

# ACICA Arbitration Rules incorporating the Emergency Arbitrator Provisions

1 January 2016

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# MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 10 of the ACICA Arbitration Rules].

## SECTION I: INTRODUCTORY RULES

### 1 ACICA Arbitration Rules

These rules (“Rules”) are the rules of arbitration of the Australian Centre for International Commercial Arbitration (“ACICA”) and may be referred to as the “ACICA Arbitration Rules”.

### 2 Scope of Application and Interpretation

- 2.1 Where parties agree in writing that disputes shall be referred to arbitration under the rules of or by ACICA, then such disputes shall be resolved in accordance with these Rules, subject to such modification as the parties may agree in writing.
- 2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- 2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.
- 2.4 The parties to an arbitration agreement referring to these Rules shall be deemed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules.
- 2.5 The provisions contained in Articles 14 and 15 shall not apply if the arbitration agreement was concluded before the date on which the 2016 version of these Rules came into force, unless otherwise agreed by the parties.
- 2.6 ACICA shall have the power to interpret all provisions of these Rules. The Arbitral Tribunal shall interpret the Rules insofar as they relate to its powers and duties under these Rules. In the event of any inconsistency between such interpretation and any interpretation by ACICA, the Arbitral Tribunal’s interpretation will prevail.

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### 3 Overriding Objective

- 3.1 The overriding objective of these Rules is to provide arbitration that is quick, cost effective and fair, considering especially the amounts in dispute and complexity of issues or facts involved.
- 3.2 By invoking these Rules the parties agree to accept the overriding objective and its application by the Arbitral Tribunal.

### 4 Notice, Calculation of Periods of Time

- 4.1 If an address has been designated by a party specifically for the purpose of service or authorised as such by the Arbitral Tribunal, any notice, including a notification, communication or proposal, shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or email may only be made to an address so designated or authorised.
- 4.2 In the absence of any such designation or authorisation, a notice is:
  - (a) received if it is physically delivered to the addressee;
  - (b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee by registered letter or any other means that provides a record of delivery; or
  - (c) deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery.
- 4.3 A notice shall be deemed to have been received on the day it is delivered in accordance with Article 4.1 or 4.2. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
- 4.4 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or

non-business days occurring during the running of the period of time are included in calculating the period.

- 4.5 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.
- 4.6 Any period of time imposed by these Rules or ACICA in respect of the Notice of Arbitration, the Answer to Notice of Arbitration and the composition of the Arbitral Tribunal may be extended by ACICA.

## 5 Notice of Arbitration

- 5.1 The party initiating recourse to arbitration (the “Claimant”) shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 5.2 Subject to Article 5.6, the arbitration shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later. ACICA shall notify the parties of the commencement of the arbitration.
- 5.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
  - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
  - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked. To the extent that claims are made under more than one arbitration clause or agreement, an indication and copy of the arbitration agreement under which each claim is made;
  - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
  - (e) the general nature of the claim and an indication of the amount involved, if any;
  - (f) the relief or remedy sought; and
  - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

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- 5.4 The Notice of Arbitration may also include:
- (a) the Claimant's proposal for the appointment of a sole arbitrator in accordance with Article 11.1;
  - (b) the notification of the appointment of an arbitrator referred to in Article 12.1; and
  - (c) the Statement of Claim referred to in Article 25.
- 5.5 The Claimant shall at the same time send a copy of the Notice of Arbitration to the party or parties against whom it seeks relief ("Respondent" or "Respondents"), and notify ACICA that it has done so, specifying the means by which the Notice of Arbitration was served on the Respondent(s) and the date of service.
- 5.6 If the Notice of Arbitration is incomplete, is not submitted in the required number or if the provisions of Article 5.5 are not complied with, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitration until such defect is remedied. ACICA's discretion in this regard is without prejudice to the provisions with respect to emergency interim measures of protection set out in Schedule 1.

## 6 Answer to Notice of Arbitration

- 6.1 Within 30 days after receipt of the Notice of Arbitration the Respondent(s) shall submit an Answer to Notice of Arbitration to ACICA. It shall be submitted in two copies or such additional number as ACICA directs.
- 6.2 The Answer to Notice of Arbitration shall include the following:
- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the Respondent and its counsel;
  - (b) any plea that an Arbitral Tribunal constituted under these Rules does not have jurisdiction;
  - (c) the Respondent's comments on the particulars set forth in the Notice of Arbitration;
  - (d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration; and
  - (e) the Respondent's proposal as to the number of arbitrators if the parties have not previously agreed thereon.



