

JAMS
International
Arbitration Rules
& Procedures

Effective June 1, 2021

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JAMS International Arbitration Rules & Procedures

Founded in 1979, JAMS is the largest private provider of alternative dispute resolution (ADR) services worldwide. Our neutrals resolve some of the world's largest, most complex and contentious disputes, utilizing JAMS Rules & Procedures as well as the rules of other domestic and international arbitral institutions.

JAMS mediators and arbitrators are full-time neutrals who come from the ranks of retired state and federal judges and prominent attorneys. These highly trained, experienced ADR professionals are dedicated to the highest ethical standards of conduct. Whether they are conducting in-person, remote or hybrid hearings, JAMS neutrals are adept at managing the resolution process.

Effective June 1, 2021, these updated Rules reflect the latest trends in international arbitration. The revised Rules clarify procedures involving the filing, commencement and service of documents, and expand the authority of a tribunal to change the location of a hearing for the health and safety of a participant and to proceed with remote hearings. They also update electronic filing processes to coordinate with JAMS Access, our secure, online case management platform.



Summary of Revisions to the International Rules

Scan this code with your smartphone for a complete list of all changes.

Additional International ADR Resources



JAMS International Clause Workbook

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ARTICLE 1 International Arbitration Rules

1.1 Where parties have agreed in writing to arbitrate disputes under these International Arbitration Rules (“Rules”) or have provided for arbitration of an international dispute to be administered by JAMS without designating specific rules that will apply, the arbitration will take place in accordance with these Rules, as in effect at the date of commencement of the arbitration, subject to whatever modifications the parties may adopt in writing. The Rules include the Schedule of Costs in effect at the commencement of the arbitration, which JAMS may amend from time to time. A dispute that is subject to these Rules may be administered by JAMS, as requested by the parties or as determined by JAMS.

1.2 When the Rules govern the arbitration, the parties will be deemed to have made the Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify the Rules. The Schedule of Costs will not be subject to modification by the parties.

1.3 When the Rules specify the duties and responsibilities of the Administrator or specify duties of an administrative nature, such reference will be to JAMS Administrators. When the Rules specify the duties and responsibilities of JAMS and specify duties and responsibilities of a discretionary nature, such reference will be to the JAMS International Arbitration Committee (“JIAC”) as it may be comprised from time to time. No member of the JIAC may participate in any decision that applies to an arbitration in which that member participates as an arbitrator.

1.4 Arbitration will be deemed to be “international” under the Rules if, at the time of the making of their agreement, the parties are located or have their places of business in different states, or if a substantial part of the transaction(s) or occurrence(s) that gave rise to the dispute took place in different states. For the purpose of this Rule, “state” means sovereign nations as well as territories, dependencies, mandates of a

sovereign nation and other political entities recognized by the United Nations as having governmental status.

1.5 These Rules will govern the conduct of the arbitration, except that where any of these Rules is in conflict with a mandatory provision of applicable arbitration law of the seat of the arbitration, that provision of law will prevail.

1.6 Except in respect of deliberate wrongdoing, the arbitrator or arbitrators, the emergency arbitrator, the JIAC and JAMS will not be liable to any person for any act or omission in connection with the arbitration, except to the extent such limitation of liability is prohibited by applicable law.

ARTICLE 2 Request for Arbitration

2.1 Arbitration is initiated by the claimant filing a Request for Arbitration (“Request”) with JAMS, which should include:

(a) A statement of the names, addresses, telephone numbers and email addresses of the parties and their representatives, if known;

(b) A description of the nature and circumstances of the dispute giving rise to the claim(s);

(c) A statement of the relief sought, including, to the extent possible, an indication of any amount(s) claimed;

(d) A copy of the arbitration agreement or clause under which the dispute is to be arbitrated;

(e) If applicable, a statement identifying the arbitrator appointed by the claimant, including such arbitrator’s address, telephone number(s) and email address; and

(f) A statement of any matters (such as seat or language of the arbitration or the number of arbitrators, or their qualifications or identities) on which the parties have already agreed in writing for the arbitration or in respect of which the claimant wishes to make a proposal. The claimant may annex to its Request documents it deems relevant, or may add a reference to documents or other evidence it intends to submit. The failure to annex or refer to a document will not in itself preclude the use of that document in the arbitration.

2.2 (a) Service by a party under these Rules is effected by claimant providing one signed copy of the Request and any accompanying documents to each party and two copies in the case of a sole arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by hand-delivery, overnight delivery services or, if a respondent is

located in the United States, by U.S. mail. Service by any of these means is considered effective upon the date of deposit of the document. Unless prohibited by the law of the seat of the arbitration, or otherwise agreed to by the parties, at the option of the filing party, the Request may be filed with the Administrator in electronic form with the requisite number of paper copies sent on the same date by courier service or post, if applicable. The claimant must also remit the filing fee and the advance payment on administrative expenses required by JAMS. In the event that the claimant fails to comply with either of these requirements, the Administrator may fix a time limit within which the claimant must comply, failing which the file will be closed without prejudice to the right of the claimant to submit the same claims at a later date in another Request.

(b) The arbitrator or arbitrators (“Tribunal”) or JAMS may at any time require, or the parties may agree to, electronic filing and service of documents in an arbitration, including through the JAMS Electronic Filing System. If the Tribunal or JAMS requires electronic filing and service, the parties shall maintain and regularly monitor a valid, usable and live email address for the receipt of all documents and notifications. Any document filed via the JAMS Electronic Filing System shall be considered as filed when the transmission to the JAMS Electronic Filing System is complete. Any document e-filed by 11:59 p.m. (of the sender’s time zone) shall be deemed filed on that date.

(c) Every document filed with the JAMS Electronic Filing System shall be deemed to have been signed by the arbitrator, Administrator, attorney or declarant who submits the document to the JAMS Electronic Filing System, and shall bear the typed name, address and telephone number of a signing attorney.

