

**VANCOUVER INTERNATIONAL ARBITRATION CENTRE
INTERNATIONAL COMMERCIAL ARBITRATION RULES**

GENERAL PROVISIONS

1. Application

- (a) The Vancouver International Arbitration Centre, located in British Columbia, Canada (“**VaniAC**”) (formerly known as the British Columbia International Commercial Arbitration Centre or the BCICAC), provides dispute resolution services around the world in locations chosen by the parties.
- (b) VaniAC administers the resolution of disputes by arbitral tribunals in accordance with the VaniAC International Arbitration Rules, including the *Fee Schedule for International Commercial Arbitration*, as amended from time to time (the “**Rules**”).
- (c) Where the parties have agreed to arbitrate disputes under these Rules (or BCICAC’s international rules) or have provided for arbitration of an international dispute by VaniAC (or BCICAC), the arbitration shall be conducted in accordance with these Rules as in effect at the date of the commencement of the arbitration.
- (d) Where the parties have agreed to arbitrate disputes under any VaniAC (or BCICAC) Rules and the seat of arbitration is in a Province or Territory of Canada other than British Columbia, the arbitration shall be conducted in accordance with these Rules as in effect at the date of the commencement of the arbitration.
- (e) These Rules may be modified by the parties by agreement confirmed in writing.
- (f) The English-language version of these Rules is the official text.
- (g) In cases where no claim, or estimate of the amount claimed, by any one party in a Notice to Arbitrate or Notice of Counterclaim exceeds \$500,000 CAD exclusive of interest and costs, the International Expedited Procedures described in Appendix A to these Rules shall apply unless otherwise agreed by the parties or determined by the arbitral tribunal or VaniAC.
- (h) As the context requires, references to arbitral tribunal in these Rules shall include expedited arbitrators and emergency arbitrators.

2. Communications

- (a) Any written communications required or permitted to be delivered under these Rules may be delivered personally, by mail, electronically or by other means of telecommunication which provide a record of delivery.
- (b) Each party to an arbitration shall provide an electronic address for delivery with its first filing with VaniAC.

- (c) Each party that is represented in the arbitration shall provide the names, addresses, telephone numbers, and email addresses of its representative(s) to VanIAC and the other parties.
- (d) A party may change its address for delivery by giving written notice to the other parties, VanIAC, and the arbitral tribunal.
- (e) Following the constitution of the arbitral tribunal:
 - (i) parties shall promptly deliver written notice to the other parties, VanIAC, and the arbitral tribunal regarding any intended change to a party's legal counsel; and
 - (ii) any change to a party's legal counsel shall be subject to the approval of the arbitral tribunal in order to address any prejudice arising from the change, including potential conflicts with the arbitral tribunal.
- (f) A communication shall be deemed to have been made on the date it was received by a party or its representative(s), or would have been received if made in accordance with Rule 2(a).
- (g) Unless otherwise agreed by the parties or set out in these Rules, documents and communications regarding the arbitration should only be communicated to the arbitral tribunal by a party while in the presence of the other parties (including virtual presence by video or phone), or by way of documents copied to the other parties simultaneously.

3. Time

- (a) In these Rules, where the time for doing an act falls or expires on a non-business day or holiday in the jurisdiction of the party subject to the deadline, the time is extended to the next business day in that jurisdiction.
- (b) In these Rules, in the calculation of time, the first day shall be excluded and the last day included.
- (c) The arbitral tribunal may extend or abridge a period of time required in these Rules or fixed or determined by itself where it considers it to be just and appropriate in all the circumstances.
- (d) VanIAC may, at any time, extend a period of time required in these Rules, other than a period of time fixed or determined by the arbitral tribunal.

4. Waiver of Right to Object

A party which proceeds with the arbitration without promptly raising its objection to a failure to comply with any provision of the Rules, or of any other rules applicable to the proceedings, any direction given by the arbitral tribunal, or any requirement under the arbitration agreement relating to the constitution of the arbitral tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

5. Confidentiality

Unless otherwise agreed by the parties, the arbitral proceedings are private and confidential, including all pleadings, evidence, submissions, orders, awards and materials created for the purpose of the arbitration, except to the extent disclosure is required by applicable law.

6. Disclosure of Third-Party Funding and Interests

If a funding agreement exists in relation to a claim, regardless of whether it was made before or after the commencement of the arbitration, the funded party shall advise the other parties, the arbitral tribunal, VanIAC, and any emergency arbitrator of the fact that a funding agreement exists and the identity of the third-party funder.

7. Exclusion of Liability

Centre staff, Board members, arbitral tribunal secretaries, and members of the arbitral tribunal shall not be liable for anything done or omitted in connection with an arbitration under these Rules unless the act or omission is in bad faith or the individual has engaged in intentional wrongdoing.

COMMENCEMENT OF ARBITRATION

8. Notice to Arbitrate

- (a) An arbitration is commenced by the party initiating arbitration (the “**Claimant**”) delivering a written Notice to Arbitrate to VanIAC and, at the same time, to the party against whom a claim is being made (the “**Respondent**”), along with the required commencement fee as set out in the *Fee Schedule for International Commercial Arbitration*.
- (b) The Notice to Arbitrate shall contain the following:
 - (i) the names of the parties to the dispute, and their legal counsel (if known), together with their addresses for delivery;
 - (ii) a brief statement of the matter in dispute;
 - (iii) a request that the dispute be referred to arbitration;
 - (iv) reference to and copies of any contract relating to the dispute, including any arbitration clause or agreement relied on;
 - (v) the remedy sought, including the amount claimed or an estimate of the amount claimed;
 - (vi) the number of arbitrators that will make up the arbitral tribunal;
 - (vii) the names of arbitrators nominated or agreed upon;

- (viii) the required qualifications of the arbitrators as agreed to by the parties, if any; and
 - (ix) any modification of these Rules which has been agreed to by the parties.
- (c) The parties may use the Notice to Arbitrate form included as Schedule "A" to these Rules.

