



Arbitrators' and Mediators' Institute of New Zealand

Arbitration Rules

Preamble

These Rules (*the AMINZ Arbitration Rules*) apply where the Parties have agreed that the arbitration is to be conducted in accordance with the AMINZ Arbitration Rules.

The AMINZ Arbitration Rules comprise the following:

- this Preamble
- [Article 1 – Commencing the Arbitration](#)
- [Article 2 – Role of the AMINZ Court of Arbitration](#)
- [Article 3 – Arbitral Tribunal](#)
- [Article 4 – Challenges to the Arbitral Tribunal](#)
- [Article 5 – Emergency Arbitration](#)
- [Article 6 – Conduct of the Arbitration](#)
- [Article 7 – Costs](#)
- [Article 8 – Award\(s\)](#)
- [Article 9 – Appeals](#)
- [Article 10 – General](#)
- Arbitrators' confirmation of willingness to act
- AMINZ Stakeholder Account 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 agree otherwise) at any time prior to the appointment of the Arbitral Tribunal in terms of Article 3.

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 or notice of dispute issued in terms of the agreement to arbitrate, or commencement of arbitration proceedings in terms of Article 1) will apply to the arbitration.

Model clause

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 [New Zealand Arbitration Act 1996 and its amendments] and the AMINZ Arbitration Rules current at the time arbitration is commenced.

The place of arbitration will be [Auckland] and the law applicable to the arbitral proceedings and the matters in dispute will be [New Zealand law].



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AMINZ Arbitration Rules

Article 1 Commencing the Arbitration

10 Objectives

10.1 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, they will promote this objective with the intent of procuring an enforceable Award without undue delay and at an appropriate cost to the Parties.

10.2 The Arbitral Tribunal has the general duties at all times to:

- (a) act fairly and impartially as between the Parties, giving each a reasonable opportunity of putting its case and dealing with that of the other Parties; and
- (b) 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.

10.3 The Arbitral Tribunal shall have the widest discretion to discharge these general duties, subject to such mandatory rules of law as the Arbitral Tribunal finds to be applicable.

10.4 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.

11 Notice of commencement of arbitration

11.1 Any Party wishing to commence an arbitration under these AMINZ Arbitration Rules (*the Claimant*) is to issue a notice of its intention (*the Notice of Arbitration*) to the Executive Director of the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ) and to the other Party(ies) (*the Respondent*).

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

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- (a) the date of receipt of the Notice of Arbitration by the Respondents and by the Executive Director; and
- (b) the date of payment of the applicable application fee prescribed by AMINZ (if any),

(the Notice Date).

11.3 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;
- (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;
- (f) a summary of the dispute (including an estimation of the value of the dispute), the claims and the relief sought against the other Party(ies);
- (g) whether or not the Claimant seeks the determination of the dispute on an expedited basis in terms of Article 33 below; and
- (h) 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 (*the Arbitral Tribunal*);
 - (vi) the composition of the Arbitral Tribunal, including the full names, qualifications and contact details of any agreed arbitrator; and
 - (vii) the procedural rules for the arbitration, including rules relating to the disclosure of documents or other relevant information, the conduct of the hearing,

and 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.

11.4 The Notice of Arbitration served on the Executive Director is to be accompanied by confirmation of the time, date and means of service of the Notice of Arbitration on the Respondent.

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11.5 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.

12 Answer

12.1 The Respondent is to deliver a written response to the Notice of Arbitration (*the Answer*) within 28 days of the Notice Date.

12.2 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;
- (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 invocation of the agreement to arbitrate or to the appointment procedure and/or the arbitration process;
- (e) a brief statement of the Respondent's position in relation to the dispute, and details of any counterclaim by the Respondent, 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.

12.3 If the Respondent fails to submit an Answer within the specified time, it will be taken to have waived its right to make submissions on the composition of the Arbitral Tribunal and it will be deemed to have accepted any nomination proposed by the Claimant. Such failure will not prevent the Respondent from challenging the jurisdiction of the Arbitral Tribunal in terms of Article 4 below or to participate in the arbitration process, whether to defend any claim or to pursue any counterclaim.

