



CPR

International Institute for
Conflict Prevention & Resolution

CPR PROCEDURES & CLAUSES

CPR Rules for Administered Arbitration of International Disputes

Effective March 1, 2019

CPR **International Institute for Conflict Prevention & Resolution**

Phone: +1.212.949.6490

Fax: +1.212.949.8859

www.cpradr.org

Changing the Way the World Resolves Conflict

ABOUT CPR – Established in 1977, CPR is an independent nonprofit organization that helps global businesses prevent and resolve commercial disputes effectively and efficiently.

CPR Dispute Resolution is an ADR provider offering quality, efficiency and integrity via innovative and practical arbitration rules, mediation and other dispute resolution services and procedures—as well as arbitrators, mediators and other neutrals, worldwide.

The CPR Institute, the world's leading ADR think tank, positions CPR uniquely as a thought leader, driving a global dispute resolution culture and utilizing its powerful committee structure to develop cutting edge tools, training and resources. These efforts are powered by the collective innovation of CPR's membership—comprising top corporations and law firms, academic and public institutions, and leading mediators and arbitrators around the world.

Each element of this unique organization informs and enriches the whole, for the benefit of our members and users.

Dispute Resolution Services:

- With litigation costing billions of dollars each year, effective conflict management is essential to reduce costs, increase privacy, lower litigation risks and improve business relationships.
- Mediation, arbitration and other consensual dispute resolution methods offer a low-cost, high-return option for parties.
- CPR's Panels of Distinguished Neutrals, comprised of former judges, prominent attorneys and academics, are uniquely qualified to resolve worldwide business disputes in more than 20 specialized practice areas.

CPR's Clauses and Rules:

- Allow parties to constructively and efficiently resolve disputes.
- Reduce time and money.
- Provide a range of options for administrative involvement.
- Enable proceedings to be held anywhere in the world.
- Conduct arbitration and/or mediation more efficiently with involvement of administering body determined by parties.

CPR Panels of Distinguished Neutrals:

- Nearly 600 distinguished neutrals, both in the United States and abroad.
- A highly selective vetting and evaluation process.
- A diverse Global Panel of Distinguished Neutrals across more than 20 countries.
- Highly skilled multilingual lawyers manage the administration and selection process

CPR Services Include:

- Resources for drafting pre-dispute ADR clauses and custom postdispute ADR agreements.
- Developing selection criteria for neutral selection, as well as generating lists of neutral candidates to meet parties' specific needs.
- Fund-holding capabilities.
- Procedures for challenging and/or replacing neutrals.
- Appointment of emergency arbitrator for emergency relief.
- Fully administered arbitration.

2019 CPR Rules for Administered Arbitration of International Disputes

(Effective March 1, 2019)

A. GENERAL AND INTRODUCTORY RULES	9
Rule 1: Scope of Application	
Rule 2: Notices	
Rule 3: Commencement of Arbitration; Counterclaims; Joinder and Consolidation	
Rule 4: Representation	
B. RULES WITH RESPECT TO THE TRIBUNAL	15
Rule 5: Selection of Arbitrators by the Parties	
Rule 6: Selection of Arbitrator(s) by CPR	
Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)	
Rule 8: Challenges to the Jurisdiction of the Tribunal	
C. RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS	25
Rule 9: General Provisions	
Rule 10: Applicable Law(s) and Remedies	
Rule 11: Disclosure	
Rule 12: Evidence and Hearings	
Rule 13: Interim Measures of Protection	
Rule 14: Emergency Measures of Protection by an Emergency Arbitrator	
Rule 15: The Award	
Rule 16: Failure to Comply With Rules	
D. RULES WITH RESPECT TO COSTS AND FEES.	38
Rule 17: Arbitrator Fees, Expenses and Deposits	
Rule 18: CPR Administrative Fees and Expenses	
Rule 19: Fixing and Apportionment of Costs	
E. MISCELLANEOUS RULES	40
Rule 20: Confidentiality	
Rule 21: Settlement and Mediation	
Rule 22: Actions against CPR or Arbitrator(s)	
Rule 23: Waiver	
Rule 24: Interpretation and Application of Rules	

CPR'S FULL RANGE OF ARBITRATION OPTIONS

The International Institute for Conflict Prevention and Resolution (“CPR”) recognizes that arbitrations managed by a separate administering entity, as well as arbitrations managed only by the Tribunal and counsel (so-called “*ad hoc*” or non-administered arbitrations), can offer benefits to the parties. Choosing administered arbitration under CPR’s rules allows the parties to avail themselves of CPR’s high quality multilingual staff and resources and obtain assistance with arbitrator selection, resolution of challenges to arbitrators, timeliness of awards, mediation queries and other key aspects of the arbitral process. On the other hand, some parties may prefer non-administered arbitrations and choose to request the assistance of CPR only for discrete functions (*e.g.*, arbitrator selection).

Since both approaches may offer benefits to the parties, CPR provides different sets of arbitration rules for each. There are four sets of rules. CPR’s non-administered rules include its Rules for Non-Administered Arbitration (March 1, 2018) for domestic disputes and its Rules for Non-Administered Arbitration of International Disputes (March 1, 2018).

CPR has also promulgated two sets of administered arbitration rules for domestic and international cases. The CPR Rules for Administered Arbitration (March 1, 2019) for domestic disputes and CPR Rules for Administered Arbitration of International Disputes (March 1, 2019) provide parties with the same well-designed procedures and high quality arbitrators as CPR’s non-administered options, while also allowing the parties to avail themselves of CPR’s staff and resources when an administered process is desired. As is the case with the domestic administered arbitration rules, the Rules for Administered Arbitration of International Disputes are based on the non-administered version, with changes to facilitate CPR’s administration of the proceedings.

CPR RULES FOR ADMINISTERED ARBITRATION OF INTERNATIONAL DISPUTES

The CPR Rules - Background

The CPR's Rules for Administered Arbitration of International Disputes (the "Rules") were developed by CPR to provide procedures to facilitate the conduct of international arbitration fairly, expeditiously and economically. The Rules were designed to be easily comprehended. They are intended, in particular, for the complex international case, but are suitable regardless of the complexity of the case or the amount in dispute.

Every disputant wants to have a reasonable opportunity to develop and present its case. Parties that choose arbitration over litigation of an international dispute do so primarily to avoid the unfamiliarity and uncertainty of litigation in a foreign court; also out of a need or desire for a proceeding that is confidential and expeditious. The Rules were designed with all of these objectives in mind. The standard arbitration clauses in the Rules have been drafted to make proceedings under the Rules subject to the law selected by the parties. The standard clauses also provide for the parties to select the seat and language of the arbitration as well as for CPR to perform the arbitrator-selection functions provided in Rules 5, 6 and 7.

