BUILDING DISPUTES TRIBUNAL
Te Taraipiunara Tautohe Hanga Whare

ARB-MED RULES

2025 Revision

BUILDING DISPUTES TRIBUNAL
TE TARAIPIUNARA TAUTOHE HANGA WHARE

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FOREWORD

The settlement of disputes by arbitration and mediation is an important feature of the commercial and legal landscape.

Arb-Med is a hybrid dispute resolution process that combines the benefits of arbitration and mediation, including: speed, procedural flexibility, confidentiality, choice of decision maker, ease of access to the tribunal, continuity, finality, and enforceability of the outcome.

The primary objective of Arb-Med is the informed good faith negotiation and settlement of the dispute by the parties, with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal arbitration process that will immediately resume if the mediation that follows is not successful.

If full settlement is not reached in the mediation, the arbitrator who was acting as mediator will have been informed as to the issues in dispute and the facts of the case which can be carried over into the arbitration with potentially significant time and cost savings for the parties.

The Building Disputes Tribunal (**BDT**) has developed Arb-Med Rules (**Rules**) for the resolution of commercial disputes that are robust and certain, yet innovative in their commercial commonsense approach to the challenge of combining arbitration and mediation in a single unified process that ensures the principles of natural justice are observed and a just, final, and binding decision is made.

The Rules provide both a framework and detailed provisions to ensure the efficient and cost effective resolution of commercial disputes. The Rules are intended to give parties the widest choice and the capacity to adopt fully administered arbitration and mediation procedures that are fair, prompt, and cost effective, and that provide a structured and proportionate response to the amounts in dispute and the complexity of the issues involved.

The Rules are set out in a manner designed to facilitate ease of use and may be adopted by agreement in writing at any time before or after a dispute has arisen.

BDT's Arb-Med Rules allow BDT to offer a unique dispute resolution service that is specifically tailored to meet the needs and requirements of parties to building and construction disputes – the Rules are fundamentally and purposively directed to ensuring the resolution of building and construction disputes in a manner that is private, efficient, flexible, cost effective, and certain.

For more information visit: www.buildingdisputestribunal.co.nz.

BDT MODEL ARB-MED CLAUSE

The following arb-med clause should be included in contracts where the parties wish to have any future disputes resolved by Arb-Med under these Rules:

“Any dispute or difference arising out of or in connection with this contract, or the subject matter of this contract, including any question about its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Arb-Med Rules of the Building Disputes Tribunal.”

NOTE: Parties to an existing dispute that have not incorporated the BDT Model Clause into a prior agreement may agree to refer that dispute to Arbitration under these Rules by signing the Arb-Med Agreement at Appendix 2 to these Rules.

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ARB-MED RULES

SECTION I: INTRODUCTORY RULES

1.0 INTRODUCTION

1.1 These are the Arb-Med Rules of the Building Disputes Tribunal (**BDT**) and may be referred to as the BDT Arb-Med Rules (**Rules**).

1.2 Where a dispute has been referred to BDT for Arb-Med (or words to the same effect), the Arbitration and Mediation will be conducted in accordance with these Rules (as amended from time to time), subject to such modification as the Parties may agree in writing.

1.3 Unless the Parties have agreed in writing that the Arb-Med process will be conducted in accordance with a particular version of these Rules, the version of these Rules, the BDT Arbitration Rules, and the BDT Mediation Rules and Mediation Protocol (together the **Operational Rules**) in effect on the date the Application for Arb-Med is made will apply. Where the Parties have agreed to apply a particular version of these Rules, the Parties will be taken to have agreed in writing that the BDT Schedule of Fees and Expenses for Arb-Med in effect on the date the Application for Arb-Med is made will apply.

1.4 These Rules must be read consistently with the Operational Rules. Where there is any conflict between these Rules and a provision of the Operational Rules, these Rules will prevail.

1.5 Where there is any conflict between these Rules and a mandatory provision of the Arbitration Act (the **Act**) from which the Parties cannot derogate, that mandatory provision will prevail, and these Rules must be read consistently with that law. Where there is any conflict between these Rules and an optional provision of the Act from which the Parties are permitted to derogate, these Rules will prevail and constitute an agreement not to be bound by that conflicting law.

1.6 BDT owns the copyright to these Rules and they may only be used by Parties, or intending Parties, to Arb-Med administered by BDT.

1.7 The functions of BDT under these Rules will be performed by the Registrar. All communications to BDT must be addressed to the Registrar and all communications with the Arbitral Tribunal must be copied to the Registrar.

2.0 DEFINITIONS

2.1 Unless the context requires otherwise, in these Rules:

APPLICATION FOR ARB-MED means an application, in the form from time to time published on the Website, for BDT to appoint an Arbitral Tribunal and administer the Arb-Med process under these Rules.

ARBITRAL TRIBUNAL means any sole arbitrator or panel of arbitrators appointed in accordance with these Rules.

ARBITRATION means Arbitration conducted under these Rules.

ARB-MED means the hybrid Arbitration and Mediation process conducted under these Rules which has as its primary objective, the informed good faith negotiation and settlement of the dispute by the Parties with the initial assistance and efficiency of the Arbitral Tribunal's information gathering powers, in the context of a formal Arbitration that will immediately resume if the Mediation is not successful.

ARB-MED AGREEMENT means a written agreement by the Parties to submit to Arb-Med under these Rules, all or certain disputes which have arisen, or which may arise between them in respect of a defined legal relationship, whether contractual or not.

AWARD means any decision of the Arbitral Tribunal on the substance of the dispute and/or the costs of the Arbitration, and includes any interlocutory, interim, partial, final, or additional award.

BUILDING DISPUTES TRIBUNAL (**BDT**) means Building Disputes Tribunal Limited, a company incorporated under the Companies Act 1993 (company number 2301888).

CLAIMANT means the Party seeking recourse to Arb-Med under these Rules and includes one or more Claimants.

COMMENCEMENT DATE means the date upon which BDT communicates the Arbitral Tribunal's appointment to the Parties by issuing a Notice of Appointment under these Rules.

EXPENSES means the actual disbursements for the Arb-Med process including, but not limited to: travel, accommodation, meals, taxis, couriers, personal vehicle mileage charges, communications, secretarial and administration services, meeting and hearing room hire, hearing reporting services, transcription services, interpreters, translators, expert or legal advice, and any other reasonable costs relating to the conduct of the Arbitration and Mediation.

FEES means BDT's fees as set out in Appendix 1 to these Rules.

INTERIM MEASURE means any temporary measure of protection (whether or not in the form of an Award) made by the Arbitral Tribunal before an Award is made in relation to the substance of the dispute. It includes giving security for costs and may include Urgent Interim Relief.

MEDIATION means Mediation conducted under these Rules.

MEDIATOR means the arbitrator who conducts Mediation under these Rules.

NOTICE OF APPOINTMENT means a written communication issued by the Registrar confirming the appointment of the Arbitral Tribunal by BDT.

NOTICE OF ARB-MED means the written notice required to be issued by the Claimant to initiate Arb-Med under these Rules unless the Parties have signed the Arb-Med Agreement in the form found at Appendix 2 to these Rules.

OVERRIDING OBJECTIVE means the Overriding Objective of these Rules set out in Rule 3.2.

PARTY means a Party to an Arb-Med Agreement, or in any case where the Arb-Med proceeding does not involve all of the Parties to the Arb-Med Agreement, means a Party to that proceeding.

PRELIMINARY PAYMENT means any Fee payable in accordance with section 1 of Appendix 1 to these Rules.

PRESIDING ARBITRATOR means, in the context of a three person Arbitral Tribunal, the arbitrator to be nominated by the Party appointed arbitrators, or otherwise selected and appointed by BDT, who will chair the arbitral proceedings, conduct the Mediation, decide questions of procedure and requests for Urgent Interim Relief, and who may, failing a majority decision, make an Award for the Arbitral Tribunal.

PURPOSE means the Purpose of these Rules set out in Rule 3.1.

REGISTRAR means a Registrar of BDT and includes any person deputed to act as a Registrar from time to time.

REPRESENTATIVE means any individual representing or assisting a Party to Arb-Med, whether legally qualified or not.

RESPONDENT means any Party against whom a claim is made by a Claimant in Arb-Med and includes one or more Respondents.

SEAT means the juridical seat or legal place of the Arbitration whose courts have jurisdiction to assist and supervise the Arbitration in accordance with the arbitration law of that place.

SETTLEMENT AGREEMENT means a written agreement of the Parties recording the matters in dispute in respect of which agreement is reached in Mediation, and the terms of that agreement.

URGENT INTERIM RELIEF means any Interim Measure that is applied for after the Application for Arb-Med has been submitted and before the Arbitral Tribunal has been constituted under Rules 6.1-6.7.

WEBSITE means the website for BDT which can be found at www.buildingdisputestribunal.co.nz.

2.2 Unless the context requires otherwise, in these Rules:

(a) words in the singular include the plural and vice versa;

(b) words importing a gender include every gender;

(c) a reference to “we”, “our”, “us”, or “it” means BDT; and

(d) words used in the Arb-Med Agreement have the same meaning as that ascribed to them in these Rules.

3.0 PURPOSE OF THESE RULES

3.1 The Purpose of these Rules is to ensure that the Arb-Med process is conducted fairly, promptly, and cost effectively, and in a manner that is proportionate to the amount in dispute and the complexity of the issues involved.

3.2 The Overriding Objective is to enable the Arbitral Tribunal:

(a) to establish the facts of the case by all relevant and legally permissible means;

(b) mediate the dispute in the context of the formal Arbitration that will immediately resume if Mediation is not successful; and

(c) to produce such orders or Awards as may be necessary to effectively determine the issues in dispute within the shortest period of time that is reasonably possible following commencement of the Arb-Med process, having regard to the complexity of the issues, and without incurring unnecessary expense.

3.3 To give effect to the stated Purpose and the Overriding Objective, the Parties must not engage in any conduct likely to disrupt or delay the Arb-Med process, and they agree to be bound by, and to comply without delay with:

(a) all timetabling and procedural provisions in these Rules;

(b) any Settlement Agreement;

(c) any directions, rulings, or orders of the Arbitral Tribunal as to procedural or evidentiary matters;

(d) any Preliminary Order or Interim Measure; and

(e) any Award of the Arbitral Tribunal.

4.0 CALCULATION OF PERIODS OF TIME FOR THE PURPOSES OF ARB-MED

4.1 Unless otherwise specified, a **working day** means a day of the week other than:

(a) a Saturday or Sunday;

(b) a day in the period commencing on 24 December in any year and ending with the close of 5 January in the following year; and

(c) a day that is an official holiday or non-business day at the home jurisdiction of BDT, the Arbitral Tribunal, or a relevant Party.

4.2 A **calendar day** means any day of the week, including weekends and holidays.

4.3 Unless otherwise agreed, any period of time under these Rules is to be calculated in accordance with New Zealand Standard Time or New Zealand Daylight Time as applicable (UTC + 12 or UTC + 13).

4.4 Any period of time will begin to run on the first working day following the date when the notice, communication, or proposal is received, or the date upon which an action is to be undertaken by a Party or the Arbitral Tribunal. If the last day for service of any notice, communication, or proposal is not a working day at the address for service of the addressee in terms of Rules 33.5-33.9, the period is extended until the first working day which follows.

4.5 The Arbitral Tribunal may vary the times for actions by the Parties or the Arbitral Tribunal under these Rules if the Arbitral Tribunal is satisfied that, in the circumstances, the additional time is reasonably required to satisfy the Purpose and Overriding Objective of these Rules, and on such terms as to costs or otherwise as the Arbitral Tribunal considers reasonable in the circumstances.

5.0 INITIATING ARB-MED

5.1 Where the Parties have agreed to refer their dispute to Arb-Med prior to the dispute arising, the Claimant must communicate to every other Party a Notice of Arb-Med that includes:

(a) a demand that the dispute be referred to Arb-Med;

(b) the full names and all contact details of the Parties and their Representatives, including details for electronic communication where those are available;

(c) identification of the Arb-Med Agreement that is being invoked;

(d) identification of the legal instrument or the relationship out of or in relation to which the dispute arises;

(e) a brief description of the nature of the dispute;

(f) the relief or remedy that is sought; and

(g) the Claimant's proposal as to the composition of the Arbitral Tribunal (if any).

5.2 No Notice of Arb-Med will be invalid for any failure to comply strictly with the requirements of Rule 5.1. Any failure to comply with the requirements of Rule 5.1 may be rectified by the Claimant within five working days of receipt of notice of the defect.

5.3 Where Parties have not agreed to refer disputes to Arb-Med prior to a dispute arising, those Parties may refer that dispute to Arb-Med by signing the Arb-Med Agreement in the form found at Appendix 2 to these Rules. In such cases, a Notice of Arb-Med is not required to be served on every other Party prior to completing the Application for Arb-Med.

