



# National Arbitration Rules

As amended, effective  
October 1, 2008



## National Arbitration Rules

### I. MODEL DISPUTE RESOLUTION CLAUSE

Parties who agree to arbitrate under these National Arbitration Rules may use the following clause in their agreement:

*All disputes arising out of or in connection with this agreement, or in respect of any legal relationship associated with or derived from this agreement, shall be finally resolved by arbitration pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. [the Simplified Arbitration Rules of the ADR Institute of Canada, Inc.]. The place of arbitration shall be [specify City and Province of Canada]. The language of the arbitration shall be English or French [specify language].*

### II. VARIATION OF RULES

Parties should examine the National Arbitration Rules to ensure that all the provisions are suitable and appropriate in the circumstances and conform to the law governing the arbitration. With certain specified exceptions, the Rules may be varied, by agreement.



## National Arbitration Rules

|   |    |
|---|----|
| 1. Purpose .....  | 3  |
| 2. Interpretation .....                                 | 3  |
| 3. Application .....                                    | 4  |
| 4. Time .....   | 4  |
| 5. Administrative Fees Schedule .....                   | 4  |
| 6. Delivery of Documents .....                          | 5  |
| 7. Communications with Tribunal .....                   | 5  |
| 8. Communications between Parties .....                 | 5  |
| 9. Address for Delivery of Documents .....              | 5  |
| 10. Waiver of Right to Object .....                     | 5  |
| 11. Arbitration under Agreement .....                   | 6  |
| 12. Arbitration by Submission .....                     | 6  |
| 13. Commencement Date .....                             | 7  |
| 14. Appointment of Tribunal .....                       | 7  |
| 15. Appointment by Institute .....                      | 8  |
| 16. Independence and Impartiality .....                 | 8  |
| 17. Substitution .....                                  | 9  |
| 18. Challenges .....                                    | 9  |
| 19. Representation .....                                | 10 |
| 20. Place of Arbitration .....                          | 10 |
| 21. Language of Arbitration .....                       | 10 |
| 22. Pre-arbitration Meeting .....                       | 10 |
| 23. Conduct of the Arbitration .....                    | 11 |
| 24. Jurisdiction .....                                  | 11 |
| 25. No Waiver of Right to Object .....                  | 11 |
| 26. General Powers of Tribunal .....                    | 12 |
| 27. Exchange of Statements .....                        | 12 |
| 28. Amendment of Statements .....                       | 13 |
| 29. Production of Documents .....                       | 14 |
| 30. Pre-hearing Examinations and Interrogatories .....  | 14 |
| 31. Agreed Statement of Facts .....                     | 14 |
| 32. Arbitration Hearings .....                          | 14 |
| 33. Confidentiality .....                               | 15 |
| 34. Evidence .....                                      | 15 |
| 35. Witnesses .....                                     | 15 |
| 36. Tribunal's Experts .....                            | 16 |
| 37. Default of a Party .....                            | 16 |
| 38. Formal Without Prejudice Offers of Settlement ..... | 17 |
| 39. With Prejudice Offers .....                         | 17 |
| 40. Deposits Against Costs .....                        | 17 |
| 41. Payment out of Deposits .....                       | 17 |
| 42. Closure of Hearings .....                           | 18 |
| 43. Settlement .....                                    | 18 |
| 44. Award .....   | 18 |
| 45. Interest .....                                      | 19 |
| 46. Costs .....   | 19 |
| 47. Amendments and Corrections to the Award .....       | 19 |
| 48. Immunity .....                                      | 20 |
| 49. Simplified Arbitration Procedure .....              | 20 |
| SCHEDULE "A" .....                                      | 22 |
| SCHEDULE "B" .....                                      | 22 |



# NATIONAL ARBITRATION RULES

## 1. PURPOSE

The purpose of the Rules is to enable the parties to a dispute to achieve a just, speedy and cost effective determination of matters in dispute, taking into account the values that distinguish arbitration from litigation.

## 2. INTERPRETATION

In the Rules:

“Act” means any applicable arbitration legislation of the place of arbitration unless otherwise agreed by the parties.

“Arbitrator” means a person appointed to serve as an arbitrator of a dispute pursuant to the Rules.

“Chair” means the person elected or appointed to chair the Tribunal.

