

2021 Edition

ACICA Rules

Arbitration Rules of the
Australian Centre for International
Commercial Arbitration



ACICA

Australian Centre for
International Commercial Arbitration

ACICA Rules

INCORPORATING CLAUSES FOR ARBITRATION AND MEDIATION

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

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Foreword



Since the prior edition of the ACICA Rules came into effect on 1 January 2016, the use and acceptance of arbitration in Australia has continued to grow. In the recently released Australian Arbitration Report, respondents reported some A\$35 billion in dispute, spread over 223 discreet arbitrations. This inaugural report, the first empirical study of arbitration with an Australian connection, was based on a nation-wide survey conducted by ACICA and FTI Consulting, with the support of the Australian Bar Association, Francis Burt Chambers and the WA Arbitration Initiative, and covered the period from the beginning of 2016 to the end of 2019.

The inclusion of ACICA Rules in contracts, and the specification of Australian seats, is also on a significant upward trajectory.

In keeping with international developments and the growing importance of arbitration in Australia, ACICA has updated its rules to further reflect international best practice, enhance the user experience, provide avenues for the parties to exercise greater flexibility and control and enjoy greater certainty in the arbitral process.

As a supplement to these rules, ACICA's Practice and Procedures Board has promulgated useful guidance and explanatory notes and sample documents for corporates, counsel and other participants in the arbitral process. These documents, along with other resources, are publicly available on the ACICA website.

This booklet contains ACICA's current Arbitration Rules, Expedited Arbitration Rules and model clauses. Together with the resources on ACICA's website, it forms part of an extensive toolkit designed to inform and assist in-house counsel, corporate lawyers, business professionals and the arbitration community with realising the real value of the arbitration process.

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ACICA Arbitration Rules incorporating Emergency Arbitrator Provisions

1 April 2021

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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 11 of the ACICA Arbitration Rules].

SECTION I

INTRODUCTORY RULES

1 ACICA Arbitration Rules

- 1.1 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”.
- 1.2 ACICA administers the resolution of disputes by arbitral tribunals in accordance with the Rules. ACICA is the only body authorised to administer arbitrations under the Rules.

2 Scope of Application and Interpretation

- 2.1 Where parties agree in writing that disputes shall be referred to arbitration under the Rules of or by ACICA, then such disputes shall be resolved in accordance with these Rules, subject to such modification as the parties may agree in writing. By agreeing to arbitration under the Rules or by ACICA, the parties have accepted that their arbitration shall be administered by ACICA.
- 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 Unless otherwise agreed by the parties:
 - (a) the provisions contained in Article 16 and 17 of these Rules will apply only to the extent that those provisions were in force at the time of the conclusion of the arbitration agreement; and
 - (b) the provisions contained in Article 18 shall only apply if the arbitration agreement was concluded after the date on which this version of the Rules came into force.

- 2.6 ACICA shall have the power to interpret all provisions of these Rules. The Arbitral Tribunal shall interpret the Rules insofar as they relate to its powers and duties under these Rules. In the event of any inconsistency between such interpretation and any interpretation by ACICA, the Arbitral Tribunal's interpretation will prevail.
- 2.7 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

3 Overriding Objective

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

4 Notice, Calculation of Periods of Time

- 4.1 For the purposes of these Rules, any notice, including a notification, communication, or proposal, may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including email), or delivered by any other appropriate means that provides a record of its delivery.
- 4.2 Any notice shall be deemed to have been received if it is delivered:
- (a) physically to the addressee or to its authorised representative;
 - (b) to the addressee's place of business, habitual residence or designated address;
 - (c) to any address agreed by the parties;
 - (d) according to the practice of the parties in prior dealings; or
 - (e) if, after reasonable efforts, none of these can be found, to the addressee's last known place of business or habitual residence.
- 4.3 A notice shall be deemed to have been received on the day it is delivered in accordance with Article 4.1 or 4.2. A notice transmitted by electronic means is deemed to have been

received on the day it is sent, except that a Notice of Arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

- 4.4 For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 4.5 Unless the parties agree otherwise in writing, any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.
- 4.6 Any period of time imposed by these Rules or by ACICA in respect of the Notice of Arbitration, the Answer to Notice of Arbitration and the composition of the Arbitral Tribunal, or otherwise, may be extended by ACICA.

5 Party Communications with the Arbitral Tribunal

- 5.1 All written communications between the parties and the Arbitral Tribunal shall be copied to the ACICA Secretariat.
- 5.2 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, except if after consulting with the parties, the Arbitral Tribunal otherwise directs.

6 Notice of Arbitration

- 6.1 The party initiating recourse to arbitration (the "Claimant") shall submit a Notice of Arbitration to ACICA. The Claimant shall at the same time pay ACICA's registration fee as specified in Appendix A. The Claimant shall submit the Notice of Arbitration in electronic form either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.
- 6.2 Subject to Articles 6.6 and 18.2, the arbitration shall be deemed to commence on the date on which the Notice of Arbitration or the registration fee is received by ACICA, whichever is the later. ACICA shall notify the parties of the commencement of the arbitration.

- 6.3 The Notice of Arbitration shall include the following:
- (a) a demand that the dispute be referred to arbitration;
 - (b) the names, postal addresses, telephone number and email addresses (if any) of the parties and their legal representatives;
 - (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, as referred to in Article 18, an indication and copy of the arbitration clause or agreement under which each claim is made;
 - (d) a reference to the contract out of, relating to or in connection with which the dispute arises;
 - (e) the general nature of the claim and an indication of the amount involved, if any;
 - (f) the relief or remedy sought; and
 - (g) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon.
- 6.4 The Notice of Arbitration may also include:
- (a) the Claimant's proposal for the nomination of a sole arbitrator in accordance with Article 12.1;
 - (b) the notification of the nomination of an arbitrator referred to in Article 13.1;
 - (c) the Statement of Claim referred to in Article 29; and
 - (d) any application for consolidation pursuant to Articles 16 or 18.
- 6.5 The Claimant shall at the same time send a copy of the Notice of Arbitration to the party or parties against whom it seeks relief ("Respondent" or "Respondents"), and notify ACICA that it has done so, specifying the means by which the Notice of Arbitration was communicated to the Respondent(s) and the date of delivery.
- 6.6 If the Notice of Arbitration is incomplete or if the provisions of Article 6.5 are not complied with, ACICA may request the Claimant to remedy the defect within an appropriate period of time and may delay the date of commencement of the arbitration until such defect is remedied. ACICA's discretion in this regard is without prejudice to the provisions with respect to emergency interim measures of protection set out in Schedule 1.

7 Answer to Notice of Arbitration

- 7.1 Within 30 days after receipt of the Notice of Arbitration the Respondent(s) shall submit an Answer to Notice of Arbitration to ACICA. The Respondent shall submit the Answer to Notice of Arbitration in electronic form to ACICA either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.
- 7.2 The Answer to Notice of Arbitration shall include the following:
- (a) the names, postal addresses, telephone numbers and email addresses (if any) of the Respondent and its legal representatives;
 - (b) any submission 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.
- 7.3 The Answer to Notice of Arbitration may also include:
- (a) the Respondent's proposal for the nomination of a sole arbitrator in accordance with Article 12.1;
 - (b) the notification of the nomination of an arbitrator referred to in Article 13.1;
 - (c) the Statement of Defence referred to in Article 30; and
 - (d) a brief description of a counterclaim or claim for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought.
- 7.4 The Respondent shall at the same time send a copy of the Answer to Notice of Arbitration to the Claimant and notify ACICA that it has done so, specifying the means by which the Answer to Notice of Arbitration was communicated to the Claimant and the date of delivery.
- 7.5 Once the registration fee has been paid, and the Arbitral Tribunal constituted, ACICA shall transmit the file to the Arbitral Tribunal.

8 Expedited Procedure

- 8.1 Prior to the constitution of the Arbitral Tribunal, a party may apply to ACICA in writing for the arbitration proceedings to be conducted in accordance with the ACICA Expedited Rules where:
- (a) the amount in dispute determined in accordance with Article 2.2 of Appendix A of these Rules is less than \$5,000,000;
 - (b) the parties so agree; or
 - (c) it is a case of exceptional urgency.
- 8.2 ACICA will consider the views of both parties in determining whether to grant such an application.
- 8.3 Unless the parties agree otherwise, Articles 8.1 and 8.2 shall not apply to any consolidated proceedings under Article 16 or 18.

9 Representation and Assistance

- 9.1 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.
- 9.2 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.

