



**ARBITRATORS' AND MEDIATORS'
INSTITUTE OF NEW ZEALAND INC**

Te Mana Kaiwhakatau, Takawaenga o Aotearoa

AMINZ Arbitration Rules

1 January 2022



Preamble

The AMINZ Arbitration Rules (*these Rules*) apply, as from 1 January 2022, where the Parties have agreed that the arbitration is to be conducted in accordance with the AMINZ Arbitration Rules (or words to the same effect).

The AMINZ Arbitration Rules comprise the following:

- This Preamble
- Rule 1 - **Objectives**
- Rule 2 - **Notice of commencement of arbitration**
- Rule 3 - **Answer**
- Rule 4 - **Reply**
- Rule 5 - **Party representation**
- Rule 6 - **Arbitral Tribunal**
- Rule 7 - **Challenges to the Arbitral Tribunal**
- Rule 8 - **Conduct of the Arbitration**
- Rule 9 - **Seat of Arbitration and Place of Hearing**
- Rule 10 - **Additional Powers of the Arbitral Tribunal**
- Rule 11 – **Expedited Arbitration**
- Rule 12 - **Emergency Arbitration**
- Rule 13 - **Consolidation of Arbitral Proceedings**
- Rule 14 - **Costs**
- Rule 15 - **Award(s)**
- Rule 16 - **Appeals**
- Rule 17 – **General**
- Schedule 1 – **Emergency Arbitration Protocol**
- Schedule 2 – **Tribunal Secretary Protocol**

The parties to the agreement to arbitrate (*the Parties*) may agree to vary the AMINZ Arbitration Rules (save where an applicable law or these Rules do not allow for the Parties to do so) at any time prior to the appointment of the Arbitral Tribunal in terms of Rule 6.

The AMINZ Arbitration Rules may be revised from time to time. The version current at the time the arbitration is commenced (whether by notice of arbitration in terms of Rule 2 or notice of dispute issued in terms of the agreement to arbitrate) will apply to the arbitration, unless the Parties specifically provide otherwise.



Model clause with opt-in to Expedited Arbitration provisions

The parties agree that any dispute or disagreement arising out of or in connection with this agreement will be settled by arbitration by a sole arbitrator in accordance with the AMINZ Arbitration Rules current at the time the arbitration is commenced and they agree to opt-in to the AMINZ Expedited Arbitration provisions.

The place of arbitration will be [Auckland] and the law applicable to any issues in relation to the agreement to arbitrate, the arbitral proceedings [and the matters in dispute] will be [New Zealand law].

Model clause without opt-in to Expedited Arbitration provisions

The parties agree that any dispute or disagreement arising out of or in connection with this agreement will be settled by arbitration by [a sole arbitrator] in accordance with the AMINZ Arbitration Rules current at the time the arbitration is commenced.

The place of arbitration will be [Auckland] and the law applicable to any issues in relation to the agreement to arbitrate, the arbitral proceedings [and the matters in dispute] will be [New Zealand law].

Arbitrators' and Mediators' Institute of New Zealand

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Rule 1 Objectives

1.1 The Parties acknowledge that:

(a) it is the objective of the arbitral proceedings that the dispute is to be resolved fairly, promptly, cost effectively and in a manner which is proportionate to the matters in dispute and their importance to the Parties; and

(b) where a matter is not expressly covered by these Rules, the Parties will promote this objective with the intent of procuring an enforceable award without undue delay and at an appropriate cost to the Parties.

1.2 The Arbitral Tribunal has the general duty at all times to adopt procedures suitable to the circumstances of the arbitration, avoiding unnecessary delay and expense, so as to provide a fair, efficient and expeditious means for the final resolution of the dispute.

1.3 The Arbitral Tribunal shall have the widest discretion to discharge this general duty, subject to such mandatory rules of law as the Arbitral Tribunal finds to be applicable.

1.4 The Parties undertake to:

(a) comply with the agreement to arbitrate, these Rules, any orders, directions, awards and determinations of the Arbitral Tribunal (and any Emergency Arbitrator and the AMINZ Arbitration Appeals Tribunal, if applicable) without delay; and

(b) act at all times in good faith so as to ensure the fair, efficient and expeditious conduct of the arbitration, and to procure that their legal advisors and other representatives do everything reasonably required to enable them to fulfil these undertakings.

Rule 2 Notice of commencement of arbitration

2.1 A Party(ies) wishing to commence an arbitration under these Rules (the Claimant) is to issue a Notice of Arbitration to AMINZ and to the other Party(ies) (the Respondent).

2.2 The arbitration will be treated for the purposes of these Rules to have commenced on the later of:

(a) the date of receipt of the Notice of Arbitration by the Respondent and by AMINZ; and

(b) the date of payment of the applicable fee prescribed by AMINZ (if any),

(the Notice Date).

