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# ARBITRATION, FAST TRACK ARBITRATION AND MEDIATION:

Rules and Materials



# **Arbitration, Fast Track Arbitration and Mediation: Rules and Materials**

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This booklet includes rules and materials for three discrete dispute management options offered by the Jamaica International Arbitration Centre Limited (JAIAC). The three sets of documents are published together here in response to a demand for a single reference volume where the rules administered by the JAIAC, and related materials, can be readily accessed.

The three discrete sets of rules and materials are for Arbitration, Fast Track Arbitration, and Mediation. Each set of rules has an effective date as from 1 January 2017.

Although included in a single booklet, the discrete sets of rules and materials are to be read separately, and each includes its own Foreword, Code of Conduct, Overview, Guide to the Rules, Rules, and Schedule.

This booklet is available for use by parties, third party neutrals, policy-makers, academics, students and other persons, in accordance with the copyright provisions set out on the inside front cover of this publication. For the convenience of users, this booklet may be downloaded from the JAIAC website: <https://www.jaic.org>.



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Christopher P Malcolm, PhD

Secretary General

Jamaica International Arbitration Centre Limited  
(JAIAC)

December 2019

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# ARBITRATION

Rules and Materials



# Foreword

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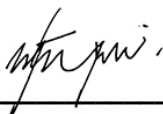
**BY MAURICE STOPPI, CD, FCIArb., FRICS, FJIQS**

A popular eighteenth century dramatist, John Gay, suggested that “They who in quarrels interpose: must often wipe a bloody nose”. Fortunately, at the present time in our region, arbitration has eliminated those inherent dangers expressed by Mr. Gay by the use of rules, acceptable and agreed. Until now, we in Jamaica, and broadly speaking others across the English speaking Caribbean, have relied on the rules of other jurisdictions or external institutions as the basis for conducting arbitration proceedings.

We are now enormously indebted to the founder and Secretary General of the Jamaica International Arbitration Centre Limited (JAIAC), Dr. Christopher Malcolm – now also Senior Lecturer at the Faculty of Law, University of the West Indies, Mona – for completing the enormous task of compiling a comprehensive set of rules, specifically relevant to this region, which can be followed in the conduct of arbitration and other forms of alternative dispute resolution. We are also indebted to Dr. Malcolm for the very useful inclusion in this publication of the Code of Conduct for Arbitrators and a Guide to the Arbitration Rules of the JAIAC.

It is true to say that other jurisdictions have previously issued rules or guidelines for the conduct of arbitration and other forms of alternative dispute resolution. These have been mainly applicable to their native regions. For the first time, Dr. Malcolm has, through the JAIAC, given us in Jamaica, and the wider English speaking Caribbean, a set of rules that are applicable to our social and legal culture.

In this publication, practitioners of alternative dispute resolution (avoiding the hazards of “bloody noses”) now have a comprehensive and well documented basis for the development of an internationally recognized indigenous arbitral system. I anticipate that it will be of great value to practitioners, end-users of arbitration, policy-makers, academics and students in as well as outside of Jamaica and the broader Caribbean region.



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**Maurice Stoppi, CD**

October 2019

# **Code of Conduct For Arbitrators**

## **1. General**

For the purpose of this Code of Conduct, 'JAIAC Rules' means JAIAC Arbitration Rules and JAIAC Fast Track Arbitration Rules.

## **2. Appointment**

- 2.1 When approached with an appointment, an arbitrator shall conduct reasonable enquiries with regard to potential conflict of interest that may arise from his appointment for that particular matter that may affect impartiality and independence. The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in disclosure requirement and whether an arbitrator is conflicted.
- 2.2 An arbitrator shall only accept an appointment if he is fully satisfied that he is independent of the parties at the time of the appointment, and is able to remain so until final award has been rendered, able to discharge his duties without bias, has adequate knowledge of the language of the proceedings, has adequate experience and ability for the case at hand, and is able to give to the proceedings the time and attention which parties are reasonably entitled to expect.

## **3. Disclosure**

- 3.1 A prospective arbitrator shall disclose to the JAIAC, the Parties and/or co-panellist (if any) of all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as the information becomes available.
- 3.2 The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an arbitrator is conflicted.

- 3.3 Before accepting appointment, a prospective arbitrator must disclose:
- a. Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness to the arbitration;
  - b. The extent of any prior knowledge he may have of the dispute.
- 3.4 Following such disclosure, the Secretary General shall reassess the suitability of the arbitrator for the matter at hand and retains the discretion to appoint a different Arbitrator.
- 3.5 This duty of disclosure shall continue throughout the arbitration with regard to new facts and circumstances.
- 3.6 Failure to disclose may be a basis of removal as a JAIAC Arbitrator even if the non disclosed facts or circumstances do not justify the removal or disqualification.

#### **4. Communications**

- 4.1 All communications other than proceedings at a hearing should be in writing.
- 4.2 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties, the amount in dispute and the expected time period required for the proceeding.
- 4.3 No arbitrator shall confer with any of the parties or their counsel until after the Secretary General gives notice of the formation of the Tribunal or Panel to the parties.
- 4.4 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with

any party or its representatives. If such communication should occur, the arbitrator should inform the other party or parties and co-arbitrators, if any, of its substance.

- 4.5 Any correspondence between arbitrator and parties shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute and the JAIAC, unless the parties agree otherwise.

## **5. Termination on Corruption, Unlawful or Illegal Activities**

### *5.1 Termination*

Termination on basis of corruption without prejudice to any other rights of the JAIAC, if the arbitrator is convicted by any court of law for corruption or any unlawful or illegal activities in relation to this Code of Conduct or any other agreement that the arbitrator may have with the JAIAC, JAIAC shall be entitled to secure the removal or disqualification of the JAIAC Arbitrator at any time.

### *5.2. Consequences of Termination*

- a. In the event this Code of Conduct no longer applies, Clause 5 and its provisions shall remain in force
- b. For the avoidance of doubt, the JAIAC and the arbitrator hereby agree that the Arbitrator shall not be entitled to any compensation or any other form of losses including any loss of profit, damages, claims or whatsoever other than the payments stipulated in Clause 7 below.
- c. JAIAC and the Arbitrator further agree that the payment made by the JAIAC under Clause 7 shall constitute a full and final settlement between the Parties.



## **6. Conduct during proceedings**

- 6.1 An Arbitrator shall at all times keep the JAIAC informed on the status of the proceedings.
- 6.2 Before the proceedings, an arbitrator shall always check with the JAIAC with regards to the deposits made by each party.
- 6.3 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all the discussions relative to the proceedings so that he may properly understand the dispute.
- 6.4 An arbitrator shall decide all the issues submitted for determination after careful deliberation and exercise his own impartial judgment and shall not permit outside pressures, fear of criticisms or any form of self-interest to affect his decisions.

## **7. Fees**

- 7.1 For matters conducted under the JAIAC Arbitration Rules, an arbitrator must adopt the JAIAC Scale of Fees and adhere to JAIAC's Guidelines for costs and disbursements. However an arbitrator may adopt a different scale of fees subject to the agreement of parties as provided for in these JAIAC Arbitration Rules.
- 7.2 In the event parties agree to adopt a different scale of fees, an arbitrator must disclose and explain the basis of his fees and expenses to the parties on or before the first preliminary meeting.
- 7.3 Immediately after the parties have agreed to a different scale of fees, the arbitrator shall notify the JAIAC, in writing, of the agreed fees and expenses.

- 7.4 The arbitral tribunal shall keep the JAIAC informed, in writing, of any changes in the amount of dispute during the proceeding as it affects the scale of fees applicable
- 7.5 For matters conducted under the JAIAC Arbitration Rules, and notwithstanding any agreement on fees pursuant to the Rules, the arbitral tribunal shall not under any circumstances collect any fees or expenses directly from the parties or their counsels, except with the express agreement of the Secretary General of the JAIAC.

## **8. Confidentiality**

- 8.1 The proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage or advantage for others or to affect adversely the interest of another.
- 8.2 This Code of Conduct is not intended to provide grounds for the setting aside of any award.

## **Arbitration Overview**

Arbitration under the auspices of Jamaica International Arbitration Centre Limited (JAIAC) begins with the agreement of two (2) or more parties for the reference to an arbitration proceeding under the JAIAC Arbitration Rules.

The JAIAC Arbitration Rules offers a comprehensive procedural process upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship. It adopts the UNCITRAL Arbitration Rules (as revised in 2013).

The JAIAC Arbitration Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award.

## Guide To JAIAC Arbitration Rules

1. The English text shall prevail over any other language versions.

2. Definitions used in the JAIAC Rules include:

**“arbitral tribunal”** means a sole arbitrator or panel of arbitrators appointed pursuant to the JAIAC Rules, and includes an emergency arbitrator appointed pursuant to the Schedule;

**“Article”** or **“Articles”** shall refer to the numbered provisions of the UNCITRAL Arbitration Rules as set out in Part II of the JAIAC Rules;

**“days”** means calendar days and includes weekends and public holidays;

**“domestic arbitration”** means any arbitration which is not an international arbitration;

**“Secretary General”** means the Secretary General of the Jamaica International Arbitration Centre;

**“GCT”** means General Consumption Tax as prescribed under the laws of Jamaica;

**“JAIAC”** means the Jamaica International Arbitration Centre Limited;

**“international arbitration”** means arbitration where;

- a. one or more of the parties to an arbitration agreement, at the time of conclusion of that agreement, has its place of business in any State other than Jamaica;
- b. one of the following in which a party or any of the parties has or have their place of business is situated in any State other than Jamaica;
- c. the seat of the arbitration if determined in, or pursuant to, the arbitration agreement;

- d. any place where a substantial part of the obligations of any commercial or business relationship is to be performed or the place with which the subject matter of the dispute is most closely connected; or
- e. the parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one State.

**“Party”** means a party to an arbitration agreement or, in any case where an arbitration does not involve all the parties to the arbitration agreement, means a party to the arbitration;

**“Rule”** or **“Rules”** shall refer to the numbered provisions of the JAIAC Arbitration Rules as set out in Part I of the JAIAC Arbitration Rules.

