

**County Court / Resolution Institute Arbitration Scheme**

**Arbitration Agreement where Arbitrator is not Agreed**

**Between**

\*\*\*\*

**And**

\*\*\*\*

**(The parties)**

**And**

\*\*\*\*

**(The Arbitrator)**

**Arbitration Agreement**

**Recitals:**

- A) Whereas the parties are parties to a proceeding being conducted in the Victorian County Court, being Proceedings number \*\*\*\*\* (**the Proceeding**);
- B) The parties have agreed that all questions arising in the Proceeding shall proceed by way of an arbitration under the Commercial Arbitration Act 2011 (Vic) (**the Arbitration**);
- C) The parties agree the Chairperson of Resolution Institute shall appoint the arbitrator in the event they do not agree on the identity of the arbitrator from an arbitrator who has indicated he or she will agree to be part of the County Court/RI Arbitration Scheme as described in this agreement (**the Arbitrator**);
- D) The parties have agreed the County Court of Victoria will be the supervising court;
- E) The parties agree to an expedited arbitration process and acknowledge that process imposes limits and constraints on the process leading up to and of the arbitration hearing time and
- F) For the avoidance of doubt, this agreement, which includes Annexure 1, is an arbitration agreement under the *Commercial Arbitration Act 2011 (Vic)*.

**The Parties agree:**

- 1) The Arbitration is to be conducted by the Arbitrator.
- 2) The Arbitrator shall be paid equally by the parties:
  - (a) at the rates and to the capped amount as set out in Annexure 1;

- (b) the Arbitration will, unless the parties agree otherwise, be concluded to award (other than on costs) in the period as set out in Annexure 1 (**the Agreed Maximum Arbitration Period**);
  - (c) the procedure for the Arbitration shall be as set out in Annexure 1 and otherwise as set by the Arbitrator in his or her sole discretion. In exercising that discretion, the Arbitrator will hold paramount the parties' agreement that the Arbitration is to be concluded in the Agreed Maximum Arbitration Period.
- 3) The supervising court of the Arbitration shall be the County Court of Victoria.
- 4) All costs incurred in the Proceeding are to be taken as cost in the Arbitration and may be awarded as between the parties as the Arbitrator determines.
- 5) Save where amended by this Agreement, the Resolution Institute 2020 Arbitration Rules (**the RI Rules**) are agreed to apply to the Arbitration.
- 6) Rules 3 and 4 of the RI Rules are deleted and the Arbitration is agreed to commence on the making of this agreement.
- 7) Rule 8.2 of the RI Rules is deleted and replaced with:

If the parties have not reached an agreement on the choice of a sole arbitrator within 14 days of the making of this agreement the Arbitrator shall be the nominee of the Chairperson of the Resolution Institute and Rule 41.2 shall apply.
- 8) Rule 41.2 of the RI Rules is amended by the replacement of the word "10%" with the word "5%" being the nomination fee payable to the Resolution Institute.
- 9) Except in the case of fraud:<sup>1</sup>
  - (a) the Arbitrator shall not be liable to the parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Arbitrator;
  - (b) the parties severally indemnify and keep indemnified the Arbitrator against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses, and damages of any kind whatsoever (**claims**), which include but is not limited to defamation, bias or other misconduct, whether such cause of action or claims arise:
    - (i) Under or in connection with contract;
    - (ii) In tort for negligence, negligent advice or otherwise;

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<sup>1</sup> Clause 9 is in similar terms to the form considered in 1144 Nepean Highway Pty Ltd v Abnote Australasia Pty Ltd [2009] VSCA 308 at [9], [12] and [14]

- (iii) Otherwise at law (including statute to the extent it is possible so to release, exclude or indemnify) and in equity generally, including without limitation for restitution for unjust enrichment arising out of, or in connection with the Arbitration.
  - (c) the parties release the Arbitrator against all claims.

Date

Claimant/Plaintiff

Respondent/Defendant