12.4 Where there is more than one Respondent, this Article will apply to each, independently of the others.

13 Reply

13.1 If the Answer includes a counterclaim, the Claimant and/or other Respondent (as appropriate) shall submit a reply (*the Reply*) outlining its defence to the counterclaim within 14 days of receipt of the Answer.

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14 Party representation

- 14.1** 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 to appear where the appearance of such legal representative might arguably require the recusal of a member of the Arbitral Tribunal.
- 14.2** 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.

REPLACED

AMINZ Arbitration Rules

Article 2 Role of the AMINZ Court of Arbitration and Registrar

20 AMINZ Court of Arbitration

- 20.1** Where under an agreement to arbitrate or enactment, AMINZ is to fulfil any role or discharge any function, for example appointing the Arbitral Tribunal, the AMINZ Court of Arbitration will act on behalf of the Institute.
- 20.2** Where the President of AMINZ is identified as the appointing authority in an agreement to arbitrate or any enactment, the President will make such appointment in consultation with the AMINZ Court of Arbitration.
- 20.3** References in these Rules to AMINZ exercising any power or duty is to be read to include any power or duty vested in the President of AMINZ.

21 Registrar

- 21.1** AMINZ will, so far as the law allows, delegate its duties and functions in relation to the arbitration process, other than the power of appointment of the Arbitral Tribunal, to a person approved by the AMINZ Council to act as arbitration registrar (*the Registrar*).
- 21.2** The Registrar may be the Executive Director or other employee of AMINZ, but shall not be the President or any other sitting member of the Council of AMINZ.

22 Tribunal Secretary

- 22.1** The Arbitral Tribunal may appoint a tribunal secretary to assist with the administration of the arbitral proceedings.
- 22.2** 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.

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22.3 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.

22.4 The tribunal secretary shall be subject to the same independence, impartiality and confidentiality obligations as the members of the Arbitral Tribunal.

23 Decisions of the President, the AMINZ Court of Arbitration and the Registrar

23.1 The President, the AMINZ Court of Arbitration and the Registrar shall discharge their respective functions in a fair and efficient manner in accordance with the provisions of these Rules and any mandatory provisions of any applicable enactment consistent with the objectives outlined in Article 10 above.

23.2 The decisions of the President, the AMINZ Court of Arbitration and the Registrar under these Rules are conclusive and binding on the Parties, and they are not required to give reasons for such decisions, unless the AMINZ Court of Arbitration decides otherwise.

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AMINZ Arbitration Rules

Article 3 Arbitral Tribunal

30 Appointment of the Arbitral Tribunal

30.1 AMINZ will appoint the Arbitral Tribunal in accordance with the procedure outlined in this Article 3.

30.2 The arbitrators appointed by AMINZ will comprise:

- (a) any arbitrator agreed between the Parties, and failing agreement;
- (b) an arbitrator nominated by the AMINZ Court of Arbitration; and

if the agreement to arbitrate or any enactment provides that the Arbitral Tribunal is to comprise more than one arbitrator,

- (c) any arbitrator(s) proposed by the Parties; and/or
- (d) such further arbitrator(s) as the AMINZ Court of Arbitration may nominate.

30.3 Where the AMINZ Court of Arbitration is to nominate a member of the Arbitral Tribunal in terms of this Article 3, the following procedure shall apply:

- (a) Within 14 days of the Notice Date, the AMINZ Court of Arbitration is to provide to each Party with a list of five potential arbitrators, made up as follows:
 - (i) at least one arbitrator nominated by each of the Parties (if any); and
 - (ii) such further arbitrators as required, nominated in accordance with [the AMINZ Appointments Policy](#).

If a Party has not nominated an arbitrator, or if they nominate an arbitrator who does not meet the criteria in [the AMINZ Appointments Policy](#), then the AMINZ Court of Arbitration will make such nomination in substitution as it deems appropriate.

- (b) Within 14 days of receipt of such list, each Party is to return the list to the Registrar (with no obligation to copy any other Party), identifying not more than two of the nominees to which it objects, and ranking the remaining nominees in order of preference, (1) being the preferred nominee and (3) the least preferred.
- (c) On the expiry of the period referred to above, the AMINZ Court of Arbitration will make the appointment from the lists returned to it, in accordance with the preferences indicated by the Parties.
- (d) If the AMINZ Court of Arbitration is unable to make the appointment in accordance with the above procedure for any reason, it is to proceed to make the appointment in accordance with [the AMINZ Appointments Policy](#), which may include appointing an arbitrator not on the list provided to the Parties or to which a Party has objected.