# **JAIAC ARBITRATION RULES**

(In force as from 1 January 2017)

## **PART I**

### **Rule 1 - General**

1. Where parties have agreed in writing to arbitrate their disputes in accordance with the JAIAC Arbitration Rules, then:
  - a. such disputes shall be settled or resolved by arbitration in accordance with the JAIAC Arbitration Rules;
  - b. the arbitration shall be conducted and administered by the Jamaica International Arbitration Centre Limited (hereinafter referred to as “JAIAC”) in accordance with the JAIAC Rules; and
2. The JAIAC Rules applicable to the arbitration shall be those in force at the time of commencement of the arbitration, unless otherwise agreed by the parties.
3. Where there is any conflict between Part I and Part II of the Rules, the provisions in Part I shall prevail.

### **Rule 2 - Commencement of Arbitration**

1. The party or parties initiating recourse to arbitration under the JAIAC Rules shall be required to submit a request in writing to commence the arbitration [hereinafter referred to as the “Commencement Request”]. The Commencement Request shall be made to the Secretary General pursuant to Article 3, and shall be accompanied by the following:
  - a. a copy of the written arbitration agreement or clause; a copy of the contractual documentation in which the arbitration clause is contained or in respect of which the arbitration arises;

- b. a copy of the Notice of Arbitration accompanied by confirmation that it has been served on all other parties by one or more of the means of service to be identified in such confirmation; and
  - c. a non-refundable registration fee amounting to USD500.00 in international arbitration (as defined in Rule 4(4)(c) of the Rules) and JMD50,000.00 in domestic arbitration, which registration fee is to be paid by the person initiating the arbitration proceedings.
- 3. The date of receipt by the Secretary General of the Confirmation Request together with all of the accompanying documentation and non-refundable registration fee shall be treated as the date on which the arbitration has commenced.
- 4. The JAIAC will notify the parties of the date of commencement of the arbitration.

### **Rule 3 - Notification and Pleadings**

All documents served on any party pursuant to Articles 3, 4, 20, 21, 22, 23 and 24 shall be served on the Secretary General at the same as such service or immediately thereafter.

### **Rule 4 - Appointment**

- 1. Where the parties have agreed to the JAIAC Arbitration Rules, the Secretary General shall be the appointing authority.
- 2. Parties are free to determine the number of arbitrators.
- 3. If the parties fail to determine the number of arbitrators and the Secretary General does not determine the number having regard to the circumstances of the case, the arbitral tribunal shall:

- a. in the case of an international arbitration, consist of 3 arbitrators; and
  - b. in the case of a domestic arbitration, consist of a sole arbitrator;
- 4. If the parties have agreed that a sole arbitrator is to be appointed, unless the parties agree otherwise, the procedure for the appointment shall be:
  - a. the parties are free to mutually agree on the sole arbitrator; or
  - b. if within 30 days of the other party's receipt of the notice of arbitration, the parties have not reached an agreement on the appointment of the sole arbitrator, either party may request that the sole arbitrator to be appointed by the Secretary General.
- 5. If the parties have agreed that three arbitrators are to be appointed, unless the parties have agreed otherwise, the procedure for the appointment shall be:
  - a. each party shall appoint one arbitrator, and the two arbitrators so appointed shall choose the third arbitrator, who will act as the presiding arbitrator of the arbitral tribunal;
  - b. if within 30 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 that the Secretary General appoint the second arbitrator; and
  - c. if within 30 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 be appointed by the Secretary General.



6. If the JAIAC upon the request of a party is to appoint a sole, presiding, second, substitute or emergency arbitrator, the Secretary General shall appoint such arbitrator in accordance with the JAIAC Arbitration Rules. In so doing, the Secretary General may seek such information from the parties as the Secretary General deems appropriate and exercise all powers and discretions as are vested in the Secretary General under the JAIAC Arbitration Rules.
7. Where the parties have agreed that any arbitrator is to be appointed by one or more parties, or by any authority agreed by the parties, or by any authority agreed by the parties, including where the arbitrators have already been appointed, that agreement shall be treated as an agreement to nominate an arbitrator under the JAIAC Arbitration Rules and shall be subject to confirmation by the Secretary General in his discretion.

#### **Rule 5 - Challenge to the Arbitrators**

1. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess any requisite qualification on which the parties agreed.
2. A party may challenge the arbitrator nominated by him only for reasons of which the party becomes aware of after the appointment has been made.
3. A challenge to an arbitrator shall be made by sending a Notice of Challenge within 15 days after the receipt of the notice of appointment of the challenged arbitrator or within 15 days after the circumstances mentioned in Rule 5(1) or Rule 5(2) became known to the party making the challenge.
4. The Notice of Challenge shall be sent simultaneously to the other Parties, to the arbitrator who is challenged, to the other members

of the arbitral tribunal, if any, and copied to the Secretary General. The notice shall be in writing and shall state the grounds for the challenge. The Notice of Challenge shall be accompanied by a non-refundable fee of USD5,000.00 in international arbitration and JMD350,000.00 in domestic arbitration.

5. The Secretary General may order suspension of the arbitration until the challenge is resolved.
6. If an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may also withdraw from his office. In neither case does this imply acceptance of the validity of the grounds of the challenge.
7. If within 15 days of the receipt of the Notice of Challenge, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily, the Secretary General shall decide on the challenge and shall in writing state reasons for the decision.
8. If required pursuant to Rule 5(6) or Rule 5(7), the substitute arbitrator to be so appointed shall be appointed in accordance with the procedure established in Rule 4.

## **Rule 6 - Powers of the Arbitral Tribunal**

The arbitral tribunal may conduct the arbitration in such manner as it deems appropriate. In particular, the arbitral tribunal may, unless otherwise agreed by the parties:

- a. limit or extend the time available for each party to present its case;
- b. conduct such enquiries as may appear to the tribunal to be necessary or expedient, including whether and to what extent the arbitral tribunal should itself take the initiative in identifying relevant issues applicable to the dispute;

- c. conduct enquires by inviting parties to make their respective submissions on such issues;
- d. order the parties to make any property, goods or sites in their possession or under their control, which the arbitral tribunal deems relevant to the case, available for inspection;
- e. order any party to produce any documents in its possession or under its control, which the arbitral tribunal deems relevant to the case, and to supply these documents and/or their copies to the tribunal and to the other parties; and
- f. decide whether or not to apply any rules of evidence as to admissibility, relevance or weight of any information or material tendered by a party on any issue of fact or expert opinion, and to decide the time, manner and form in which such information or material should be exchanged between the parties and presented to the arbitral tribunal.

## **Rule 7 - Seat of Arbitration**

1. The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration shall be Kingston, Jamaica unless the arbitral tribunal determines, having regard to all the circumstances of the case, that another seat is more appropriate.
2. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it deems appropriate for any purpose, including for hearings.
3. Unless otherwise agreed by parties, if any hearing, meeting, or deliberation is held elsewhere than at the seat of the arbitration, the arbitration, including any such hearing, meeting or deliberation, shall be deemed to have taken place at the seat of the arbitration.

## **Rule 8 - Interim Measures**

1. The arbitral tribunal may, at the request of a party, grant interim measures pursuant to Article 26.
2. A party in need of urgent interim measures prior to the constitution of the arbitral tribunal may submit a request to the Secretary General for the appointment of an emergency arbitrator pursuant to Schedule 3.

## **Rule 9 - Joinder of Parties**

1. Any party to an arbitration or any third party [hereinafter the "Additional Party"] may request that one or more Additional Party be joined to the arbitration [hereinafter referred to as 'Request for Joinder'], if all parties to the arbitration and the Additional Party give their consent in writing to the joinder, or if such Additional Party is prima facie bound by the arbitration agreement. The Request for Joinder will be determined by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Secretary General.
2. If a Request for Joinder is granted, the date on which the complete Request for Joinder is received by the arbitral tribunal or, prior to the constitution of the arbitral tribunal, by the Director, shall be deemed the date of the commencement of the arbitration in respect of the Additional Party.
3. A Request for Joinder shall be submitted to the arbitral tribunal or, prior to the constitution of the arbitral tribunal, to the Secretary General. The Request for Joinder shall include: the name and contact details of the Additional Party; whether the Additional Party is to be joined as a Claimant or a Respondent; a copy of the relevant agreements, in particular of any written arbitration clause; a brief description of the legal and factual basis supporting such joinder; and confirmation that the Request for Joinder has been or is being served

on all parties to the arbitration and the Additional Party, by one or more means of service to be identified in such confirmation.

4. Any party and any Additional Party that receives a Request for Joinder shall, within 15 days of receipt, submit to the arbitral tribunal or, prior to the constitution of the arbitral tribunal, to the Secretary General, a Response to the Request for Joinder indicating their consent or objection to the Request for Joinder.
5. In deciding whether to grant, in whole or in part, the Request for Joinder, the arbitral tribunal shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.
6. If the Secretary General receives the Request for Joinder prior to the constitution of the arbitral tribunal, the Secretary General shall decide whether to grant, in whole or in part, the Request for Joinder. In deciding whether to grant the Request for Joinder, the Secretary General shall consult all parties and any Additional Party, and shall have regard to any relevant circumstances.
7. Notwithstanding a decision by the Secretary General pursuant to Rule 9(6), the tribunal may decide on any Request for Joinder, either on its own initiative or upon the application of any party or Additional Party pursuant to Rule 9(1).
8. If the Additional Party is joined to the arbitration before the date on which the arbitral tribunal is constituted, the Secretary General shall appoint the arbitral tribunal and may release any arbitrators already appointed. In these circumstances, all parties shall be deemed to have waived their right to nominate an arbitrator.
9. The parties irrevocably waive their rights to any appeal, review or recourse to any court or other judicial authority, on the basis of any decision to join the Additional Party to the arbitration, to the validity and/or enforcement of any award made by the arbitral tribunal, insofar as such waiver can validly be made.

