



## ARBITRATION AGREEMENT AND CHECKLIST

ARBITRATION AGREEMENT ("Agreement") made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

**BETWEEN:**

\_\_\_\_\_ ("Claimant") of \_\_\_\_\_ (address)  
\_\_\_\_\_ (email address)

- and -

\_\_\_\_\_ ("Respondent") of \_\_\_\_\_ (address)  
\_\_\_\_\_ (email address)

- and -

1. **DOV SILBERMAN** of 2/185 Orrong Rd, St Kilda East, Victoria 3183

2. ... \_\_\_\_\_ ...

3. ... \_\_\_\_\_ ...

(individually called "**arbitrator**" and (if relevant collectively) called the "**Arbitral Tribunal**") (email address: [contact@jewisharbitration.com](mailto:contact@jewisharbitration.com)).

WHEREAS the Claimant and the Respondent (collectively "**Litigants**") have a dispute and have agreed to submit their dispute to binding arbitration before the Arbitral Tribunal to determine the dispute without further recourse to judicial action, and to be bound by the Arbitral Tribunal's decision.

THEREFORE it is understood and agreed as follows:

### **Arbitration Agreement and Appointment of the Arbitral Tribunal**

1. The Litigants agree that any prior arbitration agreement has been superseded by this Agreement.
2. The Litigants hereby appoint [1] or [1,2 and 3] to act as the Arbitral Tribunal in this arbitration.
3. The Litigants agree that legally their dispute is one to which the *Commercial Arbitration Act (Victoria) 2011* ("**the Act**") applies, including the enforcement of any interim measure or award. The Litigants agree that the Arbitral Tribunal has jurisdiction to enter upon the reference from the date of this Agreement.
4. For the avoidance of doubt, insofar as this Agreement regulates the relationship of the Litigants to the Arbitral Tribunal, nevertheless the Arbitral Tribunal (and likewise the arbitrators individually) is not a "party"<sup>1</sup> to an arbitration agreement<sup>2</sup> as defined in the Act. The "party" and "parties" referred to in the Act and the Rules of these arbitration proceedings ("**the Rules**") refer to the Litigants themselves.
5. Any Hebrew words not defined in this Agreement are defined in the Rules.<sup>3</sup>

### **Applicable Court**<sup>4</sup>

6. The "Court" for the purposes of section 6 of the Act and the Rules shall be the (tick one of the following):
  - the Supreme Court,
  - the County Court,
  - the Magistrates Court
  - VCAT

### **Obligations of the Arbitral Tribunal**

7. The Litigants acknowledge that they have received any information set out in **Schedule 1** from the Arbitral Tribunal which may give rise to any reasonable or justifiable doubts as to any arbitrator's impartiality or independence, including prior knowledge about or relationship with any litigant, and agree they will not make any complaint based on that information.<sup>5</sup>

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<sup>1</sup> The Act Section 1 definitions

<sup>2</sup> The Act Section 7(1)

<sup>3</sup> Rule 1

<sup>4</sup> Rule 13.2.3

<sup>5</sup> Rule 9

8. Should there be any challenge to an arbitrator(s), then the time for making the challenge shall be (tick or fill in the following):<sup>6</sup>

7

15

\_\_\_ days.

(The default time in the Rules is 7 days).

### **Rules of Procedure**

9. The arbitration shall be conducted pursuant to the Rules which include any amendments made by agreement of the Litigants and the Arbitral Tribunal pursuant to this Agreement.<sup>7</sup>

10. The Rules shall be taken to be part of, and read into, this Agreement.

11. The Litigants by their signatures acknowledge and agree that they have had a reasonable opportunity to read and consider the Rules and this Agreement. The Litigants agree that they understand and agree to be bound by the Rules. The Litigants acknowledge that they have had the opportunity to have the contents of this Agreement and the Rules explained to them by independent legal and religious advisors. The Litigants agree that they are signing this Agreement freely and voluntarily.

