

# **COMMERCIAL ARBITRATION RULES**

**As Amended and Effective on December 10, 2015**

## **ADMINISTRATIVE FEE REGULATIONS**

**As Amended and Effective on February 1, 2014**

## **REGULATIONS FOR ARBITRATOR'S REMUNERATION**

**As Amended and Effective on February 1, 2014**

**The Japan Commercial Arbitration Association**

## **STANDARD ARBITRATION CLAUSE**

All disputes, controversies or differences which may arise between the parties hereto, out of or in relation to or in connection with this Agreement shall be finally settled by arbitration in (name of city) in accordance with the Commercial Arbitration Rules of the Japan Commercial Arbitration Association.

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# THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION

## COMMERCIAL ARBITRATION RULES

As Amended and Effective on December 10, 2015

### CHAPTER I General Provisions

#### Rule 1. Scope

These Commercial Arbitration Rules (the “**Rules**”) shall apply where the parties have agreed to refer their dispute to arbitration under the Rules, or to arbitration at the Japan Commercial Arbitration Association (the “**JCAA**”). Such agreement shall be called the “**Arbitration Agreement**.”

#### Rule 2. Definitions

- 1 The term “**Party**” or “**Parties**” shall mean one or more claimants and respondents.
- 2 The term “**in writing**” shall include hard copy and electronic documents. Electronic documents shall include electronic, magnetic and any other recording media used in information processing by a computer or other electronic device.

#### Rule 3. Arbitration Agreement and Derogation from the Rules

- 1 If the Parties have entered into an Arbitration Agreement, the Rules shall be deemed to be incorporated into such Arbitration Agreement.
- 2 The Parties may agree to derogate from or vary any of the Rules, subject to the consent of the arbitral tribunal. If all the arbitrators, upon their appointment, acknowledge such agreement, the arbitral tribunal shall be deemed to have consented.

#### Rule 4. Interpretation of the Rules

If any question arises about the interpretation of the Rules, the interpretation of the JCAA shall prevail. The interpretation of an arbitral tribunal, however, shall prevail over that of the JCAA in the arbitration proceedings before such arbitral tribunal.

## Rule 5. Communication

- 1 Any notice, submission or transmission under the Rules (collectively, a “**Communication**”) shall be made by courier, registered mail, e-mail, facsimile, or any other reasonable means, unless otherwise provided.
- 2 A Communication shall be sent to the street address, habitual residence, or place of business of the recipient (including the street address or habitual residence of the recipient’s representative, if the recipient is a legal entity or other association), the e-mail address usually used by the recipient (if the recipient has designated an e-mail address, such e-mail address), or any address designated by the recipient (collectively, an “**Address for Communication**”).
- 3 A Communication shall become effective when received.
- 4 If the intended recipient refuses to receive a Communication, the Communication shall be deemed to have been received on the fourth day after dispatch or on the day of the refusal where such date is verified.
- 5 If a Party (other than the intended recipient) uses reasonable efforts to ascertain an Address for Communication but no Address for Communication can be identified, a Communication may be sent to the last-known Address for Communication. In this case, the Communication shall be deemed to have been received on the fourth day after dispatch.
- 6 If a Communication is deemed to have been received under Rule 5.5, any subsequent Communication may be made in accordance with Rule 5.5.
- 7 If any Party relocates or makes any change to its Address for Communication, the Party shall promptly designate and notify the new Address for Communication to the JCAA, the arbitrators, and the other Parties.

## Rule 6. Arbitral Tribunal

- 1 Arbitration under the Rules shall be conducted by an arbitral tribunal composed of one or more arbitrators who have been appointed under Rule 25 through 30, 33, 52, or 79.
- 2 The arbitral tribunal shall be constituted on the date when all the arbitrators have been confirmed or appointed by the JCAA.
- 3 If the arbitral tribunal is composed of more than one arbitrator, the arbitrators shall agree on and appoint a presiding arbitrator of the arbitral tribunal.



### **Rule 7. Decision of Arbitral Tribunal**

- 1 If there is more than one arbitrator, decisions of the arbitral tribunal, including the arbitral award, shall be made by a majority of votes of the arbitrators.
- 2 If no decision is made by a majority of votes of the arbitrators, the presiding arbitrator shall make the decision.
- 3 Procedural matters in arbitral proceedings may be decided by the presiding arbitrator alone, if the other members of the arbitral tribunal or all Parties so agree.

### **Rule 8. Secretariat**

- 1 Administrative work during the arbitral proceedings under the Rules shall be performed by the secretariat of the JCAA (the “**Secretariat**”).
- 2 The Secretariat, at the request of the arbitral tribunal or either Party, shall make arrangements for recording, interpreting, making a stenographic transcript of hearings, or providing a hearing room or other services necessary for conducting the arbitral proceedings.

### **Rule 9. List of Arbitrators**

The JCAA shall maintain a list of arbitrators for the sake of convenience in appointing arbitrators.

### **Rule 10. Representation and Assistance**

A Party may be represented or assisted by any person of its choice in arbitral proceedings under the Rules.

### **Rule 11. Language**

- 1 Unless Parties have agreed on the language(s) to be used in the arbitral proceedings, the arbitral tribunal shall promptly determine such language(s) to be used in the arbitral proceedings. The arbitral tribunal, in so determining, shall take into account the language of the contract containing the Arbitration Agreement, whether interpreting or translating will be required, and the cost thereof.
- 2 The arbitral tribunal may request a Party to attach to any documentary evidence a translation into the language(s) to be used in the arbitral proceedings.
- 3 Communications between the JCAA and the Parties or between the JCAA and the arbitrators shall be made in

either English or Japanese.

### **Rule 12. Period of Time**

- 1 In calculating a period of time under the Rules, the initial calendar day shall be excluded.
- 2 Holidays and non-business days occurring during the running of the period of time are included. If the last day of the period falls on a holiday or non-business day at the place of the recipient, the period shall be extended until the next following business day.
- 3 The Parties, by agreement in writing and in accordance with Rule 3.2, may change any time limit under the Rules, except for the time limits under Rules 15.2, 18.1, 19.1, 20 and 70.7 and any time limits fixed by the arbitral tribunal or by the JCAA. In the event of such a change, the Parties shall promptly notify the JCAA and the arbitral tribunal thereof.
- 4 The arbitral tribunal, if it considers it necessary, may change any time limit under the Rules (including a time limit fixed by the arbitral tribunal), except for the time limits under Rules 39.1, 56.4, 72.4 and 81.1 and any time limits fixed by the JCAA. In the event of such a change, the arbitral tribunal shall promptly notify the JCAA and the Parties thereof.
- 5 The JCAA, if it considers it necessary, may fix or change any time limit concerning the arbitral proceedings under the Rules.

### **Rule 13. Exclusion of Liability**

Neither the arbitrators, nor the JCAA (including its directors, officers, employees and other staff) shall be liable for any act or omission in connection with the arbitral proceedings unless such act or omission is shown to constitute willful misconduct or gross negligence.

## **CHAPTER II Commencement of Arbitration**

### **Rule 14. Request for Arbitration**

- 1 To request the initiation of arbitral proceedings, the claimant shall submit in writing to the JCAA a request for arbitration (the “**Request for Arbitration**”) setting forth the following:

- (1) a request that the dispute be referred to arbitration under the Rules;
  - (2) a reference to the Arbitration Agreement that is invoked (including any agreement about the number of arbitrators, the procedure for appointing arbitrators, the place of arbitration, and the language(s) of the arbitral proceedings);
  - (3) the full names and the street addresses of the Parties (if a Party is a legal entity or other association, the corporate name, street address and the name of the Party's representative);
  - (4) the name and street address of counsel, if the claimant is represented;
  - (5) the contact details of the claimant or its counsel (*e.g.*, designated address, telephone number, facsimile number and e-mail address);
  - (6) the relief and remedy sought;
  - (7) a summary of the dispute; and
  - (8) a statement of factual and legal grounds for the claim(s), and the manner and method of proof.
- 2 The Request for Arbitration may set forth the following:
- (1) the name, street address and other contact details of an arbitrator appointed by the claimant, if the Parties have agreed that the number of arbitrators is three;
  - (2) a statement about the number of arbitrators, the procedure for appointing arbitrators, the place of arbitration, or the language(s) of arbitration; or
  - (3) a statement about the governing law applicable to the substance of the dispute.
- 3 A copy of the Arbitration Agreement shall be attached to the Request for Arbitration.
- 4 A power of attorney shall be submitted with the Request for Arbitration, if claimant is represented by counsel.
- 5 The claimant, when it submits a Request for Arbitration, shall pay the administrative fee under the Administrative Fee Regulations of the JCAA attached to the Rules. If the claimant fails to pay such administrative fee in full, the JCAA shall consider that no request for arbitration has been made.
- 6 Arbitral proceedings shall be deemed to have commenced on the date on which the Request for Arbitration has been submitted to the JCAA.

