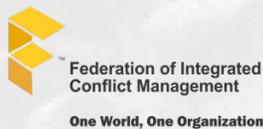


Systems, Rules and Procedures for Dispute Resolution

(Including early settlement Negotiations, Mediation
and Arbitration Rules)

As on May 2019



**Global Business
Compliance Council**
Prevent Global Trade Law Compliance Failures



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Federation of Integrated Conflict Management, FICM

INTRODUCTION

Present form of independent International Arbitration system is plagued with inefficiencies and uncertainties but we continue to use these institutions because we had no better alternatives until the evolution of FICM's new ecosystem for prevention and resolution of disputes in modern world.

A breeding ground of compelling innovations in the design and implementation of systems for the prevention, de-escalation, control and early resolution of disputes, FICM is changing the way world prevents, manages and resolves disputes.

With 1000+ active members around the world, we develop, manage and administer all forms of dispute systems through a global ecosystem.

FICM is driving the new wave of dispute prevention and resolution culture – helping corporations, communities and governments with its collective resources of conflict management, dispute resolution and civil justice systems.

Effective management and resolution of disputes is always part of an integrated and inclusive approach, where all stakeholders work with a common goal. FICM is constantly developing and nurturing the ecosystem for prevention, management and effective resolution of disputes. It is constantly developing new systems and network bodies to enable effective management of disputes in the modern world.

Global Business Compliance Council + International Commercial Disputes Tribunal

Constitution of GBCC + ICDT to strengthen global ecosystem

FICM's various systems integrated with each other are world's first and only inclusive "Global Ecosystem" of prevention, de-escalation and resolution of disputes – The FICM international framework consists of two unique initiatives

1. The global Business Compliance Council (GBCC) and
2. International Commercial Disputes Tribunal (ICDT).

Global Business Compliance Council, GBCC

Doing business in the international arena requires navigating a wide array of statutes and regulations across multiple jurisdictions which govern the movement of goods, technology, software, people and services across borders. In such a scenario, legal mistakes, non-compliance of laws on

international trade, misinterpretation of contract clauses could lead to damaging conflicts between the parties.

A membership system for the businesses in international trade, Global Business Compliance Council (GBCC) is constituted to strengthen the compliance and dispute prevention ecosystem.

As members of GBCC, businesses and trading partners worldwide prevent costly legal mistakes, minimize occurrence of misunderstandings and avoid damaging conflicts through prompt and effective resolution systems.

International Commercial Disputes Tribunal, ICDT

While Global Business Compliance Council (GBCC) is committed to prevent conflicts in International markets with its

innovation watch and analytical approach over the contracts entered between the parties by which the risk to the members of GBCC is minimized.

ICDT is constituted to bring together – elite as well as young dispute resolution talent under one decentralized system with members from over 70+ countries around the world.

ICDT's key function is the Appointment of Neutrals (finest and most credible dispute resolvers) under FICM and UNICITRAL model laws and procedures.

Anyone can appoint ICDT Neutrals - individuals, corporations, law firms and other dispute resolution bodies for the Ad-Hoc or Institutional dispute resolution processes under various institutional rules and procedures. From international small traders and large corporations with complex market disputes and companies filing claims in bulk, to the individuals filing one-off claims, ICDT delivers success to parties in dispute.

ICDT is committed to recruiting only the most credible and exceptional Neutrals – possessing

human skills, judicial capacity, extensive industry knowledge, experience and passion for consensual resolution practice.

ICDT is a body that brings in true neutrality to the system of dispute resolution – one of the key factors for the success of parties in disputes.

ICDT plays key role in the ecosystem to strengthen the system of appointment of dispute resolvers by providing very comprehensive rosters from each specialism, expertise, cost bracket, language, religion, other background credentials and from almost every important geographic region and political system around the world.

ICDT has on its panel, Representative Members as well as Associate Members who are qualified arbitrators, mediators, negotiators, expert's et al. The disputes are preferentially handled by Representative Members on the panel of ICDT. However, where the circumstances so demand, ICDT may appoint Associate Members and even non-members as the

arbitrators, mediators,
negotiators, experts etc.

THE GBCC+ICDT COMBINE

The GBCC+ICDT ecosystem provides dispute resolution services around the world in locations chosen by the parties.

The divergent, as well as integrated interventions and innovative procedures including arbitrations and mediations may be conducted in any language chosen by the parties and reflect best international practices that are designed to deliver efficient, economic, quick and fair proceedings.

GBCC+ICDT Combine is the nucleus of international trade activity, helping them or prevent and resolve international commercial disputes under its modern laws and procedures.

ICDT maintains an updated roster of impartial and credible Neutrals in virtually every specialization from over 70+ countries around the world.

Parties in international transaction prefer FICM as their institution of choice in dispute resolution clauses for dealing with unprecedented and unfortunate situations of disagreements and complex disputes.

FICM is becoming the resource of choice and mentioned in the dispute resolution clauses of almost all kinds of international cross-border commercial agreements to bring certainty in transactions.

Corporate businesses, Importers-Exporters, Investors, Shippers and people engaged in all kind of international commercial transactions can use FICM clauses in their contracts or early resolution of international cross-border disputes of all kinds.

The FICM Model Contract and Clauses

The FICM preventive provisions and dispute resolution clause should be included in any and all international business agreements.

Each and every commercial relationship is unique.

Contracting parties are well advised to seek appropriate guidance from a seasoned international contracts lawyer or GBCC ICDT contracts assistant when drafting such clauses.

All members of FICM, whether General Counsel, or an outside practicing lawyer, all are

equipped with tools and resources to not only incorporate the FICM preventive provisions and dispute resolution clauses, but also to draft the entire contract based on the “Smart Contract Protocol”.

Parties with questions regarding drafting Dispute Resolution clause should email contractdrafts@arbitrationhub.org for assistance.

Inclusion of FICM clauses in contracts

The FICM Innovative Rules and procedures were created with and maintain UNCITRAL Rule philosophies that empower parties and dispute professionals to control their own process, while keeping up with the rapid changes in today’s business landscape.

The results allow effective and lasting settlements through cooperative systems and also through awards that are enforced in jurisdictions around the world; many are not even signatories to the New York convention.

Incorporating FICM clauses backed by its modern Systems, Rules and Procedures into their agreement gives parties many advantages, including:

- Option to review contracts with new perspectives and also under the “Smart contract protocol”.
- Option to get the contract registered under the “Document Defense Scheme” to protect the interests of all the parties in transaction.
- Option to get the appointment of a standing neutral, dispute board or negotiator for instant support anytime during the transactions lifecycle to ensure that no conflict escalates
- In case of any dispute, assignment to an FICM professional who oversees the administration of the case from start to finish
- Structure, requirements, and timelines for all claims and counterclaims
- Automatic incorporation of expedited DR procedures for cases below USD \$250,000
- Presumption of decisions based upon written materials for cases below USD \$100,000
- Early administrative conference call with parties initiated by FICM to discuss arbitrator selection and other process efficiencies
- Facilitation of the appointment of a mediator if desired by parties
- Access to a special emergency arbitrator for urgent measures of protection
- Ability to request joinder of other parties or consolidation of other cases
- Structure to efficiently resolve disputes concerning place, locale, language, and number of arbitrators
- Access to lists of finest arbitrators to facilitate arbitrator appointment
- Commitment to availability by arbitrator during appointment process
- Appointment of the arbitral tribunal and facilitation of all potential arbitrator disclosures
- Arbitrator challenges handled between parties and institution with the direct involvement of challenged arbitrator only when necessary

- Oversight, review, and management of all arbitrator compensation and costs
- Assistance to tribunal and parties with scheduling conference calls and hearings
- Rules controlling scope of document and electronic document requests
- Rules giving the tribunal the authority to manage, limit, or avoid litigation-style discovery practices
- Structure for proceedings in the absence of a party's participation
- Structure to review the form and effect of the final award
- Final Award due to parties within 60 days of the closing of hearings

Model Contract Clauses

Model arbitration clause

Expressly designed to support the cost-effective and rapid arbitration proceedings of FICM; it should be inserted into contracts without modification, and parties are invited to choose one among the seats, or legal places, of arbitration, listed in Schedule of Recommended Seat of Arbitration.

1. Any dispute arising out of or in connection with this contract shall be exclusively and finally resolved by arbitration in accordance with the FICM Rules of Arbitration in force on the date of commencement of the arbitration.

2. The seat of arbitration shall be [parties to choose one of the seats of arbitration listed in Schedule 1], but the parties agree to hold hearings and/or meetings (if any) in any suitable location and/or by any suitable means of simultaneous communication. The language of arbitration is to be [parties to choose one of the languages listed in Schedule 2]. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the FICM Rules of Arbitration.

3. By submitting their dispute to arbitration under the FICM Rules of Arbitration, the parties agree to comply with any award without delay and

waive their right to any form of recourse insofar as such waiver can validly be made.

Please note that, if parties agree to FICM arbitration but use a different arbitration clause (or submission agreement – see below) from the model provided, or if parties modify the wording of the model arbitration clause (or submission agreement), or if parties choose a seat and/or language of arbitration different from any of those proposed in the Schedules, FICM may exercise its discretion to apply any time and costs scale to the dispute and/or vary the dispute timetable, as necessary.

Clause having Negotiation option before Arbitration

FICM appointed negotiator will assist parties with engaging in an active process designed to ensure the efficient resolution of their dispute.

Two parties to the contract

1. In the event of any dispute arising out of or in connection with this contract, either party shall invite the other party to commence negotiations to resolve the dispute. Any invitation to negotiate shall be issued in writing, in the usual manner in which the parties communicate in writing.
2. If the parties do not reach a settlement within [14 calendar days – parties to define appropriate time period] of one party having invited the other in writing to negotiate, the dispute shall be exclusively and finally resolved [continue with “by arbitration in accordance with...” in the model arbitration clause above]

Three or more parties to the contract

1. In the event of any dispute arising out of or in connection with this contract, any party may invite the other parties to commence negotiations to resolve the dispute. Any invitation to negotiate shall be issued in writing, in the usual manner in which the parties communicate in writing.
2. If the parties do not reach a settlement within [14 calendar days – parties to define appropriate time period] of one or more parties having invited the other parties in writing to negotiate, the dispute shall be exclusively and finally resolved [continue with “by arbitration in accordance with...” in the model arbitration clause above]

Model confidentiality clause

Parties may also want to keep their arbitration and its outcome confidential. In this case, we suggest using the following language:

The parties agree to keep confidential the existence and contents of the arbitration and the written and oral pleadings and all documents produced for or arising from the arbitration, save as may be required by legal duty or to protect or pursue a legal right.

Model governing law clause

A contract which does not clearly specify a governing law may complicate the resolution of a dispute arising under the contract. We recommend inserting a governing law clause into the contract, such as the following:

This contract shall be governed by, and construed in accordance with, the laws of [jurisdiction]. Note: remember to register your contract with FICM (by e-mailing a copy of it to FICM at contract-registration@arbitrationhub.org) once it has been finalized and signed.

FICM will send you contract registration number (CRN) which will give you access to its reduced costs.

Model agreement for submitting existing disputes to FICM arbitration

If a dispute has already arisen and the parties wish to submit it to FICM dispute resolution and arbitration, the parties would generally enter into a submission agreement to this effect. The submission agreement contains the following clause:

1. The parties agree that the following dispute shall be exclusively and finally resolved by arbitration in accordance with the FICM Rules of Arbitration in force on the date of this agreement: [insert description of the dispute and the parties to the dispute].
2. The seat of arbitration shall be [parties to choose one of the seats of arbitration listed in Schedule 1], but the parties agree to hold hearings and/or meetings (if any) in any suitable location and/or by any suitable means of simultaneous communication. The language of the arbitration is



to be [parties to choose one of the languages listed in Schedule 2]. The arbitration tribunal shall consist of a sole arbitrator appointed in accordance with the FICM Rules of Arbitration.

3. By submitting their dispute to arbitration under the FICM Rules of Arbitration, the parties agree to comply with any award without delay and waive their right to any form of recourse insofar as such waiver can validly be made.

Mediation-Arbitration Clause

Use of the Mediation process is growing globally. In mediation, parties are free to negotiate business solutions not constrained by law or contract. Parties to GBCC ICDT or FICM administered mediations have historically enjoyed a settlement rate exceeding 90%.

Increasingly, parties perceive that mediation is more effective if an unresolved dispute is to be followed, and resolved, by arbitration. Since the requirement to mediate may be seen as a condition precedent to arbitration, a deadline should be established allowing parties to move from mediation to arbitration if necessary to avoid delay.

The FICM Model “Step-Clause” for mediation-arbitration:

“In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the FICM under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution.”

- “The number of arbitrators shall be (one or three);”
- “The place of arbitration shall be [city, (province or state), country];”
- “The language(s) of the arbitration shall be ____.”

It should be noted that parties could agree to mediate at any time, even in the absence of a future disputes clause providing for mediation. Indeed,

disputing parties frequently find that mediation is particularly effective when conducted against the deadline of a pending arbitration hearing.