“Commencement Date” means the date the arbitration is deemed to commence under Rule 13.

“Counterclaim” means the Counterclaim referred to in Rule 27.

“Document” has an extended meaning and includes a photograph, film, recording of sound, any record of a permanent or semi-permanent character and any information recorded or stored by means of any device, including data and information in an electronic form.

“Institute” means the ADR Institute of Canada, Inc.

“Rules” means the National Arbitration Rules and amendments made by the ADR Institute of Canada, Inc. from time to time.

“Statement of Claim” means the Statement of Claim referred to in Rule 27.

“Statement of Defence” means the Statement of Defence referred to in Rule 27.

“Statement of Defence to Counterclaim” means the Statement of Defence to Counterclaim referred to in Rule 27.

“Tribunal” means either a sole Arbitrator or a panel of Arbitrators, as the case may be, appointed to serve as the arbitrator or arbitrators of a dispute



pursuant to the Rules.

### **3. APPLICATION**

- (a) The Rules shall apply where the parties have agreed that the National Arbitration Rules of the ADR Institute of Canada apply. If the Rules are amended by the Institute, the Rules applicable to any dispute shall be the Rules as amended as of the Commencement Date. To the extent that the Rules conflict with the Act, the provisions of the Rules shall apply except to the extent that the parties may not lawfully contract out of the provision of the Act. The parties may agree in writing to vary or exclude any of the Rules except Rules 3, 5, 7(a), 10, 11, 12, 16(b), 23(b), 40, 41, 46, 48 and Schedule A.
- (b) A reference in an arbitration agreement to the arbitration rules of the Canadian Foundation for Dispute Resolution, Inc., The Arbitrators Institute of Canada, The Arbitration and Mediation Institute of Canada, The Arbitrator and Mediators Institute of Ontario, or The Canadian Arbitration Association shall be deemed to be a reference to the Rules.
- (c) A failure to comply with the Rules is an irregularity and does not render an arbitration or a step, document or award in the arbitration a nullity.

### **4. TIME**

- (a) In the Rules, where the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday. In the calculation of time, the first day shall be excluded and the last day included.
- (b) The parties may modify any period of time by agreement.

### **5. ADMINISTRATIVE FEES SCHEDULE**

By agreeing to the Rules, the parties agree that the arbitration shall be administered by the Institute. The Institute shall prescribe from time to time fees to compensate it for its administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The current administrative fees are set out in Schedule “A”. All such fees are payable at the time specified for payment in Schedule “A”.



## **6. DELIVERY OF DOCUMENTS**

Any document required by the Rules to be delivered may be delivered either by personal delivery, mail, e-mail or facsimile to the address provided under Rule 9. If delivered by personal delivery, delivery shall be deemed to have been effected on the day of such delivery to a party at its regular place of business or mailing address or that of its legal counsel where applicable. If delivered by mail, except for confirmation copies of documents delivered by e-mail or facsimile, delivery shall be deemed to have been effected 2 days following the date of mailing. If by e-mail or facsimile, delivery shall be deemed to have been effected when sent. A confirmation copy of any such document shall be delivered by mail in the case of any electronic transmission.

## **7. COMMUNICATIONS WITH TRIBUNAL**

(a) A copy of any communication between the Tribunal and the parties or other representatives shall be delivered to the Institute.

(b) No party or person acting on behalf of a party shall have a communication with the Tribunal in the absence of any other party concerning the substance of the dispute or any contentious matter relating to the proceeding.

## **8. COMMUNICATIONS BETWEEN PARTIES**

Parties to an arbitration under the Rules may deliver any written communications required or permitted under the Rules by personal delivery, by mail, e-mail or by facsimile to a party at its regular place of business or mailing address. A confirmation copy of such communications shall be sent by mail in the case of any electronic transmission, unless otherwise agreed by the parties or directed by the Tribunal.

## **9. ADDRESS FOR DELIVERY OF DOCUMENTS**

The parties shall provide to one another and to the Institute a full mailing address, telephone number, facsimile number and e-mail address, as may be applicable.

## **10. WAIVER OF RIGHT TO OBJECT**

A party that knows that any provision of, or requirement under, the Rules has not been complied with and yet proceeds with the arbitration without promptly stating an objection shall, unless the Tri-



bunal otherwise orders, be deemed to have waived its right to object.