### **Rule 15. Single Arbitration for Multiple Claims**

- 1 The claimant may submit a single Request for Arbitration

containing multiple claims (the “**Single Arbitration for Multiple Claims**”), if:

- (1) all Parties have agreed in writing that all such claims shall be resolved together in a single arbitral proceeding;
  - (2) all claims arise under the same Arbitration Agreement; or
  - (3) all claims arise between the same Parties, and
    - (a) the same or a similar question of fact or law arises from the claims;
    - (b) the dispute is referred by the Arbitration Agreement to arbitration under the Rules or at the JCAA; and
    - (c) the arbitral proceedings are capable of being conducted in a single proceeding with regard to the place of arbitration, the number of arbitrators, language(s), and other issues governed by the Arbitration Agreement under which the claims arise.
- 2 An objection to the Single Arbitration for Multiple Claims shall be made in writing within four weeks from the respondent’s receipt of the notice of the Request for Arbitration. The arbitral tribunal shall make a determination on such objection under Rule 42.

### **Rule 16. Notice of Request for Arbitration**

- 1 The JCAA, on having confirmed that the Request for Arbitration has been made in conformity with Rules 14.1 and 14.3 through 14.5, shall promptly notify the respondent thereof. A copy of the Request for Arbitration shall be attached to such notice.
- 2 The JCAA, after appointing or confirming each arbitrator, shall promptly transmit a copy of the Request for Arbitration to each arbitrator.

### **Rule 17. Constitution of Arbitral Tribunal and Jurisdictional Objection**

The JCAA may proceed to constitute the arbitral tribunal even if the respondent raises an objection about the existence or validity of the Arbitration Agreement, or about a Single Arbitration for Multiple Claims. The arbitral tribunal, after being duly constituted, shall make a determination on any such objection under Rule 41.1 or 42.1.

## Rule 18. Answer

- 1 The respondent, within four weeks from its receipt of the notice of the Request for Arbitration, shall submit in writing to the JCAA an answer (the “**Answer**”) setting forth the following:
  - (1) the full names and the street addresses of the Parties (if a Party is a legal entity or other association, the corporate name, street address and the name of the Party’s representative);
  - (2) the name and street address of counsel, if the respondent is represented;
  - (3) the contact details of the respondent or its counsel (e.g., a designated address, telephone number, facsimile number and e-mail address);
  - (4) a response to the relief and remedy sought;
  - (5) a summary of the dispute; and
  - (6) the admission or denial of the claimant’s statements, a statement of factual and legal grounds, and the manner and method of proof.
- 2 The Answer may set forth the following:
  - (1) the name, street address and other contact details of an arbitrator appointed by the respondent, if the Parties have agreed that the number of arbitrators is three;
  - (2) a statement about the number of arbitrators, the procedure for appointing arbitrators, the place of arbitration, or the language(s) of arbitration; or
  - (3) a statement about the governing law applicable to the substance of the dispute.
- 3 A power of attorney shall be submitted, if respondent is represented by counsel.
- 4 The JCAA, on having received the Answer, shall promptly transmit a copy thereof to the other Party and each arbitrator.

## Rule 19. Counterclaim

- 1 The respondent, within four weeks from its receipt of the notice of the Request for Arbitration (or within two weeks if Rule 77 applies), may submit a counterclaim, if:
  - (1) all Parties have agreed in writing that the counterclaim shall be resolved together with all claims in a single arbitral proceeding;
  - (2) the claim and the counterclaim arise under the same Arbitration Agreement; or

- (3)
    - (a) the same or a similar question of fact or law arises from the claim and the counterclaim;
    - (b) the dispute is referred by the Arbitration Agreement to arbitration under the Rules or at the JCAA; and
    - (c) the arbitral proceedings are capable of being conducted in a single proceeding with regard to the place of arbitration, the number of arbitrators, language(s), and other issues governed by the Arbitration Agreement under which the claims arise.
- 2 Rules 14, 15.2, 16 and 18 shall apply *mutatis mutandis* to the counterclaim.

### **Rule 20. Set-off Defense**

The respondent, within four weeks from its receipt of the notice of the Request for Arbitration (or within two weeks if Rule 77 applies), may submit a set-off defense in writing.

### **Rule 21. Amendment to Claim**

- 1 The claimant (or the respondent having submitted a counterclaim) may amend its claim by submitting a request for amendment to the JCAA in writing, if:
  - (1) all Parties have agreed in writing that the amended claim shall be resolved together with other claims or counterclaims in a single arbitration proceeding;
  - (2) the original claim and the amended claim arise under the same Arbitration Agreement; or
  - (3)
    - (a) the same or a similar question of fact or law arises from the original claim and the amended claim;
    - (b) the dispute is referred by the Arbitration Agreement to arbitration under the Rules or at the JCAA; and
    - (c) the arbitral proceedings are capable of being conducted under a single proceeding with regard to the place of arbitration, the number of arbitrators, language(s), and other issues governed by the Arbitration Agreement under which the claims arise.
- 2 After the arbitral tribunal is constituted, the claimant (or the respondent having submitted a counterclaim) shall obtain approval of the arbitral tribunal to amend its claim. The arbitral tribunal shall give the other Party an opportunity to

comment before granting approval of an amendment.

- 3 The arbitral tribunal may deny the amendment under Rule 21.2, if it considers it inappropriate in view of a likely substantial delay in conducting the arbitral proceedings, a prejudicial effect on the other Party, or any other circumstances. The arbitral tribunal shall promptly notify the Parties of its decision on approval or denial.
- 4 Rules 14, 15.2 and 16 shall apply *mutatis mutandis* to the amended claim.
- 5 Rule 18, 19 or 20 shall apply *mutatis mutandis* to an Answer, a counterclaim, or set-off defense in response to the amended claim.

## **Rule 22. Number of Copies to be Submitted**

- 1 The number of hard copies to be submitted under Rules 14.1, 15.2, 18.1 (including, the application *mutatis mutandis* under Rules 19.2, 21.5 and 52.5), 20 and 21.1 shall be the sum of the number of arbitrators (three if not yet determined), and the number of other Parties, plus one. It shall be sufficient for each Party represented by counsel to submit one hard copy of a power of attorney to the JCAA.
- 2 Rule 22.1 shall not apply to a submission by e-mail, facsimile or any other electronic communication method. A Party, if requested, shall submit the number of hard copies that the JCAA or the arbitral tribunal designates.

## **Rule 23. Withdrawal of Claim**

- 1 Before the constitution of the arbitral tribunal, the claimant may withdraw its claim by submitting a notice to the JCAA in writing (the “**Notice of Withdrawal**”) stating that the claimant withdraws the claim. The JCAA shall notify the respondent of the Notice of Withdrawal.
- 2 After the constitution of the arbitral tribunal, the claimant may withdraw its claim by submitting a Notice of Withdrawal to the arbitral tribunal and obtaining its approval thereto.
- 3 Upon the request for approval by the claimant under Rule 23.2, the arbitral tribunal, after giving the respondent an opportunity to comment, shall approve the withdrawal unless the respondent promptly objects thereto and the arbitral tribunal determines that the respondent has a legitimate interest in resolving the dispute referred to the arbitral proceedings.
- 4 The arbitral tribunal shall make a decision to terminate the

arbitral proceedings if the arbitral tribunal approves the withdrawal of all the claims under Rule 23.3.

## **CHAPTER III Arbitrators and Arbitral Tribunal**

### **Rule 24. Impartiality and Independence of Arbitrators**

- 1 An arbitrator shall be, and remain at all times, impartial and independent.
- 2 When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall fully disclose to that approaching person any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.
- 3 When a person is appointed as an arbitrator, he or she shall promptly submit in writing to the Parties and the JCAA his or her undertaking to disclose any and all circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, or to declare that there are no such circumstances (the “**Declaration of Impartiality and Independence**”).
- 4 During the course of the arbitral proceedings, an arbitrator shall have an ongoing obligation to promptly disclose to the Parties and the JCAA in writing any and all such circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, unless the arbitrator has already disclosed such circumstances.

### **Rule 25. Appointment and Confirmation of Arbitrators**

- 1 Arbitrator(s) shall be appointed pursuant to the agreement of the Parties.
- 2 If the Parties have not agreed on the appointment of arbitrator(s), the arbitrator(s) shall be appointed under Rules 26 through 30.
- 3 The appointment of an arbitrator made by a Party, by Parties, or by arbitrators shall be effective only after confirmation by the JCAA. The JCAA, after giving the Party or the Parties and the arbitrator(s) an opportunity to comment, may refuse to confirm the appointment of an arbitrator if the JCAA finds that the appointment is clearly inappropriate. Upon confirming the appointment of the arbitrator, the JCAA shall promptly notify such confirmation to the Parties and the Arbitrator(s).
- 4 If the appointment of an arbitrator is not confirmed by



the JCAA, the Party, the Parties, or the arbitrators that appointed the arbitrator shall appoint another arbitrator within the period fixed by the JCAA.