(d) Delivery of documents by e-service through the JAMS Electronic Filing System to other registered users is valid and effective service and has the same legal effect as an original paper document. Recipients of e-served documents shall access such documents through the JAMS Electronic Filing System. E-service shall be deemed complete when the party initiating e-service or the Administrator completes the transmission of the electronic document(s) to the JAMS Electronic Filing System for e-filing and/or e-service.

(e) If an electronic filing and/or service via the JAMS Electronic Filing System does not occur due to error in the transmission of the document, the Tribunal or JAMS may, for good cause shown, permit the document to be filed and/or served *nunc pro tunc* to the date it was first attempted to be transmitted electronically. In such cases a party shall, absent extraordinary circumstances, be entitled to an order extending

the date for any response or the period within which any right, duty or other act must be performed.

(f) For documents that are not electronically filed, service by a party under these Rules is effected by providing one signed copy of the document to each party and two copies in the case of a sole arbitrator and four copies in the case of a tripartite panel to JAMS. Service may be made by courier service or, if the party to be served is located in the United States, certified or registered post or any other means of communication that provides a record of transmission. Service by any of these means is considered effective upon the date of deposit of the document.

2.3 In communications with the parties, the Administrator may, if practicable, utilize email in addition to post or by courier service, and any such communication will be deemed received upon the first receipt of any communication sent by any of the above means.

2.4 (a) The arbitration will be deemed to have been commenced when JAMS issues a Commencement Letter based upon the existence of one of the following:

(i) A post-dispute arbitration agreement fully executed by all parties specifying JAMS administration or use of any JAMS rules; or

(ii) A pre-dispute written contractual provision requiring the parties to arbitrate the dispute or claim and specifying JAMS administration or the use of any JAMS rules or that the parties agree shall be administered by JAMS; or

(iii) A written confirmation of an oral agreement of all parties to participate in an arbitration administered by JAMS or conducted pursuant to any JAMS rules; or

(iv) The respondent’s failure to timely object to JAMS administration, where the parties’ arbitration agreement does not specify JAMS administration or any of the JAMS rules; or

(v) A copy of a court order compelling arbitration at JAMS.

(b) The issuance of the Commencement Letter confirms that requirements for commencement have been met, that JAMS has received all payments required under the applicable fee schedule and that the claimant has provided JAMS with contact information for all parties together with evidence that the Request has been served on all parties.

(c) If a party that is obligated to arbitrate in accordance with subparagraph (a) of this Article fails to agree to participate

in the arbitration, JAMS shall confirm in writing that party's failure to respond or participate, and, pursuant to Article 27.1, the Tribunal, once appointed, shall schedule and provide appropriate notice of a hearing or other opportunity for the party demanding the arbitration to demonstrate its entitlement to relief.

(d) The date of commencement of the arbitration is the date of the Commencement Letter but is not intended to be applicable to any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements. The term "commencement," as used in this Article, is intended only to pertain to the operation of this and other Articles.

ARTICLE 3 Emergency Relief Procedures

These Emergency Relief Procedures are available where not otherwise prohibited by law. Parties may agree to opt out of these procedures in their arbitration agreement or by subsequent written agreement. A party in need of emergency relief prior to the appointment of an arbitrator may notify JAMS and all other parties in writing of the relief sought and the basis for an award of such relief. The notice shall include an explanation of why such relief is needed on an expedited basis. Such notice may be given by courier service, email or personal delivery, and must include a statement certifying that all other parties have been notified and the means of such notification, or, if all other parties have not been notified, an explanation of the efforts made to notify such parties.

3.1 Upon payment of any advance requested by JAMS, JAMS shall promptly appoint a sole emergency arbitrator ("Emergency Arbitrator") to rule on the emergency request. In most cases the appointment of an Emergency Arbitrator will be done within 24 hours of receipt of the application and any requested advance. The Emergency Arbitrator shall promptly disclose any circumstance likely, based on information disclosed in the application, to affect the arbitrator's ability to be impartial or independent. Any challenge to the appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. JAMS will promptly review and decide any such challenge. JAMS' decision will be final.

3.2 Within two business days after appointment, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency

relief. The schedule shall provide a reasonable opportunity for all parties to be heard, taking into account the nature of the relief sought. If a hearing is required, such hearing will be deemed to take place at the seat of the arbitration, and, at the discretion of the Emergency Arbitrator, the parties may attend by conference call, videoconference or other technology that enables the participants to appear remotely. The Emergency Arbitrator has the authority to rule on their own jurisdiction and shall resolve any disputes with respect to the request for emergency relief.

3.3 The Emergency Arbitrator shall determine whether the party seeking emergency relief has shown that immediate loss or damage will result in the absence of emergency relief and whether the requesting party is entitled to such relief. The Emergency Arbitrator shall enter an order or award granting or denying the relief, as the case may be, and stating the reasons therefor. The Emergency Arbitrator's order or award may be in the form of an interim award or a partial final award. By agreeing to arbitration under these Rules, the parties undertake to comply with any emergency decision without delay.

3.4 The emergency decision may be amended or revoked by the Emergency Arbitrator upon a reasoned request by a party. Any request to modify the Emergency Arbitrator's decision must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as a Tribunal is appointed in accordance with the parties' agreement and JAMS' usual procedures. The Tribunal appointed to hear the Arbitration shall not be bound by the decision(s) and reason(s) of the Emergency Arbitrator and may, at its discretion, modify any emergency decision.

3.5 In the Emergency Arbitrator's discretion, any order or award of emergency relief may be conditioned on the provision of adequate security by the party seeking such relief.