- 6.3 The Answer to Notice of Arbitration may also include:
- (a) the Respondent's proposal for the appointment of a sole arbitrator in accordance with Article 11.1;
  - (b) the notification of the appointment of an arbitrator referred to in Article 12.1;
  - (c) the Statement of Defence referred to in Article 26; and
  - (d) a brief description of a counterclaim or claim for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought.
- 6.4 The Respondent shall at the same time send a copy of the Answer to Notice of Arbitration to the Claimant and notify ACICA that it has done so, specifying the means by which the Answer to Notice of Arbitration was served on the Claimant and the date of service.
- 6.5 Once the registration fee has been paid and all arbitrators have been confirmed, ACICA shall transmit the file to the Arbitral Tribunal.

## 7 Expedited Procedure

- 7.1 Prior to the constitution of the Arbitral Tribunal, a party may apply to ACICA in writing for the arbitral proceedings to be conducted in accordance with the ACICA Expedited Rules where:
- (a) the amount in dispute determined in accordance with Article 2.2 of Appendix A of these Rules is less than \$5,000,000;
  - (b) the parties so agree; or
  - (c) it is a case of exceptional urgency.
- 7.2 ACICA will consider the views of both parties in determining whether to grant such an application.
- 7.3 Unless the parties agree otherwise, Article 7.1 and 7.2 shall not apply to any consolidated proceedings under Article 14.

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## 8 Representation and Assistance

- 8.1 The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.
- 8.2 Each party shall use its best endeavours to ensure that its legal representatives comply with the International Bar Association Guidelines on Party Representation in International Arbitration in the version current at the commencement of the arbitration.

## 9 ACICA Facilities and Assistance

ACICA shall, at the request of the Arbitral Tribunal or either party, make available, or arrange for, such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable accommodation for sittings of the Arbitral Tribunal, secretarial assistance and interpretation facilities.

## SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

### 10 Number of Arbitrators

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 30 days after the receipt by the Respondent of the Notice of Arbitration the parties cannot agree, ACICA shall determine the number of arbitrators taking into account all relevant circumstances.

### 11 Appointment of a Sole Arbitrator

- 11.1 If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.
- 11.2 If within 40 days after the date when the Notice of Arbitration was received by the Respondent the parties have not reached agreement on the choice of a sole arbitrator and provided written evidence of their agreement to ACICA, the sole arbitrator shall be appointed by ACICA.
- 11.3 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.
- 11.4 For the purposes of Articles 11.3, 12.2, 14.4, 15.11, 16.3, 17.1 and 18.4, ACICA, the Arbitral Tribunal and the parties may have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration in the version current at the commencement of the arbitration.

### 12 Appointment of Three Arbitrators

- 12.1 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the Chairperson of the Tribunal.

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- 12.2 If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request ACICA to appoint the second arbitrator. In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 12.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the Chairperson, the Chairperson shall be appointed by ACICA.

### 13 Appointment of Arbitrators in Multi-Party Disputes

- 13.1 For the purposes of Articles 11 and 12, the acts of multiple parties, whether as multiple Claimants or multiple Respondents, shall have no effect, unless the multiple Claimants or multiple Respondents have acted jointly and provided written evidence of their agreement to ACICA.
- 13.2 If three arbitrators are to be appointed and the multiple Claimants or multiple Respondents do not act jointly in appointing an arbitrator, ACICA shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairperson, unless all parties agree in writing on a different method for the constitution of the Arbitral Tribunal and provide written evidence of their agreement to ACICA.

### 14 Consolidation of Arbitrations

- 14.1 Upon request by a party, ACICA may consolidate two or more arbitrations pending under these Rules into a single arbitration, if:
- (a) the parties have agreed to the consolidation;
  - (b) all the claims in the arbitrations are made under the same arbitration agreement; or
  - (c) the claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and ACICA finds the arbitration agreements to be compatible.
- 14.2 In deciding whether to consolidate, ACICA may take into account any circumstances it considers to be relevant, including,

but not limited to, whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different arbitrators have been appointed.

- 14.3 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.
- 14.4 Within 14 days of being notified of a decision by ACICA to consolidate two or more arbitrations, all parties may agree to the identity of all of the arbitrators to be appointed to the consolidated arbitration. Failing such agreement, ACICA shall revoke the appointment of any arbitrators already appointed and appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, designate one of them to act as Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 14.5 The parties waive any objection, on the basis of ACICA's decision to consolidate, to the validity and/or enforcement of any award made by the Arbitral Tribunal in the consolidated proceedings, in so far as such waiver can validly be made.
- 14.6 The revocation of the appointment of an arbitrator under Article 14.4 is without prejudice to:
- (a) the validity of any act done or order made by the arbitrator before his or her appointment was revoked;
  - (b) his or her entitlement to be paid his or her fees and expenses subject to Article 45 as applicable; and
  - (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.
- 14.7 The party requesting consolidation shall pay to ACICA an application fee as set out in Appendix A.

