

Draft Version 1.06

NORDIC ARBITRATION CENTRE  
of the Iceland Chamber of Commerce

ARBITRATION RULES 2013

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## MODEL ARBITRATION CLAUSE

Any dispute, controversy, or claim arising out of, or in relation to, this contract, including the validity, invalidity, breach or termination thereof, shall be resolved by arbitration in accordance with the Arbitration Rules of the Nordic Arbitration Centre of the Iceland Chamber of Commerce in force on the date on which the arbitration is commenced.

Recommended additions:

The number of arbitrators shall be [●].

The seat of arbitration shall be [●].

The arbitral proceedings shall be conducted in [●].

This contract shall be governed by the substantive law of [●].

**ARBITRATION RULES OF THE NORDIC ARBITRATION CENTRE OF THE  
ICELAND CHAMBER OF COMMERCE**

Adopted by the board of directors of the Iceland Chamber of Commerce on [●] 2013.  
Adopted by the board of directors of the Nordic Arbitration Centre of the Iceland Chamber  
of Commerce on [●] 2013 and in force as of [●] 2013.

Under any arbitration agreement referring to the Arbitration Rules of the Nordic  
Arbitration Centre of the Iceland Chamber of Commerce (the “Rules”) the parties shall  
be considered to have agreed that the following rules, or such amended rules, in force  
on the date of the commencement of the arbitration shall be applied, subject to whatever  
modifications the parties may adopt in writing. The Rules include the Schedule of Costs  
in effect at the commencement of the arbitration, as may be separately amended from  
time to time by the board of directors of the Nordic Arbitration Centre of the Iceland  
Chamber of Commerce.

If the parties have provided for arbitration of a dispute by the Nordic Arbitration Centre  
of the Iceland Chamber of Commerce, the Court of Arbitration of the Iceland Chamber  
of Commerce or the Iceland Chamber of Commerce without designating particular rules,  
the arbitration shall be governed by these Rules, as in effect of the date of  
commencement of the arbitration, subject to whatever modifications the parties may  
adopt in writing.

These Rules govern the arbitration; expect that, where any such rule is in conflict with  
any mandatory provision of the law applicable to the arbitration, that provision shall  
prevail. In any case, the principles of due process and equal treatment of the parties shall  
apply.

This version of the Rules shall come into force on [●] 2013 and, unless the parties have  
agreed otherwise, shall apply to all arbitral proceedings in which the Request for  
Arbitration is submitted on or after that date.

**ARBITRATION RULES OF THE NORDIC ARBITRATION CENTRE  
OF THE ICELAND CHAMBER OF COMMERCE**

**GENERAL PROVISIONS**

**Article 1 – About the NAC**

- (1) The Nordic Arbitration Centre of the Iceland Chamber of Commerce (the “NAC”) is the independent arbitration body responsible for the administration of disputes in accordance with these Rules; and other procedures or rules agreed upon by the parties.
- (2) The NAC does not itself resolve disputes. It administers the resolution of disputes by arbitral tribunals, in accordance with these Rules. The NAC is the only body authorised to administer arbitrations under these Rules.
- (3) The NAC is composed of a board of directors (the “NAC Board”) and a secretariat (the “Secretariat”). Further information on the organisation of the NAC are set out in **Appendix A**.

**Article 2 – Decisions by the NAC Board**

- (1) The NAC Board shall render decisions as provided for under these Rules and has general competence over all matters relating to the administration of arbitral proceedings according to these Rules and issues all orders relating thereto, without prejudice to the Secretariat’s function under these Rules.
- (2) The decisions of the NAC Board with respect to all matters relating to the arbitration, including but not limited to the appointment, confirmation, challenge or replacement of arbitrators, are to be treated as administrative in nature and shall be final and binding upon the parties and the Arbitral Tribunal. The NAC Board shall not be required to give any reasons for its decisions.
- (3) To the extent permitted by the law of the seat of arbitration, the parties shall be taken to have waived any right of appeal or review in respect of any decisions by the NAC Board to any state court or other judicial authority.
- (4) In circumstances where the NAC Board or any other body operating under the auspices of NAC shall appoint the Arbitral Tribunal, in part or in whole, the arbitration agreement shall be treated for all intents and purposes as a written agreement by the parties for the appointment of the Arbitral Tribunal by the NAC.

**Article 3 – Written Submissions, Notifications and Communications**

- (1) Any notice or other communication that may be or is required to be given by, or to, a party under these Rules shall be in writing.

- (2) All notifications or communications from the NAC Board, the Secretariat and the Arbitral Tribunal shall be in writing and made to the last known address of the party or its representatives for whom the same are intended, as notified either by the party in question or by the other party. Any notification or communication may be made by delivery against receipt, registered post, courier, facsimile, email, or any other means of telecommunication that provides or allows for a record of its transmission. Delivery by electronic means such as facsimile or email may only be made to an address so designated or authorized.
- (3) If an address, either physical or electronic, has been designated by a party specifically for this purpose any notice shall be delivered to that party at that address, and is so delivered be deemed to have been received. In the absence of such designation a notice or communications are:
  - (i) Received if they are physically delivered to the addressee; or
  - (ii) Deemed to have been received if they are delivered at the place of business, habitual residence or mailing address of the addressee.
- (4) All pleadings and other written communications submitted by any party, as well as documents annexed thereto, shall be supplied in a number of copies sufficient to provide one copy for each party, plus one copy for each arbitrator, and one for the Secretariat.
- (5) Documents presented by any party, including the arbitration agreement, shall be submitted in the form of original documents or copies thereof.

#### **Article 4 – Calculation of Time Periods**

- (1) For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following day when a notice or 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 occurring during the running of the period of time are included in the calculating period.
- (2) The NAC Board may on its own initiative, or pursuant to a request from a party, extend or shorten any time period which is fixed by these Rules or has been set by the Arbitral Tribunal or the Secretariat for a party to comply with a particular order.

### **COMMENCEMENT OF PROCEEDINGS**

#### **Article 5 – Request for Arbitration**

- (1) Claimant shall file a Request for Arbitration (“the Request”) with the Secretariat.
- (2) The Secretariat shall notify the Claimant and Respondent of the receipt of the Request and the date of such receipt.

- (3) The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.
- (4) The Request shall be signed by the Claimant or by its counsel with power of attorney and shall as a minimum contain or be accompanied by the following information:
  - (i) the name in full, description, address and other contact details of each of the parties and their respective legal representatives, including, if known, an email address, as well as any telephone and facsimile numbers;
  - (ii) the name in full, description, address and other contract details of any person representing Claimant in the arbitration and the power of attorney conferred on counsel;
  - (iii) an explicit and unconditional demand that the dispute be referred to arbitration;
  - (iv) a copy or description of the arbitration agreement invoked;
  - (v) a brief description of the nature and circumstances of the dispute and identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (vi) a brief description of the claim and indication of the amount involved, if any, and the relief or remedy sought;
  - (vii) a brief description of the basis upon which Claimants claims are made;
  - (viii) identification of the principal evidence Claimant deems necessary to substantiate its claims and identification of any evidence that still has not been obtained;
  - (ix) comments and any observations or proposals regarding the number of arbitrators, the applicable rules of law and the seat and language of arbitration; and if applicable, the name in full, address and other contact details, including if known, an email address, as well as any telephone and facsimile numbers of the arbitrator nominated by Claimant.
- (5) The Request may also include:
  - (i) A proposal for the nomination of a sole arbitrator.
  - (ii) A Statement of Claim pursuant to Article 28 of these Rules.
- (6) If, according to the arbitration agreement, Claimant is to nominate an arbitrator, failure to nominate an arbitrator in the Request, or to nominate an arbitrator within the applicable period of time, shall constitute an irrevocable waiver of that party's opportunity to participate in the composition of the Arbitral Tribunal.
- (7) The constitution of the Arbitral Tribunal shall not be hindered by any controversy with respect to the sufficiency of the Request, which shall be finally resolved by the Arbitral Tribunal.



**Article 6 – Registration Fee**

- (3) The Request must be accompanied by the payment of a Registration Fee determined in accordance with the Schedule of Costs (**Appendix B**) in force on the date when the Request is filed. The Registration Fee is non-refundable.
- (4) If Claimant has not paid the Registration Fee within five (5) days from filing the Request, the Secretariat shall dismiss the Request. Such dismissal does not preclude the Claimant from subsequently filing another Request on the same issue.