2.3 The Notice of Arbitration is to provide the following:



- (a) the full name of the Claimant, physical address for the purposes of the arbitration, contact details and person authorised to give and receive all communications in relation to the arbitration;
 - (b) contact details for the Claimant's legal advisors (if any);
 - (c) details for electronic communications to the Claimant and its legal advisors;
 - (d) details of the Respondent;
 - (e) the text of the agreement to arbitrate (including any agreement to opt-in to the Expedited Arbitration Provisions);
 - (f) a summary of the dispute, the claims (including an estimation of the monetary value of such claims), and the relief or remedy claimed from the other Party(ies);
 - (g) details of any agreement between the Parties as to:
 - (i) any procedural matters;
 - (ii) whether it has been agreed that the arbitration is to be treated as an international arbitration (for the purposes of any applicable enactment);
 - (iii) the seat of the arbitration;
 - (iv) the law applicable to the substance of the dispute;
 - (v) the number of arbitrators to determine the dispute;
 - (vi) the composition of the Arbitral Tribunal, including the full names, qualifications and contact details of any agreed arbitrator; and
 - (vii) any additional procedural rules, including rules relating to the disclosure of documents or other relevant information and the conduct of the hearing; and
 - (h) any proposal made by the Claimant in respect of the composition of the Arbitral Tribunal, including where applicable, the Claimant's nomination of an arbitrator.
 - (i) any proposal made by the Claimant to opt-in to the Expedited Arbitration provisions at Rules 11.7 to 11.11 below.
- 2.4 The Notice of Arbitration served on AMINZ is to be accompanied by confirmation of the time, date and means of service of the Notice of Arbitration on the Respondent.
- 2.5 Where there is more than one Claimant, the Notice of Arbitration is to identify each Claimant, and the extent to which their respective roles and claims may differ.



Rule 3 Answer

- 3.1 The Respondent is to deliver a written response to the Notice of Arbitration (the Answer) within 21 days of the Notice Date.
- 3.2 The Answer is to provide the following:
- (a) the full name of the Respondent, physical address for the purposes of the arbitration, contact details and person authorised to give and receive all communications in relation to the arbitration;
 - (b) contact details for the Respondent's legal advisors (if any);
 - (c) details for electronic communications for the Respondent and its legal advisors;
 - (d) confirmation or denial of all information in the Notice of Arbitration, including in relation to the Claimant's claim and any challenge to the validity of the agreement to arbitrate or to the appointment procedure and/or the arbitration process including as to any agreement to opt-in to the Expedited Arbitration Provisions;
 - (e) a brief statement of the Respondent's position in relation to the dispute, and details of any counterclaim by the Respondent (including an estimation of the monetary value of such counterclaims), whether against one or all Claimants and/or any other Respondent; and
 - (f) the Respondent's position in relation to the composition of the Arbitral Tribunal, including, where applicable, the Respondent's nomination of an arbitrator.
 - (i) the Respondent's position or proposal in relation to opting-in to the Expedited Arbitration provisions at Rules 11.7 to 11.11 below.
- 3.3 If the Respondent fails to submit an Answer within the specified time, it will be taken to have waived any contractual right to nominate an arbitrator. Such failure will not prevent the Respondent from challenging the jurisdiction of the Arbitral Tribunal in terms of Rule 7 below or to participate in the arbitration process, whether to defend any claim or to pursue any counterclaim.
- 3.4 Where there is more than one Respondent, this Rule will apply to each, independently of the others.

Rule 4 Reply

- 4.1 If the Answer includes
- (a) a counterclaim; and/or
 - (b) a proposal to opt-in to the Expedited Arbitration provisions;



the Claimant and/or other Respondent (as appropriate) shall, within 14 days of receipt of the Answer, submit a reply (the Reply) outlining its defence to the counterclaim; and (if applicable) its position on opting-in to the Expedited Arbitration Provisions.

Rule 5 Party representation

- 5.1 Any addition or change to a Party's legal representation after the issue of the Notice of Arbitration and the Answer (as appropriate) must be notified to the other Parties and to the Arbitral Tribunal within 7 days of such addition or change. The Parties agree that, in order to ensure the integrity of the proceedings, the Arbitral Tribunal may refuse to permit a Party's added or changed legal representative where the appointment of such legal representative might arguably require the recusal of a member of the Arbitral Tribunal.
- 5.2 Unless the Parties agree otherwise and subject to any provision of these Rules to the contrary, the Parties and the Arbitral Tribunal shall have regard to, but will not be bound by, the IBA Guidelines on Party Representation in International Arbitration and on Conflicts of Interest in International Arbitration, in each case as current at the Notice Date.

Rule 6 Arbitral Tribunal

Appointment

- 6.1 The Parties may agree on the nomination of a sole arbitrator to decide their dispute.
- 6.2 Where the Parties do not agree on the nomination of a sole arbitrator, a sole arbitrator shall be appointed by AMINZ in accordance with the AMINZ Appointments Policy.
- 6.3 If the agreement to arbitrate or any enactment provides that the Arbitral Tribunal is to comprise more than one arbitrator, the Arbitral Tribunal will comprise:
- (a) any arbitrator(s) nominated by the Parties in accordance with their arbitration agreement; and/or
 - (b) such further arbitrator(s) as AMINZ may appoint in accordance with the AMINZ Appointments Policy.
- 6.3 Where AMINZ is to appoint the Arbitral Tribunal (or any members of the Arbitral Tribunal) it shall do so promptly following delivery of the Answer pursuant to Rule 3.1, or if no Answer is delivered, promptly after 21 days from the Notice Date. The appointment of the Arbitral Tribunal by AMINZ will not be affected by any disagreement between the Parties over the composition of the Arbitral Tribunal, any defect in the Notice of Arbitration, the Answer or the Reply, or any delay or failure by the Respondent (or any of them) or Claimant to provide the Answer or the Reply (as appropriate).
- 6.4 All members of the Arbitral Tribunal shall complete the declaration of willingness and statement of impartiality and independence in accordance with the AMINZ form. No



arbitrator shall take office until their appointment has been confirmed by AMINZ. The appointment of the Arbitral Tribunal will be confirmed by AMINZ on receipt of the completed declarations by all of the arbitrators.