## 15 Joinder

- 15.1 The Arbitral Tribunal, upon request by a party or third party, shall have the power to allow an additional party to be joined to the arbitration provided that, *prima facie*, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration.

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- 15.2 The Arbitral Tribunal's decision pursuant to Article 15.1 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- 15.3 A party wishing to join an additional party to the arbitration shall submit a Request for Joinder to ACICA. ACICA may fix a time limit for the submission of a Request for Joinder.
- 15.4 The Request for Joinder shall include the following:
- (a) the case reference of the existing arbitration;
  - (b) the names and addresses, telephone numbers, and email addresses of each of the parties, including the additional party;
  - (c) a request that the additional party be joined to the arbitration;
  - (d) a reference to the contract(s) or other legal instrument(s) out of or in relation to which the request arises;
  - (e) a statement of the facts supporting the request;
  - (f) the points at issue;
  - (g) the legal arguments supporting the request;
  - (h) the relief or remedy sought; and
  - (i) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties, including the additional party, and the Arbitral Tribunal, where applicable, by one or more means of service to be identified in such confirmation. A copy of the contract(s) and of the arbitration agreement(s) if not contained in the contract(s), shall be annexed to the Request for Joinder.
- 15.5 Within 15 days of receiving the Request for Joinder, the additional party shall submit to ACICA an Answer to the Request for Joinder. The Answer to the Request for Joinder shall include the following:
- (a) the name, address, telephone and fax numbers, and email address of the additional party and its counsel (if different from the description contained in the Request for Joinder);
  - (b) any plea that the Arbitral Tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;
  - (c) the additional party's comments on the particulars set forth in the Request for Joinder, pursuant to Article 15.4(a) to (g);
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- (d) the additional party's answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 15.4(h);
  - (e) details of any claims by the additional party against any other party to the arbitration; and
  - (f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being served simultaneously on all other parties and the Arbitral Tribunal, where applicable, by one or more means of service to be identified in such confirmation.
- 15.6 A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to ACICA. The provisions of Article 15.4 shall apply to such Request for Joinder.
- 15.7 Within 15 days of receiving a Request for Joinder pursuant to Article 15.3 or 15.6, the parties shall submit their comments on the Request for Joinder to ACICA. Such comments may include (without limitation) the following particulars:
- (a) any plea that the Arbitral Tribunal lacks jurisdiction over the additional party;
  - (b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 15.4(a) to (g);
  - (c) answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 15.4(h);
  - (d) details of any claims against the additional party; and
  - (e) confirmation that copies of the comments have been or are being served simultaneously on all other parties and the Arbitral Tribunal, where applicable, by one or more means of service to be identified in such confirmation.
- 15.8 Where ACICA receives a Request for Joinder before the date on which the Arbitral Tribunal is confirmed, ACICA may decide whether, *prima facie*, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration. If so, ACICA may join the additional party to the arbitration. Any question as to the jurisdiction of the Arbitral Tribunal arising from ACICA's decision under this Article shall be decided by the Arbitral Tribunal once confirmed, pursuant to Article 28.1.
- 15.9 ACICA's decision pursuant to Article 15.8 is without prejudice to the admissibility or merits of any party's pleas.

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- 15.10 Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by ACICA shall be deemed to be the date on which the arbitration in respect of the additional party commences.
- 15.11 Where an additional party is joined to the arbitration before the date on which the Arbitral Tribunal is confirmed, ACICA shall revoke the appointment of any arbitrators already appointed, unless all parties agree on all members of the Arbitral Tribunal within 14 days of being notified of the joinder. Where there is no such agreement, ACICA shall appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, shall designate one of them to act as Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 15.12 The revocation of the appointment of an arbitrator under Article 15.11 is without prejudice to:
- (a) the validity of any act done or order made by that arbitrator before his or her appointment was revoked; and
  - (b) his or her entitlement to be paid his or her fees and expenses subject to Article 45 as applicable.
- 15.13 The parties waive any objection to the validity and/or enforcement of any award made by the Arbitral Tribunal in the arbitration which is based on the joinder of an additional party to the arbitration, in so far as such waiver can validly be made.
- 15.14 The party requesting joinder shall pay to ACICA an application fee as set out in Appendix A.