**Article 7 – Response to the Request**

- (1) The Secretariat shall send the Request and the documents attached thereto to the Respondent within five (5) working days from the filing, accompanied by the applicable version of these Arbitration Rules pursuant to Article 53 of these Rules. Also, the Secretariat shall in such communication explain how Respondent's rights will be effected if it does not respond to the Request.
- (2) Within 15 days of the Secretariat's notification to Respondent, the Respondent shall submit a Response to the Request ("the Response") to the Secretariat.
- (3) The Response shall be signed by the party or its counsel with power of attorney and shall as a minimum contain or be accompanied by the following information:
  - (i) the name in full, description, address and other contact details of Respondent and its legal representative, including an email address, as well as any telephone and facsimile numbers;
  - (ii) the name in full, description, address and other contract details of any person representing Respondent in the arbitration and the power of attorney conferred on counsel;
  - (iii) any plea that an Arbitral Tribunal to be constituted under these Arbitration Rules lacks jurisdiction, including objections concerning the existence, validity or applicability of the arbitration agreement. However, failure to raise any objections regarding the jurisdiction of the Arbitral Tribunal shall not preclude Respondent from subsequently raising such objections at any time up to the submission of the Statement of Defence, pursuant to Article 26(2) of these Rules;
  - (iv) an admission or denial of the relief sought by Claimant in the Request;
  - (v) a preliminary statement of any counterclaims or set-offs, including a brief description of the counterclaim and indication of the amount involved, if any, and the relief or remedy sought;
  - (vi) a brief description of the basis upon which Respondents counterclaims are made;
  - (vii) identification of the principal evidence Respondent deems necessary to substantiate its defence and / or counterclaims and identification of any evidence that still has not been obtained;

- (viii) comments and any observations or proposals regarding the number of arbitrators, the applicable rules of law and the seat and language of arbitration; and if applicable, the name in full, address and other contact details, including if known, an email address, as well as any telephone, facsimile and telex numbers of the arbitrator nominated by Respondent.
- (4) The Response may also include:
- (i) A proposal for the nomination of a sole arbitrator.
  - (ii) A Statement of Defence pursuant to Article 28 of these Rules.
- (5) After having received the Response the Secretariat shall, within five (5) working days, send a copy of the Response and the documents attached thereto to the Claimant.
- (6) In the event that the Respondent does not file a Response, the arbitration shall proceed without such Response. However, a failure to send a Response shall not in itself preclude the Respondent from maintaining a counterclaim in the arbitration. Conversely, if according to the arbitration agreement Respondent is to nominate an arbitrator, failure to submit a Response or otherwise to nominate an arbitrator within the applicable period of time shall constitute an irrevocable waiver of that party's opportunity to participate in the composition of the Arbitral Tribunal.

#### **Article 8 – *Prima facie* examination of jurisdiction**

All cases referred to arbitration under these Rules shall forthwith be referred to the NAC Board, which shall within three (3) days examine whether an arbitration agreement under these Rules exists and shall decide *prima facie* whether and to what extent the arbitration shall proceed and be referred to the Arbitral Tribunal. Otherwise all decisions regarding the Arbitral Tribunal's jurisdiction shall be taken by the Arbitral Tribunal itself, pursuant to Article 26 of these Rules.

#### **Article 9 – Dismissal**

The NAC Board shall dismiss a case, in whole or in part, if:

- (i) there is a manifest lack of jurisdiction over the dispute;
- (ii) the Advance on Cost of Arbitration is not paid in full pursuant to Article 48 of these Rules; or
- (iii) a party fails to comply with a request for further details pursuant to Article 29 of these Rules.

#### **Article 10 – Consolidation**

The NAC Board may, at the request of a party, consolidate two or more arbitrations pending under these Rules into a single arbitration provided that:

- a) all the parties concerned have agreed to the consolidation; or
- b) the claims in the arbitrations are made under the same arbitration agreement; or

- c) the arbitrations arise from the same legal relationship and the NAC Board considers the claims to be compatible.

## THE ARBITRAL TRIBUNAL

### Article 11 – Number of arbitrators

- (1) The term “Arbitral Tribunal” in these Rules shall be deemed to include a sole arbitrator or all the arbitrators when more than one arbitrator are to resolve the dispute referred to arbitration.
- (2) The parties may agree on the number of arbitrators. Where the parties have not agreed on the number of arbitrators, the Arbitral Tribunal shall consist of a sole arbitrator. Nevertheless, where the parties have not agreed on the number of arbitrators, the NAC Board can, at the request of any party or at its own initiative decide that the dispute is to be decided by three arbitrators. When making such decision, regard is to be had to the complexity of the case and / or the economic value of the dispute.
- (3) Where the parties have not agreed on the number of arbitrators and the NAC Board has decided that dispute is to be decided by three arbitrators, the Secretariat shall notify all parties about the NAC Board’s decision. In the notification to Claimant the Secretariat shall give Claimant 10 days from the receipt of the notification to nominate an arbitrator for confirmation. After having received notification about such nomination from Claimant the Secretariat shall notify the Respondent and give Respondent 10 days from the receipt of the notification to nominate an arbitrator for confirmation. If a party fails to nominate an arbitrator within this period of time, such failure shall constitute an irrevocable waiver of that party’s opportunity to participate in the composition of the Arbitral Tribunal and the appointment shall be made by the NAC Board.

### Article 12 – Appointment and confirmation of arbitrators

- (1) The NAC Board is the only authority capable of confirming and appointing arbitrators under these Rules, subject only to Article 12(6) of these Rules. If the parties have agreed that any arbitrator is to be appointed by one or more of them or by an appointing authority other than the NAC, that agreement shall be treated as an agreement to nominate an arbitrator for all purposes. The NAC Board may refuse to appoint any such nominee if it determines that he is not suitable or independent or impartial.
- (2) The parties may jointly nominate a sole arbitrator for confirmation, where the parties have agreed that the dispute shall be resolved by a sole arbitrator or have not in the arbitration agreement agreed on the number of arbitrators, subject to Article 11(2) of these Rules. If the parties fail to jointly nominate a sole arbitrator within 10 days from the date when the Request has been received by the Respondent, or within such additional time as may be fixed by the Secretariat, the sole arbitrator shall be appointed by the NAC Board.

- (3) Where the parties have agreed in writing that the dispute shall be decided by three arbitrators, the parties shall each nominate in the Request and the Response, respectively, one arbitrator for confirmation. If a party fails to nominate an arbitrator within 10 days from the date when the Request or the Response, respectively, has been received by the Secretariat, the NAC Board shall appoint the arbitrator and such appointment shall be binding on the party that failed to appoint an arbitrator.
- (4) Where the dispute is to be referred to three arbitrators, either pursuant to Article 11(3) or Article 12(3) of these Rules, the third arbitrator, who will act as the Presiding Arbitrator, shall be appointed by the NAC Board. However, the parties may agree upon another procedure for such appointment, in which case the nomination will be subject to the confirmation of the NAC Board pursuant to Article 12(1) of these Rules. Should such a procedure not result in a nomination within 10 days from the date the second co-arbitrator was confirmed, or any other time limit fixed by the Secretariat, the Presiding Arbitrator shall be appointed by the NAC Board.
- (5) When confirming or appointing arbitrators the NAC Board shall consider:
  - (i) any procedure for appointment of arbitrators and any particular method or criteria of selection established by the parties in the arbitration agreement;
  - (ii) nature and circumstances of the dispute;
  - (iii) the applicable law and language of the arbitration;
  - (iv) the prospective arbitrator's nationality, residence and other relationships with the countries of which the parties or the other arbitrators are nationals or in which they are domiciled;
  - (v) the prospective arbitrator's availability and ability to conduct arbitral proceedings in accordance with the Rules.
- (6) The Secretary General may confirm as co-arbitrators, sole arbitrators and Presiding Arbitrators persons nominated by the parties or pursuant to their particular agreements, provided that the Statement of Independence submitted by the prospective arbitrator contains no qualification regarding impartiality or independence and has not given rise to objections by the parties. Such confirmation shall be reported to the NAC Board at its next session. If the Secretary General considers that a prospective co-arbitrator, sole arbitrator or Presiding Arbitrator should not be confirmed, the matter shall be submitted to the NAC Board for a final decision.
- (7) If the parties are of different nationalities, the sole arbitrator or the Presiding Arbitrator shall be of a nationality other than those of the parties, unless otherwise agreed by the parties. For these purposes the nationality of the parties shall be understood to include that of controlling shareholders or interests. However, in suitable circumstances and provided that none of the parties objects within the time limit fixed by the Secretariat, the sole arbitrator, or the Presiding arbitrator may be chosen from a country of which any of the parties is a national.

- (8) The Arbitral Tribunal shall be considered constituted on the date the NAC Board confirms the appointment of the last arbitrator. As soon as all the members of the Arbitral Tribunal have been appointed by the NAC Board, the Secretariat shall notify the parties of the constitution of the Arbitral Tribunal, identifying the arbitrators and which one of them is the Presiding Arbitrator.
- (9) If according to this Article, the NAC Board refuses to appoint an arbitrator that has been nominated by the parties, whether jointly or separately, the same party shall nominate another arbitrator within a period of 10 days from receiving a notification about the NAC Board's decision. If the NAC Board also refuses to confirm the second nominee for reasons stated in this Article 12 of these Rules the NAC Board shall proceed and directly appoint a suitable arbitrator.

