BUILDING DISPUTES TRIBUNAL
Te Taraipiunara Tautohe Hanga Whare

ECA45 ARBITRATION RULES

2025 Revision

BUILDING DISPUTES TRIBUNAL
TE TARAIPIUNARA TAUTOHE HANGA WHARE

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FOREWARD

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

The primary objective of modern commercial arbitration is the fair, prompt, and cost effective determination of any dispute, in a manner that is proportionate to the amounts in dispute and the complexity of the issues involved.

To ensure that objective is met in the context of domestic arbitration, the Building Disputes Tribunal (**BDT**) has developed a suite of Arbitration Rules (**Rules**) that are robust and certain, yet innovative in their commercial commonsense approach to challenging issues such as appointment, urgent interim relief, expedited procedures, summary procedures for early dismissal of claims and defences, joinder, consolidation, multiple contracts, confidentiality, representation, mediation, arbitral secretaries, expert evidence, appeals, and costs.

The Rules provide both a framework and detailed provisions to ensure the efficient and cost effective resolution of disputes. 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.

The Rules are intended to give parties the widest choice and capacity to adopt fully administered procedures that are fair, prompt, and cost effective, and which provide a proportionate response to the amounts in dispute and the complexity of the issues involved.

Where parties have agreed to arbitrate under the BDT Arbitration Rules and the amount claimed by the claimant is less than NZ$250,000, or the claimant is seeking declaratory relief only, these ECA45 Arbitration Rules will apply unless otherwise agreed by the parties.

These Rules are specifically designed to allow the quickest and most cost effective resolution of commercial disputes involving relatively modest amounts at issue.

These Rules provide for a documents only arbitration procedure and are specifically designed to result in an Award being made which finally determines all substantive issues in dispute within 45 working days.

In providing a 45 working day expedited arbitration procedure and fixed fees, BDT has established itself as a leader in ensuring speedy and cost effective resolution of building and construction disputes in New Zealand. While these Rules are particularly suitable for disputes where the amount claimed is less than NZ$250,000, they may be adopted for larger disputes by agreement of the parties.

BDT has long established itself as the independent, nationwide, specialist dispute resolution service provider to the building and construction industry in New Zealand and these updated Rules will allow BDT to continue to offer a world class arbitration service that is tailored to meet the needs and requirements of parties to building and construction disputes, and which is fundamentally and purposively directed to ensuring the resolution of building and construction disputes in a manner that is private, efficient, cost effective and certain.

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

BDT MODEL ARBITRATION CLAUSE

The following arbitration clause should be included in contracts where the parties wish to have any future disputes resolved by Arbitration 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 Arbitration 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 Arbitration Agreement at Appendix 2 to these Rules.

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ECA45 ARBITRATION RULES

SECTION I: INTRODUCTORY RULES

1.0 INTRODUCTION

1.1 These are the 45 day Expedited Commercial Arbitration Rules of the Building Disputes Tribunal (**BDT**) and may be referred to as the BDT ECA45 Arbitration Rules (**Rules**).

1.2 Where a dispute has been referred to BDT for Arbitration (or words to the same effect), the Arbitration 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, where:

(a) the amount claimed by the Claimant is less than NZ$250,000;

(b) the Parties are seeking declaratory relief only; or

(c) the Parties have expressly agreed to arbitrate under these Rules.

1.3 Unless otherwise agreed by the Parties in writing, where the amount claimed by the Claimant is NZ$250,000 or more, the Arbitration will be governed by the relevant BDT Arbitration Rules, ie:

(a) where the claim is for an amount greater than or equal to NZ$250,000 and less than NZ$1M the BDT ECA60 Arbitration Rules will apply;

(b) where the claim is for an amount greater than or equal to NZ$1M and less than NZ$2.5M, the BDT ECA90 Arbitration Rules will apply; and

(c) where the claim is for an amount of NZ$2.5M or more, the standard BDT Arbitration Rules will apply.

1.4 Unless the Parties have agreed in writing that the Arbitration will be conducted in accordance with a particular version of these Rules, the version of these Rules in effect on the date the Application for Arbitration 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 Arbitration in effect on the date the Application for Arbitration is made will apply.

1.5 Where there is any conflict between these Rules and a mandatory provision of the Arbitration Act 1996 (the **Act**) from which the Parties cannot derogate, that mandatory provision will prevail, and these Rules must be read consistently with that provision. 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 provision.

1.6 BDT owns the copyright to these Rules and they may only be used by Parties, or intending Parties, to an Arbitration 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 ARBITRATION means an application, in the form from time to time published on the Website, for BDT to appoint an Arbitral Tribunal and administer the Arbitration under these Rules.

ARBITRAL TRIBUNAL means any sole arbitrator appointed in accordance with these Rules.

ARBITRATION means Arbitration conducted under these Rules.

ARBITRATION AGREEMENT means a written agreement by the Parties to submit to Arbitration 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 Arbitration 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 Arbitration including, but not limited to: travel, accommodation, meals, taxis, couriers, personal vehicle mileage charges, communications, secretarial and administration services, 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.

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.

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

NOTICE OF ARBITRATION means the written notice required to be issued by the Claimant to initiate Arbitration under these Rules unless the Parties have signed the Arbitration 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 Arbitration Agreement, or in any case where the Arbitration does not involve all of the Parties to the Arbitration Agreement, means a Party to the Arbitration.

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

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 the Arbitration, whether legally qualified or not.

RESPONDENT means any Party against whom a Claim is made by a Claimant in an Arbitration 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.

URGENT INTERIM RELIEF means any Interim Measure that is applied for after the Application for Arbitration has been submitted and before the Arbitral Tribunal has been constituted under Rules 6.1-6.4.