## **11. ARBITRATION UNDER AGREEMENT**

Where a dispute falls under an arbitration clause or agreement, a party, as claimant, may submit that dispute to arbitration by delivering a written Notice of Request to Arbitrate to each respondent at the address specified by each respondent under the agreement or the last known mailing address or place of business of each respondent and to the Institute. The Notice of Request to Arbitrate shall contain:

- (a) the names, place of business or mailing addresses, telephone numbers, fax numbers and e-mail addresses of the parties to the dispute, if known;
- (b) a concise statement of the matters in dispute or a Statement of Claim;
- (c) a request that the described dispute be referred to arbitration;
- (d) an estimate of the amount claimed, or failing that, of the value of what is in issue in the dispute, unless the claimant cannot make an estimate of such value in which case the reason for this must be set out in detail;
- (e) the remedy sought;
- (f) the number and names of Arbitrators agreed upon, if any;
- (g) the required qualifications of the Arbitrators, as agreed by the parties, if any; and
- (h) any variation of the Rules that has been agreed in writing.

Appended to the Notice of Request to Arbitrate shall be a copy of the arbitration clause or agreement relied upon and a copy of the contract, if any, in relation to which the dispute has arisen.

## **12. ARBITRATION BY SUBMISSION**

- (a) Parties to a dispute may submit that dispute to arbitration by filing a Notice of Submission to Arbitration with the Institute. The Notice of Submission to Arbitration shall contain the information described in Rule 11(a) to 11(h).
- (b) The Notice of Submission to Arbitration shall be signed by the parties to the dispute. Appended



to the Notice of Submission to Arbitration shall be a copy of the contract, if any, in relation to which the dispute has arisen.

### **13. COMMENCEMENT DATE**

The arbitration is deemed to have commenced when a Notice of Request to Arbitrate or a Notice of Submission to Arbitration has been filed with the Institute and the initial filing fee has been paid. The Institute shall notify the parties when an arbitration has been commenced and shall deliver to them a Notice of Commencement of Arbitration.

### **14. APPOINTMENT OF TRIBUNAL**

- (a) If the parties have not agreed on the number of Arbitrators within 10 days after the Commencement Date, the dispute shall be determined by a single Arbitrator;
- (b) Any party may at any time request the Institute to provide to all parties a list of not fewer than 3 individuals from which the parties may agree to select an Arbitrator.
- (c) Where a single Arbitrator is to be appointed, if the parties cannot agree on the single Arbitrator within 14 days after the Commencement Date, either party may then request the Institute to make such appointment.
- (d) Where the parties have agreed to appoint three Arbitrators:
  - (i) unless otherwise agreed by the parties, each party shall appoint one Arbitrator and the two Arbitrators shall jointly appoint the third Arbitrator who shall act as the Chair of the Tribunal;
  - (ii) if a party fails to make a required appointment within the time agreed upon between the parties or, if no time is agreed, 21 days from the Commencement Date, then a party may request the Institute to make the required appointment;
  - (iii) if the parties or Arbitrators appointed by the parties, as the case may be, are unable to agree on the appointment of a third Arbitrator within the time agreed by the parties or, if no time is



agreed within 30 days from the Commencement Date, then a party may request the Institute to make the required appointment.

## 15. APPOINTMENT BY INSTITUTE

Where the Institute is asked to appoint an Arbitrator, unless it determines otherwise, the following procedure shall apply:

- (a) the Institute shall deliver to the parties an identical list containing at least 3 names;
- (b) within a period of 10 days following receipt of the list referred to in paragraph (a), each party shall deliver the list to the Institute after having deleted any name to which it objects and numbered the remaining names on the list in the order of its preference;
- (c) if a party has not advised the Institute within 10 days that it objects to any of the names suggested, it shall be deemed conclusively to have accepted those names;
- (d) after the 10-day period referred to in paragraph (b), the Institute shall appoint the Arbitrator from the remaining names on the lists returned to it, taking into account the order of preference indicated by the parties. Notwithstanding Rule 15(a) the Institute may, in its discretion, deliver to the parties one further list containing at least 3 names, and the procedure set out in Rules 15(b) (c) (d) shall then apply in respect of that further list.