10 ACICA Assistance

ACICA shall, at the request of the Arbitral Tribunal or either party, assist in making available, or arranging for, such facilities and assistance for the conduct of the arbitration proceedings as may be required, including a suitable venue for any hearing (whether held in person or virtually), secretarial assistance and interpretation facilities. ACICA may charge a fee for any service or assistance provided by it. Third party services and facilities arranged on behalf of the Arbitral Tribunal or the parties will be charged separately by the third party.

SECTION II:

COMPOSITION OF THE ARBITRAL TRIBUNAL

11 Number of Arbitrators

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

12 Sole Arbitrator

- 12.1 If the dispute is to be resolved by a sole arbitrator, either party may propose to the other the name(s) of one or more person(s), one of whom the parties may agree to nominate for confirmation by ACICA as the Sole Arbitrator.
- 12.2 If within 40 days after the date when the Notice of Arbitration was received by the Respondent the parties have not reached agreement on the choice of a sole arbitrator and provided written evidence of their agreed nomination to ACICA, the Sole Arbitrator shall be appointed by ACICA.
- 12.3 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.
- 12.4 For the purposes of Articles 12.3, 13.2, 16.8, 17.12, 20.3, 21.1 and 22.4, ACICA, the Arbitral Tribunal and the parties may have regard to the International Bar Association Guidelines on Conflicts of Interest in International Arbitration in the version current at the commencement of the arbitration.

13 Three Arbitrators

- 13.1 If the dispute is to be resolved by three arbitrators, each party shall nominate one arbitrator for confirmation by ACICA. The two arbitrators thus confirmed and/or appointed shall agree to nominate for confirmation the third arbitrator who, if confirmed by ACICA, will act as the Chairperson of the Arbitral Tribunal.

- 13.2 If within 30 days after the receipt of a party's notification of the nomination of an arbitrator the other party has not notified the first party of the arbitrator it has nominated, 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.
- 13.3 If within 30 days after the appointment of the second arbitrator the two arbitrators have not agreed to nominate for confirmation by ACICA the Chairperson, he or she shall be appointed by ACICA.
- 13.4 If ACICA decides not to confirm any arbitrator nominated under Article 13.1, ACICA may invite the party or the two arbitrators to nominate a different arbitrator for confirmation by ACICA or appoint the arbitrator itself.

14 Secretary-General's Power of Confirmation

- 14.1 Where the parties have made a nomination under Article 12.1 or 13.1 or, in the case of a three-person Arbitral Tribunal, where two arbitrators have nominated a Chairperson pursuant to Article 13.1, the Secretary-General of ACICA shall have power to confirm the nomination if:
- (a) the nominee has not disclosed any circumstances likely to give rise to justifiable doubts as to his or her availability, independence or impartiality, or
 - (b) the nominee has disclosed circumstances likely to give rise to justifiable doubts as to his or her availability, independence or impartiality and no objections have been raised by any party.
- 14.2 Where the Secretary-General confirms a nomination under Article 14.1, the Secretary-General shall report that confirmation to ACICA.
- 14.3 Where the Secretary-General declines to exercise his or her power of confirmation under Article 14.1, the nomination shall be submitted to ACICA for determination.
- 14.4 Neither the Secretary-General nor ACICA is obliged to provide reasons for any decisions taken in respect of the confirmation of an arbitrator.

15 Appointment of Arbitrators in Multi-Party Disputes

- 15.1 For the purposes of Articles 12 and 13, 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.
- 15.2 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.

16 Consolidation of Arbitrations

- 16.1 Upon request by a party, and after consulting with the parties and any confirmed or appointed arbitrators, ACICA may consolidate two or more arbitrations pending under these Rules into a single arbitration, if:
- (a) the parties have agreed to the consolidation;
 - (b) all the claims in the arbitrations are made under the same arbitration agreement; or
 - (c) the claims in the arbitrations are made under more than one arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and ACICA finds the arbitration agreements to be compatible.
- 16.2 Any party wishing to consolidate two or more arbitrations pursuant to Article 16.1 shall communicate a Request for Consolidation to ACICA, all other parties and any confirmed or appointed arbitrators.
- 16.3 The Request for Consolidation shall include the following:
- (a) the case references of the arbitrations pending under the Rules requested to be consolidated, where applicable;
 - (b) the names, postal addresses, telephone numbers and email addresses (if any) of each of the parties to the arbitrations, their legal representatives and any arbitrators who have been confirmed or appointed in the arbitrations;

- (c) a request that the arbitrations be consolidated;
- (d) copies of the arbitration agreements giving rise to the arbitrations;
- (e) a copy of or reference to the contract(s) or other legal instrument(s) out of or in relation to which the Request for Consolidation arises;
- (f) a statement of the facts supporting the Request for Consolidation, including, where applicable, evidence of all parties' written consent to consolidate the arbitrations;
- (g) the points at issue;
- (h) the legal arguments supporting the Request for Consolidation;
- (i) details of any applicable mandatory provision affecting consolidation of arbitrations;
- (j) the relief or remedy sought in each of the arbitrations;
- (k) comments on the constitution of the arbitral tribunal if the Request for Consolidation is granted, including whether to preserve the confirmation and/or appointment of any arbitrator; and
- (l) confirmation that copies of the Request for Consolidation have been or are being communicated simultaneously to all other parties and any confirmed or appointed arbitrators by one or more means of delivery to be identified in such confirmation.

16.4 ACICA may vary any of the requirements in Article 16.3 as it deems appropriate.

16.5 Where the non-requesting parties or any confirmed or appointed arbitrators are requested to provide comments on the Request for Consolidation, such comments may include (without limitation) the following particulars:

- (a) comments on the particulars set forth in the Request for Consolidation pursuant to Article 16.3(a) to (j);
- (b) responses to the comments made in the Request for Consolidation pursuant to Article 16.3(k); and
- (c) confirmation that copies of the comments have been or are being communicated simultaneously to all other relevant parties and any confirmed or appointed arbitrators by one or more means of delivery to be identified in such confirmation.

- 16.6 In deciding whether to consolidate two or more arbitrations, ACICA may take into account any circumstances it considers to be relevant, including, but not limited to, whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different arbitrators have been appointed.
- 16.7 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.
- 16.8 Within 14 days of being notified of a decision by ACICA to consolidate two or more arbitrations, all parties may agree to the identity of the arbitrator(s) to be nominated for confirmation by ACICA in the consolidated arbitration. Failing such agreement, ACICA shall revoke the confirmation or appointment of any arbitrator already confirmed or appointed and appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, designate one of them to act as the Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.
- 16.9 The parties waive any objection, on the basis of ACICA's decision to consolidate, to the validity and/or enforcement of any award made by the Arbitral Tribunal in the consolidated proceedings, in so far as such waiver can validly be made.
- 16.10 The revocation of the confirmation or appointment of an arbitrator under Article 16.8 is without prejudice to:
- (a) the validity of any act done or order made by any arbitrator before his or her confirmation or appointment was revoked;
 - (b) his or her entitlement to be paid his or her fees and expenses subject to Article 50 as applicable; and
 - (c) the date when any claim or defence was raised for the purpose of applying any limitation bar or any similar rule or provision.
- 16.11 The party requesting consolidation shall pay to ACICA an application fee as set out in Appendix A.

17 Joinder

- 17.1 The Arbitral Tribunal, upon request by a party or third party, after giving all parties, including the additional party to be joined, the opportunity to be heard, shall have the power to allow an additional party to be joined to the arbitration provided that:
- (a) prima facie, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration; or
 - (b) all parties, including the additional party, expressly agree.
- 17.2 The Arbitral Tribunal's decision pursuant to Article 17.1 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- 17.3 A party wishing to join an additional party to the arbitration shall submit a Request for Joinder to ACICA. ACICA may fix a time limit for the submission of a Request for Joinder.
- 17.4 The Request for Joinder shall include the following:
- (a) the case reference of the existing arbitration;
 - (b) the names and addresses, telephone numbers, and email addresses of each of the parties, including the additional party;
 - (c) a request that the additional party be joined to the arbitration;
 - (d) a reference to the contract(s) or other legal instrument(s) out of or in relation to which the request arises;
 - (e) a statement of the facts supporting the request;
 - (f) the points at issue;
 - (g) the legal arguments supporting the request;
 - (h) the relief or remedy sought; and
 - (i) confirmation that copies of the Request for Joinder and any exhibits included therewith have been or are being communicated simultaneously to all other parties, including the additional party, and any confirmed or appointed arbitrator, where applicable, by one or more means of delivery to be identified in such confirmation. A copy of the contract(s) and of the arbitration agreement(s) if not contained in the contract(s), shall be annexed to the Request for Joinder.