### **Rule 26. Number of Arbitrators**

- 1 If the Parties fail to notify the JCAA in writing of their agreement about the number of arbitrators within four weeks from the respondent's receipt of the notice of the Request for Arbitration, such number shall be one.
- 2 Either Party, within four weeks from the respondent's receipt of the notice of the Request for Arbitration, may request the JCAA in writing that such number shall be three. Such number shall be three, if the JCAA considers the request appropriate, taking into account the amount in dispute, the complexity of the case and other relevant circumstances.
- 3 The JCAA shall promptly notify the number of arbitrators to the Parties when it is fixed.

### **Rule 27. Appointment of Arbitrator - Sole Arbitrator**

- 1 If the Parties have agreed that there shall be only one arbitrator, the Parties shall agree on and appoint such arbitrator, and notify the JCAA of such appointment under Rule 30 within two weeks from the respondent's receipt of the notice of the Request for Arbitration.
- 2 If it is determined that there shall be one arbitrator under Rule 26.1, the Parties shall agree on and appoint such arbitrator, and notify the JCAA of such appointment under Rule 30 within two weeks from the time limit under Rule 26.1.
- 3 If the Parties fail to notify the JCAA of such appointment under Rule 30 within the time limit under Rule 27.1 or 27.2, the JCAA shall appoint an arbitrator.
- 4 In case the JCAA appoints an arbitrator under Rule 27.3 and a Party requests that the arbitrator be a person of a different nationality from that of any of the Parties, the JCAA shall respect such request.

### **Rule 28. Appointment of Arbitrators - Three Arbitrators**

- 1 If the Parties have agreed that the number of arbitrators shall be three, each Party shall appoint one arbitrator and notify the JCAA of such appointment under Rule 30 within three weeks from the respondent's receipt of the notice of

the Request for Arbitration.

- 2 If the JCAA determines that the number of arbitrators shall be three under Rule 26.2, each Party shall appoint one arbitrator and notify the JCAA of such appointment under Rule 30 within three weeks from the Party's receipt of the notice of the determination by the JCAA under Rule 26.2.
- 3 If either Party fails to notify the JCAA of such appointment under Rule 30 within the time limit under Rule 28.1 or 28.2, the JCAA shall appoint such arbitrator.
- 4 The two arbitrators shall agree on and appoint the third arbitrator, and notify the JCAA of such appointment under Rule 30 within three weeks from the two arbitrators' receipt of the notice that the JCAA has confirmed or appointed the two arbitrators.
- 5 If the two arbitrators fail to notify the JCAA of such appointment of the third arbitrator under Rule 30 within the time limit under Rule 28.4, the JCAA shall appoint such arbitrator.
- 6 If the JCAA appoints an arbitrator under Rule 28.5, Rule 27.4 shall apply *mutatis mutandis*.

**Rule 29. Appointment of Arbitrators  
- Three Arbitrators in Multi-Party Arbitration**

- 1 If there is more than one claimant or respondent and the number of arbitrators shall be three, the arbitrators shall be appointed under this Rule 29.
- 2 If the Parties have agreed that the number of arbitrators shall be three, the claimant(s) and the respondent(s) shall appoint one arbitrator each and notify the JCAA of such appointment under Rule 30 within three weeks from the respondent(s)' receipt of the notice of the Request for Arbitration.
- 3 If the JCAA determines that the number of arbitrators shall be three under Rule 26.2, the claimant(s) and the respondent(s) shall appoint one arbitrator each and notify the JCAA of such appointment under Rule 30 within three weeks from the Parties' receipt of the notice of the determination by the JCAA under Rule 26.2.
- 4 The two arbitrators appointed by the claimant(s) and the respondent(s) shall agree on and appoint the third arbitrator, and notify the JCAA of such appointment under Rule 30 within three weeks from the two arbitrators' receipt of the notice that the JCAA has confirmed the two arbitrators.
- 5 If the two arbitrators fail to notify the JCAA of such appointment of the third arbitrator under Rule 30 within the time

limit under Rule 29.4, the JCAA shall appoint such arbitrator.

- 6 If the JCAA appoints an arbitrator under Rule 29.5, Rule 27.4 shall apply *mutatis mutandis*.
- 7 If either the claimant(s) or the respondent(s), or both of them fail to notify the JCAA of such appointment under Rule 30 within the time limit under Rule 29.2 or 29.3, the JCAA shall appoint all three arbitrators. In such case, the JCAA may appoint the arbitrator already appointed by the claimant(s) or the respondent(s) as one of the three arbitrators, if no Party raises an objection.

### **Rule 30. Notice of Appointment of Arbitrator**

- 1 On appointment of an arbitrator by a Party, by Parties or by the arbitrators, such Party, Parties, or arbitrators shall promptly submit in writing to the JCAA for its confirmation:
  - (a) a notice of appointment of the arbitrator setting forth the appointed arbitrator's name, occupation, street address, and contact details (*e.g.*, designated address, telephone number, facsimile number and e-mail address) ("**Notice of Appointment**");
  - (b) the arbitrator's acceptance of appointment; and
  - (c) the arbitrator's Declaration of Impartiality and Independence.

The JCAA shall promptly transmit a copy thereof to the other Party (or Parties) and the arbitrator(s).

- 2 On appointment of an arbitrator by the JCAA, the JCAA shall promptly transmit to the Parties and the arbitrator(s) the Notice of Appointment of such arbitrator, together with a copy of the arbitrator's acceptance of appointment and Declaration of Impartiality and Independence.

### **Rule 31. Challenge to Arbitrators**

- 1 A Party may challenge an arbitrator if circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence.
- 2 A Party may challenge an arbitrator it has appointed, or whose appointment the Party has participated in by way of recommendation or any similar acts, only for reasons of which the Party becomes aware after the appointment has been made.
- 3 A Party that intends to challenge an arbitrator shall submit in writing to the JCAA a request for challenge (the "**Request for Challenge**") within two weeks from the

date of its receipt of the notice by the JCAA confirming the appointment of the arbitrator (the Notice of Appointment of the arbitrator, if the arbitrator is appointed by the JCAA) or the date when it became aware of any circumstance under Rule 31.1, whichever comes later.

- 4 On receipt of the Request for Challenge, the JCAA shall promptly notify the other Party and the challenged arbitrator, supplying them with a copy thereof.
- 5 The JCAA shall make a decision on the challenge, after giving the other Party and the challenged arbitrator an opportunity to comment. The JCAA may make the decision without giving reasons.

### **Rule 32. Removal of Arbitrators**

The JCAA, at the written request of either Party or on its own motion, may remove any arbitrator who fails to perform his or her duties or unduly delays in the performance of his or her duties, or is *de jure* or *de facto* unable to perform his or her duties. In such cases, the JCAA shall give the Parties and the challenged arbitrator an opportunity to comment.

### **Rule 33. Appointment of Substitute Arbitrator**

- 1 If an arbitrator ceases to perform his or her duties before the termination of the arbitral proceedings because of resignation, challenge, removal or death, the JCAA shall promptly notify the Parties and the remaining arbitrators.
- 2 If the arbitrator who has ceased to perform his or her duties was appointed by a Party, by Parties or by the remaining arbitrators, such Party, Parties or arbitrators shall appoint a substitute arbitrator and notify the JCAA of such appointment under Rule 30 within three weeks from their receipt of the notice under Rule 33.1, unless otherwise agreed by the Parties. If such Party, Parties or remaining arbitrators fail to do so, the JCAA shall appoint a substitute arbitrator.
- 3 If the arbitrator who ceases to perform his or her duties was appointed by the JCAA, the JCAA shall appoint a substitute arbitrator, unless otherwise agreed by the Parties.

### **Rule 34. Vacancy after Closing of Arbitral Proceedings**

Notwithstanding Rule 33, where an arbitrator ceases to perform his or her duties after the closing of the arbitral proceedings but before an arbitral award is rendered, the arbitral

tribunal may render an arbitral award without a substitute arbitrator being appointed, if the JCAA, after giving the remaining arbitrators and the Parties an opportunity to comment, considers it appropriate.

### **Rule 35. Repetition of Arbitral Proceedings by Substitute Arbitrator**

If a substitute arbitrator is appointed under Rule 33, the arbitral tribunal, after giving the Parties an opportunity to comment, shall decide whether or to what extent arbitral proceedings already conducted should be repeated.

## **CHAPTER IV Arbitral Proceedings**

### **Section 1. Conduct of Arbitral Proceedings**

#### **Rule 36. Place of Arbitration**

- 1 Unless otherwise agreed by the Parties, the place of arbitration shall be the city of the office of the JCAA to which the claimant submitted the Request for Arbitration under Rule 14.1.
- 2 The arbitral tribunal may conduct the arbitral proceedings at any place it considers appropriate, unless otherwise agreed by the Parties.

