4(e) below.
 - (c) Where the total sum of the sums claimed is within Band C of Table 1 all other Parts except Parts F and G shall apply subject to 1.4(e) below.
 - (d) Where the reference only contains declarations of principle **Part G – The Expedited Procedure** and all other Parts except Parts D, E and F shall apply subject to 1.4(e) below.
 - (e) The parties may agree to depart from the foregoing provisions and adopt a different procedure from that stated at 1.4(a) to (d) above, but only after the dispute has been referred to the Arbitrator and then only with leave of the Arbitrator.
 - (f) The Bands applicable to the arbitration shall be those shown in Table 1 current at the time of the appointment of the Arbitrator.

Table 1. Value bands for procedure selection

Band	Total Sum in issue
A	Not exceeding £50 000
B	£50 001 to £250 000
C	Over 250 001

1. The Institution of Civil Engineers updates this table from time to time.
 2. The applicable version for use with the Institution of Civil Engineers Arbitration Procedure is the version current at the appointment of the Arbitrator.
 3. Always check www.ice.org.uk/disputeresolution to ensure you are using the most up-to-date edition.
- 1.5 The parties shall agree the seat of the arbitration. If the parties fail to agree the seat of the arbitration the seat shall be determined by the Arbitrator.
 - 2.1 Unless otherwise provided in the Contract a dispute shall be deemed to arise when a claim or assertion made by one party is rejected by the Other Party and either that rejection is not accepted or no response thereto is received within a period of 28 days. Subject only to the due observance of any condition precedent in the

Rule 2. Commencement of arbitration

- Contract or the arbitration agreement either party may then invoke arbitration by serving a Notice to Refer on the Other Party.
- Notice to Refer**
- 2.2 The Notice to Refer shall be in writing and shall list the matters which the issuing party wishes to be referred to arbitration. Nothing stated in the Notice shall restrict that party as to the manner in which he subsequently presents his case.
- Rule 3. Appointment of sole Arbitrator by agreement**
- 3.1 At the same time as or within 7 days of serving the Notice to Refer, either party may serve upon the other a Notice to Concur in the appointment of an Arbitrator listing therein the names and addresses of one or more persons he proposes as Arbitrator.
- 3.2 Within 7 days after the service of the Notice to Concur the Other Party shall
- (a) agree in writing to the appointment of one of the persons listed therein or
 - (b) propose in like manner an alternative person or persons.
- 3.3 Once agreement has been reached the claiming party shall write to the person so selected inviting him to accept the appointment enclosing a copy of the Notice to Refer and documentary evidence of the other party's agreement to his appointment.
- 3.4 If the person so invited accepts the appointment he shall notify the issuing party in writing and send a copy to the Other Party. The date of posting or service as the case may be of this notification shall be deemed to be the date on which the Arbitrator's appointment is completed.
- Rule 4. Appointment of sole Arbitrator by the President**
- 4.1 If within 21 days from the service of the Notice to Refer the parties fail to agree an Arbitrator in accordance with Rule 3, either party may then apply to the President to appoint an Arbitrator.
- 4.2 The application shall be in writing and should normally be accompanied by
- (a) a copy of the Notice to Refer
 - (b) a copy of the Notice to Concur (if any)
 - (c) the names and addresses of all parties to the arbitration
 - (d) a brief statement of the nature and circumstances of the dispute
 - (e) a copy of the arbitration clause in the Contract or of the arbitration agreement
 - (f) the appropriate fee
 - (g) confirmation that any conditions precedent to arbitration contained in the Contract or arbitration agreement have been complied with
 - (h) any other relevant document.
- A copy of the application shall be sent at the same time to the other party.
- Nothing stated in the application or in any supporting documentation attached to that application shall restrict either party as to the manner in which he subsequently presents his case, nor shall it in any way restrict the scope of the reference or the Arbitrator's jurisdiction.
- 4.3 The President shall within 14 days of receiving the application or within such further time as may be necessary, make the appointment and the Arbitrator's appointment shall thereby be completed. The ICE will notify both parties and the Arbitrator in writing as soon as possible thereafter.
- Provided always that no such appointment shall be invalidated merely because the time limits set out herein have not been observed.
- Rule 5. Notice of further disputes of differences**
- 5.1 At any time before the Arbitrator's appointment is completed either party may put forward further disputes or differences to be referred to him by serving upon the other party an additional Notice to Refer in accordance with Rule 2.
- 5.2 Once his appointment is completed the Arbitrator shall have jurisdiction over any issue connected with and necessary to the determination of any dispute or difference already referred to him whether or not any condition precedent to referring the matter to arbitration had been complied with.