- 6.5 AMINZ will appoint such further arbitrators as necessary within 7 days of notification by a nominated arbitrator that he or she is unwilling or unable to be appointed or to provide the declaration.
- 6.6 If a member of the Arbitral Tribunal is to be replaced, whether as a result of a disclosure in terms of Rule 6.10 below or because he or she has died, become incapacitated or resigned of his or her own volition, then AMINZ will appoint a replacement arbitrator (in accordance with the AMINZ Appointments Policy) within 14 days, and this Rule 6 is to apply (as appropriate) to such appointment. Any such replacement will be appointed with such urgency as the circumstances require.

Composition of the Arbitral Tribunal

- 6.7 Unless otherwise agreed, no Party may unilaterally nominate a sole arbitrator or the presiding arbitrator (if the Arbitral Tribunal is to comprise more than one arbitrator).
- 6.8 Where:
- (a) the Arbitral Tribunal is to comprise more than one arbitrator; and
 - (b) there is more than one Claimant and/or Respondent; and
 - (c) the multiple Claimants have not agreed to a nominee for appointment to the Arbitral Tribunal or the multiple Respondents have not agreed to a nominee for appointment to the Arbitral Tribunal,

AMINZ is to nominate those Parties' arbitrators for appointment, regardless of any representations or nominations made by any individual Claimant or Respondent.

Duties and Powers of Arbitral Tribunal

- 6.09 The Arbitral Tribunal shall be, and shall remain at all times, impartial and independent and no member is to advise or to act as advocate for or representative of any Party.
- 6.10 If any circumstance arises which creates possible doubt as to the accuracy or completeness of the declarations made by a member of the Arbitral Tribunal, that arbitrator is to forthwith disclose such circumstance to AMINZ, the Parties and to the other members of the Arbitral Tribunal. AMINZ, in consultation with the other members of the Arbitral Tribunal, will consider whether or not such circumstance is sufficient to require the removal and replacement of that arbitrator.
- 6.11 In addition to the powers outlined elsewhere in these Rules and under any applicable law, the Arbitral Tribunal has the power on the application of a Party or on its own initiative, and in each case having considered the submissions of the Parties on the issue, to:



- (a) allow a Party to add to, modify or amend the Notice of Arbitration, Answer, Reply, any points of claim, points of defence and counterclaim (if any) or defence to it;
- (b) truncate or extend any time limit under the agreement to arbitrate, these Rules or any order by the Arbitral Tribunal or award by the Emergency Arbitrator;
- (c) direct the order of proceedings, issue partial awards or determine preliminary points of law, exclude cumulative or irrelevant testimony or other evidence and direct the Parties to focus their presentations on issues the decision of which could dispose of all or part of the proceedings;
- (d) summarily dismiss claims which are manifestly without legal merit and/or fail to disclose any reasonably arguable cause of action and/or cannot succeed;
- (e) conduct such enquiries and investigations as it considers necessary or expedient, including identifying relevant issues, ascertaining relevant facts and laws applicable to the arbitration and the merits of the Parties' positions in relation to the dispute;
- (f) order the production of, or make available for inspection, documents, goods, samples, property, sites or other things under the Parties' control, by the Arbitral Tribunal, the other Parties or any expert;
- (g) order compliance with any legal obligation, payment of compensation or performance of any obligation in an agreement or at law; and
- (h) order the discontinuance of the arbitration if it appears that the arbitration has been abandoned (having given the Parties reasonable opportunity to progress the arbitration).

6.12 The Arbitral Tribunal is to determine the dispute in accordance with the applicable law which applies to the merits of the dispute.

Rule 7 Challenges to the Arbitral Tribunal

7.1 AMINZ may revoke any arbitrator's appointment (including an Emergency Arbitrator) on its own initiative, at the written request of any other member of the Arbitral Tribunal or upon formal challenge by a Party if such arbitrator:

- (a) gives written notice of his or her intent to resign;
- (b) is unwilling, unable or unfit to act; or
- (c) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality or independence.

7.2 Any challenge by a Party under Rule 7.1 above is to be made within 14 days of such circumstance becoming apparent (or in the case of an Emergency Arbitrator, within two days of such circumstance becoming apparent). AMINZ is to give the Arbitral Tribunal (including the affected arbitrator) and the Parties reasonable opportunity to comment on the grounds



- for challenge. If all Parties agree to the challenge, AMINZ will revoke that arbitrator's appointment.
- 7.3 If AMINZ upholds the challenge, it will revoke that arbitrator's appointment. Unless otherwise agreed, AMINZ will appoint a replacement arbitrator. AMINZ has discretion to decide whether to follow the original nominating process or to nominate a replacement arbitrator in accordance with the AMINZ Appointments Policy. Rule 6 above is to apply to such replacement appointment, in so far as it is relevant.
- 7.4 Pending appointment of a replacement arbitrator, the remaining members of the Arbitral Tribunal will continue the arbitration.
- 7.5 Where a sole or the presiding arbitrator is replaced, any substantive hearings previously held shall be repeated unless the new Arbitral Tribunal, with the agreement of the parties, decides that it is not necessary to repeat a substantive hearing.
- 7.6 Where any other arbitrator is replaced, the Arbitral Tribunal shall determine whether any hearings are to be repeated at its discretion.
- 7.7 Any order or ruling made by the Arbitral Tribunal prior to the replacement of an arbitrator under this Rule 7 is not invalid solely because there has been a change in the composition of the Arbitral Tribunal, and the Arbitral Tribunal may revoke or vary any such order or ruling at its discretion.