## **Rule 10 - Consolidation of Proceedings and Concurrent Hearings**

1. Upon the request of any party to an arbitration or, if the Secretary General deems it appropriate, the Secretary General may consolidate two or more arbitrations into one arbitration if:
  - a. the parties have agreed to consolidations;
  - b. all claims in the arbitration are made under the same arbitration agreement; or
  - c. the claims are made under more than one arbitration agreement, the dispute arises in connection with the same legal relationship, and the Secretary General deems the arbitration agreements to be compatible.
2. In deciding whether to consolidate, the Secretary General shall consult all parties and any appointed arbitrators, and shall have regard to any relevant circumstances, including:
  - a. the stage of the pending arbitrations and whether any arbitrators have been nominated or appointed;
  - b. any prejudice that may be caused to any of the parties; and
  - c. the efficiency and expeditiousness of the proceedings.
3. Unless otherwise agreed by the parties, where there is consolidation, the arbitrations shall be consolidated into the arbitration that commenced first.
4. Within 15 days of being notified of a decision by the Secretary General to consolidate two or more arbitrations, all parties may agree on the arbitrators to be appointed, if any, to the consolidated arbitration or the process of such appointment. Failing such agreement, any party may request that the Secretary General

appoints the tribunal, in which case, the Secretary General may release any arbitrators appointed prior to the decision to consolidate. In these circumstances, all parties shall be deemed to have waived their right to nominate an arbitrator.

5. The parties irrevocably waive their rights to any appeal, review or recourse to the court or any other judicial authority, on the basis of any decision to consolidate arbitrations pursuant to this Rule, to the validity and/or enforcement of any award made by the arbitral tribunal, insofar as such waiver can validly be made.

### **Rule 11 - Facilities**

The Secretary General shall, at the request of the arbitral tribunal or any party, make available, or arrange for, such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable accommodation for sittings of the arbitral tribunal, secretarial assistance, transcription services, video or tele conferencing and interpretation facilities. Unless otherwise agreed by the parties, the costs of such additional facilities shall be borne in equal share by the parties.

### **Rule 12 - Technical Review and Award**

1. Following the final oral or written submissions, the arbitral tribunal shall declare the proceedings closed. The arbitral tribunal's declaration and the date on which the proceedings are closed shall be communicated in writing to the parties and to the Secretary General. After this date, the parties shall not submit any further evidence or make any further submission with respect to the matters to be decided in the award.

2. The arbitral tribunal shall within three months of the proceedings having been declared closed pursuant to Rule 12(1), and before signing the award, submit its draft of the final award (hereinafter referred to as the 'Draft Final Award') to the Secretary General for technical review.
3. The time limit for submitting the Draft Final Award may be extended by the arbitral tribunal with the consent of the parties and upon consultation with the Secretary General. The Secretary General may further extend the time limit in the absence of consent between the parties notwithstanding if deemed necessary.
4. The Secretary General may, as soon as practicable and without affecting the tribunal's liberty of decision, draw the tribunal's attention to any perceived irregularity as to the form of the award and any errors in the calculation of interest and costs.
5. If there are no perceived irregularities pursuant to Rule 12(4), the Secretary General shall notify the tribunal in writing that the technical review has been completed.
6. If there are perceived irregularities pursuant to Rule 12(4), the Secretary General shall notify the arbitral tribunal in writing and the arbitral tribunal shall within 10 days from the date on which notice of perceived irregularities was given resubmit the Final Draft Award to the Secretary General. The time limit for arbitral tribunal to consider any irregularities under Rule 12(4) may be extended by the Secretary General. Upon completion of the technical review after resubmission, the Secretary General shall notify the arbitral tribunal in writing.



7. The arbitral tribunal shall deliver sufficient copies of the award to the Secretary General. The award shall only be released to the parties by the Secretary General upon full settlement of the costs of arbitration.
8. The Secretary General shall notify the parties of its receipt of the award from the arbitral tribunal. The award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered post.
9. If the parties reach a settlement after the arbitration has commenced, the arbitral tribunal shall, if so requested by the parties, record the settlement in the form of an award made by consent of the parties. If the parties do not require a consent award, the parties shall inform the Secretary General that a settlement has been reached. The arbitration shall only be deemed concluded and the arbitral tribunal discharged upon full settlement of the costs of arbitration.
10. By agreeing to arbitration under these JAIAC Arbitration Rules, the parties undertake to carry out the award immediately and without delay, and they also irrevocably waive their rights to any appeal, review or recourse to any court or other judicial authority insofar as such waiver may be validly made, and the parties further agree that an award shall be final and binding on the parties from the date it is made.

### **Rule 13 - Costs**

The term “costs” as specified in Article 40 shall include the expenses reasonably incurred by JAIAC in connection with the arbitration, the administrative costs of JAIAC as well as the costs of the facilities made available by JAIAC under Rule 11.

2. Unless otherwise agreed by the parties and the arbitral tribunal pursuant to Rule 13(4), the fees of the arbitral tribunal shall be fixed by the Secretary General in accordance with Schedule 1.
3. Unless otherwise agreed by the parties in writing, Schedule 1(A) shall apply to international arbitrations (USD scale) and Schedule 1(B) shall apply to domestic arbitrations (JMD scale).
4. Notwithstanding the above, all parties and the arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal within the period of 30 days from the appointment of the arbitral tribunal and the arbitral tribunal (hereinafter referred to as the "Fee Agreement"). The arbitral tribunal shall inform the Secretary General where a Fee Agreement has been executed. If the Fee Agreement is executed after the 30 days period has expired, the Fee Agreement shall be subject to approval by the Secretary General.
5. The JAIAC administrative fees shall be fixed by the Secretary General in accordance with Schedule 1. Unless otherwise agreed by the parties, Schedule 1(A) shall apply to international arbitrations and Schedule 1(B) shall apply to domestic arbitrations.
6. The costs of the arbitration may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Secretary General.
7. The fees of the arbitral tribunal and the administrative costs of the JAIAC under Schedule 1 are determined based on the amount in dispute. For the purpose of calculating the amount in dispute, the value of any counterclaim and/or set-off will be taken into account.

8. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim shall be settled by the Secretary General in consultation with the arbitral tribunal and the parties for the purpose of computing the arbitrator's fees and the administrative costs of the JAIAC.
9. Notwithstanding the above, the arbitral tribunal may determine the proportion of costs to be borne by the parties.

#### **Rule 14 - Deposits**

In lieu of the provisions of Article 43, the following provisions shall apply:

1. After the arbitration has commenced in accordance with Rule 2, the Secretary General shall fix a provisional advance deposit in an amount intended to cover the costs of the arbitration. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs fixed by the Secretary General under Rule 13.
2. Such provisional advance deposit shall be payable within 21 days of receiving the request from JAIAC.
3. In the event that any of the parties fails to pay such deposit, the Secretary General shall give the other party and opportunity to make the required payment within a specified time. The arbitral tribunal shall not proceed with the arbitral proceedings until such provisional advance deposit is paid in full.
4. Upon fixing of the fees of the arbitral tribunal and administrative costs of arbitration by the Secretary General pursuant to Rule 13, including the fees and expenses of the arbitral tribunal, if any, pursuant to Rule 13(4), the Secretary General shall prepare an estimate of

the fees and expenses of the arbitral tribunal and the administrative costs of the arbitration which the parties shall bear in equal shares. Within 21 days of written notification by the Secretary General of such estimate, each party shall deposit its share of the estimate with JAIAC.

5. During the course of the arbitral proceedings the Secretary General may request further deposits from the parties which shall be paid by the parties in equal shares within 21 days of such request.
6. Notwithstanding Rule 14(4), where counterclaims are submitted by the Respondent, the Secretary General may fix separate advance preliminary deposits on costs for the claims and counterclaims. When the Secretary General has fixed separate advance preliminary deposits on costs, each of the parties shall pay the advance preliminary deposit corresponding to its claims.
7. If the required deposits are not paid in full by any party, the Secretary General shall give the other party an opportunity to make the required payment within a specified time. If such payment is not made, the arbitral tribunal may, after consultation with the Secretary General, order the suspension or termination of the arbitral proceedings or any part thereof.
8. Notwithstanding the above, the Secretary General shall have the discretion to determine the proportion of deposits required to be paid by the parties.
9. The Secretary General may apply the deposits towards the administrative costs of JAIAC, fees of the arbitrator and the arbitrator's out-of-pocket and per diem expenses in such manner and at such times as the Secretary General deems appropriate.

10. After the award has been made, the Secretary General shall render an accounting to the parties for the deposits received and return any unexpended balance to the parties based on the parties' respective contributions.

### **Rule 15 - Mediation to Arbitration**

If the parties have referred their dispute to mediation under the JAIAC Mediation Rules and they have failed to reach a settlement and thereafter proceed to arbitration under the JAIAC Arbitration Rules, then half of the administrative costs paid to JAIAC for the mediation shall be credited towards the administrative costs of the arbitration.

### **Rule 16 - Confidentiality**

1. The arbitral tribunal, the parties, all experts, all witnesses and the JAIAC shall keep confidential all matters relating to the arbitral proceedings, except where disclosure is necessary for implementation and enforcement of the award or to the extent that disclosure may be required of a party by a legal duty, to protect or pursue a legal right or to challenge an award in *bona fides* legal proceedings before a court or other judicial authority.
2. In this Rule, "matters relating to the arbitral proceedings" means the existence of the proceedings, and the pleadings, evidence and other materials in the arbitration 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.

### **Rule 17 - No Liability**

Neither JAIAC nor the arbitral tribunal shall be liable for any act or omission related to the conduct of the arbitral proceedings.

## **Rule 18 - Non-Reliance**

The parties and the arbitral tribunal agree that statements or comments whether written or oral made in the course of the arbitral proceedings shall not be relied upon to institute or commence or maintain any action for defamation, libel, slander or any other complaint.

## **PART II**

### **UNCITRAL Rules**

#### **Section I – INTRODUCTORY RULES**

##### **Article 1 – Scope of Application\***

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, then such disputes shall be settled in accordance with these Rules subject to such modification as the parties may agree.
2. The parties to an arbitration agreement concluded after 15 August 2010 shall be presumed to have referred to the Rules in effect on the date of commencement of the arbitration, unless the parties have agreed to apply a particular version of the Rules. That presumption does not apply where the arbitration agreement has been concluded by accepting after 15 August 2010 an offer made before that date.
3. 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.

