

**Rules of Arbitration of the
Bahrain Chamber for Dispute Resolution
effective ~~1 October 2017~~ [_____]**

Contents

- Article 1 Scope
- Article 2 Request for Arbitration
- Article 3 Date of commencement
- Article 4 Response to the Request
- Article 5 Case management fee
- Article 6 Expedited procedure
- Article 7 Written communications and time limits
- Article 8 Number and nationality of arbitrators
- Article 9 Appointment of arbitrators
- Article 10 Impartiality and independence of arbitrators
- Article 11 Challenge of an arbitrator
- Article 12 Replacement of an arbitrator
- Article 13 Secretary of the arbitral tribunal
- Article 14 Emergency measures of protection
- Article 15 Majority power to continue
- Article 16 Conduct of the arbitration
- Article 17 Further written statements
- Article 18 Summary procedure
- Article 19 Place of arbitration
- Article 20 Language of arbitration
- Article 21 Party representation

- Article 22 Hearings and witnesses
- Article 23 Exchange of information
- Article 24 Privilege
- Article 25 Tribunal-appointed experts
- Article 26 Interim measures of protection
- Article 27 ~~Arbitral~~ Jurisdiction
- Article 28 Joinder
- Article 29 Consolidation
- Article 30 Advances on costs
- Article 31 Fees and expenses of the arbitrators
- Article 32 Applicable law
- Article 33 Close of proceedings
- Article 34 Awards, orders, decisions and rulings
- Article 35 Time, form and effect of award
- Article 36 Costs of arbitration
- Article 37 Interpretation or correction of the award
- Article 38 Settlement and other reasons for termination
- Article 39 Waiver
- Article 40 Confidentiality
- Article 41 Limitation of liability

Appendix I – Fee Schedule effective ~~1 October 2017~~ [_____]

Administrative fees

Filing Fee

Case Management Fee

Fees and expenses of the arbitrator

Emergency Arbitrator Fee

Advances on costs

Hearing rooms and support services

Joint and several liability

Disputes

Appendix II – Model Arbitration Clause

Arbitration Rules

Article 1 Scope

- 1.1** Where parties have agreed in writing (whether before or after a dispute has arisen) to arbitrate a disputes under the rules of arbitration of the Bahrain Chamber for Dispute Resolution (the “Chamber”), or BCDR, or BCDR-AAA, or have provided for the arbitration of a dispute by the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA without designating particular rules, the arbitration shall take place in accordance with these rules, as they may have been amended by the Chamber to take effect before the date of commencement of the arbitration (the “Rules”). The Rules include the Fee Schedule as may be separately amended from time to time by the Chamber.
- 1.2** The Chamber shall be the administrator of such arbitrations.
- 1.3** The Rules govern the arbitration, provided that where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

Article 2 Request for Arbitration

- 2.1** A party wishing to initiate an arbitration under the Rules (if one, the “Claimant”; if more than one, each a “Claimant”) shall submit to the Chamber, and at the same time to all other parties to the arbitration (if one, the “Respondent”; if more than one, each a “Respondent”), a written Request for Arbitration (the “Request”).
- 2.2** The Request shall include, or be accompanied by:
- (a) the name, nationality, postal address, e-mail address and telephone number of each Claimant and of its legal representative, if any, and the name and postal address, and if and to the extent known, the e-mail address and telephone number, of each other party to the arbitration; and of its legal representative;
 - (b) a copy of the arbitration agreement conforming to Article 1.1 (the “Arbitration Agreement”);
 - (c) a copy of any contract out of or in relation to which the dispute has arisen;
 - (d) a statement summarizing the nature and circumstances of the dispute;
 - (e) a statement summarizing the relief or remedy sought and the actual or estimated value of any monetary claim;
 - (f) if the Arbitration Agreement, or any other written agreement, calls for the nomination of arbitrators by the parties, the full name, postal address, e-mail address and, if known, the telephone number of the arbitrator nominated by the Claimant;

- (g) a statement as to any proposals, or agreement among the parties, as to the constitution of the arbitral tribunal, the seat of the arbitration, the law applicable to the substance of the dispute, and the language(s) of the arbitration;
- (h) the filing fee prescribed by the Fee Schedule (the “Filing Fee”), or confirmation that the Filing Fee has been or is being paid to the Chamber; and
- (i) confirmation that copies of the Request and all accompanying documents have been or are being submitted to all other parties, with documentary proof of submission to be provided either with the Request or as soon as practicable thereafter.

2.3 The Request may, but need not, be submitted to the Chamber using the Chamber’s online filing form located at www.bcdr-aaa.org

2.4 If the Request is submitted by non-electronic means and the appointment of a sole arbitrator is contemplated by the Arbitration Agreement or any other written agreement or, if not so contemplated, proposed by the Claimant, the Request and all accompanying documents shall be submitted to the Chamber in two copies, and if the appointment of an arbitral tribunal of three arbitrators is contemplated or proposed as above, in four copies. The Chamber may at any time direct the Claimant to submit additional copies of the Request.

Article 3 Date of commencement

Provided always that the Chamber is *prima facie* satisfied that an arbitration agreement conforming to Article 1.1 may exist, the arbitration shall be deemed to have commenced on the date on which the Chamber has received the Request and the Filing Fee, and the Chamber shall advise all the parties accordingly, in writing.

Article 4 Response to the Request

4.1 Within 30 days after the commencement of the arbitration, the Respondent shall submit to the Chamber, and at the same time to all other parties to the arbitration, a written Response to the Request (the “Response”).

4.2 The Response shall include, or be accompanied by:

- (a) the name, nationality, postal address, e-mail address and telephone number of each Respondent, and of each Respondent’s legal representative (if any);
- (b) confirmation or denial, in full or in part, of any claim made by the Claimant in the Request;
- (c) a statement summarizing the circumstances giving rise to any counterclaim that the Respondent proposes to make, the relief or remedy sought and the actual or estimated value of any monetary counterclaim that the Respondent proposes to make;

- (d) if the Arbitration Agreement, or any other written agreement, calls for the nomination of arbitrators by the parties, the full name, postal address, e-mail address and, if known, the telephone number of the arbitrator nominated by the Respondent;
- (e) any response to any statement made by the Claimant in the Request as to the constitution of the arbitral tribunal, the seat of the arbitration, the law applicable to the substance of the dispute, and the language(s) of the arbitration; and
- (f) confirmation that copies of the Response and all accompanying documents have been or are being submitted to all other parties, with documentary proof of submission to be provided either with the Response or as soon as practicable thereafter.

4.3 The Response may, but need not, be submitted to the Chamber using the Chamber’s online filing form located at www.bcdr-aaa.org

4.4 If the Response is submitted by non-electronic means and the appointment of a sole arbitrator is contemplated by the Arbitration Agreement or any other written agreement or, if not so contemplated, proposed by the Respondent, the Response and all accompanying documents shall be submitted to the Chamber in two copies, and if the appointment of an arbitral tribunal of three arbitrators is contemplated or proposed as above, in four copies. The Chamber may at any time direct the Respondent to submit additional copies of the Response.

4.5 The Chamber may extend the time limit established in this Article for the submission of any Response if it considers such extension justified.

4.6 Failure by a Respondent to submit a Response shall not prevent the arbitration from proceeding.

Article 5 Case management fee

5.1 As soon as practicable after the submission of the Response or, if no Response is submitted, after the time for submission of a Response has elapsed, the Chamber shall direct the parties to pay the case management fee prescribed by the Fee Schedule (the “Case Management Fee”), which shall be paid by the party or parties directed to pay it no later than the deadline set by the Chamber for the payment.

5.2 The Case Management Fee shall be increased correspondingly, in accordance with the Fee Schedule, if the amount of a monetary claim or counterclaim is increased at any time during the arbitration, in which case, the amount of any such increase will be included in an advance on costs directed by the Chamber in accordance with Article 30.1.