### **Article 13 – Appointment of Arbitrators in Multi-Party Arbitration**

- (1) Where there are multiple Claimants and / or Respondents and the Arbitral Tribunal is to consist of a sole arbitrator all disputing parties shall, jointly, nominate a sole arbitrator for confirmation pursuant to Article 12 of these Rules. If the parties fail to make such joint nomination within the period of time stipulated in Article 12 of these Rules, or within any other period of time fixed by the Secretariat, the NAC Board shall appoint the sole arbitrator.
- (2) Where the Arbitral Tribunal is to consist of three arbitrators and where there are multiple Claimants and / or Respondents, if the parties are able, when filing the Request or the Response to form two sides as Claimant and Respondent, respectively, for the purposes of the formation of the Arbitral Tribunal, each group shall jointly nominate an arbitrator for confirmation, pursuant to Article 12 of these Rules, and the NAC Board shall appoint the Presiding Arbitrator. If either side fails to make such joint nomination within the period of time stipulated in Article 12 of these Rules, or within any other period of time fixed by the Secretariat, the NAC Board shall appoint the entire Arbitral Tribunal, without considering any nominations made by any one of the parties.

### **Article 14 – Acceptance and disclosure by the arbitrator(s)**

- (1) The Secretariat shall without delay inform the arbitrators of their nomination and fix a time limit for the arbitrators to give notice of their acceptance.
- (2) When giving a notice of their acceptance each arbitrator must submit in writing a Statement of Independence where the arbitrator shall disclose any circumstances that are known to him or her that are likely to give rise to justifiable doubts as to his or her impartiality or independence. The Secretariat may at any time throughout the arbitral process either on its own initiative or pursuant to a request of a party require an arbitrator to submit an up to date Statement of Independence.
- (3) Each arbitrator must also when giving notice of acceptance provide the Secretariat with a resume containing information about his or her professional and educational background and past and present professional positions.

- (4) The Secretariat shall forward a copy of the Statement of Independence and the resume provided by each arbitrator to the parties and fix a time limit for any comments which the parties may wish to make.
- (5) By accepting an appointment to serve as an arbitrator under these Rules the arbitrator confirms his or her availability and undertakes an obligation to carry out his or her responsibilities in accordance with the Rules and agrees that his or her fee rates will conform to the Schedule of Costs.

#### **Article 15 – Arbitrators’ impartiality and independence**

- (1) Every arbitrator participating in arbitration under these Rules must be and remain throughout the arbitral process impartial and independent.
- (2) Arbitrators are prohibited to act as advocates for any party and it is forbidden for arbitrators to offer advice to any party pertaining to the subject matter of the dispute.
- (3) Any *ex parte* communications between an arbitrator and a party are strictly forbidden after the constitution of the Arbitral Tribunal.
- (4) An arbitrator shall immediately inform the parties, the other arbitrators and the Secretariat in writing where any circumstances which may give rise to justifiable doubts as to his or her impartiality or independence arise during the course of the arbitral process.

#### **Article 16 – Challenge to Arbitrators**

- (1) A party may challenge any arbitrator if circumstances exist which give rise to justifiable doubts as to the arbitrator’s impartiality or independence or if the arbitrator does not possess, or ceases to possess, qualifications agreed on by the parties. A party may challenge an arbitrator it has appointed, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made.
- (2) A reasoned challenge against an arbitrator, specifying the facts and circumstances on which the challenge is based, shall be submitted to the Secretariat in writing within 15 days from the date when a party becomes aware of any circumstances that give rise to a challenge.
- (3) If a party fails to submit a challenge to an arbitrator within 15 days from the date a party becomes aware of any circumstances that give rise to a challenge, it shall be deemed to constitute a waiver of the right to make the challenge on such grounds.
- (4) The Secretariat shall communicate a notice of the challenge to all other parties, to the arbitrator who is challenged and to other members of the Arbitral Tribunal and shall give each of them an opportunity to comment on the challenge in writing within 7 days from receipt of the notice. Any comments made to the Secretariat

regarding the challenge shall be communicated forthwith to the parties and to the Arbitral Tribunal.

- (5) If an arbitrator has been challenged by a party, and all other parties agree to the challenge, the arbitrator shall resign. The arbitrator may also, after becoming aware of the challenge, withdraw from office. In neither case does this imply acceptance of the validity of the grounds upon which the challenge is based.
- (6) If, within 7 days from the date of the notice of challenge sent by the Secretariat, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the NAC Board shall take the challenge under consideration and subsequently make the final decision on the challenge.

#### **Article 17 – Revocation of arbitrator’s appointment**

- (1) The NAC Board shall, on its own initiative or upon request from any party or member of the Arbitral Tribunal, revoke an arbitrator’s appointment where:
  - (i) the NAC Board accepts a reasoned resignation of an arbitrator, stating the grounds of which his resignation are based;
  - (ii) the NAC Board accepts the removal of an arbitrator agreed upon by all parties;
  - (iii) the NAC Board upholds a challenge made by a party against an arbitrator;
  - (iv) an arbitrator acts in deliberate violation of these Rules or does not act fairly and impartially as between the parties or does not conduct or participate in the arbitral process with reasonable diligence, avoiding unnecessary delay or expense;
  - (v) an arbitrator dies, falls seriously ill, refuses or becomes unfit to act, or is otherwise prevented from fulfilling his or her duties in an adequate manner.
- (2) Before the NAC Board revokes the appointment of an arbitrator, the Secretariat shall give the parties and the members of the Arbitral Tribunal an opportunity to submit comments in writing. Such comments shall be communicated to the parties and to the members of the Arbitral Tribunal.
- (3) In the event that an arbitrator’s appointment is revoked, the NAC Board shall decide upon the amount of fees and expenses, if any, due for the former arbitrator’s services, taking into account the work done and the reasons for the revocation of the arbitrator’s appointment.

#### **Article 18 – Replacement of Arbitrators**

- (1) An arbitrator shall be replaced by another arbitrator where:
  - (i) an arbitrator does not accept an appointment,
  - (ii) an arbitrator is not confirmed pursuant to Article 12 of these Rules; or

- (iii) the appointment of an arbitrator has been revoked pursuant to Article 17 of these Rules.
- (2) A replacement arbitrator shall be appointed by the same authority that appointed the substituted arbitrator. If the replacement arbitrator has not been appointed by the original appointing authority within a period of time fixed by the Secretariat the NAC Board shall appoint the replacement arbitrator. If the arbitrator substituting the replaced arbitrator must also be replaced the NAC Board shall directly appoint such arbitrator.
- (3) Where the Arbitral Tribunal consists of three or more arbitrators, the NAC Board may, in exceptional circumstances and only after having invited the parties and the remaining members of the Arbitral Tribunal to comment in writing, decide that the remaining arbitrators shall continue the arbitration. In making such decision the NAC Board shall take into account the views of the remaining arbitrators and of the parties, the stage of the arbitration and such other circumstances it considers appropriate.
- (4) Where an arbitrator has been replaced, the reconstituted Arbitral Tribunal shall determine if and to what extent prior proceedings are to be repeated.

#### **Article 19 – Communications between the parties and the Arbitral Tribunal**

- (1) All communications between the parties and the Arbitral Tribunal shall be made through the Secretariat. However, the Arbitral Tribunal may issue a decision in writing that communications shall take place directly between the Arbitral Tribunal and the parties provided that simultaneous copies are sent to the Secretariat.
- (2) All communications sent by the Secretariat to one party on behalf of the Arbitral Tribunal, or directly by the Arbitral Tribunal, shall also be sent in a copy to each of the other parties, otherwise the provisions of Article 3 shall apply with regards to such communications.

### **THE PROCEEDINGS BEFORE THE ARBITRAL TRIBUNAL**

#### **Article 20 – Referral to the Arbitral Tribunal**

As soon as the Arbitral Tribunal has been constituted, the Secretariat shall transmit the file and refer the case to the Arbitral Tribunal, provided that the Advance on Costs has been paid in full pursuant to Article 48 of these Rules.

#### **Article 21 – Rules governing the proceedings and the conduct of the arbitration**

- (1) Unless otherwise agreed by the parties, these Rules shall govern the proceedings before the Arbitral Tribunal.
- (2) Subject to any agreement made between the parties in writing and these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers



appropriate, provided that the parties are treated with equality and that an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The Arbitral Tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.

