

# **DISPUTE RESOLUTION RULES**

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## PART I. GENERAL

### Article 1 Interpretation

- a. "Rules" means the Fruit and Vegetable Dispute Resolution Corporation Dispute Resolution Rules, as amended from time to time.
- b. Definitions:
  - i. "Corporation" or "DRC" means the Fruit and Vegetable Dispute Resolution Corporation or its President or any employee or agent of the Corporation designated by the President to assist in the administration of a dispute under these Rules;
  - ii. "dollar" means U.S. dollars;
  - iii. "President" means the person appointed by the Board of the Directors of the Corporation to supervise and control all business and affairs of the Corporation, or that person's delegate;
  - iv. "member" means a member in good standing of the Corporation;
  - v. "party" and "parties" means claimant, respondent or both;
  - vi. "Claim" means a claim by a claimant. Subject to Article 4, a Claim is to be brought by way of Notice of Dispute or Statement of Claim;
  - vii. "Counterclaim" means a claim by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim and that is in excess of the amount being claimed by the claimant. Subject to Article 4, a Counterclaim is to be brought by way of a Counterclaim provided that the respondent previously gave notice of the Counterclaim during the informal consultation process. Claims by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim that are less than the amount being claimed by the claimant are to be asserted as a defense only in the Statement of Defence. Claims by a respondent arising out of the transaction or occurrence that is the subject matter of the Claim that are out of time pursuant to Article 4 may be asserted as a defense to the Claim in the Statement of Defence but no amounts in excess of the Claim shall be recoverable;
  - viii. "Counterclaim with setoff" means a claim by a respondent arising out of a transaction extrinsic to the Claim. Subject to Article 4, a Counterclaim with setoff may only be brought by way of a Counterclaim with setoff provided that the respondent previously gave notice of the Counterclaim with setoff during the informal consultation process. A Counterclaim with setoff is not allowed to be asserted as a defence to the Claim;

- ix. words signifying a male person include a female person;
- x. words in the singular include the plural and words in the plural include the singular.

## Article 2 Application

- 1) These Rules are incorporated by reference in the Corporation's By-Laws and Operating Rules and their application to disputes between members is a condition of membership in the DRC.
- 2) Subject to the Corporation's By-Laws, each member agrees that any dispute, controversy or claim with another member arising out of or in connection with any transaction involving fresh fruits and vegetables as defined in the Corporation's By-Laws shall be resolved exclusively in accordance with these Rules as amended from time to time. Each member further specifically agrees to submit any such disputes not resolved through mediation to arbitration in accordance with these Rules.
- 3) By agreeing to arbitrate under the DRC and its Rules, the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one country, in accordance with Ontario's *International Arbitration Act*, 2017, SO 2017, c 2, Sch 5, Schedule 2, Article 1(3)(c).
- 4) A member's agreement to submit disputes to arbitration under the By-Laws and Rules, and the DRC's obligation to administer such disputes, shall only apply to disputes arising in relation to transactions that have entered into commerce in Canada, Mexico and the United States by the product that is the subject matter of the dispute having been grown in, received in or otherwise physically present in Canada, Mexico or the United States.
- 5) Nothing in these Rules shall prevent any member from preserving any rights it may have under the statutory trust of the Perishable Agricultural Commodities Act ("PACA"), 7 U.S.C. §499e, from seeking interim, injunctive relief to prevent dissipation of assets covered by the PACA trust, from any rights and recourses it may have to pursue a debtor/member under any insolvency legislation or from seeking interim relief from a court of competent jurisdiction in appropriate circumstances pending resolution of a proceeding before the Corporation and under its By-Laws and Operating Rules.
- 6) Nothing in these Rules is intended to prevent legal action against a non-member, except where a non-member has agreed to apply these Rules pursuant to Article 3, or an arbitrator determines the dispute falls within the scope of application of these Rules, or the non-member was a member at the time the dispute arose.
- 7) Each member agrees that it will endeavour to resolve all disputes within the scope of these Rules in good faith and in accordance with these Rules.

- 8) Each member recognizes and agrees that a failure to abide by these Rules or any request or order by the DRC, an arbitrator or a mediator in the application of these Rules or any settlement agreement or award of an arbitrator, may give rise to discipline or expulsion from membership pursuant to the By-Laws and the Corporation's Operating Rules.
- 9) Unless the parties agree otherwise, these Rules only apply to disputes between members who were both members at the time the dispute arose.
- 10) The Corporation's Board of Directors shall determine all administrative fees, including commencement and filing fees, hearing fees and postponement fees. These fees shall remain in effect until changed by the Board of Directors.
- 11) Any copy of a member's membership application provided by the Corporation shall be conclusive evidence of the member's agreement to arbitrate any dispute, controversy or claim as provided for in these Rules. Members hereby consent to the Corporation releasing a copy of their membership application to the opposing party in any arbitration proceeding as necessary to provide evidence of the member's agreement to arbitrate for the arbitration process and for enforcement of the arbitration award, or both. The agreement to arbitrate contained in a member's membership application is legally effective, valid and enforceable against the member despite the fact that signatures on the membership application may be in electronic form or that it may have been created, transmitted, stored or otherwise handled or formed, in whole or in part, by electronic means.

#### Article 3 Disputes with Non Members

These Rules also apply to any dispute, controversy or claim between a member and one or more non-members where the parties agree in writing to their application or, an arbitrator accepts a non-member as a party to the proceedings, or the non-member was a member when the dispute arose and all applicable fees have been paid, or for any claims arising out of the transactions that occurred prior to the termination of the member's membership in the Corporation as indicated in Section 3.06 of the Corporation's By-laws.

#### Article 4 Limitation of Claims

- 1) Unless the parties otherwise specifically agree in writing, no Claim may be brought under these Rules by one member against another unless the Claim is notified to the DRC by filing a Notice of Dispute within nine (9) months of when the Claim arose or within nine (9) months of when the claimant ought reasonably to have known of its existence. Failure to file the Notice of Dispute with the DRC within this time is deemed an abandonment of the Claim and shall prevent recovery against another member.
- 2) Unless the parties otherwise specifically agree in writing, no Counterclaim may be brought under these Rules by one member against another unless the Counterclaim is notified to the DRC during the informal consultation process

within nine (9) months of when the claim arose or within nine (9) months of when the respondent ought reasonably to have known of its existence. Failure to notify the DRC of the Counterclaim within this time is deemed an abandonment of the claim and shall prevent recovery against another member. Nevertheless, the facts underlying the Counterclaim may still be asserted as a defence to a Claim.

- 3) Unless the parties otherwise specifically agree in writing, no Counterclaim with setoff or defence may be brought under these Rules by one member against another unless the Counterclaim with setoff or defence is notified to the DRC during the informal process and within nine (9) months of when the claim arose or within nine (9) months of when the respondent ought reasonably to have known of its existence. Failure to notify the DRC of the Counterclaim with setoff or defence within this time shall be deemed an abandonment of the claim and prevent recovery against another member.
- 4) Unless the parties otherwise specifically agree in writing, no formal proceedings may be brought by one member against another member under Part III of these Rules unless the claim is filed with the DRC by way of a Statement of Claim within 12 months of when the Notice of Dispute regarding the specific claim was confirmed by the DRC. Failure to proceed with formal proceedings within this time shall be deemed an abandonment of the claim and prevent recovery against another member.

