

## **Town Elder Arbitration Rules**

### **Section I. Introductory Provisions**

#### ***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 UNCITRAL Arbitration Rules (the “UNCITRAL Arbitration Rules”), as amended by the Town Elder Arbitration Rules, then such disputes shall be settled in accordance with these Rules. References to provisions of the UNCITRAL Arbitration Rules in these rules are to the 2013 version and reflect the corollary provisions in those versions where they exist.

2. The Town Elder Arbitration Rules are a supplement and an amendment to the UNCITRAL Arbitration Rules. Where any of these Rules is in conflict with the UNCITRAL Arbitration Rules, these Rules shall prevail, unless the parties to the dispute otherwise agree.

#### ***Good Faith and Collaboration***

##### *Article 2*

1. The parties to an arbitration under these Rules shall act in good faith and in a collaborative spirit in order to contribute to the efficiency of the proceedings. The arbitral tribunal may consider the parties’ compliance with this standard in allocating costs of the arbitration pursuant to Article 42 of the UNCITRAL Arbitration Rules.

#### ***Notice of Arbitration***

##### *Article 3*

1. In addition to the requirements of Article 3(3) of the UNCITRAL Arbitration Rules, the notice of arbitration shall include a detailed description of the claim (“Claim”).

#### ***Response to the Notice of Arbitration***

##### *Article 4*

1. In addition to the requirements of Article 4(1) of the UNCITRAL Arbitration Rules, the response to the notice of arbitration shall include a detailed response to the Claim (“Answer”).

2. If the respondent chooses to include in the Answer any of the items listed in Articles 4(2)(a), 4(2)(e) or 4(2)(f), the Answer shall include a detailed description of each such item.

### ***Appointing Authority***

#### *Article 5*

1. If the parties have not agreed on the choice of an appointing authority 10 days after the claimant's receipt of the Answer, the appointing authority will be the Secretary-General of the Permanent Court of Arbitration at The Hague ("PCA").

## **Section II. Composition of the Arbitral Tribunal**

### ***Number of Arbitrators***

#### *Article 6*

1. Unless the parties have agreed otherwise by 15 days after the receipt by the respondent's receipt of the Claim, then a sole arbitrator will be appointed.

### ***Appointment of Arbitrators***

#### *Article 7*

1. If a sole arbitrator is to be appointed and if within 15 days after claimant's receipt of the Answer the parties have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority within 20 days of such request.

#### *Article 8*

1. If three arbitrators are to be appointed and if within 15 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 request the appointing authority to appoint the second arbitrator. Such appointment shall be made within 20 days of the request to appoint.

2. If three arbitrators are to be appointed and if within 15 days after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, the presiding arbitrator shall, at the request of a party, be appointed by the appointing authority within 20 days of such request.

#### *Article 9*

1. In making any appointment pursuant to Articles 7 and 8, the appointing authority may use the procedure described in Article 8(2)(b) of the UNCITRAL Arbitration Rules but shall adjust the time periods to meet the schedule provided in these Rules.

If the appointing authority fails to make appointment within the prescribed time periods, it shall do so as soon as possible, and the validity of the constitution of the arbitral tribunal shall not be affected by the late appointment.

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

#### *Article 10*

1. Subject to Article 14(2) of the UNCITRAL Arbitration Rules, 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 10 of the UNCITRAL Arbitration Rules, as amended by Articles 7 through 9 of these Rules.

## **Section III. Arbitral Proceedings**

### ***General Provisions***

#### *Article 11*

1. In order to understand the dispute, the arbitral tribunal may ask any questions to the parties throughout the proceedings.

### ***Location of Hearings and Meetings***

#### *Article 12*

1. Following consultation with the parties, the arbitral tribunal may determine to hold any meetings with the parties, including hearings, by video or teleconference or in person at any location the arbitral tribunal considers appropriate.
2. The arbitral tribunal may conduct deliberations via video or teleconference or in person at any location it considers appropriate.

### ***Initial Meeting***

#### *Article 13*

1. Within 30 days after its constitution, the arbitral tribunal shall conduct a meeting with the parties (“Initial Meeting”). In addition to counsel, each party shall include in the meeting a representative who is familiar with the dispute.
2. During the Initial Meeting, the parties and the arbitral tribunal will discuss the main issues in dispute in the arbitration in order to provide the arbitral tribunal with sufficient information to draft the first version of the Decision Tree set forth in Article 15 of these Rules:

- (a) the claimant shall explain each of its claims, its positions regarding its claims, and the relief it seeks;
- (b) the respondent shall explain its defenses, its positions regarding claimant's claims, and if any, its jurisdictional objections, counterclaim, set-off claim or cross-claim, and the relief it seeks;
- (c) both parties shall explain their business interests and motivations in relation to the dispute;
- (d) the parties and the arbitral tribunal shall discuss the type of decision or award that the parties need to resolve finally the dispute;
- (e) the parties and the arbitral tribunal shall discuss the order in which issues could be determined in order most efficiently to resolve the dispute and the type and extent of evidence that may be required on each of the issues; and
- (f) the parties and the arbitral tribunal shall discuss any other issues that the arbitral tribunal deems relevant to draft the first version of the Decision Tree set forth in Article 15 of these Rules.

3. A plea that the arbitral tribunal does not have jurisdiction with respect to any claim, counterclaim, set-off claim or cross-claim shall be raised no later than at the Initial Meeting.