Part B. Arrangements for the Arbitration

Rule 6. The preliminary meeting

- 6.1 The Arbitrator may upon appointment require the parties to submit to him short statements expressing their perceptions of the disputes or differences. Such statements shall give sufficient detail of the nature of the issues to enable the Arbitrator and the parties to discuss appropriate procedures for the preliminary meeting.
- 6.2 After accepting the appointment the Arbitrator may as soon as reasonably practical summon the parties to a preliminary meeting for the purpose of giving such directions about the Procedure to be adopted in the arbitration as he considers necessary and dealing with the matters referred to in Rule 6.1.
- 6.3 If the parties so wish they may themselves agree directions and submit them in draft to the Arbitrator for his approval which shall not unreasonably be withheld. In so doing the parties shall consider all the matters referred to in Rule 6.4 and shall state whether or not they wish Part F or Part G or Part H of these Rules to apply.
- 6.4 The parties and the Arbitrator shall consider whether and to what extent
- (a) Part F (Short Procedure), Part G (Expedited Procedure) or Part H (Special Procedure for Experts) of these Rules shall apply
 - (b) progress may be facilitated and costs saved by determining some of the issues in advance of the main hearing
 - (c) evidence of Experts may be necessary or desirable
 - (d) disclosure of documents should be ordered
 - (e) there should be a limit put on Recoverable Costs
 - (f) where the Act applies to the Arbitration the parties should enter into an agreement (if they have not already done so) excluding the right to appeal in accordance with ss32, 45 and 69 of the Act

and in general shall consider such other steps as may achieve the speedy and cost effective resolution of the disputes.

Part C. Control of the Proceedings

Rule 7. Power to control the proceedings

Jurisdiction

- 7.1 The Arbitrator may exercise any or all of the powers set out or necessarily to be implied in this Procedure on such terms as he thinks fit, and the parties shall not deny that the Arbitrator has such powers.
- 7.2 The Arbitrator shall have power to rule on his own substantive jurisdiction and in particular as to
- (a) whether there is a valid arbitration agreement
 - (b) whether he is properly appointed
 - (c) whether there is a dispute or difference capable of being referred to arbitration
 - (d) whether the dispute has been validly referred
 - (e) what matters have been submitted in accordance with the arbitration agreement and this Procedure.

- 7.3 Should any party refer a ruling under Rule 7.2 to the court the Arbitrator shall direct whether or not the arbitral proceedings shall continue pending a decision by the court.

General

- 7.4 The Arbitrator shall have power to decide all procedural and evidential matters including but not limited to
- (a) whether any and if so what form of written statements of claim and defence are to be used, when these should be supplied and the extent to which such statements can later be amended

- (b) whether any and if so which documents or classes of document should be disclosed between and produced by the parties and at what stage
 - (c) whether any and if so what questions should be put to and answered by the respective parties in advance of a hearing and when and in what form this should be done
 - (d) whether to apply the strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered on any matters of fact or opinion, and the time, manner and form in which such material should be exchanged and presented
 - (e) whether and to what extent the Arbitrator should himself take the initiative in ascertaining the facts and the law
 - (f) whether to rely upon his own knowledge and expertise to such extent as he thinks fit
 - (g) whether and to what extent there should be oral or written evidence or submissions
 - (h) whether and to what extent Expert evidence should be adduced
 - (i) whether and to what extent evidence should be given under oath or affirmation
 - (j) the manner in which the evidence of witnesses shall be taken
 - (k) whether translations of any relevant documents are to be supplied
- and in default of agreement between the parties, shall have power to decide
- (l) when and where any part of the proceedings is to be held
 - (m) the language or languages to be used in the proceedings.

Non-compliance with orders

- 7.5 The Arbitrator shall have power to give orders and directions in respect of
- (a) the time for compliance and the consequences of non-compliance with orders and directions
 - (b) the conducting of enquiries, tests or investigations which the Arbitrator may require
 - (c) the recognition or disallowance of any level of representation in the determination of costs.
- 7.6 Should any party fail to comply with any direction given in accordance with this Procedure such inferences may be drawn therefrom as seem to the Arbitrator both reasonable and just.