#### Article 5 Time

- 1) In these Rules, where the time for doing an act falls or expires on a holiday, the period is extended until the next business day. However, holidays occurring within a period of time are included in calculating the period.
- 2) In these Rules, in calculating a period of time, the first day shall be excluded and the last day included.
- 3) The Corporation may, at any time, extend or abridge a period of time required in these Rules, other than a period of time fixed or determined by an arbitrator or mediator.
- 4) For purposes of this Article, holidays mean Canadian national holidays, in addition to Ontario statutory holidays.

#### Article 6 Communications

- 5) Unless otherwise agreed in writing by the parties or ordered by an arbitrator or mediator, the parties to a dispute may deliver any written communications required or permitted under these Rules personally, by mail, by facsimile or by other means of electronic communication, which provide a record of delivery. Communications shall be considered received when delivered to a party's address.

- 6) A party's address shall be its place of business, habitual residence, mailing address, or electronic address as indicated in its membership application. If none of these places can be found, or are current, and after making a reasonable enquiry, a written communication is deemed to have been received if it is delivered to the addressee's last known place of business, habitual residence or mailing address.
- 7) Parties are also deemed to have received all notices under these Rules from the DRC, a mediator or an arbitrator when given by telephone. Such notices may subsequently be confirmed in writing to the parties. However, failure to confirm any notice in writing shall not invalidate the giving of notice provided notice was, in fact, given by telephone.
- 8) A copy of all written communications from a party to the DRC, a mediator, or arbitrator must be delivered to the other party or parties at the same time.

#### Article 7 Exclusion of Liability

Without their express consent, the DRC, its employees or agents, or any mediator or arbitrator shall not be a party to any judicial proceedings relating to the mediation or arbitration. Neither the DRC nor any mediator or arbitrator shall be liable to any party for any error, act, or omission in connection with any mediation conducted under these Rules. The mediator and arbitrators shall have the same immunity from legal proceedings as a judge of the Superior Court of Ontario, in which case such judicial immunity shall supplement, but not supplant, any immunity provided under other applicable laws or this Article.

#### Article 8 Waiver

A party who knows that any provision of these Rules has not been complied with and who proceeds without promptly communicating its objection in writing shall be deemed to have waived the right to object.

## **PART II. INFORMAL CONSULTATION**

#### Article 9 Notice of Dispute

- 1) A party, as claimant, may submit a claim under these Rules by delivering a written Notice of Dispute to the respondent and to the DRC.
- 2) The Notice of Dispute shall contain:
  - a. The names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
  - b. a brief statement of the matter in dispute; and

- c. the remedy sought including, where possible, a precise estimate of the amount claimed.
- 3) If the parties agree to apply these Rules to a dispute in which one of the parties is a non-member, the Notice of Dispute must be accompanied by a copy of the clause or agreement incorporating these Rules and a non-refundable commencement fee payable by the non-member. Pursuant to the Corporation's by-laws, the commencement fee paid by the non-member shall be credited towards membership fees should the non-member apply for membership in the DRC. Should the non-member refuse to or otherwise not pay the commencement fee, the member may pay the non-member's commencement fee and add this amount to the member's claim. In this case, the fee will not be credited to the non-member's membership fee should that non-member apply for membership in the DRC.
- 4) When a Notice of Dispute has been properly filed in accordance with these Rules, the DRC shall confirm the respondent has received a copy of the Notice of Dispute and advise the parties that proceedings under these Rules have commenced by way of delivering a Confirmation of Receipt of Notice of Dispute.

#### Article 10     Reply

- 1) The respondent shall deliver to the claimant and to the DRC a copy of its Reply within seven (7) days of receipt of the Confirmation of Receipt of Notice of Dispute.
- 2) The Reply shall contain:
  - a. the names of the parties to the dispute and counsel, if represented, together with their addresses for delivery;
  - b. a brief response to the Notice of Dispute, including the respondent's position with respect to the claimant's description of the matters in dispute; and
  - c. a description of any Counterclaims or Counterclaims with setoff it may have against the claimant, together with the remedy sought, including, where possible, a precise estimate of the amount claimed.

#### Article 11     Consultation

- 1) After delivery of the Reply, the DRC shall informally consult with the parties to clarify the nature of the dispute and to facilitate the exchange of information between the parties in order to assist them to resolve the dispute as quickly as possible.

- 2) The parties shall cooperate fully with the DRC and shall participate in good faith in the informal consultation process.
- 3) If the parties reach an agreement to resolve the dispute, the DRC shall assist the parties to record the terms of their agreement. The parties agree to comply in good faith with the terms of their agreement. Any disputes arising from this new agreement shall be settled by arbitration using these Rules and following its procedures.

#### Article 12 Confidentiality and Privilege

All discussions between the parties and the DRC during the informal consultation process are private and shall be kept confidential and may not be recorded nor used by any party in any subsequent proceeding.

### **PART III. FORMAL PROCEEDINGS**

#### Article 13 Mediation and Arbitration Options

- 1) If the parties are unable to resolve their dispute by informal consultations within twenty-one (21) days from confirmation of the receipt of the Notice of Dispute, or such additional time that the DRC may provide, or by mediation, the dispute shall be resolved by arbitration pursuant to these Rules; or
- 2) The parties may agree to refer their dispute to mediation pursuant to Article 17 before proceeding to arbitration. If the parties decide to pursue mediation, any applicable time limits shall be suspended pending the conduct of mediation. The parties' agreement to mediate will be recorded in writing.

#### **GENERAL CONDITIONS**

#### Article 14 Multi-national Panel of Mediators and Arbitrators

The DRC shall establish and maintain a multi-national panel of mediators and arbitrators experienced in resolving produce disputes and shall appoint them as provided in these Rules.

#### Article 15 Representation

- 1) By agreeing to mediate or arbitrate under these Rules, the parties undertake to conduct all proceedings in a *bona fide* and forthright manner and make a serious attempt to resolve the dispute.
- 2) Any party may be represented in mediation or arbitration proceedings. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to all parties and to the DRC

at least seven (7) days before the date set for the hearing at which that person is first to appear.

- 3) Unless instructed otherwise by the DRC, once a mediator or the arbitral tribunal has been established, the parties or their representatives may communicate in writing directly with the mediator or the arbitral tribunal with simultaneous copies to the other party and, unless otherwise instructed by the DRC, to the DRC. The conduct of party representatives shall be in accordance with such guidelines as the DRC may issue on the subject.
- 4) A party representative is deemed to have the authority to settle the dispute.

## Article 16 Confidentiality

### **MEDIATION**

- 1) The mediator shall not disclose confidential information received in the course of the mediation. All records, reports or other documents received or made by the mediator while serving in that capacity shall be confidential.
- 2) The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum.
- 3) The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding, the following, unless agreed to by the parties or required by applicable law:
  - a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
  - b. admissions made by a party in the course of the mediation proceedings;
  - c. documents, notes, or other information obtained during the mediation proceeding;
  - d. proposals made or views expressed by the mediator; or,
  - e. the fact that a party had or had not indicated willingness to accept a proposal.

### **ARBITRATION**

- 1) A party and any arbitrator, and any person appointed by the arbitral tribunal, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the Award as confidential, unless the parties agree otherwise. The arbitral tribunal's discussions and deliberations shall be confidential.
- 2) Unless the parties agree otherwise, a party and any arbitrator, and any person appointed by the arbitral tribunal, including any administrative secretary and any expert, shall not, without the prior written consent of the parties, disclose to a third party any matter relating to the proceedings except:

- a. for the purpose of making an application to any competent court of any State to recognize, enforce or challenge the Award;
  - b. pursuant to the order of or a subpoena issued by a court of competent jurisdiction;
  - c. for the purpose of pursuing or enforcing a legal right or claim;
  - d. in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;
  - e. pursuant to an order by the arbitral tribunal on application by a party with proper notice to the other parties;
- 3) In this Article, “matters relating to the proceedings” includes the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the Award arising from the proceedings, but excludes any matter that is otherwise in the public domain; and
  - 4) The arbitral tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Article.