- 17.5 Within 15 days of receiving the Request for Joinder, the additional party shall submit to ACICA an Answer to the Request for Joinder. The Answer to the Request for Joinder shall include the following:
- (a) the name, postal address, telephone numbers and email address (if any) of the additional party and its legal representatives (if different from the description contained in the Request for Joinder);
 - (b) any plea that the Arbitral Tribunal has been improperly constituted and/or lacks jurisdiction over the additional party;
 - (c) the additional party's comments on the particulars set forth in the Request for Joinder, pursuant to Article 17.4(a) to (g);
 - (d) the additional party's answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 17.4(h);
 - (e) details of any claims by the additional party against any other party to the arbitration; and
 - (f) confirmation that copies of the Answer to the Request for Joinder and any exhibits included therewith have been or are being communicated simultaneously to all other parties and the Arbitral Tribunal, where applicable, by one or more means of delivery to be identified in such confirmation.
- 17.6 A third party wishing to be joined as an additional party to the arbitration shall submit a Request for Joinder to ACICA. The provisions of Article 17.4 shall apply to such Request for Joinder.
- 17.7 Within 15 days of receiving a Request for Joinder pursuant to Article 17.3 or 17.6, the parties shall submit their comments on the Request for Joinder to ACICA. Such comments may include (without limitation) the following particulars:
- (a) any plea that the Arbitral Tribunal lacks jurisdiction over the additional party;
 - (b) comments on the particulars set forth in the Request for Joinder, pursuant to Article 17.4(a) to (g);
 - (c) answer to the relief or remedy sought in the Request for Joinder, pursuant to Article 17.4(h);

- (d) details of any claims against the additional party; and
 - (e) confirmation that copies of the comments have been or are being communicated simultaneously to all other parties and the Arbitral Tribunal, where applicable, by one or more means of delivery to be identified in such confirmation.
- 17.8 Where ACICA receives a Request for Joinder before the date on which the Arbitral Tribunal is constituted, and after considering the views of all parties, including the additional party to be joined, ACICA:
- (a) may decide whether, *prima facie*, the additional party is bound by the same arbitration agreement between the existing parties to the arbitration; and
 - (b) if so, may join the additional party to the arbitration.
- 17.9 Any question as to the jurisdiction of the Arbitral Tribunal arising from ACICA's decision under this Article shall be decided by the Arbitral Tribunal once constituted, pursuant to Article 32.1. ACICA's decision to reject an application for joinder under Article 17.8, in whole or in part, is without prejudice to any party's or third party's right to apply to the Arbitral Tribunal for joinder pursuant to Article 17.1.
- 17.10 ACICA's decision pursuant to Article 17.8 is without prejudice to the admissibility or merits of any party's pleas.
- 17.11 Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by ACICA shall be deemed to be the date on which the arbitration in respect of the additional party commences.
- 17.12 Where an additional party is joined to the arbitration before the date on which the Arbitral Tribunal is constituted, ACICA shall revoke the confirmation or appointment of any arbitrators already confirmed or appointed, unless all parties agree on the identity of all the arbitrators to be nominated for confirmation by ACICA within 14 days of being notified of the joinder. Where there is no such agreement, ACICA shall appoint each member of the Arbitral Tribunal and, if the Arbitral Tribunal is composed of three arbitrators, shall designate one of them to act as the Chairperson. In making the appointments, ACICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator.

- 17.13 The revocation of the confirmation or appointment of an arbitrator under Article 17.12 is without prejudice to:
- (a) the validity of any act done or order made by that arbitrator before his or her appointment was revoked; and
 - (b) his or her entitlement to be paid his or her fees and expenses subject to Article 50 as applicable.
- 17.14 The parties waive any objection to the validity and/or enforcement of any award made by the Arbitral Tribunal in the arbitration which is based on the joinder of an additional party to the arbitration, in so far as such waiver can validly be made.
- 17.15 The party requesting joinder shall pay to ACICA an application fee as set out in Appendix A.

18 Single Arbitration under Multiple Contracts

- 18.1 Claims arising out of or in connection with more than one contract may be made in a single arbitration, by filing a single Notice of Arbitration, provided that any of the criteria in Article 16.1 are satisfied.
- 18.2 By filing a single Notice of Arbitration, the Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked. The Notice of Arbitration is required to include an application to ACICA to consolidate all such arbitrations pursuant to Article 16.1. In addition to satisfying the requirements in Article 16.3, the Claimant shall include a statement identifying each contract and arbitration agreement invoked, copies of the contracts and arbitration agreements, a statement of the facts and legal arguments supporting the satisfaction of the criteria in Article 16.1 and pay to ACICA the application fee as set out in Appendix A for consolidation.
- 18.3 Where the Claimant has filed a single Notice of Arbitration pursuant to Article 18.1 and ACICA rejects the application for consolidation, in whole or in part, it shall file a Notice of Arbitration in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the registration fee as specified in Appendix A in respect of each arbitration that has not been consolidated.
- 18.4 The parties waive any objection, on the basis of ACICA's decision to consolidate, to the validity and/or enforcement of any award

made by the Arbitral Tribunal in the consolidated proceedings, in so far as such waiver can validly be made.

19 Concurrent Proceedings

- 19.1 The Arbitral Tribunal may, after consulting with the parties, conduct two or more arbitrations under the Rules at the same time, or one immediately after another, or suspend any of those arbitrations until after the determination of any other of them, where:
- (a) the same Arbitral Tribunal is constituted in each arbitration; and
 - (b) a common question of law or fact arises in all the arbitrations.
- 19.2 ACICA may adjust its Administration Fee and the Arbitral Tribunal's fees (where appropriate) where the arbitrations are conducted pursuant to Article 19.1.

20 Disclosures and Information about Arbitrators

- 20.1 Where the name of any person is proposed or nominated for confirmation as arbitrator in accordance with Articles 6.4(a) and (b) and 7.3(a) and (b), his or her name, postal addresses, telephone numbers and email addresses (if any) shall be provided and his or her nationality shall be indicated, together with a description of his or her qualifications.
- 20.2 When ACICA is required to appoint an arbitrator pursuant to Articles 12 to 17, ACICA may require from either party such information as it deems necessary to fulfil its function.
- 20.3 Before confirmation or 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 confirmed or appointed, and throughout the arbitration proceedings shall without delay disclose in writing such circumstances to the parties unless he or she has already informed them of these circumstances. A copy of any disclosure provided to a party by any nominated, confirmed or appointed arbitrator shall be sent to ACICA.

- 20.4 No party or its representatives shall have any ex parte communication relating to the arbitration with any arbitrator, or with any candidate for nomination or appointment as arbitrator or the Chairperson of the Arbitral Tribunal, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence in relation to the parties, or to discuss the suitability of candidates for the selection of Chairperson of the Arbitral Tribunal where the parties or any arbitrator nominated by the party or appointed by ACICA on behalf of the party are to designate that arbitrator.

21 Challenge of Arbitrators

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

22 Procedure for the Challenge of Arbitrators

- 22.1 A party who intends to challenge an arbitrator shall send notice of its challenge within 15 days after being notified by ACICA of the appointment of that arbitrator or within 15 days after becoming aware of the circumstances mentioned in Article 21.
- 22.2 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.
- 22.3 When an arbitrator has been challenged by one party, the other party may agree to the challenge. The arbitrator may also, after the challenge, resign. In neither case does this imply acceptance of the validity of the grounds for the challenge. In both cases the procedures provided in Articles 12 to 20 shall be used for the nomination or appointment of a substitute arbitrator, even if during the process of appointing the challenged arbitrator a party had failed to exercise its right to nominate or to participate in the appointment.

- 22.4 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.
- 22.5 If ACICA sustains the challenge, a substitute arbitrator shall be nominated or appointed pursuant to the procedure applicable to the nomination or appointment of the arbitrator to be replaced as provided in Articles 12 to 20, even if the party challenging the arbitrator had failed to exercise previously its right to participate in the nomination or appointment of that arbitrator.

23 Replacement of an Arbitrator

In the event that:

- (a) an arbitrator dies;
- (b) an arbitrator's resignation is accepted by ACICA; or
- (c) an arbitrator fails to act or it becomes de jure or de facto impossible for the arbitrator to perform his or her functions and ACICA decides to replace the arbitrator,

a substitute arbitrator shall be nominated or appointed pursuant to the procedure applicable to the nomination or appointment of the arbitrator to be replaced as provided in Articles 12 to 20.

