



## **RULES**

**VERSION NO. 1 as at 30 JULY 2015**

JEWISH ARBITRATION  
Commercial Dispute Resolutions  
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**JEWISH ARBITRATION**

**COMMERCIAL DISPUTE RESOLUTION RULES**

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## CHAPTER 1 – DEFINITIONS AND GENERAL PROVISIONS

### 1. Definitions

**the Act** means the *Commercial Arbitration Act (Victoria) 2011*.

**advisory opinion** means an opinion issued by the arbitral tribunal in respect of lefnim meshurat hadin.

**arbitral tribunal** means a sole arbitrator or a panel of arbitrators appointed by the litigants to arbitrate their dispute pursuant to the arbitration agreement.

**arbitration** means a domestic commercial arbitration as defined in section 1 of the Act.

**arbitration agreement** means the agreement entered into between the arbitral tribunal and the parties setting out the terms and conditions under which the arbitration process is to be conducted.

**award** means an award by which a part or all of the dispute is finally settled.

**confidential information** means information that relates to the arbitral proceedings or to an award made in those proceedings and includes the following:

- (a) the statement of claim, statement of defence, and all other pleadings, submissions, statements or other information supplied to the arbitral tribunal by a party;
- (b) any information supplied by a party to another party in compliance with a direction of the arbitral tribunal;
- (c) any evidence (whether documentary or otherwise) supplied to the arbitral tribunal;
- (d) any notes made by the arbitral tribunal of oral evidence or submissions given before the arbitral tribunal;
- (e) any transcript of oral evidence or submissions given before the arbitral tribunal;
- (f) any rulings of arbitral tribunal; and
- (g) any award of the arbitral tribunal.

**Court** means the Supreme Court of Victoria, unless the parties agree that it should refer to the Magistrates Court of Victoria, the County Court of Victoria, or the Victorian Civil and Administrative Tribunal, or the Act specifies it as such.

**dayan** means a person who possesses the qualification of Yadin Yadin

***din*** is a halachic term meaning judgement or law.

***Directions Hearing*** is a hearing to consider the matters referred to in Rule 14.

***function*** includes a power, authority or duty.

***halacha*** means Jewish religious and civil law as understood and interpreted by the arbitral tribunal. It includes a consideration of minhag hamedinah.

***halachic*** is the adjectival form of halacha.

***hearing*** includes any interlocutory hearing and the hearing to hear the substantive issues of the dispute, but can include a hearing to hear interlocutory matters.

***heter arkaot*** (lit. permission to go to non-Jewish courts) is an authorisation by the arbitral tribunal allowing a party to initiate legal proceedings to protect their rights in a civil court.

***heter iska*** means a halachic contract permitting one Jew to claim or receive interest which they would otherwise not have been able to claim from another Jew.

***Indicative Ruling*** is a ruling made by the arbitral tribunal allowing any party to appeal that ruling to the arbitral tribunal itself pursuant to Rule 40.

***Jewish holydays*** means the first, second, seventh and eighth days of Pesach; Shavuot; Rosh Hashanah; Yom Kippur; the first and second days of Sukkot, Shemini Atzeret and Simchat Torah.

***lefnim meshurat hadin*** (lit. beyond the letter of the law) is a Jewish moral imperative which should be considered by G-d fearing persons to be that which would be honourable in the eyes of G-d and mankind and to acquit oneself before G-d.

***lawyer*** means an Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria), or any future equivalent.

***mesarev*** means a person who fails to comply with any interim measure, order or award of the arbitral tribunal

***minhag hamedinah*** (lit. state custom) means local common practice, and may include parts of other legal and customary laws and systems.

***party*** and ***parties*** mean the litigants to the arbitration agreement.

***paramount obligations and duties*** means those obligations and duties set out in sub-rule 3.1.

***peshara*** has the same meaning as the Latin legal maxim of ex aequa et bono ("according to what is just and fair" or "according to equity and good

conscience"). This is the power of the arbitral tribunal to dispense with consideration of any law and consider solely what they consider to be fair and equitable in the case at hand.

***peshara kerova*** (*is close*) ***le-(to)din*** is an award made pursuant to halachic principles, but tempered by peshara.

***pleadings*** include any statement of claim, defence, reply or counterclaim.

***posek*** is a Jewish legal scholar who decides the halacha in cases of law where previous authorities are inconclusive or in those situations where no halachic precedent exists.

***Preliminary Hearing*** is a hearing between the parties and the arbitral tribunal convened if necessary to discuss the arbitration agreement prior to signing it.

***Rules*** and ***sub-rules*** mean these Rules and the sub-rules in this document.

***shevua*** means any form of religious oath that can be imposed upon a litigant or witness by halacha.

***toen*** is an advocate who will present a party's halachic position to the arbitral tribunal. A toen need not hold any rabbinic qualification.

***toenim*** is the plural of toen.

## 2. Purposes

2.1. The purposes of these Rules are:

- 2.1.1. to provide for a voluntary regime by which Jewish persons or companies with Jewish directors and/or shareholders may resolve their commercial disputes between themselves and with others using an arbitration procedure which takes into account their cultural and religious beliefs and values, as well as reflecting the general community ethos of the Australian way of life. So that the award determining the final resolution of the dispute is legally enforceable, it must be compatible with the public policy and the laws of Victoria;
- 2.1.2. to facilitate an award based upon the Jewish ideal that decision makers should base their decisions conforming to the three fundamentals upon which the world endures – justice, truth and peace<sup>1</sup>;
- 2.1.3. to ensure there is transparency and public confidence within the Jewish and the general public regarding this form of arbitration procedure and the fairness and finality (subject to the Rules and the Act relating to that) of the award;

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<sup>1</sup> Ethics of the Fathers (Avot) 1:18 referenced at the beginning of Tur Choshen Mishpat 1

- 2.1.4. to expressly take into account many matters noted in the Act. Section 19(1) of the Act permits the parties to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings. Failing such agreement, Section 19(2) of the Act allows the arbitral tribunal to conduct the arbitration in such manner as it sees fit. These Rules, subject to amendment by consent of the parties and the arbitral tribunal, are made by this arbitral tribunal as the default procedure by which it intends to conduct proceedings; and
- 2.1.5. to require that the costs and time spent on resolving the dispute be minimised as much as possible by:
  - 2.1.5.1. facilitating the parties to limit the issues in dispute;
  - 2.1.5.2. making the process as informal and quick as possible;
  - 2.1.5.3. minimising any delay and expense and censuring any unnecessary and/or deliberate delay and expense; and
  - 2.1.5.4. enabling the arbitral tribunal to make orders, interim measures and awards to enable a fair and cost effective final resolution of the dispute without unnecessary delay or expense, taking into account the complexity of the matter and the quantum in dispute.