Negotiation-Mediation-Arbitration Clause

Parties to commercial contracts, most particularly those involving strategic commercial relationships, will sometimes provide for both negotiation and mediation as precursors to arbitration. The intent is that the parties should try to solve the problem themselves first, and, if that proves difficult, utilize the services of a third party mediator, before resorting to a third party decision-maker/arbitrator.

Once again, time limits or an opt-out provision should be considered to avoid delay tactics.

The FICM Model “Step-Clause” for Negotiation-Mediation-Arbitration is as follows:

“In the event of any controversy or claim arising out of or relating to this contract, or the breach thereof, the parties hereto shall consult and negotiate with each other and, recognizing their mutual interests, attempt to reach a solution satisfactory to both parties. If they do not reach settlement within a period of 60 days, then either party may, by notice to the other party and the International Centre for Dispute Resolution, demand mediation under the Mediation Rules of the International Centre for Dispute Resolution. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating this contract shall be settled by arbitration administered by the FICM in accordance with its International Arbitration Rules.”

- “The number of arbitrators shall be (one or three);”
- “The place of arbitration shall be [city, (province or state), country];”
- “The language(s) of the arbitration shall be ____.”

Concurrent Arbitration-Mediation Clause

Some parties prefer not to obligate themselves to mediate as a condition precedent to the filing of arbitration. They could be concerned that early

mediation will not allow them sufficient time to understand the case, so making negotiation more perilous. That said, not providing for mediation in the dispute resolution clause may result in a lost opportunity to make clear the parties' preference for a negotiated settlement. With those countervailing concerns in mind,

FICM has developed a model “Concurrent Arbitration-Mediation” Clause. The Clause obligates the parties to mediate, but does so after the initiation of arbitration, when the parties are presumably more informed regarding both the matters in dispute and their respective needs and interests.

The FICM Model Concurrent Arbitration-Mediation Clause

“Any controversy or claim arising out of or related to this contract, or a breach thereof, shall be resolved by arbitration administered by the FICM in accordance with its International Arbitration Rules. Once the demand for arbitration is initiated, the parties agree to attempt to settle any controversy or claim arising out of or relating to this contract or a breach thereof by mediation administered by the FICM under its International Mediation Rules. Mediation will proceed concurrently with arbitration and shall not be a condition precedent to any stage of the arbitration process.”

- “The number of arbitrators shall be (one or three)”;
- “The number of mediators shall be (one or two)”;
- “The place of arbitration shall be [city, (province or state), country]”;
- “The place of mediation shall be [city, (province or state), country]”;
- “The language(s) of the arbitration shall be ____.”;
- “The language(s) of the mediation shall be ____.”

Stand-Alone Mediation Clause

Parties can adopt mediation as a stand-alone dispute settlement procedure. In the event that mediation does not result in settlement, the parties can agree to utilize other dispute resolution procedures or default to national courts for the resolution of their dispute.

The FICM Model Stand-Alone Mediation Clause is as follows:

“In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by FICM under its Mediation Rules, before resorting to arbitration, litigation or some other dispute resolution procedure.”

- The parties should consider adding:
- “The number of mediators shall be (one or two)”;
- “The place of mediation shall be [city, (province or state), country]”;
- “The language(s) of the mediation shall be ____.”

Appointment of Arbitral Tribunal - Party - Appointed Arbitrator Clause

For parties and their counsel, the appointment of the arbitral tribunal is arguably the single most critical issue in arbitration. Unless parties provide otherwise, FICM uses a list selection process for arbitrator appointments. The other method for arbitrator selection is the party-appointed selection process.

FICM will follow whatever method of appointment is provided by the parties’ agreement. FICM Arbitration Rules require that for cases with multiple claimants or respondents, unless the parties have agreed otherwise, FICM will make all appointments.

FICM begin the list selection process by consulting with the parties regarding arbitrator qualifications. After consultation, FICM sends an identical list of names along with their corresponding Curriculum Vitae to the parties with an invitation to strike unacceptable arbitrators, rank order the remaining arbitrators in order of preference and return the list to the FICM.

FICM appoints the presiding arbitrator or tribunal from the closest mutual preference of the parties. As an alternative to the list-selection process, parties can agree to use the party-appointed method of appointment. The perceived advantage of the party-appointed method is that with direct appointment of an arbitrator each party will have increased confidence in the tribunal.

Parties who wish to use the party-appointed method should consider adding the following language to their arbitration clause:

“Within [30] days after the commencement of arbitration, each party shall appoint a person to serve as an arbitrator.

The parties shall then appoint the presiding arbitrator within [20] days after selection of the party appointees. If any arbitrators are not selected within these time periods, the FICM shall, at the written request of any party, complete the appointments that have not been made.”

Limitations on Time and Information Exchange

The parties may agree to amend the rules to suit their particular needs. For example, they may wish to restrict or expand time limits provided for in the FICM Arbitration Rules, limit information exchanges or change other aspects of the process. They may do so by addressing those issues in their dispute resolution clause.

The following clause limits the time frame in arbitration:

“The award shall be rendered within [9] months of the commencement of the arbitration, unless such time limit is extended by the arbitrator.”

The parties should be wary of the dangers inherent in setting artificial deadlines. If time frames can't be met, the ability to enforce the award may be compromised. The alternative clause set forth below addresses the consequences of a “late” arbitration.

“It is the intent of the Parties that, barring extraordinary circumstances, arbitration proceedings will be concluded within [120] days from the date the arbitrator(s) are appointed. The arbitral tribunal may extend this time limit in the interests of justice. Failure to adhere to this time limit shall not constitute a basis for challenging the award.”

The parties may limit information exchange by using the following clause:

“Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents explicitly referred to by a party for the

purpose of supporting relevant facts presented in its case, carried out expeditiously.”

There is a danger in limiting the exchange of information at the time of contracting. In the event that more information exchange would be advantageous to a party in a particular dispute, that additional evidence cannot be taken without further agreement.

The parties should always exercise caution when restricting arbitration procedures and arbitral authority. Doing so may prevent international arbitrators from doing what they usually do so well, managing the process according to the immediate needs of the parties.

Confidentiality Clause

The type of contract may also call for additional language. So, for example, parties to an exclusive information contract or sensitive technology contract may wish to consider a confidentiality provision in their agreement. Parties to international contracts frequently mistake privacy, which is a standard feature of international commercial arbitration, for the obligation to maintain confidentiality, which absent party agreement under the FICM Arbitration Rules will extend only to the arbitrator and the FICM.

The FICM Model Confidentiality Clause is as follows:

“Except as may be required by law, neither a party nor its representatives may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of (all/both) parties.”

Other Drafting Considerations

Contracting parties might also consider adding language to address specific procedural or remedial concerns. So, for example, notwithstanding the availability of emergency and interim relief under FICM International Arbitration Rules, parties may wish to underscore their expectation that such relief will be available by providing language to that effect in the dispute resolution clause.

FICM Administration under the UNCITRAL Arbitration Rules



Certain parties, including most especially nation states, may feel more comfortable in contracting for application of the UNCITRAL Arbitration Rules. FICM is particularly well suited to providing administrative assistance in connection with the UNCITRAL Arbitration Rules. The FICM International Arbitration Rules were originally drafted, in 1986, using the UNCITRAL Arbitration Rules as a model. Providing for FICM administration can add significant value, especially as regards the establishment of the tribunal, scheduling and numerous other administrative concerns.

FICM offers following model clause for providing administered UNCITRAL procedures.

“Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract.

The appointing authority shall be the International Centre for Dispute Resolution.

- The case shall be administered by the FICM in accordance with its “Procedures for Cases under the UNCITRAL Arbitration Rules”.
- The parties should consider adding:
 - “The number of arbitrators shall be (one or three)”;
 - “The place of arbitration shall be [city, (province or state), country]”;
 - “The language(s) of the arbitration shall be ____.”

FICM offers following model clause where parties seek to have FICM act as the appointing authority only under UNCITRAL procedures.

“Any dispute, controversy, or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in effect on the date of this contract.

- The appointing authority shall be FICM.”

- The parties should consider adding:
- “The number of arbitrators shall be (one or three)”;
- “The place of arbitration shall be [city, (province or state), country]”;
- “The language(s) of the arbitration shall be ____.”

IMPORTANT

It must be emphasized that a poorly drafted arbitration clause may result in a “pathological” dispute resolution clause, which is worse than no clause at all.

For further information regarding dispute resolution clauses as well as general information regarding the FICM rules and services, email the FICM at contractdrafts@arbitrationhub.org.

Systems and Procedures

The international Systems and Procedures are designed to provide a complete dispute prevention and resolution framework for parties, their counsel, arbitrators, and mediators.

Negotiating, Drafting and Review of Contracts with “Smart Contract Protocols”

Do you have a system in place to ensure that each contract has all of the provisions needed to protect you and none that harm you?

Is every contract reviewed and approved by the right people and signed before you begin work?

The way you manage your contract negotiations and the contract draft process can make a big difference in the success of your international business. Nearly 15 percent of the claims traced to contract issues can be attributed to breakdowns in contract protocols.

The “Smart Contract Protocol” is the defined system of drafting international contracts used by the lawyers and contract specialists who are members of FICM.

The adherence to the protocol ensures that the occurrence of any regulatory pitfall or a dispute is reduced by over 70% by using “Smart Contract Protocols”.

It may be tempting to not get into any formal contract for a small project or transaction and simply use a letter of agreement or just sign on the dotted line of a regular agreement. But small projects aren’t immune to claims and verbal or letter agreements don’t address all the necessary issues. Even if you’ve worked with the same partner’s dozens of times, remember that their contracts aren’t written in stone. Clauses may change from one project to the next, and you may find yourself agreeing to something you shouldn’t.

Always request and insist with the other party to use the FICM “Smart Contract Protocols” that ensures safe transaction for all parties concerned.

Registration of Contracts under “Document Defense Scheme”

Document defense scheme enables the parties to register their contract documents with FICM under its Rules and procedures for the prevention and quick resolution of disputes.

The copy of contract documents are sealed and kept with utmost confidentiality. The purpose of DDS is to ensure the confidence building measures between all the parties in the contract and also keep a STANDING NEUTRAL or a NEUTRAL EVALUATOR or a NEGOTIATOR identified for the case on a standby for early interventions in case of any conflict and or regulatory issues.

Register your signed contract with FICM and get a unique Contract Registration Number (CRN) for future reference. When a dispute is reported, the dispute system gets into action immediately with all records registered with FICM. The case handling team will assess the situation and get into action to diffuse the matter with skilled negotiations.

Contract Review

The members of FICM have an option to get their Contract vetted and reviewed by expert **contract** attorneys at highly subsidized rates as:

- up to 10 pages documents: USD25
- 1-15 page documents: USD49
- 16-25 page documents: USD99
- 26-30 page documents: USD129
- 31-40 page documents: USD149
- 50-70 page documents: USD200
- 70-100 page documents: USD249

Contract Negotiations

In the event, the members to FICM wish to alter the terms of the Contract they have already entered into with another party, they have an option to hire the expert contract attorneys to negotiate with the third party to reframe the desired clauses in the Contract.

Design, development and administration of dispute resolution processes

FICM involves a range of innovative methods for settling disputes more swiftly, at less cost - Including a combination of various options.

The procedure involves a dispassionate evaluation of the dispute by experienced case managers, followed by negotiation, conciliation, mediation or a tailored hearing to resolve the issues on which the parties remain in dispute.

These options are designed to minimize combative hearings and help parties settle their disputes with the minimum of stress and acrimony, whether they are members of the public or multi-national corporations.

- Corporate counsel (GC's) of global corporations
- Business leaders
- International traders
- Importers and Exporters
- Associations and trade bodies
- Dispute Resolution Institutes.
- Leading international law firms and lawyers

Dispute Resolution Procedures

FICM maintains a range of different and most flexible procedures that are either used separately or in steps or concurrently.

1. Early intervention for settlement through negotiations.
2. Early Neutral Evaluation
3. Mediation and conciliation
4. Arbitration (Including Expedites and other innovative forms)
5. Early Neutral Evaluation+ Mediation

6. Early Neutral Evaluation Arbitration
7. Mediation+ Arbitration
8. Early Neutral Evaluation+ Mediation + Arbitration
9. Early Neutral Evaluation+ Arbitration ---Mediation --- Arbitration
(Mediative Justice)*
10. Arbitration -- Mediation– Arbitration (Mediative Justice)*

NOTE:

In all the above, mediation shall be conducted as per the mediation rules and arbitration, as per arbitration rules, as applicable on date. In all of the above options, parties may seek Experts Opinion (Expert Determination) wherever necessary in order to resolve technical issues involved in the conflict.