12. The Litigants and the Arbitral Tribunal agree that any amendments to the Rules, being any relevant items in this Agreement or anything else set out in **Schedule 5** have been agreed to by all of them immediately prior to signing the Agreement.<sup>8</sup>

13. The Litigants understand and agree to the paramount obligations and duties as set out in Rule 3 of the Rules.<sup>9</sup>

14. The Litigants and their representatives will not communicate with the Arbitral Tribunal ex parte save as allowed by the Rules.<sup>10</sup>

15. The Litigants agree that the Arbitral Tribunal has the discretion to conduct the arbitration in any way it deems fit within the confines of the Rules.<sup>11</sup> Without limiting its authority, the Litigants empower the Arbitral Tribunal to issue interim measures and orders in relation to any question of the proceeding.<sup>12</sup>

16. If the arbitral tribunal is more than one, the Litigants authorise the Arbitral Tribunal to

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<sup>6</sup> Rule 10.1

<sup>7</sup> Rule 18.4

<sup>8</sup> Rule 18.4

<sup>9</sup> Rule 3

<sup>10</sup> Rule 4

<sup>11</sup> Rule 18.4

<sup>12</sup> Rules Chapter 4

make any decision by a majority.<sup>13</sup> Notwithstanding that, the Litigants hereby authorise the Arbitral Tribunal to decide any procedural question and make any relevant order by an arbitrator sitting alone.<sup>14</sup>

17. The hearing of the substantive dispute will be recorded. The Litigants and the Arbitral Tribunal will agree upon provision and the costs of a transcript if applicable. The Arbitral Tribunal may call for the provision of part or all of a transcript at any time at no cost to it.<sup>15</sup>

18. The Arbitral Tribunal is to (tick one of the following):<sup>16</sup>

hold oral hearings to receive evidence and/or hear oral submissions and argument,

conduct the proceedings on the basis of documents and other materials ("on the papers").

Notwithstanding if the parties agree to have the arbitration conducted on the papers, a party may request the Arbitral Tribunal to hold a oral hearing.<sup>17</sup>

### **The Dispute and Award(s)**

19. The nature of the dispute, the amounts involved, and the remedies sought ("the Dispute") are set out in **Schedule 2** to this Agreement.

20. The Arbitral Tribunal will issue an award or awards relating to the Dispute, which will be enforceable.<sup>18</sup>

### **Payment of Arbitral Tribunal's fees and expenses<sup>19</sup>**

21. The Arbitral Tribunal are to be paid an hourly rate of as set out in **Schedule 3** for time spent on the arbitration on such matters as reading documents, correspondences, telephones, meetings, travel and the like (but excluding interlocutory or other hearings).

22. The Arbitral Tribunal's fee for time spent in interlocutory or other hearings and preparation of a written decision at a half daily and daily rate as set out in **Schedule 3** per day.

23. The Litigants agree to reimburse (or if necessary, deposit money in trust before the Arbitral Tribunal incurs such expenses) the Arbitral Tribunal for all out-of-pocket expenses incurred by the Arbitral Tribunal in respect of arrangements associated with the conduct of the arbitration, including but not limited to (business class where appropriate) air fares, rail fares, hotel accommodation, telephone, fax, internet, couriers and copying, together with any charges that may arise from the cancellation of such arrangements, including GST.

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<sup>13</sup> Rule 18.10

<sup>14</sup> Rule 18.11

<sup>15</sup> Rule 25

<sup>16</sup> Rule 20.1

<sup>17</sup> Rule 20.2

<sup>18</sup> See Rule 2.1.1

<sup>19</sup> Rule 31

24. Charges for cancellation are set out in **Schedule 3**.
25. The Litigants understand and agree that they are jointly and severally liable for all of the Arbitral Tribunal's fees, disbursements and expenses, including cancellation charges, but that as between them, they have the right to claim indemnity from each other for such liability as follows:
- a. as a general rule, each litigant should be responsible for their equal share of the Arbitral Tribunal's fees, disbursements and expenses; and
  - b. the general rule may be subject to any award of costs that may be made by the Arbitral Tribunal.<sup>20</sup>
26. Upon the signing of this agreement, the Litigants will deposit the sum set out in **Schedule 3** to this Agreement into a trust account, being a minimum for estimated prehearing procedures, preparation, hearing and writing a judgment towards the Arbitral Tribunal's fees, expenses and disbursements. The Litigants will also lodge an executed Form of Authority in the form set out in **Schedule 4** authorising the disbursement of such funds in accordance with the written direction of the Arbitral Tribunal.
27. The Litigants will top up the trust account from time to time to the original sum in the trust account or less or more as the Arbitral Tribunal thinks justified in the circumstances. If either or both Litigants do not do so, then the Arbitral Tribunal need not continue the arbitration or write and deliver an order or indicative ruling or award or reasons for an award. If one Litigant wishes to pay the required amount, then the Arbitral Tribunal can adjust any award or order accordingly if it feels it appropriate to do so.
28. After the signing of this Agreement, the Litigants, separately or jointly, may request the arbitration procedure to be changed, but the Arbitral Tribunal does not need to consent to any changes.<sup>21</sup> If the arbitration procedure is changed, the Arbitral Tribunal will be entitled to charge any reasonable extra fees, disbursements and expenses.<sup>22</sup>