24 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 arbitration proceedings shall be repeated before the reconstituted Arbitral Tribunal.

SECTION III

ARBITRATION PROCEEDINGS

25 General Provisions

- 25.1 Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated equally and that each party is given a reasonable opportunity of presenting its case.
- 25.2 Subject to these Rules, the Arbitral Tribunal shall adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.
- 25.3 As soon as practicable after being constituted, the Arbitral Tribunal shall hold a preliminary meeting with the parties in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places and shall make a procedural timetable for the arbitration which may include provisional hearing dates. The Arbitral Tribunal may at any time after giving the parties an opportunity to present their views, extend or vary the procedural timetable. The Arbitral Tribunal shall raise for discussion with the parties the possibility of using other techniques to facilitate the settlement of the dispute, including the options set out in Article 55 (Alternative Dispute Resolution).
- 25.4 The Arbitral Tribunal may decide where the arbitration proceedings shall be conducted (at the seat or other venues, in person or virtually). In particular, it may hold meetings for consultation among its members at any venue (whether in person or virtually) it deems appropriate, having regard to the circumstances of the arbitration.
- 25.5 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 (in person or virtually, as is considered appropriate by the Arbitral Tribunal after consultations with the parties) at such inspection.

- 25.6 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.
- 25.7 For the avoidance of doubt, the powers of the Arbitral Tribunal under these Rules include the power on the application of any party to make an award granting early dismissal or termination of any claim, defence or counterclaim, the subject of the arbitration.

26 Confidentiality and Data Protection

- 26.1 Unless the parties agree otherwise in writing, all hearings shall take place in private.
- 26.2 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 arbitration proceedings and not in the public domain (including for the purposes of Articles 16, 17 and 18) 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;
 - (e) if required to do so by any regulatory body; or
 - (f) to a person for the purposes of having or seeking third-party funding, where that person has agreed to keep the material and information supplied confidential.
- 26.3 Nothing in Article 26.2 permits a party who receives information or documents provided by another party in the arbitration proceedings (including any concurrent proceedings under Article 19 of these Rules), which is not otherwise in the public domain, to disclose or use the information or documents otherwise than for the purposes of the arbitration proceedings.

- 26.4 Any party planning to make disclosure under Article 26.2 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.
- 26.5 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.
- 26.6 The Arbitral Tribunal may, in consultation with the parties and where appropriate ACICA, adopt any measure:
- (a) to protect any physical and electronic information shared in the arbitration; and
 - (b) to ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of any applicable law.

27 Seat of Arbitration

- 27.1 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.
- 27.2 If a hearing is held virtually (by conference call, videoconference or using other communications technology) it will be deemed to be held at the seat, unless otherwise agreed by the parties or directed by the Tribunal.
- 27.3 The award shall be made at the seat of the arbitration.
- 27.4 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.

28 Language

- 28.1 Subject to an agreement by the parties, the Arbitral Tribunal shall, promptly after its constitution, determine the language or languages to be used in the arbitration 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.

28.2 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 arbitration 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.

29 Statement of Claim

29.1 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 arbitrator and ACICA. A copy of the contract, and of the arbitration agreement if not contained in the contract, shall be annexed thereto.

29.2 The Statement of Claim shall include the following particulars:

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

29.3 The Claimant should, as far as possible, annex to its Statement of Claim all documents and other evidence on which it relies or contain references to them.

30 Statement of Defence

30.1 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 arbitrator and ACICA.

30.2 The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (Article 29.2). The Respondent should, as far as possible, annex to its Statement of Defence the documents and other evidence on which it relies for its defence or contain references to them.

- 30.3 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 arbitration 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.
- 30.4 The provisions of Article 29.2 (b) to (e) shall apply to a counterclaim and a claim relied on for the purpose of a set-off.

31 Amendments to the Claim or Defence

During the course of the arbitration 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.

32 Jurisdiction of the Arbitral Tribunal

- 32.1 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.
- 32.2 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 32, 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.
- 32.3 Any submission that the Arbitral Tribunal does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 30, or, with respect to a counterclaim, in the reply to the counterclaim.
- 32.4 In general, the Arbitral Tribunal should rule on any submission concerning its jurisdiction as a preliminary question. However, the Arbitral Tribunal may proceed with the arbitration and rule on such a submission in its final award.

33 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.

34 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.

35 Evidence and Hearings

- 35.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 35.2 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.
- 35.3 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.
- 35.4 If either party so requests, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, and/or for oral argument. In the absence of such a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the arbitration proceedings shall be conducted on the basis of documents and other materials.
- 35.5 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the arbitration agreement to establish the conduct of a hearing, including its date, duration, form, content, procedure, time limits and geographical place (if applicable). As to form, a hearing may take place in person, or virtually by conference call, videoconference or using other communications technology

with participants in one or more geographical places (or in a combined form).

- 35.6 The Arbitral Tribunal shall give the parties reasonable notice in writing of any hearing.

36 Experts appointed by the Arbitral Tribunal

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

the opportunity to be present (in person or virtually) and to examine the expert. At this hearing either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 35 shall be applicable to such evidence and hearings.

37 Interim Measures of Protection

37.1 Unless the parties agree otherwise in writing:

- (a) a party may request emergency interim measures of protection to be issued by an arbitrator (the Emergency Arbitrator) appointed prior to the constitution of the Arbitral Tribunal in accordance with the provisions set out in Schedule 1; and
- (b) the Arbitral Tribunal may, on the request of any party, order interim measures of protection. The Arbitral Tribunal may order such measures in the form of an award, or in any other form (such as an order) provided reasons are given, and on such terms as it deems appropriate. The Arbitral Tribunal shall endeavour to ensure that the measures are enforceable.

37.2 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 the legal or other costs of any party.

37.3 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.

- 37.4 The Arbitral Tribunal may require a party to provide appropriate security as a condition to granting an interim measure.
- 37.5 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.
- 37.6 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.
- 37.7 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.
- 37.8 The power of the Arbitral Tribunal under this Article 37 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.

38 Default

- 38.1 If, within the period of time fixed by the Arbitral Tribunal, the Claimant has failed to communicate its Statement of Claim without showing sufficient cause for such failure, the Arbitral Tribunal may issue an order for the termination of the arbitration proceedings or any other order as the Arbitral Tribunal considers appropriate. If, within the period of time fixed by the Arbitral Tribunal, the Respondent has failed to communicate its Statement of Defence without showing sufficient cause for such failure, the Arbitral Tribunal shall order that the arbitration proceedings continue (with or without a hearing) and make one or more awards.

- 38.2 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 and make one or more awards.
- 38.3 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.

39 Closure of Arbitration Proceedings

- 39.1 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 arbitration proceedings closed.
- 39.2 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 arbitration proceedings at any time before the award is made.
- 39.3 Unless a shorter period is specified by law or the parties agree otherwise, the final award shall be made no later than nine months from the date the file was transmitted to the Arbitral Tribunal pursuant to Article 7.5 or no later than three months from the date the Arbitral Tribunal declares the arbitration proceedings closed, whichever is the earlier. ACICA may extend this time upon a reasoned request from the Arbitral Tribunal or if ACICA otherwise deems it necessary.

40 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

41 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.

42 Form and Effect of the Award

- 42.1 In addition to making a final award, the Arbitral Tribunal shall be entitled to make interim, interlocutory, or partial awards.
- 42.2 An award shall be made in writing and shall be final and binding on the parties. The parties undertake to carry out the award without delay.
- 42.3 The Arbitral Tribunal shall state the reasons upon which an award is based, unless the parties have agreed that no reasons are to be given.
- 42.4 An award shall be signed by the Arbitral Tribunal and it shall contain the date on which and the place (which shall be in conformity with Article 27.3) where the award was made. If any arbitrator refuses or fails to sign an award, the signatures of the majority or (failing a majority) of the Chairperson shall be sufficient, provided that the reason for the omitted signature is stated in the award by the majority or Chairperson. Unless the parties agree otherwise, or the Arbitral Tribunal or ACICA directs otherwise, any award may be signed electronically and/or in counterparts and assembled into a single instrument.
- 42.5 The Arbitral Tribunal shall communicate copies of an award signed by the arbitrator(s) to the parties and ACICA. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.
- 42.6 Before communicating an award to the parties, the Arbitral Tribunal shall inquire of ACICA whether there are any outstanding monies due to it. The award shall not be communicated to the parties until ACICA certifies that there are no monies due to either ACICA or the Arbitral Tribunal.