ARTICLE 4 Statement of Defense, Counterclaims, and Reply to Counterclaim

4.1 Within 30 calendar days after commencement of the Arbitration, the respondent will deliver to the claimant (with a copy to the Administrator) a statement of defense ("Statement of Defense"). Failure to deliver a Statement of Defense will not delay the arbitration. In the event of such failure, the respondent will be deemed to have denied the claims set forth

in the Request. Failure to deliver a Statement of Defense will not excuse the respondent from notifying the claimant in writing, within 30 calendar days from the date of commencement of the arbitration, of the arbitrator appointed by the respondent, unless the parties have agreed that neither will appoint an arbitrator or that JAMS will make the appointment. The Statement of Defense should include:

(a) Confirmation or denial of all or part of the claims advanced by the claimant in the Request;

(b) If not made earlier, any objection to the jurisdiction of the Tribunal to determine a claim or defense, or any objection to JAMS' authority to administer the arbitration;

(c) A brief statement describing the nature and circumstances of any set-offs asserted or counterclaims advanced by the respondent against the claimant;

(d) Comment in response to any statements contained in the Request on matters relating to the conduct of the arbitration;

(e) If applicable, the name, address, telephone number(s) and email address (if known) of the respondent's appointed arbitrator; and

(f) Any counterclaim the respondent wishes to assert against the claimant. If a counterclaim is asserted in the Statement of Defense, then, within 30 calendar days after receipt of the Statement of Defense, the claimant will deliver to the respondent (with a copy to the Administrator) a reply to counterclaim ("Reply to Counterclaim"), which should include the same elements as provided for in the Statement of Defense. Failure to deliver a Reply to Counterclaim will not delay the arbitration. In the event of such a failure, all counterclaims set forth in the Statement of Defense will be deemed denied.

4.2 The Tribunal, or JAMS if the Tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.

4.3 As soon as practicable following receipt of the Request, the Statement of Defense and the Reply to Counterclaim, if applicable, the Tribunal will proceed promptly in such a manner as has been agreed in writing by the parties or pursuant to its authority under these Rules.

4.4 The Tribunal will have jurisdiction to determine whether any claim, defense or counterclaim, whether original or amended, falls within the scope of the arbitration clause or the parties' separate agreement to arbitrate.

ARTICLE 5

Amendments to Claims and Defenses

5.1 Claims or counterclaims within the scope of the arbitration clause may be added or amended prior to the establishment of the Tribunal, but thereafter only with the consent of the Tribunal. After the Tribunal has been established, a party may amend or supplement its claims or defenses, unless the Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it or prejudice to any party or any other circumstances. However, a claim or defense may not be amended in such a manner that the amended claim or the amended defense falls outside the scope of the arbitration clause or the parties' separate arbitration agreement.

5.2 The Statement of Defense or Reply to Counterclaim to amended claims or counterclaims will be delivered within 20 calendar days after the receipt of any amendment.

ARTICLE 6

Consolidation of Arbitral Proceedings (Joinder); Participation of Third Parties (Intervention)

6.1 Where a Request is submitted between parties already involved in other arbitral proceedings pending under these Rules, JAMS may decide, after consulting with the parties to all proceedings and with the Tribunal, that the new case will be referred to the Tribunal already constituted for the existing proceedings. JAMS may proceed in the same way when a Request is submitted between parties that are not identical to the parties in the existing arbitral proceedings. When rendering its decision, JAMS will take into account all circumstances, including the links between the two cases and the progress already made in the existing proceedings. Where JAMS decides to refer the new case to the existing Tribunal, the Parties to the new case will be deemed to have waived their right to designate an arbitrator or arbitrators.

6.2 Where the claimant requests a single arbitration concerning disputes arising out of or in connection with multiple contracts, JAMS may administer such arbitration, provided that:

(a) The parties to the contracts consent to a single arbitration to be conducted and administered in accordance with these Rules; or

(b) The contracts contain arbitration agreements referring such disputes to arbitration to be conducted and administered under these Rules, the arbitration agreements are compatible and:

(i) The disputes in the arbitrations arise out of the same legal relationship(s);

(ii) Such contracts consist of a principal contract and its ancillary contract(s); or

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

6.3 Where a third party seeks to participate in an arbitration already pending under these Rules or where a party to an arbitration under these Rules seeks to cause a third party to participate in the arbitration, the Tribunal will decide on such request, after consulting with all the parties, taking into account all circumstances it deems relevant and applicable. If a third party is joined in a pending arbitration, or intervenes in a pending arbitration in accordance with this Article 6.3, the Tribunal already constituted shall continue to hear and determine the dispute. A party so joined or who intervenes in a pending arbitration in accordance with this Article 6.3 may, subject to the consent of the Tribunal, make claims against any other party or be subject to claims made against it by any other party. If the additional party makes a claim(s), it shall also make payment of the requisite filing fee for such claim(s).

6.4 Where arbitral proceedings have been consolidated in accordance with Article 6.1, or where a single arbitration against multiple parties has been accepted for administration in accordance with Article 6.2, or where a third party participates in a pending arbitration in accordance with Article 6.3, the decision by JAMS, or the Tribunal, as the case may be, to allow a party's participation under any of those subsections shall be without prejudice to the Tribunal's power subsequently to decide any question as to its jurisdiction.

ARTICLE 7

Appointment of the Arbitrator(s)

7.1 If the parties have not appointed arbitrators or if they have agreed that JAMS will appoint the Tribunal, JAMS will appoint one Arbitrator, unless JAMS determines in its discretion that three arbitrators are appropriate because of the size, complexity or other circumstances of the case.

7.2 If the parties have agreed on a procedure for appointing the Tribunal, that procedure will be followed. If the parties

have not agreed on a procedure of appointment, or if the Tribunal has not been established pursuant to the agreed procedure within the period of time stipulated by the parties (or, in the absence of such a stipulated period of time, within 45 calendar days after the commencement of the arbitration), the Tribunal will be established or completed, as the case may be, in accordance with the procedures set forth in Articles 7.3, 7.4 and 7.5 below.

7.3 Where a sole arbitrator is to be appointed, the sole arbitrator will be appointed jointly by the parties. If the appointment of the sole arbitrator is not made within the period of time agreed upon by the Parties, or in the absence of such an agreed period of time, the sole arbitrator will be appointed in accordance with Article 7.5.

