



P.R.I.M.E. FINANCE
Panel of Recognised International Market Experts in Finance

**DRAFT JANUARY 2021 FOR
CONSULTATION PURPOSES**

Working Paper # 1

January 2021

PROPOSAL FOR THE AMENDMENT OF THE P.R.I.M.E. FINANCE ARBITRATION RULES



ABOUT P.R.I.M.E. FINANCE

P.R.I.M.E. Finance is the Panel of Recognised International Market Experts in Finance, an innovative collaboration launched in January 2012 to help resolve complex financial disputes. The P.R.I.M.E. Finance Foundation, an independent, not-for-profit organisation based in The Hague, oversees and supports the global role played by its Panel of Experts.

P.R.I.M.E. Finance aims to be a centre of excellence, dedicated to promoting a more sophisticated approach to financial market dispute settlement. P.R.I.M.E. Finance has a particular focus on issues arising in relation to industry standard documentation and relevant comparative law and market practices for derivatives and other complex financial products.

P.R.I.M.E. Finance's great strength lies in the knowledge of its Experts, who comprise more than 200 of the most prominent individuals from the world of finance and financial markets law as well as the resolution of relating disputes. The Panel brings together independent and multi-jurisdictional expertise in relation to complex financial transactions and dispute resolution in a way that is unique within the world's financial markets.

In 2015, P.R.I.M.E. Finance joined forces with the PCA, the world's oldest arbitral institution, thereby combining the subject matter expertise of its Panel with the PCA's efficiency in administering arbitrations. As a result, arbitrations and mediations under the P.R.I.M.E. Finance Arbitration Rules are administered by the PCA.

For more information about P.R.I.M.E. Finance, please visit primefinancedisputes.org. Follow us on LinkedIn at [P.R.I.M.E. Finance Foundation](#).

Review of the P.R.I.M.E. Finance Arbitration Rules

From its inception, it was envisaged that P.R.I.M.E. Finance would offer a specialised forum for finance disputes to be resolved by arbitration. The P.R.I.M.E. Finance Arbitration Rules (**the Rules**) were drafted accordingly.

The aim of the current exercise is to review the Rules in their entirety with a view to ensuring they are fully fit-for-purpose for users, reflecting current best practice in arbitration while preserving and expanding features of particular interest to financial market participants.

Structure of Review

A two-tier rule revision structure has been established, comprising a Drafting Group and a Consulting Group. Georges Affaki chairs the Drafting Group. Carolyn Lamm and Heikki Cantell chair the Consulting Group. A list of members of both groups follows.

Members of both groups have been drawn from the P.R.I.M.E. Finance Expert Panel, together with other leading members of the arbitration community added by invitation. Kasper Krzeminski, Secretary-General of P.R.I.M.E. Finance, and Head of Secretariat Camilla Macpherson are leading this exercise for P.R.I.M.E. Finance.

P.R.I.M.E. Finance is grateful to all those who are contributing their time to this project.

Current status and next steps

The Drafting Group has met several times since July 2020 to review the Rules and consider draft wording, with input from the Consulting Group. The purpose of this Working Paper #1 is to provide the public with a first draft of an updated set of Rules, on which comments are solicited by **21 March 2021**.

Once public comments have been received, the Drafting Group will carry out further work. The final version will be presented to the P.R.I.M.E. Finance Management Board for adoption. We aim to launch the new Rules in 2021.

It is proposed to produce an accompanying commentary and to introduce the Rules with information about P.R.I.M.E. Finance and its panel of experts.

Members of Drafting Group and Consulting Group

Drafting Group

*Georges Affaki, AFFAKI, Paris (Chair)
Yas Banifatemi, Shearman & Sterling, Paris
Chiann Bao, Arbitrator, Hong Kong
Martin Doe, Permanent Court of Arbitration, The Hague
Grant Hanessian, Arbitrator, New York
*Kasper Krzeminski, Secretary-General of P.R.I.M.E. Finance, The Hague
*Camilla Macpherson, Head of Secretariat of P.R.I.M.E. Finance, The Hague
*Wendy Miles, Twenty Essex, London
Kathryn Sanger, Herbert Smith Freehills, Hong Kong
Gaetan Verhoosel, Three Crowns, London

Consulting Group

*Heikki Cantell, Nordic Investment Bank, Helsinki (Co-chair)
*Carolyn Lamm, White & Case, Washington, DC (Co-chair)
*Paula Costa e Silva, University of Lisbon, Lisbon
*Whitney Debevoise, Arnold & Porter, Washington, DC
Bernard Hanotiau, Arbitrator, Brussels/Paris
*Arthur Hartkamp, Arbitrator, the Netherlands
*Peter Heckel, Arbitrator, Frankfurt
*Ulf Koping-Hoggard, Svenska Handelsbanken, Sweden
*George Liakopoulos, Piraeus Bank, Athens
*Ali Malek QC, 3 Verulam Buildings, London
*Romina Martinez, Scotia Bank, Mexico/Uruguay
*Loukas Mistelis, Queen Mary University, London
Philippe Pinsolle, Quinn Emmanuel, Geneva
*Hon. Elizabeth Stong, US Bankruptcy Judge, Eastern District of New York, New York
Marcus van Bevern, Kantenwein, Munich

*Indicates P.R.I.M.E. Finance Expert or Staff

P.R.I.M.E. FINANCE ARBITRATION RULES

TABLE OF CONTENTS

SECTION I. INTRODUCTORY RULES 7

1. SCOPE OF APPLICATION 7

2. NOTICE AND CALCULATION OF PERIODS OF TIME 8

3. REPRESENTATION 9

4. PERMANENT COURT OF ARBITRATION 9

SECTION II.COMMENCEMENT OF THE ARBITRATION 9

5. NOTICE OF ARBITRATION 9

6. RESPONSE TO THE NOTICE OF ARBITRATION 10

SECTION III. COMPOSITION OF THE ARBITRAL TRIBUNAL 11

7. NUMBER OF ARBITRATORS 11

8. P.R.I.M.E. FINANCE PANEL OF EXPERTS 11

9. NOMINATION OF SOLE ARBITRATOR 11

10. NOMINATION OF THREE ARBITRATORS 12

11. CONFIRMATION OF APPOINTMENTS OF ARBITRATORS 12

12. DISCLOSURES BY ARBITRATORS 12

13. REASONS FOR CHALLENGE 13

14. CHALLENGE OF ARBITRATORS 13

15. REPLACEMENT OF AN ARBITRATOR 13

SECTION IV. ARBITRAL PROCEEDINGS..... 14

16. CONDUCT OF THE ARBITRATION 14

17. EXPEDITED PROCEEDINGS 15

18. PLACE OF ARBITRATION 16

19. LANGUAGE 16

20. WRITTEN SUBMISSIONS 16

21. COUNTERCLAIMS AND SET-OFF 16

22. AMENDMENTS TO THE CLAIM OR DEFENCE 16

23. JURISDICTION OF THE ARBITRAL TRIBUNAL 17

24. INTERIM MEASURES 17

25. EMERGENCY ARBITRATION 18

26. EVIDENCE 19

27.	HEARINGS	20
28.	EXPERTS APPOINTED BY THE ARBITRAL TRIBUNAL.....	20
29.	AMICUS CURIAE	21
30.	DEFAULT	21
31.	JOINDER.....	21
32.	CONSOLIDATION OF ARBITRATIONS.....	23
33.	SINGLE ARBITRATION UNDER MULTIPLE CONTRACTS	24
34.	COORDINATION OF PROCEEDINGS	24
35.	EARLY DETERMINATION OF UNMERITORIOUS CLAIMS OR DEFENCES	25
36.	CLOSURE OF PROCEEDINGS.....	25
37.	WAIVER OF RIGHT TO OBJECT	25
	SECTION V. THE AWARD.....	26
38.	DECISIONS AND DELIBERATIONS OF THE ARBITRAL TRIBUNAL.....	26
39.	AWARDS	26
40.	APPLICABLE LAW, AMIABLE COMPOSITEUR.....	27
41.	SETTLEMENT OR OTHER GROUNDS FOR TERMINATION	27
42.	CURRENCY OF AWARD.....	27
43.	INTEREST.....	28
44.	TAX CONSEQUENCES.....	28
45.	INTERPRETATION OF THE AWARD.....	29
46.	CORRECTION OF THE AWARD	29
47.	ADDITIONAL AWARD.....	29
	SECTION VI. COSTS.....	29
48.	COSTS OF THE ARBITRATION	29
49.	FEEES AND EXPENSES OF ARBITRATORS	30
50.	SEALED OFFERS.....	31
51.	SECURITY FOR COSTS.....	32
52.	DEPOSITS AND PAYMENT OF COSTS	32
53.	EXCLUSION OF LIABILITY	33
	ANNEX A MODEL ARBITRATION CLAUSES.....	34
	ANNEX B MODEL STATEMENT OF INDEPENDENCE	36
	ANNEX C SCHEDULE OF COSTS	37