## **SECTION 1: MEDIATION**

### **Article 17      Mediation**

- 1) Unless the parties agree otherwise, mediation shall be conducted in accordance with these Rules. Where they have agreed otherwise, these Rules will be supplemented where necessary.
- 2) Unless the parties agree otherwise, the mediation shall be commenced within thirty (30) days of the parties' agreement to mediate pursuant to Article 13.2.
- 3) Unless the parties agree otherwise, the mediation shall be deemed to have terminated if the parties have been unable to reach a settlement within sixty (60) days of the parties' agreement to mediate.

## **COMMENCING THE MEDIATION**

### **Article 18      Notice of Mediation**

- 1) Any party or parties to a dispute may initiate mediation by filing with the DRC a submission to mediation or a written request for mediation pursuant to these Rules, together with the appropriate filing fee. Where there is no submission to mediation or contract providing for mediation, a party may request the DRC to invite another party to join in mediation. Upon receipt of such a request, the DRC will contact the other parties involved in the dispute and attempt to obtain their agreement to mediation.

- 2) A request for or submission to mediation shall contain a brief statement of the nature of the dispute, and the names, addresses, and telephone numbers of all parties to the dispute and their representatives, if any. The initiating party shall simultaneously file two copies of the request with the DRC and one copy with every party to the dispute.

## **THE MEDIATOR**

### **Article 19 Appointment of Mediator**

- 1) Unless the parties have agreed to the appointment of a mediator, the DRC shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the multi-national DRC panel.
  - a. Each party shall have ten (10) days from the date of delivery in which to strike names objected to, rank the remaining names in order of preference, and return the list to the DRC.
  - b. Each party may strike three names from the list. If a party does not return the list within the time specified, all listed persons shall be deemed acceptable.
  - c. From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the DRC shall invite the appropriate number of mediators to serve. If the parties fail to agree on any of the persons named, or if acceptable mediators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the DRC shall have the power to make the appointment from among other members of the panel without the submission of additional lists. To the extent possible, the DRC will abide by any agreement of the parties regarding the desired qualifications of the mediator.
- 2) If the parties' mediation agreement names a mediator or specifies a method to appoint a mediator, such designation or method shall be followed. The parties shall file with the DRC the notice of appointment, together with the mediator's name, address, e-mail address and telephone number, within ten (10) days of the appointment. If no period of time to appoint a mediator is specified in the agreement, the DRC will notify the parties that they have ten (10) days within which to make such appointment. If any party fails to make the appointment within the time specified by the agreement or by the DRC, the DRC shall make the appointment.
- 3) Upon the DRC appointing the mediator, the DRC shall disclose the identity of the mediator to the parties and provide the parties with a summary of the mediator's qualifications and biographical data.

### **Article 20 Challenge of Mediator**

- 1) A party may challenge any mediator whenever circumstances exist that give rise to justifiable doubts as to the mediator's impartiality or independence. A party wishing to challenge a mediator shall send notice of the challenge to the DRC within ten (10) days after being notified of the appointment of the mediator, or within ten (10) days after the circumstances giving rise to the challenge became known to that party.
- 2) The challenge shall state in writing the reasons for the challenge.
- 3) Upon receipt of such a challenge, the DRC shall notify the other parties of the challenge. When one party challenges a mediator, the other parties may agree to accept the challenge and, if there is agreement, the mediator shall be replaced. The challenged mediator may also withdraw on his or her own initiative. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 4) If the other party or parties do not agree to the challenge or the challenged mediator does not withdraw, the decision on the challenge shall be made by the DRC in its sole discretion.
- 5) The DRC shall decide the challenge as soon as is reasonably possible after receiving the request and according to such procedures as the DRC considers appropriate. The DRC's decision on the challenge is final.

#### Article 21 Replacement of Mediator

If any mediator becomes unwilling or unable to serve or is disqualified, the DRC will appoint another mediator, taking into account the expressed preferences of the parties.

#### Article 22 Authority of Mediator

- 1) The mediator does not have the authority to impose a settlement on the parties but will seek to assist them in reaching a satisfactory resolution of the dispute.
- 2) The mediator is authorized to conduct joint, separate and *ex parte* meetings and other communications with the parties and to make oral and written recommendations for settlement.
- 3) Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and bear the costs of obtaining such advice. Arrangements for obtaining such expert advice shall be made by the mediator or the parties, as the mediator shall determine.
- 4) The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

- 5) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- 6) In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
- 7) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

#### Article 23 Date, Time, and Place of Mediation

- 1) The mediator shall fix the date and the time of each mediation session in consultation with the parties.
- 2) The mediation shall be held at any convenient location agreeable to the mediator and the parties, as the mediator shall determine.

#### Article 24 Identification of Matters in Dispute

- 1) At least ten (10) days before the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved and all information reasonably required for the mediator to understand these issues. The parties shall exchange such memoranda in accordance with Article 6 of these Rules.
- 2) The parties should produce all information reasonably required for the parties and the mediator to understand the issues presented.
- 3) The mediator may require any party to supplement such information.

#### Article 25 Privacy

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

#### Article 26 No Stenographic Record

There shall be no stenographic record of the mediation proceedings.

#### Article 27 Termination of Mediation

The mediation shall be terminated:

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile;
- c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated; or
- d. as stated in these Rules.

#### Article 28 Mediation Settlement

Parties who undertake to mediate under these Rules agree to carry out any settlement agreement without delay.

#### Article 29 Interpretation and Application of Rules

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's powers and duties. All other Rules shall be interpreted and applied by the DRC.

#### Article 30 Costs

The costs of any information production shall be paid by the party producing such information. All other costs of the mediation, including required travel and other expenses of the mediator and representatives of the DRC, and the costs of any information or expert advice produced at the mediator's direct request, shall be borne equally by the parties unless they agree otherwise.

### **SECTION 2: ARBITRATION**

#### Article 31 Applicable Arbitration Rules

- 1) The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration under the DRC or its Dispute Resolution Rules. The arbitration shall take place according to the Rules in force at the date of commencement of the arbitration, subject to modifications that the parties may adopt in writing and which are approved by the DRC. The DRC is the Administrator of these Rules.
- 2) These Rules govern the arbitration, to the extent that any such rule does not conflict with any mandatory provisions of the law applicable to the arbitration.
- 3) Claims, counterclaims and counterclaims with setoff under \$15,000 shall be determined by a sole arbitrator without a hearing.

- 4) Claims, counterclaims and counterclaims with setoff equal to \$15,000 and less than \$50,000, no hearing will be part of the proceedings, unless one or more of the parties make a request in writing, or the arbitrator decides one is required. In any case, it shall be determined by a sole arbitrator.

#### **EXPEDITED PROCEDURES**

- 5) 5.1 Before the arbitral tribunal is constituted, and after the filing of a Notice of Dispute pursuant to Article 9, a party may request to the DRC that the arbitral proceedings follow the Expedited Procedure under this Article when the amount in dispute is over \$50,000 representing the aggregate of the claim, counterclaim and any defence or setoff, provided that any of the following criteria is satisfied:
  - a. the parties so agree;
  - b. the respondent has failed to deliver its Reply to the Notice of Dispute and to cooperate during the informal consultation procedure provided for in Part II of these Rules; or
  - c. in cases of exceptional urgency.