### **3. Paramount obligations and duties of the participants**

- 3.1. To further the purposes of the Rules, the parties, their lawyers, their toenim and other representatives and any expert witness, have a paramount obligation and duty to the arbitral tribunal similar to the overarching obligations set out in Sections 17- 26 of the *Civil Procedure Act (Victoria) 2010* and the general duties set out in Section 24B of the Act. For the purposes of the Rules, these paramount obligations and duties are to:
  - 3.1.1. act honestly;
  - 3.1.2. have a justifiable basis for any claim or response;
  - 3.1.3. take steps to facilitate the resolution or determination of the dispute;
  - 3.1.4. co-operate with the arbitral tribunal and the other parties;
  - 3.1.5. not engage in misleading or deceptive conduct, or conduct likely to mislead or deceive, nor cause any third party to engage in such conduct;
  - 3.1.6. use their reasonable endeavours to resolve the dispute;
  - 3.1.7. narrow the issues in dispute;
  - 3.1.8. ensure costs are reasonable and proportionate;

- 3.1.9. minimise delay;
  - 3.1.10. disclose the existence of all documents that are relevant to the dispute;
  - 3.1.11. do all things necessary for the proper and expeditious conduct of the arbitration;
  - 3.1.12. comply without undue delay any order or direction or interim measure of the arbitral tribunal with respect to any procedural, evidentiary or other matter; and
  - 3.1.13. not wilfully do or cause to be done any act to delay or prevent an award being made.
- 3.2. In making any order, interim measure, indicative ruling or award, the arbitral tribunal may take into account matters, several of which are those which the Court takes into account pursuant to Section 9(2) of the *Civil Procedure Act (Victoria) 2010*. The matters for this sub-rule include, but are not limited to:
- 3.2.1. the extent to which the parties have complied with the arbitration agreement and any order, interim measure or award;
  - 3.2.2. the extent to which the parties have used reasonable endeavours to resolve the dispute by agreement or to limit the issues in dispute;
  - 3.2.3. the degree of promptness with which the parties have conducted the proceeding, including the degree to which each party has been timely in undertaking interlocutory steps in relation to the proceeding;
  - 3.2.4. the degree to which any lack of promptness by a party in undertaking the proceeding has arisen from circumstances beyond the control of that party;
  - 3.2.5. the degree to which each person to whom the paramount obligations apply has complied with, or contravened, any or all of these paramount obligations;
  - 3.2.6. any prejudice that may be suffered by a party as a consequence of any order proposed to be made or direction proposed to be given by the arbitral tribunal;
  - 3.2.7. the extent to which the parties have had the benefit of legal and halachic advice and representation; and
  - 3.2.8. any other matter that the arbitral tribunal deems appropriate.



#### **4. Communications and Service**

##### **4.1. Regarding verbal communications with the arbitral tribunal:**

4.1.1. After the arbitration agreement has been entered into, any verbal communication by any party, their lawyers or their toenim or other representatives to the arbitral tribunal or any arbitrator must be made in the presence of the other parties, their lawyers or their toenim or other representatives, as the case may be.

4.1.2. If this is not possible, then only written communications may be made in the method prescribed in sub-rule 4.2, except where an arbitrator deems an ex parte application is appropriate.

##### **4.2. Regarding written communications with the arbitral tribunal:**

4.2.1. A copy of any written communication by any party, their lawyers or their toenim or other representative to the arbitral tribunal must be delivered as soon as possible to the other parties, their lawyers or their toenim or other representatives, as the case may be.

4.2.2. Where practicable, written communications between the parties and the arbitral tribunal is to be by email to the addresses as advised from time to time, or unless as agreed by the parties and the arbitral tribunal, or as directed by the arbitral tribunal.

##### **4.3. Regarding service of documents:**

4.3.1. Where practicable, service between the parties and the arbitral tribunal is to be by email to the addresses as advised from time to time, or unless as agreed by the parties and the arbitral tribunal, or as directed by the arbitral tribunal.

#### **5. Calculation of time**

5.1. If anything has to be done within a fixed number of days, as opposed to a specific date:

5.1.1. it begins on the day after the commencement of the calculation; and

5.1.2. if the time required is seven (7) days or more, all days, including the Sabbath and Jewish holydays, are to be included in the calculation; or

5.1.3. if the time required is seven (7) days or less, then Jewish or public holidays are not be included.

5.2. The time for performing any action, in the absence of anything to the contrary, concludes at 4.00 pm of the final day.

5.3. Anything done after 4.00 pm is taken to be done at 9.00 am on the following business day. The Sabbath and Jewish holydays are not considered business days for this purpose.

5.4. If the final day for doing anything is not a business day, or is a Sabbath or Jewish holiday, it may be done on the next business day.

## **6. Representation and assistance**

6.1. Halacha prefers that each party runs and presents their own case, during the preliminary and interlocutory stages, the hearing, during the judgement and afterwards.

6.2. Notwithstanding sub-rule 6.1, legally each party has the right to be represented and assisted by persons of their choice, at any stage of the arbitration.

6.3. Consequently, a party may be self-represented or not, have lawyers or not, have toenim or not, have other assistance or representation or not, at any time during the proceeding. For the purposes of procedure and enforcement, no party at any time during or after the arbitration can make a claim of inequality on the grounds that that party does or did not have any or all of the types of representation and assistance another party has or had at any stage of the arbitration.

## **7. Non- Compliance with the Rules, the Act, other legislative requirements and the arbitration agreement**

7.1. A failure to comply with the Rules, the Act, other legislative requirements or the arbitration agreement is an irregularity and does not necessarily render the arbitration step taken, or any document, order, interim measure, Indicative Ruling or award therein a nullity.

7.2. Defaults by a party of an order or interim measure by the arbitral tribunal is referred to in Rule 21.

7.3. The arbitral tribunal may dispense with any of the requirements of these Rules, either before or after the occasion for compliance arises.

7.4. Where there has been a failure to comply with these Rules, the arbitral tribunal may:

7.4.1. set aside the arbitration in whole or in part;

7.4.2. set aside any step taken in the arbitration, or any document, order, interim measure, Indicative Ruling, or award therein, or exercise its powers under these Rules to allow amendments to make orders.

