

International Arbitration Rules of the Arbitration Foundation of Southern Africa

Preamble

Where the parties have agreed in whatsoever manner for arbitration under the Arbitration Foundation of Southern Africa (“AFSA”) Rules, or for arbitration administered by AFSA, they shall be taken to have agreed that any arbitration between them shall be conducted in accordance with the AFSA International Arbitration Rules in effect on the date upon which the arbitration commences (the “Commencement Date”), unless the Parties have specifically chosen the AFSA Commercial Rules or AFSA determines that the dispute is a domestic one. These AFSA International Arbitration Rules comprise this Preamble, the Articles, together with the Annexes to the AFSA International Arbitration Rules and the Schedule of Costs (collectively, the “Rules”).

The present Rules shall come into force on [date] (the “Effective Date”).

Article 1 – AFSA

AFSA is the body responsible for the administration of disputes in accordance with the Rules, and other procedures or rules agreed upon by the parties. AFSA is composed of an AFSA International Board (the “Board”), an AFSA International Court (the “Court”) and an AFSA International Secretariat (the “Secretariat”) led by its Secretary-General (the “Secretary-General”). Detailed provisions regarding the Board, Court and Secretariat are set out in Annex 1.

Article 2 – The Court

- (1) The Court does not itself decide the merits of disputes submitted to AFSA under the Rules. It supervises the administration of the resolution of disputes by arbitral tribunals and performs its functions in accordance with the Rules.
- (2) The functions of the Court under the Rules shall be performed in its name by either (i) the President of the Court; or (ii) any of its Vice-Presidents; or (iii) by a division of three or more members of the Court appointed by its President.
- (3) The Court is assisted in its work by the Secretariat. All communications in the arbitration to the Court shall be addressed to the Secretary-General.
- (4) The decisions of the Court are confidential and need not contain any reasons.
- (5) The decisions of the Court shall be final and binding, unless otherwise directed by the Court. To the extent permitted by any applicable law, the parties shall be taken to have waived any right of appeal or review in respect of any decision of the Court to any state court or other legal authority. If such appeal or review takes place due to mandatory provisions of any applicable law or otherwise, the Court may determine whether or not the arbitration should continue, notwithstanding such appeal or review.

Article 3 – Request for Arbitration

- (1) Any party wishing to commence an arbitration under the Rules (the “Claimant”)¹ shall deliver to the Secretariat a written request for arbitration (the “Request”), containing or accompanied by:
 - (a) the full name, description and contact details (including postal address, email address, and telephone number) of the Claimant for the purpose of receiving delivery of all documentation in the arbitration; and the same particulars of the Claimant’s authorised representatives (if any) and of all other parties to the arbitration (to the extent possible);
 - (b) a copy of the arbitration agreement(s) invoked by the Claimant to support its claim, together with a copy of any documentation in which those terms are contained and to which the Claimant’s claim relates;
 - (c) a statement summarising the nature and circumstances of the dispute giving rise to the arbitration, its estimated monetary value, the transaction(s) at issue and the reliefs

¹ The reference to “Claimant” or “Respondent” or “party” shall include the possibility of multiple Claimants, Respondents or parties.

- sought by the Claimant against any other party to the arbitration (each such other party being here separately described as a "Respondent");
- (d) a statement of any procedural matters for the arbitration (such as the seat of arbitration, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities) upon which the parties have already agreed in writing or in respect of which the Claimant makes any proposal under the arbitration agreement;
 - (e) the full name, postal address, email address, and telephone number of the arbitrator nominated by the Claimant (if applicable); and
 - (f) confirmation that the registration fee prescribed in the Schedule of Costs has been or is being paid to AFSA.
- (2) The Request (including all accompanying documents) may be submitted to the Secretariat in electronic form.
 - (3) The date of receipt by the Secretariat of the Request shall be treated as the Commencement Date for all purposes, subject to AFSA's actual receipt of the registration fee. Without actual receipt of such payment the Request shall be treated by the Secretariat as not having been delivered and the arbitration as not having been commenced.
 - (4) The Claimant shall, at the same time as it delivers the Request to the Secretariat, deliver a copy of the Request to the other parties to the arbitration, and shall notify the Secretariat that it has been or is being delivered to the other parties to the arbitration by one or more means justified specifically in such notification, to be supported then or as soon as possible thereafter by documentary proof satisfactory to the Secretariat of actual delivery or, if actual delivery is demonstrated to be impossible to the Secretariat's satisfaction, sufficient information as to any other effective form of service.

Article 4 – Answer to the Request and Any Counterclaim

- (1) Within 30 days from the receipt of the Request, the Respondent shall deliver to the Secretariat a written answer to the Request (the "Answer"), containing or accompanied by:
 - (a) the Respondent's full name and all contact details (including postal address, email address, and telephone number) for the purpose of receiving delivery of all documentation in the arbitration and the same particulars of its authorised representatives (if any);
 - (b) confirmation or denial of all or part of the claim advanced by the Claimant in the Request, including any jurisdiction objections;
 - (c) insofar as not already covered in the Request, a statement summarising the nature and circumstances of the dispute, its estimated monetary amount or value, the transaction(s) at issue and the defence advanced by the Respondent;
 - (d) a statement summarising the nature and circumstances of any counterclaim against any Claimant or any cross-claim against any other Respondent (both referred to as "Counterclaim"), specifying the reliefs sought and, where possible, an initial quantification of the amount of the Counterclaim;
 - (e) a response to any procedural matters contained in the Request under Article 3(1)(d), including the Respondent's own statement relating to the seat of arbitration, the language(s) of the arbitration, the number of arbitrators, their qualifications and identities and any other procedural matter upon which the parties have already agreed in writing or in respect of which the Respondent makes any proposal under the arbitration agreement; and
 - (f) the full name, postal address, email address, and telephone number of the arbitrator nominated by the Respondent (if applicable).
- (2) The Respondent shall, at the same time as it delivers the Answer to the Secretariat, send a copy of the Answer to the other parties to the arbitration, and shall notify the Secretariat that it has done so, specifying the mode of service employed and the date of service.
- (3) The Answer (including all accompanying documents) may be submitted to the Secretariat in electronic form.

- (4) The Claimant shall submit an answer to any Counterclaim within 30 days from the date of receipt of the Counterclaim. The provisions of this Article apply by analogy to the answer to the Counterclaim.