*\* A model arbitration clause for contracts can be found in the Schedules to these Rules.*

## **Article 2 – Notice and Calculation of Periods of Time**

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 authorised 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 email may only be made to an address so designated or authorised.
3. In the absence of such designation or authorisation, 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 non-business days occurring during the running of the period of time are included in calculating the period.

### **Article 3 – Notice of Arbitration**

1. The party or parties initiating recourse to arbitration (hereinafter called the “claimant”) shall communicate to 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;
  - d. Identification of any contract or other legal instrument 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 and an indication of the amount involved, if any;
  - f. The relief or remedy sought;



- g. A proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.
- 4. The notice of arbitration may also include:  
A proposal for the designation of an appointing authority referred to in article 6, paragraph 1:
  - a. A proposal for the appointment of a sole arbitrator referred to in article 8, paragraph 1;
  - b. Notification of the appointment of an arbitrator referred to in articles 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.

#### **Article 4 – Response to the Notice of Arbitration**

- 1. Within 30 days of the receipt of the notice of arbitration, the respondent shall communicate to the claimant 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) to (g).
- 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 articles 9 or 10;
- e. A brief description of counterclaims or claims for the purpose of a set-off, if any, including where relevant, an indication of the amounts involved, and the relief or remedy sought;
- f. 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. 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.

## **Article 5 – Representation and Assistance**

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.

## **Article 6 – Designating and Appointing Authorities**

1. Unless the parties have already agreed on the choice of an appointing authority, a party may at any time propose the name or names of one or more institutions or persons, including the

Secretary-General of the Permanent Court of Arbitration at The Hague (hereinafter called the “PCA”), one of whom would serve as appointing authority.

2. If all parties have not agreed on the choice of an appointing authority within 30 days after a proposal made in accordance with paragraph 1 has been received by all other parties, any party may request the Secretary-General of the PCA to designate the appointing authority.
3. Where these Rules provide for a period of time within which a party must refer a matter to an appointing authority and no appointing authority has been agreed on or designated, the period is suspended from the date on which a party initiates the procedure for agreeing on or designating an appointing authority until the date of such agreement or designation.
4. Except as referred to in article 41, paragraph 4, if the appointing authority refuses to act, or if it fails to appoint an arbitrator within 30 days after it receives a party’s request to do so, fails to act within any other period provided by these Rules, or fails to decide on a challenge to an arbitrator within a reasonable time after receiving a party’s request to do so, any party may request the Secretary-General of the PCA to designate a substitute appointing authority.
5. In exercising their functions under these Rules, the appointing authority and the Secretary-General of the PCA 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 and the Secretary-General of the PCA shall also be provided by the sender to all other parties.

6. 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.
7. 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 – COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Article 7 – Number of Arbitrators**

1. If the parties have not previously agreed on the number of arbitrators, and if within 30 days after the receipt by the respondent of the notice of arbitration the parties have not agreed that there shall be only one arbitrator, three arbitrators shall be appointed.
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 articles 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.

### **Article 8 – Appointment of Arbitrators**

1. If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties

have not reached agreement thereon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.

2. The appointing authority shall appoint the sole arbitrator 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 15 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 above period of time 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 appointing the sole arbitrator.

## **Article 9 – Appointment of Arbitrators**

1. If three arbitrators are to be appointed, each party shall appoint one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

2. If within 30 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.
3. If within 30 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 be appointed by the appointing authority in the same way as a sole arbitrator would be appointed under article 8.

## **Article 10 – Appointment of Arbitrators**

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, constitute the arbitral tribunal and, in doing so, may revoke any appointment already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

## **Article 11 – Disclosures by and Challenge of Arbitrators\*\***

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 and the other arbitrators unless they have already been informed by him or her of these circumstances.

*\*\* Model statements of independence pursuant to article 11 can be found in the annex to the Rules.*

## **Article 12 – Disclosures by and Challenge of Arbitrators**

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 – Disclosures by and Challenge of Arbitrators**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 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 and to the other arbitrators. 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 15 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 30 days from the date of the notice of challenge, it shall seek a decision on the challenge by the appointing authority.

## **Article 14 – Replacement of an Arbitrator**

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; or
  - b. after the closure of the hearings, authorise the other arbitrators to proceed with the arbitration and make any decision or award.



## **Article 15 – Repetition of Hearings in the Event of the Replacement of an Arbitrator**

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.

## **Article 16 – Exclusion of Liability**

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or omission in connection with the arbitration.

## **Section III – ARBITRAL PROCEEDINGS**

### **Article 17 – 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 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.
2. 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 arbitral tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
3. 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.

4. 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.
5. 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.

## **Article 18 – Place of Arbitration**

1. If the parties have not previously agreed on the place of arbitration, the place 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 place 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.

## **Article 19 – Language**

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. This determination shall apply to the statement of claim, the statement of defence, 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 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.

## **Article 20 – Statement of Claim**

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 to 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.
- 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.

## **Article 21 – Statement of Defence**

- 1. The respondent shall communicate its statement of defence 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 defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
- 2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (article 20, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the respondent, or contain references to them.
- 3. 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 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 20, paragraphs 2 to 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.

## **Article 22 – Amendments to the Claim or Defence**

During the course of the arbitral proceedings, a party may amend or supplement its claim or defence, 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 defence, 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 defence falls outside the jurisdiction of the arbitral tribunal.

## **Article 23 – Pleas as to the Jurisdiction of the Arbitral Tribunal**

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 defence 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.

## **Article 24 – 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 the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Article 25 – Periods of Time**

The periods of time fixed by the arbitral tribunal for the communication of written statements (including the statement of claim and statement of defence) should not exceed 45 days. However, the arbitral tribunal may extend the time limits if it concludes that an extension is justified.

## **Article 26 – Interim Measures**

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.

## **Article 27 – Evidence**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
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.

## **Article 28 – Hearings**

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 video conferencing).

## **Article 29 – Experts Appointed by the Arbitral Tribunal**

1. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
2. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have

any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

3. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
4. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
5. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 28 shall be applicable to such proceedings.

### **Article 30 – Default**

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 defence, 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 defence 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.

### **Article 31 – Closure of Hearings**

1. The arbitral tribunal may enquire 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.

### **Article 32 – Waiver of Right to Object**

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 – THE AWARD**

### **Article 33 – Decisions**

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 authorises, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Article 34 – Form and Effect of the Award**

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 place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
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.

### **Article 35 – Applicable Law, Amiable Compositeur**

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 authorised 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.

### **Article 36 – Settlement or Other Grounds for Termination**

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 34, paragraphs 2, 4 and 5 shall apply.

### **Article 37 – Interpretation of the Award**

1. Within 30 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 45 days after the receipt of the request. The interpretation shall form part of the award and the provisions of article 34, paragraphs 2 to 6, shall apply.

### **Article 38 – Correction of the Award**

1. Within 30 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 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative. Such corrections shall be in writing and shall form part of the award. The provisions of article 34, paragraphs 2 to 6, shall apply.

## **Article 39 – Additional Award**

1. Within 30 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 60 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 34, paragraph 2 to 6, shall apply.

## **Article 40 – Definition of Costs**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
  - a. The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with article 41;
  - b. The reasonable travel and other expenses incurred by the arbitrators;
  - c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - d. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;

- e. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - f. Any fees and expenses of the appointing authority as well as the fees and expenses of the Secretary-General of the PCA.
3. In relation to interpretation, correction or completion of any award under articles 37 to 39, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

#### **Article 41 – Fees and Expenses of Arbitrators**

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If there is an appointing authority and it applies or 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 rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the appointing authority for review. If, within 45 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. When informing the parties of the arbitrators' fees and expenses that have been fixed pursuant to article 40, paragraphs 2 (a) and (b), the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated.
  - b. Within 15 days of receiving the arbitral tribunal's determination of fees and expenses, any party may refer for review such determination to the appointing authority. If no appointing authority has been agreed upon or designated, or if the appointing authority fails to act within the time specified in these Rules, then the review shall be made by the Secretary-General of the PCA.
  - c. If the appointing authority or the Secretary-General of the PCA finds that the arbitral tribunal's determination is inconsistent with the arbitral tribunal's proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 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.
  - d. Any such adjustments shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of article 38, paragraph 3 shall apply.
5. Throughout the procedure under paragraphs 3 and 4, the arbitral tribunal shall proceed with the arbitration, in accordance with article 17, paragraph 1.

6. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal's fees and expenses.

## **Article 42 – Allocation of Costs**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that 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.

## **Article 43 – Deposit of Costs**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in article 40, paragraphs 2 (a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If an appointing authority has been agreed upon or designated, and when a party so requests and the appointing authority consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the appointing authority, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.

