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IAMA Arbitration Rules[®]

Incorporating the IAMA Fast Track Arbitration Rules

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IAMA Arbitration Rules 

Incorporating the IAMA Fast Track Arbitration Rules

AUTHORITY FOR RULES

On 1 June 2007 the Council of the Institute of Arbitrators & Mediators Australia ('IAMA') resolved that, where parties agree to submit a dispute between them to arbitration in accordance with:

1. The IAMA Arbitration Rules; or
2. The IAMA Fast Track Arbitration Rules,

then these Rules shall apply and that the former 1999 Rules for the Conduct of Commercial Arbitrations (including the Expedited Commercial Arbitration Rules) shall be superseded, except when the former 1999 Rules apply under an agreement to arbitrate.

PART I GENERAL

RULE 1 Overriding Objective

The Overriding Objective of these Rules is that the arbitration is conducted:

- a. fairly, expeditiously and cost effectively; and
- b. in a manner which is proportionate to:
 - i. the amount of money involved;
 - ii. the complexity of the issues; and
 - iii. any other relevant matter.

RULE 2 Definitions

In these Rules:

Institute of Arbitrators & Mediators Australia or **IAMA** means the Council of Institute of Arbitrators and Mediators Australia;

Agreement means any written agreement between the parties to submit present or future disputes to arbitration;

Arbitrator means an arbitrator who has entered on the reference to arbitration;

Costs of the arbitration includes the costs of the reference and the costs and disbursements of the parties;

Costs of the reference includes the fees and expenses of an Arbitrator or Nominee Arbitrator, any Nomination Fee or other fee payable to IAMA, the costs of room hire or transcript, and any fees or expenses pursuant to paragraph 2 of Rule 18;

Court means any Court which has jurisdiction under the Statute Law which governs arbitration in the place where the arbitration is held;

Days means normal working days and shall exclude Saturdays, Sundays, public holidays and any non-business day at the place of business of the addressee;

Domestic arbitration means any arbitration which is not an international arbitration;

Experts' Conclave means a meeting chaired by the Arbitrator of experts engaged by the parties;

International arbitration means arbitration where one or more of the parties to the Agreement does not carry on business within the Commonwealth of Australia;

Model Law means the UNCITRAL Model Law on International Commercial Arbitration adopted by the United Nations Commission on International Trade Law on 21 June 1985;

Nominee Arbitrator means an arbitrator who has been nominated by IAMA or agreed by the parties but who has not entered on the reference to arbitration;

Nomination Fee means such amount as may be prescribed by IAMA from time to time for it to nominate an arbitrator or arbitrators;

Notice of Dispute means a written notice of the dispute under Rule 6;

Preliminary Conference means a conference of the parties convened by the Nominee Arbitrator or Arbitrator; and

Stop Clock arbitration means a procedure by which the time allocated for the hearing is divided between the parties and is recorded progressively to ensure adherence to the allocated periods.

RULE 3 Application of Rules

1. These Rules are subject to the law governing arbitration in the location where the arbitration is conducted and to any agreement between the parties as to procedure. Otherwise where the parties to a dispute have agreed to arbitration in accordance with these Rules, they are bound to comply with these Rules.
2. These Rules shall apply to domestic arbitrations and, subject to Rule 22, to international arbitrations.

RULE 4 Counting of Days

1. Any period of days under these Rules shall begin on the day following the day when notice, notification, communication or proposal is actually received or deemed to be received under paragraph 2 of this Rule, whichever is earlier.
2. Any notice, notification, communication or proposal which is posted is deemed to have been received on the second day following the day of posting. Any notice, notification, communication or proposal which is sent by facsimile or other means of telecommunication or electronic transmission is deemed to have been received on the day of transmission.

PART II COMMENCEMENT OF PROCEEDINGS

RULE 5 Nomination of Arbitrators

1. Nomination of arbitrators shall be by IAMA, which may delegate its power of nomination to the person acting as the:
 - a. President; or
 - b. Chairman of any State or Territory Chapter.
2. Nothing in these Rules prevents the parties from agreeing on an arbitrator or arbitrators of their choice.

