



**ARBITRATION RULES**  
OF  
THE COMESA COURT OF JUSTICE **(2018)**



**ARBITRATION RULES**  
OF  
THE COMESA COURT OF JUSTICE **(2018)**



# CONTENTS

## **PRELIMINARY**

Rule 1: Citation and Interpretation

Rule 2: Scope of Application

Rule 3: Mode of Service

Rule 4: Computation of Time

Rule 5: Notice of Arbitration

Rule 6: Representation and Assistance

## **COMPOSITION AND JURISDICTION OF ARBITRAL TRIBUNAL**

Rule 7: Appointment of Arbitrators

Rule 8: Preliminary Meeting

Rule 9: Challenge of Arbitrator

Rule 10: Exclusion of Liability

## **ARBITRAL PROCEEDINGS**

Rule 11: General Provisions

Rule 12: Juridical Seat of Arbitration

Rule 13: Place of Arbitration

Rule 14: Language

Rule 15: Statement of Claim

Rule 16: Statement of Defence

Rule 17: Amendments of Claim or Defence

Rule 18: Pleas as to the Jurisdiction of Arbitral Tribunal

Rule 19: Further Written Statements

Rule 20: Periods of Time

Rule 21: Evidence

Rule 22: Hearings

Rule 23: Conservatory and Interim Measures of Protection

Rule 24: Emergency Arbitration

Rule 25: Experts

Rule 26: Defaults

Rule 27: Closure of Hearings

Rule 28: Waiver

## **THE AWARD**

Rule 29: Decisions

Rule 30: Form and Effect of the Award

Rule 31: Applicable Law, Amiable Compositeur

Rule 32: Settlement or Other Grounds of Termination

Rule 33: Interpretation of Award

Rule 34: Correction of Award

Rule 35: Addition of Award

## **COSTS**

Rule 36: Fixing of Cost

Rule 37: Apportionment of Costs

Rule 38: Deposit of Costs

Rule 39: Security for Costs

Rule 40: Application of Court Rules in Arbitration Procedure

## **COMMENCEMENT**

Rule 41: Entry into Force

Schedule I (Under Rule 24) Emergency Arbitration Procedure

Section 1: Application for Emergency Measures

Section 2: Appointment of Emergency Arbitrator

Section 3: Challenges to and Replacement of Emergency Arbitrators

Section 4: Place and Language of Emergency Proceedings,  
Jurisdiction and Arbitrability Issues

Section 5: Emergency Proceedings

Section 6: Emergency Orders and Awards

Section 7: Costs of Emergency Proceedings

Schedule II (Forms)

Form A (As Provided for Under Rule 3)

Form B (As Provided for Under Rule 8)

# THE COURT OF JUSTICE ARBITRATION RULES (2018)

(under Article 38)

## PRELIMINARY

In exercise of the powers conferred upon it by Article 38 of the Treaty Establishing the Common Market for Eastern and Southern Africa, the Court of Justice, with the approval of Council, hereby makes the following Rules–

### Rule 1

#### Citation and Interpretation

1. These Rules may be cited as the COMESA Court of Justice Arbitration Rules (2018) (hereinafter called the “Rules”).
2. The Arbitration Rules of 2003 are hereby repealed.
3. In these Rules, unless the context otherwise requires–

**“Assigning Authority”** means the President when appointing an Arbitrator in accordance with Rule 6 or, where the President is unable to so appoint, the Principal Judge of the Court;

**“Arbitral Award”** includes an interim, partial, or final award;

**“Arbitral Tribunal”** means the Tribunal appointed by the Assigning Authority to discharge the functions set out in Article 28 of the Treaty;

**“Arbitration”** means an arbitration administered by the Arbitral Tribunal;

**“Arbitration Agreement”** means an arbitration clause in a contract or special agreement by the Parties to submit to arbitration, all or certain disputes which have arisen, or which may arise between them in accordance with Article 28 of the Treaty;

**“Arbitrator”** means a sitting Judge of the Court appointed by the Assigning Authority as a member of an Arbitral Tribunal and includes an Emergency Arbitrator;

**“Chairperson”** means an Arbitrator designated as such by the Assigning Authority from among the members of the Arbitral Tribunal or as agreed by the Arbitral Tribunal, where the Assigning Authority does not so designate;

**“Claimant”** means a person, a Member State, the Common Market or any of its institutions that has referred a dispute to the Court for arbitration;

**“Common Market”** means the Common Market for Eastern and Southern Africa established under Article 1 of the Treaty;

**“Court”** means the Court of Justice of the Common Market established under Article 7 of the Treaty;

**“Data Message”** means information generated, sent, received or stored by electronic, magnetic, optical or similar means, including electronic data interchange, electronic mail, telegram, telex or telecopy;

**“Electronic Communication”** means any communication that the Parties make by means of data messages;

**“Emergency Arbitrator”** means an Arbitrator appointed as such under Rule 24;

**“Judge”** means a Judge of the Court appointed under Article 20 of the Treaty;

**“Juridical Seat of the Arbitration”** means the juridical seat of the arbitration as provided for in Rule 12;

**“Member”** means a sitting Arbitrator on an Arbitral Tribunal;

**“Member State”** means a Member State of the Common Market;

**“Official Gazette”** means the Official Gazette of the Common Market;

**“Parties”** means the Claimant and the Respondent in arbitral proceedings before the Arbitral Tribunal;

**“Place of Arbitration”** means the place provided for in Rule 13;

**“President”** means the President of the Court designated as such under Article 20 of the Treaty;

**“Principal Judge”** means the Judge designated as such by the Authority under Article 20 of the Treaty;

**“Registrar”** means the Registrar of the Court appointed under Article 41 of the Treaty;

**“Respondent”** means the person or Party against whom arbitration proceedings have been brought by the Claimant before the Court; and

**“Treaty”** means the Treaty establishing the Common Market.



4. In these Rules, wherever the context so requires, words expressing the masculine gender shall include the feminine and the singular shall include the plural and vice versa.
5. Where a provision of these Rules refers to a claim, it also applies to a counter-claim, and where it refers to a defence, it also applies to a defence to such counter-claim, if the circumstances so require.