International Disputes

These Rules are designed for "international disputes," which broadly encompass disputes of any nature involving persons or business enterprises of different nationalities or located in different countries. For example, international commercial disputes, intellectual property disputes, construction disputes, disputes between manufacturers and distributors or franchisees, disputes between joint venturers, insurance disputes and investment disputes. The Rules may be adopted by parties that do not have a contractual or other business relationship, *e.g.*, for a patent infringement dispute. The Rules may also be employed to adjudicate a dispute between a government agency and a private entity, subject to any legal restraints on that government's submission to arbitration.

CPR recommends that where the parties are based or located in different countries or where their contract involves a foreign subject matter or otherwise calls for performance abroad, they specifically provide for application of CPR's Rules for Administered Arbitration of International Disputes ("Administered International Rules") or Rules for Non-Administered Arbitration of International Disputes ("Non-Administered International Rules").

Where parties to an international transaction have provided for CPR arbitration generally, without specifically identifying which CPR arbitration rules shall apply, the CPR Administered International Rules shall apply.

Particular Rule Provisions - Overview

The Administered International Rules, as well as the Non-Administered International Rules, take into account that an international dispute calls for additional or different rules for international dispute resolution. Thus, the Administered International Rules contain additional or different provisions concerning, *inter alia*, certain time limits (*e.g.*, Rules 3.5 and 5.2), the nationality of arbitrators (Rules 6.2 and 6.3), the language of the arbitration (Rule 9.6), applicable laws and remedies including currency (Rule 10), and certain provisions concerning evidence (Rule 12). The Rules require that arbitrators be neutral and that the Tribunal issue a reasoned award.

While most arbitrations involve two parties, the Rules are also suitable for proceedings among three or more parties. References to "Claimant," "Respondent" and "other party" should be construed to encompass multiple Claimants, Respondents or other parties in such multi-party proceedings. Where necessary, the Rules specifically address particular issues raised in the multi-party context. For example, Rule 3.4 provides that the arbitration shall be deemed commenced on the date on which CPR receives the notice of arbitration. Rules 3.12 and 3.13 deal with joinder and consolidation.

Rule 5.1.a provides that, absent the parties' agreement on the number of arbitrators, in all cases in which the stated amount of the claim or counterclaim does not exceed \$3 million, exclusive of interest or costs under Rule 19, a Tribunal shall consist of a sole arbitrator

unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the complexity of the case or other considerations. In all other cases, a Tribunal shall consist of three arbitrators.

Rule 5.1.c provides that where a Tribunal is to consist of three arbitrators, the “screened selection” procedure of Rule 5.4 shall apply to the selection of the arbitrators absent the parties’ agreement on a different procedure. Under “screened selection” the arbitrators are designated by the parties without the arbitrators knowing which party designated them. Rule 5.5 deals with the constitution of the Tribunal where the arbitration agreement entitles each party to designate an arbitrator but there is more than one Claimant or Respondent to the dispute.

Rule 9.2 empowers the arbitrator(s) to establish time limits for each phase of the proceeding, including specifically the time allotted to each party for presentation of its case and for rebuttal.

Rule 9.3 requires the Tribunal to hold a pre-hearing conference promptly after it is constituted. The goal of the conference is to plan the future conduct of the arbitration and allow the Tribunal subsequently to issue a procedural order and timetable.

Rule 9.3.b provides for Tribunal and parties, at the initial pre-hearing conference, to discuss the identification and narrowing of the issues, including the possibility of early disposition of issues in accordance with Rule 12.6 and the CPR Guidelines on Early Disposition of Issues in Arbitration.

Rule 9.3.e provides for the possibility of the setting a date during the proceeding when CPR will query the parties as to their desire to mediate under the CPR International Mediation Procedure. Rule 9.3.f provides for the possibility of implementing steps to address issues of cybersecurity and protecting the security of information in the arbitration.

Rule 9.3.g provides for Tribunal and parties to discuss the setting of a date for a hearing for the presentation of evidence and oral argument.

A new Rule 12.5 supports the development of the next generation of lawyers by providing that the Tribunal, in its discretion, may encourage lead counsel to share witness examination and/or legal arguments with more junior attorneys.

A new Rule 12.6 deals with the early disposition of claims, defenses and other factual and legal issues.

Rule 14 deals with emergency measures of protection by an emergency arbitrator.

Rule 15.8.a states that the dispute should in most circumstances be heard and submitted to the Tribunal for decision within six months after the initial pre-hearing conference required by Rule 9.3 and that the final award should in most circumstances be submitted by the Tribunal to CPR within two months after the close of the proceedings. It requires the parties, the Tribunal and CPR to use their best efforts to meet these timeframes. Rule 15.8.b requires CPR to approve any scheduling orders or extensions that would result in the final award being rendered more than twelve months after the initial pre-hearing conference. Rule 15.8.a should be read in conjunction with Rule 9.3.h, which relates to the adoption of a timetable following the initial pre-hearing conference.

The Rules contemplate that counsel will cooperate fully with the Tribunal and with each other to assure that the proceeding will be conducted with civility and in an efficient, expeditious and economical manner. Rule 19.2 empowers the arbitrators in apportioning costs to take into account, *inter alia*, “the circumstances of the case” and “the conduct of the parties during the proceeding.” This broad power is intended to permit the arbitrators to apportion a greater share of costs than they otherwise might to a party that has employed tactics the arbitrators consider dilatory, or in other ways has failed to cooperate in assuring the efficient conduct of the proceedings.

Rule 21.3 permits CPR, at any point in the proceeding, to invite the parties to mediate under the CPR International Mediation Procedure or under any other mediation procedure acceptable to the parties. Any such mediation would take place concurrently with the arbitration.

Commentary, Guidelines and Protocols

CPR has prepared a General Commentary for CPR’s Rules for Administered Arbitration of International Disputes that should be consulted in applying these Rules. The General Commentary may be found on CPR’s website at www.cpradr.org following the text of the Rules.

CPR has promulgated guidelines and protocols that are designed to control time and cost and increase efficiency (available on CPR's website at www.cpradr.org).

Mediation and Other ADR Procedures

The following Procedures are intended to govern arbitration proceedings. However, many parties wish to incorporate in their contract provisions for face-to-face negotiation or mediation prior to arbitration. Parties desiring to use such procedures should consult the CPR International Mediation Procedure and CPR's tools for drafting dispute resolution clauses (available on CPR's website at www.cpradr.org, Resource Center).

CPR CLAUSES

Standard Contractual Provisions

The International Institute for Conflict Prevention and Resolution (CPR) Rules for Administered Arbitration of International Disputes are intended in particular for use in commercial arbitrations and are designed to assure the expeditious and economical conduct of proceedings. They may be adopted by parties by using one of the following standard provisions:

A. Pre-Dispute Clause

“Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration of International Disputes by [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party)]. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).”

B. Existing Dispute Submission Agreement

“We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration of International Disputes (the “Rules”) the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to [a sole arbitrator] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR] [three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators] [three arbitrators, of

whom each shall designate one in accordance with the screened selection procedure provided in Rule 5.4] [three arbitrators, none of whom shall be designated by either party.] We further agree that we shall faithfully observe this agreement and the Rules and that we shall abide by and perform any award rendered by the arbitrator(s). Judgment upon the award may be entered by any court having jurisdiction thereof. The seat of the arbitration shall be (city, country). The language of the arbitration shall be (language).”