Article 5 — Written Communications and Calculation of Time Limits

- (1) Any written communication by the Court, the Secretariat or any party may be delivered by any appropriate means that provides a record of its delivery or transmission, including by hand or by registered postal or courier service or by facsimile, email, or in any other manner ordered by the arbitral tribunal (the “Arbitral Tribunal”).² Electronic means of delivery or transmission are preferred.
- (2) After the constitution of the Arbitral Tribunal, all communications shall take place directly between the Arbitral Tribunal and the parties, with the Secretariat copied on all such communications.
- (3) Unless otherwise ordered by the Arbitral Tribunal, any written communication pursuant to the Rules shall be deemed to be received if:
 - (a) communicated to the address, facsimile number and/or email address communicated by the addressee or its representative in the arbitration; or
 - (b) in the absence of (a), communicated to the address, facsimile number and/or email address specified in any applicable agreement between the parties or regularly used in the parties’ previous dealings; or
 - (c) in the absence of (a) and (b), communicated to any address, facsimile number and/or email address which the addressee holds out to the public at the time of such communication; or
 - (d) in the absence of (a)-(c), communicated to any last known address, facsimile number and/or email address of the addressee.
- (4) A written communication shall be deemed received on the earliest day it is delivered in accordance with Article 5(1). Such time shall be determined with reference to the recipient’s time zone.
- (5) Where a written communication is being communicated to more than one party, or more than one arbitrator, such written communication shall be deemed received when it is communicated pursuant to Article 5(1) to the last intended recipient.
- (6) Unless otherwise ordered by the Arbitral Tribunal, for the purpose of calculating a period of time, such period shall begin to run on the day following the day when a written communication is received. If this day is an official holiday or a non-business day at the place of the party against whom the calculation of time applies, the period of time shall commence on the first following business day. If the last day of such period is an official holiday or a non-business day at the place of receipt, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating that time period.
- (7) Except as provided in the Rules, the Secretariat may amend the period of time provided for in the Rules, as well as any time limits it has set, irrespective of whether any such time limits have expired or not.
- (8) Prior to the constitution of the Arbitral Tribunal, unless the parties agree otherwise, no party or its representative shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration with any arbitrator or candidate to be designated as arbitrator by a party, except to advise the candidate of the general nature of the dispute or to obtain information about the candidate’s qualifications, availability, impartiality or independence.
- (9) After the constitution of the Arbitral Tribunal, no party or its representative shall deliberately initiate or attempt to initiate any unilateral contact relating to the arbitration or the parties’ dispute with any member of the Arbitral Tribunal.

² “Arbitral Tribunal” includes a sole arbitrator or all of the arbitrators where more than one is appointed.

Article 6 – Nomination, Confirmation and Appointment of Arbitrators

- (1) A sole arbitrator shall be appointed under the Rules unless the parties have otherwise agreed in writing or it appears to the Court that the dispute is such as to warrant the appointment of more than one arbitrator.
- (2) In all cases, the arbitrators nominated by the parties, or by any third person including by the arbitrators already appointed, shall be subject to confirmation by the Secretary-General.
- (3) Arbitrators shall be and remain impartial and independent of the parties during the arbitration.
- (4) Before confirmation, each arbitrator shall provide to the Secretariat a signed statement of acceptance, availability, impartiality and independence. The arbitrator shall disclose in writing to the Secretariat any circumstances likely to give rise in the mind of any party to justifiable doubts as to the arbitrator's impartiality or independence.
- (5) After confirmation, an arbitrator shall immediately disclose in writing to the Secretariat, the parties and any other members of the Arbitral Tribunal any circumstances likely to give rise in the mind of any party to any justifiable doubts as to the arbitrator's impartiality or independence that may arise or come to his or her notice during the arbitration.
- (6) The Arbitral Tribunal shall be constituted, as soon as practicable after the Commencement Date.
- (7) The Secretary-General in confirming, or the Court in appointing, arbitrators shall take into account any agreement of the parties regarding the constitution of the Arbitral Tribunal. They may also take into account the nature and circumstances of the dispute, the applicable law, the seat and language of the arbitration and any other relevant circumstances.
- (8) Where the parties are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless the parties agree otherwise.
- (9) Members of the Court are not eligible to be appointed by the Court as arbitrators, although they may be nominated as arbitrators by the parties, or selected as president of the Arbitral Tribunal by the parties or other two arbitrators.

Article 7 – Appointment of Sole Arbitrator

Where the dispute shall be resolved by a sole arbitrator, the Parties may, by agreement, nominate a sole arbitrator for confirmation pursuant to Article 6(2). If the parties fail to nominate a sole arbitrator within 30 days from Commencement Date, or any other time limit agreed by the parties or fixed by the Court, the sole arbitrator shall be appointed by the Court.

Article 8 – Appointment of Three Arbitrators

- (1) Where the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation pursuant to Article 6(2). If a party fails to nominate an arbitrator, the appointment shall be made by the Court.
- (2) The third arbitrator, who will act as president of the Arbitral Tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 6(2). Should such procedure not result in a nomination within 30 days from the nomination or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Secretariat, the third arbitrator shall be appointed by the Court.

Article 9 – Arbitrator Appointments in Cases Involving Three or More Parties

- (1) Where each party may nominate an arbitrator and there are multiple Claimants or multiple Respondents, the Claimants, jointly, and the Respondents, jointly, shall nominate an arbitrator for confirmation by the Secretary-General.
- (2) In the absence of such a joint nomination, the Court may appoint each member of the Arbitral Tribunal and designate one of them to act as presiding arbitrator.

Article 10 – Expedited Procedure

- (1) Prior to the constitution of the Arbitral Tribunal, a party may apply to the Secretariat for the arbitral proceedings to be conducted in accordance with this Article, where:

- (a) the amount in dispute representing the aggregate of any claim, Counterclaim (or set-off defence) does not exceed the equivalent amount of 500.000 USD; or
 - (b) the parties so agree.
- (2) The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Article shall, at the same time as it files an application for the arbitral proceedings to be conducted in accordance with the Expedited Procedure with the Secretariat, send a copy of the application to the other party and shall notify the Secretariat that it has done so, specifying the mode of service employed and the date of service.
- (3) Where a party has filed an application with the Secretariat under this Article, and where the Court, after considering the views of the parties, grants the application, the arbitral proceeding shall be conducted in accordance with the Expedited Procedure as follows:
- (a) the Secretariat may abbreviate any time limits under the Rules;
 - (b) the Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a sole arbitrator;
 - (c) the Arbitral Tribunal shall decide on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;
 - (d) the final award shall be communicated within six months from the date when the Secretariat transmitted the case file to the Arbitral Tribunal, unless in exceptional circumstances, the Secretariat extends the time for making such award;
 - (e) the Arbitral Tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.
- (4) By agreeing to arbitration under the Rules, the parties agree that this Article 11 shall take precedence over any contrary terms of the arbitration agreement.
- (5) Upon application by a party, and after giving the parties the opportunity to be heard, the Arbitral Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Secretariat, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Arbitral Tribunal decides to grant an application under this Article, the arbitration shall continue to be conducted by the Arbitral Tribunal.

Article 11 – Emergency Arbitrator

- (1) A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal (“Emergency Measures”) may make an application for such measures before, concurrent with, or following the filing of a Request, but prior to the constitution of the Arbitral Tribunal, to the Secretariat for the appointment of an arbitrator to conduct emergency proceedings pending the constitution or expedited constitution of the Arbitral Tribunal (the “Emergency Arbitrator”).
- (2) The provisions of the Rules applicable to members of the Arbitral Tribunals shall apply mutatis mutandis to Emergency Arbitrators, unless provided otherwise.
- (3) The application for an Emergency Arbitrator under Article 11(1) shall be made to the Secretariat in writing, communicated to all other parties to the arbitration in accordance with any of the means specified in Article 5(1) of the Rules. The application shall set out:
- (a) the names and (in so far as known) the addresses and email addresses of the parties and of their representatives;
 - (b) the specific grounds for requiring the appointment of an Emergency Arbitrator;
 - (c) the specific claim, with reasons, for Emergency Measures;
 - (d) any relevant agreement and the arbitration agreement upon which the application is made; and
 - (e) confirmation that copies of the application and any supporting materials included with it have been or are being communicated simultaneously to all other parties to the arbitration and the means of doing so.