7.5. Application by a party:

- 7.5.1. Any party may make an application in writing regarding non-compliance with these Rules, the Act or other legislative requirements or the arbitration agreement or that the arbitral tribunal has exceeded the scope of its authority.
- 7.5.2. The application must be made within a reasonable time and before the applicant has taken any fresh step after becoming aware of the irregularity. If a time-limit is provided for stating the party's objection, then the applicant must make its objection within such period of time.
- 7.5.3. Failure to do so by a party is taken to have waived the party's right to object.

## **CHAPTER 2 – COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **8. Qualifications of the arbitrators and arbitral tribunal**

- 8.1. The parties are free to determine the number of arbitrators to compose the arbitral tribunal. The minimum number of arbitrators is one (1).
- 8.2. An arbitrator need not be a dayan, rabbi, qualified arbitrator, or a lawyer.

### **9. Acceptance of, and challenge to, an arbitrator**

- 9.1. Any person minded to accept being chosen as an arbitrator must immediately write to both parties and any other arbitrator any circumstances likely to give rise to reasonable or justifiable doubts as to the person's impartiality or independence, including prior knowledge about or relationship with any party. This is a continuing obligation on the arbitrator up until the issuing of the award.
- 9.2. Because the Jewish community is relatively small, it is anticipated that there is a likelihood that there will be some prior knowledge or relationship. It is also anticipated that there may be a perception of bias sufficient to cast some doubts as to the arbitrator's impartiality and independence, whether or not that would constitute bias for the purpose of disqualifying an arbitrator under Victorian law.
- 9.3. Pursuant to the above sub rules 9.1 and 9.2, the parties acknowledge and agree that:
  - 9.3.1. by appointing any arbitrator with the knowledge of any information supplied prior to signing the arbitration agreement, they explicitly waive any such rights to challenge on that information, and

- 9.3.2. they do not consider that the information provided is sufficient to give rise to any doubts as to the arbitrator's impartiality and independence to make any order, interim measure, Indicative Ruling, or award.
- 9.4. For the avoidance of doubt, it is explicitly a rule that a party cannot challenge any arbitrator on:
- 9.4.1. any fact disclosed prior to the arbitration agreement being entered into, or
- 9.4.2. any fact that the party was aware of prior to the arbitration agreement being entered into, even if that fact was not disclosed to that party by the arbitrator.
- 9.5. Consequently, an arbitrator may be challenged only if new facts are disclosed or discovered, or circumstances arise later, that give rise to reasonable and justifiable doubts as to the arbitrator's impartiality or independence.
- 9.6. "Reasonable and justifiable doubts as to the arbitrator's impartiality or independence" means that there is a real danger of further bias not present at the time the parties entered into the arbitration agreement so as to materially affect the impartiality or independence of the arbitrator.

## **10. Challenge procedure**

- 10.1. Unless the parties agree otherwise, a challenge to an arbitrator must be made in writing to the arbitrator, the arbitral tribunal and all other parties within seven (7) days of a party being made aware of new facts or circumstances disclosed or discovered.
- 10.2. The challenge must be made prior to the challenging party taking any further step after becoming aware of the new facts or circumstances.
- 10.3. Unless the challenged arbitrator withdraws within seven (7) days of receiving the challenge, or all the parties agree to the challenge, the arbitral tribunal (composed of the challenged arbitrator and the other arbitrators) must determine the challenge within 14 days of receiving the challenge. Any withdrawal or determination that the arbitrator must withdraw in no way is to be taken as an implied acceptance of the validity of the challenge.
- 10.4. If the challenge is unsuccessful, then Section 13(4) of the Act gives the challenging party the legal right to ask the Court within 30 days of receiving notification of the decision rejecting the challenge to decide on the challenge.

## **11. Appointment of substitute arbitrator**

- 11.1. If an arbitrator resigns or for whatever reason the arbitrator's mandate is terminated, the remaining arbitrators shall, after consultation with the parties (but not being bound by them) appoint another arbitrator, and who will agree to be bound by the Rules.

- 11.2. The substituted arbitrator must be acceptable to the other members of the arbitral tribunal.
- 11.3. Once reconstituted, and after having invited the parties to comment, the reconstituted arbitral tribunal shall determine whether and how much and at which party's cost (if any), any of the prior proceedings shall be repeated.

## **CHAPTER 3 – PRE SUBSTANTIVE HEARING PROCEDURE**

### **12. Entering into the Arbitration Agreement**

- 12.1. Upon the agreement that the arbitral tribunal will act as the arbitral tribunal, the parties, their lawyers and their toenim and any other representatives, will meet with the arbitral tribunal for a Preliminary Hearing and/or a Directions Hearing.
- 12.2. If an arbitration agreement has not already been signed, then a Preliminary Hearing will be held to sign a binding arbitration agreement.
- 12.3. After the arbitration agreement has been signed, a Directions Hearing will be held for matters to be agreed on prior to the hearing of the substantive issues.

### **13. Check List of Items to be agreed upon in the Arbitration Agreement**

- 13.1. The terms of the arbitration agreement have to be consented to by the arbitrators, who will be parties to the arbitration agreement. If the arbitral tribunal does not want to sign the arbitration agreement, then any fees paid for the Preliminary Hearing may be refundable at the discretion of the Tribunal.
- 13.2. The parties and the arbitral tribunal will consider at least the following matters in respect of the arbitration:
  - 13.2.1. the names and addresses, of the arbitral tribunal and the parties;
  - 13.2.2. the email addresses for service of the parties;
  - 13.2.3. which Court shall have jurisdiction as provided by section 6 of the Act;
  - 13.2.4. that the parties have received such information from each arbitrator which may give rise to any reasonable or justifiable doubts as to the arbitrator's impartiality or independence, including prior knowledge about or relationship with any party, and they will not make any complaint based on that information;

