

**IN THE MATTER OF AN ARBITRATION UNDER THE NEW ZEALAND
ARBITRATION ACT 1996**

BETWEEN

[NAME]

Claimant

-v-

[NAME]

Respondent

**[TEMPLATE] PROCEDURAL
ORDER NO. 1 INCLUDING
TIMETABLE**

[Date]

Upon the agreement of the Claimant and the Respondent (each a “Party” and together “the Parties”) to some of the directions contained herein

And upon hearing the legal representatives of the Parties at a procedural hearing held [by telephone] / [in person] on []

The Tribunal hereby **ORDERS** and records as follows:

The Parties to the arbitration

1. The Claimant in this arbitration is [X].

[Claimant’s address]

Claimant is represented in this arbitration by:

[Counsel name & details]

2. The Respondent in this arbitration is [X].

[Respondent address]

Respondent is represented in this arbitration by:

[Counsel name and details]

[Written submissions] / [Pleadings]

3. The parties shall file their [submissions]/[pleadings] in accordance with the attached procedural timetable namely:

[list relevant filing dates here]

4. Each [submission]/[pleading] will have the following format:

(i) titles and subtitles shall be inserted whenever appropriate;

(ii) pages shall be numbered;

(iii) paragraphs shall be numbered in the left-hand side margin in a sequential and uninterrupted manner throughout the brief; and

(iv) [word limits]

Documents

5. Each Party shall attach the document or legal authority on which it relies in its [submission] / [pleading], fact witness statement or expert report as an exhibit or authority respectively.

6. The Parties shall number documents in a consecutive manner throughout the proceedings.

7. The Claimants shall number their factual exhibits as C-1, C-2 and so on, their legal authorities as CA-1, CA-2 and so on, and their witness statements as CW-1, CW-2 and so on. The Respondents shall number their factual exhibits as R-1, R-2 and so on, their legal authorities as RA-1, RA-2 and so on, and their witness statements as RW-1, RW-2 and so on.
8. Neither Party shall be permitted to submit additional or responsive documents after the filing of its respective last written submission save at the discretion of the Tribunal, and upon a prior written request followed by comments from the other Party.
9. Should a Party request leave to submit additional or responsive documents, that Party shall not annex to its request the documents that it seeks to introduce.

Document production

10. With respect to the following document production procedures, the Tribunal shall have regard to the IBA Rules on the Taking of Evidence in International Arbitration 2010 (the **IBA Rules**).
11. By [insert time], each Party may identify to the opposing Party, by its request for production in the form of a schedule with three columns (**Redfern Schedule**), any specific document or narrow and specific category of documents not already disclosed to the other Party that are reasonably believed to exist (in the first column), describing how the documents requested are relevant and, if it be so asserted, material to the outcome of the case, and containing a statement that the documents requested are not in the possession, custody or control of the requesting Party, and of the reason why that Party assumes the documents requested to be in the possession, custody or control of the other Party (in the second column).
12. By [insert time], the opposing Party will indicate its intention to comply with, or object to, the request for production, together with the reasons for any such objection (in the third column of the Redfern Schedule). By [insert time], each Party will comply with the requests for production to which no objection has been made. Each Party reserves the right to apply to the Tribunal for an extension of this deadline in the event that the scope of the relevant request for production necessitates a longer period than presently envisaged by this timetable for the purpose of complying with the request made by the opposing Party.
13. [By [insert time] the requesting Party will set out its reply to the objections to the request for production (in the fourth column of the Redfern Schedule).] [not always needed]
14. Following exchange of [the objections]/[the replies to objections] to the request for production, the Parties will attempt to settle any dispute about the production of documents by agreement between themselves.
15. If no agreement is reached in relation to any or all of the disputed requests, the Party requesting the documents or categories of documents (the **Applicant**) to which objection is made by the opposing Party (the **Opponent**) will forward the completed schedule to the Tribunal (identifying only those requests which continue to be sought by the Applicant and disputed by the Opponent) by [time and date].

