



DIS

DIS ARBITRATION  
RULES

**2018**  
**DIS ARBITRATION RULES**

Effective as of 1 March 2018

# Introduction

The German Arbitration Institute (DIS) is Germany's leading institution for alternative dispute resolution and arbitration. With roots in the 1920s, the DIS has a long tradition of administering commercial disputes between companies, having successfully administered thousands of arbitrations.

The 2018 DIS Arbitration Rules are equally suitable for companies of all sizes and industries, and for arbitrations seated in Germany and abroad. The Rules have been revised to account for developments in domestic and international arbitration as well as practical experience with the previous version of the rules. The Rules were developed and drafted by leading German and international arbitration experts as well as representatives from companies and academia with many years of experience in domestic and international arbitration.

The Rules provide a well-structured procedure and institutional framework to ensure that arbitrations are conducted with integrity, efficiency, and fairness. Parties around the world resorting to a DIS arbitration benefit from the Institute's administrative know-how, its many years of experience, and its specialized expertise.

The DIS recognizes that companies are distracted by disputes and litigation matters. That is why the 2018 DIS Arbitration Rules place a particular focus on early dispute resolution as well as on efficiency and speed. The new Rules continue to emphasize a German and continental European element that distinguishes them from other institutional rules: the promotion of amicable settlements, provided all parties agree thereto. This feature also inspires the Dispute Management Rules, which the DIS has offered since 2010. In 2018, these rules were significantly streamlined and included in Annex 6 to the DIS Arbitration Rules.

The DIS Arbitration Rules provide a solid procedural framework allowing parties to adapt the proceedings to their particular needs. Article 27 of the 2018 DIS Rules calls for the arbitral tribunal to conduct an early case management conference with the parties in order to develop a plan that is tailored to resolve the specific dispute in a time- and cost-efficient manner.

In addition to the 2018 Arbitration Rules, the DIS offers rules for the entire spectrum of alternative dispute resolution proceedings: conciliation, mediation, expertise, expert determination, and adjudication. The DIS Sports Arbitration Rules are specifically available for sports-related disputes. The DIS thus services the entire breadth of alternative dispute resolution.

Berlin / Cologne, March 2018

# DIS Model Clauses

The DIS recommends all parties wishing to make reference to the 2018 DIS Arbitration Rules to use the following arbitration clauses:

- (1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.
- (2) The arbitral tribunal shall be comprised of *[please enter “a sole arbitrator” or “three arbitrators”]*.
- (3) The seat of the arbitration shall be *[please enter city and country]*.
- (4) The language of the arbitration shall be *[please enter language of the arbitration]*.
- (5) The law applicable to the merits shall be *[please enter law or rules of law]*.

## **Model Clause for Expedited Arbitration**

- (1) All disputes arising out of or in connection with this contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law.
- (2) The arbitral tribunal shall be comprised of *[please enter “a sole arbitrator” or “three arbitrators”]*.
- (3) The seat of the arbitration shall be *[please enter city and country]*.
- (4) The language of the arbitration shall be *[please enter language of the arbitration]*.
- (5) The law applicable to the merits shall be *[please enter law or rules of law]*.
- (6) The Parties agree that the arbitration shall be conducted as Expedited Proceedings and that Annex 4 of the DIS Arbitration Rules shall apply.

# 2018 Arbitration Rules

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# Introductory Provisions

## Article 1 Scope of Application

### 1.1

These rules apply to international and domestic arbitrations in which disputes are to be settled pursuant to the Arbitration Rules of the German Arbitration Institute (DIS) (the “Rules”).

### 1.2

With respect to any arbitration, the version of the Rules in force on the date of its commencement pursuant to Article 6 shall apply.

### 1.3

The following Annexes constitute an integral part of the Rules:

- Annex 1 (Internal Rules)
- Annex 2 (Schedule of Costs)
- Annex 3 (Measures for Increasing Procedural Efficiency)
- Annex 4 (Expedited Proceedings)
- Annex 5 (Supplementary Rules for Corporate Disputes)
- Annex 6 (Dispute Management Rules).

### 1.4

The Rules shall be applied, *mutatis mutandis*, with respect to Annex 4 (Expedited Proceedings) or Annex 5 (Supplementary Rules for Corporate Disputes) when the parties have agreed to apply such Annexes.

## Article 2 Role of the DIS

### 2.1

The DIS administers arbitrations under the Rules and provides support to the parties and the arbitral tribunal for the efficient conduct of the arbitration. It does not resolve disputes itself.

### 2.2

The DIS appoints Dispute Managers pursuant to Dispute Management Rules (Annex 6) when one or more of the parties so request and none of the parties object thereto. Dispute Managers advise and assist the parties in selecting the dispute resolution mechanism best suited for resolving their dispute. Any party, or the parties jointly, may request the appointment of a Dispute Manager, either prior to the filing of a Request for Arbitration or at any time during the course of the arbitration.

## Article 3 Definitions

### 3.1

In the Rules, “Claimant”, “Respondent”, “Party”, “Additional Party” and other nouns shall, as required by the context, refer to the singular or the plural.

### 3.2

“Submissions” as used in the Rules refer to all communications in writing exchanged between or among the parties, the arbitral tribunal and the DIS, including the Request for Arbitration, the Answer, any counterclaims, any additional claims, any Request against an Additional Party, any and all pleadings filed in the course of the arbitration, along with the respective attachments thereto.

### 3.3

“Address” as used in the Rules refers to both postal and electronic addresses.

### 3.4

References to persons are gender-neutral.

## Article 4 Submissions, Time Periods, and Time Limits

### 4.1

Subject to Articles 4.2 and 4.3, all Submissions of the parties and the arbitral tribunal to the DIS shall be sent electronically, by email, or on a portable storage device, or by any other means of electronic transmission that has been authorized by the DIS. If electronic transmission is not possible, the Submission shall be sent in paper form.

### 4.2

Requests for Arbitration pursuant to Article 5 and Article 19 shall be sent to the DIS in paper form as well as in electronic form. The following number of copies shall be filed:

- (i) paper form: one copy of the Request for Arbitration for each party, as well as any attachments thereto, and one copy for the DIS without attachments;

and

- (ii) electronic form: one copy of the Request for Arbitration for each party and for the DIS, as well as any attachments thereto.

The DIS may at any time request further copies of the Request for Arbitration as well as any attachments thereto.

### 4.3

A party filing a counterclaim or any additional claims prior to the constitution of the arbitral tribunal shall send to the DIS, for transmission to each party, one paper copy thereof, as well as any attachments thereto, in addition to the electronic copy required by Article 4.1. The DIS may at any time request further copies of such documents as well as any attachments thereto.

#### 4.4

The arbitral tribunal shall determine the form of transmission of Submissions between the parties and the arbitral tribunal.

#### 4.5

Subject to Article 4.2 and Article 25, all Submissions from any party to the arbitral tribunal or to the DIS shall be sent simultaneously to the other party.

#### 4.6

All Submissions shall be sent to the last address provided by the addressee or by the other party. Submissions in paper form shall be sent by delivery against receipt, registered mail, courier, facsimile, or by any other means that provides a record of receipt.

#### 4.7

The date of transmission of any Submission shall be deemed to be the date of actual receipt by the party itself or by its designated counsel. If a Submission in paper form has been properly sent pursuant to Article 4.6 but has not been received by the party itself or by its designated counsel, such Submission shall be deemed to have been received on the date on which it would have been received in the ordinary course of the process of transmission.

#### 4.8

Time periods pursuant to the Rules shall commence on the first business day at the place of receipt after the deemed date of transmission pursuant to Article 4.7. In case of electronic transmission, time periods shall commence on the first business day after the date of transmission to the electronic address pursuant to Article 4.6. Public holidays and non-business days at the place of receipt that fall within a time period shall be included in the calculation of the time period. If the last day of a time period is a public holiday or a non-business day at the place of receipt, the time period shall expire at the end of the first subsequent business day.

#### 4.9

The DIS may, in its discretion, extend any time limit referred to in the Rules or fixed by the DIS pursuant to the Rules, except for time limits fixed by the arbitral tribunal.

## Request for Arbitration, Answer, Counterclaims and Consolidation of Proceedings

### Article 5 Request for Arbitration, Transmission to Respondent, Administrative Fee

#### 5.1

A party wishing to commence an arbitration under the Rules shall file a Request for Arbitration (the "Request") with the DIS.

#### 5.2

The Request shall contain:

- (i) the names and addresses of the parties;
- (ii) the names and addresses of any designated counsel representing the Claimant in the arbitration;
- (iii) a statement of the specific relief sought;
- (iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims;
- (v) a description of the facts and circumstances on which the claims are based;
- (vi) the arbitration agreement(s) on which the Claimant relies;
- (vii) the nomination of an arbitrator if required under the Rules;

and

- (viii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits.

#### 5.3

Within a time limit set by the DIS, the Claimant shall pay to the DIS an administrative fee in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within such time limit, the DIS may terminate the arbitration pursuant to Article 42.5.

#### 5.4

If the Claimant has not filed the Request or the attachments thereto in the number of copies required by Article 4.2, or if the DIS considers that the Request does not sufficiently comply with the requirements of Article 5.2, the DIS may set a time limit for the Claimant to supplement the filing. If the Claimant fails to submit the required number of copies or to supplement the filing with respect to Article 5.2 (ii), (iv), (vii) and (viii) within such time limit, the DIS may terminate the arbitration pursuant to Article 42.6. Article 6.2 shall apply to supplementing the filing with respect to Article 5.2 (i), (iii), (v) and (vi).

#### 5.5

The DIS shall transmit the Request to the Respondent. If the requirements of Article 5.3 or Article 5.4 are not met, the DIS may withhold the transmission.

### Article 6 Commencement of the Arbitration

#### 6.1

The arbitration shall commence on the date on which the Request, with or without the attachments thereto, is filed with the DIS in at least one of the forms required by Article 4.2, provided that it includes at least the items listed in Article 5.2 (i), (iii), (v) and (vi).

#### 6.2

If the Claimant fails to supplement the filing with respect to Article 5.2 (i), (iii), (v) and (vi), within the time limit pursuant to Article 5.4, the DIS may take the administrative decision to close the file without prejudice to the Claimant's right to resubmit its claims in a new proceeding.

## Article 7 Respondent's Notification, Answer and Counterclaim

### 7.1

Within 21 days after the date of transmission of the Request, the Respondent shall notify in writing to the DIS:

- (i) the nomination of an arbitrator, if required under the Rules;
- (ii) any particulars or proposals regarding the seat of the arbitration, the language of the arbitration, and the rules of law applicable to the merits;

and

- (iii) any request pursuant to Article 7.2 for an extension of the time limit to file an Answer to the Request (the "Answer").