5.3 The Chamber shall, ~~in its sole discretion~~, direct the parties to pay the Case Management Fee in such proportions as it deems appropriate, taking account of all the circumstances of the dispute.

5.4 If the Case Management Fee is not paid promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment, without which the Chamber may suspend or terminate the proceedings.

Article 6 Expedited procedure

- 6.1** This Article shall apply⁷ to the exclusion of any conflicting Article of the Rules:
- (a) if the parties have not agreed in writing otherwise, and provided that the claim and any counterclaim in the arbitration are quantified monetary claims and the ~~total combined value of such claim and counterclaim amount in dispute~~ does not exceed US\$1 million; or
 - (b) if the parties have agreed in writing that this Article shall apply irrespective of the value of any claim or counterclaim.
- 6.2** The Claimant shall submit a Request conforming to the provisions of Article 2, save that, in place of the statements prescribed by Articles 2.2(d) and 2.2(e), the Request shall include the Claimant's Statement of Claim, setting out in detail the remedies sought and the amount of any monetary claim, together with the factual and legal basis for its entitlement to such remedies, and accompanied by all documents essential to the claim.
- 6.3** The Request may, but need not, be submitted to the Chamber using the Chamber's online filing form located at www.bcdr-aaa.org
- 6.4** If the Respondent is not advancing a counterclaim the value of which will increase the ~~total amount in dispute combined value of the claim and counterclaim~~ to a sum greater than US\$1 million, the Respondent shall submit a Response conforming to the provisions of Article 4, save that, in place of the confirmation or denial prescribed by Article 4.2(b) and the statement prescribed by Article 4.2(c), the Response shall include the Respondent's Statement of Defense and its Counterclaim (if any), accompanied by all documents essential to its defense and counterclaim.
- 6.5** The Response may, but need not, be submitted to the Chamber using the Chamber's online filing form located at www.bcdr-aaa.org
- 6.6** If the Respondent is advancing a counterclaim the value of which will increase the ~~total amount in dispute combined value of the claim and counterclaim~~ to a sum greater than US\$1 million, and the parties have not agreed in writing that this Article shall apply irrespective of the value of any claim or counterclaim, Article 6.4 and Articles 6.7 to 6.13 shall not apply ~~to the arbitration~~ and the Respondent shall file its Response pursuant to the provisions of Article 4.
- 6.7** If, after filing the initial claim and any counterclaim, a party amends its claim or counterclaim so that the ~~total amount in dispute combined value of the claim and counterclaim~~ exceeds US\$1 million, the case will continue to be administered pursuant to this Article, unless the parties agree otherwise, or the Chamber or the arbitral tribunal determines otherwise.
- 6.8** Notwithstanding any other agreement to the contrary, the arbitral tribunal shall comprise a sole arbitrator.

- 6.9** Unless the parties have jointly nominated an arbitrator in writing, the Chamber shall, as soon as practicable after receipt of the Response, or, if no Response is submitted after the time for submission of a Response has elapsed, appoint an arbitrator of its choosing.
- 6.10** The appointment of the arbitral tribunal shall be promptly confirmed by the Chamber to the parties in a written notice of appointment.
- 6.11** Subject to the Rules, ~~t~~The arbitral tribunal shall conduct the arbitration as it considers suitable to the nature and circumstances of the case and to the expedited nature of the procedure, including determining whether any further written submissions should be made by the parties, and if so, according to what timetable, and whether the arbitration should be conducted on the papers only, without an oral hearing.
- 6.12** Unless otherwise agreed by the parties or determined by the Chamber, the arbitral tribunal shall issue the final award no later than 30 days after the date of the close of proceedings, as set out at Article 33.
- 6.13** Each of the 30-day deadlines prescribed by Article 37 for the interpretation or correction of an award shall be abridged to 15 days in respect of any award issued under this expedited procedure.

Article 7 **Written communications and time limits**

- 7.1** Any written communication by any party (including its legal representative), by the arbitral tribunal, or by the Chamber, to any or all of these ~~may~~shall be delivered personally; by courier; by registered mail; or by e-mail, facsimile, or any other form of electronic communication that provides a record of its transmission.
- 7.2** For the purpose of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a written communication is received by the ~~addressee~~intended recipient. If the last day of such period is an official holiday or a non-business day at the place of the intended recipient, the period is extended until the first business day that follows. Official holidays and non-business days occurring during the running of the period of time are included in calculating the period.
- 7.3** A written communication that is sent in accordance with the provisions of this Article shall be treated as having complied with any time limit if it is sent, ~~in accordance with the provisions of this Article,~~ prior to or on the date of the expiry of the time limit.
- 7.4** Unless otherwise ~~ordered~~directed by the arbitral tribunal, any written communication delivered to an address notified by any party for these purposes, or, if no such notice has been given, to the last known address of such party, shall be treated as having been received by that party.
- 7.5** Once the arbitral tribunal has been appointed, the parties, including their legal representatives, ~~may~~shall communicate in writing directly with the arbitral tribunal, with simultaneous copies to all other parties and to the Chamber.

Article 8 Number and nationality of arbitrators

- 8.1 The arbitral tribunal shall consist of one or three arbitrators. If the parties do not agree in writing on the number of arbitrators, one arbitrator shall be appointed unless the Chamber determines ~~in its sole discretion~~ that three arbitrators should be appointed, taking account of all the circumstances of the dispute.
- 8.2 Where the parties are of different nationalities, a person who has the nationality of any of the parties may be appointed as a sole or presiding arbitrator only with the written agreement of all the parties or, absent such agreement, if the Chamber so determines, taking account of all the circumstances of the dispute.

Article 9 Appointment of arbitrators

- 9.1 Where a sole arbitrator is to be appointed, the parties may jointly nominate the arbitrator in writing, for appointment by the Chamber.
- 9.2 If, within 15 days after the submission of the Response, or, if no Response is submitted, within 15 days after the time for submission of a Response has elapsed, the parties have not jointly nominated a sole arbitrator:
- (a) the Chamber shall, as soon as practicable, send to each party simultaneously an identical list containing the names of at least three arbitrators considered by the Chamber to be suitable for appointment;
 - (b) within 15 days after the receipt of the list, ~~the Claimant and the Respondent each party~~ shall each return the list to the Chamber after having struck out from the list the name(s) to which it objects and having ranked any remaining names in order of preference;
 - (c) after the expiry of the 15-day time limit prescribed by Article 9.2(b), the Chamber shall, as soon as practicable, appoint a sole arbitrator based on the rankings of the arbitrators on the lists returned to it; and
 - (d) if any party fails to return the list within the 15-day time limit prescribed by Article 9.2(b), all arbitrators included in the original list shall be deemed to be acceptable to that party.
- 9.3 If the appointment of a sole arbitrator cannot for any reason be made in accordance with the procedure set out at Article 9.2, or if the Chamber determines that the procedure is not appropriate, taking account of all the circumstances of the dispute, the Chamber shall, as soon as practicable, appoint a sole arbitrator of its choosing.
- 9.4 Where three arbitrators are to be appointed, the parties may agree in writing on the method for nominating the co-arbitrators, in which case that procedure will be followed. If the parties do not agree on the method for nominating the co-arbitrators, or the parties agree that each party shall nominate an arbitrator and the Claimant ~~has failed~~ to nominate an arbitrator

in accordance with Article 2.2(f), or the Respondent in accordance with Article 4.2(d), the Chamber shall select an arbitrator or arbitrators on behalf of the defaulting party or parties.