5.4 The Claimant may, after the expiry of ten working days from the date of service of the Notice of Arb-Med on every other Party, or earlier if the Parties have agreed on a nominee or the Parties have signed the Arb-Med Agreement in the form found at Appendix 2 to these Rules, apply to BDT to appoint the Arbitral Tribunal by completing an Application for Arb-Med. The Application for Arb-Med must include:

(a) the Arb-Med Agreement;

(b) the Notice of Arb-Med (if relevant);

(c) any document recording the Parties' agreement as to the composition of the Arbitral Tribunal, or, where no agreement has been reached:

(i) any proposal as to the composition of the Arbitral Tribunal, and if it exists, any response to that proposal; and

(ii) any document recording the Parties' agreement as to the preferred expertise of the Arbitral Tribunal, or where no agreement has been reached, any proposal as to the preferred expertise of the Arbitral Tribunal, and if it exists, any response to that proposal.

5.5 The Parties must pay BDT the Preliminary Payment as set out in section 1 of Appendix 1 to these Rules either before or immediately after the submission of the Application for Arb-Med.

5.6 No administrative or procedural steps will be taken by BDT in relation to the appointment of the Arbitral Tribunal until the Preliminary Payment has been paid in full.

5.7 Any Party may pay the whole of the Preliminary Payment to secure the immediate appointment of the Arbitral Tribunal.

Multiple contracts

5.8 The Claimant may initiate a single Arb-Med proceeding in respect of disputes or differences arising out of or in connection with more than one contract, provided that:

(a) the parties to each contract are the same;

(b) the Arb-Med Agreements are compatible; and

(c) the Parties agree to a single Arb-Med proceeding under these Rules.

SECTION II: FORMATION OF THE ARBITRAL TRIBUNAL

6.0 COMPOSITION AND FORMATION OF THE ARBITRAL TRIBUNAL

Procedure

6.1 Unless the Parties have agreed otherwise, a sole arbitrator will be appointed as the Arbitral Tribunal by BDT upon receipt of a duly completed Application for Arb-Med and the Preliminary Payment.

6.2 No Party or third person may appoint any arbitrator under the Arb-Med Agreement. BDT alone is empowered to appoint arbitrators.

6.3 If the Parties or arbitrators have agreed that any person is to be appointed as an arbitrator, that agreement will be treated as an agreement to nominate an arbitrator for all purposes. Any such nominee may only be appointed by BDT as an arbitrator subject to his or her prior compliance with Rules 6.24-6.25. BDT may refuse to appoint any nominee if it determines, in its sole discretion, that he or she is not suitable, independent, or impartial.

6.4 In the event of either:

(a) refusal by BDT to appoint the Parties' or arbitrators' nominee under Rule 6.3; or

(b) the Parties' or arbitrators' nominee declining to accept appointment as an arbitrator,

any Party may, after the expiry of five working days from the date BDT notifies the Parties that their nominee is unsuitable or unavailable to accept appointment as an arbitrator, request in writing that BDT appoint the arbitrator.

6.5 Where the Parties have agreed that the Arbitral Tribunal is to be composed of three arbitrators, and there are two Parties, each Party must nominate one arbitrator. The two arbitrators must nominate the Presiding Arbitrator. If a Party fails to nominate an arbitrator within ten working days of either:

(a) service of the Notice of Arb-Med; or

(b) execution of the Arb-Med Agreement in the form found at Appendix 2 to these Rules,

the selection and appointment of that arbitrator will be made by BDT upon application in writing by any Party. If, within ten working days after the appointment of the second arbitrator, the two arbitrators have not agreed on a nominee to act as the Presiding Arbitrator, the selection and appointment will be made by BDT upon application by any Party in writing.

6.6 Where the Parties have agreed that the Arbitral Tribunal is to be composed of three arbitrators, and there are multiple Parties, the respective groups of multiple Claimants or multiple Respondents must each nominate one arbitrator. The two arbitrators must nominate the Presiding Arbitrator. If either the multiple Claimants or multiple Respondents do not act jointly in nominating an arbitrator within ten working days of:

(a) service of the Notice of Arb-Med; or

(b) execution of the Arb-Med Agreement in the form found at Appendix 2 to these Rules,

the selection and appointment of that arbitrator will be made by BDT upon application in writing by any Party. If, within ten working days after the appointment of the second arbitrator, the two arbitrators have not agreed on a nominee to act as the Presiding Arbitrator, the selection and appointment will be made by BDT upon application by any Party in writing.

6.7 In Arb-Med with multiple Parties who have not, within ten working days of service of the Notice of Arb-Med, agreed that the disputant Parties represent two separate sides for the purpose of the formation of the Arbitral Tribunal, as Claimant and Respondent respectively, BDT will, at the request of any Party, select and appoint the Arbitral Tribunal and designate one of them as the Presiding Arbitrator.

6.8 No Party, nor the Representative of any Party, may have any *ex parte* communication relating to the Arb-Med process with any arbitrator, or with any candidate for a Party nominated arbitrator, save for to advise the candidate of the general nature of the dispute and to inquire as to the candidate's relevant qualifications, independence, impartiality, and availability, or to discuss the suitability of candidates for the role of Presiding Arbitrator where the Party nominated arbitrators are to make that selection.

Procedure under urgency

6.9 If a sole arbitrator is to be appointed and a Party seeks Urgent Interim Relief, the selection and appointment of the Arbitral Tribunal will be made by BDT. BDT will use best endeavours to appoint the Arbitral Tribunal within one working day of receipt of the application for Urgent Interim Relief.

6.10 If three arbitrators are to be appointed and a Party seeks Urgent Interim Relief before the Presiding Arbitrator has been appointed, the Presiding Arbitrator will be selected and appointed by BDT. BDT will use best endeavours to appoint the Presiding Arbitrator within one working day of receipt of the application for Urgent Interim Relief. The Presiding Arbitrator appointed under this Rule has the power to determine the request for Urgent Interim Relief without consulting any other member of the Arbitral Tribunal.

6.11 For the purposes of Rules 6.9 and 6.10, BDT will maintain a panel of specialist arbitrators for appointment where Urgent Interim Relief is sought.

6.12 The arbitrator determining the application for Urgent Interim Relief will consider the application in accordance with the factors set out in Rule 17.3.

6.13 The arbitrator may conduct the proceedings to determine Urgent Interim Relief in any manner he or she considers appropriate in the circumstances, taking account of the urgent and temporary nature of the Interim Measure sought. The arbitrator is not required to convene a conference or hearing with the Parties and may decide the application for Urgent Interim Relief on the available documentation, by order or Award.

6.14 The arbitrator will use best endeavours to make a determination within five working days of appointment and may make any order or Award allowed under Rules 17.2, 17.4, and 17.5.

6.15 Following the determination of Urgent Interim Relief:

(a) in Arb-Med with a sole arbitrator, the arbitrator appointed under Rule 6.9 will remain as the Arbitral Tribunal; or

(b) in Arb-Med with three arbitrators, the arbitrator appointed under Rule 6.10 will remain as the Presiding Arbitrator of the Arbitral Tribunal. The other members of the Arbitral Tribunal will be appointed in accordance with Rules 6.5-6.7.

6.16 If Urgent Interim Relief is sought, all time limits under these Rules will be extended by the period of time that elapses between the date the application for Urgent Interim Relief is served and the date the decision as to the granting of Urgent Interim Relief is made.

Replacement of arbitrator determining Urgent Interim Relief

6.17 If an arbitrator is challenged before he or she has determined an application for Urgent Interim Relief, BDT will use best endeavours to rule on the challenge within three working days of receipt of the challenge. Where a challenge is made, BDT will use best endeavours to:

(a) communicate the challenge to every other Party and the challenged arbitrator within one working day of receipt of the challenge;

(b) allow every other Party and the challenged arbitrator one working day from receipt of that communication to respond; and

(c) consider the challenge and make a determination within one working day of the expiry of the period within which the Parties and the challenged arbitrator may respond, whether or not they exercise that right.

6.18 After an application for Urgent Interim Relief has been determined, the arbitrator who has been appointed for that purpose under Rule 6.9 or 6.10 may be removed by agreement of the Parties. Any such agreement will not invalidate any order or Award for Urgent Interim Relief made by that arbitrator. The Arbitral Tribunal will then be formed in accordance with Rules 6.1-6.7.

Selection and appointment of arbitrator by BDT

6.19 BDT may require each Party to provide such information as it deems necessary to fulfil its selection and appointment function under these Rules. BDT will have regard to such information but will not be bound by it in making such appointment as it sees fit.

6.20 BDT will take into consideration:

(a) any written agreement or joint nomination by the Parties;

(b) any particular method or criteria for selection of the arbitrator agreed in writing by the Parties;

(c) all relevant circumstances, including the nature of the legal relationship out of or in connection with which the dispute arose;

(d) the nature and circumstances of the dispute;

(e) the monetary amount or value of the dispute;

(f) the number, location, and languages of the Parties;

(g) whether the arbitrator will have sufficient availability to determine the case expeditiously in accordance with the arbitrator's obligations under these Rules; and

(h) any other factors it considers relevant in the circumstances.

6.21 Where BDT selects and appoints an arbitrator under these Rules, it will have regard to, but is not bound to apply, the International Bar Association Guidelines on Conflicts of Interest in International Commercial Arbitration current at the date of the Application for Arb-Med.

6.22 BDT will use best endeavours to make an appointment under these Rules within five working days of receipt of an Application for Arb-Med and the Preliminary Payment.

6.23 Every decision by BDT to appoint an arbitrator under these Rules is final and binding on the Parties. It is not subject to appeal to BDT. BDT is not required to state or communicate reasons for its decision.

6.24 Any person who is not on a BDT approved list of arbitrators, and who is approached in connection with his or her possible appointment as an arbitrator under these Rules, must provide the Registrar with:

(a) a written resume of his or her past and present professional positions and experience as an arbitrator and mediator;

(b) a schedule of his or her fee rates; and

(c) any other information the Registrar considers relevant.

6.25 Any person approached in connection with his or her possible appointment as an arbitrator under these Rules must provide the Registrar with a written declaration disclosing, to the best of his or her knowledge:

(a) whether there are any circumstances, past or present, likely to give rise to justifiable doubts as to his or her impartiality or independence in the eyes of any of the Parties; and

(b) whether the candidate is ready, willing, and able to devote sufficient time, diligence, and effort to ensure the expeditious conduct of the Arb-Med process in accordance with these Rules.

6.26 Any arbitrator conducting Arb-Med under these Rules must be impartial and independent of the Parties. No arbitrator appointed to an Arbitral Tribunal may act as an advocate for, Representative of, or advisor to, any Party. Every arbitrator will, from the time of his or her appointment, assume a continuing duty to immediately disclose to the Parties and BDT any circumstances arising in the future which might be likely to give rise to justifiable doubts as to that arbitrator's impartiality or independence in the eyes of any of the Parties. This duty continues until the Arb-Med process is concluded.

6.27 Any appointment made by BDT under these Rules will be confirmed by a Notice of Appointment issued by the Registrar.

7.0 REPLACEMENT OF AN ARBITRATOR

7.1 BDT may revoke an arbitrator's appointment and appoint a replacement arbitrator upon its own initiative, at the written request of all other members of the Arbitral Tribunal, or on a written challenge by any Party if:

(a) the arbitrator gives written notice to BDT, every Party, and every other member of the Arbitral Tribunal (if any) of his or her intent to resign as arbitrator; or

(b) the Parties agree to the revocation of the arbitrator's mandate; or

(c) circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence; or

(d) the arbitrator becomes in fact or in law, or by reason of infirmity, unable or unwilling to perform the functions of that office, or in fact fails to fulfil his or her functions within prescribed time limits in accordance with these Rules.

7.2 A Party may challenge the arbitrator nominated by that Party only for reasons of which it becomes aware of after the appointment has been made.

7.3 A Party requesting replacement of an arbitrator must notify the Arbitral Tribunal, every other Party, and BDT within five working days after becoming aware of the circumstances that give rise to the challenge (**Challenge Notice**). The Challenge Notice must state the grounds on which the request for replacement of the arbitrator is based.

7.4 Every other Party and the challenged arbitrator may respond to the challenge. If they wish to exercise that right, they must communicate their response to BDT, every other Party, and the Arbitral Tribunal, within five working days of receipt of the Challenge Notice.

7.5 If every Party agrees to the request, or the challenged arbitrator voluntarily withdraws, BDT will use best endeavours to appoint a replacement arbitrator within ten working days of receipt of the Challenge Notice. In either case, the replacement of the arbitrator by BDT does not imply acceptance of the validity of any ground referred to in the Challenge Notice.