In appointing an Arbitrator, the Institute shall have due regard to the qualifications requested by the parties, the nature of the contract, the nature and circumstances of the dispute and any other considerations likely to secure the appointment of a qualified, independent and impartial Arbitrator.

## 16. INDEPENDENCE AND IMPARTIALITY

- (a) Unless otherwise agreed by the parties an Arbitrator shall be and remain at all times wholly independent.
- (b) An Arbitrator shall be and remain wholly impartial and shall not act as an advocate for any party to the arbitration.



- (c) Every person must, before accepting an appointment as Arbitrator, sign and deliver to the parties a statement declaring that he or she knows of no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she will disclose any such circumstances to the parties if they should arise after that time and before the arbitration is concluded. No Arbitrator shall be disqualified or subject to challenge by reason of one or more of the Arbitrator, counsel, party or representative of a party being a member, officer or director of the Institute.

## **17. SUBSTITUTION**

If an Arbitrator refuses to act, is incapable of acting, withdraws from office, is removed from office by order of the court or dies, the Institute may, on submission of satisfactory evidence, declare the office vacant. A substitute Arbitrator shall be appointed according to the provisions of the Rules, or the agreement of the parties, that were applicable to the appointment of the Arbitrator being replaced.

Where a single Arbitrator or Chair is replaced, any hearings previously held shall be repeated. Where any other Arbitrator is replaced, any hearings previously held may be repeated at the discretion of the Arbitrators.

## **18. CHALLENGES**

An Arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or if he or she does not possess the qualifications agreed upon by the parties.

A party who intends to challenge an Arbitrator shall, within 7 days after becoming aware of the appointment, or after becoming aware of any circumstances referred to in this Rule, send a written statement of the challenge and the reasons for the challenge to the Tribunal, if it has been fully constituted, and to the Institute. If the challenged Arbitrator withdraws or the other party agrees to the challenge, the mandate of the Arbitrator terminates.

In the case of an arbitration with a single Arbitrator, if the Arbitrator challenged does not withdraw and



the other party does not agree to the challenge, the single Arbitrator shall decide on the challenge. If there is a three-person panel the Chair, if he or she is not challenged, shall decide the challenge. If the Chair is challenged, all the Arbitrators may decide the challenge.

#### **19. REPRESENTATION**

Where a party intends to be represented or assisted by a lawyer, that party shall, in writing, advise the other party and the Institute of the lawyer's name, address, telephone number, facsimile number, e-mail address and the capacity in which he or she is acting at least 5 days before any scheduled hearing or meeting.

#### **20. PLACE OF ARBITRATION**

The parties may agree in writing on the place of arbitration. If no place is agreed upon, the place of arbitration shall be at the discretion of the Tribunal. The Tribunal may meet at any other place it considers convenient or necessary for consultation, to hear witnesses, experts or the parties or for the inspection of documents, goods or other property. Part or all of the arbitration may be conducted by telephone, e-mail, internet or electronic communication if agreed to by the parties or directed by the Tribunal.

#### **21. LANGUAGE OF ARBITRATION**

The parties may agree, in writing, on the language of the arbitration. If no such language of the arbitration is agreed upon, the Tribunal may specify the language of the arbitration.

#### **22. PRE-ARBITRATION MEETING**

Within 14 days of its appointment, the Tribunal shall convene a pre-arbitration meeting, unless the parties deliver to the Institute a notice, in writing, that they do not wish a pre-arbitration meeting.

At the pre-arbitration meeting the parties shall:

- (a) identify the issues in dispute;
- (b) set the procedure to be followed in the arbitration; and
- (c) establish time periods for taking steps to deal with any matter that will assist the parties to settle their differences or to assist the arbitration to proceed in an efficient and expeditious manner.



The pre-arbitration meeting may take place by conference telephone call, video conferencing or other means directed by the Tribunal.

The Tribunal shall record any agreements or orders made at the pre-arbitration meeting and shall, within 7 days of that meeting, deliver a written record of such agreements or orders to each of the parties and file a copy with the Institute.