### **Expert Witnesses<sup>23</sup>**

29. The Litigants agree that the Arbitral Tribunal may call for any expert witnesses required for any technical expertise to the substance of any issue in dispute, or in relation to Victorian law or halacha as they see fit, and that in the first instance the Litigants will pay an equal share for these witnesses' fees and expenses if required to by the Arbitral Tribunal. The Arbitral Tribunal need not continue the arbitration until these payments are made or deposited into a trust account. The Arbitral Tribunal may then pay the expert witness' account upon presentation of an account.

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<sup>20</sup> Rule 31.2

<sup>21</sup> Rule 18.7

<sup>22</sup> Rule 18.8

<sup>23</sup> Rules 22

## Legal Costs and Disbursements<sup>24</sup>

30. Subject to the paragraphs following, the Litigants agree that (tick one of the following):-

- costs follow the event, or
- each party bears its own costs

31. The relevant scale of costs shall be (tick one of the following):

- standard costs determined by the relevant Victorian Scales of Court Costs according to the amount claimed (excluding interest and disbursements) by the Claimant, and the amount claimed (excluding interest and disbursements) by the Respondent, or
- standard costs as determined by the total amount (excluding interest and disbursements) flowing from one party to the other, or
- standard costs as determined by the Arbitral Tribunal in their discretion

32. Notwithstanding the general principles agreed to above, the Arbitral Tribunal shall be entitled to award costs against a Litigant for *part or all* of the arbitration, if they feel that the actions of that party justify the making of such an order (tick one of the following):

- on a standard basis, or
- on a standard or indemnity basis

33. Costs include, but are not limited to, a Litigant's share of the Arbitral Tribunal's fees, disbursements and expenses, their own legal costs, religious advisor's costs, witness expenses and disbursements.

## Choice of law

34. The rule of law to be applied to the substance of the dispute shall be Halacha . "Halacha" means Jewish religious and civil law as understood and interpreted by the Arbitral Tribunal and includes a consideration of "minhag hamedinah".<sup>25</sup> Minhag hamedinah means local common practice, and may include parts of other legal and customary laws and systems.<sup>26</sup>

35. The Litigants authorise the Arbitral Tribunal to make its award based on the following criteria (tick one of the following):-<sup>27</sup>

- according to din
- according to peshara kerova ledin
- according to peshara, or
- according to the most appropriate form as determined by the Arbitral Tribunal, including any other criteria set out in halacha, at the time of making the Indicative Ruling and/or the award.

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<sup>24</sup> Rule 31

<sup>25</sup> Rule 1 definitions

<sup>26</sup> Rule 1 definitions

<sup>27</sup> Rule 27. See definitions in Rule 1 for Hebrew terms.

36. With respect to an advisory opinion (“lefnim meshurat hadin”) the Litigants (tick one of the following).<sup>28</sup>

**wish** the Arbitral Tribunal to act as it sees fit in issuing an advisory opinion advising the parties as to lefnim meshurat hadin, or

**do not wish** the Arbitral Tribunal to advise the parties as to lefnim meshurat hadin.

37. The parties agree that an advisory opinion given by the Arbitral Tribunal (if allowed by this Agreement) pursuant to Rule 29 will not be enforceable according to the laws of the State of Victoria.<sup>29</sup>

38. The Litigants wish the Arbitral Tribunal to act in accordance with the following specific directions or conditions, if any, as set out in **Schedule 5**.<sup>30</sup>

39. The Litigants agree that if the Arbitral Tribunal is more than one, the award is to be made by a majority of the Arbitral Tribunal.<sup>31</sup>

#### **Determination of preliminary point of law**

40. Section 27J of the Act permits an application can be made to the Court to determine a preliminary point of law, unless otherwise agreed to by the Litigants. Insofar as a “question of law” for this purpose concerns a matter of Victorian or Australian law, the Litigants (tick one of the following):-<sup>32</sup>

**agree** that an application can be made to the Court to determine any question of law concerning a matter of Victorian or Australian law arising in the course of the arbitration,

**do not want** any Litigant to make an application to the Court to determine any question of law concerning a matter of Victorian or Australian law arising in the course of the arbitration.