## **Rule 2**

### **Scope of Application**

1. These Rules shall apply to any matter that is to be determined by the Court under Article 28 of the Treaty.
2. These Rules shall govern the arbitration-
  - (a) except that where any of these Rules are in conflict with a provision of the law applicable to the arbitration from which the Parties cannot derogate, in which case that provision shall prevail; and
  - (b) subject to such modifications as the Parties may agree in writing in so far as such modifications are permissible under these Rules.

## **Rule 3**

### **Mode of Service**

1. Any notice, including a notification, communication or proposal, shall be deemed to have been received if it is physically delivered to the addressee or if it is delivered at the addressee's habitual residence or place of business.
2. Unless otherwise agreed by the Parties, where personal service cannot be effected, any notice or other document which is required to be served under these Rules may, on request by a Party, be served by registered post, by courier or similar system of delivery, facsimile or electronic communication with proof of delivery, or by any other means as may be directed by the Registrar.
3. 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.
4. Delivery by electronic communication such as facsimile or e-mail shall only be made to an address so designated or authorised.
5. A notice or other communication shall be deemed to have been received on the day it is so delivered.

6. Any notice or other document which is required to be served under these Rules, shall be served in accordance with Form A of Schedule II to these Rules, by the Party filing, who shall file an affidavit of service.

#### **Rule 4**

##### **Computation of time**

1. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, notification, communication or proposal is received.
2. 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 shall be extended until the first business day which follows.
3. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating the period.

#### **Rule 5**

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

1. Where a Claimant intends to have a matter resolved by arbitration, the Claimant shall give to the Respondent a Notice of Arbitration and shall simultaneously submit the notice together with five copies to the Arbitral Tribunal through the Registrar.
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-
  - (a) a demand that the dispute be referred to arbitration;
  - (b) the names of the Parties, and if any, the law practitioner or other person assisting the Parties, their phone numbers, postal address, physical address, e-mail addresses and fax numbers, or any other designated means of contacting or locating them;
  - (c) a reference to the arbitration clause or the separate arbitration agreement that is invoked;
  - (d) a reference to the contract or any other special agreement from which the dispute arises;
  - (e) the general nature of the claim and an indication of the amount involved, if

any;

(f) the relief or remedy sought; and

(g) the recommended number of Arbitrators.

4. The Notice of Arbitration may include the Statement of Claim referred to in Rule 15.

## **Rule 6**

### **Representation and Assistance**

1. Unless otherwise agreed by the Parties, a Party to arbitral proceedings may be represented or assisted in the arbitral proceedings by a legal practitioner or other person of his or her choice.
2. Where such a legal practitioner or other person is appointed after the commencement of the arbitral proceedings, the names and addresses and other contact details of such persons shall be communicated in writing to the other Party and to the Registrar.
3. The communication shall specify whether the appointment of such person is being made for purposes of representation or assistance.

## **COMPOSITION AND JURISDICTION OF ARBITRAL TRIBUNAL**

### **Rule 7**

#### **Appointment of Arbitrators**

1. The Assigning Authority shall appoint an Arbitral Tribunal from among the sitting Judges of the Court.
2. Subject to sub rule (3), the Parties may agree on the number of Arbitrators to constitute the Tribunal. In the absence of agreement, the Assigning Authority shall decide on the number of Arbitrators.
3. The Arbitral Tribunal shall be constituted of one, three or five Judges, as the case may be.
4. Where an arbitration agreement provides that the reference shall be made to a number of Arbitrators that is contrary to these Rules, the Assigning Authority shall either increase or reduce the number, as the case may be, in conformity with the Rules.

5. The Assigning Authority may designate the Chairperson of the Tribunal from among the members of the Arbitral Tribunal or, in the absence of such designation, the members of the Arbitral Tribunal shall select a Chairperson from amongst themselves.
6. Where the mandate of an Arbitrator terminates for whatever reason, a substitute Arbitrator shall be appointed in accordance with the Rules.
7. The Registrar shall promptly notify the Parties of the appointment of the Arbitral Tribunal.

## **Rule 8**

### **Preliminary Meeting**

1. When the Arbitral Tribunal has been appointed and the deposit of costs as may be required under Rule 39 has been paid, the Registrar shall refer the case to the Arbitral Tribunal.
2. The Arbitral Tribunal shall, within thirty (30) days of being appointed, convene a Preliminary Meeting with the Parties to establish a schedule for the conduct of the proceedings and procedures to be adopted in the general format provided for in Form B of Schedule II to these Rules. The meeting may be held at a place designated, or by any other means directed, by the Arbitral Tribunal.
3. The Arbitral Tribunal may depart from the general format provided for in Form B of Schedule II to these Rules where it deems appropriate.

## **Rule 9**

### **Challenge of Arbitrator**

1. A Party may challenge an Arbitrator for alleged lack of impartiality or independence.
2. A Party who intends to challenge an Arbitrator, shall submit a written statement to the Registrar specifying the facts and circumstances on which the challenge is based.
3. A challenge under sub rule (1) and (2) shall be submitted within fifteen (15) days after the Party becomes aware of the constitution of the Arbitral Tribunal or of any circumstances referred to in Rule 9(1).
4. Unless the challenged Arbitrator withdraws or the other Party agrees to the challenge, the Tribunal shall decide on the admissibility and if necessary on the merits of the challenge after the Tribunal has afforded an opportunity for the Parties

to comment in writing within fifteen (15) days of receipt of the written statement referred to in sub rule (2). All comments shall be communicated to the Parties and to the Arbitrators.