#### **Rule 37. Conduct of Arbitral Proceedings**

- 1 The arbitral tribunal shall direct and control the arbitral proceedings, including hearings.
- 2 The arbitral tribunal shall treat the Parties equally. The arbitral tribunal shall give each Party a sufficient opportunity to state and prove its case and to present a defense against the other Party's case.
- 3 The arbitral tribunal shall use reasonable efforts to resolve the dispute expeditiously.
- 4 A Party shall transmit any material submitted in writing in the arbitral proceedings to the arbitrator(s), the other Party and the JCAA; and the arbitral tribunal shall transmit to the JCAA a copy of any Communications in writing to the Parties.

### **Rule 38. Confidentiality**

- 1 Arbitral proceedings shall be held in private, and all records thereof shall be closed to the public.
- 2 The arbitrators, the JCAA (including its directors, officers, employees, and other staff), the Parties, their counsel and assistants, and other persons involved in the arbitral proceedings shall not disclose facts related to or learned through the arbitral proceedings except where disclosure is required by law or in court proceedings, or based on any other justifiable grounds.

### **Rule 39. Time Limit of Arbitral Award and Procedural Schedule**

- 1 The arbitral tribunal shall use reasonable efforts to render an arbitral award within six months from the date when it is constituted.
- 2 To implement Rule 39.1, the arbitral tribunal shall consult with the Parties, and make a schedule of the arbitral proceedings in writing (the “**Procedural Schedule**”) to the extent necessary and feasible as early as practicable. The consultation shall be conducted through preliminary meetings, telephone conferences, exchanges of documents or any other appropriate methods determined by the arbitral tribunal. The arbitral tribunal shall send the Procedural Schedule to the Parties and the JCAA.
- 3 The arbitral tribunal may amend the Procedural Schedule during the course of the arbitral proceedings after giving the Parties an opportunity to comment.

### **Rule 40. Issues and Terms of Reference**

- 1 At a stage as early as practicable, the arbitral tribunal shall use reasonable efforts to identify the issues to be determined upon consultation with the Parties.
- 2 If the arbitral tribunal considers it appropriate for promoting efficient arbitral proceedings, the arbitral tribunal, after giving the Parties an opportunity to comment, may prepare terms of reference setting forth the matters referred to the arbitral tribunal and a list of major issues.

### **Rule 41. Competence of Arbitral Tribunal to Determine Jurisdiction**

- 1 The arbitral tribunal may make a determination on any

objection as to the existence or validity of an Arbitration Agreement and any other matters regarding its own jurisdiction.

- 2 The arbitral tribunal shall make a decision to terminate the arbitral proceedings if it finds that it has no jurisdiction.

#### **Rule 42. Decision on Separate Proceedings**

- 1 The arbitral tribunal may make a determination on any objection as to a Single Arbitration for Multiple Claims.
- 2 If the arbitral tribunal finds that the requirements under Rule 15.1 are not satisfied, the arbitral tribunal shall make a decision to separate the arbitral proceedings (the “**Decision on Separate Proceedings**”) and notify the Parties thereof. The arbitral tribunal shall not make a Decision on Separate Proceedings if the respondent has not raised an objection within the time limit under Rule 15.2.
- 3 Upon the Decision on Separate Proceedings, the mandate of the arbitral tribunal shall be terminated, and the arbitral proceedings shall be conducted separately as to each separated claim(s). The mandate of the arbitral tribunal, however, shall not be terminated as to:
  - (a) any claim(s) against the respondent that has raised no objection within the time limit under Rule 15.2; or
  - (b) any claim(s) to which the respondent has requested continuation of the mandate of the arbitral tribunal within one week from the respondent’s receipt of the notice of the Decision on Separate Proceedings.
- 4 If the arbitral proceedings are to be conducted separately under Rule 42.3, calculation of periods of time based on the respondent’s receipt of the notice of the Request for Arbitration shall be determined based on the respondent’s receipt of the notice of the Decision on Separate Proceedings.
5. Rules 61.2, 61.4, 61.5, 61.6 and 63 through 65 shall apply *mutatis mutandis* to the Decision on Separate Proceedings.
6. Rules 42.1 through 42.5 shall apply *mutatis mutandis*, if:
  - (a) the counterclaim does not satisfy the requirements under Rule 19.1;
  - (b) (i) the amendment of the claim does not satisfy the requirements under Rule 21.1, or  
(ii) the application for approval of an amendment is denied under Rule 21.3; or
  - (c) (i) the joinder does not satisfy the requirements under

Rule 52.1, or

(ii) the joinder is denied under Rule 52.4.

7. Notwithstanding Rule 42.6, the mandate of the arbitral tribunal shall not be terminated as to:
- (1) any claim(s) pending before the counterclaim or the amendment of the claim was filed; or
  - (2) any claim(s) pending before the joinder that was applied after the constitution of the arbitral tribunal.

### **Rule 43. Interim Decision**

The arbitral tribunal, if it considers it appropriate, may make an interim decision on a dispute arising during the course of the arbitral proceedings. Rules 61.2 and 62 shall apply *mutatis mutandis* to such decision. The arbitral tribunal may omit the statement of reasons.

### **Rule 44. Hearings**

The arbitral tribunal shall decide whether to hold hearings for oral arguments or presentation of evidence, or whether the arbitral proceedings shall be conducted based only on documents and other materials. Notwithstanding the previous sentence, unless the Parties have agreed in writing that there will not be hearings, the arbitral tribunal shall hold such hearings at an appropriate stage of the arbitral proceedings, if so requested by a Party.

### **Rule 45. Date and Place of Hearings**

- 1 The arbitral tribunal, after giving the Parties an opportunity to comment, shall fix the date and place of hearings. If hearings last more than one day, the arbitral tribunal shall hold hearings on consecutive days, to the extent feasible.
- 2 If the arbitral tribunal has fixed the date and place of hearings, it shall promptly notify the Parties of the date and place of hearings.
- 3 The arbitral tribunal shall change the date of hearings at the joint request of the Parties. The arbitral tribunal may change the date at the request of one Party, if it finds a compelling reason.
- 4 Any request under Rule 45.3 shall be made in writing, unless made at a hearing or during an oral consultation under Rule 39.2.



### **Rule 46. Appearance by Parties at Hearings**

- 1 The arbitral tribunal, in principle, shall hold hearings in the presence of all the Parties.
- 2 The arbitral tribunal may hold hearings even if any or all of the Parties fails to appear.

### **Rule 47. Submission of Written Statements**

- 1 Within the time limits under the Rules or the time limits fixed by the arbitral tribunal, each Party shall submit in writing to the arbitral tribunal one or more statements setting forth such Party's case on the facts and law (the "Written Statements").
- 2 The arbitral tribunal shall acknowledge receipt of the Written Statements submitted by a Party.

### **Rule 48. Default of a Party**

- 1 If one Party fails to submit a Written Statement or the Answer within the time limits under the Rules or the time limits fixed by the arbitral tribunal, the arbitral tribunal shall continue the arbitral proceedings without treating such failure in itself as an admission of the other Party's statements.
- 2 If one Party, without sufficient cause, fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the arbitral proceedings and make the arbitral award based on the evidence before it.

### **Rule 49. Waiver of Right to Object**

A Party who knows that any of the Rules has not been complied with but fails to promptly object to such non-compliance, shall be deemed to have waived its right to object.

### **Rule 50. Evidence**

- 1 Each Party shall have the burden of proving the facts relied on to support its claims or defenses.
- 2 The arbitral tribunal, on its own motion, may examine evidence not presented by any Party, when the arbitral tribunal considers it necessary.
- 3 The arbitral tribunal may examine evidence outside the hearings. The arbitral tribunal, however, shall give the Parties an opportunity to submit statements in writing or

orally regarding such evidence.

- 4 The arbitral tribunal, at the written request of a Party or on its own motion, may order any Party to produce documents in its possession that the arbitral tribunal considers necessary to examine after giving the Party in possession an opportunity to comment, unless the arbitral tribunal finds reasonable grounds for the Party in possession to refuse the production.

### **Rule 51. Expert Appointed by Arbitral Tribunal**

- 1 The arbitral tribunal, after giving the Parties an opportunity to comment, may appoint one or more experts to advise it with respect to any matters to be determined and to report, in writing or orally, such expert(s)' findings to the arbitral tribunal.
- 2 If a Party so requests, the arbitral tribunal, after delivery of the report under Rule 51.1, shall give the Parties an opportunity to put questions to the expert(s) in a hearing. The arbitral tribunal, if it considers it necessary, may give the Parties an opportunity to submit their own expert reports.