Use of assessors and seeking outside advice

- 7.7 The Arbitrator may appoint a legal technical or other assessor to assist him in the conduct of the arbitration. The Arbitrator shall direct when such assessor is to attend hearings of the arbitration.
- 7.8 The Arbitrator may seek legal technical or other advice on any matter arising out of or in connection with the proceedings. The parties shall be given a reasonable opportunity to comment on any information, opinion or advice offered by any such person.
- 7.9 All costs arising from the Arbitrator's actions under Rules 7.7 and 7.8 shall be costs in the arbitration.

Security for costs

- 7.10 The Arbitrator shall have power to
- (a) direct that the Recoverable Costs of the arbitration be limited to a specified amount
 - (b) order the deposit of money or other security to secure the whole or any part of the amount(s) in dispute
 - (c) make an order for security for costs in favour of one or more of the parties
 - (d) order his own costs to be secured.

Money ordered to be paid under this Rule shall be paid without delay into a separate bank account in the name of a stakeholder to be appointed by and subject to the directions of the Arbitrator.

- Protective measures**
- 7.11 The Arbitrator (and in the case of urgency the courts also) shall have power to
- (a) order the preservation of evidence
 - (b) make orders relating to property which is the subject of the proceedings or as to which any question arises in the proceedings
 - (i) for the inspection, photographing, preservation, custody or detention of the property
 - (ii) ordering that samples be taken from, or any observation be made of or experiment conducted upon, the property
 - (c) give directions for the detention storage sale or disposal of the whole or any part of the subject matter of the dispute at the expense of one or both of the parties.

Part D. Procedures before the Hearing

Rule 8. Statements of case and disclosure of documents

- 8.1 Unless the Arbitrator otherwise directs, each party shall prepare in writing and shall serve upon the Other Party or parties and the Arbitrator a statement of their case comprising
- (a) a summary of that party's case
 - (b) a summary of that party's evidence
 - (c) a statement or summary of the issues between the parties
 - (d) a list and/or a summary of the documents relied upon
 - (e) any points of law with references to any authorities relied upon
 - (f) a statement or summary of any other matters likely to assist the resolution of the disputes or differences between the parties
 - (g) any other document or statement that the Arbitrator considers necessary.
- The Arbitrator may order any party to answer the Other Party's case and to give reasons for any disagreement therewith.
- 8.2 Statements or answers shall contain sufficient detail for the Other Party to know the case he has to answer. If sufficient detail is not provided the Arbitrator may of his own motion or at the request of the Other Party order the provision of such further information, clarification or elaboration as the Arbitrator may think fit.
- 8.3 The Arbitrator may order any party to deliver either with its statement of case or otherwise any documents in his possession custody or power which relate either generally or specifically to matters in issue, or upon which he intends to rely.
- 8.4
- (1) If a party fails to comply with any order made under this rule the Arbitrator may issue a peremptory order to the same effect directing such time for compliance as the Arbitrator considers appropriate.
 - (2) If the defaulting party fails to comply with a peremptory order the Arbitrator shall have power to
 - (a) debar that party from relying on the matters in respect of which he is in default
 - (b) draw such adverse inferences from the act of non-compliance as the circumstances justify
 - (c) proceed to an award on the basis of such materials as have been properly provided to him.
- Provided that the Arbitrator shall first give notice to the party in default that he intends to proceed under this rule.
- 8.5 If the Arbitrator is satisfied that there has been inordinate and inexcusable delay by either party in pursuing his claim (or counter-claim) and that delay
- (a) gives rise or is likely to give rise to substantial risk that it is not possible to have a fair resolution of the issues in that claim
 - (b) has caused or is likely to cause, serious prejudice to the other party
- then the Arbitrator may make an award dismissing the claim.

**Rule 9.
Power to order
concurrent
Hearings**

- 9.1 Where disputes or differences have arisen under two or more Contracts each concerned wholly or mainly with the same subject matter and the resulting arbitrations have been referred to the same Arbitrator he may with the agreement of all the parties concerned or upon the application of one of the parties being a party to all the contracts involved order that the whole or any part of the matters at issue shall be heard together upon such terms or conditions as the Arbitrator thinks fit.
- 9.2 Where an order for concurrent Hearings has been made under Rule 9.1 the Arbitrator shall nevertheless make and publish separate awards unless all the parties otherwise agree but the Arbitrator may if he thinks fit prepare one combined set of reasons to cover all the awards.

**Rule 10.
Procedural
meetings**

- 10.1 The Arbitrator may at any time call such procedural meetings as he deems necessary to identify or clarify the issues to be decided and the Procedures to be adopted. For this purpose the Arbitrator may request particular persons to attend on behalf of the parties.
- 10.2 Either party may at any time apply to the Arbitrator for leave to appear before him on any interlocutory matter. The Arbitrator may call a procedural meeting for the purpose or deal with the application in correspondence or otherwise as he thinks fit.
- 10.3 At any procedural meeting or otherwise the Arbitrator may give such directions as he thinks fit for the proper conduct of the arbitration.

**Rule 11.
Preparation for
the Hearing**

- 11.1 In addition to his other powers the Arbitrator shall also have power to carry out the following.
- (a) Order that the parties shall agree facts as facts and figures as figures where possible.
 - (b) Order the parties to prepare a paginated bundle of all documents relied upon by the parties, agreed if possible. The bundle(s) shall thereby be deemed to have been entered in evidence without further proof and without being read out at the hearing subject to witnesses confirming their statements, on oath if required by the Arbitrator and provided always that either party may at the hearing challenge the admissibility of any document in the agreed bundle.
 - (c) Direct that any Experts upon whose reports the parties rely shall exchange reports before the hearing and shall meet and prepare a joint report before the hearing to identify all those matters on which they agree and all those matters on which they disagree, stating the reasons for any disagreement.
 - (d) Direct that any witness statements of fact on which the parties intend to rely shall be exchanged before the hearing.
- 11.2 Before the hearing the Arbitrator may, and if so requested by the parties, shall read the documents to be used at the hearing. For this or any other purpose the Arbitrator may require all such documents to be delivered to him at such time and place as he may specify.

Part E. Procedure at the Hearing

**Rule 12.
Powers at the
Hearing**

- 12.1 The Arbitrator may hear the parties, their representatives and/or witnesses at any time or place and may adjourn the arbitration for any period on the application of any party or as he thinks fit.
- 12.2 Any party may be represented by any person including in the case of a company or other legal entity a director, officer, employee or beneficiary of such company or entity. In particular, a person shall not be prevented from representing a party because he is or may be also a witness in the proceedings. Nothing shall prevent a party from being represented by different persons at different times.
- 12.3 Nothing in these Rules or in any other rule custom or practice shall prevent the Arbitrator from starting to hear the arbitration once his appointment is completed or at any time thereafter.

- 12.4 Any meeting with or summons before the Arbitrator at which both parties are represented may if the Arbitrator so directs be treated as part of the hearing of the arbitration.
- 12.5 At or before the Hearing and after hearing representations on behalf of each party the Arbitrator shall determine the order in which the parties shall present their cases and/or the order in which the issues shall be heard and determined.
- 12.6 Either party may make oral submissions to which the other party shall have the right to reply. The Arbitrator may order that such submissions shall be confirmed in writing and served on the other party before the hearing.
- 12.7 The Arbitrator may at any time (whether before or after the hearing has commenced) allocate the time available for the Hearing between the parties and those representing the parties shall then adhere strictly to that allocation. Should a party's representative fail to complete the presentation of that party's case within the time so allowed further time shall only be afforded at the sole discretion of the Arbitrator and upon such conditions as to costs as the Arbitrator may see fit to impose.
- 12.8 The Arbitrator may on the application of either party or of his own motion hear and determine any issue or issues separately.
- 12.9 If a party fails to appear at the hearing and provided that the absent party has had notice of the hearing or the Arbitrator is satisfied that all reasonable steps have been taken to notify him of the hearing, the Arbitrator may proceed with the hearing in his absence. The Arbitrator shall nevertheless take all reasonable steps to ensure that the disputes between the parties are determined justly and fairly.

