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SUBMISSION TO AGRICULTURE AND ENVIRONMENT COMMITTEE

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A. EXECUTIVE SUMMARY

Objectives:

1. Recognition that there is no competition for sugar cane milling and marketing services and that a market failure exists due to the lack of effective competition;
2. Recognition that Wilmar Sugar Australia Ltd **(Wilmar Sugar)** functions as a monopsony;
3. Balance the inequity in bargaining power between growers and Wilmar Sugar;
4. Achieve a fair and balanced commercial relationship between growers and Wilmar Sugar; and
5. Implementation of the proposed *Sugar Code of Conduct Regulation* ***(Regulation)*** (Appendix 2) as a proportionate response to remedy the market failure/misuse of market power.

PCGO Pioneer Cane Growers Organisation Ltd

Kalamia Cane Growers Organisation Ltd

ICGO Invicta Cane Growers Organisation Ltd

Opening Statement:

6. The impetus for sugar cane growers to seek political redress is because Wilmar Sugar has unilaterally – that is, without prior agreement from growers – determined to fundamentally change the existing sugar marketing arrangements that were agreed to by the Queensland Sugar Industry at deregulation.

7. Except in very limited circumstances, there is no competition for milling services (growers do not have a choice of miller) and Wilmar Sugar's proposed marketing arrangements also excludes any competition for marketing services. Imperfect competition has created a market failure.

8. There is no statutory or mandatory dispute resolution process in the current *Sugar Industry Act* 1999 **(the Act)** to assist growers and millers resolve commercial disputes in a mutually beneficial manner when negotiating the terms of the cane supply agreement **(CSA)**. Sections 34 of the Act prescribes that a CSA must contain a dispute resolution process, however, the section is limited to a dispute arising out of a concluded or existing CSA only.

9. The Act does not prescribe growers a choice of marketer and does not promote competition for marketing services.

10. Under Wilmar Sugar's proposed marketing arrangements, Wilmar Sugar will become the sole determinant of the net sugar price and it is the net, not gross, sugar price that is utilised to pay growers. Wilmar Sugar will be in a position of conflict and bias in relation to how it will determine the net sugar price utilised to pay growers and its own business interests.

11. The private member's bill **(the Bill)** introduced by Mr Shane Knuth MP, whilst admirable in its intent and desire to improve the bargaining position of growers, contains ambiguity, which, should the Bill become legislation, likely be subject to judicial challenge by millers in relation to the rights the Bill purports to provide growers.

12. BDCG therefore has proposed a draft *Sugar Code of Conduct Regulation* [refer to Appendix 2] as a proportionate response to remedy the market failure/misuse of market power. The objective of the proposed *Regulation* is to increase competition for marketing services (choice of marketer) and balance the inequity in bargaining power in negotiating milling services where there is no competitive market (commercial arbitration mechanism for both growers and millers).

B. BACKGROUND AND BDCG'S POSITION

BDCG

13. Burdekin District Cane Growers Limited **(BDCG)** has three member organisations:

(a). Pioneer Cane Growers Organisation Limited (**PCGO)**;

(b). Kalamia Cane Growers Organisation Limited (**KCGO)**;

(c). Invicta Cane Growers Organisation Limited **(ICGO)**.

14. By way of clarification, BDCG has no affiliation with CANEGROWERS Queensland.

15. BDCG was created to enable the three organisations to bargain collectively for their respective members pursuant to section 33(3) of the *Sugar Industry Act* 1999 (Qld).

16. BDCG represents approximately 5 to 6 million tonnes, or 60% of the sugar cane grown in the Burdekin and supplied to all four Wilmar Sugar mills. BDCG is in a unique position in that it only represents growers in the Burdekin, who only supply to Wilmar Sugar. BDCG therefore only makes comment in relation to Wilmar Sugar's conduct.

Summary of BDCG's position

17. The current dispute between growers and Wilmar Sugar regarding sugar marketing arrangements highlights a fundamental flaw of deregulation; that is, a commercial arrangement without rules to balance the inequity in bargaining power between millers and growers.

18. This was perhaps inevitable and has been replicated in other rural industries, most notably wheat, where rapid deregulation has produced unintended consequences.

19. Whilst BDCG acknowledges that the Queensland Sugar Industry has been deregulated and Wilmar Sugar has the legal right to terminate its voluntary contractual relationship with Queensland Sugar Limited to sell and market the sugar, Wilmar Sugar has, by its actions, crystallised the lack of competition for both milling and marketing services. Wilmar Sugar is misusing its monopsonistic powers to force a change to the current marketing system that was agreed to by the Queensland Sugar Industry at deregulation, without first negotiating with growers to achieve an acceptable outcome to both parties.

20. BDCG is not seeking to prevent Wilmar Sugar from utilising opportunities and improving the return on its investment, however, given growers' investment in their business, it also cannot be to the growers' detriment. A balance must be achieved between the two competing interests.

21. As stated above, under Wilmar Sugar's proposed marketing arrangements, it will become the sole determinant of the net sugar price and it is the net, not gross, sugar price that is utilised to pay growers. Wilmar Sugar will be in a position of conflict and bias in relation to how it will determine the net sugar price utilised to pay growers and its own business interests.

22. Wilmar Sugar is seeking to be the only supplier of both milling and marketing services for growers. There are two problems and two remedies:

Problem	Remedy
No competition for milling services.	A commercial arbitration or dispute resolution mechanism.
No competition for marketing services.	Growers having a choice of marketer.

23. BDCG's proposed draft *Regulation* (refer to section F and Appendix 1 and Appendix 2) is a proportionate response to remedy the misuse of market power and/or market failure. The proposed draft *Regulation* **prescribes <u>only</u>:**
    (a). That a supply contract must provide for milling services and the ability to choose marketing services;
    (b). A mediation and commercial arbitration mechanism to assist both growers and millers negotiate a supply contract; and
    (c). The mechanism to facilitate a choice of marketer.

24. Whilst it is accepted that Government policy is to reduce interference with the operation of free markets and a deregulated industry, there is, nevertheless, a role for Government intervention where market failure or misuse of market power has been demonstrated to have occurred. The proposed *Regulation* does not seek to re-regulate the whole of the commercial relationship between growers and millers; it seeks to offer a commonly utilised commercial tool – a commercial arbitration mechanism – to resolve a deadlock in negotiating the terms and conditions of a CSA and provides competition for marketing services.

25. <u>Mr Knuth MP's private member's Bill similarly seeks to prescribe growers a choice of marketer and an arbitration mechanism to assist growers and millers negotiate the terms and conditions of a CSA. However, BDCG is seeking amendments to the proposed Bill consistent with the comments made in this submission.</u>

C. WHETHER THE *SUGAR INDUSTRY ACT* 1999 (CURRENT) ADEQUATELY PROTECTS THE INTERESTS OF GROWERS IN COLLECTIVE SUGAR MARKETING ARRANGEMENTS

26. Section 31(1) of the *Sugar Industry Act* 1999 **(the Act)** prohibits a grower from supplying cane to a miller without a supply contract. However, there is no statutory or mandatory dispute resolution process in the Act to assist growers and millers resolve commercial disputes in a mutually beneficial manner when negotiating the terms of the cane supply agreement **(CSA)**. Sections 34 of the Act prescribes that a CSA must contain a dispute resolution process, however, the section is limited to a dispute arising out of a concluded or existing CSA only.

27. The Act does not prescribe growers a choice of marketer and does not promote competition for marketing services.

28. Section 33(3) of the Act enables growers to nominate a bargaining representative to bargain collectively on behalf of growers. However, in BDCG's opinion section 33(3) of the Act is more a matter of convenience for Wilmar Sugar in that it has to negotiate with only 3 or 4 representative groups and a handful of growers, rather than some 1,500 individual growers.

29. The Sugar Industry predominantly operates as a monopsony – one miller per geographical region (for example, Proserpine, Burdekin, the Herbert, Maryborough, Innisfail and Mulgrave etc. – all have one miller) – and such market characteristics therefore distinguishes the Sugar Industry from most other agricultural industries. Such monopsony power negates the collective bargaining power of growers, as is demonstrated further below [refer to paragraphs 35 - 37].

D. THE COSTS, BENEFITS AND IMPACTS ON THE QUEENSLAND SUGAR INDUSTRY ARISING FROM THE DECISIONS BY SOME MILLERS TO EXIT THE CURRENT SUGAR MARKETING ARRANGEMENTS (MARKET OUTSIDE OF QUEENSLAND SUGAR LIMITED

30. Set out below is a brief summary of some impacts of Wilmar Sugar's decision to exit the current sugar marketing arrangements. There may be many other impacts that may not become apparent for some time.

Wilmar Sugar will be the sole determinant of the net sugar price

31. Growers are currently paid on the **net**, not gross, sugar price as set out below.

Net Sugar Price	=	**ICE 11 gross price**	+	**[Premiums**	-	**Costs]**
		Growers determine only 0 - 60% of the gross sugar price; Wilmar Sugar 40% to 100%		100% Wilmar Sugar		100% Wilmar Sugar

32. Growers, in the current contract, only have the ability to affect up to 60% of the gross (ICE 11 component), not net, sugar price. The balance (as demonstrated above) will be determined by Wilmar Sugar.

33. Wilmar Sugar determines, by its performance, the premiums (physical and polarisation premiums) and costs (marketing costs, storage and handling costs, financing costs). Wilmar Sugar will therefore be the sole determinant of the net sugar price.

34. Thus, Wilmar Sugar has an enormous ability to influence the sugar value paid to growers, as it will control the costs deducted from, and the premiums added to, the gross sugar price.