7.6 If every other Party does not agree to the request and the challenged arbitrator does not withdraw, the decision as to whether to appoint a replacement arbitrator will be made by BDT after the arbitrator and every Party have had an opportunity to respond to the challenge.

7.7 BDT will use best endeavours to make a decision on the request for replacement of the arbitrator within 15 working days of receipt of the Challenge Notice. Such a decision is of an administrative nature and is final and binding on the Parties and the arbitrator. It is not subject to appeal to BDT. BDT is not required to state or communicate reasons for its decision.

7.8 A request for replacement of the arbitrator will not affect the conduct of the Arb-Med process unless the arbitrator resigns or is replaced.

7.9 If an arbitrator resigns or is replaced for any reason, all time limits under these Rules will be extended by the period of time that elapses between the arbitrator's resignation or removal and the appointment of a replacement arbitrator, unless the newly constituted Arbitral Tribunal decides that any part of the prior proceedings are to be repeated. In the latter case, the period of the extension will be equal to the period of time that elapses from the date of the earliest action to be taken by any Party that is to be repeated until the appointment of the replacement arbitrator.

7.10 If, prior to the replacement of an arbitrator, the Arbitral Tribunal has granted an Interim Measure or issued an Interlocutory, Interim, or Partial Award, any proceedings related solely to such orders and Awards will not be repeated and such orders and Awards will remain in effect.

7.11 BDT will determine the amount of Fees and Expenses (if any) that it considers appropriate to be paid to the replaced arbitrator in the circumstances.

SECTION III: PROCEDURES OF THE ARBITRAL TRIBUNAL

8.0 SEAT OF ARBITRATION

8.1 Unless otherwise agreed by the Parties, the Seat of the Arbitration will be Auckland, New Zealand.

8.2 Unless otherwise agreed by the Parties, the Arbitral Tribunal may meet at any location it considers convenient or necessary for deliberations and to hear witnesses, and may convene meetings and conduct the Arbitration and Mediation proceedings at any place that it considers appropriate, whether at the Seat of the Arbitration or at any other place, having regard to the nature and circumstances of the Arb-Med process.

8.3 If such places should be other than the Seat of the Arbitration, the Arbitration will nonetheless be treated for all purposes as an Arbitration conducted at the Seat and any order or Award as having been made at the Seat.

9.0 LANGUAGE OF ARB-MED PROCESS

9.1 Unless otherwise agreed by the Parties, the Arbitral Tribunal will determine the language or languages to be used in the Arb-Med process. In the absence of any agreement or determination to the contrary, the language of the Arb-Med process will be English.

9.2 The Arbitral Tribunal may order that any documents or exhibits submitted for the purpose of the Arb-Med process, delivered in their original language, must be accompanied by a translation (or be translated) into the language or languages of the Arb-Med process agreed upon by the Parties or determined by the Arbitral Tribunal.

10.0 PROCEDURAL LAW GOVERNING THE ARBITRATION

10.1 The law applicable to the Arb-Med Agreement and the Arbitration is the New Zealand Arbitration Act 1996 (the **Act**), including the First and Second Schedules, except to the extent that the procedural law is modified by these Rules or otherwise by written agreement of the Parties and such agreement or modification is not prohibited by the Act.

10.2 No Party may apply to the High Court under Clause 5 of the Second Schedule of the Act on any question of law arising out of an Award without the consent of every other Party given after the making of that Award or without the leave of the High Court.

10.3 No Party may apply to the High Court under Clause 6(3) of the Second Schedule of the Act to vary the amount or the allocation of Fees and Expenses arising out of any Award made under these Rules.

11.0 APPLICATION OF SUBSTANTIVE LAW

11.1 The Parties are free to agree on the rules of law to be applied by the Arbitral Tribunal to the substance of the dispute. In the absence of such agreement, the Arbitral Tribunal will apply the conflict of laws rules which it considers to be appropriate to determine the substantive law.

11.2 The Arbitral Tribunal must take into account the provisions of the contract and trade usages applicable to the subject matter of the contract.

11.3 The Arbitral Tribunal will decide the issues in dispute according to considerations of justice, equity, and good conscience, only if the Parties have expressly authorised it to do so and if such an agreement is not prohibited by the law governing the Arbitration.

12.0 THE NATURE OF THE DISPUTE

12.1 The issues in dispute to be decided by the Arbitral Tribunal will be those defined in the Arb-Med Agreement and as further defined in the Notice of Arb-Med (if relevant), the Submissions of Case, and any subsequent Claim, Defence, Counterclaim, Defence to the Counterclaim, or cross-claim asserted between co-Respondents or co-Claimants.

13.0 REPRESENTATION

13.1 Any Party to the Arb-Med process may appear in person or be represented or assisted by any person whether legally qualified or not, provided that the engagement of the Representative by that Party does not threaten or bring into question the composition or integrity of the Arbitral Tribunal or the Arb-Med process, or the finality of any Award due to a past or present relationship between the Representative and an arbitrator that would

be likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence, unless none of the Parties object after proper disclosure.

13.2 Until the Arbitral Tribunal is constituted, each Party must promptly notify BDT and every other Party of the names and contact details of all Representatives engaged for the purposes of the Arb-Med process.

13.3 Following the formation of the Arbitral Tribunal, any intended engagement of a Representative or any intended addition to, or change in representation by a Party, must be notified in writing to every other Party and the Arbitral Tribunal, and may only take effect with the approval of the Arbitral Tribunal.

13.4 The Arbitral Tribunal may withhold approval for the engagement of any Representative by a Party where the Arbitral Tribunal, in its sole discretion, considers that person's engagement could threaten or bring into question the composition and integrity of the Arbitral Tribunal, or the Arb-Med process, or the finality of any Award, on the grounds of a possible conflict of interest or other like impediment.

13.5 Any obligation or duty bearing on a Representative under these Rules is an obligation or duty of the represented Party and that Party must ultimately bear the consequences of any misconduct by its Representative.

13.6 A Representative must not:

(a) engage, or attempt to engage, in any *ex parte* communications with an arbitrator concerning the Arb-Med process once that arbitrator has been appointed to the Arbitral Tribunal;

(b) make any knowingly false submission of fact to the Arbitral Tribunal;

(c) invite or encourage a witness to give false evidence;

(d) submit witness or expert evidence that he or she knows is false;

(e) induce an expert or witness to replace their own account or opinion with that of the Representative;

(f) make any request to produce, or any objection to a request to produce any document, evidence, or item, for an improper purpose (such as to harass or cause delay); or

(g) suppress or conceal, or advise a Party to suppress or conceal any document, evidence, or any other item that has been requested by another Party, or that the Party whom he or she represents has undertaken, or been ordered by the Arbitral Tribunal, to produce.

13.7 Where a Representative unknowingly breaches Rule 13.6 and later becomes aware of that breach, he or she is under a duty to disclose that breach to the Arbitral Tribunal, and to remedy that breach by any means the Arbitral Tribunal considers appropriate.

13.8 Breach of Rule 13.6 may be taken into account by the Arbitral Tribunal in apportioning the costs of the Arbitration under Rule 29.5. In taking the Representative's conduct into

account, the Arbitral Tribunal must indicate, if appropriate, how and in what amount the breach of Rule 13.6 leads to the different apportionment of costs.

13.9 Where the Arbitral Tribunal considers a Representative has breached Rule 13.6 in a manner that is flagrant and intentional, and to the extent that the Arbitral Tribunal considers the Representative's continued involvement in the Arb-Med process to be inconsistent with the Purpose and Overriding Objective of these Rules, the Arbitral Tribunal may, after giving the Parties an opportunity to express their views about the alleged breach and the consequences of the measure that the Arbitral Tribunal is considering:

(a) exclude the Representative from participating in all or part of the Arb-Med process; and/or

(b) take any other appropriate measure to preserve the fairness and integrity of the proceedings and the enforceability of the Award.

14.0 JURISDICTION OF ARBITRAL TRIBUNAL

14.1 The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the Arb-Med Agreement. For that purpose, an arb-med clause which forms part of a contract 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* (necessarily) the invalidity of the arb-med clause.

14.2 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the Respondent's Submission of Case. A Party is not precluded from raising such a plea by the fact that that Party has appointed, or participated in the appointment of, an arbitrator. A plea that the Arbitral Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the Arb-Med proceeding. The Arbitral Tribunal may, in either case, admit a later plea if it considers the delay justified.

14.3 The Arbitral Tribunal may rule on a plea referred to in Rule 14.2 either as a preliminary question or in an Award on the merits.

14.4 If the Arbitral Tribunal rules on such a plea as a preliminary question, any Party may request, within 30 calendar days after having received notice of that ruling, the High Court to decide the matter, which decision shall be subject to no appeal. While such a request is pending, the Arbitral Tribunal may continue the arbitral proceedings and make an Award.

15.0 JOINDER

15.1 A Party or non-party may apply in writing for an additional Party to be joined in the Arb-Med proceeding (**Application for Joinder**) at any time before a Partial Award which finally determines the matters at issue that relate to the additional Party to be joined is made, provided that:

(a) the additional Party to be joined is a Party to the Arb-Med Agreement; or

(b) where the additional Party to be joined is not a Party to the Arb-Med Agreement, all Parties, including the additional Party to be joined, have agreed in writing to the joinder.

15.2 An Application for Joinder must be submitted to the Registrar, and must include for each additional Party to be joined:

(a) the case reference for the existing Arb-Med proceeding;

(b) a request that the additional Party be joined in the Arb-Med proceeding;

(c) the full name and contact details of the additional Party and its Representative, including details for electronic communication where those are available;

(d) advice as to whether the additional Party is to be joined as a Claimant or a Respondent;

(e) the Arb-Med Agreement that is being invoked if the Application for Joinder is being made under Rule 15.1(a), or the agreement between all Parties and the additional Party to be joined if the Application is being made under Rule 15.1(b);

(f) a brief statement of the facts supporting the request;

(g) the points at issue and the legal basis supporting the request;

(h) the relief or remedy sought; and

(i) a statement by the non-party confirming the non-party's agreement to be bound by these Rules (including any modifications made by the extant Parties) and the non-party's acceptance of the composition of the Arbitral Tribunal as constituted.

15.3 The applicant must pay BDT the **Joinder Fee** as set out in Appendix 1 to these Rules either before or immediately after the submission of the Application for Joinder.

15.4 The Registrar will communicate a copy of the Application for Joinder to the Arbitral Tribunal, every Party, and each additional Party whose joinder is sought, within five working days of receipt of the Application and payment of the Joinder Fee.

15.5 All Parties to the Arb-Med proceeding, including each additional Party whose joinder is sought, may respond to the Application for Joinder. If they wish to exercise that right, they must, within ten working days of receipt of a copy of the Application for Joinder, communicate a response to the Arbitral Tribunal, every other Party, every other additional Party to be joined, and the Registrar.

15.6 Within five working days after the end of the period referred to in Rule 15.5, the Arbitral Tribunal must approve or decline the Application for Joinder in writing. In deciding whether to join an additional Party, the Arbitral Tribunal may take into account any relevant circumstances including, without limitation, whether there is sufficient information to make a conclusive determination, whether the claims arising in relation to the additional Party arise out of the same transaction or series of transactions, whether the joinder might result in a loss of confidentiality, and the Purpose and Overriding Objective of the Rules. The Arbitral Tribunal must state the reasons for its decision.

15.7 The Arbitral Tribunal's decision is:

(a) not subject to appeal; and

(b) made without prejudice to the Arbitral Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision.

16.0 CONSOLIDATION

16.1 Two or more Arb-Med proceedings pending under these Rules may be consolidated into a single Arb-Med proceeding provided that it appears to BDT or the Arbitral Tribunal that:

(a) some common question of law or fact arises in all the Arb-Med proceedings;

(b) the rights to relief claimed in all the Arb-Med proceedings are in respect of, or arise out of, the same transaction or series of transactions; or

(c) for some other reason it is desirable to make the order.

16.2 An application for consolidation must be submitted to the Registrar, and must include:

(a) the case references for the Arb-Med proceedings in respect of which an order for consolidation is requested;

(b) a request that the Arb-Med proceedings be consolidated;

(c) the full names and contact details of the members of the Arbitral Tribunals and all Parties and their Representatives, including details for electronic communication where those are available;

(d) the agreement that is being invoked where the application is being made under Rule 16.4(a), (b) or (c); and

(e) a statement as to how the application meets one or more of the criteria specified in Rule 16.1.

(**Application for Consolidation**)

16.3 The applicant must pay BDT the **Consolidation Fee** as set out in Appendix 1 to these Rules either before or immediately after the submission of the Application for Consolidation.