**Rule 13.
Evidence**

- 13.1 The Arbitrator may order a party to submit in advance of the hearing a list of the witnesses he intends to call. That party shall not thereby be bound to call any witness so listed.
- 13.2 No Expert evidence shall be admissible except by leave of the Arbitrator. Leave may be given on such terms and conditions as the Arbitrator thinks fit. Unless the Arbitrator otherwise orders such terms shall be deemed to include a requirement that the report from any Expert on which a party intends to rely shall be served upon the Other Party within a reasonable time before the hearing.
- 13.3 The Arbitrator may order that Experts appear before him separately or concurrently at the hearing so that he may examine them inquisitorially provided always that at the conclusion of the questioning by the Arbitrator the parties or their representatives shall have the opportunity to put such further questions to any Expert as they may reasonably require.
- 13.4 The Arbitrator may order the parties to serve written witness statements of fact on which they intend to rely, confirmed by the witness in a Statement of Truth. The Arbitrator may also order any party to prepare and disclose in writing in advance a list of points or questions to be put in cross-examination of any witness.
- 13.5 Where a list of questions is disclosed whether pursuant to an order of the Arbitrator or otherwise the party making disclosure shall not be bound to put any question therein to the witness unless the Arbitrator so orders. Where the party making disclosure puts a question not so listed in cross-examination the Arbitrator may disallow the costs thereby occasioned.
- 13.6 The Arbitrator may order that any witness statement or Expert's report which has been disclosed shall stand as the evidence in chief of that witness or Expert if confirmed by the witness or expert at the hearing and on oath if required by the Arbitrator provided that the other party has been or will be given an opportunity to cross-examine the witness or Expert thereon. The Arbitrator may also at any time before such cross-examination order the witness or Expert to deliver written answers to questions arising out of any statement or report.

Part F. Short Procedure

Rule 14. Short Procedure

Statement of case

- 14.1 Where Rule 1.4(a) applies, or where the parties so agree pursuant to Rule 6.4(a) (either of their own motion or at the invitation of the Arbitrator) the arbitration shall be conducted in accordance with the following Short Procedure.
- 14.2 Within 2 working days of the appointment of the arbitrator (or, if one has already been appointed, from the delivery of the Notice to Refer), the claiming party shall set out his case in the form of a file containing
- (a) a statement as to the orders or awards he seeks
 - (b) a statement of his reasons for being entitled to such orders or awards
 - (c) copies of any documents on which he relies (including witness statements and expert reports) identifying the origin and date of each document

and shall deliver copies of the said file to the Other Party and to the Arbitrator in such manner and within such time as the Arbitrator may direct.

Provided that where this Procedure is adopted under Rules 1.4(e) and 6.4(a) the parties shall agree the date for the submission of the file.

- 14.3 The Responding Party shall within 14 days of receipt of the claiming party's file deliver to the claiming party and to the Arbitrator his defence to the claiming party's case in like form.

- 14.4 There shall be no counterclaim. Should the Responding Party wish to raise a counterclaim he must do so by way of a separate reference.

Close of pleadings

- 14.5 Following delivery of the Responding Party's file under Rule 14.3 there shall be a period of 14 days during which the parties may comment on their opponent's file and/or add to or deduct from their own file.

Upon expiry of the said period of 14 days both files shall be closed and no further comment shall be admissible.

Award

- 14.6 Within 14 days after closure of the files pursuant to Rule 14.5 the Arbitrator shall make and publish his Award. Provided that in his sole discretion the Arbitrator may extend this period of 14 days to accommodate the provisions of Rule 14.7.

Costs

- 14.7 Notwithstanding the provisions of Rules 14.5 and 14.6 and in his own discretion the Arbitrator may

- (a) visit the Site or the Works
- (b) require either or both parties to submit further documents or information in writing
- (c) require the parties to attend a meeting for the purpose of answering the Arbitrator's questions put to them, their representatives or witnesses, save that the parties shall not themselves ask questions unless the Arbitrator so permits, and that no person shall be bound to appear before him.

- 14.8 Neither party shall be entitled to a formal hearing or to examine or cross-examine witnesses or to make submissions other than in writing unless the Arbitrator in his sole discretion gives leave.

Such leave shall be given only upon the condition that the requesting party bear the whole of any extra costs thereby incurred to himself the other party and to the Arbitrator.

Part G. The Expedited Procedure

Rule 15. The Expedited Procedure

- 15.1 Where Rule 1.4(d) or (e) applies or where the parties so agree pursuant to Rule 6.4(a) (either of their own motion or at the invitation of the Arbitrator) the arbitration shall be conducted in accordance with the following Expedited Procedure.

15.2 Within 2 working days of his appointment (or the adoption of this procedure if later) the Arbitrator shall establish and order a procedural timetable of no longer than 100 days to run from service of the statement of claim or from the date that the Arbitrator gives his directions (whichever is later).