## **23. CONDUCT OF THE ARBITRATION**

- (a) Subject to the Rules, the Tribunal may conduct the arbitration in the manner it considers appropriate.
- (b) Each party shall be treated fairly and shall be given a fair opportunity to present its case.
- (c) The Tribunal shall strive to achieve a just, speedy and cost effective determination of every proceeding on its merits, taking into account Rule 1.
- (d) A transcript or videotape of the proceedings shall be prepared if requested by either party in writing at least 5 days before the commencement of the hearing. Any such transcript or videotape shall be at the expense of the party requesting it. If a transcript or video tape has been requested by a party pursuant to this Rule, every other party and the Tribunal shall be entitled to obtain a copy of the transcript or videotape upon payment of the costs of reproduction of the transcript or videotape.

## **24. JURISDICTION**

The Tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose,

- (a) an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract, and
- (b) a decision by the Tribunal that the contract is null and void shall not entail the invalidity of the arbitration clause unless specifically found by the Tribunal.

## **25. NO WAIVER OF RIGHT TO OBJECT**

A party is not precluded from raising a jurisdictional



issue by the fact that it has appointed, or participated in the appointment of, an Arbitrator.

## **26. GENERAL POWERS OF TRIBUNAL**

The Tribunal may:

- (a) order an adjournment of the proceedings from time to time;
- (b) make an interim award on any matter with respect to which it may make a final award;
- (c) grant such interim measures of protection as it deems appropriate, including an order for security for costs, for the posting of security for the amount claimed or for preservation of property that is the subject matter of the dispute;
- (d) make an award or interim award granting equitable relief, injunctions or specific performance on such terms as may be just;
- (e) order inspection of documents, exhibits or other property;
- (f) order the taking down and recording of a transcript of any oral hearing;
- (g) at any time extend or abridge a period of time fixed or determined by it, or any period of time required in the Rules, except the time within which the award is to be made, where it considers it just and appropriate in the circumstances;
- (h) empower one member of the Tribunal to hear motions and make procedural orders, including the settling of matters at the pre-arbitration hearing, that do not deal with the substance of the dispute;
- (i) request further statements clarifying issues in dispute;
- (j) give such direction with respect to procedural matters having regard to Rule 1; and
- (k) request from a court of competent jurisdiction assistance in taking evidence.

## **27. EXCHANGE OF STATEMENTS**

On the Commencement Date, or within 14 days thereafter, the claimant must deliver a written statement (Statement of Claim) to each respondent, the Tribunal and the Institute setting out the material facts supporting its claim, the points in issue and the



relief or remedy sought, provided however that if no Tribunal has been appointed within 14 days of the Commencement Date, then a copy of the Statement of Claim must be delivered to the Tribunal forthwith upon its appointment.

Within 14 days after each respondent receives the Statement of Claim, that respondent shall deliver a written statement outlining its defence (Statement of Defence) and a written statement of any counterclaim (Counterclaim), to the claimant, the Tribunal and the Institute. The Statement of Defence or Counterclaim shall set out the material facts supporting the defence or counterclaim, the points in issue and the relief or remedy sought. Any Statement of Defence or Counterclaim shall be accompanied by payment to the Institute of the required case service fee calculated in accordance with Schedule “A”. The claimant shall deliver to the Tribunal and the Institute its Statement of Defence to Counterclaim within 14 days after receiving the Counterclaim. The Statement of Defence to Counterclaim shall set out the material facts supporting the defence, the points in issue and the relief or remedy sought.

If a respondent, or a claimant, fails to deliver a Statement of Defence or a Statement of Defence to Counterclaim, as the case may be, it shall be deemed to deny the allegations in the Statement of Claim or Counterclaim as the case may be.

Each party shall submit with its statement a preliminary list of relevant documents in accordance with Rule 29 taking into account Rule 1. The type, date, author, recipient and subject matter of each document must be specified. Documents not so identified may be subject to exclusion from the proceedings at the Tribunal’s discretion.

## **28. AMENDMENT OF STATEMENTS**

The Tribunal, upon such terms as it deems appropriate, may allow a party to amend or supplement its Statement of Claim, Statement of Defence, Counterclaim, or Statement of Defence to Counterclaim during the course of the arbitration unless the Tribunal considers the delay in amending or supplementing the claim to be prejudicial to a party or unless it considers that the amendment or supplement goes



beyond the terms of the arbitration agreement or submission to arbitrate.

