



ACICA

Australian Centre for International Commercial Arbitration

A close-up photograph of a hand holding a black pen, poised to write on a document. The background is blurred, showing another person's hand and part of a document.

ACICA Rules

Incorporating clauses for
arbitration and mediation

ACICA Rules

Incorporating clauses for
arbitration and mediation

*Approved and adopted by a resolution of
the ACICA Board of Directors*

1 August 2011

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Foreword



Alternative dispute resolution is an integral part of global business.

Many of the world's leading international companies from industries such as insurance, building and construction, mining, oil and gas, shipping, banking and financial services are increasingly referring matters to arbitration and mediation to resolve commercial disputes.

Underlying the arbitration or mediation process is the agreement allowing parties to negotiate aspects of the nominated process to resolve their dispute. By inserting an arbitration clause into their agreements with trading partners, for instance, parties can opt to have disputes arising out of or in connection with the contract decided by private tribunals rather than litigating them in national courts.

Since its inception in 1985, ACICA through the auspices of its Rules Committee, has developed a number of rules and model clauses that meet world's best practice.

Following the Australian Government's decision to appoint ACICA as the sole default appointing authority under the new International Arbitration Act, the *ACICA Arbitration Rules* have been updated to include Emergency Arbitrator provisions. This innovation will provide parties with greater flexibility including an option to seek emergency interim measures of protection from an emergency arbitrator before the arbitral tribunal is constituted.

In addition, ACICA has developed the *Appointment of Arbitrators Rules 2011* and procedures which establish a streamlined process through which a party can apply to have an arbitrator appointed to a dispute seated in Australia.

A board comprising representatives of the Attorney-General of Australia, the Chief Justices of the High Court and Federal Court, the President of the Australian Bar Association, the President of the Law Council of Australia and industry representatives will oversee the appointment process.

Containing all of ACICA's current rules and model clauses, this booklet is an essential resource designed to assist and inform inhouse counsel, corporate lawyers and business professionals.

A handwritten signature in black ink, appearing to read 'Doug Jones'.

Doug Jones AM

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ACICA Arbitration Rules incorporating the Emergency Arbitrator Provisions

1 August 2011

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Model arbitration clause

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules].

SECTION I: INTRODUCTORY RULES

1 ACICA Arbitration Rules

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

2 Scope of Application

- 2.1 Where parties agree in writing that disputes shall be referred to arbitration under the ACICA Arbitration Rules then such disputes shall be resolved in accordance with these Rules, as in force on the date of commencement of the arbitration, subject to such modification as the parties may agree in writing.
- 2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- 2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.

3 Notice, Calculation of Periods of Time

- 3.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or to the addressee's residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then to the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.
- 3.2 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, proposal or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee,

the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

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

4 Notice of Arbitration

- 4.1 The party initiating recourse to arbitration (hereinafter called the "Claimant") shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 4.2 Subject to Article 4.5, the arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later.
- 4.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
 - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
 - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked;
 - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
 - (e) the general nature of the claim and an indication of the amount involved, if any;
 - (f) the relief or remedy sought; and
 - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.

- 4.4 The Notice of Arbitration may also include:
- (a) the Claimant's proposal for the appointment of a sole arbitrator in accordance with Article 9.1;
 - (b) the notification of the appointment of an arbitrator referred to in Article 10.1; and
 - (c) the Statement of Claim referred to in Article 21.
- 4.5 If the Notice of Arbitration is incomplete or is not submitted in the required number, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitral proceedings until such defect is remedied. ACICA's discretion in this regard is without prejudice to the provisions with respect to emergency interim measures of protection set out in Schedule 2.
- 4.6 Subject to Article 4.5, upon receipt of the Notice of Arbitration, ACICA shall communicate the Notice of Arbitration to the other party referred to in Article 4.3(b).

5 Answer to Notice of Arbitration

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

- 5.3 The Answer to Notice of Arbitration may also include:
- (a) the Respondent's proposal for the appointment of a sole arbitrator in accordance with Article 9.1;
 - (b) the notification of the appointment of an arbitrator referred to in Article 10.1;
 - (c) the Statement of Defence referred to in Article 22; and
 - (d) any counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract. (The provisions of Article 4.3 will apply to any such counterclaim or set-off.)
- 5.4 ACICA shall provide a copy of the Answer to Notice of Arbitration and of any exhibits included therewith to the Claimant.
- 5.5 Once the registration fee has been paid and all arbitrators have been confirmed, ACICA shall transmit the file to the Arbitral Tribunal.

6 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

7 ACICA Facilities and Assistance

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

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

8 Number of Arbitrators

If the parties have not previously agreed on the number of arbitrators (i.e. one or three), and if within 15 days after the receipt by the Respondent of the Notice of Arbitration the parties cannot agree, ACICA shall determine the number of arbitrators taking into account all relevant circumstances.

9 Appointment of a Sole Arbitrator

- 9.1 If a sole arbitrator is to be appointed, either party may propose to the other the names of one or more persons, one of whom would serve as the sole arbitrator.
- 9.2 If within 30 days after receipt by a party of a proposal made in accordance with Article 9.1 the parties have not reached agreement on the choice of a sole arbitrator and provided written evidence of their agreement to ACICA, the sole arbitrator shall be appointed by ACICA.
- 9.3 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.

10 Appointment of Three Arbitrators

- 10.1 If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the Chairperson of the Tribunal.
- 10.2 If within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may request ACICA to appoint the second arbitrator. In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

- 10.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the Chairperson, the Chairperson shall be appointed by ACICA.

11 Appointment of Arbitrators in Multi-Party Disputes

- 11.1 For the purposes of Articles 9 and 10, the acts of multiple parties, whether as multiple Claimants or multiple Respondents, shall have no effect, unless the multiple Claimants or multiple Respondents have acted jointly and provided written evidence of their agreement to ACICA.
- 11.2 If three arbitrators are to be appointed and the multiple Claimants or multiple Respondents do not act jointly in appointing an arbitrator, ACICA shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as Chairperson, unless all parties agree in writing on a different method for the constitution of the Arbitral Tribunal and provide written evidence of their agreement to ACICA.

12 Information about Arbitrators

- 12.1 Where the names of one or more persons are proposed for appointment as arbitrators, their names, postal addresses, telephone and facsimile numbers and email addresses (if any) shall be provided and their nationalities shall be indicated, together with a description of their qualifications.
- 12.2 When ACICA is requested to appoint an arbitrator pursuant to Articles 9 to 11, ACICA may require from either party such information as it deems necessary to fulfil its function.