SECTION I.
INTRODUCTORY RULES

1. SCOPE OF APPLICATION

1.1 These Rules shall govern the arbitration where the arbitration agreement provides for them to apply. However, where any of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

1.2 In these Rules:

- a. “*arbitral tribunal*” means a sole arbitrator or a panel of arbitrators appointed under these Rules;
- b. “*arbitration agreement*” means one or more agreements to refer disputes to arbitration under these Rules, whether such agreement is entered into before or after a dispute has arisen;
- c. “*business day*” means a day on which banks are open for general business at the place where a notice or other communication in issue is to be received;
- d. “*claim*” shall include any claim, counterclaim, cross-claim, or claim for the purpose of a set-off;
- e. “*claimant*” means the party or parties initiating recourse to arbitration;
- f. “*day*” means a calendar day;
- g. “*PCA*” means the International Bureau of the Permanent Court of Arbitration at The Hague, including where relevant its Secretary-General and all its other officers and employees;
- h. “*P.R.I.M.E. Finance*” means the P.R.I.M.E. Finance Foundation, having its corporate seat in The Hague, the Netherlands, including where relevant its Secretary-General and all its other officers and employees;
- i. “*P.R.I.M.E. Finance Panel of Experts*” means the panel of experts included on the P.R.I.M.E. Finance website at <https://primefinancedisputes.org/page/list-of-experts>, as updated from time to time;
- j. “*respondent*” means all parties other than the claimant;

- k. “*Rules*” means the P.R.I.M.E. Finance Arbitration Rules as in force on the date of the commencement of the arbitration, unless the parties have agreed to submit to another version of the Rules;
 - l. “*signature*” and references to signing include, where relevant, electronic signatures and signatures provided in counterpart; and
 - m. “*they*”, “*them*”, “*their*” are used as both singular and plural pronouns.
- 1.3 Unless otherwise agreed by the parties, an arbitration initiated under the Rules shall be conducted in accordance with the expedited arbitration provisions provided in **article 17** (“expedited proceedings”) if:
- a. the amount in dispute does not exceed EUR 4,000,000 at the time the response to the notice of arbitration is filed; or
 - b. the parties so agree.

2. NOTICE AND CALCULATION OF PERIODS OF TIME

- 2.1 If an address or means of communication has been designated by a party, including in the contracts or other legal instruments out of or in relation to which the dispute arises, or authorized by the arbitral tribunal, any notice or other communication shall be made using that address or via that means and, if so made, shall be deemed to have been received and effective.
- 2.2 In the absence of such designation or authorization, any communication may be made by any means, whether physical or electronic, that provides or allows for a record of its transmission, and shall be deemed received and effective if it is delivered to the last-known place of business, habitual residence, or mailing address of the recipient or sent to any electronic address (including any name, number, account, or electronic messaging system) used in the ordinary course of business by the recipient.
- 2.3 A communication shall be deemed received and effective on the day it is physically delivered in accordance with **article 2.1 or 2.2**. A communication sent by electronic means shall be deemed received on the day it is sent, except that a notice of arbitration so sent shall only be deemed received on the day when it reaches the recipient’s electronic address. If, after reasonable efforts, a communication cannot be made in accordance with **article 2.1 or 2.2**, such communication shall be deemed received on the date of the last attempted communication in accordance with **article 2.1 or 2.2**. Any dispute with respect to the receipt of any communication, including where such communication may be materially impeded by reason of force majeure or act of state, shall be finally resolved by the arbitral tribunal.
- 2.4 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a communication is received. If the last day of such period is not a business day in the location of the recipient, the period is extended until the first business day which follows.

2.5 Nothing in these Rules shall affect the right of either party to serve process in any other manner permitted by applicable law.

3. REPRESENTATION

3.1 Each party may be represented by persons of its choice. The names and addresses of such persons and their proof of authority shall be communicated to the PCA, to all other parties, and to the arbitral tribunal in such a form as the PCA or, after it is constituted, the arbitral tribunal may determine.

3.2 Each party shall promptly notify the PCA, the arbitral tribunal and all other parties of any changes in its representation. The arbitral tribunal may, once constituted and after inviting the parties to express their views, take any measure necessary to avoid a conflict of interest of an arbitrator arising from a change in party representation, including the exclusion of new party representatives from participating in whole or in part in the arbitration.

4. PERMANENT COURT OF ARBITRATION

4.1 The PCA shall administer any arbitration under these Rules.

4.2 In exercising its functions under these Rules, the PCA may require from any party and the arbitrators the information it deems necessary and it shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner it considers appropriate. Except as otherwise directed by the PCA, all such communications to and from the PCA shall also be provided by the sender at the same time to all other parties and to the arbitral tribunal.

4.3 The PCA may, at its sole discretion, extend or abridge any period of time prescribed under these Rules or agreed by the parties.

SECTION II.

COMMENCEMENT OF THE ARBITRATION

5. NOTICE OF ARBITRATION

5.1 The claimant shall communicate the notice of arbitration to the PCA. The arbitration shall be deemed to commence on the day on which the notice of arbitration is received by the PCA. The PCA shall then notify the claimant of the date of the commencement of the arbitration and communicate a copy of the notice of arbitration to the respondent together with an invitation to submit a response to the notice of arbitration.

5.2 The notice of arbitration shall include the following:

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

- b. the names and contact details of the parties and their representatives, if any;
- c. identification of any arbitration agreements invoked;
- d. identification of any contracts or other legal instruments out of or in relation to which the dispute arises or, in the absence of such contracts or instruments, a brief description of the relevant relationship;
- e. a brief description of the claim and an indication of the amount involved, if any;
- f. the relief or remedy sought;
- g. the existence of any arrangement for the funding by a third person of any claim or defence under which that third person has an economic interest in the outcome of the arbitration and the identity of any such third person;
- h. if the parties have not previously agreed thereon, a proposal as to the number of arbitrators, language, legal place of arbitration and the use of the expedited procedure; and

payment of the registration fee in accordance with **Annex C**.

5.3 The notice of arbitration may also include:

- a. a proposal for the nomination of a sole arbitrator referred to in **article 9**;
- b. notification of the nomination of an arbitrator referred to in **article 10.1**; and
- c. any other proposals as to the procedure to be followed in the arbitration.

6. RESPONSE TO THE NOTICE OF ARBITRATION

6.1 Within 30 days of receipt by the respondent of the notice of arbitration or such other period as may be set by the PCA, the respondent shall communicate a response to the notice of arbitration to the PCA.

6.2 The response to the notice of arbitration shall include:

- a. the name and contact details of each respondent and their representatives, if any;
- b. the existence of any arrangement for the funding by a third person of any claim or defence under which that third person has an economic interest in the outcome of the arbitration and the identity of any such third person; and
- c. a response to the information set forth in the notice of arbitration, pursuant to **article 5.2 (c) to (h)**.