16. Unless an oral hearing on document production is required by both parties, or is ordered by the Tribunal upon the application of either of them or upon its own motion, the Tribunal will consider the Redfern schedule(s) and issue a decision in relation to each disputed request.
17. Following the Tribunal's decision on document production, the parties shall produce documents by [insert date] or within some other time specified by the Tribunal.
18. If a Party fails without satisfactory explanation to comply with an order for production of documents issued by the Tribunal, the Tribunal may infer that such evidence would be adverse to the interests of that Party.
19. Documents are to be produced in searchable PDF format (except where impracticable).
20. [You can suggest fully electronic sharing of documents rather than hard copies]

Witnesses of Fact

21. If a Party wishes to adduce witness evidence, witness statements shall be filed in accordance with the Procedural Timetable. [specify dates here if they are pre-agreed]
22. The IBA Rules shall apply to fact witness statements. [you can modify this to make it more permissive.]
23. [Or, alternatively to preceding paragraph, you could agree in advance on certain minimum requirements for your fact witness evidence e.g.:

Fact witness statements shall contain the following items:

- (i) the full name and address of the witness;
- (ii) the relationship (past and present, if any) between the witness and the Parties or Counsel (in particular whether the witness is or was an employee or other representative of a Party or a counsel/consultant to such Party);
- (iii) a description of the *relevant* background, qualifications, training, professional experience and present position of the witness;
- (iv) confirmation that the witness is regarded as a witness of fact by the Party calling such witness;
- (v) a detailed account of the facts *relevant* to the dispute as testified by the witness, and the sources of the witness' information and knowledge in relation to those facts; a "detailed" account for the purposes of this provision means that the witness statement must be sufficiently detailed so as to stand in lieu of examination in chief of the witness in question;
- (vi) a statement by the witness that he/she believes the matters stated are true;
- (vii) all exhibits intended to be relied upon by the witness; and
- (viii) the signature of the witness, and the date and place of signing.

24. The Parties may not annex documents that are not otherwise on record to witness statements of factual witnesses.
25. Only witnesses who have submitted their witness statements in compliance with the Tribunal's order (including this Procedural Order No.1) are allowed to attend and give evidence in the oral hearing.
26. Unless otherwise directed by the Tribunal, contents of the witness statements shall be treated as that witness' evidence-in-chief. The Party calling that witness shall have the opportunity to clarify or explain the contents of such witness statements.

Expert Evidence

27. If a Party wishes to adduce expert witness evidence, expert witness statements shall be filed in accordance with the Procedural Timetable. [Amend to indicate if with the written submission or separately]

[If you are having a separate expert witness stage and your case is expert-heavy, consider whether you wish to know in advance the scope of the other party's expert evidence and if you would like the tribunal's permission for expert evidence to be adduced.]

28. Written expert reports shall comply with the IBA Rules and contain the following items:
 - (i) the full name and address of the expert witness;
 - (ii) his/her relevant professional qualification and experience as an expert witness;
 - (iii) the relationship (past and present, if any) between the expert witness and the Parties;
 - (iv) the expert's detailed opinion on the subject matter for which he/she is called as expert witness;
 - (v) all exhibits and authorities intended to be relied upon by the expert witness;
and
 - (vi) the signature of the expert witness, and the date and place of signing.
29. Unless otherwise directed by the Tribunal, contents of the expert witness statements shall be treated as that expert's evidence-in-chief. The Party calling that expert witness shall have the opportunity to clarify or explain the contents of such expert witness statements.

Pre-hearing review and further steps before the substantive hearing

30. On or before [X], each Party shall identify any witness or expert of the opposing Party who is *not* required to appear at the evidentiary hearing. The Tribunal shall attribute to the evidence of any witness or expert who does not appear at the evidentiary hearing what weight it considers, in its absolute discretion, is appropriate.

31. On [X] a pre-hearing review will be held at which the Tribunal will decide upon procedural matters not already provided for in relation to the substantive hearing and in preparation for it.
32. The Parties agree on [an electronic hearing bundle] / [a common system of bundling (indexed and paginated) to be used by the Parties at the substantive hearing and shall identify and exchange documents for inclusion in the agreed bundles of documents to be used by the Parties at the final hearing prior to the pre-hearing review under paragraph 24 above. No document, other than those included in any of the agreed bundles of documents or legal authorities exchanged is to be introduced, without the consent of the Tribunal, for use at the substantive hearing. In the event that agreement on the system of bundling or content of such bundles cannot be reached between the Parties, any outstanding issues shall be determined by the Tribunal at the pre-hearing review.
33. By [X]. the Claimant will produce the agreed common bundle for use at the substantive hearing.
34. On [X], the Parties shall simultaneously exchange and submit their pre-hearing brief on all issues, referencing the common bundle documents on which they rely.

The hearing

35. The hearing shall be held on [date] at [venue].
36. The Parties will be responsible for arranging the hearing venue and related logistics.