- 42.7 If the arbitration law of the place where an award is made requires that the award be filed or registered by the Arbitral Tribunal, the Arbitral Tribunal shall comply with this requirement within the period of time required by law.

43 Applicable Law, Amiable Compositeur

- 43.1 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.
- 43.2 The Arbitral Tribunal shall decide as amiable compositeur or ex aequo et bono only if the parties have, in writing, expressly authorised the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
- 43.3 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.

44 Settlement or Other Grounds for Termination

- 44.1 If, before an award is made, the parties agree on a settlement of the dispute, the Arbitral Tribunal shall either issue an order for the termination of the arbitration proceedings or, if requested by both parties and accepted by the Arbitral 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.
- 44.2 If, before an award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 44.1, the Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the arbitration proceedings. The Arbitral Tribunal shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 44.3 Copies of the order for termination of the arbitration proceedings or of the arbitral award on agreed terms, signed by the arbitrator(s), 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 42.2, and 42.4 to 42.7, shall apply.

45 Interpretation of the Award

- 45.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request that the Arbitral Tribunal give an interpretation of the award.
- 45.2 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 42.2 to 42.7, shall apply.

46 Correction of the Award

- 46.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The Arbitral Tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
- 46.2 Such corrections shall be in writing and the provisions of Articles 42.2 to 42.7 shall apply.

47 Additional Award

- 47.1 Within 30 days after the receipt of an award, either party, with notice to the other party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitration proceedings but omitted from the award.
- 47.2 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.
- 47.3 When an additional award is made, the provisions of Articles 42.2 to 42.7 shall apply.

SECTION V: GENERAL

48 Costs of Arbitration

The term “costs of arbitration” includes:

- (a) the fees and expenses of the Arbitral Tribunal;
- (b) ACICA’s administration fee;
- (c) the fees and expenses of any experts and/or assistants appointed by the Arbitral Tribunal;
- (d) the parties’ legal and other costs, including, but not limited to, in-house costs, such as in-house counsel and other non-independent experts, and third-party funding costs, directly incurred by any party in conducting the arbitration, if such costs were claimed during the arbitration proceedings and only to the extent that the Arbitral Tribunal determines that such costs are reasonable;
- (e) fees for services and assistance provided by ACICA in accordance with Articles 10 and 49.7; and
- (f) the costs associated with any request for emergency interim measures of protection made pursuant to Article 37.1(a).

49 Deposit of Costs

- 49.1 As soon as practicable after the establishment of the Arbitral Tribunal, ACICA shall, after consulting the Arbitral Tribunal, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of the Arbitral Tribunal and ACICA’s administration fee. ACICA may also, after consulting the Arbitral Tribunal, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of any experts appointed by the Arbitral Tribunal.
- 49.2 The amount to be paid by the parties or any of them for any deposit of costs fixed by ACICA for the fees and expenses of the Arbitral Tribunal shall be determined by ACICA either on the basis of an hourly rate:
 - (a) agreed between the parties and the Arbitral Tribunal; or
 - (b) failing such agreement, determined in ACICA’s discretion after considering the circumstances of the case including its complexity and the amount in dispute (if known), as

well as the experience, standing, special qualifications and/or usual hourly rate of the arbitrator.

- 49.3 The hourly rate referred to in Article 49.2 will be exclusive of any goods and services tax (GST), value added tax (VAT) or other similar tax which may apply, unless the parties have expressly agreed otherwise.
- 49.4 Any deposit of costs fixed by ACICA pursuant to Article 49.1 shall in principle be payable in equal shares by the Claimant and the Respondent or, where there are more than two parties, the deposit of costs shall be payable in such proportions as ACICA determines to be appropriate.
- 49.5 Where a Respondent submits a counterclaim or it otherwise appears appropriate in the circumstances, ACICA may, after consulting the Arbitral Tribunal, fix separate deposits of costs and request payment of them from the parties.
- 49.6 During the course of the arbitration proceedings, ACICA may, after consulting the Arbitral Tribunal, readjust the amount to be paid and/or the proportion to be paid by any party for any deposit of costs fixed by ACICA and request the parties or any of them to make supplementary deposits.
- 49.7 Any deposit of costs fixed under this Article will be paid to and held by ACICA. Any interest which may accrue on any such deposit shall be retained by ACICA, with no interest to be owing or payable to the parties or the arbitrator. ACICA may make a charge for its trust account services.
- 49.8 The Arbitral Tribunal will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of the requisite funds.
- 49.9 If the required deposit of costs are not paid in full within 30 days of the request, ACICA shall, after consulting the Arbitral Tribunal, 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, a party making substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party and the Arbitral Tribunal may issue an award for that debt on application of the party making substitute payment.
- 49.10 In the event that any deposit of costs directed to be paid by ACICA under this Article remains unpaid (in whole or in part),

the Arbitral Tribunal may, after consulting ACICA, order the suspension or termination of the whole or any part of the arbitration.

- 49.11 At the end of any arbitration, including where the costs of the arbitration have been fixed by ACICA in accordance with Article 50.3 and where an arbitration is terminated or an award on agreed terms is made in accordance with Article 44, ACICA shall render an accounting to the parties of the deposit of costs received and held by it and return any unexpended balance to the parties.

50 Decisions on Costs of Arbitration by ACICA

- 50.1 In appropriate circumstances and upon the request of the Arbitral Tribunal, ACICA may, after considering the stage attained in the arbitration, the work undertaken by the Arbitral Tribunal and any other relevant circumstance, determine to make interim payments for the fees of the Arbitral Tribunal and/or interim reimbursements for the expenses of the Arbitral Tribunal from the deposit of costs.
- 50.2 At any time during the arbitration, ACICA may fix as payable a portion of ACICA's administration fee corresponding to services that have already been performed by ACICA and the Secretariat.
- 50.3 Prior to the Arbitral Tribunal either issuing a final award, an award on agreed terms, or an order for the termination of the arbitration, ACICA shall determine the fees and expenses of the Arbitral Tribunal and ACICA's administration fee and notify the Arbitral Tribunal of those determinations.
- 50.4 In making a determination under Article 50.3, ACICA may, after considering the diligence and efficiency of the arbitrator(s), the time spent by the arbitrator(s), the complexity of the dispute, the stage at which the arbitration concluded and whether the final award (if any) was made within the time limit provided in Article 39.3, determine that the fees of the Arbitral Tribunal shall be less than the amount of the deposit of costs paid by the parties or any of them for those fees under Article 49.
- 50.5 If there is an order for termination of the arbitration or an award on agreed terms in accordance with Article 44, ACICA may, after considering the stage attained by the arbitration proceedings and any other relevant circumstance, determine

that ACICA's administration fee shall be less than the amount of the deposit of costs paid by the parties or any of them for that fee under Article 49.

- 50.6 The Arbitral Tribunal's fees and expenses shall be determined exclusively by ACICA as required by the Rules. Separate fee arrangements between any of the parties and the Arbitral Tribunal are contrary to the Rules.

51 Decisions on Costs of Arbitration by the Arbitral Tribunal

- 51.1 The costs of the arbitration referred to in Article 48 shall be fixed by the Arbitral Tribunal either:
- (a) in the final award;
 - (b) in an award on agreed terms made pursuant to Article 44.1; or
 - (c) in an order for the termination of the arbitration issued pursuant to Article 44.1 or Article 44.2.
- 51.2 In addition to making a final award on costs of arbitration in accordance with Article 51.1, the Arbitral Tribunal may at any time during the arbitration make decisions on costs, other than those costs to be fixed by ACICA, and order payment. Any such decision and order on costs may be made by the Arbitral Tribunal, without limitation, by way of interim, interlocutory and partial award.
- 51.3 Except as provided in Article 51.4, 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.
- 51.4 With respect to the costs of arbitration referred to in Article 48(d), 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.
- 51.5 No additional fees may be charged by an Arbitral Tribunal for interpretation or correction or completion of its award under Articles 45 to 47.

- 51.6 With respect to the costs of Arbitration referred to in Article 48(a), the fees and expenses of the Arbitral Tribunal shall be stated separately as to each arbitrator where there is more than one arbitrator.

52 Decisions Made by ACICA

- 52.1 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.
- 52.2 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.
- 52.3 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.
- 52.4 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, including where any such decision and/or action occurs after the Arbitral Tribunal has made a final award, the parties agree on a settlement of the dispute or the arbitration proceedings have terminated.