6.3 The response to the notice of arbitration may also include:

- a. any objection that an arbitral tribunal to be constituted under these Rules does not have jurisdiction;
 - b. a proposal for the nomination of a sole arbitrator referred to in article 9;
 - c. notification of the nomination of an arbitrator referred to in article 10.1;
 - d. a brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
 - e. a notice of arbitration in accordance with article 5 in case the respondent makes a claim against a party to the arbitration agreement other than the claimant; and
 - f. any other proposals as to the procedure to be followed in the arbitration.
- 6.4 The constitution of the arbitral tribunal shall not be hindered by any dispute with respect to the respondent's failure to communicate a response to the notice of arbitration, or an incomplete or late response to the notice of arbitration, which shall be finally resolved by the arbitral tribunal.
- 6.5 The PCA shall communicate to the claimant a copy of the response to the notice of arbitration.

SECTION III.
COMPOSITION OF THE ARBITRAL TRIBUNAL

7. NUMBER OF ARBITRATORS

If, within 30 days of the commencement of the arbitration, the parties have not agreed on the number of arbitrators, a sole arbitrator shall be appointed, unless the PCA determines that, in view of the circumstances of the case, it is more appropriate to appoint three or more arbitrators.

8. P.R.I.M.E. FINANCE PANEL OF EXPERTS

When nominating or appointing arbitrators, the parties, the arbitrators and the PCA shall have regard to such considerations as are likely to secure the appointment of a qualified, independent and impartial arbitrator, including by reference, as appropriate, to the P.R.I.M.E. Finance Panel of Experts.

9. NOMINATION OF SOLE ARBITRATOR

If a sole arbitrator is to be appointed, the sole arbitrator shall be jointly nominated by the parties. If the parties have not reached agreement on the nomination of a sole arbitrator within 30 days of receipt by the respondent of the notice of arbitration or such other period as may be set by the PCA, a sole arbitrator shall be appointed by the PCA.

10. NOMINATION OF THREE ARBITRATORS

- 10.1 If three arbitrators are to be appointed, each party shall nominate one arbitrator. Following the appointment of the first two arbitrators, these arbitrators shall nominate the presiding arbitrator as promptly as possible. If multiple parties act as claimant or as respondent, the parties acting as claimant shall jointly nominate one arbitrator, and the parties acting as respondent shall jointly nominate one arbitrator.
- 10.2 If within 30 days of receipt of a party's nomination of an arbitrator, the other party has not nominated an arbitrator, the first party may request the PCA to appoint the second arbitrator.
- 10.3 If within 30 days of the appointment of the second arbitrator, the two arbitrators have not agreed on the nomination of the presiding arbitrator, the presiding arbitrator shall be appointed by the PCA.

11. CONFIRMATION OF APPOINTMENTS OF ARBITRATORS

- 11.1 All nominations of arbitrators made by the parties or the arbitrators are subject to confirmation by the PCA, upon which the appointments shall become effective. The PCA may confirm arbitrators in its sole discretion, with no reasons being required for a decision not to confirm an arbitrator.
- 11.2 Where an arbitrator is nominated and not confirmed, the PCA may either invite the relevant parties or arbitrators to make a new nomination or proceed directly with the appointment.
- 11.3 In the event of any failure to constitute the arbitral tribunal under these Rules or any other method of nomination or appointment of arbitrators agreed by the parties, or where the PCA considers that such method creates a significant risk of unequal treatment or unfairness, the PCA shall, at the request of any party, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

12. DISCLOSURES BY ARBITRATORS

- 12.1 When a person is approached in connection with their possible appointment as an arbitrator, they shall disclose any circumstances likely to give rise to justifiable doubts as to their impartiality, independence or availability. An arbitrator, from the time of their appointment and throughout the arbitration, shall without delay disclose any such circumstances to the parties, the other arbitrators, and the PCA, unless they have already been informed by that arbitrator of these circumstances.
- 12.2 In order to assist arbitrators in complying with their duties under paragraph 1, each party shall promptly inform the PCA, the arbitral tribunal and all other parties of the existence of any arrangement for the funding by a third person of any claim or defence under which that third person has an economic interest in the outcome of the arbitration and the identity of any such third person, unless they have already been informed by that party of these circumstances pursuant to **article 5.2 (g) or 6.2 (b)**.

13. REASONS FOR CHALLENGE

- 13.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess the qualifications agreed to by the parties in their arbitration agreement.
- 13.2 A party may challenge the arbitrator nominated by it only for reasons of which it becomes aware after the nomination has been made.
- 13.3 If an arbitrator fails to perform their functions in accordance with these Rules or within agreed time limits, or if justifiable doubts arise in respect thereof, the procedure in respect of the challenge of an arbitrator as provided in **article 14** shall apply.

14. CHALLENGE OF ARBITRATORS

- 14.1 If a party intends to challenge an arbitrator, it shall submit a notice of challenge as soon as practicable, and in any event within 15 days of (a) being notified of the appointment of the challenged arbitrator or (b) becoming aware of the circumstances mentioned in **articles 12 and 13**.
- 14.2 The notice of challenge shall be communicated to the PCA, all other parties, the challenged arbitrator, and any other members of the arbitral tribunal.
- 14.3 The notice of challenge shall set out the reasons for the challenge, as well as the facts and circumstances on which the challenge is based.
- 14.4 When an arbitrator has been challenged by a party, all parties may agree to the challenge and the replacement of the challenged arbitrator pursuant to **article 15**. Challenged arbitrators may also withdraw of their own motion. In neither case does this imply acceptance of the validity of the grounds for the challenge.
- 14.5 If, within 15 days of receipt of the notice of challenge, the parties do not agree to the challenge or the challenged arbitrator does not withdraw, the PCA shall decide on the challenge, after giving the parties, the challenged arbitrator, and, where appropriate, the other arbitrators, an opportunity to present their views on the challenge.
- 14.6 The decision of the PCA on the challenge shall be final.
- 14.7 The arbitral tribunal may continue the arbitral proceedings, notwithstanding any pending challenge to any arbitrator.

15. REPLACEMENT OF AN ARBITRATOR

- 15.1 Subject to **article 15.2**, in any event where an arbitrator has to be replaced during the arbitration, a substitute arbitrator shall be nominated or appointed pursuant to the procedure that was applicable to the nomination or appointment of the arbitrator being replaced. This procedure shall apply even

if, during the process of appointing the arbitrator to be replaced, a party failed to exercise its right to nominate or to participate in the appointment.

- 15.2 If, at the request of a party, the PCA determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to nominate a substitute arbitrator, the PCA may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) taking into account the stage of the proceedings and any such matters as it considers appropriate, authorize the other arbitrators to proceed with the arbitration and make any decision or award.
- 15.3 If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform their functions, unless the arbitral tribunal decides otherwise.
- 15.4 The replacement of an arbitrator is without prejudice to:
- a. the validity of any act done or order made by that arbitrator before their replacement;
 - b. their entitlement to be paid their fees and expenses; and
 - c. the date when any claim or defence was raised for the purpose of any applicable time limits.

SECTION IV. **ARBITRAL PROCEEDINGS**

16. CONDUCT OF THE ARBITRATION

- 16.1 Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the dispute.
- 16.2 As soon as practicable, and in any event within 30 days of its constitution, and after inviting the parties to express their views, the arbitral tribunal shall hold a case management conference to establish the procedure to be adopted for the arbitration, including any additional procedural rules and a procedural timetable of the arbitration, such period of time to be extended by the arbitral tribunal only on the basis of justified reasons. Following initial submissions, the arbitral tribunal may decide, in consultation with the parties, to hold such additional procedural meetings as are appropriate.
- 16.3 The arbitral tribunal may at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties under **articles 16 to 47**.