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 Arbitration 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 Arbitration 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; and

(b) to produce such orders or Awards as may be necessary to effectively determine the issues in the Arbitration within the shortest period of time that is reasonably possible following commencement of the Arbitration, 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 Arbitration, and they agree to be bound by, and to comply without delay with:

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

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

(c) any Preliminary Order or Interim Measure; and

(d) any Award of the Arbitral Tribunal.

4.0 CALCULATION OF PERIODS OF TIME FOR THE PURPOSES OF THE ARBITRATION

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 41.5-41.9, 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 ARBITRATION

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

(a) a demand that the dispute be referred to Arbitration;

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

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

(a) the Arbitration Agreement;

(b) the Notice of Arbitration (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 Arbitration.

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 Arbitration 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 Arbitration Agreements are compatible; and

(c) the Parties agree to a single Arbitration under these Rules.

SECTION II: FORMATION OF THE ARBITRAL TRIBUNAL

6.0 COMPOSITION AND FORMATION OF THE ARBITRAL TRIBUNAL

Procedure

6.1 A sole arbitrator will be appointed as the Arbitral Tribunal by BDT upon receipt of a duly completed Application for Arbitration and the Preliminary Payment.

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

6.3 If the Parties 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 6.20-6.21. 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' nominee under Rule 6.3; or

(b) the Parties' 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 No Party, nor the Representative of any Party, may have any *ex parte* communication relating to the Arbitration 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.

Procedure under urgency

6.6 If a Party seeks Urgent Interim Relief before the Arbitral Tribunal has been appointed, 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.

6.7 For the purposes of Rule 6.6, BDT will maintain a panel of specialist arbitrators for appointment where Urgent Interim Relief is sought.

6.8 The arbitrator determining the application for Urgent Interim Relief will consider the application in accordance with the factors set out in Rule 30.3.

6.9 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.

6.10 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 30.2, 30.4, and 30.5.

6.11 Following the determination of Urgent Interim Relief, the arbitrator appointed under Rule 6.6 will remain as the Arbitral Tribunal.

6.12 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

6.13 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.

6.14 After an application for Urgent Interim Relief has been determined, the arbitrator who has been appointed for that purpose under Rule 6.6 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 6.1-6.4.

Selection and appointment of arbitrator by BDT

6.15 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.

6.16 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.

6.17 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 Arbitration.

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

6.19 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.

6.20 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;

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

(c) any other information the Registrar considers relevant.

6.21 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 Arbitration in accordance with these Rules.

6.22 Any arbitrator conducting an Arbitration 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 Arbitration is concluded.

6.23 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, or on a written challenge by any Party if:

(a) the arbitrator gives written notice to BDT and every Party 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 Arbitration 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.

9.0 LANGUAGE OF ARBITRATION

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

9.2 The Arbitral Tribunal may order that any documents or exhibits submitted for the purpose of the Arbitration, delivered in their original language, must be accompanied by a translation (or be translated) into the language or languages of the Arbitration 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 Arbitration 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 4 of the Second Schedule of the Act to determine any preliminary question of law in the course of any Arbitration under these Rules.

10.3 No Party may appeal 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.

10.4 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 within the limits of the applicable law of the Seat of the Arbitration. 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 Arbitration Agreement and as further defined in the Notice of Arbitration (if relevant), Claim, and any 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 Arbitration 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 Arbitration, 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 Arbitration.

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 Arbitration, 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 Arbitration 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 37.5. 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 Arbitration 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 Arbitration; 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 DIRECTIONS CONFERENCES

14.1 The Arbitral Tribunal may call, and the Parties must attend, conferences for the purpose of discussing and determining procedural issues and timetabling matters (**Directions Conferences**). The Arbitral Tribunal may conduct Directions Conferences in any manner considered appropriate in the circumstances (whether in person, by telephone, video conference, or other electronic communication) at such times and on such dates (and at such venues in the case of meetings in person) as may be fixed by the Arbitral Tribunal.

15.0 CLAIM

15.1 Unless another period of time is agreed by the Parties or determined by the Arbitral Tribunal, the Claimant must, on or before the fifth working day after the Commencement Date, communicate to the Arbitral Tribunal and to the Respondent a statement in writing giving particulars of the claim (**Claim**).

15.2 The Claim must include:

(a) the nature and basis of the Claim;

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

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

(d) copies of all supporting documents relied on by the Claimant; and

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

16.0 DEFENCE AND COUNTERCLAIM

16.1 Unless another period of time is agreed by the Parties or determined by the Arbitral Tribunal, the Respondent may, on or before the 10th working day after the Commencement Date, communicate to the Arbitral Tribunal and to every other Party a statement in writing in reply to the Claim and giving particulars of any claims against the Claimant (**Defence and Counterclaim**).

16.2 The Defence must include:

(a) what matters in the Claim are accepted or agreed;

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

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

(d) copies of all supporting documents relied on by the Respondent; and

(e) submissions on the factual and legal issues involved in the Claim, and the Respondent's contentions as to those issues.

16.3 Any Counterclaim must include:

(a) the nature and basis of the Counterclaim;

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

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

(d) copies of all supporting documents relied on by the Respondent; and

(e) submissions on the factual and legal issues involved in the Counterclaim, and the Respondent's contentions as to those issues.

17.0 REPLY AND DEFENCE TO COUNTERCLAIM

17.1 Unless another period of time is agreed by the Parties or determined by the Arbitral Tribunal, the Claimant may, on or before the 15th working day after the Commencement Date, communicate to the Arbitral Tribunal and to the Respondent a statement in writing in reply to the Defence and Counterclaim (**Reply and Defence to Counterclaim**).

17.2 The Reply by the Claimant to any Defence or Counterclaim must include:

(a) what matters in the Defence or Counterclaim are accepted or agreed;

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

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

(d) copies of all supporting documents relied on by the Claimant; and

(e) submissions on the factual and legal issues involved in the Defence or the Counterclaim, and the Claimant's contentions as to those issues.

