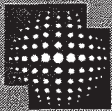


International Institute for
Conflict Prevention & Resolution

CPR PROCEDURES & CLAUSES

Administered Arbitration Rules

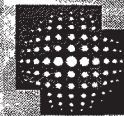
Effective July 1, 2013



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Kathleen A. Bryan, President & CEO

Changing the Way the World Resolves Conflict

ABOUT CPR – CPR is the only independent non-profit organization whose mission is to help global business and their lawyers resolve complex commercial disputes more cost effectively and efficiently. For over 30 years, the legal community has trusted CPR to deliver superior arbitrators and mediators and innovative solutions to business conflict.

Dispute Resolution Services:

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

CPR's Clauses and Rules:

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

CPR Panels of Distinguished Neutrals:

- More than 500 distinguished neutrals, both in the United States and abroad.
- A highly selective vetting and evaluation process.
- A diverse Global Panel of Distinguished Neutrals across more than 20 countries.
- Highly skilled lawyers provide the administration and selection process.

CPR Services Include:

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

CPR PROCEDURES & CLAUSES

Administered Arbitration Rules

Effective July 1, 2013

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CPR'S FULL RANGE OF ARBITRATION OPTIONS

The International Institute for Conflict Prevention and Resolution ("CPR") has long championed its Rules for Non-Administered Arbitration (Rev. 2007) as a means of providing for a fair, expeditious, and economical arbitration process. Hallmark features of non-administered or *ad hoc* rules include management of the process by the Tribunal and counsel, without the need for the involvement of a separate administering entity. To aid participants in a non-administered process when necessary, CPR offers customized services, such as arbitrator selection and a challenge procedure. For a full menu of such services, please refer to CPR's website, www.cpradr.org.

CPR maintains its commitment to non-administered processes. However, mindful of the benefits that an arbitral institution can provide in appropriate cases, CPR has promulgated a set of administered arbitration rules to increase parties' range of options. The CPR Rules for Administered Arbitration (July 1, 2013) provide parties with the same well-designed procedures and high quality arbitrators as CPR's non-administered option, while also allowing the parties to avail themselves of CPR's quality staff and resources when an administered process is desired.

Mediation and Other ADR Procedures. The following Rules are intended to govern administered arbitration proceedings. However, parties also may wish to incorporate pre-arbitral negotiation or mediation phases in their contract provisions. Parties desiring to use such procedures should consult the *CPR Mediation Procedure* and CPR's *Dispute Resolution Clauses* (available on CPR's website at www.cpradr.org).

To obtain a copy of any of our rules and procedures, or to find out more about our Dispute Resolution Services and fees, visit our website at www.cpradr.org or call CPR's office at +1.212.949.6490.

CPR MODEL CLAUSES FOR ADMINISTERED ARBITRATION

Standard Contractual Provisions

The CPR Rules for Administered Arbitration (the "Administered Rules" or "Rules") are intended in particular for use in complex commercial arbitrations where parties desire an administered process. They are designed to assure the expeditious and economical conduct of proceedings. The Administered Rules may be adopted by parties wishing to do so by using one of the following standard provisions:

A. Pre-Dispute Clause for Administered Arbitration

"Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules") by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state)."

B. Existing Dispute Submission Agreement for Administered Arbitration

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

[Describe briefly]

We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). [We further agree that we shall faithfully observe this agreement and the Administered Rules and that we shall abide by and perform any award rendered by the arbitrator(s).] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state)."

A. GENERAL AND INTRODUCTORY ADMINISTERED RULES

Rule 1: Scope of Application

- 1.1 Where the parties to a contract have provided for arbitration under the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules"), they shall be deemed to have made these Administered Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding, to modify these Administered Rules. Unless the parties otherwise agree, these Administered Rules, and any amendment thereof adopted by CPR, shall apply in the form in effect at the time the arbitration is commenced. If the parties have provided for CPR arbitration without specifying either the Non-Administered or Administered Rules, the CPR Administered Rules shall apply to any arbitration agreement dated July 1, 2013 or later.
- 1.2 These Administered Rules shall govern the arbitration except that where any of these Administered Rules is in conflict with a mandatory provision of applicable arbitration law, that provision of law shall prevail.