5. When a Judge is appointed as an Arbitrator, the Judge shall disclose, any circumstances likely to give rise to justifiable doubts as to her or his impartiality or independence by lodging with the Assigning Authority a statement of impartiality and independence, through the Registrar.
6. An Arbitrator, from the time of appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the Parties.
7. An Arbitrator may only be challenged if circumstances exist that give rise to justifiable doubt as to the Arbitrator's impartiality, or independence.
8. Within thirty (30) days after having received notice of the decision of the Arbitral Tribunal rejecting the challenge, an aggrieved Party may apply to the Assigning Authority to reconsider the challenge.
9. The Assigning Authority shall appoint a single Judge, not a member of the Arbitral Tribunal, to reconsider the challenge. The decision of the Judge shall be final.
10. Pending the determination of the challenge, the matter shall be stayed.
11. If the Arbitral Tribunal or the Judge finds that the challenge is valid, the challenged Arbitrator shall be replaced.
12. Once the Tribunal has been reconstituted and after inviting the Parties to comment, the Tribunal shall decide if and to what extent, prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

## **Rule 10**

### **Exclusion of Liability**

By submitting themselves to arbitration in accordance with these Rules, the Parties shall be deemed to have waived any claim against the Arbitral Tribunal, any Emergency Arbitrator, Judges, the Court, its officers and employees, and any person appointed by the Arbitral Tribunal or the Emergency Arbitrator, arising from any act or omission done in good faith in connection with the arbitration.

# ARBITRAL PROCEEDINGS

## Rule 11

### General Provisions

1. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the Parties shall be treated with equality and that at any stage of the proceedings each Party shall be given a full opportunity of presenting its case.
2. For the purposes of conducting an arbitration, the Arbitral Tribunal shall be deemed to be properly constituted when one or more Judges are assigned to sit as an Arbitrator or Arbitrators.
3. If either Party so requests, at any stage of the proceedings, the Arbitral Tribunal shall hold hearings for the presentation of evidence by witnesses, including expert witnesses, or for oral argument.
4. In the absence of the request in sub rule (3), 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.
5. All documents or information supplied to the Arbitral Tribunal by one Party shall simultaneously be communicated by that Party to the other Party.

## Rule 12

### Juridical Seat of Arbitration

Subject to these Rules, the Juridical Seat of the Arbitration shall be designated-

- (a) by the Parties to the arbitration agreement; or
- (b) by the Arbitral Tribunal if so authorised by the Parties, or determined, in the absence of any such authorisation, having regard to the Parties' agreement and all the relevant circumstances.

## Rule 13

### Place of Arbitration

1. The place of arbitration shall be in any of the Member States.
2. The Parties may agree on the place of arbitration within any Member State, or in the absence of such agreement, the Arbitral Tribunal shall determine the place of arbitration having regard to the circumstances of the arbitration.

3. Subject to sub rule (1) and (2), the Arbitral Tribunal may determine the locality of the arbitration within that Member State.
4. Notwithstanding the provisions of this Rule, the Arbitral Tribunal may hear witnesses and hold meetings for consultation among its members at any place it deems appropriate, having regard to the circumstances of the arbitration.
5. The Arbitral Tribunal may meet at any place it deems appropriate for the inspection of goods, other property or documents and the Parties shall be given sufficient notice to enable them to be present at such inspection.
6. The final award shall be made at the place to be decided by the Arbitral Tribunal having regard to the circumstances of the arbitration.

#### **Rule 14**

##### **Language**

1. The language of the arbitration proceedings shall be any of the official languages of the Common Market.
2. The Parties may agree, from among the official languages, the language or languages to be used in the proceedings.
3. In the absence of any such agreement, the Arbitral Tribunal shall promptly determine, from among the official languages, the language or languages to be used in the proceedings.
4. The language agreed upon by the Parties or determined by the Arbitral Tribunal shall apply to the Statement of Claim, the Statement of Defence, any further written statements and oral hearings.
5. The Arbitral Tribunal may order that any documents annexed to the Statement of Claim or Statement of Defence, 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.

#### **Rule 15**

##### **Statement of Claim**

1. Unless the Statement of Claim was contained in the Notice of Arbitration, the Claimant shall communicate, within a period agreed upon during the preliminary meeting, the Statement of Claim in writing to the Respondent, and five copies to the Court through the Registrar.

2. A copy of the special agreement or of the contract and of the Arbitration Agreement if not contained in the contract, shall be annexed thereto.
3. The Statement of Claim shall include the following particulars-
  - (a) the names and addresses of the Parties;
  - (b) a statement of the facts supporting the claim;
  - (c) the points at issue; and
  - (d) the relief or remedy sought.
4. The Claimant may annex to the Statement of Claim, all documents it deems relevant or may add a reference to the documents or other evidence it will subsequently submit.

## **Rule 16**

### **Statement of Defence**

1. The Respondent shall communicate its Statement of Defence in writing to the Claimant, and to the Arbitral Tribunal through the Registrar within a period of time agreed upon during the preliminary meeting.
2. The Statement of Defence shall reply to the particulars in sub rule (3) paragraphs (b) to (d) of Rule 15.
3. The Respondent may annex to its Statement of Defence, the documents on which it relies or may add a reference to the documents or other evidence it will subsequently submit.
4. In its Statement of Defence, 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 counter-claim arising out of the same contract or rely on a claim arising out of the same contract for the purpose of a set-off.
5. The provisions of sub rule (3) of Rule 15 shall apply to a counter-claim and a claim relied on for the purpose of a set-off.

## **Rule 17**

### **Amendments to the Claim or Defence**

1. At any stage of the arbitral proceedings, either Party may amend or supplement its claim or defence, unless the Arbitral Tribunal considers it inappropriate to allow such amendment, having regard to the delay in making it, or prejudice to the other



Party, or any other circumstances.

2. A claim may however not be amended in such a manner that the amended claim falls outside the scope of the special agreement or of the contract and of the arbitration agreement if not contained in the contract.

## **Rule 18**

### **Pleas as to the Jurisdiction of the Arbitral Tribunal**

1. The Arbitral Tribunal may rule on objections that it has no jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The Arbitral Tribunal may determine the existence or the validity of the contract of which an arbitration clause forms a part.
3. For the purposes of this Rule, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract.
4. A decision by the Arbitral Tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
5. A plea that the Arbitral Tribunal does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a counter-claim, in the reply to the counter-claim.
6. The Arbitral Tribunal may rule on a plea concerning its jurisdiction as a preliminary question or may in exceptional circumstances proceed with the arbitration and rule on such a plea in its final award.

