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**LA NUOVA VERSIONE DELLE  
*SWISS RULES OF INTERNATIONAL  
ARBITRATION (2021)***

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Estratto

**La nuova versione delle *Swiss Rules of International Arbitration* (2021).** —

Il 1° giugno 2021 è entrata in vigore la versione aggiornata — primo testo risalente al 2004, già emendato nel 2012 — delle *Swiss Rules of International Arbitration* (“*Rules*”).

Le *Rules* disciplinano i procedimenti arbitrali amministrati dalla Corte d’Arbitrato dello *Swiss Arbitration Center* (“SAC”), la cui domanda di arbitrato sia stata depositata il 1° giugno 2021 o successivamente a tale data.

È opportuna una breve annotazione sul SAC (società di capitali partecipata dalla *Swiss Arbitration Association* e da alcune delle maggiori camere di commercio svizzere): esso, da maggio di quest’anno, ha sostituito la *Swiss Chambers Arbitration Institution* (“SCAI”), associazione costituita nel 2008 tra gli stessi attuali soci del SAC, ma ora sciolta (i patti di arbitrato facenti riferimento alle *Arbitration Rules* della SCAI, tuttavia, restano validi e vincolanti per le parti, gli stessi essendo intesi — ai sensi dell’art. 1(1) delle *Rules* — come operanti un rinvio alle *Arbitration Rules* del SAC).

L’aggiornamento delle *Rules* — il cui testo è ispirato, sin dalla prima versione, a quello delle *Arbitration Rules* dell’UNCITRAL — è il riflesso delle tendenze manifestatesi durante l’ultimo decennio (*i.e.* semplificazione ed efficienza del procedimento arbitrale, razionalizzazione dei costi e contenimento dei tempi, accresciuta attenzione all’imparzialità ed indipendenza degli arbitri, diffusione degli arbitrati multi-parti o multi-contratto, attenzione ai problemi relativi al trattamento delle informazioni e alla sicurezza informatica) ed è stato animato dall’intento di allineare il regolamento alle prassi via via formatesi. Non è certamente da trascurare la spinta, per certi versi decisiva, che la pandemia da COVID-19 ha impresso all’affermazione di alcune pratiche, così di fatto imponendo alle maggiori istituzioni arbitrali interventi di adeguamento dei propri regolamenti (sicuramente per il deposito telematico degli atti delle parti e per il ricorso alla tecnologia ai fini dello svolgimento di ogni tipo di udienza da remoto, anziché in presenza fisica).

Le principali novità delle *Rules* sono così riassumibili:

— il deposito degli atti di parte è eseguito telematicamente, salvo che il Segretariato non ritenga altrimenti o che l’attore non richieda di effettuarne il deposito cartaceo [art. 3(1)];

— qualora il convenuto non depositi il proprio atto introduttivo o qualora egli eccepisca che l’arbitrato non può essere amministrato dal SAC o sollevi un’eccezione di giurisdizione, ivi inclusa quella per cui più domande di arbitrato formulate in forza di più convenzioni di arbitrato non possano essere decise

nello stesso procedimento, l'arbitrato prosegue con tutte le eccezioni, a meno che la Corte d'Arbitrato del SAC stabilisca che: (i) manchi un patto per arbitrato amministrato dal SAC; o (ii) che, in caso di domande di arbitrato formulate in forza di più convenzioni d'arbitrato, i patti di arbitrato siano tra loro manifestamente incompatibili [art. 5(1)]. Tale valutazione preliminare della Corte d'Arbitrato non pregiudica, comunque, il potere esclusivo del tribunale arbitrale di decidere tali eccezioni [art. 5(2)], ovverosia sulla propria *potestas iudicandi* (c.d. *Kompetenz-kompetenz principle*);

— la parte che intenda proporre domanda riconvenzionale contro un'altra parte convenuta (riconvenzionale c.d. trasversale), quella che voglia chiamare un terzo nel procedimento arbitrale o il terzo che voglia intervenirevi devono depositare la relativa domanda [art. 6(1)], la quale, prima della costituzione del tribunale arbitrale, va presentata al Segretariato [art. 6(2)] o, se già costituito, al tribunale arbitrale, il quale, dopo aver ascoltato le parti, decide se autorizzarla o meno, tenuto conto di tutte le circostanze rilevanti [art. 6(3)]. La partecipazione del terzo al procedimento arbitrale è ammessa anche in una posizione diversa da quella tipica della parte (in qualità, ad esempio, di *amicus curiae*): il tribunale arbitrale, anche in questo caso, decide sulla partecipazione del terzo, dopo aver ascoltato le parti, tenuto conto di tutte le circostanze rilevanti [art. 6(4)];

— la riunione di più procedimenti arbitrali già pendenti è ora espressamente consentita ad istanza di una parte (dall'art. 4 della precedente versione delle *Rules* non era chiaro se la parte potesse, o meno, formulare istanza in tal senso), sulla quale la Corte d'Arbitrato decide, dopo aver ascoltato tutte le parti e gli arbitri nominati e confermati [art. 7(1)]. Inoltre, è esplicitamente previsto che i procedimenti sono di regola riuniti in quello avviato per primo [art. 7(2)];

— se, in un arbitrato multi-parti, le parti nulla hanno disposto sul procedimento di formazione del tribunale arbitrale, la Corte d'Arbitrato assegna all'attore e al rispondente (o a ciascun gruppo di parti) un termine (nelle vecchie *Rules* fissato in trenta giorni, oggi, invece, lasciato al libero apprezzamento della Corte d'Arbitrato) per designare un arbitro [art. 11(4)]. In difetto, la Corte d'Arbitrato provvede a nominare, in tutto o in parte, il tribunale arbitrale, designando anche l'arbitro con funzioni di presidente [art. 11(5)];

— gli arbitri, già prima della loro nomina o conferma e poi durante l'intero corso del procedimento, sono tenuti a comunicare al Segretariato e — dopo la nomina e la conferma — anche alle parti ogni circostanza che possa far sorgere un ragionevole dubbio sulla loro imparzialità e indipendenza [art. 12(1) e (2)];

— ai difensori delle parti può essere chiesto di giustificare i poteri in ogni momento durante il procedimento arbitrale e il tribunale arbitrale può opporsi alla nomina di un nuovo difensore qualora tale nomina possa compromettere l'imparzialità o l'indipendenza del tribunale arbitrale [art. 16(4)];

— il tribunale arbitrale, non appena possibile, fissa una prima udienza per discutere e concordare con le parti le modalità di svolgimento del giudizio arbitrale, con riferimento particolare alle regole di conduzione del procedimento, alla protezione delle informazioni e alla sicurezza informatica [art. 19(2)]. Il tribunale arbitrale può disporre in ogni momento che siano tenute altre udienze organizzative per consultare le parti e garantire l'efficiente conduzione del giudizio [art. 19(4)];

— le parti, inoltre, possono decidere in ogni momento di risolvere la disputa mediante il ricorso alla mediazione, durante la cui pendenza l'arbitrato è, se non diversamente pattuito dalle parti medesime, sospeso (art. 19(6));

— le udienze possono svolgersi alla presenza fisica delle parti, dei rispettivi difensori e degli eventuali testimoni o esperti, o da remoto, in videoconferenza o con altri mezzi idonei [art. 27(2)].

La revisione delle *Rules* ha interessato anche le tabelle (v. *Appendix B* delle *Rules*) dei costi amministrativi e per il compenso degli arbitri (presente anche un *tool* per il calcolo dei costi, consultabile alla pagina <https://www.swissarbitration.org/centre/arbitration/cost-calculator-2021/>).

È appena il caso di rammentare, in chiusura, che la rivisitazione delle *Rules* segue di poco la recentissima riforma (entrata in vigore il 1° gennaio di quest'anno) del Capitolo 12 della legge svizzera sul diritto internazionale privato del 1° gennaio 1989 (artt. 176-194), dedicato, per l'appunto, all'arbitrato internazionale <sup>1</sup>.

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Si riporta di seguito la versione inglese delle *Rules* (disponibili anche in tedesco, francese ed italiano) estratte dalla nuova piattaforma *on line* [www.swissarbitration.org](http://www.swissarbitration.org), pagina <https://www.swissarbitration.org/wp-content/uploads/2021/06/Swiss-Rules-2021-EN.pdf>.

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### ***Swiss Rules of International Arbitration (Swiss Rules) — Swiss Arbitration Center.***

#### **Model Arbitration Clause**

Any dispute, controversy, or claim arising out of, or in relation to, this contract, including regarding the validity, invalidity, breach, or termination thereof, shall be resolved by arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Arbitration Centre in force on the date on which the Notice of Arbitration is submitted in accordance with those Rules.

The number of arbitrators shall be ... (“one”, “three”, “one or three”);

The seat of the arbitration shall be ... (name of city in Switzerland, unless the parties agree on a city in another country); The arbitration proceedings shall be conducted in ... (insert desired language).

#### **Introduction**

(a) The Swiss Rules of International Arbitration (the “Swiss Rules” or the “Rules”) were first made available to users of arbitration services in 2004 by the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud, Zurich and later Neuchâtel and Central Switzerland (the “Chambers of Commerce”). The Swiss Rules were based on the UNCITRAL Arbitration Rules

<sup>1</sup> Per un primo esame della riforma si veda PALERMO - INNEREBNER, *La riforma della legge svizzera sull'arbitrato internazionale: una prima analisi*, in questa *Rivista*, 4, 2020, 811 ss.

with a lean and professional institutional administration and were drafted in cooperation with the Swiss Arbitration Association (“ASA”). In order to administer arbitrations under the Swiss Rules, the Chambers of Commerce founded the Swiss Chambers’ Arbitration Institution (“SCAI”), an association under Swiss law.

(b) The Swiss Rules replaced the individual arbitration rules of the Chambers of Commerce. They were amended in 2012, and again in 2021, with the continued purpose of providing an efficient and reliable framework for arbitration proceedings to users around the world.

(c) In 2021, the Chambers of Commerce strengthened and formalised their cooperation with ASA for the further development of SCAI. SCAI was converted into a Swiss company and renamed Swiss Arbitration Centre Ltd. (the “Swiss Arbitration Centre”). Arbitration agreements referring to SCAI or the Chambers of Commerce remain valid and binding and will be recognised and applied by the Swiss Arbitration Centre, as legal successor of SCAI.

(d) Arbitrations under the Swiss Rules are administered by the Arbitration Court (the “Court”) of the Swiss Arbitration Centre, which is comprised of experienced international arbitration practitioners. The Court renders decisions as provided for under these Rules. It may delegate to one or more members or committees the power to take certain decisions pursuant to its Internal Rules and may issue Guidelines and Practice Notes to implement and supplement these Rules.<sup>1</sup> The Court is assisted in its work by the Secretariat of the Court (the “Secretariat”).

(e) The Swiss Arbitration Centre provides domestic and international arbitration services, as well as other dispute resolution services, relating to disputes arising under any applicable rules of law, in Switzerland or elsewhere.

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## **Section I.**

### **Introductory Rules**

#### **SCOPE OF APPLICATION**

##### **Article 1**

1. These Rules shall govern arbitrations where an arbitration clause or agreement to arbitrate (the “Arbitration Agreement”) refers to these Rules, administered by the Swiss Arbitration Centre or previously by SCAI, or to the arbitration rules of the Chambers of Commerce and Industry of Basel, Bern, Central Switzerland, Geneva, Neuchâtel, Ticino, Vaud, Zurich, or of any further Chamber of Commerce or other entity that may adhere to or refer its cases to these Rules.

2. This version of the Rules, in force as from 1 June 2021, shall apply to all arbitration proceedings in which the Notice of Arbitration is submitted on or after that date, unless the parties have agreed otherwise.

3. These Rules shall govern the arbitration, except if one of their provisions conflicts with a provision of the law applicable to the arbitration from which the parties cannot derogate, in which case that provision shall prevail.

4. By submitting their dispute to arbitration under these Rules, the parties confer on the Court, to the fullest extent permitted under the law applicable to

the arbitration, all powers required for the purpose of supervising the arbitration proceedings otherwise vested in the competent judicial authority, including the power to extend the term of office of the arbitral tribunal and to decide on the challenge of an arbitrator on grounds not provided for in these Rules.

5. The seat of arbitration may be in Switzerland or elsewhere.

## **NOTICE, CALCULATION OF TIME LIMITS**

### **Article 2**

1. For the purposes of these Rules, any notice, including a notification, communication, or proposal, is deemed to have been received if and when it is delivered to the addressee, or to its habitual residence, place of business, postal or electronic address, or, if none of these can be identified after making a reasonable inquiry, to the addressee's last known residence, place of business, or postal or electronic address.

2. A time limit under these Rules shall begin to run on the day following the day on which a notice, notification, communication, or proposal is received. If the last day of such time limit is an official holiday or a non-business day at the residence or place of business of the addressee, the time limit is extended until the first business day which follows. Official holidays or non-business days are included in the calculation of a time limit.

3. If the circumstances so justify, the Court may extend or shorten any time limit set out in these Rules.

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## **NOTICE OF ARBITRATION**

### **Article 3**

1. The party or parties initiating arbitration (the "Claimant") shall submit a Notice of Arbitration to the Secretariat at any of the addresses, postal or electronic, listed in Appendix A. No hard copies of the Notice of Arbitration shall be required, unless the Secretariat requests otherwise or the Claimant requests that the Secretariat notify a hard copy to the other party or parties (the "Respondent") in lieu of or in addition to an electronic copy. In case of hard copies, the Claimant shall provide the Secretariat with a sufficient number of copies of the Notice of Arbitration for each Respondent, each arbitrator and the Secretariat.

2. Arbitration proceedings shall be deemed to commence on the date on which the Notice of Arbitration is received by the Secretariat.

3. The Notice of Arbitration shall include the following:

- (a) a demand that the dispute be referred to arbitration;
- (b) the names, addresses, telephone numbers, and e-mail addresses of each of the parties and, where applicable, of their representatives;
- (c) identification of the Arbitration Agreement that is invoked;
- (d) identification of the contract(s) or other legal instrument(s) out of, or in relation to, which the dispute arises (the "Contract");
- (e) the general nature of the claim and an indication of the amount involved, if any;
- (f) the relief or remedy sought;

(g) a proposal as to the number of arbitrators (one or three), the manner in which the arbitral tribunal shall be constituted, the language, and the seat of the arbitration if the parties have not previously agreed thereon;

(h) the designation of an arbitrator, where the Arbitration Agreement or Article 11(1) so requires;

(i) confirmation of payment to the relevant account listed in Appendix A of the Registration Fee as required by Appendix B (Schedule of Costs) in force on the date the Notice of Arbitration is submitted.

4. The Notice of Arbitration may also include:

(a) the Claimant's proposal for the appointment of a sole arbitrator referred to in Article 10;

(b) the Statement of Claim referred to in Article 20.

5. If the Notice of Arbitration is incomplete or the Registration Fee is not paid, the Secretariat may set an appropriate time limit within which this may be remedied. The Secretariat may also request the Claimant to submit a translation of the Notice of Arbitration within the same time limit if it is not submitted in English, German, French, or Italian. If the Claimant complies with such directions within the applicable time limit, the Notice of Arbitration shall be deemed to have been validly filed on the date on which the initial version was received by the Secretariat. If the Claimant fails to comply with such directions within the applicable time limit, the Notice of Arbitration will be deemed to be withdrawn, without prejudice to the Claimant's right to resubmit it at a later date.

6. The Secretariat shall notify the Notice of Arbitration together with any exhibits to the Respondent without delay.

## **ANSWER TO THE NOTICE OF ARBITRATION**

### **Article 4**

1. Within 30 days from the date of receipt of the Notice of Arbitration, the Respondent shall submit to the Secretariat an Answer to the Notice of Arbitration. Article 3(1) shall apply *mutatis mutandis*. The Answer to the Notice of Arbitration shall, to the extent possible, include the following:

(a) the name, address, telephone number, and e-mail address of the Respondent and, where applicable, of its representative(s);

(b) any plea of lack of jurisdiction;

(c) the Respondent's comments on the particulars set forth in the Notice of Arbitration referred to in Article 3(3)(e);

(d) the Respondent's answer to the relief or remedy sought in the Notice of Arbitration referred to in Article 3(3)(f);

(e) the Respondent's proposal as to the number of arbitrators (one or three), the manner in which the arbitral tribunal shall be constituted, the language, and the seat of the arbitration referred to in Article 3(3)(g);

(f) the designation of an arbitrator, where the Arbitration Agreement or Article 11(1) so requires.

2. The Answer to the Notice of Arbitration may also include:

(a) the Respondent's proposal for the appointment of a sole arbitrator referred to in Article 10;

(b) the Statement of Defence referred to in Article 21.

3. Articles 3(5) and (6) shall apply to the Answer to the Notice of Arbitration *mutatis mutandis*.

4. Any counterclaim or set-off defence shall in principle be raised with the Answer to the Notice of Arbitration. Article 3(3) shall apply *mutatis mutandis*.

5. If no counterclaim, claim under Article 6(1) or set-off defence is raised or no Answer to the Notice of Arbitration is submitted, or if there is no indication of the amount of such claim or defence, the Court may rely exclusively on the Notice of Arbitration in order to determine the possible application of Article 42(1) (Expedited Procedure).

## **ADMINISTRATION OF CLAIMS**

### Article 5

1. If the Respondent does not submit an Answer to the Notice of Arbitration, or if the Respondent raises an objection to the arbitration being administered under these Rules or any other jurisdictional objection, including that claims made under more than one Arbitration Agreement may not be determined together, the arbitration shall proceed with all claims, unless and to the extent the Court determines that:

(a) there is manifestly no Arbitration Agreement referring to these Rules; or  
(b) where claims are made under more than one Arbitration Agreement, the Arbitration Agreements are manifestly incompatible.

2. The Court's decision to proceed with claims is without prejudice to the arbitral tribunal's power to render any decision as provided for in Article 23.

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## **CROSS-CLAIM, JOINDER, INTERVENTION**

### Article 6

1. A party asserting a claim against another party other than a claim in the Notice of Arbitration or a counterclaim in the Answer to the Notice of Arbitration (cross-claim), or a party asserting a claim against an additional party (joinder), or an additional party asserting a claim against an existing party (intervention), shall do so by submitting a notice of claim. Article 3 shall apply *mutatis mutandis*.

2. Prior to the constitution of the arbitral tribunal, such notice of claim shall be submitted to the Secretariat. The Secretariat shall notify it together with any exhibits to the addressee of the claim, all other parties and any confirmed arbitrator. Any objection to the application of these Rules to the claim or any other jurisdictional objection, including that claims made under more than one Arbitration Agreement may not be determined together, shall be raised by the addressee of the claim or any other party within 15 days from the date of receipt of the notice of claim. Article 5 shall apply *mutatis mutandis*.

3. After the constitution of the arbitral tribunal, any cross-claim, request for joinder or request for intervention shall be decided by the arbitral tribunal, after consulting with all parties, taking into account all relevant circumstances.

4. Where a third person requests or is requested by a party to participate in the arbitration proceedings in a capacity other than an additional party, the arbitral tribunal, after consulting with all parties and the third person, shall



decide on whether to permit such participation and on its modalities, taking into account all relevant circumstances.

## **CONSOLIDATION**

### **Article 7**

1. Upon request of a party and after consulting with all parties and any confirmed arbitrator, the Court may consolidate arbitration proceedings pending under these Rules.

2. When rendering its decision, the Court shall take into account all relevant circumstances, including the links between the claims and the progress already made in the respective proceedings.

3. Where the Court decides to consolidate proceedings in which one or more arbitrators have been confirmed by the Court, and absent an agreement of all parties in all proceedings on the constitution of the arbitral tribunal in the consolidated proceedings, the Court may revoke the confirmation or appointment of arbitrators and apply the provisions of Section II (Composition of the Arbitral Tribunal). The parties to all proceedings shall be deemed to have waived their right to designate an arbitrator. Unless all parties agree or the Court decides otherwise, the proceedings shall be consolidated into the arbitration commenced first.

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## **Section II.**

### **Composition of the Arbitral Tribunal**

## **CONFIRMATION OF ARBITRATORS**

### **Article 8**

1. All designations of an arbitrator are subject to confirmation by the Court, upon which the appointments shall become effective. The reasons for a decision by the Court on the confirmation of an arbitrator need not be communicated.

2. Where a designation is not confirmed, the Court may either:

(a) invite the party or parties concerned, or, as the case may be, the arbitrators, to make a new designation within a reasonable time limit; or

(b) in exceptional circumstances, proceed directly with the appointment.

3. The Court shall have all powers to address any failure in the constitution of the arbitral tribunal under these Rules and may, in particular, revoke any appointment made, appoint or reappoint any of the arbitrators and designate one of them as the presiding arbitrator.

4. If, before the arbitral tribunal is constituted, the parties agree on a settlement of the dispute, or the continuation of the arbitration proceedings becomes unnecessary or impossible for other reasons, the Secretariat shall give advance notice to the parties that the Court may terminate the proceedings. Any party may request that the Court proceed with the constitution of the arbitral tribunal in accordance with these Rules in order that the arbitral tribunal determine and apportion the costs not agreed upon by the parties.

5. Once the Registration Fee and Provisional Deposit have been paid in ac-

cordance with Appendix B (Schedule of Costs) and all arbitrators have been confirmed, the Secretariat shall transmit the file to the arbitral tribunal without delay.

### **NUMBER OF ARBITRATORS**

#### Article 9

1. If the parties have not agreed upon the number of arbitrators, the Court shall decide whether the case shall be referred to a sole arbitrator or to a three-member arbitral tribunal, taking into account all relevant circumstances.

2. The Court shall refer the case to a sole arbitrator, unless the complexity of the subject matter, the amount in dispute or other relevant circumstances justify that the case be referred to a three-member arbitral tribunal.

3. If the Arbitration Agreement provides for an arbitral tribunal composed of more than one arbitrator, and this appears inappropriate in view of the amount in dispute or of other circumstances, the Court shall invite the parties to agree to refer the case to a sole arbitrator.

4. Where the amount in dispute does not exceed CHF 1,000,000 (one million Swiss francs), Article 42(1) (Expedited Procedure) shall apply.

### **APPOINTMENT OF A SOLE ARBITRATOR**

#### Article 10

1. Where the parties have agreed that the dispute shall be referred to a sole arbitrator, they shall jointly designate the sole arbitrator within 30 days from the date on which the Notice of Arbitration was received by the Respondent, unless the parties' agreement provides otherwise.

2. Where the parties have not agreed upon the number of arbitrators and the Court decides that the dispute shall be referred to a sole arbitrator, the parties shall jointly designate the sole arbitrator within 30 days from the date of receipt of the Court's decision.

3. If the parties fail to designate the sole arbitrator within the applicable time limit, the Court shall proceed with the appointment.

### **APPOINTMENT OF ARBITRATORS**

#### Article 11

1. Where a dispute between two parties is referred to a three-member arbitral tribunal, each party shall designate one arbitrator, unless the parties have agreed otherwise.

2. If one party in a two-party dispute fails to designate an arbitrator within the time limit set by the Court or resulting from the Arbitration Agreement, the Court shall appoint the arbitrator. Unless the parties' agreement provides otherwise, the two arbitrators so appointed shall designate, within 30 days from the confirmation of the second arbitrator, a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such designation, the Court shall appoint the presiding arbitrator.

3. In multi-party proceedings, the arbitral tribunal shall be constituted in accordance with the parties' agreement.

4. If the parties have not agreed upon a procedure for the constitution of the arbitral tribunal in multi-party proceedings, the Court shall set a time limit for

the Claimant and for the Respondent (or group of parties) to each designate an arbitrator. If each group of parties has designated an arbitrator, Article 11(2) shall apply to the designation of the presiding arbitrator.

5. Where a party or group of parties fails to designate an arbitrator in multi-party proceedings, the Court may appoint some or all of the arbitrators, and shall designate the presiding arbitrator.

### **INDEPENDENCE, IMPARTIALITY AND DISCLOSURES OF ARBITRATORS**

#### Article 12

1. Any arbitrator conducting an arbitration under these Rules shall be and shall remain impartial and independent throughout the proceedings.

2. Before appointment or confirmation, prospective arbitrators shall disclose to the Secretariat any circumstances likely to give rise to justifiable doubts as to their impartiality or independence. The Secretariat shall provide such information to the parties and set a time limit within which they may comment.

3. After appointment or confirmation, each arbitrator shall have the duty to promptly disclose to the Secretariat and to the parties any such circumstances arising in the course of the proceedings.

### **CHALLENGE OF AN ARBITRATOR**

#### Article 13

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.

2. A party intending to challenge an arbitrator shall send a notice of challenge to the Secretariat with a copy to the other parties and the arbitral tribunal within 15 days after the circumstances giving rise to the challenge became known to that party.

3. If, within 15 days from the date of the notice of challenge, the parties do not agree to the challenge, or the challenged arbitrator does not withdraw, the Court shall decide on the challenge.

### **REMOVAL OF AN ARBITRATOR**

#### Article 14

1. If an arbitrator fails to perform his or her functions, the Court may, on its own initiative or upon request of the other arbitrators or a party, revoke the appointment of that arbitrator.

2. The arbitrator shall first have an opportunity to present his or her position to the Court.

### **REPLACEMENT OF AN ARBITRATOR**

#### Article 15

1. Subject to Article 15(2), in all instances in which an arbitrator has to be replaced, a replacement arbitrator shall be designated or appointed pursuant to the procedure provided for in Articles 10 and 11 within the time limit set by the

Court. Such procedure shall apply even if a party or the arbitrators failed to make the required designation during the initial appointment process.

2. In exceptional circumstances, the Court may, after consulting with the parties and any remaining arbitrators:

(a) directly appoint the replacement arbitrator; or

(b) after the closure of the proceedings, authorise the remaining arbitrator(s) to proceed with the arbitration and make any decision or award.

3. If an arbitrator is replaced, the proceedings shall resume at the stage reached when the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

### **Section III.**

#### **Arbitration Proceedings**

#### **GENERAL PROVISIONS**

##### **Article 16**

1. All participants in the arbitration proceedings shall act in good faith and make every effort to contribute to the efficient conduct of the proceedings and to avoid unnecessary costs and delays. The parties undertake to comply with any award or order made by the arbitral tribunal or emergency arbitrator without delay.

2. Any communication by a party to the arbitral tribunal shall at the same time be sent to all other parties. The Secretariat shall receive an electronic copy of all communications between the parties and the arbitral tribunal.

3. The arbitral tribunal may, with the consent of the parties, appoint a secretary. Articles 12 and 13 shall apply to the secretary *mutatis mutandis*.

4. The parties may be represented or assisted by persons of their choice. Proof of authority of a representative may be requested at any time. The arbitral tribunal may oppose the appointment of a new representative where this would risk jeopardising the impartiality or independence of the arbitral tribunal.

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#### **SEAT OF THE ARBITRATION**

##### **Article 17**

1. If the parties have not determined the seat of the arbitration, or if the designation of the seat is unclear or incomplete, the Court shall determine the seat of the arbitration, taking into account all relevant circumstances, or shall request the arbitral tribunal to determine it.

2. Without prejudice to the determination of the seat of the arbitration, the arbitral tribunal may decide where the proceedings shall be conducted. In particular, it may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.

3. The arbitral tribunal may meet at any place it deems appropriate for the inspection of goods, other property, or documents. The parties shall be given sufficient notice to enable them to be present at such an inspection.

4. The award shall be deemed to be made at the seat of the arbitration.

**LANGUAGE**

## Article 18

Subject to an agreement of the parties, the arbitral tribunal shall, promptly after its constitution, determine the language or languages to be used in the proceedings.

**ORGANISATION AND CONDUCT OF THE PROCEEDINGS**

## Article 19

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, including by adopting measures for the efficiency of the arbitration proceedings, provided that it ensures equal treatment of the parties and their right to be heard.

2. As soon as practicable after receiving the file from the Secretariat, the arbitral tribunal shall hold an initial conference with the parties to discuss the organisation of the arbitration proceedings, including rules of procedure, as well as issues of data protection and cybersecurity to the extent needed to ensure an appropriate level of compliance and security.

3. At the initial conference or promptly thereafter, the arbitral tribunal shall prepare a procedural timetable setting forth the steps to be undertaken in the course of the proceedings, including time limits for written submissions, supporting evidence, and the dates of any hearings, as well as an estimate of the time required by the arbitral tribunal for its main decisions.

4. The arbitral tribunal may hold further organisational conferences as appropriate throughout the proceedings to consult with the parties and ensure efficient case management.

5. With the agreement of each of the parties, the arbitral tribunal may take steps to facilitate the settlement of the dispute before it. Any such agreement by a party shall constitute a waiver of its right to challenge an arbitrator's impartiality based on the arbitrator's participation and knowledge acquired in taking the agreed steps.

6. At any time during the arbitration proceedings the parties may agree to resolve their dispute, or any portion of it, by mediation, including under the Swiss Rules of Mediation, or any other forms of alternative dispute resolution. Unless the parties agree otherwise, the arbitration proceedings will be stayed during that period.

**STATEMENT OF CLAIM**

## Article 20

1. Within a time limit to be determined by the arbitral tribunal, and unless the Statement of Claim was contained in the Notice of Arbitration, the Claimant shall communicate its Statement of Claim in writing to the Respondent and to each of the arbitrators.

2. The Statement of Claim shall include the following particulars:

- (a) the names and addresses of the parties;
- (b) a statement of the facts supporting the claim;
- (c) the points at issue;

(d) the relief or remedy sought.

3. The Claimant shall in principle annex to its Statement of Claim all documents and other evidence on which it relies, including a copy of the Contract.

## **STATEMENT OF DEFENCE**

### **Article 21**

1. Within a time limit to be determined by the arbitral tribunal, and unless the Statement of Defence was contained in the Answer to the Notice of Arbitration, the Respondent shall communicate its Statement of Defence in writing to the Claimant and to each of the arbitrators.

2. The Statement of Defence shall reply to the particulars of the Statement of Claim set out in Article 20(2). If the Respondent raises an objection to the jurisdiction or to the proper constitution of the arbitral tribunal, the Statement of Defence shall contain the factual and legal basis of such objection. The Respondent shall in principle annex to its Statement of Defence all documents and other evidence on which it relies.

3. Article 20(2) shall apply *mutatis mutandis* to a counter-claim and a set-off defence.

## **AMENDMENTS TO THE CLAIM OR DEFENCE**

### **Article 22**

During the course of the arbitration proceedings, a party may amend or supplement its claim or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it, the prejudice to the other parties, or any other circumstances.

## **OBJECTIONS TO THE JURISDICTION OF THE ARBITRAL TRIBUNAL**

### **Article 23**

1. The arbitral tribunal shall have the power to rule on any objections to its jurisdiction, including regarding the existence, validity or scope of the Arbitration Agreement, and on any objections that claims made under more than one Arbitration Agreement should not be determined together.

2. The arbitral tribunal shall have the power to determine the existence or the validity of the Contract of which an Arbitration Agreement forms part. A decision by the arbitral tribunal that the Contract is null and void shall not automatically entail the invalidity of the Arbitration Agreement.

3. Any objection to the jurisdiction of the arbitral tribunal shall be raised prior to any defence on the merits, unless the arbitral tribunal allows a later objection in exceptional circumstances.

4. The arbitral tribunal shall rule on any objection to its jurisdiction as a preliminary question, unless it appears more appropriate to rule on such objection in an award on the merits.

5. The arbitral tribunal shall have jurisdiction to hear a set-off defence even if the relationship out of which the defence is said to arise does not fall within

the scope of the Arbitration Agreement, or falls within the scope of another Arbitration Agreement or forum selection clause.

### **FURTHER WRITTEN SUBMISSIONS**

#### Article 24

The arbitral tribunal shall decide, after consulting with the parties, which further written submissions, if any, in addition to the Statement of Claim and the Statement of Defence, shall be submitted by the parties and shall set the time limits for such written submissions.

### **TIME LIMITS**

#### Article 25

1. The time limits for written submissions, including for the Statement of Claim and the Statement of Defence, shall be set by the arbitral tribunal after consulting with the parties. A time limit shall not exceed 45 days, unless the complexity of the case or other circumstances justify a longer time limit.

2. The arbitral tribunal may extend any time limit if it considers that an extension is justified.

### **EVIDENCE**

#### Article 26

1. The arbitral tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence, as well as the burden of proof.

2. At any time during the arbitration proceedings, the arbitral tribunal may require the parties to produce documents, exhibits, or other evidence within a time limit set by the arbitral tribunal.

### **HEARINGS**

#### Article 27

1. At any stage of the proceedings, the arbitral tribunal may hold a hearing for the presentation of evidence by witnesses or experts, or for oral argument. It shall issue directions in this respect after consulting with the parties.

2. Any hearings may be held in person or remotely by videoconference or other appropriate means, as decided by the arbitral tribunal after consulting with the parties.

3. Any person may be a witness in the arbitration. It is not improper for a party, its officers, employees, legal advisors, or counsel to interview witnesses or potential witnesses.

4. Prior to a hearing and within a time limit set by the arbitral tribunal, the evidence of witnesses and experts may be presented in the form of written statements or reports signed by them.

5. At the hearing, witnesses and experts may be heard and examined in the manner set by the arbitral tribunal. The arbitral tribunal may direct that witnesses or experts be examined through means that do not require their physical presence at the hearing (including by videoconference).

6. Arrangements shall be made for the translation of oral statements made at a hearing and for a record of the hearing to be provided if this is deemed necessary by the arbitral tribunal having regard to the circumstances of the case, or if the parties so agree.

7. Hearings shall be private, unless the parties agree otherwise.

### **TRIBUNAL-APPOINTED EXPERTS**

#### Article 28

1. The arbitral tribunal, after consulting with the parties, may appoint one or more experts to report to it, in writing, on specific issues. Articles 12 and 13 shall apply *mutatis mutandis*.

2. The expert's terms of reference shall be established by the arbitral tribunal. The parties shall give the expert any relevant information or produce for the expert's inspection any relevant documents or goods that the expert may require of them. Any dispute between a party and the expert as to the relevance of the required information, documents or goods shall be referred to the arbitral tribunal.

3. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in the report.

4. At the request of any party, the expert, after delivery of the report, may be heard at a hearing during which the parties shall have the opportunity to be present and to examine the expert. Article 27 shall apply to such proceedings.

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### **INTERIM MEASURES**

#### Article 29

1. At the request of a party, the arbitral tribunal may grant any interim measures it deems necessary or appropriate. Upon the application of any party or, in exceptional circumstances and with prior notice to the parties, on its own initiative, the arbitral tribunal may also modify, suspend or terminate any interim measures granted.

2. Interim measures may be granted in the form of an interim award. The arbitral tribunal shall be entitled to order the provision of appropriate security.

3. In exceptional circumstances, the arbitral tribunal may rule on a request for interim measures by way of a preliminary order before the request has been communicated to any other party, provided that such communication is made at the latest together with the preliminary order and that the other parties are immediately granted an opportunity to be heard.

4. The arbitral tribunal may rule on claims for compensation for any damage caused by an unjustified interim measure or preliminary order.

5. By submitting their dispute to arbitration under these Rules, the parties do not waive any right that they may have under the applicable laws to submit a request for interim measures to a judicial authority. A request for interim measures addressed by any party to a judicial authority shall not be deemed to be incompatible with the Arbitration Agreement, or to constitute a waiver of that agreement.



**DEFAULT**

## Article 30

1. If, within the time limit set by the arbitral tribunal, the Claimant has failed to communicate its claim without showing sufficient cause for such failure, the arbitral tribunal shall terminate the arbitration proceedings. If, within the time limit set by the arbitral tribunal, the Respondent has failed to communicate its defence without showing sufficient cause for such failure, the proceedings shall continue.

2. If one of the parties, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

3. If one of the parties, duly invited to produce documentary or other evidence, fails to do so within the time limit set by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the basis of the evidence before it.

**CLOSURE OF PROCEEDINGS**

## Article 31

1. When it is satisfied that the parties have had a reasonable opportunity to present their respective cases on matters to be decided in an award, the arbitral tribunal may declare the proceedings closed with regard to such matters.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon the application of a party, to reopen the proceedings on the matters with regard to which the proceedings were closed pursuant to Article 31(1) at any time before the award on such matters is made.

**RIGHT TO OBJECT AND WAIVER**

## Article 32

If a party becomes aware that any provision of, or requirement under, these Rules or any other applicable procedural rule has not been complied with, it shall promptly object to such non-compliance, failing which it shall be deemed to have waived its right to object.

**Section IV.****The Award****DECISIONS**

## Article 33

1. If the arbitral tribunal is composed of more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.

2. If authorised by the arbitral tribunal, the presiding arbitrator may decide on questions of procedure.

### **FORM AND EFFECT OF THE AWARD**

#### Article 34

1. In addition to making a final award, the arbitral tribunal may make interim or partial awards.

2. The award shall be made in writing and shall be final and binding on the parties.

3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons or only summary reasons are to be given.

4. An award shall be signed by the arbitrators and it shall specify the seat of the arbitration and the date on which the award was made. Where the arbitral tribunal is composed of more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.

5. Originals of the award signed by the arbitrators shall be notified by the Secretariat to the parties, provided that the costs referred to in Article 38(a), (b), (c), (f) and (g) have been paid in full. The Secretariat shall retain an original copy of the award.

### **APPLICABLE LAW, EX AEQUO ET BONO**

#### Article 35

1. The arbitral tribunal shall decide the case by applying the rules of law agreed upon by the parties or, in the absence of a choice of law, by applying the rules of law with which the dispute has the closest connection.

2. The arbitral tribunal shall decide *ex aequo et bono* or as amiable compositeur only if the parties have expressly authorised the arbitral tribunal to do so.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the Contract and shall take into account any trade usages applicable to the transaction.

### **SETTLEMENT OR OTHER GROUNDS FOR TERMINATION**

#### Article 36

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall terminate the arbitration proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

2. If, before the award is made, the continuation of the arbitration proceedings becomes unnecessary or impossible for any reason not mentioned in Article 36(1), the arbitral tribunal shall give advance notice to the parties that it may terminate the proceedings. The arbitral tribunal shall have the power to do so, unless a party raises justifiable grounds for objection.

3. Copies of the decision terminating the proceedings, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and to the

Secretariat. Where an arbitral award on agreed terms is made, Articles 34(2), (4) and (5) shall apply mutatis mutandis.

### **INTERPRETATION OR CORRECTION OF THE AWARD, ADDITIONAL AWARD**

#### Article 37

1. Within 30 days after the receipt of the award, a party, with notice to the Secretariat and to the other parties, may request that the arbitral tribunal:

- (a) give an interpretation of the award;
- (b) correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature;
- (c) make an additional award as to claims presented in the arbitration proceedings but omitted from the award.

2. The arbitral tribunal may set a time limit, in principle not exceeding 30 days, for the other party to comment on the request.

3. The interpretation shall be given or any correction shall be made in writing within 45 days after the receipt of the request. If the arbitral tribunal considers the request for an additional award to be justified, it shall complete its award within 60 days after the receipt of the request. The Court may extend these time limits.

4. The arbitral tribunal may within 30 days after the communication of the award make corrections on its own initiative.

5. Articles 34(2) to (5) shall apply mutatis mutandis to any interpretation, corrections or additional award.

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### **DETERMINATION OF COSTS**

#### Article 38

The final award or decision terminating the proceedings shall contain a determination of the costs of the arbitration. If appropriate, the arbitral tribunal may make that determination in another decision. The term “costs” includes only:

(a) the fees of the arbitral tribunal, to be stated separately for each arbitrator and, if applicable, for any secretary, to be determined in accordance with Article 39;

(b) the travel and other expenses incurred by the arbitral tribunal and, if applicable, by any secretary;

(c) the costs of expert advice and of other assistance required by the arbitral tribunal;

(d) the costs of witnesses and experts, to the extent such costs are approved by the arbitral tribunal;

(e) the legal and other costs incurred in connection with the arbitration, if such costs were claimed during the arbitration proceedings and the arbitral tribunal determines the amount of such costs to be reasonable;

(f) the Registration Fee and the Administrative Costs in accordance with Appendix B (Schedule of Costs);

(g) the Registration Fee, the fees and expenses of any emergency arbitrator,

and the costs of expert advice and of other assistance required by such emergency arbitrator, determined in accordance with Article 43(9).

## **FEES AND EXPENSES OF ARBITRATORS**

### Article 39

1. The fees and expenses of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter of the arbitration, the time spent and any other relevant circumstances of the case, including the diligence and efficiency of the arbitral tribunal.

2. The fees and expenses of the arbitral tribunal shall be determined in accordance with Appendix B (Schedule of Costs). In the event of a discontinuation of the arbitration proceedings, the fees of the arbitral tribunal may be lower than the minimum amount foreseen in Appendix B (Schedule of Costs).

3. No additional costs may be charged by an arbitral tribunal for interpretation or correction of its award, or for an additional award, or where an award is remitted to the arbitral tribunal following the decision of a judicial authority, unless they are justified by the circumstances.

4. The arbitral tribunal shall decide on the allocation of its fees among its members. The presiding arbitrator shall in principle receive between 40 % and 50 % and each co-arbitrator between 25 % and 30 % of the total fees, in view of the time and efforts spent by each arbitrator.

5. Before making an award, a decision terminating the proceedings, or a decision on a request under Article 37, the arbitral tribunal shall submit to the Secretariat a draft thereof for approval or adjustment by the Court of the determination on costs made pursuant to Articles 38(a) to (c) and (f). Any such approval or adjustment shall be binding upon the arbitral tribunal.

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## **ALLOCATION OF COSTS**

### Article 40

The costs of the arbitration shall in principle be borne by the unsuccessful party. The arbitral tribunal may apportion any of the costs of the arbitration among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case, including the parties' contributions to the efficient conduct of the proceedings and the avoidance of unnecessary costs and delays.

## **DEPOSIT OF COSTS**

### Article 41

1. The arbitral tribunal, once constituted, and after consulting with the Court, shall request each party to deposit an equal amount as an advance for the costs referred to in Articles 38(a) to (c) and the Administrative Costs referred to in Article 38(f). Any Provisional Deposit paid in accordance with Appendix B (Schedule of Costs) shall be considered as a partial payment of the Claimant's deposit.

2. Where a Respondent submits a counterclaim, or it otherwise appears

appropriate in the circumstances, the arbitral tribunal may in its discretion establish separate deposits.

3. During the course of the arbitration proceedings, the arbitral tribunal may, after consulting with the Court, request supplementary deposits from the parties.

4. If the required deposits are not paid in full within 15 days after the receipt of the request, or another time limit set by the arbitral tribunal if appropriate in the circumstances, the arbitral tribunal shall notify 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 order the suspension or termination of the arbitration proceedings in whole or in respect of certain claims or parties.

5. In its final award or decision terminating the proceedings, the arbitral tribunal shall issue to the parties a statement of account of the deposits received. Any unused amount shall be returned to the parties in proportion to their respective contributions, unless the parties have agreed otherwise.

## **Section V.**

### **Other Provisions**

#### **EXPEDITED PROCEDURE**

##### **Article 42**

1. The Expedited Procedure provisions shall apply to all cases in which:

(a) the parties so agree; or

(b) the amount in dispute, representing the aggregate of all claims (or any set-off defence), does not exceed CHF 1,000,000 (one million Swiss francs), unless the Court decides otherwise, taking into account all relevant circumstances.

2. The Expedited Procedure shall be conducted in accordance with the foregoing provisions of these Rules, subject to the following changes:

(a) The case shall be referred to a sole arbitrator, unless the Arbitration Agreement provides for more than one arbitrator.

(b) If the Arbitration Agreement provides for an arbitral tribunal composed of more than one arbitrator, the Secretariat shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree to refer the case to a sole arbitrator, the fees of the arbitrators shall be determined in accordance with Appendix B (Schedule of Costs), but shall in no event be less than the fees resulting from the hourly rate set out in Section 2.7 of Appendix B.

(c) After the submission of the Answer to the Notice of Arbitration, the parties shall in principle be entitled to submit only a Statement of Claim, a Statement of Defence (and counterclaim) and, where applicable, a Statement of Defence in reply to the counterclaim (or any set-off defence).

(d) Unless the dispute is decided on the basis of documentary evidence only, a single hearing shall be held for the examination of witnesses and experts or for oral argument.

(e) The final award shall be made within six months from the date on which

the arbitral tribunal received the file from the Secretariat. In exceptional circumstances, the Court may extend this time limit.

(f) The arbitral tribunal may state the reasons upon which the award is based in summary form.

3. At any time during the arbitration proceedings, the parties may agree that the provisions set out in Article 42(2) shall no longer apply.

## **EMERGENCY RELIEF**

### Article 43

1. Unless the parties have agreed otherwise, a party requiring urgent interim measures pursuant to Article 29 before the arbitral tribunal is constituted may submit to the Secretariat an application for emergency relief proceedings (the “Application”). In addition to the particulars set out in Articles 3(3) (b) to (e), the Application shall include:

(a) a statement of the interim measures sought and the reasons therefor, in particular the reason for the purported urgency;

(b) comments on the language, the seat of arbitration, and the applicable law;

(c) confirmation of payment to the relevant account listed in Appendix A of the Registration Fee and of the deposit for emergency relief proceedings as required by Appendix B (Schedule of Costs).

2. As soon as possible after receipt of the Application, the Registration Fee, and the deposit for emergency relief proceedings, the Court shall appoint and transmit the file to a sole emergency arbitrator, unless:

(a) there is manifestly no Arbitration Agreement referring to these Rules, or

(b) it appears more appropriate to proceed with the constitution of the arbitral tribunal and refer the Application to it.

3. If the Application is submitted before the Notice of Arbitration, the Court shall terminate the emergency relief proceedings if the Notice of Arbitration is not submitted within 10 days from the receipt of the Application. In exceptional circumstances, the Court may extend this time limit.

4. Articles 12 to 14 shall apply to the emergency arbitrator, except that the time limits set out in Articles 13(2) and (3) are shortened to three days.

5. If the parties have not determined the seat of the arbitration, or if the designation of the seat is unclear or incomplete, the seat of the arbitration for the emergency relief proceedings shall be determined by the Court without prejudice to the determination of the seat of the arbitration pursuant to Article 17(1).

6. The emergency arbitrator may conduct the emergency relief proceedings in such a manner as the emergency arbitrator considers appropriate, taking into account the urgency inherent in such proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application.

7. The decision on the Application shall be notified by the emergency arbitrator to the parties within 15 days from the date on which the emergency arbitrator received the file from the Secretariat. This time limit may be extended by agreement of the parties or, in appropriate circumstances, by the Court. The

decision on the Application may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

8. A decision of the emergency arbitrator shall have the same effects as a decision pursuant to Article 29. Any interim measure granted by the emergency arbitrator may be modified, suspended or terminated by the emergency arbitrator or, after transmission of the file to it, by the arbitral tribunal.

9. The decision on the Application shall include a determination of costs as referred to in Article 38(g). Before rendering the decision on the Application, the emergency arbitrator shall submit to the Secretariat a draft thereof for approval or adjustment by the Court of the determination of costs. The costs shall be payable out of the deposit for emergency relief proceedings. The determination of costs pursuant to Articles 38(d) and (e) and the apportionment of all costs among the parties shall be decided by the arbitral tribunal. If no arbitral tribunal is constituted, the determination of costs pursuant to Articles 38(d) and (e) and the apportionment of all costs shall be decided by the emergency arbitrator in a separate award.

10. Any measure granted by the emergency arbitrator ceases to be binding on the parties either upon the termination of the emergency relief proceedings pursuant to Article 43(3), upon the termination of the arbitration proceedings, or upon the making of a final award, unless the arbitral tribunal expressly decides otherwise in the final award.

11. The emergency arbitrator may not serve as arbitrator in any arbitration relating to the dispute in respect of which the emergency arbitrator has acted, unless otherwise agreed by the parties.

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## **CONFIDENTIALITY**

### **Article 44**

1. Unless the parties expressly agree in writing to the contrary, the parties undertake to keep confidential all awards and orders as well as all materials submitted by another party in the framework of the arbitration proceedings not already in the public domain, except and to the extent that a disclosure may be required of a party by a legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a judicial authority. This undertaking also applies to the arbitrators, the tribunal-appointed experts, the secretary to the arbitral tribunal, the members of the board of directors of the Swiss Arbitration Centre, the members of the Court and the Secretariat.

2. The deliberations of the arbitral tribunal are confidential.

3. No award or other decision of the arbitral tribunal may be published, whether in its entirety or in the form of excerpts or a summary, unless all parties agree and the names of the parties, the members of the arbitral tribunal and any information allowing for the identification of the dispute are redacted.

## **EXCLUSION OF LIABILITY**

### **Article 45**

1. Neither the members of the board of directors of the Swiss Arbitration Centre, the members of the Court and the Secretariat, the arbitrators, the tribunal-appointed experts, nor the secretary of the arbitral tribunal shall be

liable for any act or omission in connection with an arbitration conducted under these Rules, except if the act or omission is shown to constitute intentional wrongdoing or gross negligence.

2. After the award or decision terminating the proceedings has been made and the possibilities of correction, interpretation or additional award have lapsed or have been exhausted, neither the members of the board of the Swiss Arbitration Centre, the members of the Court and the Secretariat, the arbitrators, the tribunal-appointed experts, nor the secretary of the arbitral tribunal shall be under an obligation to make statements to any person about any matter concerning the arbitration. No party shall seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.