CARO
OHADAC Regional Arbitration Centre

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OHADAC Institutional Arbitration Rules

Applicable from 27 September 2021

The OHADAC project is co-financed by the European Regional Development Fund under the auspices of the INTERREG Caraïbes programme

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Presentation of the role of the CARO Centre and its bodies

- The CARO Centre is responsible for administering procedures as part of the implementation of alternative dispute resolution methods such as arbitration, mediation or facilitation. Its duties include drafting and regularly updating rules of procedure; monitoring proceedings; appointing and replacing "neutral third parties" acting as arbitrators, mediators and facilitators; and setting and managing the costs of proceedings.

- The CARO Centre is led by a Secretary-General, who is in charge of ensuring that the CARO Centre performs its mission properly; and of developing the CARO Centre's activities in the Caribbean region and beyond. The Secretary-General is also in charge of appointing and confirming "neutral third parties" to act as facilitator, mediator or arbitrator, after consulting the Committee in certain cases.

- The Secretariat of the CARO Centre is comprised of lawyers specializing in arbitration and of support staff. It reports directly to the Secretary-General of the institution and is responsible for day-to-day management of ongoing procedures entrusted to the CARO Centre.

- Regarding arbitration, a committee is constituted within the CARO Centre, comprising Caribbean arbitration specialists representing the different legal traditions in the region. This Committee shall be consulted by the Secretary-General regarding the appointment and confirmation of arbitrators and in order for it to rule on certain preliminary issues in the following circumstances:

    - Where the parties do not agree on the nomination or confirmation of an arbitrator;
    - Where there is a request to remove an arbitrator;
    - Where the Secretary-General considers it appropriate to replace an arbitrator who is no longer able to perform his or her duties properly;
    - Prior to the notification of an award, if the draft arbitral award is to be revised as provided for in Article 47 of the OHADAC Institutional Arbitration Rules.

- The CARO Centre is placed under the authority of its Board of Directors, comprising leading Caribbean personalities; internationally recognized arbitration specialists; as well as long-standing supporters of the OHADAC project.

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I. Preliminary provisions

Article 1: Definitions

For the purposes of these Rules, the following definitions shall apply:

a) The "Rules" means the OHADAC Institutional Arbitration Rules.

b) The "CARO Centre" means the OHADAC Regional Centre for Arbitration.

c) The "Secretariat" means the Secretariat of the OHADAC Regional Centre for Arbitration.

d) The "Secretary-General" means the Secretary-General of the OHADAC Regional Centre for Arbitration.

e) The "Committee" means the Committee of Experts formed within the OHADAC Regional Centre for Arbitration.

f) The "Claimant" and the "Respondent" mean one or more parties respectively.

g) The "Party" or "Parties" mean the Claimant(s) and the Respondent(s).

h) The "Arbitral Tribunal" means the sole arbitrator or the three arbitrators appointed to resolve the dispute.

Article 2: Jurisdiction of the CARO Centre

2.1. Where the parties have decided to have recourse to OHADAC arbitration or arbitration administered by the CARO Centre, the parties shall express their agreement that the provisions of these Rules shall apply to the administration of their arbitration proceedings.

2.2. Where the parties have decided to have recourse to OHADAC arbitration or arbitration administered by the CARO Centre, the bodies of the CARO Centre shall be responsible for administering the proceedings on the basis of these Rules. Once cases are referred to the CARO Centre, its bodies shall have full capacity to make the necessary arrangements to ensure the proper conduct of the proceedings, even if one of the parties refrains from participating.

2.3. The parties express their agreement to have recourse to OHADAC arbitration or arbitration

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administered by the CARO Centre in an arbitration agreement. An arbitration agreement may be concluded by one of the following means:

i) The parties sign an arbitration clause providing for recourse to OHADAC arbitration or arbitration administered by the CARO Centre in the event of a dispute; or

ii) The parties complete and sign an "agreement to arbitrate" template.

Article 3: Roles of the Committee and the Secretariat

3.1. The CARO Centre shall be responsible for the administration of arbitration proceedings.

3.2. The Secretariat shall monitor the progress of arbitration proceedings on a daily basis and shall ensure smooth communication between the CARO Centre, the parties and the Arbitral Tribunal. The Secretariat reports directly to the Secretary-General, who shall also have the power to appoint and confirm arbitrators, subject to consultation of the Committee as provided for in paragraph 5 of this article.

3.3. Parties are invited to contact the Secretariat as soon as possible in order to inform it of their expectations regarding the arbitration proceedings as well as their specific requirements, particularly their time constraints. Parties should notably indicate as soon as possible whether they intend to request the involvement of an Emergency Arbitrator or whether they wish to opt for expedited arbitration proceedings. Both procedures are detailed in Appendices A and B of these Rules.

3.4. The Secretariat may at any time call a meeting between the parties to organize the procedure, following receipt of the Response and before the Arbitral Tribunal is constituted. The purpose of such a meeting shall be to encourage communication between the parties; and also to ensure that their wishes concerning the establishment of the Arbitral Tribunal and more generally the administration of the proceedings and their constraints are clearly understood and taken into account. At this meeting, the Secretariat may suggest setting up a mediation procedure, if it considers that this method of dispute resolution would be more appropriate under the circumstances.

3.5. At certain stages of the arbitration proceedings, as well as on the occasion of certain preliminary issues, the Secretary-General must consult the Committee, which comprises Caribbean arbitration specialists, and whose membership shall be periodically renewed. The Committee shall be consulted in the following cases:

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i) Confirmation and appointment of arbitrators in the event of disagreement between the parties;

ii) Replacement or removal of one or more arbitrators; and,

iii) Review of the arbitral award.

In the event of a particular difficulty, the Secretary-General shall also remain free to refer to the Committee if s/he considers this necessary in relation to any decision s/he has to take on the basis of these Rules.

Article 4: Notifications and time limits

4.1. Notifications of proceedings or documents by the parties may be made by any means which provides evidence of their transmission and receipt.

4.2. Where notifications are made by post or courier, these shall be transmitted simultaneously to the other parties, to the Secretariat and, after its constitution, to the Arbitral Tribunal.

4.3. Prior to the constitution of the Arbitral Tribunal, the Notice of Arbitration, the Response and the Additional Note shall be notified to the parties in accordance with the provisions of Articles 5 to 9 of these Rules. Such communications may be notified by delivery with acknowledgement of receipt, registered mail, courier service, email, fax or by any other means which provides evidence of receipt.

4.4. Once constituted, the Arbitral Tribunal shall decide on the arrangements for notifying documents relating to the proceedings, *i.e.* orders, letters, requests, notes, submissions and any ancillary documents addressed to the other party and/or to the Arbitral Tribunal.

4.5. The Secretariat and the Arbitral Tribunal shall transmit notifications to the parties or their representatives at the last agreed address of the parties or, if none has been agreed, at the address communicated by the other party.

4.6. If one of the parties has not designated or agreed an address for notification, such notifications shall be considered valid provided that:

a) They have been hand-delivered to the addressee with a receipt signed by the addressee. Or,

b) They were delivered to the place of business or residence of the addressee, or to his or her

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postal address. Or,

c) If it is not possible to deliver the notification as outlined above, notification shall be delivered to the last known place of business, residence or domicile of the party in question.

4.7. Notification shall be presumed to have been made on the date of delivery or on the date of attempted delivery as per the preceding paragraphs. Communications by email shall be deemed to have been made on the date on which they are received on the server or at the recipient's email address.

4.8. With regard to the computation of time limits, these shall begin to run on the day following the day on which the notification is deemed to have been made in accordance with Article 4(7) above. Regarding official holidays:

a) If the day after which notification is deemed to have been made is an official holiday or a bank holiday in the place of destination of the notification, or a non-working day, the time limit shall start to run from the next working day;

b) Official holidays, bank holidays and non-working days in general that occur during the time limit are included when calculating the time limit;

c) If the time limit expires on an official holiday, a bank holiday or a non-working day in the place of destination of the notification, this time limit is extended to the next working day in that location.