18.0 NO AMENDMENTS TO CLAIM, DEFENCE AND COUNTERCLAIM, AND REPLY AND DEFENCE TO COUNTERCLAIM

18.1 No Party may amend or supplement its Claim, Defence and Counterclaim, or Reply and Defence to Counterclaim after the expiry of the period within which the relevant documents may be served on the Arbitral Tribunal and every other Party.

19.0 JURISDICTION OF ARBITRAL TRIBUNAL

19.1 The Arbitral Tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the Arbitration Agreement. For that purpose, an arbitration 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 arbitration clause.

19.2 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than the submission of the Defence and Counterclaim. 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 arbitral proceedings. The Arbitral Tribunal may, in either case, admit a later plea if it considers the delay justified.

19.3 The Arbitral Tribunal may rule on a plea referred to in Rule 19.2 either as a preliminary question or in an Award on the merits.

19.4 If the Arbitration is seated in New Zealand and 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.

Summary procedure – early dismissal of Claims and Defences

19.5 The Arbitral Tribunal may decide one or more issues of fact or law by way of summary procedure.

19.6 A Party may apply to the Arbitral Tribunal for the early dismissal of a Claim or Defence in whole or in part, on the grounds, *inter alia*, that:

(a) a Claim or Defence, or any part of such Claim or Defence, discloses no reasonably arguable cause of action, is frivolous or vexatious, or is otherwise an abuse of process;

(b) the facts alleged by the other Party, even if true, do not disclose any legally recognisable claim;

(c) an allegation of fact or law material to the outcome of the Claim or Defence is manifestly without merit; and/or

(d) a Claim or Defence is manifestly outside the jurisdiction of the Arbitral Tribunal.

19.7 A Party applying for the early dismissal of a Claim or Defence must, at the same time it files the application with the Arbitral Tribunal, file and serve a copy of the application on every other Party and BDT.

19.8 An application for the early dismissal of a Claim or Defence must state:

(a) the grounds relied on;

(b) which causes of action cannot succeed and why;

(c) the form of summary procedure proposed; and

(d) why such procedure would be consistent with the Purpose and Overriding Objective of these Rules such that it would be appropriate in all the circumstances of the case.

19.9 On receipt of an application for the early dismissal of a Claim or Defence, the Arbitral Tribunal shall, after allowing every other Party to comment, issue an order either dismissing the application or allowing the application to proceed and fixing the procedure to be adopted.

19.10 If the application for summary procedure is allowed to proceed, the Arbitral Tribunal shall, after giving the Parties an opportunity to be heard, make an order or Award on the application for the early dismissal of a Claim or Defence, with reasons, which may be in summary form.

19.11 The Arbitral Tribunal will use best endeavours to make an order or Award on the application within the shortest period of time that is reasonably practicable following receipt of the application, having regard to the circumstances of the case.

19.12 If the application for summary procedure is granted and the whole of the Claim or Defence is not dismissed, all time limits under these Rules will be extended by the period of time that elapses from the date the application is served on the Arbitral Tribunal until the order or Award on the application is made.

Arbitral Secretary

19.13 Unless otherwise agreed by the Parties, the Arbitral Tribunal may, after notifying the Registrar and consulting with the Parties, appoint, at its sole discretion, an administrative assistant (**Arbitral Secretary**) at any stage of the Arbitration to assist the Arbitral Tribunal in resolving the dispute effectively and efficiently in a manner consistent with the Purpose and Overriding Objective of these Rules.

19.14 Prior to making any such appointment, the Arbitral Tribunal shall:

(a) select an appropriate candidate, taking into account all the circumstances of the case;

(b) secure the advance agreement of that person to accept such appointment on the terms, and in the form of the Agreement to Act as Arbitral Secretary annexed at Appendix 6 to these Rules;

(c) notify the Registrar and the Parties of its proposal, providing a copy of the duly executed Agreement to Act as Arbitral Secretary and the candidate's curriculum vitae;

(d) receive and consider the Parties' comments and any objection to the appointment; and

(e) assuming no objection is taken, or the Arbitral Tribunal rules against any objection, the Arbitral Tribunal may proceed to appoint the Arbitral Secretary.

19.15 The Arbitral Tribunal shall at all times be responsible for the Arbitral Secretary's conduct in connection with the Arbitration.

19.16 The Arbitral Tribunal shall not delegate any decision-making duties to the Arbitral Secretary or rely on the Arbitral Secretary to perform any other essential duties of the Arbitral Tribunal.

19.17 The Arbitral Secretary shall be subject to the same standards of independence, impartiality, and confidentiality as the Arbitral Tribunal.

19.18 The Parties shall accord the Arbitral Secretary with the same immunity as that accorded to the Arbitral Tribunal under Rules 39.1-39.5.

19.19 The fees of the Arbitral Secretary shall form part of the Arbitral Tribunal's fees.

19.20 Any reasonable expenses incurred by the Arbitral Secretary in the execution of his or her duties shall be reimbursed by the Parties at cost.

20.0 JOINDER

20.1 There is no provision for joinder under these Rules for expedited Arbitration.

21.0 CONSOLIDATION

21.1 There is no provision for consolidation under these Rules for expedited Arbitration.

22.0 DISCLOSURE OF DOCUMENTS

22.1 There shall be no formal discovery or inspection of documents under these Rules for expedited Arbitration.

22.2 Each Party shall provide copies of all documents relied upon in support of the Claim, the Defence and Counterclaim, or the Reply and Defence to Counterclaim to the Arbitral Tribunal and every other Party in accordance with Rules 15.2, 16.2, 16.3, and 17.2.