Additional matters to be recorded

37. Electronic copies of all submissions, witness statements and experts' reports should be provided to the Tribunal and the other Party by [insert method] [to agree method for sharing electronically and in hard copy if necessary].
38. Short extensions of time may be agreed between the Parties, as long as they do not (individually or when aggregated with other agreed extensions) affect later dates in the Procedural Timetable and the Tribunal is informed before the original deadline expires. Any other request for an extension of time should be submitted to the Tribunal promptly after an event has occurred which prevents a Party from meeting a deadline. An application for more time which is made very shortly before the deadline expires, without good cause, may be denied.
39. Upon application of a Party or on its own initiative, the Tribunal may modify this Provisional Timetable and Procedural Order.
40. The parties agree that the costs of and incidental to the Procedural Hearing and this Procedural Order No. 1 shall be costs in the arbitration.

Made by Order of the Tribunal and signed on ____ at [place]

ANNEX 1A - EXAMPLE PROCEDURAL TIMETABLE [MEMORIAL STYLE]

Event	Vs. Prior Date
Statement of Claim / Memorial with fact witness statements, expert reports	--
Statement of Defence / Counter-Memorial	+ 8 weeks
The parties exchange requests for the production of documents in the form of a Redfern Schedule (see Annex B).	+ 2 weeks
Each party undertakes to produce the requested documents or, where applicable, states its objections to the request.	+ 2 weeks
Each party replies to the other party's objections to produce and submits its completed Redfern Schedule to the Tribunal. In parallel, each party produces the documents that it has agreed to disclose.	+ 2 weeks
Tribunal to rule on document requests	+ 7 days
Produce documents further to Tribunal's order	+ 4 weeks
['Midstream' procedural meeting]	[+ 10 days]
[Statement of Reply memorial style]	[+ 8 weeks]
[Statement of Rejoinder, memorial style]	[+ 8 weeks]
[Experts to meet and file a joint expert report identifying areas of agreement / disagreement]	
Parties to indicate in writing which fact and expert witnesses they intend to call and/or cross examine	
Pre-hearing case management conference	
[Parties to file short pre-hearing submissions, together with an agreed chronology of events and an agreed list of issues for the Tribunal's determination]	
Hearing	

ANNEX 1B – EXAMPLE PROCEDURAL TIMETABLE [SPLIT PLEADINGS AND WITNESS EVIDENCE]

Procedural step	Indicative timeline (+ refers to previous step unless noted otherwise)
Statement of Claim	Time 0
Statement of Defence	+ 4 weeks
The parties exchange requests for the production of documents in the form of a Redfern Schedule (see Annex B).	+ 4 weeks
Each party undertakes to produce the requested documents or, where applicable, states its objections to the request.	+ 2 weeks
Each party replies to the other party's objections to produce and submits its completed Redfern Schedule to the Tribunal. In parallel, each party produces the documents that it has agreed to disclose.	+ 2 weeks
Tribunal to rule on Document Request (if necessary)	+ 7 days
Produce documents further to Tribunal's order	+ 4 weeks (after the tribunal's ruling on document request)
[Mid-stream procedural meeting]	[+ 10 days]
[Statement of Reply]	
[Statement of Rejoinder]	
Parties to exchange fact witness statements	+ 6 weeks from production of documents OR from Tribunal's ruling on document request, whichever is later in time
Parties are to agree on the scope of expert evidence; failing such agreement, parties are at liberty to apply to the Tribunal for an order on expert evidence	+ 2 weeks
Parties to exchange reply fact witness statements	+ 4 weeks from the filing of first round fact witness statements
Parties to exchange expert evidence	+ 6 weeks from the exchange of reply fact witness statements
Parties to exchange reply expert evidence (if any)	+ 4 weeks
[Experts to meet and file a joint expert report identifying areas of agreement/disagreement]	

Procedural step	Indicative timeline (+ refers to previous step unless noted otherwise)
Parties to indicate in writing which fact and expert witnesses they intend to call and/or cross examine	+ 2 weeks (after filing of reply expert evidence or, if no reply expert evidence filed, from filing of expert evidence)
Pre-hearing conference	To be determined
[Parties to file short pre-hearing submissions, together with an agreed chronology of events and an agreed list of issues for the Tribunal's determination]	To be determined
Hearing	
[Parties to file post-hearing briefs, if any, and cost submissions]	To be determined