The party applying for the arbitral proceedings to be conducted in accordance with the Expedited Procedure under this Article shall, at the same time as it files an application for the proceedings to follow the Expedited Procedure with the DRC, send a copy of the application to the other party and shall notify the DRC that it has done so, specifying the mode of service employed and the date of service.

5.2 Where a party has filed an application with the DRC under Article 5.1, and where the DRC determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall follow the Expedited Procedure, the following procedure shall apply:

- a. the DRC may abbreviate any time limits under these Rules, in accordance with Appendix I;
- b. a sole arbitrator will hear the case, unless the DRC determines otherwise;
- c. there are no hearings, where the amount in dispute does not exceed the equivalent amount of \$15,000.00 representing the aggregate of the claim, counterclaim and any defence or setoff, unless permitted by the DRC;
- d. subject to paragraph (c) above, the arbitral tribunal may, in consultation with the parties, determine if the dispute is to be decided on the basis of documentary evidence only, or if a hearing is required for the

examination of any witness and expert witness as well as for any oral argument; and

- e. the arbitral tribunal may state the reasons for the final Award in summary form.

5.3 By agreeing to arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure, the rules and procedures set forth in Article 5.2 shall apply even in cases where the arbitration agreement contains contrary terms.

5.4 Upon application by a party, and after giving the parties the opportunity to be heard, the arbitral tribunal may, having regard to any further information as may subsequently become available, and in consultation with the DRC, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the arbitral tribunal decides to grant an application under this Article 5.4, the arbitral tribunal shall be the same arbitral tribunal that was constituted to conduct the arbitration following the Expedited Procedure. The arbitral tribunal is free to order a party to cover the additional filing fees, deposits, or costs resulting from the change in procedure.

#### **CLAIMS OF \$50,000 OR MORE AND UNSPECIFIED AMOUNTS**

- 1) For claims, counterclaims and counterclaims with setoff equal to, or above \$50,000, or where no specific amount is claimed, hearings cannot be waived, without the agreement of the DRC and the arbitration shall proceed under these Rules.

#### **COMMENCING THE ARBITRATION**

##### **Article 32 Statement of Claim**

- 1) The party initiating arbitration ("claimant") shall give written notice of arbitration in the form of a signed Statement of Claim, in two copies, to the DRC and to the party or parties against whom a claim is being made ("respondent").
- 2) Arbitral proceedings shall be deemed to have commenced on the date the Statement of Claim is received by the DRC, confirmed to the parties, and once all applicable Administrative Fees are paid, or where the DRC determines that there has been substantial compliance with such requirements.
- 3) The Statement of Claim shall include the following:
  - a. a demand that the dispute be referred to arbitration;
  - b. the names, addresses and telephone numbers of the parties, and their representatives (if known);

- c. if both parties were not DRC members at the time of the transaction, but one or both have since become members, a copy of the arbitration clause or agreement that is invoked;
- d. a reference to any contract out of, or in relation to, which the dispute arises;
- e. a detailed description of the claim and an indication of the facts supporting it;
- f. the relief or remedy sought and the amount claimed;
- g. any witness statements containing the testimony and evidence upon which the claimant relies; and
- h. any argument or legal authority upon which the claimant relies.

The Statement of Claim may include proposals as to the number of arbitrators and the language of the arbitration.

#### Article 33 Statement of Defence and Counterclaim

- 1) Within thirty (30) days after the Statement of Claim is confirmed by the DRC, a respondent shall file a signed Statement of Defence in writing with the claimant and any other parties, and two signed copies with the DRC for transmittal to the arbitral tribunal when appointed. A Statement of Defence shall include the following:
  - a. a detailed description of the defence and all the material facts supporting it;
  - b. all documents supporting the defence, such as invoices, inspections and relevant agreements and communications between the parties;
  - c. any witness statements containing the evidence or testimony upon which the respondent relies; and
  - d. any argument or legal authority upon which the respondent relies.
- 2) At the time a respondent submits its Statement of Defence, a respondent may bring a counterclaim or counterclaim with setoff or defence provided it has previously given notice of the counterclaim or counterclaim with setoff or defence during the informal consultation process.
- 3) The counterclaim or counterclaim with setoff or defence shall contain the information and documents necessary for the filing of a Statement of Claim pursuant to Article 32(3).
- 4) The claimant shall have thirty (30) days from the filing of a counterclaim or counterclaim with setoff or defence to deliver a Statement of Defence to Counterclaim in accordance with the requirements of this Article.

- 5) A respondent shall respond to the DRC, the claimant and other parties within ten (10) days from the confirmation of the Statement of Claim by the DRC as to any proposals the claimant may have made as to the number of arbitrators, where to hold hearings, or the language of the arbitration, except to the extent that the parties have previously agreed on these matters.

#### Article 34 Multiple Contracts

- 1) Where there are disputes out of or in connection with more than one contract, the Claimant may:
  - a. file a Statement of Claim in respect of each arbitration agreement invoked and concurrently submit an application to consolidate pursuant to Article 36.1; or
  - b. file a single Statement of Claim in respect of all of the arbitration agreements invoked which shall include a statement identifying each contract and arbitration agreement invoked and a description of how the applicable criteria under Article 36.1 are satisfied. The Claimant shall be deemed to have commenced multiple arbitrations, one in respect of each arbitration agreement invoked, and the Statement of Claim under this Article 34.1(b) shall be deemed to be an application to consolidate all such arbitrations pursuant to Article 36.1.
- 2) Where the Claimant has filed a single Statement of Claim pursuant to Article 34.1(b) and the DRC rejects the application for consolidation, in whole or in part, the Claimant shall file a Statement of Claim in respect of each arbitration that has not been consolidated, and the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.
- 3) Where the Claimant has filed two or more Statements of Claim pursuant to Article 34.1(a), the DRC shall accept payment of a single filing fee under these Rules for all the arbitrations sought to be consolidated. Where the DRC rejects the application for consolidation, in whole or in part, the Claimant shall be required to make payment of the requisite filing fee under these Rules in respect of each arbitration that has not been consolidated.

#### Article 35 Joinder of Additional Parties

##### Before the constitution of the arbitral tribunal

- 1) Before the constitution of the arbitral tribunal, a party or non-party to the arbitration may file an application with the DRC for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:

- a. the additional party to be joined is *prima facie* bound by the arbitration agreement; or
  - b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.
- 2) An application for joinder under Article 35.1 shall include:
  - a. the DRC file number of the pending arbitration;
  - b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties, including the additional party to be joined, and their representatives, if any, and any arbitrators who have been nominated or appointed in the pending arbitration;
  - c. whether the additional party is to be joined as a Claimant or a Respondent;
  - d. the information specified in Article 32.3(d);
  - e. if the application is being made under Article 35.1(b), identification of the relevant agreement and, where possible, a copy of such agreement; and
  - f. a brief statement of the facts and the basis supporting the application.
- 3) The application for joinder is deemed to be complete when all the requirements of this Article 35.2 are fulfilled or when the DRC determines that there has been substantial compliance with such requirements. The DRC shall notify all parties, including the additional party to be joined, when the application for joinder is complete.
- 4) The party or non-party applying for joinder under Article 35.1 shall, at the same time as it files an application for joinder with the DRC, send a copy of the application to all parties, including the additional party to be joined, and shall notify the DRC that it has done so, specifying the mode of service employed and the date of service.
- 5) The DRC shall, after considering the views of all parties, including the additional party to be joined, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Article 35.1. The DRC's decision to grant an application for joinder under this Article 35.4 is without prejudice to the arbitral tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The DRC's decision to reject an application for joinder under this Article 35.4, in whole or in part, is without prejudice to any party's or non-party's right to apply to the arbitral tribunal for joinder pursuant to Article 35.8.