Rule 2: Notices

- 2.1 Notices or other communications required under these Administered Rules shall be in writing and delivered to the address specified in writing by the recipient or, if no address has been specified, to the last known business or residence address of the recipient. Notices and communications may be given by registered mail, courier, telex, facsimile transmission, email or any other means of telecommunication that provides a record thereof. Notices and communications shall be deemed to be effective as of the date of receipt. Proof of transmission shall be deemed *prima facie* proof of receipt of any notice or communication given under these Rules.
- 2.2 Time periods specified by these Administered Rules or established by the Arbitral Tribunal (the "Tribunal") shall start to run on the day following the day when a notice or communication is received, unless these Rules or the Tribunal shall specifically provide otherwise. If the last day of such period is an official holiday or a non-business day at the place where the notice or communication is received, the

period is extended until the first business day which follows. Official holidays and non-business days occurring during the running of the period of time are included in calculating the period.

Rule 3: Commencement of Arbitration

- 3.1 The party commencing arbitration (the "Claimant") shall deliver to the other party (the "Respondent") a notice of arbitration with an electronic copy to CPR at the same time in accordance with Rule 3.3.
- 3.2 The notice of arbitration shall include in the text or in attachments thereto
 - a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
 - b. A demand that the dispute be referred to arbitration pursuant to these Rules,
 - c. The text of the arbitration clause or the separate arbitration agreement that is involved;
 - d. A statement of the general nature of the Claimant's claim;
 - e. The relief or remedy sought; and
 - f. The name, address, telephone number and email address of the arbitrator designated for appointment by the Claimant, unless the parties have agreed that neither shall designate an arbitrator or that the party-designated arbitrators shall be appointed as provided in Rule 5.4.
- 3.3 Delivery of the notice of arbitration to CPR required under this Rule 3.1 shall be as specified on the CPR website. Simultaneous with delivery of the notice of arbitration to CPR, the Claimant shall make payment to CPR of the appropriate Filing Fee as provided in the Schedule of Administered Arbitration Costs on the CPR website. In the event the Claimant fails to comply with this requirement, CPR may fix a time limit within which the Claimant must make payment, failing which the file shall be closed without prejudice to the Claimant's right to submit the same claim(s) at a later date in another notice of arbitration if permissible.
- 3.4 The date on which CPR is in receipt of both the notice of arbitration and Filing Fee shall, for all purposes, be deemed to be the date of the commencement of the arbitration ("Commencement Date"). CPR will determine the Commencement Date and so notify the parties.

- 3.5 CPR shall notify the Respondent of its time to deliver a notice of defense, which shall be 20 days after the Commencement Date.
- 3.6 The Respondent shall deliver to the Claimant a notice of defense by the date provided by CPR under Rule 3.5 with an electronic copy to CPR at the same time. Failure to deliver a notice of defense shall not delay the arbitration; in the event of such failure, all claims set forth in the notice of arbitration shall be deemed denied. Failure to deliver a notice of defense shall not excuse the Respondent from notifying the Claimant and CPR in writing, by the date provided by CPR under Rule 3.5, of the arbitrator designated for appointment by the Respondent, unless the parties have agreed that neither shall designate an arbitrator or that the party-designated arbitrators shall be appointed as provided in Rule 5.4.
- 3.7 The notice of defense shall include:
- a. The full names, addresses, telephone numbers and email addresses for the parties and their counsel;
 - b. Any comment on the notice of arbitration that the Respondent may deem appropriate;
 - c. A statement of the general nature of the Respondent's defense, and
 - d. The name, address, telephone number and email address of the arbitrator designated for appointment by the Respondent, unless the parties have agreed that neither shall designate an arbitrator or that the party-designated arbitrators shall be appointed as provided in Rule 5.4.
- 3.8 The Respondent may include in its notice of defense any counterclaim within the scope of the arbitration clause. If it does so, the counterclaim in the notice of defense shall include items (a), (b), (c), (d) and (e) of Rule 3.2.
- 3.9 If a counterclaim is asserted in accordance with Rule 3.8, CPR shall notify the Claimant of its time to deliver a response, which shall be 20 days after CPR's receipt of the notice of defense and counterclaim. Such response shall have the same elements as provided in Rule 3.7(b) and (c) for the notice of defense. Failure to deliver a reply to a counterclaim shall not delay the arbitration; in the event of such failure, all counterclaims set forth in the notice of defense shall be deemed denied.