53 Immunity of the Arbitral Tribunal

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

54 Third Party Funding

- 54.1 In these Rules, “third-party funding” means any arrangement whereby a natural or legal person, that is not party to the arbitration proceedings provides to a party, or an affiliate of that party, or law firm representing that party:
- (a) funds or other material support in order to finance part or all of the arbitration costs; and
 - (b) such support or financing is either provided in exchange for remuneration or reimbursement that is wholly or

partially dependent on the outcome of the dispute, or is provided through a grant or in return for a premium payment.

- 54.2 A party and/or its representative shall, on its own initiative, disclose the existence of third party funding and the identity of the funder to the Arbitral Tribunal and ACICA, and the other parties, upon that party submitting a Notice of Arbitration or Answer to Notice of Arbitration or Answer to the Request for Joinder, or as soon as practicable after third-party funding is provided or after entering into an arrangement for third-party funding, whichever is earlier. Each party shall have a continuing obligation to disclose any changes to the information referred to in this Article occurring after the initial disclosure, including termination of the third-party funding.
- 54.3 The Arbitral Tribunal may, at any time during the arbitration proceedings, order a party to the arbitration proceedings to disclose:
- (a) the existence of third-party funding; and/or
 - (b) the identity of any such third-party funder.

55 Other Alternative Dispute Resolution

- 55.1 The Arbitral Tribunal shall raise for discussion with the parties the possibility of using mediation or other forms of alternative dispute resolution to facilitate the timely, cost effective and fair resolution of the dispute.
- 55.2 On the application of any party, the Arbitral Tribunal may suspend the arbitration to allow for a mediation or other form of alternative dispute resolution on such terms as the Arbitral Tribunal considers appropriate. The arbitration shall resume at any time upon the written request of any of the parties.
- 55.3 Any mediation of the dispute shall be conducted in accordance with the ACICA Mediation Rules from time to time in force.

APPENDIX A: Fees and Expenses

The reference in these Rules to “dollars” or “\$” is to Australian currency.

1 Registration Fee

- 1.1 When submitting the Notice of Arbitration the Claimant shall pay to ACICA a registration fee in the amount set by ACICA in the Schedule of Fees on ACICA’s website on the date that the Notice of Arbitration is submitted (“Schedule of Fees”). The registration fee is not refundable.

2 Administration Fee

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

3 Consolidation Fees

When submitting a request for consolidation, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA. ACICA may adjust its Administration Fee and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

4 Joinder Fees

When submitting a request for joinder, the party making the request shall pay to ACICA an application fee as may be set by ACICA in the Schedule of Fees on ACICA's website on the date that the request is filed with ACICA. ACICA may adjust its Administration Fee and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

5 Emergency Arbitrator Fee

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

6 Fees and Expenses Payable after Revocation of Arbitrator's Appointment or Arbitrator's Replacement

Where an arbitrator's appointment is revoked or where an arbitrator is replaced pursuant to Articles 16, 17, 22 or 23 of the Rules, ACICA may fix an amount of fees or expenses to be paid by the parties for the arbitrator's services, taking into account the circumstances of the case including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the circumstances of the revocation of the arbitrator's appointment or the arbitrator's replacement.

7 Cancellation Fees

The Arbitral Tribunal's fees may include a charge for time reserved but not used as a result of late postponement or cancellation of hearings, provided that the basis for such charge shall be advised in writing to, and approved by, ACICA and that the parties have been informed in advance.

SCHEDULE 1

1 Application for Emergency Interim Measures of Protection

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

2 Appointment of Emergency Arbitrator

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

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

- 2.2 The time period for the appointment of the Emergency Arbitrator does not commence until ACICA has received:
 - (a) the application in compliance with Article 1 above; and
 - (b) payment of the Emergency Arbitrator Fee and the application fee.
- 2.3 Unless the parties otherwise agree in writing, the Emergency Arbitrator shall not act as an arbitrator in the arbitration 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. The decision may be delivered by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.

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 constituted within 90 days of the Emergency Interim Measure being made.

5 Powers after Constitution of the Arbitral Tribunal

- 5.1 The Emergency Arbitrator's jurisdiction and powers cease forthwith upon the constitution 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 by the parties.
- 6.2 If the time for a decision on an application for emergency interim measures of protection is extended pursuant to Article 3.1 above, ACICA may request an increase to the Emergency Arbitrator Fee specified in Appendix A.
- 6.3 The costs associated with any emergency interim measures of protection proceedings may initially be apportioned by the Emergency Arbitrator and are subject to the Arbitral Tribunal's determination of the costs of arbitration under the Rules.

7 Other

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

ACICA Expedited Arbitration Rules

1 April 2021

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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

- 1.1 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”.
- 1.2 ACICA administers the resolution of disputes by an arbitrator in accordance with the ACICA Expedited Arbitration Rules. ACICA is the only body authorised to administer arbitrations under 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, subject to such modification as the parties may agree in writing. By agreeing to arbitration under the Rules of or by ACICA, the parties have accepted that their arbitration shall be administered by ACICA.
- 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.

- 2.6 English is the original language of these Rules. In the event of any discrepancy or inconsistency between the English version and the version in any other language, the English version shall prevail.

3 Overriding Objective

- 3.1 The overriding objective of these Rules is to provide arbitration that is timely, 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, may be delivered by hand, registered post or courier service, or transmitted by any form of electronic communication (including email), or delivered by an other appropriate means that provides a record of its delivery.
- 4.2 Any notice shall be deemed to have been received if it is delivered:
- (a) physically to the addressee or to its authorised representative;
 - (b) to the addressee's place of business, habitual residence or designated address;
 - (c) to any address agreed by the parties;
 - (d) according to the practice of the parties in prior dealings; or
 - (e) if, after reasonable efforts, none of these can be found, to the addressee's last known place of business or habitual residence.
- 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 is received. If the last day of such period

is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

- 4.5 Unless the parties agree otherwise in writing any reference to time shall be deemed to be a reference to the time at the seat of the arbitration.
- 4.6 Any period of time imposed by these Rules or by ACICA may be extended by ACICA.

5 Party Communication with the Arbitrator

- 5.1 All written communications between the parties and the Arbitrator shall be copied to the ACICA Secretariat.
- 5.2 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, except if, after consulting with the parties, the Arbitrator otherwise directs.

6 Commencement of Arbitration

- 6.1 The party initiating recourse to arbitration (the “Claimant”) shall submit a Notice of Arbitration to ACICA. The Claimant shall at the same time pay ACICA’s registration fee as specified in Appendix A. The Claimant shall submit the Notice of Arbitration in electronic form either by email or other electronic means including any electronic filing system operated by ACICA. ACICA may request the provision of hard copies if required.
- 6.2 Subject to Article 6.5, 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.
- 6.3 The Notice of Arbitration shall include the following:
 - (a) a demand that the dispute be referred to arbitration;
 - (b) the names, postal addresses, telephone number and email addresses (if any) of the parties and their legal representatives;
 - (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 clause or 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 18, which may be attached as a separate document.

6.4 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 communicated on the Respondent(s) and the date of delivery. The Respondent(s) shall file a Statement of Defence under Article 19.

6.5 If the Notice of Arbitration is incomplete or if the provisions of Article 6.4 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.

7 Representation and Assistance

7.1 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.

7.2 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.

8 ACICA Assistance

ACICA shall, at the request of the Arbitrator or either party, assist in making available, or arranging for, such facilities and assistance for the conduct of the arbitration proceedings as may be required, including a suitable venue for any hearing (whether held in person or virtually),

secretarial assistance and interpretation facilities. ACICA may charge a fee for any service or assistance provided by it. Third party services and facilities arranged on behalf of the Arbitrator or the parties will be charged separately by the third party.

SECTION II

COMPOSITION OF THE ARBITRAL TRIBUNAL

9 Appointment of the Arbitrator

- 9.1 There shall be one arbitrator.
- 9.2 Within 14 days from the commencement of the arbitration, the Arbitrator shall be appointed by ACICA.
- 9.3 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 arbitration 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.
- 9.4 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.
- 9.5 When making the appointment, ACICA may require from either party such information as it deems necessary to fulfil its function.
- 9.6 For the purposes of Articles 9.3 to 9.5, 10 and 11.4, 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.
- 9.7 Once the Arbitrator has been appointed, ACICA shall transmit the file to him or her.

10 Challenge of Arbitrators

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

11 Procedure for the Challenge of Arbitrators

- 11.1 A party who intends to challenge the Arbitrator shall send

notice of its challenge within 7 days after being notified by ACICA of the appointment of that arbitrator or within 7 days after becoming aware of the circumstances mentioned in Article 10.