41. If a Litigant, either with the consent of the Arbitral Tribunal or with the consent of the other Litigant, and with the leave of the Court, makes an application to determine any question of Australian law, then for the purposes of the arbitration, such determination shall be considered as one factor, but not the sole factor, by the Arbitral Tribunal in determining what is minhag hamedinah.<sup>33</sup>

42. The Litigants agree that the Court shall not determine any question of halacha pursuant to section 27J.<sup>34</sup>

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<sup>28</sup> Rule 29.1

<sup>29</sup> Rule 29.2

<sup>30</sup> Rule 27.3

<sup>31</sup> Rule 33.3

<sup>32</sup> Rule 28.2

<sup>33</sup> Rule 28.2

<sup>34</sup> Rule 28.3

## Indicative Rulings

43. The Litigants (tick one of the following): <sup>35</sup>

- require** the Arbitral Tribunal to issue an Indicative Ruling prior to issuing an award,  
or  
 **do not want** the Arbitral tribunal to issue an Indicative Ruling but to issue an award  
without any such Indicative ruling.

44. The Litigants agree that an appeal against any Indicative Ruling must be made within  
(tick or fill in one of the following):-<sup>36</sup>

14 days

30 days

\_\_\_\_\_ days

of the giving of the Indicative Ruling (The default time in the Rules is 14 days).

## Reasons for the award (and Indicative Ruling, if applicable)

45. The Litigants (tick one of the following): <sup>37</sup>

- require** the Arbitral Tribunal to provide reasons for any Indicative Rulings and  
awards as to the final disposition of any of the substantive issues of the Dispute,  
 **do not require** the Arbitral Tribunal to provide reasons for any Indicative rulings  
and awards as to the final disposition of the substantive issues of the Dispute.

## Correction and interpretation of an award and additional awards

46. The Litigants agree that either Litigant may, with notice to the other Litigant, request  
the Arbitral Tribunal to make a correction (the "slip rule") to an award within (tick or  
fill in one of the following):<sup>38</sup>

14

30

\_\_\_\_\_ days of the giving of that award.

(The default time in the Rules is 30 days).

47. The Litigants agree that either Litigant may, with notice to the other Litigant, request  
the Arbitral Tribunal to give an interpretation of a specific point or part of an award  
within (tick or fill in one of the following):<sup>39</sup>

14

30

\_\_\_\_\_ days of the giving of that award.

(The default time in the Rules is 30 days).

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<sup>35</sup> Rule 40.1

<sup>36</sup> Rule 40.3

<sup>37</sup> Rules 33.4.5

<sup>38</sup> Rule 37.2

<sup>39</sup> Rule 38.2



48. The Litigants agree that any Litigant can request the Arbitral Tribunal to make an additional award as to claims presented but omitted from the award within (tick or fill in one of the following):<sup>40</sup>

14

30

\_\_\_\_\_ days of the giving of that award.

(The default time in the Rules is 30 days).

### **Recourse against the award and any indicative ruling**

49. The Litigants acknowledge that Part 7 (Sections 34 and 34A) of the Act refer to "Recourse against Award". The Litigants acknowledge that Section 34A states that an appeal lies to the Court on a question of law arising out of an award *if the Litigants agree* before the end of the appeal period referred to in subsection 34A(6), that an appeal may be made under that section, and the Court grants leave. In respect of such agreement now, the Litigants (tick one of the following):<sup>41</sup>

**agree** that any Litigant can appeal to the Court on a question of law, but only as permitted under the Rules,<sup>42</sup> pursuant to section 34A of the Act.