9. Deemed Commencement

The arbitration is deemed to have commenced when the Notice to Arbitrate has been delivered to VanIAC and the commencement fee has been paid. VanIAC shall notify the parties when an arbitration has commenced and identify the deemed commencement date.

10. Answer and Counterclaim

- (a) The Respondent shall deliver to the Claimant, to any other parties, and to VanIAC, a written Answer to the Notice to Arbitrate within 30 days of the commencement of the arbitration. Failure of a party to submit an Answer shall not preclude the arbitral tribunal from proceeding with the arbitration.
- (b) The Respondent's Answer to the Notice to Arbitrate shall include any selection of an arbitrator required by Rule 11 as well as any observations or proposals regarding the constitution of the arbitral tribunal, the place or language of the arbitration, or the applicable rules of law.
- (c) The Respondent shall submit any counterclaims or claimed setoffs at the time the Respondent submits its Answer by including:
 - (i) a brief statement of the matter giving rise to the counterclaim or claimed setoff;
 - (ii) reference to and copies of any contract relating to the dispute not referred to in the Notice to Arbitrate;
 - (iii) the remedy sought including the amount claimed or an estimate of the amount claimed; and
 - (iv) the required fee relating solely to the counterclaim as set out in the *Fee Schedule for International Commercial Arbitration*.
- (d) The parties may use the Answer and Notice of Counterclaim form, if any, included as Schedule "B" to these Rules, as appropriate.
- (e) The Claimant shall deliver to the Respondent, to any other parties, and to VanIAC, a written Answer to any counterclaims or claimed setoffs within 21 days of receiving the Respondent's counterclaims or claimed setoffs.

THE ARBITRAL TRIBUNAL

11. Appointment of Arbitral Tribunal

- (a) A sole arbitrator shall be appointed unless otherwise agreed by the parties.
- (b) The parties may agree upon any procedure for appointing arbitrators and inform VanIAC as to such procedure.
- (c) Where a dispute shall be resolved by three arbitrators, the following procedure shall be used unless otherwise agreed by the parties:
 - (i) the Claimant shall appoint one arbitrator for confirmation in the Request;
 - (ii) the Respondent shall appoint one arbitrator in the Answer;
 - (iii) the two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as the presiding arbitrator; and
 - (iv) if the two arbitrators appointed by the parties fail to appoint a third arbitrator within 15 days of the second arbitrator's appointment, either party or the two arbitrators appointed by the parties may request VanIAC to appoint the third arbitrator who shall act as the presiding arbitrator.
- (d) Where a dispute shall be resolved by three arbitrators and there are more than two parties to the arbitration, the following procedure shall be used unless otherwise agreed by the parties:
 - (i) the Claimant, or group of Claimants, shall appoint one arbitrator within 21 days of commencement of the arbitration;
 - (ii) the Respondent, or group of Respondents, shall appoint one arbitrator within 30 days of commencement of the arbitration;
 - (iii) within 15 days of the appointment of the second arbitrator, the two arbitrators appointed by the parties shall appoint a third arbitrator who shall act as the presiding arbitrator; and
 - (iv) if the parties cannot agree on their status as Claimants or Respondents (as the case may be), any party may request VanIAC to appoint all members of the arbitral tribunal.
- (e) If the parties cannot agree on the selection of a sole arbitrator within 21 days of commencement of the arbitration or if any party (or group of parties) fails to appoint an arbitrator in accordance with the applicable appointment procedure, any party may apply to VanIAC to appoint such arbitrator(s) in accordance with these Rules. VanIAC shall use following procedure to appoint the arbitrator(s) unless otherwise agreed by the parties:

- (i) the applicant shall provide VanIAC with the names of arbitrators previously considered by the parties to the arbitration;
 - (ii) VanIAC shall deliver to each party an identical list of at least five names of proposed arbitrators, together with a brief description of each proposed arbitrator;
 - (iii) if the parties are unable to agree on an arbitrator from the list delivered by VanIAC, then within five days of the list being delivered by VanIAC, each party shall respond by delivering to VanIAC a list of its order of preference of the proposed names and any name to which it objects;
 - (iv) taking into consideration the objections and the order of preference in the lists delivered by the parties, if any, VanIAC may appoint the arbitral tribunal from among the names on the list within five days, or deliver to each party a second list of at least four other names;
 - (v) in the event VanIAC delivers a second list of names to the parties, each party shall respond by delivering to VanIAC a list of its order of preference of the proposed names and any name to which it objects within two days;
 - (vi) taking into consideration the objections and the order of preference in the lists delivered by the parties, if any, VanIAC will appoint an arbitrator within five days of delivering the second list; and
 - (vii) a party shall not communicate directly with any arbitrator proposed by VanIAC. Any requests for more information about a proposed arbitrator shall be directed to VanIAC. On request, VanIAC will endeavour to provide more information about a proposed arbitrator.
- (f) Where VanIAC is requested or obligated to appoint all three arbitrators for an Arbitral Tribunal, the list provided under Rule 11(e)(ii) above shall contain at least ten names of proposed arbitrators.
- (g) No fee is payable for appointment services where the arbitration is administered by VanIAC and the commencement fee has been paid.
- (h) In appointing arbitrator(s), VanIAC will consult with the parties and will have due regard to any method of appointment, selection criteria or qualifications agreed to in writing by the parties. VanIAC will also have due regard to any other considerations as are likely to secure the appointment of an independent and impartial arbitral tribunal.
- (i) Unless otherwise agreed by the parties or set out in these Rules, parties and their representatives may only engage in *ex parte* communication relating to the case with an arbitrator or candidate for arbitrator to discuss the general nature of the arbitration, the candidate's qualifications, availability, or potential conflicts, or the suitability of potential candidates for presiding arbitrator (where necessary). For clarity, in accordance with Rule 11(e)(vii), in no case may a party or their representative(s) contact an arbitrator proposed by VanIAC.