15.3 The said timetable shall include

- (a) a date for service of the statement of claim (if not already served) as soon as possible
- (b) a date for service of the statement of defence within 21 working days thereafter
- (c) a date for service of the reply 14 working days thereafter
- (d) either
 - (i) a date for an oral hearing not exceeding 5 working days to commence not more than 28 days after conclusion of the foregoing steps
 - (ii) final written submissions to be served within 10 working days from the expiry of the period allowed in Rule 15.3(c)
 - (iii) where the Arbitrator is asked to award costs, he may order that submissions on costs shall be served within 5 working days from the date of publication of his award on the substantive issues.

The Arbitrator may, if so agreed by the parties, direct shorter periods for any of the foregoing steps and the period of 100 days shall be reduced accordingly.

15.4 The Arbitrator, for the purpose of achieving the foregoing time limits may do any of the following

- (a) order any submission or other material to be delivered in writing
- (b) take the initiative in ascertaining the facts and the law
- (c) direct the manner in which the time at the hearing is to be used
- (d) limit or specify the number of witnesses and/or Experts to be heard orally
- (e) order questions to witnesses or experts to be put and answered in writing
- (f) conduct the questioning of witnesses himself
- (g) require two or more witnesses to give their evidence together.

Documents

15.5 All submissions served in accordance with Rule 15.3 shall be accompanied by all supporting documents, statements of witnesses and Experts' reports relied on, and by requests for disclosure of specific documents by the Other Party.

15.6 Subject to any direction or ruling by the Arbitrator on any issue as to disclosure of documents, each party shall serve copies of the documents so requested within a further period of 14 days. No further documents may be served by either party unless requested by the Arbitrator.

Confirmation of dates

15.7 Upon completion of the steps set out in Rules 15.3(a) to (c) and 15.4 the Arbitrator shall confirm or vary the date or dates ordered under Rule 15(3)(d).

Award

15.8 The Arbitrator shall make his award on the substantive issues within 18 days of the end of the oral hearing pursuant to Rules 15.3(d)(i) or receipt of final submissions pursuant to rule 15.3(d)(ii) (as the case may be). Where he is asked to decide costs, he shall make his award on costs within 7 days of the service of submissions pursuant to Rule 15.3(d)(iii).

Extension of time

15.9 The parties may agree to extend the period of 100 days. The Arbitrator shall have no such power.

Part H. Special Procedure for Experts

Rule 16. Special Procedure for Experts

16.1 Where the parties so agree (either of their own motion or at the invitation of the Arbitrator) the hearing and determination of any issues of fact which depend upon the evidence of Experts shall be conducted in accordance with the following Special Procedure.

- 16.2 Each party shall set out his case on such issues in the form of a file containing
- (a) a statement of the factual findings he seeks
 - (b) a report or statement from and signed by each Expert upon whom that party relies
 - (c) copies of any other documents referred to in each Expert's report or statement or on which the party relies identifying the origin and date of each document

and shall deliver copies of the said file to the other party and to the Arbitrator in such manner and within such time as the Arbitrator may direct.

- 16.3 After reading the parties' cases the Arbitrator may view the site or the Works and may require either or both parties to submit further documents or information in writing.
- 16.4 Thereafter the Arbitrator shall fix a day when he shall meet the Experts whose reports or statements have been submitted. At the meeting each Expert may address the Arbitrator and put questions to any other Expert representing the Other Party. The Arbitrator shall so direct the meeting as to ensure that each Expert has an adequate opportunity to explain his opinion and to comment upon any opposing opinion. No other person shall be entitled to address the Arbitrator or question any Expert unless the parties and the Arbitrator so agree.
- 16.5 Thereafter the Arbitrator may make and publish an award setting out with such details or particulars as may be necessary his decision upon the issues dealt with.

Rule 17. Costs

- 17.1 The Arbitrator may in his award make orders as to the payment of any costs relating to the foregoing matters including his own fees and expenses in connection therewith.
- 17.2 Unless the parties otherwise agree and so notify the Arbitrator neither party shall be entitled to any costs in respect of legal representation assistance or other legal work relating to the hearing and determination of factual issues by this Special Procedure.

Part I. Awards

Rule 18. Awards

- 18.1 The Arbitrator may at any time make an award, and may make more than one award at different times on different aspects of the matters to be determined.
- 18.2 Awards may
- (a) order the payment of money to one or more of the parties
 - (b) order a party to do or refrain from doing anything
 - (c) order specific performance
 - (d) make a declaration as to any matter to be determined
 - (e) order rectification, setting aside or cancellation of a deed or other document
 - (f) be a consent award in the event of a settlement, which shall include an allocation of the costs of the arbitration.