A. GENERAL AND INTRODUCTORY RULES

Rule 1: Scope of Application

- 1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration of International Disputes (the “Rules”), they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify these Rules (other than Rule 22, which cannot be modified without CPR’s written consent). Unless the parties otherwise agree, these Rules, and any amendment thereof adopted by CPR, shall apply in the form in effect at the time the arbitration is commenced. Where parties to a contract have provided for CPR arbitration generally, without specifying which set of CPR rules shall apply, these Rules shall apply to any arbitration agreement dated on or after December 1, 2014 where the parties reside in different countries or where the contract involves property or calls for performance in a country other than the parties’ country of residence. CPR shall make the final decision as to which CPR rules shall apply.
- 1.2 These Rules shall govern the conduct of the arbitration except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law of the seat of the arbitration, that provision of law shall prevail.

Rule 2: Notices

- 2.1 Notices or other communications required under these Rules shall be in writing and delivered to the address specified in writing by the recipient for this purpose or, if no address has been specified, to the last known business or residence address of the recipient. Notices and communications may be given by registered mail, courier, facsimile transmission, email communication or any other means of telecommunication that provides a record thereof. Notices and communications shall be deemed to be effective as of the date of receipt. Proof of transmission shall be deemed prima facie proof of receipt of any notice or communication given under these Rules.
- 2.2 Time periods specified by these Rules or established by the Arbitral Tribunal (the “Tribunal”) shall start to run on the day following the day when a notice or communication is received, unless the Tribunal shall specifically provide otherwise. If the last day of such a period is an official holiday or a non-business day at the place where the notice or communication is received, the period is extended until the first business day which follows. Official holidays and non-business days occurring during the running of the time period are included in calculating the period.

Rule 3: Commencement of Arbitration; Counterclaims; Joinder and Consolidation

- 3.1 The party commencing arbitration (the “Claimant”) shall, in accordance with Rule 3.3, simultaneously deliver to the other party (the “Respondent”) a notice of arbitration with an electronic copy to CPR.
- 3.2 The notice of arbitration shall include in the text or in attachments thereto:
- a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
 - b. A demand that the dispute be referred to arbitration pursuant to these Rules;

- c. The text of the arbitration clause or the separate arbitration agreement that is involved;
 - d. A statement of the general nature of the Claimant's claim;
 - e. The relief or remedy sought; and
 - f. The name, address, telephone number and email address of the arbitrator designated for appointment by the Claimant, if the parties have agreed that each shall designate an arbitrator.
- 3.3 Delivery of the notice of arbitration to CPR required under Rule 3.1 shall be as specified on the CPR website. Simultaneous with delivery of the notice of arbitration to CPR, the Claimant shall make payment to CPR of the appropriate Filing Fee as provided in the Pricing and Fees Schedule on the CPR website. In the event the Claimant fails to comply with this requirement, CPR may fix a time limit within which the Claimant must make payment, failing which the file shall be closed without prejudice to the Claimant's right to submit the same claim(s) at a later date in another notice of arbitration if otherwise permissible. CPR shall notify all parties forthwith if it has closed the file pursuant to this Rule 3.3.
- 3.4 The date on which CPR is in receipt of the notice of arbitration shall, for all purposes, be deemed to be the date of the commencement of the arbitration ("Commencement Date").
- 3.5 CPR shall notify the Respondent of its time to deliver a notice of defense, which shall be 30 days after the Commencement Date.
- 3.6 The Respondent shall, by the date provided by CPR under Rule 3.5, simultaneously deliver a notice of defense to the Claimant and an electronic copy to CPR. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the notice of arbitration shall be deemed denied. Failure to deliver a notice of defense shall not excuse the Respondent from notifying the Claimant and CPR in writing, by the date

provided by CPR under Rule 3.5, of the arbitrator designated for appointment by the Respondent, if the parties have agreed that each shall designate an arbitrator.

- 3.7 The notice of defense shall include:
- a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
 - b. Any comment on the notice of arbitration that the Respondent may deem appropriate;
 - c. A statement of the general nature of the Respondent's defense; and
 - d. The name, address, telephone number and email address of the arbitrator designated for appointment by the Respondent, if the parties have agreed that each shall designate an arbitrator.
- 3.8 The Respondent may include in its notice of defense any counterclaim within the scope of the arbitration clause. If it does so, the counterclaim in the notice of defense shall include items a, b, c, d and e of Rule 3.2.
- 3.9 If a counterclaim is asserted in accordance with Rule 3.8, CPR shall notify the Claimant of its time to deliver a response, which shall be 30 days after CPR's receipt of the notice of defense and counterclaim. Such response shall have the same elements as provided in Rule 3.7.b and c for the notice of defense. Failure to deliver a reply to a counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.
- 3.10 Claims or counterclaims within the scope of the arbitration clause may be freely added, amended or withdrawn prior to the constitution of the Tribunal and thereafter with the consent of the Tribunal. Notices of defense or replies to added or amended claims or counterclaims shall be delivered within 20 days after CPR's receipt of the addition or amendment or such other date as specified by CPR, or, if the Tribunal has been constituted, by the date specified by the Tribunal.

- 3.11 If a dispute is submitted to arbitration pursuant to a submission agreement, this Rule 3 shall apply to the extent that it is not inconsistent with the submission agreement.
- 3.12 Prior to the appointment of any arbitrator, CPR may, at the request of any party, allow one or more third parties to be joined in the arbitration as a party, unless, after giving all parties, including the party or parties to be joined, the opportunity to be heard, CPR finds that joinder should not be permitted. Any such joinder shall be subject to the provisions of Rule 8. Whenever joinder is considered, CPR may, in its discretion, adjust or set any deadlines otherwise provided for in Rules 3, 5 and 6. No additional party may be joined after the appointment of any arbitrator, unless all parties, including the additional party or parties, otherwise agree. A request for joinder shall be addressed to CPR together with the CPR Filing Fee, and shall include the full name, address, telephone number and email address for each party to be joined and its counsel, if any, as well as the basis on which the party is proposed to be joined, including the text of any relevant arbitration clause or separate arbitration agreement.
- 3.13 a. CPR may, at the request of a party and following consultation with the parties, consolidate two or more arbitrations pending under these Rules into a single arbitration, where:
1. The parties have agreed to consolidation; or
 2. All of the claims in the arbitrations are made under the same arbitration agreement; or
 3. The claims in the arbitrations are made under more than one arbitration agreement, the arbitrations are between the same parties, the disputes in the arbitrations arise in connection with the same legal relationship, and CPR finds the arbitration agreements to be compatible.