- 16.4 Except as otherwise directed by the arbitral tribunal, all communications to the arbitral tribunal by one party shall be communicated by that party to all other parties and the PCA at the same time as they are sent to the arbitral tribunal.
- 16.5 Subject to preserving its independence and impartiality, and unless any party objects thereto, the arbitral tribunal may take steps to facilitate the settlement of the dispute before it. The parties agree that the arbitral tribunal's facilitation of settlement in accordance with this paragraph shall not be asserted by any party as grounds for the challenge of any of the arbitrators or for the set aside or refusal of enforcement of any award rendered by the arbitral tribunal.

17. EXPEDITED PROCEEDINGS

- 17.1 Upon receipt of the response to the notice of arbitration, upon expiry of the time limit for such response, or at any relevant time thereafter, the PCA shall inform the parties whether the expedited arbitration provisions in this article shall apply to the arbitration. Except as otherwise decided by the PCA, the application of the expedited arbitration provisions shall not be affected by any amendment to the claim or the filing of additional claims, as a result of which the amount in dispute exceeds the amount set out in [article 1.3](#).
- 17.2 Unless otherwise agreed by the parties, expedited proceedings shall be heard by a sole arbitrator. If the arbitration agreement provides for three arbitrators, the PCA shall invite the parties to agree to refer the case to a sole arbitrator. Unless the parties agree on three arbitrators, the case shall be referred to a sole arbitrator. In all cases, time limits for nominations of arbitrators, whether pursuant to article 9 or 10 or in accordance with the arbitration agreement, shall be 15 days.
- 17.3 At any time during the expedited proceedings, the PCA may decide, upon the request of either the arbitral tribunal or a party, that this article shall no longer apply. Unless the PCA decides otherwise, the arbitral tribunal constituted in the expedited proceedings shall remain in place, notwithstanding any contrary terms in the arbitration agreement.
- 17.4 As soon as practicable, and in any event within 15 days of its constitution, the arbitral tribunal shall convene a case management conference to consult the parties on the manner in which the expedited proceedings shall be conducted.
- 17.5 After the response to the notice of arbitration, each party shall in principle be limited to one further written submission.
- 17.6 The arbitral tribunal shall have discretion to adopt such procedural measures as it considers appropriate in view of the expeditious nature of the proceedings. In particular, the arbitral tribunal may, after consultation with the parties, limit the length and scope of oral and written submissions, production of documents, exhibits or other evidence.
- 17.7 Unless otherwise agreed by the parties, the arbitral tribunal shall render its final award in expedited proceedings within 180 days from the constitution of the arbitral tribunal. The PCA may, upon the request of the arbitral tribunal and in exceptional circumstances, extend this time limit.

18. PLACE OF ARBITRATION

- 18.1 If the legal place of arbitration has not been agreed by the parties, it shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
- 18.2 Unless otherwise agreed by the parties, the arbitral tribunal may meet for any purpose, including hearings, in person at any location it considers appropriate or through means of communication that do not require physical presence.

19. LANGUAGE

- 19.1 The parties may determine the language or languages of the proceedings. In the absence of an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. This determination shall apply to the written submissions of the parties and, if oral hearings take place, to the language or languages to be used in such hearings.
- 19.2 The arbitral tribunal may order that any documents or exhibits submitted in the course of the proceedings be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

20. WRITTEN SUBMISSIONS

The arbitral tribunal shall decide which written submissions shall be required from the parties or may be presented by them and shall fix the periods of time for such written submissions. The periods of time fixed by the arbitral tribunal for written submissions should in principle not exceed 45 days. However, the arbitral tribunal may fix a different time period if it considers it justified.

21. COUNTERCLAIMS AND SET-OFF

In its first written submission on the substance of the dispute, or at a later stage in the arbitration if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or claim for the purpose of a set-off.

22. AMENDMENTS TO THE CLAIM OR DEFENCE

During the course of the arbitration, a party may amend or supplement its claim or defence unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the circumstances of the case. However, a claim or defence may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the arbitral tribunal.

23. JURISDICTION OF THE ARBITRAL TRIBUNAL

- 23.1 The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement.
- 23.2 For the purposes of **article 23.1**, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract.
- 23.3 A decision by the arbitral tribunal that the contract is null and void, inoperative, or incapable of being performed shall not entail automatically the invalidity of the arbitration clause.
- 23.4 An objection that the arbitral tribunal does not have jurisdiction shall be raised no later than in a party's first written submission on the substance of the relevant claim or defence. A party is not precluded from raising such an objection by the fact that it has appointed, or participated in the appointment of, an arbitrator. An objection that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration. The arbitral tribunal may, in either case, admit a later objection if it considers the delay justified.
- 23.5 The arbitral tribunal may rule on an objection referred to in **article 23.4** either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitration and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

24. INTERIM MEASURES

- 24.1 At the request of a party, and at any time prior to the issue of the final award, the arbitral tribunal may grant any interim measures which it deems appropriate. An interim measure can be ordered in the form of an order or an award, as the arbitral tribunal considers appropriate.
- 24.2 Unless the arbitral tribunal decides otherwise, the party requesting an interim measure shall satisfy the arbitral tribunal that:
- a. harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - b. there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination of this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- 24.3 The arbitral tribunal may modify, suspend or terminate an interim measure it has granted upon request of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.
- 24.4 The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

- 24.5 The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
- 24.6 The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
- 24.7 By submitting to these Rules, the parties do not waive any right that they may have under applicable law to submit a request for interim measures to a judicial authority. A request for interim measures addressed by a party to a judicial authority shall not be deemed a violation or a waiver of the arbitration agreement.

25. EMERGENCY ARBITRATION

- 25.1 Unless otherwise agreed by the parties, a party in need of urgent interim measures that cannot await the constitution of the arbitral tribunal may submit a request for emergency measures, provided such request is received by the PCA prior to the constitution of the arbitral tribunal. The request for emergency measures shall include the following:
- a. the information specified in article 5.2 (b) to (e) and (g);
 - b. a statement of the emergency measures requested;
 - c. a statement of the facts and arguments supporting the request for emergency measures, in particular with respect to the need for measures prior to the constitution of the arbitral tribunal;
 - d. any agreement or proposal as to the legal place of the arbitration (or the emergency arbitration), the applicable rules of law, or the language of the arbitration (or the emergency arbitration);
 - e. any notice of arbitration and any other submissions in connection with the underlying dispute made prior to the re-quest; and
 - f. proof of the payment of the registration fee, the administrative costs, and the deposit for the emergency arbitrator's fees pursuant to **Annex C**.
- 25.2 The PCA shall send the request for emergency measures to all other parties and appoint an emergency arbitrator, unless:
- a. the PCA finds that it is manifest that the provisions of this article do not apply.
 - b. the applicant fails to pay the registration fee, the administrative costs, or the deposit for the emergency arbitrator's fees pursuant to **Annex C**.

- 25.3 The PCA shall appoint an emergency arbitrator within as short a time as possible, normally within two days of receipt of the request for emergency measures.
- 25.4 Articles 12 to 15 shall apply to the emergency arbitrator, except that the time limits of articles 14.1 and 14.5 shall be 3 days instead of 15 days. The emergency arbitrator shall not act as an arbitrator in any future arbitration relating to the dispute that gave rise to the request for emergency measures, unless otherwise agreed by the parties.
- 25.5 The PCA shall terminate the emergency arbitrator proceedings if a notice of arbitration has not been received within 10 days of receipt of the request for emergency measures, unless the emergency arbitrator determines that a longer period of time is necessary.
- 25.6 The legal place of the emergency arbitration shall be the place agreed by the parties for the arbitration. In the absence of such an agreement or if such agreement is unclear or incomplete, the PCA shall determine the legal place of the emergency arbitration, without prejudice to the determination of the place of the arbitration pursuant to article 18.1, of the Rules.
- 25.7 The emergency arbitrator may conduct the arbitration in such manner as they consider appropriate. The emergency arbitrator may decide to conduct hearings in person at any location they consider appropriate or through means of communication that do not require physical presence.
- 25.8 The decision on emergency measures shall be rendered by the emergency arbitrator, with reasons, within 15 days of appointment, in the form of an order or an award as the emergency arbitrator considers appropriate, and shall include a determination of which of the parties shall bear the costs of the emergency arbitration and in what proportions.
- 25.9 The parties undertake to comply with any decision made by the emergency arbitrator. The decision on emergency measures shall not bind the arbitral tribunal with respect to any question, issue or dispute determined therein, and shall in no way prejudice a final decision of the arbitral tribunal on the merits of the case.
- 25.10 The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitration, including (a) any request to modify or terminate the emergency measures, (b) the reallocation of the costs of the emergency arbitration, and (c) any claims arising out of or in connection with compliance or non-compliance with the decision on emergency measures.