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- 30.4** 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).
- 30.5** All members of the Arbitral Tribunal shall complete the declaration of willingness and statement of impartiality and independence in the form attached on confirmation of nomination by AMINZ. The appointment of the Arbitral Tribunal will be confirmed by the Registrar on receipt of the completed declarations by all the nominated arbitrators.
- 30.6** 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.
- 30.7** If a member of the Arbitral Tribunal is to be replaced, whether as a result of a disclosure in terms of Article 32.2 below or because he or she has died, become incapacitated or resigned of his or her own volition, then AMINZ will nominate a replacement arbitrator within 14 days, and this Article 30 is to apply (as appropriate) to such nomination. Any such replacement will be appointed with such urgency as the circumstances require.

31 Composition of the Arbitral Tribunal

- 31.1** Where the Parties have their place of business in different States, a sole arbitrator or the presiding arbitrator (if the Arbitral Tribunal comprises more than one arbitrator) is not to be of the same nationality as any Party, unless all parties agree otherwise.
- 31.2** Notwithstanding any agreement to the contrary, no Party may unilaterally nominate a sole arbitrator or the presiding arbitrator (if the Arbitral Tribunal is to comprise more than one arbitrator).
- 31.3** 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 Claimants and/or all Respondents not have agreed to a nominee for appointment to the Arbitral Tribunal,

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

- 31.4** Members of the AMINZ Court of Arbitration may only be appointed if nominated by a Party.

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31.5 If a member of the AMINZ Court of Arbitration is appointed, they will take no further part in any decision or other function of the AMINZ Court of Arbitration related to the arbitration (the AMINZ Council appointing an alternative for those functions, if necessary).

32 Duties of Arbitral Tribunal

32.1 The Arbitral Tribunal shall, 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, nor is any member to have any direct contact with any Party or their legal representatives in relation to the arbitration or the dispute, save through the Registrar as part of the arbitral proceedings.

32.2 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. The AMINZ Court of Arbitration, 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.

32.3 In addition to the powers outlined elsewhere in these Rules, 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, any points of claim, points of defence and counterclaim (if any) or defence to it or Reply;
- (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, bifurcate proceedings, 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;

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- (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).

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

33 Expedited arbitration

33.1 The arbitration may be conducted on an expedited basis, provided the following criteria are met:

- (a) the Arbitral Tribunal comprises a sole arbitrator; and
- (b) the Claimant has sought an expedited arbitration in the Notice of Arbitration; and
- (c) the matters in dispute (comprising the aggregate of the claim and any counterclaim) do not exceed \$2,000,000.00 (excluding GST); and
- (d) the issues raised in the claim and any counterclaim do not raise significant disagreements of fact or complex legal issues.

33.2 Within 14 days of receipt of a Notice of Arbitration seeking expedited arbitration, the AMINZ Court of Arbitration will consider whether or not the arbitration is suitable for determination on an expedited basis in the context of the criteria outlined in Article 33.1 above, and will notify the Parties accordingly.

33.3 Where an arbitration is to be conducted on an expedited basis, the following will apply:

- (a) Pending appointment of the Arbitral Tribunal, the AMINZ Court of Arbitration may provide for truncated periods for submissions or other actions of the Parties.
- (b) The Arbitral Tribunal may determine whether or not the dispute is to be determined on the papers only.
- (c) An interim award, with summary reasons, is to be provided within one month of the final submission by the Parties on the substance of the dispute and the final award, including determination of costs issues and with reasons on the substance of the dispute, within two months following the last of the submissions of the Parties.

33.4 The provisions of this Article 33 will prevail over any agreement to the contrary entered into by the Parties prior to the Notice Date.

33.5 If for any reason the Arbitral Tribunal comes to the view that the criteria outlined in Article 33.1 above no longer prevail, or that the expedited procedure is no longer

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appropriate, then the Arbitral Tribunal may order that the arbitration will be conducted in accordance with such further procedures as it determines is appropriate.