22.3 The Arbitral Tribunal may, at the request of any Party, or on its own motion, require a Party to provide any documents or other evidence that the Arbitral Tribunal may reasonably require, and may order a Party to make available to the Arbitral Tribunal, or to any other Party, any property, goods, or item in its power, possession, or control for inspection, observation, the taking of samples, measuring, weighing, photography, the observation of any process, or testing. If a Party fails to produce or to make available any such document, property, goods, or item, without adequate explanation, the Arbitral Tribunal may draw any inference from that failure that the Arbitral Tribunal thinks fit.

22.4 For the avoidance of doubt, the Arbitral Tribunal may modify any disclosure procedures set out in Rules 22.1-22.3.

22.5 If discovery and inspection are undertaken, then it will be on such terms as the Arbitral Tribunal directs, having regard to the Purpose and the Overriding Objective of these Rules. The Arbitral Tribunal may, at its discretion, order the Parties to exchange lists of documents verified by affidavit that are, or have been, in the Parties' possession, power, or control, and relate to a matter in question in the Arbitration.

22.6 The Arbitral Tribunal may, at the request of a Party or on its own motion, exclude from evidence, production or inspection, any document, statement, oral testimony, or item, for any of the following reasons:

(a) lack of sufficient relevance to the case or materiality to its outcome;

(b) legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;

(c) unreasonable burden to produce the requested evidence;

(d) loss or destruction of the document or item that has been shown with reasonable likelihood to have occurred;

(e) grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;

(f) grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or public international institution) that the Arbitral Tribunal determines to be compelling;

(g) considerations of procedural economy, proportionality, fairness, or equality of the Parties that the Arbitral Tribunal determines to be compelling; or

(h) any other grounds which would be applicable in court proceedings at the Seat of Arbitration.

23.0 AGREED BUNDLE

23.1 There is no provision for the compilation of an agreed bundle of documents under these Rules for expedited Arbitration.

24.0 HEARING

24.1 Oral hearings are not permitted under these Rules for expedited Arbitration on the documents. However, the Arbitral Tribunal may, at its sole discretion, convene a conference of the Parties for the purpose of clarifying any aspects of the matters in dispute, the Parties' submissions, or any evidence submitted to the Arbitral Tribunal, or for determining any application for directions or relief procedures under these Rules.

25.0 PROCEDURE

25.1 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.

25.2 It is expressly acknowledged and accepted that what might otherwise constitute natural justice in another setting may by necessity be tempered in order that the time limits under these Rules are met and the stated Purpose and Overriding Objective are achieved.

25.3 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 in terms of Rules 19.5-19.12.

25.4 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.

25.5 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.

26.0 EVIDENCE AND ADMISSIBILITY

26.1 Each Party will bear the burden of proving the facts relied upon to support its Claim or any affirmative Defence.

26.2 The Arbitration will proceed on the basis of written submissions, evidence, and any other material which is provided to every other Party and the Arbitral Tribunal in accordance with the procedures set out in these Rules.

26.3 The Arbitral Tribunal may request further relevant submissions, information, or evidence from a Party at any time, but must give every other Party a reasonable opportunity to comment on any such submissions, information, or evidence.

26.4 The admissibility, relevance, weight, and materiality of any evidence offered by the Parties will be determined by the Arbitral Tribunal. The Arbitral Tribunal is not bound by any rules of evidence which might apply in a court of law.

Expert evidence

26.5 Any Party that engages an expert witness must give the expert witness a copy of the Guidelines for Expert Evidence and the Code of Conduct for Expert Witnesses set out at Appendices 4 and 5 to these Rules.

26.6 An expert witness must state in any report or written statement that the expert witness has read the BDT Code of Conduct for Expert Witnesses and agrees to comply with it.

26.7 The evidence of an expert witness who has not complied with Rules 26.5 and 26.6 may be adduced only with the leave of the Arbitral Tribunal, and will be given such weight as the Arbitral Tribunal considers fit.

26.8 The Arbitral Tribunal may direct an expert witness to confer with any other expert witness for the purpose of trying to reach agreement on matters within the field of expertise of the experts and may order the experts to prepare a joint statement of the matters on which the experts agree, the matters on which they do not agree, and the reasons for their disagreement.

Tribunal appointed experts

26.9 The Arbitral Tribunal may not appoint its own expert under these Rules for expedited Arbitration.

27.0 VISITS AND INSPECTIONS

27.1 The Arbitral Tribunal may view the location, subject matter, property, goods, documents, or any other item to which the dispute relates, to assist it in making its Award.

27.2 The Arbitral Tribunal may convene a meeting at any venue that it deems appropriate for the purpose of inspecting property, goods, documents, or any other item.

27.3 The visits or inspections must be carried out by the Arbitral Tribunal in the presence of all Parties unless otherwise agreed. The Parties must be given such notice as is appropriate in the circumstances to enable them to be present at any visit or inspection.

27.4 The Arbitral Tribunal's power to view or inspect any item is not affected by the failure of a Party to attend any scheduled visit or inspection. In the event of any such failure, the Arbitral Tribunal may proceed with the visit or inspection and decide any issue on the basis of its own observations.

28.0 DEFAULT OF A PARTY

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

28.2 If, without showing sufficient cause, the Respondent fails to communicate a Defence and Counterclaim, or the Claimant fails to communicate a Defence to the Counterclaim within the relevant periods of time fixed under these Rules, the Arbitral Tribunal must continue the proceedings.

28.3 In the event of a failure of the kind referred to in Rule 28.2, 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, or inspection convened by the Arbitral Tribunal without showing sufficient cause for such failure, the Arbitral Tribunal must continue with the Arbitration and make the Award on the information and evidence before it.

28.4 If, however, it appears to the Arbitral Tribunal that the Arbitration 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 Arbitration provided that, after giving the Parties a reasonable period within which to respond, no Party objects in writing.

29.0 WAIVER OF RIGHT TO OBJECT

29.1 A Party to the Arbitration that continues with the Arbitration without promptly raising:

(a) a plea as to jurisdiction in accordance with Rule 19.2;

(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 Arbitration,

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.