## 16 Disclosures and Information about Arbitrators

- 16.1 Where the names of one or more persons are proposed or nominated for appointment as arbitrators in accordance with Articles 5.4(a) and (b) and 6.3(a) and (b), their names, postal addresses, telephone and facsimile numbers and email addresses (if any) shall be provided and their nationalities shall be indicated, together with a description of their qualifications.
- 16.2 When ACICA is required to appoint an arbitrator pursuant to Articles 11 to 15, ACICA may require from either party such information as it deems necessary to fulfil its function.



- 16.3 Before appointment, a prospective arbitrator shall sign a statement of availability, impartiality and independence and return the same to ACICA. The prospective arbitrator shall disclose in writing to those who approach him or her in connection with his or her possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed or chosen, and throughout the arbitral proceedings shall without delay disclose in writing such circumstances to the parties unless he or she has already informed them of these circumstances. A copy of any disclosure provided to a party by a prospective arbitrator or arbitrator shall be sent to ACICA.
- 16.4 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate for appointment as party-nominated arbitrator, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence in relation to the parties, or to discuss the suitability of candidates for the selection of Chairperson of the Tribunal where the parties or party-nominated arbitrators are to designate that arbitrator. No party or its representatives shall have any ex parte communication relating to the arbitration with any candidate for the Chairperson of the Tribunal.

## 17 Challenge of Arbitrators

- 17.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.
- 17.2 A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

## 18 Procedure for the Challenge of Arbitrators

- 18.1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 17.

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- 18.2 The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitral Tribunal and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 18.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedures provided in Articles 11 to 17 shall be used for the appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.
- 18.4 If the other party does not agree to the challenge and the challenged arbitrator does not resign, the decision on the challenge shall be made by ACICA.
- 18.5 If ACICA sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 11 to 17.

## 19 Replacement of an Arbitrator

- 19.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 11 to 17 that was applicable to the appointment or choice of the arbitrator being replaced.
- 19.2 In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of him or her performing his or her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

## 20 Repetition of Hearings if Arbitrator Replaced

Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

## SECTION III: ARBITRAL PROCEEDINGS

### 21 General Provisions

- 21.1 Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.
- 21.2 Subject to these Rules, the Arbitral Tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.
- 21.3 As soon as practicable after being appointed the Arbitral Tribunal shall hold a preliminary meeting with the parties in person or by telephone or other means and shall make a procedural timetable for the arbitration which may include provisional hearing dates. The Arbitral Tribunal may at any time after giving the parties an opportunity to present their views, extend or vary the procedural timetable. The Arbitral Tribunal shall raise for discussion with the parties the possibility of using other techniques to facilitate settlement of the dispute.
- 21.4 If either party so requests, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 21.5 Questions of procedure may be decided by the Chairperson alone, or if the Arbitral Tribunal so authorises, any other member of the Arbitral Tribunal. Any such decision is subject to revision, if any, by the Arbitral Tribunal as a whole.
- 21.6 All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.

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## 22 Confidentiality

- 22.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 22.2 The parties, the Arbitral Tribunal and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to any competent court;
  - (b) for the purpose of making an application to the courts of any State to enforce the award;
  - (c) pursuant to the order of a court of competent jurisdiction;
  - (d) if required by the law of any State which is binding on the party making the disclosure; or
  - (e) if required to do so by any regulatory body.
- 22.3 Any party planning to make disclosure under Article 22.2 must within a reasonable time prior to the intended disclosure notify the Arbitral Tribunal, ACICA and the other parties (if during the arbitration) or ACICA and the other parties (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.
- 22.4 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

## 23 Seat of Arbitration

- 23.1 If the parties have not previously agreed on the seat of the arbitration and if within 15 days after the commencement of the arbitration they cannot agree, the seat of the arbitration shall be Sydney, Australia.
- 23.2 The Arbitral Tribunal may decide where the proceedings shall be conducted (at the seat or other venues). In particular, it may hear witnesses and hold meetings for consultation among its members at any venue it deems appropriate, having regard to the circumstances of the arbitration.

- 23.3 The Arbitral Tribunal may meet at any venue it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
- 23.4 The award shall be made at the seat of the arbitration.
- 23.5 The law of the seat shall be the governing law of the arbitration agreement, unless the parties have expressly agreed otherwise and that agreement is not prohibited by an applicable law.