- (4) The application under Article 12(1) shall be accompanied by payment of the non-refundable administration fees and the requisite deposits under the Rules towards the Emergency Arbitrator's fees and expenses for proceedings pursuant to the Schedule of Costs. After the appointment of the Emergency Arbitrator, the Secretariat may increase in exceptional circumstances the amount of deposits requested from the party making the application. If the additional deposits are not paid within the time limit set by the Secretariat, the application shall be considered withdrawn.
- (5) If the parties have agreed on a seat of arbitration, such seat shall be the seat of the emergency proceedings. Failing such an agreement, the seat of the emergency proceedings before the Emergency Arbitrator shall be Johannesburg (South Africa), without prejudice to the Arbitral Tribunal's determination of the seat of the arbitration under Article 19.
- (6) If the parties have agreed on the language of the arbitration, such language shall be the language of the emergency proceedings before the Emergency Arbitrator. Failing such an agreement, the language of the emergency proceedings before the Emergency Arbitrator shall be English, without prejudice to the Arbitral Tribunal's determination of the language of the arbitration under Article 21.
- (7) If the Secretary General accepts the application under Article 12(1), the Court shall seek to appoint an Emergency Arbitrator within 48 hours of receipt by the Secretariat of such Application and payment of the administration fee and deposits. Article 7 shall apply to such appointment. For the avoidance of doubt, the Emergency Arbitrator shall comply with the requirements under Articles 7(3) and 7(4).
- (8) An Emergency Arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless otherwise agreed by the parties.
- (9) The Emergency Arbitrator may conduct the emergency proceedings in any manner determined by the Emergency Arbitrator to be appropriate.
- (10) The Emergency Arbitrator shall establish a procedural timetable for the emergency proceedings within two days from the transmission of the file to the Emergency Arbitrator.
- (11) The Emergency Arbitrator shall decide the claim for Emergency Measures as soon as possible, but no later than 14 days following the Emergency Arbitrator's appointment. This deadline may only be extended by the Court in exceptional circumstances or by the written agreement of all parties to the emergency proceedings.
- (12) The Emergency Arbitrator may make any decision or order (the "Emergency Decision") which the Arbitral Tribunal could make under the arbitration agreement. The Emergency Arbitrator Decision shall be made in writing with reasons in summary form.
- (13) The Emergency Arbitrator shall communicate the Emergency Decision to the parties with copy to the Secretariat.
- (14) The costs associated with any Application pursuant to this Article may be initially apportioned by the Emergency Arbitrator, subject to the power of the Arbitral Tribunal to determine finally the apportionment of such costs.
- (15) Any Emergency Decision may be confirmed, varied, discharged or revoked, in whole or in part, by order or award made by the Arbitral Tribunal, once constituted, upon application by any party or upon its own initiative.
- (16) This Article shall not prejudice any party's right to apply for any interim or conservatory measures from a competent authority at any time.
- (17) The emergency proceedings before the Emergency Arbitrator shall be terminated if a Request has not been submitted to the Secretariat before or within seven days of the Secretariat's receipt of the Application, unless the Emergency Arbitrator extends this time limit.
- (18) This Article shall not apply if either (i) the parties have concluded their arbitration agreement before the Effective Date and the parties have not agreed in writing to "opt in" to this Article; or (ii) the parties have agreed in writing at any time to "opt out" of this Article.

Article 12 – Early Dismissal

- (1) A party may apply to the Arbitral Tribunal for the early dismissal of a claim or defence on the basis that:
 - (a) a claim or defence is manifestly without legal merit; or
 - (b) a claim or defence is manifestly outside the jurisdiction of the Arbitral Tribunal.
- (2) An application for the early dismissal of a claim or defence under Article 12(1) shall be made within 30 days of the constitution of the Arbitral Tribunal. Such application shall state in detail the facts and legal basis supporting the application.
- (3) The Arbitral Tribunal has discretion to decide whether to allow the application for the early dismissal of a claim or defence under Article 12(1) to proceed. If the application is allowed to proceed, the Tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under Article 12(1).
- (4) If the application is granted under Article 12(1), the Arbitral Tribunal shall make an order or award on the application, stating reasons, which may be in summary form. The order or award shall be made in an efficient and expeditious manner having regard of the circumstances of the case.

Article 13 – Challenge or Removal of Arbitrators

- (1) Any arbitrator may be challenged within 15 days from the date a party becomes aware of circumstances giving rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess qualifications expressly agreed by the parties. A party may challenge the arbitrator nominated by it or in whose appointment it has participated only for reasons of which it becomes aware after the confirmation or appointment has been made.
- (2) A party that intends to challenge an arbitrator shall deliver a written statement of the reasons for its challenge to the Secretariat, the arbitrator being challenged, the other members of the Arbitral Tribunal and the other parties.
- (3) Unless the arbitrator being challenged withdraws from office or the other party agrees to the challenge within 15 days from receiving the written statement, the Court shall decide on the challenge. The Secretariat may request comments on the challenge from the parties, the arbitrator being challenged, the other members of the Arbitral Tribunal (or if the Arbitral Tribunal has not yet been constituted, any appointed arbitrator), and set a schedule for such comments to be made.
- (4) While such a challenge is pending, the Arbitral Tribunal, including the challenged arbitrator, may continue the arbitral proceedings.
- (5) If an arbitrator withdraws from office or a party agrees to the challenge under Article 13(1), no acceptance of the validity of any ground referred to in Article 13(1) shall be implied.
- (6) If the challenge is upheld, the Court shall remove the arbitrator by revoking his or her appointment.
- (7) The Court may, at its own initiative and in its discretion, remove an arbitrator who refuses or fails to act or to perform his or her functions in accordance with the Rules or if the arbitrator becomes *de jure* or *de facto* unable to perform his or her functions or for other reasons fails to act without undue delay. The Court shall consult the parties and the members of the Arbitral Tribunal, including the arbitrator to be removed prior to the removal of an arbitrator under this Article.
- (8) The Court shall determine the amount of fees and expenses (if any) to be paid for the former arbitrator's services, as it may consider appropriate in the circumstances.

Article 14 – Replacement of an Arbitrator

- (1) In the event of the death, resignation, withdrawal or removal of an arbitrator during the course of the arbitration, a replacement arbitrator shall be appointed pursuant to the provisions of the Rules that were applicable to the appointment of the arbitrator being replaced.
- (2) If an arbitrator is replaced, the arbitration shall resume at the stage where the replaced arbitrator ceased to perform his or her functions, unless the Arbitral Tribunal decides otherwise.

- (3) Following the closing of the proceedings, instead of replacing an arbitrator pursuant to Article 14(1), the Court may decide, in exceptional circumstances, when it considers it appropriate, that the remaining arbitrators shall continue the arbitration.