12. Independence and Impartiality

- (a) Arbitrators acting under these Rules shall be and remain wholly independent and impartial of any party involved in the arbitration.
- (b) When a person is approached in connection with his or her possible appointment as an arbitrator under these Rules, the person must disclose any circumstances likely to give rise to justifiable doubts as to the person's independence or impartiality.
- (c) A party's failure to disclose circumstances likely to give rise to justifiable doubts about an arbitrator's independence or impartiality within 15 days after becoming aware of such information amounts to a waiver of that party's right to challenge the arbitrator based on those circumstances.
- (d) For the purposes of these Rules, there are justifiable doubts as to an arbitrator's independence or impartiality only if there is a real danger of bias on the part of the arbitrator in conducting the arbitration.

13. Challenge of an Arbitrator

- (a) A party may challenge an arbitrator where the arbitrator fails to perform his or her duties, where circumstances give rise to justifiable doubts as to the arbitrator's independence or impartiality, or where the arbitrator does not possess the qualifications agreed to by the parties.
- (b) A party wishing to challenge an arbitrator shall deliver written notice to the arbitral tribunal and the other parties setting out detailed reasons for the challenge no later than 15 days after becoming aware of the circumstances giving rise to a challenge.
- (c) If a challenged arbitrator agrees to withdraw or all other parties to the arbitration agree to the challenge, the challenged arbitrator shall be considered withdrawn from the arbitration. An arbitrator's withdrawal does not imply acceptance of the validity of the grounds for the challenge.
- (d) If a challenged arbitrator does not withdraw, the arbitral tribunal shall decide on the challenge.

14. Replacement of an Arbitrator

- (a) Where the mandate of an arbitrator terminates because the arbitrator withdraws, becomes incapable of performing the functions of arbitrator, fails to act without undue delay, or is removed for any reason, a substitute arbitrator shall be appointed according to the provisions of the Rules that were applicable to the appointment of the arbitrator being replaced.
- (b) Subject to the agreement of the parties, where an arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

- (c) An order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator is not invalid solely because there has been a change in the composition of the tribunal.

JURISDICTION OF THE TRIBUNAL

15. Arbitral Jurisdiction

- (a) The arbitral tribunal may rule on its own jurisdiction, including on the existence, scope, or validity of the arbitration agreement(s), and for that purpose:
 - (i) an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - (ii) a decision by the arbitral tribunal that a contract is null and void shall not entail the invalidity of the arbitration agreement.
- (b) Unless otherwise permitted by the arbitral tribunal, a party wishing to object to the jurisdiction of the arbitral tribunal or to arbitral jurisdiction regarding the admissibility of a claim, counterclaim, or claimed setoff must do so no later than the deadline for submission of the Answer to the claim, counterclaim, or claimed setoff giving rise to the objection.
- (c) Objections to arbitral jurisdiction raised prior to the constitution of the arbitral tribunal shall be determined by the arbitral tribunal, once constituted.
- (d) The arbitral tribunal may rule on jurisdictional objections as a preliminary matter or in the final award.

CONDUCT OF THE PROCEEDING

16. Seat of Arbitration

- (a) The seat of arbitration shall be Vancouver, British Columbia unless otherwise agreed by the parties or directed by the arbitral tribunal on the basis that another arbitral seat is more appropriate.
- (b) The arbitral tribunal may meet or conduct proceedings at any location it deems appropriate, including by telephone, videoconference, or similar means of communication. In all cases, the arbitration shall be deemed conducted at the seat of arbitration.

17. Language

- (a) Unless otherwise agreed by the parties, the language(s) of the arbitration shall be determined by the arbitral tribunal.
- (b) Until the arbitral tribunal has been constituted, the parties shall use the language(s) of the arbitration agreement in all communications related to the arbitration unless

otherwise agreed by the parties. A party shall provide a translation upon VanIAC's request.

- (c) The arbitral tribunal may order that documentary evidence be accompanied by a translation into the language(s) of the arbitration.

18. Applicable Law

- (a) The arbitral tribunal shall decide the dispute in accordance with the rules of law agreed by the parties as applicable to the substance of the dispute. Failing such agreement, the arbitral tribunal shall apply the rules of law it determines to be appropriate given all the circumstances surrounding the dispute.
- (b) Any designation by the parties of the law or legal system of a given state shall be construed, unless otherwise expressed, as directly referring to the substantive law of that state and not to its conflict of laws rules.
- (c) In arbitrations involving the application of contracts, the arbitral tribunal shall decide the dispute in accordance with the terms of the contract and shall take applicable usages of the trade into account.
- (d) Unless expressly authorized by the parties, the arbitral tribunal shall not decide as *amiable compositeur* or *ex aequo et bono*.