Wilmar Sugar's prior conduct and misuse of bargaining power

35. Wilmar Sugar has demonstrated, by its prior conduct, that it is prepared to act unilaterally, present a standard contract as a *fait accompli* to all suppliers (i.e. growers) and refuse to negotiate the terms of the contract, reliant upon its monopsonistic powers. By way of example:

Example:

(a). On 16 August 2012 Wilmar Sugar presented as a *fait accompli* a contractual document (variation of an existing Forward Price Agreement – forms part of the supply contract) which affected, amongst other things, the manner in which the net sugar price was calculated and grower representative groups were informed that Wilmar Sugar was ***"not proposing to "negotiate" the new FPPA*** *with the various grower organisations because we consider it essential to have a consistent, single document applicable for all growers".*

(b). By way of response, Wilmar Sugar was advised that its behaviour was surprising particularly having regard to sections 21, 22 and 23 of Schedule 2 Australian Consumer Law of the *Competition and Consumer Act* 2010. Begrudgingly, Wilmar Sugar "allowed" a response.

However, it was only after persistent requests that Wilmar Sugar was prepared to discuss the new Forward Price Agreement and agreed only to minimal and peripheral changes.

36. In BDCG's view, the contract was altered to the extent that there is no transparency in relation to the how the net sugar price is currently calculated. Transparency in relation to the calculation of the net sugar price, the basis of how growers are currently paid for their cane, is a fundamental part of the commercial arrangement.

37. Growers have legitimate concerns regarding the manner in which Wilmar Sugar may choose to act, particularly when Wilmar Sugar becomes the sole determinant of the net sugar price.

Wilmar Sugar's past performance (its assertions that it performed $3.85/tonne of cane better than QSL) is not an indicator of future performance

38. Wilmar Sugar has asserted that for the 2012 and 2013 seasons it achieved, in relation to its own sugar, a price that was $3.85/tonne of cane better than that achieved by QSL. This fact, in isolation, is not persuasive. What is critical is:
    (a). What risk profile did Wilmar Sugar adopt to achieve this result?
    (b). How will Wilmar Sugar be brought to account for poor commercial performance?

39. BDCG, however, recognises Wilmar Sugar's global footprint in the trade of raw sugar, its likely market intelligence, commercial sophistication and is keen to develop a commercial relationship that includes Wilmar Sugar offering growers marketing services. However, Wilmar Sugar should not have the monopoly of providing growers with marketing services.

Wilmar Sugar will have a conflict of interest in relation to the sale of its sugar and that sugar utilised to pay growers

40. Wilmar Sugar has denied that it will have a conflict of interest, as its interests, and that of growers, are aligned and that "transparency", in the manner proffered by Wilmar Sugar, is an appropriate safeguard. Wilmar Sugar has asserted that "transparency" will be allegedly achieved by disclosure to a limited number of growers (that is, limited to a representation of all growers) of the details of "all" transactions affecting the sugar price (whatever this means), as well as audit rights.

41. In BDCG's view there is a fundamental problem with Wilmar Sugar's argument that "transparency", in the manner proffered, is the panacea to the issue of conflict – **Why is it the responsibility of a limited number of growers to act as the "truth seeker" or "guardian" to**

protect the interests of all other growers? Further, this raises issues such as the legal liability of this "representative group" in performing its overseeing role to all growers who contract with Wilmar Sugar.

42. It is Wilmar Sugar's position that its related entity, Wilmar Sugar Trading, will act as the marketer. Wilmar Sugar has recently publicly stated that "it" (assumption is the reference was to Wilmar Sugar and related entities) is the world's largest trader of raw sugar (Wilmar Sugar Grower Pricing Meeting – February 2015).

43. Growers are entitled to ask, and be satisfied with the response, to the following questions (which are not exhaustive):

    (a). Will Wilmar Sugar give preference to its own sugar, than the growers' sugar, for more lucrative deals?
    (b). Given Wilmar International Ltd's / Wilmar Sugar Trading's footprint in the global trade of sugar, how would growers ever be able to gain sufficient understanding of Wilmar Sugar's business to achieve "transparency"?
    (c). What possible incentive would Wilmar Sugar have to favour the growers' interests over that of its own (and its shareholders') interests in the pricing and sale of its and the growers' sugar?
    (d). Will proper transparency be achieved by disclosure to a limited number of growers?
    (e). How will growers know if Wilmar Sugar has made full disclosure of all matters that affect the net sugar price?
    (f). How will growers be satisfied of the efficacy of the transaction when Wilmar Sugar deals with related entities such as use of its own ships or sale of sugar to one of its refineries?
    (g). Is it reasonable for growers to incur substantial and ongoing costs to retain an expert to interpret and advise in relation to Wilmar Sugar's disclosure?

E. WHETHER PROVISIONS IN THE BILL ARE VIABLE AND WILL ACHIEVE THEIR STATED OBJECTIVES:

44. As stated above, the Bill introduced by Mr Shane Knuth MP, whilst admirable in its intent and desire to level the inequity in bargaining power between growers and millers, and provide competition for marketing services, contains ambiguity, which, should the Bill (without amendment) become legislation and amend the Act, will likely be subject to judicial challenge by millers in relation to the rights the Bill purports to provide growers.

45. BDCG makes the following comments in relation to the Bill:

(a). **Transitional Provisions** (section 298) – As currently drafted, the Bill, if proclaimed this year, could potentially relate to a contract negotiated for the 2016 harvest season. Wilmar Sugar's contract with QSL terminates at the end of the 2016 season. Therefore the proposed Bill should apply only to a supply contract for milling services provided on or after a date in 2017; for example, 15 April 2017 (refer to BDCG's proposed draft *Regulation* – section 5).

Commercial Arbitration Mechanism – section 33A

(b). **Section 33A(3) –** This section provides that a dispute regarding the intended supply contract is subject to the *Commercial Arbitration Act* 2013 (Qld), however, the sub-section does not otherwise regulate the arbitration process. It is important, for the reasons referred to below [refer to paragraph 64], that there are guidelines to ensure that the arbitration process is efficient, fair and reasonable. There must be a time limit on the arbitration process to ensure that growers know when to commence negotiations to ensure that negotiations and the arbitration process have concluded so that growers have a supply contract to be able to supply cane to a miller before the commencement of the harvest season (refer to section 31(1) of the Act).

(c). **Section 33A(5) –** This section fails to define the "pool" from which the arbitrator can be chosen; that is, what qualifications should the arbitrator hold? The section is otherwise ambiguous. The arbitrator must, not "*may",* determine the dispute.

Choicer of Marketer – section 33B

(d). **Section 33B(2)(a)** – This section is ambiguous, difficult to understand its meaning, and raises several questions. For example, what does *"in a stated way"* mean? How is *"an estimated sale price"* to be calculated? Does an *"indirect reference"* create ambiguity in the supply contract? If the grower nominates a third party marketer (i.e. not the grower's miller), it should be the marketer's responsibility to pay the grower for the grower's sugar, not the miller.

(e). **Section 33B(2)(b) and (c) –** These sections are ambiguous. What does "*bear the sale price exposure"* mean? Simply labelling this *"grower economic interest sugar"* (refer to section 33B(2)(c)), without otherwise defining the term, does not clarify the matter.

(f). **Section 33B(2)(d) –** This section allows the miller to control and determine the terms and conditions of the contract with the marketer, without the grower's consent or agreement. Thus, the miller in fact has the power to control the marketing arrangements with the marketer. There is nothing in the section that regulates what the miller can or cannot agree to as far as the provision of marketing services to the grower. Potentially, the miller could enter into a contract with the marketer on the basis of a commission of 50% of the revenue generated from the sale of the GEI sugar (regardless of whether the grower agrees to this term) and the miller has complied with this section. The grower must control the commercial relationship with the marketer. Further, subsection (d) limits the grower to choosing only one marketing entity. Growers should have the option of choosing more than one marketing entity; for example, a large grower may have sufficient sugar to negotiate favourable commercial terms with Wilmar Sugar marketing some of the grower's sugar, and a third party entity marketing a portion of the grower's sugar.

(g). **Section 33B(2)(e) –** This section provides that *"if the grower and mill owner can not agree which entity will be the GEI sugar marketing entity…."*. It should not be a matter of "agreement"; it should be the grower outright having the right to nominate the marketer.

SUPPLY CONTRACTS THAT GIVE LEGAL RECOGNITION TO "GROWER ECONOMIC INTEREST" SUGAR (GEI):

46. GEI sugar in the Bill is to facilitate growers having a choice of marketer. Whilst it may be simplistic, the point is that *"you cannot sell what you do not own"*. Thus the supply contract must deal with the transfer of title from the grower to the marketer. BDCG's proposed draft *Regulation* defines ***"Grower's Sugar"*** as the amount of raw sugar produced from the cane supplied under a CSA.

47. Whether the term is "*GEI sugar"* or *"Grower's Sugar"*, the purpose is for the grower to be able to nominate a marketer for that sugar. It is the actions of the marketer that then determines what the grower is paid for that sugar. Thus the grower's sugar needs to be identifiable, as ultimately, title to the sugar must pass from the grower to the marketer, for the marketer to be able to affect the physical sale of the sugar to the final customer. It is a matter of negotiating the terms of the CSA to determine when the grower transfers title to the grower's sugar to the marketer.

48. It is also worth restating that as it is the marketer's actions that will determine what the grower is paid for the grower's sugar, the grower, and not the miller, must control the

commercial relationship with the marketer. The Bill provides that the miller must enter into a contract with the marketer. Under this arrangement, it is the miller that has control, and not the grower, of the commercial arrangements with the marketer, which will ultimately determine what the grower will be paid for the grower's sugar. This is not an acceptable proposition.