RULE 6 Notice of Dispute

1. This Rule applies except where it is inconsistent with an Agreement.
2. If a dispute or difference of the kind described in an Agreement arises, any party to it may give a Notice of Dispute to the other party or parties.
3. The Notice of Dispute shall be served at the address of such party or parties recorded in the Agreement. Service may be effected personally, or by mail, facsimile, telecommunication or electronic transmission.
4. Unless settled beforehand, the dispute or difference described in the Notice of Dispute shall be deemed to be referred to arbitration in accordance with these Rules ten (10) days after service of the Notice of Dispute.
5. The parties may agree in writing that a Notice of Dispute is not required and may then jointly seek nomination of an arbitrator by IAMA under paragraph 2 of Rule 8.

RULE 7 Nomination Fee

1. The party giving a Notice of Dispute must pay the Nomination Fee to IAMA and provide evidence of payment with the Notice of Dispute.
2. If the parties agree to jointly seek nomination of an arbitrator they must jointly pay the Nomination Fee to IAMA.
3. Unless the Nomination Fee is paid to IAMA, IAMA is not required to nominate an arbitrator under Rule 8.

RULE 8 Call for Nomination

1. Where a Notice of Dispute has been given under either the Agreement or Rule 6, and the dispute has not been settled within any time there specified, any party may request IAMA to nominate an arbitrator and in doing so must submit the following to IAMA:
 - a. a copy of the Notice of Dispute;
 - b. a copy of the Agreement;
 - c. the names and addresses of the parties to the dispute; and
 - d. a description of the dispute sufficient to enable IAMA to nominate an appropriate arbitrator.
2. If the parties agree to jointly seek nomination of an arbitrator then, in addition to the material in paragraph 1 of this Rule, they shall provide to IAMA a copy of the agreement for the joint appointment.
3. Within ten (10) days after receipt of the material described in paragraphs 1 or 2, or any further information IAMA may require to enable a nomination, IAMA shall nominate an arbitrator and inform the parties and the Nominee Arbitrator of such nomination.
4. Unless the Agreement provides otherwise, IAMA shall nominate one arbitrator only.

RULE 9 Entry on Reference to Arbitration

1. Within five (5) days of the nomination or agreed appointment, the Nominee Arbitrator shall give written notice to the parties of the time and place of a Preliminary Conference.
2. Before the Preliminary Conference each party shall inform the Nominee Arbitrator and the other party or parties of the names of those who will attend.
3. At or before the Preliminary Conference the Nominee Arbitrator may request the parties to confirm their agreement that the Nominee Arbitrator has jurisdiction to determine the dispute.
4. At or before the Preliminary Conference the Nominee Arbitrator may inform the parties of any conditions of appointment (including provision of security for the fees and expenses of the Nominee Arbitrator) and request the parties to agree to any conditions.
5. If the parties agree to the conditions of appointment and to the jurisdiction of the Nominee Arbitrator, he or she shall accept appointment and shall enter on the reference as the Arbitrator.
6. The Nominee Arbitrator may accept the appointment and enter on the reference as the Arbitrator even though all parties have not agreed to the conditions of appointment or to the jurisdiction of the Nominee Arbitrator. Written notice of the acceptance and entry on the reference by the Nominee Arbitrator shall be given to the parties and IAMA.
7. In accepting the appointment and entering on the reference as the Arbitrator, the Nominee Arbitrator may rule on his or her jurisdiction, including an objection as to the existence or validity of the Agreement.
8. The Nominee Arbitrator may decline the appointment and decline to enter on the reference as Arbitrator and advise the parties and IAMA. IAMA shall nominate a replacement Nominee Arbitrator within ten (10) days of receipt of this advice, and paragraphs 1 to 6 of Rule 9 shall apply to the replacement Nominee Arbitrator.