## 24 Language

- 24.1 Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- 24.2 The Arbitral Tribunal may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

## 25 Statement of Claim

- 25.1 Unless the Statement of Claim was contained in the Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Claimant shall communicate its Statement of Claim in writing to the Respondent, each of the arbitrators and ACICA. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.
- 25.2 The Statement of Claim shall include the following particulars:
- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
  - (b) a statement of the facts supporting the claim;
  - (c) the points at issue; and
  - (d) the relief or remedy sought.

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- 25.3 The Claimant may annex to its Statement of Claim all documents it deems relevant or may add a reference to the documents or other evidence it will submit.

## 26 Statement of Defence

- 26.1 Unless the Statement of Defence was contained in the Answer to Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Respondent shall communicate its Statement of Defence in writing to the Claimant, each of the arbitrators and ACICA.
- 26.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 25.2). The Respondent may annex to its Statement of Defence the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit.
- 26.3 Unless put forward in the Answer to Notice of Arbitration, the Respondent may in its Statement of Defence, or at a later stage in the arbitral proceedings if the Arbitral Tribunal decides that the delay was justified under the circumstances, make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract.
- 26.4 The provisions of Article 25.2 (b) to (d) shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

## 27 Amendments to the Claim or Defence

During the course of the arbitral proceedings either party may amend or supplement its claim or defence unless the Arbitral Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant. However, a claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

## 28 Jurisdiction of the Arbitral Tribunal

- 28.1 The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

- 28.2 The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 28, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- 28.3 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 26, or, with respect to a counterclaim, in the reply to the counterclaim.
- 28.4 In general, the Arbitral Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a plea in its final award.

## 29 Further Written Statements

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## 30 Periods of Time

The periods of time fixed by the Arbitral Tribunal for the communication of written statements (including the Statement of Claim and Statement of Defence) should not exceed 45 days. However, the Arbitral Tribunal may extend the periods of time if it concludes that an extension is justified.

## 31 Evidence and Hearings

- 31.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 31.2 The Arbitral Tribunal shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.

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- 31.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Arbitration.

## 32 Experts appointed by Tribunal

- 32.1 To assist it in the assessment of evidence, the Arbitral Tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. The Arbitral Tribunal may meet privately with any tribunal-appointed expert. The Arbitral Tribunal shall establish terms of reference for the expert, and shall communicate a copy of the expert's terms of reference to the parties and ACICA.
- 32.2 The expert shall, before accepting appointment, submit to the Arbitral Tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the Arbitral Tribunal, the parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The Arbitral Tribunal shall decide promptly what, if any, action to take in those circumstances.
- 32.3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.
- 32.4 Upon receipt of the expert's report, the Arbitral Tribunal shall send a copy of the report to the parties who shall be given the opportunity to express, in writing, their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.



- 32.5 At the request of either party, the expert, after delivery of the report, shall attend a hearing at which the parties shall have the opportunity to be present and to examine the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 31 shall be applicable to such proceedings.

### 33 Interim Measures of Protection

- 33.1 Unless the parties agree otherwise in writing:
- (a) a party may request emergency interim measures of protection to be issued by an arbitrator (the Emergency Arbitrator) appointed prior to the constitution of the Arbitral Tribunal in accordance with the provisions set out in Schedule 1; and
  - (b) the Arbitral Tribunal may, on the request of any party, order interim measures of protection. The Arbitral Tribunal may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as it deems appropriate. The Arbitral Tribunal shall endeavour to ensure that the measures are enforceable.
- 33.2 An interim measure of protection is any temporary measure by which the Arbitral Tribunal orders a party to:
- (a) maintain or restore the status quo pending determination of the dispute;
  - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;
  - (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
  - (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
  - (e) provide security for legal or other costs of any party.
- 33.3 Before the Arbitral Tribunal orders any interim measure, the party requesting it shall satisfy the Arbitral Tribunal that:
- (a) irreparable harm is likely to result if the measure is not ordered;

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- (b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and
  - (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.
- 33.4 The Arbitral Tribunal may require a party to provide appropriate security as a condition to granting an interim measure.
- 33.5 The requesting party shall promptly disclose in writing to the Arbitral Tribunal any material change in the circumstances on the basis of which that party made the request for, or the Arbitral Tribunal granted, the interim measure.
- 33.6 The Arbitral Tribunal may modify, suspend or terminate any of its own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitral Tribunal may, on its own initiative, modify, suspend or terminate any of its own interim measures upon prior notice to the parties.
- 33.7 If the Arbitral Tribunal later determines that the measure should not have been granted, it may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.
- 33.8 The power of the Arbitral Tribunal under this Article 33 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the formation of the Arbitral Tribunal shall be promptly communicated, in writing, by the applicant to the Arbitral Tribunal, all other parties and ACICA.