Article 5: Forwarding the Notice of Arbitration to the CARO Centre

5.1. The party initiating arbitration (the "Claimant") shall send a notice of arbitration (the "Notice of Arbitration") to the Secretariat for notification to the other party (the "Respondent").

5.2. When sent by post or courier, the Notice of Arbitration shall be sent to the Secretariat with proof of delivery and in triplicate.

5.3. The Notice of Arbitration shall be sent to the CARO Centre together with the payment of the registration fee provided for in Appendix C (the "Registration Fee"), as an advance to be offset against the administrative costs (see Article 22(4)).

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5.4. The arbitration proceedings shall be deemed to have been initiated on the date of receipt of the Notice of Arbitration and of the registration fee by the Secretariat.

Article 6: Contents of the Notice of Arbitration

The Notice of Arbitration must contain the following information:

a) The name, address, email address and telephone number of the Claimant, along with the name of any representative, if any, and his or her address, email address and telephone number;

b) The name, address and, if known, email address and telephone number of Respondent. If the Respondent has a representative in the arbitration proceedings, that representative's name, address, email address and telephone number;

c) A brief summary of the facts and circumstances and a brief description of the issues in dispute, an indication of the relief sought by the Claimant and an assessment of the amount claimed or the value of the subject matter in dispute;

d) A copy of the contract(s) relating to the dispute and, unless included in the contract(s), a copy of the arbitration agreement(s) binding on the parties and establishing the jurisdiction of the CARO Centre;

e) If the claims are made on the basis of different contracts containing separate arbitration clauses, specify the contract and arbitration clause on which each claim is based;

f) Any agreement between the parties or, failing that, any proposal by the Claimant as to the number of arbitrators (1 or 3); the seat of the arbitration; the language to be used in the arbitration proceedings; the identity of the arbitrator or arbitrators and, in the case of an Arbitral Tribunal with three arbitrators, the appointment of an arbitrator; the qualifications required of the arbitrator or arbitrators; the law applicable to the dispute and to the arbitration proceedings; and,

g) The signature of the Claimant or its representative.

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Article 7: Notification of the Notice of Arbitration to the Respondent

7.1. Once the Notice of Arbitration has been received by the Secretariat, it shall be notified by the latter as soon as possible to each Respondent at the address indicated in the Notice of Arbitration, by post or by courier with proof of delivery.

7.2. Any dispute relating to the notification of the Notice of Arbitration or to its insufficiency shall not prevent the constitution of the Arbitral Tribunal or the instigation of arbitration proceedings. Any such dispute shall be definitively settled by the Arbitral Tribunal.

Article 8: Response to the Notice of Arbitration

8.1. Within thirty (30) days of receipt of the Notice of Arbitration by the Respondent, the Respondent shall send the Secretariat a response (the "Response") which shall contain:

a) Confirmation or otherwise of its name and address;

b) If it has a representative in the arbitration proceedings, the name, address, email address and telephone number of that representative;

c) A concise summary of the facts and its response and position on the claims made against it in the Notice of Arbitration, together with the grounds on which it intends to rely in its defence, accompanied by any documents it considers appropriate in this regard;

d) Its response to the Claimant's submissions in the Notice of Arbitration pursuant to Article 6(f) and, where appropriate, its own submissions, along with the appointment of an arbitrator in the case of an Arbitral Tribunal with three arbitrators;

e) Where applicable, any objection to the jurisdiction of the CARO Centre, to the application of the Rules or to the establishment of the Arbitral Tribunal under these Rules; and,

f) The signature of the Respondent or its representative.

8.2. In its Response, the Respondent may also submit a counterclaim or set-off, which shall contain a brief summary of the facts and circumstances and a brief description of the issues in dispute, an indication of the relief sought by the Respondent and an assessment of the amount claimed or the value of the subject matter in dispute. In such a case, the Claimant may, if it so

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desires and without delaying the establishment of the Arbitral Tribunal, submit its observations on this claim in an additional note (the "Additional Note"), within 30 days of receipt of the Response.

Article 9: Notification of the Response to the Notice of Arbitration

9.1. The Respondent shall notify its Response to the Secretariat by any means capable of establishing proof of its transmission and receipt.

9.2. If the Response is transmitted by post or courier, the Respondent shall forward the Response in as many copies as there are parties, plus one copy for the Secretariat.

9.3. The CARO Centre may extend the time limit for notification of the Response if it considers, at its discretion, that such extension is justified, and further to a request to that effect by the Respondent.

9.4. Failing a Response, any dispute as to the notification of the Response or its insufficiency, incompleteness or lateness shall not prevent the constitution of the Arbitral Tribunal or the continuation of arbitration proceedings. Any such dispute shall be definitively settled by the Arbitral Tribunal, subject to Article 10.

Article 10: Objections to the jurisdiction of the CARO Centre in the Response

10.1. Any question relating to the jurisdiction of the Arbitral Tribunal raised by one of the parties shall be decided by the Arbitral Tribunal.

10.2. Nevertheless, in the absence of a Response or if the Respondent objects to the jurisdiction of the Arbitral Tribunal and/or the CARO Centre to administer the dispute, the Secretary-General may terminate the arbitration and close the file where it has become abundantly clear that there is no agreement between the parties to refer the dispute to the CARO Centre for administration. This is particularly the case if the dispute resolution clause relied upon by the Claimant:

a) Provides for the jurisdiction of the civil courts of a given State; or,

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b) Provides for the jurisdiction of an active arbitration institution other than the active CARO Centre.

10.3. Should the Secretary-General decide that the arbitration cannot proceed and move to close the file, this decision shall be without prejudice to the ability of a party to resubmit the request at a later date in other arbitration proceedings. Alternatively, a party may bring an action before the competent courts to determine whether an arbitration agreement is enforceable against its contracting partner(s).

Article 11: Emergency

The parties may encounter an emergency situation requiring the adoption of conservatory measures before the Arbitral Tribunal is constituted or requiring the rendering of an award sooner than provided for under these Rules. In such cases, emergency arbitration, provided for in Appendix A hereto or expedited proceedings, provided for in Appendix B hereto, may be requested.

Article 12: Additional parties

12.1. If one of the parties to the arbitration wishes to involve an additional party in addition to the party or parties already mentioned in the Notice of arbitration, it shall make a request to the Secretariat, by means of an "Additional Request". This Additional Request must meet the conditions laid down in Article 5(2) and (3), and must be made before an arbitrator is appointed or confirmed by the CARO Centre. Further to such Application, arbitration proceedings shall commence against such Additional Party on the date of receipt of the Additional Request by the Additional Party marking the commencement of the arbitration proceedings for that Party.

12.2. The Additional Request shall contain the information referred to in Article 6(b) to (f), *i.e.*:

i) The name, address and, if known, email address and telephone number of the Additional Party. If the Additional Party has a representative in the arbitration proceedings, that representative's name, address, email address and telephone number;

ii) If the contract is not the same as the one relied upon by the Claimant in the Notice of Arbitration, a copy of the contract(s) relating to the dispute and, unless already included in the contract(s), a copy of the arbitration agreement binding on the parties and establishing the jurisdiction of the CARO Centre;

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iii) A concise summary of the facts and circumstances and a brief description of the issues in dispute, an indication of the relief sought against the Additional Party, any documents that it considers appropriate in this regard, and an assessment of the amount claimed or the value of the subject matter in dispute;

iv) The signature of the Party making the Additional Request, or its representative.

12.3. The Additional Party shall have thirty (30) days to submit its Response to the Additional Request, in accordance with the provisions of Article 8 of these Rules in this regard. It may make one or more counterclaims or set-off claims as provided for under this article against the party which requested its involvement or any other party (Article 13). Notification of the Response must be made in accordance with the provisions of Article 9 hereof. The other parties may comment on any counterclaim in an Additional Note within 30 days of receipt of the Response to the Additional Request, without delaying the establishment of the Arbitral Tribunal.