4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

## SCHEDULE

### A. Fees and Costs

#### INTERNATIONAL ARBITRATION FEES AND COSTS

Amount in Dispute (USD)	Arbitrator's Fees (USD)
Up to 50,000	3,000
From 50,001 to 100,000	3,000 + 7.5% excess over 50,000
From 100,001 to 500,000	6,750 + 3.5% excess over 100,000
From 500,001 to 1,000,000	20,750 + 2.75% excess over 500,000
From 1,000,001 to 2,000,000	34,500 + 1.25% excess over 1,000,000
From 2,000,001 to 5,000,000	47,000 + 0.55% excess over 2,000,000
From 5,000,001 to 10,000,000	63,500 + 0.32% excess over 5,000,000
From 10,000,001 to 50,000,000	79,500 + 0.16% excess over 10,000,000
From 50,000,001 to 80,000,000	143,500 + 0.07% excess over 50,000,000
From 80,000,001 to 100,000,000	164,500 + 0.05% excess over 80,000,000
From 100,000,001 to 500,000,000	174,500 + 0.03% excess over 100,000,000
Above 500,000,001	294,500 + 0.02% excess over 500,000,000 up to a maximum of 2,000,000

Amount in Dispute (USD)	Administrative Costs (USD)
Up to 50,000	1,500
From 50,001 to 100,000	1,500 + 1.15% excess over 50,000
From 100,001 to 500,000	2,075 + 0.85% excess over 100,000
From 500,001 to 1,000,000	4,675 + 0.5% excess over 500,000
From 1,000,001 to 2,000,000	7,175 + 0.35% excess over 1,000,000
From 2,000,001 to 5,000,000	10,675 + 0.13% excess over 2,000,000
From 5,000,001 to 10,000,000	14,575 + 0.08% excess over 5,000,000
From 10,000,001 to 50,000,000	18,575 + 0.05% excess over 10,000,000
From 50,000,001 to 80,000,000	18,575 + 0.05% excess over 10,000,000
From 80,000,001 to 100,000,000	
From 100,000,001 to 500,000,000	
Above 500,000,001	

## DOMESTIC ARBITRATION FEES AND COSTS

Amount in Dispute (JMD)	Arbitrator's Fees (JMD)
Up to 2,000,000	150,000
From 2,000,001 to 5,000,000	150,000 + 10% of excess over 2,000,000
From 5,000,001 to 10,000,000	450,000 + 12.5% of excess over 5,000,000
From 10,000,001 to 20,000,000	1,075,000 + 15% of excess over 10,000,000
From 20,000,001 to 50,000,000	2,575,000 + 17.25% of excess over 20,000,000
From 50,000,001 to 75,000,000	7,750,000 + 12% of excess over 50,000,000
From 75,000,001 to 120,000,000	10,750,500 + 8.75% of excess over 75,000,000
From 120,000,001 to 150,000,000	14,688,000 + 5.25% of excess over 120,000,000
From 150,000,001 to 240,000,000	16,263,000 + 3.45% of excess over 150,000,000
From 240,000,001 to 300,000,000	19,368,000 + 2.15% of excess over 240,000,000
From 300,000,001 to 1,500,000,000	20,658,000 + 0.75% of excess over 300,000,000
Above 1,500,000,000	29,658,000 + 0.05% of excess over 1,500,000,000 up to a maximum of 50,000,000

Amount in Dispute (JMD)	Administrative Costs (JMD)
Up to 2,000,000	50,000
From 2,000,001 to 5,000,000	50,000 + 3.5% excess over 2,000,000
From 5,000,001 to 10,000,000	155,000 + 2.25% excess over 5,000,000
From 10,000,001 to 20,000,000	492,500 + 1.75% excess over 20,000,000
From 20,000,001 to 50,000,000	1,017,500 + 1.25% excess over 50,000,000
From 50,000,001 to 75,000,000	1,330,000 + 0.75% excess over 75,000,000
From 75,000,001 to 120,000,000	1,667,000 + 0.35% excess over 120,000,000
From 120,000,001 to 150,000,000	1,772,000 + 0.15% excess over 150,000,000
From 150,000,001 to 240,000,000	1,907,000 (maximum)
From 240,000,001 to 300,000,000	
From 300,000,001 to 1,500,000,000	
Above 1,500,000,000	

## Emergency Interim Relief Costs and Fees

The following fees shall be payable upon making an application under Rule 7 for emergency interim relief:

### International Arbitration

Administration Costs for Emergency Interim Relief Applications (non-refundable):	USD1,500.00
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Emergency Arbitrator's Fees:	USD7,000.00
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### Domestic Arbitration

Administration Costs for Emergency Interim Relief Applications (non-refundable):	JMD150,000.00
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Emergency Arbitrator's Fees:	JMD750,000.00
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## **Notes on Fees**

### **Registration Fees**

1. The registration fee as specified in Rule 2(1) (c), is non-refundable and does not constitute part of JAIAC's administrative costs.
2. The registration fee shall be payable by the claimant in full and shall not be subjected to any deductions.

### **Arbitral Tribunal Fees**

1. The fees payable to the arbitrator do not include any possible taxes such as service tax, withholding tax or other taxes or charges applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the arbitrator and the parties.
2. Arbitrator's expenses:
  - a. An arbitrator shall be entitled to claim for reasonable out-of-pocket expenses relating to reasonable travel, living and other miscellaneous expenses whilst attending to the arbitration proceedings.
  - b. The arbitral tribunal's reasonable out- of-pocket expenses necessarily incurred shall be borne by the parties and reimbursed at costs.
  - c. The expenses will be reimbursed upon submission and verification by JAIAC of the supporting invoices and receipts in original.
  - d. An arbitrator who is required to travel outside his place of residence will be reimbursed with business class airfare, subject to the submission of invoice or receipt in original to JAIAC for verification.

- e. In addition to the out-of-pocket expenses, a per diem of USD400.00 shall be paid to an arbitrator who is required to travel outside his place of residence, whenever overnight accommodation is required. Where no overnight accommodation is required, a per diem of USD100.00 shall be paid.
  - f. The expenses covered by the per diem above shall include the following items which are not claimable as out-of-pocket expenses:
    - i. Hotel accommodation;
    - ii. Meals/beverages;
    - iii. Laundry/dry cleaning/ironing;
    - iv. City transportation (excluding airport transfers);
    - v. Communication costs (telephone, faxes, internet usage etc.); and
    - vi. Tips.
3. Any disbursement towards the arbitrator's out-of pocket and per diem expenses shall be additional to the arbitrator's fees and do not form part of the advance preliminary deposits. Parties shall bear these costs separately in equal shares upon request by the Secretary General of the JAIAC.
4. Payment of fees to arbitrator:
- a. The arbitrator's fees shall only be payable upon the delivery of the award to the Secretary General in accordance with Rule 13;
  - b. The arbitrator shall not be entitled to any interim fees;



- c. Where the arbitral tribunal constitutes more than one arbitrator, the chairman of the arbitral tribunal shall receive 40% of the total arbitrator's fee and the co-arbitrators shall receive the remaining 60% in equal shares;
- d. Where an arbitration is settled or disposed of before the commencement of the hearing, the costs of the arbitration shall be determined by the Secretary General.

### **JAIAC Administrative Costs**

- 1. The JAIAC administrative costs shall be calculated in accordance with the Schedule.
- 2. The JAIAC administrative costs shall be payable by the parties in equal shares and shall form a part of the advance preliminary deposit.
- 3. The JAIAC administrative costs are not inclusive of other services such as rental of facilities, refreshments, secretarial assistance, transcription services, videoconferencing and interpretation services which shall be chargeable on the requesting party separately.

### **Advance Preliminary Deposit**

- 1. Advance preliminary deposit and/or additional deposits shall include the following:
  - a. Fees of the arbitral tribunal [for a panel of more than one arbitrator, the total arbitrator's fee shall be derived by multiplying the amount of an arbitrator's fees with the number of the arbitrators].
  - b. JAIAC administrative costs (as per Schedule of Fees).
  - c. Bank charges amounting to JMD10,000.00 for domestic arbitrations or USD150.00 for international arbitrations.

2. The advance preliminary deposit and additional deposits, if any, shall be payable by the parties in equal shares pursuant to Rule 14.

### **Emergency Arbitrator**

1. A party in need of emergency interim relief may, concurrent with or following the filing of a Commencement Request pursuant to Rule 2, but prior to the constitution of the arbitral tribunal, make an application for emergency interim measures.
2. The application for emergency interim measures shall be made in writing and shall be sent simultaneously to the Secretary General and all other parties to the arbitration.
3. The application for emergency interim relief shall include:
  - a. name and contact details of the applicant;
  - b. a copy of the relevant agreements, in particular of any written arbitration clause;
  - c. a brief description of the legal and factual basis supporting the application;
  - d. a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify the other parties; and
  - e. the JAIAC administrative fee pursuant to this Schedule.
4. If the Secretary General grants the application, the Secretary General shall seek to appoint an emergency arbitrator within 2 days after the JAIAC has received the completed application pursuant to paragraph 3 of this Schedule.

5. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the Secretary General any circumstance that may give rise to justifiable doubts as to his impartiality or independence.
6. An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless agreed by the parties.
7. Once the emergency arbitrator has been appointed, the JAIAC shall so notify the parties. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and JAIAC.
8. In the event there is any challenge to the appointment of the emergency arbitrator, it must be made within one business day of the communication by the Secretary General to the parties of the appointment of the emergency arbitrator or the circumstances disclosed. Rule 5 shall apply to the emergency arbitrator, except that the time limits set out in the Rules 5(3) and 5(6) are reduced to one business day.
9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency interim measures proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant Rule 7, the seat of the emergency interim measures proceedings shall be Kingston, Jamaica.
10. The emergency arbitrator shall, as soon as possible but in any event within 2 days of appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity to all parties to be heard

but may provide for proceedings by telephone conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the powers vested in the arbitral tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, and shall resolve any disputes over the application of this Schedule.

11. The emergency arbitrator shall have the power to order or award any interim relief that he deems necessary. The emergency arbitrator shall give reasons for his decision in writing.
12. Any order or award of the emergency arbitrator shall be made within 15 days from the date of appointment notification to parties and this period of time may be extended by agreement of the parties or, in appropriate circumstances, by the Secretary General.
13. The emergency arbitrator shall deliver sufficient copies of the order or award to the Secretary General.
14. The JAIAC shall notify the parties of its receipt of the order or award from the emergency arbitrator. The order or award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered post.
15. Upon the constitution of the arbitral tribunal:
  - a. the emergency arbitrator shall have no further power to act;
  - b. the arbitral tribunal may reconsider, modify or vacate the interim award or order of emergency interim relief issued by the emergency arbitrator; and
  - c. the arbitral tribunal is not bound by the reasons given by the emergency arbitrator.

16. Any order or award issued by the emergency arbitrator shall cease to be binding: if the arbitral tribunal is not constituted within 90 days of such order or award; when the arbitral tribunal makes a final award; or if the claim is withdrawn.
17. Any interim award or order of emergency interim measures may be conditional on provision of appropriate security by the party seeking such relief.
18. An order or award pursuant to this Schedule shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
19. The costs associated with any application pursuant to this Schedule shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine the final apportionment of such costs.

## **B. Model Arbitration Clause**

*“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 JAIAC Arbitration Rules.”*

Recommended additions:

The language to be used in the arbitral proceedings shall be [...]

This contract shall be governed by the law of [...]

Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the JAIAC Mediation Rules, as in force on the date of the commencement of the mediation.