## 34 Default

- 34.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the Arbitral Tribunal may issue an order for the termination of the

arbitral proceedings or any other order as the Arbitral Tribunal considers appropriate. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the proceedings continue.

- 34.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the arbitration.
- 34.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

## 35 Closure of Hearings

- 35.1 The Arbitral Tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
- 35.2 The Arbitral Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to reopen the hearings at any time before the award is made.

## 36 Waiver of Rules

A party that knows that any provision of, or requirement under, these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

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## SECTION IV: THE AWARD

### 37 Decisions

When there are three arbitrators, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. Failing a majority decision on any issue, the opinion of the Chairperson shall prevail.

### 38 Form and Effect of the Award

- 38.1 In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 38.2 An award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 38.3 The Arbitral Tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons are to be given.
- 38.4 An award shall be signed by the arbitrators and it shall contain the date on which and the place (which shall be in conformity with Article 23.4) where the award was made. If any arbitrator refuses or fails to sign an award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson.
- 38.5 The Arbitral Tribunal shall communicate copies of an award signed by the arbitrators to the parties and ACICA.
- 38.6 Before communicating an award to the parties, the Arbitral Tribunal shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to either ACICA or the Arbitral Tribunal.
- 38.7 If the arbitration law of the place where an award is made requires that the award be filed or registered by the Arbitral Tribunal, the Tribunal shall comply with this requirement within the period of time required by law.

## 39 Applicable Law, Amiable Compositeur

- 39.1 The Arbitral Tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Arbitral Tribunal shall apply the rules of law which it considers applicable.
- 39.2 The Arbitral Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorised the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 39.3 In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

## 40 Settlement or Other Grounds for Termination

- 40.1 If, before an award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
- 40.2 If, before an award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 40.1, the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 40.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 38.2, and 38.4 to 38.7, shall apply.

## 41 Interpretation of the Award

- 41.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the award.
- 41.2 The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 38.2 to 38.7 shall apply.

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## 42 Correction of the Award

- 42.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 42.2 Such corrections shall be in writing and the provisions of Articles 38.2 to 38.7 shall apply.

## 43 Additional Award

- 43.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 43.2 If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.
- 43.3 When an additional award is made, the provisions of Articles 38.2 to 38.7 shall apply.

## 44 Costs

The Arbitral Tribunal shall fix the costs of arbitration in its award. The term “costs of arbitration” includes only:

- (a) the fees of the Arbitral Tribunal, to be stated separately as to each arbitrator, and to be fixed in accordance with Article 45;
- (b) the travel (business class airfares) and other reasonable expenses incurred by the arbitrators;
- (c) the costs of expert advice and of other assistance required by the Arbitral Tribunal;
- (d) the travel (business class airfares) and other reasonable expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;

- (e) the legal and other costs, such as the costs of in-house counsel, directly incurred by the successful party in conducting the arbitration, if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;
- (f) ACICA's administration fee;
- (g) fees for facilities and assistance provided by ACICA in accordance with Articles 9 and 47.4;
- (h) ACICA's registration fee; and
- (i) the costs associated with any request for emergency interim measures of protection made pursuant to Article 33.1(a).

## 45 Fees of the Arbitral Tribunal

- 45.1 Unless otherwise agreed, the arbitrators shall be remunerated on the basis of an hourly rate.
- 45.2 The hourly rate shall be agreed between the parties and the arbitrators or, failing agreement, shall be determined by ACICA.
- 45.3 Unless otherwise agreed in writing, the hourly rate will be exclusive of GST, value added tax or any other like tax which may apply.
- 45.4 Where ACICA is requested to determine the hourly rate, it shall take into account, inter alia:
  - (a) the nature of the dispute and the amount in dispute, insofar as it is aware of them; and
  - (b) the standing and experience of the arbitrator.

## 46 Apportionment of Costs

- 46.1 Except as provided in Article 46.2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 46.2 With respect to the costs referred to in Article 44(e), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.

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- 46.3 When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 44 in that order or award.
- 46.4 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 41 to 43.