- (3) The Arbitral Tribunal may, after consulting with the parties, appoint a tribunal secretary. The tribunal secretary is subject to the same disclosure as is required of arbitrators pursuant to Article 14 of these Rules and shall be and remain throughout the proceedings impartial and independent pursuant to Article 15 of these Rules.
- (4) If any question of procedure arises which is not covered by the parties' agreement, these Rules or any rules agreed by the parties, then the Arbitral Tribunal shall rule on the question.
- (5) If there are conflicting rights under these Rules the Arbitral Tribunal shall resolve the issue from the perspectives of fairness and efficiency in order to preserve the integrity of the arbitral process.
- (6) The parties undertake to comply with any order made by the Arbitral Tribunal.

#### **Article 22 – Seat of arbitration**

- (1) If the parties have not previously agreed on the seat of arbitration, the seat of arbitration shall be Reykjavik, Iceland, unless and until the NAC Board determines in view of all the circumstances, and after having consulted with the parties, that another seat is more appropriate.
- (2) The Arbitral Tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the Arbitral Tribunal may also conduct hearings and meetings at any location it considers appropriate. If any hearing, meeting or deliberation is held elsewhere than the seat of arbitration, the arbitration shall be deemed to have taken place at the seat of arbitration. Regardless of whether meetings of the Arbitral Tribunal or hearings are held elsewhere than at the seat of arbitration, the arbitration shall be treated for all purposes as arbitration conducted at the seat of arbitration.
- (3) The award shall be deemed to have been made at the seat of arbitration.

#### **Article 23 – Language of the Arbitration**

- (1) Unless otherwise agreed upon by the parties, the language of the arbitration shall be the language or languages of the arbitration agreement. Nevertheless, having due regard to all relevant circumstances, the Arbitral Tribunal may decide otherwise, and shall when doing so give the parties an opportunity to submit comments in that regard.

- (2) The determination of the language of the arbitration shall apply to the statement of claim, the statement of defence, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
- (3) The Arbitral Tribunal may accept the submission of documents in a language other than the language or languages of the arbitration. Such documents shall be accompanied by a translation into the language or languages of the arbitration, unless the Arbitral Tribunal considers it unnecessary.
- (4) When the language of the arbitration is other than Icelandic, all notices and communications sent to the parties and the Arbitral Tribunal by the NAC and the Secretariat shall be in the English language.

#### **Article 24 – Applicable law**

- (1) The parties shall be free to agree upon the law(s) or the rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. Failing such agreement, the Arbitral Tribunal shall apply the law(s) or the rules of law which it considers most appropriate. When determining what law(s) or rules of law are most appropriate the Arbitral Tribunal shall consider the nature of the relationship between the parties, rules of law with which the dispute has the closest connection and any other relevant circumstances.
- (2) In all cases, the Arbitral Tribunal shall decide this in accordance with the terms of the contract, if any, and shall take into account any usages of trade applicable to the matter.
- (3) Any designation made by the parties to the law of a given state shall be deemed to refer to the substantive law of that state and not to its conflict of law rules.
- (4) The Arbitral Tribunal shall only be allowed to assume the powers of an *amiabile compositeur* or decide the dispute *ex aequo et bono* if the parties have expressly agreed in writing to give it such powers.

#### **Article 25 – Representation**

- (1) Any party may be represented by legal practitioners or any other representatives chosen by it, subject to the provisions of this Article. The names and addresses of such persons must be communicated to all parties and to the Arbitral Tribunal. However, after the constitution of the Arbitral Tribunal, any addition by a party of a representative must be approved beforehand by the Arbitral Tribunal. Before granting such approval, the Arbitral Tribunal shall consult with the other parties on whether the addition of a representative will entail any adverse procedural implications. The Arbitral Tribunal shall only deny an addition of a representative by a party in extraordinary circumstances and only if the Arbitral Tribunal finds that such addition would affect the legitimacy and undermine the integrity and procedural effectiveness of the arbitral process. In the event the Arbitral Tribunal refuses to approve an addition of a party's representative, it shall issue a reasoned decision in writing to that effect.

- (2) At any time after the commencement of the arbitration, the Arbitral Tribunal or the Secretariat may require proof of the authority of any party representative in such form as the Arbitral Tribunal may determine.
- (3) At any time after the commencement of the arbitration, the Arbitral Tribunal or the Secretariat may require proof of the authority of any party representatives in such form as the Arbitral Tribunal or the Secretariat may determine.

#### **Article 26 – Jurisdiction of the Arbitral Tribunal**

- (1) The Arbitral Tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration agreement that forms part of a principal contract shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitral Tribunal that the principal contract is null and void shall not entail automatically the invalidity of the arbitration agreement.
- (2) A plea that the Arbitral Tribunal does not have jurisdiction shall be raised in the Response, and in no event later than in the Statement of Defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the Statement of Defence to a Counterclaim, or shall otherwise be deemed to be waived. A party is not precluded from raising such a plea by the fact that it has nominated, or participated in the appointment of, an arbitrator. A plea that the Arbitral 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, or shall otherwise be deemed to be waived. The Arbitral Tribunal may, in either case, admit a later plea if it considers the delay justified.
- (3) The Arbitral Tribunal may rule on a plea to its jurisdiction in an award as to jurisdiction or later in an award on the merits, as it considers appropriate in the circumstances. The Arbitral Tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.
- (4) By agreeing to arbitrate under these Rules, the parties shall be considered to have agreed not to apply to any State court or other judicial authority for any relief regarding the Arbitral Tribunal's jurisdiction or authority, except following any award by the Arbitral Tribunal regarding the objection of its jurisdiction or authority.

#### **Article 27 – Preparatory measures by the Arbitral Tribunal**

- (1) As soon as practicable after the constitution of the Arbitral Tribunal, the Presiding Arbitrator shall convene other members of the Arbitral Tribunal and the parties for a preparatory conference, unless the Arbitral Tribunal finds it inappropriate. At the preparatory conference the Arbitral Tribunal shall invite the parties to express their views on the facts and legal points of the case in order to identify circumstances that are not in dispute and where the production of evidence is required. At the preparatory conference the Arbitral Tribunal shall establish a

provisional timetable that it intends to follow for the conduct of the arbitration, a copy of which shall be sent to the Secretariat. Also, insofar as possible, the Arbitral Tribunal shall decide a date and place for the oral hearing.

- (2) The Arbitral Tribunal may convene the parties to further preparatory conferences if it deems necessary. The Arbitral Tribunal may request the parties to submit any proposals they wish to address at such preparatory conferences in advance.
- (3) The Arbitral Tribunal on its own initiative, or pursuant to a request from a party, may decide that a preparatory conference shall be conducted by video conference, telephone or similar means of communication.
- (4) In the event the Arbitral Tribunal decides that it is inappropriate to convene a preparatory conference, the Arbitral Tribunal shall as soon as practicable after it has been constituted establish a provisional timetable that it intends to follow for the conduct of the arbitration, a copy of which shall be sent to the parties and the Secretariat.
- (5) Any modifications of the provisional timetable established by the Arbitral Tribunal shall be communicated forthwith to the parties and the Secretariat.

#### **Article 28 – Written submissions**

- (1) The Claimant shall, within the period of time determined by the Arbitral Tribunal, submit to the Secretariat a Statement of Claim setting out, in addition to the particulars mentioned in Article 5 of these Rules:
  - (i) Sufficient details of the facts and any contentions of law on which it seeks to rely, together with the relief claimed against all other parties.
  - (ii) A copy of any contract or other legal instruments out of or in relation to which the dispute arises and of the arbitration agreement shall accompany the Statement of Claim.
  - (iii) The Statement of Claim should, as far as possible, be accompanied by all documents and other evidence on which the Claimant seek to rely, or contain reference to them.
- (2) The Claimant may elect to treat its Request, referred to in Article 5 of these Rules, as a Statement of Claim, provided that it also complies with the requirements of this Article.
- (3) The Respondent shall, within the period of time determined by the Arbitral Tribunal, submit to the Secretariat a Statement of Defence setting out, in addition to the particulars mentioned in Article 7 of these Rules:
  - (i) Any objections concerning the jurisdiction of the Arbitral Tribunal, including but not limited to the existence, validity or applicability of the arbitration agreement.

- (ii) Sufficient details on which of the facts and contentions of law it admits or denies, on what grounds, and on what other facts and any contentions of law it seeks to rely.
  - (iii) The relief sought by Respondent.
  - (iv) Any counterclaim or set-off and the grounds on which it is based.
  - (v) A copy of any contract or other legal instruments out of or in relation to which the dispute arises. Unless previously submitted.
  - (vi) The Statement of Defence should, as far as possible, be accompanied by all documents and other evidence on which the Respondent seek to rely, or contain reference to them.
- (4) The Respondent may elect to treat its Response to the Request, referred to in Article 7 of these Rules, as a Statement of Defence provided that it also complies with the requirements of this Article.
- (5) If the Respondent advance any counterclaims in the Respondent Statement of Defence the Claimant may, within the period of time determined by the Arbitral Tribunal, submit to the Secretariat a Statement of Defence to a Counterclaim that fulfils the requirements of this Article.
- (6) The Arbitral Tribunal may order the parties to submit any additional written submissions it considers appropriate.
- (7) Unless a party requests an oral hearing the Arbitral Tribunal may proceed and decide the case solely on the documents submitted by the parties.