Article 15 — Arbitral Tribunal’s Powers and Conduct of the Arbitral Proceedings

- (1) The Arbitral Tribunal may conduct the arbitral proceedings in such manner as it considers appropriate.
- (2) It shall at all times during the arbitration be under a general duty to:
- (a) act fairly and impartially as between all parties, giving each a reasonable opportunity of putting its case and dealing with that of its opponent(s); and
 - (b) adopt procedures suitable for the conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity of the issues and the amount in dispute.
- (3) As soon as practicable after the file has been transmitted to the Arbitral Tribunal, the parties and the Arbitral Tribunal shall hold a case management conference to establish any additional procedural rules and a procedural timetable.
- (4) Unless otherwise agreed by the parties, the presiding arbitrator may make procedural rulings alone.
- (5) The Arbitral Tribunal’s powers shall include, among other things, upon the application of any party or upon its own initiative, but in either case only after giving the parties a reasonable opportunity to state their views:
- (a) to allow a party to supplement, modify or amend any claim, defence, Counterclaim, defence to Counterclaim and reply, including a Request, Answer and any other written statement, submitted by such party;
 - (b) to abridge or extend (even where the period of time has expired) any period of time prescribed by the Rules, any agreement of the parties or any order made by the Arbitral Tribunal;
 - (c) to conduct such enquiries as may appear to the Arbitral Tribunal to be necessary or expedient, including whether and to what extent the Arbitral Tribunal should itself take the initiative in identifying relevant issues and ascertaining relevant facts and the law(s) or rules of law applicable to the arbitration agreement, the arbitration and the merits of the parties’ dispute;
 - (d) to order any party to make any documents, goods, samples, property, site or thing under its control available for inspection examination or analysis by the Arbitral Tribunal, any other party, any expert to such party and any expert to the Arbitral Tribunal;
 - (e) to order any party to produce to the Arbitral Tribunal and to other parties documents or copies of documents in their possession, custody or power which the Arbitral Tribunal decides to be relevant;
 - (f) to decide as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion; and to decide the time, manner and form in which such material should be exchanged between the parties and presented to the Arbitral Tribunal;
 - (g) to order compliance with any legal obligation, payment of compensation for breach of any legal obligation and specific performance of any agreement (including any arbitration agreement or any contract relating to land); and
 - (h) to order the discontinuance of the arbitration if it appears to the Arbitral Tribunal that the arbitration has been abandoned by the parties or all claims and any Counterclaim withdrawn by the parties. The Arbitral Tribunal shall fix a reasonable notice period for the discontinuance during which the parties may agree or object to the discontinuance.

Article 16 – Administrative Secretary–

- (1) The Arbitral Tribunal may, after consulting with the parties and at any time during an arbitration, appoint an administrative secretary (the “Administrative Secretary”).
- (2) The Administrative Secretary shall act only upon the Arbitral Tribunal’s instructions and under its strict and continuous supervision. The Arbitral Tribunal shall, at all times, be responsible for the Administrative Secretary’s conduct during the arbitration. The tasks entrusted to an Administrative Secretary shall in no circumstances release the Arbitral Tribunal from its duties, and the delegation of the Arbitral Tribunal’s decision-making functions is prohibited.
- (3) The Administrative Secretary may perform organisational and administrative tasks such as:
 - (a) transmitting documents and communications on behalf of the Arbitral Tribunal;
 - (b) organising and maintaining the Arbitral Tribunal’s file and locating documents;
 - (c) organising hearings and meetings and liaising with the parties in that respect;
 - (d) drafting correspondence to the parties and sending it on behalf of the Arbitral Tribunal;
 - (e) preparing for the Arbitral Tribunal’s review drafts of procedural orders as well as factual portions of an award, such as the summary of the proceedings, the chronology of facts, and the summary of the parties’ positions;
 - (f) attending hearings, meetings and deliberations; taking notes or minutes or keeping time;
 - (g) conducting legal or similar research; and
 - (h) proof-reading and checking citations, dates and cross-references in procedural orders or awards.
- (4) The Administrative Secretary shall remain at all times impartial and independent of the parties and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his or her appointment. The Administrative Secretary, once appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties.
- (5) The Arbitral Tribunal may seek reimbursement from the parties of the Administrative Secretary’s justified reasonable personal disbursements for hearings and meetings. The Administrative Secretary shall not charge any fees.

Article 17 – Written Statements

- (1) Unless the Arbitral Tribunal determines otherwise, the written submissions of the arbitration and its procedural timetable shall be as set out in this Article.
- (2) Within a time limit to be determined by the Arbitral Tribunal, the Claimant shall deliver to the Arbitral Tribunal and all other parties its written Statement of Case setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all supporting documents on which it relies.
- (3) Within a time limit to be determined by the Arbitral Tribunal, the Respondent shall deliver to the Tribunal and all other its written Statement of Defence and (if applicable) Statement of Counterclaim setting out in sufficient detail the relevant facts and legal submissions on which it relies, together with the relief claimed against all other parties, and all supporting documents on which it relies.
- (4) Where there is any Counterclaim made, within a time limit to be determined by the Arbitral Tribunal, the Claimant or the Respondent against which the Counterclaim is made shall deliver to the Arbitral Tribunal and all other parties a written Statement of Defence to Counterclaim in the same manner required for a Statement of Defence, and all supporting documents on which it relies.
- (5) The Arbitral Tribunal shall decide which further written submissions shall be required from the parties or may be presented by them. The Arbitral Tribunal shall fix the periods of time for communicating such written submissions.

- (6) The Arbitral Tribunal may provide any additional directions it considers appropriate regarding the parties' written submissions or the parties' submission of their evidence (including witness statements and expert reports).
- (7) If the Respondent fails to submit a Statement of Defence or the Claimant a Statement of Defence to Counterclaim, or if at any time any party fails to avail itself of the opportunity to present its written case in the manner required under this Article or otherwise by order of the Arbitral Tribunal, the Arbitral Tribunal may nevertheless proceed with the arbitration and make one or more awards.
- (8) If the Claimant fails within the time specified to submit its Statement of Case, the Arbitral Tribunal may issue an order for the termination of the arbitral proceedings or give such other directions as may be appropriate.

Article 18 – Seat of Arbitration

- (1) The parties may agree in writing the seat of their arbitration.
- (2) In default of any such agreement, the seat of the arbitration shall be determined by the Court, having regard to all the circumstances of the case.
- (3) The Arbitral Tribunal may hold any hearing at any convenient geographical place in consultation with the parties and hold its deliberations at any geographical place of its own choice; and if such place(s) should be elsewhere than the seat of the arbitration, the arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the arbitral seat and any order or award as having been made at that seat.

Article 19 – Applicable Law

- (1) The parties shall be free to agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the rules of law which it determines to be appropriate. The Arbitral Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have authorised it to do so in writing.
- (2) The Arbitral Tribunal shall decide in accordance with the terms of the contract, if any, and may take into account relevant trade usages.

Article 20 – Language of Arbitration

Unless the parties agree otherwise, English shall be the language of the arbitration.