SECTION IV: INTERIM RELIEF AND SECURITY FOR COSTS

30.0 INTERIM MEASURES

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

30.2 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 Arbitration;

(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.

30.3 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.

30.4 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.

30.5 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.

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

30.7 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.

30.8 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 Arbitration.

30.9 A request for an Interim Measure made by a Party to a court of competent jurisdiction before or during the Arbitration 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.

30.10 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.

31.0 PRELIMINARY ORDERS

31.1 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**).

31.2 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.

31.3 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.

31.4 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 30.3, 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.

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

31.6 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.

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

31.8 A Preliminary Order granted under Rule 31.4 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 31.6 and has had an opportunity to present its case.

31.9 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.

31.10 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.

31.11 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 Arbitration.

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

SECTION V: MEDIATION

32.0 MEDIATION

32.1 If, during the course of the Arbitration, the Parties notify the Arbitral Tribunal in writing that they have agreed to refer their dispute to mediation, the Arbitral Tribunal must stay the proceedings to facilitate the conduct of the mediation. All time limits under these Rules will be extended by the duration of the mediation.

32.2 In any case where such notice is given, the Parties will be deemed to have agreed to refer their dispute to mediation under the BDT Mediation Rules.

33.0 ARBITRATOR MAY ACT AS MEDIATOR

33.1 If the Parties agree in writing that a person who is acting as an arbitrator may act as a mediator, for so long as no Party withdraws that Party's consent in writing, the arbitrator may act as a mediator.

33.2 An arbitrator who is 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.

33.3 If a settlement is reached in respect of any of the matters in dispute, the Arbitral Tribunal may, at its sole discretion, record the settlement in an Award (**Award on Agreed Terms**) if requested by the Parties. The Arbitral Tribunal is not obliged to state the reasons upon which such an Award is based.

33.4 If a settlement is reached in respect of all matters in dispute, the Parties will, unless otherwise agreed in writing, bear their own legal and other costs of the Arbitration and, subject to Rule 37.7, share equally the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other Expenses related to the Arbitration.

33.5 If the Parties consent to an arbitrator acting as a mediator, and that mediation is subsequently terminated without resolving all matters in dispute, no objection may be taken to the conduct of the subsequent Arbitration solely on the ground that the arbitrator had previously acted as a mediator in accordance with these Rules.

33.6 If Confidential Information is obtained from a Party or a co-mediator during the mediation by the arbitrator acting as a mediator, and that mediation is subsequently terminated without resolving all matters in dispute:

(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.

33.7 If the Parties consent to an arbitrator conducting subsequent arbitral proceedings under Rule 33.6(b), no objection may be taken to the conduct of the subsequent Arbitration solely on the ground that the arbitrator had previously acted as a mediator in accordance with these Rules and obtained Confidential Information during the mediation.

SECTION VI: THE AWARD

34.0 AWARD

34.1 The Arbitral Tribunal must, as soon as practicable after considering all submissions and evidence, make one or more Awards as required for the final determination of the dispute. Those Awards may include one or more of the following:

(a) **Interlocutory Award**, meaning an Award which determines procedural or jurisdictional matters and any applications for Interim Measures pending the final determination of the dispute;

(b) **Interim Award**, meaning an Award which provisionally determines, whether in whole or in part, one or more matters at issue;

(c) **Partial Award**, meaning an Award which finally determines one or more of the matters at issue between the Parties in its entirety, but does not determine the costs, Fees, and Expenses of the Arbitration;

(d) **Final Award**, meaning an Award which finally determines all of the matters at issue between the Parties including the costs, Fees, and Expenses of the Arbitration; or

(e) **Additional Award**, meaning an Award which finally determines claims presented in the arbitral proceedings but omitted from a Partial or Final Award in respect of which a request for an Additional Award is made by a Party with notice to every other Party within five working days of receipt of such Award.

34.2 The Arbitral Tribunal will use best endeavours to provide a Partial Award that finally determines the substantive matters in dispute within 45 working days from the Commencement Date.

34.3 Any Partial, Final, or Additional Award (made in respect of a Partial or Final Award) made by the Arbitral Tribunal is final and binding on the Parties.

34.4 Any Award must state the date the Award is made, the Seat of the Arbitration, and it must be signed by the Arbitral Tribunal. Unless otherwise agreed by the Parties, the Award must contain reasons for the findings made.

34.5 The extent of reasons given by the Arbitral Tribunal for the findings in any Award will be proportionate to the time available to the Arbitral Tribunal to make the Award, the nature and number of matters for determination, and the amount of money at issue in the dispute.

34.6 A monetary Award will be expressed in the currency or currencies of the contract unless the Parties have agreed otherwise.

34.7 Unless otherwise agreed by the Parties, the Arbitral Tribunal may award simple or compound interest from such dates, at such rates, and with such rests as the Arbitral Tribunal considers meet the justice of the case, on the whole or any part of:

(a) any sum which the Arbitral Tribunal determines any Party is liable to pay any other Party, for the whole or any part of the period from the date on which the cause of action arose up to the date of payment; and/or

(b) any amount claimed in the Arbitration and outstanding at the commencement of the Arbitration proceedings but paid before the Award is made, for the whole or any part of the period from the date on which the cause of action arose up to the date of payment.

34.8 If the Parties are unable to reach agreement as to costs within five working days of receipt of the Arbitral Tribunal's Partial Award which finally determines all substantive matters in dispute:

(a) the Claimant may file submissions on costs with the Arbitral Tribunal and every other Party on or before the fifth working day following receipt of the Award;

(b) the Respondent may file submissions in response with the Arbitral Tribunal and every other Party on or before the 10th working day following receipt of the Award; and

(c) the Arbitral Tribunal must use best endeavours to make a Final Award on or before the 15th working day following receipt of the Partial Award by the Parties.