- 3.10** Claims or counterclaims within the scope of the arbitration clause may be freely added, amended or withdrawn prior to the appointment of the Tribunal and thereafter with the consent of the Tribunal. Notices of defense or replies to added or amended claims or counterclaims shall be delivered by the date CPR provides, which shall be within 20 days after CPR's receipt of the addition or amendment or such other date as specified by CPR, or, if the Tribunal has been appointed, by the date specified by the Tribunal.
- 3.11** If a dispute is submitted to arbitration pursuant to a submission agreement, this Rule 3 shall apply to the extent that it is not inconsistent with the submission agreement.

Rule 4: Representation

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

B. RULES WITH RESPECT TO THE TRIBUNAL

Rule 5: Selection of Arbitrator(s) by the Parties

- 5.1** a. Unless the parties have agreed otherwise in writing, the Tribunal shall consist of three arbitrators, one designated for appointment by each of the parties as provided in Rules 3.2 and 3.7 respectively, and a third who shall chair the Tribunal, selected as provided in Rule 5.2.
- b. Unless otherwise agreed, any arbitrator not designated for appointment by a party shall be a member of the CPR Panels of Distinguished Neutrals ("CPR Panels"). Upon request, CPR will provide a list of candidates from the CPR Panels in accordance with the Rules.
- c. Where a party has designated an arbitrator for appointment, CPR will query such candidate for their availability and request that the candidate disclose in writing any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of that candidate's disclosures, a party may object to the appointment of any candidate on grounds of

lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment on the objection. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as a party-appointed arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 - 7.8. At its discretion, CPR may decide an objection made under this Rule 5.1(c) by referring it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

- 5.2 a. Unless the parties agree that the third arbitrator who shall chair the Tribunal be selected jointly by the party-appointed arbitrators, CPR shall select the third arbitrator as provided in Rule 6.
- b. If the party-appointed arbitrators shall designate for appointment the third arbitrator who shall chair the Tribunal, such designation cannot occur until after appointment by CPR of both of the party-designated arbitrators. The party-appointed arbitrators shall inform CPR of the candidate designated by them to be the third arbitrator, whereupon CPR will query such candidate for availability and request such candidate to disclose in writing any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Upon receipt, CPR shall circulate any disclosures made to the parties, and, within 10 days after receipt of that candidate's disclosures, a party may object to the appointment of such candidate on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no objection to the candidate, or if the objection is overruled by CPR, CPR shall appoint the candidate as the third arbitrator, and any subsequent challenges of that arbitrator, based on circumstances subsequently learned, shall be made and decided in accordance with the procedures set forth in Rules 7.6 - 7.8. At its discretion, CPR may decide an objection under this Rule 5.2 (b) by referring

it to a Challenge Review Committee pursuant to the CPR Challenge Protocol (excluding its fee requirement).

In the event that the party-appointed arbitrators are unable to agree on a third arbitrator within 20 days of CPR's appointment of the second arbitrator, the third arbitrator shall be selected by CPR as provided in Rule 6.2.