34 Consolidation of Arbitral Proceedings

- 34.1** 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 Article 30.5 above, appoint the same Arbitral Tribunal to determine the dispute.
- 34.2** Where arbitral proceedings have arbitral tribunals composed of the same arbitrators and the 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 Article 34.1 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.
- 34.3** When arbitrations are consolidated in terms of Article 34.2(a) above, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

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Article 4 Challenges to the Arbitral Tribunal

40 Replacement of members of the Arbitral Tribunal

- 40.1** The AMINZ Court of Arbitration may revoke any arbitrator's appointment (including an Emergency Arbitrator) on its own initiative, at the written request of all other members 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) becomes unwilling, unable or unfit to act; or
 - (c) circumstances exist that give rise to justifiable doubts as to that arbitrator's impartiality of independence.
- 40.2** Any challenge by a Party under Article 40.1 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). The AMINZ Court of Arbitration 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, The AMINZ Court of Arbitration will revoke that arbitrator's appointment, without the need for giving reasons.
- 40.3** If the AMINZ Court of Arbitration upholds the challenge, it will revoke that arbitrator's appointment (with reasons) and it will nominate a replacement arbitrator as soon as practicable, taking into account the circumstances of the case. Article 3 above is to apply to such appointment, in so far as it is relevant.
- 40.4** The arbitrator whose appointment has been revoked is entitled to be paid a fair and reasonable fee as determined by the AMINZ Court of Arbitration for the services performed to the date of such revocation, unless the AMINZ Court finds there are exceptional circumstances which warrants an alternative basis for remuneration.
- 40.5** Pending appointment of a replacement arbitrator, the remaining members of the Arbitral Tribunal will continue the arbitration.
- 40.6** Where a sole or the presiding arbitrator is replaced, any hearings previously held shall be repeated.
- 40.7** Where any other arbitrator is replaced, the Arbitral Tribunal shall determine whether any hearings are to be repeated at its discretion.
- 40.8** Any order or ruling made by the Arbitral Tribunal prior to the replacement of an arbitrator under this Article 40 is not invalid solely because there has been a challenge in the composition of the Arbitral Tribunal, and the Arbitral Tribunal may revoke or vary any such order or ruling at its discretion.

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41 Challenges to the Arbitral Tribunal

- 41.1** The Parties agree to make any challenges to the jurisdiction of the Arbitral Tribunal (on any grounds) promptly, and in any event to give notice of such challenge within 28 days of the event giving rise to the challenge. The Parties will have waived all and any right to lodge a challenge if such notice is given after the expiry of such time period.

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Article 5 Emergency Arbitration

50 Interim measures and preliminary orders

- 50.1** 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 or preliminary orders.
- 50.2** The application under Article 50.1 above should be made electronically and in the case of an application for preliminary orders must, save where to give notice would defeat the entire purpose of the application, be copied to the other Parties at the same time as it is submitted to AMINZ.
- 50.3** Any application for interim measures or preliminary orders made after the appointment of the Arbitral Tribunal will, unless there are exceptional circumstances, be dealt with by the Arbitral Tribunal.
- 50.4** 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 12.2 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 or preliminary orders sought, and the reasons for them to be dealt with as a matter of urgency, rather than by the Arbitral Tribunal; and
 - (d) whether or not the application is to be heard on notice to the other Parties, and if not why not.
- 50.5** The AMINZ Court of Arbitration will determine the application as expeditiously as possible, and if granted will appoint an Emergency Arbitrator in terms of Article 51 below within 48 hours of the later of receipt of the application and payment of the relevant advance against the Emergency Arbitrator's costs and expenses.

51 Appointment of the Emergency Arbitrator

- 51.1** The AMINZ Court of Arbitration will appoint the Emergency Arbitrator in accordance with [the AMINZ Appointments Policy](#).
- 51.2** 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.
- 51.3** 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.

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51.4 The Emergency Arbitrator is to comply with Article 32 above, and these Rules generally, in so far as they are relevant to the circumstances.

52 Proceedings of the Emergency Arbitrator

52.1 The Emergency Arbitrator is to conduct the emergency proceedings in the manner which he or she determines to be appropriate in the circumstances, taking into account:

- (a) the interim measures and/or preliminary orders 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.