49. BDCG also refers to its comments regarding proposed section 33B above [refer to paragraphs 45(d) – (g)].

GROWERS' CHOICE BY NOMINATION OF MARKETING ENTITIES WITHIN SUPPLY CONTRACTS FOR GEI:

50. BDCG refers to its comments above and regarding proposed section 33B above [refer to paragraphs 45(d) – (g)].

ARBITRATION OF DISPUTED TERMS IN A SUPPLY CONTRACT:

51. BDCG refers to its comments regarding proposed section 33A above [refer to paragraphs 45(b) and (c)].

F. ALTERNATIVE WAYS TO IMPROVE SUGAR MARKETING OUTCOMES FOR GROWERS AND MILLERS

52. An alternative to Mr Knuth MP's private member's Bill, is BDCG's proposed *Sugar Code of Conduct Regulation* – refer to the following:
    - Appendix 1 – Overview of *Sugar Code of Conduct Regulation;* and
    - Appendix 2 – proposed draft *Sugar Code of Conduct Regulation.*

Characteristics of the Proposed Sugar Code of Conduct Regulation

53. The proposed *Regulation* consists of three parts:
    (a) A supply contract that provides for:
        (i). Sugar Milling Services; and
        (ii). The ability to choose Marketing Services;

    (b) Commercial Arbitration / Dispute Resolution (including mediation) Mechanisms; and

    (c) Choice of Marketer (otherwise referred to as "growers' choice").

54. As stated above, the proposed *Regulation* does not obfuscate the responsibility of growers and Wilmar Sugar to negotiate the terms of the supply contract.

55. It is also worth repeating that the proposed *Regulation* is not prescriptive, in that the *Regulation* does not seek to define the whole of the legal relationship between the growers and millers. It is limited to just the three parts referred to above that specifically remedy the imbalance in bargaining power between growers and millers.

COMMERCIAL ARBITRATION – DISPUTE RESOLUTION

56. If growers and Wilmar Sugar are unable to negotiate the terms of a supply contract, the *Regulation* provides that either party can seek:
    (a). Mediation (both parties must consent); and
    (b). Commercial Arbitration,
    to determine the terms of the contract.

57. Mediation and arbitration are commonly utilised commercial tools to resolve commercial disputes. Commercial instruments usually contain some form of commercial arbitration or dispute resolution mechanism when the parties have to agree, at some future time or triggered by some future event, a term of the agreement. This is best illustrated by examples:
    (a). When exercising an option to renew a lease, certain clauses are subject to review in the lease for the next term, and if agreement cannot be reached, the dispute in relation to the terms of the new lease are resolved by a dispute resolution mechanism; and
    (b). When a party (vendor or purchaser) exercises a put/call option in a share sale agreement, a dispute in relation to the value of shares being sold is determined by a dispute resolution mechanism.

58. The dispute resolution mechanisms contained in the proposed *Regulation* similarly operates to resolve a dispute between growers and Wilmar Sugar when negotiating a new supply contract. It is difficult to understand Wilmar Sugar's reticence of the use of a commonly utilised commercial tool if the objective is to achieve a fair and balanced commercial relationship between growers and Wilmar Sugar.

Mediation

59. The *Regulation* prescribes the rules for mediation. As a mediator does not have enforcement powers (i.e. a mediator cannot determine the terms of the supply contract), mediation can only be held by agreement by growers and Wilmar Sugar. Accordingly, when both parties are of the view

the dispute can be resolved with the assistance of an independent person, mediation is appropriate and both parties are equally responsible for the costs of the mediation.

Arbitration

60. The *Regulation* prescribes the arbitration process – the exchange of "pleadings" or documentation setting out the nature of the dispute; disclosure of documents; provision of information; evidence of witnesses and experts; and the hearing.

61. An overriding principle is the efficient resolution of the dispute and the arbitrator has a duty to orchestrate the conclusion of the whole process within a six month period.

62. Whilst the arbitration mechanism at first glance appears prescriptive, the arbitrator has absolute discretion as to whether or not to enforce the guidelines. This is consistent with the arbitrator's powers prescribed in the *Commercial Arbitration Act* 2013 (Qld).

63. An arbitration process does not negate or override the commercial imperative of achieving a negotiated outcome. That is, a known outcome (i.e. where the parties have negotiated the terms of the contract) is preferable to an unknown outcome (i.e. the parties have no control over the terms of the contract and the terms are determined by an arbitrator's award).

Matters to be considered in establishing a dispute resolution process

64. A useful reference is the opinion of Mr Bret Walker, Senior Counsel, Sydney, dated 20 June 2014 [a copy of Mr Walker SC's opinion is available on the NSW Government Department's website]. On 15 April 2014 the New South Wales Government commissioned Mr Walker SC to examine the Land Access Arbitration Framework of the *Mining Act* 1992 (NSW) and the *Petroleum (Onshore) Act* 1991 (NSW), which, amongst other things, examined the effectiveness of the arbitration process of resolving disputes between landholders and mining exploration companies. Mr Walker SC's opinion (also known as the *"Walker Report"*) included the following observations and recommendation, which BDCG opines is equally applicable in designing a dispute resolution mechanism:

    (a). The goals of conciliation and arbitration under the legislation were intended to provide maximum flexibility and to be a low cost and non-legalistic mechanism to resolve disputes.

(b). However, some arbitrations were running over 12 months, some 18 months, meaning that landholders were facing increased time, trouble and expense.

(c). There needed to be explicit good faith obligations imposed on the parties to ensure the process was fair and the need for legal representation to be a right and not by consent of the parties.

(d). There was significant disparity in the commercial sophistication and financial resources between landholders and mining companies.

(e). There needed to be procedural guidance, setting out the process to be followed by the parties and the arbitrator with concise documentation requirements.

(f). The arbitration process should take no more than 3 months from start to finish and this timeframe should only be waived in exceptional circumstances so as to render the process fair.

(g). As the landholders rights were being overridden by the mining company seeking an exploration permit over the landholders' rights, the mining company should be responsible for contributing to the landholders' negotiation and arbitration costs, including legal and expert fees capped at a maximum amount to prevent uncontrolled and escalating costs.

(h). The arbitrator should have the ability to give the parties a non-binding view of the dispute, then, if the parties do not agree, they will be able to proceed further with the process.

(i). The arbitration should be recorded and a transcript provided.

(j). Arbitrators should provide written reasons for their decisions.

65. The New South Wales Government's response to the review of the arbitration framework under the *Mining Act* 1992 and the *Petroleum (Onshore) Act* 1991 was to endorse Mr Walker's SC 31 recommendations to improve the arbitration land access framework.

66. There is an analogy between the commercial sophistication and financial resources of mining companies and landholders, to that of Wilmar Sugar and growers. Wilmar Sugar has substantially greater resources – knowledge of its business, information, time and monetary resources – than the collective resources of growers. It is therefore BDCG's view that the arbitration framework for the *Regulation* should also endorse many of Mr Walker's SC recommendations, as set out above and as far as are relevant to the Queensland Sugar Industry.

67. As Wilmar Sugar is seeking to unilaterally change the existing system, then it should recompense any resultant costs incurred by growers to ensure that the arbitration process is fair and reasonable, and that the arbitration process produces a commercial relationship that is fair and balanced.

68. It is BDCG's view that the proposed commercial arbitration provisions are not overreaching and are a proportionate and reasoned response to balance the inequity in bargaining power between growers and Wilmar Sugar.

GROWERS' CHOICE OF MARKETER

69. A choice of marketer for the growers' sugar is the remedy for no competition for marketing services.

70. Wilmar Sugar first indicated its intention to alter existing marketing arrangements on 23 May 2013, however, unlike Wilmar Sugar's proposed marketing arrangements, its initial proposition was:
    (a). Within the existing arrangements with QSL; and
    (b). Growers had a choice between QSL and Wilmar Sugar.

71. Wilmar Sugar named its original proposition "growers' choice".

72. The *Regulation* follows on with Wilmar Sugar's concept of growers having a choice of marketer for their sugar, however, its scope is not confined to QSL and Wilmar Sugar, and it permits growers to choose any marketer, including Wilmar Sugar. The draft *Regulation* fosters competition for marketing services for growers.

73. Growers' choice of marketer is facilitated by the manner in which "Marketing Services" have been defined [i.e. it means pricing, sale of sugar, logistics through a port terminal facility an payment to the grower for the grower's sugar] and the requirement that the miller must permit, in the supply contract, the grower to access Marketing Services from a third party entity other than the miller [refer to Part 4 of the proposed *Regulation*].

74. To ensure all growers are treated fairly, the *Regulation* also stipulates that a miller can not discriminate, in relation to the provision of milling services, between the grower who utilises the miller for the provision of marketing services and the grower who chooses a third party marketer [refer to Part 4 of the proposed *Regulation*].

G. CONCLUSION

75. Growers, even collectively, cannot compete, in terms of commercial sophistication and financial resources, with a global agribusiness of the scale of Wilmar Sugar. Further, growers do not have

the resources to seek relief by taking court action should a breach of the provisions of *Competition and Consumer Act* 2010 (Cth) occur.

76. In any event, it is BDCG's opinion that the market failure and/or misuse of market power is such that the provisions of the *Competition and Consumer Act* 2010 (Cth) do not adequately respond to protect growers' interests and level the imbalance in bargaining power between growers and Wilmar Sugar. Wilmar Sugar's unwillingness to reconsider offering growers a choice of marketer means that the market failure will not be corrected without Government intervention. Further the provisions of the current *Sugar Industry Act* 1999 fails to respond or protect the growers' interests.

77. It is important to recognise, and therefore worth restating, that the only reason growers are seeking political redress is because Wilmar Sugar has unilaterally – that is, without prior agreement from growers – determined to fundamentally change the existing sugar marketing arrangements that were agreed to by the Queensland Sugar Industry at deregulation.

78. BDCG's proposed draft *Sugar Code of Conduct Regulation* is a proportionate, minimal response to remedy the market failure/misuse of market power and there is a compelling case for regulatory intervention. BDCG's draft *Regulation* is just that – a draft – to stimulate discussion by stakeholders in the Sugar Industry so that there can be a satisfactory resolution to the dispute regarding sugar marketing arrangements.

79. The intent of Mr Knuth's private member's Bill is to be applauded. The Bill seeks to remedy the imbalance in bargaining power between growers and millers. With amendments to the Bill, having regard to the matters raised in this submission, the Bill would be effective it achieving its stated purpose.