- 5.3 If the parties have agreed on a Tribunal consisting of a sole arbitrator or of three arbitrators none of whom shall be designated for appointment by either party, the parties shall attempt jointly to designate such arbitrator(s) within 20 days after the notice of defense provided for in Rule 3.6 is due. CPR will query such jointly designated candidate(s) in accordance with the procedure provided for in Rule 5.1(c). The parties may extend their selection process until one or both of them have concluded that a deadlock has been reached, but in no event for more than 30 days after the notice of defense provided for in Rule 3.6 is due. In the event the parties are unable to designate the arbitrator(s) within the extended selection period, the arbitrator(s) shall be selected as provided in Rule 6.2.
- 5.4 If the parties have agreed on a Tribunal consisting of three arbitrators, two of whom are to be designated by the parties without knowing which party designated each of them, as provided for in this Rule 5.4, CPR shall conduct a "screened" selection of party-designated arbitrators as follows:
 - a. CPR will provide each party with a copy of a list of candidates from the CPR Panels together with confirmation of their availability to serve as arbitrators and disclosure of any circumstances that might give rise to justifiable doubt regarding their independence or impartiality, as provided in Rule 7. Within 10 days after the receipt of the CPR list, each party shall designate from the list three candidates, in order of preference, for its party-designated arbitrator, and so notify CPR and the other party in writing.
 - b. Within the same 10-day period after receipt of the CPR list, a party may also object to the appointment of any candidate on the list on grounds of lack of independence or impartiality by written and reasoned notice to CPR, with a copy to the other party. CPR shall decide the objection after providing the non-objecting party with an opportunity to comment. If there is no

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

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

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

Rule 6: Selection of Arbitrator(s) by CPR

6.1 Whenever (i) a party has failed to designate its arbitrator to be appointed by CPR; (ii) the parties, acting jointly, have failed to designate the arbitrator(s) for appointment by CPR; (iii) the parties have agreed that the party-designated arbitrators who have been appointed by CPR shall designate the third arbitrator and such arbitrators have failed to designate the third arbitrator, (iv) the parties have provided that one or more arbitrator(s) shall be

appointed by CPR; or (v) the multi-party nature of the dispute calls for CPR to appoint all members of a three-member Tribunal pursuant to Rule 5.5, the arbitrator(s) required to complete the Tribunal shall be selected as provided in this Rule 6.

- 6.2 Except where a party has failed to designate the arbitrator to be appointed by it, CPR shall proceed as follows:
- a. CPR shall jointly convene the parties by telephone to discuss the selection of the arbitrator(s).
 - b. Thereafter, CPR shall provide to the parties a list of candidates, from the CPR Panels, of not less than five candidates if one arbitrator is to be selected, and of not less than seven candidates if two or three arbitrators are to be selected. Such list shall include a brief statement of each candidate's qualifications, availability and disclosures in writing of any circumstances that might give rise to justifiable doubt regarding the candidate's independence or impartiality as provided in Rule 7. Each party shall number the candidates in order of preference, shall note any objection it may have to any candidate, and shall deliver the list so marked to CPR, which, on agreement of the parties, shall circulate the delivered lists to the parties. Any party failing without good cause to return the candidate list so marked within 10 days after receipt shall be deemed to have assented to all candidates listed thereon. CPR shall appoint as arbitrator(s) the nominee(s) willing to serve for whom the parties collectively have indicated the highest preference and who appear to meet the standards set forth in Rule 7. If a tie should result between two candidates, CPR may designate either candidate. If this procedure for any reason should fail to result in designation of the required number of arbitrators or if a party fails to participate in this procedure, CPR shall appoint a person or persons whom it deems qualified to fill any remaining vacancy.
- 6.3 Where a party has failed to designate the arbitrator to be appointed by it, CPR shall appoint a person whom it deems qualified to serve as such arbitrator.

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

- 7.1 Each arbitrator shall be independent and impartial.