## **Rule 19**

### **Further Written Statements**

The Arbitral Tribunal shall decide which further written statements, in addition to the Statement of Claim and the Statement of Defence, shall be required from, or be presented by, the Parties and shall fix the periods of time for communicating such statements.

## **Rule 20**

### **Periods of Time**

1. The periods of time fixed by the Arbitral Tribunal for the communication of written statements, including the Statement of Claim and Statement of Defence, shall not exceed forty-five (45) days.

2. The Arbitral Tribunal may, upon application by a Party, however, extend the time limits if it considers that an extension is justified.

## **Rule 21**

### **Evidence**

1. Each Party shall have the burden of proving the facts relied on to support its claim or defence.
2. The Arbitral Tribunal may, if it considers it appropriate, require a Party to deliver to the Arbitral Tribunal and to the other Party, within such a period of time as the Arbitral Tribunal shall decide, a summary of the documents and other evidence which that Party intends to present in support of the facts in issue set out in the Statement of Claim or Statement of Defence.
3. At any time during the arbitration proceedings, the Arbitral Tribunal may require the Parties to produce documents, exhibits or other evidence within such a period as it shall determine.

## **Rule 22**

### **Hearings**

1. Where a Party at the preliminary meeting requests for an oral hearing, the Arbitral Tribunal shall fix a date of hearing for the presentation of evidence by witnesses, including expert witnesses or for oral argument.
2. In the absence of a request, the Arbitral Tribunal shall decide whether to hold such hearings or whether the proceedings shall be conducted only on the basis of documents and other materials.
3. In the event of an oral hearing, the Arbitral Tribunal shall give the Parties adequate advance notice of the date, time and place of such hearing.
4. If witnesses are to be heard, each Party shall communicate at the preliminary meeting, or at least fifteen (15) days before the hearing, to the Arbitral Tribunal and to the other Party, the names and addresses of the witnesses the Parties intend to present, the subject upon and languages in which such witnesses will give their testimony.
5. The Arbitral Tribunal may decide the time, manner and form in which written materials shall be exchanged between the Parties and presented to the Arbitral Tribunal; and it may allow, refuse or limit the written and oral testimony of witnesses, whether witnesses of fact or expert witnesses.

6. Subject to the mandatory provisions of any applicable law, the Arbitral Tribunal shall be entitled, but not required, to administer any appropriate oath to any witness at any hearing, prior to the oral testimony of that witness.
7. The Arbitral Tribunal may direct that witnesses, including expert witnesses, be examined through any means that do not require their physical presence at the hearing, including electronic communication.
8. Hearings shall be held *in camera* unless the Parties agree otherwise.
9. The Arbitral Tribunal may determine the manner in which witness shall be examined and may require any witness or witnesses to retire during the testimony of other witnesses.
10. Evidence of witnesses may be presented in the form of written statements signed by them.
11. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.
12. The Arbitral Tribunal shall make arrangements for the interpretation of oral testimony made at a hearing and for a record of the hearing, if either is deemed necessary by the Arbitral Tribunal, or if the Parties have agreed thereto and have communicated such agreement to the Arbitral Tribunal at least fifteen (15) days before the hearing.

## **Rule 23**

### **Conservatory and Interim Measures of Protection**

1. At the request of either Party, the Arbitral Tribunal may take any interim measures it deems necessary in respect of the subject matter of the dispute.
2. Notwithstanding the generality of sub rule (1) an Arbitrator or the Arbitral Tribunal may grant any or all measures which fall within, but are not limited to, one of the following categories-
  - (a) measures for the preservation of evidence and conservation of the goods that may be relevant and material to the resolution of the dispute;
  - (b) measures for maintaining or restoring the status quo;
  - (c) measures to provide security for costs; and
  - (d) measures for interim payments;

Provided that the interim measures shall be in conformity with the applicable national law or these Rules.

3. The interim measures may be established in the form of an interim award and the Arbitral Tribunal may require security for the costs of such measures.
4. 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.
5. A Party shall promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
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.
7. A request for interim measures addressed by any Party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or with these Rules, or as a waiver of that agreement.
8. Any application to a judicial authority by a Party and any measure or decision taken by the judicial authority must be notified to the Arbitral Tribunal through the office of the Registrar.

## **Rule 24**

### **Emergency Arbitration**

1. A Party may apply for conservatory or urgent interim measures prior to the constitution of an Arbitral Tribunal by making a request to the Assigning Authority for the appointment of an Emergency Arbitrator.
2. The manner of appointment of an Emergency Arbitrator and the procedure for Emergency Arbitration shall be as set out in Schedule I.

## **Rule 25**

### **Experts**

1. The Arbitral Tribunal may, at its sole discretion, appoint one or more experts to report to it, in writing, on specific issues it wishes to determine.
2. A copy of the expert's terms of reference, as determined by the Arbitral Tribunal, shall be communicated to the Parties by the Registrar.

3. The Parties shall give the expert any relevant information or produce for the expert's inspection any relevant documents or goods that the expert may require.
4. Any dispute between a Party and the expert as to the relevance of the required information or production shall be referred to the Arbitral Tribunal for decision.
5. Upon receipt of the expert's report, the Arbitral Tribunal shall communicate a copy of the report together with any document on which the expert has relied on in the report, to the Parties who shall be given the opportunity to express their opinion on the report in writing.
6. At the request of either Party and after delivery of the report, the expert may be heard at an oral hearing where the Parties may examine the expert.
7. At the hearing, either Party may present expert witnesses in order to testify on the points at issue.
8. The provisions of Rule 22 shall be applicable to such proceedings.
9. The Costs of hiring an expert shall be borne by the Parties.

## **Rule 26**

### **Default**

1. If the Claimant fails to communicate its claim to the Respondent within the period of time fixed by the Arbitral Tribunal, the Arbitral Tribunal shall issue an order for the termination of the arbitral proceedings unless the Claimant has shown sufficient cause for such failure.
2. If the Respondent fails to communicate its Statement of Defence to the Claimant, within the period of time fixed by the Arbitral Tribunal, the Arbitral Tribunal shall order the continuation of the proceedings without treating such failure as an admission of liability unless the Respondent has shown sufficient cause for such failure.
3. If one of the Parties, 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.
4. If one of the Parties, duly invited 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 an award on the evidence before it.
5. The Arbitral Tribunal, may on application by a Party revealing sufficient cause, set aside any order made under this rule.