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APPENDIX 1

OVERVIEW OF PROPOSED SUGAR CODE OF CONDUCT REGULATION

Set our below is a summary of each part of the proposed Regulation.

Part 1 - Preliminary:

Section 1 – Name

This section provides that the name of the Regulation is the *Sugar Code of Conduct Regulation 2015*.

Section 2 – Commencement

This section provides that the regulation would commence on a specific date, though the Regulation would not have retrospective effect in that it only applies to milling services provided on or after 15 April 2017 [refer to section 5].

Part 2 – Sugar Code of Conduct:

Section 3 – Purpose of Regulation

The purpose of the Regulation is to ensure that Cane Producers have fair and transparent access to Sugar Milling Services and Marketing Services and any potential misuse of market power by Sugar Millers is addressed through good faith negotiations and recourse to independent commercial arbitration.

Section 4 – Definitions

This section contains terms used in the Regulation, particularly:

Cane Producer means a grower seeking milling services and importantly includes any bargaining representative pursuant to section 33(3) of the *Sugar Industry Act* 1999 (Qld).

Growers are permitted to negotiate collectively with a miller, via the appointment of a bargaining representative (eg. BDCG is a bargaining

representative). It is important that the concept of collective bargaining be preserved and the definition has been designed to ensure that bargaining representatives, as well as individual growers, can access the mediation and commercial arbitration mechanism [refer to section 4].

Cane Supply Agreement	means the supply contract between the miller and the grower and includes a supply contract as defined in the Act.
Marketing Services	means pricing, sale of sugar, logistics through a port terminal facility and payment to the Cane Producer for the grower's sugar.
Sugar Miller	means the owner or operator of a sugar cane mill that is used to provide milling services.
Sugar Milling Services	means crushing sugar cane and production of raw sugar via a sugar mill.

Section 5 – Application of Regulation

Application of the Regulation is limited to supply contracts for the supply of Milling Services by a Miller on or after 15 April 2017. It is clear that the Regulation does not have retrospective effect; that is, it does not relate to supply contracts for either 2015 or 2016.

Part 3 - General Obligations of Sugar Miller and Cane Producers:

Section 6 – Obligations to deal in good faith

The Regulation also stipulates that the Miller and Cane Producer must deals with each other in good faith.

Part 4 – Access to Milling Services provided by a Sugar Miller:

This part provides:

- **Section 7 -** creates the obligation on a Miller to enter into a CSA with a Cane Producer or enter into negotiations about the terms of a CSA – either by agreement by the parties or failing agreement, as determined by the arbitrator.

- **Section 8 –** specifies the manner in which an incomplete application to enter into a CSA is resolved. The Sugar Miller can seek additional information from the Cane Producer.

- **Section 9 -** Stipulates the requirement of certain terms of the CSA -

    - Contain a mechanism by which the quantity of Grower's sugar can be calculated;
    - Permit a choice of marketer via access to Marketing Services from a third party entity other than the Miller;

- Prohibits a Miller discriminating between a Grower who does and does not access Marketing Services from the Miller;
- Contain a mechanism to determine the Miller's charge for Milling Services;
- The Miller must facilitate the delivery of the Grower's Sugar to the Grower's choice of Marketer for no additional charge.

- **Section 10** - deals with disputes arising during negotiating a CSA and provides:

  - For the process of notification of the dispute.
  - That the parties may mutually agree to undertake mediation and the appointment of the mediator, either by agreement, or failing agreement, by the Institute of Arbitrators & Mediators Australia.
  - The mediator must take into account the written representations of a person with an interest in the CSA.

- **Section 11** – specifies the arbitration process and specifically provides:

  - The arbitration process is initiated by a party giving notice that the terms of the CSA are to be determined by an independent arbitrator and subclause (1) sets out the notice requirements.
  - The manner in which the arbitrator is appointed, by agreement, or failing agreement by the Institute of Arbitrators & Mediators Australia and further specifies the class of people from which an arbitrator can be chosen.
  - The arbitrator must determine the terms of the CSA and the Miller must offer the Cane Producer a contract in the terms determined by the arbitrator.
  - The principles the arbitrator must take into account in determining the terms of the CSA – promotion of efficient milling of cane and milling costs; encourage the production of quality sugar; and have regard to the historical allocation of reward between the Miller and the Cane Producer.
  - The arbitrator must take into account written submissions by interested parties.
  - The Miller must bear its own, and the reasonable costs of the Cane Producer of the arbitration process, with expert costs capped at $50,000 per issue [the high costs of obtaining expert opinions warrants this cap].
  - The Miller's safeguard in relation to the requirement to pay the Cane Producer's reasonable costs is the arbitrator's discretion to alter this obligation upon a determination that the Cane Producer has acted in "bad faith".

- **Section 12** – specifies that the Miller must provide information requested by a Cane Producer, as long as the request is not unduly burdensome or commercially sensitive.

- **Section 13** – specifies when negotiations have concluded – either when a CSA has been entered into by the Miller and Cane Producer; or the Cane Producer no longer desires entering into a CSA; or 60 days after negotiations have concluded.

- **Section 14** – specifies the rules of mediation – determination of the mediator, time, place, and the parties who must attend.

- **Section 15** – specifies that a mediation is terminated either 5 days after commencement; or when the dispute is resolved; or if a party or mediator terminates the mediation.

- **Section 16** – specifies that each party bears their own costs of the mediation and the mediator's costs are shared equally by the parties.

Part 5 – Record Keeping

- **Section 17** – specifies that Millers must retain a CSA (including any variation) for at least 6 years; similarly all documents pertaining to any dispute must also be retained by 6 years.

- **Section 18 –** specifies that Millers and Cane Producers must retain records relating to a dispute for at least 6 years.

Schedule – Cane Supply Agreement Arbitration Rules

There are 3 Parts to the Cane Supply Agreement Arbitration Rules:

- Part 1 – Conduct of the Arbitral Proceedings
- Part 2 – the Award
- Part 3 – Protocol of expert witnesses

Part 1 – Conduct of the Arbitral Proceedings

- **Rule 1** – specifies that the Arbitration is governed by the *International Arbitration Act* 1974 (Cth), the provisions of the *Commercial Arbitration Act* 2013 (Qld), save insofar as such provisions are not consistent with the Rules set out in Schedule.

- **Rule 2** – specifies that seat of the arbitration, and the location of any hearings, is determined by the arbitrator.

- **Rule 3** – specifies the manner in which the proceedings are conducted:

    - All communications between the parties and the arbitrator is in writing;
    - The parties are obligated to conduct themselves so that the arbitration is fair, efficient and expeditious.
    - The arbitrator is to convene an initial meeting to set the procedure for the arbitration – the parties are entitled to be legally represented; there will be a hearing; the exchange of documents setting out the nature of the claim and the other party's response;
    - The arbitrator has the power to issue directions to ensure the efficient conduct of the arbitration;
    - The arbitration should be concluded within a 6 month period, to be extended only in exceptional circumstances so as to render the arbitration process fair.

- **Rule 4 –** The arbitrator has wide ranging powers to amend any claim or response; extend any time limit; conduct its own enquiries; order a party to produce documents; determine whether and which rules of evidence are applicable; enforce non-compliance; dismiss any points of dispute for in-excusable delay; and

render an award when a recalcitrant party has refused to participate in the arbitration process.

- **Rule 5 –** The arbitrator can consolidate arbitrations.

- **Rule 6 –** sets out the powers of an arbitrator to grant extensions of time to comply with any procedure of the arbitration. The arbitrator has the power to render an award based only on the evidence before it.

- **Rule 7 –** deals with the giving of evidence by witnesses, and limits, to ensure the efficient conduct of the arbitration, the number of witnesses to three, unless otherwise ordered by the arbitrator. The arbitrator determines the manner in which each witness gives evidence – that is, by statement, affidavit or in person at the hearing. A witness must be available for cross-examination. The arbitrator may ask any question of an expert or witness.

- **Rule 8 –** regulates the ability of a party to rely upon experts. The arbitrator has the power to determine the number of experts, however, except in exceptional circumstance, only one expert can be relied upon per issue. This is to ensure that the arbitration process is fair. The arbitrator can appoint its own expert and direct that the expert be briefed with certain documents or information. Each expert has an obligation to the arbitrator to comply with the Chartered Institute of Arbitrators *Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration* as annexed in Part 3.

- **Rule 9 –** specifies that a hearing will be conducted at the direction of the arbitrator, including the Miller providing funds to meet any expenses associated with the conduct of the arbitration.

Part 2 – the Award

- **Rule 10 –** specifies that the arbitrator should deliver the Award within 30 days of final submissions or the hearing. The Award must be in writing. The arbitrator must give reasons for the Award. The arbitrator can assess the costs connected with the arbitration, including the arbitrator's costs (including any legal advice sought by the arbitrator). The parties must comply with the award within 14 days of its receipt. The Award is final and binding.

- **Rule 11 –** specifies that an arbitrator can correct any errors in the Award.

- **Rule 12 –** settlement or termination of the arbitration – the arbitrator can terminate the arbitration if the parties agree to settle the dispute prior to an Award being rendered. A copy of the arbitrator's termination or the agreed settlement terms are to be signed by the arbitrator.

Part 3 – Protocol of expert witnesses

- Expert witnesses must abide by the Chartered Institutes of Arbitrators *Protocol for the use of party-appointed Expert Witnesses in International Arbitration* (as attached).

- The protocol proves a complete regime for the giving of evidence, the independence of experts, the contents of experts' opinions, privilege, and the meeting of experts.

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APPENDIX 2

PROPOSED *SUGAR CODE OF CONDUCT REGULATION*

PCGO
PIONEER CANE GROWERS ORGANISATION LTD

KALAMIA
CANE GROWERS
ORGANISATION LTD

ICGO
Invicta Cane Growers
Organisation Ltd

Sugar Industry Act 1999

Sugar Code of Conduct Regulation 2015

Current as at ##date

Sugar Code of Conduct Regulation 2015

[reprinted as in force on ##date]

Part 1 Preliminary

1. Short title

This regulation may be cited as the *Sugar Code of Conduct Regulation 2015*.