34.9 Unless the Parties agree otherwise, the Final Award must contain reasons for the Arbitral Tribunal's findings in respect of the costs of the Arbitration.

Scrutiny of Award by BDT

34.10 Before signing an Award, the Arbitral Tribunal must submit the Award in draft form to the Registrar for scrutiny.

34.11 The Registrar may make recommendations as to the form of the Award directed to identifying any errors in computation, any clerical or typographical errors, or any errors of a similar nature in the Award. The Registrar may also draw the Arbitral Tribunal's attention to any points of substance or any internal inconsistencies in the Award without affecting the Arbitral Tribunal's independence and autonomy in rendering the Award.

34.12 No Award shall be made by the Arbitral Tribunal until it has been approved by the Registrar.

Provision of Award

34.13 Subject to payment in full of BDT's administration fees and the Arbitral Tribunal's Fees and Expenses, a copy of the signed Award will be sent to the Parties by BDT as soon as possible after signature.

Settlement or other grounds for termination

34.14 The Parties are encouraged to find their own resolution to the dispute. In the event that the Parties can settle their dispute before a Partial Award which finally determines all the substantive matters in dispute is made, the Arbitral Tribunal must issue an order for the termination of the arbitral proceedings, and may, at its sole discretion, record the terms of the settlement and issue a Final Award on Agreed Terms if requested by the Parties. The Arbitral Tribunal is not obliged to give reasons for such an Award.

34.15 Unless otherwise agreed, settling Parties will bear their own legal fees and other expenses of the Arbitration and, subject to Rule 37.7, share equally the Fees and Expenses of the Arbitral Tribunal, BDT's administrative fees, and any other Expenses related to the Arbitration.

Correction and interpretation of Award

34.16 Within five working days of receipt of an Award, a Party may, with notice to every other Party, request the Arbitral Tribunal to:

(a) correct in the Award any errors in computation, any clerical or typographical errors, or any errors of a similar nature; and/or

(b) give an interpretation of a specific dispositive point or part of the Award that is improperly expressed or ambiguous on its face so as to allow the Award's execution by the Parties.

34.17 If the Arbitral Tribunal considers the request to be justified, the Arbitral Tribunal must use best endeavours to make the correction or give the interpretation within five working days of receipt of the request.

34.18 The Arbitral Tribunal may correct in the Award any errors in computation, any clerical or typographical errors, or any errors of a similar nature, on its own initiative within 30 calendar days of the date of the Award.

34.19 No additional Fees may be charged by the Arbitral Tribunal for correction or interpretation of an Award.

34.20 For the avoidance of doubt, the Arbitral Tribunal may extend, if necessary, the period of time within which it must make a correction or give an interpretation, except in the case of corrections made on its own initiative under Rule 34.18.

Additional Award

34.21 Within five working days after the date upon which an Award is given to the Parties, a Party may, with notice to every other Party, request the Arbitral Tribunal to make an **Additional Award** as to claims presented in the arbitral proceedings but omitted from that Award.

34.22 If the Arbitral Tribunal considers the request to be justified, the Arbitral Tribunal must use best endeavours to make the Additional Award within five working days of receipt of the request.

34.23 For the avoidance of doubt, the Arbitral Tribunal may extend if necessary the period of time within which it must make an Additional Award; and, the Arbitral Tribunal is entitled to be paid any Fees and Expenses incurred in respect of making an Additional Award insofar as such Fees and Expenses are otherwise payable under these Rules.

35.0 APPEALS

35.1 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 VII: COSTS

36.0 ADMINISTRATION COSTS

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

36.2 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.

37.0 COSTS OF THE ARBITRATION

37.1 Unless otherwise agreed by the Parties, the Arbitral Tribunal will fix the costs and expenses of the Arbitration, 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.

37.2 Unless otherwise agreed by the Parties, the costs of the 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.

37.3 Unless the Arbitration is undertaken under BDT's fixed fee service, the Arbitral Tribunal is entitled to fix and be paid a Fee 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 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.

37.4 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.

37.5 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.

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

37.7 Notwithstanding the provisions of Rules 33.4, 34.14, and 37.1, 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 Arbitration 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 VIII: GENERAL RULES

38.0 CONFIDENTIALITY

38.1 The Arbitral Tribunal must conduct the Arbitration in private.

38.2 The Parties, their Representatives, the Arbitral Tribunal, BDT, and any other person involved in the Arbitration, 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 Arbitration or to any Award made in that proceeding and includes:

(a) the fact of the Arbitration 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) all rulings, orders, or Awards of the Arbitral Tribunal; and

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

(**Confidential Information**)

38.3 If a Party seeks to involve, or is required to involve in the Arbitration, 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 Arbitration.

38.4 Notwithstanding Rules 38.1-38.3, BDT, a Party, a Representative, the Arbitral Tribunal, or a non-party involved in the Arbitration, may disclose Confidential Information to the extent necessary to:

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

(b) pursue a legal right;

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

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

(e) 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

(f) 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.

38.5 Any person intending to make disclosure under Rule 38.4 must, within a reasonable period of time prior to the intended disclosure, notify the Arbitral Tribunal, every Party, and BDT.

38.6 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 Arbitration, the Arbitral Tribunal must determine whether the disclosure meets the requirements of Rule 38.4 after each Party has been given an opportunity to be heard.

38.7 Notwithstanding the foregoing, the Arbitral Tribunal may, during the course of the Arbitration, permit disclosure of Confidential Information outside the categories set out in

Rule 38.4 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.

38.8 If a Party breaches the provisions of Rules 38.2-38.7 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.

38.9 The Parties expressly agree that any court proceedings related to the Arbitration must, to the full extent permitted by the law in that jurisdiction, be conducted in private.

39.0 EXCLUSION OF LIABILITY AND INDEMNITY

39.1 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.

39.2 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 Arbitration, may be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

39.3 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.

39.4 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 Arbitration, 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 Arbitration.