- b. In deciding whether to consolidate, CPR may take into account any circumstances it considers to be relevant, including whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed; the existence of common issues of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation; and consolidation would serve the interests of justice and efficiency.
- c. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by the parties or determined by CPR.
- d. Arbitrations shall not be consolidated if the arbitration agreement prohibits consolidation.
- e. In its discretion, CPR may refer any issues relating to consolidation to the CPR International Arbitration Council (the “Council”) for determination. Information on the Council is set forth in Rule 24 and also available on CPR’s website, www.cpradr.org.

Rule 4: Representation

- 4.1 The parties may be represented or assisted by persons of their choice.
- 4.2 Each party shall communicate the names, addresses, telephone numbers, email addresses and function of such persons in writing to the other party, to the Tribunal and to CPR.

B. RULES WITH RESPECT TO THE TRIBUNAL

Rule 5: Selection of Arbitrators by the Parties

- 5.1 a. *Number of Arbitrators.* Absent the parties' agreement on the number of arbitrators, in all cases in which the stated amount of the claim or counterclaim does not exceed \$3 million, exclusive of interest or costs under Rule 19, a Tribunal shall consist of a sole arbitrator unless CPR, in its discretion, decides that three arbitrators shall be appointed due to the complexity of the case or other considerations. In all other cases, a Tribunal shall consist of three arbitrators.
- b. *Procedures for Selection.* Arbitrators may be selected (i) by the parties through direct designation (Rule 5.2), (ii) by the parties through CPR's screened selection procedure (Rule 5.4), or (iii) by the parties through CPR's list procedure (Rule 6). Unless the parties have agreed otherwise, any arbitrator not designated for appointment by a party shall be a member of the CPR Panels of Distinguished Neutrals ("CPR Panels") or a candidate selected by CPR. Upon request, CPR will provide a list of candidates in accordance with the Rules.
- c. *Screened Selection As Default Procedure.* Where a Tribunal is to consist of three arbitrators, Rule 5.4 shall apply to the selection of the arbitrators absent the parties' agreement on a different procedure.
- 5.2 a. *Direct Designation By the Parties.* Where the parties have agreed that two of the three arbitrators on a Tribunal are to be directly designated for appointment by the parties rather than designated through the screened selection procedure of Rule 5.4 or a different procedure, Rules 3.2 and 3.7 shall apply to the selection of the party-designated arbitrators, and a third arbitrator who shall chair the Tribunal shall be selected in accordance with the procedure set forth in Rule 5.2.c & d.

- b. Where a party has directly designated an arbitrator for appointment under Rule 3.2 or 3.7, CPR will query such candidate for their availability and request that the candidate disclose in writing any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of that candidate's disclosures, a party may object to the appointment of any candidate on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment on the objection. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as the party-appointed arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection made under this Rule 5.2.b by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).
- c. Absent the parties' agreement on a different procedure, CPR shall select the third arbitrator in accordance with the procedure set forth in Rule 6.2.
- d. If the parties have agreed that the party-appointed arbitrators shall designate for appointment the third arbitrator who shall chair the Tribunal, such designation cannot occur until after appointment by CPR of both of the party-designated arbitrators. The party-appointed arbitrators shall inform CPR of the candidate designated by them to be the third arbitrator, whereupon CPR will query such candidate for availability and request such candidate to disclose in writing any circumstances that might give rise to justifiable doubt regarding the

candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of the candidate's disclosures, a party may object to the appointment of such candidate on the grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as the third arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection under this Rule 5.2.d by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

In the event that the party-appointed arbitrators are unable to agree on a third arbitrator within 30 days of CPR's appointment of the second arbitrator, the third arbitrator shall be selected as provided in Rule 6.2.

- 5.3 *Selection by the Parties through Means Other than Direct Designation or Screened Selection.* If Rule 5.1.a provides for a Tribunal consisting of a sole arbitrator, or if the parties have agreed on a Tribunal consisting of a sole arbitrator or of three arbitrators none of whom shall be directly designated for appointment by either party or designated by either party through screened selection, the parties shall attempt jointly to designate such arbitrator(s) within 30 days after the deadline for notice of defense provided for in Rule 3.6 is due. CPR will query such jointly designated candidate(s) in accordance with the procedure provided for in Rule 5.2.b. The parties may extend their selection process until one or both of them have concluded that a deadlock

has been reached, but in no event for more than 45 days after the notice of defense provided for in Rule 3.6 is due. In the event the parties are unable to designate the arbitrator(s) within the extended selection period, the arbitrator(s) shall be selected as provided in Rule 6.2.

- 5.4 *Screened Selection By the Parties.* Absent party agreement to the contrary, where the Tribunal is to consist of three arbitrators, two of the arbitrators shall be designated by the parties without the arbitrators knowing which party designated each of them, as provided for in this Rule 5.4. CPR shall conduct a screened selection of party-designated arbitrators as follows:
- a. Each party may provide designee(s) to CPR to be included in a list of candidates to be circulated to the parties by such date as CPR shall set, provided that neither the party nor anyone acting on its behalf has had any *ex parte* communications with the arbitrator candidate relating to the case. CPR will query such designee in accordance with the procedure provided for in Rule CPR 5.2.b. CPR will provide each party a list of candidates drawn in whole or in part from the CPR Panels, including any designees provided by the parties, together with confirmation of their availability to serve as arbitrators and disclosure of any circumstances that might give rise to justifiable doubt regarding their independence or impartiality as provided in Rule 7. Within 10 days after the receipt of the CPR list of candidates, each party shall designate from the list three candidates, in order of preference, for its party-designated arbitrator, and so notify CPR and the other party in writing.
 - b. Within the same 10-day period after receipt of the CPR list, a party may also object to the appointment of any candidate on the list on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no objection to the

first candidate designated by a party, or if the objection is overruled by CPR, CPR shall appoint the candidate as the arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 – 7.8. At its discretion, CPR may decide an objection under this Rule 5.4.b by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

- c. If the independence or impartiality of the first candidate designated by a party is successfully challenged, CPR will appoint the subsequent candidate designated by that party, in order of the party's indicated preference, provided CPR does not sustain any objection made to the appointment of that candidate.
- d. Neither CPR nor the parties shall advise or otherwise provide any information or indication to any arbitrator candidate or appointed arbitrator as to which party selected either of the party-designated arbitrators. No party or anyone acting on its behalf shall have any *ex parte* communications relating to the case with any arbitrator candidate or appointed arbitrator pursuant to this Rule 5.4.
- e. The chair of the Tribunal will be appointed by CPR in accordance with the procedure set forth in Rule 6.2, which shall proceed concurrently with the procedure for appointing the party-designated arbitrators provided in subsections a-d above.

5.5 *Selection in Multi-party Cases.* Where the arbitration agreement entitles each party to designate an arbitrator but there is more than one Claimant or Respondent to the dispute, and either the multiple Claimants or the multiple Respondents do not jointly designate an arbitrator within the time limit set by CPR, CPR shall appoint all of the arbitrators as provided in Rule 6.2.