## 47 Deposit of Costs

- 47.1 As soon as practicable after the establishment of the Arbitral Tribunal, ACICA shall, in consultation with the Arbitral Tribunal, request each party to deposit an equal amount as an advance for the costs referred to in Article 44(a), (b), (c), (f) and (g). ACICA shall provide a copy of the request to the Arbitral Tribunal.
- 47.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitral Tribunal may in its discretion request separate deposits from the parties.
- 47.3 During the course of the arbitral proceedings ACICA, in consultation with the Arbitral Tribunal, may from time to time request supplementary deposits from the parties. ACICA shall provide copies of any such request(s) to the Arbitral Tribunal.
- 47.4 The deposits will be made to and held by ACICA and from time to time will be released by ACICA to the Arbitral Tribunal on its instructions. ACICA may make a charge for its trust account services.
- 47.5 The Arbitral Tribunal will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of the requisite funds.
- 47.6 If the required deposits are not paid in full within 30 days after the receipt of the request, ACICA, in consultation with the Arbitral Tribunal, shall so inform the parties in order that any party may pay the unpaid portion of the deposit to allow the arbitration to proceed. In such circumstances, the party making the substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party and the Arbitral Tribunal may issue an award for unpaid costs on application of that party.



- 47.7 In the event that any deposit directed to be paid under this Article remains unpaid (in whole or in part), the Arbitral Tribunal, in consultation with ACICA, may order the suspension or termination of the arbitral proceedings.
- 47.8 After the award has been made, ACICA shall render an accounting to the parties of the deposits received and held by it and return any unexpended balance to the parties.

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## SECTION V: GENERAL

### 48 Decisions Made by ACICA

- 48.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.
- 48.2 Decisions made by ACICA with respect to all matters relating to the arbitration shall be conclusive and binding upon the parties and the Arbitral Tribunal. ACICA shall not be required to give any reasons.
- 48.3 To the extent permitted by the law of the seat of the arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any such decisions made by ACICA to any State court or other judicial authority.
- 48.4 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

### 49 Immunity of the Arbitral Tribunal

The Arbitral Tribunal shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission was not done in good faith.

## APPENDIX A: ACICA's Fees

### 1 Registration Fee

- 1.1 The reference in these Rules to “dollars” or “\$” is to Australian currency.
- 1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee in the amount set by ACICA in the Schedule of Fees on ACICA's website on the date that the Notice of Arbitration is submitted (“Schedule of Fees”). The registration fee is not refundable.

### 2 Administration Fee

- 2.1 The parties shall pay to ACICA an administration fee as specified in the Schedule of Fees.
- 2.2 For the purposes of determining the amount in dispute:
  - (a) claims, counterclaims and set-off defences shall be added together;
  - (b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;
  - (c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the relevant claim, including any counterclaim or set-off defence; and
  - (d) if the amount in dispute is not specified in the Notice of Arbitration, Statement of Claim or counterclaim, the amount set out in the Schedule of Fees to apply in these circumstances will be payable to ACICA as the administration fee until the amount in dispute is determined by the Arbitral Tribunal. If no such determination is made, or the claim is for non-monetary relief, the administration fee will be as set out in the Schedule of Fees, unless in its discretion ACICA determines that a lesser fee is payable, or if the case is not resolved within 6 months from the appointment of the Arbitral Tribunal, that a higher fee is to be paid (up to the maximum specified in the Schedule of Fees).

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### 3 Consolidation Application Fee

- 3.1 When submitting a request for consolidation, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA.

### 4 Joinder Application Fee

- 4.1 When submitting a request for joinder, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA.

### 5 Emergency Arbitrator Fee

- 5.1 The party applying for the appointment of an Emergency Arbitrator must pay the costs of the emergency proceedings upon filing the application. The applicable costs are the Emergency Arbitrator Fee and the application fee set out in the Schedule of Fees on ACICA's website on the date that the application is filed with ACICA.
- 5.2 ACICA may decide to increase or reduce the costs having regard to the nature of the case, the work performed by the Emergency Arbitrator and ACICA, and other relevant circumstances.

## SCHEDULE 1

### 1 Application for Emergency Interim Measures of Protection

- 1.1 A party in need of emergency interim measures of protection may make an application to ACICA for emergency interim measures of protection prior to the constitution of the Arbitral Tribunal.
- 1.2 The application for emergency interim measures of protection shall:
  - (a) be made to ACICA in writing;
  - (b) be made concurrently with or following the filing of the Notice of Arbitration;
  - (c) if possible, be communicated to all other parties prior to or at the same time as making the application; and
  - (d) include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties of the application.
- 1.3 The application shall contain details of:
  - (a) the nature of the relief sought;
  - (b) the reasons why such relief is required on an emergency basis; and
  - (c) the reasons why the party is entitled to such relief.
- 1.4 The party making the application shall at the same time pay ACICA the Emergency Arbitrator Fee and the application fee as specified in Appendix A.