### **Rule 52. Third Party Joinder**

- 1 A third party may join in the arbitral proceedings as a claimant or a Party may request a third party to join in the arbitral proceedings as a respondent, if:
  - (1) all Parties and the third party have agreed in writing about the joinder; or
  - (2) all claims are made under the same Arbitration Agreement; provided, however, the third party's consent in writing to such joinder is necessary when the third party is requested to join as respondent after the constitution of the arbitral tribunal.
- 2 If the third party joins in the arbitral proceedings before the arbitral tribunal is constituted, the arbitrators shall be appointed under Rules 25 through 27, 29 and 30. Calculation of periods of time under Rules 26, 27.1 and 29.2 shall be determined based on the date that the respondent against whom the claim is made in the application for joinder receives the notice of the application for joinder.
- 3 If the third party joins in the arbitral proceedings after the arbitral tribunal is constituted, the arbitral tribunal shall remain the same.

- 4 Even when the requirement under Rule 52.1 is satisfied, the arbitral tribunal may deny joinder if it finds that such joinder will delay the arbitral proceedings or it finds any other reasonable grounds.
- 5 Rules 14, 15.2 and 16.1 shall apply *mutatis mutandis* to an application for joinder; provided that “the respondent” under Rules 15.2, 16.1 and 42.3 shall be read as “the Party other than the Party that has submitted an application for joinder, and the third party who has been requested to join as respondent.”
- 6 Rule 18, 19 or 20 shall apply *mutatis mutandis* to an answer, counterclaim or set-off defense to the claim made in the application for joinder.

### **Rule 53. Consolidation**

The arbitral tribunal may, at the written request of a Party and when it finds it necessary, consolidate and hear the pending claim(s) with the other claim(s) (as to which no arbitral tribunal has been constituted), if:

- (1) all Parties (including the parties to the other claim(s)) have agreed in writing;
- (2) the pending claim(s) and the claim(s) to be consolidated arise under the same Arbitration Agreement; provided, however, the written consent to such consolidation by the party to the other claim(s) is necessary when the party has not been a Party to the pending claim(s); or
- (3) both the pending claim(s) and the other claim(s) to be consolidated arise between the same Parties, and
  - (a) the same or a similar question of fact or law arises from the claims;
  - (b) the dispute is referred by the Arbitration Agreement to arbitration under the Rules or at the JCAA; and
  - (c) the arbitral proceedings are capable of being conducted in a single proceeding with regard to the place of arbitration, the number of arbitrators, language(s), and other issues governed by the Arbitration Agreements under which the claims arise.

### **Rule 54. Mediation**

- 1 The Parties, at any time during the course of the arbitral proceedings, may agree in writing to refer the dispute to

mediation proceedings under the International Commercial Mediation Rules of the JCAA (the “**ICMR**”). No arbitrator assigned to the dispute shall be appointed as mediator, except if appointed under Rule 55.1.

- 2 If the Parties enter into an agreement under Rule 54.1, the arbitral tribunal, at the request of either Party, shall stay the arbitral proceedings.
- 3 All offers, admissions, or other statements by the Parties, or recommendations by the mediator, made during the course of the mediation proceedings shall be inadmissible as evidence in the arbitral proceedings unless otherwise agreed by the Parties.
- 4 If the mediation proceedings are terminated under Rule 10.2(3), 10.2(4), or 10.2(5) of the ICMR, the arbitral tribunal, at the request of either Party, shall resume the arbitral proceedings.

**Rule 55. Special Rules for the ICMR if an Arbitrator serves as Mediator**

- 1 Notwithstanding Rule 54.1, the Parties may agree in writing to appoint an arbitrator assigned to the same dispute as a mediator, and refer the dispute to mediation proceedings under the ICMR. If the Parties do so, the Parties shall not challenge the arbitrator based on the fact that the arbitrator is serving or has served as a mediator.
- 2 Notwithstanding Rule 9.5 of the ICMR, an arbitrator who serves as mediator in regard to the same dispute shall not consult separately with any of the Parties orally or in writing, without the agreement of the Parties in writing. The arbitrator shall disclose to all other Parties, in each instance, the fact that such consultation has taken place, excluding the contents thereof.
- 3 The Parties shall submit to the JCAA a copy of the agreement under Rule 55.1, when they refer the dispute to mediation proceedings under Rule 55.1.
- 4 The mediator’s remuneration under Rule 55 and the administrative fee for the mediation proceedings shall be calculated as follows:
  - (1) the administrative fee for the mediation proceedings are not required to be paid; and
  - (2) the Mediation Hours shall be deemed to be the arbitrator’s Arbitration Hours in calculating the arbitrator’s remuneration.
- 5 The ICMR, except Chapter II, and the Mediation Cost Regulation shall apply to the mediation under Rule 55.

## **Rule 56. Closing and Reopening of Arbitral Proceedings**

- 1 The arbitral tribunal shall close the arbitral proceedings upon determining that the Parties have been given sufficient opportunity to state and prove their respective claims and present defenses thereto and that the arbitral tribunal is able to render an arbitral award.
- 2 The arbitral tribunal may close the arbitral proceedings as to certain claims, upon determining that the requirements under Rule 56.1 as to such claims have been satisfied.
- 3 Before closing the arbitral proceedings under Rule 56.1 or 56.2, the arbitral tribunal shall provide the Parties with notice thereof in advance.
- 4 The arbitral tribunal, if it considers it necessary, may reopen the arbitral proceedings. The arbitral tribunal shall not, in principle, reopen the arbitral proceedings after the lapse of three weeks from the date of closing.

## **Rule 57. Termination of Arbitral Proceedings**

- 1 The arbitral proceedings shall terminate upon the rendering of an arbitral award, or upon a decision to terminate the arbitral proceedings.
- 2 The arbitral tribunal shall make a decision to terminate the arbitral proceedings, if:
  - (1) the arbitral tribunal approves the withdrawal of all the claim under Rule 23.3;
  - (2) the arbitral tribunal finds that it has no jurisdiction under Rule 41.2; or
  - (3) the arbitral tribunal finds that the continuation of the arbitral proceedings has become unnecessary or impossible.
- 3 The mandate of the arbitral tribunal terminates upon termination of the arbitral proceedings, subject to Rules 63 through 65.
- 4 Rules 61.2, 61.4, 61.5, 61.6 and 62 shall apply *mutatis mutandis* to the decision to terminate the arbitral proceedings.

## **Section 2. Arbitral Award**

### **Rule 58. Final Award, Partial Award and Award by Consent**

- 1 The arbitral tribunal shall render an arbitral award on all claims presented in the arbitral proceedings.

- 2 Notwithstanding Rule 58.1, if the arbitral tribunal has closed the arbitral proceedings as to certain claims under Rule 56.2, it may render a partial award on such claims.
- 3 If the Parties agree on a settlement of the dispute during the course of the arbitral proceedings, the arbitral tribunal, upon the request of the Parties, may record the settlement in the form of an arbitral award on agreed terms.

### **Rule 59. Effect of Arbitral Award**

An arbitral award shall be final and binding on the Parties.

### **Rule 60. Rules Applicable to Substance of Dispute**

- 1 The arbitral tribunal shall decide the dispute in accordance with such rules of law agreed by the Parties to be applicable to the substance of the dispute.
- 2 Failing such agreement by the Parties under Rule 60.1, the arbitral tribunal shall apply the substantive law of the country or state to which the dispute referred to the arbitral proceedings is most closely connected.
- 3 Notwithstanding Rules 60.1 and 60.2, the arbitral tribunal shall decide *ex aequo et bono* only if all Parties have expressly requested it to do so.

### **Rule 61. Arbitral Award - Number of Copies and Format**

- 1 The arbitral tribunal shall make a number of hard copies of the arbitral award sufficient to provide one hard copy for each of the Parties and one hard copy for the JCAA.
- 2 The arbitral award shall state the following:
  - (1) the full names and street addresses of the Parties (if a Party is a legal entity or other association, the corporate name, street address and the name of the Party's representative);
  - (2) the name and street address of counsel, if a Party is represented;
  - (3) the determination on the relief and remedy sought;
  - (4) the reasons upon which the arbitral award is based;
  - (5) the date of the arbitral award; and
  - (6) the place of arbitration.
- 3 If the Parties have agreed that no reasons are to be given, or if the arbitral tribunal records a settlement in the form of an arbitral award on agreed terms under Rule 58.3, the reasons shall be omitted. The arbitral tribunal, however, shall state the reason for such omission in the arbitral

award.

- 4 The arbitral tribunal shall determine in the arbitral award the total amount of costs and the allocation thereof under Rule 83.1. The arbitral tribunal, however, is not required to do so in a partial award.
- 5 If one Party has to repay an amount to the other Party based on the allocation under Rule 61.4, the arbitral tribunal shall order that that Party shall repay such amount to the other Party in the arbitral award.
- 6 The arbitrator(s) shall sign the arbitral award. If there is more than one arbitrator and an arbitrator fails to sign the arbitral award, the signatures of the majority of the arbitral tribunal shall suffice. The reason for such failure to sign shall be stated in the arbitral award.