Rule 6: Selection of Arbitrator(s) by CPR

- 6.1 Whenever (i) a party has failed to designate its arbitrator to be appointed by CPR; (ii) the parties have failed jointly to designate the arbitrator(s) to be appointed by CPR; (iii) the parties have agreed that the party-designated arbitrators who have been appointed by CPR shall designate the third arbitrator, and such arbitrators have failed to designate the third arbitrator; (iv) the parties have provided that one or more arbitrators shall be appointed by CPR; or (v) the multi-party nature of the dispute calls for CPR to appoint all members of a three-member Tribunal pursuant to Rule 5.5, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6.
- 6.2 *Selection Through CPR List Procedure.* Except where a party has failed to designate its arbitrator to be appointed by CPR, CPR shall proceed as follows:
- a. At its discretion, CPR shall jointly convene the parties by telephone to discuss the selection of the arbitrator(s).
 - b. Thereafter, CPR shall provide to the parties a list, drawn in whole or in part from the CPR Panels, of not less than five candidates if one arbitrator is to be selected, and of not less than seven candidates if two or three arbitrators are to be selected. If either party shall so request, such candidates shall be of a nationality other than the nationalities of the parties. Such list shall include a brief statement of each candidate's qualifications, availability and disclosure in writing of any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Each party shall number the candidates in order of preference, shall note any objection it may have to any candidate, and shall deliver the list so marked to CPR, which, on agreement of the parties, shall circulate the delivered lists to the parties.
 - c. Any party failing without good cause to return the candidate list so marked within 10 days after receipt shall be deemed to have

assented to all candidates listed thereon. CPR shall appoint as arbitrator(s) the nominee(s) willing to serve for whom the parties collectively have indicated the highest preference and who appear to meet the standards set forth in Rule 7. If a tie should result between two candidates, CPR may designate either candidate. If this procedure for any reason should fail to result in designation of the required number of arbitrators or if a party fails to participate in this procedure, CPR shall appoint a person or persons whom it deems qualified to fill any remaining vacancy, and whom, if either party shall so request, shall be of a nationality other than the nationalities of the parties.

- 6.3 Where a party has failed to designate its arbitrator to be appointed by CPR, CPR shall appoint a person whom it deems qualified to serve as such arbitrator, taking into account the nationalities of the parties and any other relevant circumstances.

Rule 7: Qualifications, Challenges and Replacement of Arbitrator(s)

- 7.1 Each arbitrator shall be independent and impartial.
- 7.2 By accepting appointment, each arbitrator shall be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that he or she has the time available to devote to the expeditious process contemplated by these Rules.
- 7.3 Each arbitrator shall disclose in writing to CPR and the parties prior to appointment in accordance with the Rules, and also promptly upon their arising during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality as well as any additional disclosures required by the law of the seat. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel.

- 7.4 No party or anyone acting on its behalf shall have any *ex parte* communications concerning any matter relating to the proceeding with any arbitrator or arbitrator candidate, except that a party may advise a candidate being considered for designation as its party-appointed arbitrator of the general nature of the case and discuss the candidate's qualifications, availability, and independence and impartiality with respect to the parties, and a party may confer with its designated arbitrator after the arbitrator's appointment by CPR regarding the selection of the chair of the Tribunal, if the chair is to be selected by agreement of the party-appointed arbitrators or the parties. As provided in Rule 5.4.d, no party or anyone acting on its behalf shall have any *ex parte* communications relating to the case with any arbitrator candidate designated or appointed pursuant to Rule 5.4, either before or after that candidate is designated or appointed.
- 7.5 Any arbitrator may be challenged if circumstances exist or arise that give rise to justifiable doubt regarding that arbitrator's independence or impartiality, provided that a party may challenge an arbitrator whom it has designated only for reasons of which it becomes aware after the designation has been made.
- 7.6 A party may challenge an appointed arbitrator only by a notice in writing to CPR, with a copy to the Tribunal and the other party, in accordance with the CPR Challenge Protocol (excluding its fee requirement) given no later than 15 days after the challenging party (i) receives notification of the appointment of that arbitrator, or (ii) becomes aware of the circumstances specified in Rule 7.5, whichever shall last occur. The notice shall state the reasons for the challenge with specificity. The notice shall not be sent to the Tribunal when the challenged arbitrator is a party-designated arbitrator selected through CPR's screened selection procedure as provided in Rule 5.4; in that event, CPR may provide each member of the Tribunal with an opportunity to comment on the substance of the challenge without disclosing the identity of the challenging party.

- 7.7 When an arbitrator has been challenged by a party, the other party may agree to the challenge or the arbitrator may voluntarily withdraw. Neither of these actions implies acceptance of the validity of the challenge.
- 7.8 If neither agreed disqualification nor voluntary withdrawal occurs, the challenge shall be decided by CPR in accordance with the CPR Challenge Protocol (excluding its fee requirement) after providing the non-challenging party and each member of the Tribunal with an opportunity to comment on the challenge.
- 7.9 In the event of death, resignation or successful challenge of an arbitrator not designated by a party, a substitute arbitrator shall be selected pursuant to the procedure by which the arbitrator being replaced was selected. In the event of the death, resignation or successful challenge of an arbitrator designated by a party, that party may designate a substitute arbitrator; provided, however, that should that party fail to notify the Tribunal and the other party of the substitute designation within 20 days from the date on which it becomes aware that the opening arose, that party's right of designation shall lapse and CPR shall appoint a substitute arbitrator forthwith in accordance with these Rules.
- 7.10 In the event that an arbitrator fails to act or is *de jure* or *de facto* prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement. If the parties do not agree on whether the arbitrator has failed to act or is prevented from performing the functions of an arbitrator, either party may request CPR to make that determination forthwith.
- 7.11 If the sole arbitrator or the chair of the Tribunal is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated. If any other arbitrator is replaced, the Tribunal in its discretion may require that some or all prior hearings be repeated.

- 7.12 If an arbitrator on a three-person Tribunal fails to participate in the arbitration, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling or award, notwithstanding the failure of the third arbitrator to participate, unless the parties agree otherwise. In determining whether to continue the arbitration or to render any decision, ruling or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such nonparticipation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the procedures provided in Rule 7.9 shall apply to the selection of a replacement.

Rule 8: Challenges to the Jurisdiction of the Tribunal

- 8.1 The Tribunal shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement. This authority extends to jurisdictional challenges with respect to both the subject matter of the dispute and the parties to the arbitration.
- 8.2 The Tribunal shall have the power to determine the existence, validity or scope of the contract of which an arbitration clause forms a part. For the purpose of challenges to the jurisdiction of the Tribunal, the arbitration clause shall be considered as separable from any contract of which it forms a part.
- 8.3 Any challenges to the jurisdiction of the Tribunal, except challenges based on the award itself, shall be made no later than the notice of defense or, with respect to a counterclaim, the reply to the counterclaim; provided, however, that if a claim or counterclaim is later added or amended, a challenge to jurisdiction over such claim or counterclaim must be made no later than the response to such claim or counterclaim as provided under these Rules.

C. RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

Rule 9: General Provisions

- 9.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate while giving each party a fair opportunity to present its case and according the parties equality of treatment. The chair shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal, and shall keep CPR informed of such arrangements throughout the proceedings.
- 9.2 The proceedings shall be conducted in an expeditious manner. The Tribunal is empowered to impose reasonable time limits on each phase of the proceeding, including without limitation the time allotted to each party for presentation of its case and for rebuttal. In setting time limits, the Tribunal should bear in mind its obligation to manage the proceeding efficiently in order to complete proceedings as economically and expeditiously as possible.
- 9.3 The Tribunal shall hold an initial pre-hearing conference for the planning and scheduling of the proceeding. Such conference shall be held promptly after the constitution of the Tribunal. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct and allowing the Tribunal thereafter to issue a procedural order and timetable governing the arbitration. Matters to be considered in the initial pre-hearing conference may include, *inter alia*, the following:
- a. Procedural matters, such as the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and costs of translations; the scheduling of pre-hearing memoranda; the need for and type of record of conferences and hearings, including the need for transcripts; the amount of time allotted to each party for presentation of

its case and for rebuttal; the mode, manner and order for presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal;

- b. The early identification and narrowing of the issues in the arbitration, including the possibility of early disposition of any claims, counterclaims, defenses or other issues in accordance with Rule 12.6 and the CPR Guidelines on Early Disposition of Issues in Arbitration;
- c. The possibility of stipulations of fact by the parties solely for purposes of the arbitration;
- d. The possibility of appointment of a neutral expert by the Tribunal;
- e. The possibility of the parties engaging in settlement negotiations, with or without the assistance of a mediator, and the possibility of setting of a date during the proceeding when CPR will query the parties as to their desire to mediate under the CPR International Mediation Procedure;
- f. The possibility of implementing steps to address issues of cybersecurity and to protect the security of information in the arbitration;
- g. The setting of a date for a hearing to be held for the presentation of evidence and oral argument if requested by either party or directed by the Tribunal as provided in Rule 12.2; and
- h. The adoption of a timetable that would allow the Tribunal to render a final award within the timeframe specified in Rule 15.8.a, or, subject to the approval of CPR under Rule 15.8.b, by such later date consistent with the objectives of efficiency, expedition and fairness set forth in Rules 9.1 and 9.2.

After the initial conference, further pre-hearing or other conferences may be held as the Tribunal deems appropriate.

- 9.4 In order to define the issues to be heard and determined, the Tribunal may, *inter alia*, make pre-hearing orders for the arbitration and instruct the parties to file more detailed statements of claim and of defense and pre-hearing memoranda.
- 9.5 Unless the parties have agreed upon the seat of arbitration, CPR may initially determine the seat of the arbitration, subject to the power of the Tribunal to determine finally the seat of the arbitration promptly after its constitution. All such determinations shall be made having regard for the contentions of the parties and the circumstances of the arbitration. The award shall be deemed made at the seat. The Tribunal may schedule meetings and hold hearings wherever it deems appropriate.
- 9.6 If the parties have not agreed otherwise, the language(s) of the arbitration shall be that of the documents containing the arbitration agreement, subject to the power of the Tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The Tribunal may order that any documents submitted in other languages shall be accompanied by a translation into such language or languages.
- 9.7 Except as otherwise provided in these Rules, only electronic copies of filings, communications and other documents shall be sent to CPR; hard copies of filings or other documents sent to the Tribunal and/or the other party should not be sent to CPR in the ordinary course.

Rule 10: Applicable Law(s) and Remedies

- 10.1 The Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the Tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
- 10.2 Subject to Rule 10.1, in arbitrations involving the application of contracts, the Tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

- 10.3 The Tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have authorized it to do so in writing or on the record.
- 10.4 The Tribunal may grant any remedy or relief, including but not limited to specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute pursuant to Rule 10.1, or, if the parties have expressly so provided pursuant to Rule 10.3, within the Tribunal's authority to decide as *amiable compositeur* or *ex aequo et bono*.
- 10.5 Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary or similar damages unless a statute requires that compensatory damages be increased in a specified manner. This provision shall not limit the Tribunal's authority under Rule 19 to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.
- 10.6 A monetary award shall be in the currency or currencies of the contract unless the Tribunal considers another currency more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.

Rule 11: Disclosure

The Tribunal may require and facilitate such disclosure as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making disclosure expeditious and cost-effective. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed.

Rule 12: Evidence and Hearings

- 12.1 The Tribunal shall determine the manner in which the parties shall present their cases. Unless otherwise determined by the Tribunal or agreed by the parties, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements:
- a. A statement of facts;
 - b. A statement of each claim being asserted;
 - c. A statement of the applicable law and authorities upon which the party relies;
 - d. A statement of the relief requested, including the basis for any damages claimed; and
 - e. The evidence to be presented, including documents relied upon and the name, capacity and subject of testimony of any witnesses to be called, and the language in which each witness will testify.
- 12.2 If either party so requests or the Tribunal so directs, a hearing shall be held for the presentation of evidence and oral argument. Testimony may be presented in written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply the rules of evidence used in judicial proceedings. The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.
- 12.3 The Tribunal, in its discretion, may require the parties to produce evidence in addition to that initially offered. It may also appoint neutral experts whose testimony shall be subject to examination by the parties and the Tribunal and to rebuttal.
- 12.4 The Tribunal shall determine the manner in which witnesses are to be examined, including the need and arrangements for translation of any witness testimony in a language other than the language of the arbitration. The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

12.5 In order to support the development of the next generation of lawyers, the Tribunal, in its discretion, may encourage lead counsel to permit more junior lawyers with significantly less arbitration experience than lead counsel to examine witnesses at the hearing and present argument. The Tribunal, in its discretion, may permit experienced counsel to provide assistance or support, where appropriate, to a lawyer with significantly less experience during the examination of witnesses or argument. Notwithstanding the contents of this Rule 12.5, the ultimate decision of who speaks on behalf of the client in an arbitration is for the parties and their counsel, not the Tribunal.

12.6 *Early Disposition of Claims, Counterclaims, Defenses and Other Issues*

- a. Subject to the Tribunal's instructions pursuant to Rule. 9.3.b, a party may make a preliminary application to the Tribunal to file a motion for early disposition of issues, including claims, counterclaims, defenses, and other legal and factual questions.
- b. A preliminary application to file a motion for early disposition shall set forth:
 - i. the issue(s) to be resolved;
 - ii. a short statement of the basis for the proposed motion for early disposition and relief requested;
 - iii. how early disposition of the issue(s) will advance efficient resolution of the overall dispute; and
 - iv. the applicant's proposal as to the procedure by which the issues submitted for early disposition would be resolved.
- c. The Tribunal shall promptly review the preliminary application and any responses from the other party(ies) and determine whether there is a reasonable likelihood that hearing the motion for early disposition may result in increased efficiency in resolving the overall dispute while not unduly delaying the rendering of a final award.