26. EVIDENCE

- 26.1 Each party shall have the burden of proving the facts on which it relies to support its claim or defence.
- 26.2 Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be presented in writing and signed by them.

- 26.3 At any time during the arbitration, the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such time period as the arbitral tribunal shall determine.
- 26.4 The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

27. HEARINGS

- 27.1 If at an appropriate stage of the arbitration any party so requests, the arbitral tribunal may hold hearings for the presentation of evidence by witnesses or for oral argument. In the absence of such a request, or in the case of disagreement between the parties, the arbitral tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 27.2 In the event of a hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time, manner and, if applicable, place thereof. The arbitral tribunal may decide, after consulting the parties, that any hearing shall be conducted through means of communication that do not require physical presence.
- 27.3 Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
- 27.4 Hearings shall be held in private unless the parties agree otherwise.

28. EXPERTS APPOINTED BY THE ARBITRAL TRIBUNAL

- 28.1 After consultation with the parties, the arbitral tribunal may at any stage appoint one or more independent experts, including from the P.R.I.M.E Finance Panel of Experts as appropriate, to report to it on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
- 28.2 The expert shall, in principle before accepting the appointment, submit to the arbitral tribunal and to the parties a description of their qualifications and a statement of their impartiality and independence from the parties, their representatives and advisors, and the arbitral tribunal. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 28.3 The parties shall give the expert any relevant information or produce any relevant evidence. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

- 28.4 Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to respond to the expert's report in a written submission or through written statements by witnesses, including expert witnesses. A party shall be entitled to examine any document on which the expert has relied in their report.
- 28.5 At the request of a party or the arbitral tribunal, the expert shall participate in the hearing. The arbitral tribunal may question the expert, and the expert may be questioned by the parties or by another expert witness on issues raised in the expert's report, the parties' written submissions or written statements of witnesses, including expert witnesses presented by the parties.

29. AMICUS CURIAE

- 29.1 If it considers it necessary or appropriate for the proper determination of the case, the arbitral tribunal may, at the request of a party or at its own initiative, and in either case after consultation with the parties, invite or grant leave to a person or entity that is not a party to the proceedings to appear before it and make submissions on any issues relevant for the proceedings, as determined by the arbitral tribunal.
- 29.2 The arbitral tribunal shall ensure that any such appearance and submissions do not disrupt the proceedings or unduly burden or unfairly prejudice either party, and that both parties are given an opportunity to present their views on the non-disputing party's submissions.

30. DEFAULT

- 30.1 If a party has failed, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
- a. to pursue its claim in a diligent manner, the arbitral tribunal may issue an order for the termination of the arbitration with respect to that claim;
 - b. to communicate its response to the notice of arbitration or to submit a defence to any claim, the arbitral tribunal shall continue the proceedings, without treating such failure in itself as an admission of any party's allegations.
- 30.2 If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the arbitral tribunal may proceed with the hearing.
- 30.3 If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

31. JOINDER

- 31.1 The arbitral tribunal or, where the arbitral tribunal is not yet constituted, the PCA shall have the power to allow an additional party to be joined to the arbitration provided that:

- a. *prima facie*, the additional party to be joined is bound by an arbitration agreement giving rise to the arbitration, including any arbitration under article 32 or 33; or
 - b. all parties, including the additional party to be joined, expressly agree to the joinder of the additional party.
- 31.2 Any request for the joinder of an additional party made by a current party shall be made no later than in the current party's first written submission on the substance of the relevant claim, counter-claim or set-off unless the arbitral tribunal decides that the delay was justified under the circumstances.
- 31.3 A party wishing to join, or to be joined as, an additional party to the arbitration shall submit a request for joinder. The request for joinder shall include the following:
- a. identification of the existing arbitration to which the additional party would be joined;
 - b. the name and contact details of the additional party and its representatives, if any;
 - c. whether the additional party is proposed to be joined as a claimant or a respondent;
 - d. a statement of the facts and arguments supporting the request for joinder; and
 - e. the information specified in article 5.2 (c) to (h) in respect of any claims or defences made by or against the additional party.
- 31.4 The PCA or the arbitral tribunal, as the case may be, shall decide on the request for joinder after giving all other parties and the additional party to be joined an opportunity to present their views thereon.
- 31.5 Except as otherwise decided by the arbitral tribunal, where an additional party is joined to the arbitration, the arbitration against that additional party shall be deemed to commence on the date on which the request for joinder is received by the PCA or the arbitral tribunal, as the case may be.
- 31.6 Where an additional party is joined to the arbitration, all parties to the arbitration shall be deemed to have waived their right to appoint an arbitrator, and the PCA may revoke any appointment of an arbitrator already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator. The revocation of the appointment of an arbitrator is without prejudice to:
- a. the validity of any act done or order made by that arbitrator before their appointment was revoked;
 - b. their entitlement to be paid their fees and expenses; and
 - c. the date when any claim or defence was raised for the purpose of any applicable time limits.

31.7 The PCA may adjust its and the arbitral tribunal's fees as appropriate in order to take into account any request for joinder.

32. CONSOLIDATION OF ARBITRATIONS

32.1 The PCA shall have the power to consolidate two or more pending arbitrations where:

- a. all parties expressly agree to consolidate the arbitrations;
- b. all of the claims in the arbitrations are made under the same arbitration agreement or agreements; or
- c. the claims arise under more than one arbitration agreement but the arbitration agreements are compatible, and: (i) the claims arise out of the same legal relationship(s); (ii) the claims arise out of contracts consisting of a principal contract and its ancillary contract(s); or (iii) the claims arise out of the same transaction or series of transactions.

32.2 Any party wishing to consolidate two or more arbitrations pursuant to **article 32.1** shall submit a request for consolidation to the PCA. The request for consolidation shall include the following:

- a. identification of the arbitrations requested to be consolidated;
- b. the names and contact details of each of the parties to the arbitrations, their representatives, if any, and any arbitrators who have been appointed in the arbitrations; and
- c. a statement of the facts and arguments supporting the request for consolidation, including, where applicable, evidence of all parties' written consent to consolidate the arbitrations;
- d. the information specified in **article 5.2 (c) to (h)** in respect of each of the arbitrations requested to be consolidated; and
- e. a proposal for the constitution of the arbitral tribunal if the request for consolidation is granted, including whether to preserve the appointment of any arbitrators already appointed.

32.3 The PCA shall decide on the request for consolidation after giving all parties and any appointed arbitrators an opportunity to express their views thereon.

32.4 Where the PCA decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or the PCA decides otherwise taking into account the circumstances of the case.

32.5 The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by a competent authority in support of the relevant arbitration before it was consolidated.

32.6 Where the PCA decides to consolidate two or more arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to appoint an arbitrator, and the PCA may revoke any appointment of an arbitrator already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator. The revocation of the appointment of an arbitrator pursuant to [article 32.7](#) is without prejudice to:

- a. the validity of any act done or order made by that arbitrator before their appointment was revoked;
- b. their entitlement to be paid their fees and expenses; and
- c. the date when any claim or defence was raised for the purpose of any applicable time limits.

32.7 The PCA may adjust its and the arbitral tribunal's fees as appropriate in order to take into account any request for consolidation.