## **C. Model Submission Agreement**

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the JAIAC Arbitration Rules may adopt the following form of agreement:

*“The parties hereby agree that the dispute arising out of the contract dated \_\_\_\_\_ shall be settled by arbitration under the JAIAC Arbitration Rules.”*

This form may also be used where a contract does not contain an arbitration clause and the parties wish to have an ad hoc submission to arbitration.

## **D. Model Statements of Impartiality, Independence and Availability**

### ***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 the adopted article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties, and (b) other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. Furthermore, 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.

### ***Statement of availability***

I confirm, on the basis of the information now 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.

# FAST TRACK ARBITRATION

## Rules and Materials





# Foreword

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**BY ROY K ANDERSON, CD, FCIArb.**

A wise man once said that a bad settlement is better than the best lawsuit. That may be somewhat of an over-statement. However, experience over the last forty (40) years or so, clearly point to great advantages of settling disputes by means other than litigation. In particular, arbitration and mediation have come into their own in a significant way, providing as they do, confidential, efficient and cost effective ways of resolving disputes outside of a cumbersome and backlog-laden court system. It is not surprising that alternative dispute resolution procedures have taken on a life of their own, as parties have come to appreciate the benefits which accrue to them and their businesses in resolving disputes without recourse to the formal court system.

In Jamaica, after more than a century of living with an old out-dated and inadequate statute, the legislature finally passed into law a new Arbitration Act in 2017. This has provided a fillip to the growing efforts to avoid costly and dilatory litigation in a system which is over-burdened by backlogs and inertia. The introduction of the new Arbitration Act based on the UNCITRAL Model Law is a welcome addition to the national economy and there are already signs that the commercial sector is awakening to the possibilities which it provides.

Nevertheless, the passage into law of this Act by itself, would not facilitate the opportunities that are inherent in a viable alternative dispute resolution mechanism. The law must be given life through rules which provide practical guidance as to how it is to be implemented in practice. It is for this reason that we must commend the Jamaica International Arbitration Centre and its tireless Secretary General, Dr. Christopher Malcolm, for putting together these rules to facilitate fast-Track Arbitration. The rules provide a veritable road map for negotiating one's way through the Act and its processes.

Having had a chance to view them, I am satisfied that practitioners in the field will be well served by having a copy of these rules at hand as they work their way through the new Act for the benefit, not only of their respective clients, but of the economy of Jamaica.

A handwritten signature in black ink, appearing to read 'Roy K Anderson', is written over a horizontal line.

**Roy K Anderson, CD, FCI Arb**  
Retired Judge, Supreme Court of Jamaica

# **Code of Conduct For Arbitrators**

## **1. General**

For the purpose of this Code of Conduct, 'JAIAC Rules' means JAIAC Arbitration Rules and JAIAC Fast Track Arbitration Rules.

## **2. Appointment**

- 2.1 When approached with an appointment, an arbitrator shall conduct reasonable enquiries with regard to potential conflict of interest that may arise from his appointment for that particular matter that may affect impartiality and independence. The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an Arbitrator is conflicted.
- 2.2 An arbitrator shall only accept an appointment if he is fully satisfied that he is independent of the parties at the time of the appointment, and is able to remain so until final award has been rendered, able to discharge his duties without bias, has adequate knowledge of the language of the proceedings, has adequate experience and ability for the case at hand, and is able to give to the proceedings the time and attention which parties are reasonably entitled to expect.

## **3. Disclosure**

- 3.1 A prospective arbitrator shall disclose to the JAIAC, the Parties and/or co-panellist (if any) of all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as the information becomes available.

- 3.2 The International Bar Association (IBA) Guidelines on Conflict of Interest will be a point of reference in determining the disclosure requirement and whether an arbitrator is conflicted.
- 3.3 Before accepting appointment, a prospective arbitrator must disclose:
- a. Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party, or any person known to be a potentially important witness to the arbitration;
  - b. The extent of any prior knowledge he may have of the dispute
- 3.4 Following such disclosure, the Secretary General shall reassess the suitability of the arbitrator for the matter at hand and retains the discretion to appoint a different Arbitrator.
- 3.5 This duty of disclosure shall continue throughout the arbitration with regard to new facts and circumstances.
- 3.6 Failure to disclose may be a basis of removal as a JAIAC Arbitrator even if the non-disclosed facts or circumstances do not justify the removal or disqualification.

#### **4. Communications**

- 4.1 All communications other than proceedings at a hearing should be in writing.
- 4.2 Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties, the amount in dispute and the expected time period required for the proceeding.

4.3 No arbitrator shall confer with any of the parties or their counsel until after the Secretary General gives notice of the formation of the Tribunal or Panel to the parties.

4.4 Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party or its representatives. If such communication should occur, the arbitrator should inform the other party or parties and co-arbitrators, if any, of its substance.

4.5 Any correspondence between arbitrator and parties shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute and the JAIAC, unless the parties agree otherwise.

## **5. Termination on Corruption, Unlawful or Illegal Activities**

### *5.1 Termination*

Termination on basis of corruption without prejudice to any other rights of the JAIAC, if the arbitrator is convicted by any court of law for corruption or any unlawful or illegal activities in relation to this Code of Conduct or any other agreement that the arbitrator may have with the JAIAC, JAIAC shall be entitled to secure the removal or disqualification of the JAIAC Arbitrator at any time.

### *5.2. Consequences of Termination*

- a. In the event this Code of Conduct no longer applies, Clause 5 and its provisions shall remain in force.
- b. For the avoidance of doubt, the JAIAC and the arbitrator hereby agree that the arbitrator shall not be entitled to any compensation or any other form of losses including any loss of profit, damages, claims or whatsoever other than the payments stipulated in Clause 7 below.

- c. JAIAC and the arbitrator further agree that the payment made by the JAIAC under Clause 7 shall constitute a full and final settlement between the parties.

## **6. Conduct during proceedings**

- 6.1 An arbitrator shall at all times keep the JAIAC informed on the status of the proceedings.
- 6.2 Before the proceedings, an arbitrator shall always check with the JAIAC with regards to the deposits made by each party.
- 6.3 Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all the discussions relative to the proceedings so that he may properly understand the dispute.
- 6.4 An arbitrator shall decide all the issues submitted for determination after careful deliberation and exercise his own impartial judgment and shall not permit outside pressures, fear of criticisms or any form of self-interest to affect his decisions.

## **7. Fees**

- 7.1 For matters conducted under the JAIAC Arbitration Rules, an arbitrator must adopt the JAIAC Scale of Fees and adhere to JAIAC's Guidelines for costs and disbursements. However an arbitrator may adopt a different scale of fees subject to the agreement of parties as provided for in JAIAC Rules.
- 7.2 In the event parties agree to adopt a different scale of fees, an Arbitrator must disclose and explain the basis of his fees and expenses to the parties on or before the first preliminary meeting.

- 7.3 Immediately after the parties have agreed to a different scale of fees, the arbitrator shall notify the JAIAC, in writing, of the agreed fees and expenses.
- 7.4 The arbitral tribunal shall keep the JAIAC informed, in writing, of any changes in the amount of dispute during the proceeding as it affects the scale of fees applicable.
- 7.5 For matters conducted under the JAIAC Arbitration Rules, and notwithstanding any agreement on fees pursuant to the Rules, the arbitral tribunal shall not under any circumstances collect any fees or expenses directly from the parties or their counsels, except with the express agreement of the Secretary General of the JAIAC.

## **8. Confidentiality**

- 8.1 The proceedings shall remain confidential. An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage or advantage for others or to affect adversely the interest of another.
- 8.2 This Code of Conduct is not intended to provide grounds for the setting aside of any award.

## **Fast Track Arbitration Overview**

Arbitration under the auspices of Jamaica International Arbitration Centre Limited (JAIAC) begins with the agreement of two (2) or more parties for the reference to an arbitration proceeding under the JAIAC Arbitration Rules. The JAIAC Arbitration Fast Track Rules offers a comprehensive procedural process upon which parties may agree for the conduct of arbitral proceedings arising out of their commercial relationship.

The JAIAC Fast Track Arbitration Rules cover all aspects of the arbitral process, providing a model arbitration clause, setting out procedural rules regarding the appointment of arbitrators and the conduct of arbitral proceedings, and establishing rules in relation to the form, effect and interpretation of the award.



## **Guide to Fast Track Arbitration Rules**

(In force as from 1 January 2017)

The JAIAC Fast Track Arbitration Rules have been designed for parties who wish to obtain an award in the fastest time possible with minimal costs. The Rules provide that arbitration [with a substantive oral hearing] must be completed within 160 days before a sole arbitrator [unless the parties prefer to have a larger panel]. The Rules also cap the tribunal's fees and recoverable costs to fixed scale. Other features include tighter obligations for disclosure so as to avoid surprises and controlled usage of expert evidence to ensure that the parties and tribunal are focused only on specific issues.

### **2. Where can I find the JAIAC Fast Track Arbitration Rules Model Clause?**

One of the essential requirements for dispute resolution through arbitration is the existence of an arbitration agreement between the parties. An arbitration agreement must be in the form of an arbitration clause in an agreement or in the form of a supplementary agreement. The JAIAC Fast Track Arbitration Rules model clause, which is enforceable internationally, is as follows:

*“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 the JAIAC Fast Track Arbitration Rules.”*

Any party who wants to substitute an existing arbitration clause for one referring the dispute to arbitration under the JAIAC Fast Track Arbitration Rules may adopt the following form of agreement

*“The parties hereby agree that the dispute arising out of the contract dated [insert date of contract] shall be settled by arbitration under the JAIAC Fast Track Arbitration Rules.”*

This form may also be used where a contract does not contain an arbitration clause and parties wish to have an ad hoc submission to arbitration.

### **3. Is there a difference between the JAIAC Fast Track Arbitration Rules and the JAIAC Arbitration Rules?**

Yes, there are differences, including:

#### **Number of Arbitrators**

Unless the parties agree otherwise, an arbitration conducted under the JAIAC Arbitration Rules is heard by a panel of 3 arbitrators whereas arbitration under the JAIAC Fast Track Arbitration Rules will be conducted by a sole arbitrator. [cf. Article 4].