### 7.2

The Respondent shall file its Answer to the Request within 45 days following the date of transmission of the Request. The DIS, upon a request by the Respondent, shall extend the time limit up to a maximum of 30 additional days.

### 7.3

If the Respondent maintains that due to exceptional circumstances a total of 75 days is insufficient for filing the Answer, the arbitral tribunal may grant a longer time limit. If the arbitral tribunal is not yet constituted, the DIS shall grant a preliminary extension of the time limit that shall be valid until the arbitral tribunal decides upon the request for an extension.

### 7.4

The Answer shall contain:

- (i) the names and addresses of the parties;
- (ii) the names and addresses of any designated counsel representing the Respondent in the arbitration;
- (iii) a description of the facts and circumstances on which the Answer is based;
- (iv) a statement of the specific relief sought;

and

- (v) any relevant particulars regarding the arbitration agreement, the jurisdiction of the arbitral tribunal, and the amount in dispute.

### 7.5

Any counterclaim shall, when possible, be filed together with the Answer. Article 5.2 shall apply, *mutatis mutandis*. The counterclaim shall be filed with the DIS.

### 7.6

The Respondent shall pay to the DIS an administrative fee for the counterclaim in accordance with the Schedule of Costs (Annex 2) in effect at the time of the commencement of the arbitration. If payment is not made within a time limit set by the DIS, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.5.

### 7.7

If the Respondent has not filed the counterclaim or the attachments thereto in the number of copies required by Article 4.3, or if the DIS considers that the counterclaim does not sufficiently comply with the requirements of Article 7.5, the DIS may set a time limit for the Respondent to supplement the filing. If the Respondent fails to submit the required number of copies or to supplement the filing within such time limit, the DIS may terminate the arbitration with regard to the counterclaim pursuant to Article 42.6.

### 7.8

The DIS shall transmit the counterclaim to the Claimant and the arbitral tribunal if the Respondent has not already done so. If the requirements of Article 7.6 or Article 7.7 are not met, the DIS may withhold the transmission of the counterclaim.

### 7.9

The arbitral tribunal shall set a reasonable time limit for the Answer to the counterclaim.

## Article 8 Consolidation of Arbitrations

### 8.1

Upon the request of one or more parties, the DIS may consolidate two or more arbitrations conducted under the Rules into a single arbitration if all parties to all of the arbitrations consent to the consolidation. Such consolidation is without prejudice to any decisions of the arbitral tribunal pursuant to Articles 17 to 19.

### 8.2

Any consolidation of arbitrations shall be into the arbitration that was first commenced, unless the parties have agreed otherwise.



# The Arbitral Tribunal

## Article 9 Impartiality and Independence of the Arbitrators, Duties of Disclosure

### 9.1

Every arbitrator shall be impartial and independent of the parties throughout the entire arbitration and shall have all of the qualifications, if any, that have been agreed upon by the parties.

### 9.2

Subject to Article 9.1, the parties may nominate any person of their choice to act as an arbitrator. The DIS may propose names of potential arbitrators to any party upon such party's request.

### 9.3

Every prospective arbitrator shall declare in writing whether they accept to act as arbitrator.

### 9.4

In case of acceptance, the prospective arbitrators shall sign a declaration in which they shall state that they are impartial and independent of the parties, that they have all of the qualifications, if any, that have been agreed upon by the parties, and that they will be available throughout the arbitration. In addition, each prospective arbitrator shall disclose any facts or circumstances that could cause a reasonable person in the position of a party to have doubts as to the arbitrator's impartiality and independence.

### 9.5

The DIS shall send each prospective arbitrator's declaration and any disclosures pursuant to Articles 9.3 and 9.4 to the parties and shall set a time limit for the parties to provide any comments regarding the appointment of the prospective arbitrator.

### 9.6

Every arbitrator shall have a continuing obligation throughout the entire arbitration to promptly disclose in writing to the parties, the other arbitrators and the DIS any facts or circumstances in the sense of Article 9.4.

### 9.7

Subject to the provisions of this Article 9, Articles 10 to 13 and 20 shall apply to the constitution of the arbitral tribunal, unless the parties have agreed otherwise.

## Article 10 Number of Arbitrators

### 10.1

The parties may agree that the arbitral tribunal shall be comprised of a sole arbitrator, of three arbitrators, or of any other odd number of arbitrators. Article 16.4 shall apply notwithstanding any such agreement.

### 10.2

If the parties have not agreed upon the number of arbitrators, any party may submit a request to the DIS that the arbitral tribunal be comprised of a sole arbitrator. The Arbitration Council of the DIS (the "Arbitration Council") shall decide on such request after consultation with the other party. If no request for the appointment of a sole arbitrator has been made, or if a request has been made but not granted, the arbitral tribunal shall be comprised of three arbitrators.

## Article 11 Sole Arbitrator

If the arbitral tribunal is comprised of a sole arbitrator, the parties may jointly nominate the sole arbitrator. If the parties do not agree upon a sole arbitrator within a time limit fixed by the DIS, the Appointing Committee of the DIS (the "Appointing Committee") shall select and appoint the sole arbitrator pursuant to Article 13.2. In such case, the sole arbitrator shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

## Article 12 Three-Member Arbitral Tribunal

### 12.1

If the arbitral tribunal is comprised of three arbitrators, each party shall nominate one co-arbitrator. If a party fails to nominate a co-arbitrator, such co-arbitrator shall be selected by the Appointing Committee and appointed pursuant to Article 13.2.

### 12.2

The co-arbitrators shall jointly nominate the president of the arbitral tribunal (the "President") within 21 days after being requested to do so by the DIS. Each co-arbitrator nominated by or appointed on behalf of a party may consult with such party regarding the selection of the President.

### 12.3

If the co-arbitrators do not nominate the President within the time limit provided in Article 12.2, the Appointing Committee shall select and appoint the President pursuant to Article 13.2. In such case, the President shall be of a nationality different from that of any party, unless all parties are of the same nationality or have agreed otherwise.

## Article 13 Appointment of the Arbitrators

### 13.1

Every arbitrator shall be appointed by the DIS even when such arbitrator has been nominated by a party or by the co-arbitrators.

### 13.2

The Appointing Committee decides on the appointment of arbitrators, except as provided in Article 13.3.

### 13.3

The appointment of an arbitrator may also be decided upon by the Secretary General of the DIS if no party has objected to the appointment of the prospective arbitrator within the time limit fixed pursuant to Article 9.5.

### 13.4

The arbitral tribunal is constituted once all of the arbitrators have been appointed.

### 13.5

Until all payments requested by the DIS have been made in full, the DIS may postpone the constitution of the tribunal or the appointment of any arbitrator.

## Article 14 Conduct of the Arbitration by the Arbitral Tribunal

### 14.1

Once the arbitral tribunal has been constituted pursuant to Article 13.4, the DIS shall inform the arbitral tribunal and the parties that the arbitration shall henceforth be conducted by the arbitral tribunal.

### 14.2

In an arbitration having more than one arbitrator, every decision by the arbitral tribunal that is not made unanimously shall be made by majority vote, unless the parties agree otherwise. In the absence of a majority vote, the President shall decide alone.

### 14.3

The President may, in exceptional circumstances, rule on individual procedural issues alone, as long as he or she has been authorized to do so by the other members of the arbitral tribunal.

## Article 15 Challenge of an Arbitrator

### 15.1

Any party who seeks to challenge an arbitrator, on the grounds that the arbitrator has failed to comply with one or more of the requirements of Article 9.1, shall file a request for challenge ("Challenge") pursuant to Article 15.2.

### 15.2

The Challenge shall describe the facts and circumstances on which it is based and shall specify when the party filing the Challenge first obtained knowledge of the same. The Challenge shall be filed with the DIS no later than 14 days after the party filing the Challenge first obtained knowledge of the facts and circumstances on which it is based.

### 15.3

The DIS shall transmit the Challenge to the challenged arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

### 15.4

The Arbitration Council shall decide upon the Challenge.

### 15.5

The arbitral tribunal may proceed with the arbitration, unless and until the Challenge is accepted.

## Article 16 Termination of an Arbitrator's Mandate

### 16.1

An arbitrator's mandate shall terminate on the date on which:

- (i) the Arbitration Council accepts the Challenge of such arbitrator;
- (ii) the Arbitration Council accepts the resignation of such arbitrator;
- (iii) the arbitrator dies;
- (iv) the Arbitration Council removes the arbitrator from office pursuant to Article 16.2;

or

- (v) all of the parties notify the DIS that they have agreed to terminate such arbitrator's mandate.

### 16.2

The Arbitration Council may remove an arbitrator from office if it considers that such arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future. The procedure for removal from office is set forth in Article 9 of the Internal Rules (Annex 1).

### 16.3

If an arbitrator's mandate is terminated, a replacement arbitrator shall be appointed pursuant to Article 16.5, except as provided in Article 16.4.

### 16.4

The Arbitration Council may decide that an arbitrator whose mandate has been terminated shall not be replaced if all of the parties and the remaining arbitrators so agree and after taking into account all of the circumstances. If the Arbitration Council so decides, then the arbitration shall continue with the remaining arbitrators only.

### 16.5

When an arbitrator is to be replaced, the same process that was used for the initial appointment of the replaced arbitrator shall be followed; provided, however, that, after consultation with the parties and the remaining arbitrators and having taken into account any circumstances that it considers to be relevant, the Arbitration Council may determine that a different process pursuant to the Rules shall apply.

### 16.6

The arbitral tribunal, once reconstituted, shall continue the proceedings without repeating any part thereof, unless the parties agree otherwise or the arbitral tribunal considers, after consultation with the parties, that repeating any part of the proceedings is necessary.

# Multi-Contract Arbitration, Multi-Party Arbitration, Joinder

## Article 17 Multi-Contract Arbitration

### 17.1

Claims arising out of or in connection with more than one contract may be decided in a single arbitration (“Multi-Contract Arbitration”), provided that all of the parties to the arbitration have agreed thereto. Any dispute as to whether all of the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

### 17.2

When claims are made in reliance on more than one arbitration agreement, they may be decided in a single arbitration, provided that, in addition to the requirement set forth in Article 17.1, such arbitration agreements are compatible. Any dispute as to whether the arbitration agreements are compatible shall be decided by the arbitral tribunal, subject to Article 17.3.

### 17.3

When Article 17.2 applies and the DIS considers that an incompatibility of the arbitration agreements with respect to their provisions on the constitution of an arbitral tribunal prevents the constitution of an arbitral tribunal under the Rules, Article 42.4 (ii) shall apply.

