

JAMS

# International Arbitration

## Rules & Procedures

*Effective September 1, 2016*



# JAMS INTERNATIONAL ARBITRATION RULES

JAMS International and JAMS provide arbitration and mediation services from Resolution Centers located throughout Europe and the United States. Our arbitrators and mediators hear and resolve some of the most complex and contentious disputes. Our arbitrators and mediators come from the highest ranks of the legal profession. These highly trained and experienced ADR professionals are dedicated to the highest ethical standards of conduct. Parties wishing to write a predispute JAMS International arbitration clause into their agreement should review the sample arbitration clauses. These clauses may be modified to tailor the arbitration process to meet the parties' individual needs.

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## Model Arbitration Clause

*“Any dispute, controversy or claim arising out of or relating to this contract, including the formation, interpretation, breach or termination thereof, including whether the claims asserted are arbitrable, will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules. The tribunal will consist of [three arbitrators][a sole arbitrator]. The seat of the arbitration will be [location]. The language to be used in the arbitral proceedings will be [language]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.”*

## Submission Agreement

*“We, the undersigned parties, hereby agree that the following dispute will be referred to and finally determined by arbitration in accordance with the JAMS International Arbitration Rules:*

*[Brief description of the dispute]*

*“The seat of the arbitration will be [location]. The language to be used in the arbitral proceedings will be [language]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof.”*

## Mediator-in-Reserve Policy for International Arbitrations

Within one week of the commencement of an international arbitration at JAMS or JAMS International, a suggested list of mediators will be sent to the parties. The parties will be encouraged to select a mediator from the list, who will be placed in reserve during the pendency of the arbitration. The mediator so selected (“Mediator-in-Reserve”) will be available to the parties to assist in settlement negotiations in the event that, at any time in the course of the arbitration proceedings, the parties all agree to enlist the mediator’s assistance. There will be no charge to the parties for the appointment of the Mediator-in-Reserve, and the parties will not incur fees unless and until they choose to utilize the mediator’s services.

The Mediator-in-Reserve will not be informed of the parties’ selection until and unless the parties decide to request the mediator’s services. The parties will not be bound to use the Mediator-in-Reserve and may, at any time, mutually select another mediator to assist in their settlement discussions.

The arbitrator(s) in the proceeding will have no knowledge of the identity of the Mediator-in-Reserve, or whether the parties may have engaged their services at any point in the arbitration proceedings.

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## **Article 1. International Arbitration Rules**

**1.1** Where parties have agreed in writing to arbitrate disputes under these International Arbitration Rules (“Rules”) or have provided for arbitration of an international dispute to be administered by JAMS without designating specific rules that will apply, the arbitration will take place in accordance with these Rules, as in effect at the date of commencement of the arbitration, subject to whatever modifications the parties may adopt in writing. The Rules include the Schedule of Costs in effect at the commencement of the arbitration, which JAMS International may amend from time to time. A dispute that is subject to these Rules may be administered by JAMS or JAMS International, as requested by the parties or as determined by JAMS or JAMS International. As used herein, “JAMS International” shall refer to either JAMS or JAMS International, whichever is the administering body.

**1.2** When the Rules govern the arbitration, the parties will be deemed to have made the Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify the Rules. The Schedule of Costs will not be subject to modification by the parties.

**1.3** When the Rules specify the duties and responsibilities of the Administrator, such reference will be to JAMS or JAMS International Administrators. When the Rules specify the duties and responsibilities of JAMS International, such reference will be to the JAMS International Arbitration Committee (“JIAC”) as it may be comprised from time to time. No member of the JIAC may participate in any decision that applies to an arbitration in which that member participates as an arbitrator.

**1.4** Arbitration will be deemed to be “international” under the Rules if, at the time of the making of their agreement, the parties are located or have their places of business in different states or if a substantial part of the transaction(s) or occurrence(s) that gave rise to the dispute

took place in different states. For the purpose of this Rule, “state” means sovereign nations as well as territories, dependencies, mandates of a sovereign nation and other political entities recognized by the United Nations as having governmental status.

**1.5** These Rules will govern the conduct of the arbitration except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law of the seat of the arbitration, that provision of law will prevail.

**1.6** Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, the emergency arbitrator, the JIAC and JAMS International will not be liable to any person for any act or omission in connection with the arbitration except to the extent such limitation of liability is prohibited by applicable law.

## **Article 2. Request for Arbitration**

**2.1** Arbitration is initiated by the Claimant filing a Request for Arbitration (“Request”) with JAMS International, which should include:

(a) A statement of the names, addresses, telephone and facsimile numbers and email addresses of the parties and their representatives, if known;

(b) A description of the nature and circumstances of the dispute giving rise to the claim(s);

(c) A statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed;

(d) A copy of the arbitration agreement or clause under which the dispute is to be arbitrated;

(e) If applicable, a statement identifying the arbitrator appointed by the Claimant, including such arbitrator’s address, telephone and facsimile numbers and email address; and

(f) A statement of any matters (such as seat or language of the arbitration or the number of arbitrators, or their qualifications or identities) on which the parties have already agreed in writing for the arbitration or in respect of which the Claimant wishes to make a proposal. The Claimant may annex to its statement of claim documents it deems relevant or may add a reference to documents or other evidence it intends to submit. The failure to annex or refer to a document will not in itself preclude the use of that document in the arbitration.