RULE 10 Nominee Arbitrator Failing to Act / Loss of Arbitrator

If:

1. a Nominee Arbitrator does not enter upon the reference to arbitration within one (1) month of the date of the nomination; or
2. after entering on the reference to arbitration, an Arbitrator dies or becomes incapable of continuing with the reference to arbitration;

then IAMA shall nominate a replacement Arbitrator within ten (10) days of a request by a party that it do so.

RULE 11 Liability of IAMA for Acts or Omissions

The parties agree that IAMA, its officers and employees are not liable to any party for anything done or omitted to be done in good faith in the exercise of IAMA's functions under these Rules.

RULE 12 Provision of Security

1. The Arbitrator may direct the parties to provide security for the costs of the reference in the amounts and at the times nominated by the Arbitrator. The security shall be deposited and applied as directed by the Arbitrator.
2. The Arbitrator may make any direction which he or she considers appropriate if a party defaults in the provision of security.

PART III THE ARBITRATION PROCEDURE

RULE 13 Preliminaries not to Prejudice Scope of Arbitration

Unless otherwise agreed in writing by the parties:

1. Any description of a claim in a Notice of Dispute under Rule 6 or in a description submitted under Rule 8 (1)(d) shall not define or limit the scope of the arbitration.
2. Any party may include in its pleadings or contentions any other dispute or difference which may be referred to arbitration under the Agreement.
3. Any subsequent amendment or addition to the claims made in the pleadings or contentions will be in the discretion of the Arbitrator.

RULE 14 General Duty of Arbitrator

1. The Arbitrator must conduct the arbitration in accordance with the Overriding Objective, and shall adopt procedures suitable to the particular case, avoiding unnecessary delay and expense so as to provide a fair, expeditious and cost-effective process for determination of the dispute.
2. The Arbitrator shall be independent of, and act fairly and impartially as between the parties, giving each party a reasonable opportunity to put its case and to respond to that of any opposing party, and a reasonable opportunity to be heard on the procedure adopted or proposed to be adopted by the Arbitrator.

RULE 15 General Duty of Parties

1. The parties must do all things in the course of the arbitration:
 - a. for the arbitration to be conducted in accordance with the Overriding Objective; and
 - b. necessary for the fair, expeditious and cost-effective conduct of the arbitration.
2. The parties must comply without delay with any direction or ruling by the Arbitrator as to procedural or evidentiary matters.
3. Where appropriate, the parties shall without delay take any necessary steps to obtain a decision of a Court on any question of jurisdiction or law.

RULE 16 Waiver of Right to Object

1. If a party to an arbitration takes part, or continues to take part, in the arbitration without objecting within a reasonable time that:
 - a. the Arbitrator lacks jurisdiction;
 - b. the arbitration has been improperly conducted;
 - c. there has been a failure to comply with the Agreement; or
 - d. there has been any other irregularity affecting the Arbitrator or the arbitration,

then that party shall be deemed to have waived its right to make such objection later, before the Arbitrator or a Court, unless it shows that, at the relevant time it did not know and could not with reasonable diligence have discovered the grounds for the objection.

2. Where:

- (a) the Arbitrator makes a ruling as to jurisdiction; and
- (b) a party to the arbitration who could have challenged that ruling in a Court does not do so within any time fixed by the Arbitrator (or if no time is fixed, within a reasonable time and not later than the conclusion of any hearing),

then that party shall be deemed to have waived any right to object later to the Arbitrator's jurisdiction on any ground which was the subject of that ruling, and shall be deemed to have submitted to the Arbitrator's jurisdiction.