7.4 Where three arbitrators are to be appointed, the arbitrators will be appointed in the following manner: The claimant(s) will appoint one arbitrator in the Request. The respondent(s) will appoint one arbitrator upon the earlier of the filing of the Statement of Defense or 30 calendar days from the date of commencement of the arbitration, unless that time is extended by stipulation of the parties or by JAMS. The two arbitrators thus appointed will, within 20 calendar days after the appointment of the second arbitrator, appoint a third arbitrator, who will be the presiding arbitrator. If the respondent(s) fail to appoint an arbitrator within the time allotted, JAMS will appoint an arbitrator for the respondent(s). If the two arbitrators appointed by the claimant(s) and the respondent(s), respectively, fail to appoint a third arbitrator within the time period allotted under these Rules, the presiding arbitrator will be appointed in accordance with Article 7.5.

7.5 If the parties have failed to appoint an arbitrator as required under Article 7.2 or 7.3, or if the presiding arbitrator has not been appointed as required under Article 7.4, the appointment will take place in accordance with the following procedure:

(a) The Administrator will send to each party an identical list of candidates. The list will comprise the names of at least five candidates. The list will include or be accompanied by a brief statement of each candidate's qualifications. If the parties have agreed upon any particular qualifications, the list will contain only the names of candidates that satisfy those qualifications.

(b) Each side (claimant(s) and respondent(s)) will have the right to strike the names of any two candidates to

whose appointment it objects and will number any remaining candidates in order of preference.

(c) Each side will return the marked list to the Administrator within 20 calendar days after the date it receives the list. Any side failing to return a marked list within that period of time, or that fails to respond according to the instructions provided by the Administrator, will be deemed to have assented to all candidates appearing on the list.

(d) As soon as possible after receipt of the lists from the parties, or failing this, after the expiration of the period of time specified in the previous subparagraph, JAMS, taking into account the preferences and objections expressed by the parties, will invite a person from the list to be the sole arbitrator, or the presiding arbitrator as the case may be.

7.6 Each prospective arbitrator will accept appointment in writing and will communicate such acceptance to the Administrator.

7.7 The Administrator will notify the parties of the establishment of the Tribunal.

7.8 Where there are more than two parties in the arbitration, and three arbitrators are to be appointed, the claimant(s) shall jointly nominate one arbitrator, and the respondent(s) shall jointly nominate one arbitrator. The third arbitrator, who shall act as the presiding arbitrator, shall then be appointed in accordance with Article 7.5, unless all parties, within 10 calendar days after the appointment of the two party-appointed arbitrators, are able to agree on the appointment of a presiding arbitrator.

7.9 Where there are more than two parties in the arbitration, and one arbitrator is to be appointed, all parties are to agree on an arbitrator. In the absence of such a joint nomination having been made within 30 calendar days of receipt by the Administrator of the Request for Arbitration or within the period agreed by the parties or set by the Administrator, the arbitrator shall be appointed in accordance with Article 7.5.

ARTICLE 8

Independence and Availability of the Arbitrators

8.1 Arbitrators acting under these Rules will be impartial and independent. Each arbitrator will disclose in writing to the Administrator and to the parties at the time of the arbitrator's appointment and promptly, upon there arising during the

course of the arbitration, any circumstances that might give rise to justifiable doubt regarding that arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration and past or present relationships with a party or its counsel. The parties and their representatives shall disclose to JAMS any circumstances likely to give rise to justifiable doubt as to an arbitrator's independence or impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. The obligation of the arbitrator, the parties and their representatives to make all required disclosures continues throughout the arbitration process.

8.2 By accepting appointment, each arbitrator will be deemed to be bound by these Rules and any modification agreed to by the parties, and to have represented that the arbitrator has and will maintain the time available to devote to the process contemplated by these Rules, as these Rules may have been amended by the parties' agreement.

ARTICLE 9

Challenge to Arbitrators

9.1 A party may challenge any arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the requisite qualifications on which the parties have agreed. A party wishing to challenge an arbitrator must send notice of the challenge to the Administrator within 15 calendar days after being notified of the appointment of the arbitrator or within 15 calendar days after the circumstances giving rise to the challenge become known to that party.

9.2 The challenge must state in writing the reasons for the challenge.

9.3 Upon receipt of such a challenge, the Administrator will notify the other parties of the challenge. When an arbitrator has been challenged by one party, the other party or parties may agree to the acceptance of the challenge, and if there is agreement, the challenged arbitrator must withdraw. The challenged arbitrator may also withdraw from office in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.

9.4 If the other party or parties do not agree to the challenge and the challenged arbitrator does not withdraw, JAMS in its sole discretion will make the decision on the challenge.

9.5 The Tribunal may, in its discretion, suspend or continue the arbitral proceedings during the pendency of the challenge.

9.6 JAMS' decision as to the challenge or replacement of an arbitrator will be communicated to the parties and will be final.

ARTICLE 10

Replacement of an Arbitrator

10.1 If an arbitrator withdraws after a challenge, or if JAMS sustains a challenge, or if JAMS determines that there are sufficient reasons to accept the resignation of an arbitrator, or if an arbitrator dies or, in JAMS' sole discretion, becomes unable to act, a substitute arbitrator will be appointed pursuant to the provisions of Article 10.3, unless the parties otherwise agree on another procedure.

10.2 If a substitute arbitrator is appointed under this Article, JAMS, after consultation with the parties and the remaining members of the Tribunal, will determine in its sole discretion whether all or part of any prior hearings will be repeated.

10.3 Where a substitute arbitrator is to be appointed, JAMS will appoint such arbitrator. If the arbitrator to be replaced had been appointed by a party, JAMS will solicit the views of that party prior to the appointment. Where the Tribunal consists of three or more arbitrators, JAMS may decide that the remaining arbitrators will proceed with the case. Prior to making such a decision, the views of the parties and the remaining arbitrators will be solicited.