Arbitration Rules and Procedures

Effective January 1, 2019

Introduction

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Rule 2. Scope and extent of Rules

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Rule 4. Overriding effect

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Rule 7. Language of arbitration

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Rule 31. Miscellaneous

Introduction - Process of “Mediative Justice”

To advance the sacrosanct cause of resolution of conflicts between parties by various methods, FICM is promoting the concept of “Mediative Justice”, wherein the parties are encouraged to resolve the dispute amongst themselves by way of **arb-med-arb and other such tailor made and innovative approaches** to reach at an amicable and binding resolution to their dispute. The procedure may be summarized as follows:

- a. Parties agreeing to opt for mediative justice shall file the notice of arbitration in accordance with the Rules of Arbitration of FICM.
- b. The sole arbitrator or a panel of three arbitrators shall be appointed as per Rules.
- c. The sole arbitrator or the arbitral tribunal so constituted, after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, stay the arbitration proceedings and refer the case to case management team for an independent Mediation under the Arb-Med-Arb Rules.
- d. The case director shall appoint a mediator or a batch of mediators as per the Mediation Rules of FICM (“Mediation Rules”). Parties can opt for the same arbitrator to act as the mediator if they wish to.
- e. The Mediation proceedings shall be conducted for a period of maximum eight weeks, or any such period mutually agreed between the parties, wherein all endeavor shall be made to bring the disputing parties to converge to a consensual solution to their disputes.
- f. Where the parties agree on certain/all issues pertaining to the dispute, a Settlement Agreement shall be drafted recording such terms, duly signed by the parties and the mediator(s).
- g. The mediator(s) shall prepare a report of the mediation proceedings and send the entire case file including the agreement so recorded between the parties, if any and the mediator’s report to the case director.
- h. The case director in turn, shall send the same to the appointed arbitrator and the arbitration proceedings shall resume.

- i. After the resumption of the arbitral proceedings, the arbitrator shall arbitrate over the remaining issues, if any, which could not be settled in the mediation proceedings.
- j. The arbitrator shall pass the interim or final “consent” award incorporating the terms settled between the parties.
- k. In the event the parties were not able to reach at any consensus over any issue during the mediation proceedings, the arbitrator shall pass the interim/final award on merits as per the FICM Arbitration Rules.

Rule 1. Definitions

Unless explicitly stated otherwise, the terms used would be defined as follows:

1. “FICM” means FICM or any of its units, initiatives, partnerships, subsidiaries, systems of dispute prevention and resolution etc., individually or collectively, unless expressly stated;
2. “Agreement” would mean the arbitration agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not;
3. “Arbitration” means any arbitration whether or not administered by any permanent arbitral institution;
4. “Arbitrator” shall mean, as the context requires, the Arbitrator or the panel of Arbitrators in a tripartite Arbitration.
5. “Presiding Arbitrator” would be the principal arbitrator in case of three-arbitrators panel
6. “Case director” shall mean office of the President of FICM, which may include the president and/or designated office bearers appointed by the President of FICM
7. “Electronic filing” (e-file) means the electronic transmission of documents to and from FICM and other parties for the purpose of filing via the Internet.
8. “Electronic service” (e-service) means the electronic transmission of documents via FICM Electronic Filing System to a party, attorney or representative under these Rules.
9. “Party” would mean the parties/their representative to the arbitration
10. “Rules” would mean the FICM Arbitration Rules and Procedures

11. “Neutrals” would mean Arbitrators/Mediators/Conciliators

Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

Rule 2. Scope and extent of rules

1. The Rules govern binding Arbitrations of disputes administered by Introduction and related to or arising out of contracts.
2. The Parties shall be deemed to have made these Rules a part of their Arbitration agreement (“Agreement”) whenever they have provided either for Arbitration under these rules or for Arbitration by FICM, or any of its sub units, without specifying any rules.
3. The authority and duties of FICM as prescribed in the Agreement of the Parties and in these Rules shall be carried out by FICM.
4. The parties may agree on any procedures not specified herein provided the newly consented procedures are in tandem with the policies of FICM. In such an event, the parties shall promptly inform FICM and obtain a written confirmation from FICM regarding the same. Only thereafter the party-agreed procedures shall be enforceable as if contained in these Rules
5. Where the parties have already agreed to abide by rules other than these Rules, they may subsequently agree to abide by these Rules and inform FICM about the same in writing.
6. FICM may, in its discretion, assign the administration of Arbitration to any of its Resolution Centers, bodies or sub units as may be required.
7. Nothing in these Rules shall prevent parties from naming FICM as the appointing authority in an ad hoc arbitration without subjecting the arbitration to these Rules, on payment of appropriate Appointment Fee to FICM as per the Schedule of Fees in force at the time of request.
8. Nothing in these rules shall prevent the parties to arbitrate under UNCITRAL rules, administered by FICM, on the payment of Administration Fee to FICM, as per the Schedule of Fees in force at the time of such request.

Rule 3. Amendment of Rules

FICM may amend these Rules without notice. The Rules in effect on the date of the commencement of Arbitration shall apply to that Arbitration, unless the Parties have agreed upon another version of the Rules.

Rule 4. Over-riding effect

The Rules are subject to the prevailing laws and in the event of a conflict with the prevailing applicable laws from which the parties cannot derogate, the Rules herein or later amended rules by FICM or agreed-rules by the parties, the laws prevailing shall hold and supersede the Rule(s) directly in conflict with the prevailing laws to the extent of the conflict keeping all other rules of FICM intact and enforceable.

Rule 5. Qualification to enter FICM administered arbitration

1. Where the parties in dispute enter into an agreement whether written or orally offered by one party and accepted by the other party, to refer the dispute to FICM for resolution of the dispute by arbitration, or
2. The parties in dispute enter into an agreement to abide by these Rules, whether or not administered by FICM, or
3. Where the parties have at the pre-dispute stage itself put a contractual clause into the contract between the parties keeping provision of referring the dispute to FICM for arbitration and abiding by the Arbitration Rules.
4. Where the parties have agreed to arbitrate under the UNCITRAL, administered by FICM.
5. Put here the registered contract clause under the Document Registration and Defense scheme of FICM

Rule 6. Place and schedule of arbitration

1. The parties are free to agree on the place of arbitration
2. Failing any agreement referred to in clause above, the place of arbitration shall be determined by the arbitrator appointed by FICM having regard to the circumstances of the case, including the convenience of the parties.
3. The Arbitrator, after consulting with the parties shall fix the date, time and location of each hearing.

4. If a Party has failed to participate in the Arbitration process, the Arbitrator may set the Hearing without consulting with that Party. The non-participating Party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date unless the law of the relevant jurisdiction allows for, or the Parties have agreed to shorter notice.
5. The Arbitrator, in order to hear a third party witness, or for the convenience of the Parties or the witnesses, may conduct the Hearing at any location or any FICM listed venue may be designated a Hearing location.

Rule 7. Language of arbitration

1. The parties are free to agree upon the language or languages to be used in arbitral proceedings.
2. Failing any agreement referred to in as above, the arbitrator appointed by FICM shall determine the language or languages to be used in arbitral proceedings.
3. The Arbitrator may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the Arbitrator.

Rule 8. Number of Arbitrators and their selection

The Arbitration shall be conducted by Sole Arbitrator with respect to any dispute by default, unless otherwise agreed by the parties. However, where the parties concerned insist or the Case director, having regard to the complexity of the dispute, amount of claim and/or such relevant circumstances decides to appoint more than one arbitrator, three arbitrators shall be appointed.

SOLE ARBITRATOR

1. In case of a sole arbitrator, FICM shall send the Parties a list of at least ten Arbitrator candidates. FICM shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. FICM may replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice.

2. Within seven calendar days of service upon the Parties of the list of ten names, each Party may strike five names and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking shall be appointed the Arbitrator. If this process does not yield an Arbitrator, FICM shall designate the sole Arbitrator.

PANEL OF THREE ARBITRATORS

1. In cases involving three arbitrators, FICM shall send the parties a list of at least twenty Arbitrator candidates. FICM shall also provide each Party with a brief description of the background and experience of each Arbitrator candidate. FICM may replace any or all names on the list of Arbitrator candidates for reasonable cause at any time before the Parties have submitted their choice.
2. The parties may reach at a consensus of appointing two arbitrators of the list so sent to them by FICM.
3. Where no such consensus is reached between the parties, each party shall within a span of ten days, shall send back the names of all the arbitrator candidates in order of its preference. FICM shall appoint one of the candidates so chosen by each party. In the event of non-suitability of any arbitrator candidate, FICM shall appoint the arbitrator.
4. The presiding arbitrator shall be appointed by the Case director.

Rule 9. Criteria of selection of arbitrators

1. Where the parties insist for a particular Arbitrator or any arbitrator with specific expertise, who is not on the panel of FICM, FICM shall make every endeavor to appoint the same, subject to the suitability and availability. The party(ies) so requesting have to make the payment of Appointment Fee to FICM as per the Schedule of Fees in force at the time of such request.
2. In confirming or appointing arbitrators, the Case director shall consider the prospective arbitrator's nationality, residence and other relationships with the countries of the parties or of the arbitrators and the prospective arbitrator's availability and ability to conduct the arbitration in accordance with these Rules.

3. Before confirming or appointing arbitrators, the FICM shall get a Statement of Arbitrators acceptance in a prescribed format in tune with the Model Code of Conduct for FICM Neutrals

Rule 10. Objections to the appointment of arbitrators

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.
2. A party may challenge the appointment of an arbitrator only for reasons of which it becomes aware after the appointment has been made.
3. At any time during the Arbitration process, a Party may challenge the continued service of an Arbitrator for cause. The challenge must be based upon information that was not available to that Party at the time the Arbitrator was selected.
4. A party that intends to challenge an arbitrator shall file a Notice of Challenge with the Case director within a period of 14 days from which the party became aware of the circumstances upon which the challenge is based. The Notice of Challenge shall state the reasons for the challenge.
5. The date of receipt of the notice of challenge by the Case director shall be deemed to be the date the notice of challenge is filed.
6. The party challenging an arbitrator shall, at the same time as it files a Notice of Challenge with the Case director, send a copy of the Notice of Challenge to the other party, to the arbitrator who is being challenged and the other members of the Tribunal (or if the Tribunal has not yet been constituted, any appointed arbitrator), and shall notify the Case director that it has done so, specifying the mode of service employed and the date of service.
7. The party making the challenge shall pay the requisite Challenge Fee under these Rules in accordance with the applicable Schedule of Fees. If the party making the challenge fails to pay the Challenge Fee within the time limit set by the Case director, the challenge shall be considered as withdrawn.

Rule 11. Decision on challenge of arbitrator

1. After receipt of a Notice of Challenge, the Case director may order a suspension of the arbitral proceedings until the challenge is resolved. Unless the Case director orders the suspension of the arbitral proceedings pursuant to the challenge, the challenged arbitrator shall be entitled to continue to participate in the arbitration.
2. The Case director may act upon the challenge of a party to remove the arbitrator under challenge or the Case director may grant an opportunity to the arbitrator under challenge and/or the other party/parties to comment in writing over the challenge made upon the arbitrator, within a suitable period of time. Such comments shall be made available to the parties and the arbitrator under challenge and other co arbitrators, if any.
3. The arbitrator under challenge may offer to resign.
4. Where all the parties agree to the challenge, the Case director shall remove the arbitrator and a substitute arbitrator shall be appointed as per the procedure laid down under these rules. The time limits applicable to the nomination and appointment of the substitute arbitrator shall commence from the date of the Case director's notification to the parties of the decision by the Case director.
5. If within seven days of the receipt of the Notice of Challenge, the other party does not agree to the challenge, and the arbitrator under challenge does not offer to resign, the Case director shall decide the challenge.
6. If, for any reason, the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator shall be chosen in accordance with these Rules.
7. The Case director will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties, and that decision shall be final.
8. If the Case director rejects the challenge to an arbitrator, the challenged arbitrator shall continue with the arbitration.

Rule 12. Replacement of an arbitrator

In the event of the death, resignation, withdrawal or removal of an arbitrator during the course of arbitral proceedings, a substitute arbitrator shall be appointed in accordance with the procedure applicable to nomination and appointment under these Rules.

The Case director may, at his own initiative and in his discretion, remove an arbitrator who refuses or fails to act or to perform his functions in accordance with the Rules or within prescribed time limits or in a manner which is unbecoming of a fair and neutral arbitrator and that decision shall be final.

Rule 13. Repetition of hearings in the event of replacement of an arbitrator

If sole or the presiding arbitrator is replaced, any hearings held previously shall be repeated unless otherwise agreed by the parties.

If any other member of the tripartite tribunal is replaced, any hearings held previously may be repeated at the discretion of the parties. In this respect, the decision of the presiding arbitrator shall be final.

Rule 14. Representation

The Parties, whether natural persons or legal entities such as corporations, LLCs or partnerships, may be represented by counsel or any other person of the Party's choice. Each Party shall give prompt written notice to the Case director and the other Parties of the name, address, telephone and fax numbers, and email address of its representative. The representative of a Party may act on the Party's behalf in complying with these Rules.