- 9.5** The parties may agree in writing on the method for nominating the presiding arbitrator, in which case that procedure will be followed, subject to Article 9.6.
- 9.6** If the parties do not agree on a method for the nomination of the presiding arbitrator, or if the nomination cannot for any reason be made in accordance with the agreed procedure, the presiding arbitrator shall be selected by the list procedure set out at Article 9.2, provided that if the Chamber determines that the list procedure is not appropriate, taking account of all the circumstances of the dispute, the Chamber shall select the presiding arbitrator.
- 9.7** By whichever means the ~~three arbitrators~~ arbitral tribunal ~~ors are~~ is selected, whether by party nomination or by any other method, and whether of one or three arbitrators, the Chamber alone may appoint the arbitrators, taking account of any nominations or proposals made by the parties~~the Chamber shall appoint the arbitral tribunal as soon as practicable.~~
- 9.8** Where the dispute is to be referred to three arbitrators, and the parties have agreed in writing that each party shall nominate an arbitrator and there are multiple Claimants or Respondents, the multiple parties, whether as Claimant or Respondent, shall each jointly nominate an arbitrator, failing which the Chamber shall appoint the arbitral tribunal without reference to any party's nomination.
- 9.9** When appointing an arbitrator, the Chamber shall consider the nature of the dispute, the applicable law, the seat of the arbitration, the language of the arbitration, the nationalities of the parties and of the prospective arbitrator, the prospective arbitrator's availability to conduct the arbitration, any relationships of the prospective arbitrator with the parties and any other arbitrators, and all other circumstances of the dispute.
- 9.10** The appointment of the arbitral tribunal shall be promptly confirmed by the Chamber to the parties in a written notice of appointment.

Article 10 Impartiality and independence of arbitrators

- 10.1** All arbitrators shall be and shall remain at all times impartial and independent of the parties, and no arbitrator shall act as advocate for any party.
- 10.2** No party or anyone acting on behalf of any party shall have any *ex parte* communication relating to the dispute with any candidate arbitrator, except to inform the candidate of the general nature of the dispute, to discuss the candidate's availability and to ascertain whether there might be any conflicts of interest, or, with the written agreement of all parties, to discuss the suitability of candidates for nomination as presiding arbitrator where the parties or party-nominated arbitrators are to participate in that selection.
- 10.3** After the appointment of the arbitral tribunal, no party or anyone acting on behalf of any party shall have any *ex parte* communication with the arbitral tribunal or any of its members.
- 10.4** Prior to accepting appointment, an arbitrator shall provide to the Chamber a curriculum vitae and shall sign a statement of impartiality and independence in which the arbitrator shall

disclose to the Chamber any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence and shall confirm his or her availability to conduct the arbitration in a timely fashion.

- 10.5** In the event of any disclosure made pursuant to Article 10.4, ~~T~~the Chamber shall either provide the arbitrator's ~~disclosure declaration~~ to the parties prior to the appointment of the arbitral tribunal, notifying a time limit for any comments thereon or ~~shall, in its discretion,~~ proceed with the appointment and provide the ~~disclosure declaration~~ at the time it notifies the parties of the appointment of the arbitral tribunal, without prejudice to any party's entitlement to challenge an arbitrator pursuant to Article 11. If, in light of comments received from the parties, the Chamber determines that the appointment of an arbitrator shall not proceed, an alternative arbitrator will be selected by the same method by which the arbitrator that he or she replaces was selected.
- 10.6** If, at any stage during the arbitration, circumstances emerge that may give rise to justifiable doubts as to an arbitrator's independence or impartiality, the arbitrator shall disclose such circumstances to the parties, to any other members of the arbitral tribunal and to the Chamber, without delay.
- 10.7** Disclosure by an arbitrator does not indicate belief by the arbitrator that the disclosed information does in fact give rise to justifiable doubts as to the arbitrator's impartiality or independence.

Article 11 Challenge of an arbitrator

- 11.1** Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, provided that, following the appointment of the arbitral tribunal, a party may challenge an arbitrator nominated by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment of the arbitral tribunal.
- 11.2** A party that intends to challenge an arbitrator shall submit to the Chamber, to all other parties and to the arbitral tribunal its written challenge, stating the facts and circumstances on which the challenge is made, within 15 days after the date on which it becomes aware of those facts and circumstances. A party that fails to challenge an arbitrator within this 15-day time limit waives its right to make the challenge.
- 11.3** The appointment of an arbitrator who is challenged shall be revoked by the Chamber if the arbitrator resigns or if all parties agree in writing with the challenge. Neither case shall imply the acceptance of the validity of the challenge.
- 11.4** If within 15 days after the date of receipt of the challenge all parties do not agree with the challenge or the challenged arbitrator does not resign, the Chamber shall determine the challenge, after having requested, if it considers it to be necessary and appropriate, further information on the challenge from the challenged arbitrator, the parties and any other members of the arbitral tribunal.

11.5 The Chamber's decision shall be in writing, shall be final, shall include reasons and shall be transmitted to the challenged arbitrator, to the parties and to any other members of the arbitral tribunal.

11.6 If the appointment of an arbitrator is revoked as a consequence of a challenge, the Chamber shall determine whether any fees and expenses should be paid to the arbitrator for his or her services.

11.7 The costs of any challenge shall form part of the costs of the arbitration for the purposes of Article 36.

Article 12 Replacement of an arbitrator

12.1 The appointment of an arbitrator shall be revoked by the Chamber and that arbitrator shall be replaced if:

- (a) ~~an~~the arbitrator tenders his or her resignation in writing and the Chamber accepts the resignation;
- (b) ~~an~~the arbitrator is removed following a challenge;
- (c) all the parties request the Chamber in writing, stating reasons, that the appointment be revoked;
- (d) two arbitrators on a three-member arbitral tribunal give notice, pursuant to Article 15.5, of their decision not to continue the arbitration without the participation of the third member of the arbitral tribunal, and the absent arbitrator is to be replaced; or
- (e) the Chamber on its own initiative determines that ~~an~~the arbitrator is no longer able to fulfill his or her functions, is not acting independently or impartially towards a party, or is not participating in the arbitration in accordance with the arbitral tribunal's duty under Articles 16.1 and 16.2.

12.2 When the Chamber is considering replacing an arbitrator pursuant to Article 12.1(e), it shall invite that arbitrator, the parties and any other members of the arbitral tribunal to provide comments in writing within a reasonable period of time as specified by the Chamber.

12.3 When an arbitrator is to be replaced pursuant to Article 12.1, or in the event of the death of an arbitrator, the Chamber may, but is not required to, follow the original nominating procedure.

12.4 Once the replacement arbitrator has been appointed, the proceedings shall be resumed at the stage at which the replaced arbitrator ceased performing his or her functions, unless the arbitral tribunal determines ~~decides~~—otherwise after giving the parties a reasonable opportunity to comment.

Article 13 Secretary of the arbitral tribunal

13.1 If at any time during the arbitration the arbitral tribunal wishes to appoint an ~~an~~ administrative secretary, it shall submit to the Chamber, with copy to all the parties:

- (a) the name, postal address, e-mail address and telephone number of the nominee for appointment;
- (b) a brief written statement of the nominee's qualifications and position;
- (c) the proposed hourly fee rate of the nominee; and
- (d) a brief statement of the tasks to be performed by the secretary, which shall neither conflict with those performed by the Chamber as the administrator of the arbitration under the Rules, nor constitute any delegation of the decision-making authority of the arbitral tribunal.

13.2 A secretary shall act at all times under the instructions and supervision of the arbitral tribunal, which shall be responsible for the conduct of the secretary in relation to the arbitration.

13.3 A secretary shall be appointed only with the written approval of the Chamber and of all the parties, and only after having signed a statement of impartiality and independence, disclosing to the parties, the members of the arbitral tribunal and the Chamber any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence.

13.4 If, at any time after the secretary's appointment, circumstances emerge that may give rise to justifiable doubts as to the secretary's impartiality or independence, the secretary shall disclose such circumstances to the parties, the members of the arbitral tribunal and the Chamber, without delay.