33. SINGLE ARBITRATION UNDER MULTIPLE CONTRACTS

33.1 Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that the arbitration agreements under which those claims are made are compatible, and:

- a. the claims arise out of the same legal relationship(s);
- b. the claims arise out of contracts consisting of a principal contract and its ancillary contract(s); or
- c. the claims arise out of the same transaction or series of transactions.

34. COORDINATION OF PROCEEDINGS

34.1 The arbitral tribunal may, after consulting with the parties, coordinate proceedings by aligning specific procedural aspects of two or more pending arbitrations, which arbitrations shall remain separate, where:

- a. the same arbitral tribunal is constituted in each arbitration; and
- b. a common question of law or fact arises in all the arbitrations.

35. EARLY DETERMINATION

- 35.1 Within 30 days of the relevant claim or defence is raised or within such other time as may be directed by the arbitral tribunal, a party may request the early determination of a claim or defence on the basis that manifestly outside the jurisdiction of the arbitral tribunal, manifestly inadmissible, or manifestly without legal merit.
- 35.2 In its request for early determination, the party shall specify the facts and the legal basis for the request, and a proposal regarding the procedure for early determination to be adopted by the arbitral tribunal.
- 35.3 The arbitral tribunal shall, after giving the parties an opportunity to express their views, decide, within 30 days of receipt of the request for early determination, whether to allow the request to proceed.
- 35.4 If the request for early determination is allowed to proceed, the arbitral tribunal shall fix in its decision a procedure for early determination as it considers appropriate. In such case, the arbitral tribunal shall make, within 30 days of the decision to proceed, an order or award deciding whether to grant the request, in whole or in part, with reasons, which may be in summary form.

36. CLOSURE OF PROCEEDINGS

- 36.1 As soon as possible after the closing of the hearing or receipt of the last submissions authorized by the arbitral tribunal, the arbitral tribunal shall:
- a. declare the proceedings closed with respect to the matters to be decided in the award; and
 - b. inform the PCA and the parties of the date by which it expects to issue its award.
- 36.2 After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the arbitral tribunal.

37. WAIVER OF RIGHT TO OBJECT

- 37.1 A failure by any party to object promptly to any non-compliance with these Rules, any requirement of the arbitration agreement or any procedural decisions made by the arbitral tribunal shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.
- 37.2 The parties waive any objection, on the basis of the use of any procedure under **articles 31 to 35**, and any decision made in respect of such procedure, to the validity and enforcement of any award made by the arbitral tribunal in the arbitration(s), insofar as such waiver can validly be made.

SECTION V.
THE AWARD

38. DECISIONS AND DELIBERATIONS OF THE ARBITRAL TRIBUNAL

- 38.1 When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
- 38.2 If there is no majority, an award or other decision of the arbitral tribunal may be made by the presiding arbitrator alone. In the case of questions of procedure, the arbitral tribunal may authorize the presiding arbitrator to decide alone, subject to revision, if any, by the arbitral tribunal.
- 38.3 The arbitral tribunal may deliberate in person or by any means of communication it deems appropriate, whether physical or electronic.
- 38.4 The deliberations of the arbitral tribunal shall be strictly confidential.

39. AWARDS

- 39.1 The arbitral tribunal may make separate awards on different issues at different times, in the form of interim, interlocutory, partial or final awards.
- 39.2 All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.
- 39.3 The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
- 39.4 A member of the arbitral tribunal who does not join in an award may issue a dissenting opinion. Such opinion shall not constitute part of the award.
- 39.5 Before signing any award, the arbitral tribunal shall send a copy of the award in draft form to the PCA for a limited review for format, clerical, typographical or computational errors, or any errors of a similar nature in the award. The PCA shall promptly review such award and suggest any corrections to the arbitral tribunal. The PCA, without affecting the arbitral tribunal's liberty of decision, may also draw its attention to points of substance.
- 39.6 An award shall be signed by the arbitrators, contain the date on which the award was made and indicate the legal place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
- 39.7 Copies of the award signed by the arbitrators shall be communicated to the parties by the PCA on behalf of the arbitral tribunal.

39.8 Unless otherwise agreed by the parties, the final award shall be rendered within 90 days of the closing of the hearing or receipt of the last submissions authorized by the arbitral tribunal in the case of an arbitral tribunal of three or more arbitrators, and within 60 days in the case of a sole arbitrator. The PCA may, in its sole discretion, extend such period.

39.9 An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party or by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority. The PCA shall furnish P.R.I.M.E. Finance with an anonymized copy of the arbitral award and any orders under the condition that no party objects within 30 days of receipt of the award or order. P.R.I.M.E. Finance may publish the anonymized award with the consent of all parties.

40. APPLICABLE LAW, AMIABLE COMPOSITEUR

40.1 The rules of law applicable to the substance of the dispute and to the arbitration agreement shall be those designated by the parties, failing which the arbitral tribunal shall apply the rules of law which it determines to be appropriate. The arbitral tribunal may also take into account any usage of trade applicable to the transaction.

40.2 The arbitral tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.

41. SETTLEMENT OR OTHER GROUNDS FOR TERMINATION

41.1 If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

41.2 If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in article 41.1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.

41.3 Copies of the order for termination of the arbitration or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties and to the PCA. Where an arbitral award on agreed terms is made, the provisions of articles 39.2, 39.6, and 39.9 shall apply.

42. CURRENCY OF AWARD

42.1 Unless otherwise agreed by the parties, any award shall be issued in the currency or currencies of the underlying contracts or other legal instruments upon which the claim is based or, where such contracts or instruments do not specify a currency or currencies or where the claim is not based on such contracts or instruments, in a currency to be determined by the arbitral tribunal, having regard

to the circumstances of the case, which may include the underlying contract (the “**Award Currency**”).

- 42.2 Unless otherwise agreed by the parties, where there are claims under multiple contracts in dispute, and the Award Currency of these contracts differs, each claim shall - unless otherwise agreed - be awarded in the Award Currency of the contract under which the claim arose.
- 42.3 To the extent permitted by applicable law, any obligation to pay in the Award Currency an award or arising under any other decision of the arbitral tribunal shall not be discharged or satisfied by any tender in any currency other than the Award Currency, except to the extent such tender results in the actual receipt by the party to which payment is owed, acting in good faith and using commercially reasonable procedures in converting the currency so tendered into the Award Currency, of the full amounts payable in respect of such award or decision.
- 42.4 If for any reason the amount in the Award Currency so received falls short of the amount in the Award Currency so payable, the party required to make the payment shall, to the extent permitted by applicable law, immediately pay such additional amount in the Award Currency as may be necessary to compensate for the shortfall. If for any reason the amount in the Award Currency so received exceeds the amount in the Award Currency so payable, the party receiving the payment shall refund promptly the amount of such excess.

43. INTEREST

- 43.1 Unless otherwise agreed by the parties, the arbitral tribunal may:
- a. fix a rate of interest payable on any amount due from one party to another; and
 - b. order that simple or compound interest shall be paid.
- 43.2 Subject to the applicable law, the parties’ agreement, and the terms of the relevant claim, the interest should be calculated for the period from (and including) the due date for payment, as determined by the arbitral tribunal, to (but excluding) the date of actual payment.

44. TAX CONSEQUENCES

- 44.1 Unless otherwise agreed, all payments of any award or arising under any decision of the arbitral tribunal shall be made without any deduction or withholding for or on account of any tax imposed by any government or taxing authority unless such deduction or withholding is required by any applicable law, as modified by the practice of any relevant governmental revenue authority, then in effect. If a party is so required to deduct or withhold, then that party may do so on the giving of prompt notice to the other party but subject to any gross-up or certification requirements on the part of both parties contemplated by the underlying contract or contracts to which the award or decision relates.
- 44.2 The arbitral tribunal may, after consulting the parties, further take into consideration any tax consequences of the amounts payable under the award for any of the parties.