Article 21 – Hearings

- (1) The Arbitral Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.
- (2) After studying the written submissions of the parties and all documents relied upon, the Arbitral Tribunal shall hold a hearing, if any of them so requests or, failing such a request, it may of its own motion decide to schedule a hearing.
- (3) The Arbitral Tribunal shall organise the conduct of any hearing in advance, in consultation with the parties, as it sees fit. The Arbitral Tribunal shall have the fullest authority under the arbitration agreement to establish the conduct of a hearing, including its date, form, content, procedure, time-limits and geographical place.
- (4) The Arbitral Tribunal shall give to the parties reasonable notice in writing of any hearing, including the relevant date, time and place.
- (5) At any time during the proceedings, the Arbitral Tribunal may summon any party to provide additional evidence.
- (6) The hearing may take place in person or by any other means that the Arbitral Tribunal considers appropriate considering all relevant circumstances, including by video or telephone conference, or a combination thereof. The Arbitral Tribunal may make directions for the interpretation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.

- (7) To the extent permitted by any applicable law, all hearings shall be held in private, unless the parties agree otherwise in writing.

Article 22 — Fact and Expert Witnesses

- (1) Unless decided otherwise by the Arbitral Tribunal, a party may present evidence by fact witnesses or expert witnesses.
- (2) Before any hearing, the Arbitral Tribunal may order any party to give written notice of the identity of each witness that party wishes to call, as well as the subject-matter of that witness's testimony, its content and its relevance to the issues in the arbitration.
- (3) Subject to any order otherwise by the Arbitral Tribunal, the testimony of a witness may be presented by a party in written form as a signed statement (for fact witnesses) or signed report (for expert witnesses).
- (4) The Arbitral Tribunal may decide the time, manner and form in which these written materials shall be exchanged between the parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses.
- (5) The Arbitral Tribunal and any party may request that a witness, on whose written testimony another party relies, should attend for oral questioning at a hearing before the Arbitral Tribunal. If the Arbitral Tribunal orders a party to secure the attendance of that witness and the witness refuses or fails to attend the hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony or exclude all or any part thereof altogether as it considers appropriate in the circumstances.
- (6) Any witness who gives oral testimony at a hearing before the Arbitral Tribunal may be questioned by each of the parties under the control of the Arbitral Tribunal. The Arbitral Tribunal may put questions at any stage of such testimony.

Article 23 — Tribunal Experts

- (1) Notwithstanding the provision on expert witnesses in Article 22, the Arbitral Tribunal, after consultation with the parties, may appoint one or more experts to report to it in writing on specific issues in the arbitration, as identified by the Arbitral Tribunal and communicated to the parties.
- (2) Any such expert shall submit a copy of his or her qualifications to the Arbitral Tribunal, shall be and remain impartial and independent of the parties, and shall sign a declaration to that effect, deliver it to the Arbitral Tribunal and copy all parties.
- (3) The Arbitral Tribunal may ask any party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that party's control on such terms as the Arbitral Tribunal thinks appropriate in the circumstances.
- (4) If any party so requests or the Arbitral Tribunal considers it necessary, the Arbitral Tribunal may order the expert, after delivery of the expert's written report, to participate in a hearing at which the parties shall have a reasonable opportunity to question the expert on the report and to present witnesses to testify on relevant issues arising from the report.
- (5) The fees and expenses of any expert appointed by the Arbitral Tribunal under this Article shall be borne by the parties, subject to the final allocation by the Arbitral Tribunal.

Article 24 — Interim Measures

- (1) Unless otherwise agreed by the parties and to the extent permitted by any applicable law, the Arbitral Tribunal may, at the request of any party, order interim measures.
- (2) An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the Arbitral Tribunal orders a party, for example and without limitation, to:
- (a) maintain or restore the status quo pending determination of the dispute;
 - (b) take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;

- (c) provide a means of preserving assets out of which a subsequent award may be satisfied; or
 - (d) preserve evidence that may be relevant and material to the resolution of the dispute.
- (3) The Arbitral Tribunal may order such measures in the form of an interim order or award.
 - (4) The Arbitral Tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
 - (5) The Arbitral Tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
 - (6) The Arbitral Tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Arbitral Tribunal's own initiative.
 - (7) The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the Arbitral Tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the proceedings.
 - (8) The Arbitral Tribunal may in its discretion order costs associated with the application for interim or conservatory measures in any interim order or award, or in the final award.
 - (9) The power of the Arbitral Tribunal under Article 24(1) shall not prejudice any party's right to apply to any competent judicial authority for interim or conservatory measures prior to the constitution of the Arbitral Tribunal, and in appropriate circumstances, after the constitution of the Arbitral Tribunal.
 - (10) A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

Article 25 – Security for Costs

- (1) The Arbitral Tribunal may order security for costs by way of deposit or bank guarantee or in any other manner and upon such terms as the Arbitral Tribunal considers appropriate in the circumstances.
- (2) In determining whether to order security for costs, the Arbitral Tribunal may have regard to:
 - (a) the prospects of success of the claims, Counterclaims and defences;
 - (b) the ability of the Claimant or of the party bringing the Counterclaim to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
 - (c) whether it is appropriate in all the circumstances of the case to order one party to provide security; and
 - (d) any other relevant circumstances.
- (3) If a party fails to comply with an order to provide security, the Arbitral Tribunal may stay or dismiss the party's claims in whole or in part.
- (4) Any decision to stay or to dismiss a party's claims shall take the form of an order or an award.

Article 26 – Party Representatives

- (1) Any party may be represented in the arbitration by one or more authorised representatives appearing by name before the Arbitral Tribunal (the "Party Representatives").
- (2) Prior to the constitution of the Arbitral Tribunal, the Secretariat may request from any party:
 - (a) written proof of the authority granted by that party to any Party Representatives designated in its Request or Answer; and
 - (b) written confirmation of the names and addresses of all such Party Representatives.
- (3) After the constitution of the Arbitral Tribunal, at any time, the Arbitral Tribunal may order any party to provide proof similar to the one under Article 26(2)(b) or confirmation in any form it

considers appropriate. Any intended change or addition by a party to its Party Representatives shall be notified promptly in writing to all other parties, the Arbitral Tribunal and the Secretariat.

- (4) Each party shall ensure that all its Party Representatives have agreed to comply with the general guidelines contained in Annex 2 to the Rules (the "General Guidelines"), as a condition of such representation. In permitting any Party Representative so to appear, a party shall thereby represent that the Party Representatives has agreed to such compliance.
- (5) In the event of a complaint by one party against another's Party Representative or upon the Arbitral Tribunal's own initiative, the Arbitral Tribunal may decide, after consulting the parties and granting that Party Representative a reasonable opportunity to answer the complaint, whether or not the Party Representative has violated the General Guidelines. If such violation is found by the Arbitral Tribunal, the Arbitral Tribunal may order any measure it deems necessary.

Article 27 — Third-Party Funding

- (1) For the purposes of this Article
 - (a) "Third-Party Funder" refers to any natural or legal person who is not a party to the arbitration and is not a Party Representative, but who enters into an agreement either with a party, an affiliate of that party, or a Party Representative in order to provide material or financial support for all or part of the cost of the arbitration, where such support is provided through a donation, or grant, or in exchange for remuneration or reimbursement wholly or partially dependent on the outcome of the arbitration.
 - (b) "Third-Party Funding Agreement" means an agreement by a party or potential party to the arbitration with a Third-Party Funder for the funding of the arbitration.
 - (c) "Funded Party" refers to a party to the arbitration who enters into a Third-Party Funding Agreement;
- (2) If a Third-Party Funding Agreement is entered into, the Funded Party shall notify all other parties, the Arbitral Tribunal, and the Secretariat of:
 - (a) the existence of a Third-Party Funding Agreement; and
 - (b) the identity of the Third-Party Funder.
- (3) The notification must be communicated in respect of a Third-Party Funding Agreement made on, before or after the Commencement Date, as soon as practicable after the Third-Party Funding Agreement is entered into.
- (4) Any Funded Party shall promptly disclose any changes to the information referred to above that occur after the initial disclosure.