13.5 A secretary may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, in which case the provisions of Article 11 will apply equally to the challenge.

Article 14 Emergency measures of protection

14.1 At any time concurrent with or following the submission of a Request, and prior to the appointment of the arbitral tribunal, any party may apply in writing to the Chamber, with simultaneous copy to all other parties, for the appointment of an emergency arbitrator to grant emergency measures, setting out the nature of the measures sought; the reasons why such measures are required on an emergency basis; and the legal basis of the applicant party's entitlement to such measures. Such application may be made by any of the means set out in Article 7.1 and shall include a statement certifying that all other parties have been notified of the application.

14.2 Any such application shall be accompanied by the Emergency Arbitrator Fee prescribed by the Fee Schedule, or by confirmation that the Emergency Arbitrator Fee has been or is being paid to the Chamber, without the actual receipt of which the application shall be treated as not having been received.

- 14.3** Subject to Articles 3, 14.1 and 14.2, within two business days after receipt of an application for emergency measures, or as soon as practicable thereafter, the Chamber shall appoint a sole emergency arbitrator to consider the application.
- 14.4** Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the Chamber any circumstances that may give rise to justifiable doubts as to the impartiality or independence of the emergency arbitrator. In the event any such circumstances are disclosed or the prospective emergency arbitrator cannot confirm his or her immediate availability, the Chamber shall not proceed with the appointment, but shall appoint an arbitrator who has no such circumstances to disclose and who is immediately available. If, notwithstanding the above, a party wishes to challenge the appointment of the emergency arbitrator, such challenge shall be made in writing within two business days after the notification by the Chamber to the parties of the appointment of the emergency arbitrator, and the challenge shall be determined by the Chamber and its decision notified to the parties in writing within two additional business days, or as soon as practicable thereafter.
- 14.5** Subject to the Rules, ~~The~~ emergency arbitrator may conduct the emergency proceedings as he or she considers suitable to the nature and circumstances of the application, and shall, as soon as possible, and in any event within two business days after appointment, establish, and communicate to the parties in writing, a schedule for the determination of the application for emergency measures. Such schedule shall provide a reasonable opportunity to all parties to be heard on the application, and may provide for an oral hearing, in person or by telephone or video conference and for written submissions.
- 14.6** The emergency arbitrator shall have the authority vested in the arbitral tribunal under Article 27, including the authority to rule on his or her own jurisdiction, and may rule on any dispute concerning the applicability of this Article 14.
- 14.7** The emergency arbitrator shall have the power to order or award any interim or conservatory measure that he or she deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such order or award shall include reasons, shall have the same effect as an interim measure ordered or awarded pursuant to Article 26 and shall be binding on the parties when rendered. The parties undertake to comply with any such interim order or award without delay.
- 14.8** The emergency arbitrator shall decide the application for emergency measures as soon as practicable, but no later than 15 days after his or her appointment, unless this time limit is extended by written agreement of all parties, or by the Chamber upon written request from the emergency arbitrator stating reasons for the extension.
- 14.9** An order or award of the emergency arbitrator may be made conditional upon the provision of appropriate security by the party applying for emergency measures.
- 14.10** The ~~signed order or award of the~~ emergency arbitrator shall retain one signed original of the order or award and shall be transmitted by the emergency arbitrator to the Chamber,;
- (a) an electronic copy of the signed order or award for immediate onward transmission by the Chamber to the parties; and

~~(a)(b)~~ as many signed originals as there are parties. -which the Chamber shall communicate ~~the order or award~~ to the parties as soon as practicable.

- 14.11** The emergency arbitrator shall have no further power to act in this capacity after the arbitral tribunal has been appointed.
- 14.12** An application for interim measures made by a party to a court or other judicial authority shall not be deemed incompatible with this Article 14 or with the Arbitration Agreement, or a waiver of the right to arbitrate.
- 14.13** The costs associated with any application for emergency measures shall form part of the costs of the arbitration for the purposes of Article 36 and shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine finally the apportionment of such costs in an award.
- 14.14** Once the arbitral tribunal has been appointed, the arbitral tribunal may confirm, reconsider, modify or vacate the interim award or order for emergency measures issued by the emergency arbitrator.
- 14.15** The emergency arbitrator may not serve as a member of the arbitral tribunal, unless all parties to the arbitration agree in writing otherwise.
- 14.16** The request to appoint an emergency arbitrator may, but need not, be submitted to the Chamber using the Chamber's online filing form located at www.bcdr-aaa.org

Article 15 **Majority power to continue**

- 15.1** If an arbitrator fails without good cause, or refuses, to participate in the arbitration, the other arbitrators shall have the power to continue the arbitration, including making an award, notwithstanding the failure of the absent arbitrator to participate, provided that the reason for the decision to proceed in the absence of one arbitrator shall be stated in any award of the remaining arbitrators.
- 15.2** In determining whether to continue the arbitration without the participation of an arbitrator, the participating arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the absent arbitrator for his or her non-participation, the possible effect on the recognition and enforcement of any award rendered by the remaining arbitrators, and such other matters as they consider appropriate in the circumstances of the case.
- 15.3** In the event that the participating arbitrators decide to proceed without a non-participating arbitrator, they shall give written notice, with reasons, to the Chamber, to all the parties, and to the non-participating arbitrator.
- 15.4** The participating arbitrators shall not proceed without the non-participating arbitrator without the written approval of the Chamber. Absent such approval, the Chamber shall declare the office of the non-participating arbitrator vacant, and a replacement arbitrator shall be appointed pursuant to the provisions of Article 12.

15.5 In the event that the remaining arbitrators determine at any time not to continue the arbitration without the participation of the absent arbitrator, they shall notify the Chamber and all parties in writing of this decision. The Chamber shall declare the office of the non-participating arbitrator vacant, and a replacement arbitrator shall be appointed pursuant to the provisions of Article 12.

Article 16 Conduct of the arbitration

16.1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, including making decisions on preliminary issues and bifurcation of the proceedings, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

16.2 The arbitral tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute, avoiding unnecessary delay and expense.

16.3 The arbitral tribunal shall, promptly after being appointed, conduct a preliminary conference with the parties, in person or by video or telephone conference, for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the arbitral tribunal and the parties ~~may shall~~ consider how technology, including electronic communications, might be used to increase the efficiency and economy of the proceedings.

16.4 The parties shall make every effort to avoid unnecessary delay and expense in the arbitration.

16.5 The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as may be necessary to protect the efficiency and integrity of the arbitration.

Article 17 Further written statements

17.1 Subject to any alternative written agreement between all the parties, alternative directions of the arbitral tribunal, or the application of Article 6, the parties shall submit the following further written statements in accordance with the timetable set out in this Article.

17.2 Within 30 days after receipt by the ~~Claimant parties~~ of the written notification of the appointment of the arbitral tribunal by the Chamber, the Claimant shall:

- (a) submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Claim, setting out in detail the remedies sought and the amount of any monetary claim, together with the factual and legal basis for its entitlement to such remedies, and accompanied by all documents essential to its claim; or
- (b) give notice in writing to all other parties and to the arbitral tribunal, with copy to the Chamber, that the Request shall stand as its Statement of Claim.

17.3 Within 30 days after receipt of the Claimant's Statement of Claim or of its notice that the Request shall stand as the Statement of Claim, the Respondent shall:

- (a) submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Defense, and Counterclaim (if any), setting out in detail its defense to the Statement of Claim, and, in the case of any counterclaim, the remedies sought and the amount of any monetary claim, together with the factual and legal basis for its defense and for its entitlement to any remedies counterclaimed, and in either case accompanied by all documents essential to its defense and any counterclaim; or
- (b) give notice in writing to all other parties and to the arbitral tribunal, with copy to the Chamber, that the Response to the Request shall stand as its Statement of Defense, and its Counterclaim (if any).