Changes in Representation

A Party shall give prompt written notice to the Case director and the other Parties of any change in its representation, including the name, address, telephone and fax numbers, and email address of the new representative. Such notice shall state that the written consent of the new representative has been obtained and shall state the effective date of the new representation.

Rule 15. Commencement of Arbitration

The party initiating arbitration (Claimant) shall communicate a Notice of Arbitration to FICM and all other parties. The Notice of Arbitration shall include:

1. a request that the dispute be referred to arbitration;

2. the names and (in so far as known) the addresses, telephone and facsimile numbers, and/or email addresses of the parties and of their representatives;
3. a copy of the arbitration agreement(s) invoked;
4. a copy of the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises, or reference thereto;
5. a description of the general nature of the claim and an indication of the amount involved, if any;
6. the relief or remedy sought;
7. a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;
8. the Claimant's preference of the expertise of an arbitrator confirmation that copies of the Notice of Arbitration and any supporting materials included with it have been or are being communicated simultaneously to all the parties with evidence thereof.
9. Payment of the requisite filing fee as per the prevalent fee schedule of FICM

The Notice of Arbitration **may** include the Statement of Claim which would comprise of:

- a statement of the facts supporting the claim;
- the points at issue;
- the legal arguments supporting the claim; and
- the relief or remedy sought
- all supporting materials on which the Claimant relies

RULE 16. Response to the Notice of Arbitration

The respondent shall file a Response with the Case director within 14 days of the Notice of Arbitration.

The response shall include:

1. A confirmation or denial of all or part of the claims, including the issue of jurisdiction;

2. A brief statement describing the nature and circumstances of any counterclaim, specifying the relief claimed and where possible, an initial qualification of the counterclaim amount;
3. Any comment in response to any statement contained in the Notice of Arbitration or any comment with respect to the matters covered;
4. Comments on the Claimant's proposal of sole arbitrator or a panel of three arbitrators
5. the Respondent's preference of the expertise of an arbitrator
6. Confirmation that copies of the Response and any supporting materials included with it have been or are being communicated simultaneously to all the parties with evidence thereof.
7. Payment of the requisite filing fee for any Counter-Claim as per the prevalent fee schedule of FICM

The Response to the Notice of Arbitration may include the Statement of Defense and a Statement of Counter-Claim

The process of arbitration commences with the issuance of the **Commencement Letter** by FICM which confirms that requirements for commencement have been met, that FICM has received all payments required under the applicable fee schedule, and that the Claimant has provided FICM with contact information of all Parties along with evidence that the Notice of Arbitration has been served on all Parties.

However, the date of the Commencement Letter so referred above is intended to be applicable for the arbitration process under these Rules only and in no way would determine the limitation period laid down by any statute of the land.

Rule 17. Changes of Claims

After the filing of a claim and before the Arbitrator is appointed, any Party may make a new or different claim against a Party or any third Party that is subject to Arbitration in the proceeding. Such claim shall be made in writing, filed with FICM and served on the other Parties. Any response to the new claim shall be made within fourteen (14) calendar days after service of such claim. After the Arbitrator is appointed, no new or different claim may be submitted except with the Arbitrator's approval. A Party may request a Hearing on this issue.

RULE 18. Recourse to Mediative Justice

Parties agreeing to opt for MEDIATIVE JUSTICE shall file with the Case director of FICM, the notice of arbitration in accordance with the Rules of Arbitration of FICM.

1. The sole arbitrator or a panel of three arbitrators shall be appointed as per these Rules.
2. The sole arbitrator or the arbitral tribunal so constituted, after the exchange of the Notice of Arbitration and Response to the Notice of Arbitration, stay the arbitration proceedings and send the case file with all the documents to the Case director.
3. The Case director then shall appoint a mediator or a batch of mediators as per the Mediation Rules of ITDC (“Mediation Rules”).
4. The Mediation proceedings shall be conducted for a period of maximum eight weeks, or any such period mutually agreed between the parties, with prior approval by the Case director, wherein all endeavor shall be made to bring the disputing parties to converge to a consensual solution to their disputes.
5. Where the parties agree on certain/all issues pertaining to the dispute, a Settlement Agreement shall be drafted recording such terms, duly signed by the parties and the mediator(s).
6. The mediator(s) shall prepare a report of the mediation proceedings and send the entire case file including the agreement so recorded between the parties, if any and the mediator’s report to the Case director.
7. The Case director in turn, shall send the same to the appointed arbitrator and the arbitration proceedings shall resume.
8. Parties can opt for the same arbitrator to act as the mediator if they wish to.
9. After the resumption of the arbitral proceedings, the arbitrator shall arbitrate over the remaining issues, if any, which could not be settled in the mediation proceedings.
10. The arbitrator shall pass the interim or final “consent” award incorporating the terms settled between the parties. In the event the parties were not able to reach at any consensus over any issue during the mediation proceedings, the arbitrator shall pass the interim/final award on merits as per these Rules.

Rule 19. Preliminary and Administrative Matters

FICM may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the Arbitration.

If a party files more than one arbitration with FICM, FICM may consolidate the arbitrations into a single arbitration, where FICM finds that common issue of law or facts or both are involved.

FICM may in its discretion consolidate fresh request of arbitration into an already ongoing case or cases of arbitration, where the circumstances so demand, keeping in view the links between the cases, and the progress made in the ongoing case or cases of arbitration.

Unless applicable law provides otherwise, where FICM decides to consolidate a proceeding into a pending Arbitration, the Parties to the consolidated case or cases will be deemed to have waived their right to designate an Arbitrator as well as any contractual provision with respect to the site and language of the Arbitration.

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 compel a third party to participate in a pending Arbitration, the Arbitrator shall determine such request, taking into account all circumstances he or she deems relevant and applicable.

At the request of any Party or at the direction of the Arbitrator, a Preliminary Conference shall be conducted with the Parties or their counsel or representatives. The Preliminary Conference may address any or all of the following subjects:

- THE EXCHANGE OF INFORMATION IN ACCORDANCE WITH RULE OR OTHERWISE;
- THE SCHEDULE FOR DISCOVERY AS PERMITTED BY THE RULES, AS AGREED BY THE PARTIES OR AS REQUIRED OR AUTHORIZED BY APPLICABLE LAW;
- THE PLEADINGS OF THE PARTIES AND ANY AGREEMENT TO CLARIFY OR NARROW THE ISSUES OR STRUCTURE THE ARBITRATION HEARING;

- THE SCHEDULING OF THE HEARING AND ANY PRE-HEARING EXCHANGES OF INFORMATION, EXHIBITS, MOTIONS OR BRIEFS;
- THE ATTENDANCE OF WITNESSES AS CONTEMPLATED BY RULE;
- THE SCHEDULING OF ANY DISPOSITIVE MOTION PURSUANT TO RULE;
- THE PREMARKING OF EXHIBITS; PREPARATION OF JOINT EXHIBIT LISTS AND THE RESOLUTION OF THE ADMISSIBILITY OF EXHIBITS;
- THE FORM OF THE AWARD; AND
- SUCH OTHER MATTERS AS MAY BE SUGGESTED BY THE PARTIES OR THE ARBITRATOR.

The Preliminary Conference may be conducted telephonically and may be resumed from time to time as warranted.

Rule 20. Interpretation of Rules and Jurisdictional Challenges

Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the Arbitration Hearing. The resolution of the issues by the Arbitrator shall be final.

Jurisdictional and arbitrability of disputes, including disputes over the formation, existence, validity, interpretation or scope of the agreement under which Arbitration is sought, and who are proper Parties to the Arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has the authority to determine jurisdiction and arbitrability issues as a preliminary matter.

Disputes concerning the appointment of the Arbitrator shall be resolved by Case director.

The Arbitrator may upon a showing of good cause, when necessary to facilitate the Arbitration, extend any deadlines established in these Rules with prior approval of the Case director.

Rule 21. Exchange of Information

(a) The Parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information (including electronically stored information) relevant to the dispute or claim immediately after commencement of the Arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, names of individuals who may have relevant knowledge or who may be called as witnesses at the Arbitration Hearing, and names of experts who have been retained or who may be called to provide expert testimony at the Arbitration Hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. Final expert reports of testifying experts will be exchanged as scheduled in the Preliminary Conference or within 14 days after the close of discovery. The Arbitrator may modify these obligations at or following the Preliminary Conference.

(b) Each Party may take two depositions of either an opposing Party or individuals under the control of the opposing Party. The Parties shall attempt to agree on the time, location and duration of the deposition, and if the Parties do not agree these issues shall be determined by the Arbitrator. The necessity of additional depositions shall be determined by the Arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing Parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The Parties shall promptly notify FICM when a dispute exists regarding discovery issues. A conference shall be arranged with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute. With the written consent of all Parties, and in accordance with an agreed written

procedure, the Arbitrator may appoint a special master to assist in resolving a discovery dispute.

Rule 22. Pre-Hearing Submissions

(a) Except as set forth in any scheduling order that may be adopted, at least fourteen (14) calendar days before the Arbitration Hearing, the Parties shall file with FICM and serve and exchange

(1) a list of the witnesses they intend to call, including any experts, in the order in which the witnesses are expected to be called,

(2) a short description of the anticipated testimony of each such witness and an estimate of the length of the witness's direct testimony, and

(3) a list of all exhibits intended to be used at the Hearing, together with a copy of such exhibits to the extent that any such exhibit has not been previously exchanged.

The Parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(b) The Arbitrator may require that each Party submit concise written statements of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought.

The statements, which may be in the form of a letter, shall be filed with FICM and served upon the other Parties, at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator.

Rule 23. Summoning Witnesses and production of Documents

The Arbitrator may issue Summons for the attendance of witnesses or the production of documents either prior to or at the Hearing. The Summons shall be issued in accordance with the applicable law. In the event a Party or a summoned person objects to the production of a witness or other evidence, the Party or summoned person may file an objection with the

Arbitrator, who shall promptly rule on the objection, weighing both the burden on the producing Party and witness and the need of the proponent for the witness or other evidence.

Rule 24. The Arbitration Hearing

(a) The Arbitrator will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator may vary these procedures if it is determined to be reasonable and appropriate to do so.

(b) The Arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The Arbitrator shall require witnesses to testify under oath if requested by any Party or deemed appropriate in the discretion of the Arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the Arbitrator shall apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The Arbitrator may limit testimony to exclude evidence that would be immaterial, cumulative or unduly repetitive, without infringing the opportunity of all Parties to present material and relevant evidence.

(e) The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine at the time the testimony was recorded. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other Parties have not had the opportunity to cross-examine, but will give that evidence only such weight as the Arbitrator deems appropriate.

(f) The Parties will not offer as evidence, and the Arbitrator shall neither admit into the record nor consider, prior settlement offers by the Parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The Hearing or any portion thereof may be conducted telephonically or video graphically with the agreement of the Parties or in the discretion of the Arbitrator.

(h) When the Arbitrator determines that all relevant and material evidence and arguments have been presented, and any interim or partial Awards have been issued, the Arbitrator shall declare the Hearing closed. The Arbitrator may defer the closing of the Hearing until a date determined by the Arbitrator in order to permit the Parties to submit post-Hearing briefs, which may be in the form of a letter, and/or to make closing arguments. If post-Hearing briefs are to be submitted, or closing arguments are to be made, the Hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments, whichever is later.

(i) At any time before the Award is rendered, the Arbitrator may, on application of a Party for good cause shown, re-open the Hearing. If the Hearing is re-opened, the time to render the Award shall be calculated from the date the reopened Hearing is declared closed by the Arbitrator.

(j) The Arbitrator may proceed with the Hearing in the absence of a Party that, after receiving notice of the Hearing fails to attend. The Arbitrator may not render an Award solely on the basis of the default or absence of the Party, but shall require any Party seeking relief to submit such evidence as the Arbitrator may require for the rendering of an Award. If the Arbitrator reasonably believes that a Party will not attend the Hearing, the Arbitrator may schedule the Hearing as a telephonic Hearing and may receive the evidence necessary to render an Award by affidavit. The notice of Hearing shall specify if it will be in person or telephonic.

(k) Any Party may arrange for a stenographic or other record to be made of the Hearing and shall inform the other Parties in advance of the Hearing. The requesting party shall bear the cost of such stenographic record. However the parties shall be at liberty to share such cost.

Rule 25. Summary Disposal

The Arbitrator may permit any Party to file a Motion for Summary Disposal of 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.

Rule 26. Withdrawal from Arbitration

(a) No Party may terminate or withdraw from Arbitration after the issuance of the Commencement Letter except by written agreement of all Parties to the Arbitration.

(b) A Party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other Parties and on the Arbitrator. However, the opposing Parties may, within seven (7) calendar days of service of such notice, request that the Arbitrator condition the withdrawal upon such terms as he or she may direct.

Rule 27. Proceeding based upon written submissions alone

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator for an Award based on written submissions and other evidence as the Parties may agree.