Rule 8 Conduct of the Arbitration

Preliminary Conferences and Procedural Orders

- 8.1 The Arbitral Tribunal is to arrange a preliminary conference (whether in person or by telephone or video conference as the Arbitral Tribunal deems appropriate) within 30 days of notification of appointment of the Arbitral Tribunal in terms of Rule 6.4 above.
- 8.2 The Parties are encouraged to agree on joint proposals for the conduct of their arbitration for consideration by the Arbitral Tribunal, including proposals in relation to:
- (a) narrowing the issues in dispute;
 - (b) timetabling the submission of the Points of Claim and Points of Defence (and Counterclaim, if any) and defence to any such Counterclaim and the exchange of witness statements, supporting documentation and submissions in support;
 - (c) disclosure of documentation;
 - (d) appointment and use of experts;
 - (e) the place of the arbitration, and the location and timing of any hearing;
 - (f) the requirement for any interim measures or preliminary orders;
 - (g) the requirement for any interim or partial award; and



(h) treatment of costs of the arbitration.

- 8.3 The Arbitral Tribunal will consider any such proposals, and any related submissions in making its procedural orders.

Rules of evidence

- 8.4 The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence.
- 8.5 Notwithstanding the foregoing, the Arbitral Tribunal may, on the application of any Party or of its own volition, order the production of documents and other material which it considers to be relevant and material to the dispute at a time, and in a manner and form in which the Arbitral Tribunal may reasonably determine.
- 8.6 Unless the Parties agree otherwise, and subject to the provisions of these Rules, the Arbitral Tribunal shall have regard to, but not be bound by, the IBA Rules on the Taking of Evidence in International Arbitration as current at the Notice Date.

Submissions of the Parties

- 8.7 Unless otherwise agreed by the Parties, or directed by the Arbitral Tribunal, all submissions of the Parties are to be made in accordance with Rules 8.8 to 8.16.
- 8.8 The Claimant is to submit its Points of Claim within a period of time determined by the Arbitral Tribunal, setting out in full detail:
- (a) a statement of the facts supporting the claim(s);
 - (b) the legal grounds or arguments supporting the claim(s);
 - (c) the Claimant's contentions on the factual and legal issues involved in the claim(s); and
 - (d) the relief or remedy claimed, together with the amount of all quantifiable claims.
- 8.9 The Respondent is to submit its Points of Defence (and Counterclaim, if any) within a period of time determined by the Arbitral Tribunal, setting out in full detail:
- (a) a statement of the facts supporting the defence and any counterclaim(s);
 - (b) the legal grounds or arguments supporting the defence and any counterclaim(s);
 - (c) the Respondent's contentions on the factual background and legal issues involved in the defence and any counterclaim(s); and
 - (d) the relief or remedy claimed, together with the amount of all quantifiable counterclaims.
- 8.10 The Points of Claim and Defence (and Counterclaim, if any) shall be accompanied by:



(a) subject to Rules 8.4 to 8.6 above, and to the extent not already submitted, the documents on which the Party relies;

(b) if the Party intends to rely on witness testimony from any fact witness(es), their signed witness statement(s) in accordance with Rules 8.17 and 8.18 below;

(c) if the Party intends to rely on expert opinion from any expert witness(es), their signed expert report(s) in accordance with Rules 8.19 to 8.24 below; and

(d) the legal authorities on which the Party relies.

- 8.11 Where the Points of Defence include a counterclaim, the Claimant is to submit its Points of Defence to the Counterclaim within a period of time determined by the Arbitral Tribunal. To the extent not already submitted in relation to the Points of Claim in Rule 8.8 above, the requirements of Rule 8.9 above apply to the Claimant's Points of Defence to the Counterclaim.
- 8.12 A Party may amend its Points of Claim, Defence, Counterclaim or other submissions, unless the Arbitral Tribunal considers the delay or otherwise in making such amendment may cause undue prejudice to the other Party. A Claim or Counterclaim may not be amended in such a manner that the amended Claim or Counterclaim falls outside the scope of the arbitration agreement.
- 8.13 Where the Parties agree, or if directed by the Arbitral Tribunal, the Parties may file a further response and/or rejoinder, or any other submissions, together with additional supporting evidence and legal authorities on which the relevant Party relies, within a time period determined by the Arbitral Tribunal.
- 8.14 All submissions referred to in this Rule 8 are to be accompanied by copies of all supporting documents which have not previously been submitted by any Party.
- 8.15 If the Claimant fails to submit its Points of Claim within the specified time, the Arbitral Tribunal may order the termination of the arbitral proceedings or give such other directions as may be appropriate.
- 8.16 If the Respondent fails to submit its Points of Defence, the Claimant fails to submit its defence to the Counterclaim (if any) or if at any point any Party fails to avail itself of the opportunity to present its case in the manner directed by the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration in any manner it thinks fit.