### **Rule 62. Notice of Arbitral Award**

- 1 The JCAA shall send the arbitral award to each Party after the Parties have fully paid to the JCAA the amount due, consisting of the arbitrator(s)' remuneration and expenses, and other reasonable expenses incurred with respect to the arbitral proceedings as required to be paid to the JCAA.
- 2 The JCAA shall keep one original of the arbitral award.

### **Rule 63. Correction of Arbitral Award**

- 1 The arbitral tribunal, upon the written request of a Party, or on its own motion, may correct any computational, clerical, or any other errors or omissions of a similar nature.
- 2 A Party, within four weeks from its receipt of the arbitral award, may request the arbitral tribunal to make a correction of the arbitral award.

### **Rule 64. Interpretation of Arbitral Award**

A Party, within four weeks from its receipt of the arbitral award, may request in writing the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

### **Rule 65. Additional Arbitral Award**

A Party, within four weeks from its receipt of the arbitral award, may request in writing the arbitral tribunal to make an additional arbitral award as to claims presented in the arbitral proceedings but omitted from the arbitral award.

# CHAPTER V Interim Measures by Arbitral Tribunal or by Emergency Arbitrator

## Section 1. Interim Measures by Arbitral Tribunal

### Rule 66. Interim Measures

- 1 A Party may apply in writing to the arbitral tribunal for the grant of interim measures against the other Party (“**Interim Measures**”). Interim Measures are, for example, orders to:
  - (1) maintain or restore the status quo;
  - (2) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral proceedings themselves;
  - (3) provide a means of preserving assets out of which a subsequent arbitral award may be satisfied; or
  - (4) preserve evidence that may be relevant and material to the resolution of the dispute.
- 2 The Party requesting Interim Measures under Rule 66.1(1), (2) and (3) shall satisfy the arbitral tribunal that:
  - (1) harm not adequately reparable by an arbitral award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the Party against whom the measure is directed if the measure is granted; and
  - (2) there is a reasonable possibility that the requesting Party will succeed on the merits of the claim.
- 3 The arbitral tribunal may order Interim Measures under Rule 66.1(4) to the extent it considers appropriate after taking into account the standards under Rule 66.2.
- 4 The arbitral tribunal, before granting Interim Measures, shall give each Party a reasonable opportunity to comment.
- 5 Rules 61.2, 62, and 63 shall apply *mutatis mutandis* to the Interim Measures.
- 6 The Parties shall be bound by, and carry out, the Interim Measures ordered by the arbitral tribunal.



## **Rule 67. Provision of Security**

The arbitral tribunal may require the Party requesting Interim Measures to provide appropriate security in connection with the Interim Measures.

## **Rule 68. Disclosure**

A Party shall disclose to the arbitral tribunal any material change in the circumstances on which the application or the arbitral tribunal's determination on the Interim Measures is based.

## **Rule 69. Modification, Suspension, Termination**

The arbitral tribunal, on the written application of either Party, or on its own motion in exceptional circumstances, may modify, suspend or terminate Interim Measures after giving the Parties an opportunity to comment. Rule 66.5 shall apply *mutatis mutandis* to such modification, suspension or termination.

# **Section 2. Interim Measures by Emergency Arbitrator**

## **Rule 70. Application for Emergency Measures**

- 1 Before the arbitral tribunal is constituted, or when any arbitrator has ceased to perform his or her duties, a Party may apply in writing to the JCAA for Interim Measures by an emergency arbitrator (“**Emergency Measures**”).
- 2 The application for Emergency Measures shall set forth the following:
  - (1) a statement that the Party is applying for Emergency Measures, and the measures sought;
  - (2) a reference to the Arbitration Agreement that is invoked;
  - (3) the full names and the street addresses of the Parties (if a Party is a legal entity or other association, the corporate name, street address and the name of the Party's representative);
  - (4) the name and street address of counsel, if the applicant is represented;
  - (5) the contact details of the applicant or its counsel (e.g., designated address, telephone number, fac-

- simile number and e-mail address);
- (6) a summary of the dispute; and
  - (7) a statement of facts supporting the necessity of granting the Emergency Measures.
- 3 A copy of the Arbitration Agreement shall be attached to the application for Emergency Measures.
  - 4 A power of attorney shall be attached to the application for Emergency Measures, if the applicant is represented by counsel.
  - 5 The applicant, when it submits an application for Emergency Measures, shall pay: the administrative fee and the deposit under the Administrative Fee Regulations of the JCAA; and the emergency arbitrator's remuneration under the Regulations for Arbitrator's Remuneration of the JCAA. If the applicant fails to pay such amount in full, the JCAA shall consider that no application for Emergency Measures has been made.
  - 6 Rules 16 and 22 shall apply *mutatis mutandis* to the application for Emergency Measures.
  - 7 If the JCAA has received no Request for Arbitration before or at the time of receiving the application for Emergency Measures, the applicant shall submit the Request for Arbitration within ten days from the date of the application. If the applicant fails to do so, the JCAA shall consider that no application for Emergency Measures has been made.

### **Rule 71. Appointment of Emergency Arbitrator**

- 1 The JCAA shall appoint a sole emergency arbitrator.
- 2 An emergency arbitrator shall be, and remain at all times, impartial and independent. No person shall be appointed as emergency arbitrator if there are any circumstances likely to give rise to doubts as to his or her impartiality or independence.
- 3 The emergency arbitrator shall promptly submit to the JCAA the Declaration of Impartiality and Independence stating that no circumstances exist that likely give rise to doubts as to his or her impartiality or independence.
- 4 The JCAA shall use reasonable efforts to appoint an emergency arbitrator within two business days from its receipt of the application for Emergency Measures, if:
  - (a) it confirms that the application for Emergency Measures has been made in conformity with Rules 70.1 through 70.6; and
  - (b) it considers it appropriate to appoint an emergency arbitrator.
- 5 On appointment of an emergency arbitrator by the

JCAA, the JCAA shall promptly transmit to the Parties the Notice of Appointment of the emergency arbitrator, together with a copy of the emergency arbitrator's acceptance of appointment in writing and of the Declaration of Impartiality and Independence.

- 6 A Party may challenge the emergency arbitrator under Rule 31. The Party shall submit the Request for Challenge to the JCAA within two days from the date of its receipt of the Notice of Appointment or from the date when the Party became aware of any circumstances that give rise to doubts as to his or her impartiality or independence, whichever comes later.
- 7 On or after the termination of the mandate of the emergency arbitrator, no Party may challenge the emergency arbitrator, and the pending challenge procedure shall be terminated.

### **Rule 72. Mandate of Emergency Arbitrator**

- 1 The emergency arbitrator may order, modify, suspend or terminate Emergency Measures in accordance with Rules 66 through 69.
- 2 The emergency arbitrator shall make a procedural schedule for Emergency Measures immediately after his or her appointment.
- 3 The emergency arbitrator, if he or she considers a hearing necessary in order to make a determination on the Emergency Measures, may hold such hearing for one day only.
- 4 The emergency arbitrator shall make a decision on the Emergency Measures within two weeks from his or her appointment. The emergency arbitrator shall not extend this time limit; provided, however, the JCAA may extend such time limit, if all Parties so agree or if the JCAA finds that the case is sufficiently complex or that any other compelling reason exists.
- 5 The Parties shall be bound by, and carry out, the Emergency Measures ordered by the emergency arbitrator. The Emergency Measures shall be deemed to be Interim Measures granted by the arbitral tribunal when it is constituted or when a substitute arbitrator is confirmed or appointed by the JCAA. The Emergency Measures shall remain in effect until the arbitral tribunal modify, suspend or terminate such Emergency Measures under Rule 73.2.
- 6 The Emergency Measures shall no longer be effective, if:
  - (1) the arbitral tribunal is not constituted or a substi-

tute arbitrator is not confirmed or appointed by the JCAA within three months from the grant of the Emergency Measures;

- (2) the arbitral proceedings are terminated under Rule 57.1; or
  - (3) the JCAA considers that no application for Emergency Measures has been made under Rule 70.7.
- 7 The mandate of the emergency arbitrator shall be terminated on the constitution of the Arbitral Tribunal or on the confirmation or appointment of the substitute arbitrator by the JCAA. The JCAA may extend the mandate, if it considers it necessary.
- 8 The emergency arbitrator shall not be appointed as an arbitrator for the same dispute, unless otherwise agreed in writing by the Parties.

### **Rule 73. Approval, Modification, Suspension and Termination by Arbitral Tribunal**

- 1 No determination on Emergency Measures shall be binding on the arbitral tribunal.
- 2 The arbitral tribunal may approve, modify, suspend or terminate the Emergency Measures in whole or in part.

### **Rule 74. Application *Mutatis Mutandis***

The other Chapters of the Rules shall apply *mutatis mutandis* to the emergency arbitrator and the Emergency Measures unless they are contrary to the nature thereof.