2. Commencement

This regulation commences on ##.

Part 2 Sugar Code of Conduct

3. Purpose of Regulation

The purpose of this Regulation is to establish a Code of Conduct to ensure that Cane Producers have fair and transparent access to Sugar Milling Services and Marketing Services and that any potential misuse of market power by Sugar Millers is addressed through good faith negotiation and recourse to independent commercial arbitration.

4. Definitions

In this code:

Act means the *Sugar Industry Act 1999* (Qld).

associated entity has the meaning given by section 50AAA of the *Corporations Act 2001*.

Cane Producer means an entity seeking access to, or using, Sugar Milling Services and includes any bargaining representative under section 33(3) of the Act.

Cane Supply Agreement means an agreement between a Sugar Miller and a Cane Producer for the supply of Sugar Milling Services and includes a *supply contract* as defined in the Act.

Note: For requirements relating to Cane Supply Agreements, see Part 4 of this Regulation.

entity has the meaning given by section 64A of the *Corporations Act 2001*.

Marketing Services means pricing, sale of sugar and logistics through a port terminal facility, and includes the use of a port terminal facility and payment to the Cane Producer for the Grower's Sugar.

Grower's Sugar means the amount of raw sugar produced from the cane supplied under a Cane Supply Agreement.

Sugar Miller means the owner or operator of a sugar mill that is used, or is to be used, to provide Sugar Milling Services, and any related entity.

sugar mill means a mill that processes sugar cane.

Sugar Milling Services means the crushing of sugar cane and production of raw sugar being a service (within the meaning of Part IIIA of the *Competition and Consumer Act 2010*) provided by means of a sugar mill.

5. Application of Regulation

Application of certain parts and sections

(1) This Regulation applies to all Cane Supply Agreements for the supply of Milling Services provided by a Sugar Miller on or after 15 April 2017.

Part 3 General obligations of Sugar Millers and Cane Producers

6. Obligation to deal in good faith

A Sugar Miller and a Cane Producer must at all times deal with each other in good faith.

Part 4 Access to Milling Services provided by a Sugar Miller

Division 1—General matters

7. Cane Producer to have access to Sugar Milling Services provided by a Sugar Miller

Access to Sugar Milling Services to be provided under a Cane Supply Agreement

A Sugar Miller must enter into a Cane Supply Agreement or enter into negotiations about the terms of a Cane Supply Agreement with a Cane Producer if the Cane Producer has applied to the Sugar Miller to enter into a Cane Supply Agreement.

8. Dealing with an incomplete application

If a Cane Producer has applied to a Sugar Miller under section 7 and the Sugar Miller is not satisfied on reasonable grounds that the Cane Producer's application is complete, the Sugar Miller must:

(a) within 5 business days after receipt of the application, notify the cane producer, in writing, of the additional information required to be provided by the Cane Producer; and

(b) if additional information is provided by the Cane Producer—within 3 business days after receipt of the additional information, notify the Cane Producer, in writing, whether the information provided is sufficient.

9. Terms of a Cane Supply Agreement

(1) The terms of a Cane Supply Agreement between a Sugar Miller and a Cane Producer (the ***parties***) must:

(a) be either:

(i) the terms negotiated and agreed by the parties; or

(ii) the terms determined by an arbitrator under section 11.

(2) The terms of a Cane Supply Agreement must

(a) contain a mechanism by which the quantity of Grower's Sugar can be identified; and

(b) permit a Cane Producer to access Marketing Services from a third party entity other than the Sugar Miller in respect of the Grower's Sugar; and

(c) not discriminate between a Cane Producer accessing Marketing Services from a third party entity other than the Sugar Miller and a Cane Producer accessing Marketing Services from the Sugar Miller; and

(d) contain a mechanism by which the price payable for Sugar Milling Services can be established.

(3) A Cane Supply Agreement may include Marketing Services.

(4) Without limiting the generality of section 9(2)(c) a Cane Supply Agreement will be discriminatory if it has the effect that a Cane Producer accessing Marketing Services from a 3rd party entity pays

more for Sugar Milling Services than a Cane Producer who accesses Marketing Services from the Sugar Miller.

(5) A Cane Supply Agreement must provide that a Sugar Miller will if directed by a Cane Producer facilitate the delivery of the Grower's Sugar to a 3rd party entity providing Marketing Services promptly and at no additional cost.

(6) The terms of a Cane Supply Agreement must not purport to restrict a party from disclosing information to the ACCC.

(7) A Cane Supply Agreement may require a party to the agreement to retain records in addition to those required by Part 5 of this Code.

10. Dealing with disputes during negotiations

(1) A party negotiating a Cane Supply Agreement may request, in writing, the other party to resolve a dispute about one or more of the following:

(a) a decision made under section 8;

(b) a decision made under section 12;

(c) the proposed terms of the Cane Supply Agreement.

(2) The request must be made before the negotiations end under section 13.

(3) Within 5 business days after receiving the request, senior representatives from each party must meet and use reasonable endeavours to resolve the dispute.

(4) If the dispute is not resolved, the parties may mutually agree to undertake mediation.

(5) If mediation is required under subsection (4), the party that requested resolution of the dispute under subsection (1) (the ***first party***) must tell the other party in writing:

(a) the nature of the dispute; and

(b) what outcome the first party wants; and

(c) what action the first party thinks will settle the dispute.

(6) Either party may ask the Institute of Arbitrators & Mediators Australia to appoint a mediator. Any mediation is subject to Division 2 of this Part.

(7) In conducting mediation, the mediator must take into account written representations made by a person, if the mediator considers that the person has a sufficient interest in the terms of the Cane Supply Agreement concerned.

11. Arbitration of terms of Cane Supply Agreements

(1) A party negotiating a Cane Supply Agreement may, by notice in writing to the other party, refer the terms of the Cane Supply Agreement to be determined by an independent arbitrator appointed by the parties and conducted according to the Rules in the Schedule.

(2) If a notice is given to the other party under subsection (1), the party that gave the notice (the ***first party***) must notify any Advisory Committee established pursuant to the Act, and if no Advisory Committee, the Minister of Agriculture, in writing, of the following matters when the notice is given:

(a) the first party's intention to proceed to arbitration;

(b) the nature of any dispute between the parties;

(c) whether the parties have agreed on the appointment of an arbitrator.

(3) If the parties fail to agree on the appointment of an arbitrator within 15 business days after the notice is given, the first party must request the Institute of Arbitrators & Mediators Australia to appoint an independent arbitrator.

(4) The arbitrator must be;

(a) An accredited arbitrator; and

(b) Have extensive arbitration experience; and

(c) And must either;

(i) Have extensive agricultural industry experience; or

(ii) Be a legal practitioner with considerable litigation experience.

(5) The arbitrator must determine the terms of the Cane Supply Agreement and notify the parties of the terms. The Sugar Miller must offer to enter into a Cane Supply Agreement with the Cane

Producer on the terms determined by the arbitrator within 3 business days of being notified of the terms.

(6) In determining the terms of the Cane Supply Agreement, the arbitrator must take into account the following principles;

(i) the terms of the Cane Supply Agreement should promote the efficient milling of cane and efficient milling costs on the part of the Sugar Miller;

(ii) the terms of the Cane Supply Agreement should reward and encourage the production of the highest quantity and quality sugar cane on the part of the Cane Producer;

(iii) the historical allocation of reward as between Sugar Miller and Cane Producer as reflected in the traditional cane payment formula.

(7) In determining the terms of the Cane Supply Agreement, the arbitrator must take into account written representations made by a person, if the arbitrator considers that the person has a sufficient interest in the terms of the Cane Supply Agreement.

(8) Subject to section 11(9) the Sugar Miller must bear the following costs of any arbitration under this section:

(a) their own costs (including legal costs) of participating in the arbitration;

(b) The Cane Producer's reasonable costs (including legal costs) of participating in the arbitration;

(c) the cost of the arbitrator;

(d) the cost of room hire; and

(e) the cost of any reasonable additional input (including expert reports) necessary to the conduct of the arbitration.

(9) An arbitrator appointed under this section is authorised to vary the default position with respect to costs in subsection 11(8) where the arbitrator is satisfied that the Cane Producer has conducted themselves in bad faith during the arbitration.

12. Cane Producer may request information to be provided during negotiations

(1) A Cane Producer may request a Sugar Miller to provide information held by the Sugar Miller for the purpose of negotiating the terms of a Cane Supply Agreement.

(2) The Sugar Miller must comply with a request mentioned in subsection (1), within 10 business days of receiving the request, if:

(a) the information requested is not confidential or commercially sensitive; and

(b) the information does not relate to another Cane Producer; and

(c) providing the information would not be unduly onerous for the Sugar Miller having regard to the following:

(i) the operational, commercial and logistical information that a Cane Producer may require to use Sugar Milling Services;

(ii) whether the Sugar Miller has access to and control of the information and whether a third party would need to be engaged to gather, collate or present the information;

(iii) the staffing, technical and financial capability of the Sugar Miller to obtain and provide the information;

(iv) the volume of information and time-frame within which it is requested.

13. When negotiations are taken to end

(1) Negotiations between a Cane Producer and a Sugar Miller end on the earliest of the following days:

(a) the day the Cane Producer and Sugar Miller enter into a Cane Supply Agreement;

(b) the day the Cane Producer provides written notification to the Sugar Miller that it no longer wishes to enter into a Cane Supply Agreement;

(c) the day that is 60 business days after the negotiation request concerned was made, or such later day as is agreed by the Cane Producer and the Sugar Miller.

(2) For the purpose of calculating the number of days for subsection (1)(c), the following days are to be disregarded:

(a) each day the Cane Producer and Sugar Miller are involved in resolving a dispute in accordance with section 10;

(b) the days during the period commencing on the day a notice is given under subsection 11(1) and ending on the day the Cane Producer and Sugar Miller enter into an agreement on the terms determined by the arbitrator under subsection 11(5).