Where Arbitral Tribunal not constituted

16.4 Prior to the full constitution of the Arbitral Tribunals in each of the proceedings identified in the Application for Consolidation, the Registrar may, on receipt of an Application for Consolidation by any Party, consolidate that Arb-Med proceeding with one or more Arb-Med proceedings pending under these Rules into a single Arb-Med proceeding, provided that:

(a) all of the Parties to the Arb-Med proceedings have agreed to consolidation; or

(b) all of the claims in the Arb-Med proceedings are made under the same Arb-Med Agreement; or

(c) the claims in the Arb-Med proceedings are made under more than one Arb-Med Agreement and the Arb-Med proceedings are between the same Parties, the disputes arise out of the same legal relationship or the same transaction or series of transactions, and the Arb-Med Agreements are compatible.

16.5 The Registrar will communicate a copy of the Application for Consolidation to every Party to the Arb-Med proceedings within five working days of receipt of the Application for Consolidation and payment of the Consolidation Fee.

16.6 All Parties to the Arb-Med proceedings may respond to the Application for Consolidation. If they wish to exercise that right, they must, within ten working days of receipt of a copy of the Application for Consolidation, communicate a response to the Registrar and every other Party.

16.7 Within ten working days after the end of the period referred to in Rule 16.6, the Registrar must approve or decline the Application for Consolidation, in writing.

16.8 In deciding whether to consolidate, the Registrar may, in addition to the matters specified in Rule 16.1, take into account any relevant circumstances, including, without limitation, whether there is sufficient information to make a conclusive determination, whether the consolidation might result in a loss of confidentiality, and the Purpose and Overriding Objective of the Rules. The Registrar must state the reasons for the decision.

16.9 The Registrar's decision to reject an Application for Consolidation is without prejudice to any Party's right to subsequently apply to the Arbitral Tribunal, when fully constituted, to consolidate the Arb-Med proceedings pursuant to Rules 16.10 or 16.11.

Where two or more Arbitral Tribunals constituted

16.10 Where two or more Arb-Med proceedings pending under these Rules all have the same Arbitral Tribunal, the Arbitral Tribunal may, on receipt of an Application for Consolidation by at least one Party in each of the Arb-Med proceedings, order:

(a) those proceedings to be consolidated into a single Arb-Med proceeding on such terms as the Arbitral Tribunal thinks just; or

(b) those proceedings to be heard at the same time, or one immediately after the other; or

(c) any of those proceedings to be stayed until after the determination of any one of them, in whole or part.

16.11 Where two or more Arb-Med proceedings pending under these Rules do not have the same Arbitral Tribunal, an Arbitral Tribunal may, on receipt of an Application for Consolidation by a Party, make any of the orders specified in Rule 16.10 jointly with the Arbitral Tribunal in any other Arb-Med proceeding, where:

(a) all of the Parties to the Arb-Med proceedings have agreed to consolidation; or

(b) all of the claims in the Arb-Med proceedings are made under the same Arb-Med Agreement; or

(c) the claims in the Arb-Med proceedings are made under more than one Arb-Med Agreement and the Arb-Med proceedings are between the same Parties, the disputes arise out of the same legal relationship or the same transaction or series of transactions, and the Arb-Med Agreements are compatible; and

(d) the Arbitral Tribunal in each Arb-Med proceeding agrees on the desirability of making such order, and the terms of such order.

16.12 The Registrar will communicate a copy of the Application for Consolidation to the Arbitral Tribunals and every Party to the Arb-Med proceedings within five working days of receipt of the Application for Consolidation and payment of the Consolidation Fee.

16.13 All Parties to the Arb-Med proceedings may respond to the Application for Consolidation. If they wish to exercise that right, they must, within ten working days of receipt of a copy of the Application for Consolidation, communicate a response to the Arbitral Tribunals, every other Party, and the Registrar.

16.14 Within ten working days after the end of the period referred to in Rule 16.13, the Arbitral Tribunals must approve or decline the Application for Consolidation in writing. In deciding whether to consolidate the Arb-Med proceedings, the Arbitral Tribunals must communicate with each other for the purpose of conferring on the desirability of making orders under this Rule and deciding on the terms of any such order.

16.15 In deciding whether to consolidate, the Arbitral Tribunals may, in addition to the matters specified in Rule 16.1, take into account any relevant circumstances, including, without limitation, whether there is sufficient information to make a conclusive determination, whether the consolidation might result in a loss of confidentiality, and the Purpose and Overriding Objective of the Rules. The Arbitral Tribunals must state the reasons for their decision.

16.16 The Arbitral Tribunals' decision is not subject to appeal.

Where Application for Consolidation granted

16.17 If the Application for Consolidation is granted, the Arb-Med proceedings will be consolidated into the Arb-Med proceeding that commenced first unless all Parties agree otherwise.

16.18 When Arb-Med proceedings are consolidated, the Parties to all such Arb-Med proceedings will be deemed to have waived their right to nominate an arbitrator. In the circumstances, BDT will appoint the Arbitral Tribunal in respect of the consolidated proceedings and may revoke the appointment of any arbitrator already appointed.

16.19 The revocation of the appointment of an arbitrator under Rule 16.18 does not invalidate any order or direction made by the Arbitral Tribunal prior to the date of revocation.

16.20 Any arbitrator whose appointment is revoked under Rule 16.18 must immediately transmit all documents in connection with the Arb-Med proceeding that are in his or her possession (the **File**), to the Registrar. The Registrar will make payment to the arbitrator of his or her

Fee and Expenses entitlement in terms of the Rules, on receipt of the File. The Registrar will transmit the File to the Arbitral Tribunal appointed in respect of the consolidated proceedings.

17.0 INTERIM MEASURES

17.1 A Party may, with notice to every other Party, request an **Interim Measure** at any time after submitting the Application for Arb-Med to BDT.

17.2 An Interim Measure is a temporary measure, whether or not in the form of an Award, by which a Party is required at any time before an Award is made in relation to a dispute, to do all or any of the following:

(a) maintain or restore the status quo pending the determination of the dispute;

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the Arb-Med process;

(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) give security for costs.

17.3 Before the Arbitral Tribunal may grant an Interim Measure, the applicant must satisfy the Arbitral Tribunal (to the extent that the Arbitral Tribunal considers appropriate) that:

(a) harm not adequately reparable by an award of damages is likely to result if the Interim Measure is not granted;

(b) such harm will substantially outweigh the harm that is likely to result to the non-applicant Party if the Interim Measure is ordered;

(c) there is a reasonable possibility that the applicant will succeed on the merits of the Claim; and

(d) the applicant will be able to pay the costs or damages of the Party against whom an Interim Measure is requested if the applicant is unsuccessful on the merits of the Claim.

17.4 The Arbitral Tribunal may require the applicant to provide appropriate security in such a manner as it deems just, as a condition of granting an Interim Measure.

17.5 The costs relating to the application for an Interim Measure may initially be apportioned by the Arbitral Tribunal in an order or direction, subject to payment falling due in terms of the Arbitral Tribunal's determination of the costs of the Arbitration in the Final Award.

17.6 The applicant must promptly disclose to the Arbitral Tribunal any material change in the circumstances upon which an Interim Measure was requested or granted.

17.7 The Arbitral Tribunal may modify, suspend, or cancel an Interim Measure at any time upon application of a Party. In exceptional circumstances, the Arbitral Tribunal may modify, suspend, or cancel an Interim Measure on its own initiative after giving prior notice to the Parties.

17.8 The granting of an Interim Measure does not affect the Arbitral Tribunal's discretion to make any subsequent determination. An applicant for an Interim Measure is liable for any costs or damages caused to any other Party by the Interim Measure if the Arbitral Tribunal later determines that, in the circumstances, the Interim Measure should not have been granted. The Arbitral Tribunal may award those costs or damages at any time during the Arb-Med process.

17.9 A request for an Interim Measure made by a Party to a court of competent jurisdiction before or during the Arb-Med process is not incompatible with these Rules. Any application for such measures made after the formation of the Arbitral Tribunal, and any court order made in relation to such application, must be promptly communicated to the Arbitral Tribunal and to every other Party.

17.10 If an Interim Measure is sought, all time limits under these Rules will be extended by the period of time that elapses between the date the application for an Interim Measure is served and the date the decision as to the granting of the Interim Measure is made.

18.0 PRELIMINARY ORDERS

18.1 A Party may, when making a request for an Interim Measure, apply for an order directing a Party not to frustrate the purpose of an Interim Measure (**Preliminary Order**).

18.2 A Party applying for a Preliminary Order need not give notice to the Party against whom the Interim Measure is requested of either the request for the Interim Measure or the application for the Preliminary Order until immediately after the application for the Preliminary Order has been determined.

18.3 A Party applying for a Preliminary Order must disclose to the Arbitral Tribunal all circumstances that are likely to be relevant to the Arbitral Tribunal's determination as to whether to issue or extend the order. The obligation continues until each Party against whom the Interim Measure is requested or directed has had an opportunity to present its case.

18.4 It is envisaged by these Rules that the issuing of a Preliminary Order will be made in exceptional cases only. A Preliminary Order will be issued where:

(a) the applicant satisfies the Arbitral Tribunal of the matters specified in Rule 17.3, subject to:

(i) the modification that the harm to be assessed is the harm likely to result from the order being issued or not; and

(ii) all other necessary modifications; and

(b) prior disclosure of the request for the Interim Measure to the Party against whom it is directed risks frustrating the purpose of the measure.

18.5 The Arbitral Tribunal must use best endeavours to determine an application for a Preliminary Order within three working days.

18.6 Immediately after the Arbitral Tribunal makes a determination in respect of an application for a Preliminary Order without notice, it must:

(a) give notice to all the Parties of:

(i) the request for the Interim Measure;

(ii) the application for the Preliminary Order;

(iii) the Preliminary Order issued by the Arbitral Tribunal (if any); and

(iv) all other communications between a Party and the Arbitral Tribunal in relation to those matters; and

(b) give an opportunity to every other Party to present its case at the earliest practicable time.

18.7 The applicant must promptly disclose to the Arbitral Tribunal any material change in the circumstances upon which a Preliminary Order was requested or granted.

18.8 A Preliminary Order granted under Rule 18.4 expires 20 calendar days after the date on which it is issued by the Arbitral Tribunal. However, the Arbitral Tribunal may grant an Interim Measure adopting or modifying the Preliminary Order if, within 20 calendar days after the Preliminary Order is issued, every Party against whom the Interim Measure is requested has been given notice under Rule 18.6 and has had an opportunity to present its case.

18.9 The Arbitral Tribunal may modify, suspend, or cancel the Preliminary Order on the application of any Party or on its own initiative, but only in exceptional circumstances and after giving prior notice to the Parties.

18.10 The Arbitral Tribunal must require the applicant for a Preliminary Order to provide appropriate security in connection with the order unless it considers it is inappropriate or unnecessary to do so.

18.11 An applicant for a Preliminary Order will be liable for any costs or damages caused to any other Party by the order if the Arbitral Tribunal later determines that the order should not have been issued. The Arbitral Tribunal may award those costs or damages at any time during the Arb-Med process.

18.12 A Preliminary Order is binding on all Parties but is not enforceable by a court and does not constitute an Award.

19.0 DIRECTIONS CONFERENCE

19.1 Within ten working days of the Commencement Date, the Arbitral Tribunal must convene, and all Parties must attend, a conference for the purpose of discussing and determining

procedural and evidential issues, and timetabling matters (**Directions Conference**) for Mediation.

19.2 The Arbitral Tribunal may conduct the Directions Conference in any manner considered appropriate in the circumstances (whether in person, by telephone, video conference, or other electronic communication) at such time and on such date (and at such venue in the case of a meeting in person) as may be fixed by the Arbitral Tribunal.

19.3 The Parties must cooperate in good faith with the Arbitral Tribunal and with every other Party to the Dispute and must comply with the Arbitral Tribunal's directions to attend the Directions Conference (and any further Directions Conferences that may be enjoined), and to provide documents or other evidentiary material as directed by the Arbitral Tribunal.

20.0 SUBMISSION OF CASE

20.1 Unless another procedure is agreed by the Parties or otherwise determined by the Arbitral Tribunal, the following procedure for the exchange of submissions and evidence by the Parties in preparation for Mediation (**Submission of Case**) will apply:

(a) the Claimant must, on or before the 10th working day after the Commencement Date, communicate to the Arbitral Tribunal and to the Respondent, the Claimant's Submission of Case. The Claimant's Submission of Case must include:

(i) the nature and basis of the Claimant's claim;

(ii) the amount of compensation claimed, or other relief or remedy sought, including any claim for interest;

(iii) any expert reports or sworn witness statements relied on by the Claimant;

(iv) copies of all key documents relied on by the Claimant, sufficient to enable the claim to be fully understood, but without limiting the Claimant's right to produce and rely on other documents; and

(v) submissions on the factual and legal issues involved in the claim, and the Claimant's contentions as to those issues.