- d. If the Tribunal concludes that hearing the motion for early disposition of the issue(s) is appropriate, it shall instruct the parties as to the procedure to be followed, taking into account the proposals by the parties. The motion for early disposition may be resolved on the basis of written submissions, witness testimony by affidavit or other written form, limited hearings, or in any other manner the Tribunal shall deem appropriate, provided that the party opposing the motion has a reasonable opportunity to make its factual and other presentations.
- e. The Tribunal shall endeavour to render a decision on the motion for early disposition expeditiously, which in most circumstances should be within sixty (60) days of the date of the motion. The Tribunal shall consider whether its decision should be in the form of a procedural order or a final, interim or partial award. With respect to any interim or partial award, the Tribunal may state in its award whether it is final for purposes of any judicial proceedings in connection therewith.
- f. The Tribunal may apportion the costs of the early disposition proceedings between or among the parties in accordance with Rule 19.

Rule 13: Interim Measures of Protection

- 13.1 At the request of a party, the Tribunal may take such interim measures as it deems necessary, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Tribunal may require appropriate security as a condition of ordering such measures.
- 13.2 A request for interim measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate or as a waiver of that agreement.

Rule 14: Emergency Measures of Protection by an Emergency Arbitrator

- 14.1 Unless otherwise agreed by the parties, this Rule 14 shall be deemed part of any arbitration clause or agreement that provides for arbitration under these Rules.
- 14.2 Prior to the constitution of the Tribunal, any party may request that emergency measures be granted under this Rule against any other party by an emergency arbitrator appointed for that purpose.
- 14.3 Emergency measures under this Rule are requested by written application to CPR, entitled “Request for Emergency Measures of Protection By an Emergency Arbitrator,” describing in reasonable detail the relief sought, the party against whom the relief is sought, the grounds for the relief, and, if practicable, the evidence and law supporting the request. The request shall be delivered in accordance with Rule 2.1, and shall certify that all other parties affected have been notified of the request or explain the steps taken to notify such parties.
- 14.4 The request for emergency measures by an emergency arbitrator shall be accompanied by an initial deposit payable to CPR as provided in the Pricing and Fees Schedule on the CPR website, www.cpradr.org. CPR shall promptly determine whether any further deposit is due to cover the fee of CPR and the remuneration of the emergency arbitrator, which amount shall be paid within the time period determined by CPR.
- 14.5 Unless the parties have jointly designated an emergency arbitrator to be appointed by CPR, CPR shall appoint an emergency arbitrator from a list of arbitrators maintained by CPR for that purpose. To the extent practicable, CPR shall appoint the emergency arbitrator within one business day of CPR’s receipt of the application for emergency measures under this Rule. The emergency arbitrator’s fee shall be determined by CPR in consultation with the emergency arbitrator. The emergency arbitrator’s fee and reasonable out-of-pocket expenses shall be paid from the deposit made with CPR.

- 14.6 Prior to appointment, an emergency arbitrator candidate shall disclose to CPR any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality within the meaning of Rule 7.3. Any challenge to the appointment of an emergency arbitrator must be made within one business day of the challenging party's receipt of CPR's notification of the appointment of the arbitrator and the circumstances disclosed. An emergency arbitrator may be challenged on any ground for challenging arbitrators generally under Rule 7. To the extent practicable, CPR shall rule on the challenge within one business day after CPR's receipt of the challenge in accordance with the CPR Challenge Protocol (excluding its fee requirement). CPR's ruling on the challenge shall be final.
- 14.7 In the event of death, resignation or successful challenge of an emergency arbitrator, CPR shall appoint a replacement forthwith in accordance with the procedures set forth in Rules 14.5 and 14.6.
- 14.8 The emergency arbitrator shall determine the procedure to be followed, which shall include, whenever possible, reasonable notice to, and an opportunity for hearing (either in person, by teleconference or other appropriate means) for all affected parties. The emergency arbitrator shall conduct the proceedings as expeditiously as possible, and shall have the powers vested in the Tribunal under Rule 8, including the power to rule on his/her own jurisdiction and on the applicability of this Rule 14.
- 14.9 The emergency arbitrator may grant such emergency measures as he or she deems necessary, including but not limited to measures for the preservation of assets, the conservation of goods or the sale of perishable goods.
- 14.10 The ruling on the request for emergency measures shall be made by award or order, and the emergency arbitrator may state in such award or order whether or not the award or order is final for purposes of any judicial proceedings in connection therewith. The award or order may be made conditional upon the

provision of security or any act or cessation of any act specified in the award or order. The award or order may provide for the payment of a specified amount in case of noncompliance with its terms.

- 14.11 The award or order shall specify the emergency measures awarded or denied, shall determine the cost of the proceedings, which includes CPR's administrative fees and expenses and the emergency arbitrator's fee and expenses as determined by CPR, and shall apportion such costs among the parties as the emergency arbitrator deems appropriate. The emergency arbitrator may also apportion the parties' reasonable attorneys' fees and expenses in the award or order or in a supplementary award or order. Unless the parties agree otherwise, the award or order shall state the reasoning on which the award or order rests as the emergency arbitrator deems appropriate.
- 14.12 Prior to the execution of any emergency arbitrator's award, the emergency arbitrator shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award, suggest any corrections to the emergency arbitrator and the emergency arbitrator shall as soon as possible thereafter deliver executed copies of the award to CPR, which shall promptly deliver the award to the parties, provided no fees, expenses and other charges incurred in accordance with the Pricing and Fees Schedule are outstanding.
- 14.13 A request for emergency measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate, including the agreement to this Rule 14, or as a waiver of that agreement.
- 14.14 Unless otherwise agreed by the parties, any agreement by the parties to negotiate, mediate, or use any other form of non-binding dispute resolution shall not prevent the parties from requesting emergency measures from an emergency arbitrator under this Rule 14.

- 14.15 The emergency arbitrator's award or order shall remain in effect until modified or vacated by the emergency arbitrator or the Tribunal. The emergency arbitrator may modify or vacate the award or order for good cause. If the Tribunal is constituted before the emergency arbitrator has rendered an award or order, the emergency arbitrator shall retain jurisdiction to render such award or order unless and until the Tribunal directs otherwise. Once the Tribunal has been constituted, the Tribunal may modify or vacate the award or order rendered by the emergency arbitrator.
- 14.16 The emergency arbitrator shall not serve as a member of the Tribunal unless the parties agree otherwise.

Rule 15: The Award

- 15.1 The Tribunal may make final, interim, interlocutory and partial orders or awards. With respect to any interim, interlocutory or partial award, the Tribunal may state in its award whether or not the award is final for purposes of any judicial proceedings in connection therewith.
- 15.2 All awards shall be in writing and shall state the reasoning on which the award rests unless the parties agree otherwise. The award shall be deemed to be made at the seat of the arbitration and shall contain the date on which the award was made. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.
- 15.3 A member of the Tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.
- 15.4 Prior to execution of any award, the Tribunal shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award and suggest any corrections to the Tribunal.