### 2 Appointment of Emergency Arbitrator

- 2.1 Upon receipt of an application for emergency interim measures of protection ACICA shall use its best endeavours to appoint an Emergency Arbitrator within 1 business day from the receipt of the application and shall notify the parties of the appointment as soon as possible thereafter. A prospective Emergency Arbitrator shall immediately in writing disclose to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A party who intends to challenge an Emergency Arbitrator shall send notice of its

challenge within one business day after being notified of the appointment of that arbitrator and the circumstances disclosed.

- 2.2 The time period for the appointment of the Emergency Arbitrator does not commence until ACICA has received:
  - (a) the application in compliance with Article 1 above; and
  - (b) payment of the Emergency Arbitrator Fee and the application fee.
- 2.3 Unless the parties otherwise agree in writing, the Emergency Arbitrator shall not act as an arbitrator in the proceedings.
- 2.4 Once the Emergency Arbitrator has been appointed, ACICA shall refer the application to the Emergency Arbitrator.

### 3 Decisions on Emergency Interim Measures of Protection

- 3.1 Any decision on an application for emergency interim measures of protection shall be made not later than 5 business days from the date upon which the application was referred to the Emergency Arbitrator pursuant to Article 2.4 above. ACICA may extend this time limit upon a request from the Emergency Arbitrator.
- 3.2 Any decision on an application for emergency interim measures of protection shall:
  - (a) be made in writing;
  - (b) state the date when it was made;
  - (c) contain reasons for the decision; and
  - (d) be signed by the Emergency Arbitrator.
- 3.3 The Emergency Arbitrator shall have the power to order or award any interim measure of protection on an emergency basis (the “Emergency Interim Measure”) that he or she deems necessary and on such terms as he or she deems appropriate.
- 3.4 The Emergency Arbitrator may modify or vacate the Emergency Interim Measure for good cause shown at any time prior to the constitution of the Arbitral Tribunal.
- 3.5 Before the Emergency Arbitrator orders or awards any Emergency Interim Measure, the party requesting it shall satisfy the Emergency Arbitrator that:
  - (a) irreparable harm is likely to result if the Emergency Interim Measure is not ordered;

- (b) such harm substantially outweighs the harm that is likely to result to the party affected by the Emergency Interim Measure if the Emergency Interim Measure is granted; and
  - (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.
- 3.6 The Emergency Arbitrator may require a party to provide appropriate security as a condition of any Emergency Interim Measure.
- 3.7 The Emergency Arbitrator shall promptly deliver a copy of the decision on emergency interim measures of protection and any Emergency Interim Measure to each of the parties and ACICA.

## 4 Compliance with the Emergency Interim Measure

- 4.1 Any Emergency Interim Measure shall be binding on the parties.
- 4.2 The parties undertake to comply with any Emergency Interim Measure without delay.
- 4.3 Any Emergency Interim Measure shall, in any event, cease to be binding if:
  - (a) the Arbitral Tribunal makes a final award;
  - (b) the claim is withdrawn;
  - (c) the Emergency Arbitrator or the Arbitral Tribunal (whichever applies) so decides; or
  - (d) the Arbitral Tribunal is not appointed within 90 days of the Emergency Interim Measure being made.

## 5 Powers after Arbitral Tribunal Appointment

- 5.1 The Emergency Arbitrator's jurisdiction and powers cease forthwith on the appointment of the Arbitral Tribunal.
- 5.2 The Arbitral Tribunal may reconsider, vacate or modify any Emergency Interim Measure.
- 5.3 The Arbitral Tribunal is not bound by any decision or the reasons of the Emergency Arbitrator.

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## 6 Costs

- 6.1 The costs associated with the emergency interim measures of protection proceedings include:
- (a) the Emergency Arbitrator Fee and the application fee; and
  - (b) the legal and other costs directly incurred by the parties.
- 6.2 If the time for a decision on an application for emergency interim measures of protection is extended pursuant to Article 3.1 above, ACICA may request an increase to the Emergency Arbitrator Fee specified in Appendix A.
- 6.3 The costs associated with any emergency interim measures of protection proceedings may initially be apportioned by the Emergency Arbitrator and are subject to the Arbitral Tribunal's determination of the costs of arbitration under the Rules.

## 7 Other

- 7.1 The power of the Emergency Arbitrator under this Schedule 1 shall not prejudice a party's right to apply to any competent court or other judicial authority for emergency interim measures. If any such application or any order for such measures is made after the referral of an application for emergency interim measures of protection to an Emergency Arbitrator, the applicant shall promptly notify the Emergency Arbitrator, all other parties and ACICA in writing.
- 7.2 The Emergency Arbitrator shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission was not done in good faith.