



## AGREEMENT TO ACT AS ARBITRAL SECRETARY

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### AND STATEMENT OF AVAILABILITY, INDEPENDENCE, AND IMPARTIALITY

**Case No:**

The Arbitral Tribunal has proposed that I, \_\_\_\_\_  
Arbitral Secretary in this matter.

be appointed to act as

**I confirm that:**

- (a) I have been informed by the Arbitral Tribunal as to the names of the Parties and their Representatives and I have familiarised myself with the NZIAC Arbitration Rules and these Terms of Agreement;
- (b) I am ready, willing, and able to devote sufficient time, diligence, and effort to act as Arbitral Secretary in this matter;
- (c) I am impartial and independent of the Parties to the Arbitration. To the best of my knowledge there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence in the eyes of any of the Parties;
- (d) I undertake to assume a continuing duty to immediately disclose to the Arbitral Tribunal any circumstances arising in the future which may be likely to give rise to justifiable doubts as to my impartiality or independence in the eyes of any of the Parties, which duty continues until the Arbitration is concluded;
- (e) I undertake to act in accordance with the NZIAC Arbitration Rules and the further terms and conditions set out in this Agreement; and
- (f) my *curriculum vitae* attached to this Agreement is current and all facts and matters disclosed therein are true and correct in all respects.

**DUTIES**

The Arbitral Secretary shall perform such tasks as the Arbitral Tribunal or the Presiding Arbitrator may assign, which may include, but are not limited to:

- (a) organising and maintaining the Arbitral Tribunal's files and documents;
- (b) attending hearings and meetings, taking notes or minutes, and recording evidence and exhibits;

- (c) 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 minutes, procedural orders, and non-substantive parts of Awards, and proof-reading any procedural orders or Awards that may be rendered by the Arbitral Tribunal;
- (d) 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, checking authorities cited by the Parties, and research on specific factual or legal issues on the record; and
- (e) providing other support to the Arbitral Tribunal or to its members at any time, including during hearings and deliberations which the Arbitral Secretary may attend.

The Arbitral Secretary shall, at all times, act strictly under the direction, instruction, control, and supervision of the Arbitral Tribunal.

The Arbitral Secretary shall not exceed the scope of the tasks assigned to him or her.

Under no circumstances shall the Arbitral Secretary perform any decision-making function, enter into any discussion of the merits, or otherwise attempt to influence the Arbitral Tribunal's decision in any manner.

#### **APPOINTMENT AND REMOVAL OF ARBITRAL SECRETARY**

The Arbitral Tribunal may, after consulting with the Parties, appoint or remove a secretary at any stage of the Arbitration in terms of Rules 19.13-19.14.

A party may challenge the Arbitral Secretary's continuing appointment only for reasons which it becomes aware of after the appointment has been made. The procedure for challenge of an arbitrator set out in Rules 7.2-7.7 shall apply *mutatis mutandis* to reflect the different context.

If for any reason a substitute Arbitral Tribunal Secretary needs to be appointed, the procedure in Rule 19.14 shall apply.

#### **PAYMENT**

As a general principle, the use of an Arbitral Secretary should reduce rather than add to the overall costs of the Arbitration.

The Arbitral Secretary shall be remunerated by the Arbitral Tribunal for time engaged on the duties of the Arbitration at the rate of NZ\$..... per hour (including GST, value added tax, or any other similar tax, if any).

The Arbitral Secretary shall be reimbursed by the Parties for the actual and reasonable costs and expenses incurred in relation to the provision of the Arbitral Secretary's duties upon receipt and verification by the Arbitral Tribunal of supporting invoices and receipts.

The Parties are jointly and severally liable for the costs and expenses of the Arbitral Secretary.

The Arbitral Secretary shall submit invoices to the Arbitral Tribunal on a bi-monthly basis.

The Arbitral Tribunal may instruct the Registrar to apply the advances and deposits paid by the Parties as security for the Arbitral Tribunal's Fees and Expenses towards payments to the Arbitral Secretary and render an updated statement of accounting to the Parties.

The Arbitral Tribunal shall determine any disputes or differences concerning the Arbitral Secretary's fees or expenses at its sole discretion. Where an Arbitral Secretary is removed, the

Arbitral Tribunal shall decide the amount of Fees and Expenses (if any) that it considers appropriate to be paid to the removed Arbitral Secretary in the circumstances.

### **CONFIDENTIALITY**

I have read and understand that I am bound by Rules 38.2-38.7. of the NZIAC Arbitration Rules. I understand that by being involved in, or being privy to, NZIAC Arbitration, I am bound by these Rules.

I understand that I am not to disclose any information obtained in the course of the Arbitration, including the fact of the Arbitration itself, except in accordance with Rules 38.4-38.7.

I understand that I owe all Parties, NZIAC, the Arbitral Tribunal, and any other non-parties involved in the Arbitration, a duty of confidence, and that failure to comply with this duty may result in legal consequences.

I understand that if I intend to make a disclosure of any Confidential Information, I must notify all persons listed in Rule 38.5.

### **EXCLUSION OF LIABILITY**

The Arbitral Secretary will not be under any legal obligation to make any statement to any person about any matter concerning the Arbitration, nor shall any Party seek to call the Arbitral Secretary to give evidence in any legal proceedings arising out of or in connection with the Arbitration.

The Parties shall accord the Arbitral Secretary with the same immunity as that accorded to the Arbitral Tribunal under Rules 39.1-39.5.

**Dated this** \_\_\_\_\_ day of \_\_\_\_\_ (month) \_\_\_\_\_ (year)

**Signed:** \_\_\_\_\_

**Name:** \_\_\_\_\_