- 6) Where an application for joinder is granted under Article 35.4, the date of receipt of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.
- 7) Where an application for joinder is granted under Article 35.4, the DRC may revoke the appointment of any arbitrators appointed prior to the decision on joinder. Unless otherwise agreed by all parties, including the additional party joined, Articles 40 and 41 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the DRC's decision under Article 35.4.
- 8) The DRC's decision to revoke the appointment of any arbitrator under Article 35.6 is without prejudice to the validity of any act done or order or Award made by the arbitrator before his appointment was revoked.

After the constitution of the arbitral tribunal

- 9) After the constitution of the arbitral tribunal, a party or non-party to the arbitration may apply to the arbitral tribunal for one or more additional parties to be joined in an arbitration pending under these Rules as a Claimant or a Respondent, provided that any of the following criteria is satisfied:
  - a. the additional party to be joined is *prima facie* bound by the arbitration agreement; or
  - b. all parties, including the additional party to be joined, have consented to the joinder of the additional party.
- 10) Where appropriate, an application to the arbitral tribunal under this Article 35.8 may be filed with the DRC.
- 11) Subject to any specific directions of the arbitral tribunal, the provisions of Article 35.2 shall apply, *mutatis mutandis*, to an application for joinder under Article 35.8.
- 12) The arbitral tribunal shall, after giving all parties, including the additional party to be joined, the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for joinder under Article 35.8. The arbitral tribunal's decision to grant an application for joinder under this Article 35.10 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.
- 13) Where an application for joinder is granted under Article 35.10, the date of receipt by the arbitral tribunal or the DRC, as the case may be, of the complete application for joinder shall be deemed to be the date of commencement of the arbitration in respect of the additional party.

- 14) Where an application for joinder is granted under Article 35.4 or Article 35.10, any party who has not nominated an arbitrator or otherwise participated in the constitution of the arbitral tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the arbitral tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 42.
- 15) Where an application for joinder is granted under Article 35.4 or Article 35.10, the requisite filing fee under these Rules shall be payable for any additional claims or counterclaims.

## Article 36 Consolidation

### Before the constitution of any arbitral tribunal

- 1) Before the constitution of any arbitral tribunal in the arbitrations sought to be consolidated, a party may file an application with the DRC to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:
  - a. all parties have agreed to the consolidation;
  - b. all the claims in the arbitrations are made under the same arbitration agreement; or
  - c. the arbitration agreements are compatible, and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the disputes arise out of the same transaction or series of transactions.
- 2) An application for consolidation under this article shall include:
  - a. the DRC file numbers of the arbitrations sought to be consolidated;
  - b. the names, addresses, telephone numbers, facsimile numbers and electronic mail addresses, if known, of all parties and their representatives, if any, and any arbitrators who have been nominated or appointed in the arbitrations sought to be consolidated;
  - c. the information specified in Article 32.3(d);
  - d. if the application is being made under Article 36.1(a), identification of the relevant agreement and, where possible, a copy of such agreement; and
  - e. a brief statement of the facts and legal basis supporting the application.

- 3) The party applying for consolidation under Article 36.1 shall, at the same time as it files an application for consolidation with the DRC, send a copy of the application to all parties and shall notify the DRC that it has done so, specifying the mode of service employed and the date of delivery.
- 4) The DRC shall, after considering the views of all parties, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Article 36.1. The DRC's decision to grant an application for consolidation under this Article 36.4 is without prejudice to the arbitral tribunal's power to subsequently decide any question as to its jurisdiction arising from such decision. The DRC's decision to reject an application for consolidation under this Article 36.4, in whole or in part, is without prejudice to any party's right to apply to the arbitral tribunal for consolidation pursuant to Article 36.7. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.
- 5) Where the DRC decides to consolidate two or more arbitrations under Article 36.4, the arbitrations shall be consolidated into the arbitration that is deemed by the DRC to have commenced first, unless otherwise agreed by all parties or the DRC decides otherwise having regard to the circumstances of the case.
- 6) Where an application for consolidation is granted under Article 36.4, the DRC may revoke the appointment of any arbitrators appointed prior to the decision on consolidation. Unless otherwise agreed by all parties, Articles 40 and 41 shall apply as appropriate, and the respective timelines thereunder shall run from the date of receipt of the DRC's decision under Article 36.4.

#### After the constitution of any arbitral tribunal

- 7) After the constitution of any arbitral tribunal in the arbitrations sought to be consolidated, a party may apply to the arbitral tribunal to consolidate two or more arbitrations pending under these Rules into a single arbitration, provided that any of the following criteria is satisfied in respect of the arbitrations to be consolidated:
  - a. all parties have agreed to the consolidation;
  - b. all the claims in the arbitrations are made under the same arbitration agreement, and the same arbitral tribunal has been constituted in each of the arbitrations or no arbitral tribunal has been constituted in the other arbitration(s); or
  - c. the arbitration agreements are compatible, the same arbitral tribunal has been constituted in each of the arbitrations or no arbitral tribunal has been constituted in the other arbitration(s), and: (i) the disputes arise out of the same legal relationship(s); (ii) the disputes arise out of contracts consisting of a principal contract and its ancillary contract(s);

or (iii) the disputes arise out of the same transaction or series of transactions.

- 8) Subject to any specific directions of the arbitral tribunal, the provisions of Article 36.2 shall apply equally, with necessary alterations, to an application for consolidation under Article 36.7.
- 9) The arbitral tribunal shall, after giving all parties the opportunity to be heard, and having regard to the circumstances of the case, decide whether to grant, in whole or in part, any application for consolidation under Article 36.7. The arbitral tribunal's decision to grant an application for consolidation under this Article 36.9 is without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision. Any arbitrations that are not consolidated shall continue as separate arbitrations under these Rules.
- 10) Where an application for consolidation is granted under Article 36.9, the DRC may revoke the appointment of any arbitrators appointed before the decision on consolidation.
- 11) The DRC's decision to revoke the appointment of any arbitrator under Article 36.6 or Article 36.10 is without prejudice to the validity of any act done or order or Award made by the arbitrator before the arbitrator's appointment was revoked.
- 12) Where an application for consolidation is granted under Article 36.4 or Article 36.9, any party who has not nominated an arbitrator or otherwise participated in the constitution of the arbitral tribunal shall be deemed to have waived its right to nominate an arbitrator or otherwise participate in the constitution of the arbitral tribunal, without prejudice to the right of such party to challenge an arbitrator pursuant to Article 42.

#### Article 37 Early dismissal of a Claim

- 1) This article applies only to claims above \$15,000.
- 2) A party may apply to the arbitral tribunal for the early dismissal of a claim or defence on the basis that:
  - a. a claim or defence is manifestly without legal merit; or
  - b. a claim or defence is manifestly outside the jurisdiction of the arbitral tribunal.
- 3) An application for the early dismissal of a claim or defence under this Article shall state in detail the facts and legal basis supporting the application. The party applying for early dismissal shall, at the same time as it files the application with the arbitral tribunal, send a copy of the application to the other party, and shall notify the arbitral tribunal that it has done so, specifying the mode of service employed and the date of delivery.