13 Challenge of Arbitrators

- 13.1 A prospective arbitrator shall in writing disclose to those who approach him or her in connection with his or her possible appointment any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed or chosen, shall immediately in writing disclose such circumstances

to the parties unless he or she has already informed them in writing of these circumstances. A copy of any written disclosures provided to a party by a prospective arbitrator or arbitrator shall be sent to ACICA.

- 13.2 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 13.3 A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.

14 Procedure for the Challenge of Arbitrators

- 14.1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 13.
- 14.2 The challenge shall be notified to the other party, to the arbitrator who is challenged, to the other members of the Arbitral Tribunal and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 14.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Articles 9 to 13 shall be used for the appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to appoint or to participate in the appointment.
- 14.4 If the other party does not agree to the challenge and the challenged arbitrator does not resign, the decision on the challenge shall be made by ACICA.
- 14.5 If ACICA sustains the challenge, a substitute arbitrator shall be appointed or chosen pursuant to the procedure applicable to the appointment or choice of an arbitrator as provided in Articles 9 to 13.

15 Replacement of an Arbitrator

- 15.1 In the event of the death or resignation of an arbitrator during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Articles 9 to 13 that was applicable to the appointment or choice of the arbitrator being replaced.
- 15.2 In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of him or her performing his or her functions, the procedure in respect of the challenge and replacement of an arbitrator as provided in the preceding Articles shall apply.

16 Repetition of Hearings if Arbitrator Replaced

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

SECTION III: ARBITRAL PROCEEDINGS

17 General Provisions

- 17.1 Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a full opportunity of presenting its case.
- 17.2 If either party so requests, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 17.3 Questions of procedure may be decided by the Chairperson alone, or if the Arbitral Tribunal so authorises, any other member of the Arbitral Tribunal. Any such decision is subject to revision, if any, by the Arbitral Tribunal as a whole.
- 17.4 All documents or information supplied to the Arbitral Tribunal by one party shall at the same time be communicated by that party to the other party.

18 Confidentiality

- 18.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 18.2 The parties, the Arbitral Tribunal and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to any competent court;
 - (b) for the purpose of making an application to the courts of any State to enforce the award;

- (c) pursuant to the order of a court of competent jurisdiction;
 - (d) if required by the law of any State which is binding on the party making the disclosure; or
 - (e) if required to do so by any regulatory body.
- 18.3 Any party planning to make disclosure under Article 18.2 must within a reasonable time prior to the intended disclosure notify the Arbitral Tribunal, ACICA and the other parties (if during the arbitration) or ACICA and the other parties (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.
- 18.4 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

19 Seat of Arbitration

- 19.1 If the parties have not previously agreed on the seat of the arbitration and if within 15 days after the commencement of the arbitration they cannot agree, the seat of the arbitration shall be Sydney, Australia.
- 19.2 The Arbitral Tribunal may decide where the proceedings shall be conducted (at the seat or other venues). In particular, it may hear witnesses and hold meetings for consultation among its members at any venue it deems appropriate, having regard to the circumstances of the arbitration.
- 19.3 The Arbitral Tribunal may meet at any venue it deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
- 19.4 The award shall be made at the seat of the arbitration.

20 Language

- 20.1 Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings.

This determination shall apply to the Statement of Claim, the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

- 20.2 The Arbitral Tribunal may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitral Tribunal.

21 Statement of Claim

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

22 Statement of Defence

- 22.1 Unless the Statement of Defence was contained in the Answer to Notice of Arbitration, within a period of time to be determined by the Arbitral Tribunal, the Respondent shall communicate its Statement of Defence in writing to the Claimant, each of the arbitrators and ACICA.

- 22.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 21.2). The Respondent may annex to its Statement of Defence the documents on which it relies for its defence or may add a reference to the documents or other evidence it will submit.
- 22.3 Unless put forward in the Answer to Notice of Arbitration, the Respondent may in its Statement of Defence, or at a later stage in the arbitral proceedings if the Arbitral Tribunal decides that the delay was justified under the circumstances, make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the contract.
- 22.4 The provisions of Article 21.2 (b) to (d) shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

23 Amendments to the Claim or Defence

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

24 Jurisdiction of the Arbitral Tribunal

- 24.1 The Arbitral Tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- 24.2 The Arbitral Tribunal shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 24, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of

the other terms of the contract. A decision by the Arbitral Tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

- 24.3 A plea that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 22, or, with respect to a counterclaim, in the reply to the counterclaim.
- 24.4 In general, the Arbitral Tribunal should rule on a plea concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a plea in its final award.

25 Further Written Statements

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

26 Periods of Time

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

27 Evidence and Hearings

- 27.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 27.2 The Arbitral Tribunal shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.
- 27.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Arbitration.

28 Interim Measures of Protection

- 28.1 Unless the parties agree otherwise in writing:
- (a) a party may request emergency interim measures of protection to be issued by an arbitrator (the Emergency Arbitrator) appointed prior to the constitution of the Arbitral Tribunal in accordance with the provisions set out in Schedule 2; and
 - (b) the Arbitral Tribunal may, on the request of any party, order interim measures of protection. The Arbitral Tribunal may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as it deems appropriate. The Arbitral Tribunal shall endeavour to ensure that the measures are enforceable.
- 28.2 An interim measure of protection is any temporary measure by which the Arbitral Tribunal orders a party to:
- (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
 - (e) provide security for legal or other costs of any party.
- 28.3 Before the Arbitral Tribunal orders any interim measure, the party requesting it shall satisfy the Arbitral Tribunal that:
- (a) irreparable harm is likely to result if the measure is not ordered;
 - (b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and
 - (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitral Tribunal in making any subsequent determination.
- 28.4 The Arbitral Tribunal may require a party to provide

appropriate security as a condition to granting an interim measure.

- 28.5 The requesting party shall promptly disclose in writing to the Arbitral Tribunal any material change in the circumstances on the basis of which that party made the request for, or the Arbitral Tribunal granted, the interim measure.
- 28.6 The Arbitral Tribunal may modify, suspend or terminate any of its own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitral Tribunal may, on its own initiative, modify, suspend or terminate any of its own interim measures upon prior notice to the parties.
- 28.7 If the Arbitral Tribunal later determines that the measure should not have been granted, it may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.
- 28.8 The power of the Arbitral Tribunal under this Article 28 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the formation of the Arbitral Tribunal shall be promptly communicated, in writing, by the applicant to the Arbitral Tribunal, all other parties and ACICA.

