

A R B I T R A T O R ' S A P P O I N T M E N T

D A T E D

day of

2019

P A R T I E S

(1) [REDACTED] (*the Claimant*)

(2) [REDACTED] (*the Respondent*)

(together, the parties), and

(3) Bankside Chambers, Level 22, 88 Shortland Street, Auckland, barrister (*the Arbitrator*)

B A C K G R O U N D

- A. A dispute, outlined in the Schedule, has arisen between the parties in connection with the Contract.
- B. The parties have agreed to submit the dispute to arbitration for final determination by the Arbitrator in terms of the Arbitration Act 1996 (*the Act*).
- C. The Arbitrator has agreed to determine the dispute in terms of the Act and this agreement.

A G R E E M E N T

1. Arbitral tribunal and remedies

1.1 Appointment

The dispute is submitted to arbitration before the Arbitrator, whose award shall be final and binding on the parties.

The parties undertake to comply with any award without delay, subject only to such rights as they may possess under Articles 33 & 34 of the First Schedule to the Act, but not under clause 5 of the Second Schedule.

1.2 Arbitration

The parties and the arbitrator acknowledge that the arbitration is to be conducted fairly and cost effectively, with the objective that the dispute is determined promptly, and in a manner which is proportionate to the issues in dispute.

1.3 Procedure

As soon as practicable after the signature of this agreement, the Arbitrator will hold a preliminary conference with the parties, and/or their counsel.

The purpose of the preliminary conference is for the Arbitrator to discuss the process with the parties and to set a timetable for the production of documents, exchange of submissions and for the hearing. The Arbitrator will issue formal rulings following the preliminary conference, which will be binding on the parties.

The Arbitrator may require further conferences, if the need arises.

Unless the parties and the arbitrator agree otherwise, the Arbitrator will conduct a hearing at which each party will be given a reasonable opportunity to present all relevant evidence and argument.

1.4 Submissions

The parties agree to limit their submissions and their use of the procedure to matters which are relevant to the dispute.

1.5 Discovery

The parties will disclose all documents relevant to the dispute as soon as practicable before the hearing, and they will prepare an agreed bundle of documents.

Formal discovery will not be required, unless the Arbitrator forms a view that an order for discovery is required to ensure that all relevant and material information is disclosed.

1.6 Award

The Arbitrator, for his part, may make one or more interim or partial awards and will produce a final award, including a final determination as to costs, as soon as practicable following the completion of the hearing.

A copy of the award will be made available to the parties as soon as possible after signature, and payment of any balance of the Arbitrator's fees owing.

1.7 Costs

Pending a ruling as to costs, the parties agree to share equally in the costs of the arbitration, including the Arbitrator's interim fees, room hire, refreshments, travel and accommodation and recording of the evidence. If one party pays more than an equal share, the non-paying party will pay interest on the excess at the paying party's overdraft rate.

The parties agree that costs will be awarded in accordance with the AMINZ Guidelines and Rules on Awarding Costs in Arbitration.

1.8 AMINZ Arbitration Appeal Tribunal

The parties exclude all rights of appeal to the High Court of an award and any ruling of the Arbitration Appeal Tribunal (AAT) under clause 5 of the Second Schedule to the Act.

Any party may appeal the award to the AMINZ Arbitration Appeal Tribunal (AAT), in terms of the current Arbitration Appeal Rules (the Appeal Rules) published by the Arbitrators' and Mediators' Institute of New Zealand (AMINZ).

The parties will not enforce any award which is subject to an appeal to the AAT, whether in New Zealand or elsewhere, unless:

- the time for filing an appeal has expired, and no appeal has been filed, or
- there has been a final award by the AAT, or
- the appeal has been abandoned or dismissed.

The AAT is to have the same powers as the High Court in terms of clause 5 of the Second Schedule to the Act (save as provided in the Appeal Rules).

Where the Arbitrator is unwilling or unable to accept the remission of the award following the appeal, the AAT may decide the issues which would otherwise have been remitted.

2. Arbitrator's fees

2.1 Rates

The parties will pay the Arbitrator the following rates (plus GST) in New Zealand dollars:

- [\$] for every day, and [] for every half day or less, occupied in a hearing.
- [] per hour for all other necessary attendances.
- Legal research fees paid to a junior barrister or law graduate.
- All reasonable disbursements and, for arbitrations outside Auckland, accommodations and travel (business class, where international travel is required).

The Arbitrator will provide interim invoices, typically on a monthly basis. The parties agree to pay such invoices in equal shares within 7 days of receipt.

2.2 Security

The Arbitrator may require security for his fees, representing the Arbitrator's estimate of the likely fees to be incurred until the next interim invoice is issued.

The security may take the form of payment on account, or a personal, irrevocable and unconditional undertaking from the parties' solicitors.

The amount of the security may be increased from time to time (for example, prior to commencement of the hearing and/or preparation of the award).

2.3 Cancellation

Where days reserved for the hearing of the arbitration, or a matter relating to the arbitration, are cancelled or postponed the Arbitrator will be paid a cancellation fee consisting of the following proportions of the Arbitrator's daily rate, multiplied by the number of unused days reserved:

- Cancellation or postponement more than four weeks prior to the scheduled commencement of the hearing – nil.
- Cancellation or postponement between four weeks and two weeks prior to the scheduled commencement of the hearing – 15%.
- Cancellation or postponement two weeks or less prior to the scheduled commencement of the hearing – 30%.

3. Arbitrator's liability

3.1 Release

The parties together and separately release and discharge the Arbitrator from all liability of any kind (whether involving negligence, breach of contract, breach of fiduciary duty, breach of statutory duty or otherwise) which may be alleged to arise in connection with, or to result from, or to in any way relate to, this arbitration, unless the act or omission is fraudulent.

3.2 Limitation

To the extent that such release and discharge is ineffective as a matter of law, in terms of section 5 of the Contractual Remedies Act 1979, the parties agree that damages is their exclusive remedy for any action against the Arbitrator, and such damages are limited to the amount of the Arbitrator's fee.

4. Communication

4.1 Notices

All notices and communications must be copied to all parties, and to the Arbitrator, at the following addresses:

- The Arbitrator

John Walton
Bankside Chambers
Level 22 Lumley Centre
88 Shortland Street
Auckland

john@johnwalton.co.nz

(021) 473 656

- The Claimant

[]

- The Respondent

[]

Post and facsimile transmission is not to be used.

4.2 Email

The parties agree to the use of email for all communications.

5. Applicable law

5.1 Arbitration Act 1996

Unless the parties have agreed otherwise, and subject to the provisions of this agreement, the First and Second Schedules to the Act apply.

5.2 New Zealand law

The governing law of the dispute and all contracts forming the subject of the arbitration is the law of New Zealand, and the parties agree to submit to the exclusive jurisdiction of the courts of New Zealand.

S I G N E D

SIGNED for and on behalf of)
)
by)
in the presence of:)

SIGNED for and on behalf of)
)
by)
in the presence of:)

SCHEDULE

Brief summary of the dispute