- 13.2.5. any particular procedure that the parties and the arbitral tribunal agree upon;
- 13.2.6. whether the arbitral tribunal is to hold oral hearings to receive evidence and/or to hear submissions and argument or whether the proceedings are to be conducted on the basis of documents and other materials ("on the papers");
- 13.2.7. a brief description of the dispute and remedies sought, and any counterclaim and remedies sought;
- 13.2.8. the fees and expenses of the arbitral tribunal, and how they are to be paid; what happens if any fee amount agreed to now is insufficient; what happens if any money is not paid, including for the delivery of the award;
- 13.2.9. whether costs can be recovered from any party, and in what circumstances;
- 13.2.10. whether the arbitral tribunal will act :
  - 13.2.10.1. according to din;
  - 13.2.10.2. according to peshara kerova ledin;
  - 13.2.10.3. according to peshara; or
  - 13.2.10.4. 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.
- 13.2.11. whether the arbitral tribunal will act if it sees fit in advising the parties as to lefnim meshurat hadin;
- 13.2.12. whether the arbitral tribunal will act in accordance with any other specific directions or considerations;
- 13.2.13. whether an application to the Court can be made to determine a preliminary point of law (but in any case, not halacha);
- 13.2.14. whether reasons for the award are to be given;
- 13.2.15. The number of days the parties can request the arbitral tribunal to correct and/or interpret an award and/or request an additional award;
- 13.2.16. whether the parties agree between themselves that any of them may appeal to the Court pursuant to Section 34A on a question of law. (note that pursuant to these Rules, a "question of law" does not include a question of halacha);

- 13.2.17. whether Rule 40 (appeals against Indicative Rulings) applies;
  - 13.2.18. whether the death of a party terminates the arbitration proceedings;
  - 13.2.19. whether there is any confidential information relevant to the arbitration proceeding; and
  - 13.2.20. if relevant, whether the corporate veil should be pierced.
- 13.3. an omission of any of the matters in sub-rule 13.2 will not invalidate or weaken the arbitration agreement in any way.

#### **14. The Directions Hearing**

- 14.1. The Directions Hearing will consider at a minimum the following matters:
- 14.1.1. the provision of a statement of claim consisting of facts supporting the claim, points of issue, relief or remedy sought;
  - 14.1.2. the provision of a defence setting out a statement of facts supporting such defence;
  - 14.1.3. the provision of any counterclaim, to be in the same form as the statement of claim;
  - 14.1.4. the provision of any reply to the defence and any defence to the counterclaim;
  - 14.1.5. whether there should be any discovery of documents prior to the hearing, and any inspection and copying required;
  - 14.1.6. whether, and on what terms and costs, there should be any independent expert witness to advise the arbitral tribunal in any matter of Victorian or Commonwealth law, and how and when that evidence should be given;
  - 14.1.7. whether, and on what terms and costs, there should be any independent expert witness to advise the arbitral tribunal in any matter of halacha and how and when that evidence should be given;
  - 14.1.8. whether, and on what terms and costs, there should be any independent expert witness to advise the arbitral tribunal on any other specific issue, and how and when that evidence should be given;
  - 14.1.9. what type of evidence will need to be adduced at the hearing, and how;
  - 14.1.10. which witnesses will be called, and whether notice should be given;

- 14.1.11. whether a further Directions Hearing is necessary to determine if the issues in dispute can be narrowed; and
- 14.1.12. a provisional date for a hearing on the substantive issues of the dispute and an estimated duration of such hearing.
- 14.2. Unless otherwise stated, liberty to apply for directions upon written notice is always available to the parties.

## **CHAPTER 4 – INTERIM MEASURES**

### **15. Interim measures**

- 15.1. Without limitation to the following, the arbitral tribunal may grant interim measures prior to the award so as to:
  - 15.1.1. maintain or restore the status quo pending determination of the dispute;
  - 15.1.2. take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;
  - 15.1.3. provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - 15.1.4. preserve evidence that may be relevant and material to the resolution of the dispute.

### **16. Conditions for granting interim measures**

- 16.1. The arbitral tribunal may for whatever reason it deems appropriate without seeking the consent of any party, grant an interim measure.
- 16.2. To grant such an interim measure without consent, the arbitral tribunal is not limited to consider being satisfied by any or all those matters required to be considered or being satisfied when a party requests an interim measure.
- 16.3. Notwithstanding having such a right, there is no obligation on the arbitral tribunal to act on its own initiative, nor can it be held responsible for any action or inaction in any circumstances.
- 16.4. Any party requesting an interim measure shall satisfy the arbitral tribunal that:
  - 16.4.1. harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and that harm substantially



outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted, or

16.4.2. even if that harm could be rectified by damages, there is a reasonable and justifiable question and doubt as to whether any order for damages could or would be met by the other party; and

16.4.3. there is a reasonable possibility that the requesting party will succeed on the merits of the claim.

16.5. The determination on the possibility that the requesting party will succeed on the merits of the claim does not affect the discretion of the arbitral tribunal in making any subsequent determination.

16.6. The party requesting an interim measure is liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.

16.7. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, on application of any party or, in exceptional circumstances and on prior notice to the parties, on the arbitral tribunal's own initiative.

## **17. Orders**

17.1. Without limitation, orders may be issued by the arbitral tribunal prior to the award, on its own accord, or on the application of any party, to any of the parties for orders:

17.1.1. to do anything for the proper and expeditious conduct of the arbitration;

17.1.2. to make further payments for the fees and expenses of the arbitral tribunal;

17.1.3. to provide security for such further payments for the fees and expenses of the arbitral tribunal;

17.1.4. to provide security for costs;

17.1.5. to provide specific evidence to the arbitral tribunal;

17.1.6. to provide discovery or further discovery specifying the manner in which any evidence, including any property which forms part of the dispute may be provided and inspected;

17.1.7. to give evidence by affidavit;

- 17.1.8. to take photographs of any property which is or forms part of the subject-matter of the dispute;
  - 17.1.9. for samples to be taken from, or any observation or inspection, to be made of, or experiment conducted on, any property which is or forms part of the subject-matter of the dispute;
  - 17.1.10. for how long parties shall have to present evidence and make submissions; or
  - 17.1.11. to vary any prior order or orders given.
- 17.2. The arbitral tribunal may modify, suspend or terminate any order it has granted, on application of any party or, on prior notice to the parties, on the arbitral tribunal's own initiative.

## **CHAPTER 5 – CONDUCT OF THE ARBITRAL PROCEEDINGS**

### **18. General conduct and procedural rules**

- 18.1. The arbitral tribunal must treat all parties equally, and give each party a reasonable time to present their case and make their submissions.
- 18.2. For the purposes of this sub-rule 18.1, “a reasonable time” is to be determined by the arbitral tribunal.
- 18.3. For the purposes of this sub-rule 18.1, “treated equally” does not mean giving each party the same amount of time for any part of the proceedings, but means that there should be no discrimination of, and that there should be procedural fairness accorded to, each party.
- 18.4. Subject to anything explicit in the arbitration agreement and these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate. This includes without limitation, the power to determine the admissibility, relevance, materiality and weight of any evidence.
- 18.5. The power conferred on the arbitral tribunal also includes:
  - 18.5.1. the power to make orders or give directions for the examination of a party or witness on oath or affirmation , and
  - 18.5.2. the power to make orders or give directions for the imposition of any shevua on a party or witness.