19. Conduct of the Proceedings

- (a) The parties shall be treated with equality and each party shall be given a reasonable opportunity to present its case.
- (b) The arbitral tribunal shall endeavour to conduct the proceedings expeditiously and avoid unnecessary delay and expense. Subject to these Rules, the arbitral tribunal has broad discretion to conduct the arbitration in the manner it considers appropriate to further these objectives.
- (c) The parties shall endeavour to promote the expeditious conduct of the arbitration and to avoid unnecessary delay and expense. The arbitral tribunal may allocate costs or take any other steps it considers necessary to preserve these objectives.
- (d) The arbitral tribunal shall convene an initial procedural conference to discuss the most suitable schedule and procedures for the arbitration. Following the initial procedural conference, the arbitral tribunal shall deliver a procedural schedule for the arbitration. The arbitral tribunal may convene further conferences at any stage in the arbitration and may modify the procedural schedule following consultation with the parties.
- (e) The arbitral tribunal may bifurcate proceedings, determine preliminary issues, direct the parties to focus their evidence or argument on specific issues, summon a party to provide additional evidence, exclude cumulative or irrelevant evidence, and determine the admissibility, relevance, materiality, and weight of any evidence.

- (f) In establishing procedures, and in order to increase the efficiency and economy of the proceedings, the parties and arbitral tribunal shall consider:
 - (i) whether the Expedited Procedures set out in Appendix A to these Rules may be used; and
 - (ii) whether videoconference and other technology are appropriate, including any of the Virtual Hearing procedures in Rule 25.
- (g) The arbitral tribunal may permit amendments to the parties' claims, counterclaims, setoffs, or defences unless the arbitral tribunal considers it inappropriate to do so in the circumstances.

20. Production of Documents

- (a) The parties shall submit documents they intend to rely on in accordance with the procedural schedule set by the arbitral tribunal.
- (b) The arbitral tribunal may order the parties to produce documents it deems necessary or appropriate at any stage in the proceedings. The arbitral tribunal shall take applicable principles of privilege into account.
- (c) The arbitral tribunal may make orders with respect to the means and methods of production of documents and may direct any other steps necessary to safeguard the efficiency of the arbitration.
- (d) The arbitral tribunal may draw inferences if it determines that a party has failed to produce documents ordered or agreed to be produced by the party. The arbitral tribunal may also take a failure to produce such documents into account when allocating costs.

21. Early Disposition

- (a) A party may seek leave to bring an application for early disposition of one or more issues of fact or law at any stage in the proceedings. All parties shall have the opportunity to present their positions regarding the suitability of a proposed application for early disposition and potential summary procedures for the application.
- (b) In determining whether to grant leave for a party to bring an application for early disposition, the arbitral tribunal shall have regard to whether consideration of the application will further the fair and expeditious conduct of the proceedings.
- (c) Where leave is granted to bring an application for early disposition, the arbitral tribunal shall endeavour to issue the resultant order or award in an expeditious manner and shall provide written reasons for any award.

22. Tribunal-Appointed Experts

- (a) The arbitral tribunal may appoint one or more experts to report to it in writing on specific issues to be determined by the arbitral tribunal. The arbitral tribunal shall consult with the parties regarding the expert's terms of reference.
- (b) The arbitral tribunal may require a party to produce or provide access to relevant documents, goods, or other information required by the expert. Any dispute regarding the relevance or production of the required documents, goods, or information shall be determined by the arbitral tribunal.
- (c) Upon receipt of an expert's report, the arbitral tribunal shall send a copy of the report to the parties and shall provide the parties with an opportunity to submit written opinions regarding the report.
- (d) The parties may examine any documents, goods, or other information relied on by the expert in preparing the report.
- (e) If a party so requests or the arbitral tribunal considers it necessary, the expert who has prepared and delivered a report shall attend an oral hearing where the parties shall have the opportunity to examine the expert and present other experts to testify on the matters at issue.

23. Hearings and Evidence

- (a) Each party shall bear the burden of proving the facts necessary to support its claims, counterclaims, or defences.
- (b) Unless otherwise agreed by the parties or directed by the arbitral tribunal, the direct evidence of witnesses shall be provided by way of written witness statements. Each party shall notify the arbitral tribunal of the names of any witnesses it requests to examine in accordance with the timeline specified in the procedural schedule issued by the arbitral tribunal.
- (c) Unless a party requests an oral hearing, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or argument and may decide the case solely on the basis of documents and other materials.
- (d) Oral hearings may be held in whole or in part by telephone, videoconference, or other electronic means where such procedure is agreed by the parties or directed by the arbitral tribunal following consultation with the parties.
- (e) The arbitral tribunal shall have broad authority to direct any oral hearing, including by requiring witnesses to appear at a hearing, directing the manner in which witnesses are examined, determining who may be present during examinations, and requiring translations or other records of the hearing if the arbitral tribunal deems them to be necessary.