RULE 17 Procedural Directions

1. Subject to any prior written agreement of the parties, the requirements of Rule 14 and paragraph 2 of this Rule, the Arbitrator shall make such directions or rulings in respect of procedural and evidentiary matters as he or she sees fit.
2. Subject to any agreement of the parties to the contrary, in order to give effect to the Overriding Objective the Arbitrator shall have, in addition to the general procedural authority in paragraph 1, the widest discretion:
 - a. to exercise procedural control of the conduct of the arbitration including the power to limit the time to be taken for any aspect of the proceedings not otherwise agreed by the parties; and
 - b. to give appropriate directions in the event of default by either party in compliance with any agreed or fixed time period, or with a procedural direction by the Arbitrator.
3. Subject to any agreement of the parties to the contrary, and without limiting the generality of paragraphs 1 and 2 of this rule:
 - a. unless the arbitration is to be conducted in accordance with the IAMA Fast Track Arbitration Rules, the provisions of Schedule 1 shall apply; and
 - b. where the arbitration is to be conducted in accordance with the IAMA Fast Track Arbitration Rules, the provisions of Schedule 2 shall apply.

RULE 18 Views and Other Material

1. The Arbitrator may view the subject matter of any dispute if the Arbitrator considers that a view may assist the Arbitrator to determine the dispute. The Arbitrator may use observations made on the view not merely to assist in understanding the evidence but also in determining the issues in dispute provided that the Arbitrator notifies the parties of any potentially adverse conclusion based solely, or in part, on those observations and affords the parties an opportunity to meet it.
2. Subject to any agreement of the parties to the contrary, the Arbitrator may obtain such technical and legal assistance or advice as the Arbitrator may reasonably require provided that the Arbitrator:
 - (i) requests the agreement of the parties before obtaining such assistance or advice; and
 - (ii) provides an opportunity to the parties to review and be heard in relation to the technical and legal assistance and advice obtained.

The cost of obtaining such assistance and advice shall form part of the costs of the reference.

RULE 19 Awards

1. The Arbitrator must deliver one or more interim awards dealing with all issues in the arbitration except for the costs of the arbitration within a reasonable time of the conclusion of the hearing.
2. At the time and as directed by the Arbitrator, the parties shall provide such evidence and submissions on which they rely on the question of costs.
3. The Arbitrator shall as soon as reasonably practicable deliver a final award including the Arbitrator's determination on the costs of the arbitration, by whom they are to be paid and the basis of assessment for the whole or any part of those costs.
4. Awards of the Arbitrator shall be made in writing, and either forwarded by mail to the parties, or the Arbitrator may advise the parties that the award may be collected at a place nominated by the Arbitrator.
5. In the event that security moneys lodged are less than the amount which the Arbitrator determines as the costs of the reference and any other amounts to be paid from that security, then the Arbitrator may withhold the award until the outstanding balance has been paid as directed by the Arbitrator.

RULE 20 Multiple Arbitrators – Appointment of Umpire

1. Where there is more than one Arbitrator then, references in these Rules to an Arbitrator shall be a reference to the Arbitrators and, subject to Rule 21, to any umpire who is appointed.
2. Where there is an even number of Arbitrators, those Arbitrators may appoint an umpire, and shall do so if the Arbitrators fail to agree on any matter for determination.
3. If the Arbitrators are unable to agree on the identity of the umpire within seven (7) days of their disagreement, then they shall notify the parties accordingly in writing. Any party may then make a written request to IAMA to nominate an umpire. IAMA shall within ten (10) days thereafter nominate an umpire and advise the parties, the Arbitrators and the nominated umpire accordingly.

RULE 21 Determination by an Umpire

1. Where an umpire is appointed under Rule 20 and the Arbitrators fail to agree on any matter for determination, then the Arbitrators shall provide the umpire with a joint written statement listing the points of agreement and disagreement, together with all written material relevant to the matter in issue including exhibits.
2. The material referred to in paragraph 1 of this Rule shall be provided to the umpire within five (5) days of written notice by the umpire of acceptance of the nomination as umpire. The Arbitrators shall, by the same time, provide copies of their written statement of the points of agreement and disagreement to the parties.
3. Unless otherwise agreed by the parties, the umpire shall proceed to deliver an award as soon as reasonably practicable taking into account the written material provided by the Arbitrators but shall not be bound by any of the points of agreement between the Arbitrators.