12.4. If the Additional Party fails to respond, or if it raises an objection to the jurisdiction of the Arbitral Tribunal and/or to the administration of the dispute by the CARO Centre, the Secretary-General shall exercise the powers provided for in Article 10 hereof in respect of the Additional Party, reserving the option to terminate the arbitration in the scenarios provided for under that article.

12.5. If the Secretary-General declines to investigate the request made regarding the Additional Party based on Article 10 hereof, the party that requested the Additional Party's involvement in the dispute and that made claims in that regard shall remain free to resubmit these requests in separate proceedings. Such separate proceedings may take place before the CARO Centre if it has jurisdiction on the basis of another arbitration agreement, or before any other competent forum.

Article 13: Multiple parties

13.1. More generally, in any arbitration involving multiple parties, *i.e.* more than two parties, any party shall be free to make any claim in respect of another party, subject to the implementation of Article 10 by the Secretary-General and to compliance with Article 27(5) in relation to claims made subsequent to the drafting of the Procedural Organization Act and/or Procedural Organization Order. This request must meet the requirements of Article 6.

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13.2. The party against which the claim is made shall be invited to respond within thirty (30) days, in accordance with the provisions of Article 8 hereof. It shall in particular provide a concise summary of the facts and its position on the claims made against it, together with the grounds on which it intends to rely in its defence, accompanied by any documents it considers appropriate in this regard. It may also make one or more counterclaims or set-off claims as provided for under this article. Notification of the Response shall be made in accordance with the provisions of Article 9 hereof. The party against which a counterclaim has been made may formulate its observations in an Additional Note within thirty (30) days of receipt of the Response to the Additional Request, without delaying the establishment of the Arbitral Tribunal.

Article 14: Multiple contracts

14.1. The same arbitration may be instituted on the basis of several contracts, each containing an arbitration clause providing for the jurisdiction of the CARO Centre and/or recourse to OHADAC arbitration. Nevertheless, before the Arbitral Tribunal is constituted, the Secretary-General shall decide whether it is feasible to hear all claims based on different contracts in the same arbitration proceedings, after verifying the compatibility of the arbitration agreements in particular and ascertaining whether the disputes have arisen from the same legal relationship and whether the parties agree to the joinder.

14.2. If the Secretary-General declines to hear all the claims submitted in a single arbitration procedure, the parties remain free to resubmit these claims at a later stage to the CARO Centre if the arbitration agreement so permits or before any other competent forum.

Article 15: Consolidation of pending arbitrations

15.1. The Secretary-General may, at the request of at least one of the parties, decide to join separate arbitration proceedings into a single arbitration. The Secretary-General shall take its decision after verifying the compatibility of the arbitration agreements – where applications have been made on the basis of separate arbitration agreements – and shall take into account all relevant circumstances, in particular the stage reached in the proceedings, the identity of the members of the Arbitral Tribunal if it has already been constituted, the subject matter in dispute in each of the proceedings, and the willingness of the parties to have the arbitrations decided by a single Arbitral Tribunal.

15.2. If the Secretary-General decides to join ongoing proceedings, these shall be joined in the

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arbitration which was first started, unless otherwise agreed by all the parties.

II. Constitution of the Arbitral Tribunal

Article 16: Constitution of the Arbitral Tribunal: general principles

16.1. The Secretary-General shall constitute the Arbitral Tribunal by appointing or confirming the arbitrator(s).

16.2. The Arbitral Tribunal shall be constituted taking into account the nationality of the parties, the place of residence of the parties and, in the case of a three-member Arbitral Tribunal, the nationality of the other arbitrators and their place of residence; the place of residence of their counsel; the language of the parties, the arbitrator's fields of specialization; the nature of the issues raised by the dispute, the laws chosen by the parties to govern their relationship and, more generally, the ability of the arbitrator to conduct the arbitration proceedings in accordance with the Rules in a fully independent and impartial manner. Particular importance is attached to the availability of the arbitrator to conduct the proceedings in a prompt and efficient manner in accordance with the Rules.

16.3. Any arbitrator appointed or confirmed by the Secretary-General shall remain impartial and independent of the parties involved throughout the arbitration proceedings.

16.4. Failing agreement by the parties on these points, the Secretary-General shall decide on the number of arbitrators and shall appoint them in the following manner:

i) Number of arbitrators: the Secretary-General shall first determine whether the dispute is to be decided by 1 or 3 arbitrators. Unless there are special circumstances and/or unless all parties agree otherwise, a dispute where the amount at stake is less than 1 million euros shall be decided by a sole arbitrator;

ii) Sole Arbitrator: if there is to be a sole arbitrator, failing agreement between the parties as to his or her identity, the Secretary-General shall appoint him or her, taking into account the observations of the parties as expressed in the Notice of Arbitration and in the Response, as provided for in Article 18;

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iii) Tribunal of three arbitrators: in the event of a tribunal of three arbitrators, the Secretary-General shall confirm the arbitrators nominated by the parties as provided for in Article 17. If the parties have not expressed a choice as to the identity of the arbitrator or arbitrators, the CARO Centre shall appoint the arbitrator or arbitrators as provided for in Article 18.

16.5. The fact that a party has taken part in the appointment of an arbitrator or arbitrators shall not prevent it from raising a plea that the Arbitral Tribunal lacks jurisdiction.

Article 17: Procedure for confirming arbitrators appointed by the parties

17.1. Where a party nominates an arbitrator in the Notice of Arbitration or in the Response for confirmation by the Secretary General, such nomination shall state the arbitrator's first name and surname, nationality, address, occupation, and the qualifications on which his appointment as arbitrator are based.

17.2. Where the arbitration involves multiple parties (*i.e.* more than two parties) and in the case of a three-member Arbitral tribunal, the Claimants and/or the Respondents shall each jointly appoint an arbitrator. If an Additional Party has been joined to the proceedings, it may appoint an arbitrator jointly with the Claimant(s) or jointly with the Respondent(s). Failing any joint appointment, all members of the Arbitral Tribunal may be appointed by the CARO Centre as provided for in Article 18.

17.3. The nomination of the arbitrator shall be transmitted by the party or parties to the Secretariat. The Secretariat shall then contact the arbitrator and invite him or her to accept or decline the appointment within a certain period of time.

17.4. The arbitrator shall indicate in his or her response whether s/he is prepared to accept such an assignment. Acceptance implies an undertaking to complete the arbitration proceedings within the required time limits, with complete independence and impartiality.

17.5. Each arbitrator shall furthermore, in his or her acceptance letter, issue and sign a declaration of independence and impartiality (the "Declaration of Independence"). In this letter, the arbitrator must disclose any circumstances that could give rise to any doubt as to his or her independence and/or impartiality. In particular, the arbitrator shall disclose any direct or indirect personal, business and professional relationships that s/he may have with the other arbitrators,

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the parties, their legal representatives or counsel.

17.6. This Declaration of Independence shall then be transmitted to the parties prior to the appointment or confirmation. The parties shall decide on this declaration within the time limit set by the Secretariat.

17.7. If the parties do not object to the confirmation of the arbitrator, s/he shall be confirmed by the Secretary-General. In the event of objection by one of the parties, the Secretary-General shall decide whether or not to confirm the arbitrator after consulting the Committee. If the Secretary-General decides not to confirm the appointment of this arbitrator, s/he shall directly appoint an arbitrator in accordance with the procedure laid down in Article 18.

Article 18: Procedure for the appointment of arbitrators by the Secretary-General failing a choice expressed by the parties

18.1. Where the Claimant(s) and the Respondent(s) have not nominated an arbitrator in the Notice of Arbitration or the Response, the Secretary-General shall appoint an arbitrator in their place, taking into account the comments, if any, made by the parties in the Notice of Arbitration and the Response.