- (f) Where, without showing sufficient cause, a witness whose attendance has been requested does not attend an oral hearing, the arbitral tribunal may make such order it deems appropriate after hearing the parties' positions on the evidence.
- (g) Where, without showing sufficient cause, a party fails to appear at an oral hearing or produce evidence, the arbitral tribunal may continue the arbitral proceedings and make the arbitral award on the evidence before it.

24. Closure of Proceedings

- (a) The arbitral tribunal shall declare the proceedings closed where:
 - (i) the parties, on inquiry, have advised that they have no further evidence to give or submissions to make; or
 - (ii) the arbitral tribunal considers further hearings to be unnecessary or inappropriate.
- (b) In exceptional circumstances and on its own motion or on an application of a party, the arbitral tribunal may reopen the proceedings at any time before the final arbitral award is made.

VIRTUAL HEARINGS

25. General

- (a) Where the parties agree or are directed by the arbitral tribunal to proceed by way of virtual hearing, the arbitral tribunal may issue directions on a video conferencing platform to be used for the arbitration that provides for clear video and audio transmission, allows for virtual breakout rooms for each party (if necessary), and allows witnesses, the arbitral tribunal and the parties to simultaneously view documents (if necessary). The arbitral tribunal may also issue directions on a backup system of communication.
- (b) Unless otherwise agreed by the parties, the only persons entitled to access or attend a virtual hearing are:
 - (i) the parties;
 - (ii) the parties' legal representatives;
 - (iii) witnesses during their examination;
 - (iv) the arbitral tribunal;
 - (v) any arbitral tribunal secretary; and
 - (vi) third party service providers, including but not limited to interpreters and transcription service providers.

- (c) Any party may request that the arbitral tribunal test the videoconferencing platform prior to a virtual hearing, provided that such party shall book necessary venues and coordinate with the parties and arbitral tribunal regarding arrangements relating to the test.

INTERIM AND EMERGENCY MEASURES

26. Interim Measures

- (a) Unless otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, grant any interim measure it deems appropriate, including:
 - (i) security for all or part of the amount in dispute, by way of deposit, bank guarantee, or in any other manner and upon such terms as the arbitral tribunal considers appropriate;
 - (ii) the preservation, storage, sale or other disposal of property under the control of any party and relating to the subject matter of the arbitration; and
 - (iii) any relief that an arbitral tribunal would have power to grant in an award, including an interim order for the payment of money or the disposition of property as between any parties.
- (b) A party may request an interim measure by:
 - (i) prior to the constitution of the arbitral tribunal, delivering its application for an interim measure to VanIAC and all other parties concurrent with or following the delivery of a Notice to Arbitrate together with the required fee as set out in the Fee Schedule for *International Arbitration*; or
 - (ii) following constitution of the arbitral tribunal or appointment of an emergency arbitrator, as the case may be, delivering its application for an interim measure to the arbitral tribunal or emergency arbitrator.
- (c) An application for an interim measure shall contain a description of the circumstances giving rise to the application, a description of the relief sought, and any other documents and information relevant to the application. Where a party seeks an interim measure prior to the constitution of the arbitral tribunal, its application shall also include the reasons why the party requires the interim measure on an urgent basis.
- (d) Interim orders and awards shall be binding on the parties when rendered. The parties shall undertake to comply with any interim award or order without delay.
- (e) The arbitral tribunal may order the requesting party to furnish appropriate security in connection with an interim measure.
- (f) Unless otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, order any claiming or counterclaiming party to provide security for legal or other costs upon such terms as the arbitral tribunal considers appropriate. The location of a party's residence is not itself reason for the arbitral tribunal to order security for

costs. Where a party fails to comply with an order requiring security under this Rule, the arbitral tribunal may stay or dismiss that party's claims or counterclaims.

- (g) The arbitral tribunal may modify, suspend, or terminate any interim measure granted in the arbitration. If the arbitral tribunal determines that, in the circumstances, an interim measure should not have been granted, the arbitral tribunal may order the party that requested the interim measure to pay all costs and damages caused to another party by such measure.
- (h) A request for an interim measure addressed by a party to a judicial authority shall not be deemed incompatible with these Rules or with the arbitration agreement and shall not constitute a waiver of the party's right to arbitrate.

27. Ex Parte Preliminary Orders

- (a) Unless prohibited by law or otherwise agreed by the parties in writing, the arbitral tribunal may, at the request of a party, grant an *ex parte* preliminary order directing a party not to frustrate the purpose of a requested interim measure. A preliminary order shall only be granted in exceptional circumstances where the arbitral tribunal considers that prior disclosure of a request for an interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure.
- (b) A party may apply for a preliminary order without notice to any other party at the same time as applying for an interim measure by:
 - (i) prior to the constitution of the arbitral tribunal, delivering an application for a preliminary order to VanIAC concurrent with or following the delivery of a Notice to Arbitrate together with the required fee as set out in the Fee Schedule for *International Arbitration*; or
 - (ii) following constitution of the arbitral tribunal or appointment of an emergency arbitrator, as the case may be, delivering an application for a preliminary order to the arbitral tribunal or emergency arbitrator.
- (c) An application for a preliminary order shall include the reasons why prior disclosure of the request for the interim measure to the party against whom it is directed risks frustrating the purpose of the interim measure. Where a party seeks a preliminary order prior to the constitution of the arbitral tribunal, the application shall also include the reasons why the party requires the preliminary order on an urgent basis.
- (d) A party applying for a preliminary order must disclose all circumstances that are likely to be relevant to the arbitral tribunal's determination whether to grant or maintain the order. This disclosure obligation continues until the party against whom the order is directed has had an opportunity to present its case. After that party has had an opportunity to present its case, the arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the preliminary order was requested or granted.