17.4 Within 30 days after receipt of the Respondent's Statement of Defense, and Counterclaim (if any), or notice that the Response to the Request shall stand as the Statement of Defense, and Counterclaim (if any), the Claimant shall submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Reply to the Statement of Defense and, if applicable, a Statement of Defense to Counterclaim, accompanied by all documents essential to its reply and defense.

17.5 Within 30 days after receipt of the Claimant's Statement of Reply, and Defense to Counterclaim (if any), the Respondent shall submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Rejoinder to the Statement of Reply and, if applicable, a Statement of Reply to the Defense to Counterclaim, together with all documents essential to its rejoinder and reply.

17.6 Within 30 days after receipt of the Respondent's Statement of Rejoinder, and Reply to the Defense to Counterclaim (if any), the Claimant shall submit to all other parties and to the arbitral tribunal, with copy to the Chamber, a Statement of Rejoinder to the Statement of Reply to the Defense to Counterclaim, together with all documents essential to its rejoinder.

17.7 If the Respondent fails to submit a Statement of Defense, or the Claimant a Statement of Defense to Counterclaim, or if any party fails to present its case as set out in this Article, or as otherwise directed by the arbitral tribunal, the arbitral tribunal may nonetheless proceed with the arbitration, including the making of an award or awards.

Article 18 Summary procedure

18.1 The arbitral tribunal shall have the power, on the written application of a party, with simultaneous copy to all other parties and to the Chamber, to determine on a summary basis any legal or factual issue considered by the applicant party to be material to the outcome of the arbitration.

18.2 The application shall set out the issue or issues asserted to be suitable for summary procedure and the specific grounds advanced for such assertion.

18.3 The arbitral tribunal shall give all other parties to the arbitration a reasonable opportunity to respond to the application for summary procedure, and shall allow or dismiss the application as soon as practicable thereafter.

18.4 If the application is allowed, the arbitral tribunal shall notify the parties of any procedural steps it deems appropriate to its determination, which it shall issue in the form of an order or an award as soon as practicable after the completion of the last of the procedural steps that it has directed.

Article 19 Place of arbitration

19.1 The parties may agree in writing on the place of arbitration. If they do not agree, the place of arbitration may initially be determined by the Chamber, prior to the appointment of the arbitral tribunal, subject to the power of the arbitral tribunal, once appointed, finally to determine the place of arbitration.

19.2 The law governing the arbitration shall be that of the place of arbitration unless the parties have validly agreed in writing otherwise.

19.3 The arbitral tribunal may meet ~~at any place wherever~~ it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

Article 20 Language of arbitration

20.1 The language or languages of the arbitration shall be the language, languages or prevailing language of the Arbitration Agreement, unless the parties agree otherwise in writing, subject to determination by the arbitral tribunal once appointed.

20.2 The arbitral tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration, and shall determine the arrangements for such translations.

Article 21 Party representation

21.1 Any party may be represented in the arbitration by any legal representative whose full name, postal address, e-mail address and telephone number have been notified in writing to the Chamber, to all other parties, and (once appointed) to the arbitral tribunal, provided that there shall be no addition to any party's legal representatives following the appointment of the arbitral tribunal without the prior written approval of the arbitral tribunal.

21.2 The arbitral tribunal may decline to approve an addition to any party's legal representatives if, on proper disclosure, a relationship exists between the proposed additional legal representative and any member of the arbitral tribunal that would create a conflict of interest jeopardizing the composition of the arbitral tribunal or the integrity of the proceedings.

21.3 The Chamber and, once appointed, the arbitral tribunal may at any time require written proof of the authority of any named legal representative.

21.4 Every party shall require its legal representatives to agree that they shall not:

- (a) engage in any *ex parte* communication with any member of the arbitral tribunal;
- (b) knowingly make any false statement to the arbitral tribunal;
- (c) knowingly submit any false witness evidence to the arbitral tribunal, nor encourage or assist any witness to give false evidence;
- (d) suppress or conceal any document that the party instructing that legal representative has undertaken, or has been ordered by the arbitral tribunal, to produce; or
- (e) otherwise conduct themselves in a manner likely or calculated to obstruct, or jeopardize the integrity of the arbitral proceedings, or to create unnecessary delay or expense.

21.5 If the arbitral tribunal, having given the parties a reasonable opportunity to express their views, determines that any legal representative has breached any of the rules set out at Article 21.4, the arbitral tribunal may:

- (a) issue a written admonition to the legal representative, including a warning as to his or her future conduct in the arbitration;
- (b) draw such inferences as the arbitral tribunal may consider appropriate in considering the evidence or statements ~~relied upon~~ submitted by the legal representative;
- (c) consider any effect that the actions of the legal representative should have on the apportionment of the costs of the arbitration, including the parties' legal costs; and
- (d) take any other measures that the arbitral tribunal considers appropriate to preserve the fairness and integrity of the arbitration.

21.6 In determining whether to exercise any of the measures available under Article 21.5, the arbitral tribunal shall take into account the nature and seriousness of the breach; the potential impact of the exercise of the sanction on the rights of the parties, and on the enforceability of any award; and such other matters as it considers appropriate in the circumstances of the case.

21.7 The provisions of this Article do not displace any applicable mandatory laws or professional or disciplinary rules.

Article 22 Hearings and witnesses

22.1 The arbitral tribunal shall give the parties reasonable notice of the date, time and place of any oral hearing. Hearings or meetings may be conducted in person or by any electronic means directed by the arbitral tribunal that allows all those who are to participate in the hearing or meeting to do so irrespective of physical location.

- 22.2** At least 15 days before the hearing, each party shall give the arbitral tribunal and the other parties the name and address of any witness it intends to present, the subject of the witness's testimony and the language in which such witness will give his or her testimony.
- 22.3** The arbitral tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.
- 22.4** Unless otherwise agreed by the parties or directed by the arbitral tribunal, evidence of witnesses may be presented in the form of written statements signed by them.
- 22.5** In accordance with a schedule set by the arbitral tribunal, each party shall notify the arbitral tribunal and the other parties of the names of any witnesses who have presented a written witness statement whom it wishes to examine.
- 22.6** The arbitral tribunal may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the arbitral tribunal, the arbitral tribunal may disregard any written statement of that witness.
- 22.7** The arbitral tribunal may direct that witnesses be examined in person or by telephone or video conference.
- 22.8** The arbitral tribunal may direct the order of the presentation of evidence~~proof~~, exclude irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.
- 22.9** Hearings shall not be held in public unless the parties agree otherwise or the governing law provides to the contrary.
- 22.10** If a party, duly notified in accordance with Article 22.1, fails to appear at a hearing without showing sufficient cause for such failure to the satisfaction of the arbitral tribunal, the arbitral tribunal may proceed with the hearing in the absence of such party.

Article 23 Exchange of information

- 23.1** The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining time and cost efficiency, and at any time during the proceedings, the arbitral tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate.
- 23.2** The parties may provide the arbitral tribunal with their views on the appropriate level of information exchange, but the arbitral tribunal retains final authority in this regard.
- 23.3** The parties shall exchange all documents upon which each intends to rely, in accordance with a timetable set by the arbitral tribunal, insofar as these have not been submitted pursuant to Articles 2, 4, 6 and 17.
- 23.4** The arbitral tribunal may, upon written application, require a party to make available to all other parties documents in that party's possession not otherwise available to the party

seeking the documents that are reasonably believed to exist and to be relevant and material to the outcome of the arbitration. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the arbitration.

23.5 The arbitral tribunal may make any exchange of information that is subject to claims of commercial or technical confidentiality conditional upon appropriate measures to protect such confidentiality.

23.6 When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form most convenient and economical for it (including paper copies), unless the arbitral tribunal determines, on written application, that there is a need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible as to time and cost.

