



# **IACT Arbitration Rules**

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## **Section I. Introductory rules**

### ***Scope of application***

#### *Article 1*

1. Where parties have agreed that disputes between them in respect of a defined legal relationship, whether contractual or not, shall be referred to arbitration under the IACT Arbitration Rules, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. These Rules shall govern the arbitration except that 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.

### ***Notice and calculation of periods of time***

#### *Article 2*

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or e-mail may only be made to an address so designated or authorized.
3. In the absence of such designation or authorization, a notice is:
  - (a) Received if it is physically delivered to the addressee; or
  - (b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.
5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. 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 notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or nonbusiness days occurring during the running of the period of time are included in calculating the period.

### ***Notice of arbitration***

#### *Article 3*

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to the IACT Secretariat (via info@iactokyo.com) and the other party or parties (hereinafter called the “respondent”) a notice of arbitration.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the respondent.
3. The notice of arbitration shall include the following:
  - (a) A demand that the dispute be referred to arbitration;
  - (b) The names and contact details of the parties;
  - (c) Identification of the arbitration agreement that is invoked, if any;
  - (d) Identification of any contract, patents, or other legal instruments out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (e) A brief description of the claim. In a patent case, unless otherwise agreed by the parties, to the extent the technical issues are disputed the case description should include detailed preliminary claim charts setting forth the claimant’s infringement theories. The claim charts must separately be submitted to the IACT Secretariat using an FTP site or another secure means;
  - (f) An indication of the amount involved, if any;
  - (g) The relief or remedy sought;
  - (h) A proposal as to the number of arbitrators, the applicable law, language and seat of arbitration, if the parties have not previously agreed thereon.
4. The notice of arbitration may also include:
  - (a) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
  - (b) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph

1;

(c) Notification of the appointment of an arbitrator referred to in article 9 or 10.

5. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### ***Response to the notice of arbitration***

#### *Article 4*

1. Within 21 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant and the IACT Secretariat (via info@iactokyo.com) a response to the notice of arbitration, which shall include:

- (a) The name and contact details of each respondent;
- (b) A response to the information set forth in the notice of arbitration, pursuant to article 3, paragraphs 3(c)-(h).

2. The response to the notice of arbitration may also include:

- (a) Any plea that an arbitral tribunal to be constituted under these Rules lacks jurisdiction;
- (b) A proposal for the designation of an appointing authority referred to in article 6, paragraph 1;
- (c) A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
- (d) Notification of the appointment of an arbitrator referred to in article 9 or 10;
- (e) A brief description of counterclaims, defenses, or claims for the purpose of a set-off, if any. In a patent case, unless otherwise agreed by the parties, to the extent the technical issues are disputed the case description should include detailed preliminary claim charts setting forth the respondent's theories of infringement, non-infringement, and invalidity. The claim charts must separately be submitted to the IACT Secretariat using an FTP site or another secure means;
- (f) An indication of the amounts involved, and the relief or remedy sought;
- (g) A notice of arbitration in accordance with article 3 in case the respondent formulates a claim against a party to the arbitration agreement other than the claimant.

3. The constitution of the arbitral tribunal shall not be hindered by any controversy 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.

### ***Representation and assistance***

#### *Article 5*

Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine. Any change in representation during the course of the arbitration must be communicated without delay to all other parties, the arbitrators, and the IACT Secretariat.

### ***The appointing authority***

#### *Article 6*

1. The appointing authority shall be constituted on a case-by-case basis by the IACT governing board. Absent good cause, the appointing authority shall include one representative from each of the United States, Korea, China, Japan, and Europe. In the event a governing board member or appointing authority member has an actual or potential conflict of interest, the member shall abstain from performing his or her duties in the case, and instead those duties shall be performed by a neutral, competent substitute.

2. In exercising their functions under these Rules, the appointing authority may require from any party and the arbitrators the information they deem necessary and they shall give the parties and, where appropriate, the arbitrators, an opportunity to present their views in any manner they consider appropriate. All such communications to and from the appointing authority shall also be provided by the sender to all other parties and the IACT Secretariat.