### 17.4

When there are multiple parties in a Multi-Contract Arbitration, the provisions of Article 18 (Multi-Party Arbitration) shall apply in addition to the provisions of this Article 17.

## Article 18 Multi-Party Arbitration

### 18.1

Claims made in an arbitration with multiple parties (“Multi-Party Arbitration”) may be decided in that arbitration if there is an arbitration agreement that binds all of the parties to have their claims decided in a single arbitration or if all of the parties have so agreed in a different manner. Any dispute as to whether the parties have agreed thereto, in particular when there is no express agreement in writing to that effect, shall be decided by the arbitral tribunal.

### 18.2

When claims arising out of or in connection with more than one contract are made in a Multi-Party Arbitration, the provisions of Article 17 (Multi-Contract Arbitration) shall apply in addition to the provisions of this Article 18.

## Article 19 Joinder of Additional Parties

### 19.1

Prior to the appointment of any arbitrator, any party who wishes to join an additional party to the arbitration may file with the DIS a Request for Arbitration against such additional party (the “Request against an Additional Party”).

### 19.2

The Request against an Additional Party shall contain:

- (i) the case reference of the pending arbitration;
- (ii) the names and addresses of the parties, including the additional party;
- (iii) a statement of the specific relief sought against the additional party;
- (iv) the amount of any quantified claims and an estimate of the monetary value of any unquantified claims against the additional party;
- (v) a description of the facts and circumstances on which the claims against the additional party are based;

and

- (vi) the arbitration agreement(s) on which the party filing the Request against an Additional Party relies.

The remaining provisions of Articles 5 and 6 shall apply, *mutatis mutandis*, to the Request against an Additional Party.

### 19.3

Within a time limit set by the DIS, the additional party shall:

- (i) provide its comments regarding the constitution of the arbitral tribunal;

and

- (ii) file an Answer in accordance, *mutatis mutandis*, with the requirements of Article 7.4.

### 19.4

In the Answer, the additional party may make claims against any other party in the arbitration. The requirements of Articles 7.5 to 7.9 shall apply, *mutatis mutandis*, to any such claims.

### 19.5

The arbitral tribunal shall decide any dispute as to whether claims made by or against the additional party may be resolved in the pending arbitration. The arbitral tribunal, in making its decision, shall apply the provisions of Article 18 (Multi-Party Arbitration) and, when claims are made under more than one contract, the arbitral tribunal shall also apply the provisions of Article 17 (Multi-Contract Arbitration).

## Article 20 Three-Member Arbitral Tribunal in Multi-Party Arbitrations

### 20.1

In a Multi-Party Arbitration (Article 18), the co-arbitrators shall be appointed as follows:

(i) the Claimant, or the Claimants jointly, shall nominate one co-arbitrator;

and

(ii) the Respondent, or the Respondents jointly, shall nominate the other co-arbitrator.

### 20.2

When in a Multi-Party Arbitration a single Claimant or a single Respondent does not nominate a co-arbitrator, such co-arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2.

### 20.3

In the absence of a joint nomination by either the Claimants or the Respondents, the Appointing Committee may, in its discretion, after consultation with the parties:

(i) select and appoint pursuant to Article 13.2 a co-arbitrator for the parties who have not jointly nominated a co-arbitrator and appoint the co-arbitrator nominated by the opposing side;

or

(ii) select and appoint pursuant to Article 13.2 a co-arbitrator both for the parties who have not jointly nominated a co-arbitrator and for the opposing side, in which case any prior party nomination shall be deemed void.

### 20.4

Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President.

### 20.5

Where an additional party has been joined pursuant to Article 19, the additional party, with respect to the nomination of co-arbitrators, may nominate an arbitrator only either jointly with the Claimant(s) or jointly with the Respondent(s). In the absence of a joint nomination, the Appointing Committee may, in its discretion, after consultation with the parties:

(i) apply, *mutatis mutandis*, Article 20.3 (i) for the co-arbitrators;

(ii) apply, *mutatis mutandis*, Article 20.3 (ii) for the co-arbitrators;

or

(iii) select and appoint the co-arbitrators as well as the President pursuant to Article 13.2.

When Article 20.5 (i) and (ii) apply, Articles 12.2 and 12.3 shall apply with respect to the nomination or appointment of the President. When Article 20.5 (iii) apply, and when an appointment is made by the Appointing Committee, any prior party nomination shall be deemed void.

# The Proceedings before the Arbitral Tribunal

## Article 21 Rules of Procedure

### 21.1

The parties shall be treated equally. Each party shall have a right to be heard.

### 21.2

The Rules shall apply to the proceedings before the arbitral tribunal except to the extent that the parties have agreed otherwise.

### 21.3

When the Rules are silent as to the procedure to be applied in the proceedings before the arbitral tribunal, such procedure shall be determined by agreement of the parties, in the absence of which the arbitral tribunal in its discretion shall decide upon the procedure, after consultation with the parties.

### 21.4

The arbitral tribunal shall apply all mandatory provisions of the arbitration law applicable at the seat of the pending arbitration.

## Article 22 Seat of the Arbitration

### 22.1

If the parties have not agreed upon the seat of the arbitration, then it shall be fixed by the arbitral tribunal.

### 22.2

Unless the parties have agreed otherwise, the arbitral tribunal may decide to undertake any or all acts in the proceedings at a location other than the seat of the arbitration.

## Article 23 Language of the Arbitration

If the parties have not agreed upon the language of the arbitration, the arbitral tribunal shall fix the language of the arbitration.

## Article 24 Rules of Law Applicable to the Merits

### 24.1

The parties may agree upon the rules of law to be applied to the merits of the dispute.

#### 24.2

If the parties have not agreed upon the rules of law to be applied to the merits of the dispute, the arbitral tribunal shall apply the rules of law that it deems to be appropriate.

#### 24.3

The arbitral tribunal shall decide on the merits in accordance with the provisions of the contract between the parties, if any, and shall take into account any relevant trade usages.

#### 24.4

The arbitral tribunal may not decide *ex aequo et bono* or act as an *amiable compositeur*, unless the parties have expressly agreed thereto.

### Article 25 Interim Relief

#### 25.1

Unless the parties have agreed otherwise, the arbitral tribunal may, at the request of a party, order interim or conservatory measures, and may amend, suspend or revoke any such measure. The arbitral tribunal shall transmit the request to the other party for comments. The arbitral tribunal may request any party to provide appropriate security in connection with such measures.

#### 25.2

In exceptional circumstances, the arbitral tribunal may rule on a request pursuant to Article 25.1 without giving prior notice to or receiving comments from the other party, if otherwise it would risk frustrating the purpose of the measure. In such case, the arbitral tribunal shall notify the other party of the request, at the latest, when ordering the measure. The arbitral tribunal shall promptly grant the other party a right to be heard. Thereafter, the arbitral tribunal shall confirm, amend, suspend, or revoke the measure.

#### 25.3

The parties may request interim or conservatory measures from any competent court at any time.

### Article 26 Encouraging Amicable Settlements

Unless any party objects thereto, the arbitral tribunal shall, at every stage of the arbitration, seek to encourage an amicable settlement of the dispute or of individual disputed issues.

### Article 27 Efficient Conduct of the Proceedings

#### 27.1

The arbitral tribunal and the parties shall conduct the proceedings in a time- and cost-efficient manner, taking into account the complexity and economic importance of the dispute.

#### 27.2

The arbitral tribunal shall hold a case management conference as soon as possible after its constitution, in principle within 21 days.

#### 27.3

When the parties are represented by outside counsel, they are also encouraged to attend the case management conference in person or with an in-house party representative, together with such outside counsel. Any Dispute Manager who has been duly appointed pursuant to Article 2.2 of the Rules may, with the authorization of the arbitral tribunal, attend the case management conference.

#### 27.4

During the case management conference, the arbitral tribunal shall discuss with the parties the procedural rules to be applied in the proceedings pursuant to Article 21, as well as the procedural timetable.

With a view to increasing procedural efficiency, the arbitral tribunal shall specifically discuss the following with the parties:

- (i) each of the measures set forth in Annex 3 (Measures for Increasing Procedural Efficiency) in order to determine whether any of them should be applied;
- (ii) the provisions of Annex 4 (Expedited Proceedings) in order to determine whether they should be applied;
- (iii) the possibility of using mediation or any other method of amicable dispute resolution to seek the amicable settlement of the dispute or of individual disputed issues.

#### 27.5

During, or as soon as possible after, the case management conference, the arbitral tribunal shall issue a procedural order and a procedural timetable.

#### 27.6

The arbitral tribunal may hold additional case management conferences as needed and may issue additional procedural orders or amend the procedural timetable as needed.

#### 27.7

In the first case management conference or, if necessary, in additional case management conferences, the arbitral tribunal shall discuss with the parties whether to employ experts and, if so, how to conduct the expert procedure efficiently.

#### 27.8

The arbitral tribunal shall also transmit to the DIS a copy of each procedural order and the procedural timetable, as well as any amendments thereto.

### Article 28 Establishing the Facts, Tribunal-Appointed Expert

#### 28.1

The arbitral tribunal shall establish the facts of the case that are relevant and material for deciding the dispute.

## 28.2

For this purpose, the arbitral tribunal may, *inter alia*, on its own initiative, appoint experts, examine fact witnesses other than those called by the parties, and order any party to produce or make available any documents or electronically stored data. The arbitral tribunal shall not be limited to admit only evidence offered by the parties.

## 28.3

The arbitral tribunal shall consult with the parties before appointing an expert. Any expert appointed by the arbitral tribunal shall be impartial and independent of the parties. The arbitral tribunal shall apply the provisions of Article 9 and Article 15, *mutatis mutandis*, to any tribunal-appointed expert, provided, however, that the arbitral tribunal shall assume with respect to the expert the function that the DIS has with respect to the arbitral tribunal.

## Article 29 Oral Hearing

### 29.1

The arbitral tribunal shall hold an oral hearing if:

(i) all of the parties have so agreed;

or

(ii) any party so requests, unless all of the parties have agreed not to hold oral hearings.

In all other cases, the arbitral tribunal shall hold an oral hearing when it determines in its discretion, after consultation with the parties, that an oral hearing is necessary.

### 29.2

A record shall be kept of all oral hearings using appropriate means, which may include verbatim transcripts.

## Article 30 Default of a Respondent

In the event of a default of a Respondent, the arbitral tribunal shall proceed with the arbitration. The factual allegations of the Claimant shall not be considered as having been admitted by the Respondent as a result of its default.