- 7.2 By accepting appointment, each arbitrator shall be deemed to be bound by these Administered Rules and any modification thereof agreed to by the parties, and to have represented that he or she has the time available to devote to the expeditious process contemplated by these Administered Rules.
- 7.3 Each arbitrator shall disclose in writing to CPR and the parties prior to appointment in accordance with the Rules, and also promptly upon there arising during the course of the arbitration, any circumstances that might give rise to justifiable doubt regarding the arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, and past or present relations with a party or its counsel.
- 7.4 No party or anyone acting on its behalf shall have any *ex parte* communications concerning any matter relating to the proceeding with any arbitrator or arbitrator candidate, except that a party may advise an arbitrator candidate being considered for designation as its appointed arbitrator of the general nature of the case and discuss the candidate's qualifications, availability, and independence and impartiality with respect to the parties, and a party also may confer with its designated arbitrator after the arbitrator's appointment by CPR regarding the selection of the chair of the Tribunal. As provided in Rule 5.4(d), no party or anyone acting on its behalf shall have any *ex parte* communications relating to the case with any arbitrator candidate designated or appointed pursuant to Rule 5.4.
- 7.5 Any arbitrator may be challenged if circumstances exist or arise that give rise to justifiable doubt regarding that arbitrator's independence or impartiality, provided that a party may challenge an arbitrator whom it has designated only for reasons of which it becomes aware after the designation has been made.
- 7.6 A party may challenge an appointed arbitrator only by a notice in writing to CPR, with a copy to the Tribunal and the other party, in accordance with the CPR Challenge Protocol (excluding its fee requirement) given no later than 15 days after the challenging party (i) receives notification of the appointment of that arbitrator, or (ii) becomes aware of the circumstances specified in Rule 7.5, whichever shall last occur. The notice shall state the reasons for the challenge with specificity. The notice shall not be sent to the Tribunal when the challenged arbitrator is a party-designated arbitrator selected as provided in Rule 5.4; in that event, CPR may provide

each member of the Tribunal with an opportunity to comment on the substance of the challenge without disclosing the identity of the challenging party.

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

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

Rule 8: Challenges to the Jurisdiction of the Tribunal

- 8.1 The Tribunal shall have the power to hear and determine challenges to its jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- 8.2 The Tribunal shall have the power to determine the existence, scope or validity of the contract of which an arbitration clause forms a part. For the purpose of challenges to the jurisdiction of the Tribunal, the arbitration clause shall be considered as separable from any contract of which it forms a part.
- 8.3 Any challenges to the jurisdiction of the Tribunal, except challenges based on the award itself, shall be made no later than the notice of defense or, with respect to a counterclaim, the reply to the counterclaim; provided, however, that if a claim or counterclaim is later added or amended, a challenge to jurisdiction over such claim or counterclaim must be made not later than the response to such claim or counterclaim as provided under these Rules.

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

Rule 9: General Provisions

- 9.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate. The chair shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal, and shall keep CPR informed of such arrangements throughout the proceedings.
- 9.2 The proceedings shall be conducted in an expeditious manner. The Tribunal is empowered to impose time limits it considers reasonable on each

phase of the proceeding, including without limitation, the time allotted to each party for presentation of its case and for rebuttal. In setting time limits, the Tribunal should bear in mind its obligation to manage the proceeding firmly in order to complete proceedings as economically and expeditiously as possible.

- 9.3 The Tribunal shall hold an initial pre-hearing conference for the planning and scheduling of the proceeding. Such conference shall be held promptly after the constitution of the Tribunal, unless the Tribunal is of the view that further submissions from the parties are appropriate prior to such conference. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct. Following the initial pre-hearing conference, a schedule for the conduct of the arbitration should be issued as soon thereafter as appropriate. Matters to be considered in the initial pre-hearing conference may include, *inter alia*, the following
- a. Procedural matters (such as setting specific time limits for, and manner of, any required discovery, the desirability of bifurcation or other separation of the issues in the arbitration; the desirability and practicability of consolidating the arbitration with any other proceeding; the scheduling of conferences and hearings; the scheduling of pre-hearing memoranda; the need for and type of record of conferences and hearings, including the need for transcripts; the amount of time allotted to each party for presentation of its case and for rebuttal; the mode, manner and order for presenting proof; the need for expert witnesses and how expert testimony should be presented, and the necessity for any on-site inspection by the Tribunal);
 - b. The early identification and narrowing of the issues in the arbitration;
 - c. The possibility of stipulations of fact and admissions by the parties solely for purposes of the arbitration, as well as simplification of document authentication;
 - d. The possibility of appointment of a neutral expert by the Tribunal, and
 - e. The possibility of the parties engaging in settlement negotiations, with or without the assistance of a mediator.