- 18.6. For the purposes of the exercise of the powers referred to in sub-rule 18.5 above, the arbitral tribunal may administer any necessary oath or take any necessary affirmation or administer any necessary shevua.
- 18.7. After the signing of the arbitration agreement, the parties may apply by mutual consent at any time to change the procedural rules governing the arbitration. The arbitral tribunal need not consent to the application, but if the arbitral tribunal agrees to any variation to the procedural rules, it shall accept the change upon payment of any reasonable extra fees and expenses it deems fit to cover the change as appropriate.
- 18.8. If the arbitral tribunal does not consent to the application made in sub-rule 18.7 above, then the parties may by mutual consent terminate the arbitration proceedings. Fees and expenses of the arbitral tribunal will not be refunded, and any outstanding fees and expenses to the termination shall be paid.
- 18.9. Should an arbitrator not agree to any consent order requested, but a majority of the other arbitrators do, then that arbitrator has the right to resign without any adverse consequences to the arbitrator and the other arbitrators. The arbitral tribunal will be reconstituted pursuant to Rule 11.
- 18.10. If the arbitral tribunal consists of more than one arbitrator, then any decision of the arbitral tribunal must be made, unless otherwise agreed to by the parties, by a majority of all its members.
- 18.11. Questions of procedure and orders may be decided and made by an arbitrator sitting alone if the arbitral tribunal and litigants so agree in writing.

## **19. Amendments of the claim and defence and remedies sought**

- 19.1. The arbitral tribunal may at any time amend or supplement a party's claim, defence or remedies provided such amendment or supplement falls within the ambit of the arbitration agreement.
- 19.2. A party may apply to the arbitral tribunal to amend or supplement its pleadings. Such application may be refused if the arbitral tribunal considers it to be inappropriate due to the delay in making it or unreasonableness.
- 19.3. The arbitral tribunal may allow such amendment or supplement on such terms and costs as the arbitral tribunal deems appropriate.

## **20. Hearings and written proceedings**

- 20.1. Subject to the relevant clause in the arbitration agreement, the arbitral tribunal is to decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings are to be conducted on the basis of documents and other materials ("on the papers").

- 20.2. Subject to the relevant clause in the arbitration agreement, a party may request the arbitral tribunal to hold an oral hearing at an appropriate stage of the proceedings, with costs and fees to be determined by the arbitral tribunal.
- 20.3. The parties must be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.
- 20.4. All statements, documents or other information supplied to the arbitral tribunal by one party must be communicated to the other party.
- 20.5. Any expert report or evidentiary document on which the arbitral tribunal may rely upon in making its decision must be communicated to the parties.

## **21. Default by a party**

- 21.1. The parties can themselves agree to cure any default by one party and may apply to the arbitral tribunal for consent orders. The arbitral tribunal need not consent to the application. The following sub rules apply when there is no such agreement between the parties, or the arbitral tribunal does not agree to the consent orders.
- 21.2. The arbitral tribunal may consider and deem how appropriate any reason a party gives to excuse a default when determining any further action to be taken.
- 21.3. If any statement of claim is not provided within the required time, the arbitral tribunal shall issue and serve an order requiring the provision of the statement of claim within seven (7) days or such other time as the arbitral tribunal deems appropriate. If the statement of claim is still not produced, the arbitral tribunal may make any further order, including terminating the arbitration on terms and costs.
- 21.4. If a defence, reply or counterclaim is not provided within the required time, the arbitral tribunal shall issue and serve an order requiring the provision of the relevant document within seven (7) days or such other time as the arbitral tribunal deems appropriate. If the relevant document is still not produced, the arbitral tribunal may make any further order, including continuing the proceedings without these documents and make the award on the evidence before it. The arbitral tribunal may or may not draw any inference that failure to deliver a document in response to allegations is in itself an admission of these allegations.
- 21.5. If any party fails to appear at a hearing or to produce any documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence presented.

21.6. Apart from the requirements in sub-rules 21.3, 21.4 and 21.5, if a party has not done any other thing it was supposed to do or fails to do any other thing necessary for the proper and expeditious conduct of the arbitration, then the arbitral tribunal shall issue and serve an order requiring that party to do that thing within seven (7) days or such other time as the arbitral tribunal deems appropriate. If the party will still not have done that thing, then the arbitral tribunal may make any further order, or do any other action, including but not limited to:

21.6.1. making an award dismissing the claim or may give directions (with or without conditions) for the speedy determination of the claim if it is satisfied that there has been an inordinate or inexcusable delay by a party;

21.6.2. directing that the party in default not to be entitled to rely on any allegation or material to which the order related to;

21.6.3. drawing such adverse inferences from the party's failure to comply with the order;

21.6.4. proceeding to an award on the basis of any evidence or materials properly provided to the arbitral tribunal; or

21.6.5. making any order that it thinks fit as to the payment of costs and fees of the arbitration incurred as a result of that party's failure to comply with the order.

## **22. Expert appointed by arbitral tribunal**

22.1. Subject to any relevant clauses in the arbitration agreement, the arbitral tribunal:

22.1.1. may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and

22.1.2. may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for the expert's inspection.

22.2. Subject to any relevant clauses in the arbitration agreement, if a party so requests or if the arbitral tribunal considers it necessary, the expert must, after delivery of the expert's written or oral report, participate in a hearing where the parties have the opportunity to put questions to the expert and present expert witnesses in order to testify on the points at issue.

## **23. Witnesses and subpoenas**

- 23.1. A party with the approval of the arbitral tribunal, has the right to seek the assistance of the Court in taking evidence, and to issue subpoenas for attendance before and/or to produce material or documents to the arbitral tribunal.
- 23.2. The arbitral tribunal can accept witnesses at night and has the discretion to accept testimony and evidence even if unacceptable according to halacha.

## **24. Power to act as mediator, conciliator or non-arbitral intermediary**

- 24.1. With the consent of all parties, an arbitrator can act as a mediator, conciliator or other non-arbitral intermediary.