## Article 31 Closing of Proceedings

After the last hearing or the last admitted Submission, whichever is later, the arbitral tribunal shall close the proceedings by a procedural order that shall also be sent to the DIS. No evidence or Submissions may be filed after the closing of the proceedings, except with the prior leave of the arbitral tribunal.

# Costs

## Article 32 Costs of the Arbitration

The costs of the arbitration shall include:

- (i) the arbitrators' fees and expenses;
- (ii) the fees and expenses of any expert appointed by the arbitral tribunal;
- (iii) the reasonable costs of the parties that were incurred in connection with the arbitration, including legal fees, fees of experts and expenses of any witnesses;

and

- (iv) the Administrative Fees.

## Article 33 Arbitral Tribunal's Costs Decisions

### 33.1

The arbitral tribunal may make decisions, including interim decisions, concerning the costs of the arbitration at any time during the course of the arbitration. Only the DIS may make decisions pursuant to Article 32 (i) and (iv).

### 33.2

The arbitral tribunal shall decide on the allocation of the costs of the arbitration between the parties.

### 33.3

The arbitral tribunal shall make decisions concerning the costs of the arbitration in its discretion. In so doing, it shall take into account all circumstances that it considers to be relevant. Such circumstances may include the outcome of the arbitration and the extent to which the parties have conducted the arbitration efficiently.

## Article 34 Arbitrators' Fees and Expenses

### 34.1

The arbitrators shall be entitled to fees and reimbursement of their expenses, except as otherwise provided in the Rules.

### 34.2

The arbitrators' fees and expenses shall be calculated pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration, except as provided in Article 34.4; provided, however, that the Arbitration Council may reduce the fees of any arbitrator pursuant to Article 37. No separate fee agreements between the parties and the arbitrators shall be made or performed. The expenses of the arbitrators shall be reimbursed to the extent and in the amount provided in the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

### 34.3

The DIS shall pay the fees and expenses of the arbitrators after the termination of the arbitration. At the arbitral tribunal's request, the Arbitration Council may grant an advance on the arbitrators' fees in an amount that it considers to be appropriate in view of the stage of the proceedings. Any fees, expenses or advances on the arbitrators' fees shall be paid by the DIS out of the Deposit pursuant to Article 35.1.

### 34.4

When the arbitration has been terminated prior to the making of a final award or by an award by consent, the Arbitration Council shall, in its discretion, and after consultation with the parties and the arbitral tribunal, fix the arbitrators' fees. In so doing, it shall take into consideration, *inter alia*, the stage of the proceedings at the time of the termination and the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute.

### 34.5

When the mandate of an arbitrator has been terminated pursuant to Article 16.1, the Arbitration Council shall, in its discretion, determine whether to pay any fees or reimburse any expenses of the arbitrator whose mandate was terminated, and, if so, in what amount. In making such determination, the Arbitration Council shall take into account the reasons for the premature termination of the mandate and the circumstances of the arbitration.

## Article 35 Deposit for Fees and Expenses of the Arbitral Tribunal

### 35.1

The parties shall provide a security for the fees and expenses of the arbitrators by paying an amount that the DIS shall calculate on the basis of Article 36 and shall fix during the course of the arbitration (the "Deposit").

### 35.2

Before constitution of the arbitral tribunal, the DIS shall fix the amount of an initial deposit and set a time limit for payment by the parties. The DIS may, in its discretion, request both parties or only one party to pay the initial deposit.

### 35.3

At a later point in time, the DIS shall fix the amount of the Deposit and shall set a time limit for payment by the parties. The Deposit shall be paid by the Claimant and the Respondent in equal shares. Any initial deposit already paid by the parties shall be deducted. The amount of the Deposit may be equal to the amount of the initial deposit.

### 35.4

If a party fails to pay its share of the initial deposit or the Deposit, any other party may substitute such payment without prejudice to the decision of the arbitral tribunal pursuant to Article 33.2 on the allocation of the costs of the arbitration between the parties.

### 35.5

If the parties have not paid the initial deposit or the Deposit in full, the DIS may terminate the proceedings pursuant to Article 42.5.

### 35.6

The DIS may increase or decrease the amount of the initial deposit or the Deposit at any time.

### 35.7

In a Multi-Party Arbitration (Article 18), the Arbitration Council may fix the share of the initial deposit and the Deposit for each party separately and in different amounts, or it may fix several deposits.

## Article 36 Basis for Calculation of Deposits and Administrative Fees

### 36.1

The initial deposit, the Deposit and the Administrative Fees, as well as any later increases or decreases thereto, shall be calculated on the basis of the amount in dispute pursuant to the Schedule of Costs (Annex 2) in effect on the date of the commencement of the arbitration.

### 36.2

The arbitral tribunal shall determine the amount in dispute after consultation with the parties.

### 36.3

Within 14 days after the determination of the amount in dispute by the arbitral tribunal pursuant to Article 36.2, any party may request the Arbitration Council to reconsider the arbitral tribunal's determination. The Arbitration Council may either confirm or modify the amount in dispute determined by the arbitral tribunal. Any such confirmation or modification by the Arbitration Council shall be solely for the purpose of calculating the amounts of the initial deposit, the Deposit and the Administrative Fees.

## Termination of the Arbitration by Award or Otherwise

### Article 37 Time Limit for the Final Award

The arbitral tribunal shall send the final award to the DIS for review pursuant to Article 39.3, in principle within three months after the last hearing or the last authorized Submission, whichever is later. The Arbitration Council, in its discretion, may reduce the fee of one or more arbitrators based upon the time taken by the arbitral tribunal to issue its final award. In deciding whether to reduce the fee, the Arbitration Council shall consult the arbitral tribunal and take into consideration the circumstances of the case.



## Article 38 Effect of the Arbitral Award

Each arbitral award shall be final and binding on the parties.

## Article 39 Content, Form and Transmission of the Arbitral Award

### 39.1

Each arbitral award shall be made in writing and shall state:

- (i) the names and addresses of the parties, of any designated counsel representing a party in the arbitration, and of the arbitrators;
  - (ii) the arbitral tribunal's decision and the reasons upon which it is based, unless the parties have agreed that reasons need not be given or the award is by consent pursuant to Article 41;
  - (iii) the seat of the arbitration;
- and
- (iv) the date of the award.

### 39.2

In the final award, the arbitral tribunal shall state the costs of the arbitration and shall decide on their allocation between the parties pursuant to Article 33. The DIS shall communicate to the arbitral tribunal the amount of the costs pursuant to Article 32 (i) and (iv).

### 39.3

The arbitral tribunal shall send a draft of the award to the DIS for review. The DIS may make observations with regard to form and may suggest other non-mandatory modifications to the arbitral tribunal. The arbitral tribunal shall remain exclusively responsible for the content of the award.

### 39.4

The award shall be signed by the arbitral tribunal. If an arbitrator does not sign the award, the reason therefor shall be explained in the award.

### 39.5

The arbitral tribunal shall transmit to the DIS as many originals of the signed award as are needed in order to provide an original to each party and the DIS.

### 39.6

The DIS shall transmit one original of the award to each party, provided that all Deposits and Administrative Fees have been paid in full. Articles 4.6 and 4.7 shall apply, *mutatis mutandis*.

### 39.7

The award shall be deemed to have been made on the date and at the seat of the arbitration stated in the award.

## Article 40 Correction of the Arbitral Award

### 40.1

The arbitral tribunal shall, upon the request of any party:

- (i) correct clerical, typographical or computation errors, and any other errors of a similar nature;
- and
- (ii) render a supplementary award upon any claims that were made in the arbitration but were not decided in the arbitral award.

### 40.2

The arbitral tribunal may, upon the request of any party, interpret the arbitral award and clarify the dispositive section thereof.

### 40.3

A request by a party pursuant to Article 40.1 or Article 40.2 shall be submitted to the DIS within 30 days after the date of transmission of the arbitral award. The DIS shall promptly transmit any such request to the arbitral tribunal.

### 40.4

The arbitral tribunal shall consult the other party and shall decide upon the request within 30 days after the receipt of the request by the President of the arbitral tribunal.

### 40.5

After consultation with the parties, the arbitral tribunal may also make corrections pursuant to Article 40.1 on its own initiative. The corrections shall be made within 60 days after the date on which the award was made pursuant to Article 39.7.

### 40.6

Articles 38 and 39 shall apply, *mutatis mutandis*, to any decision to correct the arbitral award pursuant to this Article 40.

## Article 41 Award by Consent

### 41.1

At the request of the parties, the arbitral tribunal may record a settlement in an award by consent, unless it considers that there are serious grounds not to do so.

### 41.2

At the request of all of the parties, the arbitral tribunal may record in the form of an award by consent a settlement agreement or a decision arising out of proceedings pursuant to:

- the DIS Mediation Rules,
- the DIS Conciliation Rules,
- the DIS Rules on Adjudication,



- the DIS Rules on Expertise, or
- the DIS Rules on Expert Determination,

unless it considers that there are serious grounds not to do so.

#### 41.3

The provisions of Articles 38 to 40 shall apply, *mutatis mutandis*, to awards by consent.

### **Article 42** Termination of the Arbitration before the Making of a Final Award

#### 42.1

The arbitration may be terminated before the arbitral tribunal makes its final award, either by the arbitral tribunal pursuant to Article 42.2, or by the DIS pursuant to Articles 42.4, 42.5 or 42.6.

#### 42.2

The arbitral tribunal shall terminate the arbitration by way of a termination order:

- (i) if all of the parties agree to terminate the arbitration;
- (ii) if one of the parties requests a termination order and none of the other parties objects, or, if there is an objection, the arbitral tribunal considers that the objecting party has no legitimate interest in the continuation of the arbitration;
- (iii) if the parties fail to pursue the arbitration even after being requested to do so by the arbitral tribunal;

or

- (iv) if the arbitral tribunal considers that, for any other reason, the arbitration cannot be continued.

#### 42.3

Any termination order issued by the arbitral tribunal is without prejudice to a party's right to resubmit its claims in a new proceeding.

#### 42.4

Prior to the constitution of the arbitral tribunal, the Arbitration Council may, after consultation with the parties, decide to terminate the arbitration:

- (i) if the parties have agreed that the arbitration be terminated;
- (ii) if the DIS considers that it is not possible to constitute the arbitral tribunal pursuant to the Rules;
- (iii) if the parties fail to pursue the arbitration even after being requested to do so by the DIS;

or

- (iv) if the DIS considers that, for any other reason, the arbitration cannot be continued.

#### 42.5

Prior to or after the constitution of the arbitral tribunal, the Arbitration Council may decide to terminate the arbitration if the parties fail within the set time limit to pay in full any initial deposits, Deposits or Administrative Fees requested by the DIS pursuant to the Rules. If the arbitral tribunal is already constituted, the arbitral tribunal may, upon consultation with the DIS, suspend its work prior to the termination by the Arbitration Council.