39.5 The purpose of Rules 39.1-39.4 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.

40.0 STORAGE OF ARBITRATION DOCUMENTS

40.1 Unless a Party requests the return of any original documents provided to the Arbitral Tribunal for the purpose of the Arbitration, all original documents will be destroyed by the Arbitral Tribunal after the expiry of three calendar months following the date of the last Award made by the Arbitral Tribunal in relation to the Arbitration.

41.0 COMMUNICATIONS AND CONTACT DETAILS

41.1 Until the Arbitral Tribunal is formed, all communications relating to the Arbitration must be directed to the Registrar.

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

41.3 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.

41.4 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.

41.5 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.

41.6 The Claim, the Defence and Counterclaim, the Reply and Defence to the Counterclaim, 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 Arbitration, and if so delivered, will be deemed to have been received.

41.7 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.

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

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

42.0 MISCELLANEOUS

42.1 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.

42.2 By agreeing to Arbitration 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.

42.3 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 an Award made under these Rules is enforceable.

42.4 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 Arbitrations governed by these Rules.

APPENDIX 1: BDT FEES AND EXPENSES FOR ARBITRATION

BDT provides a fully administered arbitration service. To ensure that the cost of arbitration is proportionate to the amount in dispute, our arbitrators' fees are capped 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 Arbitration. 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 Arbitration with one arbitrator; or

(b) **$2,000.00** for Arbitration 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 Arbitration.

4.0 ARBITRATOR'S FEES AND EXPENSES

Fixed fee service under BDT ECA45 Rules

BDT provides a fully administered fixed fee arbitration service under the BDT ECA45 Rules for disputes where the Claim is for a monetary amount and the amount claimed by the Claimant is less than NZ$50,000.00, and where there are three or less items in

dispute in the Claim and Counterclaim. The number of items at issue that may be dealt with under the fixed price low value claim service is strictly limited.

No conference of the Parties or inspection of the subject matter of the dispute or any other thing related to the dispute is included in the fixed fee.

Under the fixed fee service, BDT charges the following Fee for the Arbitral Tribunal's services:

Code	Amount in dispute	Fee	Documents that each Party may file in support of the Claim or Counterclaim:
LVAC10	≤ $9,999.99	$3,000.00	Contract Documents together with 15 single sided A4 pages of submissions and evidence in relation to the Claim or Counterclaim.
LVAC20	$10,000.00 ≤ $19,999.99	$5,000.00	Contract Documents together with 20 single sided A4 pages of submissions and evidence in relation to the Claim or Counterclaim.
LVAC30	$20,000.00 ≤ $29,999.99	$7,250.00	Contract Documents together with 30 single sided A4 pages of submissions and evidence in relation to the Claim or Counterclaim.
LVAC40	$30,000.00 ≤ $39,999.99	$8,500.00	Contract Documents together with 40 single sided A4 pages of submissions and evidence in relation to the Claim or Counterclaim.
LVAC50	$40,000.00 ≤ $49,999.99	$10,000.00	Contract Documents together with 50 single sided A4 pages of submissions and evidence in relation to the Claim or Counterclaim.

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 Fee in full as security for the Arbitral Tribunal's Fees and Expenses in accordance with the above schedule.

General service

Where the amount in dispute is equal to or exceeds NZ$50,000.00, or the nature of the claim does not otherwise meet the criteria for BDT's fixed fee service, the arbitrator is entitled to fix a Fee to be paid by the Parties that is reasonable having regard to the work done by the arbitrator, 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 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 additional payment, the arbitrator's all-inclusive hourly rate may not exceed NZ$850.00 per hour for time engaged on the duties of the Arbitration.

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 is a decision of an administrative nature made under Rule 42.1.

BDT is entitled to recover the actual and reasonable Expenses of the Arbitration in addition to the Fee.

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 Arbitration, 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 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 Arbitration**. 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 Additional Fee or Cancellation Fee that the Arbitral Tribunal is entitled to under these Rules.

Interim Relief, Summary Procedure, Joinder, and Consolidation

Whether the Arbitration proceeds under the fixed fee service or general service, 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 42.1.

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

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 Arbitration, 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 Arbitrations 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 Arbitration.

5.0 WHEN IS PAYMENT REQUIRED?

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

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

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 Arbitration.

If the Fees and Expenses of the Arbitration 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 Arbitration 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 the 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 Arbitration 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 Arbitration 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 Arbitration 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 Arbitration.

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 Arbitration 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, inspection, or hearing date is to be vacated, whether or not the dispute between the Parties has been settled, or the conference, inspection, or hearing is adjourned by agreement, or the Application for Arbitration 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, 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, 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: ARBITRATION 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 Arbitration Rules of the Building Disputes Tribunal (**BDT Arbitration Rules**).

The number of arbitrators will be one. **[*or where the amount in dispute is ≥ NZ $2.5M may choose three*]**

The language to be used in the Arbitration 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 Arbitration Agreement, any Party may initiate the Arbitration by completing an Application for Arbitration in terms of Rule 5.4.

For the avoidance of doubt, under this Arbitration Agreement the Claimant is not required to serve a Notice of Arbitration under Rule 5.1 to initiate the Arbitration or to attach such Notice to the Application for Arbitration 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 Arbitration Agreement and the BDT Arbitration Rules; and

I agree to be bound by the terms of this Arbitration Agreement and the BDT Arbitration 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 ARBITRATION

The Parties have agreed that the following matters in dispute are the matters to be submitted to Arbitration:

(a) [ ]

(b) [ ]

APPENDIX 3: CONFIDENTIALITY AGREEMENT FOR NON-PARTIES

I have read and understand that I am bound by Rules 38.2-38.7 of the BDT Arbitration Rules. I understand that by being involved in, or being privy to, BDT Arbitration, I am bound by these Rules.