52.2 The Emergency Arbitrator may grant the interim relief or preliminary orders without notice to the other Parties and without the requirement for an oral hearing.

52.3 The Emergency Arbitrator is to determine the application and issue an award no later than 14 days following the date of application in terms of Article 50.1 above.

52.4 The award of the Emergency Arbitrator shall be in writing and provide reasons.

53 Effect of an award of the Emergency Arbitrator

53.1 The Emergency Arbitrator shall be considered to be an *arbitral tribunal* under the applicable law, and until such time as the Emergency Arbitrator's award is varied, discharged or revoked as contemplated in Article 53.2 below, such award shall be binding on the Parties and the Parties agree to comply with the award without delay.

53.2 The Emergency Arbitrator's award (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.

53.3 If the Arbitral Tribunal is appointed before the Emergency Arbitrator issues the award, the Emergency Arbitration proceedings are not to be stayed, and the Arbitral Tribunal will not make any order discharging the Emergency Arbitrator's appointment, or discharging, revoking or varying any order or award of the Emergency Arbitrator under Article 52.1 above until the Emergency Arbitrator has issued an award in relation to the interim measures and/or preliminary orders.

53.4 Any interim measures or preliminary orders made by the Emergency Arbitrator will expire automatically, and shall be of no effect, unless confirmed by the Arbitral Tribunal within 60 days of its appointment.

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Article 6 Conduct of the Arbitration

60 Preliminary Conferences and Procedural Orders

- 60.1** The Arbitral Tribunal is to arrange a preliminary conference (whether in person or by telephone or video conference) within 30 days of notification of appointment of the Arbitral Tribunal in terms of Article 30.5 above.
- 60.2** 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) holding an issues hearing (a Kaplan Opening, or KO) as a preliminary step to enable the Parties to present their respective cases in outline;
 - (c) timetabling the submission of the Points of Claim and Defence, Points of Claim for any Counterclaim and defence and the exchange of witness statements, supporting documentation and submissions in support;
 - (d) disclosure of documentation;
 - (e) appointment and use of experts;
 - (f) the seat of the arbitration, and the location and timing of any hearing;
 - (g) the requirement for any interim measures or preliminary orders;
 - (h) the requirement for any interim or partial award; and
 - (i) treatment of costs of the arbitration.
- 60.3** The Arbitral Tribunal will consider any such proposals, and any related submissions in making its procedural orders.

61 Rules of evidence

- 61.1** The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence.
- 61.2** 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 are relevant and material to the dispute at a time, manner and form in which the Arbitral Tribunal may reasonably determine.
- 61.3** Unless the Parties agree otherwise, and subject to the provisions of these Rules which may provide to the contrary, the Arbitral Tribunal shall have regard to, but not be bound by, [the IBA Rules of Evidence](#) as current at the Notice Date.

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62 Submissions of the Parties

- 62.1** Unless otherwise agreed by the Parties, or directed by the Arbitral Tribunal, all submissions of the Parties are to be made in accordance with this Article 62.
- 62.2** 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;
 - (b) the legal grounds or arguments supporting the claim;
 - (c) the Claimant's contentions on the factual and legal issues involved in the claim; and
 - (d) the relief claimed, together with the amount of all quantifiable claims.
- 62.3** The Points of Claim shall be accompanied by:
- (a) subject to Article 61 above, and to the extent not submitted, the documents on which the Claimant relies;
 - (b) if the Claimant intends to rely on witness testimony from any fact witness(es), their sworn witness statement(s) in accordance with Article 64 below;
 - (c) if the Claimant intends to rely on expert opinion from any expert witness(es), their sworn expert report(s) in accordance with Article 65 below; and
 - (d) the legal authorities on which the Claimant relies.
- 62.4** 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;
 - (b) the legal grounds or arguments supporting the defence and any counterclaim;
 - (c) the Respondent's contentions on the factual background and legal issues involved in the claim and any counterclaim; and
 - (d) the relief claimed, together with the amount of all quantifiable counterclaims.
- 62.5** The Points of Defence (and Counterclaim, if any) shall be accompanied by:
- (a) subject to Article 61 above, and to the extent not submitted, the documents on which the Respondent relies;
 - (b) if the Respondent intends to rely on witness testimony from any fact witness(es), their sworn witness statement(s) in accordance with Article 64 below;
 - (c) if the Respondent intends to rely on expert opinion from any expert witness(es), their sworn expert report(s) in accordance with Article 65 below; and
 - (d) the legal authorities on which the Claimant relies.