3. When the appointing authority is requested to appoint an arbitrator pursuant to articles 8, 9, 10 or 14, the party making the request shall send to the appointing authority copies of the notice of arbitration and, if it exists, any response to the notice of arbitration.

4. The appointing authority shall have regard to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and shall take into account the advisability of appointing an arbitrator of a nationality other than the nationalities of the parties.



## **Section II. The arbitrator(s)**

### *Number of arbitrators*

#### *Article 7*

1. If the parties do not agree to the appointment of only one arbitrator within 21 days after the receipt by the respondent of the notice of arbitration, then three arbitrators shall thereafter be appointed in accordance with the procedures set forth in article 9.
2. Notwithstanding paragraph 1, if no other parties have responded to a party's proposal to appoint a sole arbitrator within the time limit provided for in paragraph 1 and the party or parties concerned have failed to appoint a second arbitrator in accordance with article 9 or 10, the appointing authority may, at the request of a party, appoint a sole arbitrator pursuant to the procedure provided for in article 8, paragraph 2, if it determines that, in view of the circumstances of the case, this is more appropriate.

### *Appointment of arbitrators*

#### *Article 8*

1. If the parties have agreed to a sole arbitrator, but do not agree to the identity of the arbitrator within 21 days after receipt by all other parties of the proposal for the appointment of a sole arbitrator, then the appointing authority shall, after the expiration of the 21-day period, promptly appoint the sole arbitrator.
2. The appointing authority shall appoint the sole arbitrator, by majority vote of the appointing authority members, as promptly as possible. In making the appointment, the appointing authority shall use the following list-procedure, unless the parties agree that the list-procedure should not be used or unless the appointing authority determines in its discretion that the use of the list-procedure is not appropriate for the case:
  - (a) The appointing authority shall communicate to each of the parties an identical list containing at least three names;
  - (b) Within 7 days after the receipt of this list, each party may return the list to the appointing authority after having deleted the name or names to which it objects and numbered the remaining names on the list in the order of its preference;
  - (c) After the expiration of the 7-day period, the appointing authority shall appoint the sole arbitrator from among the names approved on the lists returned to it and in accordance with the order of preference indicated by the parties;
  - (d) If for any reason the appointment cannot be made according to this procedure, the appointing authority may exercise its discretion in promptly appointing the sole arbitrator by majority vote.

## *Article 9*

1. If three arbitrators are to be appointed, each party shall promptly appoint one arbitrator. The two arbitrators thus appointed shall promptly choose the third arbitrator, who will act as the presiding arbitrator of the arbitral tribunal.
2. If within 21 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, the first party may, after the expiration of the 21-day period, promptly request that the appointing authority appoint the second arbitrator.
3. If within 21 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the appointing authority shall, after the expiration of the 21-day period, promptly appoint the presiding arbitrator in the same way as a sole arbitrator would be appointed under article 8.

## *Article 10*

1. For the purposes of article 9, paragraph 1, where three arbitrators are to be appointed and there are multiple parties as claimant or as respondent, unless the parties have agreed to another method of appointment of arbitrators, the multiple parties jointly, whether as claimant or as respondent, shall appoint an arbitrator.
2. If the parties have agreed that the arbitral tribunal is to be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties.
3. In the event of any failure to constitute the arbitral tribunal under these Rules, the appointing authority shall, at the request of any party, promptly constitute the arbitral tribunal by majority vote 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.

## ***Disclosures by and challenge of arbitrators***

### *Article 11*

When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties, the other arbitrators, and the IACT Secretariat unless they have already been informed by him or her of these circumstances. If no such circumstances exist, each arbitrator shall certify to IACT, on or

before the last day of each month of the arbitration, that no such circumstances exist.

### *Article 12*

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the de jure or de facto impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in article 13 shall apply.