- 4) The arbitral tribunal may, in its discretion, allow the application for the early dismissal of a claim or defence under paragraph (2) of this Article to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for early dismissal under paragraph (2) of this Article.
- 5) If the application is allowed to proceed, the arbitral tribunal shall make an order or Award on the application, with reasons, which may be in summary form. The order or Award shall be made within 30 days of the date of filing of the application, unless, in exceptional circumstances, the Administrator extends the time.

#### Article 38      Deposit of Costs

- 1) When claims are filed, the DRC may request the filing party to deposit appropriate amounts, as an advance for the costs referred to in Article 67, paragraphs (a), (b) and (c).
- 2) During the course of the arbitral proceedings, the arbitral tribunal may request supplementary deposits from the parties.
- 3) If the deposits requested are not paid in full within the time specified by the DRC or the arbitral tribunal, the DRC shall so inform the parties, in order that one or the other of them may make the required payment. If such payments are not made, the arbitral tribunal may order the suspension or termination of the proceedings.
- 4) After the award has been made, and on request by a party, the DRC shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

### **THE ARBITRAL TRIBUNAL**

#### Article 39      Number of Arbitrators

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the DRC determines, in its discretion, that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

#### Article 40      Appointment of Arbitrators

- 1) Unless the parties have agreed to the appointment of an arbitrator, the DRC shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the multi-national DRC panel.
- 2) Each party shall have ten (10) days from the transmittal date in which to strike names objected to, rank the remaining names in order of preference, and return the list to the DRC.

- 3) Each party may rank, in order of preference, each arbitrator on the list provided. If a party does not return the list within the time specified, all persons named therein shall be deemed equally acceptable.
- 4) From among the persons who have been approved on the relevant lists, and in accordance with the designated order of mutual preference, the DRC shall invite the appropriate number of arbitrators to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the DRC shall have the power to make the appointment from among other members of the panel without the submission of additional lists. To the extent possible, the DRC will abide by any agreement of the parties regarding the desired qualifications of the arbitrator.
- 5) If the agreement of the parties names an arbitrator or specifies a method of appointing the arbitrator, such designation or method shall be followed. The notice of appointment, with the name, address, e-mail address and telephone number of the arbitrator, shall be filed with the DRC by the appointing parties within ten (10) days of the appointment. If no period of time for the appointment of arbitrator is specified in the agreement, the DRC will notify the parties that they have ten (10) days within which to make such appointment. If any party fails to make the appointment within the time specified by the agreement or by the DRC, the DRC shall make the appointment.
- 6) Upon appointment of the arbitrator, the DRC shall disclose the identity of the arbitrator to the parties and provide the parties with a summary of the arbitrator's qualifications and biographical data.

#### Article 41 Independence and Impartiality

- 1) Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with the terms of the Statement of Independence and Impartiality provided by the DRC.
- 2) Upon accepting appointment, an arbitrator shall sign the Statement of Independence and Impartiality provided by the DRC, affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.
- 3) If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the DRC. Upon receipt of such information from an arbitrator or a party, the DRC shall communicate it to all parties and to the arbitral tribunal.

- 4) Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 5) Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within twenty (20) days after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.
- 6) No party or anyone acting on its behalf shall have any private or unilateral communication relating to the case with any arbitrator or with any candidate for party-appointed arbitrator, except to advise the candidate of the general nature of the controversy and of the anticipated proceedings; to discuss the candidate's qualifications, availability, impartiality, and independence in relation to the parties; or to discuss the suitability of candidates for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any private or unilateral communication relating to the case with any candidate for presiding arbitrator.

#### Article 42 Challenge of Arbitrator

- 1) A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party wishing to challenge an arbitrator shall send notice of the challenge to the DRC within ten (10) days after being notified of the appointment of the arbitrator, or within ten (10) days after the circumstances giving rise to the challenge became known to that party.
- 2) The challenge shall state in writing the reasons for the challenge.
- 3) Upon receipt of such a challenge, the DRC shall notify the other parties of the challenge. When a party challenges an arbitrator, the other parties may agree to accept the challenge and, if there is agreement, the arbitrator shall be replaced. The challenged arbitrator may also withdraw on his or her own initiative. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 4) If the other party or parties do not agree to the challenge or the challenged arbitrator does not withdraw, the decision on the challenge shall be made by the DRC in its sole discretion.
- 5) The DRC shall decide the challenge as soon as is reasonably possible after receiving the request and according to such procedures as the DRC considers appropriate. The DRC's decision on the challenge is final.

#### Article 43 Replacement of an Arbitrator

- 1) If an arbitrator resigns, is incapable of performing the duties of an arbitrator, or is removed for any reason and the office becomes vacant, a substitute arbitrator shall be appointed pursuant to the provisions of Article 40, unless the parties otherwise agree.
- 2) If a substitute arbitrator is appointed under this Article, the arbitral tribunal shall determine at its sole discretion whether all or part of the case shall be repeated.
- 3) If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for reasons other than those identified in Article 42, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation, and such other matters as they consider appropriate in the circumstances of the case. In the event that the two other arbitrators determine not to continue the arbitration without the participation of the third arbitrator, the DRC on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 40, unless the parties otherwise agree.

#### Article 44 Jurisdiction

- 1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence, scope or validity of the arbitration agreement(s), including whether all the claims, counterclaims, and counterclaim with setoffs made in the arbitration may be determined in a single arbitration.
- 2) The arbitral tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. For that purpose, such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract between the parties is null and void shall not entail the invalidity of the arbitration clause or agreement unless specifically found to be so by the arbitral tribunal.
- 3) Any objection to the jurisdiction of the arbitral tribunal to consider a claim, counterclaim or counterclaim with setoff or defence shall be raised in the Statement of Defence or Statement of Defence to Counterclaim. The arbitral tribunal may consider a later objection only if it regards the delay justified and may rule on any objection under this Article as a preliminary matter or as part of the final award.

- 4) Issues regarding arbitral jurisdiction raised before the constitution of the arbitral tribunal shall not preclude the DRC from proceeding and shall be referred to the tribunal for determination once constituted.

#### Article 45 Compensation of Arbitrators

- 1) For arbitrations less than \$15,000 arbitrators shall be compensated based on a fixed fee set by the Board of Directors.
- 2) For arbitrations of \$15,000 and above, arbitrators shall be compensated based on their amount of service, taking into account the size and complexity of the case. An appropriate daily or hourly rate, based on such considerations, shall be arranged by the DRC before the arbitrator is appointed and confirmed. If the parties fail to agree on the terms of compensation, an appropriate rate shall be established by the DRC and communicated in writing to the parties.
- 3) Where the parties agree to appoint an arbitrator, they may agree to a fee agreement with that arbitrator. Nevertheless, the DRC's administrative fees must be paid.
- 4) Any request for an increase in fees must be made to the DRC, who shall determine the appropriateness of the request and communicate its decision to the arbitral tribunal and the parties.

### **PROCEEDINGS**

#### Article 46 Place of Arbitration

- 1) Unless the parties agree otherwise, the Place (juridical seat) of the arbitration shall be Ottawa, Ontario, Canada.
- 2) The arbitral tribunal may hold hearings and meetings by any means it considers expedient or appropriate and at any location it considers convenient or appropriate. However, unless the parties agree otherwise, the Place (juridical seat) of the arbitration shall remain Ottawa, Ontario, Canada.