- (e) The arbitral tribunal must require the party applying for a preliminary order to provide security in connection with the order unless the arbitral tribunal considers it inappropriate or unnecessary.
- (f) The arbitral tribunal shall establish a procedure for an application for an emergency preliminary order forthwith upon appointment or receipt of the application.
- (g) Immediately after the arbitral tribunal makes a determination in respect of an application for a preliminary order, the arbitral tribunal must notify all parties of the request for the interim measure, the request for the preliminary order, the preliminary order (if any), and all other communications between any party and the arbitral tribunal regarding the requested interim measure and preliminary order.
- (h) At the earliest practicable time, the arbitral tribunal must give a reasonable opportunity to the party against whom a preliminary order is directed to present its case. After the party has had a reasonable opportunity to present its case, the arbitral tribunal may issue an interim measure adopting or modifying the preliminary order.
- (i) A preliminary order expires 20 days after the date on which it was issued by the arbitral tribunal. The arbitral tribunal may modify, suspend, or terminate any preliminary order granted in the arbitration.
- (j) A preliminary order is binding on the parties but is not an arbitral award and is not subject to enforcement by a court.

28. Costs and Damages

- (a) The arbitral tribunal may allocate costs relating to applications for interim measures and preliminary orders in the final award or the interim order or award.
- (b) At any time during the arbitration, if the arbitral tribunal determines that, in the circumstances, a preliminary order should not have been granted, the arbitral tribunal may order the party that requested the interim measure or preliminary order to pay all costs and damages caused to another party by the interim measure or preliminary order.

29. Appointment of Emergency Arbitrator

- (a) Where a party applies for an interim measure or preliminary order prior to the constitution of the arbitral tribunal, VanIAC shall appoint an emergency arbitrator within two days of VanIAC's receipt of the application, provided that the application satisfies any applicable requirements of Rules 26 and 27. Once an emergency arbitrator has been appointed, VanIAC shall notify the parties and transfer the application to the emergency arbitrator.
- (b) In the case of an application made by a party without notice for a preliminary order together with an interim measure, VanIAC shall notify only the applicant of the appointment of the emergency arbitrator.

- (c) The emergency arbitrator shall establish a procedure for an application for an interim measure within three days of appointment.
- (d) Unless otherwise agreed by the parties, an emergency arbitrator appointed under these Rules cannot be appointed as part of the arbitral tribunal in the same arbitration.
- (e) In determining an application for an interim measure or preliminary order, an emergency arbitrator shall have the same duties and powers as an arbitral tribunal pursuant to these Rules, including the authority to rule on his or her own jurisdiction.

30. Challenge to Emergency Arbitrator

- (a) A party wishing to challenge an emergency arbitrator shall deliver written notice to the emergency arbitrator and VanIAC setting out detailed reasons for the challenge no later than two days after the appointment of the emergency arbitrator or two days after the circumstances giving rise to the challenge became known to the party. Unless the party has made an application without notice for a preliminary order together with an interim measure, the party shall also deliver the written notice to the other parties.
- (b) If a challenged emergency arbitrator agrees to withdraw or all other parties to the arbitration agree to the challenge, the challenged emergency arbitrator shall be considered withdrawn from the arbitration. An emergency arbitrator's withdrawal does not imply acceptance of the validity of the grounds for the challenge.
- (c) If a challenged emergency arbitrator does not withdraw, the emergency arbitrator shall decide on the challenge.

31. Emergency Awards and Orders

- (a) The emergency arbitrator shall issue any interim measure or preliminary order within 15 days of appointment.
- (b) The emergency arbitrator may issue an interim measure or preliminary order after the arbitral tribunal has been constituted but shall not have any further powers.
- (c) The costs associated with emergency applications for interim measures and preliminary orders shall be addressed by the emergency arbitrator unless otherwise agreed by the parties. The arbitral tribunal retains the authority to finally determine the allocation of such costs.
- (d) An interim measure or preliminary order issued under this Rule may be modified, suspended, or terminated by the emergency arbitrator or arbitral tribunal and shall cease to be binding if:
 - (i) the emergency arbitrator or arbitral tribunal so decides;
 - (ii) the arbitration is terminated before a final award is made by the arbitral tribunal;or

- (iii) a final award is made by the arbitral tribunal, unless the arbitral tribunal expressly decides otherwise.

32. Application of this Part

- (a) The emergency arbitrator procedures in these Rules shall not apply if the parties have agreed in writing to opt out of the emergency arbitrator procedures.
- (b) Nothing in the emergency arbitrator procedures derogates from the jurisdiction of an arbitral tribunal, once constituted, to issue preliminary orders or orders for interim measures.

ARBITRAL AWARDS

33. Decisions

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members unless otherwise agreed by the parties. Notwithstanding this Rule, a presiding arbitrator may make procedural rulings when authorized by the parties or the arbitral tribunal.

34. Settlement

- (a) If the parties settle the dispute during arbitral proceedings, the arbitral tribunal shall terminate the proceedings.
- (b) The arbitral tribunal may record a settlement in the form of an award on agreed terms if the parties request and the arbitral tribunal does not object. An award on agreed terms need not contain reasons but shall be made in accordance with Rule 35 and shall state that it is an arbitral award on agreed terms.