Provisional relief

- 18.3 The Arbitrator may also make an order for provisional relief and for this purpose the Arbitrator shall have power to award payment by one party to another of a sum representing a reasonable proportion of the final net amount which in his opinion that party is likely to be ordered to pay after determination of all the issues in the arbitration and after taking into account any defence or counterclaim upon which the Other Party may be entitled to rely.
- 18.4 The Arbitrator shall have power to order the party against whom an order for provisional relief is made to pay part or all of the sum awarded to a stakeholder. In default of compliance with such an order the Arbitrator may order payment of the whole sum in the order for provisional relief to the Other Party.

18.5 Unless the parties otherwise agree after the commencement of the arbitration the Arbitrator shall have power to order payment of costs in relation to an order for provisional relief including power to order that such costs shall be paid forthwith.

18.6 An order for provisional relief shall be binding upon the parties unless and until it is varied by any subsequent award made and published by the same Arbitrator or by any other Arbitrator having jurisdiction over the matters in dispute. Any such subsequent award may order repayment of monies paid in accordance with the order.

Interest

18.7 In any award the Arbitrator shall have power to award interest at such rate and between such dates as he thinks fit.

Costs

18.8 In any award the Arbitrator shall have power to

- (a) allocate the costs of the arbitration between the parties
- (b) direct the basis upon which the costs are to be determined
- (c) in the default of agreement by the parties, determine the amount of the Recoverable Costs.

18.9 Unless the parties agree otherwise, the arbitrator shall allocate costs on the general principle that costs should follow the event except where it appears that in the circumstances this is not appropriate in relation to the whole or part of the costs.

18.10 In allocating costs, the arbitrator shall have regard to any offer of settlement made prior to the making of his award. As a general principle, a party who recovers less overall than a sum offered in settlement should recover costs up to the date by which it was reasonable for him to have accepted that offer and the other party should recover his costs thereafter.

18.11 The arbitrator may determine the recoverable costs on such basis as he considers appropriate. Unless ordered otherwise, the recoverable costs shall be determined on the basis that there shall be allowed a reasonable amount in respect of all costs reasonably incurred.

Rule 19. Reasons

19.1 The Arbitrator shall include in his award reasons for the award unless it is a consent award or the parties have agreed to dispense with reasons.

Rule 20. Making the award

20.1 Upon the closing of the hearing (if any) and after having considered all the evidence and submissions the Arbitrator shall prepare and make his award.

20.2 When the Arbitrator has made his award or an order for provisional relief under Rule 18 he shall so inform the parties in writing and shall specify how and where it may be taken up upon full payment of his fees and expenses.

20.3 The Arbitrator may on the application of any party made within 28 days of the date of the award or on his own initiative

- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award
- (b) make an additional award in respect of any claim (including a claim for loss of interest or costs) which was presented to him but was not dealt with in the award.

Such correction or additional award shall be made within 28 days of the date of the award or of receipt of the application (as the case may be).

Rule 21. Appeals

21.1 If any party applies to the court for leave to appeal against any award or decision or for an order staying the arbitration proceedings or for any other purpose that party shall forthwith notify the Arbitrator of the application.

The Arbitrator may continue the arbitral proceedings, including making further awards, pending a decision by the court.

- 21.2 Once any award or decision has been made and taken up the Arbitrator shall be under no obligation to make any statement in connection therewith other than in compliance with an order of the court under s.70 (4) of the Arbitration Act 1996.

Part J. Miscellaneous

Rule 22. Definitions

- 22.1 In these Rules the following definitions shall apply.
- (a) All references in this Procedure to ‘days’ are references to Calendar Days unless otherwise stated.
 - (b) ‘Arbitrator’ includes a tribunal of two or more Arbitrators or an Umpire.
 - (c) ‘Institution’ or ‘ICE’ means The Institution of Civil Engineers.
 - (d) ‘Responding Party’ and ‘Other Party’ includes the plural unless the context otherwise requires.
 - (e) ‘President’ means the President for the time being of the ICE or any Vice-President acting on his behalf or such other person as may have been nominated in the arbitration agreement to appoint the Arbitrator in default of agreement between the parties.
 - (f) ‘Procedure’ means the Institution of Civil Engineers Arbitration Procedure unless the context otherwise requires.
 - (g) ‘Contract’ means the Contract between the parties which either incorporates the arbitration agreement or under which the dispute arises.
 - (h) ‘Expert’ means an expert witness or person called to give expert opinion evidence.
 - (i) The ‘Act’ means the Arbitration Act 1996 and when the Act applies words defined in it shall have the same meanings in this Procedure.
 - (j) ‘Recoverable Costs’ of the Arbitration shall include the parties’ own legal and other costs incurred in preparing their cases, and preparing for and appearing at any hearing or other meeting.
 - (k) The ‘Arbitrator’s Costs’ shall include his fees and expenses incurred on or in connection with the arbitration, and the fees and expenses of any advisor or assessor he may employ in accordance with this Procedure.