(b) the Respondent must, on or before the 20th working day after the Commencement Date, communicate to the Arbitral Tribunal and to the Claimant a copy of the Respondent's Submission of Case. The Respondent's Submission of Case must include:

(i) what matters in the Claimant's Submission of Case are accepted or agreed;

(ii) what matters are disputed, with reasons why;

(iii) the nature and basis of any counterclaim;

(iv) any expert reports or sworn witness statements relied on by the Respondent;

(v) copies of all key documents relied on by the Respondent, sufficient to enable the Respondent's position to be fully understood, but without limiting the Respondent's right to produce and rely on other documents; and

(vi) submissions on the factual and legal issues involved in the Respondent's Submission of Case, and the Respondent's contentions as to those issues.

(c) the Claimant may, on or before the 25th working day after the Commencement Date, communicate to the Arbitral Tribunal and the Respondent a statement in reply to the Respondent's Submission of Case.

21.0 STAY OF ARBITRATION

21.1 On the expiry of the period referred to in Rule 20.1(c), the Arbitration will be stayed pending Mediation.

22.0 MEDIATION

22.1 The Mediation will be conducted under the BDT Mediation Rules, subject to Rule 1.5 of these Rules and such modification as the Parties may agree in writing.

22.2 The arbitrator will act as Mediator, for so long as no Party withdraws that Party's consent in writing.

22.3 In an Arb-Med process with three arbitrators, unless the Parties agree otherwise, the Presiding Arbitrator will act as Mediator.

22.4 An arbitrator acting as a Mediator may not communicate with the Parties separately and, if that person is a co-mediator, that person may not communicate with any other co-mediator in relation to any Confidential Information or material obtained by that co-mediator from a Party during a separate session with any of the Parties.

Settlement – Award on agreed terms

22.5 If a settlement is reached in respect of all matters in dispute, the Arbitral Tribunal may, at its sole discretion, record the terms of the Settlement Agreement in an Award (**Award on Agreed Terms**) if requested by the Parties. The Arbitral Tribunal is not obliged to give reasons for such an Award.

22.6 Unless otherwise agreed, settling Parties will bear their own legal and other expenses of the Arbitration and Mediation, and subject to Rule 29.7, share equally the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other Expenses related to the Arbitration and Mediation.

Partial or no settlement

22.7 If no agreement that finally resolves all matters in dispute is reached within 45 working days of the Commencement Date, or any other period that the Parties agree, the

Mediation will be terminated, and the Arbitration will be reconvened as of that date (the **Mediation Termination Date**).

22.8 No objection may be taken to the further conduct of the Arbitration by the arbitrator who was previously acting as Mediator, solely on the ground that the arbitrator had previously acted as a Mediator in accordance with these Rules.

22.9 If Confidential Information is obtained from a Party or a co-mediator during the Mediation by the arbitrator acting as a Mediator:

(a) the arbitrator must disclose to every Party the fact that Confidential Information was obtained during the course of the Mediation;

(b) following that disclosure, the arbitrator may not conduct subsequent arbitral proceedings without the written consent of all the Parties; and

(c) if all the Parties do not consent to the arbitrator conducting subsequent arbitral proceedings, the arbitrator's mandate will be taken to have been terminated under Rule 7.1 and a replacement arbitrator will be appointed in accordance with Rule 7.7.

23.0 PROCEDURE – RECONVENED ARBITRATION

23.1 The Arbitral Tribunal must convene a further **Directions Conference** within five working days of the Mediation Termination Date for the purpose of discussing and determining procedural issues and timetabling matters for the further conduct of the Arbitration.

23.2 Subject to Rule 1.5 of these Rules and such modification as the Parties may agree in writing, the Arbitration will be conducted under the BDT Arbitration Rules, save that the following rules will not apply to any Arb-Med proceeding under these Rules:

(a) Rule 1.3;

(b) Rules 15.1-18.1; and

(c) Rules 19.13-19.20.

23.3 The Arbitral Tribunal has the widest discretion permitted by law to resolve the dispute in a just, speedy, cost effective, and final manner in accordance with these Rules and the principles of natural justice.

23.4 The Arbitral Tribunal has the jurisdiction and power to:

(a) make any rulings and give any directions that it thinks fit with regard to procedure at any time during the Arbitration, including but not limited to, directing the order of proceedings, bifurcating proceedings, excluding repetitive or irrelevant evidence, directing conferences of experts and the preparation of a joint statement of experts; and

(b) decide one or more issues of fact or law by way of summary procedure.

23.5 The Arbitral Tribunal must conduct the Arbitration in accordance with the Purpose of these Rules. It must adopt such procedures and give such directions and rulings as may be required to ensure that the process for the determination of the matters in dispute is fair, prompt, and cost effective, and that to the best of the Arbitral Tribunal's ability, the Overriding Objective is achieved.

23.6 In an Arbitration with three arbitrators, the Presiding Arbitrator will chair the proceedings. The Presiding Arbitrator has the power to determine all questions of procedure and may consult other members of the Arbitral Tribunal before making any procedural determination. Any Party may request that a procedural issue be determined by the full Arbitral Tribunal, with such requests to be determined by the Presiding Arbitrator.

23.7 In Arb-Med proceedings with more than one arbitrator, any decision may be made by a majority of the members of the Arbitral Tribunal and may be signed only by those members who assent to it.

23.8 Failing a majority, the Presiding Arbitrator alone shall make the Award for the Arbitral Tribunal.

23.9 Notwithstanding Rule 23.6, in an Arbitration where the Presiding Arbitrator has been appointed under Rule 6.10, the Presiding Arbitrator alone will determine any request for Urgent Interim Relief.

23.10 If, without good cause, an arbitrator refuses or persistently fails to act with due diligence, or to cooperate in the making of an Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed to make the Award and sign it, provided that the reason for the omitted signature is stated by the majority or the Presiding Arbitrator. A majority of the Arbitral Tribunal must determine when an arbitrator has caused undue delay or refused to cooperate in the making of the Award.

23.11 In the event that the remaining arbitrators decide at any time thereafter not to continue the Arb-Med proceeding without the participation of another arbitrator, the remaining arbitrators must notify the Parties and BDT of such decision and request BDT to revoke the non-performing arbitrator's appointment and appoint a replacement arbitrator under Rule 7.1.

23.12 Following the formation of the Arbitral Tribunal, all statements, documents, or other information supplied to the Arbitral Tribunal by any Party must simultaneously be communicated to every other Party and the Registrar.

24.0 DEFAULT OF A PARTY

24.1 If, without showing sufficient cause, the Claimant fails to communicate a Submission of Case within the period of time fixed under these Rules, the Arbitral Tribunal must terminate the proceedings.

24.2 If, without showing sufficient cause, the Respondent fails to communicate a Submission of Case within the relevant period of time fixed under these Rules, the Arbitral Tribunal must continue the proceedings.

24.3 In the event of a failure of the kind referred to in Rule 24.2, or the failure by any Party to comply with these Rules or the directions of the Arbitral Tribunal, or if any Party does not attend a meeting, conference, visit, inspection, or hearing convened by the Arbitral Tribunal, without showing sufficient cause for such failure, the Arbitral Tribunal must continue with the Arb-Med process and make the Award on the information and evidence before it.

24.4 If, however, it appears to the Arbitral Tribunal that the Arb-Med proceeding has been abandoned by the Parties, or all claims and cross-claims are withdrawn by the Parties, the Arbitral Tribunal may order the discontinuance of the Arb-Med proceeding provided that, after giving the Parties a reasonable period within which to respond, no Party objects in writing.

25.0 WAIVER OF RIGHT TO OBJECT

25.1 A Party to the Arb-Med process that continues with the Arb-Med process without promptly raising:

(a) a plea as to jurisdiction in accordance with Rule 14.2;

(b) an objection as to any direction or order of the Arbitral Tribunal;

(c) any objection as to failure to comply with these Rules; or

(d) any other irregularity affecting the Arbitral Tribunal or the conduct of the Arb-Med proceeding,

will be deemed to have waived its right to object later unless it establishes that at the relevant time it did not know, and could not with reasonable diligence have discovered, the grounds for objection.

26.0 APPEALS

26.1 No Party may appeal to any court of competent jurisdiction at the Seat of the Arbitration on any question of law arising out of any Award made under these Rules.

SECTION IV: COSTS

27.0 ADMINISTRATION COSTS

27.1 Either before or immediately after submission of the Application for Arb-Med, the Parties must pay BDT the Preliminary Payment as required by Rules 5.5-5.7.

27.2 The Preliminary Payment must include:

(a) the BDT Registration Fee;

(b) payment toward the BDT Administration Fee; and

(c) payment toward the Arbitral Tribunal's Fees and Expenses,

as set out in Appendix 1 to these Rules.

28.0 COSTS OF ARB-MED - SETTLEMENT

28.1 If a settlement is reached by the Parties at Mediation or prior to a Partial Award being made which finally determines all the substantive matters in dispute, the Parties will, unless otherwise agreed in writing, bear their own legal and other costs of the Arbitration and Mediation, and subject to Rule 29.7, share equally the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other Expenses related to the Arbitration and Mediation.

29.0 COSTS OF ARB-MED – NO SETTLEMENT

29.1 Unless otherwise agreed by the Parties, if no agreement that finally resolves all matters in dispute is reached prior to a Partial Award being made which finally determines all the substantive matters in dispute:

(a) the Parties will bear their own legal and other costs of the Arbitration and Mediation up to and including the Mediation Termination Date, and subject to Rule 29.7, share equally the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other Expenses related to the Arbitration and Mediation; and

(b) the Arbitral Tribunal will fix the costs and expenses of the reconvened Arbitration from the Mediation Termination Date, being the legal and other fees and expenses of the Parties, the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other costs related to the Arbitration. The Arbitral Tribunal must direct which Party is to pay all or part of the costs and expenses of the Arbitration and may make an order for costs in favour of any Party.

29.2 Unless otherwise agreed by the Parties, the costs of the reconvened Arbitration, reasonably and properly incurred by the successful Party, will in principle be borne by the unsuccessful Party. However, the Arbitral Tribunal may apportion such costs between the Parties if it determines that apportionment is just in the circumstances of the case.

29.3 The Arbitral Tribunal is entitled to fix a Fee to be paid by the Parties that is reasonable having regard to the duties of the Arbitral Tribunal, which Fee may not, except in exceptional circumstances, exceed the Scheduled Maximum Fee, together with a Mediation Fee for all time reasonably engaged on the duties of the Mediation, and all Expenses and outgoings incurred by the Arbitral Tribunal in the execution of those duties in accordance with the terms and conditions set out in Appendix 1 to these Rules.

29.4 An arbitrator is entitled to fix and be paid an Additional Fee to determine any application for Interim Relief, early dismissal of the Claim or Defence, Joinder, or Consolidation.

29.5 In making decisions as to costs, the Arbitral Tribunal is not required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority. The Arbitral Tribunal may take into account such matters as it considers relevant, including without limitation: whether the costs are reasonably proportionate to the amount

at stake; the complexity and importance of the case; the nature of the work involved; whether the costs have actually and reasonably been incurred; incompetent presentation of case; whether a settlement offer no less favourable than the Award was made and rejected; the extent to which a Party or its Representative has caused costs to be incurred unnecessarily by engaging in conduct that has disrupted or delayed the Arbitration; any breach of Rule 13.6; raising allegations or objections that are without substantial merit; bad faith on the part of that Party or its Representative; or contemptuous or improper conduct on the part of that Party or its Representative during the Arbitration.

29.6 Unless otherwise agreed by the Parties, any order for costs must be made with reasons in the Award containing such order.

29.7 Notwithstanding the provisions of Rules 22.6, 28.1, and 29.1(a), the Parties will at all material times remain jointly and severally liable to pay BDT's administrative fees and the Arbitral Tribunal's Fees and Expenses, whether the Arb-Med process is abandoned, suspended, withdrawn, or concluded by agreement or otherwise, before the Arbitral Tribunal makes an Award fixing the costs and expenses of the Arbitration, together with any additional costs incurred by BDT in recovering any overdue monies, on a full indemnity basis.

SECTION V: GENERAL RULES

30.0 CONFIDENTIALITY

30.1 The Arbitral Tribunal must conduct the Arb-Med process in private.

30.2 The Parties, their Representatives, the Arbitral Tribunal, BDT, and any other person involved in the Arb-Med proceeding, must keep confidential and not publish, communicate, or otherwise supply (**disclose**) confidential information to any non-party. Confidential information includes all non-public materials and information that relates to the Arb-Med proceeding or to any Award made in that proceeding and includes:

(a) the fact of the Arb-Med proceeding itself;

(b) all statements, pleadings, submissions, or other information supplied to the Arbitral Tribunal by a Party;

(c) all evidence, whether documentary or otherwise, supplied to the Arbitral Tribunal;

(d) any notes made by the Arbitral Tribunal;

(e) all recordings or transcripts of evidence or submissions given before the Arbitral Tribunal;

(f) any Settlement Agreement reached in the Mediation;

(g) all rulings, orders, or Awards of the Arbitral Tribunal; and

(h) all non-public materials and information provided for the Arb-Med proceeding by a Party, including documents used or generated by a Representative or advisor to a Party to the Arb-Med proceeding.