35. Making of an Award

- (a) Unless otherwise agreed by the parties or directed by the arbitral tribunal, the arbitral tribunal shall issue an award within 90 days of the latter of the close of the hearing and the last written submissions received by the arbitral tribunal.
- (b) In addition to the final award, the arbitral tribunal may make partial awards.
- (c) Awards shall be made in writing. Awards shall state the reasons on which they are based unless the parties otherwise agree or the award is an arbitral award on agreed terms under Rule 34.
- (d) Awards shall be signed by the members of the arbitral tribunal and shall be deemed to be made at the seat of the arbitration and on the date stated therein. Electronic signatures shall suffice unless otherwise agreed by the parties or required by applicable law. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

- (e) The arbitral tribunal may award interest. An award shall be expressed in the currency or currencies determined appropriate by the arbitral tribunal.
- (f) After an arbitral award is made, a signed copy shall be delivered to each party and VanIAC. The arbitral tribunal shall take steps to satisfy applicable procedural requirements regarding the filing or registration of awards upon being advised of such requirements.
- (g) Awards shall be binding on the parties and the parties undertake to carry out such awards without delay.

36. Termination

- (a) The arbitral tribunal may issue an order for the termination of the proceedings where:
 - (i) the claimant withdraws its claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on its part in obtaining a final resolution of the dispute;
 - (ii) the parties agree to the termination of the proceedings;
 - (iii) there has been material non-payment of deposits required by VanIAC or the arbitral tribunal; or
 - (iv) the arbitral tribunal otherwise determines that continuation of the proceedings has become unnecessary or impossible.
- (b) The arbitral tribunal shall inform the parties of its intention to terminate the proceedings and shall issue an order terminating the proceedings unless it determines that a party has raised justifiable grounds for objecting to such termination.

37. Interpretation and Correction of Awards

- (a) Within 30 days after receipt of an award, a party may request that the arbitral tribunal:
 - (i) correct any computation, clerical, or typographical errors or any other errors of a similar nature;
 - (ii) make an additional award regarding claims, counterclaims, or claimed setoffs presented in the arbitral proceedings but omitted from the award; or
 - (iii) provide an interpretation of a specific point or part of the award.
- (b) If the arbitral tribunal considers the request made under Rule 37(a) to be justified, it shall provide the correction, additional award, or interpretation within 30 days of receipt of the request. The correction, additional award, or interpretation shall contain reasons and shall form part of the award. Where the arbitral tribunal considers such a request to be unjustified, it may allocate costs relating to the request.

- (c) The arbitral tribunal may issue corrections, additional awards, or interpretations of the nature described in Rule 37(a) on its own initiative within 30 days of the date of an award.

COSTS AND FEES

38. Costs

- (a) The arbitral tribunal shall fix the costs of arbitration in its final award. Such costs may include:
 - (i) the fees of the arbitral tribunal;
 - (ii) the travel and other expenses incurred by the arbitral tribunal;
 - (iii) the fees, travel, and other expenses of any expert(s) appointed by the arbitral tribunal;
 - (iv) the fees, travel, and other expenses of witnesses, including experts;
 - (v) the actual reasonable legal fees and expenses incurred by the parties; and
 - (vi) any fees or charges of VanIAC for administering the arbitration or providing services to the arbitral tribunal or the parties in connection with the proceedings.
- (b) Unless otherwise agreed by the parties, the arbitral tribunal has broad discretion to determine which of the parties shall bear costs or otherwise allocate costs among the parties. In making such determinations, the arbitral tribunal may take into account the relative success of the parties, the extent to which the parties have conducted the proceedings in an expeditious and cost-effective manner, and any other circumstances it deems relevant.

39. Arbitral Tribunal Fees and Expenses

- (a) The arbitral tribunal may, at the time it is constituted and at any point thereafter, require each party to deposit an equal amount as an advance for the arbitral tribunal's anticipated fees and expenses. If the required deposits are not made, the arbitral tribunal may order the suspension or termination of the proceeding and may withhold any award.
- (b) On request, VanIAC shall hold any deposits required under this Rule. VanIAC may, from time to time, pay to the arbitral tribunal from any deposit it holds under this Rule for fees earned or expenses incurred by the arbitral tribunal.
- (c) If the required deposits are not paid in full within 30 days of the request, the arbitral tribunal or VanIAC shall inform the parties in order that one or other of the parties may make the required payment. Where one or more of the other parties makes such payment(s), the arbitral tribunal may award reimbursement of such payment(s) upon request at any time during the arbitration.

- (d) After the final award has been made, VanIAC or the arbitral tribunal shall, in accordance with the final award, apply any deposits it holds to the costs of the proceedings, render an accounting to the parties of the deposits received and applied, and return any unexpended balance.

APPENDIX A: INTERNATIONAL EXPEDITED PROCEDURES

A-1. Scope and Application of International Expedited Procedures

- (a) These VanIAC International Expedited Procedures supplement the VanIAC International Arbitration Rules. By agreeing to arbitration under these Rules, the parties agreed that these Expedited Procedures, when applicable, shall take precedence over any contrary terms in the arbitration agreement or the Rules.
- (b) These Expedited Procedures shall apply if:
 - (i) the parties agree; or
 - (ii) no claim, or estimate of the amount claimed, by any one party in a Notice to Arbitrate or Notice of Counterclaim exceeds \$500,000 CAD exclusive of interest and costs.
- (c) These Expedited Procedures shall not apply if:
 - (i) the parties have agreed to an arbitral tribunal consisting of more than one arbitrator; or
 - (ii) the parties have agreed to opt out of these Expedited Procedures.