### ***Decision Tree***

#### *Article 14*

1. Within 15 days after the Initial Meeting, the arbitral tribunal shall draft, on the basis of the issues discussed in the Initial Meeting and in light of the parties' submissions, a document that will serve as a roadmap to a final decision (the "Decision Tree").
2. The Decision Tree shall be organized in a manner that the determination of one issue could dispose of the case, eliminate or make more efficient the consideration of other issues, lead to settlement, or change the focus of the arbitration to different issues. It shall include:
  - (a) a list of the main issues in dispute in the arbitration;
  - (b) the sequence in which these issues shall be addressed; and,
  - (c) the different phases ("Steps") in which the arbitration will be divided.
3. The parties shall have an opportunity to make any comments or suggestions within 10 days after receiving the first draft of the Decision Tree. After carefully examining the parties' comments and suggestions, the arbitral tribunal shall make any

necessary changes and issue a finalized version of the Decision Tree within 10 days after receiving the parties' comments.

4. The Decision Tree is subject to change as the proceedings move forward.
5. The Decision Tree may also include an indicative schedule for each of the Steps provided within it.
6. If the parties and the arbitral tribunal decide that a Decision Tree is not appropriate for a particular case, each party will make a single submission that will include all of its arguments and evidence. The reply arguments of each party will be addressed at a hearing unless the arbitral tribunal considers that they are better addressed otherwise.

### ***Steps of the Arbitration***

#### *Article 15*

1. The first Step of the arbitration will commence immediately after the arbitral tribunal issues the Decision Tree. Each subsequent Step of the arbitration will commence immediately after the arbitral tribunal issues a decision on the previous Step.

#### *Article 16*

1. Within 10 days after the commencement of each Step, the arbitral tribunal shall conduct a meeting with the parties to discuss the following considerations in relation to the Step in question exclusively ("Initial Step Meeting"):
  - (a) whether the parties shall submit any written pleadings;
  - (b) whether the parties shall present any fact or expert witnesses;
  - (c) whether discovery is convenient or required;
  - (d) whether the parties shall submit any other type of evidence;
  - (e) whether it is convenient or required to hold a hearing to hear fact or expert witnesses or oral argument;
  - (f) a procedural timetable;
  - (g) the potential costs that the Step will involve; and,
  - (h) any other consideration that the arbitral tribunal deems convenient to reach a decision in the most efficient manner.

*Article 17*

1. As soon as possible after each Initial Step Meeting, the arbitral tribunal shall issue a procedural order that will establish the procedures and timetable that will govern that Step.

*Article 18*

1. The arbitral tribunal shall be actively involved in each Step of the arbitration and will interact with the parties by *inter alia* raising questions, asking for evidence and indicating when a matter being addressed by a party does not appear to be relevant to the determination of the issue(s) in that Step. However, the arbitral tribunal shall not meet separately with either party.

***Procedural Orders***

*Article 19*

1. The arbitral tribunal may issue general procedural orders that govern the entire arbitration and limited procedural orders that govern only a specific Step of the arbitration.<sup>1</sup>

2. The arbitral tribunal may reserve potential hearing dates for future Steps, but it shall refrain from issuing procedural orders with the timetables of future Steps that have not commenced.

***Evidence***

*Article 20*

1. The production of evidence will be a collaborative process and may occur over multiple Steps and iteratively within a Step.

*Article 21*

1. The arbitral tribunal may decide that:

(a) fact witnesses on the same issue shall testify together;

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<sup>1</sup> The distinction between “general” and “limited” procedural orders responds to two central themes of the rules: (i) that dividing the arbitration in steps promotes efficiency by making sure that the arbitral tribunal does not spend time on issues that may not need to be addressed; and (ii) that each step is different and may need different evidence, submissions, hearings, etc. This distinction allows the arbitral tribunal to have more flexibility and prevents the arbitral tribunal from prematurely deciding procedural issues of future steps that may or may not happen.

- (b) expert witnesses shall submit joint expert reports;
- (c) expert witnesses shall be examined together.

*Article 22*

1. If a party or the arbitral tribunal considers that evidence in the possession of the other party would be helpful to the resolution of the case, the arbitral tribunal and the parties will discuss the potential evidence before the tribunal orders any discovery. The arbitral tribunal shall apply the standards of the IBA Rules of Evidence.
2. Among other questions, the arbitral tribunal and the parties will consider:
  - (a) why that evidence may be necessary to determination of the issues in that Step;
  - (b) how easily relevant and material evidence can be located, as opposed to all evidence relating to a subject; and
  - (c) the best manner to search for electronic evidence. This may include, for example, engaging in an iterative process involving multiple rounds of applying different search scopes, terms and custodians.
3. The arbitral tribunal will order the production of evidence when the request is as focused and cost-effective as possible to obtain relevant and material evidence.

**Section IV. Decisions and Final Award**

*Article 23*

1. The arbitral tribunal shall make determinations that decide the issues in dispute on a Step (“Step Decision”) within one month following any hearing in that Step, or if no hearing is held, following the final submission in that Step.
2. A Step Decision may be in writing or delivered orally to the parties, as appropriate for the issue or for the case. If in writing, the arbitral tribunal, after consultation with the parties, shall determine whether the decision should be issued as a partial award.
3. Following any Step Decision, the arbitral tribunal may, after consultation with the parties, revise the Decision Tree as it considers appropriate.

*Article 24*

1. Each case will be ultimately decided by:
  - (a) A final award that determines an issue in the Decision Tree that either alone or in conjunction with prior Step Decisions is dispositive of the case; or
  - (b) a settlement following one or more of the arbitral tribunal’s Step Decisions.

(c) a final award dealing with all issues raised.

2. With the permission of the parties, at any time the arbitral tribunal may make suggestions to the parties designed to lead to settlement.

*Article 25*

1. A final award may incorporate by reference prior written Step Decisions.

*Article 26*

1. Arbitral tribunals are required to issue decisions promptly.

2. If a final award is necessary, the arbitral tribunal shall issue the final award within 2 months after the final hearing.