## **CHAPTER VI Expedited Procedures**

### **Rule 75. Scope**

- 1 Expedited procedures shall be conducted if a Party notifies the JCAA in writing of the agreement by the Parties to submit the dispute to expedited procedures within two weeks from the respondent's receipt of the notice of the Request for Arbitration.
- 2 Expedited procedures shall be conducted where the amount or economic value of the claimant's claim(s) is not more than ¥20,000,000; unless, within two weeks from the respondent's receipt of the notice of the Request for Arbitration:

- (1) a Party notifies the JCAA in writing of the agreement by the Parties not to submit their dispute to expedited procedures;
  - (2) a Party notifies the JCAA in writing of the agreement by the Parties that there will be more than one arbitrator; or
  - (3) a counterclaim or set-off defense is submitted and the amount or economic value of such submission exceeds ¥20,000,000 (except when the Parties agreed in writing to submit such counterclaim(s) or set-off defense(s) to expedited procedures).
- 3 The amount of any interest, rent, damage, penalty, expense, or cost that is incidental to the principal claim shall be excluded when calculating the amount or the economic value of the claim, counterclaim, or set-off defense under Rule 75.2.
  - 4 Where the economic value cannot be calculated, or its calculation is extremely difficult, or where there is a dispute between the Parties concerning such economic value, the economic value under Rule 75.2 shall be deemed to exceed ¥20,000,000.
  - 5 The JCAA shall promptly notify the Parties and the arbitrator on determining that expedited procedures shall be conducted.

## **Rule 76. Applicable Rules of Expedited Procedures**

- 1 Expedited procedures shall be conducted under Rules 77 through 82.
- 2 Matters not provided for in this Chapter VI shall be governed *mutatis mutandis* by the other Chapters.

## **Rule 77. Time Limit of Counterclaim and Set-off Defense**

If it is determined that expedited procedures shall be conducted, the respondent shall not submit counterclaim(s) under Rule 19 or set-off defense(s) under Rule 20. The counterclaim(s) or set-off defense(s) submitted by the respondent within two weeks from the respondent's receipt of the notice of the Request for Arbitration, however, shall be allowed, if:

- (1) the amount or economic value of the counterclaim(s) or set-off defense(s) does not exceed ¥20,000,000; or
- (2) the amount or economic value of the counterclaim(s) or set-off defense(s) exceeds ¥20,000,000, but

the Parties agreed in writing to submit such counterclaim(s) or set-off defense(s) to expedited procedures.

### **Rule 78. No Amendment to Claim, Counterclaim or Set-Off Defense**

Neither the claimant nor the respondent shall amend or supplement its claims, counterclaims or set-off defenses.

### **Rule 79. Appointment of Arbitrator**

- 1 Expedited procedures shall be conducted by a sole arbitrator.
- 2 The Parties shall agree upon and appoint an arbitrator and notify the JCAA of such appointment under Rule 30 within two weeks from their receipt of the notice by the JCAA that expedited procedures shall be conducted.
- 3 If the Parties fail to notify the JCAA under Rule 79.2, the JCAA shall appoint such arbitrator.
- 4 In case the JCAA appoints an arbitrator under Rule 79.3, and a Party requests that such arbitrator be a person of a different nationality from that of any of the Parties, the JCAA shall respect such request.
- 5 Rules 25 through 29 (except Rules 25.3 and 25.4) shall not apply to expedited procedures.

### **Rule 80. One Day Hearing**

A hearing shall not, in principle, last for more than one day. The arbitrator may schedule additional hearing days, if necessary.

### **Rule 81. Time Limit of Arbitral Award**

- 1 The arbitrator shall make an arbitral award within three months from his or her confirmation or appointment by the JCAA.
- 2 The arbitrator shall not extend the time limit under Rule 81.1. The JCAA may extend such time limit under Rule 81.1 if the JCAA finds that the case is sufficiently complex or that any other compelling reason exists.

## **Rule 82. No Third Party Joinder nor Consolidation**

Rules 52 and 53 shall not apply to expedited procedures.

## **CHAPTER VII Costs**

### **Rule 83. Allocation of Costs**

- 1 The costs of the arbitration include the administrative fee, the arbitrator(s)' remuneration and expenses, and other reasonable expenses incurred with respect to the arbitral proceedings; and the Parties' legal fees and expenses to the extent the arbitral tribunal determines that they are reasonable.
- 2 The arbitral tribunal may apportion the costs under Rule 83.1 between the Parties, taking into account the Parties' conduct throughout the course of the arbitral proceedings, the determination on the merits of the dispute, and any relevant circumstances. If before the constitution of the arbitral tribunal, the claimant withdraws its claim, the JCAA may apportion such costs.
- 3 The administrative fee shall be fixed pursuant to the Administrative Fee Regulations, and the arbitrators' remuneration and expenses shall be fixed pursuant to the Regulations for Arbitrator's Remunerations.

### **Rule 84. Joint and Several Liability to the JCAA**

All Parties to the arbitration shall be jointly and severally liable for payments that have to be made to the JCAA in respect of the arbitrator(s)' remuneration and expenses, and other reasonable expenses incurred with respect to the arbitral proceedings and that are required to be paid to the JCAA.

### **Rule 85. Payment, Deposit and Accounting**

- 1 The Parties shall pay to the JCAA a sum of money in an amount, in the manner and within the time limit fixed by the JCAA, so as to cover the arbitrator(s)' remuneration and expenses, and other reasonable expenses incurred with respect to the arbitral proceedings.
- 2 If a Party fails to make payment under Rule 85.1, the arbitral tribunal, upon the JCAA's request, shall suspend or terminate the arbitral proceedings unless the other Party makes such payment.

- 3 If the total sum of money already paid by the Parties to the JCAA exceeds the total sum of the money that is required to be paid as determined by the arbitral tribunal under Rule 61.4, the JCAA shall refund the difference to either or both of the Parties on termination of the arbitral proceedings.

### **Supplementary Provision**

- 1 These Rules shall come into effect on December 10, 2015.
- 2 Any arbitral proceedings commenced before these Rules come into effect shall be governed by the former Rules; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the arbitral proceedings that already have been conducted pursuant to the former Rules shall remain valid.



# THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION

## ADMINISTRATIVE FEE REGULATIONS

As Amended and Effective on February 1, 2014

### Article 1. Administrative Fee

- 1 The administrative fee that the claimant shall pay at the time of submitting a Request for Arbitration shall be as follows:

Amount or Economic Value of Claim	Amount of Administrative Fee
Not more than ¥5,000,000	¥216,000
More than ¥5,000,000 but not more than ¥10,000,000	¥216,000 plus 3.24% of excess over ¥5,000,000
More than ¥10,000,000 but not more than ¥20,000,000	¥378,000 plus 1.62% of excess over ¥10,000,000
More than ¥20,000,000 but not more than ¥100,000,000	¥540,000 plus 1.08% of excess over ¥20,000,000
More than ¥100,000,000 but not more than ¥1,000,000,000	¥1,404,000 plus 0.324% of excess over ¥100,000,000
More than ¥1,000,000,000 but not more than ¥5,000,000,000	¥4,320,000 plus 0.27% of excess over ¥1,000,000,000
More than ¥5,000,000,000	¥15,120,000
Claim the economic value of which cannot be calculated or is extremely difficult to calculate	¥1,080,000 per claim

8% Consumption Tax is included in the above Amount of Administrative Fee.

- 2 Where the claim includes a claim for interest, damages, etc. accruing or being caused continuously, the administrative fee shall be calculated based upon the amount of the claim plus the amount of interest, damages, etc. for a period of one year from the date of submitting the Request for Arbitration.

## **Article 2. Administrative Fee in Case of Modification of Amount of Claim**

If, after paying the administrative fee, the claimant increases the amount of the claim or adds another claim, the administrative fee shall be the amount obtained by applying Article 1 to the claim as modified; provided that “the date of submitting the Request for Arbitration” under Article 1 shall be read as “the date of increasing the amount of the claim or adding another claim.”

## **Article 3. Request for Decision on Propriety of Amount of Administrative Fee Already Paid**

The Parties or the JCAA may request the arbitral tribunal to decide on the propriety of the amount of the administrative fee already paid under Articles 1 and 2. Upon such a decision, if the amount already paid falls short of the amount of the administrative fee so decided, the JCAA may request the claimant to pay the difference, or, if the amount already paid exceeds the amount of the administrative fee so decided, the JCAA shall refund the difference to the claimant.

## **Article 4. Administrative Fee in Case of Withdrawal of All Claims**

- 1 If the claimant, within thirty days after the initiation of the arbitral proceedings and when no arbitrator has been appointed, withdraws all its claims, the JCAA shall refund the total amount of the administrative fee.
- 2 Article 4.1 shall not apply to arbitration under the Expedited Procedures provided for in Chapter VI of the Commercial Arbitration Rules.