## **Rule 27**

### **Closure of Hearings**

1. The Arbitral Tribunal may inquire of the Parties if they have any further evidence 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 motion or upon application by a Party, to reopen the hearings at any time before an award is made.

## **Rule 28**

### **Waiver**

A Party who becomes aware that any provision of, or requirement under these Rules has not been complied with and yet proceeds with the arbitration without promptly stating the Party's objection to such non-compliance, shall be deemed to have waived the right to object

## **THE AWARD**

## **Rule 29**

### **Decisions**

1. Any award or other decision of the Arbitral Tribunal shall be made by a majority of the Arbitrators within a period of sixty (60) days of conclusion of the hearing except where, for good reason, the Arbitral Tribunal is unable to do so. The Arbitral Tribunal shall communicate to the Parties the reasons for the delay and provide a time frame within which the Arbitral Tribunal will deliver its award or decision.
2. The award or other decision shall be enforceable in terms of Article 40 of the Treaty.
3. In matters of procedure, when there is no majority or when the Arbitral Tribunal so authorises, the Chairperson may decide alone, subject to revision, if any, by the Arbitral Tribunal.

## **Rule 30**

### **Form and Effect of the Award**

1. In addition to making a final award, the Arbitral Tribunal may make interim, interlocutory, partial awards.

2. The final award shall be in writing and shall be final and binding on the Parties.
3. The Parties shall carry out the award without delay.
4. By adopting these Rules, and subject to Rule 9(4), the Parties waive their right to any form of appeal or recourse to a court or other judicial authority in so far as such waiver is valid under the applicable law.
5. 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.
6. An award shall be signed by all the Arbitrators who sat on the arbitration and it shall contain the date on which, and the place where the award was made. Where there are three or more Arbitrators and one of them fails to sign, the award shall state the reason for the absence of the signature. The absence of the signature shall not affect the validity of the award.
7. The award may be made public only with the consent of all Parties.
8. Copies of the signed award shall be communicated to the Parties by the Registrar.
9. If the arbitration law of the country where the award is made requires that the award be filed or registered, the Arbitral Tribunal shall comply with this requirement within the period of time required by that law.

## **Rule 31**

### **Applicable Law, Amiable Compositeur**

1. The Arbitral Tribunal shall apply the law designated by the Parties as applicable to the substance of the dispute, in these Rules otherwise referred to as “applicable law”.
2. Where Parties fail to designate the applicable law, the Arbitral Tribunal shall apply the law determined by the conflict of law rules, which it considers applicable.
3. The Arbitral Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the Parties have expressly authorised the Arbitral Tribunal to do so and if the law applicable to the arbitral procedure permits such arbitration.
4. In all cases, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

## **Rule 32**

### **Settlement or Other Grounds for Termination**

1. If the Parties agree on a settlement of the dispute, before the award is made, the Arbitral Tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by both Parties and accepted by the Arbitral Tribunal, record the settlement in the form of an arbitral award on agreed terms.
2. The Arbitral Tribunal shall not be obliged to give reasons for an award made under sub rule (1).
3. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in sub rule (1), the Arbitral Tribunal shall inform the Parties of its intention to issue an order for the termination of the proceedings, and unless a Party raises justifiable grounds for objection, the Arbitral Tribunal shall issue such an order.
4. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the Arbitrators who sat on the arbitration, shall be communicated by the Registrar to the Parties.
5. Where an arbitral award on agreed terms is made, the provisions of sub rules (2) and (4) to (8) of Rule 30, shall apply.

## **Rule 33**

### **Interpretation of Award**

1. Within thirty (30) days after the receipt of the award, either Party, with notice to the other Party, may request that the Arbitral Tribunal give an interpretation of the award.
2. The interpretation shall-
  - (a) be given in writing within forty-five (45) days after the receipt of the request; and
  - (b) form part of the award and the provisions of sub rules (2) to (8) of Rule 30 shall apply.

## **Rule 34**

### **Correction of Award**

1. Within thirty (30) days after the receipt of the award, either Party, with notice to the other Party, may request the Arbitral Tribunal to correct any errors in computation, any clerical or typographical errors, or any errors of a similar nature in the award.



2. If the Arbitral Tribunal considers that the request for correction is justified, it shall make the correction within thirty (30) days of receipt of the request.
3. The Arbitral Tribunal may, within thirty (30) days after the communication of the award, make any corrections on its own initiative.
4. The corrections shall be in writing, and the provisions of sub rules (2) to (8) of Rule 30 shall apply.

## **Rule 35**

### **Additional Award**

1. Within thirty (30) days after the receipt of the award, either Party, with notice to the other Party, may request the Arbitral Tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award.
2. If the Arbitral Tribunal considers the request for an additional award to be justified and considers that the omission can be rectified without any further hearings or evidence, it shall complete its award within thirty (30) days after the receipt of the request.
3. When an additional award is made, the provisions of sub rules (2) to (8) of Rule 30 shall apply.

## **COSTS**

## **Rule 36**

### **Fixing of Costs**

1. The Arbitral Tribunal shall fix the costs of arbitration in its award.
2. The term “costs” includes but is not limited to the-
  - (a) fees of the Arbitral Tribunal to be fixed by the Arbitral Tribunal itself;
  - (b) travel and other expenses incurred by the Arbitral Tribunal;
  - (c) costs of expert advice and of other assistance required by the Arbitral Tribunal;
  - (d) travel and other expenses of witnesses to the extent such expenses are approved by the Arbitral Tribunal; and

- (e) costs for legal representation and assistance of the successful Party, if such costs were claimed during the arbitral proceedings, and only to the extent that the Arbitral Tribunal determines that the amount of such costs is reasonable.
3. The fees of the Arbitral Tribunal shall be reasonable, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the Arbitral Tribunal and any other relevant circumstances of the case.