23.7 The arbitral tribunal may, on written application, require a party to permit inspection, on reasonable notice, of relevant premises or objects.

23.8 In resolving any dispute about pre-hearing exchanges of information, the arbitral tribunal shall require a requesting party to justify the time and expense that its request may involve and may make granting such a request conditional upon the payment of part or all of the cost of producing the information by the party seeking the information. The arbitral tribunal may also allocate the costs of providing information among the parties, either in an interim order or in an award.

23.9 Documents or information submitted to the arbitral tribunal by one party shall at the same time be transmitted by that party to all parties and, unless otherwise instructed by the Chamber, to the Chamber.

23.10 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of any evidence.

23.11 In the event a party fails to comply with an order for information exchange, the arbitral tribunal may draw adverse inferences and may take such failure into account in allocating costs.

Article 24 Privilege

The arbitral tribunal shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between lawyer and client. When the parties, their counsel, or their documents would be subject to different rules of privilege, the arbitral tribunal shall, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

Article 25 Tribunal-appointed experts

- 25.1** The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to the arbitral tribunal, in writing, on issues designated by the arbitral tribunal and to be communicated to the parties. Prior to accepting appointment, an expert to be appointed by the arbitral tribunal shall provide to the arbitral tribunal, the parties and the Chamber a curriculum vitae and shall sign a statement of impartiality and independence in which the expert shall disclose any circumstances that may give rise to justifiable doubts as to his or her impartiality or independence. A tribunal-appointed expert may be challenged if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, in which case the provisions of Article 11 will apply equally to the challenge of the expert.
- 25.2** The parties shall provide such expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute ~~between a party and the expert~~ as to the relevance of the requested information or goods shall be referred to the arbitral tribunal for determination.
- 25.3** Upon receipt of an expert's report, the arbitral tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such report.
- 25.4** At the request of any party, the arbitral tribunal shall give the parties an opportunity to question the expert at a hearing, at which the parties may present expert witnesses to testify on the points at issue, subject to the provisions of Article 22.

Article 26 Interim measures of protection

- 26.1** On the written application of any party, the arbitral tribunal shall have the power to order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such order or award shall include reasons.
- 26.2** An order or award made pursuant to this Article may be made conditional on the provision by the applicant party of security for the costs of the application on such terms and in such form as the arbitral tribunal deems appropriate.
- 26.3** The arbitral tribunal may in its discretion allocate costs associated with applications for interim relief in any such order or award.
- 26.4** An application for emergency measures of protection prior to the appointment of the arbitral tribunal may be made as provided for in Article 14.
- 26.5** An application for interim measures made by a party to a court or other judicial authority shall not be deemed incompatible with this Article 26, or with the Arbitration Agreement, or a waiver of the right to arbitrate.

Article 27 Arbitral Jurisdiction

- 27.1** The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence, scope, or validity of the Arbitration Agreement, or with respect to whether all of the claims and counterclaims made in the arbitration may be determined in a single arbitration.
- 27.2** The arbitral tribunal shall have the power to determine the existence or validity of a contract of which the Arbitration Agreement forms a part. Such Arbitration Agreement shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not for that reason alone render invalid the Arbitration Agreement.
- 27.3** A party shall raise an objection to arbitral jurisdiction no later than the time that the Statement of Defense is due if the objection relates to a claim, and no later than the time that the Statement of Defense to Counterclaim is due if the objection relates to a counterclaim. The arbitral tribunal has the power to extend these time limits and may rule on any objection under this Article as a preliminary matter or as part of the final award.
- 27.4** Subject to Article 3, issues regarding arbitral jurisdiction raised prior to the appointment of the arbitral tribunal shall not preclude the Chamber from proceeding with the administration of the arbitration and shall be referred to the arbitral tribunal, once appointed, for determination.

Article 28 Joinder

- 28.1** At any time following the Chamber's notice of the commencement of the arbitration pursuant to Article 3, and before the appointment of the arbitral tribunal, a party wishing to join an additional party to the arbitration shall submit to the Chamber, and at the same time to all other parties to the arbitration and to the additional party, a written request for arbitration against the additional party (the "Request for Joinder"), including or accompanied by all the items prescribed for a Request in accordance with Article 2.2.
- 28.2** The additional party shall submit a response to the Request for Joinder (the "Response to Request for Joinder"), the time limit, form and content of which shall be as prescribed for a Response in ~~accordance with~~ Article 4.
- 28.3** The Chamber shall join the additional party to the existing arbitration, provided that no additional party shall be joined pursuant to Article 28.1 unless the Chamber is *prima facie* satisfied that an arbitration agreement conforming to Article 1.1 may exist between all the parties, including the additional party.
- 28.4** At any time following the appointment of the arbitral tribunal, a party wishing to join an additional party to the arbitration shall proceed in the manner prescribed by Article 28.1, provided always that:
- (a) the additional party shall not be joined after the appointment of the arbitral tribunal unless all parties to the arbitration and the additional party so agree in writing, and further agree that the additional party shall waive any right to participate in the

selection of the arbitral tribunal that it would or might have had, had it been joined prior to the appointment of the arbitral tribunal;

- (b) the arbitral tribunal shall, after consultation with the parties, determine in its sole discretion whether the additional party should be joined, taking into account the stage of the arbitration, whether joinder would serve the interests of justice and efficiency, and such other matters as it considers appropriate in the circumstances of the case; and
- (c) the arbitral tribunal, if it permits joinder, shall determine the time, form and content of any Response to the Request for Joinder.

28.5 If joined, the additional party shall be a party to the arbitration for all purposes.

28.6 A Request for Joinder and a Response to Request for Joinder may, but need not, be submitted to the Chamber using the Chamber's online filing form located at www.bcdr-aaa.org

Article 29 Consolidation

29.1 If two or more arbitrations subject to these Rules are commenced pursuant to the same arbitration agreement and between the same parties, the Chamber may, in its discretion and after consultation with the parties, consolidate the arbitrations into a single arbitration subject to these Rules, provided that no arbitral tribunal has yet been appointed in any of the arbitrations to be consolidated.

29.2 Following the appointment of the arbitral tribunal, the arbitral tribunal shall, on the application of any party, and having consulted all the parties, have the power to consolidate two or more arbitrations commenced under these Rules into a single arbitration, provided that no arbitral tribunal has been appointed in the other arbitration or arbitrations, or, if appointed, is the same arbitral tribunal as the arbitral tribunal appointed in the arbitration that commenced first; and

- (a) all parties to the arbitrations to be consolidated have agreed in writing to consolidation; or
- (b) all claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
- (c) if the claims and counterclaims in the arbitrations are made under more than one arbitration agreement, the arbitrations involve the same parties, the disputes in the arbitrations arise in connection with the same legal relationship and the arbitral tribunal determines that the arbitration agreements are compatible.

29.3 In determining whether to consolidate two or more arbitrations, the arbitral tribunal shall take into account the stage of the arbitrations, whether the consolidation of the arbitrations would serve the interests of justice and efficiency, and such other matters as it considers appropriate in the circumstances of the case.

29.4 When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed in writing by all parties or the arbitral tribunal determines otherwise.

Article 30 Advances on costs

30.1 Promptly upon the notification of the appointment of the arbitral tribunal in accordance with Article 9.10, and from time to time thereafter during the arbitration, the Chamber shall direct the parties to pay appropriate amounts as an advance for the costs of the arbitration, other than the parties' own legal and other costs.

30.2 If the payments directed are not made promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may, after consultation with the Chamber, order the suspension or termination of the proceedings.

30.3 The arbitral tribunal shall not continue with the arbitration if it has not sought and obtained confirmation from the Chamber that the Chamber is holding sufficient funds on account of the accrued and anticipated costs of arbitration, other than the parties' own legal and other costs.