#### **Documents-only Hearing**

Under the JAIAC Fast Track Arbitration Rules, claims which are less than/unlikely to exceed JMD3,000,000.00 (in a domestic arbitration) and USD75,000.00 (in an international arbitration) shall immediately proceed as a documents-only arbitration unless a substantive oral hearing is deemed necessary by the arbitrator upon consultation with the parties.

#### **Time Frames**

The time frames for submission of statements, hearings and the making of awards differ. Arbitration under the JAIAC Fast Track Arbitration Rules must be completed within a maximum of 160 days whereas arbitrations under the JAIAC Arbitration Rules are estimated to take between 365 days and 550 days to be completed.

#### **Costs**

Arbitration under the JAIAC Fast Track Arbitration Rules is more cost effective. Furthermore, the rules have been drafted so as to make the assessment of costs more predictable. The JAIAC Fast Track Arbitration Rules comprises a schedule of Arbitrator's Fees, which arbitrators must have regard for albeit not bound by while fixing fees. Also, the costs of arbitrations under the JAIAC Fast Track Arbitration Rules are capped.

For documents-only hearings, costs must not exceed 30% of the total amount of the claim, and for an arbitration with substantive oral hearing, costs must not exceed 50% of the total amount claimed. For more information on costs and fees [cf. Articles 14 and 19].

## **Evidence**

In view of expediency, the JAIAC Fast Track Arbitration Rules restricts the use of expert evidence or supplementary expert evidence. In order for such evidence to be adduced as evidence, the party wishing to do so must first request for permission or leave from the arbitral tribunal within 14 days after the Statement of Reply or service/exchange of expert reports.

### **4. What type of disputes can be resolved by arbitration under the JAIAC Fast Track Arbitration Rules?**

The JAIAC Fast Track Arbitration Rules may be used for any type of dispute capable of being resolved by arbitration.

### **5. What are the advantages in using the JAIAC Fast Track Arbitration Rules?**

If the arbitration clause does not mention the JAIAC Fast Track Arbitration Rules, the hearings are conducted according to existing arbitration laws and procedure. Incorporating the JAIAC Fast Track Arbitration Rules into your arbitration clause has great benefits. The Rules allow you to consolidate disputes, to avoid compelling arbitration in court, and to receive a quick award with minimal costs. You would also have the opportunity to be awarded legal fees and your share of the Panel's expenses.

## **6. How much will it cost to arbitrate under the JAIAC Fast Track Arbitration Rules?**

The arbitration fee is divided into two categories – the administrative costs and the tribunal's fee. The administrative costs are 20% of the tribunal's fees and cover the JAIAC cost of administering the arbitration. The tribunal's fee are divided into different scales for international and domestic arbitrations. The schedule of fees and administration costs can be found in the schedule to the JAIAC Fast Track Arbitration Rules, which is reproduced as follows:

## Fast Track Arbitration Rules

### Article 1 – Interpretation

Unless the context otherwise requires, words and expressions below shall bear the meanings and/ or definitions ascribed respectively below:

**“the Centre”** means the Jamaica International Arbitration Centre Limited (JAIAC);

**“the Secretary General”** means the Secretary General of the Centre, and in the event, the Secretary General is unable or incapable of acting for any reason whatsoever, refers to any other person who may be authorised by the Secretary General in writing;

**“these Rules”** means the JAIAC Fast Track Arbitration Rules;

**“the Act”** means the Jamaican Arbitration Act, 2017 or any statutory modification to or re-enactment or replacement of the Act;

**“arbitral tribunal”** means either a sole arbitrator or all arbitrators when more than one is appointed;

**“relevant documents”** means all documents relevant to the dispute, whether or not favorable to the party having power, possession or control of them, but does not include documents which are privileged and not therefore legally disclosable;

**“international arbitration”** means an arbitration where:

- a. One of the parties to an arbitration agreement, at the time of the conclusion of that agreement, has its place of business in any sovereign State other than Jamaica;

- b. Any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is situated in any sovereign State other than Jamaica;
- c. The parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one sovereign State;

**“domestic arbitration”** means any arbitration which is not an international arbitration.

- 2. Where the parties to a contract have provided in writing for reference to arbitration under these Rules, then such dispute(s) shall be referred and finally determined in accordance with these Rules. These Rules shall be subject to any such amendments as the Centre may have adapted to take effect on or before the commencement of the arbitration unless the parties have agreed otherwise.

## **Article 2 – Written Notifications or Communications**

- 1. For the purposes of these Rules, notices, statements, submissions or other documents used in arbitration may be delivered personally to the party or delivered by leaving the document at the party’s habitual residence, place of business or mailing address; or, if none of these can be ascertained after making reasonable inquiry, then documents may be delivered by leaving them at the party’s last known residence or place of business.
- 2. If a party is represented by an attorney-at-law or any other authorised agent in respect of the arbitral proceedings, all notices or other documents required to be given or served for the purposes of the arbitral proceedings

together with all decisions, orders and awards made or issued by the arbitral tribunal shall be treated as effectively served if served on that attorney-at-law or authorised agent.

3. The date that a party has had or ought to reasonably have had notice of a document is deemed to be the date that the particular document is delivered to that party. Delivery of documents to the Centre or its officers shall be in accordance with these Rules.
4. Without prejudice to the effectiveness of any other form of written communication, written communication may be by fax, email or any other means of electronic transmission effected to a number, address or site of a party. The transmission is deemed to have been received on the day of transmission.
5. 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, statement, submission or other document 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 non-business days occurring during the running of the period of time are included in calculating the period.

### **Article 3 – Commencement of Arbitration**

1. Arbitration proceedings under these Rules shall be deemed to have commenced when the party initiating the arbitration (the “Claimant”) delivers to the other party (the “Respondent”) a notice in writing stating its intention to commence an arbitration under these Rules (the “Notice of Arbitration”). A copy of the Notice of Arbitration shall be delivered at the same time to the Centre and be marked for the attention of the Secretary General.

2. The Notice of Arbitration shall include:

- a. The names, mailing addresses, telephone and facsimile numbers of the parties and their counsel;
  - b. A brief summary of the matters in respect of which the parties are in dispute;
  - c. Reference to the agreement by which the dispute is to be arbitrated under these Rules;
  - d. The name and professional details of at least 1 individual nominated by the Claimant as candidate for the role of a sole arbitrator or the name and professional details of the Claimant's duly appointed arbitrator where there is prior agreement for a panel of 3 arbitrators;
  - e. A request to the other party to concur with the appointment of a sole arbitrator or to duly appoint an arbitrator whether there is prior agreement for 3 arbitrators;
  - f. A copy of the arbitration agreement; and
  - e. A comprehensive Statement of Case in accordance with Article 7 signed by or on behalf of the Claimant.
3. The copy of the Notice of Arbitration delivered to the Centre shall be accompanied by a cheque drawn in favour of the Centre in such sums as may from time to time be prescribed by the Centre as the non-refundable registration fee for commencing arbitration under these Rules.



## **Article 4 – Appointment of Arbitral Tribunal**

1. Unless the parties have agreed otherwise, any arbitration conducted under these Rules shall be conducted by a sole arbitrator whose appointment shall be agreed in writing by the parties within 7 days of the commencement of arbitration.
2. Where parties have failed to reach an agreement in writing to the appointment of a sole arbitrator within 7 days of the commencement of the arbitration, the Secretary General shall appoint the sole arbitrator, notify the parties of the appointment and provide the parties with the arbitral tribunal's name and mailing address.
3. If the arbitral tribunal is to consist of 3 arbitrators:
  - a. Each party shall appoint 1 arbitrator within 7 days of the commencement of arbitration, or longer provided an extension of time has been applied for and granted by the Secretary General prior to the lapse of the 7 days;
  - b. Where one party has failed to appoint an arbitrator within 7 days of the commencement of the arbitration and have failed to request for an extension of time for such appointment prior to the lapse of the 7 days the Secretary General shall appoint the second arbitrator, notify the parties of the appointment and provide the parties with the second arbitrator's name and mailing address;
  - c. If the two said arbitrators do not appoint a presiding arbitrator within 10 working days of one calling upon the other to do so, the Secretary General shall appoint the presiding arbitrator, notify the parties of the appointment, and provide the parties with the presiding arbitrator's name and mailing address;

- d. A substantive oral hearing shall only proceed after 3 arbitrators have been appointed;
  - e. After the appointment of the presiding arbitrator, decisions, orders or awards shall be made by all or a majority of the arbitrators;
  - f. The view of the presiding arbitrator shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority under Article 4 Rule 3(e) above.
- 4. The request for appointment of an arbitral tribunal shall be accompanied by a cheque drawn in favour of the Centre in such sum as may from time to time be prescribed by the Centre as the appointment fee.
  - 5. Upon the appointment of the arbitral tribunal (whether by parties' agreement or appointment by the Secretary General), the Claimant shall forthwith provide the arbitral tribunal with a copy of the Notice of Arbitration.

## **Article 5 – Independence and Impartiality of the Arbitral Tribunal**

The arbitral tribunal conducting arbitration under these Rules shall be and remain at all times independent and impartial and shall not act as advocate for any party.

## **Article 6 – Law, Procedure and Jurisdiction**

- 1. The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of this dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules, which it considers applicable.
- 2. The seat of arbitration shall be Jamaica. The law of the arbitration under these Rules shall be the Act.