#### 42.6

The DIS may, subject to the provision set forth in the second sentence of Article 5.4, terminate the arbitration at any time if a party has failed to comply with the request of the DIS to supplement a filing pursuant to Articles 5, 7 or 19 within the time limit set by the DIS.

#### 42.7

A termination of the arbitration in whole or in part pursuant to Articles 42.4, 42.5 or 42.6 is without prejudice to a party's right to resubmit its claims in a new proceeding.

## Miscellaneous

### **Article 43** Waiver of Right to Object

If a party does not raise an objection with respect to any failure to comply with the Rules or with any other provisions applicable to the arbitration promptly after it first becomes aware of such failure, such party shall be deemed to have waived its right to object.

### **Article 44** Confidentiality

#### 44.1

Unless the parties agree otherwise, the parties and their outside counsel, the arbitrators, the DIS employees, and any other persons associated with the DIS who are involved in the arbitration shall not disclose to anyone any information concerning the arbitration, including in particular the existence of the arbitration, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available.

#### 44.2

Disclosures may nonetheless be made to the extent required by applicable law, by other legal duties, or for purposes of the recognition and enforcement or annulment of an arbitral award.

#### 44.3

The DIS may publish statistical data or other general information concerning arbitral proceedings, provided that no party is identified by name and that no particular arbitration is

identifiable on the basis of such information. The DIS may publish an arbitral award only with the prior written consent of all of the parties.

## **Article 45** Limitation of Liability

### 45.1

An arbitrator shall not be liable to any person for any acts or omissions in connection with such arbitrator's decision-making in the arbitration, except in case of an intentional breach of duty.

### 45.2

For any other acts or omissions in connection with the arbitration, an arbitrator, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the arbitration shall not be liable, except in case of an intentional breach of duty or gross negligence.

# **Annex 1**

## **Internal Rules**

### **Article 1** Scope of Application

These internal rules for administering arbitrations under the Rules (the "Internal Rules") shall govern the work of the Arbitration Council, the Appointing Committee, and the DIS Secretariat (the "Secretariat").

### **Article 2** Powers of the Arbitration Council, the Appointing Committee, and the Secretariat

#### 2.1

The Arbitration Council and the Appointing Committee shall render such decisions and exercise such powers and activities as are specifically assigned to them in the Rules. They shall be assisted in their work by the Secretariat.

#### 2.2

The Secretariat, under the direction of its Secretary General (the "Secretary General"), shall render such decisions and exercise such powers and activities as the Rules assign to the DIS, or as the DIS considers appropriate for the proper administration of an arbitration. The Secretariat may at any time consult the Arbitration Council, the Case Committee designated pursuant to Article 4.2 of these Internal Rules, or the Appointing Committee.

### **Article 3** The Arbitration Council

#### 3.1

The Arbitration Council shall consist of at least fifteen members (each member, a "Council Member"). The Council Members shall be nationals of at least five different countries and shall have practical experience in domestic and international arbitration. The provisions of Section 6 of the DIS Integrity Principles shall apply to Council Members.

#### 3.2

Council Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, members of the Appointing Committee, and staff of the Secretariat may not be Council Members.

#### 3.3

A Council Member's term of office shall be four years and may be renewed once.

3.4

The Arbitration Council shall hold plenary sessions at least once annually to discuss and take decisions in respect of subjects of general importance to the practice of the Arbitration Council. The Secretariat shall attend all plenary sessions and may invite the members of the Appointing Committee to attend a plenary session. A plenary session may be attended in person or by any suitable means of communication.

3.5

The Council Members shall elect from their members a President and up to two Vice Presidents. The President, or, in the President's absence, one of the Vice Presidents, shall call and preside over plenary sessions.

3.6

All decisions to be taken by the Arbitration Council under the Rules shall be exercised, with respect to any specific arbitration, exclusively by the Case Committee to which such arbitration has been assigned pursuant to Article 4.2 of these Internal Rules. The Arbitration Council shall not have the power to review, alter, or vacate decisions rendered by a Case Committee.

3.7

The Arbitration Council may, after consultation with the Secretariat, issue internal guidelines that all Case Committees shall observe.

## **Article 4** The Case Committees

4.1

The Secretariat shall create at least five Case Committees to supervise DIS arbitrations (each committee, a "Case Committee"), each consisting of three Council Members.

4.2

Upon receipt of a Request for Arbitration, the Secretariat shall assign supervision of the arbitration to a Case Committee. The Secretariat may at any time during the arbitration reassign supervision of an arbitration from one Case Committee to another Case Committee, or replace any Council Member on a Case Committee by another Council Member. The Secretariat, in its discretion, may take any decision pursuant to this Article 4.2 of these Internal Rules, taking into account in particular the workload, any conflicts of interest, and any other reasons affecting the availability of a Council Member.

4.3

A Council Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Council Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Council Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

4.4

Decisions by a Case Committee require a quorum of two of its members and a majority of such Case Committee.

4.5

As a basis for any decision of the Case Committees, the Secretariat shall prepare a written statement, which shall advise of any existing practice of other Case Committees in comparable cases and may contain non-binding recommendations.

## **Article 5** Specialized Case Committees

5.1

All arbitrations administered by the DIS pursuant to the rules of a chamber of commerce and industry referring to the Rules shall be assigned to the same Case Committee.

5.2

The DIS may at any time create additional specialized Case Committees, for example for specific geographic regions or certain types of arbitrations.

## **Article 6** The Appointing Committee

6.1

The Appointing Committee shall consist of three main members and three alternate members (together the "Appointing Committee Members"). The Appointing Committee Members shall have practical experience in domestic and international arbitration. The provisions of Section 3 of the DIS Integrity Principles shall apply to Appointing Committee Members.

6.2

Appointing Committee Members shall be appointed by the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, after consultation with the chairman of the Advisory Board of the DIS. Members of the DIS Board of Directors pursuant to Section 7.2 of the DIS Statutes, Council Members, and staff of the Secretariat may not be Appointing Committee Members.

6.3

The Appointing Committee Members' terms of office shall be three years and may be renewed once.

6.4

An Appointing Committee Member who has a conflict of interest with respect to any arbitration shall promptly disclose such conflict to the Secretariat, and, as from the time such Appointing Committee Member obtained knowledge of the conflict, may no longer participate in decisions pertaining to such arbitration. Such Appointing Committee Member may not obtain any additional information or documentation pertaining to such arbitration, and must return or destroy any information or documentation already received.

6.5

The Appointing Committee's decisions are taken by the main members. If a main member cannot act due to a conflict of interest or otherwise, an alternate member designated by the Secretariat shall act in lieu of such main member.

6.6

Decisions by the Appointing Committee require a majority vote.

6.7

As a basis for any decision of the Appointing Committee, the Secretariat shall prepare a written statement, which shall advise of any existing practice of the Appointing Committees in comparable cases and may contain non-binding recommendations.

## **Article 7** The Secretariat

7.1

Within the Secretariat, arbitrations are administered by the Case Management Team under the direction of the Deputy Secretary General.

7.2

The Secretary General may, when absent or otherwise, authorize the Deputy Secretary General or another staff member of the Secretariat to decide upon the appointment of an arbitrator pursuant to Article 13.3 of the Rules.

7.3

The Secretariat may issue notes and other documents for the information of the parties and the arbitrators or, as necessary, for the proper conduct of the arbitral proceedings.

## **Article 8** Submissions and Notifications, Reasons, Confidentiality

8.1

All Submissions that are to be sent to the DIS under the Rules, and any communication addressed to the Arbitration Council, a Case Committee, or the Appointing Committee, shall be sent to the Secretariat.

8.2

All notifications from, and communications of decisions by, the Appointing Committee or any Case Committees to the parties or arbitrators concerning any arbitration shall be sent exclusively by the Secretariat.

8.3

The reasons for decisions of the Appointing Committee and the Case Committees shall not be communicated.

8.4

Information and documentation relating to any arbitration, as well as to the work of the Appointing Committee, the Arbitration Council, a Case Committee, and the Secretariat, shall be confidential, unless otherwise provided in Article 44 of the Rules.

## **Article 9** Removal of an Arbitrator from Office Pursuant to Article 16.2 of the Rules

9.1

Any party who considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, may file a request for removal ("Request for Removal") pursuant to Article 9.2 of these Internal Rules.

9.2

The Request for Removal shall describe the facts and circumstances on which it is based and shall specify when the party filing the Request for Removal first obtained knowledge of the same. The Request for Removal shall be filed with the DIS no later than 14 days after the party filing the Request for Removal first obtained knowledge of the facts and circumstances on which it is based.

9.3

The DIS shall transmit the Request for Removal to the concerned arbitrator, the other arbitrators and the other party, and shall set a time limit for comments. The DIS shall send any comments that it receives to the parties and to each arbitrator.

9.4

The Case Committee to which the arbitration has been assigned pursuant to Article 4.2 shall decide upon the Request for Removal.

9.5

If the Case Committee to which the arbitration has been assigned pursuant to Article 4.2 considers that an arbitrator is not fulfilling the arbitrator's duties pursuant to the Rules or is not, or will not be, in a position to fulfil those duties in the future, such Case Committee may, after consultation with the parties and all arbitrators, remove such arbitrator from office even in the absence of a Request for Removal.

## **Article 10** Transitional Provision

Until such time as the DIS Statutes have been amended, Section 14 of the DIS Statutes regarding the DIS Appointing Committee shall supersede the provisions of Article 6 of these Internal Rules.

## Annex 2

# Schedule of Costs

### Paragraph 1 Introductory Provisions

- 1.1 With respect to the entire arbitration, the version of this Annex in force on the date of its commencement pursuant to Article 6 of the Rules shall apply.
- 1.2 The arbitrators' fees and the Administrative Fees of the DIS shall, pursuant to Paragraphs 2 and 3 of this Annex 2, be calculated on the basis of the amount in dispute. If the amount in dispute is not quantified or not estimated, the DIS shall set a time limit for the parties to do so. If the parties do not do so within the time limit set by the DIS, Paragraphs 2.3 and 3.3 of this Annex 2 shall apply.
- 1.3 The parties are jointly and severally liable for the costs of the arbitration within the meaning of Article 32 (i), (ii) and (iv) of the Rules, without prejudice to any claims for reimbursement of costs between or among the parties.