Rule 28. Confidentiality and Privacy

(a) FICM and the Arbitrator shall maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(b) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(c) Subject to the discretion of the Arbitrator or agreement of the Parties, any person having a direct interest in the Arbitration may attend the Arbitration Hearing. The Arbitrator may exclude any non-Party from any part of a Hearing.

(d) The Parties may not call the Arbitrator, the Case Manager or any other FICM employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating

to the dispute that is the subject of the Arbitration. The Arbitrator, Case Manager and other FICM employees and agents are also incompetent to testify as witnesses or experts in any such proceeding.

(e) The Parties shall defend and/or pay the cost (including any lawyers' fees) of defending the Arbitrator, Case Manager and/or FICM from any summons from outside Parties arising from the Arbitration.

(f) The Parties agree that neither the Arbitrator, Case Manager nor FICM is a necessary Party in any litigation or other proceeding relating to the Arbitration or the subject matter of the Arbitration, and neither the Arbitrator, Case Manager nor FICM, including its employees or agents, shall be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules, including but not limited to any disqualification of or recusal by the Arbitrator.

Rule 29. Settlement and Consent Award

(a) The Parties may agree, at any stage of the Arbitration process, to submit the case to FICM for mediation. The FICM mediator assigned to the case may not be the Arbitrator, unless the Parties so agree.

(b) The Parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the Parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(c) If, at any stage of the Arbitration process, all Parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the Arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the Parties of that concern and may request additional specific information from the Parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

Rule 30. High-Low Offer Arbitration Option

(a) At any time before the issuance of the Arbitration Award, the Parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The Parties shall promptly notify FICM and provide to FICM a copy of their written agreement setting forth the agreed-upon maximum and minimum amounts.

(b) FICM shall not inform the Arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the Parties.

(c) The Arbitrator shall render the Award in accordance with Rule 26.

(d) In the event that the Award of the Arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

Rule 31. Final Offer Arbitration Option

(a) Upon agreement of the Parties to use the option set forth in this Rule, at least seven (7) calendar days before the Arbitration Hearing, the Parties shall exchange and provide to FICM written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 27 (c). FICM shall promptly provide a copy of the Parties' proposals to the Arbitrator, unless the Parties agree that they should not be provided to the Arbitrator. At any time prior to the close of the Arbitration Hearing, the Parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to FICM, which shall promptly provide them to the Arbitrator, unless the Parties agree otherwise.

(b) If the Arbitrator has been informed of the written proposals, in rendering the Award the Arbitrator shall choose between the Parties' last

proposals, selecting the proposal that the Arbitrator finds most reasonable and appropriate in light of the standard set forth in Rule 26(c). This provision modifies Rule 26(h) in that no written statement of reasons shall accompany the Award.

(c) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 26, except that the Award shall thereafter be corrected to conform to the closest of the last proposals, and the closest of the last proposals will become the Award.

(d) Other than as provided herein, the provisions of Rule 26 shall be applicable.

Rule 32. Termination of proceedings by declaring an Award

(a) The Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the Hearing or if a Hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the Parties, except (i) by the agreement of the Parties, (ii) upon good cause for an extension of time to render the Award, or (iii) as provided in Rules (i). The Arbitrator shall provide the Final Award or the Partial Final Award to FICM for issuance in accordance with this Rule.

(b) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute the Arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the Arbitrator shall be guided by the rules of law and equity that the Arbitrator deems to be most appropriate. The Arbitrator shall have the power to grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement, including but not limited to specific performance of a contract or any other equitable or legal remedy.

(d) In addition to a Final Award or Partial Final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

(e) Interim Measures. The Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim or Partial Final Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a Party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(f) The Award of the Arbitrator may allocate Arbitration fees and Arbitrator compensation and expenses unless such an allocation is expressly prohibited by the Parties' agreement. (Such a prohibition may not limit the power of the Arbitrator to allocate Arbitration fees and Arbitrator compensation and expenses.

(g) The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the Arbitrator may deem appropriate) if provided by the Parties' agreement or allowed by applicable law. When the Arbitrator is authorized to award attorneys' fees and must determine the reasonable amount of such fees, he or she may consider whether the failure of a Party to cooperate reasonably in the discovery process and/or comply with the Arbitrator's discovery orders caused delay to the proceeding or additional costs to the other Parties.

(h) The Award will consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all Parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

(i) After the Award has been rendered, and provided the Parties have complied with Rule 30, the Award shall be served by FICM upon the Parties. Service may be made by Registered Post. It need not be sent certified or registered.

(j) Within seven (7) calendar days after service of a Partial Final Award or Final Award by FICM, any Party may serve upon the other Parties and on FICM a request that the Arbitrator correct any computational, typographical or other similar error in an Award (including the reallocation of or on account of the effect of an offer to allow judgment). Party opposing

such correction shall have seven (7) calendar days thereafter in which to file any objection. The Arbitrator may make any necessary and appropriate correction to the Award within twenty-one (21) calendar days of receiving a request or fourteen (14) calendar days after the Arbitrator's proposal to do so. The Arbitrator may extend the time within which to make corrections upon good cause. The corrected Award shall be served upon the Parties in the same manner as the Award.

(k) The Award is considered final, for purposes of judicial proceeding to enforce, modify or vacate the Award/Corrected Award.

Rule 33. Enforcement of the Award

Judicial Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the applicable state law. The Parties to Arbitration under these Rules shall be deemed to have consented that judgment upon the Award may be entered in any court having jurisdiction thereof.

Rule 34. Waiver

(a) If a Party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause substantial injustice or hardship.

(b) If any Party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing, to FICM. Failure to do so shall constitute a waiver of any objection to continued service of the Arbitrator.

Rule 35. Power of Arbitrator to put sanctions

The Arbitrator 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 Arbitrator. These sanctions may include, but are not limited to, assessment of Arbitration fees and Arbitrator compensation and expenses, 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.

Rule 36. Fees

When submitting a Notice of Arbitration, Claimant must pay the “Filing Fee” set out in the payment schedule. Such payment is non-refundable and shall be credited to Claimant’s share of the arbitration costs.

(a) Each Party shall pay its pro-rata share of FICM fees and expenses as set forth in the FICM Commencement Letter and fee schedule in effect at the time of the commencement of the Arbitration, unless the Parties agree on a different allocation of fees and expenses or FICM thereafter directs a different allocation upon consolidation with another Arbitration. FICM agreement to render services is jointly with the Party and the Party’s attorney or other representative of the Party in the Arbitration. The non-payment of fees may result in an administrative suspension of the case in accordance with Rules

(b) FICM requires that the Parties deposit the fees and expenses for the Arbitration from time to time during the course of the proceedings and prior to the Hearing. The Arbitrator may preclude a Party that has failed to deposit its pro-rata or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the Hearing.

(c) The Parties are jointly and severally liable for the payment of FICM Arbitration fees and Arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the Arbitrator may award against any other Party any such fees, compensation and expenses that such Party owes with respect to the Arbitration.

(d) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single Party for purposes of FICM assessment of fees. FICM shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the Arbitration.

(e) If the award is made within half of the time limit agreed upon between the parties, the arbitration panel shall be entitled to increased fee as may be mutually agreed between the parties.

TIME AND COSTS OF THE ARBITRATION

Following the due date for receipt of the Notice of Defence (and Counterclaim), FICM shall (i) assess the value of the dispute (i.e. the sum of the value of the claims and counterclaims) and its complexity and (ii) fix the arbitration costs in accordance with the costs schedules at Appendix 4.

The arbitration costs consist of the fees and expenses of the Tribunal and the administrative costs of FICM. The parties and the Tribunal shall not enter into separate fee arrangements.

FICM will exercise its discretion, as informed by the principal purpose of the Rules, in fixing the arbitration costs where: (i) the parties have not provided any assessment of the value of some or all of their claims; and/or (ii) the parties have agreed to arbitration under the Rules but have used a different arbitration clause from the FICM model clause or have modified the same.

The costs of the arbitration shall be payable in equal shares by Claimant and by Respondent, upon notification by FICM.

Once each party has paid its share of the arbitration costs or installment thereof, as determined by FICM, it shall provide the parties and the Tribunal with a confirmation of the same and FICM shall notify the Tribunal and the parties of the time it grants to the Tribunal to submit its draft Award (the “FICM Time Notice”; the “Time Notification Date” is the date on which this notice is provided to the parties).

Upon the issuance of an interim or partial Award, FICM shall notify the parties and the Tribunal of the time it grants to the Tribunal to submit any further draft Award (also a “FICM Time Notice”).

6. Should a party fail to pay its share of the arbitration costs or installment thereof, as applicable, FICM may request the other party/parties to make the payment. When a request for payment has not been complied with, FICM may direct the Tribunal to suspend its work and fix a time limit for

payment on the expiry of which the relevant claims shall be considered as withdrawn. A party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.

7. At any stage prior to the issuance of the final Award, FICM may adjust the arbitration costs to take into account (i) any significant change in the claims of the parties, the complexity of the dispute, the anticipated time and expenses incurred by the Tribunal and/or the conduct of the arbitration, and/or (ii) the termination of the arbitration, including by processing reimbursements to the parties in proportion of their respective payments. In addition to the arbitration costs, parties may be required to pay taxes or other taxes or charges that may be applicable to the arbitrator's fees or to FICM's share of the arbitration costs. Such taxes or charges are payable in addition to the arbitration costs, and the arbitration costs exclude such taxes or charges.

Rule 37. Miscellaneous

1. If, at any time, any Party has failed to pay fees or expenses in full, FICM may order the suspension or termination of the proceedings. FICM may so inform the Parties in order that one of them may advance the required payment. If one Party advances the payment owed by a non-paying Party, the Arbitration shall proceed and the Arbitrator may allocate the non-paying party's share of such costs in accordance with Rules). An administrative suspension shall toll any other time limits contained in these Rules, applicable statutes or the Parties' Agreement.
2. FICM does not maintain an official record of documents filed in the Arbitration. If the Parties wish to have any documents returned to them, they must advise FICM in writing within 30 calendar days of the conclusion of the Arbitration. If special arrangements are required regarding file maintenance or document retention, they must be agreed to in writing and FICM reserves the right to impose an additional fee for such special arrangements. Documents that are submitted for e-filing are retained for 30 calendar days following the conclusion of the Arbitration.
3. Every document filed with FICM shall be deemed to have been signed by the Arbitrator, Case Manager, attorney or declarant who submits the document to FICM, and shall bear the typed name, address and

telephone number of a signing attorney. Documents containing signatures of third-parties (i.e., unopposed motions, affidavits, stipulations, etc.) may also be filed by indicating that the original signatures are maintained by the filing Party in paper-format.

4. For documents that are 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 FICM. Service may be made by hand-delivery, overnight delivery service or registered post. Service by any of these means is considered effective upon the date of deposit of the document.
5. In computing any period of time prescribed or allowed by these Rules for a Party to do some act within a prescribed period after the service of a notice or other paper on the Party and the notice or paper is served on the Party only by registered mail service, three (3) calendar days shall be added to the prescribed period.
6. No Party may have any ex parte communication with a neutral Arbitrator, except as provided in section (g) of this Rule. The Arbitrator(s) may authorize any Party to communicate directly with the Arbitrator(s) by email or other written means, so long as copies are simultaneously forwarded to the FICM Case Manager and the other Parties.
7. A Party may have ex parte communication with its appointed neutral or non-neutral Arbitrator as necessary to secure the Arbitrator's services and to assure the absence of conflicts and in connection with the selection of the Chairperson of the arbitral panel.
8. The Parties may agree to permit more extensive ex parte communication between a Party and a non-neutral Arbitrator. More extensive communications with a non-neutral arbitrator may also be permitted by applicable law and rules of ethics.

FICM Mediation Rules

1 APPLICATION OF RULES

1.1 These Mediation Rules (the “Rules”) shall apply to all mediations administered by Federation of Integrated Conflict Management (“FICM”) or any of its units, subsidiaries, branches, systems etc, save that where a mediation is administered pursuant to the Arb-Med-Arb protocol, the Rules shall be modified as necessary to be consistent with the terms of the AMA Protocol.

1.2 The parties may at any time agree to modify the provisions of the Rules, subject to the agreement of the mediator and FICM.

2 COMMENCEMENT OF MEDIATION

2.1 Any party or parties wishing to commence mediation under the Rules shall submit a written request for mediation in the form (the “Request”) together with the applicable filing fee set out in Fees and cost schedules..

2.2 A copy of the Request should be sent to all other parties to the mediation.

3 AGREEMENT TO MEDIATE

For cases administered pursuant to the AMA Protocol, Rules may be modified by the AMA Protocol.

3.1 If the Request is made pursuant to an agreement to mediate at FICM, evidence of such an agreement shall be attached to the Request.

3.2 If the request is made pursuant to an agreement to mediate at FICM, FICM will acknowledge receipt of the Request in writing. The date on which FICM acknowledges such receipt shall be deemed to be the date of the filing of the Request and the date of commencement of mediation.