#### **Article 29 – Request for further details**

At any time during the arbitration the NAC Board or the Arbitral Tribunal may request further details from either party regarding any of its written submissions to the NAC. If the Claimant fails to comply with a request for further details, the NAC Board may in exceptional circumstances dismiss the case. If the Respondent fails to comply with a request for further details regarding its counterclaim or set-off, the NAC Board may dismiss the counterclaim or set-off. However, it shall not prevent the arbitration from proceeding if the Respondent otherwise fails to comply with a request for further details.

#### **Article 30 – Amendments to the claims or defence**

A party shall submit its claims and / or defence at the earliest opportunity possible. However, during the course of the arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off unless the Arbitral Tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the Arbitral Tribunal.

**Article 31 – Hearings**

- (1) A hearing shall be held if requested by a party, or if deemed appropriate by the Arbitral Tribunal. In the event of an oral hearing, the Arbitral Tribunal shall, in consultation with the parties, determine the date, time and location of any hearing and shall give the parties adequate notice thereof.
- (2) If any of the parties, although duly notified, fails to attend the oral hearing without showing good cause, the Arbitral Tribunal shall have the power to proceed with a hearing in the absence of that party.
- (3) Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the Arbitral Tribunal.
- (4) Hearings shall be held *in camera* unless the parties agree otherwise. The Arbitral Tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including expert witness, who is a party to the arbitration shall not, in principle be asked to retire.
- (5) The parties may appear in person or through duly authorised representatives. In addition, they may be assisted by advisers.
- (6) Minutes of meetings and hearings held shall be prepared by the Arbitral Tribunal. Such minutes shall state the place and time of the meeting or hearing, the participants, and the decisions made. These minutes shall be forwarded to the parties.

**Article 32 – Taking of evidence**

- (1) Each party shall have the burden of proving the facts relied on to support its claims or defence.
- (2) The Arbitral Tribunal may order a party to produce any documents or other evidence such party intends to rely on and specify the circumstances intended to be proven by such evidence.
- (3) At the request of a party, the Arbitral Tribunal may order another party to produce any documents or other evidence which may be relevant to the outcome of the case.
- (4) At any time during the arbitral proceedings, the Arbitral Tribunal may require the parties to produce documents, exhibits or other evidence within such period of time as the Arbitral Tribunal shall determine.
- (5) The Arbitral Tribunal may on its own initiative or pursuant to a request by a party decide to carry out an on-site inspection.
- (6) The admissibility, relevance, materiality and weight of the evidence offered shall be for the Arbitral Tribunal to determine. The Arbitral Tribunal shall freely evaluate all evidence offered.

- (7) Any party, having obtained the prior consent of the Arbitral Tribunal, may request the assistance of national courts with jurisdiction for the taking of evidence. In Iceland a party may seek the assistance of the District Courts in accordance with Chapter XII of Act No. 91/1991 on Civil Procedure.

### **Article 33 – Witnesses**

- (1) Witnesses, including expert witnesses, who are presented by the parties to testify to the Arbitral Tribunal on any issue of fact or expertise, may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party.
- (2) The statements of witnesses, including expert witnesses, signed by them may be presented in writing before the commencement of oral hearings. Nevertheless, any witness or expert witness, on whose testimony a party intends to rely, shall, if considered necessary, attend a hearing for examination by the Arbitral Tribunal and other parties. Nevertheless, the Arbitral Tribunal may allow witnesses, including expert witnesses, to be examined via conference call, a video conference or by means of other similar technology. Unless otherwise agreed by the parties the Arbitral Tribunal shall prepare transcripts of any witness testimony heard before the Arbitral Tribunal, which shall be available to the parties upon their request.
- (3) A party intending to rely on a testimony of a witness, including expert witnesses, is responsible to produce the witness and to pay any associated costs thereof. If a witness fails to attend the oral hearing without good cause, the Arbitral Tribunal may place such weight on the written testimony as it considers appropriate in the circumstances of the case, or to exclude it in part or in whole.
- (4) In advance of any hearing and within a period of time fixed by the Arbitral Tribunal, the parties shall identify each witness or expert they intend to call and specify the subject matter of that witness's testimony, its content, relevance to the issues in the arbitration and the circumstances intended to be proved by the testimony. Failing this, the Arbitral Tribunal may if it deems necessary decide to postpone the oral hearing or refuse to allow the testimony of such witnesses.
- (5) The parties shall be entitled to call in their own expert witnesses.
- (6) The Arbitral Tribunal has discretion to allow, refuse, or limit the appearances of witnesses, including expert witnesses if it considers the relevance of the testimony futile for the resolution of the dispute.

### **Article 34 – Experts appointed by the Arbitral Tribunal**

- (1) The Arbitral Tribunal may on its own initiative after consultation with the parties, or pursuant to a request from a party, appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the Arbitral Tribunal. The Arbitral Tribunal shall define the expert's terms of reference, which shall be communicated to the parties and the Secretariat.

- (2) The expert shall, in principle before accepting appointment, submit to the Arbitral Tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the Arbitral Tribunal, the parties shall inform the Arbitral Tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The Arbitral Tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. When such an objection is made, the Arbitral Tribunal shall decide promptly what, if any, action to take.
- (3) The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents, goods or property that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision. The Arbitral Tribunal may require a party to give the expert any relevant information or to provide access to any relevant documents, goods, samples, property or site for inspection by the expert.
- (4) The expert shall give the parties or their representatives the opportunity to be present during any inspections and to monitor and comment on the expert's activities throughout the process.
- (5) Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report to the parties, which shall be given, within the period of time fixed by the Arbitral Tribunal, the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any documents on which the expert has relied in his or her report.
- (6) At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to examine the expert. At this hearing, any party may present expert witnesses and evidence in order to testify on the points at issue.
- (7) The fees and expenses of any expert appointed by the Arbitral Tribunal under this Article shall be paid out of the Advance on Cost payable by the parties and shall form part of the Costs of the Arbitration. Upon its appointment the expert shall provide the Arbitral Tribunal with an estimate of the costs likely to arise out of the expert's examination and its report to the Arbitral Tribunal. The expert shall report to the Arbitral Tribunal in advance if the costs is likely exceeds the estimated costs.

#### **Article 35 – Default**

- (1) If the Claimant, without showing good cause, fails to submit a Statement of Claim in accordance with Article 28 of these Rules, and if the Request does not fulfil the requirements of Article 5 of these Rules, the Arbitral Tribunal shall terminate the proceedings provided the Respondent has not filed a counterclaim.



- (2) If a party, without showing good cause, fails to submit a Statement of Defence, Statement of Defence to a Counterclaim or other written statement in accordance with these Rules, or fails to appear at a hearing, or otherwise fails to utilise any opportunity to present its case extended to it by these Rules or the Arbitral Tribunal, the Arbitral Tribunal may, despite any such failure, proceed with the arbitration and make an award.

### **Article 36 – Conservatory and Interim measures**

- (1) Unless the parties have agreed otherwise in writing, the Arbitral Tribunal may, after its formation and at the request of a party, grant interim and / or conservatory measures as it deems appropriate. Any such measure shall take the form of a reasoned order or an award, as the Arbitral Tribunal considers appropriate.
- (2) Before the formation of the Arbitral Tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures.
- (3) Any application for an interim or a conservatory measure to a competent judicial authority and any measure taken by the competent judicial authority must be notified without delay to the Secretariat, which shall inform the Arbitral Tribunal and all other parties thereof.
- (4) An interim or a conservatory measure is any temporary measure, at any time prior to the issuance of the award by which the dispute is finally decided, by which the Arbitral Tribunal orders a party, for example and without limitation, to:
  - (i) Maintain or restore the *status quo* pending determination of the dispute;
  - (ii) Take action that would prevent, or refrain from taking action that is likely to cause, (a) current or imminent harm or (b) prejudice to the arbitral process itself;
  - (iii) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (iv) Preserve evidence that may be relevant and material to the resolution of the dispute.
- (5) The party requesting an interim or a conservatory measure under paragraphs 4(i) to (iii) above shall satisfy the Arbitral Tribunal that:
  - (i) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - (ii) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the Arbitral Tribunal in making any subsequent determination.