### Paragraph 2 Arbitrators' Fees

- 2.1 The arbitrators' fees shall be calculated on the basis of the amount in dispute pursuant to the following table:

Amount in Dispute	Fee for each Co-Arbitrator	Fees for President / Sole Arbitrator
Up to 5.000 €	770 €	1.000 €
From 5.000,01 € to 20.000 €	1.150 €	1.500 €
From 20.000,01 € to 50.000 €	2.300 €	3.000 €
From 50.000,01 € to 70.000 €	3.000 €	4.000 €
From 70.000,01 € to 100.000 €	3.800 €	5.000 €
From 100.000,01 € to 500.000 €	4.450 € plus 2 % of the amount exceeding 100.000 €	Fee of a co-arbitrator plus 30 %
From 500.000,01 € to 1.000.000 €	12.450 € plus 1,4 % of the amount exceeding 500.000 €	Fee of a co-arbitrator plus 30 %
From 1.000.000,01 € to 2.000.000 €	19.450 € plus 1 % of the amount exceeding 1.000.000 €	Fee of a co-arbitrator plus 30 %

From 2.000.000,01 € to 5.000.000 €	29.450 € plus 0,5 % of the amount exceeding 2.000.000 €	Fee of a co-arbitrator plus 30 %
From 5.000.000,01 € to 10.000.000 €	44.450 € plus 0,3 % of the amount exceeding 5.000.000 €	Fee of a co-arbitrator plus 30 %
From 10.000.000,01 € to 50.000.000 €	59.450 € plus 0,1 % of the amount exceeding 10.000.000 €	Fee of a co-arbitrator plus 30 %
From 50.000.000,01 € to 100.000.000 €	99.450 € plus 0,06 % of the amount exceeding 50.000.000 €	Fee of a co-arbitrator plus 30 %
above 100.000.000 €	129.450 € plus 0,05 % of the amount exceeding 100.000.000 € up to 650.000.000 €; above 750.000.000,01 €, increases in the amount in dispute shall not further increase the fee	Fee of a co-arbitrator plus 30 %

- 2.2 In case of a counterclaim or a Request against an Additional Party, the sum of the amounts in dispute of the Request, the counterclaim, and the Request against an Additional Party shall serve as the basis for the calculation of the fees.
- 2.3 If information on the amount in dispute is missing from the Request, the counterclaim, or the Request against an Additional Party, or if the DIS considers that the amount of any quantified claim has been manifestly undervalued, the DIS may initially calculate the arbitrators' fees on the basis of an amount in dispute determined by the DIS in its discretion, which shall apply until a determination of the amount in dispute pursuant to Article 36 of the Rules.
- 2.4 If there are more than two parties to the arbitration, the fees set forth in Paragraph 2.1 above shall be increased respectively by 10 percent for each additional party, not to exceed 50 percent overall.
- 2.5 In cases of particular legal or factual complexity, at the request of the arbitral tribunal and after consultation with the parties, the Arbitration Council may in its discretion determine an increase in the fees calculated pursuant to Paragraphs 2.1 and 2.4 above, not to exceed 50 percent. In deciding on any such increase in fees, the Arbitration Council shall take into account in particular the amount of time spent, the diligence and efficiency of the arbitrators, having regard to the complexity and economic importance of the dispute, as well as the arbitral tribunal's contribution to encouraging an amicable settlement of the dispute.
- 2.6 A decision on an application for interim relief pursuant to Article 25 of the Rules shall constitute a case of particular complexity within the meaning of Paragraph 2.5 above.
- 2.7 If a replacement arbitrator is appointed pursuant to Article 16 of the Rules, the Arbitration Council shall in its discretion determine the amount of the fees of the replacement arbitrator.
- 2.8 If the proceedings are terminated prior to the constitution of the arbitral tribunal, no arbitrator who has already been appointed shall be entitled to any fees or expenses.

### Paragraph 3 Administrative Fees of the DIS

3.1 The Administrative Fees of the DIS for the filing of a Request shall amount to:

Amount in Dispute	Administrative Fees of the DIS
up to 50.000 €	2 % of the amount in dispute, minimum 750 €
from 50.000,01 € to 1.000.000 €	1.000 € plus 1 % of the amount exceeding 50.000 €
above 1.000.000 €	10.500 € plus 0,5 % of the amount exceeding 1.000.000, maximum 40.000 €

3.2 In case of a counterclaim or a Request against an Additional Party, Paragraph 3.1 of this Annex 2 shall apply to the Administrative Fees, *mutatis mutandis*. In such cases, the Administrative Fees of the DIS shall amount to the sum of the Administrative Fees pursuant to Paragraphs 3.1 and 3.2 of this Annex 2.

3.3 If the Request, the counterclaim, or the Request against an Additional Party does not contain any quantification of claims, or if the DIS considers that the amount of any quantified claim has been manifestly undervalued, the DIS may initially calculate the Administrative Fees on the basis of an amount in dispute determined by the DIS in its discretion, which shall apply until a determination of the amount in dispute pursuant to Article 36 of the Rules.

3.4 If there are more than two parties to the arbitration, the Administrative Fees pursuant to Paragraphs 3.1 and 3.2 of this Annex 2 shall be increased respectively by 10 percent for each additional party. The increase shall not exceed, respectively, 20.000 € overall.

3.5 If the proceedings are terminated prior to the constitution of the arbitral tribunal, the DIS may reduce its Administrative Fees by up to 50 percent.

3.6 In case of a consolidation of two or more arbitrations, the amounts in dispute of the claims of a party in the respective arbitrations shall be added together and the new Administrative Fee for each party shall be calculated on the basis of the sum of these amounts in dispute. Any amounts already paid by the parties shall be deducted.

3.7 If a Submission within the meaning of Article 3.2 of the Rules is filed with the DIS in a language other than German or English, the DIS may charge the costs of a translation in addition to the Administrative Fees.

3.8 If proceedings are conducted prior to the commencement of the arbitration pursuant to

- the DIS Mediation Rules,
- the DIS Conciliation Rules,
- the DIS Rules on Adjudication,
- the DIS Rules on Expertise, or
- the DIS Rules on Expert Determination,

any DIS Administrative Fees already paid by the parties for such proceedings shall be deducted from the Administrative Fees for the arbitration. If any such proceedings are instituted after the arbitration has been commenced, no additional DIS Administrative Fees for such proceedings shall be charged.

### Paragraph 4 Initial Deposit and Deposit

4.1 The total amount of the Deposits to be provided by the parties pursuant to Article 35 of the Rules shall correspond to the sum of the anticipated fees of the arbitrators pursuant to Paragraph 2, the anticipated expenses of the arbitrators pursuant to Paragraph 5, and any supplement pursuant to Paragraph 6 of this Annex 2.

4.2 The DIS shall fix the amount of the initial deposit and of the Deposit. When calculating the initial deposit, the DIS may take into consideration the fees of the arbitral tribunal as a whole or initially only in part. In the latter case, the remaining fees shall be taken into consideration when calculating the Deposit.

4.3 In case a counterclaim or a Request against an Additional Party is filed, at the request of a party and after consultation with the arbitral tribunal the Arbitration Council may decide that for the respective claims separate initial deposits or Deposits shall be paid.

4.4 The DIS may increase or decrease the initial deposit and the Deposit during the course of the proceedings.

4.5 The DIS shall administer the initial deposit and the Deposit until they have been paid out to the arbitral tribunal. Prior to the termination of the arbitration, the DIS shall bear any negative interest, and shall be entitled to any positive interest, on the Deposits.

### Paragraph 5 Expenses of the Arbitral Tribunal

For the reimbursement of expenses pursuant to Article 34.1 of the Rules, the version of the respective guidelines of the DIS in force on the date of the commencement of the arbitration shall apply.

### Paragraph 6 Value Added Tax

6.1 The fees paid by the DIS to the arbitrators are not inclusive of value added tax or any comparable taxes or charges to which the fees of arbitrators may be subject.

6.2 It is the obligation of the parties to reimburse the arbitrators for value added tax or any comparable taxes or charges. The reimbursement of such taxes and charges shall exclusively occur between the parties and the arbitrators. To facilitate the process of reimbursement, in calculating the initial deposit and the Deposit, the DIS in principle shall charge a supplement in an amount up to 20 percent of the fees, which may be used to

reimburse any such taxes or charges upon presentation of a corresponding invoice by an arbitrator to one or more parties.

- 6.3 The Administrative Fees of the DIS may be subject to value added tax or similar other taxes or charges. The parties shall pay such taxes or charges in addition to paying the Administrative Fees pursuant to Paragraph 3 of this Annex 2.

## Annex 3

### Measures for Increasing Procedural Efficiency

During the case management conference, the arbitral tribunal shall discuss with the parties the following measures for increasing procedural efficiency:

- A. Limiting the length or the number of Submissions, of any written fact witness statements, and of any expert reports provided by the parties.
- B. Conducting only one oral hearing, including any taking of evidence.
- C. Dividing the proceedings into multiple phases.
- D. Rendering one or more partial awards or procedural orders on specific issues.
- E. Regulating whether the production of documents can be requested from a party that does not bear the burden of proof, as well as possibly limiting document production requests generally.
- F. Providing the parties with a preliminary non-binding assessment of factual or legal issues in the arbitration, provided all of the parties consent thereto.
- G. Making use of information technology.

To the extent that the parties disagree as to whether to apply one or more of the above measures, the arbitral tribunal shall, during or as soon as possible after the case management conference, decide in its discretion whether to apply such measures.

## Annex 4

# Expedited Proceedings

### Article 1

The final award shall be made at the latest six months after conclusion of the case management conference held pursuant to Article 27.2.

### Article 2

When establishing the procedure for the arbitration, and in particular when setting time limits, the arbitral tribunal shall at all times take into account the parties' specific interest in accelerating the proceedings.

### Article 3

In addition to the Request pursuant to Article 5.1 of the Rules and the Answer pursuant to Article 7.2 of the Rules, each party may file only one further written Submission. In the case of a counterclaim pursuant to Article 7.5, one further written Submission in reply to the counterclaim may be filed.

### Article 4

The arbitral tribunal shall hold only one oral hearing, including for the taking of evidence. An oral hearing may be dispensed with if all parties so agree.

### Article 5

If the final award cannot be made within the time limit set in Article 1 of this Annex, the arbitral tribunal shall inform the parties and the DIS in writing of the reasons therefor. If such time limit is exceeded, the arbitral tribunal shall not for that reason cease to have jurisdiction, and the final award shall be made as soon as possible.

## Annex 5

# Supplementary Rules for Corporate Disputes

### Article 1 Scope of Application

#### 1.1

The Supplementary Rules for Corporate Disputes ("DIS-CDR") set forth herein shall apply if the parties have referred to them in their arbitration agreement, either within or outside the articles of incorporation, or have otherwise agreed to their application.