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- 62.6** 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 Article 62.2 above, the requirements of Article 62.4 above apply *mutadis mutandis* to the Claimant's Points of Defence to the Counterclaim.
- 62.7** A Party may amend its Points of Claim, Defence, Counterclaim or other submissions, unless the Arbitral Tribunal considers the delay or otherwise in making it such amendment may cause 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.
- 62.8** 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.
- 62.9** All submissions referred to in this Article 62 are to be accompanied by copies of all supporting documents which have not previously been submitted by any Party.
- 62.10** 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.
- 62.11** If the Respondent fails to submit its Points of Defence, 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.

63 Seat of Arbitration and Place of Hearing

- 63.1** Subject to any agreement between the Parties, the Arbitral Tribunal is to determine the seat of the arbitration and the location and timing of the hearing, on the basis of convenience to the Parties and the Arbitral Tribunal.
- 63.2** The Arbitral Tribunal is also to determine the number, location and means of any hearings. 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.
- 63.3** Unless the Parties agree otherwise, the arbitral proceedings are to be conducted in the English language.

64 Witnesses

- 64.1** Unless otherwise agreed by the Parties, or directed by the Arbitral Tribunal, the Parties shall exchange witness statements, outlining the evidence which each witness is to

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give, in accordance with Article 62 above. The Parties must then confirm which of the other Parties' witnesses are required to appear to be cross-examined on their evidence.

64.2 Unless the Arbitral Tribunal directs otherwise, witness statements will be confirmed by the witness and, subject to any corrections, will be taken as read. Each witness may then be cross-examined on its evidence and/or questioned by the Arbitral Tribunal, as appropriate.

65 Experts

65.1 Where a Party is to rely on the opinion of an expert, that Party is to submit that expert's sworn report in accordance with Article 62 above.

65.2 Any such expert report is to contain the following:

- (a) the name, qualifications, expertise and experience;
- (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 counsel or a member of the Arbitral Tribunal; and
- (f) confirmation that the conclusions in the report are the genuine belief of the expert on the questions put to the expert.

65.3 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 counsel 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.

65.4 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 Article 65.3

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above, and any other matters which they believe are relevant to their expertise. The experts are then to be available at the hearing to be cross-examined on their findings.

65.5 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.

65.6 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.

66 Additional Powers of the Arbitral Tribunal

66.1 To the fullest extent permitted by the applicable law, the Arbitral Tribunal has all the powers in [article 17A](#) (*interim measures*), [17C](#) (*preliminary orders*) and [clause 3](#) (*conduct of the arbitration*) of Schedule 1 and Schedule 2, respectively, of the Arbitration Act 1996 of New Zealand.

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Article 7 Costs

70 Advance on costs and expenses

70.1 The Arbitral Tribunal (and the AMINZ Court of Arbitration, in respect of the Emergency Arbitrator, for the purposes of this Article 7), may fix an amount to be paid by way of an advance on the costs and expenses of:

- (a) the Arbitral Tribunal (including the costs of any tribunal secretary appointed in terms of Article 22 above);
- (b) the AMINZ Court of Arbitration (if any); and
- (c) the Registrar (if adopted).

Such advance will be held by AMINZ in its stakeholder account, in accordance with the provisions of the AMINZ stakeholder protocol attached.

70.2 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.

70.3 If there is any delay to the payment of such costs, the Arbitral Tribunal will be paid out of the amount held in the stakeholder account, and it is entitled to suspend undertaking any further work on the arbitration until the stakeholder account has been reimbursed with the amount paid out.

71 Cancellation

71.1 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.

72 Costs of the Arbitration

72.1 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](#).

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Article 8 Award(s)

80 Separate, interim or partial awards

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

81 Majority decisions

- 81.1** 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.
- 81.2** 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.

82 Consent awards

- 82.1** 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.
- 82.2** Such a consent award will record that it is entered at the request of the Parties, and will not contain reasons.