**2.2** Together with the Request, the Claimant must submit one copy for each named Respondent and two additional copies for the Administrator. The Claimant must also remit the filing fee and the advance payment on administrative expenses required by JAMS International. In the event that the Claimant fails to comply with either of these requirements, the Administrator may fix a time limit within which the Claimant must comply, failing which the file will be closed without prejudice to the right of the Claimant to submit the same claims at a later date in another Request.

**2.3** The Administrator will send a copy of the Request and the documents annexed thereto to the Respondent for its Statement of Defense once the Administrator has sufficient copies of the Request and the required advance payment.

**2.4** In communications with the parties, the Administrator may, if practicable, utilize facsimile or email communication in addition to post or courier service, and any such communication will be deemed received upon the first receipt of any communication sent by any of the above means.

**2.5** The arbitration will be deemed to have been commenced on the date on which JAMS International receives the Request for Arbitration. Such Request may be filed by email transmission as set forth in Article 4.

### **Article 3. Emergency Relief Procedures**

These Emergency Relief Procedures are available in arbitrations filed after September 1, 2016, and where not otherwise prohibited by law. Parties may agree to opt out of these procedures in their arbitration agreement or by subsequent written agreement. A party in need of emergency relief prior to the appointment of an Arbitrator may notify JAMS International and all other parties in writing of the relief sought and the basis for an award of such relief. The Notice shall include an explanation of why such relief is needed on an expedited basis. Such Notice may be given by courier service, facsimile, email or personal delivery, and must include a statement certifying that all other parties have been notified and the means of such notification, or, if all other parties have not been notified, an explanation of the efforts made to notify such parties.

**3.1** Upon payment of any advance requested by JAMS, JAMS International shall promptly appoint an Emergency



Arbitrator to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the application and any requested advance. The Emergency Arbitrator shall promptly disclose any circumstance likely, on the basis disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS International will promptly review and decide any such challenge. JAMS International's decision will be final.

**3.2** Within two business days, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The schedule shall provide a reasonable opportunity for all parties to be heard taking into account the nature of the relief sought. If a hearing is required, such hearing may, at the Emergency Arbitrator's discretion, take place at the seat of the arbitration, and the parties may attend by videoconference or other remote location. The Emergency Arbitrator has the authority to rule on his or her own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

**3.3** The Emergency Arbitrator shall determine whether the party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting Party is entitled to such relief. The Emergency Arbitrator shall enter an order or award granting or denying the relief, as the case may be, and stating the reasons therefor. The Emergency Arbitrator's order or award may be in the form of an interim award or a partial final award. By agreeing to arbitration under these Rules, the parties undertake to comply with any emergency decision without delay.

**3.4** The emergency decision may be amended or revoked by the Emergency Arbitrator upon a reasoned request by a party. Any request to modify the Emergency Arbitrator's decision must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as an arbitrator or arbitrators are appointed in accordance with the parties' agreement and JAMS International's usual procedures. The arbitrator or arbitrators appointed to hear the arbitration shall not be bound by the decision(s) and reason(s) of the Emergency Arbitrator and may, at his, her or their discretion, modify any emergency decision.

**3.5** At the Emergency Arbitrator's discretion, any order or award of emergency relief may be conditioned on the provision of adequate security by the party seeking such relief.

#### **Article 4. Electronic Filing**

**4.1** Unless prohibited by the law of the seat of the arbitration, or otherwise agreed to by the parties, at the option of the filing party, the Request for Arbitration may be filed with the Administrator in electronic form with the requisite number of paper copies sent on the same date by courier service, facsimile or post.

**4.2** All communications and filings in the arbitration may, upon agreement of the parties or by order of the arbitrator or arbitrators ("Tribunal"), be accomplished electronically.

#### **Article 5. Statements of Defense and Reply; Counterclaims**

**5.1** Within 30 days after receipt of the Request for Arbitration, the Respondent will deliver to the Claimant (with a copy to the Administrator) a Statement of Defense. Failure to deliver a Statement of Defense will not delay the arbitration. In the event of such failure, the Respondent will be deemed to have denied the claims set forth in the Request for Arbitration. Failure to deliver a Statement of Defense will not excuse the Respondent from notifying the Claimant in writing, within 30 days after receipt of the Request for Arbitration, of the arbitrator appointed by the Respondent, unless the parties have agreed that neither will appoint an arbitrator. The Statement of Defense should include:

(a) Confirmation or denial of all or part of the claims advanced by the Claimant in the Request;

(b) A brief statement describing the nature and circumstances of any set-offs asserted or counterclaims advanced by the Respondent against the Claimant;

(c) Comment in response to any statements contained in the Request on matters relating to the conduct of the arbitration;

(d) If the arbitration agreement calls for party appointment of arbitrators, the name, address, telephone and facsimile numbers and email address (if known) of the Respondent's nominee; and

(e) Any counterclaim the Respondent wishes to assert against the Claimant. If a counterclaim is asserted in the Statement of Defense, then, within 30 days after receipt of

the Statement of Defense, the Claimant will deliver to the Respondent (with a copy to the Administrator) a Reply to Counterclaim, which should include the same elements as provided for in the Statement of Defense. Failure to deliver a Reply to Counterclaim will not delay the arbitration. In the event of such a failure, all counterclaims set forth in the Statement of Defense will be deemed denied.

**5.2** The Tribunal, or JAMS International if the Tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.

**5.3** As soon as practicable following receipt of the Request, the Statement of Defense and the Reply, if applicable, the Tribunal will proceed promptly in such a manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.

**5.4** The Tribunal will have jurisdiction to determine whether any claim, defense or counterclaim, whether original or amended, falls within the scope of the arbitration clause or the parties' separate agreement to arbitrate.

## **Article 6. Amendments to the Claim or Defense**

**6.1** Claims or counterclaims within the scope of the arbitration clause may be added or amended prior to the establishment of the Tribunal, but thereafter only with the consent of the Tribunal. After the Tribunal has been established, a party may amend or supplement its claim or defense, unless the Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice to any party or any other circumstances. However, a claim or defense may not be amended in such a manner that the amended claim or the amended defense falls outside the scope of the arbitration clause or the parties' separate arbitration agreement.

**6.2** Statements of Defense or Replies to Amended Claims or Counterclaims will be delivered within 20 days after the receipt of any amendment.

## **Article 7. Consolidation of Arbitral Proceedings (Joinder); Participation of Third Parties (Intervention)**

**7.1** Where a Request for Arbitration is submitted between parties already involved in other arbitral proceedings pending under these Rules, JAMS International may decide, after consulting with the parties to all proceedings and with the arbitrators, that the new case will be referred to the Tribunal already constituted for the existing proceedings. JAMS International may proceed in the same way when a Request for Arbitration is submitted between parties that are not identical to the parties in the existing arbitral proceedings. When rendering its decision, JAMS International will take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings. Where JAMS International decides to refer the new case to the existing Tribunal, the parties to the new case will be deemed to have waived their right to designate an arbitrator.

**7.2** Where the Claimant commences a single arbitration concerning disputes arising out of or in connection with multiple contracts, JAMS International may administer such arbitration, provided that:

(a) The parties to the contracts consent to a single arbitration to be conducted and administered in accordance with these Rules; or

(b) The contracts contain arbitration agreements referring such disputes to arbitration to be conducted and administered under these Rules, the arbitration agreements are compatible and:

(i) The disputes in the arbitrations arise out of the same legal relationship(s);

(ii) Such contracts consist of a principal contract and its ancillary contract(s); or

(iii) The disputes arise out of the same transaction or series of transactions.

**7.3** Where a third party seeks to participate in an arbitration already pending under these Rules or where a party to an arbitration under these Rules seeks to cause a third party to participate in the arbitration, the Tribunal will decide on such request, after consulting with all the parties, taking into account all circumstances it deems relevant and applicable. If a third party is joined in a pending arbitration,

or intervenes in a pending arbitration in accordance with this Article 7.3, the Tribunal already constituted shall continue to hear and determine the dispute. A party so joined or who intervenes in a pending arbitration in accordance with this Article 7.3 may, subject to the consent of the Tribunal, make claims against any other party or be subject to claims made against it by any other party. If the additional party makes a claim(s), it shall also make payment of the requisite filing fee for such claim(s).

**7.4** Where arbitral proceedings have been consolidated in accordance with Article 7.1, or where a single arbitration against multiple parties has been accepted for administration in accordance with Article 7.2, or where a third party participates in a pending arbitration in accordance with Article 7.3, the decision by the Administrator to allow a party's participation under any of those subsections shall be without prejudice to the Tribunal's power subsequently to decide any question as to its jurisdiction.

## **Article 8. Appointment of the Arbitrator(s)**

**8.1** If the parties have not agreed on the number of arbitrators, one arbitrator will be appointed, unless JAMS International determines in its discretion that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

**8.2** If the parties have agreed on a procedure of appointing the arbitrator or arbitrators, that procedure will be followed. If the parties have not agreed on a procedure of appointment, or if the Tribunal has not been established pursuant to the agreed procedure within the period of time stipulated by the parties (or, in the absence of such a stipulated period of time, within 45 days after the commencement of the arbitration), the Tribunal will be established or completed, as the case may be, in accordance with the procedures set forth in Articles 8.3, 8.4 and 8.5 below.

**8.3** Where a sole arbitrator is to be appointed, the sole arbitrator will be appointed jointly by the parties. If the appointment of the sole arbitrator is not made within the period of time agreed upon by the parties, or in the absence of such an agreed period of time, the sole arbitrator will be appointed in accordance with Article 8.5.

**8.4** Where three arbitrators are to be appointed, the arbitrators will be appointed in the following manner: The Claimant(s) will appoint one arbitrator in the Request for

Arbitration. The Respondent(s) will appoint one arbitrator within 30 days from the date on which it receives (or the last of the Respondents receives) the Request for Arbitration. The two arbitrators thus appointed will, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who will be the presiding arbitrator. If the Respondent(s) fail to appoint an arbitrator within the time allotted, JAMS International will appoint an arbitrator for the Respondent(s). If the two arbitrators appointed by the Claimant(s) and the Respondent(s) respectively fail to appoint a third arbitrator within the time period allotted under these Rules, the presiding arbitrator shall be appointed in accordance with Article 8.5.

**8.5** If the parties have failed to appoint an arbitrator as required under Article 8.2 or 8.3, or if the presiding arbitrator has not been appointed as required under Article 8.4, the appointment will take place in accordance with the following procedure:

(a) The Administrator will send to each party an identical list of candidates. The list will comprise the names of at least five candidates. The list will include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list will contain only the names of candidates that satisfy those qualifications.

(b) Each party will have the right to strike the names of any two candidates to whose appointment it objects and will number any remaining candidates in order of preference.

(c) Each party will return the marked list to the Administrator within 20 days after the date it receives the list. Any party failing to return a marked list within that period of time, or who fails to respond according to the instructions provided by the Administrator, will be deemed to have assented to all candidates appearing on the list.

(d) As soon as possible after receipt of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous sub-paragraph, JAMS International, taking into account the preferences and objections expressed by the parties, will invite a person from the list to be the sole arbitrator, or the presiding arbitrator as the case may be.

**8.6** Each prospective arbitrator will accept appointment in writing and will communicate such acceptance to the Administrator.

**8.7** The Administrator will notify the parties of the establishment of the Tribunal.

**8.8** Where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the Claimant(s) shall jointly nominate one arbitrator, and the Respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall act as the presiding arbitrator, shall then be appointed in accordance with Article 8.5, unless all parties, within 10 days after the appointment of the two party-appointed arbitrators, are able to agree on the appointment of a presiding arbitrator. In the absence of both such joint nominations having been made within 30 days of receipt by the Administrator of the Request for Arbitration or within the period agreed by the parties or set by the Administrator, JAMS International may appoint all three arbitrators and shall designate one of them to act as the presiding arbitrator.

**8.9** Where there are more than two parties in the arbitration, and one arbitrator is to be appointed, all parties are to agree on an arbitrator. In the absence of such a joint nomination having been made within 30 days of receipt by the Administrator of the Request for Arbitration or within the period agreed by the parties or set by the Administrator, the arbitrator shall be appointed in accordance with Article 8.5.

## **Article 9. Independence and Availability of the Arbitrators**

**9.1** Arbitrators acting under these Rules will be impartial and independent. Each arbitrator will disclose in writing to the Administrator and to the parties at the time of his or her appointment and promptly, upon there arising during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding that arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration and past or present relationships with a party or its counsel. The parties and their representatives shall disclose to JAMS International any circumstances likely to give rise to justifiable doubt as to an arbitrator's independence or impartiality, including any bias or any financial or personal interest in the result of the Arbitration or any past or present relationship with the parties or their representatives. The obligation of the Arbitrator, the parties and their representatives to make all required disclosures continues throughout the Arbitration process.

**9.2** By accepting appointment, each arbitrator will be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that he or she has and will maintain the time available to devote to the process contemplated by these Rules, as these Rules may have been amended by the parties' agreement.

## **Article 10. Challenge to Arbitrators**

**10.1** A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the requisite qualifications on which the parties have agreed. A party wishing to challenge an arbitrator must send notice of the challenge to the Administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party.

**10.2** The challenge must state in writing the reasons for the challenge.

**10.3** Upon receipt of such a challenge, the Administrator will notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge, and if there is agreement, the arbitrator must withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

**10.4** If the other party or parties do not agree to the challenge and the challenged arbitrator does not withdraw, JAMS International in its sole discretion will make the decision on the challenge.

**10.5** The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

**10.6** JAMS International's decision as to the challenge or replacement of an arbitrator will be issued to the parties and will be final.

## **Article 11. Replacement of an Arbitrator**

**11.1** If an arbitrator withdraws after a challenge, or if JAMS International sustains a challenge, or if JAMS In-



ternational determines that there are sufficient reasons to accept the resignation of an arbitrator, or if an arbitrator dies or, in JAMS International's sole discretion, becomes unable to act, a substitute arbitrator will be appointed pursuant to the provisions of Article 11.3, unless the parties otherwise agree on another procedure.

**11.2** If a substitute arbitrator is appointed under this Article, JAMS International, after consultation with the parties and the remaining members of the Tribunal, will determine in its sole discretion whether all or part of any prior hearings will be repeated.

**11.3** Where a substitute arbitrator is to be appointed, JAMS International will appoint such arbitrator. If the arbitrator to be replaced had been appointed by a party, JAMS International will solicit the views of that party prior to the appointment. Where the Tribunal consists of three or more arbitrators, JAMS International may decide that the remaining arbitrators will proceed with the case. Prior to making such a decision, the views of the parties and the remaining arbitrators will be solicited.

## **Article 12. Majority Power to Continue with Proceedings**

**12.1** If any arbitrator on a Tribunal of three or more members refuses or persistently fails to participate in proceedings or deliberations, the other arbitrators will have the power, after giving written notice of such refusal or failure to the Administrator, the parties and the non-participating arbitrator, to continue with the arbitration (including the making of any decision, ruling or award).

**12.2** In determining whether to continue the arbitration, the other arbitrators will take into account the status of the arbitration, any explanation made by the non-participating arbitrator for his or her non-participation and such other matters as they may consider appropriate in the circumstances of the case. The reasons for such determination will be stated in any award, order or other decision made by the other arbitrators without the participation of the non-participating arbitrator.

**12.3** In the event that the other arbitrators determine not to continue with the arbitration without the participation of a non-participating arbitrator, JAMS International will, on proof satisfactory to it of the failure of the arbitrator to participate in the proceedings and deliberation of the Tribunal, declare the office vacant. JAMS International will

then appoint a substitute arbitrator, unless the parties agree otherwise.

### **Article 13. Communications between the Parties and the Arbitral Tribunal**

**13.1** Except as provided in Article 13.3, until the Tribunal is formed, all communications between parties and arbitrators will be made through the Administrator.

**13.2** Thereafter, unless and until the Tribunal directs that communications will take place directly between the Tribunal and the parties (with simultaneous copies to the Administrator), all written communications between the parties and the Tribunal will continue to be made through the Administrator.

**13.3** No party or anyone acting on its behalf will have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-appointed arbitrator except to advise a candidate for appointment of the general nature of the controversy and of the anticipated proceedings and to ascertain the candidate's qualifications, availability or independence in relation to the parties, or to discuss with a party-appointed arbitrator the suitability of candidates for selection as third arbitrator where the parties or party-appointed arbitrators are to participate in that selection.

**13.4** Documents or information supplied to the Tribunal by one party must be communicated simultaneously to the other party or parties.

### **Article 14. Notices**

**14.1** Any notice or other communication that may be or is required to be given by a party under these Rules must be in writing and must be delivered by certified or registered postal or courier service, or transmitted by facsimile, email or any other means of telecommunication that provides a record of its transmission.

**14.2** A party's last-known residence or place of business during the arbitration will be a valid address for the purpose of any notice or other communication in the absence of any notification of a change to such address by that party to the other parties, the Tribunal and the Administrator.

**14.3** For the purpose of determining the date of commencement of a time limit, a notice or other communica-

tion will be treated as having been received on the day it is delivered or, in the case of a telecommunication, the date it is transmitted. If the date of receipt is an official holiday at the place received, the period is calculated from the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

## **Article 15. Seat of the Arbitration**

**15.1** The seat of the arbitration will be fixed by the Administrator, unless designated in the arbitration agreement or otherwise agreed upon by the parties. Upon application of a party or at the request of an arbitrator, the Administrator or the Tribunal, for reasons of safety to a party, a witness or an arbitrator, may direct that hearings take place in a location other than the seat of the arbitration.

**15.2** The Tribunal, in its discretion, or by direction of the Administrator pursuant to Article 15.1, may hold hearings, meetings and deliberations at any convenient location; if elsewhere than the seat of the arbitration, the arbitration will be treated as an arbitration conducted at the seat of the arbitration, and any award will be treated as an award made at the seat of the arbitration for all purposes.

## **Article 16. Language**

**16.1** If the parties have not agreed otherwise, the language(s) of the arbitration will be that of the documents containing the arbitration agreement, subject to the power of the Tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The Tribunal may order that any documents delivered in another language be accompanied by a translation into the language(s) of the arbitration.

## **Article 17. Confidentiality**

**17.1** Unless otherwise required by law, or unless the parties expressly agree, the Tribunal, the Administrator and JAMS International will maintain the confidentiality of the arbitration.

**17.2** Unless otherwise required by law, an award will remain confidential, unless all of the parties consent to its publication.

## Article 18. Jurisdiction

**18.1** The Tribunal will have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause will be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void will not for that reason alone render invalid the arbitration clause.

**18.2** A party that objects to the jurisdiction of the Tribunal or to the arbitrability of a claim, defense or counterclaim must make that objection no later than the filing of the Statement of Defense or the Reply, as provided in Article 5.1(e). The Tribunal may rule on such objections as a preliminary ruling or as part of the final award.

**18.3** By agreeing to arbitration under these Rules, the parties will be treated as having agreed not to apply to any court or other judicial authority for any relief regarding the Tribunal's jurisdiction, except with the agreement in writing of all parties to the arbitration or the prior authorization of the Tribunal, or following the latter's ruling on the objection to its jurisdiction.

## Article 19. Applicable Law(s)

**19.1** The Tribunal will decide the merits of the dispute on the basis of the rules of law agreed upon by the parties. In the absence of such an agreement, the Tribunal will apply the law or rules of law that it determines to be most appropriate.

**19.2** The procedure applicable to the arbitration will be the procedure set forth in these Rules and in the arbitration law of the seat of the arbitration, unless the parties have expressly agreed upon another procedure, or upon the application of another arbitration law, provided any such agreement is deemed enforceable by the law of the seat of arbitration.

**19.3** In all cases the Tribunal will take account of the provisions of the contract and the relevant trade usages.

## Article 20. Representation

**20.1** The parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by the persons of their choice, irrespective of, in particular, nationality or professional qualification.

The names, addresses and telephone, facsimile, email or other communication references of representatives will be communicated to the Administrator, the other parties and, after its establishment, the Tribunal.

**20.2** Following the Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Tribunal and JAMS International, and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal.

**20.3** The Tribunal may withhold approval of any intended change or addition to a party's legal representative(s) where such change or addition could compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including the general principle that a party may be represented by a legal representative chosen by that party, the stage that the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration), the views of the other party or parties to the arbitration and any likely wasted costs or loss of time resulting from such change or addition.

## **Article 21. Conduct of the Arbitration**

**21.1** Subject to these rules, the Tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a reasonable opportunity to present its case. The Tribunal, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the dispute.

**21.2** The Tribunal may decide whether the parties will present any written statements in addition to statements of claims and counterclaims and statements of defense, and it will fix the periods of time for submitting any such statements.

**21.3** The Tribunal may, in its discretion, direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

**21.4** Unless the parties at any time agree otherwise in writing, the Tribunal will have the power, on the application of any party or on its own motion, to identify the issues and to ascertain the relevant facts and the law or rules of law applicable to the arbitration, or to inquire into the merits of the parties' dispute.

**21.5** The Tribunal may decide that the presiding arbitrator of a multi-arbitrator panel may alone make procedural rulings.

**21.6** The Tribunal is empowered to impose time limits it considers reasonable on each phase of the proceedings, including, without limitation, the time allotted to each party for presentation of its case and for rebuttal.

## **Article 22. Expedited Procedures**

**22.1** Prior to the full constitution of the Tribunal, a party may apply to the Administrator in writing for the arbitral proceedings to be conducted in accordance with the Expedited Procedures under this Rule, where any of the following criteria are satisfied:

(a) The amount in dispute does not exceed the equivalent amount of U.S. Dollars \$5,000,000, representing the aggregate of the claim, counterclaim and any set-off defense, and exclusive of any demand for reimbursement of costs or fees;

(b) The parties so agree; or

(c) In cases of exceptional urgency as may initially be determined by JAMS International, subject to ultimate review by the Tribunal.

**22.2** When a party has applied to the Administrator under Rule 22.1, JAMS International shall make the initial determination, after considering the views of the parties, whether the arbitral proceedings shall be conducted in accordance with these Expedited Procedures, subject to ultimate determination by the Tribunal.

**22.3** If JAMS International determines that the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, the following procedure shall apply:

(a) The Administrator, before the full constitution of the Tribunal, or the Tribunal, after its full constitution, may shorten any time limits under these Rules;

(b) The Tribunal shall have the discretion to decide if the dispute shall be decided on the basis of documentary

evidence only or if a hearing is required for the examination of any witnesses and expert witnesses and/or oral arguments;

(c) The Tribunal shall have the discretion to hold hearings or hear witnesses by remote means in order to avoid the expense and time of convening hearings in a single location;

(d) The award shall be made within six months from the date when the Tribunal is constituted, unless, in exceptional circumstances, the Administrator extends the time; and

(e) The 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.

**22.4** The parties may agree to shorten the various time limits set out in these Rules. Any such agreement entered into subsequent to the constitution of a full Tribunal will become effective only upon the approval of the Tribunal.

## **Article 23. Preliminary Conference**

**23.1** The Tribunal may hold an initial preliminary conference for the planning and scheduling of the arbitration. Such conference, if any, will be held promptly after the establishment of the Tribunal, unless the Tribunal is of the view that further submissions from the parties are appropriate prior to such conference. Such preliminary conference may be conducted in person, by telephone or by videoconference, at the discretion of the Tribunal.

**23.2** The Tribunal may provide an agenda for the preliminary conference in advance. By way of example, the following procedural matters may be addressed: any anticipated applications for interim measures of protection; any objections to the arbitrability of a particular claim or counterclaim; any objections to the jurisdiction of the Tribunal; the timing and manner of any required disclosure; the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and cost of translations; the scheduling of pre-hearing memorials and witness statements; the need for and type of record of conferences and hearings, including the need for or desirability of transcripts; the amount of time that may be allotted to each party for presentation of its case and for rebuttal; the mode, manner and order of presenting proof; the need for expert witnesses and how expert

testimony should be presented; and the necessity for any on-site inspection by the Tribunal.

## Article 24. Hearings

**24.1** If either party so requests, the Tribunal will hold hearings for the presentation of evidence by witnesses, including expert witnesses. In the absence of such a request, the Tribunal will decide whether to hold such hearings or whether the proceedings will be conducted on the basis of the written record.

**24.2** The Tribunal will fix the date, time and place of any meetings and hearings on the arbitration, and will give the parties reasonable notice thereof.

**24.3** In advance of any hearing, the Tribunal may submit to the parties a list of questions that it wishes them to address with special attention.

**24.4** Hearings are private, unless the parties agree otherwise or the law provides to the contrary. The Tribunal will determine the manner in which witnesses are examined and may require any witness or witnesses to retire during the testimony of other witnesses.

**24.5** If any of the parties, without valid excuse, fails to appear although duly summoned, the Tribunal will have the power to proceed with the hearing.

## Article 25. Evidence

**25.1** Each party will have the burden of proving the facts relied upon to support its claim or defense.

**25.2** At any time during the proceedings, the Tribunal may order parties to exchange and produce documents, exhibits or other evidence it deems necessary or appropriate. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed.

**25.3** The Tribunal may determine the time, manner and form in which written exhibits are to be exchanged between the parties and presented to the Tribunal.

**25.4** The Tribunal will determine the admissibility, relevance, materiality and weight of the evidence offered by any party. The Tribunal will take into account applicable principles of legal privilege, such as those involving the



confidentiality of communications between a lawyer and client.

## Article 26. Dispositive Motions

**26.1** The Tribunal may permit any party to file a Motion for Summary Disposition of a particular claim or issue, either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request.

## Article 27. Experts and Other Witnesses

**27.1** Before any hearing, the Tribunal may require either party to give notice of the identity of the witness it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues.

**27.2** The Tribunal has the power to summon witnesses and to compel the production of relevant documents by subpoena or other compulsory process where authorized to do so by the law of the location where the testimony of the witness is to be heard, or the production of documents is to be made, whether such location is at the seat of arbitration or in another location designated by the Tribunal pursuant to Article 15.2.

**27.3** The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness.

**27.4** In the discretion of the Tribunal, evidence of witnesses may also be presented in the form of written statements signed by them. In the discretion of the Tribunal, the presentation of witness testimony in the form of written statements may be made conditional upon the witnesses' appearance for the purpose of cross-examination.

**27.5** Subject to the provisions of any applicable law or ethical rule, it will not be improper for any party or its legal representatives to interview any witness or potential witness for the purpose of presenting his or her testimony in written form or producing him or her as an oral witness.

**27.6** Any person intending to testify to the Tribunal on any issue of fact or expertise will be treated as a witness under these Rules, even if that person is a party to the arbitration or was or is an officer, employee or shareholder of any party.

**27.7** The Tribunal, after having consulted the parties, may appoint one or more experts, define the scope of their work and receive their reports. At the request of a party, the parties will be given the opportunity to question at a hearing any such expert appointed by the Tribunal and comment on any reports.

**27.8** The fees and expenses of any expert appointed by the Tribunal under this Article will form part of the costs of the arbitration.

## Article 28. Default

**28.1** If the Respondent fails to submit a Statement of Defense or the Claimant fails to submit a Reply to Counterclaim, or if at any point any party fails to avail itself of the opportunity to present its case in the manner determined by these Rules or as directed by the Tribunal, the Tribunal may nevertheless proceed with the arbitration and make an award.

**28.2** The Tribunal will make no final award upon the default of a party without a determination made upon the submission of proof by the non-defaulting party of the validity and amount of that party's claim.

**28.3** If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences that it considers appropriate.

## Article 29. Waiver of Rules

**29.1** A party who knows that any provision of or requirement under these Rules has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance will be deemed to have waived its right to object.

## Article 30. Closing of the Proceedings

**30.1** When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Tribunal will declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Tribunal.

## Article 31. Powers of the Tribunal and Remedies

**31.1** The Tribunal may grant any remedy or relief, including, but not limited to, specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute or, if the parties have expressly so provided, within the Tribunal's authority to decide as *amiable compositeur* or *ex aequo et bono*. The Tribunal will decide a dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

**31.2** Unless the parties agree otherwise, the parties expressly waive and forgo any right to punitive, exemplary or similar damages, unless a statute requires that compensatory damages be increased in a specified manner. This provision will not limit the Tribunal's authority to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.

**31.3** In addition to making a final award, the Tribunal will be entitled to make interim, interlocutory or partial final awards.

## Article 32. Interim Measures of Protection

**32.1** At the request of any party, the Tribunal may take whatever interim measures it deems necessary, including injunctive relief and measures for the protection or conservation of property, including, at the Tribunal's discretion, measures to secure the payment of any award that might be rendered.

**32.2** Such interim measures may take the form of an interim or partial final award, and the Tribunal may require security for the costs of such measures, including security for any costs that the party that is the subject of the interim or partial final award may incur if it is subsequently determined that the moving party was not entitled to such interim relief.

**32.3** A request for interim measures addressed by a party to a judicial authority will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

**32.4** The Tribunal may, in its discretion, apportion costs associated with applications for interim relief in any interim or partial final award or in the final award.

## Article 33. Sanctions

**33.1** The Tribunal may order appropriate sanctions for failure of a party to comply with its obligations under any of these Rules or with an order of the Tribunal. These sanctions may include, but are not limited to, assessment of Arbitration Fees and Arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to Arbitration adversely to the party that has failed to comply.

## Article 34. Determination of the Award

**34.1** In most circumstances, the dispute should be heard and be submitted to the Tribunal for decision within nine months after the initial preliminary conference required by Article 23, and the final award should be rendered within three months thereafter. The parties and the Tribunal will use their best efforts to comply with this schedule.

**34.2** Unless otherwise required by law, where there are three or more arbitrators and the Tribunal fails to agree unanimously on any issue, the arbitrators will decide that issue by a majority. Failing a majority decision on any issue, the chair of the Tribunal will decide that issue.

**34.3** If any arbitrator fails to comply with the mandatory provisions of these Rules or of any applicable law relating to the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed to render an award. In that event, the remaining arbitrators will state in their award the circumstances of the other arbitrator's failure to participate in the making of the award.

**34.4** An arbitrator may attach a dissenting or concurring opinion to the Award.

**34.5** The award shall be delivered to the Administrator, who shall transmit copies to the parties upon the full settlement of the costs of the arbitration.

## Article 35. Form of the Award

**35.1** The award will be made in writing and will be final and binding on the parties. The parties undertake to carry out the award without delay.

**35.2** The Tribunal will state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

**35.3** Before signing any Award, the Tribunal will submit it in draft to JAMS International. JAMS International may suggest modifications as to the form of the Award and may also draw the Tribunal's attention to points of substance. No Award will be rendered by the Tribunal until it has been approved by JAMS International as to its form.

**35.4** An award will be signed by the arbitrators, and it will contain the date on which and the seat where the award was made. The arbitrators may sign the award outside of the seat of arbitration without affecting where the award was made. Copies of the award signed by the arbitrators will be communicated to the parties by the Administrator.

**35.5** If the arbitration law of the country where the award is made requires that the award be filed or registered by the Tribunal, the Tribunal will comply with this requirement within the period of time required by law.

**35.6** At the request of any party, the Administrator will provide it, at cost, with a copy of the award certified by JAMS International. A copy so certified will be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

**35.7** A monetary award will be in the currency or currencies of the contract, unless the Tribunal considers another currency more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, at such rate and from such date(s) as the arbitrator(s) may deem appropriate, taking into consideration the contract and applicable law.

## **Article 36. Fees**

**36.1** At the same time as the Request for Arbitration is filed, the Claimant will pay a filing fee. The amount of the fee is fixed in accordance with the JAMS International Schedule of Fees and Costs in force on the date of the filing of the Request for Arbitration.

**36.2** In addition to the filing fee, the Administrator may direct the parties to make one or several deposits on account of the costs of the arbitration. Such deposits will be made to and held by JAMS International and from time

to time may be released by JAMS International to the arbitrator(s), to any expert appointed by the Tribunal and to JAMS International itself as the arbitration progresses.

**36.3** If at any time any party has failed to pay fees or expenses in full, JAMS International may order the suspension or termination of the proceedings. In the event that a party fails or refuses to provide any deposit as directed by the Administrator, JAMS International may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed, subject to any award on costs. An administrative suspension shall toll any time limits contained in these Rules or the parties' agreement.

**36.4** The Tribunal need not proceed with the arbitration unless the Tribunal ascertains from the Administrator that JAMS International is in receipt of the requisite funds.

**36.5** In the discretion of the Tribunal, failure by a Claimant or counterclaiming party to provide promptly and in full the required deposit may be treated as a withdrawal, without prejudice, of the claim or counterclaim, respectively.

**36.6** JAMS International may decide that an advance on costs consist of or include a bank guarantee or other form of security.

**36.7** If one of the parties claims a right to a set-off with regard to either claims or counterclaims asserted against it, such set-off will be taken into account in determining the advance to cover the costs of arbitration in the same way as a separate claim insofar as it may require the Tribunal to consider additional matters.

**36.8** If a party who has not paid an advance on costs requests the Tribunal to rule on a withdrawn claim, JAMS International may, as a condition for such a ruling, order the requesting party to pay an advance on costs.

**36.9** Where the amount of the counterclaim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, JAMS International, in its discretion, may establish two separate deposits on account of claim and counterclaim. If separate deposits are established, the totality of the deposit on account of the claim will be paid by the Claimant, and the totality of the deposit on account of the counterclaim will be paid by the Respondent.

**36.10** After the award has been made, JAMS International, in accordance with the award, will render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

## **Article 37. Arbitration Costs**

**37.1** Arbitration costs consist of:

- (a) The Tribunal's fees;
- (b) The filing fee and JAMS International's administrative fees as set forth in the Schedule of Fees and Costs;
- (c) The fees and expenses of any expert appointed by the Tribunal;
- (d) The reasonable costs for legal representation of a successful party; and
- (e) Any costs incurred in connection with an application for interim or emergency relief.

**37.2** The Tribunal's fees will be calculated by reference to work done by its members in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case, including its complexity and the special qualifications of the arbitrators. JAMS International will agree upon fee rates with the arbitrators in writing prior to their appointment by JAMS International.

**37.3** In the event of the replacement of any arbitrator pursuant to Article 11 of these Rules, JAMS International will decide upon the amount of fees and expenses to be paid for the former arbitrator's services, if any, as it may consider appropriate in all the circumstances.

**37.4** The Tribunal will fix the arbitration costs in its award. The Tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case.

## **Article 38. Interpretation or Correction of the Award**

**38.1** Within 30 days after the receipt of an award, any party, with notice to the other parties, may request the Tribunal to interpret the award or correct any clerical, typographical or computational errors, or make an additional award as to claims presented but omitted from the award.

**38.2** If the Tribunal considers such a request justified, after considering the contentions of the parties, it will comply with such a request within 30 days after the request.

**38.3** The Tribunal may correct any error of the type referred to in Article 38.1 on its own initiative within 30 days of the date of the award.

### **Article 39. Settlement and Award on Agreed Terms**

**39.1** In the event of a settlement, if the parties so request, the Tribunal may render an Award on Agreed Terms recording the settlement. If the parties do not require an Award on Agreed Terms, the parties shall confirm to JAMS International that a settlement has been reached. The Tribunal shall be discharged and the arbitration concluded upon payment of any outstanding costs of the arbitration.



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