- 11.2 The challenge shall be notified to the other party, to the Arbitrator who is challenged and to ACICA. The notification shall be in writing and shall state the reasons for the challenge.
- 11.3 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 9 shall be used for the appointment of a substitute Arbitrator.
- 11.4 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.
- 11.5 If ACICA sustains the challenge, a substitute Arbitrator shall be appointed pursuant to the procedure set out in Article 9.
- 11.6 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.

12 Replacement of an Arbitrator

- 12.1 In the event that:
 - (a) an arbitrator dies;
 - (b) an arbitrator's resignation is accepted by ACICA; or
 - (c) an arbitrator fails to act or it becomes de jure or de facto impossible for the arbitrator to perform his or her functions and ACICA decides to replace the arbitrator, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 9.

13 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 arbitration proceedings shall be repeated.

SECTION III

ARBITRATION PROCEEDINGS

14 General Provisions

- 14.1 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.
- 14.2 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 constituted, the Arbitrator shall hold a preliminary meeting with the parties in person or virtually by conference call, videoconference or using other communications technology with participants in one or more geographical places and shall make a procedural timetable for the arbitration.
- 14.3 The Arbitral Tribunal may decide where the proceedings shall be conducted (at the seat or other venues, in person or virtually). In particular, it may hear witnesses and hold meetings for consultation among its members at any venue (whether in person or virtually) it deems appropriate, having regard to the circumstances of the arbitration.
- 14.4 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 (in person or virtually, as is considered appropriate by the Arbitrator, after consultation with the parties) at such inspection.
- 14.5 For the avoidance of doubt, the powers of the Arbitrator under these Rules include the power on the application of any party to make an award granting early dismissal or termination of any claim, defence or counterclaim, the subject of the arbitration.

15 Confidentiality and Data Protection

- 15.1 Unless the parties agree otherwise in writing, any hearings shall take place in private.
- 15.2 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 arbitration 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;
- (e) if required to do so by any regulatory body; or
- (f) to a person for the purposes of having or seeking third-party funding, where that person has agreed to keep the material and information supplied confidential.

- 15.3 Nothing in Article 15.2 permits a party who receives information or documents provided by another party in the arbitration proceedings, which is not otherwise in the public domain, to disclose or use the information or documents otherwise than for the purposes of the arbitration proceedings.
- 15.4 Any party planning to make disclosure under Article 15.2 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.
- 15.5 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.
- 15.6 The Arbitrator may, in consultation with the parties and where appropriate ACICA, adopt any measure:
- (a) to protect any physical and electronic information shared in the arbitration; and
 - (b) to ensure any personal data produced or exchanged in the arbitration is processed and/or stored in light of an applicable law.

16 Seat of Arbitration

- 16.1 If the parties have not previously agreed on the seat of the arbitration, the seat of the arbitration shall be Sydney, Australia.
- 16.2 If a hearing is held virtually (by conference call, videoconference or using other communications technology) it will be deemed to be held at the seat, unless otherwise agreed by the parties or directed by the Arbitrator.
- 16.3 The award shall be made at the seat of the arbitration.
- 16.4 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.

17 Language

- 17.1 Subject to an agreement by the parties, the Arbitrator shall, promptly after its constitution, determine the language or languages to be used in the arbitration 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.
- 17.2 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 arbitration 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.

18 Statement of Claim

- 18.1 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.
- 18.2 The Statement of Claim shall include the following particulars:
 - (a) the names, postal addresses, telephone numbers and email addresses (if any) of the parties and their legal representatives (if any);
 - (b) a statement of the facts supporting the claim;

- (c) the points at issue;
 - (d) the relief or remedy sought; and
 - (e) the legal grounds or arguments supporting the claim.
- 18.3 The Claimant should, as far as possible, annex to its Statement of Claim all documents and other evidence on which it relies or contain references to them.

19 Statement of Defence

- 19.1 Within 28 days of service of the Notice of Arbitration under Article 6.4, the Respondent shall communicate its Statement of Defence in writing to the Claimant, the Arbitrator and ACICA.
- 19.2 The Statement of Defence shall reply to the particulars (b) to (e) of the Statement of Claim (Article 18.2) and provide particulars similar to those required under Article 18.2. The Respondent should, as far as possible, annex to its Statement of Defence the documents and other evidence on which it relies for its defence or contain references to them.
- 19.3 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.
- 19.4 The provisions of Article 18.2 (b) to (e) and 18.3 shall apply to a counterclaim and a claim relied on for the purpose of a set-off.
- 19.5 The Claimant shall communicate a Defence to the Counterclaim (if any) within 14 days, including any additional documents.

20 Amendments to the Claim or Defence

During the course of the arbitration 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.

21 Jurisdiction of the Arbitrator

- 21.1 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.

- 21.2 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 21, 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.
- 21.3 Any submission that the Arbitrator does not have jurisdiction shall be raised no later than in the Statement of Defence referred to in Article 19, or, with respect to a counterclaim, in the Defence to the Counterclaim.
- 21.4 In general, the Arbitrator should rule on any submission concerning his or her jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a submission in his or her final award.

22 Further Written Statements

- 22.1 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.
- 22.2 The periods of time fixed by the Arbitrator for the communication of further written statements shall not exceed 14 days.

23 Periods of Time

- 23.1 Any times fixed under these Rules may be varied by agreement among the Arbitrator and the parties.
- 23.2 Notwithstanding Article 23.1 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.

24 Evidence and Hearings

- 24.1 Each party shall have the burden of proving the facts relied upon to support its claim or defence.
- 24.2 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.
- 24.3 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.
- 24.4 There shall be no discovery.
- 24.5 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.
- 24.6 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.
- 24.7 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.
- 24.8 The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties. The Arbitral Tribunal shall have the fullest authority under the arbitration agreement to establish the conduct of a hearing, including its date, duration, form, content, procedure, time limits and geographical place (if applicable). As to form, a hearing may take place in person, or virtually by conference call,

videoconference or using other communications technology with participants in one or more geographical places (or in a combined form).

- 24.9 The Arbitral Tribunal shall give the parties reasonable notice in writing of any hearing.

25 Interim Measures of Protection

- 25.1 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.
- 25.2 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.
- 25.3 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.

- 25.4 The Arbitrator may require a party to provide appropriate security as a condition to granting an interim measure.
- 25.5 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.
- 25.6 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.
- 25.7 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.
- 25.8 The power of the Arbitrator under this Article 25 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.

26 Default

- 26.1 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 (with or without a hearing) and make one or more awards
- 26.2 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 and make one or more awards.
- 26.3 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.

27 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

28 Time for the Final Award

Subject to Articles 23 and 29.6, 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.

29 Form and Effect of the Award

- 29.1 In addition to making a final award, the Arbitrator shall be entitled to make interim, interlocutory, or partial awards.
- 29.2 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.
- 29.3 Subject to Article 31.1, 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.
- 29.4 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 16.4) where the award was made. Unless the parties agree otherwise, or the Arbitrator or ACICA directs otherwise, any award may be signed electronically.
- 29.5 The Arbitrator shall communicate signed copies of an award to the parties and ACICA. Such transmission may be made by any electronic means, and (if so requested by any party or if transmission by electronic means to a party is not possible) in paper form. In the event of any disparity between electronic and paper forms, the electronic form shall prevail.
- 29.6 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 28 will not run for these purposes.
- 29.7 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.

30 Applicable Law, Amiable Compositeur

- 30.1 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.
- 30.2 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.
- 30.3 In all cases, the Arbitrator shall decide in accordance with the terms of the contract and shall take into account any usages of the trade applicable to any transaction the subject of or connected with the dispute.

31 Settlement or Other Grounds for Termination

- 31.1 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 arbitration 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.
- 31.2 If, before an award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 31.1, the Arbitrator shall inform the parties of his or her intention to issue an order for the termination of the arbitration proceedings. The Arbitrator shall have the power to issue such an order unless a party raises justifiable grounds for objection.
- 31.3 Copies of the order for termination of the arbitration 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 29.2, and 29.4 to 29.7 shall apply.

32 Interpretation of the Award

- 32.1 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.

- 32.2 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 29.2 to 29.7 shall apply.

33 Correction of the 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 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.
- 33.2 Such corrections shall be in writing and the provisions of Articles 29.2 to 29.7 shall apply.

34 Additional Award

- 34.1 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 arbitration proceedings but omitted from the award.
- 34.2 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.
- 34.3 When an additional award is made, the provisions of Articles 29.2 to 29.7 shall apply.