(3) If negotiations between a Cane Producer and a Sugar Miller end without the Cane Producer and Sugar Miller entering a Cane Supply Agreement, the Cane Producer may make a new application under section 7 to the Sugar Miller to enter into a Cane Supply Agreement.

Note: If a new application is made, the provisions of this Part applies to the new application (for example, the time period referred to in paragraph (1)(c) runs from the date of a negotiation request in respect of the new application).

Division 2—Mediation

14. General rules applicable to mediation

(1) The rules in this section apply to mediation conducted under section 10.

(2) If the parties cannot agree on who should be the mediator, either party may request the Institute of Arbitrators and Mediators Australia to appoint the mediator.

(3) The mediator may decide the time and place (which must be in Australia) for mediation.

(4) The parties must attend the mediation and try to resolve the dispute.

(5) For subsection (4), a party is taken to attend mediation if the party is represented at the mediation by a person who has the authority to enter into an agreement to settle the dispute on behalf of the party.

(6) For subsection (4), a party will be taken to be trying to resolve a dispute if the party does all of the following:

(a) attends and participates in meetings at reasonable times;

(b) at the beginning of the mediation process, makes the party's intention clear as to what the party is trying to achieve through the mediation process;

(c) observes any obligations relating to confidentiality that apply during or after the mediation process.

15. Termination of mediation

(1) This section applies if:

(a) at least 5 business days have elapsed after the start of the mediation of a dispute; and

(b) the dispute has not been resolved.

(2) If either party asks the mediator to terminate the mediation, the mediator must do so.

(3) Subject to subsection (2), the mediator may terminate the mediation at any time unless satisfied that a resolution of the dispute is imminent.

(4) If the mediator terminates the mediation of a dispute under this section, the mediator must issue a certificate to each party stating:

(a) the names of the parties; and

(b) the nature of the dispute; and

(c) that the mediation has finished; and

(d) that the dispute has not been resolved.

(5) If the mediation was in relation to a dispute mentioned in subsection 10(1) and the mediation is terminated, the party that requested resolution of the dispute under subsection 10(1) must notify any Advisory Committee, and if no committee, the Minister for Agriculture, that the mediation has been terminated.

16. Costs of mediation

(1) The parties to mediation under this code:

(a) must bear their own costs of attending mediation; and

(b) are equally liable for the following costs of mediation unless they agree otherwise:

(i) the cost of the mediator;

(ii) the cost of room hire;

(iii) the cost of any additional input (including expert reports) agreed by both parties to be necessary to the conduct of the mediation; and

(iv) are liable for any other costs determined by the Mediator.

Part 5 Record keeping

17. Sugar Millers to retain Cane Supply Agreements and variations to those agreements

(1) A Sugar Miller must retain the following documents in accordance with this section:

(a) Cane Supply Agreements entered into by the Sugar Miller;

(b) documents evidencing variations made to Cane Supply Agreements mentioned in subsection (a).

(2) A Cane Supply Agreement entered into by a Sugar Miller that has not been varied since the agreement was entered into must be retained by the Sugar Miller for at least 6 years after the agreement was entered into.

(3) A Cane Supply Agreement entered into by a Sugar Miller that has been varied since the agreement was entered into must be retained with the documents evidencing the variations to the agreement for at least 6 years after the variations to the agreement commenced.

18. Records about disputes in relation to a Cane Supply Agreement

(1) A Sugar Miller and a Cane Producer involved in a dispute about a decision made under section 8, section 12 or the proposed terms of a Cane Supply Agreement must both retain records relating to the dispute for at least 6 years after the dispute is concluded.

(2) The obligation to retain records mentioned in subsection (1) applies regardless of how the dispute concluded.

Schedule

Cane Supply Agreement Arbitration Rules

Part 1: Conduct of the Arbitral Proceedings

1. Governing Legislation

(1) Unless the Arbitration is governed by the International Arbitration Act 1974 (Cth), the provisions of the Commercial Arbitration Act 2013 (Qld) and any statutory amendments in force, shall apply, save insofar as such provisions are expressly modified by, or are inconsistent with, these Rules.

2. Seat of Arbitration

(1) Unless otherwise agreed by the Parties, the seat of arbitration shall be determined by the Arbitrator having regard to the circumstances of the dispute. The Award shall be deemed to have been made at the seat of Arbitration.

(2) The Arbitrator may determine the location of any hearings.

3. Conduct of Proceedings

(1) All communications between the Arbitrator and the Parties shall be in writing. Any communications that are sent to the Arbitrator by a party shall be copied to the other party.

(2) Unless otherwise agreed by the parties, the Arbitrator shall have a wide discretion to discharge its duties permitted under the relevant laws. The parties shall do everything necessary to ensure the fair, efficient and expeditious conduct of the arbitration.

(3) As soon as possible after his or her appointment (but not more than 5 business days) the Arbitrator shall convene a meeting of the parties for the purpose of settling the procedure for the arbitration and to consider whether the Standard Process should be confirmed or varied. The Standard Process may only be varied by agreement of the parties and the Arbitrator.

(4) Under the Standard Process;

(a) The parties are entitled to legal representation;

(b) There will be a hearing;

(c) First Party to submit Points of Dispute within 14 days of the meeting;

(d) Second Party (party that received the notice pursuant to section 10(2)) to submit Points of Response within 14 days of receipt of the Points of Dispute;

(e) First Party to submit any Reply within 5 days of receipt of Points of Response; and

(f) Second Party to submit any Reply within 5 days of receipt of the First Party's Reply.

(5) There is no obligation on a party to submit a Reply. A party that chooses not to submit a Reply shall notify the Arbitrator and other party prior to time when the Reply is due.

(6) The Arbitrator may at his or her discretion request further submissions and documentation from the parties where he or she considers necessary to do so, giving each party a reasonable opportunity to respond.

(7) The Arbitrator has the power to issue further procedural directions and deal with preliminary issues for the efficient conduct of the Arbitration.

(8) The Arbitration should be concluded, including the delivery of the Arbitrator's Award pursuant to section 101, within 6 months from the First Party giving notice pursuant to section 10(1). This period must only be extended where the Arbitrator considers there have been exceptional circumstances so as to render the arbitration fair.

4. Powers of Arbitrator

(1) The Arbitrator shall have the power to do anything, on the application of any party or of his or her own motion, but in either case only after giving the parties a reasonable opportunity to state their views, including:

(a) to allow any party, upon such terms as the Arbitrator shall determine (as to costs and otherwise), to amend any claim, response or reply;

(b) to extend or abbreviate any time-limit provided by the these Rules or the Arbitrator's own orders and whether or not any such time limit has expired;

(c) to conduct such enquiries as may appear to the Arbitrator to be necessary or expedient including identifying the issues and

ascertaining relevant facts and the law(s) or rules applicable to the Arbitration and the merits of the parties' dispute;

(d) to order any party to produce to the Arbitrator, and the other party for inspection, and to supply copies of any documents or classes of documents in their possession, custody or power which the Arbitrator determines to be relevant;

(e) to decide whether or not to apply strict rules of evidence as to admissibility, relevance or weight of any material tendered by a party on any matter of fact or expert opinion; and to determine the time, manner and form in such material should be exchanged between the parties and presented to the Arbitrator;

(f) to impose appropriate terms on a party who has not complied with any interim or final Award or order or direction;

(g) to dismiss any Points of Dispute on the application of a party, if the Arbitrator decides there has been inordinate or in-excusable delay by a party;

(h) to render an Award, on application by the First Party, where the Second Party has failed to respond or lodge a Response or Reply within the time limits, or has declined or failed to attend an oral hearing.

5. Consolidation

(1) The Arbitrator has the power to consolidate Arbitrations.

(2) The Arbitrator shall provide the information and documentation that is exchanged as part of the Arbitration to all Parties in the consolidated Arbitration, whether or not they are an active Party to the Arbitration.

6. Default/Extensions of Time

(1) A party is in default if it fails to submit its Points of Dispute, Response, Reply, or comply with the Arbitrator's direction pursuant to clause 4 within the time required.

(2) Where the parties are unable to reach an agreement in relation to the extension of time for the submission of a document, the party seeking the extension may apply to the Arbitrator in writing to extend the time limit. The Arbitrator may grant an extension of time where good cause is shown for a period of no longer than 21 days. Any extension must be granted in writing and a copy sent to all parties.

(3) Where the First Party is in default, the Arbitrator has the power to order the termination of the Arbitration. Where the Second Party is in default, the Arbitrator may proceed to render an Award.

(4) If one of the Parties, duly notified under these Rules, fails to attend the oral hearing without showing good cause, the Arbitrator may proceed with the arbitration hearing.

(5) If one of the Parties have been directed by the Arbitrator to produce evidence and fails to do so within the required time, without showing good cause, the Arbitrator may proceed to render an award based on the evidence before it.

7. Witnesses

(1) Unless otherwise directed by the Arbitrator, no party shall be entitled to adduce evidence from more than 3 witnesses.

(2) Before any hearing, the Arbitrator may require any party to give notice of the identity of each witness that party intends to call, the subject matter of that witness' testimony, its content and its relevance to the issues in the Arbitration.

(3) The Arbitrator may also determine the time, manner and form in which the evidence referred to in subclause (2) should be exchanged between the parties and presented to the Arbitrator. The Arbitrator has a discretion to allow, refuse or limit the appearance of witnesses (whether a witness of fact or expert witness).

(4) Subject to any order otherwise by the Arbitrator, the testimony of a witness may be presented by a party in writing, either as a signed statement or sworn affidavit.

(5) Subject to the above, any party may request that a witness, on whose testimony a party seeks to rely, should attend for oral questioning at a hearing before the Arbitrator. If the Arbitrator orders that other party to produce the witness and the witness fails to attend the oral hearing without good cause, the Arbitrator may place such weight on the written testimony (or exclude the same altogether) as it considers appropriate in the circumstances.