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

- 9.4 In order to define the issues to be heard and determined, the Tribunal may, *inter alia*, make pre-hearing orders and instruct the parties to file more detailed statements of claim and of defense and pre-hearing memoranda.
- 9.5 Unless the parties have agreed upon the place of arbitration, the Tribunal shall fix the place of arbitration based upon the contentions of the parties and the circumstances of the arbitration. The award shall be deemed made at such place. The Tribunal may schedule meetings and hold hearings wherever it deems appropriate.
- 9.6 Except as otherwise provided in these Administered Rules, only electronic copies of filings, communications and other documents shall be sent to CPR; hard copies of filings or other documents sent to the Tribunal and/or the other party should not be sent to CPR in the ordinary course.

Rule 10: Applicable Law(s) and Remedies

- 10.1 The Tribunal shall apply the substantive law(s) or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the Tribunal shall apply such law(s) or rules of law as it determines to be appropriate.
- 10.2 Subject to Rule 10.1, in arbitrations involving the application of contracts, the Tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
- 10.3 The Tribunal may grant any remedy or relief, including but not limited to specific performance of a contract, which is within the scope of the agreement of the parties and permissible under the law(s) or rules of law applicable to the dispute.
- 10.4 The Tribunal may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law.

Rule 11: Discovery

The Tribunal may require and facilitate such discovery as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost-effective. The

Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery.

Rule 12: Evidence and Hearings

12.1 The Tribunal shall determine the manner in which the parties shall present their cases. Unless otherwise determined by the Tribunal or agreed by the parties, the presentation of a party's case shall include the submission of a pre-hearing memorandum including the following elements

- a. A statement of facts;
- b. A statement of each claim being asserted;
- c. A statement of the applicable law and authorities upon which the party relies;
- d. A statement of the relief requested, including the basis for any damages claimed; and
- e. A statement of the nature and manner of presentation of the evidence, including the name, capacity and subject of testimony of any witnesses to be called and an estimate of the amount of time required for each witness's direct testimony.

12.2 If either party so requests or the Tribunal so directs, a hearing shall be held for the presentation of evidence and oral argument. Testimony may be presented in written and/or oral form as the Tribunal may determine is appropriate. The Tribunal is not required to apply any rules of evidence used in judicial proceedings, provided, however, that the Tribunal shall apply any lawyer-client privilege and work product immunity it deems applicable. The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered.

12.3 The Tribunal, in its discretion, may require the parties to produce evidence in addition to that initially offered. It may also appoint neutral experts whose testimony shall be subject to cross-examination and rebuttal.

12.4 The Tribunal shall determine the manner in which witnesses are to be examined. The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.

Rule 13: Interim Measures of Protection

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

Rule 14: Interim Measures of Protection by a Special Arbitrator

- 14.1 Unless otherwise agreed by the parties, this Rule 14 shall be deemed part of any arbitration clause or agreement that provides for arbitration under these Administered Rules.
- 14.2 Prior to the constitution of the Tribunal, any party may request that interim measures be granted under this Administered Rule against any other party by a special arbitrator appointed for that purpose.
- 14.3 Interim measures under this Administered Rule are requested by written application to CPR, entitled "Request for Interim Measures of Protection by a Special Arbitrator," describing in reasonable detail the relief sought, the party against whom the relief is sought, the grounds for the relief, and, if practicable, the evidence and law supporting the request. The request shall be delivered in accordance with Administered Rule 2.1, and shall certify that all other parties affected have been notified of the request or explain the steps taken to notify such parties.
- 14.4 The request for interim measures by a special arbitrator shall be accompanied by an initial deposit payable to CPR as provided in the Schedule of Administered Arbitration Costs on the CPR website. CPR shall promptly determine whether any further deposit is due to cover the fee of CPR and the remuneration of the special arbitrator, which amount shall be paid within the time period determined by CPR.
- 14.5 If the parties agree upon a special arbitrator within one business day of the request, that arbitrator shall be appointed by CPR subject to Rule 14.6. If there is no such timely agreement, CPR shall appoint a special arbitrator from a list of arbitrators maintained by CPR for that purpose. To the extent practicable, CPR shall appoint the special arbitrator within one business day of CPR's receipt of the application for interim measures under this Administered Rule. The

special arbitrator's fee shall be determined by CPR in consultation with the special arbitrator. The special arbitrator's fee and reasonable out-of-pocket expenses shall be paid from the deposit made with CPR.