(**Confidential Information**)

30.3 If a Party seeks to involve, or is required to involve in the Arb-Med proceeding, a non-party, including a Representative, fact or expert witness, translator, interpreter, or any other person, that Party must secure the non-party's advance agreement to preserve the confidentiality of the Confidential Information. This agreement must be recorded in the form provided at Appendix 3 to these Rules and a copy of the Confidentiality Agreement signed by each non-party must be provided to the Arbitral Tribunal by that Party as a condition of that non-party's participation in the Arb-Med proceeding.

30.4 Notwithstanding Rules 30.1-30.3, BDT, a Party, a Representative, the Arbitral Tribunal, or a non-party involved in the Arb-Med proceeding, may disclose Confidential Information to the extent necessary to:

(a) enforce any Settlement Agreement reached in the Mediation;

(b) prosecute or defend the Arbitration or proceedings related to it (including enforcement or annulment proceedings);

(c) pursue a legal right;

(d) protect a Party's legal rights in relation to a third party;

(e) respond to a legitimate subpoena, governmental request for information, or other compulsory process;

(f) seek legal, accounting, or other professional services, or satisfy information requests of potential acquirers, investors or lenders, provided that in each case the recipient agrees in advance to preserve the confidentiality of the Confidential Information; or

(g) comply with the order of a court of competent jurisdiction, or the law of any State which is binding on the Party making the disclosure,

provided always that such publication, disclosure, or communication is no more than what is reasonably required for those purposes.

30.5 Any person intending to make disclosure under Rule 30.4 must, within a reasonable period of time prior to the intended disclosure, notify the Arbitral Tribunal, every Party, and BDT.

30.6 The notification must include full details of the intended disclosure and an explanation of the reason for it. Where such a question arises in the course of an Arb-Med proceeding, the Arbitral Tribunal must determine whether the disclosure meets the requirements of Rule 30.4 after each Party has been given an opportunity to be heard.

30.7 Notwithstanding the foregoing, the Arbitral Tribunal may, during the course of the Arb-Med proceeding, permit disclosure of Confidential Information outside the categories set

out in Rule 30.4 where the Arbitral Tribunal is satisfied that it is reasonably required and just in the circumstances. For permission to be granted, at least one Party must refer that question to the Arbitral Tribunal, and every other Party must be given an opportunity to be heard.

30.8 If a Party breaches the provisions of Rules 30.2-30.7 before a Final Award is made, the Arbitral Tribunal may, after giving the Parties notice and a reasonable opportunity to be heard, take any appropriate measure including, without limitation:

(a) issuing orders requiring the defaulting Party to act or refrain from acting in a particular way; and

(b) making an award of damages.

30.9 The Parties expressly agree that any court proceedings related to the Arb-Med proceeding must, to the full extent permitted by the law in that jurisdiction, be conducted in private.

31.0 EXCLUSION OF LIABILITY AND INDEMNITY

31.1 The Parties, together and separately, release and discharge the members of the Arbitral Tribunal and BDT, its agents and employees, from all liability of any kind (whether involving negligence, misrepresentation, breach of contract, or breach of any equitable, fiduciary, statutory or other duty, or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to the exercise of any of their functions, duties or powers, whether under the procedural law of the Arbitration, under these Rules, or otherwise, unless the act or omission is the fraudulent act of the Arbitral Tribunal, BDT, its agents or its employees. Any member of the Arbitral Tribunal, BDT, or any agent or employee of BDT who has not acted fraudulently and is shown to be unaware of the fraud of any other person, will continue to be released and discharged from liability as provided in these Rules.

31.2 No statements or comments, whether written or oral, made or used by the Arbitral Tribunal, BDT, its agents or employees, in connection with, or resulting from, or in any way relating to the Arb-Med process, may be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

31.3 The Parties, together and separately, undertake to indemnify and keep indemnified the members of the Arbitral Tribunal and BDT, its agents and employees, against all claims, costs, expenses, liabilities, awards, damages, and proceedings of any kind (properly sustained or incurred by them directly, or indirectly made by any third party) in relation to, or in connection with, the exercise of their functions, duties, or powers, whether under the procedural law of the Arbitration, under these Rules, or otherwise, unless the act or omission is the fraudulent act of the Arbitral Tribunal, BDT, its agents or its employees. If a member of the Arbitral Tribunal, BDT, or any agent or employee of BDT has not acted fraudulently and is shown to be unaware of the fraud of any other person, he or she will continue to be indemnified as provided in these Rules.

31.4 After the Final Award is made and all possibilities of correction, interpretation, or Additional Awards have expired, BDT, its agents and employees, the Arbitral Tribunal, and any expert appointed by the Arbitral Tribunal, will not be under any legal obligation

to make any statement to any person about any matter concerning the Arb-Med process, nor shall any Party seek to call any of these persons to give evidence in any legal proceedings arising out of or in connection with the Arb-Med process.

31.5 The purpose of Rules 31.1-31.4 is to provide the Arbitral Tribunal, BDT, its agents and employees, and any expert appointed by the Arbitral Tribunal, with the widest immunity from liability that the law will allow.

32.0 STORAGE OF ARB-MED DOCUMENTS

32.1 Unless a Party requests the return of any original documents provided to the Arbitral Tribunal for the purpose of the Arb-Med proceeding, all original documents will be destroyed by the Arbitral Tribunal after the expiry of three calendar months following the latter of:

(a) the date of any Settlement Agreement which finally determines all matters in dispute; or,

(b) the date of the last Award made by the Arbitral Tribunal in relation to the Arbitration.

33.0 COMMUNICATIONS AND CONTACT DETAILS

33.1 Until the Arbitral Tribunal is formed, all communications relating to the Arb-Med proceeding must be directed to the Registrar.

33.2 Thereafter, all communications between the Parties and the Arbitral Tribunal must be made directly to the Arbitral Tribunal and copied to the Registrar.

33.3 Any application, agreement, request, instruction, direction, response, notice, or other communication required or referred to in these Rules, or in any Appendix to these Rules, must be made in writing. If it is in electronic form, it must be readily accessible so as to be available for subsequent reference.

33.4 All notifications, documents, or information provided to the Arbitral Tribunal by a Party must simultaneously be communicated by that Party to every other Party and the Registrar.

33.5 Routine communications and notifications between BDT, the Arbitral Tribunal, and the Parties, may validly be made by email, or any other means of communication that provides or allows for a record of transmission.

33.6 The Submissions of Case and any further submissions, documents, or evidentiary material requested or directed by the Arbitral Tribunal to be provided by any Party, must be delivered to the Arbitral Tribunal and every other Party at the email address for service designated by each Party or authorised by the Arbitral Tribunal for the purpose of the Arb-Med proceeding, and if so delivered, will be deemed to have been received.

33.7 In the absence of such designation or authorisation, a document is:

(a) received if it is physically delivered to the addressee;

(b) deemed to have been received if it is left at the usual place of business, habitual residence, or mailing address of the addressee; or

(c) deemed to have been received if, after reasonable efforts, delivery cannot be effected, 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 the attempt to deliver it.

33.8 The communication will be deemed to have been received on the day it is so delivered.

33.9 A notice transmitted by electronic means is deemed to have been received on the day it is sent, excepting a Notice of Arb-Med which is only deemed to have been received on the day when it reaches the addressee's electronic address.

34.0 MISCELLANEOUS

34.1 All decisions of BDT with respect to its functions and obligations under these Rules are final and binding on the Parties and the Arbitral Tribunal. Such decisions are of an administrative nature and, unless the Rules expressly provide otherwise, BDT is not required to state or communicate reasons for its decisions.

34.2 By agreeing to Arb-Med under these Rules, the Parties and the Arbitral Tribunal are deemed to have agreed not to apply to any court, judicial authority, or any other body having jurisdiction, for any relief regarding BDT's jurisdiction or authority under these Rules, so far as that agreement is not inconsistent with the law of the Seat of Arbitration.

34.3 In all matters not expressly provided for in these Rules, the Parties, BDT, and the Arbitral Tribunal must act in the spirit of these Rules and must make every effort to ensure that any Settlement Agreement or Award made under these Rules is enforceable.

34.4 The Registrar may from time to time issue Practice Notes to supplement, regulate, and implement these Rules for the purpose of facilitating the administration of Arb-Med proceedings governed by these Rules.

APPENDIX 1: BDT FEES AND EXPENSES FOR ARB-MED

BDT provides a fully administered Arb-Med service. To ensure that the cost of Arb-Med is proportionate to the amount in dispute, our arbitrators' fees are capped for the Arbitration component of the service based on the amount in dispute.

For the purpose of calculating the amount in dispute, the GST, value added tax, or any other similar tax which might apply, inclusive value of all claims, counterclaims, and affirmative defences in New Zealand dollars must be added together.

Interest will not be taken into account unless the interest claimed by a Party exceeds the aggregate principal amount, in which case the amount in dispute will be calculated on the value of the interest claim alone.

All sums stated are in New Zealand dollars and are inclusive of GST (if any).

1.0 PRELIMINARY PAYMENT

A **Preliminary Payment** must be made to BDT either before or immediately after the submission of the Application for Arb-Med. The Preliminary Payment must include:

(a) the Registration Fee;

(b) a payment toward the Administration Fee, to be calculated in accordance with the Applicant's reasonable assessment of the aggregate amount in dispute; and

(c) a payment toward Security for the Arbitral Tribunal's Fees and Expenses, to be calculated in accordance with the Applicant's reasonable estimate of the aggregate amount in dispute.

No administrative or procedural steps will be taken by BDT in relation to the appointment of the Arbitral Tribunal until the Preliminary Payment has been paid in full.

2.0 REGISTRATION FEE

In accordance with Rules 5.5-5.7, the Parties must pay BDT a non-refundable **Registration Fee** of:

(a) **$1,000.00** for Arb-Med with one arbitrator; or

(b) **$2,000.00** for Arb-Med with more than one arbitrator.

3.0 ADMINISTRATION FEE

In accordance with Rules 5.5-5.7, the Parties must pay BDT a non-refundable **Administration Fee** in accordance with the following schedule:

Amount in Dispute	Administration Fee
≤ $249,999.99	$1,250.00
$250,000.00 ≤ $499,999.99	$1,250.00 plus 0.7% on the amount above $250,000.00
$500,000.00 ≤ $999,999.99	$3,000.00 plus 0.4% on the amount above $500,000.00
$1,000,000.00 ≤ $2,499,999.99	$5,000.00 plus 0.16% on the amount above $1,000,000.00
$2,500,000.00 ≤ $4,999,999.99	$7,500.00 plus 0.1% on the amount above $2,500,000.00
$5,000,000.00 ≤ $9,999,999.99	$10,000.00 plus 0.1% on the amount above $5,000,000.00
$10,000,000.00 ≤ $49,999,999.99	$15,000.00 plus 0.0125% on the amount above $10,000,000.00
$50,000,000.00 ≤ $99,999,999.99	$20,000.00 plus 0.02% on the amount above $50,000,000.00
≥ $100,000,000.00	$30,000.00 plus 0.01% on the amount above $100,000,000.00 up to a maximum of $50,000.00
Declaratory relief only	$3,000.00

Urgent Interim Relief

Where Urgent Interim Relief is sought, the applicant must pay BDT an additional non-refundable Administration Fee at the time the application for Urgent Interim Relief is made, in accordance with the following schedule:

Amount in Dispute	Administration Fee – Urgent Interim Relief
≤ $249,999.99	$1,000.00
$250,000.00 ≤ $499,999.99	$1,250.00
$500,000.00 ≤ $999,999.99	$1,500.00
$1,000,000.00 ≤ $2,499,999.99	$1,625.00
$2,500,000.00 ≤ $4,999,999.99	$1,750.00
$5,000,000.00 ≤ $9,999,999.99	$2,000.00
$10,000,000.00 ≤ $49,999,999.99	$2,500.00
$50,000,000.00 ≤ $99,999,999.99	$2,750.00
≥ $100,000,000.00	$3,000.00
Declaratory relief only	$1,500.00

The Administration Fee does not include the Fees and Expenses of the Arbitral Tribunal, or usage, hire, and cost of facilities and support services for and in connection with the Arb-Med proceeding.