Witnesses

- 8.17 Unless otherwise agreed by the Parties, or directed by the Arbitral Tribunal, the Parties must provide witness statements, outlining their evidence. The Parties must then confirm which of the other Parties' witnesses are required to appear to be cross-examined on their evidence.
- 8.18 Unless the Arbitral Tribunal directs otherwise, witness statements will be confirmed by the witness at the hearing and, subject to any corrections, will be taken as read. Each witness may then be cross-examined on their evidence and/or questioned by the Arbitral Tribunal, as appropriate.



Experts

- 8.19 Where a Party is to rely on the opinion of an expert, that Party is to submit that expert's signed report in accordance with Rule 8.10 above.
- 8.20 Any such expert report is to contain the following:
- (a) the name, qualifications, expertise and experience of the expert;
 - (b) details of the instructions to the expert provided by the appointing Party, including any background summary and the questions asked of the expert;
 - (c) details of the information provided to the expert and investigations and other information obtained by the expert for the purposes of preparing and completing the report;
 - (d) a full description of methods used by the expert and any reports or authorities relied upon in reaching the conclusions in the report;
 - (e) a statement of independence and disclosure of any previous relationships with the Parties, including any previous appointments by a Party, their legal advisor or a member of the Arbitral Tribunal;
 - (f) confirmation that the expert has an overriding duty to assist the tribunal impartially on relevant matters within the expert's area of expertise; and
 - (g) confirmation that the conclusions in the report are the genuine belief of the expert on the questions put to the expert.
- 8.21 Where more than one expert is appointed by the Parties to express an opinion on the same issue, the Arbitral Tribunal may require those experts to meet together, without the Parties or their legal advisors being present, to determine the following:
- (a) any differences in the issues the experts were engaged to determine, the information provided, their methodologies or reports and authorities relied upon in reaching their respective conclusions;
 - (b) those areas where the experts are in agreement; and
 - (c) those areas where the experts disagree and the reasons why they may have reached differing conclusions.
- 8.22 Following such meeting, the Arbitral Tribunal may require those experts to provide a joint report to the Arbitral Tribunal and to the Parties on the issues outlined in Rule 8.21 above, and any other matters which they believe are relevant to their expertise. The experts are then to be available at the hearing, either separately or together, to answer questions of the Arbitral Tribunal and to be cross-examined on their findings.
- 8.23 If one or more of the Parties agree, the Arbitral Tribunal may appoint its own expert, in which case:



(a) the Arbitral Tribunal is to consult with the Parties on the issues to be referred to the expert and the expert to be engaged;

(b) the Parties are to make such information as the Arbitral Tribunal requires available to the expert, including access to documents, materials and the site; and

(c) the Arbitral Tribunal is to provide the parties with the expert's report.

8.24 The Parties may then make submissions on such expert's report in a manner to be directed by the Arbitral Tribunal and may cross-examine the expert on the report and any other matter relevant to the findings contained in it.

Rule 9 Seat of Arbitration and Place of Hearing

9.1 Subject to any agreement between the Parties, the Arbitral Tribunal is to determine the seat of the arbitration.

9.2 Subject to any agreement between the Parties, the Arbitral Tribunal is to determine the location and timing of any hearings, on the basis of convenience to the Parties and the Arbitral Tribunal.

9.3 The Arbitral Tribunal is also to determine the number, location and means of any hearings (including whether the hearing is to be conducted by videoconference, telephone or similar means of communication). Hearings may be held for the purposes of adducing evidence, cross-examining witnesses, making oral submissions or any other purpose the Arbitral Tribunal considers appropriate for determining the dispute.

9.4 Unless the Parties agree otherwise, the arbitral proceedings are to be conducted in the English language.

Rule 10 Additional Powers of the Arbitral Tribunal

10.1 To the fullest extent permitted by the applicable law, the Arbitral Tribunal has all the powers in Rule 17A (interim measures), 17C (preliminary orders) of Schedule 1, to the Arbitration Act 1996 of New Zealand and clause 3 (conduct of the arbitration) of Schedule 2, to the Arbitration Act 1996 of New Zealand.

10.2 The Arbitral Tribunal may appoint a tribunal secretary to assist with the administration of the arbitral proceedings, in accordance with the ***Tribunal Secretary Protocol*** at Schedule 2. The cost of the tribunal secretary shall be part of the costs of the arbitration and shall be fixed and allocated in accordance with Rule 14.