(6) Any witness who attends and presents evidence at an oral hearing shall be available for cross-examination by the other Party to the Arbitration.

(7) The Arbitrator may question an expert or witness during the Arbitration.

8. Experts

(1) Upon application by the parties, the Arbitrator has the power to permit the parties to rely on expert evidence.

(2) Subject to subclause (3) the Arbitrator shall determine the number of experts permitted to be used by the parties and the reports shall be exchanged prior to the oral hearing or delivery of the Second Party's Reply or at any earlier time directed by the Arbitrator.

(3) The parties are limited to relying upon one expert report for each issue in dispute except if the Arbitrator considers exceptional circumstances require the Arbitrator to exercise subclause (2) to ensure that the Arbitration process is fair.

(4) The Arbitrator may order that a "without prejudice" meeting of the experts take place for the purpose of identifying the parts of the evidence which are in issue.

(5) Unless otherwise agreed by the parties in writing, the Arbitrator:

(a) may appoint one or more experts (who shall remain impartial and independent of the parties throughout the arbitration) to advise the Arbitrator on specific issues (including legal issues), which are outside the scope of its own expertise, the fees of which shall be borne by the Sugar Miller;

(b) may require a Party to give the expert any relevant information or to provide access to any relevant documents, goods, samples, property or site for inspection by the expert.

(6) Any expert appointed pursuant to clause 8 shall be made available for questioning at an oral hearing, if an oral hearing is requested by the parties.

(7) Each appointed expert has an obligation to the Arbitrator contained in the Chartered Institute of Arbitrators *Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration* annexed. Each appointed expert shall be provided with a copy of the Protocol.

(8) The Sugar Miller shall pay the appointed experts' fees, subject to a cap of $50,000.

9. Hearings

(1) A hearing will be conducted at such place and time as the Arbitrator decides.

(2) The Arbitrator may direct that the Sugar Miller provide funds to meet any expenses associated with the conduct of the hearing.

(3) The proceedings will be recorded and a transcript produced.

Part 2: The Award

10. The Award

(1) The Award, where possible, shall be issued by the Arbitrator within 30 days of receipt of the final submissions or within 30 days of the final hearing.

(2) The Award shall be in writing and be signed by the Arbitrator.

(3) The Award shall state the reasons upon which it is based and include a concise statement as to the facts, issues and submissions of the Parties and the conclusions of the Arbitrator.

(4) The Arbitrator shall have the power to assess and award the costs of and connected with the arbitration and also the fees and/or expenses of the Arbitrator including legal advice. The Arbitrator may assess and award costs at the conclusion of the Arbitration.

(5) Parties must comply with the terms of the Award within 14 days of its receipt.

(6) The Award shall be final and binding. The Parties shall carry out the Award without delay.

(7) Upon the request of the Parties, the Arbitrator may issue a consent Award recording the agreement of the Parties. A consent Award need not contain reasons.

11. Corrections and Additional Awards

(1) Within 10 days of receipt of any Award a Party may request the Arbitrator to correct any errors in computation, clerical or typographical errors or any errors of a similar nature. If the Arbitrator considers the request justified, it shall make the corrections within 10 days of receipt of the request by issuing a memorandum dated and signed by the Arbitrator and the memorandum shall form part of the Award.

(2) The Arbitrator may correct any error of the nature described above on its own initiative within 10 days of the date of the Award.

(3) Within 10 days of receipt of the final Award, a Party may request the Arbitrator to make an additional Award as to claims or cross-claims presented in the Arbitration not determined in any Award. If the Arbitrator considers the request justified, it shall make an additional Award within 60 days of receipt of the request. This clause 11 shall apply to any additional Award.

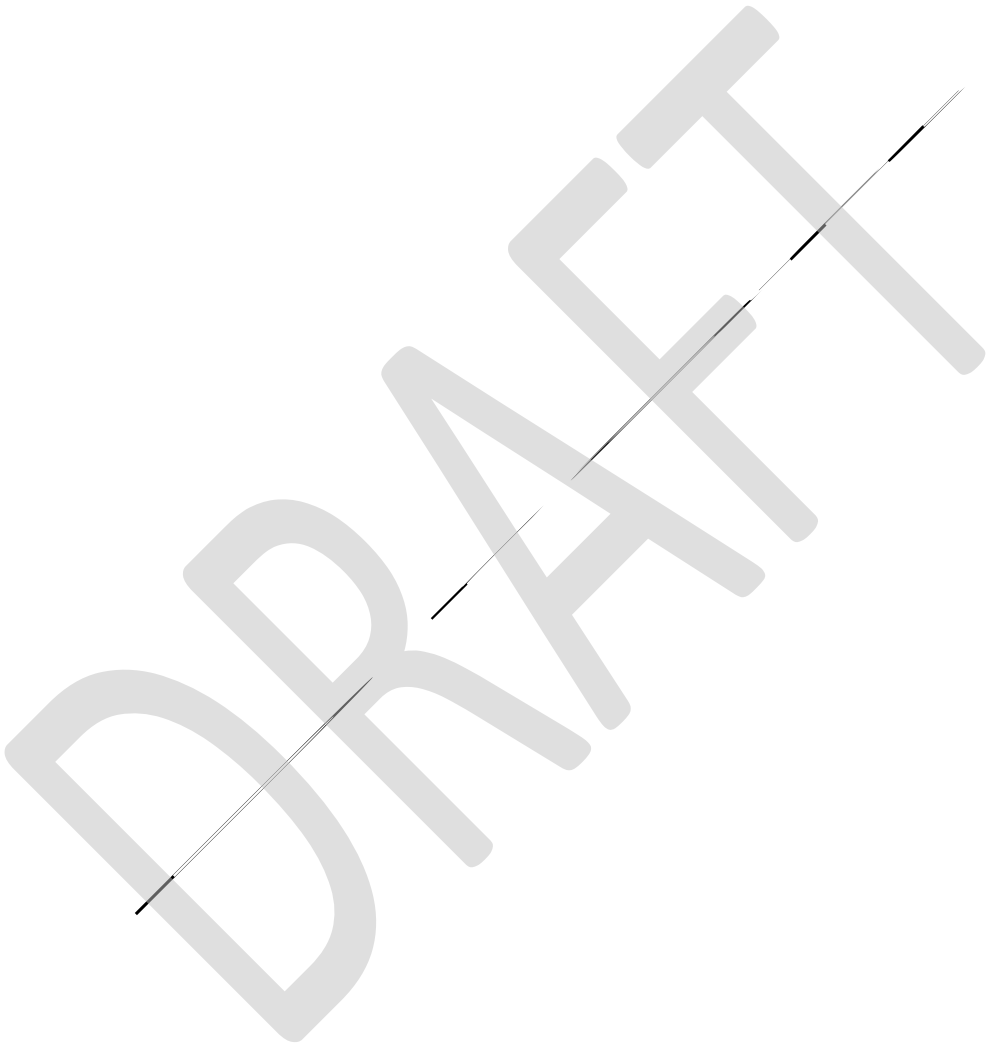
12. Settlement or Other Grounds for Termination

(1) If the Parties agree to settle the dispute prior to the time when the Award is rendered, the Arbitrator shall either issue an order for the termination of the Arbitration or, if requested by the Parties and accepted by the Arbitrator, record the settlement in the form of an Award on agreed terms. The Arbitrator is not obliged to give reasons for such an Award.

(2) If the continuation of the Arbitration becomes unnecessary or impossible prior to the time when the Award is rendered, the Arbitrator shall inform the parties of its intention to issue an order for the termination of the proceedings. The Arbitrator shall have the power to issue such an order unless there are matters that remain which may need to be decided and the Arbitrator considers it appropriate to do so.

(3) Copies of the order for termination of the Arbitration or of the Award on agreed terms, signed by the arbitrator, shall be communicated to the parties by the Arbitrator.

Annex: Protocol



Protocol for the
Use of Party-Appointed
Expert Witnesses in
International Arbitration

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Foreword

The Chartered Institute of Arbitrators Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration (the "CIArb Protocol") has been prepared by the Practice and Standards Committee of the CIArb.

The CIArb has issued this Protocol so that parties and arbitrators can use it when party-appointed experts are needed to give evidence in arbitration proceedings.

It provides a complete regime for the giving of such evidence and provides a procedure for identifying the issues to be dealt with by way of expert evidence, the number of experts, their identity, what tests or analyses are required, the independence of the experts, the contents of the experts' opinions, privilege, meetings of experts and the manner of expert testimony.

The CIArb Protocol applies only to party-appointed experts. It is not intended to cover tribunal-appointed experts or single-joint experts .

It has been structured along similar lines to the IBA Rules of Evidence (which are gaining increasingly wide acceptance internationally) and has been aligned with those parts of the IBA Rules which deal with party-appointed experts.

The CIArb Protocol expands upon the IBA Rules in that, amongst other things, it caters for tests and analyses to be conducted, it gives more detailed guidance as to what should (and should not) be in an expert's written opinion and it deals with independence and privilege. It only differs from the IBA Rules in providing for an experts' meeting before reports are produced.

The CIArb Protocol can be used in its entirety by the arbitral tribunal directing (or the parties agreeing):

"Expert Evidence shall be adduced in accordance with the CIArb Protocol".

Alternatively, the CIArb Protocol can be used in part or as a guideline for developing procedures to be adopted.

Peter J. Rees
Debevoise & Plimpton LLP
Chairman of the Practice & Standards Committee of the CIArb

September 2007

Preamble

1 This Chartered Institute of Arbitrators Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration (the Protocol) is intended to govern in an efficient and economical manner the preparation and giving of expert evidence in international arbitrations, particularly those between Parties from different legal traditions. It is designed to supplement the legal provisions and the institutional or ad-hoc rules according to which the Parties are conducting the Arbitration.

