

AGREEMENT TO ARBITRATE UNDER THE 7<sup>TH</sup> FLOOR ARBITRATION SCHEME

Parties:

**(1) Claimant:**

Legal Representative:

Email address:

Physical address:

**(2) Respondent:**

Legal Representative:

Email address:

Physical address:

[If Respondents are separately represented, provide separate details for First Respondent, Second Respondent, etc.]

Dispute:<sup>1</sup>

Seat of arbitration: Sydney, Australia<sup>2</sup>

Name of arbitrator (if agreed):

Clerk: Mr Simon Walker, Clerk of 7 Wentworth Selborne Chambers, 180 Phillip Street, Sydney, NSW, Australia

1. The Parties agree that the Dispute shall be determined in accordance with this Agreement.
2. The Dispute includes, in addition to the matters described above,
  - (a) any defence, set-off or counterclaim arising out of the same contract or legal relationship,

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<sup>1</sup> Drafting note for Parties: If the pleadings in the Dispute have already closed, it may be appropriate to define the Dispute as “The dispute as defined by the Statement of Claim filed on [date] and the Defence filed on [date] in Proceedings No. [xxx] in [name of Court or Tribunal].”

<sup>2</sup> Sydney is the default seat of the arbitration. If the parties have chosen a different seat, it should be written in here.

- (b) any related dispute, difference or claim between the Parties arising out of the same contract or legal relationship which the arbitrator considers appropriate to be included in the arbitration and allows to be included in the pleadings and
- (c) if an action has already been brought on a claim within the Dispute, the costs of that action.
3. The place (i.e. the seat) of the arbitration shall be Sydney, Australia or such other place as the Parties have chosen (as indicated above).
  4. The language of the arbitration shall be English.
  5. The arbitral tribunal shall be constituted by one arbitrator.
  6. Notices, including notifications, communications and proposals, in connection with the arbitration may be communicated to each Party in writing addressed to its legal representative at the email address or physical address set out above. All written communications from a Party to the arbitrator shall be made by email or electronic file share transfer and copied to each other Party by email, whether or not they are also delivered physically.
  7. The arbitration shall be conducted under the 7<sup>th</sup> Floor Arbitration Scheme (the **Scheme**).
  8. The arbitrator shall be a participant in the Scheme.
  9. The arbitrator shall be appointed by the following procedure:
    - (a) When a participant in the Scheme is approached in connection with an appointment as arbitrator, and following appointment, he or she must disclose any circumstances likely to give rise to justifiable doubts as to the person's impartiality or independence.
    - (b) If the Parties have agreed on and nominated an arbitrator above or in writing within seven days of this Agreement, that person shall be the arbitrator.
    - (c) If an arbitrator has not otherwise been appointed within seven days of this Agreement, the Clerk shall, on the request of any Party, and in consultation with the Hon. P M Jacobson QC or J N West QC, choose another person, also a member of the Scheme, who shall be the arbitrator.
  10. The making of this Agreement shall be taken as a notice to arbitrate and shall constitute the commencement of the arbitration.

11. The Arbitrator may conduct the arbitration in such manner as he or she considers appropriate provided that the Parties must be treated with equality and each Party must be given a reasonable opportunity of presenting that Party's case.
12. If an action has already been brought on a claim within the Dispute:
  - (a) the Parties at their own expense shall consent to an order under section 8 of the *Commercial Arbitration Act 2010* (NSW) or equivalent legislation referring the Dispute to arbitration and to any reasonably appropriate ancillary order; and
  - (b) the Parties agree that, for the purposes of any law relating to the limitation of actions in relation to that claim, the arbitration shall (notwithstanding clause 10) be taken to have commenced at the same time as that action.
13. If and to the extent that the Parties are not already litigating the Dispute in a court:
  - (a) the Claimant shall communicate its statement of claim to the Respondent and the arbitrator within 14 days.
  - (b) the Respondent shall communicate its statement of defence to the Claimant and the arbitrator within 14 days of receipt of the statement of claim.
  - (c) if the statement of defence includes a counterclaim or set-off, the Claimant shall communicate its statement of reply to the Respondent and the arbitrator within 14 days of receipt of the statement of defence.
  - (d) the matters in this clause 13 are subject to the arbitrator's power to admit further statements or to set and modify a timetable for the arbitration, including in relation to the exchange of evidence by witness statement or expert report.
14. The statement of claim, defence and any counterclaim or reply shall include the following:
  - (a) a statement of the facts supporting the claim or defence;
  - (b) the real issues in dispute;
  - (c) the relief or remedy sought;
  - (d) the legal grounds or arguments supporting the claim or defence;
  - (e) a copy of any contract or other legal instrument out of or in relation to which the dispute arises (if a copy has not already been provided with an earlier pleading); and
  - (f) so far as is possible shall be accompanied by all documents relied upon by the party, or contain references to them.