#### 1.2

With respect to any arbitration, the version of the DIS-CDR in force on the date of its commencement pursuant to Article 6 of the Rules shall apply.

### Article 2 Inclusion of Concerned Others

#### 2.1

In disputes requiring a uniform decision binding all shareholders and the corporation, and in which a party intends to extend the effects of an arbitral award to any shareholder or the corporation who are not named parties to the arbitration ("Concerned Others"), the Concerned Others shall be granted the opportunity to join the arbitration pursuant to these DIS-CDR as a party or compulsory intervenor in the sense of Section 69 of the German Code of Civil Procedure ("Intervenor"). This applies, *mutatis mutandis*, to disputes that can be decided only by a uniform decision binding specific shareholders or the corporation.

#### 2.2

In its Request, the Claimant shall designate, in addition to the Respondent, any Concerned Others, providing the names and addresses of any shareholders or of the corporation itself to which the effects of the arbitral award shall extend, and shall request the DIS to also transmit the Request to the Concerned Others. In addition to what is required in Article 4.2 of the Rules, a number of copies of the Request sufficient for the designated Concerned Others shall be filed with the DIS in paper form as well as in electronic form.

#### 2.3

Concerned Others designated after expiry of the time limits provided in these DIS-CDR for designating Concerned Others may join the arbitration pursuant to Article 4.3 of these DIS-CDR.



### **Article 3** Transmission of the Request and Invitation to Join the Proceedings

#### 3.1

The DIS shall deliver the Request to the Respondent and the designated Concerned Others pursuant to Article 5.5 of the Rules. The DIS shall request the Concerned Others to inform the DIS in writing within one month following transmission of the Request whether they wish to join the arbitration on the Claimant's or on the Respondent's side, either as a party or as an Intervenor. The DIS shall inform the parties and all Concerned Others designated pursuant to Articles 2.2 or 9.4 of these DIS-CDR of any effected joinder.

#### 3.2

Within one month following the date of transmission of the Request, the Respondent may designate additional Concerned Others, providing their addresses and requesting the DIS to transmit the Request to such additional Concerned Others. With its request, the Respondent shall file the number of copies of the Request in paper form as well as in electronic form required by Article 4.2 of the Rules. Article 3.1 of these DIS-CDR shall apply to any additional Concerned Others.

### **Article 4** Joinder

#### 4.1

If Concerned Others join the arbitration as a party within the time limit provided for in Article 3 or Article 9.4 of these DIS-CDR, they shall become a party to the arbitration with all rights and duties pertaining thereto as of the date on which their declaration of joinder is filed with the DIS. If they join as an Intervenor, they shall be entitled to the rights of a compulsory Intervenor as provided for in Section 69 of the German Code of Civil Procedure. Upon their joinder, Concerned Others are entitled to designate additional Concerned Others. Article 3.2 of these DIS-CDR shall apply, *mutatis mutandis*, with regard to any such additional designated Concerned Others.

#### 4.2

If a designated Concerned Other does not join the arbitration within the provided time limit, such Concerned Others shall be deemed to have waived participation in the arbitration, without prejudice to the right to join the arbitration at a later point in time pursuant to Article 4.3 of these DIS-CDR.

#### 4.3

Designated Concerned Others may join the arbitration at any time, provided that they do not raise objections to the composition of the arbitral tribunal, and either

(i) such Concerned Others accept the arbitration as it stands at the time of their joinder,

or

(ii) the arbitral tribunal in its discretion decides to approve the joinder of such Concerned Others.

In addition, the first and second sentences of Article 4.1 of these DIS-CDR shall apply, *mutatis mutandis*.

### **Article 5** Continuous Information of Concerned Others

#### 5.1

Unless Concerned Others have expressly waived in writing their right thereto, the arbitral tribunal shall inform, pursuant to Article 4.4 of the Rules, the designated Concerned Others who have not joined the arbitration of the progress of the arbitration by transmitting to the provided addresses of the Concerned Others copies of all Submissions of the parties or of Intervenor's as well as any decisions and procedural orders of the arbitral tribunal. This shall apply to other communications from the arbitral tribunal to the parties or Intervenor's only insofar as it may be reasonably assumed that such communications are relevant to a subsequent decision of any Concerned Others to join the arbitration. If the DIS transmits decisions by the arbitral tribunal to the parties, the DIS instead of the arbitral tribunal shall transmit such decisions to any designated Concerned Others who have not joined the arbitration.

#### 5.2

Concerned Others who have not joined the arbitration are not entitled to attend case management conferences or the oral hearing.

### **Article 6** Extension or Amendment of the Subject Matter of the Claim; Withdrawal of a Claim

#### 6.1

An extension or amendment of the subject matter of the claim (including any counterclaim pursuant to Articles 7.5 to 7.9 of the Rules and any joinder of additional parties pursuant to Article 19 of the Rules) or, in case of a shareholder resolution dispute, the extension of the claim to other resolutions, is only admissible with the consent of all Concerned Others.

#### 6.2

A complete or partial withdrawal of a claim is admissible without the consent of the Concerned Others, unless a Concerned Other objects within one month after having been informed of the intended withdrawal of such claim and the arbitral tribunal acknowledges the Concerned Other's legitimate interest in the continuation of the arbitration.

### **Article 7** Sole Arbitrator

#### 7.1

If the arbitral tribunal is comprised of a sole arbitrator, the parties and Intervenor's may jointly nominate the sole arbitrator within one month following the date of transmission of the Request to the Respondent and to all Concerned Others, or, in case of an admissible joinder of a Concerned Other, within one month following such joinder.

#### 7.2

If the Respondent and the Concerned Others have received the Request at different times, the time limit shall be calculated by reference to the time of receipt by the party or Concerned

Other who last received the Request. If Concerned Others join the arbitration at different points in time, the time limit shall be calculated by reference to the last such joinder.

#### 7.3

Where the parties and the Intervenor do not reach an agreement on the sole arbitrator within the time limits provided in Articles 7.1 and 7.2 of these DIS-CDR, upon request of any Claimant, Respondent, or Intervenor, the sole arbitrator shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules. The third sentence of Article 11 of the Rules shall apply; however, for purposes of such provision, Intervenors shall be deemed equal to parties.

### Article 8 Three-Member Arbitral Tribunal

#### 8.1

If the arbitral tribunal is comprised of three arbitrators, the Request, in deviation from Article 5.2 (vii) of the Rules, need not contain the nomination of an arbitrator. Notwithstanding the above, any nomination made shall be deemed to be a proposal.

#### 8.2

Within one month following the date of transmission of the Request to the Respondent and all Concerned Others, or in case of an admissible joinder within one month thereafter, the parties and any Intervenors on Claimant's and on Respondent's side, respectively, shall jointly nominate a co-arbitrator. Article 7.2 of these DIS-CDR shall apply, *mutatis mutandis*.

#### 8.3

Where the parties and any Intervenors on Claimant's or on Respondent's side do not jointly nominate an arbitrator within the time limit provided for in Article 8.2 of these DIS-CDR, the two co-arbitrators shall be selected and appointed by the Appointing Committee pursuant to Article 13.2 of the Rules.

#### 8.4

Articles 12.2 and 12.3 of the Rules shall apply to the nomination and appointment of the President of the arbitral tribunal; however, for purposes of such provisions, Intervenors shall be deemed equal to parties.

### Article 9 Consolidation of Jurisdiction in Case of Parallel Proceedings

#### 9.1

Where multiple arbitrations concerning the same subject matter have been initiated that require a uniform decision applying to all parties and Concerned Others, Articles 9.2 to 9.4 of these DIS-CDR shall apply.

#### 9.2

The arbitration that has been commenced at an earlier point in time (the "Primary Arbitration") shall preclude an arbitration commenced at a later point in time (the "Secondary Arbitration"). The Secondary Arbitration shall be inadmissible.

#### 9.3

The priority of multiple requests for arbitration shall be determined by the time of filing of each Request with the DIS. To prove the exact time of day at which the Request was filed with the DIS, the Request (with or without attachments thereto, pursuant to Article 6.1 of the Rules) shall, in deviation from Articles 4.1 and 4.2 of the Rules, always also be sent by fax or email. In case of doubt, the DIS shall determine the priority of multiple requests for arbitration in its discretion. If the DIS considers prima facie that the case described in Article 9.1 of these DIS-CDR exists, it shall so inform the parties and the designated Concerned Others of the pending arbitration.

#### 9.4

If the Claimant in the Secondary Arbitration has filed its Request within the time limit provided for in Article 3.1 of these DIS-CDR, it may join the Primary Arbitration as a designated Concerned Other. In such case, the Request shall be deemed to constitute a joinder to the Primary Arbitration as a designated Concerned Other. Such Claimant shall become an additional claimant in the Primary Arbitration, unless it objects within the time limit for joinder provided in Article 3.1 of these DIS-CDR. Such additional claimant may participate in the constitution of the arbitral tribunal pursuant to Articles 7 or 8 of these DIS-CDR and name additional Concerned Others in the Primary Arbitration pursuant to Article 4.1 of these DIS-CDR. Insofar as Articles 7 and 8 of these DIS-CDR make reference to the time of the joinder of a Concerned Other for the calculation of time limits, it shall be deemed, for the purposes of this Article 9.4 of these DIS-CDR, that the joinder has occurred on the day on which the time limit for joining the arbitration pursuant to Article 3.1 of these DIS-CDR has expired. If the Claimant in the Secondary Arbitration expressly consents to join the Primary Arbitration before the expiry of the time limit provided for in Article 3.1 of these DIS-CDR, the time of consent shall apply for the calculation of time limits. If the Claimant in the Secondary Arbitration files timely objections, or if it files the Request after the time limit provided in Article 3.1 of these DIS-CDR has expired, such Claimant shall not be considered a party to the Primary Arbitration. Irrespective thereof, the Secondary Arbitration is inadmissible. The foregoing is without prejudice to the Claimant's rights pursuant to Article 4.3 of these DIS-CDR.

### Article 10 Confidentiality

Article 44 of the Rules shall also apply to all designated Concerned Others.

### Article 11 Extension of Effects of the Arbitral Award

#### 11.1

The effects of an arbitral award extend to those Concerned Others that have been designated as such within the time limits provided in these DIS-CDR, regardless of whether they have availed themselves of the opportunity to join the arbitration as a party or as an Intervenor. The shareholders designated as Concerned Others within the provided time limits agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

### 11.2

The effects of an arbitral award also extend to those Concerned Others that have been designated as such after the time limits provided in these DIS-CDR, but that have joined the arbitration as a party or as an Intervenor. These Concerned Others also agree to recognize the effects of an arbitral award rendered in accordance with these DIS-CDR.