## **29. PRODUCTION OF DOCUMENTS**

Each party shall disclose all documents relating to the matters in issue in the arbitration that are or have been in the party's possession, control or power, within 15 days after the date of delivery of the Statement of Defence or the Statement of Defence to Counterclaim, whichever is later, unless the Tribunal orders otherwise. Where the Tribunal considers that the disclosure of all such documents is unnecessary, unduly costly or burdensome or for other reason is inconsistent with Rule 1, the Tribunal may give directions to limit the scope of disclosure of documents.

The Tribunal may, on application, order a party to produce any documents the Tribunal considers relevant to the arbitration within a time it specifies, and where such order is made the other party may inspect those documents and take copies of them.

## **30. PRE-HEARING EXAMINATIONS AND INTERROGATORIES**

The Tribunal may, on such terms as it deems just and appropriate, order a party or a representative of a party to submit to an oral examination under oath or to respond by sworn statement to written interrogatories, on such issues as may be ordered by the Tribunal taking into account Rule 1. The Tribunal shall, at the time of making any such order, determine the use that may be made of the evidence taken on any such examination or in responses.

## **31. AGREED STATEMENT OF FACTS**

The parties shall, within a period of time specified by the Tribunal, identify those facts that are not in dispute and submit to the Tribunal and file with the Institute an agreed statement of facts.

## **32. ARBITRATION HEARINGS**

The Tribunal shall set the dates for any interim hearings or meetings, whether oral or not, and shall, except in cases of urgency, give at least 4 days written notice thereof to the parties and the Institute. The Tribunal may direct that all evidence and argument be given in writing and may dispense with an oral hearing.



### **33. CONFIDENTIALITY**

The parties, the witnesses and the Arbitrators shall treat all meetings and communications, the proceedings, documents disclosed in the proceeding, discovery and the awards of the Tribunal as confidential, except in connection with a judicial challenge to, or enforcement of, an award, and unless otherwise required by law. Nothing in this Rule shall preclude disclosure of such information to a party's insurer, auditor, lawyer or other person with a direct financial interest in the arbitration. The parties shall use such information solely for the purposes of the arbitration, and shall not use or allow it to be used for any other purpose unless the parties agree otherwise or unless otherwise required by law.

After the delivery of an award the Institute may make a written request to the parties for their consent to the publication by the Institute of the award or extracts from it. Should a party fail to respond to such a request within 45 days of the date of request then it shall be deemed to have consented to the request.

### **34. EVIDENCE**

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence under oath as the Tribunal may deem necessary to an understanding and determination of the dispute. The Tribunal may be guided by the rules of evidence applicable in court proceedings, but conformity with the rules of evidence is not required. All evidence shall be taken in the presence of the Tribunal and all of the parties, except where any of the parties is voluntarily absent, in default or has waived the right to be present.

The Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered and may exclude evidence that the Tribunal deems to be repetitive.

### **35. WITNESSES**

The Tribunal may determine the manner in which witnesses are to be examined, and save for a party or the person nominated as that party's representative for the purpose of the arbitration, may require witnesses to absent themselves from an oral hearing during the testimony of other witnesses.

Where the evidence of a witness is presented by



written statement or sworn declaration, the Tribunal may order that the witness be present at an oral hearing for cross examination.

### **36. TRIBUNAL'S EXPERTS**

The Tribunal may appoint one or more independent experts to report on specific issues to be determined by the Tribunal and may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for its inspection.

The Tribunal shall communicate the expert's terms of reference to the parties. Any dispute as to the terms of reference or the relevance of the required information, or production of it, shall be referred to the Tribunal for decision. The cost of any such expert shall be borne by the parties on a basis determined by the Tribunal.

Upon receipt of the expert's report in writing, the Tribunal shall deliver a copy of it to the parties who shall be given the opportunity to challenge all or any part of it in a manner determined by the Tribunal.

The expert shall, on the request of a party, make available to that party for examination all documents, goods or other property in the expert's possession that the expert has used to prepare the report and shall provide that party with a list of all documents, goods or other property not in the expert's possession, but that were provided to prepare the report, and a description of the location of those documents, goods or other property.

An expert shall, after delivery of the report, be required to attend for the purpose of cross examination on some or all of the contents of that report, unless the parties agree that such cross-examination is not required.

### **37. DEFAULT OF A PARTY**

Where a party, without sufficient cause, fails to appear at a hearing, pay the fees of the Institute, or to produce evidence, the Tribunal may continue the arbitration on such terms as the Tribunal deems appropriate after satisfying itself that a reasonable attempt has been made to communicate with the defaulting party. The Tribunal shall make an award based upon the evidence before it.