Rule 11 Expedited Arbitration

- 11.1 The Parties may agree, before the Notice Date, that they will opt-in to these Expedited Arbitration Provisions. Where they do so, the Expedited Arbitration Provisions shall prevail over any agreement to the contrary entered into by the parties prior to the Notice Date.
- 11.2 The Parties may agree, after the Notice Date, that they will opt-in to Rules 11.7 to 11.11 of the Expedited Arbitration Provisions.
- 11.3 Where the parties have opted-in to the Expedited Arbitration Provisions prior to the Notice of Arbitration, a sole arbitrator is to be appointed to hear their dispute.
- 11.4 The Notice of Arbitration shall:
- (a) state that the Expedited Arbitration Provision are to apply and provide evidence of the parties' agreement to opt-in to the Expedited Arbitration Provisions; and
 - (b) ask AMINZ to appoint a sole arbitrator within 14 days of the Notice of Arbitration.
- 11.5 The Respondent is to deliver a written response to the Notice of Arbitration (the Answer) within 14 days of the Notice Date.
- 11.6 Within 14 days of appointment, the Arbitral Tribunal shall consult with the parties, through a case management conference or otherwise, on the manner in which it will conduct the arbitration.
- 11.7 The Arbitral Tribunal shall direct what written statements shall be required from the parties or may be presented by them (and may limit the number of pages of evidence and submissions that may be filed by the parties).
- 11.8 Unless agreed to by the Arbitral Tribunal, there shall be no requests for disclosure of documents. The parties are to produce all documents and evidence upon which they rely. The Arbitral Tribunal may direct what other additional documents, exhibits or other evidence the parties should produce.
- 11.9 The Arbitral Tribunal may at any time, after inviting the parties to express their views:
- (a) extend or abridge any period of time prescribed in these Expedited Arbitration Provisions;
 - (b) decide that hearings shall not be held; and
 - (c) decide which witnesses, including expert witnesses, shall give evidence at the hearings, if hearings are held.
- 11.10 Unless otherwise agreed by the parties or directed by the Arbitral Tribunal, the award shall be made within six months from the date of the appointment of the Arbitral Tribunal.
- 11.11 At any time during the proceedings, the parties may agree, or the Arbitral Tribunal may decide, that the Expedited Arbitration Provisions shall no longer apply to the arbitration, in which case the proceedings shall continue, in accordance with these Rules, and in accordance with the directions of the Arbitral Tribunal.



Rule 12 Emergency Arbitration

- 12.1 Any Party may, concurrent with or after the submission of the Notice of Arbitration but before the appointment of the Arbitral Tribunal, apply to AMINZ for the appointment of an Emergency Arbitrator to award interim measures in accordance with Article 17A of Schedule 1, to the Arbitration Act 1996 of New Zealand.
- 12.2 The application under Rule 12.1 above should be made electronically and be copied to the other Parties at the same time as it is submitted to AMINZ.
- 12.3 AMINZ will appoint the Emergency Arbitrator in accordance with the AMINZ Appointments Policy.
- 12.4 The Emergency Arbitrator will sit as a sole arbitrator, and must not subsequently be nominated to be a member, or become a member, of the Arbitral Tribunal.
- 12.5 The seat of the emergency arbitration will be as specified in the agreement to arbitrate, and if not specified, it will be Auckland, New Zealand.
- 12.6 The Emergency Arbitrator is to comply with Rules 6.09 to 6.12 above, and these Rules generally, in so far as they are relevant to the circumstances.
- 12.7 The application for the appointment of the Emergency Arbitrator must specify the following:
- (a) if the Answer has not, as yet, been served, such information to be contained in the Answer in Rule 3.2 above as is known or apparent to the applicant;
 - (b) any preference the applicant may have for any person to be appointed as the Emergency Arbitrator;
 - (c) the interim measures sought, and the reasons for them to be dealt with as a matter of urgency by an Emergency Arbitrator, rather than by the Arbitral Tribunal.
- 12.8 AMINZ will determine the application for appointment of an Emergency Arbitrator as expeditiously as possible and, if the application is granted, will seek to appoint an Emergency Arbitrator within 48 hours of the later of:
- (a) the notification to the Parties that the application to appoint an Emergency Arbitrator has been granted; and
 - (b) payment of the Emergency Arbitration filing fee prescribed by AMINZ, if any.
- 12.9 Emergency Arbitration proceedings are to be conducted in accordance with the ***Emergency Arbitration Protocol*** at Schedule 1 to these Rules.

Rule 13 Consolidation of Arbitral Proceedings

- 13.1 Where the Parties are already involved in arbitral proceedings over a related dispute or in relation to the same subject matter, AMINZ may, subject to receiving appropriate



declarations from the Arbitral Tribunal in terms of Rule 6.4 above, appoint the same Arbitral Tribunal to determine the dispute.

13.2 Where arbitral proceedings have arbitral tribunals composed of the same arbitrators and the Arbitral Tribunal forms the view that the disputes are sufficiently related, by reference to the matters in dispute and the Parties involved, the Arbitral Tribunal appointed in terms of Rule 13.1 above may, on the application of any Party, order:

(a) the arbitral proceedings to be consolidated on such terms as the Arbitral Tribunal thinks just, including for the issue of a single award to cover all disputes; or

(b) the arbitral proceedings to be heard at the same time or one after the other, and for the awards to be issued contemporaneously, based on the same evidence and taking into account all the submissions of the Parties; or

(c) the staying of one or other arbitral proceedings until the other has been determined.

13.3 When arbitrations are consolidated in terms of Rule 13.2(a) above, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all Parties.

Rule 14 Costs

Costs of the Tribunal

14.1 The Arbitral Tribunal is entitled to invoice for its costs on a progressive or interim basis, and the Parties are to pay such costs as they fall due.

Cancellation

14.2 In the event that the arbitration is discontinued or abandoned, the Arbitral Tribunal is entitled to be paid its costs to the date of such discontinuance or abandonment, and may charge a reasonable cancellation fee having regard to the timing of the discontinuance or abandonment, the time set aside for the hearing and any other abortive costs of the Arbitral Tribunal.

Costs of the Arbitration

14.3 Unless the Parties have agreed otherwise, the costs of the arbitration and the Parties' legal costs will be fixed and allocated in accordance with the AMINZ Rules for Awarding Costs in Arbitration and related guidelines.