ARTICLE 11

Majority Power to Continue with Proceedings

11.1 If any arbitrator on a Tribunal of three or more members refuses or persistently fails to participate in proceedings or deliberations, the other arbitrators will have the power, after giving written notice of such refusal or failure to the Administrator, the parties and the non-participating arbitrator, to continue with the arbitration (including the making of any decision, ruling or award).

11.2 In determining whether to continue the arbitration, the other arbitrators will take into account the status of the

arbitration, any explanation made by the non-participating arbitrator for that arbitrator's non-participation and such other matters as they may consider appropriate in the circumstances of the case. The reasons for such determination will be stated in any award, order or other decision made by the other arbitrators without the participation of the non-participating arbitrator.

11.3 In the event that the other arbitrators determine not to continue with the arbitration without the participation of a non-participating arbitrator, JAMS will, on proof satisfactory to it of the failure of the arbitrator to participate in the proceedings and deliberation of the Tribunal, declare the office vacant. JAMS will then appoint a substitute arbitrator, unless the parties agree otherwise.

ARTICLE 12

Communications Between the Parties and the Arbitral Tribunal

12.1 Except as provided in Article 12.3, until the Tribunal is formed, all communications between parties and arbitrators will be made through the Administrator.

12.2 Thereafter, unless and until the Tribunal directs that communications will take place directly between the Tribunal and the parties (with simultaneous copies to the Administrator), all written communications between the parties and the Tribunal will continue to be made through the Administrator.

12.3 No party or anyone acting on its behalf will have any *ex parte* communication relating to the case with any arbitrator or with any candidate for appointment as party-appointed arbitrator, except to advise a candidate for appointment of the general nature of the controversy and of the anticipated proceedings and to ascertain the candidate's qualifications, availability or independence in relation to the parties, or to discuss with a party-appointed arbitrator the suitability of candidates for selection as presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection.

12.4 Documents or information supplied to the Tribunal by one party must be communicated simultaneously to the other party or parties.

ARTICLE 13

Notices

13.1 Unless otherwise ordered by the Tribunal, any notice or other communication that may be or is required to be given by a party under these Rules must be in writing and must be delivered via the JAMS Electronic Filing System or by courier service, or transmitted by email or any other means of communication that provides a record of its transmission. Parties resident in the United States may be notified by certified or registered mail.

13.2 A party's last-known residence or place of business during the arbitration will be a valid address for the purpose of any notice or other communication in the absence of any notification of a change to such address by that party to the other parties, the Tribunal and the Administrator.

13.3 For the purpose of determining the date of commencement of a time limit, a notice or other communication will be treated as having been received on the day it is delivered or, in the case of a telecommunication, the date it is transmitted. If the date of receipt is an official holiday at the place received, the period is calculated from the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

ARTICLE 14

Seat of the Arbitration

14.1 The seat of the arbitration will be fixed by the Administrator, unless designated in the arbitration agreement or otherwise agreed upon by the parties. Upon application of a party or at the request of an arbitrator, the Administrator or the Tribunal, for reasons of the health or safety of a party, a witness or an arbitrator, may direct that hearings take place in a location other than the seat of the arbitration.

14.2 The Tribunal, in its discretion, or by direction of the Administrator pursuant to Article 14.1, may hold hearings, meetings and deliberations at any convenient location; if elsewhere than the seat of the arbitration, the arbitration will be treated as an arbitration conducted at the seat of the arbitration, and any award will be treated as an award made at the seat of the arbitration for all purposes. At the discretion of the Tribunal, and after consultation with the parties, a hearing, or any part thereof, may take place by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical

locations. If some or all of the witnesses or other participants are located remotely, the Tribunal may make such orders and set such procedures as it deems necessary or advisable.

ARTICLE 15

Language

15.1 If the parties have not agreed otherwise, the language(s) of the arbitration will be that of the documents containing the arbitration agreement, subject to the power of the Tribunal to determine otherwise based upon the contentions of the parties and the circumstances of the arbitration. The Tribunal may order that any documents delivered in another language be accompanied by a translation into the language(s) of the arbitration.

ARTICLE 16

Confidentiality

16.1 Unless otherwise required by law, or unless the parties expressly agree otherwise, the Tribunal, the parties, the Administrator and JAMS will maintain the confidentiality of the arbitration.

16.2 Unless otherwise required by law, an award will remain confidential, unless all of the parties consent to its publication.

ARTICLE 17

Jurisdiction

17.1 The Tribunal will have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause will be treated as an agreement independent of the other terms of the contract. A decision by the Tribunal that the contract is null and void will not for that reason alone render invalid the arbitration clause.

17.2 A party that objects to the jurisdiction of the Tribunal or to the arbitrability of a claim, defense or counterclaim must make that objection no later than the filing of the Statement of Defense or the Reply to Counterclaim, as provided in Article 4.1(b) and (f). The Tribunal may nevertheless admit an untimely objection as to its jurisdiction or authority if it considers the delay justified in the circumstances. The Tribunal may rule on such objections as a preliminary ruling or as part of the final award.

17.3 By agreeing to arbitration under these Rules, the parties will be treated as having agreed not to apply to any court or

other judicial authority for any relief regarding the Tribunal's jurisdiction, except with the agreement in writing of all parties to the arbitration or the prior authorization of the Tribunal, or following the latter's ruling on the objection to its jurisdiction.

ARTICLE 18 Applicable Law(s)

18.1 The Tribunal will decide the merits of the dispute on the basis of the rules of law agreed upon by the parties. In the absence of such an agreement, the Tribunal will apply the law or rules of law that it determines to be most appropriate.

18.2 The procedure applicable to the arbitration will be the procedure set forth in these Rules and in the arbitration law of the seat of the arbitration, unless the parties have expressly agreed upon another procedure, or upon the application of another arbitration law, provided any such agreement is deemed enforceable by the law of the seat of arbitration.