15. If the Parties are already litigating the Dispute in a court, their pleadings (or equivalent documents) in the court shall stand as corresponding pleadings in the arbitration. If the pleadings are incomplete, the outstanding pleadings shall be completed in accordance with so much of clause 13 as is relevant.
16. Unless the Parties otherwise agree:
- (a) There shall be an oral hearing.
  - (b) Evidence in chief shall be given in writing unless the arbitrator determines otherwise.
  - (c) The hearing shall be limited to one day comprising up to six hours (not counting breaks).
  - (d) The hearing shall be conducted online.
  - (e) The hearing shall commence not less than three months from the date of this Agreement.
  - (f) If the Parties certify that the matter is ready for hearing, the hearing shall commence not less than one month from the date of such certification.
  - (g) The arbitrator may direct that the period for commencement of the hearing be extended if he or she considers it necessary in the interests of justice.
  - (h) If a hearing does not commence within the time required, the arbitration is not thereby invalidated and the parties shall cooperate with the arbitrator to convene a hearing as soon as possible thereafter.
  - (i) The arbitrator shall deliver a final award save as to costs within 14 days from the end of the hearing. Such an award delivered outside that period is not thereby invalid.
  - (j) Unless the Arbitrator extends the time, a Party may make an application with respect to the allocation, basis or quantification of costs within 14 days from the date of the award on substantive issues. That application shall be determined on the papers.
17. Notwithstanding clause 16(c) above, at the request of a Party, the arbitrator may permit a longer hearing.
18. In particular and without limiting the arbitrator's conduct of the arbitration, the arbitrator may limit the time allowed for cross-examination and submissions.

19. The Parties shall cooperate and shall assist the arbitrator to facilitate the fair, efficient and economical resolution of the parties' Dispute.
20. Unless otherwise agreed by the parties, and subject to the provisions of the *Commercial Arbitration Act 2010* (NSW) (CAA) or the *International Arbitration Act 1974* (Cth.)(IAA) (or other applicable law if the chosen seat is not Sydney, Australia), the parties and the arbitrator shall not disclose any matters relating to the arbitration without the prior written consent of the parties.
21. The following provisions apply to a hearing conducted online:
  - (a) The hearing shall be conducted using such technology as the arbitrator may determine.
  - (b) The Parties shall inform the tribunal and each other in advance of the hearing of the names of all persons attending, participating, or who are able to hear or view any communications in the hearing.
  - (c) No Party shall permit or suffer any person to attend, participate or listen to or view the hearing without the prior consent of the arbitrator and of all Parties.
  - (d) The Parties and their legal advisors agree that they will not record or permit or suffer the recording of the hearing without the consent of the arbitrator and of all Parties. Each Party shall procure that each additional attendee at the hearing for whom that Party is responsible also acknowledges and agrees to this.
  - (e) The Parties, their legal advisors and the arbitrator acknowledge and agree that their communications at the hearing can and will be listened to or viewed by each other and, if the arbitrator so rules, recorded and/or transcribed. Each Party shall procure that each additional attendee at the hearing for whom that Party is responsible also acknowledges and agrees to this.
22. The provisions of clause 21 apply, with such modification as the context requires, to any online preliminary conference or other online communication for the purposes of the arbitration between (a) the Parties and/or their representatives and (b) the arbitrator.
23. Unless the parties otherwise agree, disclosure of documents (as distinct from production) shall not be ordered save in exceptional circumstances.
24. Any application for an order for production must set out:

- (a) the reason why production is necessary for the resolution of the real issues in dispute in the proceedings;
  - (b) the classes of documents in respect of which production is sought.
25. The arbitrator shall not order the production of any document or class of documents unless, consistent with clause 11 above, the arbitrator considers that the document or class of documents is necessary for the resolution of the real issues in dispute, and the arbitrator shall have discretion to determine the point at which such an order, if any, shall be made.
26. The arbitrator shall fix the costs of arbitration in the final award and, if he or she considers it appropriate, in another decision. Such costs shall include those referred to in clause 2(c), regardless of whether they were incurred before or after the date of this Agreement.
27. The arbitrator is not liable for anything done or omitted to be done by the arbitrator in good faith in his or her capacity as arbitrator. The Clerk, any person consulted by the Clerk pursuant to this Agreement, 7 Wentworth Selborne Chambers, and Seventh Floor Chambers Co-operative Limited are not liable in relation to any appointment, failure or refusal of appointment or any other act or omission in relation to the arbitration if it was done in good faith and the Parties waive any claims against any of them arising from any such act or omission in relation to the arbitration.
28. The arbitrator may from time to time request each of the Parties to deposit an amount as an advance for fees. The payments will be deposited into the NAB Escrow Service or another account agreed with the Parties.
29. If the required deposits are not paid in full within 14 days after the receipt of the request, the arbitrator shall inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitrator may order the suspension or termination of the arbitration.
30. After a final award or order terminating the arbitration has been made, the arbitrator shall render an accounting to the Parties of the deposits received and release any unexpended balance to the Parties via the Escrow Service (or other agreed account).

Signed for the Claimant:

Name and capacity of signatory:

Date:

Signed for the Respondent:

Name and capacity of signatory:

Date: