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**WIPO  
ARBITRATION  
AND  
MEDIATION  
CENTER**



**WIPO Arbitration,  
Mediation, and  
Expert Determination  
Rules and Clauses**

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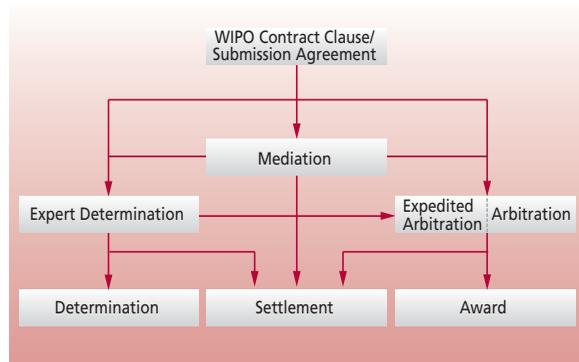
# WIPO ARBITRATION AND MEDIATION CENTER

Introduction

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## Introduction: WIPO ADR Procedures

Based in Geneva, Switzerland and part of the World Intellectual Property Organization (WIPO), the WIPO Arbitration and Mediation Center (Center) is a leading international dispute resolution service provider. This brochure contains the rules of dispute resolution procedures administered by the Center, namely, the WIPO Mediation Rules, the WIPO Arbitration Rules, the WIPO Expedited Arbitration Rules, and the WIPO Expert Determination Rules.<sup>1</sup> The Center offers clauses, rules and neutrals for the following alternative dispute resolution (ADR) procedures:



- **Mediation:** an informal procedure in which a neutral intermediary, the mediator, assists the parties in reaching a settlement of the dispute. (Depending on the parties' choice, mediation may be followed, in the absence of a settlement, by arbitration, expedited arbitration or expert determination.)
- **Arbitration:** a binding procedure in which the dispute is submitted to one or more arbitrators who make a final decision on the

dispute. (Depending on the parties' choice, arbitration may be preceded by mediation or expert determination.)

- **Expedited Arbitration:** an arbitration procedure that is carried out in a short time and at a reduced cost. (Depending on the parties' choice, expedited arbitration may be preceded by mediation or expert determination.)
- **Expert Determination:** a procedure in which a technical, scientific or related business issue between the parties is submitted to one or more experts who make a determination on the matter. The determination is binding, unless the parties have agreed otherwise. (Depending on the parties' choice, expert determination may be preceded by mediation or followed by (expedited) arbitration.)

Developed by leading experts in cross-border dispute settlement, these rules are widely recognized as particularly appropriate for disputes arising out of commercial transactions or relationships involving intellectual property. In addition, they contain provisions on confidentiality and technical and experimental evidence that are of special interest to parties to intellectual property disputes. The rules are available in a number of languages.

The Center makes available a general overview of its caseload as well as sanitized examples of particular cases at <http://www.wipo.int/amc/en/center/caseload.html>.

In administering disputes, the Center provides the following administrative services:

- Assistance to the parties in selecting and appointing the mediator, arbitrator(s) or expert if necessary, with reference to the Center's database of more than 1000 neutrals from more than 100 countries with expertise in

<sup>1</sup> The WIPO Expedited Arbitration Rules consist of the WIPO Arbitration Rules modified in certain respects in order to ensure that the arbitration can be conducted in a shortened time frame and at reduced cost. A table showing the differences between the two sets of Rules is provided at p. 112 of this booklet.

commercial, intellectual property and information and communications technology dispute resolution;

- Guidance regarding the application of the relevant procedural rules;
- Liaising between the parties and the arbitral tribunal, mediator or expert with a view to ensuring optimal communications and procedural efficiency;
- Assisting the parties in organizing any other support services that may be needed, such as translation, interpretation or secretarial services;
- Fixing the fees of the neutrals, in consultation with parties and the neutrals;
- Administering the financial aspects of the proceedings by obtaining a deposit from each party of the estimated costs and paying out of the deposit the fees of the neutrals and any other support services or facilities, such as fees for interpreters, where they are required;
- Where the proceedings take place at WIPO in Geneva, providing a meeting room and party retiring rooms free of charge;
- Where the proceedings take place outside Geneva, assisting the parties in organizing appropriate meeting rooms and other required facilities;
- Providing such other services or functions as may be required to ensure that the WIPO procedures are conducted efficiently and expeditiously.

The Center also administers procedures for the resolution of disputes related to the abusive registration and use of Internet domain names.

The Center also assists parties to develop dispute resolution schemes (whether mediation, arbitration, expert determination or another type of procedure, such as the Uniform Domain Name Dispute Resolution Policy) tailored to meet their specific commercial circumstances or industry characteristics.

Additional information about the Center and its activities is available at <http://www.wipo.int/amc>. The Center has published guides to different dispute resolution procedures (e.g., mediation, arbitration, domain name disputes), which may be obtained in hard copy by contacting the Center or which may be downloaded from the Center's website.

# WIPO MEDIATION RULES

*(Effective from October 1, 2002)*

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## **Abbreviated Expressions**

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### **Article 1**

In these Rules:

"Mediation Agreement" means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them; a Mediation Agreement may be in the form of a mediation clause in a contract or in the form of a separate contract;

"Mediator" includes a sole mediator or all the mediators where more than one is appointed;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center, a unit of the International Bureau of WIPO.

Words used in the singular include the plural and vice versa, as the context may require.

## **Scope of Application of Rules**

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### **Article 2**

Where a Mediation Agreement provides for mediation under the WIPO Mediation Rules, these Rules shall be deemed to form part of that Mediation Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the mediation shall apply.

## **Commencement of the Mediation**

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### **Article 3**

(a) A party to a Mediation Agreement that wishes to commence a mediation shall submit a Request for Mediation in writing to the Center. It shall at the same time send a copy of the Request for Mediation to the other party.

(b) The Request for Mediation shall contain or be accompanied by:

(i) the names, addresses and telephone, telefax, e-mail or other communication references of the parties to the dispute and of the representative of the party filing the Request for Mediation;

(ii) a copy of the Mediation Agreement; and

(iii) a brief statement of the nature of the dispute.

### **Article 4**

The date of the commencement of the mediation shall be the date on which the Request for Mediation is received by the Center.

### **Article 5**

The Center shall forthwith inform the parties in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

## **Appointment of the Mediator**

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### **Article 6**

(a) Unless the parties have agreed themselves on the person of the mediator or on another procedure for appointing the mediator, the mediator shall be appointed by the Center after consultation with the parties.

(b) The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

### **Article 7**

The mediator shall be neutral, impartial and independent.

## Representation of Parties and Participation in Meetings

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### Article 8

- (a) The parties may be represented or assisted in their meetings with the mediator.
- (b) Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a party, and the names and positions of the persons who will be attending the meetings of the parties with the mediator on behalf of that party, shall be communicated by that party to the other party, the mediator and the Center.

## Conduct of the Mediation

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### Article 9

The mediation shall be conducted in the manner agreed by the parties. If, and to the extent that, the parties have not made such agreement, the mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted.

### Article 10

Each party shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

### Article 11

The mediator shall be free to meet and to communicate separately with a party on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

### Article 12

- (a) As soon as possible after being appointed, the mediator shall, in consultation with the parties, establish a timetable for the submission by each party to the mediator and to the other party of a statement summarizing the background of the

dispute, the party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified.

- (b) The mediator may at any time during the mediation suggest that a party provide such additional information or materials as the mediator deems useful.
- (c) Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials which it considers to be confidential. The mediator shall not, without the written authorization of that party, disclose such information or materials to the other party.

## Role of the Mediator

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### Article 13

- (a) The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties.
- (b) Where the mediator believes that any issues in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues. In particular, the mediator may so propose:
- (i) an expert determination of one or more particular issues;

- (ii) arbitration;
- (iii) the submission of last offers of settlement by each party and, in the absence of a settlement through mediation, arbitration conducted on the basis of those last offers pursuant to an arbitral procedure in which the mission of the arbitral tribunal is confined to determining which of the last offers shall prevail; or
- (iv) arbitration in which the mediator will, with the express consent of the parties, act as sole arbitrator, it being understood that the mediator may, in the arbitral proceedings, take into account information received during the mediation.

**Confidentiality**

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**Article 14**

No recording of any kind shall be made of any meetings of the parties with the mediator.

**Article 15**

Each person involved in the mediation, including, in particular, the mediator, the parties and their representatives and advisors, any independent experts and any other persons present during the meetings of the parties with the mediator, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation. Each such person shall sign an appropriate confidentiality undertaking prior to taking part in the mediation.

**Article 16**

Unless otherwise agreed by the parties, each person involved in the mediation shall, on the termination of the mediation, return, to the party providing it, any brief, document or other materials supplied by a party, without retaining any copy thereof. Any notes taken by

a person concerning the meetings of the parties with the mediator shall be destroyed on the termination of the mediation.

**Article 17**

Unless otherwise agreed by the parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding:

- (i) any views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
- (ii) any admissions made by a party in the course of the mediation;
- (iii) any proposals made or views expressed by the mediator;
- (iv) the fact that a party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other party.

**Termination of the Mediation**

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**Article 18**

The mediation shall be terminated:

- (i) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the parties;
- (ii) by the decision of the mediator if, in the mediator's judgment, further efforts at mediation are unlikely to lead to a resolution of the dispute; or
- (iii) by a written declaration of a party at any time after attending the first meeting of the parties with the mediator and before the signing of any settlement agreement.

**Article 19**

- (a) Upon the termination of the mediation, the mediator shall promptly send to the Center a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the parties a copy of the notice so addressed to the Center.
- (b) The Center shall keep the said notice of the mediator confidential and shall not, without the written authorization of the parties, disclose either the existence or the result of the mediation to any person.
- (c) The Center may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

**Article 20**

Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

**Administration Fee****Article 21**

- (a) The Request for Mediation shall be subject to the payment to the Center of an administration fee, the amount of which shall be fixed in accordance with the Schedule of Fees applicable on the date of the Request for Mediation.
- (b) The administration fee shall not be refundable.
- (c) No action shall be taken by the Center on a Request for Mediation until the administration fee has been paid.

- (d) If a party who has filed a Request for Mediation fails, within 15 days after a second reminder in writing from the Center, to pay the administration fee, it shall be deemed to have withdrawn its Request for Mediation.

**Fees of the Mediator****Article 22**

- (a) The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by the Center, after consultation with the mediator and the parties.
- (b) The amount of the fees shall, unless the parties and the mediator agree otherwise, be calculated on the basis of the hourly or, if applicable, daily indicative rates set out in the Schedule of Fees applicable on the date of the Request for Mediation, taking into account the amount in dispute, the complexity of the subject matter of the dispute and any other relevant circumstances of the case.

**Deposits****Article 23**

- (a) The Center may, at the time of the appointment of the mediator, require each party to deposit an equal amount as an advance for the costs of the mediation, including, in particular, the estimated fees of the mediator and the other expenses of the mediation. The amount of the deposit shall be determined by the Center.
- (b) The Center may require the parties to make supplementary deposits.
- (c) If a party fails, within 15 days after a second reminder in writing from the Center, to pay the required deposit, the mediation shall be deemed to be terminated. The Center shall, by notice in writing,

inform the parties and the mediator accordingly and indicate the date of termination.

- (d) After the termination of the mediation, the Center shall render an accounting to the parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

## **Costs**

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### **Article 24**

Unless the parties agree otherwise, the administration fee, the fees of the mediator and all other expenses of the mediation, including, in particular, the required travel expenses of the mediator and any expenses associated with obtaining expert advice, shall be borne in equal shares by the parties.

## **Exclusion of Liability**

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### **Article 25**

Except in respect of deliberate wrongdoing, the mediator, WIPO and the Center shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

## **Waiver of Defamation**

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### **Article 26**

The parties and, by accepting appointment, the mediator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

## **Suspension of Running of Limitation Period under the Statute of Limitations**

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### **Article 27**

The parties agree that, to the extent permitted by the applicable law, the running of the limitation period under the Statute of Limitations or an equivalent law shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

# WIPO ARBITRATION RULES

(Effective from October 1, 2002)

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# I. GENERAL PROVISIONS

## Abbreviated Expressions

### **Article 1**

In these Rules:

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

"Claimant" means the party initiating an arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" includes a sole arbitrator or all the arbitrators where more than one is appointed;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center, a unit of the International Bureau of WIPO.

Words used in the singular include the plural and vice versa, as the context may require.

## Scope of Application of Rules

### **Article 2**

Where an Arbitration Agreement provides for arbitration under the WIPO Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

### **Article 3**

(a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

(b) The law applicable to the arbitration shall be determined in accordance with Article 59(b).

## Notices and Periods of Time

### **Article 4**

(a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by expedited postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication that provide a record thereof.

(b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.

(c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance with paragraphs (a) and (b) of this Article.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.

- (e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non business days occurring during the running of the period of time are included in calculating the period.
- (f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18(b), 19(b)(iii), 41(a) and 42(a).
- (g) The Center may, at the request of a party or on its own motion, extend the periods of time referred to in Articles 11, 15(b), 16(b), 17(b), 17(c), 18(b), 19(b)(iii), 67(d), 68(e) and 70(e).

### **Documents Required to be Submitted to the Center**

#### ***Article 5***

- (a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these rules shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.
- (b) Any written statement, notice or other communication so sent to the Center shall be sent in a number of copies equal to the number required to provide one copy for each envisaged arbitrator and one for the Center.
- (c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.
- (d) The Tribunal shall send to the Center a copy of each order or other decision that it makes.

## **II. COMMENCEMENT OF THE ARBITRATION**

### **Request for Arbitration**

#### ***Article 6***

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

#### ***Article 7***

The date of commencement of the arbitration shall be the date on which the Request for Arbitration is received by the Center.

#### ***Article 8***

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and of the date of the commencement of the arbitration.

#### ***Article 9***

The Request for Arbitration shall contain:

- (i) a demand that the dispute be referred to arbitration under the WIPO Arbitration Rules;
- (ii) the names, addresses and telephone, telefax, email or other communication references of the parties and of the representative of the Claimant;
- (iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause;
- (iv) a brief description of the nature and circumstances of the dispute, including an indication of the rights and property involved and the nature of any technology involved;
- (v) a statement of the relief sought and an indication, to the extent possible, of any amount claimed; and

- (vi) any appointment that is required by, or observations that the Claimant considers useful in connection with, Articles 14 to 20.

#### **Article 10**

The Request for Arbitration may also be accompanied by the Statement of Claim referred to in Article 41.

#### **Answer to the Request**

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#### **Article 11**

Within 30 days from the date on which the Respondent receives the Request for Arbitration from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the elements in the Request for Arbitration and may include indications of any counter-claim or set-off.

#### **Article 12**

If the Claimant has filed a Statement of Claim with the Request for Arbitration pursuant to Article 10, the Answer to the Request may also be accompanied by the Statement of Defense referred to in Article 42.

#### **Representation**

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#### **Article 13**

- (a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, telefax, e mail or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.
- (b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.
- (c) The parties may also be assisted by persons of their choice.

### **III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL**

#### **Number of Arbitrators**

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#### **Article 14**

- (a) The Tribunal shall consist of such number of arbitrators as has been agreed by the parties.
- (b) Where the parties have not agreed on the number of arbitrators, the Tribunal shall consist of a sole arbitrator, except where the Center in its discretion determines that, in view of all the circumstances of the case, a Tribunal composed of three members is appropriate.

#### **Appointment Pursuant to Procedure Agreed Upon by the Parties**

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#### **Article 15**

- (a) If the parties have agreed on a procedure for the appointment of the arbitrator or arbitrators other than as envisaged in Articles 16 to 20, that procedure shall be followed.
- (b) If the Tribunal has not been established pursuant to such procedure within the period of time agreed upon by the parties or, in the absence of such an agreed period of time, within 45 days after the commencement of the arbitration, the Tribunal shall be established or completed, as the case may be, in accordance with Article 19.

#### **Appointment of a Sole Arbitrator**

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#### **Article 16**

- (a) Where a sole arbitrator is to be appointed and the parties have not agreed on an appointment procedure, the sole arbitrator shall be appointed jointly by the parties.

- (b) 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, within 30 days after the commencement of the arbitration, the sole arbitrator shall be appointed in accordance with Article 19.

### **Appointment of Three Arbitrators**

#### ***Article 17***

- (a) Where three arbitrators are to be appointed and the parties have not agreed upon an appointment procedure, the arbitrators shall be appointed in accordance with this Article.
- (b) The Claimant shall appoint an arbitrator in its Request for Arbitration. The Respondent shall appoint an arbitrator within 30 days from the date on which it receives the Request for Arbitration. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.
- (c) Notwithstanding paragraph (b), where three arbitrators are to be appointed as a result of the exercise of the discretion of the Center under Article 14(b), the Claimant shall, by notice to the Center and to the Respondent, appoint an arbitrator within 15 days after the receipt by it of notification by the Center that the Tribunal is to be composed of three arbitrators. The Respondent shall appoint an arbitrator within 30 days after the receipt by it of the said notification. The two arbitrators thus appointed shall, within 20 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.
- (d) If the appointment of any arbitrator is not made within the applicable period of time referred to in the preceding paragraphs, that arbitrator shall be appointed in accordance with Article 19.

### **Appointment of Three Arbitrators in Case of Multiple Claimants or Respondents**

#### ***Article 18***

- (a) Where:
- (i) three arbitrators are to be appointed;
  - (ii) the parties have not agreed on an appointment procedure; and
  - (iii) the Request for Arbitration names more than one Claimant;

the Claimants shall make a joint appointment of an arbitrator in their Request for Arbitration. The appointment of the second arbitrator and the presiding arbitrator shall, subject to paragraph (b) of this Article, take place in accordance with Article 17(b), (c) or (d), as the case may be.

- (b) Where:
- (i) three arbitrators are to be appointed;
  - (ii) the parties have not agreed on an appointment procedure; and
  - (iii) the Request for Arbitration names more than one Respondent;

the Respondents shall jointly appoint an arbitrator. If, for whatever reason, the Respondents do not make a joint appointment of an arbitrator within 30 days after receiving the Request for Arbitration, any appointment of the arbitrator previously made by the Claimant or Claimants shall be considered void and two arbitrators shall be appointed by the Center. The two arbitrators thus appointed shall, within 30 days after the appointment of the second arbitrator, appoint a third arbitrator, who shall be the presiding arbitrator.

- (c) Where:

- (i) three arbitrators are to be appointed;
- (ii) the parties have agreed upon an appointment procedure; and
- (iii) the Request for Arbitration names more than one Claimant or more than one Respondent;

paragraphs (a) and (b) of this Article shall, notwithstanding Article 15(a), apply irrespective of any contractual provisions in the Arbitration Agreement with respect to the appointment procedure, unless those provisions have expressly excluded the application of this Article.

### **Default Appointment**

#### **Article 19**

- (a) If a party has failed to appoint an arbitrator as required under Articles 15, 17 or 18, the Center shall, in lieu of that party, forthwith make the appointment.
- (b) If the sole or presiding arbitrator has not been appointed as required under Articles 15, 16, 17 or 18, the appointment shall take place in accordance with the following procedure:
  - (i) The Center shall send to each party an identical list of candidates. The list shall comprise the names of at least three candidates in alphabetical order. The list shall include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed on any particular qualifications, the list shall contain only the names of candidates that satisfy those qualifications.
  - (ii) Each party shall have the right to delete the name of any candidate or candidates to whose appointment it objects and shall number any remaining candidates in order of preference.

- (iii) Each party shall return the marked list to the Center within 20 days after the date on which the list is received by it. Any party failing to return a marked list within that period of time shall be deemed to have assented to all candidates appearing on the list.

- (iv) As soon as possible after receipt by it of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, the Center shall, taking into account the preferences and objections expressed by the parties, invite a person from the list to be the sole or presiding arbitrator.

- (v) If the lists which have been returned do not show a person who is acceptable as arbitrator to both parties, the Center shall be authorized to appoint the sole or presiding arbitrator. The Center shall similarly be authorized to do so if a person is not able or does not wish to accept the Center's invitation to be the sole or presiding arbitrator, or if there appear to be other reasons precluding that person from being the sole or presiding arbitrator, and there does not remain on the lists a person who is acceptable as arbitrator to both parties.

- (c) Notwithstanding the provisions of paragraph (b), the Center shall be authorized to appoint the sole or presiding arbitrator if it determines in its discretion that the procedure described in that paragraph is not appropriate for the case.

### **Nationality of Arbitrators**

#### **Article 20**

- (a) An agreement of the parties concerning the nationality of arbitrators shall be respected.
- (b) If the parties have not agreed on the nationality of the sole or presiding arbitrator, such arbitrator shall, in the absence of special circumstances such as the need to appoint a person having particular

qualifications, be a national of a country other than the countries of the parties.

### **Communication Between Parties and Candidates for Appointment as Arbitrator**

#### **Article 21**

No party or anyone acting on its behalf shall have any ex parte communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

### **Impartiality and Independence**

#### **Article 22**

- (a) Each arbitrator shall be impartial and independent.
- (b) Each prospective arbitrator shall, before accepting appointment, disclose to the parties, the Center and any other arbitrator who has already been appointed any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstances exist.
- (c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to any arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties, the Center and the other arbitrators.

### **Availability, Acceptance and Notification**

#### **Article 23**

- (a) Each arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.

- (b) Each prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Center.
- (c) The Center shall notify the parties of the establishment of the Tribunal.

### **Challenge of Arbitrators**

#### **Article 24**

- (a) Any arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.
- (b) A party may challenge an arbitrator whom it has appointed or in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

#### **Article 25**

A party challenging an arbitrator shall send notice to the Center, the Tribunal and the other party, stating the reasons for the challenge, within 15 days after being notified of that arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to that arbitrator's impartiality or independence.

#### **Article 26**

When an arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within 15 days after receipt of the notice referred to in Article 25, a copy of its response to the Center, the party making the challenge and the arbitrators.

#### **Article 27**

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

### **Article 28**

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

### **Article 29**

If the other party does not agree to the challenge and the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## **Release from Appointment**

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### **Article 30**

At the arbitrator's own request, an arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Center.

### **Article 31**

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as arbitrator. The parties shall promptly notify the Center of such release.

### **Article 32**

At the request of a party or on its own motion, the Center may release an arbitrator from appointment as arbitrator if the arbitrator has become de jure or de facto unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Articles 26 to 29 shall apply *mutatis mutandis*.

## **Replacement of an Arbitrator**

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### **Article 33**

(a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in

Articles 15 to 19 that was applicable to the appointment of the arbitrator being replaced.

- (b) In the event that an arbitrator appointed by a party has either been successfully challenged on grounds which were known or should have been known to that party at the time of appointment, or has been released from appointment as arbitrator in accordance with Article 32, the Center shall have the discretion not to permit that party to make a new appointment. If it chooses to exercise this discretion, the Center shall make the substitute appointment.
- (c) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

### **Article 34**

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings are to be repeated.

## **Truncated Tribunal**

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### **Article 35**

- (a) If an arbitrator on a three person Tribunal, though duly notified and without good cause, fails to participate in the work of the Tribunal, the two other arbitrators shall, unless a party has made an application under Article 32, have the power in their sole discretion to continue the arbitration and to make any award, order or other decision, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any award, order or other decision without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non participation, and such other matters as they consider appropriate in the circumstances of the case.

- (b) In the event that the two other arbitrators determine not to continue the arbitration without the participation of a third arbitrator, the Center shall, on proof satisfactory to it of the failure of the arbitrator to participate in the work of the Tribunal, declare the office vacant, and a substitute arbitrator shall be appointed by the Center in the exercise of the discretion defined in Article 33, unless the parties agree otherwise.

### **Pleas as to the Jurisdiction of the Tribunal**

#### ***Article 36***

- (a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 59(b).
- (b) The Tribunal shall have the power to determine the existence or validity of any contract of which the Arbitration Agreement forms part or to which it relates.
- (c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.
- (d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.
- (e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

## **IV. CONDUCT OF THE ARBITRATION**

### **Transmission of the File to the Tribunal**

#### ***Article 37***

The Center shall transmit the file to each arbitrator as soon as the arbitrator is appointed.

### **General Powers of the Tribunal**

#### ***Article 38***

- (a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.
- (b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.
- (c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties. In urgent cases, such an extension may be granted by the presiding arbitrator alone.

### **Place of Arbitration**

#### ***Article 39***

- (a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.
- (b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.
- (c) The award shall be deemed to have been made at the place of arbitration.

## Language of Arbitration

### **Article 40**

- (a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.
- (b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

## Statement of Claim

### **Article 41**

- (a) Unless the Statement of Claim accompanied the Request for Arbitration, the Claimant shall, within 30 days after receipt of notification from the Center of the establishment of the Tribunal, communicate its Statement of Claim to the Respondent and to the Tribunal.
- (b) The Statement of Claim shall contain a comprehensive statement of the facts and legal arguments supporting the claim, including a statement of the relief sought.
- (c) The Statement of Claim shall, to as large an extent as possible, be accompanied by the documentary evidence upon which the Claimant relies, together with a schedule of such documents. Where the documentary evidence is especially voluminous, the Claimant may add a reference to further documents it is prepared to submit.

## Statement of Defense

### **Article 42**

- (a) The Respondent shall, within 30 days after receipt of the Statement of Claim or within 30 days after

receipt of notification from the Center of the establishment of the Tribunal, whichever occurs later, communicate its Statement of Defense to the Claimant and to the Tribunal.

- (b) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 41(b). The Statement of Defense shall be accompanied by the corresponding documentary evidence described in Article 41(c).
- (c) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Article 41(b) and (c).

## Further Written Statements

### **Article 43**

- (a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof. Article 42(a) and (b) shall apply mutatis mutandis to such reply.
- (b) The Tribunal may, in its discretion, allow or require further written statements.

## Amendments to Claims or Defense

### **Article 44**

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 38(b) and (c).

## **Communication Between Parties and Tribunal**

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### **Article 45**

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any ex parte communication with any arbitrator with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit ex parte communications which concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

## **Interim Measures of Protection and Security for Claims and Costs**

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### **Article 46**

- (a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.
- (b) At the request of a party, the Tribunal may, if it considers it to be required by exceptional circumstances, order the other party to provide security, in a form to be determined by the Tribunal, for the claim or counter-claim, as well as for costs referred to in Article 72.
- (c) Measures and orders contemplated under this Article may take the form of an interim award.
- (d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

## **Preparatory Conference**

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### **Article 47**

The Tribunal may, in general following the submission of the Statement of Defense, conduct a preparatory conference with the parties for the purpose of organizing and scheduling the subsequent proceedings.

## **Evidence**

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### **Article 48**

- (a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.
- (b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

## **Experiments**

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### **Article 49**

- (a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.
- (b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

## Site Visits

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### Article 50

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

## Agreed Primers and Models

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### Article 51

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

- (i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to fully understand the matters in issue; and
- (ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

## Disclosure of Trade Secrets and Other Confidential Information

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### Article 52

- (a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:
- (i) in the possession of a party;
  - (ii) not accessible to the public;
  - (iii) of commercial, financial or industrial significance; and

(iv) treated as confidential by the party possessing it.

- (b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.
- (c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.
- (d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.
- (e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 55 in order to report to it, on the basis of the confidential information, on specific issues designated by the

Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

## Hearings

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### **Article 53**

- (a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.
- (b) In the event of a hearing, the Tribunal shall give the parties adequate advance notice of the date, time and place thereof.
- (c) Unless the parties agree otherwise, all hearings shall be in private.
- (d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.

## Witnesses

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### **Article 54**

- (a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues.
- (b) 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.
- (c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by

each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.

- (d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.
- (e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.
- (f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

## Experts Appointed by the Tribunal

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### **Article 55**

- (a) The Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking.
- (b) Subject to Article 52, upon receipt of the expert's report, the 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 may, subject to Article 52, examine any document on which the expert has relied in such a report.
- (c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.

(d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

## **Default**

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### **Article 56**

- (a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Article 41, the Tribunal shall terminate the proceedings.
- (b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Article 42, the Tribunal may nevertheless proceed with the arbitration and make the award.
- (c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.
- (d) 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 therefrom that it considers appropriate.

## **Closure of Proceedings**

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### **Article 57**

- (a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.

(b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

## **Waiver**

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### **Article 58**

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non compliance, shall be deemed to have waived its right to object.

## **V. AWARDS AND OTHER DECISIONS**

### **Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement**

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#### **Article 59**

- (a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.
- (b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.

- (c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

## **Currency and Interest**

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### **Article 60**

- (a) Monetary amounts in the award may be expressed in any currency.
- (b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

## **Decision-Making**

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### **Article 61**

Unless the parties have agreed otherwise, where there is more than one arbitrator, any award, order or other decision of the Tribunal shall be made by a majority. In the absence of a majority, the presiding arbitrator shall make the award, order or other decision as if acting as sole arbitrator.

## **Form and Notification of Awards**

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### **Article 62**

- (a) The Tribunal may make preliminary, interim, interlocutory, partial or final awards.
- (b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 39(a).

- (c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.
- (d) The award shall be signed by the arbitrator or arbitrators. The signature of the award by a majority of the arbitrators, or, in the case of Article 61, second sentence, by the presiding arbitrator, shall be sufficient. Where an arbitrator fails to sign, the award shall state the reason for the absence of the signature.
- (e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.
- (f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator or arbitrators.
- (g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall 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.

## **Time Period for Delivery of the Final Award**

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### **Article 63**

- (a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than nine months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within three months thereafter.

- (b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of three months during which the proceedings have not been declared closed.
- (c) If the final award is not made within three months after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

## **Effect of Award**

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### **Article 64**

- (a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.
- (b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 62(f), second sentence.

## **Settlement or Other Grounds for Termination**

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### **Article 65**

- (a) The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.
- (b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a

consent award. The Tribunal shall not be obliged to give reasons for such an award.

- (c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.
- (d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator or arbitrators in accordance with Article 62(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator or arbitrators and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator or arbitrators.

## **Correction of the Award and Additional Award**

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### **Article 66**

- (a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 62(d), shall become part of the award.
- (b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.

- (c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 60 days of receipt of the request.

## VI. FEES AND COSTS

### Fees of the Center

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#### **Article 67**

- (a) The Request for Arbitration shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.
- (b) Any counter-claim by a Respondent shall be subject to the payment to the Center of a non-refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.
- (c) No action shall be taken by the Center on a Request for Arbitration or counter-claim until the registration fee has been paid.
- (d) If a Claimant or Respondent fails, within 15 days after a second reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration or counter-claim, as the case may be.

#### **Article 68**

- (a) An administration fee shall be payable by the Claimant to the Center within 30 days after the Claimant has received notification from the Center of the amount to be paid.
- (b) In the case of a counter-claim, an administration fee shall also be payable by the Respondent to the Center within 30 days after the Respondent has received notification from the Center of the amount to be paid.
- (c) The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration.
- (d) Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable under paragraph (c), and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.
- (e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.
- (f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counter-claim, as well as any increase thereof.

### Fees of the Arbitrators

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#### **Article 69**

The amount and currency of the fees of the arbitrators and the modalities and timing of their payment shall be fixed by the Center, after consultation with the arbitrators and the parties, in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

## Deposits

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### **Article 70**

- (a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 71. The amount of the deposit shall be determined by the Center.
- (b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.
- (c) If the required deposits are not paid in full within 30 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.
- (d) Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.
- (e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay the required deposit, it shall be deemed to have withdrawn the relevant claim or counter-claim.
- (f) After the award has been made, the Center shall, in accordance with the award, 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.

## Award of Costs of Arbitration

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### **Article 71**

- (a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:
  - (i) the arbitrators' fees;
  - (ii) the properly incurred travel, communication and other expenses of the arbitrators;
  - (iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and
  - (iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.
- (b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 70.
- (c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

## Award of Costs Incurred by a Party

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### **Article 72**

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

## VII. CONFIDENTIALITY

### Confidentiality of the Existence of the Arbitration

#### **Article 73**

(a) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only:

- (i) by disclosing no more than what is legally required; and
  - (ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.
- (b) Notwithstanding paragraph (a), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

### Confidentiality of Disclosures Made During the Arbitration

#### **Article 74**

(a) In addition to any specific measures that may be available under Article 52, any documentary or other evidence given by a party or a witness in the arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose

without the consent of the parties or order of a court having jurisdiction.

- (b) For the purposes of this Article, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

### Confidentiality of the Award

#### **Article 75**

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

- (i) the parties consent; or
- (ii) it falls into the public domain as a result of an action before a national court or other competent authority; or
- (iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

### Maintenance of Confidentiality by the Center and Arbitrator

#### **Article 76**

(a) Unless the parties agree otherwise, the Center and the arbitrator shall maintain the confidentiality of the arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

(b) Notwithstanding paragraph (a), the Center may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

## VIII. MISCELLANEOUS

### Exclusion of Liability

#### **Article 77**

Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, WIPO and the Center shall not be liable to a party for any act or omission in connection with the arbitration.

### Waiver of Defamation

#### **Article 78**

The parties and, by acceptance of appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

# WIPO EXPEDITED ARBITRATION RULES

*(Effective from October 1, 2002)*

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## INTRODUCTION

The WIPO Expedited Arbitration Rules consist of the WIPO Arbitration Rules modified in certain respects in order to ensure that the arbitration can be conducted in a shortened time frame and at reduced cost. To achieve these objectives, five main modifications have been introduced:

- (i) The registration and administration fees are lower than those applicable to an arbitration conducted under the WIPO Arbitration Rules. Fixed arbitrator's fees apply to disputes of up to USD 10 million.
- (ii) The Statement of Claim must accompany (and not be filed later and separately from) the Request for Arbitration. Similarly, the Statement of Defense must accompany the Answer to the Request.
- (iii) There is always a sole arbitrator.
- (iv) Any hearings before the arbitrator are condensed and may not, save in exceptional circumstances, exceed three days.
- (v) The time limits applying to the various stages of the arbitral proceedings have been shortened. In particular, the proceedings should, whenever reasonably possible, be declared closed within three months (as opposed to nine months under the WIPO Arbitration Rules) of either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later, and the final award should, whenever reasonably possible, be made within one month (as opposed to three months under the WIPO Arbitration Rules) thereafter.

## I. GENERAL PROVISIONS

### Abbreviated Expressions

#### **Article 1**

In these Rules:

"Arbitration Agreement" means an agreement by the parties to submit to arbitration all or certain disputes that have arisen or that may arise between them; an Arbitration Agreement may be in the form of an arbitration clause in a contract or in the form of a separate contract;

"Claimant" means the party initiating an arbitration;

"Respondent" means the party against which the arbitration is initiated, as named in the Request for Arbitration;

"Tribunal" means the sole arbitrator;

"WIPO" means the World Intellectual Property Organization;

"Center" means the WIPO Arbitration and Mediation Center, a unit of the International Bureau of WIPO.

Words used in the singular include the plural and vice versa, as the context may require.

### Scope of Application of Rules

#### **Article 2**

Where an Arbitration Agreement provides for arbitration under the WIPO Expedited Arbitration Rules, these Rules shall be deemed to form part of that Arbitration Agreement and the dispute shall be settled in accordance with these Rules, as in effect on the date of the commencement of the arbitration, unless the parties have agreed otherwise.

### **Article 3**

- (a) These Rules shall govern the arbitration, except that, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
- (b) The law applicable to the arbitration shall be determined in accordance with Article 53(b).

## **Notices and Periods of Time**

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### **Article 4**

- (a) Any notice or other communication that may or is required to be given under these Rules shall be in writing and shall be delivered by expedited postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication that provide a record thereof.
- (b) A party's last known residence or place of business shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by that party. Communications may in any event be addressed to a party in the manner stipulated or, failing such a stipulation, according to the practice followed in the course of the dealings between the parties.
- (c) For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered or, in the case of telecommunications, transmitted in accordance with paragraphs (a) and (b) of this Article.
- (d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraphs (a) and (b) of this Article, prior to or on the day of the expiration of the time limit.

- (e) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- (f) The parties may agree to reduce or extend the periods of time referred to in Articles 11, 14(b), 37(a), 47(b) and 49(a).
- (g) The Center may, at the request of a party or on its own motion, extend the periods of time referred to in Articles 11, 14(b), 37(a), 47(b), 49(a), 60(d), 61(e) and 63(e).
- (h) The Center may, in consultation with the parties, reduce the period of time referred to in Article 11.

## **Documents Required to be Submitted to the Center**

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### **Article 5**

- (a) Until the notification by the Center of the establishment of the Tribunal, any written statement, notice or other communication required or allowed under these Rules shall be submitted by a party to the Center and a copy thereof shall at the same time be transmitted by that party to the other party.
- (b) Any written statement, notice or other communication so sent to the Center shall be sent in a number of copies equal to the number required to provide one copy for the Tribunal and one for the Center.
- (c) After the notification by the Center of the establishment of the Tribunal, any written statements, notices or other communications shall

be submitted by a party directly to the Tribunal and a copy thereof shall at the same time be supplied by that party to the other party.

- (d) The Tribunal shall send to the Center a copy of each order or other decision that it makes.

## II. COMMENCEMENT OF THE ARBITRATION

### Request for Arbitration

#### **Article 6**

The Claimant shall transmit the Request for Arbitration to the Center and to the Respondent.

#### **Article 7**

The date of commencement of the arbitration shall be the date on which the Request for Arbitration, together with the Statement of Claim as required by Article 10, is received by the Center.

#### **Article 8**

The Center shall inform the Claimant and the Respondent of the receipt by it of the Request for Arbitration and Statement of Claim and of the date of the commencement of the arbitration.

#### **Article 9**

The Request for Arbitration shall contain:

- (i) a demand that the dispute be referred to arbitration under the WIPO Expedited Arbitration Rules;
- (ii) the names, addresses and telephone, telefax, e-mail or other communication references of the parties and of the representative of the Claimant;
- (iii) a copy of the Arbitration Agreement and, if applicable, any separate choice-of-law clause; and

- (iv) any observations that the Claimant considers useful in connection with Articles 14 and 15.

#### **Article 10**

The Request for Arbitration shall be accompanied by the Statement of Claim in conformity with Article 35(a) and (b).

### Answer to the Request and Statement of Defense

#### **Article 11**

Within 20 days from the date on which the Respondent receives the Request for Arbitration and Statement of Claim from the Claimant, the Respondent shall address to the Center and to the Claimant an Answer to the Request which shall contain comments on any of the items in the Request for Arbitration.

#### **Article 12**

The Answer to the Request shall be accompanied by the Statement of Defense in conformity with Article 36(a) and (b).

### Representation

#### **Article 13**

- (a) The parties may be represented by persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, telefax, e mail or other communication references of representatives shall be communicated to the Center, the other party and, after its establishment, the Tribunal.
- (b) Each party shall ensure that its representatives have sufficient time available to enable the arbitration to proceed expeditiously.
- (c) The parties may also be assisted by persons of their choice.

### III. COMPOSITION AND ESTABLISHMENT OF THE TRIBUNAL

#### Number of Arbitrators

##### **Article 14**

- (a) The Tribunal shall consist of a sole arbitrator, who shall be appointed by the parties.
- (b) If the appointment of the arbitrator is not made within 15 days after the commencement of the arbitration, the arbitrator shall be appointed by the Center.

#### Nationality of Arbitrator

##### **Article 15**

- (a) An agreement of the parties concerning the nationality of the arbitrator shall be respected.
- (b) If the parties have not agreed on the nationality of the arbitrator, the arbitrator shall, in the absence of special circumstances, such as the need to appoint a person having particular qualifications, be a national of a country other than the countries of the parties.

#### Communication Between Parties and Candidates for Appointment as Arbitrator

##### **Article 16**

No party or anyone acting on its behalf shall have any *ex parte* communication with any candidate for appointment as arbitrator except to discuss the candidate's qualifications, availability or independence in relation to the parties.

#### Impartiality and Independence

##### **Article 17**

- (a) The arbitrator shall be impartial and independent.

- (b) The prospective arbitrator shall, before accepting appointment, disclose to the parties and the Center any circumstances that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, or confirm in writing that no such circumstances exist.

- (c) If, at any stage during the arbitration, new circumstances arise that might give rise to justifiable doubt as to the arbitrator's impartiality or independence, the arbitrator shall promptly disclose such circumstances to the parties and the Center.

#### Availability, Acceptance and Notification

##### **Article 18**

- (a) The arbitrator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the arbitration to be conducted and completed expeditiously.
- (b) The prospective arbitrator shall accept appointment in writing and shall communicate such acceptance to the Center.
- (c) The Center shall notify the parties of the establishment of the Tribunal.

#### Challenge of Arbitrator

##### **Article 19**

- (a) The arbitrator may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the arbitrator's impartiality or independence.
- (b) A party may challenge an arbitrator in whose appointment it concurred, only for reasons of which it becomes aware after the appointment has been made.

##### **Article 20**

A party challenging the arbitrator shall send notice to the Center, the Tribunal and the other party, stating the

reasons for the challenge, within seven days after being notified of the arbitrator's appointment or after becoming aware of the circumstances that it considers give rise to justifiable doubt as to the arbitrator's impartiality or independence.

#### **Article 21**

When the arbitrator has been challenged by a party, the other party shall have the right to respond to the challenge and shall, if it exercises this right, send, within seven days after receipt of the notice referred to in Article 20, a copy of its response to the Center, the party making the challenge and the arbitrator.

#### **Article 22**

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

#### **Article 23**

The other party may agree to the challenge or the arbitrator may voluntarily withdraw. In either case, the arbitrator shall be replaced without any implication that the grounds for the challenge are valid.

#### **Article 24**

If the other party does not agree to the challenge and the arbitrator does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

### **Release from Appointment**

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#### **Article 25**

At the arbitrator's own request, the arbitrator may be released from appointment as arbitrator either with the consent of the parties or by the Center.

#### **Article 26**

Irrespective of any request by the arbitrator, the parties may jointly release the arbitrator from appointment as

arbitrator. The parties shall promptly notify the Center of such release.

#### **Article 27**

At the request of a party or on its own motion, the Center may release the arbitrator from appointment as arbitrator if the arbitrator has become de jure or de facto unable to fulfill, or fails to fulfill, the duties of an arbitrator. In such a case, the parties shall be offered the opportunity to express their views thereon and the provisions of Articles 21 to 24 shall apply mutatis mutandis.

### **Replacement of Arbitrator**

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#### **Article 28**

- (a) Whenever necessary, a substitute arbitrator shall be appointed pursuant to the procedure provided for in Article 14 that was applicable to the appointment of the arbitrator being replaced.
- (b) Pending the replacement, the arbitral proceedings shall be suspended, unless otherwise agreed by the parties.

#### **Article 29**

Whenever a substitute arbitrator is appointed, the Tribunal shall, having regard to any observations of the parties, determine in its sole discretion whether all or part of any prior hearings are to be repeated.

### **Pleas as to the Jurisdiction of the Tribunal**

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#### **Article 30**

- (a) The Tribunal shall have the power to hear and determine objections to its own jurisdiction, including any objections with respect to form, existence, validity or scope of the Arbitration Agreement examined pursuant to Article 53(b).
- (b) The Tribunal shall have the power to determine the existence or validity of any contract of which

- the Arbitration Agreement forms part or to which it relates.
- (c) A plea that the Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defense or, with respect to a counter-claim or a set-off, the Statement of Defense thereto, failing which any such plea shall be barred in the subsequent arbitral proceedings or before any court. A plea that the Tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The Tribunal may, in either case, admit a later plea if it considers the delay justified.
- (d) The Tribunal may rule on a plea referred to in paragraph (c) as a preliminary question or, in its sole discretion, decide on such a plea in the final award.
- (e) A plea that the Tribunal lacks jurisdiction shall not preclude the Center from administering the arbitration.

## IV. CONDUCT OF THE ARBITRATION

### Transmission of the File to the Tribunal

#### **Article 31**

The Center shall transmit the file to the Tribunal as soon as it is appointed.

### General Powers of the Tribunal

#### **Article 32**

- (a) Subject to Article 3, the Tribunal may conduct the arbitration in such manner as it considers appropriate.
- (b) In all cases, the Tribunal shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case.

- (c) The Tribunal shall ensure that the arbitral procedure takes place with due expedition. It may, at the request of a party or on its own motion, extend in exceptional cases a period of time fixed by these Rules, by itself or agreed to by the parties.

### Place of Arbitration

#### **Article 33**

- (a) Unless otherwise agreed by the parties, the place of arbitration shall be decided by the Center, taking into consideration any observations of the parties and the circumstances of the arbitration.
- (b) The Tribunal may, after consultation with the parties, conduct hearings at any place that it considers appropriate. It may deliberate wherever it deems appropriate.
- (c) The award shall be deemed to have been made at the place of arbitration.

### Language of Arbitration

#### **Article 34**

- (a) Unless otherwise agreed by the parties, the language of the arbitration shall be the language of the Arbitration Agreement, subject to the power of the Tribunal to determine otherwise, having regard to any observations of the parties and the circumstances of the arbitration.
- (b) The Tribunal may order that any documents submitted in languages other than the language of arbitration be accompanied by a translation in whole or in part into the language of arbitration.

### Statement of Claim

#### **Article 35**

- (a) The Statement of Claim shall contain a comprehensive statement of the facts and legal

arguments supporting the claim, including a statement of the relief sought.

- (b) The Statement of Claim shall, to as large an extent as possible, be accompanied by the documentary evidence upon which the Claimant relies, together with a schedule of such documents. Where the documentary evidence is especially voluminous, the Claimant may add a reference to further documents it is prepared to submit.

## **Statement of Defense**

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### **Article 36**

- (a) The Statement of Defense shall reply to the particulars of the Statement of Claim required pursuant to Article 35(a). The Statement of Defense shall be accompanied by the corresponding documentary evidence described in Article 35(b).
- (b) Any counter-claim or set-off by the Respondent shall be made or asserted in the Statement of Defense or, in exceptional circumstances, at a later stage in the arbitral proceedings if so determined by the Tribunal. Any such counter-claim or set-off shall contain the same particulars as those specified in Article 35(a) and (b).

## **Further Written Statements**

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### **Article 37**

- (a) In the event that a counter-claim or set-off has been made or asserted, the Claimant shall reply to the particulars thereof within 20 days from the date on which the Claimant receives such counter-claim or set-off. Article 36(a) shall apply mutatis mutandis to such reply.
- (b) The Tribunal may, in its discretion, allow or require further written statements.

## **Amendments to Claims or Defense**

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### **Article 38**

Subject to any contrary agreement by the parties, a party may amend or supplement its claim, counter-claim, defense or set-off during the course of the arbitral proceedings, unless the Tribunal considers it inappropriate to allow such amendment having regard to its nature or the delay in making it and to the provisions of Article 32(b) and (c).

## **Communication Between Parties and Tribunal**

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### **Article 39**

Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf may have any ex parte communication with the Tribunal with respect to any matter of substance relating to the arbitration, it being understood that nothing in this paragraph shall prohibit ex parte communications that concern matters of a purely organizational nature, such as the physical facilities, place, date or time of the hearings.

## **Interim Measures of Protection and Security for Claims and Costs**

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### **Article 40**

- (a) At the request of a party, the Tribunal may issue any provisional orders or take other interim measures it deems necessary, including injunctions and measures for the conservation of goods which form part of the subject matter in dispute, such as an order for their deposit with a third person or for the sale of perishable goods. The Tribunal may make the granting of such measures subject to appropriate security being furnished by the requesting party.
- (b) At the request of a party, the Tribunal may, if it considers it to be required by exceptional circumstances, order the other party to provide security, in a form to be determined by the Tribunal,

for the claim or counter-claim, as well as for costs referred to in Article 65.

- (c) Measures and orders contemplated under this Article may take the form of an interim award.
- (d) A request addressed by a party to a judicial authority for interim measures or for security for the claim or counter-claim, or for the implementation of any such measures or orders granted by the Tribunal, shall not be deemed incompatible with the Arbitration Agreement, or deemed to be a waiver of that Agreement.

## **Preparatory Conference**

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### **Article 41**

The Tribunal may, in general following the submission of the Statement of Defense, conduct a preparatory conference with the parties for the purpose of organizing and scheduling the subsequent proceedings.

## **Evidence**

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### **Article 42**

- (a) The Tribunal shall determine the admissibility, relevance, materiality and weight of evidence.
- (b) At any time during the arbitration, the Tribunal may, at the request of a party or on its own motion, order a party to produce such documents or other evidence as it considers necessary or appropriate and may order a party to make available to the Tribunal or to an expert appointed by it or to the other party any property in its possession or control for inspection or testing.

## **Experiments**

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### **Article 43**

- (a) A party may give notice to the Tribunal and to the other party at any reasonable time before a hearing

that specified experiments have been conducted on which it intends to rely. The notice shall specify the purpose of the experiment, a summary of the experiment, the method employed, the results and the conclusion. The other party may by notice to the Tribunal request that any or all such experiments be repeated in its presence. If the Tribunal considers such request justified, it shall determine the timetable for the repetition of the experiments.

- (b) For the purposes of this Article, "experiments" shall include tests or other processes of verification.

## **Site Visits**

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### **Article 44**

The Tribunal may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, machinery, facility, production line, model, film, material, product or process as it deems appropriate. A party may request such an inspection at any reasonable time prior to any hearing, and the Tribunal, if it grants such a request, shall determine the timing and arrangements for the inspection.

## **Agreed Primers and Models**

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### **Article 45**

The Tribunal may, where the parties so agree, determine that they shall jointly provide:

- (i) a technical primer setting out the background of the scientific, technical or other specialized information necessary to understand fully the matters in issue; and
- (ii) models, drawings or other materials that the Tribunal or the parties require for reference purposes at any hearing.

## Disclosure of Trade Secrets and Other Confidential Information

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### Article 46

- (a) For the purposes of this Article, confidential information shall mean any information, regardless of the medium in which it is expressed, which is:
- (i) in the possession of a party;
  - (ii) not accessible to the public;
  - (iii) of commercial, financial or industrial significance; and
  - (iv) treated as confidential by the party possessing it.
- (b) A party invoking the confidentiality of any information it wishes or is required to submit in the arbitration, including to an expert appointed by the Tribunal, shall make an application to have the information classified as confidential by notice to the Tribunal, with a copy to the other party. Without disclosing the substance of the information, the party shall give in the notice the reasons for which it considers the information confidential.
- (c) The Tribunal shall determine whether the information is to be classified as confidential and of such a nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to the party invoking its confidentiality. If the Tribunal so determines, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.
- (d) In exceptional circumstances, in lieu of itself determining whether the information is to be classified as confidential and of such nature that the absence of special measures of protection in the proceedings would be likely to cause serious harm to

the party invoking its confidentiality, the Tribunal may, at the request of a party or on its own motion and after consultation with the parties, designate a confidentiality advisor who will determine whether the information is to be so classified, and, if so, decide under which conditions and to whom it may in part or in whole be disclosed. Any such confidentiality advisor shall be required to sign an appropriate confidentiality undertaking.

- (e) The Tribunal may also, at the request of a party or on its own motion, appoint the confidentiality advisor as an expert in accordance with Article 49 in order to report to it, on the basis of the confidential information, on specific issues designated by the Tribunal without disclosing the confidential information either to the party from whom the confidential information does not originate or to the Tribunal.

## Hearings

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### Article 47

- (a) If either party so requests, the Tribunal shall hold a hearing for the presentation of evidence by witnesses, including expert witnesses, or for oral argument or for both. In the absence of a request, the Tribunal shall decide whether to hold such a hearing or hearings. If no hearings are held, the proceedings shall be conducted on the basis of documents and other materials alone.
- (b) If a hearing is held, it shall be convened within 30 days after the receipt by the Claimant of the Answer to the Request and the Statement of Defense. The Tribunal shall give the parties adequate advance notice of the date, time and place of the hearing. Except in exceptional circumstances, hearings may not exceed three days. Each party shall be expected to bring to the hearing such persons as necessary to adequately inform the Tribunal of the dispute.
- (c) Unless the parties agree otherwise, all hearings shall be in private.

- (d) The Tribunal shall determine whether and, if so, in what form a record shall be made of any hearing.
- (e) Within such short period of time after the hearing as is agreed by the parties or, in the absence of such agreement, determined by the Tribunal, each party may communicate to the Tribunal and to the other party a post-hearing brief.

## **Witnesses**

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### **Article 48**

- (a) Before any hearing, the Tribunal may require either party to give notice of the identity of witnesses it wishes to call, as well as of the subject matter of their testimony and its relevance to the issues.
- (b) 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.
- (c) Any witness who gives oral evidence may be questioned, under the control of the Tribunal, by each of the parties. The Tribunal may put questions at any stage of the examination of the witnesses.
- (d) The testimony of witnesses may, either at the choice of a party or as directed by the Tribunal, be submitted in written form, whether by way of signed statements, sworn affidavits or otherwise, in which case the Tribunal may make the admissibility of the testimony conditional upon the witnesses being made available for oral testimony.
- (e) A party shall be responsible for the practical arrangements, cost and availability of any witness it calls.
- (f) The Tribunal shall determine whether any witness shall retire during any part of the proceedings, particularly during the testimony of other witnesses.

## **Experts Appointed by the Tribunal**

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### **Article 49**

- (a) The Tribunal may, after consultation with the parties, appoint one or more independent experts to report to it on specific issues designated by the Tribunal. A copy of the expert's terms of reference, established by the Tribunal, having regard to any observations of the parties, shall be communicated to the parties. Any such expert shall be required to sign an appropriate confidentiality undertaking. The terms of reference shall include a requirement that the expert report to the Tribunal within 30 days of receipt of the terms of reference.
- (b) Subject to Article 46, upon receipt of the expert's report, the 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 may, subject to Article 46, examine any document on which the expert has relied in such a report.
- (c) At the request of a party, the parties shall be given the opportunity to question the expert at a hearing. At this hearing, the parties may present expert witnesses to testify on the points at issue.
- (d) The opinion of any expert on the issue or issues submitted to the expert shall be subject to the Tribunal's power of assessment of those issues in the context of all the circumstances of the case, unless the parties have agreed that the expert's determination shall be conclusive in respect of any specific issue.

## **Default**

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### **Article 50**

- (a) If the Claimant, without showing good cause, fails to submit its Statement of Claim in accordance with Articles 10 and 35, the Center shall not be required to take any action under Article 8.

- (b) If the Respondent, without showing good cause, fails to submit its Statement of Defense in accordance with Articles 11, 12 and 36, the Tribunal may nevertheless proceed with the arbitration and make the award.
- (c) The Tribunal may also proceed with the arbitration and make the award if a party, without showing good cause, fails to avail itself of the opportunity to present its case within the period of time determined by the Tribunal.
- (d) 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 therefrom that it considers appropriate.

### **Closure of Proceedings**

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#### **Article 51**

- (a) The Tribunal shall declare the proceedings closed when it is satisfied that the parties have had adequate opportunity to present submissions and evidence.
- (b) The Tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own motion or upon application of a party, to re-open the proceedings it declared to be closed at any time before the award is made.

### **Waiver**

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#### **Article 52**

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Tribunal, has not been complied with, and yet proceeds with the arbitration without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

## **V. AWARDS AND OTHER DECISIONS**

### **Laws Applicable to the Substance of the Dispute, the Arbitration and the Arbitration Agreement**

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#### **Article 53**

- (a) The Tribunal shall decide the substance of the dispute in accordance with the law or rules of law chosen by the parties. Any designation of the law of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules. Failing a choice by the parties, the Tribunal shall apply the law or rules of law that it determines to be appropriate. In all cases, the Tribunal shall decide having due regard to the terms of any relevant contract and taking into account applicable trade usages. The Tribunal may decide as amiable compositeur or ex aequo et bono only if the parties have expressly authorized it to do so.
- (b) The law applicable to the arbitration shall be the arbitration law of the place of arbitration, unless the parties have expressly agreed on the application of another arbitration law and such agreement is permitted by the law of the place of arbitration.
- (c) An Arbitration Agreement shall be regarded as effective if it conforms to the requirements concerning form, existence, validity and scope of either the law or rules of law applicable in accordance with paragraph (a), or the law applicable in accordance with paragraph (b).

### **Currency and Interest**

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#### **Article 54**

- (a) Monetary amounts in the award may be expressed in any currency.
- (b) The Tribunal may award simple or compound interest to be paid by a party on any sum awarded against

that party. It shall be free to determine the interest at such rates as it considers to be appropriate, without being bound by legal rates of interest, and shall be free to determine the period for which the interest shall be paid.

## **Form and Notification of Awards**

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### **Article 55**

- (a) The Tribunal may make preliminary, interim, interlocutory, partial or final awards.
- (b) The award shall be in writing and shall state the date on which it was made, as well as the place of arbitration in accordance with Article 33(a).
- (c) The award shall state the reasons on which it is based, unless the parties have agreed that no reasons should be stated and the law applicable to the arbitration does not require the statement of such reasons.
- (d) The award shall be signed by the arbitrator. Where the arbitrator fails to sign, the award shall state the reason for the absence of the signature.
- (e) The Tribunal may consult the Center with regard to matters of form, particularly to ensure the enforceability of the award.
- (f) The award shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator and the Center. The Center shall formally communicate an original of the award to each party and the arbitrator.
- (g) At the request of a party, the Center shall provide it, at cost, with a copy of the award certified by the Center. A copy so certified shall 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.

## **Time Period for Delivery of the Final Award**

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### **Article 56**

- (a) The arbitration should, wherever reasonably possible, be heard and the proceedings declared closed within not more than three months after either the delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. The final award should, wherever reasonably possible, be made within one month thereafter.
- (b) If the proceedings are not declared closed within the period of time specified in paragraph (a), the Tribunal shall send the Center a status report on the arbitration, with a copy to each party. It shall send a further status report to the Center, and a copy to each party, at the end of each ensuing period of one month during which the proceedings have not been declared closed.
- (c) If the final award is not made within one month after the closure of the proceedings, the Tribunal shall send the Center a written explanation for the delay, with a copy to each party. It shall send a further explanation, and a copy to each party, at the end of each ensuing period of one month until the final award is made.

## **Effect of Award**

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### **Article 57**

- (a) By agreeing to arbitration under these Rules, the parties undertake to carry out the award without delay, and waive their right to any form of appeal or recourse to a court of law or other judicial authority, insofar as such waiver may validly be made under the applicable law.
- (b) The award shall be effective and binding on the parties as from the date it is communicated by the Center pursuant to Article 55(f), second sentence.

## Settlement or Other Grounds for Termination

### **Article 58**

- (a) The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.
- (b) If, before the award is made, the parties agree on a settlement of the dispute, the Tribunal shall terminate the arbitration and, if requested jointly by the parties, record the settlement in the form of a consent award. The Tribunal shall not be obliged to give reasons for such an award.
- (c) If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in paragraph (b), the Tribunal shall inform the parties of its intention to terminate the arbitration. The Tribunal shall have the power to issue such an order terminating the arbitration, unless a party raises justifiable grounds for objection within a period of time to be determined by the Tribunal.
- (d) The consent award or the order for termination of the arbitration shall be signed by the arbitrator in accordance with Article 55(d) and shall be communicated by the Tribunal to the Center in a number of originals sufficient to provide one for each party, the arbitrator and the Center. The Center shall formally communicate an original of the consent award or the order for termination to each party and the arbitrator.

## Correction of the Award and Additional Award

### **Article 59**

- (a) Within 30 days after receipt of the award, a party may, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to correct in the award any clerical, typographical or computational errors. If the Tribunal considers the request to be justified, it shall make the correction

within 30 days after receipt of the request. Any correction, which shall take the form of a separate memorandum, signed by the Tribunal in accordance with Article 55(d), shall become part of the award.

- (b) The Tribunal may correct any error of the type referred to in paragraph (a) on its own initiative within 30 days after the date of the award.
- (c) A party may, within 30 days after receipt of the award, by notice to the Tribunal, with a copy to the Center and the other party, request the Tribunal to make an additional award as to claims presented in the arbitral proceedings but not dealt with in the award. Before deciding on the request, the Tribunal shall give the parties an opportunity to be heard. If the Tribunal considers the request to be justified, it shall, wherever reasonably possible, make the additional award within 30 days of receipt of the request.

## **VI. FEES AND COSTS**

### Fees of the Center

#### **Article 60**

- (a) The Request for Arbitration shall be subject to the payment to the Center of a non refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.
- (b) Any counter-claim by a Respondent shall be subject to the payment to the Center of a non refundable registration fee. The amount of the registration fee shall be fixed in the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.
- (c) No action shall be taken by the Center on a Request for Arbitration or counter-claim until the registration fee has been paid.

- (d) If a Claimant or Respondent fails, within 15 days after a second reminder in writing from the Center, to pay the registration fee, it shall be deemed to have withdrawn its Request for Arbitration or counter-claim, as the case may be.

#### **Article 61**

- (a) An administration fee shall be payable by the Claimant to the Center within 30 days after the Claimant has received notification from the Center of the amount to be paid.
- (b) In the case of a counter-claim, an administration fee shall also be payable by the Respondent to the Center within 30 days after the date the Respondent has received notification from the Center of the amount to be paid.
- (c) The amount of the administration fee shall be calculated in accordance with the Schedule of Fees applicable on the date of commencement of the arbitration.
- (d) Where a claim or counter-claim is increased, the amount of the administration fee may be increased in accordance with the Schedule of Fees applicable under paragraph (c), and the increased amount shall be payable by the Claimant or the Respondent, as the case may be.
- (e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay any administration fee due, it shall be deemed to have withdrawn its claim or counter-claim, or its increase in claim or counter-claim, as the case may be.
- (f) The Tribunal shall, in a timely manner, inform the Center of the amount of the claim and any counter-claim, as well as any increase thereof.

## **Fees of the Arbitrator**

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### **Article 62**

The amount and currency of the fees of the arbitrator and the modalities and timing of their payment shall be fixed by the Center after consultation with the arbitrator and the parties, in accordance with the Schedule of Fees applicable on the date on which the Request for Arbitration is received by the Center.

## **Deposits**

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### **Article 63**

- (a) Upon receipt of notification from the Center of the establishment of the Tribunal, the Claimant and the Respondent shall each deposit an equal amount as an advance for the costs of arbitration referred to in Article 64. The amount of the deposit shall be determined by the Center.
- (b) In the course of the arbitration, the Center may require that the parties make supplementary deposits.
- (c) If the required deposits are not paid in full within 20 days after receipt of the corresponding notification, the Center shall so inform the parties in order that one or other of them may make the required payment.
- (d) Where the amount of the counter-claim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, the Center in its discretion may establish two separate deposits on account of claim and counter-claim. If separate deposits are established, the totality of the deposit on account of claim shall be paid by the Claimant and the totality of the deposit on account of counter-claim shall be paid by the Respondent.
- (e) If a party fails, within 15 days after a second reminder in writing from the Center, to pay the required deposit,

it shall be deemed to have withdrawn the relevant claim or counter-claim.

- (f) After the award has been made, the Center shall, in accordance with the award, 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.

### **Award of Costs of Arbitration**

#### **Article 64**

- (a) In its award, the Tribunal shall fix the costs of arbitration, which shall consist of:
  - (i) the arbitrator's fees;
  - (ii) the properly incurred travel, communication and other expenses of the arbitrator;
  - (iii) the costs of expert advice and such other assistance required by the Tribunal pursuant to these Rules; and
  - (iv) such other expenses as are necessary for the conduct of the arbitration proceedings, such as the cost of meeting and hearing facilities.
- (b) The aforementioned costs shall, as far as possible, be debited from the deposits required under Article 63.
- (c) The Tribunal shall, subject to any agreement of the parties, apportion the costs of arbitration and the registration and administration fees of the Center between the parties in the light of all the circumstances and the outcome of the arbitration.

### **Award of Costs Incurred by a Party**

#### **Article 65**

In its award, the Tribunal may, subject to any contrary agreement by the parties and in the light of all the

circumstances and the outcome of the arbitration, order a party to pay the whole or part of reasonable expenses incurred by the other party in presenting its case, including those incurred for legal representatives and witnesses.

## **VII. CONFIDENTIALITY**

### **Confidentiality of the Existence of the Arbitration**

#### **Article 66**

- (a) Except to the extent necessary in connection with a court challenge to the arbitration or an action for enforcement of an award, no information concerning the existence of an arbitration may be unilaterally disclosed by a party to any third party unless it is required to do so by law or by a competent regulatory body, and then only:
  - (i) by disclosing no more than what is legally required; and
  - (ii) by furnishing to the Tribunal and to the other party, if the disclosure takes place during the arbitration, or to the other party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.
- (b) Notwithstanding paragraph (a), a party may disclose to a third party the names of the parties to the arbitration and the relief requested for the purpose of satisfying any obligation of good faith or candor owed to that third party.

### **Confidentiality of Disclosures Made During the Arbitration**

#### **Article 67**

- (a) In addition to any specific measures that may be available under Article 46, any documentary or other evidence given by a party or a witness in the

arbitration shall be treated as confidential and, to the extent that such evidence describes information that is not in the public domain, shall not be used or disclosed to any third party by a party whose access to that information arises exclusively as a result of its participation in the arbitration for any purpose without the consent of the parties or order of a court having jurisdiction.

- (b) For the purposes of this Article, a witness called by a party shall not be considered to be a third party. To the extent that a witness is given access to evidence or other information obtained in the arbitration in order to prepare the witness's testimony, the party calling such witness shall be responsible for the maintenance by the witness of the same degree of confidentiality as that required of the party.

### **Confidentiality of the Award**

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#### **Article 68**

The award shall be treated as confidential by the parties and may only be disclosed to a third party if and to the extent that:

- (i) the parties consent; or
- (ii) it falls into the public domain as a result of an action before a national court or other competent authority; or
- (iii) it must be disclosed in order to comply with a legal requirement imposed on a party or in order to establish or protect a party's legal rights against a third party.

### **Maintenance of Confidentiality by the Center and Arbitrator**

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#### **Article 69**

- (a) Unless the parties agree otherwise, the Center and the arbitrator shall maintain the confidentiality of the

arbitration, the award and, to the extent that they describe information that is not in the public domain, any documentary or other evidence disclosed during the arbitration, except to the extent necessary in connection with a court action relating to the award, or as otherwise required by law.

- (b) Notwithstanding paragraph (a), the Center may include information concerning the arbitration in any aggregate statistical data that it publishes concerning its activities, provided that such information does not enable the parties or the particular circumstances of the dispute to be identified.

## **VIII. MISCELLANEOUS**

### **Exclusion of Liability**

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#### **Article 70**

Except in respect of deliberate wrongdoing, the arbitrator, WIPO and the Center shall not be liable to a party for any act or omission in connection with the arbitration.

### **Waiver of Defamation**

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#### **Article 71**

The parties and, by accepting appointment, the arbitrator agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the arbitration shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

# WIPO EXPERT DETERMINATION RULES

*(Effective from April 15, 2007)*

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## Abbreviated Expressions

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### Article 1

In these Rules:

“Determination” means the decision issued by the Expert in accordance with Article 16 of these Rules on the matter referred to expert determination;

“Expert” means a sole Expert or all the Experts where more than one is appointed;

“Expert Determination Agreement” means an agreement by the parties to submit to expert determination all or certain matters which have arisen or which may arise between them; an Expert Determination Agreement may be in the form of an expert determination clause in a contract or in the form of a separate contract;

“WIPO” means the World Intellectual Property Organization;

“Center” means the WIPO Arbitration and Mediation Center, a unit of the International Bureau of WIPO.

Words used in the singular include the plural and vice versa, as the context may require.

## Scope of Application of Rules

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### Article 2

Where an Expert Determination Agreement provides for expert determination under the WIPO Expert Determination Rules, these Rules shall be deemed to form part of that Expert Determination Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the expert determination shall apply.

## Communication and Periods of Time

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### Article 3

(a) Unless the parties have agreed otherwise, or the Center or the Expert has determined otherwise, any notice or other communication that may be or is required to be given under these Rules shall be:

(i) in writing and shall be delivered by expedited postal or courier service, or transmitted by telefax, e-mail or other means of telecommunication that provide a record thereof; and

(ii) copied to each other party, the Expert and the Center.

(b) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice or other communication is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

(c) A notice or other communication shall be deemed to have been received on the day it is delivered, or, in the case of telecommunications, transmitted in accordance with paragraph (a) of this Article.

(d) For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with paragraph (a) of this Article, prior to or on the day of the expiration of the time limit.

(e) The Center or the Expert may, at the request of a party or on its own motion, extend periods of time fixed by these Rules.

## Language of Expert Determination

### **Article 4**

- (a) Unless otherwise agreed by the parties, the language of the expert determination shall be the language of the Expert Determination Agreement, subject to the power of the Expert to determine otherwise, having regard to any observations of the parties and the circumstances of the expert determination.
- (b) The Expert may order that any documents submitted in languages other than the language of the expert determination be accompanied by a translation in whole or in part into the language of the expert determination.

## Request for Expert Determination

### **Article 5**

- (a) A party to an Expert Determination Agreement that wishes to commence an expert determination shall submit a Request for Expert Determination to the Center. It shall at the same time send a copy of the Request to the other party. The Request for Expert Determination may also be jointly filed by the parties to the Expert Determination Agreement.
- (b) The Request for Expert Determination shall contain or be accompanied by:
  - (i) the names, addresses and telephone, telefax, e-mail or other communication references of the parties to the expert determination and of any representative of the party filing the Request for Expert Determination;
  - (ii) a copy of the Expert Determination Agreement;
  - (iii) a description of the matter referred to expert determination;

- (iv) an indication of any rights and the nature of any technology involved;
- (v) any documents or other information which the party deems relevant to the Determination;
- (vi) observations on the scope and time frame of the expert determination;
- (vii) if the parties have agreed on the appointment of a particular Expert, the name, address and telephone, telefax, e-mail or other communication references of the Expert;  
  
if the parties have not agreed on the appointment of a particular Expert, observations on the expected qualifications of the Expert;
- (viii) information on any legal or other dispute resolution proceedings commenced or terminated in connection with the matter referred to expert determination; and
- (ix) payment of the administration fee in accordance with Article 20.

## Date of Commencement of Expert Determination

### **Article 6**

- (a) The date of commencement of the expert determination shall be the date on which the Request for Expert Determination is received by the Center.
- (b) The Center shall inform the parties in writing of the receipt by it of the Request for Expert Determination and of the date of commencement of the expert determination.

## **Answer to the Request**

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### **Article 7**

- (a) When a Request for Expert Determination is not jointly filed by the parties, the party that has not filed the Request may submit, within 14 calendar days of the date of commencement of the expert determination, an Answer to the Request.
- (b) The Answer to the Request shall reply to the particulars of the Request for Expert Determination and shall be accompanied by any additional documents or other information which the party deems relevant to the Determination.

## **Appointment of Expert**

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### **Article 8**

- (a) Unless the parties have agreed themselves on the person of the Expert, the Center shall proceed to appoint the Expert upon receipt of the Answer to the Request or the lapse of the time period for the submission of such Answer. When a Request for Expert Determination is jointly filed by the parties, and the parties have not agreed themselves on the person of the Expert, the Center shall proceed to appoint the Expert upon receipt of the Request for Expert Determination.
- (b) Where the parties have not agreed on the number of Experts, the Center shall appoint a sole Expert, except where the Center in its discretion determines that, in view of all relevant circumstances, more than one Expert is appropriate.
- (c) Unless the parties have agreed themselves on the person of the Expert or on another procedure for appointing the Expert, the Expert shall be appointed by the Center after consultation with the parties.
- (d) The Center's appointment of the Expert will have regard to, without limitation:

- (i) any views expressed by the parties;
- (ii) the matter on which the Determination is sought;
- (iii) the Expert's relevant expertise;
- (iv) the ability of the Expert to complete the expert determination with due expedition;
- (v) the language of the expert determination;
- (vi) the place and nationality of the Expert and the parties.
- (e) For the purposes of paragraph (d)(i) of this Article, the Center may communicate to the parties the details of one or more candidates for appointment and invite parties to communicate their views.
- (f) The Expert shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the expert determination to be completed with due expedition.

## **Impartiality and Independence**

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### **Article 9**

- (a) The Expert shall be impartial and independent.
- (b) The prospective Expert shall, before accepting appointment, disclose to the parties and the Center any circumstances that might give rise to justifiable doubt as to the Expert's impartiality or independence, or confirm in writing that no such circumstances exist.
- (c) If, at any stage during the expert determination, new circumstances arise that might give rise to justifiable doubt as to the Expert's impartiality or independence, the Expert shall promptly disclose such circumstances to the parties and the Center.

- (d) Unless required by a court of law or authorized in writing by the parties, the Expert shall not act in any capacity whatsoever, otherwise than as an Expert, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the matter referred to expert determination.

## **Challenge of Expert**

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### **Article 10**

- (a) The Expert may be challenged by a party if circumstances exist that give rise to justifiable doubt as to the Expert's impartiality or independence.
- (b) A party challenging an Expert shall send notice of the challenge, stating the reasons for the challenge, within 7 calendar days after being notified of the Expert's appointment or after becoming aware of the circumstances underlying such challenge.
- (c) The Expert or the Center may, in its discretion, suspend or continue the expert determination during the pendency of the challenge.
- (d) If the Expert is challenged by a party, and the other party does not agree to the challenge and the Expert does not withdraw, the decision on the challenge shall be made by the Center in accordance with its internal procedures. Such a decision is of an administrative nature and shall be final. The Center shall not be required to state reasons for its decision.

## **Release from Appointment**

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### **Article 11**

- (a) The parties may jointly release the Expert from appointment as Expert. The parties shall promptly notify the Center of such release.
- (b) If the Expert is unable to make a Determination in accordance with these Rules for any reason, the

Center may release the Expert having regard to any views expressed by the Expert and/or the parties.

## **Replacement of Expert**

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### **Article 12**

- (a) Whenever necessary, a substitute Expert shall be appointed. The procedure provided for in Article 8 that was applicable to the appointment of the Expert shall apply mutatis mutandis.
- (b) Pending the replacement, the expert determination shall be suspended, unless otherwise agreed by the parties.

## **Conduct of the Expert Determination**

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### **Article 13**

Subject to these Rules, the Expert shall conduct the expert determination as it considers appropriate.

The Expert shall ensure that the parties are treated with equality and that each party is given an adequate opportunity to present information which it considers relevant to the Determination.

Unless otherwise determined by the Expert in consultation with the parties or provided by these Rules, no party or anyone acting on its behalf shall have any ex parte communication with the Expert, it being understood that nothing in this paragraph shall prohibit ex parte communications that concern matters of a purely organizational nature, such as the physical facilities, place, date or time of meetings, or in case of a candidate for appointment to discuss the candidate's qualifications, availability or independence in relation to the parties.

The Expert shall ensure that the expert determination takes place with due expedition. Each party shall cooperate in good faith with the Expert for this purpose.

As soon as reasonably feasible after appointment, the Expert shall, in consultation with the parties, prepare a description of the matter referred to expert determination.

If the Expert considers it necessary, or if agreed between the parties, the Expert may hold:

- (i) a teleconference, videoconference, web-conference, or a conference by other means of simultaneous communication between the Expert and the parties;
- (ii) a meeting between the Expert and the parties.

In addition to the Request for Expert Determination and the Answer to the Request, the Expert may, at the request of a party or on its own motion, allow or require further submissions, including the submission of documents or other information in a party's possession or control.

The Expert may, at the request of a party or on its own motion, require statements or appearances by party witnesses.

The Expert may, at the request of a party or on its own motion, inspect or require the inspection of any site, property, product or process as it deems appropriate.

## **Default**

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### **Article 14**

- (a) The failure of a party to submit an Answer to the Request shall not prevent the Center and the Expert from proceeding with the expert determination.
- (b) 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 Expert, the Expert may draw the inferences therefrom that it considers appropriate.

## **Confidentiality**

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### **Article 15**

(a) Each person involved in the expert determination, including, in particular, the parties and their representatives and advisors, the Expert and the Center, shall maintain the confidentiality of the expert determination and may not use or disclose to any outside party the Determination or any information concerning, or obtained exclusively in the course of, the expert determination, including its existence, except to the extent that:

- (i) the parties have agreed otherwise; or
- (ii) the information is already in the public domain; or
- (iii) disclosure is necessary in connection with legal proceedings relating to the expert determination; or
- (iv) disclosure is otherwise required by law.

(b) A party invoking the confidentiality of any information it wishes or is required to submit in the expert determination, shall submit the information to the Expert stating the reasons for which it considers the information to be confidential. If the Expert determines that the information is to be classified as confidential, it shall decide under which conditions and to whom the confidential information may in part or in whole be disclosed and shall require any person to whom the confidential information is to be disclosed to sign an appropriate confidentiality undertaking.

## **The Determination**

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### **Article 16**

(a) The Expert may make the Determination on the basis of, without limitation:

- (i) any information presented by the parties;
  - (ii) the Expert's expertise;
  - (iii) any other information which the Expert considers to be relevant.
- (b) The Expert may, after consultation with the parties, make interim or partial Determinations.
- (c) The Determination shall, unless otherwise agreed by the parties:
- (i) be in writing;
  - (ii) include a description of the matter referred to expert determination;
  - (iii) state the reasons on which it is based;
  - (iv) indicate the date on which it was made; and
  - (v) be signed by the Expert.
- (d) Subject to paragraph (c) of this Article, the Determination shall be communicated by the Expert to the Center in a number of originals sufficient to provide one for each party and the Center. The Center shall formally communicate an original of the Determination to each party.
- (e) The Determination shall be effective as from the date it is communicated by the Center to the parties pursuant to paragraph (d) of this Article. The Expert shall be deemed to have completed its functions as of the effective date of the final Determination.
- (f) Unless the parties have agreed otherwise, the Determination shall be binding on the parties.
- (g) Within 30 calendar days after the effective date of the Determination, a party may, by notice to the Expert, with a copy to the Center and the other party, request the Expert to correct in the

Determination any clerical, typographical or computational errors. If the Expert considers the request to be justified, it shall make the correction within 30 days after receipt of the request. The Expert may correct any clerical, typographical or computational error on its own initiative within 30 calendar days after the effective date of the Determination.

## **Interest**

### ***Article 17***

Where relevant the Expert may determine that simple or compound interest is to be paid by a party on any sum payable by such party. The Expert shall be free to determine the interest rate and the period for which interest shall be paid as it considers appropriate.

## **Settlement or Other Grounds for Termination**

### ***Article 18***

- (a) If, before the Determination is made, the parties agree on a settlement of the matter referred to expert determination, the Expert shall terminate the expert determination.
- (b) If, before the Determination is made, the continuation of the expert determination becomes unnecessary or impossible for any reason not mentioned in paragraph (a) of this Article, the Expert shall terminate the expert determination.

## **Waiver**

### ***Article 19***

A party which knows that any provision of, or requirement under, these Rules, or any direction given by the Expert, has not been complied with, and yet proceeds with the expert determination without promptly recording an objection to such non-compliance, shall be deemed to have waived its right to object.

## Administration Fee

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### Article 20

- (a) The Request for Expert Determination shall be subject to the payment to the Center of an administration fee, the amount of which shall be fixed in accordance with the Schedule of Fees applicable on the date on which the Request for Expert Determination is received by the Center.
- (b) The administration fee shall not be refundable.
- (c) The Center is not required to take any action on a Request for Expert Determination until it has received the administration fee in full.
- (d) If a party who has filed a Request for Expert Determination fails, within 15 calendar days after a reminder in writing from the Center, to pay the administration fee, it shall be deemed to have withdrawn its Request for Expert Determination.

## Fees of the Expert

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### Article 21

- (a) The amount and currency of the fees of the Expert and the modalities and timing of their payment shall be fixed by the Center, after consultation with the Expert and the parties.
- (b) The amount of the fees shall, unless the parties and the Expert agree otherwise, be calculated on the basis of the hourly or daily indicative rates set out in the Schedule of Fees applicable on the date on which the Request for Expert Determination is received by the Center, taking into account any amount concerned, the complexity of the matter referred to expert determination, any comparable rates for an expert in the relevant area of expertise and any other relevant circumstances of the case.

## Deposits

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### Article 22

- (a) The Center may, at the time of the appointment of the Expert, require each party to deposit an equal amount as an advance for the costs of the expert determination, including, in particular, the estimated fees of the Expert and the other expenses of the expert determination. The amount of the deposit shall be determined by the Center in consultation with the Expert.
- (b) In the course of the expert determination, the Center may require that the parties make supplementary deposits.
- (c) If a party fails, within 15 calendar days after a reminder in writing from the Center, to pay the required deposit, the Center shall inform the parties in order that any one of them may make the required payment. If the deposit is not made as required, the Center may terminate the expert determination.
- (d) After the completion or termination of the expert determination, the Center shall render an accounting to the parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

## Costs

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### Article 23

Unless the parties agree otherwise, the administration fee, the fees of the Expert, the expenses of the Expert and such other expenses as are necessary for the conduct of the expert determination shall be borne in equal shares by the parties.

## Exclusion of Liability

### Article 24

Except in respect of deliberate wrongdoing, the Expert, WIPO and the Center shall not be liable to a party for any act or omission in connection with the expert determination.

## Waiver of Defamation

### Article 25

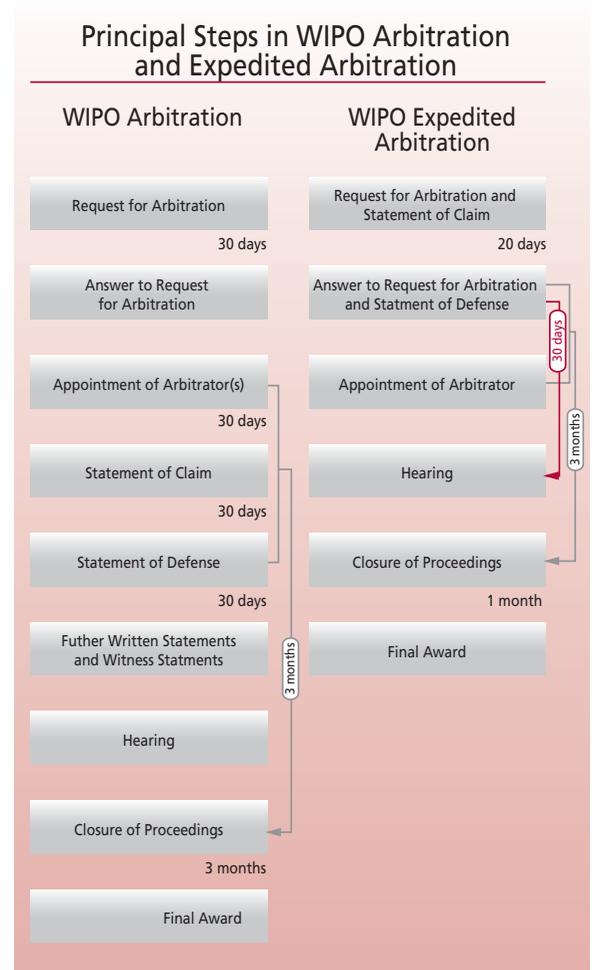
The parties and, by accepting appointment, the Expert agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the expert determination shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

## Suspension of Running of Limitation Period under Statute of Limitations

### Article 26

The parties agree that, to the extent permitted by applicable law, the running of any limitation period under any statute of limitations or any equivalent law shall be suspended in relation to the matter that is the subject of the expert determination from the date of commencement of the expert determination until the date of the completion or termination of the expert determination.

## WIPO ARBITRATION AND EXPEDITED ARBITRATION COMPARED



**COMPARISON TABLE: WIPO ARBITRATION AND EXPEDITED ARBITRATION RULES**

<b>ELEMENT</b>	<b>ARBITRATION</b>	<b>EXPEDITED ARBITRATION</b>
<b>Request for Arbitration</b>	May be accompanied by the Statement of Claim. (Art. 10)	Must be accompanied by the Statement of Claim. (Art. 10)
<b>Answer to the Request</b>	Must be submitted within 30 days of Respondent's receipt of the Request from the Claimant. (Art. 11) If the Claimant filed a Statement of Claim with the Request, the Statement of Defense may be submitted with the Answer. (Art. 12)	Must be submitted within 20 days of Respondent's receipt of the Request from the Claimant. (Art. 11) The Answer must be accompanied by the Statement of Defense, including any counter-claims. (Art. 12)
<b>Arbitral Tribunal</b>	One or more arbitrators may be appointed. (Art. 14) In the event of a party's failure to appoint an arbitrator or in the absence of party agreement, the Center is authorized to make the appointment pursuant to a list procedure. (Art. 19) Detailed articles regarding the composition and establishment of the Tribunal. (Arts. 14 to 20)	Only a sole arbitrator may be appointed. (Art. 14(a))  If the appointment of the sole arbitrator is not made within 15 days after the commencement of the arbitration, appointment is made by the Center. Center is not required to follow the list procedure. (Art. 14(b))
<b>Statement of Claim</b>	May be submitted with the Request, otherwise within 30 days following notification of the establishment of the Arbitral Tribunal. (Arts. 10 and 41)	Must be submitted with the Request. (Art. 10)
<b>Statement of Defense</b>	Must be submitted within 30 days after receipt of the Statement of Claim or within 30 days after receipt of notification of the establishment of the Tribunal, whichever is later. (Art. 42(a))	Must be submitted within 20 days from the date on which the Respondent receives the Request from the Claimant. (Arts. 11 and 12)
<b>Further Written Statements</b>	If a counter-claim or set-off has been made, the Claimant's reply must be submitted within 30 days following receipt thereof. (Art. 43(a))	If a counter-claim or set-off has been made, the Claimant's reply must be submitted within 20 days following receipt thereof. (Art. 37(a))

Table continues on next page

**COMPARISON TABLE: WIPO ARBITRATION AND EXPEDITED ARBITRATION RULES**

<b>ELEMENT</b>	<b>ARBITRATION</b>	<b>EXPEDITED ARBITRATION</b>
<b>Hearings</b>	Date, time and place of any hearing to be determined by the Tribunal. (Art. 53(b))  No limit specified as to the length of hearings.  No specific provisions regarding the submission of a post-hearing brief.	Any hearing must be convened within 30 days after the receipt by the Claimant of the Answer. (Art. 47 (b))  Except in exceptional circumstances, hearings may not exceed 3 days. (Art. 47(b))  Expectation that each party will bring to the hearing such persons as necessary to inform the Tribunal adequately of the dispute. (Art. 47 (b))  Specific provision allowing for the possibility of a post-hearing brief. (Art. 47(e))
<b>Tribunal Appointed Experts</b>	Time limit for expert's report to be set by the Tribunal. (Art. 55)	Expert's report must be submitted to the Tribunal within 30 days of receipt of the expert's terms of reference. (Art. 49(a))
<b>Closure of Proceedings</b>	Whenever reasonably possible, the proceedings should be declared closed within 9 months of either delivery of the Statement of Defense or the establishment of the Tribunal, whichever event occurs later. (Art. 63(a))	Whenever reasonably possible, the proceedings should be declared closed within 3 months of either delivery of the Answer to the Request and Statement of Defense or the establishment of the Tribunal, whichever event occurs later. (Art. 56(a))
<b>Timing of Final Award</b>	Final award should, whenever reasonably possible, be made within 3 months following closing of proceedings. (Art. 63(a))	Final award should, whenever reasonably possible, be made within 1 month following closing of proceedings. (Art. 56(a))
<b>Arbitration Fees</b>	Different fees apply to arbitrations conducted under the Arbitration Rules and the Expedited Arbitration Rules.	

## RECOMMENDED WIPO DISPUTE RESOLUTION CLAUSES

The following pages contain recommended contract clauses (for the submission of future disputes under a particular contract) and submission agreements (for the reference of an existing dispute) for the procedures administered by the WIPO Arbitration and Mediation Center (The diagram on page 2 of this booklet provides a graphic outline of these procedures.)

### Future Disputes

Mediation
Arbitration
Expedited arbitration
Expert determination
Mediation followed, in the absence of a settlement, by [expedited] arbitration
Mediation followed, in the absence of a settlement, by expert determination
Expert determination, binding unless followed by [expedited] arbitration

#### **Mediation**

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language]."

#### **Arbitration**

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination,

as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules. The arbitral tribunal shall consist of [three arbitrators][a sole arbitrator]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction]."

#### **Expedited Arbitration**

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim shall be decided in accordance with the law of [specify jurisdiction]."

#### **Expert Determination**

"Any dispute or difference between the parties arising under, out of or relating to [describe scope of the matter referred to expert determination] under this contract and any subsequent amendments of this contract shall be referred to expert determination in accordance with the WIPO Expert Determination Rules. The determination made by the expert shall [not] be binding upon the parties. The language to be used in the expert determination shall be [specify language]."

#### **Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration**

"Any dispute, controversy or claim arising under, out of or relating to this contract and any subsequent amendments of this contract, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall be submitted to mediation in accordance with the WIPO Mediation

Rules. The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

If, and to the extent that, any such dispute, controversy or claim has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute, controversy or claim shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute, controversy or claim referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]." (*\*The WIPO Expedited Arbitration Rules provide that the arbitral tribunal shall consist of a sole arbitrator.\**)

### **Mediation Followed, in the Absence of a Settlement, by Expert Determination**

"Any dispute or difference between the parties arising under, out of or relating to [describe scope of the matter referred to expert determination] under this contract and any subsequent amendments of this contract shall be submitted to mediation in accordance with the WIPO Mediation Rules. The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

If, and to the extent that, any such dispute or difference has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Expert Determination by either party, be referred to expert determination in accordance with the WIPO

Expert Determination Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute or difference shall, upon the filing of a Request for Expert Determination by the other party, be referred to expert determination in accordance with the WIPO Expert Determination Rules. The determination made by the expert shall [not] be binding upon the parties. The language to be used in the expert determination shall be [specify language]."

### **Expert Determination, Binding Unless Followed by [Expedited] Arbitration**

"Any dispute or difference between the parties arising under, out of or relating to [describe scope of the matter referred to expert determination] under this contract and any subsequent amendments of this contract shall be referred to expert determination in accordance with the WIPO Expert Determination Rules. The language to be used in the expert determination shall be [specify language].

The determination made by the expert shall be binding upon the parties, unless within [30] days of the communication of the determination, the matter referred to expert determination is, upon the filing of a Request for Arbitration by either party, referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator][three arbitrators].]\* The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute or difference referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]."

## Existing Disputes

Mediation
Arbitration
Expedited arbitration
Expert determination
Mediation followed, in the absence of a settlement, by [expedited] arbitration
Mediation followed, in the absence of a settlement, by expert determination
Expert determination, binding unless followed by [expedited] arbitration

### **Mediation**

"We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language]."

### **Arbitration**

"We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO Arbitration Rules:

[brief description of the dispute]

The arbitral tribunal shall consist of [three arbitrators] [a sole arbitrator]. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction]."

### **Expedited Arbitration**

"We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the WIPO

Expedited Arbitration Rules:

[brief description of the dispute]

The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute shall be decided in accordance with the law of [specify jurisdiction]."

### **Expert Determination**

"We, the undersigned parties, hereby agree to submit to expert determination in accordance with the WIPO Expert Determination Rules the following matter:

[brief description of the matter referred to expert determination]

The determination made by the expert shall [not] be binding upon the parties. The language to be used in the expert determination shall be [specify language]."

### **Mediation Followed, in the Absence of a Settlement, by [Expedited] Arbitration**

"We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following dispute:

[brief description of the dispute]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language]."

We further agree that, if, and to the extent that, the dispute has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Arbitration by either party, be referred to and finally determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute shall, upon the filing of a Request for Arbitration by the other party, be referred to and finally

determined by arbitration in accordance with the WIPO Expedited Arbitration Rules. The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]."

**Mediation Followed, in the Absence of a Settlement, by Expert Determination**

"We, the undersigned parties, hereby agree to submit to mediation in accordance with the WIPO Mediation Rules the following matter:

[brief description of the dispute or difference between the parties]

The place of mediation shall be [specify place]. The language to be used in the mediation shall be [specify language].

We further agree that, if, and to the extent that, any such matter has not been settled pursuant to the mediation within [60][90] days of the commencement of the mediation, it shall, upon the filing of a Request for Expert Determination by either party, be referred to expert determination in accordance with the WIPO Expert Determination Rules. Alternatively, if, before the expiration of the said period of [60][90] days, either party fails to participate or to continue to participate in the mediation, the dispute or difference shall, upon the filing of a Request for Expert Determination by the other party, be referred to expert determination in accordance with the WIPO Expert Determination Rules. The arbitral tribunal shall consist of [a sole arbitrator] [three arbitrators]. The determination made by the expert shall [not] be binding upon the parties. The language to be used in the expert determination shall be [specify language]."

**Expert Determination, Binding Unless Followed by [Expedited] Arbitration**

"We, the undersigned parties, hereby agree to submit to expert determination in accordance with the WIPO Expert Determination Rules the following matter:

[brief description of the matter referred to expert determination]

The language to be used in the expert determination shall be [specify language].

We further agree that the determination made by the expert shall be binding upon the parties, unless within [30] days of the communication of the determination, the matter referred to expert determination is, upon the filing of a Request for Arbitration by either party, referred to and finally determined by arbitration in accordance with the WIPO [Expedited] Arbitration Rules. [The arbitral tribunal shall consist of [a sole arbitrator][three arbitrators].]\* The place of arbitration shall be [specify place]. The language to be used in the arbitral proceedings shall be [specify language]. The dispute or difference referred to arbitration shall be decided in accordance with the law of [specify jurisdiction]." (*\*The WIPO Expedited Arbitration Rules provide that the arbitral tribunal shall consist of a sole arbitrator.*)

## SCHEDULE OF FEES AND COSTS

### Mediation<sup>2</sup>

(All amounts are in United States dollars)

Administration Fee	Mediator's Fees (*)	
0.10% of the value of the mediation, subject to a maximum of \$10,000	\$300-\$600 per hour	\$1,500-\$3,500 per day

(\*) Indicative rates

1. The amount of the administration fee shall be 0.1% of the value of the mediation, subject to a maximum administration fee of \$10,000.
2. The value of the mediation is determined by the total value of the amounts claimed.
3. Where the Request for Mediation does not indicate any claims for a monetary amount or the dispute concerns issues that are not quantifiable in monetary amounts, an administration fee of \$1,000 shall be payable, subject to adjustment. The adjustment shall be made by reference to the administration fee that the Center, after consultation with the parties and the mediator, determines in its discretion to be appropriate in the circumstances.
4. Any monetary amounts in dispute expressed in currencies other than United States dollars shall, for the purposes of calculating the administration fee, be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Request for Mediation.

<sup>2</sup> Any changes to the Schedule of Fees and Costs are announced in the Center's website at <http://www.wipo.int/amc>

### Arbitration/Expedited Arbitration<sup>3</sup>

(All amounts are in United States dollars)

Type of Fee	Amount in Dispute	Expedited Arbitration	Arbitration
Registration Fee	Any Amount	\$1,000	\$2,000
	Up to \$2.5 M	\$1,000	\$2,000
	Over \$2.5 M and up to \$10 M	\$5,000	\$10,000
Administration Fee*	Over \$10 M	\$5,000 +0.05% of amount over \$10 M up to a maximum fee of \$15,000	\$10,000 +0.05% of amount over \$10 M up to a maximum fee of \$25,000
	Arbitrator(s) Fees*	Up to \$2.5 M	\$20,000 (fixed fee)
Over \$2.5 M and up to \$10 M		\$40,000 (fixed fee)	
Over \$10 M		As agreed by the Center in consultation with the parties and the arbitrator	Indicative rate(s) \$300 to \$600 per hour

\* Each bracket indicates the total amount of the fees payable in a dispute, e.g. the administration fee payable in an expedited Arbitration when the amount in dispute is \$5 million is \$5,000 (and not a fee of \$6,000 which would have resulted from adding the fees of \$5,000 and \$1,000).

1. The Center may set-off all or part of the administration fees paid to it in connection with a WIPO mediation or a WIPO expert determination against the registration and administration fees payable to the Center in connection with a WIPO arbitration regarding the same dispute.
2. Prior to the establishment of the arbitral tribunal, the Center shall fix an arbitrator's hourly or daily fee rate, in consultation with the parties and the arbitrator. In so doing, the Center shall take into consideration such factors as the amounts in dispute, the number of parties, the complexity of the dispute and the status and any special qualifications required of the arbitrator.

<sup>3</sup> Any changes to the Schedule of Fees and Costs are announced in the Center's website at <http://www.wipo.int/amc>

3. An arbitrator shall be required to maintain a detailed and accurate record of the work done and the time spent on the arbitration. Following the termination of the arbitration, a copy of such records shall be provided to the parties and the Center, together with the arbitrator's invoice.
4. After consulting with the parties and the arbitral tribunal, the Center shall determine the final amount to be paid to the sole arbitrator or each of the respective amounts to be paid to the presiding arbitrator and the other members of a three-member tribunal, taking into consideration the hourly or daily rates and maximum rates and other factors such as the complexity of the subject matter of the dispute and of the arbitration, the total time spent by the arbitrator, the diligence of the arbitral tribunal and the rapidity of the arbitration proceedings.
5. For the purposes of calculating the fees, the amount of claims expressed in currencies other than United States dollars shall be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Request for Arbitration.
6. For the purpose of calculating the fees, the value of any counterclaim should be added to the amount of the claim.
7. Only paragraphs 1, 3, 5 and 6 above apply to Expedited Arbitration proceedings.

## Expert Determination<sup>4</sup>

(All amounts are in United States dollars)

Administration Fee	Expert's Fees (*)	
\$1,000 +0.1% of amount over \$1 M up to a maximum fee of \$10,000	\$300-\$600 per hour	\$1,500-\$3,500 per day

(\*) Indicative rates

1. Where the Request for Expert Determination does not indicate a monetary amount or where the matter referred to expert determination concerns issues that are not quantifiable in monetary amounts, an administration fee of \$1,000 shall be payable, subject to adjustment. The adjustment shall be made by reference to the administration fee that the Center, after consultation with the parties and the Expert, determines in its discretion to be appropriate in the circumstances.
2. The Center may set-off all or part of the administration fee paid to it in connection with a WIPO expert determination against the registration and administration fees payable to the Center in connection with a WIPO arbitration regarding the same dispute.
3. Prior to the appointment of the Expert, the Center shall fix an Expert's hourly or daily fee rate, in consultation with the parties and the Expert. In so doing, the Center shall take into account any amount concerned, the complexity of the matter referred to expert determination, the Expert's qualifications, any comparable rates for an expert in the relevant area of expertise, and any other relevant circumstances of the case.

<sup>4</sup> Any changes to the Schedule of Fees and Costs are announced in the Center's website at <http://www.wipo.int/amc>

4. The Expert shall maintain a detailed and accurate record of the work done and the time spent on the expert determination, as well as of any expenses made in connection with the expert determination. Following the completion or the termination of the expert determination, a copy of such records shall be provided to the parties and the Center, together with the Expert's invoice.
  
5. Any monetary amounts expressed in currencies other than United States dollars shall, for the purposes of calculating the administration fee, be converted to amounts expressed in United States dollars on the basis of the official United Nations exchange rate prevailing on the date of submission of the Request for Expert Determination.