- (6) With regard to a request for an interim or a conservatory measure under paragraph 4(iv), the requirements in paragraph (5)(i) and (ii) shall apply only to the extent the Arbitral Tribunal considers appropriate.
- (7) The Arbitral Tribunal may modify, suspend or terminate any interim or a conservatory measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the Arbitral Tribunal's own initiative.
- (8) The Arbitral Tribunal may require the party requesting an interim or a conservatory measure to provide appropriate security in connection with the measure. If a party that requests an interim or a conservatory measure does not comply with any order to provide security, the Arbitral Tribunal shall dismiss its application for an interim or a conservatory measure.
- (9) The Arbitral Tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim or the conservatory measure was requested or granted.
- (10) The party requesting an interim or a conservatory measure may be liable for any costs and damages caused by the measure to any party if the Arbitral Tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the proceedings.
- (11) The Arbitral Tribunal shall have discretion to apportion the costs relating to a request for interim or conservatory measures in an interim award or in the final award.
- (12) A request for interim or conservatory measures, whether before or after the formation of the Arbitral Tribunal, addressed by any party to a competent judicial authority, shall not be deemed incompatible with the agreement to arbitrate or with these Rules, or as a waiver of the agreement to arbitrate.

#### **Article 37 – Inferences of the Arbitral Tribunal**

If a party without good cause fails to comply with any provisions of, or requirement under, these Rules or any procedural order given by the Arbitral Tribunal, the Arbitral Tribunal may draw such inferences as it considers appropriate.

#### **Article 38 – Closure of proceedings**

- (1) Once the Arbitral Tribunal is satisfied that the case has been adequately clarified and that the parties have been given a reasonable opportunity to present the case respectively, the Arbitral Tribunal shall inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make, and if there are none, the Arbitral Tribunal may declare the proceedings closed and set down the case for an award.

- (2) The Arbitral Tribunal may decide, in exceptional circumstances, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

## **AWARDS AND DECISIONS**

### **Article 39 – Time limit for the final award**

- (1) The final award shall be made not later than six months from the date of the commencement of the arbitration, pursuant to Article 5(3) of these Rules, unless otherwise agreed by the parties in the arbitration agreement or by a later agreement.
- (2) In any case, the NAC's board of directors may, upon a reasoned request from a party, the Arbitral Tribunal or in exceptional circumstances on its own initiative, extend the time limit for the making of the final award if it deems necessary.

### **Article 40 – Decisions of the Arbitral Tribunal and form and effects of the award**

- (1) All awards and decisions rendered shall be made in writing and shall be final and binding on the parties. By agreeing to submit the dispute to arbitration under these Rules, the parties undertake to carry out any award without delay. Also, the parties irrevocably waive their right to any form of appeal, review or recourse to any State court or other judicial authority, insofar as such waiver can validly be made.
- (2) When the Arbitral Tribunal is composed of more than one arbitrator, any award or other decision of the Arbitral Tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the Presiding Arbitrator alone.
- (3) The Arbitral Tribunal or the parties may decide that the Presiding Arbitrator alone may make procedural rulings and resolve questions of procedure.
- (4) All members of the Arbitral Tribunal shall participate in the deliberations. If any arbitrator fails without valid cause to participate in the deliberations of the Arbitral Tribunal on an issue, such failure will not preclude a decision being made by the other arbitrators.
- (5) An award shall indicate the place of arbitration and it shall be signed by all members of the Arbitral Tribunal and it shall contain the date of each signature respectively. The arbitrators may sign an award at different places and times. The award shall be deemed to be made at the place of the arbitration, pursuant to Article 22(3) of these Rules, and on the date it was signed by the last member of the Arbitral Tribunal.
- (6) If an arbitrator fails to sign an award, the signatures of the majority of the arbitrators or, failing a majority, the Presiding Arbitrator shall be sufficient,

provided that the reason for the omission of the signature is stated in the award. If an arbitrator is in a minority regarding the reasons given and / or the outcome of the case and is unwilling to sign the award, he may insist that a dissenting vote be recorded in the final award.

- (7) The Arbitral Tribunal shall make its award in writing and shall state the reasons upon which the award is based, unless the parties have agreed in writing that no reasons are to be given.
- (8) An award may be expressed in any currency. The Arbitral Tribunal may, upon a request by a party, order that simple, compound or penalty interest be paid by any party on any sum awarded at such rates as the Arbitral Tribunal determines appropriate, without being bound by legal rates of interest imposed by any State court, in respect of any period which the Arbitral Tribunal determines to be appropriate ending no later than the date upon which the award is complied with.

#### **Article 41 – Filing and notification of the award**

- (1) Once an award has been made, the sole arbitrator or the Presiding Arbitrator shall file the award with the Secretariat in as many original copies as there are parties plus one.
- (2) The Secretariat shall notify the parties immediately about the filing of the award and shall forward an original copy of the award to each party within five (5) days of the filing, provided always that the costs of the arbitration have been fully paid to the NAC by the parties or by one of them. There will be no further notifications about the award by the Arbitral Tribunal or the NAC.
- (3) Additional copies certified true by the Secretary General shall be made available upon request and at any time to the parties, but to no one else.
- (4) An original copy of each award, or a settlement reached before an Arbitral Tribunal, made in accordance with these Rules shall be filed with the Secretariat. NAC shall keep awards and settlements reached before an Arbitral Tribunal in accordance with these Rules on file for a minimum of 10 years.
- (5) The Arbitral Tribunal and the Secretariat shall assist the parties in complying with whatever further formalities that may be necessary.
- (6) When a final award has been rendered or the arbitral proceedings terminated, the NAC shall return any original documents, drawings and similar documents to the parties, provided that the costs of the arbitration have been fully paid to the NAC by the parties or by one of them. Everything else that has been submitted in the case shall remain the property of NAC.

#### **Article 42 – Settlement or other grounds for termination**

- (1) If the parties reach a settlement before the final award is made, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by all parties and accepted by the Arbitral Tribunal, record the

settlement in the form of an award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award. Otherwise the provisions of Article 40 of these Rules shall apply. If the parties do not require an award on agreed terms, then on a written confirmation by the parties to the Secretariat that a settlement has been reached, the Arbitral Tribunal shall issue an order for the termination of the proceedings, subject to payment by the parties of any outstanding costs of the arbitration pursuant to Article 46 of these Rules.

- (2) If the continuation of the arbitral proceedings becomes unnecessary or impossible for any other reasons than mentioned in paragraph 1 of this Article, the Arbitral Tribunal shall issue an order for the termination of the proceedings. The Arbitral Tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings beforehand and provide the parties with the opportunity to comment on such intentions. The Arbitral Tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the Arbitral Tribunal considers it appropriate to do so.

#### **Article 43 – Partial award and Interim award**

- (1) The Arbitral Tribunal may make one or more awards on different issues at different times, including awards of a partial or interim nature.
- (2) Partial or interim awards rendered by the Arbitral Tribunal shall not affect the time limit for making of the final award.
- (3) Such awards shall have the same status and effect as any other award made by the Arbitral Tribunal and the provisions of Article 40 of these Rules shall apply to partial and interim awards.
- (4) Partial or interim awards may contain a decision of the costs for that stage of the proceedings and on the legal costs incurred by the parties respectively, including the costs relating to a request for interim measures.

#### **Article 44 – Correction and interpretation of the award**

- (1) Within 30 days of the date of an award, a party may, upon notice to the Secretariat, which shall communicate the notice to the Arbitral Tribunal and all other parties, request that the Arbitral Tribunal correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature or provide an interpretation of a specific point or part of the award. If the Arbitral Tribunal considers the request justified, it shall, after consulting the parties, make the correction or provide the interpretation within 30 days of receiving the request.
- (2) The Arbitral Tribunal may on its own initiative and within 30 days of the date of an award make such corrections referred to in paragraph 1 of this Article.
- (3) Any correction or interpretation of an award shall be in writing and shall form part of the award. The provisions of Article 40 of these Rules shall apply.

- (4) In any case, no additional cost will be charged to the parties for the correction of an award. However, a party that requests the Arbitral Tribunal to provide an interpretation on a specific point or part of the award, pursuant to Article 44(3) of these Rules shall be liable for payment to the Arbitral Tribunal on the basis of the time spent by the arbitrators regarding the preparation of such an interpretation.

#### **Article 45 – Additional award**

- (1) Within 30 days of the date of an award, a party may, upon notice to the Secretariat, which shall communicate the notice to the Arbitral Tribunal and all other parties, request the Arbitral Tribunal to make an additional award on claims presented in the arbitration but not determined by the Arbitral Tribunal.
- (2) If the Arbitral Tribunal considers the request justified, it shall make the additional award within 45 days of receipt of the request. The NAC Board may extend, if necessary, the period of time limit within which the Arbitral Tribunal shall make the additional award.
- (3) An additional award shall be in writing and shall form part of the award. The Provisions of Article 40 of these Rules shall apply.