### **38. FORMAL WITHOUT PREJUDICE OFFERS OF SETTLEMENT**

At any time before the hearing on the merits, a party may deliver to the other party an offer marked “without prejudice” to settle one or more of the issues between it and any other party on the terms specified in the offer. An offer to settle may specify a time within which it may be accepted and it will expire if not accepted within that time.

The Tribunal shall take into consideration the offer, the time at which the offer was made and the extent to which it was accepted when dealing with questions of costs and interest.

No party shall inform the Tribunal of the fact that an offer had been made under this Rule until after all issues in the arbitration other than costs have been determined.

### **39. WITH PREJUDICE OFFERS**

The parties may deliver written offers marked “with prejudice” at any time, and all such offers may be put in evidence at the arbitration hearing.

### **40. DEPOSITS AGAINST COSTS**

The Tribunal may, directly or through the Institute, from time to time, require the parties to deposit by cash, certified cheque, or irrevocable letter of credit, to the Institute in trust, equal amounts as an advance for the anticipated costs and expenses of the arbitration including the Tribunal’s fees and expenses.

If the required deposits are not made within 15 days after receipt of the request, the Tribunal or the Institute shall inform the parties so that another party may make the required payment.

If the required deposits are not made within 30 days after receipt of the request, the Tribunal may continue the arbitration under Rule 37 or order the suspension or termination of the proceeding.

### **41. PAYMENT OUT OF DEPOSITS**

The Institute may, from time to time, pay to the Tribunal from any deposit it holds, any amount it considers reasonable and appropriate for fees earned or expenses incurred by the Tribunal.

After the final award has been made, a settlement has been reached or the arbitration abandoned or



otherwise finally disposed of, the Institute shall apply any deposits it holds to the costs of the arbitration, including any unpaid Tribunal fees and administrative fees, render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties in proportion to their contributions or as may be directed by the Tribunal in the final award.

#### **42. CLOSURE OF HEARINGS**

Where the parties have, on inquiry, advised they have no further evidence to give or submissions to make, or the Tribunal considers further hearings to be unnecessary or inappropriate, the Tribunal may close the hearings.

On its own motion or on the application of a party, the Tribunal may, in exceptional circumstances, reopen the hearings to receive evidence or submissions concerning a matter at any time before the issuance of a partial final award or final award concerning that matter.

#### **43. SETTLEMENT**

The Tribunal may encourage settlement of the dispute and, with the written agreement of the parties, may order that mediation, conciliation or other procedures be used by the parties at any time during the arbitration proceedings to encourage settlement.

If, during the arbitration proceedings, the parties settle the dispute, the Tribunal shall, upon receiving confirmation of the settlement or determining that there is a settlement, terminate the proceedings and, if requested by the parties, record the settlement in the form of an arbitration award on agreed terms.

#### **44. AWARD**

The Tribunal may make a partial final award finally determining an issue or part of a dispute.

The Tribunal may make an interim award that shall subsequently be incorporated into and become part of a final award.

The Tribunal shall make its final award with respect to the matters determined in the award within 60 days after the hearings have been closed or such further period as may:

- (a) be agreed to in writing by the parties, or



(b) be directed by a court of competent jurisdiction. Awards of the Tribunal shall be in writing and shall, unless the parties otherwise agree, state the reasons upon which they are based. The Tribunal shall deliver to the Institute sufficient originally signed copies of any award for each party. Upon payment of all outstanding Institute and Tribunal fees and expenses, copies of the award will be delivered to the parties by the Institute.

Where the Tribunal consists of more than two Arbitrators, the award shall be made by a majority of the Tribunal. Where there is no majority decision, the decision of the Chair of the Tribunal shall be the award.

#### **45. INTEREST**

The Tribunal may order interest to be paid in an award for such time and in such amount as it considers just and reasonable.

#### **46. COSTS**

The Tribunal shall be entitled to fix the costs and expenses of the arbitration, including reasonable legal fees, the costs and expenses of the arbitration and the Tribunal, and the fees of the Institute. If costs and expenses are awarded, such costs and expenses shall be made part of the award. The Tribunal shall be entitled to make separate awards for legal costs and the fees and expenses of the arbitration and shall be entitled to apportion costs and expenses between the parties.