Article 28 — Multiple Contracts

- (1) Where there are disputes arising out of or in connection with more than one contract, the Claimant may:
 - (a) file a Request in respect of each arbitration agreement invoked and concurrently submit an application to consolidate the arbitrations pursuant to Article 30(1); or
 - (b) file a single Request in respect of all the arbitration agreements invoked which shall include a statement identifying each Article and arbitration agreement invoked and a description of how the applicable criteria under Article 30(1) are satisfied, and such Request shall be deemed to be an application to consolidate all such arbitrations pursuant to Article 30(1).
- (2) Where the Claimant has filed two or more Requests pursuant to Article 28(1)(a), the Secretariat shall accept payment of a single filing fee under the Rules for all the arbitrations sought to be consolidated. Where the Court rejects the application for consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under the Rules in respect of each arbitration that has not been consolidated.
- (3) Where the Claimant has filed a single Request pursuant to Article 28(1)(b) and the Court rejects the application for consolidation, in whole or in part, the Claimant shall file a Request in respect of each arbitration that has not been consolidated, although each such arbitration shall be

deemed to have been commenced at the time the Claimant filed a single Request pursuant to Article 28(1)(b). The Claimant shall be required to make payment of the requisite filing fee under the Rules in respect of each arbitration that has not been consolidated.

Article 29 — Joinder and Intervention

- (1) Prior to the constitution of the Arbitral Tribunal, a party or non-party to the arbitration may file an application with the Secretariat for one or more additional parties to be joined in an arbitration pending under the Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:
 - (a) all parties, including the additional party to be joined, have consented to the joinder of the additional party; or
 - (b) the additional party to be joined is prima facie bound by the arbitration agreement upon which the pending arbitration is made.
- (2) An application under Article 29(1) shall include:
 - (a) the case reference number of the pending arbitration;
 - (b) the names, addresses, telephone numbers and email addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;
 - (c) whether the additional party is to be joined as a Claimant or a Respondent;
 - (d) a copy of the arbitration agreement(s) invoked by the Claimant to support its claim, together with a copy of any documentation in which those terms are contained and to which the Claimant's claim relates;
 - (e) if the application is being made under Article 29(1)(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
 - (f) a brief statement of the facts and legal basis supporting the application.
- (3) The application for joinder is deemed to be complete when all the requirements of Article 29(2) are fulfilled or when the Secretariat determines that there has been substantial compliance with such requirements. The Secretariat shall notify all parties, including the additional party to be joined, when the application for joinder is complete.
- (4) The party or non-party applying for joinder under Article 29(1) shall, at the same time as it files an application for joinder with the Secretariat, send a copy of the application to all parties, including the additional party to be joined, and shall notify the Secretariat that it has done so, specifying the mode of service employed and the date of service.
- (5) The Court shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Article 29(1). The Court's decision to grant an application for joinder under this Article is without prejudice to the Arbitral Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision.
- (6) Where an application for joinder is granted under Article 29(5), the date of receipt of the complete application for joinder shall be deemed to be the Commencement Date of the arbitration in respect of the additional party.
- (7) Where an application for joinder is granted under Article 29(5), the Court may revoke the confirmation or appointment of any arbitrators confirmed or appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Article 6 to Article 9 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Article 29(5).
- (8) After the constitution of the Arbitral Tribunal, a party or non-party to the arbitration may apply to the Arbitral Tribunal for one or more additional parties to be joined in an arbitration pending under the Rules as a Claimant or a Respondent, provided all parties, including the additional party to be joined, have consented to the joinder of the additional party.
- (9) An application under Article 29(8) shall include:

- (a) the case reference number of the pending arbitration;
 - (b) the names, addresses, telephone numbers and email addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;
 - (c) whether the additional party is to be joined as a Claimant or a Respondent;
 - (d) a copy of the arbitration agreement(s) invoked by the Claimant to support its claim, together with a copy of any documentation in which those terms are contained and to which the Claimant's claim relates;
 - (e) if the application is being made under Article 29(8)(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
 - (f) a brief statement of the facts and legal basis supporting the application.
- (10) The Arbitral Tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Article 29(8). The Arbitral Tribunal's decision to grant an application for joinder under this Article 29(10) is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- (11) Where an application for joinder is granted under Article 29(10), the date of receipt by the Arbitral Tribunal of the complete application for joinder shall be deemed to be the Commencement Date of the arbitration in respect of the additional party.
- (12) Where an application for joinder is granted under Article 29(5) or Article 29(10), any party who has not nominated an arbitrator or otherwise participated in the constitution of the Arbitral Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Arbitral Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 13.
- (13) Where an application for joinder is granted under Article 29(5) or Article 29(10), the requisite filing fee under the Rules shall be payable for any additional claims or Counterclaims.

Article 30 — Consolidation

- (1) Prior to the constitution of any Arbitral Tribunal in the arbitrations sought to be consolidated, a party may file an application with the Secretariat to consolidate two or more arbitrations pending under the Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:
- (a) all parties have agreed to the consolidation; or
 - (b) all the claims in the arbitrations are made under the same arbitration agreement.
- (2) An application for consolidation under Article 30(1) shall include:
- (a) the case reference numbers of the arbitrations sought to be consolidated;
 - (b) the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;
 - (c) a reference to the arbitration agreement(s) invoked and a copy of the arbitration agreement(s);
 - (d) a reference to the contract or other instrument out of or in relation to which the dispute arises, and where possible, a copy of the contract or other instrument;
 - (e) if the application is being made under Article 30(1)(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
 - (f) a brief statement of the facts and legal basis supporting the application.
- (3) The party applying for consolidation under Article 30(1) shall, at the same time as it files an application for consolidation with the Secretariat, send a copy of the application to all parties and shall notify the Secretariat that it has done so, specifying the mode of service employed and the date of service. The Court shall, after considering the views of all parties, and having

regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Article 30(1). The Court's decision to grant an application for consolidation under this Article 30(3) is without prejudice to the Tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under the Rules and may nonetheless be run concurrently where procedural efficiency requires it.

- (4) Where the Court decides to consolidate two or more arbitrations under Article 30(3), the arbitrations shall be consolidated into the arbitration that is deemed to have commenced first, unless otherwise agreed by all parties or the Court decides otherwise having regard to the circumstances of the case.
- (5) Where an application for consolidation is granted under Article 30(3), the Court may revoke the confirmation or appointment of any arbitrators confirmed or appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Article 6 to Article 9 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the Court's decision under Article 30.4.
- (6) After the constitution of any Arbitral Tribunal in the arbitrations sought to be consolidated, a party may apply to the Arbitral Tribunal to consolidate two or more arbitrations pending under the Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated
 - (a) all parties have agreed to the consolidation; or
 - (b) all the claims in the arbitrations are made under the same arbitration agreement, and the same Arbitral Tribunal has been constituted in each of the arbitrations or no Arbitral Tribunal has been constituted in the other arbitration(s); or
 - (c) the arbitration agreements are compatible, the same Arbitral Tribunal has been constituted in each of the arbitrations to be consolidated or no Arbitral Tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); or (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.
- (7) The Arbitral Tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation. The Arbitral Tribunal's decision to grant an application for consolidation under this Article is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under the Rules.
- (8) Where an application for consolidation is granted under Article 30(7), any party who has not nominated an arbitrator or otherwise participated in the constitution of the Tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the Tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 13.