Rule 15 Award(s)

Separate, interim or partial awards

- 15.1 The Arbitral Tribunal and the Emergency Arbitrator may make separate awards on discrete issues at different times, depending on the circumstances of the case.
- 15.2 Such awards shall have the same status as any other award and they will be binding on the Parties.
- 15.3 Unless the Parties agree otherwise, all Awards shall state the reasons upon which they are based.

Majority decisions

- 15.4 Where there is more than one arbitrator, and the Arbitral Tribunal fails to agree on any issue, the Arbitral Tribunal is to decide the issue by majority decision; failing which the presiding arbitrator is to decide the issue.
- 15.5 If an arbitrator fails or refuses to sign an award, the signature of the majority or the presiding arbitrator will be sufficient, provided the reason for the omitted signature is stated.

Consent awards

- 15.6 Where the Parties have settled the dispute, the Arbitral Tribunal is to record such settlement in an award if requested to do so by the Parties.
- 15.7 Such a consent award will record that it is made at the request of the Parties, and will not contain reasons.

Correction of awards

- 15.8 Within 30 days of receipt of the award
- (a) a 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:
- (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.
- If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. The interpretation shall form part of the award.
- 15.9 The arbitral tribunal may correct any error of the type referred to in paragraph 15.8 (a) on its own initiative within 30 days of the date of the award.



- 15.10 A party, with notice to the other party, may request, within 30 days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.
- 15.11 The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation, or an additional award under paragraphs 15.8 or 15.10.

Rule 16 Appeals

Appeals on questions of law

- 16.1 Subject to Rule S1.7 below, every award shall be final and binding on the Parties, and to the fullest extent permitted by law, the Parties irrevocably waive any right they may have to any form of appeal, review or recourse to any court or legal authority.
- 16.2 Notwithstanding the foregoing, the Parties may agree, before or after the Notice Date, that they will opt-in to the provisions for appeals on a question of law in an award to the AMINZ Arbitration Appeals Tribunal in terms of Rules 16.3 to 16.6 below.

AMINZ Arbitration Appeals Tribunal

- 16.3 Any appeal to the AMINZ Arbitration Appeals Tribunal is to be made in accordance with the Rules of the AMINZ Arbitration Appeals Tribunal current at the Notice Date.
- 16.4 Any such appeal is to be lodged within 21 days of the relevant partial award or the final award of the Arbitral Tribunal.
- 16.5 On determination of the appeal, the AMINZ Arbitration Appeals Tribunal may by order confirm, vary or set aside the award, or remit the award, together with the Appeals Tribunal's opinion on the question of law remitted to it, to the Arbitral Tribunal for reconsideration. Where an award has been varied by the Appeals Tribunal, the award as varied shall have effect as if it were the award of the Arbitral Tribunal.
- 16.6 Where the Arbitral Tribunal is unwilling or unable to accept the remission of the award following the conclusion of the appeal, the AMINZ Arbitration Appeals Tribunal itself in its discretion may decide the issues which would otherwise have been remitted or may further decide to confirm, vary or set aside the award.

Rule 17 General

AMINZ

- 17.1 The arbitrators, any person appointed by the arbitral tribunal, the emergency arbitrator and AMINZ and its representatives shall not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.



Glossary

17.2 The following terms and expressions (in the singular and plural) have the meanings ascribed to them in the Preamble and relevant Rules identified below, unless the context requires otherwise:

AMINZ is the Arbitrators' and Mediators' Institute of New Zealand Incorporated.

AMINZ Appointments Policy is the policy for the appointment of disputes resolvers adopted by the AMINZ Council from time to time.

AMINZ Arbitration Appeals Tribunal is the appeals tribunal appointed in terms of the AMINZ Arbitration Appeals Tribunal Rules current at the Notice Date.

AMINZ Arbitration Rules and these **Rules** is defined in the Preamble.

AMINZ Council means the council of AMINZ constituted from time to time.

Arbitration Act 1996 and **Act** is the New Zealand Arbitration Act 1996, and all amendments to it, including any new act passed in substitution for it.

Claimant is defined in Rule 2.1.

day for the purposes of these Rules is a calendar day.

Emergency Arbitration is the arbitration proceedings instituted in terms of Rule 12.

Emergency Arbitrator is appointed in terms of Rule 12.3.

Expedited Arbitration Provisions means Rules 11.1 to 11.11

Notice Date is defined in Rule 2.2.

Notice of Arbitration is the notice issued in terms of Rule 2.

Party and **Parties** is defined in the Preamble.

President is the President for the time being of AMINZ.

Respondent is defined in Rule 2.1.

Seat means the legal location of the arbitration as agreed between the Parties or determined by the Arbitral Tribunal in accordance with Rule 9.1.

Communications

17.3 All communications (which include, for the purposes of these Rules, the Notice of Arbitration, the Answer, Reply (if any), all submissions, memoranda and any other communication with AMINZ or the Arbitral Tribunal) are to be:

(a) in writing; and

(b) in the English language (unless the Parties agree otherwise).