4.0 ARBITRATOR'S FEES AND EXPENSES

An arbitrator is entitled to fix and be paid a Fee, for time engaged on the duties of the Arb-Med process.

Arbitration Fee

An arbitrator is entitled to fix and be paid a Fee that is reasonable having regard to the work done by the arbitrator while engaged on the duties of the Arbitration, and which Fee may not, except in exceptional circumstances, exceed the maximum amount in the following schedule (**Scheduled Maximum Fee**):

Amount in Dispute	Fee
≤ $249,999.99	$30,000.00
$250,000.00 ≤ $499,999.99	$35,000.00 plus 2% on the amount above $250,000.00
$500,000.00 ≤ $999,999.99	$40,000.00 plus 3% on the amount above $500,000.00
$1,000,000.00 ≤ $2,499,999.99	$55,000.00 plus 2% on the amount above $1,000,000.00
$2,500,000.00 ≤ $4,999,999.99	$85,000.00 plus 1.6% on the amount above $2,500,000.00
$5,000,000.00 ≤ $9,999,999.99	$125,000.00 plus 0.5% on the amount above $5,000,000.00
$10,000,000.00 ≤ $49,999,999.99	$150,000.00 plus 0.125% on the amount above $10,000,000.00
$50,000,000.00 ≤ $99,999,999.99	$200,000.00 plus 0.2% on the amount above $50,000,000.00
≥ $100,000,000.00	$300,000.00 plus 0.01% on the amount above $100,000,000.00 up to a maximum of $500,000.00
Declaratory relief only	$40,000.00

In exceptional circumstances BDT may, on application by an arbitrator, copied to every Party, fix the amount that the arbitrator is entitled to be paid for the Arbitration at a higher figure than the Scheduled Maximum Fee after allowing every Party an opportunity to respond. If a Party wishes to exercise that right, that Party must within five working days of receipt of the arbitrator's application for additional payment, communicate its response to BDT, the arbitrator, and every other Party.

For the purpose of supporting a claim for payment of an amount additional to the Scheduled Maximum Fee, the arbitrator's all-inclusive hourly rate may not exceed NZ$850.00 per hour.

For the avoidance of any doubt, a decision by BDT to increase the Fee that an arbitrator is entitled to be paid above the Scheduled Maximum Fee for the Arbitration is a decision of an administrative nature made under Rule 34.1.

Interim Relief, Summary Procedure, Joinder, and Consolidation

An arbitrator is entitled to fix and be paid an amount by the Parties, over and above the Scheduled Maximum Fee, which amount is reasonable having regard to the work done by the arbitrator to determine any application for Interim Relief, early dismissal of a Claim or Defence, Joinder, or Consolidation (**Additional Fee**).

In the event of any dispute arising in relation to the Additional Fee fixed by the arbitrator, BDT will determine the additional amount that the arbitrator is entitled to be paid after allowing every Party an opportunity to respond. If a Party wishes to exercise that right, that Party must within five working days of receipt of notice of the proposed Additional Fee communicate its response to BDT and the arbitrator.

For the avoidance of any doubt, a decision by BDT as to the Additional Fee that an arbitrator is entitled to be paid for determining any application for Interim Relief, early dismissal of a Claim or Defence, Joinder, or Consolidation, is a decision of an administrative nature made under Rule 34.1.

Mediation Fee

An arbitrator is entitled to fix and be paid a Fee that is reasonable having regard to the work done by the arbitrator while engaged on the duties of the Mediation (**Mediation Fee**).

For the purpose of supporting a claim for payment of a Mediation Fee, the arbitrator's all-inclusive hourly rate may not exceed NZ$850.00 per hour.

A decision by BDT as to the amount to be paid to an arbitrator in respect of the Mediation Fee, is a decision of an administrative nature made under Rule 34.1.

Arb-Med Expenses

BDT is entitled to recover the actual and reasonable Expenses of the Arb-Med proceeding in addition to the Fee.

Fee payable on replacement of arbitrator

If an arbitrator becomes in fact or in law, or by reason of infirmity, unable to perform the functions of that office, or withdraws from office, or is replaced in accordance with Rules 6.18 or 7.1-7.7, BDT will determine the amount of Fees and Expenses to be paid to the replaced arbitrator (if any). BDT will take into consideration the circumstances of the case, including, but not limited to, the basis for withdrawal or grounds for replacement, the work done by the arbitrator in connection with the Arb-Med process, and the complexity of the subject matter.

Security for Arbitral Tribunal's Fees and Expenses

A Notice of Appointment of the Arbitral Tribunal will not be served on the Parties by BDT until the Parties have paid (in clear funds) into the trust account of BDT the prescribed security for the Arbitral Tribunal's Fees and Expenses in accordance with the following schedule:

Amount in dispute	Security Amount	
	1 Arbitrator	3 Arbitrators
≤ $249,999.99	$10,000.00	$25,000.00
$250,000.00 ≤ $499,999.99	$15,000.00	$35,000.00
$500,000.00 ≤ $999,999.99	$20,000.00	$45,000.00

$1,000,000.00 ≤ $2,499,999.99	$25,000.00	$55,000.00
$2,500,000.00 ≤ $4,999,999.99	$30,000.00	$65,000.00
$5,000,000.00 ≤ $9,999,999.99	$35,000.00	$75,000.00
$10,000,000.00 ≤ $49,999,999.99	$40,000.00	$85,000.00
$50,000,000.00 ≤ $99,999,999.99	$45,000.00	$90,000.00
≥ $100,000,000.00	$50,000.00	$100,000.00
Declaratory relief only	$20,000.00	$45,000.00

Security for Interim Relief, Summary Procedure, and Joinder

Where Interim Relief, early dismissal of a Claim or Defence, or Joinder is sought, the applicant must pay BDT an additional amount as security for the Arbitral Tribunal's Fees and Expenses in accordance with the following schedule:

Amount in Dispute	Additional Security
≤ $249,999.99	$5,000.00
$250,000.00 ≤ $499,999.99	$7,500.00
$500,000.00 ≤ $999,999.99	$10,000.00
$1,000,000.00 ≤ $2,499,999.99	$11,125.00
$2,500,000.00 ≤ $4,999,999.99	$12,500.00
$5,000,000.00 ≤ $9,999,999.99	$15,000.00
$10,000,000.00 ≤ $49,999,999.99	$17,500.00
$50,000,000.00 ≤ $99,999,999.99	$18,750.00
≥ $100,000,000.00	$20,000.00
Declaratory relief only	$10,000.00

Security amount not an estimate

Any amount paid as security for the Arbitral Tribunal's Fees and Expenses is merely an initial advance against the Arbitral Tribunal's Fees and Expenses which will be calculated in accordance with the criteria set out in this Appendix to the Rules.

The initial advance is a nominal amount only and **is not an estimate of the cost of the Arb-Med process**. The Arbitral Tribunal is entitled to fix a Fee to be paid by the Parties that is reasonable having regard to work done, which Fee may not, except in exceptional circumstances, exceed the Scheduled Maximum Fee set out above, together with any Mediation Fee, Additional Fee, or Cancellation Fee that the Arbitral Tribunal is entitled to under these Rules.

Supplementary advances and interim payments

During the course of the Arbitration, BDT may from time to time request one or several further supplementary, interim, and/or final advances and deposits from the Parties towards the Fees and Expenses of the Arb-Med proceeding, incurred or to be incurred on behalf of, or for the benefit of the Parties. All such advances are to be paid into the trust account of BDT on demand.

The Registrar may, from time to time on instruction of the Arbitral Tribunal, apply the advances and deposits paid by the Parties as security towards interim payments to the Arbitral Tribunal and render an updated statement of accounting to the Parties.

Any interest which may accrue on such deposits will be retained by BDT as its own property.

Multiple Parties

In Arb-Med involving multiple Parties, the provisions in sections 1-4 apply *mutatis mutandis*, save for the **Registration Fee** shall be increased by a factor of 50% of the relevant scheduled amount for the third and every other additional Party to the Arb-Med proceeding.

Joinder

The applicant must pay BDT a **Joinder Fee** either before or immediately after submission of the Application for Joinder. The Joinder Fee must include:

(a) a non-refundable **Registration Fee** of:

  (i) **$1,000.00** for Arb-Med with one arbitrator; or

  (ii) **$2,000.00** for Arb-Med with more than one arbitrator.

(b) an advance payment toward the **Administration Fee** to be calculated in accordance with the applicant's reasonable assessment of the value of its cross-claims against the non-party and the non-party's counterclaims and/or affirmative defences; and

(c) an advance payment toward **Security for the Arbitral Tribunal's Fees and Expenses** to be calculated in accordance with the applicant's reasonable assessment of the value of its cross-claims against the non-party and the non-party's counterclaims and/or affirmative defences.

No administrative or procedural steps will be taken by BDT in relation to the Application for Joinder until the Joinder Fee has been paid in full.

In the event that the Application for Joinder is declined by the Arbitral Tribunal, BDT will refund the applicant the whole of the amount paid in advance toward the Administration Fee and any unexpended amount paid as security for the Arbitral Tribunal's Fees and Expenses.

Consolidation

The applicant must pay BDT a non-refundable **Consolidation Fee** of:

(a) **$2,000.00** where each of the Arbitral Tribunals is composed of a sole arbitrator; or

(b) **$3,500.00** where one or more of the Arbitral Tribunals is composed of more than one arbitrator.

The Consolidation Fee must be paid by the applicant either before or immediately after submission of the Application for Consolidation.

No administrative or procedural steps will be taken by BDT in relation to the Application for Consolidation until the Consolidation Fee has been paid.

For the avoidance of doubt, the Fee that an arbitrator is entitled to be paid in respect of the consolidated Arb-Med proceedings shall be the total amount of the separate Scheduled Maximum Fees payable in respect of each Arb-Med proceeding (together with any Mediation Fee, Additional Fee, or Cancellation Fee that the Arbitral Tribunal is entitled to under these Rules). The Fee is not calculated on the aggregate value of the amounts in dispute in each of the consolidated Arb-Med proceedings.

5.0 WHEN IS PAYMENT REQUIRED?

The **Preliminary Payment** must be made to BDT either before or immediately after submission of the Application for Arb-Med.

BDT may from time to time request one or more **Supplementary Payments** from the Parties towards the Fees and Expenses incurred or to be incurred on behalf of, or for the benefit of the Parties, in Arb-Med.

If the actual aggregate amount in dispute is greater than the value used for the purpose of calculating the Preliminary Payment, the final Supplementary Payment must include:

(a) the remaining balance of the Administration Fee, to be calculated in accordance with the schedule in section 3 of this Appendix; and

(b) the remaining balance of the Arbitral Tribunal's Fees and Expenses, to be calculated in accordance with the criteria set out in this Appendix to the Rules.

The Parties must pay all Supplementary Payments within three working days of receipt of request by BDT for such additional Fees and Expenses.

If any required deposit or advance is not paid in full within three working days after receipt of the request, the Registrar will so inform the Parties in order that one or another of them may make the required payment. If payment is not made within a further five working days, the Arbitral Tribunal may order the suspension or termination of the Arb-Med proceeding.

If the Fees and Expenses of the Arb-Med proceeding are less than the amount held by BDT as security, BDT will provide the Arbitral Tribunal's Award to the Parties as soon as practicable after the Arbitral Tribunal has made its Award.

In the event that the Fees and Expenses of the Arb-Med proceeding are greater than the amount held as security, the Parties will be advised as soon as practicable by BDT of the Arbitral Tribunal's actual Fees and Expenses, and the Parties will be requested to pay the balance in order to uplift the Award. When the balance is paid in full, a copy of the Award will be provided to each of the Parties by BDT.

As soon as practicable after an Award on Agreed Terms or a Final Award has been provided to the Parties, BDT will render a final statement of accounting to the Parties of deposits and advances received and payments made to the Arbitral Tribunal, and BDT

will reimburse any unexpended balance of the security amount to the Parties in the manner determined by the Arbitral Tribunal.

No administrative or procedural steps will be taken by BDT while any payment is due under these Rules.

6.0 LIABILITY FOR PAYMENT

The Parties are free to make any arrangements as between them for payment of the Arb-Med Fees and Expenses.

However, and notwithstanding any agreement as between the Parties, the Parties will at all times be jointly and severally liable for the Arbitral Tribunal's Fees and Expenses, whether or not it makes an Award fixing the costs and expenses of the Arbitration, together with the BDT Administration Fee and any costs howsoever incurred by BDT in recovering any overdue monies on a full indemnity basis.

7.0 METHODS OF PAYMENT

Payment of all BDT Fees and Expenses may be made by direct credit, bank transfer, or by credit card (Visa and MasterCard only). A merchant transaction fee of 2.95% is payable in addition to the published BDT Fee for all credit card payments.