45. INTERPRETATION OF THE AWARD

- 45.1 Within 30 days of receipt of an award, a party, with notice to the other parties and the PCA, may request that the arbitral tribunal give an interpretation of the award.
- 45.2 The interpretation shall be given in writing within 45 days of receipt of the request. The interpretation, which may be given in the original award or in a separate document, shall form part of the award and the provisions of article 39.2 to 39.7 and 39.9, shall apply.

46. CORRECTION OF THE AWARD

- 46.1 Within 30 days of receipt of an award, a party, with notice to the other parties and the PCA, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the corrections in writing within 45 days of receipt of the request.
- 46.2 The arbitral tribunal may, within 30 days of the issue of the award, make such corrections on its own initiative.
- 46.3 Such corrections, which may be made in the original award or in a separate document, shall form part of the award, and the provisions of article 39.2 to 39.7 and 39.9, shall apply.

47. ADDITIONAL AWARD

- 47.1 Within 30 days of receipt of a termination order or an award, a party, with notice to the other parties and the PCA, may request the arbitral tribunal to complete the award or render an additional award as to claims presented in the arbitration but not decided by the arbitral tribunal.
- 47.2 If the arbitral tribunal considers the request to be justified, it shall complete the award or render an additional award within 60 days of receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
- 47.3 The provisions of article 39.2 to 39.7 and 39.9, shall apply to any such completed award or additional award.

SECTION VI. **COSTS**

48. COSTS OF THE ARBITRATION

- 48.1 The arbitral tribunal shall fix the costs of arbitration in the final award or termination order and, if it deems appropriate, in another decision.
- 48.2 The term “costs of arbitration” includes:

- a. The fees of the arbitral tribunal, as determined in accordance with article 49;
- b. The reasonable expenses incurred by the arbitrators, including any value added tax or sales tax levied on their fees;
- c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal, including fees and expenses of any tribunal secretary;
- d. The legal and other costs incurred by the parties in relation to the arbitration including fees and expenses of any witnesses and experts, to the extent that (i) such costs were claimed during the arbitration and (ii) the arbitral tribunal determines that the amount of such costs is reasonable;
- e. The registration fees and administrative costs fixed by the PCA in accordance with Annex C.

48.3 The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion all or part of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

48.4 The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, including a separate award on costs, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

48.5 The parties are jointly and severally liable to the arbitrators and the PCA for the costs of arbitration specified in article 48.2 (a) to (c) and (e).

49. FEES AND EXPENSES OF ARBITRATORS

49.1 The fees of the arbitral tribunal shall be determined according to either (a) an hourly rate or (b) the schedule of fees based on the sum in dispute in Annex C.

49.2 The parties shall agree on the method for determining the fees of the arbitral tribunal and shall inform the PCA of the applicable method. If the parties fail to agree on the applicable method within 30 days of the commencement of the arbitration, the arbitral tribunal's fees shall be determined on the basis of an hourly rate.

49.3 Where the fees of the arbitral tribunal are to be determined on the basis of an hourly rate:

- a. the applicable rate for each co-arbitrator shall be the rate agreed between that co-arbitrator and the nominating party; and

- b. the applicable rate for a sole or presiding arbitrator designated by the parties or the co-arbitrators, as applicable, shall be the rate agreed between that arbitrator and the parties.

- 49.4 Where the rate of an arbitrator is not agreed in accordance with article 49.2, or where the PCA appoints an arbitrator, the PCA shall determine the rate of that arbitrator.
- 49.5 Where the fees of the arbitral tribunal are determined based on the sum in dispute, the PCA shall fix the fees in accordance with article 4 of Annex C.
- 49.6 In all cases, the fees and expenses of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitral tribunal and any tribunal secretary, and any other relevant circumstances of the case. The PCA may at any time, at the request of any party or on its own initiative, adjust the fees of any arbitrator including any rate on which they are based. The PCA may also decide that the arbitral tribunal's fees may exceed the amounts calculated in accordance with article 49.3 to 49.5 where, in the opinion of the PCA, there are exceptional circumstances, which may include, but are not limited to, the parties conducting the arbitration in a manner not reasonably contemplated at the time when the arbitral tribunal was constituted.

50. SEALED OFFERS

- 50.1 Any party may provide an unaccepted settlement offer to the PCA for potential consideration by the arbitral tribunal in determining allocation of costs pursuant to article 48, in accordance with the following procedure.
- 50.2 Any party may send to the PCA a copy of an offer of settlement previously made to any other party in the arbitration, but not accepted, that is marked "without prejudice save as to costs". The offer of settlement should be communicated to the PCA in a sealed envelope marked "without prejudice save as to costs" (the settlement offer and sealed envelope are collectively referenced herein as the "Sealed Offer"), making reference to this article. The party shall send a copy of its communication to the PCA, including the Sealed Offer, to the recipient of the original offer.
- 50.3 Any party may send to the PCA any further communications arising from the Sealed Offer (including, for example, any counter-offers) in a sealed envelope marked "without prejudice save as to costs," in the same manner as the original Sealed Offer.
- 50.4 The PCA shall treat the Sealed Offer(s) as confidential and shall notify the arbitral tribunal in writing that the PCA is holding the Sealed Offer(s).
- 50.5 The arbitral tribunal shall then inform the PCA in writing whether it requests to receive the Sealed Offer(s) and, if so, shall notify the PCA in writing when it has completed its deliberations on all liability and quantum issues and is ready to allocate costs.
- 50.6 If the arbitral tribunal requests to receive the Sealed Offer(s), the PCA shall send the Sealed Offer(s) to the arbitral tribunal. The arbitral tribunal shall open the sealed envelopes(s) and provide copies of any documents contained therein to all parties. The arbitral tribunal may delay closing the

proceedings pursuant to **article 36** to the extent necessary to allow the parties to make further submissions on costs.

50.7 The arbitral tribunal shall decide, as it considers appropriate, what weight, if any, should be given to the Sealed Offer(s) in allocating costs pursuant to **article 48**.

51. SECURITY FOR COSTS

51.1 The arbitral tribunal may, at the request of a party, order any party asserting a claim to provide security for costs.

51.2 In determining whether to order a party to provide security for costs, the arbitral tribunal shall consider all relevant circumstances, including:

- a. that party's ability and willingness to comply with an adverse decision on costs;
- b. the effect that provision of security may have on that party's ability to pursue its claim; and
- c. the conduct of the parties.

51.3 The arbitral tribunal shall specify in its decision any terms regarding security for costs, and shall fix a time limit for compliance with its decision.

51.4 If a party fails to comply with the arbitral tribunal's decision on security for costs, the arbitral tribunal may suspend the proceeding. If the proceeding is suspended for more than [30] days, the arbitral tribunal may, after consulting with the parties, order the termination of the arbitration or continue with the arbitration on such basis and in respect of such claims as the arbitral tribunal considers appropriate.

51.5 The arbitral tribunal's decisions on security for costs in accordance with this article may take the form of an order or an award, as the arbitral tribunal considers appropriate.

51.6 **Articles 24.4 and 24.6**, shall apply *mutatis mutandis* to decisions on security for costs.

52. DEPOSITS AND PAYMENT OF COSTS

52.1 Following the establishment of the arbitral tribunal, the PCA may request the parties to each deposit with the PCA an advance for the costs referred to in **article 48.2**.

52.2 During the course of the arbitration, the PCA may request supplementary deposits from the parties towards any advance on costs, including in cases where further claims are made, existing claims are amended or where it otherwise appears appropriate to the PCA in the circumstances (such as fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrators, or the evolving difficulty or complexity of the arbitration).