2 Parties and Arbitral Tribunals may adopt the Protocol in whole or in part or may use it as a guideline in developing their own procedures for the preparation and giving of expert evidence. The Protocol is not intended to limit the flexibility that is inherent in, and an advantage of, international arbitration, and Parties and Arbitral Tribunals are free to adapt it to the particular circumstances of each arbitration.

3 Each Arbitral Tribunal is encouraged to identify and establish with the Parties, as soon as it is appropriate in the Arbitration, the issues in respect of which it considers expert evidence to be appropriate.

4 The preparation and giving of expert evidence in accordance with this Protocol is intended to give effect to the following principles

- each Party is entitled to know, reasonably in advance of any Evidentiary Hearing, the expert evidence upon which the other Parties rely;
- experts should provide assistance to the Arbitral Tribunal and not advocate the position of the Party appointing them;
- there should be established before any hearing the greatest possible degree of agreement between experts.

Article 1 – Definitions

In the Chartered Institute of Arbitrators Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration.

"Arbitral Tribunal" means a sole arbitrator or a panel of arbitrators validly deciding by majority or otherwise.

"Arbitration" means the arbitration in respect of which the Arbitral Tribunal has been appointed.

"Evidentiary Hearing" means any hearing in the Arbitration whether or not held on consecutive days, at which the Arbitral Tribunal receives oral evidence.

"General Rules" means the institutional or ad-hoc rules according to which the Arbitration is being conducted.

"Party" means a party to the Arbitration, and "Parties" shall be construed accordingly.

"Protocol" means this Chartered Institute of Arbitrators Protocol for the Use of Party-Appointed Expert Witnesses in International Arbitration.

Article 2 – Use of Protocol

1 The Protocol shall govern the preparation and giving of expert evidence.

(a) whenever the Parties agree that it shall do so; or

(b) upon application by one or more Parties for party-appointed expert evidence to be adduced in the Arbitration, and the Arbitral Tribunal, after consultation with the Parties, directs that the Protocol shall apply.

2 In the event of a conflict between any provision of the Protocol and any mandatory provision of law agreed by the Parties or determined by the Arbitral Tribunal to be applicable to the Arbitration, the mandatory provision of law shall prevail.

3 In the event:

(a) of a conflict between the Protocol and the General Rules;

(b) that the Protocol and the General Rules are silent on anything concerning the preparation and giving of expert evidence; or

(c) that there is a dispute as to the meaning of the Protocol.

the Arbitral Tribunal shall, after consultation with the Parties, make any necessary interpretations and shall make any directions appropriate for the preparation and giving of expert evidence in the Arbitration.

Article 3 – Permission to Adduce Expert Evidence

1 Where the Protocol is to apply, the Arbitral Tribunal shall, in consultation with the Parties and in timely fashion, direct:
(a) the issue evidence shall be adduced in the Arbitration;
(b) the number of experts in respect of each issue that shall be permitted to give evidence in the Arbitration;
(c) what tests or analyses shall be required.

2 Expert evidence shall be adduced in the manner provided for in Articles 6 and 7.

Article 4 – Independence, Duty and Opinion

1 An expert's opinion shall be impartial, objective, unbiased and uninfluenced by the pressures of the dispute resolution process or by any Party.

2 Payment by the appointing Party of the expert's reasonable professional fees for the work done in giving such evidence shall not, of itself, vitiate the expert's impartiality.

3 An expert's duty, in giving evidence in the Arbitration, is to assist the Arbitral Tribunal to decide the issues in respect of which expert evidence is adduced.

4 An expert's written opinion should:
(a) contain the full name and address, background, qualifications, training and experience of the expert;
(b) state any past or present relationship with any of the Parties, the Arbitral Tribunal, counsel or other representatives of the Parties, other witnesses and any other person or entity involved in the Arbitration;
(c) contain a statement setting out all instructions the expert has received from the appointing Party and the basis of remuneration of the expert;
(d) only address the issue or issues in respect of which the Arbitral Tribunal has given permission for expert evidence to be adduced;
(e) state which facts, matters and documents, including any assumed facts or other assumptions, have been considered in reaching the opinion;
(f) state which facts, matters and documents, including any assumed facts or other assumptions, the opinion is based upon;
(g) state the opinion(s) and conclusion(s) that have been reached and a description of the method, evidence and information used in reaching the opinion(s) and conclusion(s);
(h) state which matters the expert has been unable to reach an opinion on;
(i) state which matters (if any) are outside the expert's area of expertise;
(j) adequately reference all documents and sources relied upon;
(k) contain a declaration in the form set out in Article 8; and
(l) be signed by the expert and state its date and place.

Article 5 – Privilege

1 All instructions to, and any terms of appointment of, an expert shall not be privileged against disclosure in the Arbitration, but the Arbitral Tribunal shall not, in relation to the instructions or terms of appointment:

(a) order disclosure of the instructions or appointment or any document relating thereto; or

(b) permit any questioning of the expert about such instructions or appointment

unless it is satisfied that there is good cause.

2 Drafts, working papers or any other documentation created by an expert for the purposes of providing expert evidence in the Arbitration shall be privileged from production and shall not be discloseable in the Arbitration.

Article 6 – Expert Evidence

1 Within the time ordered by the Arbitral Tribunal, and save where the Arbitral Tribunal directs to the contrary, expert evidence shall be adduced in the Arbitration using the following procedure:

(a) The experts appointed by the Parties on related expert issues shall hold a discussion for the purpose of:

(i) identifying and listing the issues upon which they are to provide an opinion;

(ii) identifying and listing any tests or analyses which need to be conducted; and

(iii) where possible, reaching agreement on those issues, the tests and analyses which need to be conducted and the manner in which they shall be conducted.

(iv) if the Arbitral Tribunal so directs, the experts shall prepare and exchange draft outline opinions for the purposes of these meetings, which opinions shall be without prejudice to the Parties' respective positions in the Arbitration and privileged from production to the Tribunal.

(b) Following such discussion, the experts shall prepare and send to the Parties and to the Arbitral Tribunal a statement setting out:

(i) those issues upon which they agree and the agreed opinions they have reached on those issues;

(ii) those tests and analyses which they agree need to be conducted and the agreed manner for conducting them;

(iii) those issues upon which they disagree and a summary of their reasons for disagreement; and

(iv) the tests and analyses in respect of which agreement has not been reached as to whether they shall be conducted and/or the manner in which they should be conducted, and a summary of their reasons for disagreement.

(c) Following such statement:

(i) any agreed tests and analyses shall be conducted in the agreed manner;

(ii) any agreed tests and analyses in respect of which the manner of conduct has not been agreed shall be conducted in such manner as each expert considers appropriate in the presence of the other expert(s); and

(iii) any test and analyses which have not been agreed shall be conducted in such manner as the expert requiring them to be conducted considers appropriate in the presence of the other expert(s).

(d) Following such statement, and such tests and analyses (if any), each expert shall produce a written opinion in accordance with the provisions of Article 4 dealing only with those issues upon which there is disagreement.

(e) Such written opinions shall be exchanged simultaneously.

(f) Following such exchange, each expert shall be entitled, should the expert so wish, to produce a further written opinion dealing only with such matters as are raised in the written opinion(s) of the other expert(s).

(g) Such further written opinions shall be exchanged simultaneously.

(h) Each expert who has provided a written opinion in the Arbitration shall give oral testimony at an Evidentiary Hearing unless the Parties agree otherwise and the Arbitral Tribunal confirms that agreement.

(i) If an expert who has provided an opinion in the Arbitration does not appear to give testimony at an Evidentiary Hearing without a valid reason, unless the Parties agree otherwise and the Arbitral Tribunal confirms that agreement, the Arbitral Tribunal shall disregard the expert's written opinion unless, in exceptional circumstances, the Arbitral Tribunal determines otherwise.

2 The contents of the discussion referred to at Article 6.1(a) shall be without prejudice to the Parties' respective positions in the Arbitration and, unless all the Parties agree otherwise, and save as provided in Article 6.1(b), the content of that discussion shall not be communicated to the Arbitral Tribunal.

3 Any agreement by the Parties pursuant to Article 6.1(h) that an expert need not give oral testimony at an Evidentiary Hearing shall not constitute agreement with, or acceptance by a Party of, the content of the expert's written opinion.

Article 7 – Testimony by Experts

1 The manner in which an expert gives testimony shall be as directed by the Arbitral Tribunal. The expert's testimony shall be given with the purpose of assisting the Arbitral Tribunal to narrow the issues between the experts and to understand and efficiently to use the expert evidence.

2 The Arbitral Tribunal may at any time, up to and during the hearing, direct the experts to confer further and to provide further written reports to the Arbitral Tribunal either jointly or separately.

3 The Arbitral Tribunal may at any time hold preliminary meetings with the experts.

4 If the Arbitral Tribunal is satisfied that either written opinion or testimony of an expert is not in accordance with the expert declaration contained in Article 8 of the Protocol, the Arbitral Tribunal shall disregard the expert's written opinion and testimony either in whole or in part, as it considers appropriate in all the circumstances.

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Article 8 – Expert Declaration

1 The expert declaration referred to in Article 4.5(n) shall be in the following form:

" (a) I understand that my duty in giving evidence in this arbitration is to assist the arbitral tribunal decide the issues in respect of which expert evidence is adduced. I have complied with, and will continue to comply with, that duty.

(b) I confirm that this is my own, impartial, objective, unbiased opinion which has not been influenced by the pressures of the dispute resolution process or by any party to the arbitration.

(c) I confirm that all matters upon which I have expressed an opinion are within my area of expertise.

(d) I confirm that I have referred to all matters which I regard as relevant to the opinions I have expressed and have drawn to the attention of the arbitral tribunal all matters, of which I am aware, which might adversely effect my opinion;

(e) I confirm that, at the time of providing this written opinion, I consider it to be complete and accurate and constitute my true, professional opinion.

(f) I confirm that if, subsequently, I consider this opinion requires any correction, modification or qualification I will notify the parties to this arbitration and the arbitral tribunal forthwith."


Chartered
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