18.2. If the parties have agreed on the identity of the President of the Arbitral Tribunal or the Sole Arbitrator in the Notice of Arbitration and the Response, the Secretary-General shall confirm this choice. Failing agreement between the parties, the Secretary-General shall appoint the President of the Arbitral Tribunal or the Sole Arbitrator, unless the parties have agreed on another procedure for his or her appointment (such as the appointment of the President of the Arbitral Tribunal by those arbitrators who have already been confirmed or appointed in the case of an Arbitral tribunal comprising three (3) arbitrators).

18.3. The Secretary-General shall appoint the President of the Arbitral Tribunal or the Sole Arbitrator by sending in advance to the parties a list containing at least three names. Within five (5) days of its receipt, each of the parties shall return the aforementioned list to the Secretariat after crossing out the name or names of any persons to whom they object and listing the remaining names in order of preference. Upon receipt of the lists transmitted by each of the parties, the Secretary-General shall appoint the Sole Arbitrator or the President of the Arbitral Tribunal, according to the order of preference indicated by the parties or at his or her discretion

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if there is no consensus in the lists transmitted by the parties. Failing receipt of a reply from either party, the Secretary-General shall proceed to appoint the person or persons required without further formality.

18.4. All prospective arbitrators shall be required to complete and sign a Statement of Independence which shall be transmitted to the parties and the Secretariat.

Article 19: Continuity of the duty of independence and impartiality of arbitrators

19.1. Any arbitrator appointed or confirmed by the CARO Centre shall remain impartial and independent of the parties and their representatives throughout the arbitration proceedings.

19.2. If, at any stage of the arbitration proceedings, new circumstances arise that could give rise to doubts as to the independence and impartiality of the arbitrator, the arbitrator shall immediately inform the parties and the Secretariat.

Article 20: Challenge

20.1. Arbitrators may be challenged in the course of the arbitration proceedings if there are circumstances giving rise to doubts as to their impartiality and independence.

20.2. Any such challenge shall be substantiated by means of a written statement, which shall be transmitted to the Secretariat, setting out the alleged facts and circumstances. The challenge shall be made within the following time limits:

i) Either a period of twenty (20) days from notification of the confirmation or appointment of an arbitrator by the CARO Centre, where the reasons are based on the content of the Arbitrator's Statement of Independence;

ii) Or twenty (20) days after the party becomes aware of the facts and circumstances relied upon in support of the challenge.

20.3. No party may challenge an arbitrator that it has nominated where the reason(s) for the challenge could have been discovered prior to the confirmation of the arbitrator through due diligence.

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20.4. The challenge shall be notified to the Secretariat in as many copies as there are parties and arbitrators, plus one copy for the Secretariat.

20.5. If the challenged arbitrator accepts the challenge, s/he may resign. However, such resignation shall not imply acceptance of the validity of the grounds for the challenge.

20.6. If the arbitrator or one of the parties disagrees with the challenge, the Secretariat shall request the observations of all the other parties and of any other member of the Arbitral Tribunal (in the case of a three-member Arbitral Tribunal). The disagreement shall then be resolved by the Secretary-General, who shall first seek the opinion of the Committee.

20.7. Consideration by the CARO Centre of the challenge shall not have the effect of suspending the arbitration proceedings unless the Secretary-General, after consulting the Committee, so decides in light of the particular circumstances of the case.

Article 21: Replacement of arbitrators

21.1. If the arbitrator resigns, accepts a challenge, is unable to perform his or her duties or dies, the arbitrator shall be replaced.

21.2. The Secretary-General may, at his or her own initiative, replace an arbitrator who is no longer able to carry out his or her duties within a reasonable time limit. The Secretary-General may also decide to replace an arbitrator who fails to comply with the provisions of the Rules, in particular the time limits. Where s/he considers that there is reason to initiate a procedure which may lead to the replacement of the arbitrator, the Committee shall be consulted beforehand.

21.3. If the Secretary-General decides to initiate proceedings leading to the possible replacement of the arbitrator, the Secretariat shall contact the parties and the other arbitrators, in the case of an Arbitral tribunal comprising three (3) arbitrators, in order to seek their comments. These comments shall then be forwarded to the Committee for its opinion. The Secretary-General shall then forward his or her decision to the parties and to the members of the Arbitral Tribunal.

21.4. When appointing the substitute arbitrator, the Secretary-General may decide to follow the initial nomination procedure if the arbitration agreement provided for the nomination of arbitrators, or to appoint a substitute arbitrator in accordance with the procedure provided for in Article 18.

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21.5. If a sole arbitrator or all the members of a three-member tribunal are to be replaced, the substitute Arbitral Tribunal shall, after consulting the parties, decide whether or not it is necessary to review, in full or in part, any of the arbitration proceedings or steps previously taken, with the exception, however, of any arbitral awards and orders already made.

III. Financial aspects

Article 22: Advance on arbitration fees

22.1. The arbitration fees ("Arbitration Fees") shall include the CARO Centre's administrative costs, intended to remunerate the CARO Centre for its task of administering arbitration (the "Administrative Costs"), as well as the costs of the Arbitral Tribunal, corresponding to the fees of the Arbitral Tribunal, disbursements relating to the hearings, and the remuneration of a secretary to the Arbitral Tribunal, if any, under the conditions provided for in Article 23(2) ("Remuneration of the Arbitral Tribunal").

22.2. The Arbitration Fees shall be provisionally fixed at the commencement of proceedings on the basis of the amount at stake between the parties, in accordance with the Schedule of Costs provided in Appendix C hereto. This amount shall take account of the monetary value of all parties' claims, including counterclaims. If a party has not quantified its claim(s), the CARO Centre shall fix the Arbitration Fees on the basis of the monetary value set out in Appendix C, and this amount may subsequently be readjusted by the CARO Centre when the party quantifies the amount of its claim.

22.3. The Arbitration Fees shall be paid by each Claimant and Respondent, who shall be requested by the Secretariat to pay an advance (the "Advance") corresponding to 50% of the Arbitration Fees. In the case of multiple parties – *i.e.* more than two parties to the arbitration proceedings – the Secretariat shall decide how the Arbitration Fees are to be shared between the parties. Payment of these fees shall be made by the parties over the course of the arbitration proceedings, as provided for in the following paragraphs.

22.4. The registration fees provided for in Appendix C shall be treated as an advance on the Administrative Costs and shall be non-refundable but may be offset against the amount of the Advance payable by the Claimant. Once the Advance has been fixed, an initial call for funding

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shall be issued to the parties to cover the administrative costs until the Arbitral Tribunal is set up.

22.5. Once the Arbitral Tribunal has been set up, prior to forwarding the file to it, the Secretariat shall issue a second call for funding, asking the parties to deposit a sum corresponding to the foreseeable costs of the arbitration until the adoption of the Procedural Organization Act. This amount shall include the minimum fees of the arbitrators as well as the costs of the arbitration proceedings up to that date.

22.6. During the arbitration proceedings, the Secretariat may ask the parties to make additional advances until full payment of the Arbitration Fees.

22.7. The amount of the Arbitration Fees may be modified and adapted by the Secretariat as the proceedings progress, taking into account variations in the amount in dispute, the budget drawn up by the Arbitral Tribunal following the Organizational Hearing, in accordance with the provisions of Articles 26(3) and 27(3) hereof; the complexity of the dispute; and the time spent by the Arbitral Tribunal in particular.

22.8. Advances paid by the parties throughout the arbitration proceedings shall be offset, as partial payments, against the sums due as an Advance.

22.9. If, at the end of thirty (30) days from the date of having been requested from the parties, the required advances have not been fully paid, the Secretariat shall inform the parties of this circumstance so that each of them can make the required payment. Any party may substitute itself for another for the payment of the Advance.

22.10. Failing satisfaction of such payment, the CARO Centre may order the suspension or termination of the arbitration.

22.11. Where there are counterclaims, and at the request of one of the parties, the CARO Centre may fix separate provisions. The amount of each advance shall thus be determined separately for the Claimant and the Respondent, according to the amount of their respective claims, considered separately. If one of the parties fails to pay the separate advance due by it within the time limit granted by the CARO Centre, the Centre may then order the withdrawal of the defaulting party's claims from the arbitration proceedings.