Article 31 -- Jurisdiction and Authority

- (1) The Arbitral Tribunal shall have the power to rule upon its own jurisdiction and authority, including any objection to the initial or continuing existence, validity, effectiveness or scope of any arbitration agreement invoked by a party.
- (2) For that purpose, an arbitration agreement which forms or was intended to form part of another agreement shall be treated as an arbitration agreement independent of that other agreement. A decision by the Arbitral Tribunal that such other agreement is non-existent, invalid or ineffective shall not entail (of itself) the non-existence, invalidity or ineffectiveness of the arbitration agreement.
- (3) An objection by a Respondent that the Arbitral Tribunal does not have jurisdiction shall be raised as soon as possible but not later than the time for its Statement of Defence; and a like objection by any party responding to a Counterclaim shall be raised as soon as possible but not later than the time for its Statement of Defence to Counterclaim. A party is not precluded from raising such an objection by the fact that it has participated in the appointment of the

Arbitral Tribunal. An objection that the Arbitral Tribunal is exceeding the scope of its authority shall be raised promptly after the Arbitral Tribunal has indicated its intention to act upon the matter alleged to lie beyond its authority. The Arbitral Tribunal may nevertheless admit an untimely objection as to its jurisdiction or authority if it considers the delay justified in the circumstances.

- (4) The Arbitral Tribunal may decide the objection to its jurisdiction or authority in an award as to jurisdiction or authority or later in an award on the merits, as it considers appropriate in the circumstances.
- (5) To the extent permitted by any applicable law, the parties waive their right to apply to any state court or other legal authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority, until the Arbitral Tribunal has made its decision on the objection to its jurisdiction or authority pursuant to Article 31(4).

Article 32 – Deposits

- (1) The Secretariat may direct the parties, in such proportions and at such times as it thinks appropriate (taking into account the scales set out in the Schedule of Costs), to make one or more payments to AFSA on account of the Arbitration Costs.
 - (a) Such payments deposited by the parties may be applied by the Secretariat to pay any item of such Arbitration Costs (including AFSA's own fees and expenses) in accordance with the Rules.
 - (b) Unless otherwise decided by the Secretariat, where a Counterclaim is submitted by the Respondent, the Secretariat may fix separate advances on costs for the claim and the Counterclaim. When the Secretariat has fixed separate advances on costs, each of the parties shall pay the advances on costs corresponding to its claims.
 - (c) Where the amount of the claim or the Counterclaim is not quantifiable at the time payment is due, a provisional estimate of the Arbitration Costs shall be made by the Secretary-General. Such estimate may be based on the nature of the controversy and the circumstances of the case. This estimate may be adjusted in light of such information as may subsequently become available.
 - (d) The Secretariat may authorise, at the request of a party, that part of any advances on costs may be provided in the form of a bank guarantee or other form of security. Any costs arising from payment in the form of a bank guarantee or other form of security shall be borne by the requesting party.
- (2) All payments made by parties on account of the Arbitration Costs shall be held by AFSA for the parties, to be disbursed or otherwise applied by AFSA in accordance with the Rules. In the event that payments exceed the total amount of the Arbitration Costs at the conclusion of the arbitration, the excess amount shall be returned by AFSA to the parties, in accordance with any agreement of the parties or, in the absence of any such agreement, in proportions determined by the Court in its discretion.
- (3) In the event that a party fails or refuses to make any payment on account of the Arbitration Costs as directed by the Secretariat, the Secretariat may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed (subject to any order or award on Arbitration Costs).
- (4) In such circumstances, the party effecting the substitute payment may request the Arbitral Tribunal to make an order or award in order to recover that amount as a debt immediately due and payable to that party by the defaulting party, together with any interest.
- (5) If a claiming or counterclaiming party fails to make prompt and full payment on account of the Arbitration Costs, the Secretariat may, after consultation with the Arbitral Tribunal, direct the Arbitral Tribunal to suspend its work and set a time limit on the expiry of which the relevant claim or Counterclaim shall be considered as withdrawn. Such withdrawal would thereby remove the relevant claim or Counterclaim (as the case may be) from the scope of the Arbitral Tribunal's jurisdiction under the arbitration agreement, subject to any terms decided by the Arbitral Tribunal as to the reinstatement of the claim or Counterclaim in the event of subsequent payment by the claiming or counterclaiming party. Such a withdrawal shall not preclude the

claiming or counterclaiming party from defending as a respondent any claim or Counterclaim made by another party.

- (6) For the avoidance of any doubt, for the purpose of calculating of the deposits under this Article, the Arbitral Tribunal shall have the power to decide whether a Counterclaim designated by the party making it as a set-off defence should be properly considered as a Counterclaim instead.

Article 33 – Awards

- (1) Where the Arbitral Tribunal is composed of more than one arbitrator, an award is made by majority decision. If there is no majority, an award shall be made by the presiding arbitrator alone.
- (2) An award shall state the reasons upon which it is based, unless the parties have agreed in writing that reasons shall not be given.
- (3) An award shall be dated and state the seat of the arbitration.
- (4) An award shall be signed by the Arbitral Tribunal. If there is more than one arbitrator and any arbitrator does not sign an award, the award shall state the reason the arbitrator did not sign it.
- (5) If the parties reach a settlement before the final award is made, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or record the settlement in an award on agreed terms if requested by the parties and not objected to by the Arbitral Tribunal. Such an award need not be reasoned.
- (6) After the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or an award on terms agreed by the parties under Article 33(5), the mandate of the Arbitral Tribunal terminates, subject to Article 34.
- (7) The Arbitral Tribunal shall deliver the award to the Secretariat, which shall notify the award to the parties provided that all Arbitration Costs have been paid in full to AFSA in accordance with Articles 32 and 34.
- (8) By virtue of the notification of the award made in accordance with Article 33(7), the parties waive any other form of notification or deposit on the part of the Arbitral Tribunal.
- (9) Every award shall be final and binding on the parties. By submitting the dispute to arbitration under the Rules, the parties undertake to carry out an award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

Article 34 – Correction and Interpretation of Awards and Additional Awards

- (1) On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error or any errors of a similar nature contained in an award, provided such correction is delivered to the Secretariat within 30 days of the date of the notification of the award.
- (2) Within 30 days of the receipt of an award, a party may ask the Arbitral Tribunal to correct any errors of the kind referred to in Article 34(1). If the Arbitral Tribunal considers the request justified, after consulting the parties, it shall make the correction within 30 days of receipt of the request.
- (3) Within 30 days of the receipt of an award, a party may ask the Arbitral Tribunal to give an interpretation of an award. If the tribunal considers the request justified, after consulting the parties, it shall give the interpretation within 30 days of receipt of the request.
- (4) Within 30 days of the receipt of an award, a party may ask the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. If the Arbitral Tribunal considers the request justified, after consulting the parties, it shall make the additional award within 60 days of receipt of the request.
- (5) Articles 33(1) to 33(4), as well as Articles 33(7) to 33(9), shall apply to any corrections, interpretations or additional awards. Any correction or interpretation shall form part of the award.

