

**SAMPLE**  
**Terms of Appointment of Arbitral Tribunal**  
**Claimant v Respondent**

The Dispute

An arbitration to determine whether the Respondent is in breach of an Agreement entered into between the parties [.....] and if so the remedies to which the Claimant may be entitled.

Representation by Counsel

By signing these Terms of Appointment:

- 1) [the lawyers for the Claimant] warrant that they are authorized by the Claimant to represent it in this arbitration and to sign this document on its behalf.
- 2) [the lawyers for the Respondent]] warrant that they are authorized by the Respondent to represent it in this arbitration and to sign this document on its behalf.

Confirmation of Appointment of the Tribunal

The parties by their counsel confirm that the following members of the tribunal have been appointed to arbitrate the dispute:

Arbitrator A. (appointed by Claimant)  
Arbitrator B (appointed by Respondent)  
Arbitrator C (the “Presiding Arbitrator” appointed by Arbitrator A and Arbitrator B).

The members of the tribunal confirm that they have accepted their appointments and have agreed to act as arbitrators of the Dispute.

Independence and Impartiality

Each member of the tribunal acknowledges that all tribunal members have a duty:

- a) to act independently and impartially in this matter regardless of how or by whom they were appointed;
- b) to have no communications with one party where the other parties are not present or have had no reasonable opportunity to participate; and
- c) to have no communications with the parties or their counsel regarding this arbitration except through the tribunal acting as a whole or through the Presiding Arbitrator.

Each member of the tribunal confirms that he or she has disclosed to the tribunal and to counsel for all parties any prior relationship with any of the parties to the dispute and any other circumstance that would call into question his ability to adjudicate this dispute in

an independent and impartial manner. The parties by their counsel confirm that they do not object to and are not aware of any grounds upon which to object to the appointment of the members of the tribunal to arbitrate this Dispute.

### Fees and Expenses

Each other member of the tribunal shall be compensated at an hourly rate of \$----- (plus HST or any similar tax that may be applicable). Each member of the panel shall be reimbursed for reasonable out of pocket expenses.

Arbitrator A and Arbitrator B shall be compensated at the stated rate for time and expenses, if any, incurred prior to the appointment of the Presiding Arbitrator.

Both parties to the arbitration shall be jointly and severally liable for payment of the fees and reasonable expenses of all three members of the tribunal, and for the payments of deposits from time to time to secure payment of such fees and expenses.

Accounts of all three arbitrators and receipt and application of deposits shall be coordinated by the Presiding Arbitrator using the deposit management services of XYZ Insitute (“XYZ”). The Presiding Arbitrator and XYZ shall have no liability with respect to payment of fees and expenses other than to co-ordinate payments out of available deposits. In the arbitration, no account shall be taken of XYZ’s involvement in administering the deposits in relation to the determination of any issue relating to applicable law or the seat of the arbitration.

Each side shall pay 50% of deposits required and accounts rendered by the arbitrators, subject to any reallocation of the costs of the arbitration in the award. If either side defaults as to payment, the other side may pay on behalf of the defaulting party.

Payments of deposits, and the application of deposits to the fees and expenses of the tribunal, are without prejudice to the allocation or re-allocation of costs by the tribunal at the end of the proceeding, based upon the submissions of the parties.

An initial deposit of \$----- shall be payable upon the signing of these Terms of Appointment.

Further deposits may be required on 14 days notice if, at any time, the estimated time to complete the arbitration exceeds the amount of the deposit on hand. Accounts rendered by the arbitrators (except for cancelled hearing dates) will be based on actual time spent. Time spent by individual arbitrators may vary.

Accounts of the arbitrators shall be payable out of the deposit as accounts are rendered.

Any balance of the deposit remaining after payment of the fees and expenses of the arbitrators and the arbitration, shall be returned to the parties without interest in proportion to the amounts they contributed to the deposit(s).

Arbitration services and the final award may be suspended or withheld at any time and from time to time until the financial obligations of both parties are met by both parties, or by one party on behalf of both.

### Cancellation and Adjournment

Cancellation fees are calculated on the basis of 8 hours per scheduled hearing day per arbitrator.

If a hearing is adjourned or cancelled or the arbitration is settled within 90 days prior to the date on which the hearing was previously scheduled to begin 25% of the cancellation fee for the unused hearing dates shall be payable. If a hearing is adjourned or cancelled or the arbitration is settled within 60 days prior to the date on which the hearing was previously scheduled to begin 50% of the cancellation fee for the unused hearing dates shall be payable. If a hearing is adjourned or cancelled or the arbitration is settled within 30 days prior to the date on which the hearing was previously scheduled to begin 100% of the cancellation fee for the unused hearing dates shall be payable.

No cancellation fee is payable in respect of time reserved by the arbitrators for preparing for hearings or writing awards.

Notification of any request for cancellation or adjournment or of any settlement, shall be made by e-mail, sent to all members of the tribunal.

### Conduct of the Arbitration

The Arbitration shall be conducted in accordance with the agreement of the parties, subject to mandatory requirements prescribed by law. The parties shall advise the Tribunal at the first meeting as to the matters on which they have agreed respecting the conduct of the Arbitration. The Tribunal shall provide directions, initially and from time to time, as to the conduct of the arbitration and procedural matters on which the parties are not in agreement.

During the Covid-19 pandemic the Tribunal, or any member of the Tribunal, may elect to attend the hearing and any case conferences by remote video conferencing.

### Immunity

The parties hereby fully release the members of the tribunal from all claims and causes of action whatsoever relating to or arising from the arbitration, now or hereafter. The members of the tribunal shall be entitled to the same immunity from claims and legal proceedings as a Judge of the Superior court of Ontario.

The parties agree that they will not call upon any tribunal member to give evidence in any court proceeding relating to the arbitration or relating to any decision or award rendered by the tribunal. If any member of the tribunal is called upon to give evidence in any court proceeding the tribunal member shall be paid by the parties for his or her time and expenses on the same basis as set out in this agreement.

### Confidentiality, Privacy and Security

The parties, through their counsel, shall advise the tribunal of all measures necessary to comply with applicable legal requirements relating to privacy and confidentiality, as well as any security measures proposed by the parties, or either of them, relating to the security of

information in the arbitration.

Applicable Law

These Terms of Appointment shall be subject to and interpreted in accordance with the laws of Ontario.

Document Retention

The tribunal and each tribunal member may dispose of all documents relating to this matter after 60 days following delivery of a final Award or other termination of the arbitration. This period shall be extended at the request of any party, provided the party making the request provides a deposit and reimburses the tribunal and each member of the tribunal for the cost of storage of the documents for the period of the time requested beyond 60 days. If a party initiates any court proceeding with respect to the Arbitration, that party shall notify the tribunal of having done so and shall provide a deposit and reimburse the tribunal and each member of the tribunal for the costs of storing any documents relating to the Arbitration pending completion of such court review.

Entire Agreement

These Terms of Appointment supersede any previous agreements between the parties and the arbitrators appointed by them to the tribunal.

**Execution of this Agreement**

This agreement may be signed in counter parts and sent to the other parties and the tribunal by courier or e-mail. The agreement only takes effect once the Arbitrators and Counsel for all parties have signed.

Agreed to this -- day of -----, 2021.

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Claimant  
by its solicitors [the lawyers for the Claimant]

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Respondent  
by its attorneies [the lawyers for the Respondent]]

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Arbitrator A

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Arbitrator B

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“Presiding Arbitrator”