**do not want** any Litigant to appeal to the Court on a question of law pursuant to section 34A of the Act.

50. If the Litigants wish Section 34A to apply, then the Litigants agree that Section 34A of the Act (appeals against awards) shall only apply insofar as there is a question of law relating to the laws of the State of Victoria as they may affect minhag hamedinah.<sup>43</sup>

51. The parties to this Agreement, (and for the avoidance of doubt, this means the Litigants and the Arbitral Tribunal) hereby agree that no appeal can be made to the Court on a question of halacha arising out of an award.<sup>44</sup>

### **Death of a party/director of a corporation**

52. If a Litigant dies, the parties agree that the Agreement is (tick one of the following):-<sup>45</sup>

**not discharged** (either as respects the deceased or any other party) and the authority of the Arbitral Tribunal is not revoked by the death but that the Agreement is enforceable by or against the personal representative of the deceased.

**discharged** (either as respects the deceased or any other party) and the authority of the Arbitral Tribunal is revoked by the death and that the Agreement is not enforceable by or against the personal representative of the deceased.

(The default position in the Act and Rules is that the agreement is not discharged and the authority of the Arbitral Tribunal is not revoked)

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<sup>40</sup> Rule 39.1

<sup>41</sup> Rule 41.1

<sup>42</sup> Rule 41.3

<sup>43</sup> Rule 41.2

<sup>44</sup> Rule 41.3

<sup>45</sup> Rule 43.1

## **Immunity from Suit<sup>46</sup>**

53. The Litigants agree that the parties jointly and severally release and discharge the Arbitral Tribunal from, and indemnify them against, any liability of whatsoever kind, including negligence but excluding fraud, arising out of or in connection with this Arbitration Agreement and Arbitral Tribunal's nomination or conduct of or in relation to the Arbitration.
54. The Litigants agree that the arbitral tribunal and each arbitrator shall have the protection and immunity in respect of the arbitration proceedings that they would have if they were a judicial officer performing duties in connection with a judicial resolution conference under Section 68 of the *Civil Procedure Act 2010* and/or under Section 27A(1) of the *Supreme Court Act 1986* as if they had been appointed by an order of the Supreme Court.
55. Save as provided by law, the Arbitral Tribunal shall not be made a party nor shall they be compelled by either Litigant to become a witness in any judicial other proceedings arising out of or relating in any manner to the arbitration or this Agreement.
56. The Litigants agree to jointly and severally indemnify the Arbitral Tribunal any legal costs or their time and expenses in accordance with their hourly and daily rates set out in this Agreement or damages in respect of any third party claim arising out of the arbitration.
57. In the event that any proceedings are brought by either of the Litigants or in the event that any of the Arbitral Tribunal are compelled to attend any proceedings as witnesses, then the Arbitral Tribunal shall be entitled, without prejudice to any other rights they may have against that Litigant whether under this agreement or otherwise in relation to the issue and pursuit of such proceedings or their requirement to attend any proceedings as a witness, to charge that Litigant in accordance with their hourly and daily rates set out in this Agreement.
58. No statements or comments, whether written or oral, made or used by the Litigants or their Legal Practitioners or their Toenim or other advisers or the Arbitral tribunal or an arbitrator shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

## **Notices relevant to this Agreement**

59. Any notice to be given or demand to be made relevant to this Agreement shall be deemed to have been duly and sufficiently given or made if it transmitted by email to the email address last notified to the other parties to this agreement.
60. Any notice or demand transmitted by email shall be deemed to have been received at the time noted by the sender's copy email unless a failure notice was received by that party.

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<sup>46</sup> Rule 44

## **Disputes**

61. Any dispute between the Litigants themselves arising out of of this Agreement shall be determined by the Arbitral Tribunal in such manner as it considers appropriate. If there is more than one arbitrator, then any decision by a majority of the Arbitral Tribunal is sufficient.
62. Any dispute between the Litigants (separately or collectively) and the Arbitral Tribunal arising out of this Agreement shall be referred to an acceptable mediator within seven (7) days of notice being given by one party to the others. If the parties cannot agree on a mediator within that time, then the President of the JCCV will appoint a mediator. The mediator's fees will be paid equally by the Litigants.
63. If any such dispute cannot be settled by mediation, then the arbitration will be terminated pursuant to Rule 34.2.3.

