

ARBITRATION AGREEMENT

File #

**THIS AGREEMENT is made**

**BETWEEN:-**

Applicant's name and address

AND

Respondent's name and address

(each a ‘Party’ and together ‘the Parties’)

AND

Arbitrator's name

(the ‘Arbitrator’)

**WHEREAS:**

A dispute exists between the Parties with respect to a matter under the *Owner Drivers and Forestry Contractors Act 2005* (the Act) (the Dispute).

Under section 35 of the Act the Parties jointly have referred the Dispute to the Victorian Small Business Commission (VSBC) for arbitration (Arbitration).

In performance of its function under section 54 of the Act the VSBC has arranged for the Arbitration of the Dispute between the Parties.

The Parties wish for the terms of this Agreement to apply to the Arbitration.

**EACH PARTY AGREES AS FOLLOWS:**

1. To pay $295.00 each for the Arbitrator's fee, and to otherwise pay their own costs for the Arbitration.
2. That the Arbitration will be conducted in accordance with the VSBC's Arbitration Rules as in force at the time of the commencement of the Arbitration.
3. To co-operate and act in good faith during the Arbitration.
4. Subject to Clause 19, to keep all information disclosed by the other Party during the Arbitration confidential and not to disclose that information to any other person other than that Party's professional advisors and/or representative for the purpose of the Arbitration unless compelled by law to do so and not to use that information for a purpose other than the Arbitration.
5. The written Arbitration decision provided by the Arbitrator (the Award) is final and binding upon the Parties and cannot be appealed.
6. To comply with the Award without delay.
7. To not at any time before, during or after the Arbitration, call the Arbitrator as a witness in any legal or administrative proceedings concerning the Dispute.
8. In accordance with section 39 of the Act, the Arbitrator, Victorian Small Business Commissioner or VSBC staff are not personally liable for anything necessarily or reasonably done or omitted to be done in good faith in the performance of any function under the Act or in the reasonable belief that the act or omission was in the performance of any function under the Act.
9. That each Party jointly and severally indemnifies the Arbitrator for and against all claims by that Party or any other party arising out of or in connection with any act done or omitted to be done by the Arbitrator in the performance of the Arbitrator's obligations under this Agreement, unless the act or omission was fraudulent.
10. This agreement may be produced and relied upon as a defence to any such claim as is contemplated in Clauses 7, 8 and 9.

**THE ARBITRATOR AGREES AS FOLLOWS:**

1. To inform the Parties and the VSBC of any circumstances which may affect his/her capacity to act impartially and, if the parties agree in writing only, to continue the Arbitration.
2. To conduct the Arbitration and determine the Dispute in accordance with the Act and the VSBC’s Arbitration Rules, the rules of natural justice and in a manner that is procedurally fair.
3. To only seek from the Parties information related specifically to the Dispute.
4. To determine the Dispute by evaluating any applicable law, the facts, submissions, documents, information and evidence provided by each Party and, if the Arbitrator considers it appropriate, conducting a hearing.
5. To keep all information disclosed by the Parties during the Arbitration confidential and not to disclose that information to any other person other than the Parties’ professional advisors for the purpose of the Arbitration unless compelled by lawand not to use that information for a purpose other than the Arbitration.

**GENERAL PROVISIONS MUTUALLY AGREED BETWEEN THE PARTIES AND THE ARBITRATOR:**

1. The rules of evidence do not apply to the Arbitration.
2. Any statements or admissions made by any person during the Arbitration are made without prejudice and shall not be admissible in any other legal proceedings.
3. If either party has not met the timeframes for the provision of information, or does not co-operate or act in good faith during the Arbitration, the Arbitrator may terminate the Arbitration by giving written notice to the Parties and advise the VSBC who may issue a certificate under section 40 of the ODFC Act.
4. Either Party will be at liberty to enforce the Arbitration decision by judicial or tribunal proceedings and in such proceedings to adduce evidence of and incidental to the Arbitration (other than the matters that are privileged by reason of Clause 17).
5. If any provision of this Agreement is prohibited, invalid or unenforceable, that provision will be ineffective to the extent of the prohibition, invalidity or unenforceability without invalidating the remaining provisions of this Agreement, unless it materially alters the nature or material terms of this Agreement.
6. Termination of the Arbitration will not terminate the operation of this clause or clauses 4, 7, 8, 9, 10, 17, 19 and 20.

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| SIGNED by or for and on behalf of Applicant's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| SIGNED by or for and on behalf of Respondent's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| SIGNED by the Arbitrator, Arbitrator's name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | Date  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Version 10, 21 April 2020