## **25. Recording of hearing**

- 25.1. The hearing of the substantive dispute will be recorded. The parties and the arbitral tribunal will agree upon provision and the costs of a transcript if applicable.
- 25.2. The arbitral tribunal may call for the provision of part or all of a transcript at any time at no cost to it.

## **26. Confidential information**

- 26.1. For the avoidance of doubt, in this rule, “the parties” mean the parties, their toenim, their lawyers and other representatives.
- 26.2. The arbitral tribunal and the parties must not disclose any confidential information except in the following circumstances in this Rule 26.
- 26.3. The parties and the arbitral tribunal can by consent agree to determine what confidential information can be disclosed, to whom and when.
- 26.4. The following sub rules apply where the parties and arbitral tribunal have not agreed on the release of any confidential information:
  - 26.4.1. the information may be disclosed to a professional or other adviser of any of the parties;
  - 26.4.2. the information may be disclosed if it is necessary to ensure that a party has a reasonable opportunity to present the party's case and the disclosure is no more than reasonable for that purpose;
  - 26.4.3. the information may be disclosed if it is necessary for the establishment or protection of a party's legal rights in relation to a third party and the disclosure is no more than reasonable for that purpose;

- 26.4.4. the information may be disclosed if it is necessary for the purpose of enforcing an arbitral award and the disclosure is no more than reasonable for that purpose;
- 26.4.5. the information may be disclosed if it is necessary for the purposes of this Act and the disclosure is no more than reasonable for that purpose;
- 26.4.6. the information may be disclosed if the disclosure is in accordance with an order made or subpoena issued by a court; and
- 26.4.7. the information may be disclosed if the disclosure is authorised or required by a relevant law or required by a competent regulatory body, and the person making the disclosure gives written details of the disclosure (including an explanation of the reasons for the disclosure) to:
- 26.4.7.1. if the person is a party—the other parties and the arbitral tribunal; and
- 26.4.7.2. if the arbitral tribunal is making the disclosure—all the parties.
- 26.4.8. In this rule, *relevant law* means:
- 26.4.8.1. a law of this State (other than this Act);
- 26.4.8.2. a law of the Commonwealth; and
- 26.4.8.3. a law of another State or Territory.
- 26.5. An arbitral tribunal may make an order allowing a party to arbitral proceedings to disclose confidential information in relation to the proceedings in circumstances other than those mentioned in sub-rule 26.4. This order may only be made at the request of one of the parties and after giving each of the parties the opportunity to be heard.
- 26.6. The person to whom the confidential information is disclosed must be made aware by the disclosing party that it is confidential information and agrees in writing to treat it as such, a copy of which is to be provided to the arbitral tribunal within three (3) days of the disclosure having been made.
- 26.7. If the award has already been given, then the arbitral tribunal can be reconstituted for the purpose of this request.
- 26.8. The parties acknowledge that sections 27H and 27I of the Act allow the Court to make orders relating to confidential information.

## **CHAPTER 6 – THE AWARD**

### **27. Rules of law applicable to the substance of the dispute**

- 27.1. The parties and the arbitral tribunal shall agree whether the arbitral tribunal will act:
- 27.1.1. according to din;
  - 27.1.2. according to peshara kerova ledin;
  - 27.1.3. according to peshara; or
  - 27.1.4. 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
- regarding the rule of law in relation to the award applicable to the substance of this dispute.
- 27.2. If there is no such agreement or direction given by the parties, or the terms of the agreement are not completely clear, then the arbitral tribunal will determine the most appropriate rule of law to follow, including any other criteria set out in halacha, at the time of making the Indicative Ruling and/or award, as set out in sub-rule 13.2.10.4 above.
- 27.3. The arbitral tribunal must decide the dispute, if the parties so agree, in accordance with such other considerations as are agreed to by the parties at the time of entering into the arbitration agreement.
- 27.4. Notwithstanding the above sub-rules, in all cases, the arbitral tribunal must decide in accordance with the terms of the contract and must take into account the common commercial practices and usages of the trade, profession or community, whether mentioned explicitly or implicitly, applicable to the transaction(s).
- 27.5. The arbitral tribunal may make an award in respect of indirect damage and loss of profit.

### **28. Determination of Minhag Hamedinah and Halacha**

- 28.1. For the purposes of determining what the minhag hamedinah is, the arbitral tribunal may, whether with the consent of the parties or not, or at the request of one party or otherwise, after hearing from the other parties, on whatever terms and costs, refer any question of Commonwealth, State or local law or regulation to an expert for an expert report or oral testimony alone, or to the Court.
- 28.2. Subject to any contrary agreement by the parties, either with the consent of the arbitral tribunal or with the consent of the other party, and with the leave of the Court, if a party 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.

28.3. For the avoidance of doubt, there shall be no recourse pursuant to Section 27J of the Act in relation to any question of halacha.

28.4. The arbitral tribunal, whether with the consent of any other party or not, or at the request of one party or otherwise, after hearing from the other parties, on whatever terms and costs, may refer any question of halacha to an expert for an expert report or oral testimony alone or to a recognised halachic posek. If the arbitral tribunal submits such a question to a posek, then that posek's determination shall have the same effect for a question of halacha as a Court would have on a question of law.

28.5. No party, either alone or with the consent of any other party, may seek a halachic determination outside the tribunal.

28.6. Subject to any contrary agreement by the parties, the arbitral tribunal will pierce the corporate veil if it believes minhag hamedinah would entitle it to.

## **29. Advisory opinion of the arbitral tribunal**

29.1. For the purposes of halacha, the arbitral tribunal has the authority to issue an advisory opinion in respect of lefnim meshurat hadin.

29.2. Subject to any contrary agreement of the parties, for the purposes of the Act, the Rules, and the legal enforceability of any award pursuant to the Act and the Rules, such an advisory opinion carries no legal weight in Victoria, but has a moral and halachic imperative for the parties in their relationship with each other and within the Jewish community.

## **30. Specific performance**

30.1. The arbitral tribunal may issue an interim measure or an award for specific performance of any contract or other matter which is part of the arbitration, provided the Court has a similar power to so order.

## **31. Costs, fees and expenses**

31.1. The arbitral tribunal has the discretion as to ordering payment of costs (including the fees and expenses of the arbitral tribunal) by whom, to whom and in what manner, at any time (with or without a hearing) during the arbitration.