30.34 Failure by a party asserting a claim or counterclaim to make the required payment may be deemed by the arbitral tribunal a withdrawal of the claim or counterclaim.

30.54 After the final award has been made, the Chamber shall render an accounting to the parties for the payments made and shall return any unexpended balance to the parties in the proportions in which the payments were made.

Article 31 Fees and expenses of the arbitrators

31.1 The fees and expenses of the arbitrators shall conform to the Fee Schedule and shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case and any other relevant circumstances.

31.2 As soon as practicable after the commencement of the arbitration, the Chamber shall designate an appropriate daily or hourly rate in conformity with the Fee Schedule and in consultation with the arbitrators.

31.3 Any dispute regarding the fees and expenses of the arbitral tribunal shall be determined by the Chamber.

Article 32 Applicable law

32.1 The arbitral tribunal shall apply the rules of law agreed by the parties as applicable to the substance of the dispute. Failing such agreement, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

32.2 In arbitrations involving the performance of contracts, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

32.3 The arbitral tribunal shall not decide any dispute as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it in writing to do so.

Article 33 Close of proceedings

33.1 Following the last submissions, written or oral, made in accordance with the procedural timetable directed by the arbitral tribunal, the arbitral tribunal shall ask the parties if they have any further submissions. Upon receiving negative replies, or if satisfied that the record is complete, the arbitral tribunal shall declare the arbitral proceedings closed, ~~save for the rendering of the final award.~~

33.2 The arbitral tribunal may in its discretion, on its own initiative, or upon written application of a party, reopen the arbitral proceedings at any time before the final award is made.

Article 34 Awards, orders, decisions and rulings

34.1 In addition to making a final award, the arbitral tribunal may make interim, interlocutory or partial awards, orders, decisions and rulings.

34.2 When there is more than one arbitrator, any award, order, decision or ruling of the arbitral tribunal shall be made unanimously or, failing unanimity, by a majority of the arbitrators.

34.3 When the parties or the arbitral tribunal so authorize, the presiding arbitrator alone may make orders, decisions or rulings on questions of procedure, including exchanges of information, subject to revision by the arbitral tribunal.

Article 35 Time, form and effect of award

35.1 The arbitral tribunal shall deliberate and issue its final award as soon as possible after the close of proceedings, and, unless otherwise agreed by the parties or determined by the Chamber, the final award shall be made no later than 60 days from the date of the close of proceedings.

35.2 Awards shall be made in writing, and the arbitral tribunal shall state the reasons upon which an award is based, unless the parties have agreed in writing that no reasons need be given.

35.3 A monetary award shall be in the currency or currencies of the contract unless the arbitral tribunal considers another currency more appropriate.

35.4 An award shall be signed by the arbitral tribunal and shall state the date on which the award was made and the place of arbitration pursuant to Article 19. Where there is more than one arbitrator and any of them fails to sign an award, the award shall include a statement of the reasons for the absence of such signature.

35.5 Awards shall be final and binding on the parties, who shall carry out any award without delay and, absent written agreement otherwise, waive irrevocably their right to any form of

appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made.

35.6 The arbitral tribunal shall retain for each of its members one signed original of the award, and shall transmit to the Chamber:

(a) an electronic copy of the signed award for immediate onward transmission by the Chamber to the parties; and

(b) as many signed originals as there are parties, plus one signed original for the Chamber, which shall communicate the award to the parties as soon as practicable.

35.7 If the applicable law requires an award to be filed or registered, the arbitral tribunal shall use its best endeavors to cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration concerning an award to the attention of the arbitral tribunal.

Article 36 Costs of arbitration

36.1 The arbitral tribunal shall fix the costs of the arbitration in its final award or, if it deems appropriate, in any other order or award. The arbitral tribunal may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case and any matter prescribed by these Rules that may affect such allocation.

36.2 Such costs may include:

- (a) the fees and expenses of the arbitrators and of any secretary of the arbitral tribunal;
- (b) the costs of assistance required by the arbitral tribunal, including its experts;
- (c) the fees and expenses of the Chamber;
- (d) the reasonable legal and other costs incurred by the parties;
- (e) any costs incurred in connection with a notice for emergency or interim measures pursuant to Articles 14 or 26;
- (f) any costs incurred in the operation of Article 21.5;
- (g) any costs associated with the exchange of information pursuant to Article 23; and
- (h) any costs incurred in connection with an application for joinder or consolidation pursuant to Articles 28 or 29.

Article 37 Interpretation or correction of the award

- 37.1** Within 30 days after the receipt of an award, any party, with notice to all other parties and to the Chamber, may request the arbitral tribunal to interpret the award or correct any clerical, typographical or computational errors or make an additional award as to claims or counterclaims presented in the proceedings but omitted from the award.
- 37.2** If the arbitral tribunal considers such a request justified after considering the contentions of the parties, it shall comply with such request within 30 days after receipt of the parties' last submissions in respect of the requested interpretation, correction or additional award. Any interpretation, correction or additional award made by the arbitral tribunal shall be in writing and shall include reasons and shall form part of the award.
- 37.3** The arbitral tribunal on its own initiative may, within 30 days after the date of the award, correct any clerical, typographical or computational errors or make an additional award as to claims presented in the proceedings but omitted from the award.
- 37.4** The parties shall be responsible for all costs associated with any request for interpretation, correction or an additional award, and the arbitral tribunal may allocate such costs between the parties.

Article 38 Settlement and other reasons for termination

- 38.1** If the parties settle the dispute before a final award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms, stating that the award is made by consent. The arbitral tribunal is not obliged to give reasons for such award.
- 38.2** ~~If continuation of the arbitration becomes unnecessary or impossible for any other reason, the arbitral tribunal shall inform the parties of its intention to terminate the arbitration. The~~ If the parties have taken no steps in the arbitration for a period of six months, or such longer period as may be determined by the arbitral tribunal, or the Chamber if the arbitral tribunal is not yet appointed, the arbitral tribunal or the Chamber, as the case may be, shall, after notice to the parties, thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objections to such termination.
- 38.3** If the arbitration is terminated for any reason before a final award is made, the parties shall remain jointly and severally liable for the costs of arbitration specified in Articles 36.2(a), (b), (c), (e), (f), (g) and (h) until such costs have been paid in full.

Article 39 Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the Arbitration Agreement, and proceeds with the arbitration without promptly stating its objections in writing to the Chamber (before the appointment of the arbitral tribunal), or the arbitral tribunal (after its appointment), waives the right to object.

Article 40 Confidentiality

- 40.1** Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by the parties, by an arbitrator, by any emergency arbitrator, by any expert to

the arbitral tribunal, by any secretary of the arbitral tribunal, or by the Chamber (including its officers and employees). Unless otherwise agreed in writing by the parties or required by applicable law, the members of the arbitral tribunal, any emergency arbitrator, any expert to the arbitral tribunal, any secretary of the arbitral tribunal, and the Chamber (including its officers and employees) shall keep confidential all matters relating to the arbitration or the award.

40.2 An award may be made public only with the consent of all parties or as required by law, except that the Chamber may publish or otherwise make publicly available selected awards, orders, decisions and rulings that have become public in the course of enforcement proceedings or otherwise and, unless otherwise agreed in writing by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details.

40.3 Unless the parties agree in writing otherwise, the arbitral tribunal may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

Article 41 Limitation of liability

41.1 None of the members of the arbitral tribunal, any secretary of the arbitral tribunal, any emergency arbitrator, any expert to the arbitral tribunal, and the Chamber (including its officers and employees) shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, except where such act or omission is shown by that party to be the consequences of conscious and deliberate wrongdoing, or to the extent that any part of this limitation of liability is shown to be prohibited by any applicable law.