18.3 In all cases the Tribunal will take account of the provisions of the contract and the relevant trade usages.

ARTICLE 19 Representation

19.1 The parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by the persons of their choice, irrespective of, in particular, nationality or professional qualification. The names, addresses and telephone, email or other communication references of representatives will be communicated to the Administrator, the other parties and, after its establishment, the Tribunal.

19.2 Following the Tribunal's formation, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the Tribunal and JAMS, and any such intended change or addition shall only take effect in the arbitration subject to the approval of the Tribunal.

19.3 The Tribunal may withhold approval of any intended change or addition to a party's legal representative(s) where such change or addition could compromise the composition of the Tribunal or the finality of any award (on the grounds of possible conflict or other like impediment). In deciding whether to grant or withhold such approval, the Tribunal shall have regard to the circumstances, including the general principle that a party may be represented by a legal representative

chosen by that party, the stage that the arbitration has reached, the efficiency resulting from maintaining the composition of the Tribunal (as constituted throughout the arbitration), the views of the other party or parties to the arbitration and any likely wasted costs or loss of time resulting from such change or addition.

ARTICLE 20 Conduct of the Arbitration

20.1 Subject to these rules, the 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 reasonable opportunity to present its case. The Tribunal, exercising its discretion, will conduct the proceedings with a view to expediting the resolution of the dispute.

20.2 The Tribunal may decide whether the parties will present any written statements in addition to statements of claims and counterclaims and statements of defense, and it will fix the periods of time for submitting any such statements.

20.3 The Tribunal may, in its discretion, direct the order of proof, bifurcate proceedings, exclude cumulative or irrelevant testimony or other evidence and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

20.4 Unless the parties at any time agree otherwise in writing, the Tribunal will have the power, on the application of any party or on its own initiative, to identify the issues and to ascertain the relevant facts and the law or rules of law applicable to the arbitration, or to inquire into the merits of the parties' dispute.

20.5 The Tribunal may decide that the presiding arbitrator of a Tribunal may alone make procedural rulings.

20.6 The Tribunal is empowered to impose time limits it considers reasonable on each phase of the proceedings, including, without limitation, the time allotted to each party for presentation of its case and for rebuttal.

ARTICLE 21 Expedited Procedures

21.1 Prior to the full constitution of the Tribunal, a party may apply to the Administrator in writing for the arbitral proceedings to be conducted in accordance with the expedited procedures

under this Rule (“Expedited Procedures”), where any of the following criteria are satisfied:

(a) The amount in dispute does not exceed the equivalent amount of \$5,000,000 (USD), representing the aggregate of the claim, counterclaim and any set-off defense, and exclusive of any demand for reimbursement of costs or fees;

(b) The parties so agree; or

(c) In cases of exceptional urgency as may initially be determined by JAMS, subject to ultimate review by the Tribunal.

21.2 When a party has applied to the Administrator under Rule 21.1, JAMS shall make the initial determination, after considering the views of the parties, whether the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, subject to ultimate determination by the Tribunal.

21.3 If JAMS determines that the arbitral proceedings shall be conducted in accordance with the Expedited Procedures, the following procedure shall apply:

(a) The Administrator, before the full constitution of the Tribunal, or the Tribunal, after its full constitution, may shorten any time limits under these Rules;

(b) The Tribunal shall have the discretion to decide if the dispute shall be decided on the basis of documentary evidence, or if a hearing is required for the examination of any witnesses, expert witnesses and/or oral arguments;

(c) The award shall be made within six months from the date when the Tribunal is constituted, unless, in exceptional circumstances, the Administrator extends the time; and

(d) The Tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

21.4 The parties may agree to shorten the various time limits set out in these Rules. Any such agreement entered into subsequent to the constitution of a full Tribunal will become effective only upon the approval of the Tribunal.

ARTICLE 22 Preliminary Conference

22.1 The Tribunal may hold an initial preliminary conference for the planning and scheduling of the arbitration. Such conference, if any, will be held promptly after the establishment of the Tribunal, unless the Tribunal is of the view that further submissions from the parties are appropriate prior to such conference. Such preliminary conference may,

at the discretion of the Tribunal, be conducted in person, by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical locations.

22.2 The Tribunal may provide an agenda for the preliminary conference in advance. By way of example, the following procedural matters may be addressed: any anticipated applications for interim measures of protection; any objections to the arbitrability of a particular claim or counterclaim; any objections to the jurisdiction of the Tribunal; the timing and manner of any required disclosure; the need or advisability of establishing measures or security protocols to protect the confidentiality of the arbitration or the confidentiality of information disclosed in connection with the arbitration; the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the need for and cost of translations; the scheduling of pre-hearing memorials and witness statements; the need for a record of conferences and hearings, including the need for or desirability of transcripts; the amount of time that may be allotted to each party for presentation of its case and for rebuttal; the mode, manner and order of presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal.

ARTICLE 23 Hearings

23.1 If either party so requests, the Tribunal will hold hearings for the presentation of evidence by witnesses, including expert witnesses. In the absence of such a request, the Tribunal will decide whether to hold such hearings or whether the proceedings will be conducted on the basis of the written record.

23.2 The Tribunal will fix the date, time and place of any meetings and hearings on the arbitration, and will give the parties reasonable notice thereof. At the discretion of the Tribunal, hearings may be conducted in person, by conference call, videoconference or the use of technology that enables participants to be located in one or more geographical locations.

23.3 In advance of any hearing, the Tribunal may submit to the parties a list of questions that it wishes them to address with special attention.

23.4 Hearings are private, unless the parties agree otherwise or the law provides to the contrary. The Tribunal will determine the manner in which witnesses are examined and may require any witness or witnesses to retire during the testimony of other witnesses.

23.5 If any of the parties, without valid excuse, fails to appear although duly summoned, the Tribunal will have the power to proceed with the hearing.