### *Article 13*

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 14 days after it has been notified of the appointment of the challenged arbitrator, or within 14 days after the circumstances mentioned in articles 11 and 12 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged, to the other arbitrators, and to the IACT Secretariat. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 14 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In that case, within 21 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

### ***Replacement of an arbitrator***

#### *Article 14*

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in articles 8 to 11 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the

appointment.

2. If, at the request of a party, the appointing authority 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 appoint a substitute arbitrator, the appointing authority may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator by majority vote; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

### ***Repetition of hearings in the event of the replacement of an arbitrator***

#### *Article 15*

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

### ***Exclusion of liability***

#### *Article 16*

1. Any arbitrators, the appointing authority, the supervisory panel and any person appointed by the arbitral tribunal and IACT, including the governing board, any administrative secretary and any law clerk, any technical assistant, directors, officers and employees of IACT, shall not be liable to any person for any negligence, act or omission in connection with any arbitration administered by IACT.

2. IACT, including arbitrators, the appointing authority, the supervisory panel, and any person appointed by the arbitral tribunal and IACT, including the governing board, any administrative secretary and any law clerk, any technical assistant, directors, officers and employees of IACT, shall not be under any obligation to make any statement in connection with any arbitration administered by IACT. No party shall seek to make arbitrators, the appointing authority, the supervisory panel and any person appointed by the arbitral tribunal, including any administrative secretary and any expert, any directors, officers and employees of IACT, act as a witness in any legal proceedings in connection with any arbitration administered by IACT.

### ***Assistants to the arbitral tribunal***

#### *Article 17*

1. The arbitral tribunal may seek permission of the parties to appoint one or more technical assistants—who are neutral, qualified, and competent in the technology field relevant to the case—to assist the tribunal with the technical issues in the case. In the event the arbitral tribunal requests

such permission, it shall provide the parties with names and credentials of any nominees for the technical assistant positions, as well as certifications of neutrality signed by the nominees.

2. If the parties approve the tribunal's request, the tribunal may use its discretion under the circumstances of the case to decide the manner in which the technical assistant(s) shall assist the tribunal, whether through a written report, oral presentation, or other means.

3. All communications between the arbitral tribunal and the technical assistant(s) will be subject to review and comment by the parties.

4. After a technical assistant's nomination and approval, 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 approval has been given. The arbitral tribunal shall decide promptly what, if any, action to take.

5. All communications between the arbitral tribunal and parties regarding a technical assistant's nomination and approval shall also be provided to the IACT Secretariat.

#### *Article 18*

The arbitral tribunal may seek permission of the parties to appoint one or more law clerks—who are neutral, qualified, and competent in the issues presented in the case—to assist the tribunal with legal research and drafting, but not deliberations or decision-making. In the event the arbitral tribunal requests such permission, it shall provide the parties with names and credentials of any nominees for the law clerk positions, as well as certifications of neutrality signed by the nominees.

## **Section III. Arbitration proceedings**

### ***General rules***

#### *Article 19*

1. Unless otherwise agreed by the parties, the parties, arbitrators, appointing authority, supervisory panel, and any person appointed by IACT, including any administrative secretary and any expert, shall at all times treat all matters relating to the proceedings and the award as confidential. Such matters include the existence of the proceedings, and the pleadings, evidence and other materials in the arbitral proceedings and all other documents produced by another party in the proceedings or the award arising from the proceedings, but excludes any matter that is otherwise in the public domain. The arbitrator panel has the power to take appropriate measures, including issuing an order or award for sanctions or costs, if a party breaches the provisions of this rule.
2. Materials relating to an arbitration generally must be submitted to IACT using a secure file transfer protocol (FTP) site or through [info@iactokyo.com](mailto:info@iactokyo.com) (if the data is less than 5 MB). In the case of an FTP site, the submitting party must provide the IACT Secretariat (via email to [info@iactokyo.com](mailto:info@iactokyo.com)) with FTP site access instructions and the time window during which the materials will be made available on the FTP site. IACT shall maintain all submitted files on secured server with restricted access.
3. 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 at an appropriate stage of the proceedings 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 parties' dispute.
4. As soon as practicable after its constitution and after inviting the parties to express their views, the arbitral tribunal shall establish the provisional timetable of the arbitration. The provisional timetable shall, except for good cause, provide for a decision no more than twelve months following the establishment of the arbitral tribunal. The arbitral tribunal may, upon a showing of good cause or agreement by the parties, extend or abridge the timetable.
5. If at an appropriate stage of the proceedings any party so requests, the arbitral tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument. In the absence of such a request, 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.
6. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.
7. The arbitral tribunal may, at the request of any party, allow one or more third persons to be

