

# ACICA Expedited Arbitration Rules

1 January 2016

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## MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA 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].

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## 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 and Interpretation

- 2.1 Where parties agree in writing that disputes shall be referred to arbitration under the expedited rules of ACICA or 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.
- 2.4 The parties to an arbitration agreement referring to these Rules shall be deemed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules.
- 2.5 ACICA shall have the power to interpret all provisions of the Rules. The Arbitrator shall interpret the Rules insofar as they relate to the Arbitrator’s powers and duties under these Rules. In the event of any inconsistency between such interpretation and any interpretation by ACICA, the Arbitrator’s interpretation will prevail.

### 3 Overriding Objective

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

## 4 Notice, Calculation of Periods of Time

- 4.1 If an address has been designated by a party specifically for the purpose of service or authorised as such by the Arbitrator, any notice, including a notification, communication or proposal, shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or email may only be made to an address so designated or authorised.
- 4.2 In the absence of any such designation or authorisation, a notice is:
- (a) received if it is physically delivered to the addressee;
  - (b) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee by registered letter or any other means that provides a record of delivery; or
  - (c) deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery.
- 4.3 A notice shall be deemed to have been received on the day it is delivered in accordance with Article 4.1 or 4.2. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the date when it reaches the addressee's electronic address.
- 4.4 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.
- 4.5 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.

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## 5 Commencement of Arbitration

- 5.1 The party initiating recourse to arbitration (the “Claimant”) shall give to ACICA a Notice of Arbitration in two copies or such additional number as ACICA directs. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A.
- 5.2 Subject to Article 5.5, the arbitration shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later. ACICA shall notify the parties of the commencement of arbitration.
- 5.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
  - (b) the names, postal addresses, telephone and facsimile numbers and email addresses (if any) of the parties and their representatives (if any);
  - (c) a copy of the arbitration clause or the separate arbitration agreement that is invoked. To the extent that claims are made under more than one arbitration clause or agreement, an indication and copy of the arbitration agreement under which each claim is made;
  - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
  - (e) the general nature of the claim and an indication of the amount involved, if any;
  - (f) the relief or remedy sought; and
  - (g) the Statement of Claim referred to in Article 17, which may be attached as a separate document.
- 5.4 The Claimant shall at the same time send a copy of the Notice of Arbitration to the other party or parties against whom it seeks relief (“Respondent” or “Respondents”), and notify ACICA that it has done so, specifying the means by which the Notice of Arbitration was served on the Respondent(s) and the date of service. The Respondent(s) shall file a Statement of Defence under Article 18.
- 5.5 If the Notice of Arbitration is incomplete or is not submitted in the required number or if the provisions of Article 5.4 are not complied with, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the

date of commencement of the arbitration until such defect is remedied, 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.

## 6 Representation and Assistance

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

## 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.

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## 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 Before appointment, a prospective arbitrator shall sign a statement of availability, impartiality, and independence and return the same to ACICA. The prospective arbitrator shall disclose in writing to ACICA any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, once appointed, and throughout the arbitral proceedings shall without delay disclose in writing such circumstances to ACICA and the parties unless he or she has already informed them of these circumstances.
- 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.

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## 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 Subject to these Rules, the Arbitrator shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay and expense. As soon as practicable after being appointed the Arbitrator shall hold a preliminary meeting with the parties in person or by telephone or other means and shall make a procedural timetable for the arbitration.
- 13.3 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.
- 13.4 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.
- 13.5 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.
- 15.5 The law of the seat shall be the governing law of the arbitration agreement, unless the parties have expressly agreed otherwise and that agreement is not prohibited by an applicable law.

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## 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 service of the Notice of Arbitration under Article 5.4, 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.

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- 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.

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- 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 An award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out an award without delay.
- 28.3 Subject to Article 30.1, the Arbitrator shall state the reasons upon which an 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 an award to the parties and ACICA.
- 28.6 Before communicating an 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 either ACICA or the Arbitrator. 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 an 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.

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- 29.2 The Arbitrator shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorised 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 an 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 an 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 an 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 an 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 an 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, such as the costs of in-house counsel, directly incurred by the successful party in conducting the arbitration, if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitrator determines that the amount of such costs is reasonable;

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- (f) ACICA's administration fee;
  - (g) fees for facilities and assistance provided by ACICA in accordance with Articles 7 and 37.4; 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 34.1(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 As soon as practicable after the appointment of the Arbitrator, ACICA shall, in consultation with the Arbitrator, 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). ACICA shall provide a copy of the request to the Arbitrator.
- 37.2 Where a Respondent submits a counterclaim, or it otherwise appears appropriate in the circumstances, the Arbitrator may in his or her discretion request separate deposits from the parties.
- 37.3 During the course of the arbitral proceedings, ACICA, in consultation with the Arbitrator, may from time to time request supplementary deposits from the parties. ACICA shall provide copies of any such request(s) to the Arbitrator.
- 37.4 The deposits will be made to and held by ACICA and from time to time will be released by ACICA to the Arbitrator on his or her instructions. ACICA may make a charge for its trust account services.
- 37.5 The Arbitrator will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of requisite funds.
- 37.6 If the required deposits are not paid in full within 21 days after the receipt of the request, ACICA, in consultation with the Arbitrator, shall so inform the parties in order that any party may pay the unpaid portion of the deposit to allow the arbitration to proceed. In such circumstances, the party making the substituted payment shall be entitled to recover that amount as a debt due immediately from the defaulting party and the Arbitrator may issue an award for unpaid costs on application of that party.
- 37.7 In the event that any deposit directed to be paid under this Article remains unpaid (in whole or in part), the Arbitrator in consultation with ACICA, may order the suspension or termination of the arbitral proceedings.
- 37.8 After the award has been made, ACICA shall render an accounting to the parties of the deposits received and held by it and return any unexpended balance to the parties.

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## SECTION V: GENERAL

### 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 Immunity 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 was not done in good faith.

## APPENDIX A: ACICA's Fees

### 1 Registration Fee

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

### 2 Administration Fee

- 2.1 The parties shall pay to ACICA an administration fee as specified in the Schedule of Fees.
- 2.2 For the purposes of determining the amount in dispute:
  - (a) claims, counterclaims and set-off defences shall be added together;
  - (b) amounts claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claims alone shall be considered in calculating the amount in dispute;
  - (c) claims expressed in currencies other than in Australian dollars shall be converted into Australian dollars at the rate of exchange applicable on the day when ACICA received the relevant claim, including any counterclaim or set-off defence; and
  - (d) if the amount in dispute is not specified in the Notice of Arbitration, Statement of Claim or counterclaim, the amount set out in the Schedule of Fees to apply in these circumstances will be payable to ACICA as the administration fee until the amount in dispute is determined by the Arbitrator. If no such determination is made, or the claim is for non-monetary relief, the administration fee will be as set out in the Schedule of Fees unless in its discretion ACICA determined that a lesser fee is payable, or if the case is not resolved within 5 months from the appointment of the Arbitrator, that a higher fee is to be paid (up to the maximum specified in the Schedule of Fees).