22.12. Once the final award has been rendered, the Secretariat shall provide the parties with a statement of account of the instalments received and shall refund any unused balance.

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Article 23: Remuneration of the Arbitral Tribunal

23.1. The fees of the Arbitral Tribunal shall be reasonable and shall take into account the amount in dispute, the complexity of the dispute, the time spent by the arbitrators in the proceedings, the manner in which the arbitrators have carried out their duties, taking into account the difficulties they have had to face, and any other relevant circumstances of the case.

23.2. If the President of the Arbitral Tribunal or the Sole Arbitrator decides to engage the services of a secretary, the remuneration due to that secretary shall be deducted by the President of the Arbitral Tribunal or the Sole Arbitrator from his or her own fees and shall be paid directly to the secretary.

IV. Arbitration proceedings

Article 24: Referral to the Arbitral Tribunal

24.1. Once the Arbitral Tribunal has been constituted by the CARO Centre and the advances have been paid by the parties, the Secretariat shall forward the file to the Arbitral Tribunal.

24.2. Within five (5) days of its referral, the Arbitral Tribunal shall contact the parties in order to fix the date of the first procedural hearing, at which each of the parties and the Arbitral Tribunal shall be present or represented. The Arbitral Tribunal shall also invite the parties to prepare their arguments on the following points, unless these have already been agreed upon between them:

a) The seat of the arbitration;

b) The language of the proceedings;

c) Applicable law;

d) The interim or conservatory measures applied for;

e) Any objection to the jurisdiction of the Arbitral Tribunal and the advisability of considering such objection before examining the merits of the case;

f) Possible time constraints (for the purpose of establishing the timetable of the proceedings);

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g) Organization of evidence:

- Request(s) for expert opinion(s) and/or testimony(ies);

- Request(s) to produce documents;

- Means of evidence (video conference; affidavit; *etc.*).

h) Supplementary submissions and/or necessary or foreseeable changes to existing proceedings;

i) Wishes in regard to hearings (holding of hearings and where; duration; physical or virtual hearings);

j) Measures to simplify and accelerate the arbitration proceedings, such as admissions, division of the proceedings, paper hearing, joint expertise, expert appointed by the Arbitral Tribunal, remote hearings using technological means, sworn witness statements, *etc.*; methods for forwarding submissions and documents relating to the proceedings (electronic and/or hard copy); and

k) The advisability or necessity for the Arbitral Tribunal to engage the services of a secretary.

24.3. The Arbitral Tribunal may, at this stage of the proceedings or at any later stage, require evidence of the ability of any representatives of a party to act in this capacity.

Article 25: Organizational Hearing

25.1. At this initial hearing (the "Organizational Hearing"), which may be held either in person or remotely using technological means, the Arbitral Tribunal shall clear up any procedural difficulties that may exist, make a general assessment of the state of preparation of the case and determine, in consultation with the parties, the important issues to be decided; the timetable for the proceedings; and the procedures for the organization of evidence. The objective during this initial hearing is to arrive at an agreement between the parties on the procedural framework of the dispute and on the issues that the Arbitral Tribunal will have to settle, and to achieve visibility as to the costs of the arbitration that can be anticipated at this stage. The Arbitral Tribunal shall also draw up a provisional budget for its fees and expenses resulting from the procedural choices made.

25.2. In this regard, the Arbitral Tribunal shall prioritise efficiency in terms of time and costs, which must be predictable and transparent to all parties at this stage. The Arbitral Tribunal shall

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require all parties to substantiate costs generated by requests that do not comply with these principles. In particular, if one of the parties requests a document production and discovery procedure, this shall only be granted on an exceptional basis. The Arbitral Tribunal shall also encourage the parties to make use of any technological means that could reduce the costs of the proceedings and improve their efficiency. The main stages of the hearing are described in the following paragraphs.

25.3. Unless already settled in the arbitration agreement or, more generally, in the contract, the Arbitral Tribunal shall hear the parties' submissions on the following points:

a) The seat of the arbitration;

b) The language of the arbitration; and,

c) The law applicable to the dispute.

25.4. The Arbitral Tribunal shall summarize the position of the parties as expressed in the Notice of Arbitration and the Response, shall indicate which documents, if any, have already been submitted, and shall set out their requests.

25.5. The Arbitral Tribunal shall then invite the parties to comment on this presentation and to indicate their wishes regarding the future conduct of the proceedings, in particular on the matters referred to in Article 24(2)(d) to (k).

25.6. If there is an objection to the jurisdiction of the Arbitral Tribunal, the Arbitral Tribunal shall, after consulting the parties, determine whether it is appropriate to rule on this exception during an initial phase prior to examining the merits of the dispute, or whether it will render its decision on jurisdiction following discussions on jurisdiction and on the merits.

25.7. At the end of these discussions, the Arbitral Tribunal shall invite the parties to meet without the Tribunal being present to enable them to reach an agreement terminating the arbitration proceedings, or to request the establishment of a mediation procedure, which the CARO Centre can organize at any time. If the parties reach an agreement that puts an end to their dispute, they may ask the Arbitral Tribunal to record the terms of the agreement in a procedural order.

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Article 26: Procedural Organization Act

26.1. In light of the discussions during the Organizational Hearing, and within a maximum period of fifteen (15) days, the Arbitral Tribunal shall communicate to the parties a document providing a summary of the facts of the case; a summary of the claims of each party; the precise identification of the issues to be determined; and any agreement between the parties on the procedural issues listed in Article 24(2) (the "Procedural Organization Act").

26.2. In particular, the Procedural Organization Act shall specify the following information:

a) The full name of each party and their contact details, as well as the precise identification and contact details of any representatives;

b) The address and email of each party to which notifications are to be sent;

c) A summary of the facts of the case;

d) A summary of the claims of each party and a quantification – or estimate – of each request;

e) A list of the written proceedings and documents already communicated by the parties;

f) The findings sought by the parties;

g) A list of the issues to be resolved by the Arbitral Tribunal;

h) A reference to the arbitration agreement(s) and to the jurisdiction of the Arbitral Tribunal;

i) The constitution of the Arbitral Tribunal and the identity and contact details of each arbitrator;

j) The rules applicable to the proceedings and the dispute, where these have been determined at this stage;

k) Whether the arbitration agreement(s) specifically so permits or whether the parties request and consent to the Arbitral Tribunal acting as *amiable compositeur* or *ex aequo et bono*;

l) Any agreement between the parties on one of the points referred to in Article 24(2), *i.e.* the seat of the arbitration, the language and the law applicable to the dispute; the methods of establishing the evidence (testimony; expert determination procedure; documents); conservatory measures and more generally the organization of the proceedings. The Arbitral Tribunal shall also indicate the points on which the parties have not reached agreement and their position in this respect; and,

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m) Further to a statement by each party regarding their time constraints, the procedural timetable specifying the date on which the Arbitral Tribunal undertakes to render the award. Unless otherwise indicated, this date shall not be later than 2 months from the submission of the last pleading or the last hearing scheduled in the procedural timetable.

26.3. Where the parties have agreed on a sufficient number of points mentioned in paragraph 2 above, the Procedural Organization Act shall include, as an appendix, a provisional budget drawn up by the Arbitral Tribunal (the "budget"). Based on the information obtained during the Organizational Hearing, the budget shall quantify the anticipated amount of the fees and expenses of the Arbitral Tribunal to bring the procedure to a conclusion, *i.e.* until notification to the parties of an arbitral award on the basis of these Rules in view of the procedural choices made by the parties. This budget shall be drawn up in accordance with the provisions in the Schedule of Costs in Appendix C, particularly those relating to the anticipated hourly rate per arbitrator. This budget shall then be reviewed and approved by the CARO Centre before being forwarded to the parties. The Arbitral Tribunal shall remain within budget throughout the procedure, with potential variation up to a limit of 10%.