83 Correction of awards

- 83.1** The Arbitral Tribunal will, on the application of any Party or of its own volition, within 30 days of the issue of an award:
- (a) correct any computational or typographical error;
 - (b) clarify any ambiguity or correct any omission or mistake of a similar nature; and
 - (c) make an additional award in relation to any claim or counterclaim not covered in the award.

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Article 9 Appeals

90 Appeals on questions of law

- 90.1** Subject to Articles 53.2 above, 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.
- 90.2** Notwithstanding the foregoing, where the Parties have agreed prior to the Notice Date that any Party may appeal an order or award on a question of law, such appeal shall be referred to the AMINZ Arbitration Appeals Tribunal in terms of Article 91 below.

91 AMINZ Arbitration Appeals Tribunal

- 91.1** 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.
- 91.2** Any such appeal is to be lodged within 21 days of the relevant order (whether by the Emergency Arbitrator or the Arbitral Tribunal), partial award or the final award of the Arbitral Tribunal.
- 91.3** 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.
- 91.4** 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 decide the issues which would otherwise have been remitted.

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Article 10 General

100 Glossary

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

AMINZ and the *Institute* 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 Article 9 and the AMINZ Arbitration Appeals Tribunal Rules current at the Notice Date.

AMINZ Court of Arbitration and the *AMINZ Court* is the court of arbitration appointed by the Council of AMINZ.

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

AMINZ Costs Rules are the AMINZ Rules for Awarding Costs in Arbitration current at the Notice Date.

Arbitral Tribunal is defined in Article 11.3.

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 Article 11.1.

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

Emergency Arbitration is the arbitration proceedings instituted in terms of Article 4

Emergency Arbitrator is appointed in terms of Article 51.

Notice Date is defined in Article 11.2.

Notice of Arbitration is the notice issued in terms of Article 11.1.

Party and *Parties* is defined in the Preamble.

President is the President for the time being of AMINZ.

Registrar is defined in Article 21.

Respondent is defined in Article 11.3.

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101 Communications

101.1 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, the President, the Registrar or the Arbitral Tribunal) are to be:

- (a) in writing;
- (b) in the English language (unless the Parties agree otherwise); and
- (c) copied to the Registrar and all other Parties contemporaneously, save where a Party is making an application for interim measures without notice (*ex parte*) in terms of Article 50 above.

101.2 All communications are to be delivered either electronically to the electronic address provided or by courier or by hand to the physical address, in each case provided by the recipient or if not expressly provided, by that means or to that address as the recipient has previously used in connection with the arbitration.

101.3 The Parties may change their addresses for the receipt of communications by written notice to the other parties and to the Registrar, provided such address is no less convenient for the purposes of the arbitration.

101.4 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.

101.5 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 midnight 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.

101.6 A communication is in writing if it is capable of being saved, reproduced and read (using industry standard software, if the communication is electronic).

101.7 If physical copies are delivered, they are to be provided in sufficient number for each member of the Arbitral Tribunal, the Registrar and each Party to have a copy, and in a format which enables each of them to conveniently make further copies if required.

102 Confidentiality

102.1 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.

102.2 To that end, the Parties will use all reasonable endeavours:

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- (a) 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, rather than by reference to the courts; and
- (b) when instituting any court proceedings (whether challenging any part of the arbitral proceedings or enforcing any award, including by an Emergency Arbitrator, or otherwise) to apply 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.

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

REPLACED

AMINZ Arbitration Rules

NOTICE OF WILLINGNESS TO ACT AND

STATEMENT OF IMPARTIALITY AND INDEPENDENCE

FOR APPOINTMENTS BY THE ARBITRATORS' AND MEDIATORS' INSTITUTE OF NEW ZEALAND INC.

REF:

Parties

Party 1

Party 2

1. I confirm my willingness to act as arbitrator.
2. Upon acceptance, I undertake to act in accordance with the AMINZ Code of Ethics, and I accept that the AMINZ Rules as to professional misconduct and disciplinary matters will apply to me whilst acting in relation to this appointment.
3. I declare that: (*Please delete whichever of the following two statements does not apply*)
 - I am independent of each of the parties and intend to remain so; and that, to the best of my knowledge, there are no circumstances, past or present, likely to give rise to any doubts as to my impartiality or independence in the eyes of either/any of the parties.
 - I am independent of each of the parties and intend to remain so, but I wish to draw to your attention the following circumstances, which I hereafter disclose because I consider that they may be likely to give rise to doubts as to my impartiality or independence in the eyes of either/any of the parties. (Use separate sheet.)
4. There are no known health issues that may affect my ability to perform in this role.
5. I undertake to disclose to all the parties, any circumstances arising in the future which may be likely to give rise to any doubts as to my impartiality or independence in the eyes of either/any of the parties, until the process is concluded.

The duty to disclose whether there be any reason that may give rise to the nominee's impartiality or independence is an ongoing duty.

_____ Date: _____

Name of nominee:

delete as applicable. Which of the declarations you delete will be determined after you have taken into account, inter alia, whether there exists any past or present relationships, direct or indirect, with any of the

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parties or any of their counsel, whether financial, professional or of another kind. Any doubt should be resolved in favour of disclosure.

REPLACED

AMINZ Arbitration Rules

AMINZ STAKEHOLDER PROTOCOL

Introduction

This protocol is to be read together with the AMINZ Arbitration Rules.

The Parties have engaged in arbitration and the Arbitral Tribunal has been appointed to conduct the arbitration.

The Parties are required to pay an advance on:

- any costs and expenses imposed by the AMINZ Court for discharging its functions under the Rules,
- the Registrar's costs and expenses, if the Registrar is utilised for the arbitration, and
- the Arbitral Tribunal's costs and expenses (including the Tribunal Secretary's costs and expenses)

(together with any and all further sums of money as may be requested in due course, and costs and expenses) to be held as a fund from which the fees and expenses of the Arbitral Tribunal will be met.

The advance will be held by AMINZ as stakeholder.

Stakeholder Account

1. The Parties are to pay AMINZ such amounts determined by the Arbitral Tribunal from time to time as an advance on the costs and expenses (*the advance*) to be held on the terms of this agreement.
2. The Institute will hold the advance in an account at the Bank of New Zealand, Wellington, Account No. 02-0568-0419074-26, which account is known as the Arbitrators' & Mediators' Institute Stakeholder Account (*the stakeholder account*).
3. The advance will be held by AMINZ in the stakeholder account until a direction in writing is received from the Arbitral Tribunal as to its payment.
4. The Arbitral Tribunal will be entitled at any time during the process to give a written direction to AMINZ for payment of all or such part of the advance as the Arbitral Tribunal may direct in order to meet the costs and expenses.
5. Every direction by the Arbitral Tribunal to the Institute for payment of the advance from the stakeholder account must be:
 - (a) in writing; and
 - (b) accompanied by a copy of the invoice or invoices rendered to the for the costs and expenses; and
 - (c) copied to the Parties.

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6. Any and all directions by the Arbitral Tribunal to the AMINZ for payment of costs and expenses from the advance will be binding on AMINZ and the Parties. AMINZ will be under no obligation, nor will it incur any liability whatsoever arising out of or consequent upon any payment made following a direction by the Arbitral Tribunal.
7. AMINZ will pay the Arbitral Tribunal, or will make any other payment as the Arbitral Tribunal directs, from the advance within three working days after receipt of the Arbitral Tribunal's direction.
8. If the advance is expended, or the Arbitral Tribunal decides that it will not be sufficient to meet the costs and expenses, the Parties will make such further payment to the stakeholder account as the Arbitral Tribunal may direct.
9. If the advance is insufficient to meet a direction by the Arbitral Tribunal for payment then AMINZ will:
 - (a) pay the remaining amount of the advance as the Arbitral Tribunal may direct; and
 - (b) advise the Parties and the Arbitral Tribunal that the advance was insufficient to pay the costs and expenses, as directed.
10. AMINZ will not at any time or in any circumstances be liable to pay anything more than the amount of the advance held from time to time.
11. All sums paid out of the advance, as directed, will be credited against the costs and expenses.
12. Should any balance of the advance remain in the stakeholder account at the conclusion of the arbitration, after payment of all costs and expenses (*the residue*), then the Arbitral Tribunal will issue a direction in writing to AMINZ as to the allocation and payment of the residue to the Parties.
13. AMINZ shall retain all interest earned on the advance, and to transfer such interest to its own bank account at such time or times as interest is credited to the stakeholder account.