29 Default

- 29.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the proceedings continue.
- 29.2 If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause

for such failure, the Arbitral Tribunal may proceed with the arbitration.

- 29.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitral Tribunal may make the award on the evidence before it.

30 Closure of Hearings

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

31 Waiver of Rules

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

SECTION IV: THE AWARD

32 Decisions

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

33 Form and Effect of the Award

- 33.1 In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 33.2 The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 33.3 The Arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 33.4 An award shall be signed by the arbitrators and it shall contain the date on which and the place (which shall be in conformity with Article 19.4) where the award was made. If any arbitrator refuses or fails to sign the award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson.
- 33.5 The Arbitral Tribunal shall communicate copies of the award signed by the arbitrators to the parties and ACICA.
- 33.6 Before communicating the award to the parties, the Arbitral Tribunal shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to it.
- 33.7 If the arbitration law of the place where the award is made requires that the award be filed or registered by the Arbitral Tribunal, the Tribunal shall comply with this requirement within the period of time required by law.

34 Applicable Law, Amiable Compositeur

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

35 Settlement or Other Grounds for Termination

- 35.1 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Tribunal, record the settlement in the form of an arbitral award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
- 35.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 35.1, the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 35.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the Arbitral Tribunal to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 33.2, and 33.4 to 33.7, shall apply.

36 Interpretation of the Award

- 36.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the award.
- 36.2 The interpretation shall be given in writing within 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 33.2 to 33.7, shall apply.

37 Correction of the Award

- 37.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 37.2 Such corrections shall be in writing, and the provisions of Articles 33.2 to 33.7 shall apply.

38 Additional Award

- 38.1 Within 30 days after the receipt of the award, either party, with notice to the other party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 38.2 If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within 60 days after the receipt of the request.
- 38.3 When an additional award is made, the provisions of Articles 33.2 to 33.7, shall apply.

39 Costs

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

- (a) the fees of the Arbitral Tribunal, to be stated

- separately as to each arbitrator, and to be fixed in accordance with Article 40;
- (b) the travel (business class airfares) and other reasonable expenses incurred by the arbitrators;
 - (c) the costs of expert advice and of other assistance required by the Arbitral Tribunal;
 - (d) the travel (business class airfares) and other reasonable expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal;
 - (e) the legal and other costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable;
 - (f) ACICA's administration fee;
 - (g) fees for facilities and assistance provided by ACICA in accordance with Articles 7 and 42.5;
 - (h) ACICA's registration fee; and
 - (i) the costs associated with any request for emergency interim measures of protection made pursuant to Article 28.1(a).

40 Fees of the Arbitral Tribunal

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

41 Apportionment of Costs

- 41.1 Except as provided in Article 41.2, the costs of arbitration shall in principle be borne by the unsuccessful party.

However, the Arbitral Tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

- 41.2 With respect to the costs referred to in Article 39(e), the Arbitral Tribunal, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if it determines that apportionment is reasonable.
- 41.3 When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Article 39 in that order or award.
- 41.4 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 36 to 38.

42 Deposit of Costs

- 42.1 The Arbitral Tribunal, on its establishment, shall request each party to deposit an equal amount as an advance for the costs referred to in Article 39 (a), (b), (c), (f) and (g).
- 42.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitral Tribunal may in its discretion establish separate deposits.
- 42.3 During the course of the arbitral proceedings the Arbitral Tribunal may from time to time request supplementary deposits from the parties.
- 42.4 The Arbitral Tribunal shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.
- 42.5 With the consent of ACICA, the Arbitral Tribunal may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the Arbitral Tribunal. ACICA may make a charge for its trust account services.
- 42.6 If the required deposits are not paid in full within 30 days after the receipt of the request, the Arbitral Tribunal shall

so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the arbitral proceedings.

- 42.7 After the award has been made, the Arbitral Tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

SECTION V: GENERAL

43 Decisions Made by ACICA

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

44 Liability of the Arbitral Tribunal

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

APPENDIX A: ACICA's Fees

1 Registration Fee

- 1.1 The reference in these Rules to “dollars” or “\$” is to Australian currency.
- 1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee of \$2,500. The registration fee is not refundable.

2 Administration Fee

- 2.1 The parties shall pay to ACICA an administration fee as specified in Schedule 1.
- 2.2 For the purposes of determining the amount in dispute:
 - (a) claims, counterclaims and set-off defences shall be added together;
 - (b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;
 - (c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the Notice of Arbitration; and
 - (d) if the amount in dispute is not specified in the Statement of Claim or counterclaim, the amount in dispute shall be determined by the Arbitral Tribunal taking into account all relevant circumstances.

3 Emergency Arbitrator Fee

- 3.1 The party applying for the appointment of an Emergency Arbitrator must pay the costs of the emergency proceedings upon filing the application. These costs include:
 - (a) the Emergency Arbitrator Fee - \$10,000; and
 - (b) the application fee - \$2,500.
- 3.2 ACICA may decide to increase or reduce the costs having regard to the nature of the case, the work performed by the Emergency Arbitrator and ACICA, and other relevant circumstances.

SCHEDULE 1

Amount in Dispute	Administration Fee
\$1 to \$500,000	1% of the amount in dispute
\$500,001 to \$1,000,000	\$5,000 plus 0.5% of the amount in dispute above \$500,000
\$1,000,001 to \$10,000,000	\$7,500 plus 0.25% of the amount in dispute above \$1,000,000
\$10,000,001 to \$100,000,000	\$30,000 plus 0.01% of the amount in dispute above \$10,000,000
over \$100,000,000	\$39,000 plus 0.02% of the amount in dispute above \$100,000,000 up to a maximum of \$60,000

SCHEDULE 2

1 Application for Emergency Interim Measures of Protection

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

2 Appointment of Emergency Arbitrator

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

notified of the appointment of that arbitrator and the circumstances disclosed.