SECTION V GENERAL

35 Costs of Arbitration

The term “costs of arbitration” includes:

- (a) the fees and expenses of the Arbitrator;
- (b) ACICA’s administration fee;
- (c) the fees and expenses of any experts and/or assistants appointed by the Arbitrator; and
- (d) the parties’ legal and other costs, including, but not limited to, in-house costs, such as in-house counsel and other non-independent experts, and the costs incurred in obtaining third-party funding, directly incurred by any party in conducting the arbitration, if such costs were claimed during the arbitration proceedings and only to the extent that the Arbitrator determines that such costs are reasonable; and
- (e) Fees for services and assistance provided by ACICA in accordance with Articles 8 and 36.7.

36 Deposit of Costs

36.1 As soon as practicable after the appointment of the Arbitrator, ACICA shall, after consulting the Arbitrator, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of the Arbitrator and ACICA’s administration fee. ACICA may also, after consulting the Arbitrator, fix an amount to be paid by the parties for the deposit of costs to pay for the fees and expenses of any experts appointed by the Arbitrator.

36.2 The amount to be paid by the parties or any of them for any deposit of costs fixed by ACICA for the fees and expenses of the Arbitrator shall be determined by ACICA either on the basis of an hourly rate:

- (a) agreed between the parties and the Arbitrator; or
- (b) failing such agreement, determined in ACICA’s discretion after considering the circumstances of the case including its complexity and the amount in dispute (if known), as well as the experience, standing, special qualifications and/or usual hourly rate of the arbitrator.

36.3 The hourly rate referred to in Article 36.2 will be exclusive of

- any goods and services tax (GST), value added tax (VAT) or other similar tax which may apply, unless the parties have expressly agreed otherwise.
- 36.4 Any deposit of costs fixed by ACICA pursuant to Article 36.1 shall in principle be payable in equal shares by the Claimant and the Respondent or, where there are more than two parties, the deposit of costs shall be payable in such proportions as ACICA determines to be appropriate.
- 36.5 Where a Respondent submits a counterclaim or it otherwise appears appropriate in the circumstances, ACICA may, after consulting the Arbitrator, fix separate deposits of costs and request payment of them from the parties.
- 36.6 During the course of the arbitration proceedings, ACICA may, after consulting the Arbitrator, readjust the amount to be paid and/or the proportion to be paid by any party for any deposit of costs fixed by ACICA and request the parties or any of them to make supplementary deposits.
- 36.7 Any deposit of costs fixed under this Article will be paid to and held by ACICA. Any interest which may accrue on any such deposit shall be retained by ACICA, with no interest to be owing or payable to the parties or the arbitrator. ACICA may make a charge for its trust account services.
- 36.8 The Arbitrator will not proceed with the arbitration without ascertaining at all times from ACICA that ACICA is in possession of the requisite funds.
- 36.9 If the required deposits are not paid in full within 30 days, ACICA shall, after consulting the Arbitrator, 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, a party making substitute payment shall be entitled to recover that amount as a debt immediately due from the defaulting party and the Arbitrator may issue an award for that debt on application of the party making substitute payment.
- 36.10 In the event that any deposit of costs directed to be paid by ACICA under this Article remains unpaid (in whole or in part), the Arbitrator may, after consulting ACICA, order the suspension or termination of the whole or any part of the arbitration.
- 36.11 If there is an order for termination of the arbitration or an

award on agreed terms in accordance with Article 31, ACICA shall render an accounting to the parties of the deposits received and held by it and return any unexpended balance to the parties.

37 Decisions on Costs of Arbitration by ACICA

- 37.1 In appropriate circumstances and upon the request of the Arbitrator, ACICA may, after considering the stage attained in the arbitration, the work undertaken by the Arbitrator and any other relevant circumstance, determine to make interim payments for the fees of the Arbitrator and/or interim reimbursements for the expenses of the Arbitrator from the deposit of costs.
- 37.2 At any time during the arbitration, ACICA may fix as payable a portion of ACICA's administration fee corresponding to services that have already been performed by ACICA and the Secretariat.
- 37.3 Prior to the Arbitrator either issuing a final award, an award on agreed terms, or an order for the termination of the arbitration, ACICA shall determine the fees and expenses of the Arbitrator and ACICA's administration fee and notify the Arbitrator of those determinations.
- 37.4 In making a determination under Article 37.3, ACICA may, after considering the diligence and efficiency of the arbitrator(s), the time spent by the arbitrator(s), the complexity of the dispute, the stage at which the arbitration concluded and whether the final award (if any) was made within the time limit provided in Article 28, determine that the fees of the Arbitrator shall be less than the amount of the deposit of costs paid by the parties or any of them for those fees under Article 36.
- 37.5 If there is an order for termination of the arbitration or an award on agreed terms in accordance with Article 31, ACICA may, after considering the stage attained by the arbitration proceedings and any other relevant circumstance, determine that ACICA's administration fee shall be less than the amount of the deposit of costs paid by the parties or any of them for that fee under Article 36.
- 37.6 The Arbitrator's fees and expenses shall be determined exclusively by ACICA as required by the Rules. Separate fee arrangements between any of the parties and the Arbitrator are contrary to the Rules.

38 Decisions on Costs of Arbitration by the Arbitrator

- 38.1 The costs of the arbitration referred to in Article 35 shall be fixed by the Arbitrator either:
- (a) in the final award
 - (b) in an award on agreed terms made pursuant to Article 31.1; or
 - (c) in an order for the termination of the arbitration issued pursuant to Article 31.1 or Article 31.2.
- 38.2 In addition to making a final award on costs in accordance with Article 38.1, the Arbitrator may at any time during the arbitration make decisions on costs, other than those costs to be fixed by ACICA, and order payment. Any such decision and order on costs may be made by the Arbitrator, without limitation, by way of interim, interlocutory and partial award.
- 38.3 Except as provided in Article 38.4, 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 it determines that apportionment is reasonable, taking into account the circumstances of the case.
- 38.4 With respect to the costs of arbitration referred to in Article 35(d), 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 it determines that apportionment is reasonable.
- 38.5 No additional fees may be charged by an Arbitrator for interpretation or correction or completion of its award under Articles 32 to 34.

39 Decisions Made by ACICA

- 39.1 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.
- 39.2 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.
- 39.3 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.

- 39.4 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, including where any such decision and/or action occurs after the Arbitrator has made a final award, the parties agree on a settlement of the dispute or the proceedings have terminated.

40 Immunity of the Arbitrator

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

41 Third Party Funding

- 41.1 In this section, “third-party funding” means any arrangement whereby a natural or legal person, that is not party to the arbitration proceedings provides to a party, or an affiliate of that party, or law firm representing that party:
- (a) funds or other material support in order to finance part or all of the arbitration costs; and
 - (b) such support or financing is either provided in exchange for remuneration or reimbursement that is wholly or partially dependent on the outcome of the dispute, or is provided through a grant or in return for a premium payment.
- 41.2 A party and/or its representative shall, on its own initiative, disclose the existence of third party funding and the identity of the funder to the Arbitrator and ACICA, and the other parties, upon that party submitting a Notice of Arbitration or Statement of Defence, or as soon as practicable after third-party funding is provided or after entering into an arrangement for third-party funding, whichever is earlier. Each party shall have a continuing obligation to disclose any changes to the information referred to in this Article occurring after the initial disclosure, including termination of the third-party funding.
- 41.3 The Arbitrator may, at any time during the arbitration proceedings, order a party to the proceedings to disclose:
- (a) the existence of third-party funding; and/or
 - (b) the identity of any such third-party funder.

APPENDIX A: Fees and Expenses

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).

3 Fees and Expenses Payable after Revocation of Arbitrator's Appointment or Arbitrator's Replacement

Where an arbitrator's appointment is revoked or where an arbitrator is replaced pursuant to Articles 12 and 13 of the Rules, ACICA may fix an amount of fees or expenses to be paid by the parties for the arbitrator's services, taking into account the circumstances of the case including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the circumstances of the revocation of the arbitrator's appointment or the arbitrator's replacement.

4 Cancellation Fees

The Arbitrator's fees may include a charge for time reserved but not used as a result of late postponement or cancellation of hearings, provided that the basis for such charge shall be advised in writing to, and approved by, ACICA and that the parties have been informed in advance.



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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 academic expert in the field of international and domestic dispute resolution. ACICA 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.

These rules are proudly endorsed by the
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ACICA

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