31.2. At any time, for any discrete part of the arbitration, or as part of a final award, the arbitral tribunal may fix the cost, fees and expenses:

31.2.1. if relevant, as set out in the arbitration agreement;

- 31.2.2. as a fixed amount;
  - 31.2.3. as an amount related to a specific invoice either in existence or to come into existence;
  - 31.2.4. after requiring the parties to come back to the arbitral tribunal with such further information as the arbitral tribunal requires to make the award; or
  - 31.2.5. being all or part of costs to be taxed on a standard or indemnity basis, to be assessed as though it was an order of the Court.
- 31.3. If no provision is made by an award with respect to the costs of the arbitration, a party may, within 14 days after receiving the award, apply to the arbitral tribunal for directions as to the payment of those costs.
- 31.4. The arbitral tribunal must, after hearing any party who wishes to be heard, amend the award by adding to it such directions as the arbitral tribunal thinks proper with respect to the payment of the costs of the arbitration.

## **32. Settlement prior to the award**

- 32.1. If the parties settle the dispute prior to the giving of the award, then the parties shall decide if they want the settlement to be recorded as an agreement between themselves or as an award.
- 32.2. Upon the parties signing a settlement agreement (ie not being an award) the arbitral tribunal must terminate the arbitration.
- 32.3. If the parties wish their settlement to be recorded as an award, then the arbitral tribunal will make an award as it would have been done otherwise, incorporating the terms of settlement and must terminate the proceedings. If there are any concerns as to the appropriateness or otherwise as to any term, the arbitral tribunal is not obliged to include that term in the award. The arbitral tribunal must advise the parties of that concern prior to making any award.
- 32.4. If the arbitral tribunal makes any award pursuant to this rule, then:
- 32.4.1. reasons do not have to be given;
  - 32.4.2. the award shall state that it is made on agreed terms;
  - 32.4.3. the award has the same status and effect as though an award was given on the merits of the arbitration; and
  - 32.4.4. otherwise the award must be made in accordance with Rule 33 about the form and contents of the award.

### **33. Form and contents of the award**

- 33.1. Unless otherwise agreed by the parties, the arbitral tribunal shall issue an Indicative Ruling. Any party may then appeal against that Indicative Ruling pursuant to Rule 40. If no appeal has been made, then, subject to any amendments or applications pursuant to Rules 37, 38 or 39 concerning correction of the award, interpretation of the award, and additional award, the arbitral tribunal shall make and deliver the award in the same terms as the Indicative Ruling. The award will become an award for the purposes of the Act, and in particular, Part 7 of the Act, being Recourse against Award, and Part 8 of the Act, being Recognition and Enforcement of Awards.
- 33.2. Subject to sub-rule 33.1, the arbitral tribunal can make an award finally disposing of any or all of the issues in dispute at the time of making the award.
- 33.3. If the arbitral tribunal consists of more than one arbitrator, then each arbitrator must vote on the substance of the dispute. The Indicative Ruling and the award will follow the majority of the arbitral tribunal.
- 33.4. Any award must:
- 33.4.1. be in writing and must be signed by the arbitrator or arbitrators;
  - 33.4.2. if the arbitral tribunal consists of more than one arbitrator, be signed by at least a majority of the arbitral tribunal. If any arbitrator does not sign, then reasons for his omitted signature must be given;
  - 33.4.3. be dated;
  - 33.4.4. have a place of arbitration noted; and
  - 33.4.5. include a statement of the reasons for making the award unless the parties have agreed that no reasons need be given or the award is made pursuant to a settlement.
- 33.5. A copy of any award made is to be signed by the arbitral tribunal and given to each party.
- 33.6. The arbitral tribunal may give its Indicative Ruling or Award at night.

### **34. Termination of proceedings**

- 34.1. The arbitral proceedings are terminated automatically by the arbitral tribunal signing the award which finally disposes of all the issues in dispute or upon an order made by the arbitral tribunal in accordance with this Rule 34.
- 34.2. The arbitral tribunal is to issue an order for the termination of the arbitral proceedings when:

- 34.2.1. the claimant withdraws his or her claim, unless the respondent objects and the arbitral tribunal recognises a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;
  - 34.2.2. the parties agree on the termination of the proceedings;
  - 34.2.3. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible; or
  - 34.2.4. the arbitral tribunal makes an award dismissing the claim where the claimant has not complied with an order based upon the claimant's inordinate or inexcusable delay.
- 34.3. The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, save to determine costs if applicable, to correct and to interpret the award or to make any additional award.

### **35. Costs of terminated or abortive arbitration**

- 35.1. If an arbitration is terminated for whatever reason without an award being made, or an award is made pursuant to sub-rule 32.4 above, then any costs or fee agreement or orders made at the termination of the arbitral tribunal's mandate or prior to that, shall remain.

### **36. Interest**

- 36.1. Interest shall not be awarded unless the arbitral tribunal determines that a particular amount is properly claimable under halacha.
- 36.2. Subject to this sub-rule 36.1 the arbitral tribunal may determine a reasonable rate of interest from any date after the cause of action arose or from another date if interest was part of the subject matter of the claim, and award interest on the whole or any part of the money.
- 36.3. Interest is payable from the day immediately following the due date; and on so much of the money as remains unpaid, if allowed by halacha.
- 36.4. If interest is awarded, it shall form part of the award.

### **37. Correction of the award**

- 37.1. Within 30 days of the date of the award, the arbitral tribunal may on its own initiative correct any clerical or computational mistake or error arising from any accidental slip or omission.
- 37.2. Within 30 (unless otherwise agreed) days of receipt of the award, a party, may with notice to the other parties, request the arbitral tribunal to correct any clerical or computational mistake or error arising from any accidental slip or omission.

- 37.3. The arbitral tribunal may give the other parties a reasonable opportunity to make any submissions about the request. The arbitral tribunal shall within 30 days of receiving the request correct the award if it feels the request justified.
- 37.4. The arbitral tribunal may extend the time it in which it can make a correction under sub-rule 37.3.
- 37.5. Any correction forms part of the award.
- 37.6. Rule 33 as to form and contents of the award applies to any correction of the award.

### **38. Interpretation of the award**

- 38.1. Within 30 (unless otherwise agreed) days of receipt of the award, a party with written notice to the other parties, may request the arbitral tribunal give an interpretation of part or all of the award, giving reasons why an interpretation is requested.
- 38.2. The arbitral tribunal must give the other parties a reasonable opportunity to make any submissions about the request for interpretation.
- 38.3. The arbitral tribunal shall be entitled to determine that the request for interpretation is unjustified, and not give any interpretation. Otherwise, the arbitral tribunal shall give an interpretation either with a hearing or on written submissions within 30 days of receiving the request.
- 38.4. The arbitral tribunal may extend the time it in which it can give an interpretation under subrule 38.3.
- 38.5. Any interpretation will be part of the award.
- 38.6. Rule 33 as to form and contents of the award applies to any interpretation of the award.