#### Article 47 Amendments to Claims

- 1) During the arbitral proceedings, any party may amend or supplement its claim, counterclaim or counterclaim with setoff or defence, unless the arbitral tribunal considers it inappropriate to allow such amendment because of the party's delay in making it, or of prejudice to the other parties, or any other circumstances.
- 2) A claim, counterclaim or counterclaim with setoff or defence may not be amended if the amendment would fall outside the scope of the agreement to arbitrate.

#### Article 48 Language

- 1) Unless the parties agree otherwise, the language of the arbitration shall be that of the documents containing the arbitration agreement between the parties. In the case of disputes between members where there is no separate arbitration agreement or where the documents containing the arbitration agreement are in different languages, the language of the arbitration shall be the language of the principal agreement and supporting business documentation between the parties. However, the arbitral tribunal retains the power to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration.
- 2) The arbitral tribunal may order that any documents delivered in another language shall be accompanied by a translation into such language or languages.

#### Article 49 Conduct of the Arbitration

- 1) Subject to these Rules, the arbitral tribunal may conduct the arbitration in whatever manner it considers appropriate, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- 2) A party supplying documents or information to the arbitral tribunal shall, at the same time, supply the documents or information to the other party or parties.

#### Article 50 Further Written Statements

The arbitral tribunal may decide whether any written statements, in addition to statements of claims and counterclaims and statements of defence, shall be required from the parties or may be presented by them, and shall fix the periods of time for submitting such statements.

#### Article 51 Periods of Time

- 1) The periods of time fixed by the arbitral tribunal for the communication of written statements should not exceed thirty (30) days. However, the arbitral tribunal may extend such time limits if it considers such an extension justified.
- 2) Without limiting the generality of Article 44 or any other rule which confers jurisdiction or powers on the arbitral tribunal, and unless the parties at any time agree otherwise, the arbitral tribunal may at any time extend or abridge a period of time fixed or determined by it, or any period of time required in these Rules.

#### Article 52 Evidence

- 1) Each party shall have the burden of proving the facts relied on to support its claim or defence.
- 2) The arbitral tribunal may order a party to deliver to it and to the other parties a summary of the documents and other evidence which that party intends to present in support of its claim, counterclaim or defence.
- 3) At any time during the proceedings, the arbitral tribunal may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate.
- 4) The admissibility, relevance, materiality and weight of the evidence offered by any party shall be determined by the arbitral tribunal, provided that the arbitral tribunal shall consider applicable principles of legal privilege.

#### Article 53 Hearings

- 1) The arbitral tribunal shall give the parties at least thirty (30) days' advance notice of the date, time and place of the initial oral hearing. The arbitral tribunal shall give reasonable notice of subsequent hearings.
- 2) At least twenty (20) days before the hearings, each party shall give the arbitral tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony and the languages in which such witnesses will give their testimony.
- 3) At least ten (10) days before the hearings each party shall give the arbitral tribunal and the other parties the names and addresses of any additional witnesses it intends to present to rebut the witnesses disclosed by the other party, the subject of their testimony and the languages in which such witnesses will give their testimony.
- 4) At the request of the arbitral tribunal or pursuant to mutual agreement of the parties, the arbitral tribunal shall make arrangements for the interpretation of oral testimony or for a record of the hearing.
- 5) Hearings are private unless the parties agree otherwise or the law provides to the contrary. The arbitral tribunal may require any witness or witnesses to retire during the testimony of other witnesses. The arbitral tribunal may determine the manner in which witnesses are examined.
- 6) Evidence of witnesses may also be presented in the form of written statements. The written statement of each witness shall be signed by the witness and duly sworn or declared.

#### Article 54 Interim Measures of Protection

- 1) At the request of any party, the arbitral tribunal may grant interim measures.

- 2) Such interim measures may be taken in the form of an interim award and the arbitral tribunal may require security for the costs of such measures.
- 3) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate, or to seek an interim measure from the arbitral tribunal.
- 4) An interim measure is any temporary measure, whether in the form of an award or in another form, by which, at any time before issuing the award by which the dispute is finally decided, the arbitral tribunal orders a party to:
  - a. Maintain or restore the status quo pending determination of the dispute;
  - b. Take action that would prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitral process itself;
  - c. Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - d. Preserve evidence that may be relevant and material to the resolution of the dispute.

#### Article 55 Conditions for granting Interim Measures of Protection

- 1) The party requesting an interim measure under article 54(4)(a), (b) and (c) shall satisfy the arbitral tribunal that:
  - a. Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - b. There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 2) With regard to a request for an interim measure under article 54(4)(d), the requirements in paragraphs (1)(a) and (b) of this article shall apply only to the extent the arbitral tribunal considers appropriate

#### Article 56 General Powers of the Arbitrator

Without limiting the generality of Article 44 or any other rule which confers jurisdiction or powers on the arbitrator, and unless the parties at any time agree otherwise, the arbitral tribunal may:

- a. order an adjournment of the proceedings from time to time;
- b. make a partial award;
- c. order inspection of documents, exhibits or other property, including a view or physical inspection of goods or property;
- d. order an oral hearing or oral examination of any witness including the use of telephone and video conferences and the use of other means of electronic communication;
- e. at any time extend or abridge a period of time fixed or determined by it, or any period of time required in these Rules;
- f. make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information;
- g. order any party to provide security for the legal or other costs of any other party by way of a deposit or bank guarantee or in any other manner the arbitral tribunal thinks fit;
- h. order any party to provide security for all or part of any amount in dispute in the arbitration; and/or
- i. make an award ordering specific performance, rectification, injunctions and other equitable remedies.

#### Article 57 Experts

- 1) The arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues designated by the arbitral tribunal and communicated to the parties.
- 2) The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitral tribunal for decision.
- 3) Upon receipt of an expert's report, the arbitral tribunal shall send a copy of the report to all parties, who shall be given an opportunity to express, in writing, their opinion on the report. A party may examine any document on which the expert has relied in such a report.
- 4) At the request of any party, the parties shall be given an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

#### Article 58 Default

- 1) If the claimant fails to comply with a requirement under these Rules or fails to comply with an order of the arbitral tribunal, the arbitral tribunal may issue an order for the termination of the arbitration. The arbitral tribunal shall provide the claimant with no fewer than seven (7) days' notice of its intention to terminate the arbitration and determine that the claimant has not provided sufficient cause for being in breach of the Rules or the order of the arbitrator.
- 2) If the respondent fails to deliver its Statement of Defence, fails to comply with a requirement under these Rules or fails to comply with an order of the arbitral tribunal, the arbitral tribunal may proceed to determine the issues before it and the award shall be made on the basis of the evidence received. The arbitral tribunal shall provide the respondent with no fewer than seven (7) days' notice of its intention to proceed to decide the issues on the basis of the evidence received.
- 3) If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, as determined by the arbitral tribunal, the arbitral tribunal may proceed with the arbitration.
- 4) If a party, duly invited to produce evidence, fails to do so within the time established by the arbitral tribunal without showing sufficient cause for such failure, as determined by the arbitral tribunal, the arbitral tribunal may make the award on the evidence before it.

#### Article 59 Closure of Hearing

- 1) After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or if satisfied that the record is complete, the arbitral tribunal may declare the hearing(s) closed.
- 2) If the arbitral tribunal considers it appropriate, on its own motion or upon application of a party, the arbitral tribunal may reopen the hearing(s) at any time before the award is made.