## **Rule 37**

### **Apportionment of Costs**

1. The costs of arbitration shall in principle be borne by the unsuccessful Party except as provided in sub rule (4).
2. The Arbitral Tribunal may, however, apportion each of such costs between the Parties if it determines that the apportionment is reasonable, taking into account the circumstances of the case.
3. In the event that the Parties have agreed before their dispute that one or more Parties shall pay the whole or any part of the arbitration costs or legal costs whatever the result of any dispute, arbitration or award, such agreement shall be confirmed by the Parties in writing after the commencement of the arbitration.
4. With respect to the costs of legal representation and assistance referred to in sub rule 2(e) of Rule 36, the Arbitral Tribunal, taking into account the circumstances of the case, may determine which Party shall bear such costs or may apportion such costs between the Parties if it determines that apportionment is reasonable;

Provided that nothing in this Rule shall prevent the Arbitral Tribunal, at its own discretion, to order each Party to bear its own costs.

5. When the Arbitral Tribunal issues an order for the termination of the arbitral proceedings or makes an award on agreed terms, it shall fix the costs of arbitration referred to in Rule 36 in the text of that order or award.
6. No additional fees may be charged by the Arbitral Tribunal for interpretation or correction or completion of its award under Rules 33-35.

## **Rule 38**

### **Deposit of Costs**

1. The Arbitral Tribunal on its appointment may request a Party to deposit an amount as an advance for the costs referred to in sub rule (2) paragraphs (a), (b) and (c) of Rule 36.

2. During the course of the arbitral proceedings, the Arbitral Tribunal may request supplementary deposits from the Parties.
3. If the required deposits are not paid in full within thirty (30) days after the receipt of the request, the Arbitral Tribunal shall inform the Parties in order that one or another of them may make the required payment.
4. If such payment is not made, the Arbitral Tribunal may order the suspension or termination of the arbitral proceedings;

Provided that nothing shall prevent the Claimant, where the arbitral proceedings have been terminated on the ground of non-payment of costs, from reintroducing the same claims at a later date in other proceedings.

5. After the award has been made, the Registrar shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

### **Rule 39**

#### **Security for Costs**

1. The Arbitral Tribunal may, in exceptional circumstances and at the request of a Party, order any Claimant or Counter-Claimant to provide security for costs in any manner the Arbitral Tribunal deems appropriate.
2. In determining whether to order security for costs, the Arbitral Tribunal shall have regard to-
  - (a) the prospects of success of the claims, counter-claims and defences;
  - (b) the Claimant's or counter-Claimant's ability to comply with an adverse costs award and the availability of assets for enforcement of an adverse costs award;
  - (c) whether it is appropriate in all the circumstances of the case to order one Party to provide security; and
  - (d) any other relevant circumstances.
3. If a Party fails to comply with an order to provide security, the Arbitral Tribunal may stay or dismiss the Party's claims in whole or in part;

Provided that nothing shall prevent a Party, where the Arbitral proceedings have been dismissed on the ground of failure to deposit security for costs, from reintroducing the same claims at a later date in other proceedings.

4. Any decision to stay or to dismiss a Party's claims shall take the form of an order or an award.

#### **Rule 40**

##### **Application of Court Rules in Arbitration Procedure**

1. The COMESA Court of Justice Rules of Procedure, 2016, as amended from time to time, shall apply to all matters not expressly provided for in these Rules.
2. Reference to the COMESA Court of Justice Rules of Procedure, 2016 shall at all times be made in good faith, respecting the spirit of the Arbitration Agreement.

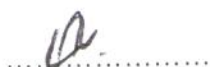
## **COMMENCEMENT**

#### **Rule 41**

##### **Entry into Force**

These Rules shall come into effect upon approval by the Council of Ministers of the Common Market in accordance with Article 38(2) of the Treaty.

Made by the Court, with the approval of the Council of Ministers at Lusaka, Zambia this day of in the year Two Thousand and Eighteen in the Arabic, English and French languages, the three texts being equally authentic.



**HONOURABLE LADY JUSTICE LOMBE CHIBESAKUNDA**  
**JUDGE PRESIDENT**  
**COMESA COURT OF JUSTICE**

# SCHEDULE I

## (Under Rule 24)

### Emergency Arbitration Procedure

#### Section 1

##### Application for Emergency Measures

1. Prior to the filing of a Notice of Arbitration, any Party in need of conservatory or urgent interim measures may make a request to the Assigning Authority seeking the appointment of an Emergency Arbitrator pursuant to the procedures set forth in this Schedule.
2. If circumstances of extraordinary urgency arise before the Arbitral Tribunal has been constituted, a Party may, after a Notice of Arbitration has been received by the Respondent, submit a request to the Assigning Authority with a copy to all other Parties, seeking the appointment of an Emergency Arbitrator pending the constitution of an Arbitral Tribunal.
3. Subject to any applicable law, a request for the appointment of an Emergency Arbitrator may seek orders, including, but not limited to-
  - (a) maintaining or restoring the status quo pending the determination of the dispute;
  - (b) taking 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) providing a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) preserving evidence that may be relevant and material to the resolution of the dispute.
4. The request shall contain the following information-
  - (a) the names of the Parties, the legal practitioner or other person of their choice assisting them, their phone numbers, postal address, physical address, e-mail addresses and fax numbers, or any other designated means of contacting or locating them;

- (b) a copy of the Parties' arbitration agreement;
- (c) a statement certifying that all other Parties to the arbitration have been notified of the application or an explanation of the steps taken to notify such Parties or that such notification has not occurred;
- (d) a description of the Parties' dispute, including any currently known claims or counter-claims for relief and the amount or value thereof;
- (e) the applicant's position, if any, regarding the place of the emergency proceedings, the language(s) of the proceedings and any procedural or substantive laws pertaining to the proceedings;
- (f) a full statement of the specific relief sought in the application;
- (g) a statement as to why the applicant's request for emergency relief cannot await the constitution of the Arbitral Tribunal; and
- (h) a statement regarding whether and, if so, why:
  - (i) 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
  - (ii) there is a reasonable possibility that the applicant 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.