23.6 Any party may arrange for a stenographic record to be made of the hearing and shall inform the other parties in advance of the Hearing. No other means of recording the proceedings shall be permitted absent agreement of the parties or by direction of the Tribunal.

ARTICLE 24 Evidence

24.1 Each party will have the burden of proving the facts relied upon to support its claim or defense.

24.2 At any time during the proceedings, the Tribunal may order parties to exchange and produce documents, exhibits or other evidence it deems necessary or appropriate. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed.

24.3 The Tribunal may determine the time, manner and form in which written exhibits are to be exchanged between the parties and presented to the Tribunal.

24.4 The Tribunal will determine the admissibility, relevance, materiality and weight of the evidence offered by any party. The Tribunal will take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

ARTICLE 25 Dispositive Motions or Early Determinations

25.1 The Tribunal may permit any party to file a dispositive motion directed to a particular claim or issue, either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request. The dispositive motion may be granted only if the Tribunal determines that the requesting

party has shown that the proposed motion is likely to succeed and dispose of or narrow the issues in the case.

25.2 After consultation with the parties, the Tribunal, in its discretion, may *sua sponte* determine that any claim or defense is outside of the jurisdiction of the Tribunal or manifestly without merit. If such a determination is made, the Tribunal will issue an appropriate award to that effect.

ARTICLE 26 Experts and Other Witnesses

26.1 Before any hearing, the Tribunal may require either party to give notice of the identity of the witness it wishes to call, as well as of the subject matter of the witness's testimony and its relevance to the issues.

26.2 The Tribunal has the power to summon witnesses and to compel the production of relevant documents by summons, subpoena or other compulsory process where authorized to do so by the law of the location where the testimony of the witness is to be heard, or the production of documents is to be made, whether such location is at the seat of arbitration or in another location designated by the Tribunal pursuant to Article 14.2.

26.3 The Tribunal has discretion, on the grounds of redundancy and irrelevance, to limit or refuse the appearance of any witness, whether witness of fact or expert witness.

26.4 In the discretion of the Tribunal, evidence of witnesses may also be presented in the form of written statements signed by them. In the discretion of the Tribunal, the presentation of witness testimony in the form of written statements may be made conditional upon the witnesses' appearance for the purpose of cross-examination.

26.5 Subject to the provisions of any applicable law or ethical rule, it will not be improper for any party or its legal representatives to interview any witness or potential witness for the purpose of presenting the witness's testimony in written form or producing them as an oral witness.

26.6 Any person intending to testify to the Tribunal on any issue of fact or expertise will be treated as a witness under these Rules, even if that person is a party to the arbitration or was or is an officer, employee or shareholder of any party.

26.7 The Tribunal, after having consulted the parties, may appoint one or more experts, define the scope of their work

and receive their reports. At the request of a party, the parties will be given the opportunity to question at a hearing any such expert appointed by the Tribunal and comment on any reports.

26.8 The fees and expenses of any expert appointed by the Tribunal under this Article will form part of the costs of the arbitration.

ARTICLE 27 Default

27.1 If the respondent fails to submit a Statement of Defense or the claimant fails to submit a Reply to Counterclaim, or if at any point any party fails to avail itself of the opportunity to present its case in the manner determined by these Rules or as directed by the Tribunal, the Tribunal may nevertheless proceed with the arbitration and make an award.

27.2 The Tribunal will make no final award upon the default of a party without a determination made upon the submission of proof by the non-defaulting party of the validity and amount of that party's claim.

27.3 If a party, without showing good cause, fails to comply with any provision of, or requirement under, these Rules or any direction given by the Tribunal, the Tribunal may draw the inferences that it considers appropriate.

ARTICLE 28 Waiver of Rules

28.1 A party that knows that any provision of or requirement under these Rules has not been complied with, and yet proceeds with the arbitration without promptly stating its objection to such noncompliance, will be deemed to have waived its right to object.

ARTICLE 29 Closing of the Proceedings

29.1 When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Tribunal will declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Tribunal.

ARTICLE 30 Powers of the Tribunal and Remedies

30.1 The Tribunal may grant any remedy or relief, including, but not limited to, specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute or, if the parties have expressly so provided, within the Tribunal's authority to decide as *amiable compositeur* or *ex aequo et bono*. The Tribunal will decide a dispute *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

30.2 Unless the parties agree otherwise, the parties expressly waive and forgo any right to punitive, exemplary or similar damages, unless a statute requires that compensatory damages be increased in a specified manner. This provision will not limit the Tribunal's authority to take into account a party's dilatory or bad faith conduct in the arbitration in apportioning arbitration costs between or among the parties.

30.3 In addition to making a final award, the Tribunal will be entitled to make interim, interlocutory, partial or partial final awards.

ARTICLE 31 Interim Measures of Protection

31.1 At the request of any party, the Tribunal may take whatever interim measures it deems necessary, including injunctive relief and measures for the preservation of evidence or for the protection or conservation of property, including, at the Tribunal's discretion, measures to secure the payment of any award that might be rendered.

31.2 The party requesting an interim measure shall satisfy the 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.

31.3 With regard to a request for an interim measure to preserve evidence or to protect or conserve property, the requirements of Article 31.2(a) and (b) shall apply on to the extent the Tribunal considers appropriate.

31.4 Such interim measures may take the form of an order, an interim award, a partial award or a partial final award, and the Tribunal may require security for the costs of such measures, including security for any costs that the party that is the subject of the order or award may incur if it is subsequently determined that the moving party was not entitled to such interim relief.

31.5 A request for interim measures addressed by a party to a judicial authority will not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

31.6 The Tribunal may, in its discretion, apportion costs associated with applications for interim relief in any Interim or Partial Final Award or in the Final Award.