- 15.5 Thereafter, as soon as possible, but in no event more than 10 days, or such other period as may be specified by CPR, the Tribunal shall deliver executed copies of the award and of any dissenting opinion to CPR, which shall promptly deliver the award and any dissenting opinion to the parties provided no fees, expenses and other charges incurred in accordance with the Pricing and Fees Schedule are outstanding. If the arbitration law of the country where the award is made requires the award to be filed or registered, the parties shall bring such requirement to the attention of the Tribunal and CPR, and the Tribunal shall endeavor to arrange for compliance with such requirement.
- 15.6 Within 20 days after receipt of the award, either party, with notice to the other party and CPR, may request the Tribunal to clarify the award; to correct any clerical, typographical or computational errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any clarification, correction or additional award requested by either party that it deems justified within 30 days after receipt of such request. Within 20 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 30 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All clarifications, corrections and additional awards shall be in writing, shall be submitted directly to CPR by the Tribunal for delivery by CPR to the parties, and the provisions of this Rule 15 shall apply to them.
- 15.7 The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative, as provided in Rule 15.6, the award shall be final and binding on the parties when such

clarification, correction or additional award is made by the Tribunal or upon the expiration of the time periods provided in Rule 15.6 for such clarification, correction or additional award to be made, whichever is earlier.

- 15.8 a. The dispute should in most circumstances be heard and submitted to the Tribunal for decision within six months after the initial pre-hearing conference required by Rule 9.3. The final award should in most circumstances be rendered within two months after the close of the proceedings. The parties, the Tribunal, and CPR shall use their best efforts to meet these timeframes.
- b. CPR must approve any scheduling orders or extensions that would result in the final award being rendered more than twelve months after the initial pre-hearing conference. When such approval is required, CPR in its discretion may convene a call with the parties and arbitrators to discuss factors relevant to such request.

Rule 16: Failure to Comply with Rules

Whenever a party fails to comply with these Rules, or any order of the Tribunal pursuant to these Rules, in a manner deemed material by the Tribunal, the Tribunal shall, if appropriate, fix a reasonable period of time for compliance and, if the party does not comply within said period, the Tribunal may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the Tribunal shall require the non-defaulting party to produce such evidence and legal argument in support of its contentions as the Tribunal may deem appropriate. The Tribunal may receive such evidence and argument without the defaulting party's presence or participation.

D. RULES WITH RESPECT TO COSTS AND FEES

Rule 17: Arbitrator Fees, Expenses and Deposits

- 17.1 Each arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation for each arbitrator should be fully disclosed to all Tribunal members and parties. If there is a disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by CPR and confirmed in writing to the parties. The parties shall be jointly and severally liable for such fees and expenses.
- 17.2 The Tribunal shall determine the necessary advances on the arbitrator(s) fees and expenses and advise CPR which, unless otherwise agreed by the parties, shall invoice the parties in equal shares. The amount of any advances to cover arbitrator fees and expenses may be subject to readjustment at any time during the arbitration. Such funds shall be held and disbursed in a manner CPR deems appropriate. An accounting will be rendered to the parties and any unexpended balance returned at the conclusion of the arbitration as may be appropriate.
- 17.3 If the requested advances are not paid in full within 20 days after receipt of the request, CPR shall so inform the parties and the proceeding may be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 18: CPR Administrative Fees and Expenses

- 18.1 In addition to the CPR Filing Fee, CPR shall charge a Case Administrative Fee ("Administrative Fee") as set forth in the Pricing and Fees Schedule. CPR reserves the right in special circumstances to adjust the Administrative Fee based on developments in the proceeding.

18.2 Unless otherwise agreed by the parties, CPR shall invoice the parties in equal shares for the Administrative Fee. Payment shall be due on receipt unless other arrangements are authorized by CPR. The parties shall be jointly and severally liable to CPR for the Administrative Fee. In the event a party fails to pay as provided in the invoice, the proceeding shall be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 19: Fixing and Apportionment of Costs

- 19.1 The Tribunal shall fix the costs of arbitration in its award. The costs of arbitration include:
- a. The fees and expenses of members of the Tribunal;
 - b. The costs of expert advice and other assistance engaged by the Tribunal;
 - c. The travel, translation and other expenses of witnesses to such extent as the Tribunal may deem appropriate;
 - d. The costs for legal representation and assistance and experts incurred by a party to such extent as the Tribunal may deem appropriate;
 - e. The CPR Administrative Fee with respect to the arbitration;
 - f. The costs of a transcript; and
 - g. The costs of meeting and hearing facilities.
- 19.2 Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration between or among the parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties and their counsel during the proceeding, and the result of the arbitration.

E. MISCELLANEOUS RULES

Rule 20: Confidentiality

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related disclosure and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

Rule 21: Settlement and Mediation

- 21.1 Either party may propose settlement negotiations to the other party at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.
- 21.2 With the consent of the parties, the Tribunal at any stage of the proceeding may request CPR to arrange for mediation of the claims asserted in the arbitration by a mediator acceptable to the parties. The mediator shall be a person other than a member of the Tribunal. Unless the parties agree otherwise, any such mediation shall be conducted under the CPR International Mediation Procedure.
- 21.3 At any point in the proceeding, CPR may invite the parties to mediate under the CPR International Mediation Procedure or under any other mediation procedure acceptable to the parties. Any such mediation shall take place concurrently with the arbitration.
- 21.4 The Tribunal will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless both parties consent.

21.5 If the parties settle the dispute before an award is made, the Tribunal shall terminate the arbitration and so inform CPR. If requested by all parties and accepted by the Tribunal, the Tribunal may record the settlement in the form of an award made by consent of the parties. The Tribunal is not obliged to give reasons for such an award. CPR shall issue the award.

Rule 22: Actions against CPR or Arbitrator(s)

Neither CPR nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules.

Rule 23: Waiver

A party knowing of a failure to comply with any provision of these Rules, or any requirement of the arbitration agreement or any direction of the Tribunal, and neglecting to state its objections promptly, waives any objection thereto.

Rule 24: Interpretation and Application of Rules

The Tribunal shall interpret and apply these Administered International Rules insofar as they relate to the Tribunal's powers and duties. When there is more than one member on the Tribunal and a difference arises among them concerning the meaning or application of these Administered International Rules, it shall be decided by a majority vote. All other Rules shall be interpreted and applied by CPR. Unless otherwise provided in the Rules, whenever under these Rules CPR is required to make a determination, CPR in its discretion may refer the issue for such determination to a panel of three members from the CPR International Arbitration Council, the composition of which is set forth on CPR's website, www.cpradr.org.

For information on how to file a matter with CPR, see <https://www.cpradr.org/dispute-resolution-services/file-a-case>.

Notes:



CPR

International Institute for
Conflict Prevention & Resolution

Phone: +1.212.949.6490

Fax: +1.212.949.8859

www.cpradr.org