41.2 None of the members of the arbitral tribunal, any secretary of the arbitral tribunal, any emergency arbitrator, any expert to the arbitral tribunal, and the Chamber (including its officers and employees) shall be under any legal obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

Appendix I – Fee Schedule effective 1 October 2017[_____]

1. This Fee Schedule (the “Fee Schedule”) forms part of the rules of arbitration (the “Rules”) of the Bahrain Chamber for Dispute Resolution (the “Chamber”) and shall be applied in all arbitrations administered by the Chamber in which the parties have agreed in writing to arbitrate disputes under the Rules of the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA, or have provided for the arbitration of a dispute by the Bahrain Chamber for Dispute Resolution, or BCDR, or BCDR-AAA without designating particular rules.
2. The Fee Schedule may be separately amended from time to time by the Chamber.
3. All fees are stated in U.S. dollars, but may be invoiced in any freely convertible currency, and shall be paid in the currency of the invoice.

Administrative fees

4. The administrative fees of the Chamber shall comprise:
 - (a) a non-refundable Filing Fee of \$3,000, and
 - (b) a Case Management Fee based on the value of claims and counterclaims, as set out in the table below.

Sum claimed <u>and/or</u> counterclaimed	Case Management Fee 1 arbitrator	Case Management Fee 3 arbitrators
Up to \$75,000	\$4,000	\$6,000
\$75,001 to \$150,000	\$5,000	\$7,000
\$150,001 to \$300,000	\$6,000	\$8,000
\$300,001 to \$500,000	\$8,000	\$10,000
\$500,001 to \$1,000,000	\$12,000	\$14,000
\$1,000,001 to \$5,000,000	\$17,000	\$19,000
\$5,000,001 to \$10,000,000	\$23,000	\$25,000
Over \$10,000,000	\$23,000 plus 0.15% of the amount claimed over \$10,000,000 Capped at \$100,000	\$25,000 plus 0.15% of the amount claimed over \$10,000,000 Capped at \$100,000
Non-monetary claims	\$8,000	\$10,000

Filing Fee

5. In accordance with Articles 2.2(h) and 3 of the Rules, the non-refundable Filing Fee shall be paid in full by the Claimant at the time a Request for Arbitration is submitted to the Chamber.

Case Management Fee

6. In accordance with Article 5 of the Rules, as soon as practicable after the submission of the Response to the Request for Arbitration or, if no Response is submitted, after the time for submission of a Response has elapsed, the Chamber shall direct the parties to pay the Case Management Fee calculated by reference to the value of the Claimant's claim and (if any) the Respondent's counterclaim, or, if applicable, at the prescribed rate for a non-monetary claim or counterclaim.
7. Where the value of a monetary claim is not known at the time of the Request or Response, the claiming party shall be required to estimate the monetary value, failing which the Case Management Fee applicable to a non-monetary claim shall be paid.
8. The Case Management Fee shall be increased correspondingly if the amount of a monetary claim or counterclaim is increased at any time during the arbitration, in which case the amount of any such increase will be included in an advance on costs directed by the Chamber in accordance with Article 30.1 of the Rules.
9. The Chamber shall, in its sole discretion, direct the parties to pay the Case Management Fee in such proportions as it deems appropriate, taking account of all the circumstances of the dispute.
10. The Case Management Fee shall be paid by the party or parties directed to pay it no later than the deadline set by the Chamber for the payment. If the Case Management Fee is not paid promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment, without which the Chamber may suspend or terminate the proceedings.
11. In addition to the Case Management Fee, expenses incurred by the Chamber in its administration of the arbitration, including, but not limited to, telephone, postage and courier charges, shall be reimbursed to the Chamber from advances paid by the parties.
12. In the event that the arbitration is terminated for any reason prior to the scheduling of the first hearing, the Chamber may, ~~in its sole discretion~~, reimburse a proportion of the Case Management Fee to the party or parties that have paid it, taking account of the administrative time and overheads of the Chamber accruing to the date of termination.

Fees and expenses of the arbitrator

13. In consultation with the arbitral tribunal, the Chamber shall designate an hourly fee rate to be charged for all time spent by the arbitral tribunal in the arbitration other than in hearings, and a daily fee rate for hearing days, and shall promptly notify the parties of the rates to be applied.
14. The hourly rate shall not exceed \$500 and the daily rate shall not exceed \$4,000, provided that, in exceptional cases, higher rates may be applied if, on consultation with the arbitral tribunal, the Chamber deems a higher rate appropriate taking into account all the

circumstances of the case, and provided that the higher rate shall be agreed in writing by all the parties.

15. In the event of cancellation or postponement of a scheduled hearing less than four weeks before the start of the hearing, or at any time during the hearing, the arbitral tribunal may, with the approval of the Chamber, charge 50% of its daily rate for the number of days reserved for the hearing but not used.
16. The arbitrators may also charge for their reasonable expenses incurred in the course of the arbitration, which must be reasonable in amount, taking into account all the circumstances of the case, and which will be paid by the Chamber to the arbitrators on presentation of supporting receipts.
17. Subject to Clause 27 below, the fees and expenses of the arbitrators shall be paid by the Chamber to the arbitrators, on presentation of supporting invoices, from the advances paid by the parties.

Emergency Arbitrator Fee

18. An application for the appointment of an Emergency Arbitrator shall be accompanied by an Emergency Arbitrator Fee of \$35,000, or by confirmation that the Emergency Arbitrator Fee has been or is being paid to the Chamber, without the actual receipt of which the application will be treated as not having been received.
19. The Emergency Arbitrator Fee shall comprise:
 - (a) the Chamber's fee of \$10,000; and
 - (b) the Emergency Arbitrator's Fee of \$25,000.
20. No part of the Chamber's fee shall be refundable.
21. If the Chamber grants the application for the appointment of an Emergency Arbitrator, no part of the Emergency Arbitrator's Fee shall be refundable. If the Chamber refuses the application, the Emergency Arbitrator's Fee shall be returned to the party that paid it.

Advances on costs

22. In accordance with Article 30.1 of the Rules, the Chamber shall, promptly upon the notification of the appointment of the arbitral tribunal in accordance with Article 9.10 of the Rules, and from time to time thereafter during the arbitration, direct the parties to pay appropriate amounts as an advance for the costs of the arbitration as set out at Article 36.2 of the Rules, other than the parties' own legal and other costs.
23. If the payments directed are not made promptly and in full, the Chamber shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may, after consultation with the Chamber, order the suspension or termination of the proceedings.

24. Failure by a party asserting a claim or counterclaim to make the required payment may be deemed by the arbitral tribunal a withdrawal of the claim or counterclaim.
25. After the final award has been made, the Chamber shall render an accounting to the parties for the payments made and shall return any unexpended balance to the parties in the proportions in which the payments were made.

Hearing rooms and support services

26. The fees set out in ~~the~~ the Fee s Schedule do not cover the cost of hire of hearing rooms, or the cost of any related support services, including, but not limited to, any secretary of the arbitral tribunal, court reporting, transcription, translation, photocopying and catering.

Joint and several liability

27. The parties shall be jointly and severally liable to the Chamber and to the arbitral tribunal for the costs of the arbitration, as set out at Article 36.2 of the Rules, other than the parties' own legal and other costs, until all such costs have been paid in full.

Disputes

28. Any dispute regarding the administrative fees, the Emergency Arbitrator Fee, the fees and expenses of the arbitral tribunal, or the fees of any secretary of the arbitral tribunal shall be determined by the Chamber.

Appendix II – Model Arbitration Clause

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the Bahrain Chamber for Dispute Resolution.

The arbitral tribunal shall consist of [specify one or three] arbitrator[s].

The place of arbitration shall be [specify town and country].

The language of the arbitration shall be [specify language].”

Notes

The parties may also wish to stipulate in the arbitration clause the law that the tribunal will apply to the substance of the dispute.

The Chamber will be pleased to discuss any points relating to the drafting of an arbitration clause, including provisions for party nomination of arbitrators.