3.3 If the Request is not made pursuant to an agreement to mediate at FICM, it will promptly contact the parties regarding the proposal for mediation, and may assist the parties in considering the proposal. The mediation shall be deemed to commence on the date on which FICM sends written confirmation to the parties that an agreement to mediate has been reached.

3.4 In the event of any doubt as to the existence of an agreement to mediate at FICM, it may request further information from the parties or take such other steps as may be appropriate.

4 APPOINTMENT OF MEDIATOR

4.1 The parties may jointly nominate a mediator to conduct the mediation for confirmation by FICM. The nomination may be from FICM's Panel of Mediators or from any other panel.

4.2 Where the parties are unable to agree on a mediator to be nominated within 10 days from the date of commencement of the mediation, FICM shall appoint a mediator from FICM's Panel of Mediators. FICM may also nominate a mediator from the panel of one of its partner organizations, in the event that there is no suitable mediator from the FICM panel.

4.3 In confirming or appointing a mediator, FICM shall consider the prospective mediator's attributes, including but not limited to nationality, language, skills, qualifications, and areas of expertise, experience, and the prospective mediator's availability.

4.4 The parties may nominate more than one mediator or request FICM to appoint more than one mediator, in accordance with the provisions of the Rules. Where appropriate, FICM may propose to the parties that there be more than one mediator. References to "mediator" under these Rules will then be deemed as reference to "mediators".

4.5 Before confirmation or appointment, a prospective mediator shall make a written declaration of his or her acceptance, availability, impartiality and independence, and shall also immediately disclose to the parties any known actual or potential conflicts of interest which could reasonably raise any question of his or her impartiality and independence.

4.6 Any party may object to the appointment of the mediator on the basis of any disclosed actual or potential conflict, or choose to waive the conflict.

4.7 If any party has valid objections to the appointment of the mediator, the party shall notify FICM and all the other parties in writing as soon as possible and FICM may within five business days of receipt of notification of the objections, appoint another mediator.

4.8 FICM may replace the mediator in the course of the mediation if a conflict arises or in exceptional circumstances raised by the mediator or any of the parties.

5 FEES AND COSTS

5.2 Following commencement of the mediation, FICM shall request all parties to pay one or more deposits to cover FICM's administrative fees, as set out, the mediator's fees, and other expenses of FICM and the mediator.

5.3 FICM may stay or terminate the mediation if any requested deposit is not paid.

5.4 Upon termination of the mediation, FICM shall fix the total costs of the mediation and reimburse the parties for any excess payment or bill the parties for any balance required pursuant to the Rules

5.5 All deposits requested and costs fixed by FICM shall be borne equally by the parties, except where they have agreed otherwise in writing.

5.6 Any party is free to pay the unpaid balance of any deposits and costs should another party fail to pay its share.

5.7 Any other expenditure incurred by the respective parties shall remain the responsibility of that party, unless otherwise agreed by the parties.

6 CONDUCT OF MEDIATION

6.1 FICM will, in consultation with the parties, determine the location of the mediation and may engage in the following in order to facilitate the achievement of full settlement at mediation:

1. Appointing a suitable mediator;
2. Assisting parties with entering into a mediation agreement;

3. Organizing the exchange of any pertinent information and documents;
4. Arranging a suitable venue and date for mediation;
5. Providing administrative and logistical support; and
6. Providing case-management services.

6.2 The parties may, by agreement, determine the language(s) in which the mediation is to be conducted and shall inform FICM of their agreement within such time as FICM may specify. Absent any agreement between the parties, FICM will determine the language(s) of the mediation in consultation with the mediator.

6.3 The parties shall inform FICM of the names of their representatives and advisors attending the mediation within such time as FICM may specify.

6.4 At least 10 days, or such other time as the mediator may specify, before the scheduled mediation, the parties shall submit to FICM and exchange statements of their cases and any relevant documents.

6.5 Where appropriate, FICM may arrange for a pre-mediation conference to discuss the manner and procedure for the conduct of the mediation, including setting relevant timelines. For the avoidance of doubt, the pre-mediation conference may take place in person, by teleconference, or other electronic means.

6.6 In determining the manner and procedure for the conduct of the mediation, the mediator shall give due respect to the wishes of the parties and be fair and impartial.

6.7 The mediator may communicate with the parties orally, in writing, in person, electronically, or otherwise, and may do so jointly or separately, before and during the scheduled mediation, and, in the event that there is no full settlement during the scheduled mediation, for a period of time after the scheduled mediation in order to facilitate the achievement of a full settlement.

6.8 The mediator may obtain expert advice or assistance in technical matters with the parties' consent and the parties shall bear any expenses incurred in this regard.

6.9 All parties shall act in good faith to prepare for the mediation and in the course of participating in the mediation.

7 TERMINATION OF MEDIATION

7.1 The mediation commenced pursuant to the Rules shall terminate upon:

- a. the signing by the parties of a written settlement agreement; or
- b. the issuance of written confirmation of termination by FICM after the occurrence of the earliest of:
 - I. any party giving written notice of withdrawal to FICM, the mediator and the other parties;
 - II. the mediator giving written notice to FICM and the parties that the mediation should be terminated;
 - III. FICM giving written notice to the parties that any time limit set for the mediation, including any extension thereof, has expired; or
 - IV. FICM giving written notice to the parties that any payment by one or more parties pursuant to the Rules has not been made for more than 14 days after the due date for payment. +

8 SETTLEMENT AGREEMENT

8.1 Any settlement agreement reached in the course of mediation shall be in writing and signed by or on behalf of the parties.

8.2 For the avoidance of doubt, a settlement agreement may take the form of an electronic record, and be signed by electronic signature.

8.3 Where any settlement agreement has been reached, the mediator shall promptly notify FICM of the same, and provide FICM with a copy of such agreement.

8.4 A settlement agreement may be recorded substantially in the format set out in Appendix C.

9 CONFIDENTIALITY

9.1 Subject to any agreement between the parties, the FICM, and any other applicable law:

a. The mediation shall be private and confidential; and

b. Any settlement agreement between the parties shall not be disclosed save where it is necessary for purposes of its implementation or enforcement.

9.2 No communications made in the mediation, including any information disclosed and views expressed in relation to any proposal for settlement, shall be used in any judicial, arbitration, or similar proceedings, unless required by applicable law.

9.3 The mediator shall not give testimony in any judicial, arbitration or similar proceedings concerning any aspect of the mediation under the Rules, unless required by applicable law or unless all of the parties and the mediator agree otherwise in writing.

9.4 No persons other than the parties, their representatives, their advisors, and the mediator may attend the mediation, save with the permission of the parties and the mediator.

9.5 There shall be no transcript or formal record of the mediation, save for that which may be necessary to record any settlement agreement.

10 GENERAL PROVISIONS

10.1 The mediator, FICM and its employees shall not be liable to any person for any act or omission in connection with the mediation, unless there is fraudulent or willful misconduct.

ARTICLE 1

MODEL NOTICE OF ARBITRATION

To start a FICM arbitration, please complete the model Notice of Arbitration provided below and send it with a copy of the Filing Fee payment receipt to: case_director@arbitrationhub.org and to Respondent, in accordance with the FICM Rules of Arbitration.

Notice of Arbitration under the FICM Rules of Arbitration [Name of Claimant(s)] Vs. [Name of Respondent(s)] Claimant[s] hereby submit[s] this Notice of Arbitration in accordance with FICM Rules of Arbitration.

Parties to the dispute Claimant[s] [is/are] [Please set out here the full name and contact details (including e-mail address, postal address, and telephone number) of (i) Claimant and (ii) its legal representative(s) in the arbitration, if any. Please provide a brief description of Claimant's business]. Respondent[s] [is/are] [Please set out here the full name and contact details (including e-mail address, postal address, and telephone number) of Respondent, and a brief description of Respondent's business].

The claim(s) [Please provide a statement of up to a maximum of ten pages, setting out the background and nature of the dispute, and the issues in dispute. As part of this statement, please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence. In addition to the contract(s) to be provided under section 4 below, you may enclose with your Notice of Arbitration up to ten documents to support your claim(s).]

Relief sought [Please state what remedies you are seeking in this arbitration, including the amounts you are claiming or an estimate of the value of your claims. The explanation regarding why you are seeking this remedy is to be provided in your statement about the dispute, in section above.]

The arbitration agreement [Please reference the contract(s) (if any) containing the agreement between the parties to submit the dispute to arbitration, and quote any such arbitration agreements here. Please provide

a copy of the contract(s) (if any) with your Notice of Arbitration. If the contract(s) provide that, before starting arbitration, Claimant will first issue Respondent with a written invitation to negotiate or mediate, please provide a copy of this invitation. If you have a FICM contract registration number (“CRN”) for the contract(s), please indicate the CRN(s) here to take the benefit of the reduced costs schedule.]

Governing law [If the contract(s) contain a governing law clause, please quote that clause here; otherwise, please indicate any proposals you may have as to the applicable rules of law.]

The Arbitral Tribunal [Please indicate here any proposals you wish to make regarding the profile and/or qualifications of the member(s) of the Arbitral Tribunal or, if applicable under Article FICM Rules of Arbitration, the full name and contact details (including e-mail address, postal address, and telephone number) of your nominated arbitrator.]

Other procedural matters, to deal with the dispute fairly, expeditiously and at proportionate cost [Please indicate here any proposals you wish to make to achieve the resolution of the dispute in accordance with the principal purpose of the FICM Rules of Arbitration [Please sign and date this Notice of Arbitration.]

ARTICLE 2

MODEL NOTICE OF DEFENCE (AND COUNTERCLAIM)

To respond to a Notice of Arbitration (and submit any counterclaims), please complete the model Notice of Defense (and Counterclaim) provided below.

NOTICE OF DEFENSE [AND COUNTERCLAIM]

under the FICM Rules of Arbitration [Name of Claimant(s)] Vs. [Name of Respondent(s)] Respondent[s] hereby submit[s] this Notice of Defense [and Counterclaim] in accordance with Article 2.1 of the FICM Rules of Arbitration.

Parties to the dispute [Please provide here any comments you may have on section 1 of the Notice of Arbitration and indicate the full name and contact details (including e-mail address, postal address, and telephone number) of your legal representative(s) in the arbitration, if any.]

The defence [Please provide a statement of up to a maximum of ten pages, setting out your position on the dispute and the claims (see sections 2 and 3 of the Notice of Arbitration). If you have any comments on the Notice of Arbitration, please provide these in a further statement of up to a maximum of ten pages. As part of the above, please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence. You may enclose with your Notice of Defence up to ten documents to support each of the two statements above. For the avoidance of doubt, where a document has already been provided by Claimant, it is not necessary to provide it again.]

The counterclaim [If you have a counterclaim, please set it out in a statement of up to a maximum of ten pages. You may enclose with your Notice of Defence and Counterclaim up to ten documents to support your counterclaim.]

Relief sought [Please state what remedies you are seeking in this arbitration, including the amounts you are counterclaiming or an estimate

of the value of your counterclaims. For the avoidance of doubt, any explanation regarding why you are seeking this remedy is to be provided in your statement about the dispute]

[If you have a GBCC-ICDT CRN for the contract(s) containing the agreement between the parties to submit the dispute to arbitration and Claimant did not provide this with the Notice of Arbitration, please indicate the CRN(s) here to take the benefit of the reduced costs schedule.]

Additional comments [Please provide here any comments or proposals you may have of the Notice of Arbitration, namely regarding: the governing law; the profile and/or qualifications of the member(s) of the Arbitral Tribunal or, the full name and contact details (including e-mail address, postal address, and telephone number) of your nominated arbitrator; and any proposals you wish to make to achieve the resolution of the dispute in accordance with the principal purpose of the FICM Rules of Arbitration.]

[Please sign and date this Notice of Defence.]

ARTICLE 3

MODEL NOTICE OF RESPONSE TO COUNTERCLAIM

To respond to a counterclaim contained in a Notice of Defense and Counterclaim, please complete the model Notice of Response to Counterclaim provided below.

Notice of Response to Counterclaim under the FICM Rules of Arbitration

[Name of Claimant(s)] Vs. [Name of Respondent(s)]

Claimant[s] hereby submit[s] this Notice of Response to Counterclaim in accordance with Article 4.2 of the FICM Rules of Arbitration.

Response to the counterclaim [Please provide a statement of up to a maximum of ten pages, setting out your position on the counterclaim only. Please indicate whether, and for which issues and to what extent, you expect to require witness and/or expert evidence. You may enclose with your Notice of Response to Counterclaim up to ten documents to support your position. For the avoidance of doubt, where a document has already been provided by you or by Respondent, it is not necessary to provide it again.]

[Please sign and date this Notice of Response to Counterclaim.]