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

- 14.11 The award or order shall specify the relief awarded or denied, shall determine the cost of the proceedings, which includes CPR's administrative fees and expenses, the special arbitrator's fee and expenses as determined by CPR, and apportion such costs among the parties as the special arbitrator deems appropriate. The special arbitrator may also apportion the parties' reasonable attorneys' fees and expenses in the award or order or in a supplementary award or order. Unless the parties agree otherwise, the award or order shall state the reasoning on which the award or order rests as the special arbitrator deems appropriate.
- 14.12 Prior to the execution of any special arbitrator's award, the special arbitrator shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award, suggest any corrections to the special arbitrator and the special arbitrator shall as soon as possible thereafter deliver executed copies of the award to CPR, which shall promptly deliver the award to the parties, provided no fees, expenses and other charges incurred in accordance with the Schedule of Administered Arbitration Costs are outstanding.
- 14.13 A request for interim measures by a party to a court shall not be deemed incompatible with the agreement to arbitrate, including the agreement to this Administered Rule 14, or as a waiver of that agreement.
- 14.14 The special arbitrator's award or order shall remain in effect until modified or vacated by the special arbitrator or the Tribunal. The special arbitrator may modify or vacate the award or order for good cause. If the Tribunal is constituted before the special arbitrator has rendered an award or order, the special arbitrator shall retain jurisdiction to render such award or order unless and until the Tribunal directs otherwise. Once the Tribunal has been constituted, the Tribunal may modify or vacate the award or order rendered by the special arbitrator.
- 14.15 The special arbitrator shall not serve as a member of the Tribunal unless the parties agree otherwise.

Rule 15: The Award

- 15.1 The Tribunal may make final, interim, interlocutory and partial awards. With respect to any interim,

interlocutory or partial award, the Tribunal may state in its award whether or not it views the award as final for purposes of any judicial proceedings in connection therewith.

- 15.2 All awards shall be in writing and shall state the reasoning on which the award rests unless the parties agree otherwise. The award shall be deemed to be made at the seat of arbitration and shall contain the date on which the award was made. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.
- 15.3 A member of the Tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.
- 15.4 Prior to execution of any award, the Tribunal shall send a copy of the award in draft form to CPR for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. CPR shall promptly review such award, and suggest any corrections to the Tribunal.
- 15.5 Thereafter as soon as possible, but in no event more than 3 days, the Tribunal shall deliver executed copies of the award and of any dissenting opinion to CPR, which shall promptly deliver the award and any dissenting opinion to the parties provided no fees, expenses and other charges incurred in accordance with the Schedule of Administered Arbitration Costs are outstanding.
- 15.6 Within 15 days after receipt of the award, either party, with notice to the other party and CPR, may request the Tribunal to clarify the award; to correct any clerical, typographical or computational errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The Tribunal shall make any clarification, correction or additional award requested by either party that it deems justified within 30 days after receipt of such request. Within 15 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 30 days after receipt of such request, the Tribunal may make such corrections and additional awards on its own initiative as it deems appropriate. All clarifications, corrections, and additional awards shall be in writing, shall be submitted directly to CPR by the Tribunal for delivery by CPR to the parties, and the provisions of this Administered Rule 15 shall apply to them.

15.7 The award shall be final and binding on the parties, and the parties will undertake to carry out the award without delay. If an interpretation, correction or additional award is requested by a party, or a correction or additional award is made by the Tribunal on its own initiative as provided in Administered Rule 15.6, the award shall be final and binding on the parties when such clarification, correction or additional award is issued by CPR or upon the expiration of the time periods provided in Administered Rule 15.6 for such clarification, correction or additional award to be made, whichever is earlier.

- 15.8 a. The dispute should in most circumstances be submitted to the Tribunal for decision within six months after the initial pre-hearing conference required by Administered Rule 9.3. The final award should in most circumstances be submitted by the Tribunal to CPR within 30 days after the close of the hearing and thereafter CPR should render the award to the parties promptly. The Tribunal and CPR shall use their best efforts to comply with this schedule.
- b. CPR must approve any scheduling orders or extensions that would result in a final award being rendered more than 12 months after the initial pre-hearing conference required by Administered Rule 9.3. When such approval is required, CPR in its discretion may convene a call with the parties and arbitrators to discuss factors relevant to such request.