### **COSTS OF THE ARBITRATION**

#### **Article 46 – Costs of Arbitration**

- (1) Prior to rendering the final award, the Arbitral Tribunal shall request the NAC Board to finally determine the Costs of Arbitration. Upon such request, the NAC Board shall finally determine the Costs of Arbitration in accordance with the Schedule of Costs (**Appendix B**) in force at the time of the commencement of the arbitration, pursuant to Article 5(3) of these Rules. In exceptional circumstances, the NAC Board may fix NAC's administrative expenses and the fees of the arbitrators at a figure higher or lower than that which would result from the application of the Schedule of Costs and shall then consider the work done, the complexity of the dispute, the duration of the arbitral proceedings and any other circumstances.
- (2) The term Costs of Arbitration includes only:
  - (i) The Fees of the Arbitral Tribunal and the administrative fee of the NAC;
  - (ii) The reasonable travel and other "out of pocket" expenses incurred by the Arbitral Tribunal and / or the NAC;
  - (iii) The reasonable cost of expert advice and of other assistance required by the Arbitral Tribunal;
  - (iv) Fees and expenses of any experts appointed by the Arbitral Tribunal; and
  - (v) If applicable, any fees and expenses of an appointing authority.

- (3) The Arbitral Tribunal shall indicate in the final award the total Costs of Arbitration as determined by the NAC Board and specify the individual fees and expenses of each member of the Arbitral Tribunal and the administrative fees and expenses of the NAC.
- (4) Unless otherwise agreed by the parties, the Arbitral Tribunal shall, at the request of a party, apportion the Costs of Arbitration between the parties in the final award.
- (5) In making decisions as to the apportion of the Costs of the Arbitration according to this Article, and legal costs incurred by the parties according to Article 47 of these Rules, the Arbitral Tribunal shall make its decisions on the general principle that costs should reflect the parties' relative success and failure in the arbitration, unless otherwise agreed by the parties, or if the Arbitral Tribunal finds such approach inappropriate under the circumstances. The Arbitral Tribunal shall when making such decisions also take into account any circumstances it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.
- (6) In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final award, the NAC Board shall fix the fees and expenses of the arbitrators and the NAC's administrative fees and expenses. If the parties have in such circumstances not previously agreed upon the allocation of the Costs of Arbitration, the Arbitral Tribunal shall decide the allocation of the Costs of Arbitration. If the Arbitral Tribunal has not been constituted at the time of such withdrawal or termination, any party may request the NAC Board to proceed with the constitution of the Arbitral Tribunal in accordance with these Rules so that the Arbitral Tribunal may decide the allocation of the Costs of Arbitration.
- (7) Any order for Costs of Arbitration and legal costs shall be made with reasons in the award containing such order
- (8) At any time during the arbitral proceedings the Arbitral Tribunal may make decisions on costs, other than those to be fixed by the NAC Board and order payment.
- (9) The parties shall be jointly and severally liable to the arbitrator(s) and to the NAC for the Costs of Arbitration.
- (10) The NAC shall refund the parties, in the same proportion as the Advance on Costs of Arbitration were made by the parties to the NAC, if the amount of the Costs of Arbitration turns out to less than the Advance on Costs of Arbitration made by the parties pursuant to Article 48 of these Rules.

#### **Article 47 – Costs incurred by a party**

Unless otherwise agreed by the parties, the Arbitral Tribunal may in the final award upon the request of a party, order one party to pay all or part of any costs incurred by another party, including costs for legal representation, having regard to the outcome of the case

and the other relevant circumstances to the extent that the Arbitral Tribunal determines that the amount of such cost is reasonable.

#### **Article 48 – Advances on the Costs of Arbitration**

- (1) Once the Request and the Response have been submitted, the NAC Board shall as soon as possible thereafter determine an amount to be paid by the parties as an Advance on the Cost of Arbitration, which shall correspond to the estimated amount of the Costs of Arbitration pursuant to Article 46 of these Rules. The Secretariat shall then direct the parties to make an Advance on the Cost of Arbitration, within 10 days from the receipt of such notice. Payments by the parties as Advances on the Costs of Arbitration shall be made to and held by the Secretariat, which may draw on the Advance on Costs of Arbitration at any stage during the arbitration or after the award has been made.
- (2) The Claimant and Respondent shall pay the Advance on Costs of Arbitration in equal shares, unless separate advances are determined. Where counterclaims or set-offs are submitted by a party, the NAC Board may decide that each of the parties shall pay the Advances on the Costs of Arbitration corresponding to the totality of its respective claims.
- (3) The amount of any Advances on the Cost of Arbitration are subject to readjustment and the NAC Board may, if it deems necessary or upon a request from the Arbitral Tribunal, order the parties to pay additional Advances on the Cost of Arbitration during the course of the arbitration.
- (4) In the event a party fails to make a required payment of its share of the Advance on Costs of the Arbitration, the Secretariat shall give the other party an opportunity to do so within a period of time fixed by the Secretariat. If a party makes a substitute payment of the Advances on Costs of the Arbitration on behalf of another party, the Arbitral Tribunal may, at the request of such party, make a separate award for reimbursement of the payment.
- (5) If the Advance on the Costs of Arbitration is not paid in full, the NAC Board shall dismiss the case in whole or in part, without prejudice to the possibility of the parties to reintroduce the same claims at a later stage in another proceeding. The Secretariat shall, pursuant to such a decision of the NAC Board, notify the parties that the case has been dismissed due to failure to pay the required Advances on the Costs of Arbitration, but that this shall not preclude the parties from reintroducing the same claims at a later stage in another proceeding.
- (6) For the purpose of payment of the Advance of the Cost of Arbitration, the NAC Board may, in multi-party arbitration, consider several parties as one, taking into account the manner in which the Arbitral Tribunal is constituted or the relationship between two or more parties.
- (7) The NAC Board may decide to accept that part of the Advance on the Cost of Arbitration be provided in the form of a bank guarantee or other form of security on terms acceptable to the NAC Board.



- (8) Before proceeding with the arbitration, the Arbitral Tribunal shall after its constitution establish that the Advances on the Costs of Arbitration have been paid in full to the Secretariat and only proceed with the arbitration if this requirement has been satisfied.

## MISCELLANEOUS PROVISIONS

### Article 49 – Waiver

A party who knows that any provision of the arbitration agreement, these Rules, or any other rules applicable to the proceedings or any order given by the Arbitral Tribunal have not been complied with and yet proceeds with the arbitration without stating its objection without undue delay to such non-compliance, shall be deemed to have irrevocably waived its right to object to such non-compliance, unless such party can show that, under the circumstances, its failure to object was justified.

### Article 50 – Confidentiality

- (1) Unless expressly agreed otherwise by the parties, the parties shall maintain the confidentiality of all matters related to the arbitration and the award, including but not limited to all materials disclosed by any party during the course of the arbitral proceedings that are not otherwise in the public domain and all materials created for the purposes of the arbitration – save and to the extent that disclosure may be required of a party by legal duty, to protect or pursue a legal right to enforce or challenge an award in *bona fide* legal proceedings before a national court or other judicial authority with jurisdiction.
- (2) Unless otherwise agreed by the parties, the NAC, the Arbitral Tribunal and any expert witnesses shall maintain the confidentiality of the all matters related to the arbitration and the award.
- (3) The deliberations of the Arbitral Tribunal are confidential to its members.
- (4) Unless expressly agreed by the parties and the Arbitral Tribunal, the NAC shall not publish any award, whether in part or in whole or whether in an anonymous format or otherwise. However, after five years from the Arbitral Tribunal rendering its award the NAC may publish the arbitral award in part or in whole in an anonymous format without the consent of the parties.

### Article 51 – General Rule

In all matters not expressly provided for in these Rules, the NAC, the Arbitral Tribunal and the parties shall act in the spirit of these Rules and shall make every reasonable effort to contribute to the efficient conduct and ensure the efficiency and cost-

effectiveness of the proceedings, avoid unnecessary costs or delays, and that all awards are legally enforceable.

#### **Article 52 – Limitation of Liability**

Save for wilful misconduct or gross negligence, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, any persons appointed by the Arbitral Tribunal, the NAC's board of directors, the NAC and its employees based on any act or omission in connection with arbitration conducted under these Rules.

#### **Article 53 – Applicable version of the Rules**

These Rules are published in two versions, Icelandic and English. In case of any discrepancies between the versions of these Rules, the English version shall prevail, unless all parties to the arbitration are Icelandic, in which case, and subject to the parties' agreement to the contrary, the Icelandic version of these Rules shall apply.

### **PROVISIONAL MEASURES**

#### **Article 54 – Entry into force**

These Rules shall come into force on [●] 2013.

Unless otherwise agreed by the parties, these Rules shall apply to arbitrations commenced after the date on which the Rules entered into force.