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

3 Decisions on Emergency Interim Measures of Protection

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

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

4 Compliance with the Emergency Interim Measure

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

5 Powers after Arbitral Tribunal Appointment

- 5.1 The Emergency Arbitrator's jurisdiction and powers cease forthwith on the appointment of the Arbitral Tribunal.
- 5.2 The Arbitral Tribunal may reconsider, vacate or modify any Emergency Interim Measure.

- 5.3 The Arbitral Tribunal is not bound by any decision or the reasons of the Emergency Arbitrator.

6 Costs

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

7 Other

- 7.1 The power of the Emergency Arbitrator under this Schedule 2 shall not prejudice a party's right to apply to any competent court or other judicial authority for emergency interim measures. If any such application or any order for such measures is made after the referral of an application for emergency interim measures of protection to an Emergency Arbitrator, the applicant shall promptly notify the Emergency Arbitrator, all other parties and ACICA in writing.
- 7.2 The Emergency Arbitrator shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission is fraudulent.

ACICA Expedited Arbitration Rules

1 August 2011

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Model arbitration clause

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language].

SECTION I: INTRODUCTORY RULES

1 ACICA Expedited Arbitration Rules

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

2 Scope of Application

- 2.1 Where parties agree in writing that disputes shall be referred to arbitration under the ACICA Expedited Arbitration Rules then such disputes shall be resolved in accordance with these Rules as in effect on the date of commencement of the arbitration, subject to such modification as the parties may agree in writing.
- 2.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- 2.3 By selecting these Rules the parties do not intend to exclude the operation of the UNCITRAL Model Law on International Commercial Arbitration.

3 Overriding Objective

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

4 Notice, Calculation of Periods of Time

- 4.1 For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or to the addressee's residence, place of business or mailing address, or, if none of these can

be found after making reasonable inquiry, then to the addressee's last-known residence or place of business. Notice shall be deemed to have been received on the day it is so delivered.

- 4.2 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notice, notification, proposal or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 4.3 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.

5 Commencement of Arbitration

- 5.1 The party initiating recourse to arbitration (hereinafter called the "Claimant") shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 5.2 Subject to Article 5.4, the arbitral proceedings shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later.
- 5.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
 - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their representatives (if any);
 - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked;
 - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
 - (e) the general nature of the claim and an indication of the amount involved, if any;
 - (f) the relief or remedy sought; and

- (g) the Statement of Claim referred to in Article 17, which may be attached as a separate document.
- 5.4 If the Notice of Arbitration is incomplete or is not submitted in the required number, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitral proceedings until such defect is remedied, in which event the arbitration is deemed to have commenced on the date ACICA gives to the parties advice that the defect has been remedied.
- 5.5 Subject to Article 5.4, upon receipt of the Notice of Arbitration, ACICA shall communicate the Notice of Arbitration to the other party referred to in Article 5.3(b), and that party shall file a Statement of Defence under Article 18.

6 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons must be communicated in writing to the other party and ACICA.

7 ACICA Facilities and Assistance

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

SECTION II: COMPOSITION OF THE ARBITRAL TRIBUNAL

8 Appointment of the Arbitrator

- 8.1 There shall be one arbitrator.
- 8.2 Within 14 days from the commencement of the arbitration, the Arbitrator shall be appointed by ACICA.
- 8.3 A prospective arbitrator shall in writing disclose to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed or chosen, shall immediately in writing disclose such circumstances to the parties. A copy of any written disclosures provided to ACICA by a prospective arbitrator may be sent to the parties.
- 8.4 In making the appointment, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account as well the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.
- 8.5 When making the appointment, ACICA may require from either party such information as it deems necessary to fulfil its function.
- 8.6 For the purposes of Articles 8.3 to 8.5, 9 and 10.4, the Arbitrator, the parties, and ACICA may have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration, in the version current at the commencement of the arbitration.
- 8.7 Once the Arbitrator has been appointed, ACICA shall transmit the file to him or her.

9 Challenge of Arbitrators

The Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence.

10 Procedure for the Challenge of Arbitrators

- 10.1 A party who intends to challenge the Arbitrator shall send notice of its challenge within 7 days after being notified of his or her appointment or within 7 days after becoming aware of the circumstances mentioned in Article 9.
- 10.2 The challenge shall be notified to the other party, to the Arbitrator and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 10.3 When the Arbitrator has been challenged by one party, the other party may agree to the challenge. The Arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedure provided in Article 8 shall be used for the appointment of a substitute Arbitrator.
- 10.4 If the other party does not agree to the challenge and the challenged Arbitrator does not resign, the decision on the challenge shall be made by ACICA.
- 10.5 If ACICA sustains the challenge, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure set out in Article 8.
- 10.6 Challenge to the Arbitrator shall not affect the conduct of the arbitration in any way unless the Arbitrator resigns or is removed. However if an Arbitrator resigns or is removed, all time limits under these Rules will be extended by the time that elapses between the Arbitrator's resignation or removal and the appointment of a substitute Arbitrator.

11 Replacement of an Arbitrator

- 11.1 In the event of the death or resignation of the Arbitrator during the course of the arbitral proceedings, a substitute Arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 8.
- 11.2 In the event that the Arbitrator fails to act or in the event of the de jure or de facto impossibility of him or her performing his or her functions, the procedure in respect of the challenge and replacement of the Arbitrator as provided in the preceding Articles shall apply.

12 Repetition of Proceedings if Arbitrator Replaced

Once the substitute Arbitrator has been appointed, and after having invited the parties to comment, the Arbitrator shall determine if and to what extent prior proceedings shall be repeated.

SECTION III: ARBITRAL PROCEEDINGS

13 General Provisions

- 13.1 Subject to these Rules, including the overriding objective in Article 3, the Arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.
- 13.2 There shall be no hearing unless:
- (a) exceptional circumstances exist, as determined by the Arbitrator; and
 - (b) either the Arbitrator or the parties require a hearing to take place.
- 13.3 Any hearing shall be no longer than one working day, unless the Arbitrator decides otherwise. The Arbitrator shall allocate the available time to the parties in such manner that each party shall have an equal opportunity to present its case.
- 13.4 All documents or information supplied to the Arbitrator by one party shall at the same time be communicated by that party to the other party.