## **Article 5. Administrative Fee in Case of Withdrawal of All Claims where Expedited Procedures Apply**

In the case of arbitration under the Expedited Procedures provided for in Chapter VI of the Commercial Arbitration Rules, if the claimant, within ten days after the initiation of the arbitral proceedings and when no arbitrator has been appointed, withdraws all its claims, the JCAA shall refund the total amount of the administrative fee.

## **Article 6. Application in Case of Counterclaim**

Articles 1 through 5 shall apply to a counterclaim made by the respondent.

## **Article 7. Special Rules concerning Application for Emergency Measures**

- 1 Articles 1 through 6 shall not apply to an application for Emergency Measures.
- 2 The administrative fee and the deposit to cover a part of the emergency arbitrator's expenses and other reasonable expenses incurred with respect to the proceedings that the applicant should pay at the time of submitting an application for Emergency Measures shall be as follows:  
Administrative Fee: ¥216,000 (including 8% Consumption Tax).  
Deposit: ¥100,000.
- 3 If the applicant, before the emergency arbitrator has been appointed, withdraws the application for Emergency Measures, the JCAA shall refund the full amount of the administrative fee.

# THE JAPAN COMMERCIAL ARBITRATION ASSOCIATION

## REGULATIONS FOR ARBITRATOR'S REMUNERATION

As Amended and Effective on February 1, 2014

### Article 1. Application of these Regulations

These Regulations shall apply to the arbitrator's remuneration and related matters for arbitration under the Commercial Arbitration Rules of the JCAA.

### Article 2. Arbitrator's Remuneration

The basic amount of an arbitrator's remuneration shall be based on the amount equal to the Hourly Rate multiplied by the number of the Arbitration Hours. Taking into consideration the complexity of the case, the speed of arbitral proceedings, the circumstances of each arbitrator, the role of the presiding arbitrator and other circumstances, the JCAA shall determine, within the upper limit specified in the annexed table, the amount of remuneration for each arbitrator pursuant to these Regulations.

### Article 3. Arbitration Hours and Hourly Rate

- 1 The term "**Arbitration Hours**" means the time spent for hearings and the time reasonably required for preparation for arbitral proceedings and related matters; provided that, only one-half of the traveling time the arbitrator spends for arbitral proceedings shall be added to the Arbitration Hours, except for the time spent for preparation for arbitral proceedings.
- 2 Taking into consideration their experience as arbitrators, the complexity of the case and related matters, the JCAA will determine an "**Hourly Rate**" within the range of ¥30,000 to ¥80,000 for each arbitrator; provided that the Hourly Rate for the presiding arbitrator shall not be lower than the Hourly Rates of the other arbitrators.
- 3 Notwithstanding Article 3.2, the JCAA may determine any other Hourly Rate if all of the Parties agree.
- 4 If one of the arbitrators has been entrusted by the arbitral tribunal to draw up a draft of the arbitral award or

to perform any other functions, an amount equal to the Hourly Rate multiplied by the number of hours spent for the entrusted work shall be added to the amount calculated pursuant to Articles 3.1, 3.2 and 3.3, and such total amount shall be the basic amount of remuneration for that arbitrator as calculated under Article 2.

- 5 The arbitrator(s) shall provide the JCAA with a monthly report stating the time reasonably required for preparation for arbitral proceedings and related matters as well as the traveling time under Article 3.1.

#### **Article 4. Reduction of Hourly Rate**

- 1 When the Arbitration Hours exceed sixty hours, the Hourly Rate shall be reduced by ten percent (10%) for every fifty hours in excess of the initial sixty hours; provided that the reduction shall not exceed fifty percent (50%) of the original Hourly Rate and provided further that the Hourly Rate for the time spent for the entrusted work by the arbitrator entrusted to do such work as under Article 3.4 shall be equal to that arbitrator's original Hourly Rate.
- 2 At the time of calculating the number of hours under Article 4.1, the traveling time under Article 3.1 shall not be counted.

#### **Article 5. Reduction of Arbitrator's Remuneration**

In case an arbitrator loses his or her mandate as an arbitrator due to his or her resignation or other reasons during arbitral proceedings, the JCAA may, in consideration of the circumstances, reduce the arbitrator's remuneration calculated under Articles 2 through 4.

#### **Article 6. Committee for Reviewing Arbitrator's Remuneration**

- 1 If any arbitrator or Party considers the application of Articles 2 through 5 inappropriate, that arbitrator or Party may request in writing that the JCAA review the application of such provisions. Such request shall be made as early as possible, and at the latest by the time of closing the arbitral proceedings.
- 2 In case a request under the provisions of the preceding paragraph has been made to the JCAA, the Committee for Reviewing Arbitrator's Remuneration (the "**Committee**") shall decide whether or not the request has merit. If the

Committee accepts the request, it may set the arbitrator's remuneration at any appropriate amount notwithstanding Articles 2 through 5.

- 3 The Committee's determination under Article 6.2 shall be final and no appeal shall be allowed against the arbitrator's remuneration so determined.

### **Article 7. Payment of Arbitrator's Remuneration**

- 1 The JCAA shall pay to the arbitrator his or her remuneration without delay upon the arbitrator's rendering of an arbitral award or making a determination to terminate the arbitral proceedings, or upon any other termination of arbitral proceedings.
- 2 The JCAA shall pay to the arbitrator his or her remuneration without delay upon the arbitrator's loss of his or her mandate as an arbitrator due to his or her resignation or other reasons.

### **Article 8. Arbitrator's Expenses**

- 1 The arbitrator shall be entitled to reimbursement by the JCAA of his or her actual expenses incurred to the extent reasonable and required for arbitral proceedings, including expenses for travel, hotels, meals and other expenses, and which are defined as "the arbitrator(s)' expenses" under Rule 83.1 of the Commercial Arbitration Rules of the JCAA.
- 2 The travel expenses shall include air, train and taxi fares.
- 3 The arbitrator's expenses under Article 8.1 shall be paid by the JCAA when the arbitrator has provided documentary evidence thereof to the JCAA.

### **Article 9. Special Rules concerning Emergency Arbitrator's Remuneration**

- 1 Articles 2 through 6 shall not apply to the emergency arbitrator's remuneration and related matters.
- 2 The emergency arbitrator's remuneration shall be ¥2,160,000 (including 8% Consumption Tax). Where the proceedings are terminated before the emergency arbitrator makes a determination on the application for Emergency Measures, the JCAA may reduce the emergency arbitrator's remuneration, if it considers it appropriate, taking into account the time that the emergency arbitrator has spent for the hearing and other proceedings.

In that case, the JCAA shall without delay notify the emergency arbitrator of the reduced amount.

- 3 Articles 7 and 8 shall apply *mutatis mutandis* to the payment of the emergency arbitrator's remuneration and expenses, respectively.
- 4 If the emergency arbitrator considers application of Article 9.2 inappropriate, the emergency arbitrator may request in writing that the JCAA review such application.
- 5 The emergency arbitrator shall make the request under Article 9.4 before the determination on the application for Emergency Measures. Where the JCAA has reduced the emergency arbitrator's remuneration under Article 9.2, the request shall be made within three days from the day of the receipt of the notice to that effect from the JCAA.
- 6 In case a request under Article 9.5 has been made to the JCAA, the Committee shall decide whether or not the request has merit. If the Committee accepts the request, it may set the emergency arbitrator's remuneration at any appropriate amount notwithstanding Article 9.2.
- 7 The Committee's determination under Article 9.6 shall be final and no appeal shall be allowed against the emergency arbitrator's remuneration so determined.

# Annex to the Regulations for Arbitrator's Remuneration

## Upper Limit of the Arbitrator's Remuneration

### 1. A sole arbitrator

Amount or Economic Value of Claim	Maximum Amount of Remuneration
Not more than ¥20,000,000	10.8%
More than ¥20,000,000 but not more than ¥100,000,000	¥2,160,000 plus 2.7% of excess over ¥20,000,000
More than ¥100,000,000 but not more than ¥500,000,000	¥4,320,000 plus 1.62% of excess over ¥100,000,000
More than ¥500,000,000 but not more than ¥1,000,000,000	¥10,800,000 plus 0.432% of excess over ¥500,000,000
More than ¥1,000,000,000 but not more than ¥5,000,000,000	¥12,960,000 plus 0.108% of excess over ¥1,000,000,000
More than ¥5,000,000,000	¥17,280,000 plus 0.0864% of excess over ¥5,000,000,000
Claim the economic value of which cannot be calculated or is extremely difficult to calculate	As determined by the JCAA

8% Consumption Tax is included in the above Maximum Amount of Remuneration.

### 2 Multiple arbitrators

(Maximum Amount of Remuneration of a sole arbitrator) × (number of arbitrators) × 0.8 shall be the maximum aggregate remuneration for multiple arbitrators.



**THE JAPAN  
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