## APPENDIX A – ORGANISATION OF THE NORDIC ARBITRATION CENTRE OF THE ICELAND CHAMBER OF COMMERCE

### Article 1 – About the Nordic Arbitration Centre

Gerðardómur Viðskiptaráðs Íslands, which in English is called The Nordic Arbitration Centre of the Iceland Chamber of Commerce (the “NAC”) is the independent arbitration body of the Iceland Chamber of Commerce and provides administrative services in relation to the resolution and settlement of disputes. The NAC is part of the Iceland Chamber of Commerce, but is independent in exercising its functions in the administration of disputes. The NAC consists of a board of directors (the “NAC Board”) and a secretariat (the “Secretariat”).

### Article 2 – Function of the NAC

The NAC does not itself decide disputes.

The tasks and functions of the NAC include:

- (1) the administration of domestic and international disputes in accordance with the NAC Arbitration Rules and other procedures or rules the parties have agreed upon;
- (2) appointing arbitrators, at the request of the parties, in proceedings not governed by the NAC Arbitration Rules, including arbitrations under the Arbitration Rules of the United Nations Commission for International Trade Law (UNCITRAL); and
- (3) promoting and providing information on arbitration related matters.

The NAC is the only body authorised to administer arbitration under NAC Arbitration Rules.

### Article 3 – NAC’s board of directors

The NAC Board consists of a president, vice-president and three additional members. Board members may be either Icelandic or foreign citizens, although the majority of NAC Board’s members shall always be comprised of Icelandic citizens.

### Article 4 – Appointment of the NAC Board

The NAC Board shall be appointed by the board of directors of the Iceland Chamber of Commerce for a term of two years at a time. The members of the NAC Board are eligible for re-appointment only once and can thus only serve as members of the NAC Board for a maximum consecutive period of four years.

The president and vice-president of the NAC Board shall fulfil the same qualifications as those required for District Court judges according to Article 12(1) of Act No. 15/1998, on

the Judiciary. One of the three additional members shall be a professional attorney. When appointing the NAC Board, the board of directors of the Iceland Chamber of Commerce shall endeavour to preserve and maintain a good connection with the members of the Iceland Chamber of Commerce and the business sector in general.

#### **Article 5 – Removal of a member of the NAC Board**

In exceptional circumstances, such as when the president or vice-president cease to fulfil the requirements stated in Article 5(1) above, the board of directors of the Iceland Chamber of Commerce may remove a member of the NAC Board. Such removal may only be done by means of a reasoned opinion of the board of directors of the Iceland Chamber of Commerce.

If a member resigns or is removed during a term of office, the board of directors of the Iceland Chamber of Commerce shall appoint a new member for the remainder of the term.

#### **Article 6 – Function of the NAC Board**

The function of NAC Board is to take the decisions required of the NAC in administering disputes under the NAC Arbitration Rules and any other rules or procedures the parties have agreed upon. Such decisions include *prima facie* decisions on jurisdiction, determination of advances on costs, appointment of arbitrators, decisions upon challenges to arbitrators, removal of arbitrators and fixing of arbitration costs.

#### **Article 7 – Decisions by the NAC Board**

Three members of NAC Board shall form a quorum. If a majority cannot be reached the president has the casting vote. The president of the NAC Board, or vice-president in the president's absence or otherwise at the president's request, shall have the power to take decisions on behalf of the NAC Board in urgent matters. Any decisions taken in such a manner must be reported to the NAC Board at its next session.

The NAC Board may delegate decisions to the Secretariat, including decisions on Advances on Costs of the Arbitration, extension of time for rendering an award, dismissal for non-payment of registration fee, removal of arbitrators and fixing of arbitration costs.

Decisions by the NAC Board are final and binding to the parties and not subject to an appeal or revision by the Iceland Chamber of Commerce.

#### **Article 8 – The Secretariat**

The NAC Board appoints a Secretary General and the Secretariat acts under the Secretary General's direction. The Secretariat carries out the functions assigned to it under the NAC Arbitration Rules. The Secretariat may also take decisions delegated to it by the NAC Board.

**Article 9 – NAC’s procedures**

The NAC shall maintain the confidentiality of the arbitration and the award and shall deal with the arbitration in an impartial, practical, expeditious and cost-effective manner.

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Approved by the board of directors of the Iceland Chamber of Commerce on [●] 2013

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**APPENDIX B – SCHEDULE OF COSTS****Arbitration Costs****Article 1 – Registration Fee**

- (1) The Registration Fee referred to in Article 3 of the NAC Arbitration Rules is EUR 1,000 or the equivalent amount in Icelandic Krona (ISK) according to the exchange rate of the Central Bank of Iceland valid at the time of the commencement of the arbitration.
- (2) The Registration Fee is non-refundable and constitutes a part of the Administrative Fee in Article 3 below. The Registration Fee shall be credited to the Advance on Costs of Arbitration to be paid by the Claimant pursuant to Article 48 of the NAC Arbitration Rules.

**Article 2 – Fees of the Arbitral Tribunal**

- (1) The NAC Board shall determine the fee of a presiding or sole arbitrator based on the amount in dispute in accordance with the table below.
- (2) Co-arbitrators shall each receive 60 per cent of the fee of the Presiding Arbitrator. After consultation with the Arbitral Tribunal, the NAC Board may decide that a different percentage shall apply.
- (3) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the NAC Board shall determine the fees of the Arbitral Tribunal taking all relevant circumstances into account.
- (4) In exceptional circumstances, the NAC Board may deviate from the amounts set out in the table.

**Article 3 – Administrative Fee**

- (1) The NAC's Administrative Fee shall be determined in accordance with the table set out below.
- (2) The amount in dispute shall be the aggregate value of all claims, counterclaims and set-offs. Where the amount in dispute cannot be ascertained, the NAC Board shall determine the Fees of the Arbitral Tribunal taking all relevant circumstances into account.
- (3) In exceptional circumstances, the NAC Board may deviate from the amounts set out in the table.

**Article 4 – Expenses**

In addition to the fees of the arbitrator(s) and the NAC's Administrative Fee, the NAC's Board shall fix an amount to cover any reasonable expenses incurred by the arbitrator(s) and the NAC. The expenses of the arbitrator(s) may include reasonable travel expenses and the fee and expenses of any expert appointed by the Arbitral Tribunal pursuant to Article 34 of the NAC Arbitration Rules.

Table of Arbitrators' fees

Amount in dispute (EUR)	Fee of Chairman / Sole Arbitrator	
	Minimum (EUR)	Maximum (EUR)
to 50,000		
from 50,001 to 100,000		
from 100,001 to 500,000		
from 500,001 to 1,000,000		
from 1,000,001 to 2,000,000		
from 2,000,001 to 5,000,000		
from 5,000,001 to 10,000,000		
from 10,000,001 to 25,000,000		
from 25,000,001 to 50,000,000		
from 50,000,001 to 75,000,000		
from 75,000,001 to 100,000,000		
from 100,000,000		

Table of NAC Administrative Fee

<b>Amount in dispute (EUR)</b>	<b>NAC's Administrative Fee (EUR)</b>
to 50,000	
from 50,001 to 100,000	
from 100,001 to 500,000	
from 500,001 to 1,000,000	
from 1,000,001 to 2,000,000	
from 2,000,001 to 5,000,000	
from 5,000,001 to 10,000,000	
from 10,000,001 to 25,000,000	
from 25,000,001 to 50,000,000	
from 50,000,001 to 75,000,000	
from 75,000,001 to 100,000,000	
from 100,000,000	



## APPENDIX C – ADMINISTRATIVE FEES OF THE NAC

### Included and excluded services

#### Article 1 – Included services

- (1) The following services and activities shall be included in the administrative fees of the NAC:
  - a. Managing and administering proceedings according to these Rules.
  - b. Receiving and transmitting written communications and submissions of the parties and the Arbitral Tribunal.
  - c. Controlling the formal validity of the Request, Response, Statement of Claim, Statement of Defence and Statement of Defence of Counterclaims.
  - d. Convening and hosting hearings on its premises.
  - e. Staff attendance at hearings and taking minutes of the hearings.

#### Article 2 – Excluded services

- (1) The following services and activities shall be excluded from the administrative fees of the NAC and shall be paid for separately, if requested:
  - a. Photocopying written communications and submissions filed by the parties where the number of copies is insufficient, including the photocopies of documents made by the Secretariat for the expert witnesses to the Arbitral Tribunal.
  - b. Adding fiscal stamps to written communications and submissions where needed.
  - c. Recording of hearings and transcription of tapes.
  - d. Interpretation services.
  - e. Videoconference (or other similar technology)
  - f. Travel expenses for the Secretariat attending hearings held outside the premises of the NAC.
  - g. Services for scheduling hearing venues when hearings are to be held outside the premises of the NAC.
  - h. Photocopies of written communications and submissions in case of collection of the dossier.