## **Applicable Law**

64. This Agreement shall be governed by and interpreted in accordance with halacha and minhag hamedinah as defined in Rule 1.

## **Severability**

65. If a Court or any other entity agreed upon or submitted to by the parties determines that a word, phrase, sentence, sub-clause or clause is unenforceable, illegal or void, then it must be read down so as to give it as much effect as possible. If it is not so possible to give it any effect at all, then it must be severed and the other provisions of this Agreement shall remain operative.

## **Confidential information<sup>47</sup> and Confidentiality - including third parties**

66. The parties and any other person present at the arbitration will not unless agreed to by the Litigants or required by law to do so, disclose to any person not present at the arbitration, nor use, any confidential information furnished during the arbitration unless such disclosure is to obtain professional advice or is to a person within that litigant's legitimate field of intimacy, and the person to whom the disclosure is made is advised that the confidential information is confidential. The Arbitral Tribunal may disclose any confidential information to any person that it deems appropriate if in the opinion of the Arbitral Tribunal a person is at risk to personal injury or health.
67. The relevant persons, not being the signatories to this agreement, shall sign the acknowledgement and undertaking as set out in **Schedule 6**. This need not be signed at the time of entering this agreement, but before or when these people shall appear before the Arbitral Tribunal.

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<sup>47</sup> Rule 26

## **SPECIFIC HALACHIC ISSUES**

### **A. Piercing the corporate veil**

68. The Litigants acknowledge that there are different halachic opinions as to whether the corporate veil should be pierced or not. The Litigants (tick one of the following):<sup>48</sup>

**agree** to having the corporate veil pierced

or

**do not agree** having the corporate veil pierced

The default position in the Rules is that the Arbitral Tribunal is entitled to pierce the corporate veil if it believes minhag hamedinah would entitle it to do so

### **B. Interest**

69. The Litigants agree to be bound by the halachot of Interest.<sup>49</sup>

### **C. Indirect damages**

70. The Litigants agree that the Arbitral Tribunal may make an award in respect of indirect damage and loss of profit.<sup>50</sup>

### **D. Kinyan clauses**<sup>51</sup>

71. The Litigants agree that they have validated this Agreement by making an effective Kinyan Agav Sudar (literally "act of acquisition by raising an object" i.e. the formal halachic method of giving legal efficacy and validity to an agreement) Mei'achshav (literally "from now") in a Beth Din Chashuv (literally "in an esteemed Beth Din") for all the terms and conditions in this Agreement and the Rules. The litigants further acknowledge that signing this agreement is an effective Kinyan. This agreement is validated as above by a Kinyan Agav Sudar or by signing. The lack of either Kinyan does not invalidate this Agreement.

72. The Litigants warrant that they have withdrawn and cancelled any Moda'ot (literally "announcements" (of objection)) and invalidated any witnesses to any Moda'ah (singular of moda'ot) or oness (literally "force").

73. The Litigants explicitly waive all rights to nullify this agreement and the Rules on any halachic grounds, including but not limited to any dispute about Kinyan or the lack of any Tenai Kaful (literally "a double condition" i.e. some terms and conditions are only halachically valid if they are expressed in both a positive and negative formulation of such a term or condition), or in respect of any missing or extra words or letters, or due to erasure.

74. The Litigants each agree and acknowledge that they are entering into this Agreement in good faith and seriousness. Consequently each Litigant agrees not to raise any technical halachic objections to this Agreement. For the avoidance of doubt, these

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<sup>48</sup> Rule 28.5

<sup>49</sup> Rule 36. Note that not all ribbit is forbidden to be claimed.

<sup>50</sup> Rule 27.5

<sup>51</sup> This section is included to ensure that this Arbitration Agreement is binding in halacha.

objections are hereby waived pursuant to the halachic doctrines of a Beth Din Chashuv (literally "an esteemed Beth Din" i.e. no objection can be taken based on the qualifications of the Arbitral Tribunal), Be'ofen Hayoter Mo'il (literally, "in the best possible way" i.e. the terms are to be read widely to give effect), Lo Ke'asmachta (literally "no conditional commitments or promises which a person making them does not intend to keep them" i.e. a Litigant cannot plead this intention) U-Delo Ketofsa Deshtara (literally "and not according to (certain) formulaic interpretations of contracts" i.e. the Arbitrators can interpret all of the clauses of this Agreement so as to give them some validity if possible).