26.4. The Procedural Organization Act shall be signed by each party and delivered to the Arbitral Tribunal, which shall also sign it. It shall constitute a binding procedural agreement to be observed by the Arbitral Tribunal and the parties throughout the proceedings, subject to the provisions of Article 27(5). Failing signature by the parties; in the event of default by one of the parties or if the parties have not reached agreement on all issues listed in Article 24(2) at the Organizational Hearing, the Arbitral Tribunal shall issue an order organizing the proceedings as provided for in the following article.

Article 27: Procedural Organization Orders

27.1. Any remaining disagreement between the parties with respect to certain aspects of the organization of proceedings shall be settled by the Arbitral Tribunal in an order (the "Procedural Organization Order"), within a maximum period of fifteen (15) days following the date of signature of the Procedural Organization Act or of refusal to sign.

27.2. The Arbitral Tribunal shall have the widest powers in the preparation of the Procedural Organization Order, as provided for by Article 33 hereof. The Arbitral Tribunal shall take into account the circumstances of the proceedings, the observations of the parties exchanged during the Organizational Hearing, their specific requirements, the adversarial principle, the principle of proportionality as well as the provisions of these Rules and more generally the rules applicable

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to the proceedings to ensure that the parties' actions, procedural acts and the means of proof chosen are proportionate to the nature and complexity of the case and to the purpose of the dispute, having regard to the costs and the time required. In this regard, the Arbitral Tribunal may make use of any technological means that could reduce the costs of the proceedings and improve their efficiency. This Procedural Organization Order shall supplement the provisions of the Procedural Organization Act, or replace them if the Procedural Organization Act is not signed by the parties.

27.3. The Arbitral Tribunal shall draw up the budget and append it to the Procedural Organization Order, quantifying the anticipated amount of the fees and expenses of the Arbitral Tribunal to bring the procedure to a conclusion, following the decisions taken in the Procedural Organization Order and in light of the Organizational Hearing. This budget shall also be drawn up in accordance with the provisions in the Schedule of Costs in Appendix C, particularly those relating to the anticipated hourly rate per arbitrator. This budget shall then the reviewed and approved by the CARO Centre prior to being forwarded to the parties. The Arbitral Tribunal shall remain within budget throughout the procedure, with potential variation up to a limit of 10%.

27.4. This Procedural Order shall supplement the provisions of the Procedural Act, or replace them if the Procedural Act is not signed by the parties.

27.5. The Procedural Act and the Order, if any, shall constitute a procedural framework that is binding on the parties and on the Arbitral Tribunal. In particular, the parties shall not be entitled to make new claims outside the limits defined in the Procedural Act and/or the Procedural Order. Nevertheless, the Arbitral Tribunal may admit a new claim and more generally deviate from the terms of the Procedural Organization Act and/or the Procedural Organization Order in one or more procedural orders if new circumstances subsequent to the Organizational Hearing so warrant. In this case, the Arbitral Tribunal shall take into account the progress of the proceedings and any other relevant circumstance(s), after having received the observations of the parties, and shall provide reasons for its decision. The Arbitral Tribunal shall systematically check whether these amendments will have financial consequences on the amount of its fees and expenses as estimated in the budget and shall amend the budget where appropriate. Where applicable, the amended budget shall be forwarded to the CARO Centre for review and approval before being communicated to the parties.

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Article 28: Seat of arbitration

28.1. The seat of the arbitration shall be determined by the parties in the arbitration agreement or in the Procedural Organization Act (Article 26).

28.2. If the parties fail to determine the seat of the arbitration, the Arbitral Tribunal shall, after consulting the parties, fix the seat in the Procedural Organization Order (Article 27(1)), having regard to the circumstances surrounding the proceedings.

28.3. Unless otherwise agreed by the parties, the Arbitral Tribunal may hold hearings at such place and in such manner as it considers appropriate, either in person or remotely by means of technology.

28.4. The Arbitral Tribunal may carry out inspections of property, premises or documents at any place it considers necessary, giving the parties sufficient notice of such inspections so that they may be present at such inspections.

28.5. The Arbitral Tribunal may hold consultation meetings or deliberations at any place it deems appropriate, either in person or remotely using technological means.

28.6. The award shall be deemed to have been issued at the seat of the arbitration, irrespective of the place where it was drawn up and/or signed.

Article 29: Language of arbitration

29.1. The language of the arbitration shall be the language decided by the parties in the arbitration agreement or at the Organizational Hearing provided for in Article 25.

29.2. Failing agreement between the parties, the language shall be determined by the Arbitral Tribunal in the Procedural Organization Order (Article 27), taking into account the language of the contract, the language of communication between the parties, the subject matter in dispute, the witnesses, the evidence, the seat and/or any other circumstances of a significant nature.

29.3. The statements of claim and of defence and all other documents submitted by the parties shall be written in the language of the arbitration.

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29.4. The Arbitral Tribunal may order that documents annexed to the submissions of claim and of defence or any other additional documents or instruments produced during the proceedings in their original language shall be accompanied by a version translated into the language of the arbitration.

Article 30: Rules applicable to the proceedings

30.1. The arbitration proceedings shall be governed by the rules established by the parties in the arbitration agreement; the Procedural Organization Act; any rules established by the Arbitral Tribunal in the Procedural Organization Order and any subsequent procedural orders, as provided under Article 27 above; these Rules; and the law applicable to the proceedings, in particular the mandatory provisions thereof.

30.2. The Arbitral Tribunal shall ensure fairness between the parties during the arbitration proceedings by guaranteeing their right to debate the facts and legal grounds of the dispute in adversarial proceedings.

30.3. In conducting the arbitration proceedings, the Arbitral Tribunal shall endeavour to act with the utmost diligence in order to expedite the proceedings, avoid unnecessary costs and ensure proportionality with respect to the dispute, while guaranteeing the parties' respect for the principle of adversarial proceedings. To this end, the Arbitral Tribunal and the parties may use various technological means, if necessary.

Article 31: Confidentiality

31.1. The arbitration proceedings within the scope of these Rules and the award rendered by the Arbitral Tribunal are strictly confidential and all participants in the arbitration proceedings undertake to keep them confidential, unless otherwise agreed by the parties.

31.2. During the arbitration proceedings, the Arbitral Tribunal, the Arbitral Tribunal Secretary, where applicable, the CARO Centre and the parties shall ensure the confidentiality of the proceedings, the documents exchanged, the acts performed, the hearings, the deliberations and the decisions taken by the Arbitral Tribunal. The Arbitral Tribunal and the CARO Centre may adopt any measures they consider appropriate in order to preserve commercial and industrial secrets and confidential information.

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Article 32: Law applicable to the merits of the dispute

32.1. The Arbitral Tribunal may act as *amiable compositeur* (*ex aequo et bono*) only if the parties have expressly so agreed and provided that the applicable law so permits.

32.2. The Arbitral Tribunal shall apply to the merits of the dispute the rules of law expressly chosen by the parties.

32.3. Failing such a choice, the Arbitral Tribunal shall seek observations from the parties on this issue prior to the Organizational Hearing, as provided for under Article 24(2)(c) hereof. In the event of agreement on the applicable law, the parties' choice shall be recorded in the Procedural Organization Act, in accordance with Article 26(2)(l) hereof. Failing such agreement, the Arbitral Tribunal shall rule on the question in the Procedural Organization Order, selecting the rules of law it considers most appropriate and setting out the reasons for its choice.

32.4. In any event, the Arbitral Tribunal may also consider the binding standards of international public policy of a State that is closely linked to the subject matter in dispute referred to the Arbitral Tribunal. The Arbitral Tribunal shall also take into consideration the contractual provisions concluded between the parties as well as any trade usages that may be applicable.