Rule 23. Application of the ICE Procedure

- 23.1 This Procedure shall apply to the conduct of the arbitration if
- (a) the Contract so provides
 - (b) the parties at any time so agree
 - (c) the Arbitrator so stipulates at the time of his appointment.
- Provided that where this Procedure applies by virtue of the Arbitrator’s stipulation under (c) above the parties may within 14 days of that appointment agree otherwise in which event the Arbitrator may terminate his appointment and the parties shall pay his reasonable charges in equal shares.
- 23.2 Where an arbitration is governed by the law of a country other than England and Wales, or Northern Ireland this Procedure shall apply to the extent that the applicable law permits.
- 23.3 If after the appointment of the Arbitrator any agreement is reached between the parties which is inconsistent with this Procedure the Arbitrator shall be entitled upon giving reasonable notice to terminate his appointment, and shall be entitled to payment of his reasonable fees and expenses incurred up to the date of the termination.

Rule 24. Exclusion of liability

- 24.1 Neither the Arbitrator nor any employee or agent of the Arbitrator shall be liable for anything done or omitted in the discharge or purported discharge of his functions as Arbitrator unless the act or omission is shown to have been in bad faith.
- 24.2 Neither the ICE nor its servants or agents nor the President shall be liable to any party for any act omission or misconduct in connection with any appointment made or any arbitration conducted under this Procedure.

Sample documents

Notice to Refer a Dispute to Arbitration

To: *(Name of Respondent)*
(Address of Respondent)

Date:

Notice to Refer

(Contract name)

We consider that the following dispute(s) or difference(s) have arisen between us:

We now give notice that we require these dispute(s) or difference(s) to be referred to arbitration.

Yours faithfully,

For and on behalf of
(Claimant's name)

Notice to Concur in the Appointment of an Arbitrator

To: *(Name of Respondent)*
(Address of Respondent)

Date:

(Title of dispute):

Further to the **Notice to Refer** this dispute between us to arbitration given by us/you and dated (date) we now call upon you to concur in the appointment of an arbitrator to hear and determine the dispute(s) listed in the **Notice to Refer**.

We propose the following person for your consideration:

Name of the proposed Arbitrator:
Address:

And require you within 14 days of receipt of this notice to:

- (h) agree in writing to the appointment; or
- (i) propose an alternative person for our consideration;

failing which we intend to apply to the President of the Institution of Civil Engineers to appoint an arbitrator.

Yours faithfully,

For and on behalf of:
(Name of applicant)

Signed by the Arbitrator

Name

Signature

Date

SCHEDULE TO THE ARBITRATOR'S AGREEMENT

1. The Arbitrator shall be paid at the hourly rate of £ in respect of all time spent upon or in connection with the arbitration including time spent travelling.
2. The Arbitrator shall be reimbursed in respect of all disbursements properly made including, but not restricted to:
 - a. Printing, reproduction and purchase of documents, drawings, maps, records and photographs.
 - b. Telegrams, telex, faxes, and telephone calls.
 - c. Postage and similar delivery charges.
 - d. Travelling, hotel expenses and other similar disbursements.
 - e. Room charges.
 - f. Charges for legal or technical advice obtained in accordance with the Procedure.
3. The Arbitrator shall be entitled to be paid an appointment fee of £ . This fee shall become payable in equal amounts by each Party within 14 days of the appointment of the arbitrator. The fee will be deducted from the final fees charged by the arbitrator. Where applicable, a party who has paid part of the appointment fee and is found not liable for any of the arbitrator's fees shall be reimbursed in accordance with the award made by the arbitrator.
4. The Arbitrator is/is not registered for VAT.
5. Where the arbitrator is so registered, VAT shall be charged additionally in accordance with the rates current at the date of invoice.
6. All payments shall become due 14 days after the date of invoice, thereafter interest shall be payable at 10% per annum above Bank of England base rate for every day the amount remains outstanding.