



**Party “A” v. Party “B”
Sample Terms of Appointment of Arbitral
Tribunal**

The Dispute

The dispute to be arbitrated (the “Dispute”) relates to the Agreement between Party “A” to Party “B” and Related Party “C” dated [Date] and the matters relating thereto as they may be further defined in the arbitration. The Dispute is to be arbitrated under Article [#] of the Agreement between Party “A” and Party “B” dated as of [Date].

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 Party “A”)

Arbitrator “B” (appointed by Party “B”)

Arbitrator “Chair” (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

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 Chair.

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 or her 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

The Chair shall be compensated at an hourly rate of \$_____. Each other member of the tribunal shall be compensated at an hourly rate of \$_____. Each member of the panel shall be reimbursed for reasonable out of pocket expenses.

[The tribunal may appoint an assistant to the tribunal to assist with file management, logistics at the hearing and other administrative matters at a rate not to exceed \$_____.]

All 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.

Accounts of all three arbitrators and receipt and application of deposits shall be coordinated by [the Chair or the deposit management service of the LCIA]. The [Chair or LCIA] shall have no liability with respect to payment of fees and expenses other than to co-ordinate payments out of available deposits.

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.

Deposits totalling \$ _____ shall be payable as follows:

1. \$ _____ on or before [Date]
2. \$ _____ on or before [Date]
3. \$ _____ on or before [Date]

The deposits are calculated on the basis of _____ days for motions and directions, ___ days for preparation for the hearing, _____ days for the hearing and _____ days for consideration and writing the award. This is an estimating tool only. 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 until the financial obligations of the parties are met.

Cancellation and Adjournment

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 a cancellation fee for the unused hearing dates shall be payable. The cancellation fee for unused hearing dates so cancelled will be based on 6 hours per day times the arbitrators' hourly rates for up to a maximum of 10 scheduled hearing dates. The cancellation fee shall not be applicable if an arbitrator is able to rebook the cancelled dates for other matters.

If more than 10 scheduled hearing dates are adjourned or cancelled, a cancellation fee of 1.5 hours per day shall be payable in any circumstance in which no other cancellation fee is payable.

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

Notification of any cancellation, request for adjournment or settlement, shall be made by telephone and also confirmed in writing, by fax or e-mail, to the attention of the tribunal.

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 Ontario Superior Court of Justice].

The parties agree that they will not call upon any tribunal member to give evidence in any court proceeding relating to the arbitration or 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.

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.

Party "A"
by its counsel

Party "B"
by its counsel

Arbitrator "A"

Arbitrator "B"

Arbitrator "Chair"