14 Confidentiality

- 14.1 Unless the parties agree otherwise in writing, any hearings shall take place in private.
- 14.2 The parties, the Arbitrator and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties any matters relating to the arbitration (including the existence of the arbitration), the award, materials created for the purpose of the arbitration and documents produced by another party in the proceedings and not in the public domain except:
- (a) for the purpose of making an application to any competent court;
 - (b) for the purpose of making an application to the courts of any State to enforce the award;

- (c) pursuant to the order of a court of competent jurisdiction;
- (d) if required by the law of any State which is binding on the party making the disclosure; or
- (e) if required to do so by any regulatory body.

- 14.3 Any party planning to make disclosure under Article 14.2 must within a reasonable time prior to the intended disclosure notify the Arbitrator, ACICA and the other party (if during the arbitration) or ACICA and the other party (if the disclosure takes place after the conclusion of the arbitration) and furnish details of the disclosure and an explanation of the reason for it.
- 14.4 To the extent that a witness is given access to evidence or other information obtained in the arbitration, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

15 Seat of Arbitration

- 15.1 If the parties have not previously agreed on the seat of the arbitration, the seat of the arbitration shall be Sydney, Australia.
- 15.2 The Arbitrator may decide where the proceedings shall be conducted (at the seat or other venues). In particular, the Arbitrator may hear witnesses and hold meetings at any venue he or she deems appropriate, having regard to the circumstances of the arbitration.
- 15.3 The Arbitrator may conduct any part of the proceedings at any venue he or she deems appropriate for the inspection of goods, other property or documents. The parties shall be given sufficient notice to enable them to be present at such inspection.
- 15.4 The award shall be made at the seat of the arbitration.

16 Language

- 16.1 Subject to an agreement by the parties, the Arbitrator shall, promptly after his or her appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the Statement of Claim,

the Statement of Defence, any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.

- 16.2 The Arbitrator may order that any submissions (written or oral), documents annexed to the Statement of Claim or Statement of Defence, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation (or be translated) into the language or languages agreed upon by the parties or determined by the Arbitrator.

17 Statement of Claim

- 17.1 The Statement of Claim shall be contained in the Notice of Arbitration. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

- 17.2 The Statement of Claim shall include the following particulars:

- (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel (if any);
- (b) a statement of the facts supporting the claim;
- (c) the points at issue; and
- (d) the relief or remedy sought.

- 17.3 The Claimant shall annex to its Statement of Claim all documents and any witness statements on which it relies.

18 Statement of Defence

- 18.1 Within 28 days of ACICA communicating the Notice of Arbitration under Article 5.5, the Respondent shall communicate its Statement of Defence in writing to the Claimant, the Arbitrator and ACICA.

- 18.2 The Statement of Defence shall reply to the particulars (b), (c) and (d) of the Statement of Claim (Article 17.2) and provide particulars similar to those required under Article 17.2(a). The Respondent shall annex to its Statement of Defence the documents and any witness statements on which it relies for its defence.

- 18.3 The Respondent may in its Statement of Defence make a counterclaim or claim for the purpose of a set-off, arising out of, relating to or in connection with the dispute.
- 18.4 The provisions of Article 17.2 (b) to (d) and 17.3 shall apply to a counterclaim and a claim relied on for the purpose of a set-off.
- 18.5 The Claimant shall communicate a Defence to the Counterclaim (if any) within 14 days, including any additional documents.

19 Amendments to the Claim or Defence

During the course of the arbitral proceedings no party may amend or supplement its claim or defence unless the Arbitrator considers it appropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances it considers relevant, including the overriding objective in Article 3. A claim may not be amended in such a manner that the amended claim falls outside the scope of the arbitration clause or separate arbitration agreement.

20 Jurisdiction of the Arbitrator

- 20.1 The Arbitrator shall have the power to rule on objections that he or she has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
- 20.2 The Arbitrator shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purposes of this Article 20, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.
- 20.3 A plea that the Arbitrator does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 18, or, with respect to a counterclaim, in the Defence to the Counterclaim.

- 20.4 In general, the Arbitrator should rule on a plea concerning his or her jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a plea in his or her final award.

21 Further Written Statements

- 21.1 The Arbitrator shall decide which further written statements, in addition to the Statement of Claim, the Statement of Defence and Defence to the Counterclaim, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.
- 21.2 The periods of time fixed by the Arbitrator for the communication of further written statements shall not exceed 14 days.

22 Periods of Time

- 22.1 Any times fixed under these Rules may be varied by agreement among the Arbitrator and the parties.
- 22.2 Notwithstanding Article 22.1 the Arbitrator, in exceptional circumstances as determined by the Arbitrator, may vary the times fixed:
- (a) to give effect to the overriding objective set out in Article 3;
 - (b) if the Arbitrator is satisfied that a variation of any fixed time or times is required in the interests of justice;
 - (c) on such terms as to costs or otherwise as the Arbitrator considers reasonable in the circumstances;
 - (d) to a maximum total period of 14 days to the total time fixed under these Rules for actions by each party; and
 - (e) to a maximum total period of 30 days for actions by the Arbitrator.

23 Evidence and Hearings

- 23.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.

- 23.2 The Arbitrator shall have regard to, but is not bound to apply, the International Bar Association Rules on the Taking of Evidence in International Arbitration in the version current at the commencement of the arbitration.
- 23.3 An agreement of the parties and the Rules (in that order) shall at all times prevail over an inconsistent provision in the International Bar Association Rules on the Taking of Evidence in International Arbitration.
- 23.4 There shall be no discovery.
- 23.5 The Arbitrator may order a party to produce such particular documents as he or she may believe to be relevant. If the Arbitrator believes that a party has failed to produce any relevant document without good reason, he or she may draw an adverse inference from that party's failure to produce.

24 Interim Measures of Protection

- 24.1 In appropriate circumstances, the Arbitrator may, on the request of any party, order interim measures of protection. The Arbitrator may order such measures in the form of an award, or in any other form (such as an order), provided reasons are given, and on such terms as he or she deems appropriate. The Arbitrator shall endeavour to ensure that the measures are enforceable.
- 24.2 An interim measure of protection is any temporary measure by which the Arbitrator orders a party to:
- (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm;
 - (c) provide a means of preserving assets out of which a subsequent award may be satisfied;
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute; or
 - (e) provide security for legal or other costs of any party.
- 24.3 Before the Arbitrator orders any interim measure, the party requesting it shall satisfy the Arbitrator that:
- (a) irreparable harm is likely to result if the measure is not ordered;

- (b) such harm substantially outweighs the harm that is likely to result to the party affected by the measure if the measure is granted; and
- (c) there is a reasonable possibility that the requesting party will succeed on the merits, provided that any determination on this possibility shall not affect the liberty of decision of the Arbitrator in making any subsequent determination.