75. The parties agree that Hakol Sharir Vekayam (literally "everything is done properly and well founded in law" i.e. no objections can be taken on jurisdictional issues).

## **Schedule 1**

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**Disclosure by the Arbitral Tribunal (Clause 7)**

## **Schedule 2**

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**The nature of the dispute, the amounts involved, and the remedies sought including the title and number of any related legal proceedings (Clause 19):**

### Schedule 3

#### Arbitral Tribunal's Fees and Expenses (Clause 21, 22, 24, 26)

1	For all preparation including a preliminary conference	\$	per hour
2	For the arbitration hearings (unless agreed prior, the arbitration will be set down for at least 1 full day)	\$	per half day per full day
A half day is 3 hours and a full day is 6 hours.			
3	Cancellation fees:-		
	If cancelled after being appointed as Arbitral Tribunal and more than 5 business days before the arbitration	\$	
	If cancelled within 15 - 7 days of the arbitration	\$	
	If cancelled within 7 days of the arbitration	\$	
4	Accommodation, meals and travel expenses (if applicable)	At cost	
5	Long distance calls, couriers, etc. (if applicable)	At cost	
6	Room hire fees (if applicable)	At cost	
7	Allocation of costs - equally between the parties, unless otherwise agreed in writing with the Arbitral Tribunal		
	Litigant 1		%
	Litigant 2		%
	Litigant 3		%
	Litigant 4 or		%
	All parties equally	_____	(Tick if agreed)

**GST:**

The fees in items 1,2 and 3 are *inclusive of GST*.

Items 4 to 6 are invoiced at cost to the Arbitral Tribunal charged by the supplier, plus GST

**Time for Payment:**

The fee in item 1 is payable on the date of any preliminary conference; the daily fee in item 2 and room hire fees are payable on the day of the arbitration hearing, and on any further day of arbitration; other fees are payable as incurred and invoiced.

**Method of payment:**

Cash, bank cheque or solicitors office or trust cheque

## **Schedule 4**

**Form of Authority (Clause 26)**

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## **Schedule 5**

**Specific directions or conditions for the Arbitral Tribunal to take into account  
(Clause 12, 38)**

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## **Schedule 6**

### **Acknowledgment and Undertaking as to Confidentiality and Recording (Clause 67)**

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The Litigants and the Arbitral Tribunal having entered into this arbitration agreement in accordance with which the Arbitral Tribunal will conduct a arbitration **THE UNDERSIGNED** acknowledge by their signatures that they attend the arbitration on the basis of their agreement to the terms of clauses 1 and 2 below.

1. Each of the undersigned undertakes to the Litigants and the Arbitral Tribunal:
  - (a) to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the arbitration including the preliminary steps (“**confidential information**”);
  - (b) not to act contrary to the undertaking in sub-paragraph (a) unless compelled by law to do so or with the consent of the litigant who disclosed the confidential information;
  - (c) not to use confidential information for a purpose other than the arbitration;
  - (d) not to record or attempt to record or capture statements made, with the
  
2. For the purposes of this clause, each of the undersigned undertakes to the Litigants and the Arbitral Tribunal that unless otherwise made by consent in writing, no consent is given to record or monitor any of the arbitration or private conferences associated with it, with the exception of file notes taken or prepared by the Arbitral Tribunal, a litigant or a litigant's Legal Practitioners.
  
3. Each of the undersigned undertakes to the Litigants and the Arbitral Tribunal that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any judicial proceedings between the Litigants to the arbitration:
  - (a) any settlement proposal;
  - (b) the willingness of a Litigant to consider any such proposal;
  - (c) any admission or concession made by a Litigant;
  - (d) any statement or document made by the Arbitral Tribunal.

**SIGNED** by in the )  
presence of: )  
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## Execution page to the Arbitration Agreement

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*By signing this arbitration agreement, the Litigants agree that they have had the opportunity of reading this whole document before signing it and to take legal advice about it, and their signatures signify their consent and agreement to all of the terms of this arbitration agreement.*

**SIGNED** by )  
in the presence of: )

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Signature of witness )

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Name of witness (block letters) )

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Address of witness )

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