5. The request may contain additional information or any other documents that may contribute to an efficient and fair consideration of the request.

## **Section 2**

### **Appointment of an Emergency Arbitrator**

1. The Assigning Authority shall appoint an Emergency Arbitrator unless the applicant has failed to demonstrate that an Emergency Arbitrator should be appointed under this Schedule.
2. The Assigning Authority shall endeavour to appoint an Emergency Arbitrator within two (2) business days following receipt of the request, and shall forthwith notify the Parties of such appointment and contemporaneously provide to the Emergency Arbitrator and to the Parties, complete copies of the applicant's request for emergency relief and of the Notice of Arbitration to the extent that such notice has

not been communicated to those Parties.

3. No Emergency Arbitrator shall be appointed after the Arbitral Tribunal has been constituted.
4. Unless the Parties otherwise agree, the Emergency Arbitrator shall not serve as a member of the Arbitral Tribunal.

### **Section 3**

#### **Challenges to and Replacement of Emergency Arbitrators**

1. Within one (1) business day of receipt of the Emergency Arbitrator's disclosures and statement of impartiality and independence, any Party may challenge the Emergency Arbitrator's appointment on the grounds set forth in Rule 9 of the Rules for challenges to Arbitrators. The Assigning Authority shall forthwith withdraw the appointment of the Emergency Arbitrator and appoint a replacement.
2. The provisions of Rule 9 of the Rules, regarding impartiality and independence, shall apply with necessary modifications to Emergency Arbitrators under this Schedule, except that the Emergency Arbitrator shall provide the Parties with all required disclosures within one (1) day after the date of the appointment.
3. Should an Emergency Arbitrator become unable for whatever reason to discharge the functions of her or his office, the Assigning Authority shall appoint a replacement Emergency Arbitrator.
4. The procedure relating to disclosures and written statements to be made by an Emergency Arbitrator and to challenges to Emergency Arbitrators, shall apply with respect to the replacement Emergency Arbitrator.
5. Should an Emergency Arbitrator be replaced, the new Emergency Arbitrator shall determine whether to resume the emergency proceedings at the stage at which the original Emergency Arbitrator ceased performing such functions or recommence the proceedings.

### **Section 4**

#### **The Place and Language of Emergency Proceedings,**

#### **Jurisdiction and Arbitrability Issues**

1. In the absence of a clear and complete agreement between the Parties regarding the place and language of the emergency proceedings, the Emergency Arbitrator shall have the authority to determine the place and language of the emergency

proceedings.

2. The Emergency Arbitrator shall have the authority to decide issues relating to jurisdictional challenges, including issues regarding the arbitrability of the Parties' dispute as well as the meaning and intent of the Parties' arbitration agreement.

## **Section 5**

### **The Emergency Proceedings**

1. The Emergency Arbitrator shall, where possible in consultation with the Parties, as soon as possible and preferably within two (2) days of being appointed, establish a timeline for the conduct of the emergency proceedings.
2. The Emergency Arbitrator may conduct the emergency proceedings in any manner the Emergency Arbitrator determines appropriate under the circumstances, including through a hearing by telephonic or electronic communication, or any other means.

## **Section 6**

### **Emergency Orders and Awards**

1. The Emergency Arbitrator-
  - (a) shall decide the issues raised in the application no later than fifteen (15) days following the Emergency Arbitrator's appointment, taking due care to ensure that all Parties are afforded notice and a reasonable opportunity to be heard;
  - (b) may extend the timeline provided under paragraph (a) only in exceptional circumstances or by the written agreement of all Parties to the emergency proceedings; and
  - (c) shall have no further power to act after the Arbitral Tribunal has been constituted.
2. In deciding the issues raised in the request, the Emergency Arbitrator shall take into consideration all the circumstances of the case, including any applicable law regarding the applicant's right to be granted the requested relief and the Emergency Arbitrator's power to grant such relief.
3. In granting an application for emergency relief, the Emergency Arbitrator may impose such conditions as the Emergency Arbitrator deems necessary, including requiring that the applicant provide appropriate security in connection with the relief granted.
4. The Emergency Arbitrator shall issue a written order or award that states the



following-

- (a) the date on which it was issued and the place of the emergency proceedings;
- (b) the basis for the Emergency Arbitrator's jurisdiction;
- (c) the reasons for the decision; and
- (d) the allocation among the Parties of the responsibility for the costs associated with the application for emergency relief and the emergency proceedings, subject to the authority of the Arbitral Tribunal to make a final determination and apportionment of such costs.

5. The Emergency Arbitrator shall promptly deliver a signed copy of the written order or award to each of the Parties and to the Assigning Authority.

6. By agreeing to resolve their dispute pursuant to this Schedule, the Parties agree to comply without delay with any order or award delivered.

7. Prior to the constitution of the Arbitral Tribunal, the Emergency Arbitrator shall, after providing the Parties with notice and an opportunity to be heard, have the authority to amend or revoke, for good cause, or on the Emergency Arbitrator's own initiative, any emergency order or award issued by the Emergency Arbitrator.

8. A Party that requests and is granted emergency relief shall be obliged to promptly disclose to the Parties, the Emergency Arbitrator or the Arbitral Tribunal, as the case may be, any change in the circumstances that served as the basis for the request or the granting of such relief.

9. Any order or award issued by the Emergency Arbitrator, including an award of costs-

- (a) may be modified or confirmed by the Emergency Arbitrator or the Arbitral Tribunal, and, in the absence of such a modification or confirmation, shall automatically expire and no longer be in effect fifteen (15) days following the constitution of the Arbitral Tribunal; and
- (b) shall immediately expire:
  - (i) if the Assigning Authority withdraws the appointment of the Emergency Arbitrator;
  - (ii) if the order or award is amended or revoked by the same Emergency Arbitrator prior to the appointment of the Arbitral Tribunal;
  - (iii) if the Claimant withdraws its Notice of Arbitration without the agreement of the remaining Parties prior to the appointment of the Arbitral Tribunal; or

(iv) upon the issuance of a final award by the Arbitral Tribunal, unless the Arbitral Tribunal decides otherwise.