#### **47. AMENDMENTS AND CORRECTIONS TO THE AWARD**

A Tribunal may, on the application of a party or on its own initiative, amend or vary an award or interim award to correct:

- (a) a clerical or typographical error;
- (b) an accidental error, slip, omission or other similar mistake; or
- (c) an arithmetical error made in a computation.

An application by a party to amend or vary shall be made within 15 days after that party is notified of the award.

An amendment or variation shall not, without the consent of the parties, be made more than 30 days



after the parties have been notified of the award.

A party may, within 15 days after being notified of the award, apply to the Tribunal for clarification of the award, and the Tribunal may clarify the award where it considers it appropriate, in which case the clarification becomes part of the award.

A party may, within 30 days after receiving the award, apply to the Tribunal to make an additional award with respect to claims presented in the proceedings but omitted from the award.

An amended, varied or additional award shall be filed by the Tribunal with the Institute.

Unless otherwise agreed, the award of the Tribunal shall be final and binding and there shall be no appeal.

#### **48. IMMUNITY**

Neither the Institute nor the Tribunal shall be liable to any party for any act or omission in connection with any arbitration conducted under the Rules. The Tribunal and the Institute shall have the same protections and immunity as a Judge of the Superior Court in the province or territory in which the arbitration takes place.

#### **49. SIMPLIFIED ARBITRATION PROCEDURE**

- (a) Where the parties agree in writing the arbitration shall be conducted in accordance with this simplified procedure section and Schedule “B” to the Rules.
- (b) The time periods for a simplified procedure arbitration, other than those time periods specifically provided for under sub-rules (c), (d) and (j) of this Rule, shall be those set out in Schedule “B”.
- (c) The simplified arbitration shall be conducted by a single Arbitrator appointed by the Institute within 14 days after the filing of the Submission to Arbitration or Notice of Request to Arbitrate.
- (d) Within 14 days of the appointment of the Arbitrator, the Arbitrator shall convene a pre-arbitration meeting of the parties which may be held by conference telephone call, video conferencing or other means as the Arbitrator may direct to determine:



- i. a timetable for the conduct and completion of all pre-hearing and preliminary matters in a period not to exceed 90 days from the date of the commencement of the arbitration;
  - ii. the time and place of the hearing; and
  - iii. such other directions as may be necessary.
- (e) Rules 14, 15, 22, 26(h), and 30 shall not apply to the conduct of the arbitration.
- (f) Unless agreed by the parties or ordered by the Arbitrator, there shall be no oral discovery.
- (g) No transcript of the proceedings shall be required.
- (h) Sworn statements of evidence shall be filed at the hearing in lieu of examination in chief and shall be subject to cross-examination and re-examination only.
- (i) The record of the arbitration shall consist of the documents and exhibits produced and filed by the parties.
- (j) The Arbitrator shall deliver the award and reasons for the award within 14 days from the completion of the hearing.



## SCHEDULE "A"

### ARBITRATION ADMINISTRATIVE FEE SCHEDULE

Under the fee schedule, an Initial Filing Fee, payable by the filing party, and a Case Service Fee, payable by each party filing a defence or counterclaim, will cover all ADR Institute services from the time a case is filed until it is awarded or settled. This fee schedule eliminates hearing and postponement fees and miscellaneous expenses.

| AMOUNT OF CLAIM                | INITIAL FILING FEE                                     | CASE SERVICE FEE   |
|--------------------------------|--|--|
| Above \$0 to \$10,000          | \$350  | \$175  |
| Above \$10,000 to \$75,000     | \$600  | \$300  |
| Above \$75,000 to \$150,000    | \$1,000  | \$500  |
| Above \$150,000 to \$500,000   | \$2,000  | \$1,000  |
| Above \$500,000 to \$5,000,000 | \$4,000  | \$2,000  |
| Above \$5,000,000              | \$5,000  | \$3,000  |
| Date Payment Due               | On filing Notice of Request or Submission to Arbitrate | On filing of Statement of Defence which may include a Counterclaim |

## SCHEDULE "B"

### SIMPLIFIED RULE TIME PERIOD

| RULE | TIME PERIOD                                 |
|------|---|
| 27   | All references to 14 days shall be 10 days. |







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