RULE 22 International Arbitrations

1. The Model Law shall apply to any international arbitration conducted under these Rules.
2. The provisions of Rules 1 to 21 inclusive shall also apply to any international arbitration conducted under these Rules to the extent that any such Rule or Rules are not inconsistent with the Model Law which shall prevail to the extent of any inconsistency.
3. The functions under Article 6 of the Model Law shall be performed by IAMA which may, by resolution of Council and in accordance with the Memorandum and Articles of Association of IAMA, delegate the performance of those functions to the President for the time being or the person so acting.

SCHEDULE 1

GENERAL ARBITRATION PROCEDURE

The Arbitrator may make such directions or rulings he or she considers appropriate, including in respect of the following:

1. The form and extent of any pleadings or other documents defining the issues in dispute, including the extent to which particularisation should be provided.
2. The preparation of any joint statement of issues to define and narrow the issues in dispute.
3. The holding of further Preliminary Conferences, meetings between experts and/or representatives of the parties, or Experts' Conclaves, so as to define and narrow the issues in dispute, including the time at which any such meeting shall be held and the procedure to be adopted for the conduct and the recording of the results of such meetings.
4. The preparation of joint reports by experts engaged by the parties following any meetings between such experts or any Experts' Conclave and the form and content of such joint reports.
5. The preparation of joint bundles of documents for use in any aspect of the arbitration.
6. The provision of factual information to experts for the parties for use in their joint deliberations or preparation of any joint report.
7. The manner and extent which the parties will be obliged to produce documents for inspection by any opposing party.
8. The form of any evidence in chief, by witness statement or otherwise, and the times at which it is to be provided to the Arbitrator and any other party.
9. Whether an oral hearing is required and any limitations on the hearing, including reasonable limits on oral evidence and cross examination and the provision of written opening addresses and final submissions.
10. The service of offers of settlement without prejudice except as to costs.

SCHEDULE 2

FAST TRACK ARBITRATION PROCEDURE

The arbitration shall be conducted in the following manner:

1. The particular objective of this Schedule is to enable an Arbitrator to produce an award (except as to costs) within one hundred and fifty (150) days after the Arbitrator enters upon the reference.
2. All time periods in this Fast Track Arbitration Procedure are calculated from the day after the Arbitrator enters in the reference under Rule 9.
3. On or before the 20th day the claimant shall provide the following to each other party and to the Arbitrator:
 - a. a written statement of the nature of the dispute, the legal and factual issues, its contentions as to those issues, and the amount of its claim;
 - b. all statements of evidence and copies of all documents on which it relies;
 - c. any expert report on which it relies; and
 - d. its written submissions on the legal and factual issues involved in its claim.
4. On or before the 40th day each party other than the claimant shall provide the following to the other parties and to the Arbitrator:
 - a. a written statement responding to the claimant's written statement under paragraph 3a, its statement of the nature of the dispute (including any cross claim), the legal and factual issues in the claimant's claim and any cross claim, its contentions as to those issues, and the amount of any cross claim;
 - b. all statements of evidence and copies of all documents on which it relies;
 - c. any expert report on which it relies;
 - d. any objections which it has to the statements of evidence, any expert report, and documents served by the claimant, detailing the basis of objection; and
 - e. its written submissions on the legal and factual issues involved in the claimant's claim and any cross claim.
5. On or before the 55th day, any party may reply to written material provided under paragraph 4, by providing to the other parties and to the Arbitrator:
 - a. a written statement responding to the written statement under paragraph 4a and, its reply as to the nature of the dispute, the issues likely to arise and its contentions in relation to the issues;
 - b. all statements of evidence and copies of documents in reply to material served under paragraph 4b;
 - c. any expert report in reply to material provided under paragraph 4c;
 - d. any objections to the statements of evidence, any expert report, and documents served under to paragraph 4b, detailing the basis of objection; and
 - e. its written submissions in reply on the legal and factual issues involved.
6. If a cross claim is made under paragraph 4, then on or before the 70th day the cross claimant may reply (as set out in paragraph 5) to the material served in response to the cross claim under paragraph 5.
7. The Arbitrator may direct that in the alternative to paragraphs 3c, 4c, 5c and 6:
 - a. the experts retained by the parties each be provided with the material otherwise served under paragraphs 3, 4, 5 and 6;
 - b. the Arbitrator provide a list of issues to be addressed by the experts;
 - c. the experts are to jointly confer and produce a joint report or reports; and
 - d. the form and content of any joint report shall be as directed by the Arbitrator and be provided on or before the 85th day.