10. The emergency arbitral order shall not bind the Arbitral Tribunal with respect to any question, issue or dispute determined in the order.
11. The Arbitral Tribunal may modify, terminate or annul the order or any modification thereto made by the Emergency Arbitrator.

## **Section 7**

### **Costs of the Emergency Proceedings**

The Emergency Arbitrator shall make orders on the costs of the emergency proceedings in the written order or award.

## SCHEDULE II

(Forms)

### FORM A

(As provided for under Rule 3)

#### AFFIDAVIT OF SERVICE

IN THE COMESA COURT OF JUSTICE

ARBITRAL TRIBUNAL SITTING AT.....

ARBITRAL CAUSE NO. .... OF 20.....

.....APPLICANT

VERSUS

.....RESPONDENT

#### AFFIDAVIT OF SERVICE

(Rule 3(3))

I ..... of .....and Counsel/ a process server of the Court make oath and state as follows:

(1) On ....., 20 .... at ..... (time) I served the notification in this case on ..... at ..... (Place) by tendering a copy thereof to her/him and requiring a signature on the original. She/He signed/refused to sign the notification. She/He was personally known to me/identified to me by ..... who is known to me.

(2) Not being able to find ....., the Respondent on ....., 20..... at ..... (time) I served the notification on ..... (Name) an adult member of the family of the Respondent who is residing with her/him.

(3) Not being able to find ..... the Respondent or any person on whom service could be made, on ....., 20..... at ..... (time), I affixed a copy of the notification to the outer door of ..... being the house in which she/he ordinarily resides/carries on business/personally works for gain. I was accompanied by..... who identified the house to me.

(4) The original notification is annexed to this affidavit.

(5) (Otherwise specify the manner in which the notification was served).

.....

DEPONENT

SWORN by the said .....

This ..... day of ....., 20.....

BEFORE ME:

COMMISSIONER FOR OATHS/NOTARY PUBLIC

FORM B  
(As provided for under Rule 8)

AGENDA FOR PRELIMINARY MEETING

IN THE COMESA COURT OF JUSTICE  
ARBITRAL TRIBUNAL SITTING AT.....  
ARBITRAL CAUSE NO. ....OF 20.....  
.....APPLICANT

VERSUS  
.....RESPONDENT

AGENDA FOR PRELIMINARY MEETING  
(Rule 8 (2))

|   |                               |               |                |
|---|-------------------------------|---------------|----------------|
| <b>DATED:</b>   | <b>TIME:</b>                  | <b>PLACE:</b> |                |
| <b>Coram</b><br>Chairperson:<br><br>Members<br>1.<br><br>2.<br><br>Claimant Represented by:<br><br>Also present:<br><br>Respondent Represented by:<br><br>Also present: |                               |               |                |
|   |                               |               | <b>Remarks</b> |
| 1   | To see the original agreement |               |                |

|          |   |   |  |
|----------|---|---|--|
| <u>2</u> | Terms of reference                              | <p>The full names addresses and description of the Parties.</p> <p>The issues to be determined.</p> <p>Composition of the tribunal.</p> <p>Whether or not summary of evidence or other document and lists of authorities are required and is so required when to be submitted.</p> <p>Particulars of substantive law chosen by the Parties.</p> <p>Such other particulars as may be required to make arbitral award enforceable</p> |  |
| <u>3</u> | Arbitrators schedule of charges                 | Accepted  |  |
|          |   | Security  |  |
|          |   | Interim payments  |  |
| <u>4</u> | To find out if the Parties are briefing counsel | Claimant  |  |
|          |   | Respondent  |  |
| <u>5</u> | Programme for pleadings                         | <p>Points of claim.....</p> <p>Points of defence &amp; counter-claim.</p> <p>Points of reply to defence and defence to counter-claim.....</p> <p>Points of reply to defence to counter-claim....</p>  |  |
| <u>6</u> | F & BP<br>Further & better particulars          |   |  |

|           |   |  |  |
|-----------|---|--|--|
| <u>7</u>  | Discovery   | Procedure<br>After close of pleadings,<br>exchange of lists within ....days  |  |
|           |   | Inspection   |  |
|           |   | Bundle to be limited   |  |
|           |   | To be provided to Arbitrator<br>....days before the hearing.                 |  |
|           |   | Written representation   |  |
| <u>8</u>  | Conduct of the reference                          | Hearing  |  |
| <u>9</u>  | Hearing   | Venue  |  |
|           |   | Estimated duration   |  |
|           |   | Procedure  |  |
| <u>10</u> | Expert witness                                    | Number on each side  |  |
|           |   | Meeting of experts of the same<br>discipline on a without prejudice<br>basis |  |
|           |   | Exchange of reports<br>simultaneously  |  |
|           |   | Date for exchange  |  |
|           |   | Sanction for failure to exchange<br>reports                                  |  |
|           |   | Access for expert  |  |
| <u>11</u> | Witness of fact<br>Proofs of evidence             | Exchange   |  |
|           |   | Date of exchange   |  |
| <u>12</u> | Communications with<br>Arbitrator                 | Copies to be sent to other Party   |  |
| <u>13</u> | Figures, plans, photographs<br>and correspondence | To be agreed where possible  |  |
| <u>14</u> | Transcript of hearing                             |  |  |

|           |                                      |                   |  |
|-----------|--------------------------------------|-------------------|--|
| <u>15</u> | Oath                                 |                   |  |
| <u>16</u> | Pre-hearing review                   |                   |  |
| <u>17</u> | Opening addresses reduced to writing |                   |  |
|           |                                      | Date of service   |  |
| <u>18</u> | Final speeches reduced to writing    |                   |  |
|           |                                      | Date of service   |  |
| <u>19</u> | Taxation of costs                    | By taxing master  |  |
|           |                                      | By Arbitrator     |  |
| <u>20</u> | Any other business                   | Claimant          |  |
|           |                                      | Respondent        |  |
| <u>21</u> | Signature                            | Claimant .....    |  |
|           |                                      | Respondent .....  |  |
|           |                                      | Chairperson ..... |  |