Article 33: Powers of the Arbitral Tribunal during proceedings

33.1. The Arbitral Tribunal shall be entrusted with the broadest powers to administer the dispute, and in particular:

a) The Arbitral Tribunal shall determine the advisability, number and order of presentation of the parties' submissions and their method of communication (electronic, hard copy);

b) The Arbitral Tribunal may order the production of any document it considers necessary or appropriate, and may draw any consequences from the failure of either party to do so;

c) The Arbitral Tribunal shall decide to hold hearings at such place and in such manner as it considers appropriate, unless otherwise agreed by the parties. If it considers it appropriate, and unless otherwise agreed by the parties, the Arbitral Tribunal may decide to rule solely on the basis of the documents provided by the parties, unless one of the parties requests a hearing;

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d) Unless the parties agree otherwise, the Arbitral Tribunal may request the hearing of any witness or expert it considers relevant, and it is authorized to swear them in;

e) The Arbitral Tribunal may carry out inspections of property, premises or documents at any place it considers necessary, giving the parties sufficient advance notice so that they may be present at such inspections;

f) The Arbitral Tribunal shall hold consultation meetings or deliberations at any place it considers appropriate;

g) After consulting the parties, the Arbitral Tribunal may issue procedural orders to govern aspects of the proceedings not provided for in these Rules. The parties undertake to comply with any order of the Arbitral Tribunal;

h) The Arbitral Tribunal may take any measure designed to improve the efficiency of the arbitration proceedings in terms of time and cost, including the use of any appropriate technological means or accelerated procedures.

33.2. The powers of the arbitrator shall be exercised in accordance with the rules applicable to the proceedings, as listed in Article 30 above, and while upholding the adversarial principle and the principle of impartiality in particular. Moreover, these powers shall be implemented within the binding framework defined in the Procedural Organization Act, possibly supplemented by the Procedural Organization Order and any subsequent procedural order(s) as provided for in Article 27 above.

Article 34: Interim measures

34.1. At the request of either party, the Arbitral Tribunal may order interim measures which may be necessary with regard to the subject matter in dispute, such as prohibitions, measures for the protection or conservation of property, the deposit of property in the hands of a third party, the provision of security for the payment of the arbitration costs and the defence costs of the opposing party.

34.2. Such measures may be adopted pursuant to an interim award and the Arbitral Tribunal may request the granting of security for the payment of damages caused by such measures. These measures may also be adopted prior to the constitution of the Arbitral Tribunal, following the implementation of “emergency arbitration” proceedings as provided for in Appendix A

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hereto, if one of the parties decides to have recourse to them and if the circumstances so warrant.

34.3. The Arbitral Tribunal may, at its discretion, decide on the allocation of costs relating to requests for interim measures in any interim or interlocutory award or in the final award.

34.4. The parties may apply to the judicial authorities for interim measures, without prejudice to the effectiveness of the arbitration agreement or to the conduct of the arbitration proceedings. The parties are under an obligation to communicate the adoption of such measures to the Arbitral Tribunal.

Article 35: Proof

35.1. Each party shall bear the burden of proving the facts on which its claim, defence or counterclaim is based.

35.2. The Arbitral Tribunal may order a party to provide it and the other parties with a summary of the documents and other evidence it intends to submit in support of its claim, defence or counterclaim.

35.3. At any time during the proceedings, the Arbitral Tribunal may require the parties to produce further documents or evidence which it considers necessary or appropriate.

35.4. The Arbitral Tribunal shall rule on the admissibility of evidence, its relevance and the taking thereof. It shall be free to assess the effectiveness and probative value thereof in order to decide on the facts in dispute.

Article 36: Expert appointed by the Arbitral Tribunal

36.1. Independently of the experts nominated by the parties, the Arbitral Tribunal may, if it considers it necessary, decide in the Procedural Organization Act, potentially supplemented by the Procedural Organization Order and any subsequent procedural orders as provided for in Article 27 hereof, to designate one or more experts to advise it in writing on certain matters which are the subject of or connected with the dispute and to furnish it with information on them.

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36.2. If an expert is appointed, the Arbitral Tribunal shall communicate to the parties a copy of the expert's terms of reference. The parties shall provide the expert with any relevant information or present any documents or property that may be requested by the expert for inspection. Any controversy between a party and the expert as to the relevance of the information or goods requested shall be decided by the Arbitral Tribunal.

36.3. Upon receipt of the report of the expert appointed by the Arbitral Tribunal, the Arbitral Tribunal shall forward a copy thereof to the parties, inviting them to express their views thereon in writing. The parties shall be entitled to examine any document referred to in the report of the expert appointed by the Arbitral Tribunal.

36.4. After the report of the expert appointed by the Arbitral Tribunal has been delivered and at the request of any of the parties, the expert may be called to a hearing during which the parties may question him. The parties may introduce other experts for the purpose of opposing their statement(s) to matters in dispute.

Article 37: Hearings

37.1. In the Procedural Organization Act, potentially supplemented by the Procedural Organization Order and any subsequent procedural orders as provided for in Article 27 of these Rules, the Arbitral Tribunal may, on its own motion or at the request of a party, decide to hold hearings for the purpose of taking evidence or hearing oral arguments. After hearing the parties, the Arbitral Tribunal shall determine the place, day and time of the hearings, giving the parties sufficient notice. In particular, the Arbitral Tribunal may decide that witnesses, including experts, shall be heard, examined and cross-examined remotely by technological means. The Arbitral Tribunal may also decide to hold the hearing at a remote location, using technological means, if the circumstances so warrant.

37.2. The parties shall attend the hearing in person alongside and/or via their authorized representatives. Persons not connected to the arbitration proceedings are not authorized to attend hearings.

37.3. Within the time limit fixed by the Procedural Organization Act, potentially supplemented by the Procedural Organization Order or any subsequent procedural orders as provided for in Article 27 hereof, each party shall provide the Arbitral Tribunal and the other parties with the names and addresses of the witnesses it intends to introduce, the subject matter of their testimony and the language in which they will testify.

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37.4. The Arbitral Tribunal shall then take the necessary steps to have the oral testimony interpreted or to have the hearing transcribed.

37.5. Hearings shall be held behind closed doors and in private unless the parties decide otherwise. At the request of either party, the Arbitral Tribunal may order witnesses to testify without hearing other testimonies, in their absence. Unless there are exceptional circumstances, such a request shall not apply to expert witnesses.

37.6. The Arbitral Tribunal shall determine the order and manner in which witnesses are to be examined.

37.7. Testimonial evidence may also be produced in the form of written statements signed by the witnesses and by the experts, without prejudice to the right of the opposing party to cross-examine.

Article 38: Default

38.1. If either party fails to submit within the prescribed time limit a written statement of claim required and ordered by the Arbitral Tribunal without showing sufficient grounds to the satisfaction of the Arbitral Tribunal, the Arbitral Tribunal may proceed with the arbitration.

38.2. If one of the parties, duly notified, fails to appear at a hearing and does not provide good reason to the satisfaction of the Arbitral Tribunal, the arbitration may proceed without that party.

38.3. If one of the parties, having been duly required to produce evidence or take any other steps in the proceedings, fails to do so within the time limit fixed by the Arbitral Tribunal, and failing a reason considered justified to the satisfaction of the Arbitral Tribunal, the Arbitral Tribunal may make the award on the basis of the evidence at its disposal.

38.4. Default shall not imply acceptance by the Arbitral Tribunal of the facts and grounds alleged by either party. However, if the party failing to state its case is the party which submitted the dispute to arbitration and if there is no counterclaim by the other parties, the arbitration shall be terminated unless another party objects.

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Article 39: Closure of hearings

39.1. At the end of the last hearing or the last post-hearing submission filed by the parties, the Arbitral Tribunal shall decide to close the proceedings by communicating this decision to the parties.

39.2. The Arbitral Tribunal, on its own motion or at the request of a party, may, in exceptional circumstances, order the reopening of the proceedings before the mandatory time limit for rendering the award has expired.

Article 40: Waiver of the right to object

A party shall be deemed to have waived its right to object when proceeding with the arbitration if, knowing that a provision or condition imposed by these Rules was not complied with, it did not promptly express its objection to such non-compliance.