### **39. Additional award**

- 39.1. Within 30 (unless otherwise agreed) days of receipt of the award, all parties, or one party with notice to the other parties, may request the arbitral tribunal to make an additional award with regard to any claims presented in the arbitration but omitted from the award.
- 39.2. The arbitral tribunal must give the other parties a reasonable opportunity to make any submissions about the request for an additional award.
- 39.3. The arbitral tribunal shall be entitled to determine that the request for an additional award is unjustified, and not make any award. Otherwise, the arbitral tribunal shall make an additional award, including any award as to

costs, either with a hearing or on written submissions within 60 days of receiving the request.

39.4. The arbitral tribunal may extend the time it in which it can make an additional award under sub-rule 39.3.

39.5. Rule 33 as to form and contents of the award applies to any additional award.

#### **40. Appeals against Indicative Ruling**

40.1. Any appeal on a question of halacha or minhag hamedinah against an Indicative Ruling may only be made if all the parties agree in writing before the end of the time for such appeal in sub-rule 40.3 below that this Rule 40 applies to the arbitration. The following sub-rules apply when there is agreement by the parties that Rule 40 applies to the arbitration proceedings.

40.2. The parties agree that any question relating to an appeal against the Indicative Ruling on a question of halacha, whether of a substantive, procedural or conflict of laws nature, can only be heard and determined by the arbitral tribunal.

40.3. Unless otherwise agreed by the parties, within 14 days of receipt of the indicative ruling, a party with notice to the other parties, may appeal to the arbitral tribunal on any question of halacha or minhag hamedinah, giving reasons for the appeal.

40.4. Once an appeal against an indicative ruling has been made, any party or the arbitral tribunal may raise any other question of halacha or minhag hamedinah, and the other parties can be heard on these grounds pursuant to sub-rule 40.6 below.

40.5. The arbitral tribunal, at its discretion, may make any order as to costs as prescribed by Rule 31.

40.6. The arbitral tribunal must give the other party a reasonable opportunity to make any submissions concerning the appeal or any further questions of halacha or minhag hamedinah. The arbitral tribunal shall make a decision on the appeal either with a hearing or on written submissions within 14 days of receiving the request.

40.7. On the determination of an appeal under this Rule, the arbitral tribunal may confirm or vary the Indicative Ruling, and may confirm or vary or add to, the costs of the arbitration, including the appeal.

40.8. Where the arbitral tribunal confirms the Indicative Ruling on appeal, then the confirmed Indicative Ruling becomes the award of the arbitral tribunal as at the date of determination of the appeal and the Arbitral tribunal will make the award pursuant to sub-rule 33.4 above.

40.9. Where the arbitral tribunal varies the Indicative Ruling on appeal, then within 14 days of receipt of the variation, a party with notice to the other parties, may appeal to the arbitral tribunal on the varied Indicative Ruling, giving reasons for the appeal. This Rule 40 in its entirety shall then apply to the varied Indicative Ruling as though it were the original Indicative Ruling.

40.10. The arbitral tribunal may extend the time in which it can confirm or vary the Indicative Ruling under sub-rule 40.6.

40.11. The parties must ensure that any person to whom they disclose details of the arbitration proceedings to in order to determine if they can appeal the indicative ruling pursuant to this Rule 40 must maintain the confidentiality of the proceedings. If there is any confidential information involved, then the relevant party must ensure that the provisions of Rule 26 relating to confidential information be adhered to.

#### **41. Recourse against the Award**

41.1. The parties acknowledge that Part 7 (Sections 34 and 34A) of the Act refers to "Recourse against Award". The parties acknowledge that they are aware that Section 34A states that an appeal to the Court on a question of law arising out of an award can only be made if the parties agree to this before the end of the appeal period referred to in subsection 34A(6), and the Court grants leave.

41.2. If the parties agree that Section 34A of the Act (appeals against awards) applies to the arbitration proceedings, then Section 34A 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.

41.3. For the avoidance of doubt, the parties agree that there shall be no recourse pursuant to Section 34A in relation to any question of halacha.

#### **42. Heter Arkaot**

42.1. If any party does not comply with any part of an award within the time allowed in the award, then in this regard for the purposes of a heter arkaot, that party shall be considered a mesarev.

### **CHAPTER 7 – MISCELLANEOUS**

#### **43. Death of a party**

43.1. Unless otherwise agreed by the parties, unless there is any law under which a right of action is extinguished by the death of a person, the death of a party shall of itself not bring the arbitration to a halt. The arbitration may be continued by or against the legal personal representative of the deceased.

#### **44. Immunity and indemnity of the arbitral tribunal**

- 44.1. The arbitral tribunal or an arbitrator is not liable for anything done or omitted to be done in good faith in their capacity as arbitral tribunal or arbitrator unless the act or omission is fraudulent.
- 44.2. The parties shall indemnify the arbitral tribunal and each arbitrator against any liability of whatever kind except fraud.
- 44.3. In this rule, a reference to an arbitrator includes an arbitrator acting as a mediator, conciliator or other non-arbitral intermediary under the Rules.

#### **45. Hierarchy of laws as to substantive law and procedure**

- 45.1. Unless there is anything contrary to Victorian law or public policy, and where it is allowed that any Act of Parliament or law may be derogated from, where there is any inconsistency or gaps:
  - 45.1.1. the arbitration agreement prevails over the Rules, the Act, and any other Victorian or Australian law or regulation;
  - 45.1.2. the Rules prevail over the Act and any other Victorian or Australian law or regulation; and
  - 45.1.3. the Act applies for any gaps or silence in the arbitration agreement and the Rules.

#### **46. Reading down and severance.**

- 46.1. If the arbitral tribunal or Court determines that a word, phrase, sentence, rule or sub-rule in the arbitration agreement or these Rules 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 alone must be severed and the other provisions of the arbitration agreement and the Rules shall remain operative.
  - 46.2. If the arbitral tribunal determines that a word, phrase, sentence, rule or sub-rule in the arbitration agreement or the Rules is according to halacha 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 alone must be severed and the other provisions of the arbitration agreement and the Rules shall remain operative.
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