- 24.4 The Arbitrator may require a party to provide appropriate security as a condition to granting an interim measure.
- 24.5 The requesting party shall promptly disclose in writing to the Arbitrator any material change in the circumstances on the basis of which that party made the request for, or the Arbitrator granted, the interim measure.
- 24.6 The Arbitrator may modify, suspend or terminate any of his or her own interim measures at any time upon the request of any party. In exceptional circumstances the Arbitrator may, on his or her own initiative, modify, suspend or terminate any of his or her own interim measures upon prior notice to the parties.
- 24.7 If the Arbitrator later determines that the measure should not have been granted, he or she may decide that the requesting party is liable to the party against whom the measure was directed for any costs or damages caused by the measure.
- 24.8 The power of the Arbitrator under this Article 24 shall not prejudice a party's right to apply to any competent court or other judicial authority for interim measures. Any application and any order for such measures after the appointment of the Arbitrator shall be promptly communicated, in writing, by the applicant to the Arbitrator, all other parties and ACICA.

25 Default

- 25.1 If, within the period of time fixed under these Rules, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitrator shall order that the proceedings continue.
- 25.2 If one of the parties, duly notified under these Rules, fails

to appear at a hearing, without showing sufficient cause for such failure, the Arbitrator may proceed with the arbitration.

- 25.3 If one of the parties, duly invited to produce documentary evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the Arbitrator may make the award on the evidence before him or her.

26 Waiver of Rules

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

SECTION IV: THE AWARD

27 Time for the Final Award

Subject to Articles 22 and 28.6, the Arbitrator shall make the final award within 4 months of the appointment of the Arbitrator if there is no counterclaim (or claim relied on for the purpose of a set-off), and otherwise within 5 months.

28 Form and Effect of the Award

- 28.1 In addition to making a final award, the Arbitrator shall be entitled to make interim, interlocutory, or partial awards.
- 28.2 The award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 28.3 Subject to Article 30.1, the Arbitrator shall state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.
- 28.4 An award shall be signed by the Arbitrator and it shall contain the date on which and the place (which shall be in conformity with Article 15.4) where the award was made.
- 28.5 The Arbitrator shall communicate signed copies of the award to the parties and ACICA.
- 28.6 Before communicating the award to the parties, the Arbitrator shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to it. Time for the Final Award in Article 27 will not run for these purposes.
- 28.7 If the arbitration law of the place where the award is made requires that the award be filed or registered by the Arbitrator, he or she shall comply with this requirement within the period of time required by law.

29 Applicable Law, Amiable Compositeur

- 29.1 The Arbitrator shall apply the rules of law designated by the parties as applicable to the substance of the dispute.

Failing such designation by the parties, the Arbitrator shall apply the rules of law which he or she considers applicable.

- 29.2 The Arbitrator shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorized him or her to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 29.3 In all cases, the Arbitrator shall decide in accordance with the terms of any contract and shall take into account any usages of the trade applicable to any transaction the subject of or connected with the dispute.

30 Settlement or Other Grounds for Termination

- 30.1 If, before the award is made, the parties agree on a settlement of the dispute, the Arbitrator shall either issue an order for the termination of the arbitral proceedings or, if requested by both parties and accepted by the Arbitrator, record the settlement in the form of an arbitral award on agreed terms. The Arbitrator is not obliged to give reasons for such an award.
- 30.2 If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in Article 30.1, the Arbitrator shall inform the parties of his or her intention to issue an order for the termination of the proceedings. The Arbitrator shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 30.3 Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Arbitrator, shall be communicated by the Arbitrator to the parties and ACICA. Where an arbitral award on agreed terms is made, the provisions of Articles 28.2, and 28.4 to 28.7, shall apply.

31 Interpretation of the Award

- 31.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request that the Arbitrator give an interpretation of the award.
- 31.2 The interpretation shall be given in writing within 28 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Articles 28.2 to 28.7 shall apply.

32 Correction of the Award

- 32.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request the Arbitrator to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitrator may within 28 days after the communication of the award make such corrections on his or her own initiative.
- 32.2 Such corrections shall be in writing, and the provisions of Articles 28.2 to 28.7 shall apply.

33 Additional Award

- 33.1 Within 7 days after the receipt of the award, either party, with notice to the other party, may request the Arbitrator to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
- 33.2 If the Arbitrator considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, he or she shall complete the award within 28 days after the receipt of the request.
- 33.3 When an additional award is made, the provisions of Articles 28.2 to 28.7, shall apply.

34 Costs

The Arbitrator shall fix the costs of arbitration in the award. The term "costs of arbitration" includes only:

- (a) the fees of the Arbitrator, to be fixed in accordance with Article 35;

- (b) the travel (business class airfares) and other reasonable expenses incurred by the Arbitrator;
- (c) the costs of expert advice and of other assistance required by the Arbitrator;
- (d) the travel (business class airfares) and other reasonable expenses of witnesses to the extent such expenses are approved by the Arbitrator;
- (e) the legal and other costs directly incurred by the successful party if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitrator determines that the amount of such costs is reasonable;
- (f) ACICA's administration fee;
- (g) fees for facilities and assistance provided by ACICA in accordance with Articles 7 and 37.5; and
- (h) ACICA's registration fee.

35 Fees of the Arbitrator

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

36 Apportionment of Costs

- 36.1 Except as provided in Article 36.2, the costs of arbitration shall in principle be borne by the unsuccessful party. However, the Arbitrator may apportion each of such costs between the parties if he or she determines that apportionment is reasonable, taking into account the circumstances of the case.

- 36.2 With respect to the costs referred to in Article 34(e), the Arbitrator, taking into account the circumstances of the case, shall be free to determine which party shall bear such costs or may apportion such costs between the parties if he or she determines that apportionment is reasonable.
- 36.3 When the Arbitrator issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, he or she shall fix the costs of arbitration referred to in Article 34 in that order or award.
- 36.4 No additional fees may be charged by an Arbitrator for interpretation or correction or completion of an award under Articles 31 to 33.