V. Award

Article 41: Time limit for rendering the award

41.1. Unless otherwise provided in the Procedural Organization Act or any other document reflecting the consensus of all parties to the arbitration proceedings, the Arbitral Tribunal shall have two (2) months from the closure of the proceedings to deliberate and render its final award.

41.2. In exceptional circumstances, the Arbitral Tribunal may extend this time limit in one or more orders, stating the reasons for such extension and after notifying the CARO Centre.

41.3. If the time limit for rendering the award proves unreasonable given the circumstances (reasons advanced for the extension; the situation of the parties; the complexity of the dispute and any other relevant circumstances) the Arbitral Tribunal shall be liable for financial penalties.

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Article 42: Decisions

42.1. Where the Arbitral Tribunal comprises three (3) arbitrators, decisions shall be adopted by majority vote. However, one of them, if authorized by the parties or by all the other arbitrators, may settle procedural questions alone.

42.2. An arbitrator having a dissenting opinion with respect to the award approved by the majority may present his or her dissenting opinion or a dissenting award.

Article 43: Forms and effects of the award

43.1. In addition to the final award, the Arbitral Tribunal may make interim, interlocutory or partial awards.

43.2. The award shall be made in writing and shall be final, not subject to appeal and binding on the parties. The parties undertake to execute the award without delay.

43.3. The Arbitral Tribunal shall state in the award the reasons on which it is based.

The award shall be signed by the arbitrators and shall state the date and place it was rendered. In the case of arbitration by three (3) arbitrators, if one of them has not signed the award, the award shall disclose the reasons for not doing so.

43.4. The award shall be strictly confidential. It may not be disclosed to the public or published except with the consent of all parties or in the event of recognition and enforcement. In such a case, the parties and the court of justice shall to the greatest extent possible endeavour to keep the reasons for the award confidential.

Article 44: Arbitration costs

44.1. The arbitration fees ("Arbitration Fees") shall include the CARO Centre's administrative costs, intended to cover the remuneration of the CARO Centre for its task of administering the arbitration ("Administrative Costs"), as well as the costs of the Arbitral Tribunal, corresponding to the fees of the Arbitral Tribunal and disbursements relating to the hearings, and the remuneration of a secretary to the Arbitral Tribunal, if any, under the conditions provided for in Article 23(2) ("Remuneration of the Arbitral Tribunal").

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44.2. The Arbitration Fees shall be definitively fixed by the Secretariat prior to notification of the award, based on the Schedule of Costs in Appendix C and on the budget drawn up by the Arbitral Tribunal in accordance with the provisions of Articles 26(3), 27(3) and 27(5) hereof; taking into account compliance with the budget by the Arbitral Tribunal throughout the procedure.

44.3. If an award is rendered by the Arbitral Tribunal, the Arbitral Tribunal shall indicate in the award the final amount of the Arbitration Fees, and shall also indicate all other costs incurred by the parties in the context of the arbitration proceedings, in particular the costs of counsel; fees of witnesses and experts; hearing room cost; and any other reasonable expenses incurred, all of which together shall constitute the arbitration costs (the "Arbitration Costs").

44.4. The Arbitral Tribunal shall have full discretion to determine in the final award the proportion in which the Arbitration Costs shall be borne by the parties, according to circumstances such as the behaviour of parties during the proceedings and the extent to which they contributed to the efficient conduct of the proceedings with the best possible combination of cost and efficiency.

44.5. In a case where arbitration proceedings are terminated before an award is rendered, the CARO Centre shall fix the final amount of the Arbitration Fees and shall ask the parties to pay the outstanding amounts. The Arbitral Tribunal shall then render a decision settling any other financial issue not yet resolved between the parties (payment of expert determination procedure or hearing costs for example), thus fixing the Arbitration Costs. The Arbitral Tribunal shall also make a final decision regarding the proportion in which the Arbitration Costs shall be borne by the parties.

Article 45: Partial Award

45.1. Partial awards rendered by the Arbitral Tribunal, irrespective of the stage of the proceedings at which they are made, shall be considered an integral part of the final award.

45.2. In the event of a contradiction between a partial award and a final award, the operative provisions of the partial awards shall be deemed to have been modified or set aside in accordance with the meaning established by the final award.

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Article 46: Award by Consent

46.1. At any time prior to the rendering of the award, and in particular at the end of the Organizational Hearing, the parties may agree to terminate the arbitration proceedings and request the Arbitral Tribunal to make an award made by consent or a consent award.

46.2. In accordance with the wishes of the parties, the Arbitral Tribunal may make a consent award, stating only the request of the parties and the terms of the written agreement.

46.3. The settlement award shall be signed by the parties and the arbitrators.

Article 47: Revision of draft award by the CARO Centre

47.1. Any draft arbitral award shall be communicated to the Secretariat prior to its notification to the parties, for review and comments, in compliance with the discretion of the Arbitral Tribunal, which has sole competence to rule on the merits of the case. During this review, the Committee's observations shall be sought on the draft award. These observations may notably involve matters relating to the form of the award.

47.2. The CARO Centre shall also fix the total amount of the Arbitration Fees as provided for under Article 44 hereof and shall specify the amount of the Advance paid by each of the parties.

47.3. Once the award has been validated by the CARO Centre, the final and definitive version shall be forwarded by the Arbitral Tribunal to the Secretariat, in as many originals as there are parties, plus one original to be kept in the archives of the CARO Centre. The award shall be dated and signed by the arbitrators (in person or electronically), or with an indication of any refusal to sign where appropriate.

Article 48: Notification of awards to the parties

48.1. After full payment of the Arbitration Fees, the Secretariat shall communicate the awards to the parties or their representatives by courier or by registered mail with proof of receipt.

48.2. All awards shall be binding on the parties. Parties who have recourse to OHADAC arbitration undertake to execute any award without delay.

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Article 49: Interpretation and correction of the award

49.1. Within thirty (30) days after rendering an award, the Arbitral Tribunal may, of its own motion, correct any formal, typographical or computational errors in the award.

49.2. A correction may also be made at the request of a party, and must be submitted to the Secretariat within fifteen (15) days of receipt of an award. The Secretariat shall forward this correction request to the Arbitral Tribunal, which shall forward it to the opposing party or parties, asking them to make their observations within fifteen (15) days of receipt of the correction request.

49.3. The Arbitral Tribunal shall make the corrections within a maximum period of fifteen (15) days from the last comments of the parties or shall notify the parties of its refusal to make them.

49.4. Furthermore, the parties may, in accordance with the procedure set out in paragraph 2 of this article, request an interpretation of the content of the award if they consider it confusing or unclear.

49.5. The parties may also request, in accordance with the procedure set out in paragraph 2 of this article, that the Arbitral Tribunal decide on one or more unresolved claims in the final award.

49.6. Where applicable, any corrections, interpretations and/or decision(s) on unresolved claim(s) shall be listed in an addendum to the final award, and shall form an integral part of it and shall be submitted to the CARO Centre for review, as provided under Article 47 of these Rules. Notification of this addendum shall be made in accordance with the provisions of Article 48 hereof.

Article 50: Amendment of the time limits

The time limits provided for herein must be complied with by the parties and the Arbitral Tribunal. Nevertheless, the parties may agree to derogate from the time limits by extending or shortening them, subject to approval by the Arbitral Tribunal if this has already been constituted.

Article 51: Responsibility of the CARO Centre

The CARO Centre is an institution that administers arbitration proceedings in compliance with

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these Rules. The CARO Centre and its members, its employees, its board of directors and/or the members of the Committee may not be held liable in this regard.

Article 52: Powers of the Arbitral Tribunal and of the CARO Centre in matters not mentioned in the Rules

In all scenarios not explicitly mentioned in these Rules, the CARO Centre and the Arbitral Tribunal may adopt any necessary measures to ensure the efficient conduct of the arbitration proceedings, in compliance with the rules applicable to the merits and to the proceedings, in order to enable the notification of an award that can be enforced.

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