A-2. Flat Fee Expedited Arbitrations

- (a) Unless otherwise agreed by the parties, arbitrations conducted under these Expedited Procedures may be conducted under the flat fee arrangements set out in the *Fee Schedule for International Commercial Arbitration* in cases where no claim, or estimate of the amount claimed, by any one party in a Notice to Arbitrate or Notice of Counterclaim exceeds \$250,000 CAD exclusive of interest and costs.
- (b) Prior to an expedited arbitrator accepting appointment under the flat fee arrangements set out in the *Fee Schedule for International Commercial Arbitration*, the expedited arbitrator shall be provided with the Notice to Arbitrate and any Notice of Counterclaim delivered by the parties. The expedited arbitrator may refuse appointment if the expedited arbitrator is not prepared to be compensated to determine the claims set out in the Notice to Arbitrate and any Notice of Counterclaim in accordance with the flat fee arrangements in the *Fee Schedule for International Commercial Arbitration*.
- (c) Any new or amended claim or counterclaim in excess of \$250,000 CAD, exclusive of interest and costs, requires the consent of an expedited arbitrator that has accepted the appointment on the basis of the flat fee arrangements in the *Fee Schedule for International Arbitration*. The expedited arbitrator's consent may be subject to terms including compensation of the expedited arbitrator in addition to the flat fee arrangements in the *Fee Schedule for International Arbitration*. The expedited arbitrator's consent may also be subject to terms regarding the allocation between the parties of deposits and payment of any additional compensation of the expedited arbitrator.

- (d) An expedited arbitrator acting under this Rule cannot award a total amount to any one party in excess of \$250,000 CAD exclusive of interest and costs, unless the expedited arbitrator has consented to a new or amended claim or counterclaim in excess of \$250,000 CAD under Rule A-2(c).
- (e) In the event of an oral hearing not exceeding one day, the expedited arbitrator shall be compensated on an hourly basis in accordance with the hourly fee arrangements in the *Fee Schedule for International Arbitration*.
- (f) In the event of an oral hearing exceeding one day, the expedited arbitrator's compensation shall not be governed by the flat fee or hourly fee arrangements in the *Fee Schedule for International Arbitration*. Any order for an oral hearing exceeding one day may also be subject to terms regarding the allocation between the parties of deposits and payment of any additional compensation to the expedited arbitrator.

A-3. Commencement of Proceedings

- (a) VanIAC shall advise the parties of an arbitration commenced by a Notice to Arbitrate that meets the requirements of Rule A-1 at the same time that VanIAC advises the parties of the commencement date of the arbitration.
- (b) A Notice of Counterclaim delivered in response to a Notice to Arbitrate that meets the requirement of Rule A-1 shall be delivered within 10 days of commencement of the arbitration with the required fee set out in the *Fee Schedule for International Commercial Arbitration*.

A-4. Objections to the Applicability of the International Expedited Procedures

If an objection to the applicability of the International Expedited Procedures is submitted before the expedited arbitrator is appointed, VanIAC shall submit the issue of the applicability of these International Expedited Procedures to the expedited arbitrator, once appointed, to make a final determination.

A-5. Appointment of Expedited Arbitrator

A sole expedited arbitrator shall be appointed in the same manner as set out in Rule 11. The expedited arbitrator shall have the same powers and duties as an arbitral tribunal pursuant to the VanIAC International Arbitration Rules.

A-6. Procedural Conference and Schedule

- (a) Once appointed, the expedited arbitrator shall convene a procedural conference to discuss the most suitable schedule and procedures for the arbitration.
- (b) The expedited arbitrator shall deliver a procedural schedule for the arbitration to the parties within 14 days of appointment.

A-7. Proceedings by Written Submissions

- (a) Unless otherwise agreed by the parties or directed by the expedited arbitrator, a final award shall be issued without an oral hearing based on written materials delivered to the expedited arbitrator.
- (b) The written materials exchanged by the parties may include written argument, witness statements, expert reports and supporting documentary evidence.
- (c) Unless otherwise agreed by the parties or directed by the expedited arbitrator, all written material shall be exchanged by no later than 120 days from the appointment of the expedited arbitrator.

A-8. Oral Hearings

- (a) Any party may apply for an oral hearing within 10 days following delivery of all written material.
- (b) The expedited arbitrator shall order an oral hearing only where the expedited arbitrator is satisfied that an oral hearing is necessary, having regard to the expedited arbitrator's duties under Rule 19.
- (c) Subject to Rule 19, any order requiring oral hearings shall restrict such hearings to a maximum of one day and shall specify what cross-examinations or submissions are to be heard orally. In extraordinary circumstances, the expedited arbitrator may order an oral hearing exceeding one day, if it would be otherwise impossible to comply with Rule 19(a).
- (d) Any oral hearings shall take place within 30 days of delivery of all written material unless the expedited arbitrator deems it necessary to extend that period.

A-9. Time for Delivery of Award

Unless otherwise agreed by the parties or directed by the expedited arbitrator, the expedited arbitrator shall issue an award within 45 days of the last written material received by the expedited arbitrator, or, where an oral hearing has been ordered, within 45 days of the closure of proceedings pursuant to Rule 24.