ARTICLE 32 Sanctions

32.1 The Tribunal may order appropriate sanctions for failure of a party to comply with its obligations under any of these Rules or with an order of the Tribunal. These sanctions may include, but are not limited to, assessment of arbitration fees and arbitrator compensation and expenses; assessment of any other costs occasioned by the actionable conduct, including reasonable attorneys' fees; exclusion of certain evidence; drawing adverse inferences; or, in extreme cases, determining an issue or issues submitted to arbitration adversely to the party that has failed to comply.

ARTICLE 33 Determination of the Award

33.1 In most circumstances, the dispute should be heard and be submitted to the Tribunal for decision within nine months after the initial preliminary conference required by Article 22, and the final award should be rendered within three months thereafter. The parties and the Tribunal will use their best efforts to comply with this schedule.

33.2 Unless otherwise required by law, where there are three or more arbitrators and the Tribunal fails to agree unanimously on any issue, the arbitrators will decide that issue by a majority. Failing a majority decision on any issue, the presiding arbitrator will decide that issue.

33.3 If any arbitrator fails to comply with the provisions of these Rules or of any applicable law relating to the making of the award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed to render an award.

In that event, the remaining arbitrators will state in their award the circumstances of the other arbitrator's failure to participate in the making of the award.

33.4 An arbitrator may attach a dissenting or concurring opinion to the award.

33.5 The award shall be delivered to the Administrator, who shall transmit copies to the parties upon the full settlement of the costs of the arbitration.

ARTICLE 34 Form of the Award

34.1 The award will be made in writing and will be final and binding on the parties. The parties undertake to carry out the award without delay.

34.2 The Tribunal will state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

34.3 Before signing any award, the Tribunal will submit it in draft to JAMS. JAMS may suggest modifications as to the form of the award and may also draw the Tribunal's attention to points of substance. No award will be rendered by the Tribunal until it has been approved by JAMS as to its form.

34.4 An award will be signed by the arbitrators, and it will contain the date on which it is rendered, and the seat where the award was made. The arbitrators may sign the award outside of the seat of arbitration without affecting where the award was made. The award may be signed electronically and/or in counterparts and assembled into a single document. Copies of the award signed by the arbitrators will be communicated to the parties by the Administrator.

34.5 If the arbitration law of the country where the award is made requires that the award be filed or registered by the Tribunal, the Tribunal will comply with this requirement within the period of time required by law.

34.6 At the request of any party, the Administrator will provide it, at cost, with a copy of the award certified by JAMS. A copy so certified will be deemed to comply with the requirements of Article IV(1)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, June 10, 1958.

34.7 A monetary award will be in the currency or currencies of the contract, unless the Tribunal considers another currency

more appropriate, and the Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, at such rate and from such date(s) as the arbitrator(s) may deem appropriate, taking into consideration the contract and applicable law.

ARTICLE 35

Fees

35.1 At the same time as the Request for Arbitration is filed, the claimant will pay a filing fee. The amount of the fee is fixed in accordance with the JAMS Schedule of Fees and Costs in force on the date of the filing of the Request.

35.2 In addition to the filing fee, the Administrator may direct the parties to make one or several deposits on account of the costs of the arbitration. Such deposits will be made to and held by JAMS and from time to time may be released by JAMS to the Tribunal, to any expert appointed by the Tribunal and to JAMS itself as the arbitration progresses.

35.3 If at any time any party has failed to pay fees or expenses in full, JAMS may order the suspension or termination of the proceedings. In the event that a party fails or refuses to provide any deposit as directed by the Administrator, JAMS may direct the other party or parties to effect a substitute payment to allow the arbitration to proceed, subject to any award on costs. An administrative suspension shall toll any time limits contained in these Rules or the parties' agreement.

35.4 The Tribunal need not proceed with the arbitration unless the Tribunal ascertains from the Administrator that JAMS is in receipt of the requisite funds.

35.5 In the discretion of the Tribunal, failure by a claimant or counterclaiming party to provide promptly and in full the required deposit may be treated as a withdrawal, without prejudice, of the claim or counterclaim, respectively.

35.6 JAMS may decide that an advance on costs consist of or include a bank guarantee or other form of security.

35.7 If one of the parties claims a right to a set-off with regard to either claims or counterclaims asserted against it, such set-off will be taken into account in determining the advance to cover the costs of arbitration in the same way as a separate claim insofar as it may require the Tribunal to consider additional matters.

35.8 If a party that has not paid an advance on costs requests the Tribunal to rule on a withdrawn claim, JAMS may, as a condition for such a ruling, order the requesting party to pay an advance on costs.

35.9 Where the amount of the counterclaim greatly exceeds the amount of the claim or involves the examination of significantly different matters, or where it otherwise appears appropriate in the circumstances, JAMS, in its discretion, may establish two separate deposits on account of claim and counterclaim. If separate deposits are established, the totality of the deposit on account of the claim will be paid by the claimant, and the totality of the deposit on account of the counterclaim will be paid by the respondent.

35.10 After the award has been made, JAMS, in accordance with the award, will render an accounting to the parties of the deposits received and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

ARTICLE 36

Arbitration Costs

36.1 Arbitration costs consist of:

(a) The Tribunal's fees, including, if applicable, the fees of a clerk or Tribunal secretary appointed to assist the Tribunal;

(b) The filing fee and JAMS administrative fees as set forth in the Schedule of Fees and Costs;

(c) The fees and expenses of any expert appointed by the Tribunal;

(d) The reasonable costs for legal representation of a successful party; and

(e) Any costs incurred in connection with an application for interim or emergency relief.

36.2 The Tribunal's fees will be calculated by reference to work done by its members in connection with the arbitration and will be charged at rates appropriate to the particular circumstances of the case, including its complexity and the special qualifications of the arbitrators. JAMS will agree upon fee rates with the arbitrators in writing prior to their appointment by JAMS.

36.3 In the event of the replacement of any arbitrator pursuant to Article 10 of these Rules, JAMS will decide upon the amount of fees and expenses to be paid for the former

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