joined in the arbitration as a party provided such person is a party to the arbitration agreement, unless the arbitral tribunal finds, after giving all parties, including the person or persons to be joined, the opportunity to be heard, that joinder should not be permitted because of prejudice to any of those parties. The arbitral tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

### ***Place of arbitration***

#### *Article 20*

1. If the parties have not previously agreed on the seat of arbitration, the seat of arbitration 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 seat of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including hearings.

### ***Language***

#### *Article 21*

1. Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages to be used in the proceedings. English shall be the presumptive language of the proceedings. The arbitral tribunal's language determination shall apply to the statement of claim, the statement of defense, and any further written statements and, if oral hearings take place, to the language or languages to be used in such hearings.
2. The arbitral tribunal may order that any documents annexed to the statement of claim or statement of defense, and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

### ***Statement of claim***

#### *Article 22*

1. The claimant shall communicate its statement of claim in writing to the respondent and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat its notice of arbitration referred to in article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2-4 of this article.

2. The statement of claim shall include the following particulars:
  - (a) The names and contact details of the parties;
  - (b) A statement of the facts supporting the claim;
  - (c) The points at issue;
  - (d) The relief or remedy sought;
  - (e) The legal grounds or arguments supporting the claim;
  - (f) A list of the documents necessary for proving the claim that the claimant seeks to be discovered from the respondent(s).
3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the claimant, or contain references to them.

### ***Statement of defense***

#### *Article 23*

1. The respondent shall communicate its statement of defense in writing to the claimant and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The respondent may elect to treat its response to the notice of arbitration referred to in article 4 as a statement of defense, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defense shall reply to the particulars (b)-(e) of the statement of claim (article 22, paragraph 2). The statement of defense should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them. The statement of defense shall also include a list of the documents necessary for proving any defense, offset, or counterclaim asserted by the respondent that the respondent seeks to be discovered from the claimant.
3. In its statement of defense, or at a later stage in the arbitral proceedings if the arbitral tribunal decides that the delay was justified under the circumstances, the respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of article 22, paragraphs 2-4, shall apply to a counterclaim, a claim under article 4, paragraph 2(f), and a claim relied on for the purpose of a set-off.



## ***Amendments to the claim or defense***

### *Article 24*

During the course of the arbitral proceedings, a party may amend or supplement its claim or defense, including a counterclaim or a claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defense, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defense falls outside the jurisdiction of the arbitral tribunal.

## ***Pleas as to the jurisdiction of the arbitral tribunal***

### *Article 25*

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. For that purpose, an arbitration clause that forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defense or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea 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 arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

## ***Further written statements***

### *Article 26*

The arbitral tribunal shall decide which further written statements, in addition to the statement of claim and the statement of defense, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## ***Periods of time***

### *Article 27*

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defense) should not exceed 30 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## ***Interim measures***

### *Article 28*

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - (a) Maintain or restore the status quo pending determination of the dispute;
  - (b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
  - (c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) 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 on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. 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.
8. 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.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## ***Evidence***

### *Article 29*

1. Each party shall have the burden of proving the facts relied on to support its claim or defense.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, may be presented in writing and signed by them.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## ***Hearings***

### *Article 30*

1. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time and place thereof.
2. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
3. Hearings shall be held in camera unless the parties agree otherwise. The arbitral tribunal

may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.

4. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication that do not require their physical presence at the hearing (such as videoconference).

## ***Default***

### *Article 31*

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:

(a) The claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;

(b) The respondent has failed to communicate its response to the notice of arbitration or its statement of defense, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claimant's allegations; the provisions of this subparagraph also apply to a claimant's failure to submit a defense to a counterclaim or to a claim for the purpose of a set-off.

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 arbitration.

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.

## ***Closure of hearings***

### *Article 32*

1. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

***Waiver of right to object***

*Article 33*

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement 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.

## **Section IV. Award**

### ***Decisions***

#### *Article 34*

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.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### ***Form and effect of the award***

#### *Article 35*

1. The arbitral tribunal may make separate awards on different issues at different times.
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.
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.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the seat 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.
5. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
6. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

### ***Applicable law, amiable compositeur***

#### *Article 36*

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.
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.

3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

### ***Settlement or other grounds for termination***

#### *Article 37*

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 arbitral proceedings 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.

2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 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.

3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of article 35, paragraphs 2, 4 and 5, shall apply.

### ***Interpretation of the award***

#### *Article 38*

1. Within 21 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.

2. The interpretation shall be given in writing within 30 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 35, paragraphs 2 to 6, shall apply.

### ***Correction of the award***

#### *Article 39*

1. Within 21 days after the receipt of the award, a party, with notice to the other parties, 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 correction within 21 days of receipt of the request.

2. The arbitral tribunal may within 21 days after the communication of the award make such corrections on its own initiative.

3. Such corrections shall be in writing and shall form part of the award. The provisions of article 35, paragraphs 2 to 6, shall apply.

### ***Substantive Scrutiny by Supervisory Panel***

#### *Article 40*

1. Within 21 days following the award, a party may elect to submit to the arbitral tribunal, the IACT Secretariat and all other parties a request for review of the award by a supervisory panel. The request must be in a form no longer than 30 pages, double spaced and a font at least as large as Times New Roman size 12. The request shall include (i) a detailed explanation of any alleged material and prejudicial error of law or fact that the requesting party seeks to be corrected by the tribunal, and (ii) a specific identification of the modification sought by the requesting party.

2. Upon submission of any request for review by a supervisory panel, the appointing authority shall establish the supervisory panel on a case-by-case basis selecting five neutral and qualified IACT arbitrators who are competent in the subject matter of the arbitration and who did not participate in the award. Except for good cause, the supervisory panel shall include one arbitrator who represents each of the following five regions: the U.S., Europe, China, Japan, and Korea.

3. Within 14 days after a request is submitted, a party opposing the request for review by the supervisory panel may submit an explanation of reasons, no longer than 20 pages, why the request for review by a supervisory panel should be denied.

4. Within 7 days after an opposition to the request is submitted, the supervisory panel shall inform the parties whether it will review the award.

5. Within 4 days following the supervisory panel's decision to review of the award, one or more parties may request an oral hearing. In the event such a request is made, the supervisory panel shall promptly inform the parties of the time, location, and procedure of the oral hearing.

6. After fully considering the parties' arguments, the supervisory panel shall consult with the arbitral tribunal in the manner it deems appropriate regarding its recommendations (if any) for amending the award. The supervisory panel may elect to issue a written recommendation to the tribunal that is reviewable by the parties.

7. After considering the supervisory panel's recommendations (if any), the arbitral tribunal shall promptly inform the parties of any changes being made to the award, and the reasons therefor, and issue an amended award.



## ***Additional award***

### *Article 41*

1. Within 21 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.
2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 45 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of article 35, paragraphs 2 to 6, shall apply.