Rule 16. Failure to Comply with Administered Rules

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

D. RULES WITH RESPECT TO COSTS AND FEES

Rule 17. Arbitrator Fees, Expenses and Deposits

- 17.1 Each arbitrator shall be compensated on a reasonable basis determined at the time of appointment for serving as an arbitrator and shall be reimbursed for any reasonable travel and other expenses. The compensation for each arbitrator should be fully disclosed to all Tribunal members and parties. If there is a disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by CPR and confirmed in writing to the parties. The parties shall be jointly and severally liable for such fees and expenses.
- 17.2 The Tribunal shall determine the necessary advances on the arbitrator(s) fees and expenses and advise CPR which, unless otherwise agreed by the parties, shall invoice the parties in equal shares. The amount of any advances to cover arbitrator fees and expenses may be subject to readjustment at any time during the arbitration. Such funds shall be held and disbursed in a manner CPR deems appropriate. An accounting will be rendered to the parties and any unexpended balance returned at the conclusion of the arbitration as may be appropriate.
- 17.3 If the requested advances are not paid in full within 10 days after receipt of the request, CPR shall so inform the parties and the proceeding may be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 18. CPR Administrative Fees and Expenses

- 18.1 In addition to the CPR Filing Fee, CPR shall charge a Case Administrative Fee ("Administrative Fee") as set forth in the Schedule of Administered Arbitration Costs on the CPR website. CPR reserves the right to adjust the Administrative Fee based on developments in the proceeding.
- 18.2 Unless otherwise agreed by the parties, CPR shall invoice the parties in equal shares for the Administrative Fees. Payment shall be due on receipt unless other arrangements are authorized by CPR. The parties shall be jointly and severally liable to CPR for the Administrative Fee. In the event a party fails to pay as provided in the invoice, the proceeding shall be suspended or terminated unless the other party pays the non-paying party's share subject to any award on costs.

Rule 19. Fixing and Apportionment of Costs

19.1 The Tribunal shall fix the costs of arbitration in its award. The costs of arbitration include:

- a. The fees and expenses of members of the Tribunal;
- b. The costs of expert advice and other assistance engaged by the Tribunal;
- c. The travel and other expenses of witnesses to such extent as the Tribunal may deem appropriate;
- d. The costs for legal representation and assistance and experts incurred by a party to such extent as the Tribunal may deem appropriate;
- e. The CPR Administrative Fee with respect to the arbitration;
- f. The costs of a transcript; and
- g. The costs of meeting and hearing facilities.

19.2 Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration between or among the parties in such manner as it deems reasonable, taking into account the circumstances of the case, the conduct of the parties during the proceeding, and the result of the arbitration.

E. MISCELLANEOUS ADMINISTERED RULES**Rule 20: Confidentiality**

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

Rule 21: Settlement and Mediation

21.1 Either party may propose settlement negotiations to the other party at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate.

21.2 With the consent of the parties, the Tribunal at any stage of the proceeding may request CPR to arrange for mediation of the claims asserted in the

arbitration by a mediator acceptable to the parties. The mediator shall be a person other than a member of the Tribunal. Unless the parties agree otherwise, any such mediation shall be conducted under the CPR Mediation Procedure.

21.3 The Tribunal will not be informed of any settlement offers or other statements made during settlement negotiations or a mediation between the parties, unless both parties consent.

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

Rule 22: Actions Against CPR or Arbitrator(s)

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

Rule 23: Waiver

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

Rule 24: Interpretation and Application of Administered Rules

The Tribunal shall interpret and apply these Administered Rules insofar as they relate to the Tribunal's powers and duties. When there is more than one member on the Tribunal and a difference arises among them concerning the meaning or application of these Administered Rules, that difference shall be decided by a majority vote. All other Rules shall be interpreted and applied by CPR.