All Fees, Expenses, and costs related to the Arb-Med proceeding will be invoiced in New Zealand dollars, but may be paid in other convertible currencies at rates prevailing at the time of payment, provided that any transfer and/or currency exchange charges must be borne by the payer.

8.0 SETTLEMENT OR WITHDRAWAL

In the event that the dispute is settled or the Arb-Med Agreement is withdrawn by the Parties before a Partial Award is made that determines all of the matters at issue, the Arbitral Tribunal's Fees and Expenses incurred prior to that date, including any entitlement to Cancellation Fees and any outstanding balance of the BDT Administration Fee will be deducted from the amount paid as security by the Parties for the costs of the Arb-Med proceeding.

The balance of the security monies will be refunded to the Parties in the proportions in which the security payment was made, unless the Parties agree otherwise and instruct BDT accordingly in writing within five working days of notice of settlement or withdrawal of the Arb-Med Agreement.

In the event that the combined amount of the Fees and Expenses and the BDT Administration Fee are greater than the amount held as security, the Parties must pay the balance within five working days of receipt of notification by BDT of such additional Fees and Expenses.

9.0 CANCELLATION FEES

In any case where a Party notifies the Arbitral Tribunal in writing that a scheduled conference, Mediation session, inspection, or hearing date is to be vacated, whether or not the dispute between the Parties has been settled, or the conference, Mediation session, inspection, or hearing is adjourned by agreement, or the Application for Arb-Med is withdrawn or terminated by the Parties for any reason whatsoever, and the notice is received by the Arbitral Tribunal between 15 and 11 working days from and including the date of the scheduled conference, Mediation session, inspection, or hearing, the Arbitral Tribunal may charge a Fee in the amount of 50% of the Arbitral Tribunal's daily charges for the entire period of time set aside for attendances on the same (**Cancellation Fee**).

If such notice is received ten working days or less from and including the date of the scheduled conference, Mediation session, inspection, or hearing, the Arbitral Tribunal may charge a Cancellation Fee in the amount of 75% of the Arbitral Tribunal's daily charges for the entire period of time set aside for attendances on the same.

For the purpose of calculating Cancellation Fees, an arbitrator's daily charges may not exceed eight hours at an all-inclusive hourly rate of NZ$850.00 per hour.

APPENDIX 2: ARB-MED AGREEMENT

By an Agreement

Dated this day of (month) (year)

BETWEEN:

_____ Claimant

AND

_____ Respondent

Together, the **Parties**

The Claimant and the Respondent are Parties to **(*define legal relationship*)**:

Entered into on or about **(*enter date*)**:

For, or in relation to **(*enter detail*)**:

The Claimant and the Respondent have agreed that [all matters in dispute between them / the matters in dispute between them set out in the Schedule attached hereto **(*delete one*)**] shall be referred to Arbitration for final determination in accordance with the Arb-Med Rules of the Building Disputes Tribunal (**BDT Arb-Med Rules**).

The number of arbitrators will be one. **[*or may choose three*]**

The language to be used in the Arb-Med process will be English. **[*or choose another language*]**

The governing law of the contract will be the substantive law of New Zealand. **[*or choose another country*]**

On execution of this Arb-Med Agreement, any Party may initiate Arb-Med by completing an Application for Arb-Med in terms of Rule 5.4.

For the avoidance of doubt, under this Arb-Med Agreement the Claimant is not required to serve a Notice of Arb-Med under Rule 5.1 to initiate Arb-Med or to attach such Notice to the Application for Arb-Med under Rule 5.4(b).

Notices to the Claimant:

Notices to the Claimant shall be given to an address for service which is:

Phone:

Mobile:

Email:

Notices to the Respondent:

Notices to the Respondent shall be given to an address for service which is:

Phone:

Mobile:

Email:

I certify that: I have read and understood this Arb-Med Agreement and the BDT Arb-Med Rules; and

I agree to be bound by the terms of this Arb-Med Agreement and the BDT Arb-Med Rules.

Claimant		**Respondent**	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Position:	_____	Position:	_____
In the presence of:			
Name:	_____	Name:	_____
Address:	_____	Address:	_____
Occupation:	_____	Occupation:	_____

SCHEDULE OF MATTERS IN DISPUTE FOR REFERENCE TO ARB-MED

The Parties have agreed that the following matters in dispute are the matters to be submitted to Arb-Med:

(a) [ ]

(b) [ ]

APPENDIX 3: CONFIDENTIALITY AGREEMENT FOR NON-PARTIES

I have read and understand that I am bound by Rules 30.2-30.7 of the BDT Arb-Med Rules. I understand that by being involved in, or being privy to, BDT Arb-Med, I am bound by these Rules.

I understand that I am not to disclose any information obtained in the course of the Arb-Med proceeding, including the fact of the Arb-Med itself, except in accordance with Rules 30.4-30.7.

I understand that I owe all Parties, BDT, the Arbitral Tribunal, and any other non-parties involved in the Arb-Med proceeding a duty of confidence, and that failure to comply with this duty may result in legal consequences.

I understand that if I intend to make a disclosure of any Confidential Information, I must notify all persons listed in Rule 30.5.

Dated this day of (month) (year)

Signed: _____

Name: _____

APPENDIX 4: BDT GUIDELINES FOR EXPERT EVIDENCE

These Guidelines are intended to assist experts, Parties, and their Representatives, to understand experts' obligations and BDT's requirements in relation to the preparation of reports, Mediation, joint conferences of experts, and the hearing of concurrent evidence in Arb-Med under these Rules.

1.0 THE EXPERT REPORT

1.1 BDT wishes to ensure that experts understand their responsibilities and obligations, and that a common approach to the preparation of reports is adopted and followed.

1.2 An expert report should clearly state:

(a) the expert's qualifications and the expert's expertise and experience in relation to the issues the subject of the report;

(b) the issues that the evidence of the expert addresses;

(c) that the evidence is within the expert's area of expertise and, if applicable, the issues that fall outside of the expert's expertise;

(d) all instructions that define the scope of the report or evidence, both original and supplementary, and whether in writing or oral;

(e) the facts and assumptions on which the opinions of the expert are based; and

(f) the expert's opinion on the issues referred to him or her, based on paragraphs (a) to (e) above, and the reasons for the opinions given by the expert.

1.3 The report should specify any literature, general body of scientific knowledge, or other material used or relied on in support of the opinions expressed by the expert.

1.4 The report should describe any examinations, tests, or other investigations on which the expert has relied, and give the details and qualifications of any person who carried them out.

1.5 Technical experts should not comment or report on legal questions of liability.

1.6 An expert who changes his or her opinion on a material matter on the basis of another expert's report, or for any other reason, must communicate the change of opinion to the Party retaining the expert, and such Party must immediately file with the Arbitral Tribunal and every other Party to the proceeding, notice of such change of opinion, and the notice must specify the reason or reasons why the expert's opinion has changed.

2.0 JOINT CONFERENCE OF EXPERTS

2.1 To minimise the length and complexity of hearings, experts will generally be ordered to meet and confer with other experts for the purpose of trying to reach agreement on matters within the field of expertise of the experts and for preparing a joint statement

stating the matters on which the experts agree, the matters on which they do not agree, and the reasons for their disagreement.

2.2 The joint conference of experts may be conducted at any venue that the Parties may agree, or in the absence of agreement, at any venue directed by the Arbitral Tribunal.

2.3 The matters discussed between the experts at the conference must remain confidential to those experts and must not be referred to at the hearing unless the Parties who have engaged the experts all agree. However, the joint statement will be open.

2.4 The joint statement must be signed by the experts at the end of the conference.

2.5 The Claimant must file the joint statement with the Arbitral Tribunal and every other Party within two days of the conference.

2.6 The Parties and/or their Representatives may not attend the joint conference of experts and they must not review a copy of the joint statement before it is completed and signed by the experts.

3.0 THE JOINT STATEMENT

3.1 It is expected that in preparing the joint statement, the experts will confer and genuinely endeavour to reach agreement on any matters at issue within their field of expertise, narrow any points in difference between them, and identify any remaining points of difference. As part of that process, the experts may agree a scope of works for further testing and monitoring and a timetable for the carrying out of such testing and monitoring.

3.2 While experts are free to disagree, such disagreement must come from the free exercise of their own independent, professional judgment. Experts must not be influenced by, or act upon, any instruction or request to withhold or avoid agreement.

3.3 In the context of a joint conference of experts, it is likely that there will be a fuller revelation of the relevant facts. The preparation of the joint statement is intended to allow experts to reconsider and revise their opinions where appropriate in a professional and non-adversarial environment if new evidence and relevant material becomes available.

3.4 A joint statement must:

(a) identify the areas of agreement and disagreement with reasons for any disagreement;

(b) include any alternative recommendations; and

(c) be signed by all experts who participated in the joint meeting of experts before it is filed with the Arbitral Tribunal and the Parties.

4.0 CONCURRENT EXPERT EVIDENCE

4.1 It should be expected that all expert evidence will be heard concurrently unless there is a single expert appointed or the Arbitral Tribunal directs that expert evidence is to be

given in an alternate manner. The process enables experts to express opinions they have on a particular subject in their own words, and to answer questions from the Arbitral Tribunal, the Parties' Representatives, and from their professional colleagues.

4.2 Subject to the discretion of the Arbitral Tribunal, the hearing of concurrent evidence will generally proceed on the following basis:

(a) the experts will be sworn in at the same time;

(b) the joint statement will form the basis of the concurrent evidence;

(c) the Arbitral Tribunal will identify with the help of the Parties' Representatives, and in the presence of the experts, the topics that require discussion in order to resolve the outstanding issues;

(d) the Arbitral Tribunal will then ask each expert to briefly summarise the expert's position on the first issue;

(e) general discussion on the issue will follow during which the experts can ask each other questions and discuss issues;

(f) the Arbitral Tribunal may ask questions of any of the experts and the Parties' Representatives will be invited to ask any questions of their own or any other witness; and

(g) each topic or issue will be dealt with in turn.

APPENDIX 5: BDT CODE OF CONDUCT FOR EXPERT WITNESSES

1.0 APPLICATION OF THE CODE

1.1 This Code of Conduct applies to any expert witness engaged or appointed to give opinion evidence or to provide an expert report for use as evidence in Arb-Med under these Rules.

2.0 GENERAL DUTY TO THE ARBITRAL TRIBUNAL

2.1 An expert witness has an overriding duty to assist the Arbitral Tribunal impartially on matters relevant to the expert's area of expertise.

2.2 The expert witness is not an advocate for the Party retaining the witness.

2.3 The expert witness must comply with any directions or orders of the Arbitral Tribunal.

3.0 EVIDENCE OF THE EXPERT WITNESS

3.1 In any report or statement of evidence, the expert witness must:

(a) acknowledge that the expert witness has read this Code of Conduct and agrees to be bound by it;

(b) state the expert witness' qualifications and the expert witness' expertise and experience in relation to the issues the subject of the report;

(c) state the issues that the evidence of the expert witness addresses;

(d) state that the evidence is within the expert witness' area of expertise, and if applicable, the issues that fall outside of the expert witness' expertise;

(e) state all instructions that define the scope of the report or evidence, both original and supplementary, and whether in writing or oral;

(f) state the facts and assumptions on which the opinions of the expert witness are based;

(g) state the expert witness' opinion on the issues referred to him or her based on paragraphs (a) to (f) above, and the reasons for the opinions given by the expert witness;

(h) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness; and

(i) describe any examinations, tests, or other investigations on which the expert witness has relied, and give the details and qualifications of any person who carried them out.

3.2 If an expert witness believes that his or her evidence, or any part of it, may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

3.3 If an expert witness considers that his or her opinion is not a concluded opinion because of insufficient research, or data, or for any other reason, this must be stated in his or her evidence.

3.4 If an expert witness changes his or her opinion on a material matter after providing an expert's report to the Party engaging him or her (or that Party's Representative), the expert witness must immediately communicate the change of opinion to the Party retaining the expert (or that Party's Representative) and provide a supplementary report. The report must specify the reason or reasons why the expert's opinion has changed and must contain such of the information in paragraph 3.1 above as is relevant.

4.0 DUTY TO ATTEND JOINT MEETING OF EXPERTS AND TO CONFER

4.1 An expert witness must comply with any direction of the Arbitral Tribunal to:

(a) confer with any other expert witness on the matters on which the Arbitral Tribunal directs the expert witnesses to confer in the absence of the Representatives of the Parties;

(b) endeavour to reach agreement on any matters at issue within the field of expertise of the expert witnesses, to narrow any points in difference between them, and to identify any remaining points of difference; and

(c) prepare and sign a joint statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, and the reasons for their disagreement.

4.2 The expert witness must exercise his or her independent, professional judgment in relation to conferring with another expert witness and the preparation of a joint statement and must not act on the instructions or directions of any person to withhold or avoid agreement.