## ***Definition of costs***

### *Article 42*

1. The IACT Secretariat shall send the parties an itemized invoice following each month of an arbitration, generally payable with 30 days of receipt, providing details concerning each of the following categories of arbitration costs:
  - (a) The reasonable fees of the arbitral tribunal to be stated separately as to each arbitrator;
  - (b) The reasonable travel and other expenses incurred by the arbitrators;
  - (c) The reasonable fees of each technical assistant (if any);
  - (d) The reasonable fees of each law clerk (if any);
  - (e) The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - (f) The reasonable fees and expenses of the appointing authority and the supervisory panel.

Consistent with IACT's goal of resolving disputes as efficiently and inexpensively as reasonably possible, the IACT Secretariat shall continuously monitor such invoices to prevent excessive or unnecessary expenditures.

2. In the event the IACT Secretariat determines that costs listed in the invoice are excessive and/or unnecessary, it shall amend the invoice as it sees appropriate.
3. If a party fails to pay the costs listed in the invoice by the due date designated by the IACT Secretariat, either wholly or in part, the arbitral tribunal, the appointing authority, the

supervisory panel, the law clerks and technical assistants if any, and the IACT Secretariat may suspend its work for the arbitration, in whole or in part.

### ***Fees and expenses of arbitrators***

#### *Article 43*

1. The fees and expenses of the arbitrators shall be reasonable in amount given the complexity of the subject matter and any other relevant circumstances of the case.
2. If the appointing authority has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any hourly rates of arbitrators it intends to apply. Within 14 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 21 days of receipt of such a referral, the appointing authority finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
4.
  - (a) Within 14 days of receiving the arbitral tribunal's invoice pursuant to article 42, paragraphs (a) and (b), any party may refer for review such determination to the IACT Secretariat, which may consult with the appointing authority;
  - (b) If the IACT Secretariat finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 of this article or is otherwise manifestly excessive, it shall, within 14 days of receiving such a referral, make any adjustments to the arbitral tribunal's determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments shall be binding upon the arbitral tribunal;
  - (c) Any such adjustments shall be reflected in a revised invoice sent to the parties without delay.
5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 19, paragraph 3.

## *Allocation of costs*

### *Article 44*

1. The costs of the arbitration shall in principle be borne equally by the parties. However, the arbitral tribunal may exercise discretion in apportioning such costs between the parties if it determines that a different apportionment is reasonable, taking into account the circumstances of the case.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

## **Annex**

### ***Model arbitration clause for contracts***

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

*Note. Parties should consider adding:*

- (a) The number of arbitrators shall be . . . [one or three];
- (b) The place of arbitration shall be . . . [town and country];
- (c) The language to be used in the arbitral proceedings shall be . . . .
- (d) The arbitration shall proceed under the law of [jurisdiction, *e.g.*, the state of New York].

### ***Possible waiver statement***

*Note. If the parties wish to exclude recourse against the arbitral award that may be available under the applicable law, they may consider adding a provision to that effect as suggested below, considering, however, that the effectiveness and conditions of such an exclusion depend on the applicable law.*

#### *Waiver*

The parties hereby waive their right to any form of recourse against an award to any court or other competent authority, insofar as such waiver can validly be made under the applicable law.

### ***Model statements of independence pursuant to article 11 of the Rules***

#### *No circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

#### *Circumstances to disclose*

I am impartial and independent of each of the parties and intend to remain so. Attached is

a statement made pursuant to article 11 of the IACT Arbitration Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration.

*Note. Any party may consider requesting from the arbitrator the following addition to the statement of independence:*

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits in the Rules.

### *Fees*

The following is a schedule of fees that will apply in any IACT arbitration. This list is exclusive of the costs identified in Article 42.

- **Case Filing Fee:** 2,000 USD
- **Counterclaim Filing Fee:** 2,000 USD

The following is a schedule of exemplary fees listed in article 42 that are approximately equal to the fees that will be charged in a given case.

- **Hourly Fee of Each Arbitrator, Appointing Authority Member, and Supervisory Panel Member:** Approximately 1,000 USD
- **Hourly Fee of Each Technical Assistant:** Approximately 300 USD
- **Hourly Fee of Each Law Clerk:** Approximately 300 USD