#### Article 60 Waiver of Rules

A party who knows that any provision of the Rules or requirement under the Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, is deemed to have waived the right to object.

#### Article 61 Awards, Decisions and Rulings

- 1) When there is more than one arbitrator, any award, decision or ruling of the arbitral tribunal shall be made by a majority of the arbitrators.
- 2) When the parties or the arbitral tribunal so authorize, decisions or rulings on questions of procedure may be made by the presiding arbitrator, subject to revision by the arbitral tribunal.

#### Article 62 Form and Effect of the Award

- 1) Awards shall be made in writing, promptly by the arbitral tribunal, and shall be final and binding on the parties. The parties undertake to carry out any such award without delay.
- 2) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given.
- 3) An award signed by a majority of the arbitral tribunal shall be sufficient. Where there are three arbitrators and one of them fails to sign, the award shall be accompanied by a statement of whether the third arbitrator was given the opportunity to sign. The award shall contain the date and the place where the award was made, but in all cases shall be deemed to be Ottawa, Ontario, Canada.
- 4) An award may be made public only with the consent of all parties or as required by law.
- 5) The arbitral tribunal shall communicate the award to the parties after first sending its award to DRC and after the DRC has approved the award, in accordance with Article 68.
- 6) The DRC may publicly publish the full text of the awards, by redacting the names of all parties.
- 7) In addition to making a final award, the arbitral tribunal may make interim, interlocutory, or partial orders and awards.

#### Article 63 Applicable Rules and Laws

- 1) In all cases, the arbitral tribunal shall decide the dispute in accordance with the terms of the agreement of the parties and the Trading Standards, the Transportation Standards, the Rules and Regulations, and the Policies of the Corporation.
- 2) To the extent recourse to rules of law is required, the arbitrator shall apply the laws or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the arbitrator shall apply such law or rules of law as it determines to be appropriate.
- 3) In arbitrations involving the application of contracts, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
- 4) The arbitral tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.

#### Article 64 Settlement or Other Reasons for Termination

- 1) If the parties settle the dispute before an award is made, the arbitral tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
- 2) If the continuation of the proceedings becomes unnecessary or impossible for any other reason, the arbitral tribunal shall inform the parties of its intention to terminate the proceedings. The arbitral tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection, within 7 days of receiving the order terminating the arbitration.

#### Article 65 Interpretation or Correction of the Award

- 1) On the application of a party or on the arbitral tribunal's own initiative, an arbitral tribunal may amend an award to correct:
  - a. a clerical or typographical error,
  - b. an accidental slip, error, omission or similar mistake; or
  - c. an arithmetical error made in a computation.
- 2) An application by a party under paragraph (1) of this Article must be made within ten (10) days after the party is notified of the award.
- 3) An amendment under paragraph (1) of this Article must not, without the consent of all parties, be made more than thirty (30) days after receipt of the original application.
- 4) Within ten (10) days of being notified of the award, a party may apply to the arbitral tribunal for clarification of the award.
- 5) On an application under paragraph (4) of this Article, the arbitral tribunal may amend the award if the arbitral tribunal considers the amendment will clarify it.
- 6) Within ten (10) days after receiving the award, a party may apply to the arbitral tribunal to make an additional award with respect to claims presented in the proceedings but omitted from the award.
  - a. If the arbitral tribunal considers the request to be justified, it shall make the clarification or additional award within 30 days of receipt of the original application.
- 7) In keeping with DRC's educational mandate, it may require the arbitral tribunal to clarify its award.

#### Article 66 Interest

On the basis of the evidence presented, the arbitral tribunal may award interest to be paid in an award. Interest may include simple or compound interest at commercial rates.

Article 67 Costs

The arbitral tribunal shall fix the costs of arbitration in the award. The arbitral tribunal may apportion such costs among the parties if it determines that such apportionment is reasonable, taking into account the circumstances of the case. Such costs may include:

- a. the fees and expenses of the arbitral tribunal;
- b. the costs of assistance required by the arbitral tribunal, including its experts;
- c. the fees and expenses of the DRC; and
- d. the reasonable costs for legal or other representation of a successful party.

Article 68 Scrutiny of the Award by the DRC

Before signing any award, the arbitral tribunal shall submit it in draft form to the DRC. The DRC may lay down modifications as to the form of the award and, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance. No award shall be rendered by the arbitral tribunal or communicated to the parties until it has been approved by the DRC as to its form.

Article 69 Interpretation of Rules

The arbitral tribunal shall interpret and apply these Rules insofar as they relate to the arbitral tribunal powers and duties. All other rules shall be interpreted and applied by the DRC.

## **APPENDICES**

### **APPENDIX I: AMENDED TIMES FOR EXPEDITED ARBITRATION**

Under Article 33, the following dates are deemed to read:

- 1) twenty one (21) days for the respondent to submit the Statement of Defence and Counterclaim (if applicable) after DRC has confirmed the Statement of Claim.
- 2) ten (10) days for the claimant to submit their Reply to Statement of Defence to Statement of Claim after DRC has confirmed the Statement of Defence to Statement of Claim.
- 3) twenty one (21) days for the claimant to submit their Statement of Defence to Counterclaim (if applicable) after DRC has confirmed the Counterclaim.
- 4) ten (10) days for the respondent to submit their Reply to Statement of Defence to Counterclaim (if applicable) after DRC has confirmed the Statement of Defence to Counterclaim.

The delays in Article 40 are deemed to read five (5) days for the parties to submit the arbitrator selection form after DRC has confirmed the Statement of Claim.

Article 42.1 is deemed to read seven (7) days to challenge the arbitrator after his appointment.

## **APPENDIX II: ADMINISTRATIVE FEES**

### **THE FILING FEE**

#### **MEDIATION**

- 1) A non-refundable filing fee is payable at the time mediation is requested, in accordance with the Fee Schedule. This fee is to be borne equally or as otherwise agreed by the parties.
- 2) Additionally, the parties are charged a fee based on the mediator's time. It is suggested that parties consult the DRC for applicable rates.
- 3) A supplementary fee will be charged to the filing party where the DRC is requested to invite other parties to join in mediation, which will be applied to the filing fee upon obtaining the parties' agreement to mediate.
- 4) The expenses of the DRC, if any, are generally borne equally by the parties. The parties may vary this arrangement by agreement.

#### **DEPOSITS**

- 1) Before the commencement of mediation, the parties shall equally deposit such portion of the fee covering the cost of mediation as the DRC shall direct and all appropriate additional sums that the DRC deems necessary to defray the expenses of the proceeding. When the mediation has terminated, the DRC shall render an accounting and return any unexpended balance to the parties.

#### **ARBITRATION**

The DRC administrative fees are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the award.

#### **Filing Fee**

- 1) A non-refundable filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed.
- 2) Administrative fees for undetermined claims are subject to increase when the claim or counterclaim is disclosed.

- 3) The administrative fee for claims in excess of \$5,000,000 will be negotiated between the Administrator and the filing party.
- 4) When a claim or counterclaim is not for a monetary amount, an appropriate filing fee will be determined by the Administrator.

#### Postponement/Cancellation Fees

- 1) Postponement fees are payable by the party causing a postponement of any scheduled hearing.

#### Hearing Fee

- 1) A non-refundable hearing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed.

#### Suspension for Nonpayment

- 1) If arbitrator compensation or administrative charges have not been paid in full, the DRC may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitral tribunal may order the suspension or termination of the proceedings. If the arbitral tribunal has not yet been appointed, the DRC may suspend the proceedings.