ARTICLE 4

TIME AND COST SCHEDULES

There are three aspects to the payment of the FICM costs deposit, or “advance on costs,” as it is called under the FICM Arbitration Rules:

ARBITRATION

FILING FEE

A filing fee of USD1,000, which is paid by the Claimant when it files a “Request for Arbitration;” This is a condition of the Case director that notifies the “Request” to the respondent(s). A US1,000 fee is also due from any party that files a request to join an additional party.

APPOINTMENT FEE

The appointment fee is payable where a request for appointment of arbitrator(s) is made in an ad hoc case. The fee is payable by the party requesting the appointment. A request for appointment must be accompanied by payment of the appointment fee of USD 500 for each Arbitrator.

FICM ADMINISTRATIVE EXPENSES

The “administrative expenses,” also referred to as “administrative costs,” represent the fee charged by FICM for administering a case. The USD1,000 payment that accompanies the ‘Request’ is an advance on administrative expenses.

FICM fixes the administrative expenses on the basis of the scales set out in Appendix, or, where the sum in dispute is not stated, at its discretion. FICM may fix the administrative expenses at a lower or higher figure than that which would result from the application of the scales. This is provided that expenses shall not exceed the maximum amount of the scale (i.e., USD100,000).

Administration Fee Schedule

Sum in Dispute (USD)	Minimum Administration Fees (USD)	Maximum Administration Fees (USD)
Up to 50,000	3000	3,800
50,001 to 100,000	3000	3,800 + 2.200% excess over 50,000
100,001 to 500,000	3000	4,900 + 1.200% excess over 100,000
500,001 to 1,000,000	7500	9,700 + 1.000% excess over 500,000
1,000,001 to 2,000,000	12000	14,700 + 0.650% excess over 1,000,000
2,000,001 to 5,000,000	17000	21,200 + 0.320% excess over 2,000,000
5,000,001 to 10,000,000	22000	30,800 + 0.160% excess over 5,000,000
10,000,001 to 50,000,000	30000	38,800 + 0.095% excess over 10,000,000
50,000,001 to 80,000,000	60000	76,800 + 0.040% excess over 50,000,000
80,000,001 to 100,000,000	80000	88,800 + 0.031% excess over 80,000,000
Above 100,000,000	85000	95000

The administration fees do not include the following:

- Fees and expenses of the Tribunal;
- Usage cost of facilities and support services for and in connection with any hearing (e.g. hearing rooms and equipment, transcription and interpretation services);

FICM will charge a minimum administration fee of USD3,000, payable for all cases, unless the case director otherwise determines.

Any FICM administrative expenses may be subject to taxes or charges of a similar nature at the prevailing rate.

ARBITRATORS' FEES

The arbitrators' fees are managed by FICM and fixed on the basis of the relevant scale found in Appendix. FICM will take into consideration the procedure to be followed, out of several such mentioned in the article

above, including the diligence of the arbitrators, time spent, rapidity of the proceedings and complexity of the dispute.

Based on the amount in dispute, the scale provides a minimum and a maximum for one arbitrator.

The fees are multiplied by the number of arbitrators. In exceptional circumstances, FICM may fix the fees of the arbitrators at a figure higher or lower than that which would result from the application of the relevant scale. Where the sum in dispute is not stated, FICM fixes the arbitrators' fees at its discretion.

Amounts paid to arbitrators do not include any taxes or charges and parties have a duty to pay any such taxes or charges. However, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.

Arbitrator's Fee Schedule

Sum in Dispute USD	Minimum Arbitrator's Fees USD	Maximum Arbitrators Fee USD
Up to 50,000	5000	6,250
50,001 to 100,000	5000	6,250 + 13.800% excess over 50,000
100,001 to 500,000	10000	13,150 + 6.500% excess over 100,000
500,001 to 1,000,000	30000	39,150 + 4.850% excess over 500,000
1,000,001 to 2,000,000	50000	63,400 + 2.750% excess over 1,000,000
2,000,001 to 5,000,000	75000	90,900 + 1.200% excess over 2,000,000
5,000,001 to 10,000,000	100000	126,900 + 0.700% excess over 5,000,000
10,000,001 to 50,000,000	150000	161,900 + 0.300% excess over 10,000,000
50,000,001 to 80,000,000	200000	281,900 + 0.160% excess over 50,000,000
80,000,001 to 100,000,000	300000	329,900 + 0.075% excess over 80,000,000
100,000,001 to 500,000,000	500000	344,900 + 0.065% excess over 100,000,000
Above 500,000,000	600000	605,000 + 0.040% excess over 500,000,000

up to a maximum of 2,000,000

Arbitrators' expenses

The arbitrators' expenses or disbursements are also managed by FICM and include such expenses as for travel, accommodation, meals, courier charges and facilities for hearings.

FEES AND EXPENSES FOR EXPERT(S)

In those cases where an expertise is ordered by the Arbitral Tribunal, the latter fixes the fees and expenses of the expert(s) and is responsible for the management and payment of such fees and expenses by the parties. The costs of an expertise are not covered by the advance on costs fixed by FICM—although the case director may administer the accounts as a service to the Arbitral Tribunal.

LEGAL COSTS

The cost of legal representation and the other costs incurred by the parties for the arbitration are not covered by the advance on costs required by FICM. They are included in the costs of the arbitration as fixed by the Arbitral Tribunal in the Award.

MEDIATION

A \$500 non-refundable deposit, which will be applied toward the mediation fee, is required to initiate the FICM's administration of the mediation and appointment of the mediator.

MEDIATION ADMINISTRATION FEE

The FICM administrative fee, split by the parties, is \$65 per hour billed by the mediator with a minimum four hour charge for any mediation held.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the request to initiate mediation is filed but prior to the mediation conference, the FICM administrative fee is \$500 (to which the

deposit will be applied) plus any mediator time and expenses incurred. These costs shall be borne by the initiating party unless the parties agree otherwise.

MEDIATORS FEE

The mediator's fee is stated on his or her resume. (Which could range anywhere between USD 100/ to USD 300 an hour)

ADDITIONAL PARTY FEES

If there are more than two separately represented parties in the arbitration, an additional 10% of each fee contained in these fee schedules will be charged for each additional separately represented party. However, Additional Party Fees will not exceed 50% of the base fees contained in these fee schedules unless there are more than 10 separately represented parties.

OTHER FEE HEADS

EMERGENCY INTERIM RELIEF FEES

The following fees shall be payable in an application for emergency interim relief . An application must be accompanied by a payment of the following:

Administration Fee for Emergency Arbitrator Applications (Non-Refundable): USD 5000/

EMERGENCY ARBITRATOR'S FEES AND DEPOSITS:

The deposits towards the Emergency Arbitrator's fees and expenses shall be fixed at USD20,000, unless the case director determines otherwise.

The Emergency Arbitrator's fees shall be fixed at USD25,000, unless the case director determines otherwise.

FEES FOR ADDITIONAL SERVICES

FICM reserves the right to assess additional administrative fees for services performed by FICM that go beyond those provided for in the FICM rules, but which are required as a result of the parties' agreement or stipulation.

VENUE / HEARING FACILITY RENTALS

The fees do not cover the cost of hearing rooms, which are available on a rental basis.

CHALLENGE FEE (NON-REFUNDABLE)

A party submitting a notice of challenge shall make payment of the following challenge fee: Administration Fee for Arbitrator Challenges (Non-Refundable): USD 8000/-

Important notes:

The costs of the arbitration shall be payable in equal shares by Claimant and by Respondent. The costs of the arbitration are based on the value of the dispute as per the table annexed (i.e. the sum of the value of the claims and counterclaims).

The time indication corresponds to the indicative duration of time in calendar days to be granted by FICM from the Time Notification Date until the submission of the draft of the first or next Award by the Tribunal to FICM.

FICM provides the facility for parties to register with FICM their contracts containing a FICM arbitration clause, including agreements for submitting existing disputes to FICM arbitration. Where such contracts have been validly registered, FICM shall issue the parties with a contract registration number ("CRN"), which shall entitle the parties to a reduced costs schedule.

The costs of the arbitration include the fees and expenses of the arbitrators and FICM administrative costs fixed by FICM in accordance with the costs scales in force, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal, venue, facilities and other costs incurred by the parties for the arbitration.

Once the arbitrators' fees and expenses and FICM administrative costs have been finalized by FICM at the end of the proceedings, the Arbitral Tribunal fixes the costs of the arbitration in the Award and decides which of the parties shall bear them or in what proportion they shall be borne by the parties.

If the arbitration terminates before it reaches the stage of a final award, FICM will fix the fees and expenses of the arbitrators and FICM administrative expenses. If the parties have not agreed upon the allocation of the costs of the arbitration or other relevant issues with respect to costs, such matters shall be decided by the Arbitral Tribunal. In case the Arbitral Tribunal is not yet constituted at the time of the withdrawal, the FICM case director will fix such costs.

FEE PAYMENT OPTIONS

FICM offers parties different options for the payment of administrative fees. Two such flexible and diverse options are stated below in the schedule table.

For both options, administrative fees are based on the amount of the claim or counterclaim and are to be paid by the party bringing the claim or counterclaim at the time the demand or claim is filed with FICM. Arbitrator compensation is not included in either schedule. Unless the parties' agreement provides otherwise, arbitrator compensation and administrative fees are subject to allocation by an arbitrator in an award.

STANDARD FEE SCHEDULE

A payment schedule in two parts that provides for somewhat higher initial filing fees but lower overall administrative fees for cases that proceed to a hearing.

The **Initial Filing Fee** is payable in full by a filing party when a claim, counterclaim, or additional claim is filed.

The **Final Fee** will be incurred for all cases that proceed to their first hearing and is payable in advance at the time the first hearing is scheduled.

Fee Modifications: Fees are subject to increase if the claim or counterclaim is increased after the initial filing date. Fees are subject to decrease if the claim or counterclaim decreases prior to the first hearing.

Cases with Three or More Arbitrators are subject to a minimum Initial Filing Fee of \$3500 and a Final Fee of \$5500.

Nonmonetary Claims: The non-monetary filing fee is the minimum filing fee for any case requesting non-monetary relief. Where a party seeks both monetary damages and non-monetary relief, the higher of the two filing fees will apply.

Refunds—Standard Fee Schedule:

Initial Filing Fees: Subject to a \$600 minimum non-refundable Initial Filing Fee for all cases, refunds of Initial Filing Fees for settled or withdrawn cases will be calculated from the date FICM receives the notice of arbitration as follows

- Within 7 calendar days of filing—90%
- between 8 and 30 calendar days of filing—50%
- between 31 and 60 calendar days of filing—25%
- However, no refunds will be made once any arbitrator has been appointed (including one arbitrator on a three-arbitrator panel).

Final Fees: If a case is settled or withdrawn prior to the first hearing taking place, all Final Fees paid will be refunded. However, if FICM is not notified of a cancellation at least 24 hours before a scheduled hearing date, the Final fee will remain due and will not be refunded.

FLEXIBLE FEE SCHEDULE

A three-payment schedule that provides for lower initial filing fee and then spreads subsequent payments out over the course of the arbitration. Total administrative fees will be somewhat higher for cases that proceed to a hearing.

The **Initial Filing Fee** is payable in full by a filing party when a claim, counterclaim, or additional claim is filed.

The **Proceed Fee** must be paid within 90 days of the filing of the notice of arbitration or a counterclaim before FICM will proceed with further administration of the arbitration, including the arbitrator appointment process.

If a Proceed Fee is not submitted within 90 days of the filing of the Claimant's Notice of Arbitration, FICM will administratively close the file and notify all parties.

If the Flexible Fee Schedule is being used for the filing of a counterclaim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

The **Final Fee** will be incurred for all cases that proceed to their first hearing and is payable in advance at the time the first hearing is scheduled.

Fee Modifications: Fees are subject to increase if the claim or counterclaim is increased after the initial filing date. Fees are subject to decrease if the claim or counterclaim decreases prior to the first hearing.

Cases with Three or More Arbitrators are subject to a minimum Initial Filing Fee of USD2,000 and USD4,500 Proceed Fee and a Final Fee of \$6,500.

Nonmonetary Claims: The non-monetary filing fee is the minimum filing fee for any case requesting non-monetary relief. Where a party seeks both monetary damages and non-monetary relief, the higher of the two filing fees will apply.

Refunds—Flexible Fee Schedule:

Under the Flexible Fee Schedule, **Filing Fees** and **Proceed Fees** are **non-refundable** once incurred

Final Fees: If a case is settled or withdrawn prior to the first hearing taking place, all Final Fees paid will be refunded. However, if FICM is not notified of a cancellation at least 24 hours before a scheduled hearing date, the Final fee will remain due and will not be refunded.

Time Schedule

In addition to cost-efficiency, parties require disputes to be decided as quickly as circumstances permit, as any delay in resolving the dispute may lead to additional commercial or financial difficulties or risks. The FICM time schedule provide an indicative time of the duration that FICM will set for tribunals to hear and determine key issues and to produce a draft award.

This indicative time is a useful guide for parties to estimate the time that may be required to obtain the final resolution of their dispute, which will also include the initial period to commence the arbitration and form the tribunal, and the final period for FICM to review the draft award.