- 52.3 If the required deposits are not paid in full within the time limit set by the PCA, the PCA shall so inform the parties in order that one or more of them may make the required payment within the timeframe specified by the PCA. If such payment is not made within the specified time limit, the arbitral tribunal may order the suspension or termination of the arbitration or continue with the arbitration on such basis and in respect of such claims as the arbitral tribunal considers appropriate.
- 52.4 If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an order or award for reimbursement of that payment by the defaulting party, together with any interest.
- 52.5 Any deposit of security for costs ordered by the arbitral tribunal pursuant to **article 51** shall be directed to the PCA and disbursed by it upon order from the arbitral tribunal.
- 52.6 After a termination order or final award has been made, the PCA shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties in the shares in which it was paid by the parties to the PCA, or as otherwise instructed by the arbitral tribunal.

53. EXCLUSION OF LIABILITY

The parties waive, to the fullest extent permitted under applicable law, any claim against the arbitrators, the PCA, P.R.I.M.E. Finance and any person appointed by the PCA or the arbitral tribunal based on any act or omission in connection with the arbitration.

ANNEX A
MODEL ARBITRATION CLAUSES

Option 1 (arbitration)

Any dispute arising out of or relating to this agreement shall be finally resolved by arbitration in accordance with the P.R.I.M.E. Finance Arbitration Rules (the “**Rules**”).

- a. The arbitral tribunal shall be composed of [one arbitrator] [three arbitrators].
- b. The arbitral tribunal shall be appointed in accordance with **Articles 7 to 11** of the Rules. Where appropriate, the P.R.I.M.E. Finance Panel of Experts may serve as guidance for the selection and appointment of arbitrators.
- c. The legal place of arbitration shall be [city and/or country];
- d. The language to be used in the arbitration shall be [...]; and
- e. The law applicable to the arbitration agreement shall be [...]

[Optional]

- f. The rules on expedited proceedings as set out in **article 17** to the Rules shall not apply.
- g. The rules on emergency arbitration as set out in **article 25** of the Rules shall not apply.
- h. The administrative costs of P.R.I.M.E. Finance shall be calculated in accordance with **article 4 of Annex C** to the Rules

Option 2 (arbitration with an option for mediation)

Any dispute arising out of or relating to this agreement shall be submitted to mediation in accordance with the P.R.I.M.E. Finance Mediation Rules (the “**Mediation Rules**”). Any mediation shall take place in [city and/or country] and be administered by the Permanent Court of Arbitration (the PCA). Any dispute which has not been resolved by mediation within 45 days after initiation of the mediation procedure shall be finally resolved by arbitration in accordance with the P.R.I.M.E. Finance Arbitration Rules (the “**Rules**”).

- a. The arbitral tribunal shall be composed of [one arbitrator] [three arbitrators].
- b. The arbitral tribunal shall be appointed in accordance with **articles 7 to 11** of the Rules. Where appropriate, the P.R.I.M.E. Finance Panel of Experts may serve as guidance for the selection and appointment of arbitrators.
- c. The legal place of arbitration shall be [city and/or country];

- d. The language to be used in the arbitration shall be [...];
- e. The law applicable to the arbitration agreement shall be [...]

[Optional]

- f. The rules on expedited proceedings as set out in **article 17** to the Rules shall not apply.
- g. The rules on emergency arbitration as set out in **article 25** of the Rules shall not apply.
- h. The administrative costs of P.R.I.M.E. Finance shall be calculated in accordance with **article 4 of Annex C** to the Rules.

ANNEX B
MODEL STATEMENT OF INDEPENDENCE

[TO BE UPDATED]

ANNEX C
SCHEDULE OF COSTS

1. REGISTRATION FEES

- 1.1 When submitting a notice of arbitration pursuant to article 5 of the Rules, the claimant shall pay a non-refundable registration fee of EUR 2,000 to the PCA. The same registration fee shall apply accordingly to any claim referred to in article 21 of the Rules.
- 1.2 A party making a request for emergency measures pursuant to article 25 of the Rules shall pay a non-refundable registration fee of EUR 1,000 to the PCA together with the submission of any request for emergency measures made pursuant to article 25 of the Rules.

2. ADMINISTRATIVE COSTS

- 2.1 The administrative costs referred to in article 48.2(e) of the Rules shall be determined in accordance with article 3 of this annex, which is an indicative scale only. The PCA may charge the PCA hourly rates, if these total a higher amount than the indicative scale mentioned in article 3 below.
- 2.2 The administrative costs shall be no less than EUR 10,000.

3. INDICATIVE SCALE OF ADMINISTRATIVE COSTS

The indicative scale set out hereinafter shall guide the fixing of administrative costs by the PCA. The PCA retains discretion in the fixing of the administrative costs and, in exceptional circumstances, may fix the administrative costs at a lower or higher figure than that which would result from the application of the following indicative scale:

Amount in Dispute (in EUR)		P.R.I.M.E. Finance Administrative Fees (in EUR)
Up to	1,000,000	10,000
From	1,000,001	10,000
To	2,000,000	+ 1% of the amount above 1,000,000
From	2,000,001	20,000
To	5,000,000	+ 0.28% of the amount above 2,000,000
From	5,000,001	28,400
To	10,000,000	+ 0.15% of the amount above 5,000,000
From	10,000,001	35,900
To	20,000,000	+ 0.07% of the amount above 10,000,000
From	20,000,001	42,900
To	50,000,000	+ 0.045% of the amount above 20,000,000
From	50,000,001	56,400
To	100,000,000	+ 0.004% on the amount above 50,000,000
From	100,000,001	58,400

To	300,000,000	+ 0.0025% on the amount above 100,000,000
From	300,000,001	63,400
To	500,000,000	+ 0.0015% on the amount above 300,000,000
Over	500,000,000	66,400

4. INDICATIVE SCALE OF ARBITRATOR FEES

The indicative scale set out hereinafter shall guide the fixing of each arbitrator's fees by the PCA in accordance with article 49.5 of the Rules. The PCA retains discretion in the fixing of the arbitrator fees and, in exceptional circumstances, may fix the administrative costs at a lower or higher figure than that which would result from the application of the following indicative scale:

Amount in Dispute (in EUR)		Arbitrator's Fees (in EUR)
Up to	1,000,000	40,000
From	1,000,001	40,000
To	2,000,000	+ 2% of the amount above 1,000,000
From	2,000,001	60,000
To	5,000,000	+ 1% of the amount above 2,000,000
From	5,000,001	90,000
To	10,000,000	+ 0.3% of the amount above 5,000,000
From	10,000,001	105,000
To	20,000,000	+ 0.2% of the amount above 10,000,000
From	20,000,001	125,000
To	50,000,000	+ 0.185% of the amount above 20,000,000
From	50,000,001	180,500
To	100,000,000	+ 0.075% on the amount above 50,000,000
From	100,000,001	218,000
To	300,000,000	+ 0.043% on the amount above 100,000,000
From	300,000,001	304,000
To	500,000,000	+ 0.025% on the amount above 300,000,000
Over	500,000,000	354,000 + 0.0225% on the amount above 500,000,000

5. ADMINISTRATIVE COSTS IN EMERGENCY ARBITRATION

- 5.1 When submitting a request for emergency measures in accordance with article 25 of the Rules, the requesting party shall pay administrative costs of EUR 10,000 to the PCA. The requesting party shall also pay an amount of EUR 20,000 as deposit for the Emergency Arbitrator's fees and expenses.
- 5.2 Upon a request from the Emergency Arbitrator or if otherwise deemed appropriate, the PCA may decide to increase or reduce the administrative costs as well as the Emergency Arbitrator's fees taking into account the nature of the case, the work performed by the Emergency Arbitrator and the PCA. If the applicant fails to pay the costs mentioned in this paragraph in due time, the PCA shall

dismiss the Application.

6. ADMINISTRATIVE COSTS IN CASE OF EARLY TERMINATION

If the arbitration is terminated before the final award is made pursuant to **article 41** of the Rules, the PCA shall fix the administrative costs at its discretion, taking into account the stage attained by the arbitration, the applicable method of calculation of the costs and any other relevant circumstances.

7. PCA BANK ACCOUNT

All payments to the PCA shall be made to the following bank account: [...]