8. If the Arbitrator considers it appropriate, the experts retained by the parties may be directed to attend one or more Experts' Conclaves. Any such Conclaves are to be conducted and recorded as directed by the Arbitrator, and shall be held and completed on or before the 90th day.
9. The Arbitrator may make other directions or rulings as considered appropriate, including directions or rulings referred to in paragraphs 1, 2, 3, 5, 6, 7 and 10 of Schedule 1.
10. The Arbitrator shall determine the matter based on the written material served or produced under this Schedule unless the Arbitrator determines that a hearing is necessary to explain or resolve any conflicts in the written material.
11. If the Arbitrator determines that a hearing be held, then that hearing:
 - a. shall be completed on or before the 120th day;
 - b. shall be conducted as directed by the Arbitrator, including the imposition of time limits on oral evidence, and the provision of written opening addresses and final submissions; and
 - c. may be conducted as a 'Stop Clock' arbitration if directed by the Arbitrator or agreed upon by the parties.
12. The time by which the Arbitrator is to deliver the award shall be agreed between the parties and the Arbitrator. In the absence of agreement, the arbitrator shall deliver the award on or before the 150th day. The parties acknowledge that the extent of reasons for the award by the Arbitrator shall be proportionate to the time available to the arbitrator to deliver the award.
13. Any times fixed in accordance with this Schedule may be varied by agreement of the parties. In the absence of such agreement the Arbitrator may vary the times fixed:
 - a. only in exceptional circumstances, and if the Arbitrator is satisfied that a variation of any fixed time or times is required in the interests of justice;
 - b. on such terms as to costs or otherwise as the Arbitrator considers reasonable in the circumstances;
 - c. to a maximum total period of ten (10) days to the total time fixed under these Rules for actions by each party; and
 - d. to a maximum total period of ten (10) days for actions by the Arbitrator.

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The Institute of Arbitrators & Mediators Australia (IAMA) is the nation's largest, independent and most experienced alternative dispute resolution (ADR) organisation. Founded in 1975, membership comprises some of Australia's eminent and experienced ADR professionals drawn from a diverse range of sectors including commercial, legal, education and government. With offices in all states and territories, it also plays a key role in industry and consumer schemes. The IAMA provides services in all forms of ADR including arbitration, mediation, conciliation, adjudication and expert determination, and is involved in the professional development, training and accreditation of ADR across Australia and internationally.

The Institute provides:

Dispute Resolution Services:

- Access to a wide range of highly qualified and experienced dispute resolvers, who have been graded as Arbitrators, or accredited as Mediators, Adjudicators or other ADR practitioners.
- Nomination of Arbitrators, Mediators, Adjudicators and other ADR neutrals from lists of practitioners accredited by the Institute on the basis of their training and experience and compliance with the Institute's CPD requirements.
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Other Services:

- A high quality journal, *The Arbitrator & Mediator*, which appears on the DEST list of refereed journals.
- A full colour national newsletter, *The IAMA News*, which is distributed widely throughout Australia and internationally.
- Website database of accredited and graded ADR professionals.
- Administration and presence in all jurisdictions: Chapter offices in all States and Territories which provide administrative services, as well as regular educational and networking activities, Chapter newsletters etc, with the central administration conducted from the National Office which is located in Melbourne.
- A Dispute Resolution Centre with excellent hearing rooms facility located in Sydney.
- Annual National Conference, featuring an interesting and varied program dealing with topics of interest in ADR.

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