Finally, if there is any significant change during the arbitration in the claims of the parties, the complexity of the dispute, the anticipated time and expenses incurred by the Tribunal and/or the conduct of the arbitration, FICM may adjust the arbitration costs. FICM may also do so if the parties depart from its model clauses.

ARTICLE 5

SEAT OF ARBITRATION

FICM SEATS OF ARBITRATION (AS OF 1 APRIL 2019)

Parties are invited to choose one of the following recommended seats, or legal place, of arbitration to be designated in their arbitration agreement:

- | | | |
|----------------------------------|-----------------------------|-------------------------------|
| — Amsterdam
(The Netherlands) | — Helsinki
(Finland) | — Porto (Portugal) |
| — Auckland (New Zealand) | — Hong Kong (PRC) | — Rotterdam (The Netherlands) |
| — Berlin
(Germany) | — Lisbon
(Portugal) | — Seoul (South Korea) |
| — Calgary
(Canada) | — London (UK) | — Singapore
(Singapore) |
| — Copenhagen
(Denmark) | — Madrid (Spain) | — Stockholm
(Sweden) |
| — Frankfurt
(Germany) | — Miami (USA) | — Sydney
(Australia) |
| — Geneva
(Switzerland) | — Montreal
(Canada) | — Toronto
(Canada) |
| — The Hague (The Netherlands) | — Munich
(Germany) | — Vancouver
(Canada) |
| — Hamburg
(Germany) | — New York (USA) | — Vienna
(Austria) |
| | — Oslo (Norway) | — Zurich
(Switzerland) |
| | — Ottawa
(Canada) | |
| | — Paris (France) | |
| | — Port Louis
(Mauritius) | |

Parties can also take advice on the most suited place of arbitration to be mentioned in their agreements. It is of high note that the most popular seat of arbitration are always essentially not the most safe and appropriate seat of arbitration for parties in cross border transactions.

ARTICLE 6

Arb-Med-Arb Approach

A process where a dispute is referred to arbitration before mediation is attempted. If the parties settle their dispute through mediation, their mediated settlement may be recorded as a consent award. If mediation fails, they may continue with the arbitration proceedings.

Parties who have signed an arbitration agreement and/or commenced arbitration may wish to refer their dispute to mediation, either before they commence arbitration or during arbitration.

If the parties to an arbitration agreement refer their dispute to mediation as a first means of resolving their dispute, this is referred to as “Med-Arb”, as arbitration commences in the event mediation does not result in settlement.

Under the **FICM Arb-Med-Arb Approach**, the arbitrator(s) and the mediator(s) will be separately and independently appointed by the Singapore International Arbitration Centre* (FICM) and FICM, respectively, under the applicable arbitration rules and mediation rules of each Centre. Unless the parties otherwise agree, the arbitrator(s) and the mediator(s) will generally be different persons.

Arb-Med-Arb is a flexible and efficient form of alternative dispute resolution. It combines the advantages of confidentiality and neutrality with enforceability and finality.

Both arbitration and mediation proceedings are confidential and can be conducted by a neutral third party at the parties’ venue of choice.

A settlement agreement obtained through the Arb-Med-Arb process may be made a consent award. The consent award is accepted as an arbitral award, and, subject to any local legislation and/or requirements, is generally enforceable in 150 countries under the New York Convention. Parties can achieve finality whether through the mediation process or arbitration process.

ARTICLE 7

Appointing Authority Service

Parties who wish to appoint an arbitrator, mediator or expert can seek FICM's recommendations.

Parties wishing to use FICM's appointing authority service may submit a request along with the requisite appointment fee as follows:

One (1) mediator or expert – USD 500

How it works

Within 24 hours of engaging FICM's Appointing Authority Service (AAS), FICM will provide parties with a shortlist of five most suitable candidates for their needs. If parties subsequently agree to proceed with mediation at FICM, the appointment fee will be credited and be offset from the case filing and management fees.

ARTICLE 8

Dispute Boards and Standing Neutrals

Under various protocols and systems of FICM, parties appoint a standing Neutral or a Dispute Board comprising up to three neutral professionals who are experts in relevant fields such as engineering, technology, law etc.

The standing neutrals or the Dispute Board gets incorporated into any transaction or project at the beginning or contract negotiation stage itself and remains an active part of the transaction or project till its conclusion or completion. They follow the project or transaction from start to finish and proactively help to manage issues that may arise, through a range of customised dispute avoidance and resolution processes.

Parties can opt for a DB or a standing neutral comprising one, two or three expert professionals depending on the complexity and needs of the project. Interested users may choose their DB members from FICM's Specialists (Infrastructure) Panel, a list which comprises experts with the appropriate experience in resolving complex infrastructure disputes.

ARTICLE 9

Early Neutral Evaluation (ENE)

Early Neutral Evaluation is a process in which a third party neutral examines the evidence and listens to the disputants' positions, and then gives the parties his or her evaluation of the case. It works best when used as a prelude to either of the processes of mediation and arbitration. It provides early focus to complex commercial arbitration, and based on that focus, to provide a basis for sensible case management or offer resolution of the entire case, in the very early stages.

“A senior counsel or a panel with expertise and experience in the subject matter are called upon to conduct ENE. Such persons are referred to as the Evaluator or a neutral person. A written brief is provided by the lawyers to such neutral evaluator, summarizing the facts, legal arguments and authorities in support of each party's case. In a nutshell, the process would be same as would be required for making submissions in court.

In the initial session before the evaluator, a decision-maker of each party accompanied by their lawyers would be present and a short concise presentation would be made by the counsels for each side referring to the documents and legal proposition. It is open to the evaluator to raise queries on the counsels for the parties and involve the decision-makers of the parties in the process. The neutral evaluator thereafter retires to prepare what according to the neutral evaluator is the central dispute in the case and what as per the neutral evaluator is the likely outcome on each of the issues/aspects. The evaluator also estimates the costs to each of the parties.

The evaluator thereafter shares his conclusion with the parties either at joint sessions or at private sessions, called caucuses. Said private caucuses are often useful as they may allow a more frank and free discussion about the strength and weaknesses of the respective parties. If no settlement is possible the parties may opt for mediation and/or arbitration or Arb-med Arb scheme to dispute resolution.

ARTICLE 10

Code of Ethics for Arbitrators

1. Appointment

1.1 A prospective arbitrator shall accept an appointment only if he is fully satisfied that he is able to discharge his duties without bias, he has an adequate knowledge of the language of the arbitration, and he is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.

1.2 Should the prospective arbitrator be aware of any potential time constraints in the next 12 months in his ability to discharge his duties if he is appointed as an arbitrator, he shall, without breaching any existing confidentiality considerations and/or obligations, disclose details of such time constraints to the Case director of FICM. FICM reserves the right to refuse to appoint the prospective arbitrator should it take the view that the prospective arbitrator will not be able to discharge his duties due to such potential time constraints.

1.3 The prospective arbitrator confirms that he understands that the Case director of FICM will take into account any failure by the prospective arbitrator to discharge his duties to ensure the fair, expeditious, economical and final determination of the dispute when fixing the quantum of fees payable to the arbitrator.

2. Disclosure

2.1 A prospective arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances.

2.2 A prospective arbitrator shall disclose to the Case director and any party who approaches him for a possible appointment:

- (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person

to be a potentially important witness in the arbitration;

(b) the extent of any prior knowledge he may have of the dispute.

3. Bias

3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an arbitrator favors one of the parties or where he is prejudiced in relation to the subject matter of the dispute. Dependence arises from relationships between an arbitrator and one of the parties, or with someone closely connected with one of the parties.

3.2 Any close personal relationship or current direct or indirect business relationship between an arbitrator and a party, or any representative of a party, or with a person who is known to be a potentially important witness, will normally give rise to justifiable doubts as to a prospective arbitrator's impartiality or independence. Past business relationships will only give rise to justifiable doubts if they are of such magnitude or nature as to be likely to affect a prospective arbitrator's judgment. He should decline to accept an appointment in such circumstances unless the parties agree in writing that he may proceed.

4. Communications

4.1 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.

4.2 Save as may be permitted under the applicable arbitration rules, no arbitrator shall confer with any of the parties or their counsel until after the Case director gives notice of the formation of the Tribunal to the parties.

4.3 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

5. Fees

5.1 In accepting an appointment, an arbitrator agrees to the remuneration as settled by the FICM, and he shall make no unilateral arrangements with

any of the parties or their counsel for any additional fees or expenses, except with the express agreement of the Case director.

5.2 All matters relating to arbitrators' fees and expenses shall be dealt with in accordance with the **PRACTICE NOTE FOR ADMINISTERED CASES** (PN – 01/14, 2 January 2014).

6. Conduct

6.1 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.

7. Confidentiality

7.1 The arbitration proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of the proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

7.2 This Code of Ethics is not intended to provide grounds for the setting aside of any award.

ARTICLE 11

MODEL CODE OF CONDUCT FOR FICM NEUTRALS

FICM Neutrals are bound by the Code of Conduct formed by FICM which is prevailing on the date of proposal for acting as a Neutral in a particular matter;

1. FICM Neutrals shall follow and observe the Rules governing the proceedings strictly and with due diligence;
2. FICM Neutrals shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a Neutral;
3. FICM Neutrals shall uphold the integrity and fairness of the arbitration or any other agreed Dispute Resolution Process;
4. FICM Neutrals shall ensure that the parties involved in the proceedings are fairly informed and have an adequate understanding of the procedural aspects of the process;
5. FICM Neutrals are required to satisfy himself/herself that he/she is qualified to undertake and complete the assignment in a professional manner;
6. That on appointment, the FICM Neutral has to declare in writing that on the basis of the information available he/she will be available to devote necessary time to conduct the proceedings diligently and efficiently according to the time limits in the rules
7. The FICM Neutrals shall avoid, while communicating with the parties, any impropriety or appearance of impropriety;
8. The FICM Neutrals shall be faithful to the relationship of trust and confidentiality imposed in the office of Neutral;
9. The FICM Neutrals shall conduct all proceedings related to the resolutions of a dispute, in accordance with the applicable law;
10. The FICM Neutrals are expected to maintain the

- reasonable expectations of the parties as to confidentiality;
11. The appointed Neutral is duty bound to declare that he/she is impartial and independent of each of the parties and intend to remain so.
 12. The appointed Neutral shall enquire at the onset, before starting the Proceedings, about any actual and/or potential conflict of interests that may interfere with the impartiality of the Neutral in conducting the Proceedings.
 13. That in case the appointed Neutral is/was in any way connected with the parties concerned, he/she is duty bound to declare so, at the onset, before accepting the appointment or as expeditiously as practical, that his/her past and present professional, business and/or other relationship with the party/parties is not going to affect his/her independence and impartiality.
 14. No Neutral shall act as an advocate for any party whether or not nominated by the parties.
 15. No Neutral at any time, either before or after appointment shall advise any party of the outcome of the proceedings

ARTICLE 12

Statement of Arbitrators Acceptance

DECLARATION OF AVAILABILITY, IMPARTIALITY AND INDEPENDENCE

1. ACCEPTANCE

I accept to serve as arbitrator under and in accordance with FICM Rules of Arbitration (“Rules”). I confirm that I am familiar with the Rules. I accept that my fees and expenses will be fixed exclusively by FICM. By accepting to serve as arbitrator under the Rules, unless otherwise agreed by the parties, I accept that my name, nationality, role and the method of my appointment as well as the termination of my assignment will be published on the FICM gadgets. I also accept that my award(s) and procedural order(s) may be published pursuant to the Note.

2. AVAILABILITY

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration throughout the entire duration of the case as diligently, efficiently and expeditiously as possible in accordance with the time limits in the Rules, subject to any extensions granted by FICM Rules. I understand that it is important to complete the arbitration as promptly as reasonably practicable and that FICM will consider the duration and conduct of the proceedings when fixing my fees.

My current professional engagements are as below for the information FICM and the parties.

I have marked in the annexed the details of all currently scheduled hearings and other existing commitments that would prevent me from sitting in a hearing on this matter. I have further marked in the box below or on a separate sheet any other relevant information regarding my availability.

3. INDEPENDENCE and IMPARTIALITY

Nothing to disclose:

I am impartial and independent and intend to remain so. To the best of my knowledge, and having made due enquiry, there are no facts or circumstances, past or present, that I should disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties and no circumstances that could give rise to reasonable doubts as to my impartiality.

Acceptance with disclosure:

I am impartial and independent and intend to remain so. However, mindful of my obligation to disclose any facts or circumstances which might be of such a nature as to call into question my independence in the eyes of any of the parties or that could give rise to reasonable doubts as to my impartiality,

I draw attention to the matters below and/or on the attached sheet.

Name

Membership ID

Signatures

Disclaimer: The information requested in this form will be considered by FICM for its Dispute Resolution Services, and will be stored in case management database systems.

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