## Article 12 Costs

### 12.1

Concerned Others who have not joined the arbitration as a party or as an Intervenor are not entitled to reimbursement of costs.

### 12.2

When calculating the costs pursuant to Annex 2 of the Rules (Schedule of Costs), a designated Concerned Other shall be treated as a party.

## Annex 6 Dispute Management Rules

### Article 1 Scope of Application

#### 1.1

These Dispute Management Rules (the “DMR”) shall apply when

(i) the parties have agreed to conduct dispute management proceedings under the DMR,

or

(ii) a party initiates dispute management proceedings under the DMR and the other party consents thereto.

#### 1.2

With respect to any dispute management proceedings, the version of the DMR in force on the date of their commencement pursuant to Article 2.4 of these DMR shall apply.

### Article 2 Initiation and Commencement of the Proceedings

#### 2.1

A party wishing to commence dispute management proceedings under the DMR shall file a written application with the DIS. The application shall contain:

(i) the names and addresses of the parties;

(ii) the names and addresses of any designated counsel representing the applicant;

(iii) a brief description of the dispute and the underlying facts;

and

(iv) the asserted claims and information regarding the amount in dispute.

#### 2.2

If at the time of the application there is an agreement to conduct dispute management proceedings under the DMR, the applicant shall submit a copy of such agreement together with the application pursuant to Article 2.1 of these DMR, as well as evidence of payment to the DIS of half of the costs pursuant to Article 9.1 (i) and (ii) of these DMR. The DIS shall send the application for the commencement of dispute management proceedings to the other party and shall request the other party to pay the other half of the costs pursuant to Article 9.1 (i) and (ii) of these DMR.

#### 2.3

If the applicant states that at the time of the application there is no agreement to conduct dispute management proceedings under the DMR, or no agreement is filed with the application pursuant to Article 2.2 of these DMR, the DIS shall send the application to commence

dispute management proceedings to the other party requesting that the latter, within 14 days, provide the DIS with its written consent to conduct such proceedings. If the other party fails to provide its consent within such time period, no dispute management proceedings shall take place. If such consent is provided, the DIS shall request the parties to pay the costs pursuant to Article 9 (i) and (ii) of these DMR.

#### 2.4

The dispute management proceedings shall commence:

(i) in the case of Article 2.2 of these DMR, on the date on which the application for commencement of dispute management proceedings is filed with the DIS;

or

(ii) in the case of Article 2.3 of these DMR, on the date on which the consent of the other party is filed with the DIS.

The DIS shall inform the parties about the date of commencement of the proceedings.

### Article 3 Appointment of a Dispute Manager

After commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, and after informal consultation with the parties, the DIS shall appoint an impartial and independent Dispute Manager. The DIS may refrain from appointing a Dispute Manager unless and until the costs pursuant to Article 9.1 (i) and (ii) of these DMR have been paid.

### Article 4 Joint Consultation

#### 4.1

The Dispute Manager shall contact the parties promptly, and no later than one week following his or her appointment, in order to determine, together with the parties, the date and venue for a joint consultation. The Dispute Manager may prepare the joint consultation at his or her discretion and may provide guidance to the parties in advance.

#### 4.2

During the joint consultation, the Dispute Manager shall comprehensively consult and assist the parties in deciding upon the selection and design of the dispute resolution procedure.

#### 4.3

The parties agree to endeavour, with the assistance of the Dispute Manager, to agree on an appropriate dispute resolution procedure during or promptly after the joint consultation. The parties and the Dispute Manager are free in their selection of such procedure. The Dispute Manager may make proposals regarding the appropriate dispute resolution procedure, but is not authorized to make any decisions.

### Article 5 Termination of the Proceedings

#### 5.1

The dispute management proceedings shall terminate:

- (i) on the date of the written declaration by the parties that they have agreed upon a dispute resolution procedure pursuant to Article 4.3 of these DMR;
- (ii) on the date on which a party files with the DIS a written termination notice;
- (iii) on the date on which the Dispute Manager files with the DIS a written termination notice, in particular when he or she considers that conducting the joint consultation would not serve a purpose or that the parties cannot be expected to reach an agreement;

or

- (iv) if the parties have failed to agree on a dispute resolution procedure two months from commencement of the proceedings pursuant to Article 2.4 of these DMR.

#### 5.2

The DIS may decide to terminate the dispute management proceedings at any time if, within the time limit set by the DIS, the costs pursuant to Article 9 of these DMR have not been paid.

### Article 6 Prescription

The statute of limitations applicable to the claims described in the application shall be tolled upon commencement of the dispute management proceedings pursuant to Article 2.4 of these DMR, until three months after the termination of the proceedings pursuant to Article 5 of these DMR.

### Article 7 Special Provisions in the Event of a Pending Dispute Resolution Procedure

#### 7.1

If there is a dispute resolution procedure already pending between the parties that involves matters related to the dispute management proceedings, the parties and the Dispute Manager during the joint consultation should additionally take into consideration any effects on such procedure.

#### 7.2

If the pending procedure is an arbitration under the DIS Arbitration Rules, in addition to Article 7.1 of these DMR the following shall apply:

- (i) no Administrative Fees pursuant to these DMR shall be due;
- (ii) the time limit stipulated in Article 2.3 of these DMR for the other party to provide its consent shall be five days;

and

(iii) in deviation from Article 5.1 (iv) of these DMR, the dispute management proceedings shall terminate if, within 30 days from commencement of the dispute resolution proceedings pursuant to Article 2.4 of these DMR, the parties do not agree on a dispute resolution procedure other than the already pending dispute resolution procedure pursuant to Article 7.1 of these DMR.

## Article 8 Confidentiality

### 8.1

Unless the parties agree otherwise, the parties and their outside counsel, the Dispute Manager, the DIS employees, and any other persons associated with the DIS who are involved in the dispute management proceedings shall not disclose to anyone any information concerning the proceedings, including in particular the existence of the proceedings, the names of the parties, the nature of the claims, the names of any witnesses or experts, any procedural orders or awards, and any evidence that is not publicly available. Disclosures may nonetheless be made to the extent required by applicable law or by other legal duties.

### 8.2

Unless the parties agree otherwise, no party shall nominate the Dispute Manager as a witness in a procedure that relates to the subject matter of the dispute management proceedings.

### 8.3

Unless the other party consents thereto, no party shall appoint or otherwise engage the Dispute Manager as party-appointed arbitrator, expert, counsel, or advisor in any arbitration, litigation, or alternative dispute resolution proceedings that relate to the subject matter of the dispute management proceedings.

### 8.4

The DIS may publish statistical data or other general information concerning dispute management proceedings, provided that no party is identified by name and that no particular dispute management proceedings are identifiable on the basis of such information.

### 8.5

Article 8 of these DMR is notwithstanding any contractual confidentiality and secrecy obligations of the parties.

## Article 9 Costs

### 9.1

The costs of the dispute management proceedings (including the DIS Administrative Fees and the fees and expenses of the Dispute Manager) shall be determined as follows:

- (i) The DIS Administrative Fees shall amount to 500 €.
- (ii) The Dispute Manager shall be entitled to a flat fee of 2.500 €, which shall include the preparation for, and the conduct of, the first joint consultation, and which shall be due even if, for reasons beyond the Dispute Manager's control, no joint consultation takes place.

(iii) The Dispute Manager's necessary and documented expenses, in particular travel and lodging costs, shall be reimbursed.

### 9.2

Paragraph 6 of Annex 2 to the DIS Arbitration Rules in respect of value added tax shall apply, *mutatis mutandis*.

### 9.3

The parties shall bear in equal shares, and are jointly and severally liable for, the costs of the dispute management proceedings pursuant to Article 9.1.

## Article 10 Limitation of Liability

For any acts or omissions in connection with the dispute management proceedings, a Dispute Manager, the DIS, its statutory organs, its employees, and any other person associated with the DIS who is involved in the proceedings shall not be liable, except in case of an intentional breach of duty or gross negligence.

# DIS Integrity Principles

- (1) The following provisions shall aim at making transparent the Integrity Principles of the DIS applicable in arbitrations under the DIS Arbitration Rules concerning:
  - (i) the nomination of arbitrators by the DIS Appointing Committee; and
  - (ii) the acceptance of mandates as arbitrators or external counsel by members of organs or other officials of the DIS.
  
- (2) The Integrity Principles serve to promote trust in arbitration and are to be interpreted and applied for this purpose. All members of organs of the DIS and all persons exercising functions within the DIS concerning the administration of DIS arbitrations are obligated to promote trust in arbitration. They are also required to act in the spirit of the Integrity Principles even in cases for which the following provisions do not contain specific instructions, and to resolve possible conflicts of interest on the basis of the highest standards of integrity.
  
- (3) Members of the DIS Appointing Committee (Article 14 of the DIS Statutes) shall not:
  - (i) simultaneously be members of the Board of Directors or the Advisory Board (Articles 7 and 9 of the DIS Statutes);
  - (ii) serve more than two terms in office;
  - (iii) appoint members of the Board of Directors or the Advisory Board or the DIS Secretariat or the DIS's external auditors as arbitrators for arbitrations under the DIS Arbitration Rules;
  - (iv) during their term of office, accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules.

They may, however, during their term of office, act as external counsel in an arbitration under the DIS Arbitration Rules. In this case, they may not participate in decisions relating to this arbitration pursuant to Article 14.6 of the DIS Statutes.

- (4) Members of the Secretariat or other employees of the DIS may not:
  - (i) accept mandates as arbitrators for an arbitration under the DIS Arbitration Rules;
  - (ii) act as external counsel in an arbitration under the DIS Arbitration Rules.
  
- (5) Executive members of the DIS Board of Directors pursuant to Section 26 of the German Civil Code (Article 7.2 of the DIS Statutes) may not:
  - (i) accept mandates as arbitrators in an arbitration under the DIS Arbitration Rules;
  - (ii) act as external counsel in an arbitration under the DIS Arbitration Rules.
  
- (6) Non-executive members of the DIS Board of Directors who do not have a power of attorney (Article 7 of the DIS Statutes) and members of the DIS Advisory Board (Article 9 of the DIS Statutes) may:
  - (i) accept mandates as arbitrators in arbitrations under the DIS Arbitration Rules, taking into account the restrictions of Paragraph 3 (iii);
  - (ii) act as external counsel in proceedings under the DIS Arbitration Rules.

Deutsche Institution für Schiedsgerichtsbarkeit e.V.

German Arbitration Institute

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These Arbitration Rules are drafted in a single original, of which the German and English texts are equally authoritative.