Article 35 – Arbitration Costs and Legal Costs

- (1) The Arbitration Costs shall include the fees and expenses of the arbitrators and the Administrative Secretary and AFSA's administrative expenses fixed in accordance with the

Schedule of Costs, the fees and expenses of any experts appointed by the Arbitral Tribunal, and the costs of any other assistance reasonably required by the Arbitral Tribunal (the "Arbitration Costs").

- (2) The parties shall be jointly and severally liable to AFSA and the Arbitral Tribunal for the Arbitration Costs.
- (3) The Arbitral Tribunal shall specify by an award the amount of the Arbitration Costs determined by the Court. The Arbitral Tribunal shall decide the proportions in which the parties shall bear such Arbitration Costs (unless the parties have otherwise reached a final settlement regarding liability for such costs). If the Arbitral Tribunal has decided that all or any part of the Arbitration Costs shall be borne by a party other than a party which has already covered such costs by way of a payment to AFSA under Article 32, the latter party shall have the right to recover the appropriate amount of Arbitration Costs from the former party.
- (4) The Arbitral Tribunal shall also have the power to decide by an award that all or part of the legal or other expenses incurred by a party in relation to the arbitration (the "Legal Costs") be paid by another party. The Arbitral Tribunal shall decide the amount of such Legal Costs on such reasonable basis as it thinks appropriate. The Arbitral Tribunal shall not be required to apply the rates or procedures for assessing such costs practised by any state court or other legal authority.
- (5) The Arbitral Tribunal shall make its decisions on both Arbitration Costs and Legal Costs on the general principle that costs should reflect the parties' relative success and failure in the award or arbitration or under different issues, except where it appears to the Arbitral Tribunal that in the circumstances the application of such a general principle would be inappropriate under the arbitration agreement or otherwise. The Arbitral Tribunal may also take into account the parties' conduct in the arbitration, including any co-operation in facilitating the proceedings as to time and cost and any non-co-operation resulting in undue delay and unnecessary expense. Any decision on costs by the Arbitral Tribunal shall be made with reasons in the award containing such decision.

Article 36 — Confidentiality and Publication of Award

- (1) To the extent permitted by any applicable law, the parties undertake as a general principle to keep confidential all awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another party in the proceedings not otherwise in the public domain, save and to the extent that:
 - (a) disclosure may be required of a party by legal duty;
 - (b) disclosure is required to protect or pursue a legal right; or
 - (c) disclosure is required to enforce or challenge an award in legal proceedings before a state court or other legal authority.
- (2) The deliberations of the Arbitral Tribunal shall remain confidential to its members, save as required by any applicable law and to the extent that disclosure of an arbitrator's refusal to participate in the arbitration is required of the other members of the Arbitral Tribunal under Articles 13 and 14 of the Rules.
- (3) As an exception to the general principle set out in Article 36(1) above, and unless a party to the arbitration proceedings objects in writing to the publication of the arbitral award within 30 days after notification of the award to the parties, AFSA may in principle publish all arbitral awards in an anonymised or pseudonymised form.

Article 37 — Limitation of Liability

- (1) Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the members of the Arbitral Tribunal, its Administrative Secretary, AFSA (including the Board, the Court, the Secretariat, the Secretary-General and any of AFSA's officers and employees) and any person appointed by the Arbitral Tribunal based on any act or omission in connection with the arbitration.
- (2) The parties shall indemnify and hold AFSA (including the Board, the Court, the Secretariat, the Secretary-General and any of AFSA's officers and employees) harmless from any and all claims, injuries, damages, losses or legal proceedings including legal fees, arising out of or

resulting from the acts, errors or omissions in administering an arbitration, except for injuries and damages caused by the sole negligence of AFSA.

Article 38 — General Provisions

- (1) Throughout the proceedings, the Court, the Secretariat, the Arbitral Tribunal and the parties shall act in an efficient and expeditious manner.
- (2) A party who knows that any provision of the arbitration agreement has not been complied with and yet proceeds with the arbitration without promptly stating its objection as to such non-compliance to the Secretariat (prior to the constitution of the Arbitral Tribunal) or the Arbitral Tribunal (after its constitution), shall be treated as having irrevocably waived its right to object for all purposes.
- (3) For all matters not expressly provided in the arbitration agreement, AFSA, the Court, the Secretariat, the Arbitral Tribunal and each of the parties shall act at all times in good faith, respecting the spirit of the arbitration agreement, and shall make every reasonable effort to ensure that any award is legally recognised and enforceable at the seat of arbitration.
- (4) If and to the extent that any part of the arbitration agreement is decided by the Arbitral Tribunal, or any court or other legal authority of competent jurisdiction to be invalid, ineffective or unenforceable, such decision shall not, of itself, adversely affect any order or award by the Arbitral Tribunal or any other part of the arbitration agreement which shall remain in full force and effect, unless prohibited by any applicable law.

Annex 1 --AFSA / The Court

[To be added]

Annex 2 -- General Guidelines for Party Representatives

- (1) These general guidelines are intended to promote the good and equal conduct of Party Representatives. Nothing in these guidelines is intended to derogate from the arbitration agreement or to undermine any Party Representative's primary duty of loyalty to the party represented in the arbitration or the obligation to present that party's case effectively to the Arbitral Tribunal. Nor shall these guidelines derogate from any mandatory provisions of any laws, rules of law, professional rules or codes of conduct if and to the extent that any are shown to apply to a Party Representative appearing in the arbitration.
- (2) A Party Representative should not engage in activities that are intended to, or would reasonably be construed by a fair-minded observer to, obstruct unfairly the arbitration or to jeopardise the finality of any award, including repeated challenges to an arbitrator's appointment or to the jurisdiction or authority of the Arbitral Tribunal known to be unfounded by that Party Representative.
- (3) A Party Representative should not knowingly make any false statement to the Arbitral Tribunal or the Court.
- (4) A Party Representative should not knowingly procure or assist in the preparation of or rely upon any false evidence presented to the Arbitral Tribunal or the Court.
- (5) A Party Representative should not knowingly conceal or assist in the concealment of any document (or any part thereof) which is ordered to be produced by the Arbitral Tribunal.
- (6) During the arbitration proceedings, a Party Representative should not deliberately initiate or attempt to initiate with any member of the Arbitral Tribunal or with any member of the Court making any determination or decision in regard to the arbitration (but not including the Secretariat) any unilateral contact relating to the arbitration or the parties' dispute, which has not been disclosed in writing prior to or shortly after the time of such contact to all other parties, all members of the Arbitral Tribunal (if comprised of more than one arbitrator) and the Secretariat.
- (7) In accordance with Articles 26(5) and 26(6), the Arbitral Tribunal may decide whether a Party Representative has violated these general guidelines and, if so, how to exercise its discretion to impose any sanction pursuant to Article 26(6).

Annex 3 -- Schedule of Costs

[To be added]