I understand that I am not to disclose any information obtained in the course of the Arbitration, including the fact of the Arbitration itself, except in accordance with Rules 38.4-38.7.

I understand that I owe all Parties, BDT, the Arbitral Tribunal, and any other non-parties involved in the Arbitration, 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 38.5.

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, joint conferences of experts, and the hearing of concurrent evidence in Arbitration 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 Arbitration 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.

APPENDIX 6: AGREEMENT TO ACT AS ARBITRAL SECRETARY

AGREEMENT TO ACT AS ARBITRAL SECRETARY

AND STATEMENT OF AVAILABILITY, INDEPENDENCE, AND IMPARTIALITY

Case No:

The Arbitral Tribunal has proposed that I, be appointed to act as Arbitral Secretary in this matter.

I confirm that:

(a) I have been informed by the Arbitral Tribunal as to the names of the Parties and their Representatives and I have familiarised myself with the BDT Arbitration Rules and these Terms of Agreement;

(b) I am ready, willing, and able to devote sufficient time, diligence, and effort to act as Arbitral Secretary in this matter;

(c) I am impartial and independent of the Parties to the Arbitration. To the best of my knowledge there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence in the eyes of any of the Parties;

(d) I undertake to assume a continuing duty to immediately disclose to the Arbitral Tribunal any circumstances arising in the future which may be likely to give rise to justifiable doubts as to my impartiality or independence in the eyes of any of the Parties, which duty continues until the Arbitration is concluded;

(e) I undertake to act in accordance with the BDT Arbitration Rules and the further terms and conditions set out in this Agreement; and

(f) my *curriculum vitae* attached to this Agreement is current and all facts and matters disclosed therein are true and correct in all respects.

DUTIES

The Arbitral Secretary shall perform such tasks as the Arbitral Tribunal or the Presiding Arbitrator may assign, which may include, but are not limited to:

(a) organising and maintaining the Arbitral Tribunal's files and documents;

(b) attending hearings and meetings, taking notes or minutes, and recording evidence and exhibits;

(c) assisting the Arbitral Tribunal in the preparation and communication of its decisions to the Parties on issues of procedure and substance, including by preparing initial drafts of minutes, procedural orders, and non-substantive parts of Awards, and proof-reading any procedural orders or Awards that may be rendered by the Arbitral Tribunal;

(d) assisting the Arbitral Tribunal in the review of evidence and of the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, checking authorities cited by the Parties, and research on specific factual or legal issues on the record; and

(e) providing other support to the Arbitral Tribunal or to its members at any time, including during hearings and deliberations which the Arbitral Secretary may attend.

The Arbitral Secretary shall, at all times, act strictly under the direction, instruction, control, and supervision of the Arbitral Tribunal.

The Arbitral Secretary shall not exceed the scope of the tasks assigned to him or her.

Under no circumstances shall the Arbitral Secretary perform any decision-making function, enter into any discussion of the merits, or otherwise attempt to influence the Arbitral Tribunal's decision in any manner.

APPOINTMENT AND REMOVAL OF ARBITRAL SECRETARY

The Arbitral Tribunal may, after consulting with the Parties, appoint or remove an Arbitral Secretary at any stage of the Arbitration in terms of Rules 19.13-19.14.

A party may challenge the Arbitral Secretary's continuing appointment only for reasons which it becomes aware of after the appointment has been made. The procedure for challenge of an arbitrator set out in Rules 7.2-7.7 shall apply *mutatis mutandis* to reflect the different context.

If for any reason a substitute Arbitral Tribunal Secretary needs to be appointed, the procedure in Rule 19.14 shall apply.

PAYMENT

As a general principle, the use of an Arbitral Secretary should reduce rather than add to the overall costs of the Arbitration.

The Arbitral Secretary shall be remunerated by the Arbitral Tribunal for time engaged on the duties of the Arbitration at the rate of NZ$..... per hour (including GST, value added tax, or any other similar tax, if any).

The Arbitral Secretary shall be reimbursed by the Parties for the actual and reasonable costs and expenses incurred in relation to the provision of the Arbitral Secretary's duties upon receipt and verification by the Arbitral Tribunal of supporting invoices and receipts.

The Parties are jointly and severally liable for the costs and expenses of the Arbitral Secretary.

The Arbitral Secretary shall submit invoices to the Arbitral Tribunal on a bi-monthly basis.

The Arbitral Tribunal may instruct the Registrar to apply the advances and deposits paid by the Parties as security for the Arbitral Tribunal's Fees and Expenses towards payments to the Arbitral Secretary and render an updated statement of accounting to the Parties.

The Arbitral Tribunal shall determine any disputes or differences concerning the Arbitral Secretary's fees or expenses at its sole discretion. Where an Arbitral Secretary is removed, the

Arbitral Tribunal shall decide the amount of Fees and Expenses (if any) that it considers appropriate to be paid to the removed Arbitral Secretary in the circumstances.

CONFIDENTIALITY

I have read and understand that I am bound by Rules 38.2-38.7 of the BDT Arbitration Rules. I understand that by being involved in, or being privy to, BDT Arbitration, I am bound by these Rules.

I understand that I am not to disclose any information obtained in the course of the Arbitration, including the fact of the Arbitration itself, except in accordance with Rules 38.4-38.7.

I understand that I owe all Parties, BDT, the Arbitral Tribunal, and any other non-parties involved in the Arbitration, 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 38.5.

EXCLUSION OF LIABILITY

The Arbitral Secretary will not be under any legal obligation to make any statement to any person about any matter concerning the Arbitration, nor shall any Party seek to call the Arbitral Secretary to give evidence in any legal proceedings arising out of or in connection with the Arbitration.

The Parties shall accord the Arbitral Secretary with the same immunity as that accorded to the Arbitral Tribunal under Rules 39.1-39.5.

Dated this day of (month) (year)

Signed: _____

Name: _____