- 17.4 Communications may be sent by email, by electronic communication or by delivery to a physical address.
- 17.5 Where a Party has an email address that has been used in communications with another Party, communications may be sent to that email address (provided the sender can establish that the email has not been rejected by the server of the recipient). Where there is no email address that has been used in communications with another Party (or the email has been rejected by the server of the recipient), a Party may use an email address or electronic address that is set out on a website of the recipient or any other email address or electronic address if the sender can otherwise establish that the communication has been received by the recipient.
- 17.6 The Parties may change their physical addresses, for the receipt of communications, by written notice to the other Parties, provided such address is no less convenient for the purposes of the arbitration.
- 17.7 Communications will be treated as having been received on the date the electronic communication is received into the information system of the recipient's service provider and in all other cases on delivery to the recipient's physical address.
- 17.8 For the purposes of calculating the time of receipt, the time and date is the time and date applicable at the seat of the arbitration, a day will end at 11.59pm at the time of the seat, and periods of time will be calculated from the day following the date of receipt. Weekends and public holidays applicable at the seat are not to be included in such calculation.
- 17.9 A communication is in writing if it is capable of being saved, reproduced and read (using industry standard software, if the communication is electronic).
- 17.10 If physical copies are delivered, they are to be provided in sufficient number for each member of the Arbitral Tribunal and each Party to have a copy, and in a format which enables each of them to conveniently make further copies if required.

Confidentiality

- 17.11 The Parties agree to use all reasonable efforts to maintain the confidentiality of the dispute and the arbitral proceedings, including any orders or awards issued, including by the Emergency Arbitrator.
- 17.12 To that end, the Parties will:
- (a) use all reasonable endeavours to maintain the privacy of the arbitral proceedings by referring all legal issues to the Arbitral Tribunal and appeals to the AMINZ Arbitration Appeals Tribunal (where the Parties have opted in to the AMINZ Arbitration Appeals process under Rule 16.2 above) rather than by reference to the courts; and
 - (b) agree that when instituting any court proceedings (whether challenging any part of the arbitral proceedings or enforcing any award, including by an Emergency Arbitrator, or otherwise) they will not raise any objection if any party applies for



confidentiality to be maintained during any such court proceedings and for any reporting of such proceedings to be redacted in order to maintain the confidentiality of the Parties and the details of the dispute.

- 17.13 The Parties acknowledge that maintaining confidentiality is not a matter for which damages would be an adequate remedy.



Schedule 1 – Emergency Arbitration Protocol

Proceedings of the Emergency Arbitrator

- S1.1 The Emergency Arbitrator is to conduct the emergency arbitral proceedings in the manner which he or she determines to be appropriate in the circumstances, taking into account:
- (a) the interim measures sought;
 - (b) the need for the Parties to be heard, if possible; and
 - (c) the reasons for the emergency relief and the submissions of the applicant.
- S1.2 The Emergency Arbitrator may determine the application for interim measures without the requirement for an oral hearing.
- S1.3 When a hearing is to be held, the Emergency Arbitrator may conduct it by videoconference, telephone or similar means of communication;
- S1.4 The Emergency Arbitrator is to determine the application and issue an order no later than 14 days following the later of:
- (a) the date of the appointment of the Emergency Arbitrator;
 - (b) payment of the AMINZ fee in terms of Rule 12.8 above; and
 - (c) payment of any costs on account specified by the Emergency Arbitrator.
- S1.5 The order of the Emergency Arbitrator shall be in writing and provide reasons.

Effect of an order of the Emergency Arbitrator

- S1.6 The Emergency Arbitrator shall be considered to be an arbitral tribunal under the applicable law, and until such time as the Emergency Arbitrator's order is varied, discharged or revoked as contemplated in Rule S1.7 below, such order shall be binding on the Parties and the Parties agree to comply with the order without delay.
- S1.7 The Emergency Arbitrator's order (once it has been issued) may be confirmed, varied, discharged or revoked in whole or in part by the Arbitral Tribunal on application by any Party, or on its own initiative.
- S1.8 If the Arbitral Tribunal is appointed before the Emergency Arbitrator issues the order, the Emergency Arbitration proceedings are terminated.
- S1.9 Any interim measures made by the Emergency Arbitrator will expire automatically, and shall be of no further effect, unless confirmed by the Arbitral Tribunal within 60 days of its appointment.



Schedule 2 – Tribunal Secretary Protocol

- 1 At or around the time of the first procedural meeting to plan the arbitration (or later in the proceedings if appropriate), the Arbitral Tribunal may propose to the parties that a tribunal secretary be appointed to assist with the administration of the arbitral proceedings.
- 2 The Arbitral Tribunal will obtain agreement from the Parties as to the appointment of the tribunal secretary and will obtain agreement from the parties (or one of them) as to how the tribunal secretary is to be paid.
- 3 Unless the parties otherwise agree, the tribunal secretary shall perform all the tasks as the Arbitral Tribunal may assign, including:
 - (a) assisting the Arbitral Tribunal in the review of evidence and of the issues in dispute, including through the review of submissions and evidence, preparation of summaries and/or memoranda, and research on specific factual or legal issues;
 - (b) assisting the Arbitral Tribunal in the preparation and communication of its decisions to the Parties on issues of procedure and substance, including by preparing initial drafts of procedural orders and awards, under the direction and supervision of the Arbitral Tribunal; and
 - (c) providing other support to the Arbitral Tribunal or to its members at any time, including during hearings and deliberations which the tribunal secretary may attend.
- 4 The Arbitral Tribunal will not, under any circumstances, delegate any decision-making function to the tribunal secretary. The tribunal secretary will work at all times under the specific instructions and continuous control and supervision of the Arbitral Tribunal.
- 5 The tribunal secretary shall be subject to the same independence, impartiality and confidentiality obligations as the members of the Arbitral Tribunal.