37 Deposit of Costs

- 37.1 The Arbitrator, on his or her appointment, shall request each party to deposit an equal amount as an advance for any costs referred to in Article 34(a), (b), (c), (f) and (g).
- 37.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitrator may in his or her discretion establish separate deposits.
- 37.3 During the course of the arbitral proceedings the Arbitrator may from time to time request supplementary deposits from the parties.
- 37.4 The Arbitrator shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.
- 37.5 With the consent of ACICA, the Arbitrator may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the Arbitrator. ACICA may make a charge for its trust account services.
- 37.6 If the required deposits are not paid in full within 21 days after the receipt of the request, the Arbitrator shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitrator may order the suspension or termination of the arbitral proceedings.

- 37.7 After the award has been made, the Arbitrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

SECTION V: GENERAL

38 Decisions Made by ACICA

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

39 Liability of the Arbitrator

The Arbitrator shall not be liable for any act or omission in connection with any arbitration conducted by reference to these Rules save where the act or omission is fraudulent.

APPENDIX A: ACICA's Fees

1 Registration Fee

- 1.1 The reference in these Rules to "dollars" or "\$" is to Australian currency.
- 1.2 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee of \$2,500. The registration fee is not refundable.

2 Administration Fee

- 2.1 The parties shall pay to ACICA an administration fee as specified in Schedule 1.
- 2.2 For the purposes of determining the amount in dispute:
 - (a) claims, counterclaims and set-off defences shall be added together;
 - (b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;
 - (c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the Notice of Arbitration; and
 - (d) if the amount in dispute is not specified in the Statement of Claim or counterclaim, the amount in dispute shall be determined by the Arbitrator taking into account all relevant circumstances.

SCHEDULE 1

Amount in Dispute	Administration Fee
\$1 to \$250,000	0.5% of the amount in dispute
\$250,001 to \$500,000	\$1,250 plus 1% of the amount in dispute above \$250,000
\$500,001 to \$1,000,000	\$3,750 plus 0.5% of the amount in dispute above \$500,000
\$1,000,001 to \$10,000,000	\$6,250 plus 0.25% of the amount in dispute above \$1,000,000
\$10,000,001 to \$100,000,000	\$28,750 plus 0.01% of the amount in dispute above \$10,000,000
over \$100,000,000	\$37,750 plus 0.02% of the amount in dispute above \$100,000,000 up to a maximum of \$60,000

ACICA Mediation Rules

17 July 2007

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Model mediation clauses

Optional Mediation

Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia [or choose another city] and be administered by the Australian Centre for International Commercial Arbitration (ACICA).

Mediation followed by Arbitration

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by mediation in accordance with the ACICA Mediation Rules. The mediation shall take place in Sydney, Australia [or choose another city] and be administered by the Australian Centre for International Commercial Arbitration (ACICA).

If the dispute has not been settled pursuant to the said Rules within 60 days following the written invitation to mediate or within such other period as the parties may agree in writing, the dispute shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia [or choose another city]. The language of the arbitration shall be English [or choose another language]. The number of arbitrators shall be one [or three, or delete this sentence and rely on Article 8 of the ACICA Arbitration Rules].

(The parties may agree on other mediation clauses.)

1 Application of the Rules

- 1.1 These Rules apply to mediation of disputes arising out of or relating to a contractual or other legal relationship where the parties have agreed that the ACICA Mediation Rules ("Rules") apply.
- 1.2 Where any of the Rules is in conflict with a provision of law from which the parties cannot derogate, that provision prevails.

2 Commencement of Mediation Proceedings

- 2.1 A party or parties wishing to commence mediation proceedings pursuant to the Rules shall give to ACICA a Request for Mediation in two copies or such additional number as ACICA directs.
- 2.2 The Request for Mediation shall include the following:
 - (a) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their counsel;
 - (b) a copy of the mediation clause or the separate mediation agreement that is invoked (where there is such an agreement between the parties to refer their dispute to the Rules);
 - (c) a brief description of the dispute including, if possible, an assessment of its value;
 - (d) the name of the proposed mediator, if all the parties have agreed on his or her identity; and
 - (e) payment for ACICA's registration fee as specified on the ACICA website from time to time.
- 2.3 The Request for Mediation may also include a proposal regarding the qualifications of the mediator.
- 2.4 Subject to Article 2.5, the mediation proceedings shall be deemed to commence on the date on which the Request for Mediation or the registration fee is received by ACICA, whichever is the later.
- 2.5 If the Request for Mediation is incomplete or is not submitted in the required number ACICA may:
 - (a) request the party or parties which filed the Request for Mediation to remedy the defect within an appropriate period of time; and

(b) delay the date of commencement of the mediation proceedings until such defect is remedied.

2.6 Subject to Article 2.5, upon receipt of the Request for Mediation, ACICA shall communicate the Request for Mediation to the other party or parties referred to in Article 2.2(a), unless the Request for Mediation was submitted jointly by all parties.

3 Answer to Request for Mediation

3.1 This Article applies where the Request for Mediation was not submitted jointly by all parties.

3.2 The party or parties served with the Request for Mediation may provide to ACICA:

- (a) a proposal regarding the qualifications of a mediator;
and
- (b) brief comments on the dispute and its value.

4 Number of Mediators

There shall be one mediator, unless the parties have agreed otherwise.

5 Appointment of Mediator

5.1 Unless the parties have agreed on the name of a mediator the appointment shall be made by ACICA.

5.2 Any mediator agreed by the parties or appointed by ACICA must be independent and impartial.

5.3 No person may act as a mediator under the Rules unless he or she has given to ACICA a declaration in writing of independence and impartiality.

6 Submission of Statements to Mediator

6.1 The mediator, upon his or her appointment, may request each party to submit to him or her a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of its statement to the other party.

6.2 The mediator may request each party to submit to him or her a further written statement of its position and the

facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of its statement to the other party.

- 6.3 At any stage of the mediation proceedings the mediator may request a party to submit to him or her such additional information as he or she deems appropriate.

7 Representation and Assistance

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the mediator. Such communication shall specify whether the appointment is made for purposes of representation or of assistance.

8 Role of Mediator

- 8.1 The mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- 8.2 The mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- 8.3 The mediator may conduct the mediation proceedings in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.
- 8.4 The mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree to this and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator in consultation with the parties and ACICA.

- 8.5 The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

9 Administrative Assistance

- 9.1 ACICA shall, at the request of the mediator or a party, make available, or arrange for, such facilities and assistance for the conduct of the mediation proceedings as may be required, including suitable accommodation for sittings of the mediator, secretarial assistance and interpretation facilities.
- 9.2 ACICA may charge for such services and require payment in advance or the provision of security before providing such services.

10 Communication Between Mediator and Parties

- 10.1 The mediator may invite the parties to meet with him or her or may communicate with them orally or in writing. He or she may meet or communicate with the parties together or with each of them separately.
- 10.2 Unless the parties have agreed upon the place where meetings with the mediator are to be held, such place will be determined by the mediator, after consultation with the parties, having regard to the circumstances of the mediation proceedings.

11 Disclosure of Information

When the mediator receives factual information concerning the dispute from a party, he or she shall disclose the substance of that information to the other party in order for the other party to have the opportunity to present any explanation which he or she considers appropriate. However, when a party gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

12 Co-operation of Parties with Mediator

The parties will in good faith co-operate with the mediator and, in particular, will endeavour to comply with requests by the mediator to submit written materials, provide evidence and attend meetings.

13 Suggestions by Parties for Settlement of Dispute

Each party may, on its own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

14 Settlement Agreement

- 14.1 When it appears to the mediator that there exist elements of a settlement which would be acceptable to the parties, he or she may formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of such observations.
- 14.2 If the parties reach agreement on a settlement of the dispute, they shall draw up and sign a written settlement agreement. If requested by the parties, the mediator shall draw up, or assist the parties in drawing up, the settlement agreement.
- 14.3 The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

15 Confidentiality

- 15.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 15.2 The parties, the mediator and ACICA shall treat as confidential and shall not disclose to a third party without prior written consent from the parties all matters relating to the mediation (including the existence of the mediation), the settlement agreement, materials created for the purpose of the mediation and documents produced by another party in the proceedings and not in

the public domain except:

- (a) for the purpose of making an application to the courts of any State to enforce the settlement agreement;
- (b) pursuant to the order of a court of competent jurisdiction;
- (c) if required by the law of any State which is binding on the party making the disclosure; or
- (d) if required to do so by any regulatory body.

15.3 Any party planning to make disclosure under Article 15.2 must within a reasonable time prior to the intended disclosure notify the mediator, ACICA and the other parties (if during the mediation) or ACICA and the other parties (if the disclosure takes place after the conclusion of the mediation) and furnish details of the disclosure and an explanation of the reason for it.

15.4 To the extent that a witness is given access to evidence or other information obtained in the mediation, the party calling such witness is responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

16 Termination of Mediation Proceedings

16.1 The mediation proceedings are terminated:

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or
- (d) on the expiration of 90 days, or such other period as is agreed by the parties, after the date that the request for mediation is received by ACICA.

16.2 The mediator shall promptly notify ACICA of the termination of the mediation proceedings.

17 Resort to Arbitral or Judicial Proceedings

- 17.1 Subject to Article 17.2, the parties undertake not to initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings.
- 17.2 A party may initiate arbitral or judicial proceedings for the purposes of enforcing its rights under the Rules or to seek relief of an interlocutory nature.

18 Costs

- 18.1 Upon termination of the mediation proceedings, the mediator shall fix the costs of the mediation and give written notice thereof to the parties. The term “costs” includes only:
- (a) the fee of the mediator which shall be reasonable in amount;
 - (b) the travel and other expenses of the mediator;
 - (c) the travel and other expenses of witnesses requested by the mediator with the consent of the parties;
 - (d) the cost of any expert advice requested by the mediator with the consent of the parties;
 - (e) the cost of any assistance provided pursuant to Articles 5, 9 and 19 of the Rules.
- 18.2 The costs, as defined above, shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

19 Deposits

- 19.1 The mediator, upon his or her appointment, may request each party to deposit an equal amount as an advance for the costs referred to in Article 18.1 which he or she expects will be incurred.
- 19.2 During the course of the mediation proceedings the mediator may request supplementary deposits in an equal amount from each party.
- 19.3 The mediator shall fix the amount of any deposit or supplementary deposits only after consultation and with the approval of ACICA.

- 19.4 With the consent of ACICA, the mediator may lodge the deposits in a trust account maintained by ACICA. ACICA shall disburse those funds on the instructions of the mediator. ACICA may make a charge for its trust account services.
- 19.5 If the required deposits under Articles 19.1 and 19.2 are not paid in full by both parties within thirty days, the mediator may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- 19.6 Upon termination of the mediation proceedings, the mediator shall render an account to the parties of the deposits received and return any unexpended balance to the parties.

20 Role of Mediator in Other Proceedings

The parties and the mediator undertake that the mediator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation proceedings. The parties also undertake that they will not present the mediator as a witness in any such proceedings.

21 Admissibility of Evidence in Other Proceedings

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the mediation proceedings:

- (a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- (b) admissions made by the other party in the course of the mediation proceedings;
- (c) proposals made by the mediator; or
- (d) the fact that the other party had indicated its willingness to accept a proposal for settlement made by the mediator.

22 Decisions made by ACICA

- 22.1 Decisions made by ACICA will be made by the ACICA Board of Directors, or by any person(s) to whom the Board of Directors has delegated decision making authority.
- 22.2 Neither ACICA nor its members, officers, servants or agents shall be liable for making any decision or taking any action or failing to make any decision or take any action under these Rules.

23 Liability of Mediator

The mediator shall not be liable for any act or omission in connection with any mediation conducted by reference to these Rules save where the act or omission is fraudulent.

Australian Centre for International Commercial Arbitration

The Australian Centre for International Commercial Arbitration (ACICA) is Australia's only international arbitral institution. A signatory of co-operation agreements with over 50 global bodies including the Permanent Court of Arbitration (The Hague), it seeks to promote Australia as an international seat of arbitration. Established in 1985 as a not-for-profit public company, its membership includes world leading practitioners and academics expert in the field of international and domestic dispute resolution. ACICA has played a leadership role in the Australian Government's review of the *International Arbitration Act 1974* (Cth) and on 2 March 2011 the Australian Government confirmed ACICA as the sole default appointing authority competent to perform the arbitrator appointment functions under the new act. ACICA's suite of rules and clauses provide an advanced, efficient and flexible framework for the conduct of international arbitrations and mediations. Headquartered at the Australian International Disputes Centre in Sydney (www.disputescentre.com.au) ACICA also has registries in Melbourne and Perth.

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