3. An award made under these Rules shall be deemed to be an award made in Jamaica.
4. Unless otherwise agreed, the language of arbitration shall be English.
5. Subject to these Rules, the arbitral tribunal shall have the powers permitted by law and under the Act to ensure the just, expeditious, economical and final determination of the dispute(s) in the reference. In this regard, the arbitral tribunal shall conduct the arbitration in such manner as the arbitral tribunal considers appropriate, save that at all times the arbitral tribunal shall ensure that the parties are treated equally and are given reasonable opportunity to present their case.
6. Without limiting the generality of the foregoing, the arbitral tribunal's powers and jurisdiction to achieve the just, expeditious, economical and final determination of the dispute(s) in the reference shall include the power and jurisdiction to:
  - a. Establish any other procedure not covered by these Rules which is deemed suitable;
  - b. Order any submission or other materials to be delivered in writing or electronically;
  - c. Limit the submission or production of any documents by the parties;
  - d. Order specific disclosure and discovery of limited identified documents or relevant documents which have not been produced in the statement of case, defence or reply, upon application by a party on justifiable grounds; and that if such relevant documents are not disclosed by the other party

within the time so prescribed, draw adverse inferences in its award should it consider that other party to be in default of its disclosure obligations;

- e. Fix deadlines for any procedure including submissions and production of documents and in default of deadlines to accordingly proceed with the arbitration without attaching any weight to any non-compliant submission or production of documents which do not comply with the deadlines;
- f. Apply the arbitral tribunal's specialist knowledge provided that parties are given the opportunity to address any matter relating to the specialist knowledge that the arbitral tribunal wishes to apply to the award;
- g. Restrict the use of expert evidence or supplementary expert evidence unless permission or leave is first obtained and any such terms imposed by the arbitral tribunal complied with. Any request for such permission or leave to adduce expert evidence must be made within 14 days after the delivery of the Statement of Reply. In the case of supplementary expert evidence, any request for such permission must be made by the party wishing to adduce such evidence within 14 days of service/exchange of expert reports, failing which no supplementary witness statement shall be adduced in evidence by that party;
- h. Appoint independent experts to inquire and report on specific matters with the consent of the parties as to the appointment and the costs related thereto, and require the parties to give such expert any relevant information

or to produce, or to provide access to, any relevant documents, goods or property for inspection by the expert;

- i. Order the parties to make any property or thing available for inspection and to carry out physical inspection of any matter or item that is related to the subject matter of the reference to arbitration;
- j. If the parties so agree, add other parties (with their consent) to be joined in the arbitration and make a single final award determining all disputes between them;
- k. Make such directions on the procedure and process for the substantive oral hearings as may be necessary for the expedient determination of the dispute(s) in the reference including but not limited to:
  - i. Directing that any party wishing to adduce in evidence statements of witnesses of fact must give notice of such intention within the prescribed time;
  - ii. The manner in which the time at the hearing is used including the time limited for cross examination or re-examination allocated to each party;
  - iii. Directing that evidence in chief of any witnesses will be limited only to affirmed witness statements and no further examination in chief of any witness is allowed except for corrections to the witness statements and directions for the simultaneous exchange of these witness statements;

- iv. Directing that witness statements in reply can be lodged if parties choose to do so and making directions for the simultaneous exchange of these witness statements;
- v. Directing that unless the party entitled to cross-examine agrees to dispense with it, the maker of any witness statement and/or the party or parties identified in the statements and/or supporting evidence must be made available for cross-examination at the hearing, in default of which, the arbitral tribunal may elect either to proceed with the hearing and place such weight on his statement or evidence as the arbitral tribunal deems just and appropriate; or proceed with the hearing and exclude the statement or evidence altogether;
- vi. Directing that in the absence of any witness statements, the parties' signed Statement of Case, Statement of Defence (and Counterclaim, if any) and Statement of Reply (and Defence to Counterclaim, if applicable) shall serve as the parties' evidence at the hearing;
- vii. Directing the limit or specifying the number of witnesses and/or experts that is to be dealt with in the hearing;
- viii. Directing that any issues to be cross-examined of particular witnesses or experts are irrelevant and not to be raised in the hearing;

- ix. Directing that any other issues cross-examined of particular witnesses or experts apart from those approved by the arbitral tribunal, will be given no weight;
- x. Ordering pre-hearing interrogatories to be answered;
- xi. Conducting the questioning of witnesses or experts himself/herself or making such enquiries as may appear to the arbitral tribunal to be necessary provided that parties are given an opportunity to address any facts and/or law that the arbitral tribunal wishes to apply to the award;
- xii. Requiring two or more witnesses and/or experts to give their evidence together;
- xiii. Directing written submission, if required, to be served and exchanged simultaneously with a limited right for an expeditious written submission in reply;
- xiv. Extending any time limit provided by the Rules up to 7 days, and with the consent of the Director up to 14 days. The Secretary General may in exceptional circumstances, upon consultation with the arbitral tribunal and parties, extend time further.

## **Article 7 – Statement of Case**

Without limiting its comprehensive nature, the “Statement of Case” shall contain the following information:

1. Statement of the facts and sufficient particulars supporting the Claimant’s position in the case and any related claims;
2. Copies of all documents relied upon in the statement of facts and sufficient particulars;
3. Copies of any other documents considered relevant to the Claimant’s case and claims;
4. The contentions of fact and law supporting the Claimant’s position and copies of any particular legal authority that the Claimant intends to rely upon;
5. All items of relief and remedy sought by the Claimant; and
6. All quantifiable items of claim shall be accompanied with the relevant calculations and breakdowns to substantiate the quantum (where applicable).

## **Article 8 – Statement of Defence (and counterclaim, if any)**

1. Within 28 days of the commencement of arbitration, the Respondent shall deliver to the arbitral tribunal and the Claimant a comprehensive “Statement of Defence” to the Claimant’s Statement of Case, signed by or on behalf of the Respondent. Where the Respondent desires to advance a counterclaim against the Claimant, a comprehensive statement of the case and claim relating to the counterclaim signed by or on behalf of the Respondent must be included in the same document as the Statement of Defence and such document shall be entitled “Statement of Defence and Counterclaim”.



2. Without limiting its comprehensive nature, the Statement of Defence (and Counterclaim, if any) shall contain the following information:
  - a. Claimant's case and claims;
  - b. A statement of the facts and sufficient particulars supporting the Respondent's position in defending the case and claim;
  - c. Copies of all documents relied upon in the statement of facts and sufficient particulars;
  - d. Copies of any other documents considered relevant to the Respondent's defence;
  - e. The contentions of fact and law supporting the Respondent's position and copies of any particular legal authority that the Respondent intends to rely upon;
  - f. An identification of agreement or disagreement to any documents produced by the Claimant in the Statement of Case and contentions on the reasons for disagreements; and
  - g. Where a counterclaim is advanced by the Respondent, the same kind of information and documents that the Claimant is obliged to provide under these Rules in relation to the Statement of Case.
3. Within 7 days of receipt of the Respondent's Statement of Defence (and counterclaim, if any), the Claimant shall deliver to the arbitral tribunal and the Respondent a comprehensive "Statement of Reply" to the Respondent's defence signed by or on behalf of the Claimant.

Where the Respondent has advanced a counterclaim against the Claimant, a comprehensive statement of defence to the Respondent's counterclaim signed by or on behalf of the Claimant must be included in the same document as the Statement of Reply and such document shall be entitled "Statement of Reply and Defence to Counterclaim".

4. Without limiting its comprehensive nature, the Statement of Reply (and Defence to Counterclaim, if applicable) shall contain the following information:
  - a. A confirmation or denial of the Respondent's defence;
  - b. A statement of the facts and sufficient particulars supporting the Claimant's position in replying to the Respondent's defence;
  - c. Copies of all documents relied upon in the statement of facts and sufficient particulars;
  - d. Copies of any other documents considered relevant to the Claimant's reply;
  - e. The contentions of fact and law supporting the Claimant's position and copies of any particular legal authority that the Claimant intends to rely upon;
  - f. An identification of agreement or disagreement to any documents produced by the Respondent in the Statement of Defence and contentions on the reasons for disagreements; and
  - g. Where a defence to counterclaim is advanced by the Claimant, the same kind of information and documents that the Respondent is obliged to provide under these Rules in relation to the Statement of Defence.

5. If the Respondent does advance a counterclaim and the Claimant does deliver a Statement of Reply and Defence to Counterclaim, then within 7 days of receipt of the Claimant's Statement of Reply and Defence to Counterclaim, the Respondent shall deliver to the arbitral tribunal and the Claimant a comprehensive Statement of Reply ("Respondent's Reply") containing the same kind of information and documents that the Claimant is obliged to provide under these Rules in relation to the Statement of Reply.
6. If the Respondent does not advance a counterclaim, then within 7 days of receipt of the Claimant's Statement of Reply, the Respondent shall deliver to the arbitral tribunal and the Claimant an identification of agreement or disagreement to any documents produced by the Claimant in the Statement of Reply and contentions on the reasons for disagreements, signed by or on behalf of the Respondent.
7. If there is a Respondent's Reply, then within 7 days of receipt of the Respondent's Reply, the Claimant shall deliver to the arbitral tribunal and the Respondent an identification of agreement or disagreement to any documents produced by the Respondent in the Respondent's Reply and contentions on the reasons for disagreements, signed by or on behalf of the Claimant.

## **Article 9 – Documents-only Arbitration**

1. Where parties agree expressly in writing to a documents-only arbitration, the arbitral tribunal shall, upon receipt of the final document delivered under Article 8 above, proceed to consider the dispute and publish the award in accordance with these Rules.
2. Physical attendance by parties for a substantive oral hearing is not required in a documents-only arbitration unless, in exceptional circumstances, the arbitral tribunal deems it necessary for the resolution of the dispute.

3. Where the aggregate amount of the claim and/or counter claim in dispute is less than USD75,000.00 or is unlikely to exceed USD75,000.00 for an international arbitration; or is less than JMD5,000,000.00 or is unlikely to exceed JMD5,000,000.00 in a domestic arbitration, the arbitration shall proceed as a documents-only arbitration, unless the arbitrator deems it necessary to proceed by way of substantive oral hearing upon consultation with the parties.

## **Article 10 – Case Management Meeting**

1. Where the arbitration is not a documents- only arbitration, the arbitral tribunal shall convene a meeting to be attended by all parties (“Case Management Meeting”) no later than 8 weeks from the date of commencement of the arbitration. Case Management Meetings may be conducted through a meeting in person, by video conference, by telephone or by any other means of communications as agreed by the parties or failing which, as determined by the arbitral tribunal.
2. At the Case Management Meeting, the arbitral tribunal shall enquire into the status of the arbitration and shall consider directions for the further conduct of the arbitration. In addition to the powers and jurisdiction of the arbitral tribunal as stated in these Rules, the arbitral tribunal shall also give:
  - a. Directions for the production and exchange of any statements of case, defence or reply or the compliance of any other preceding procedure in these Rules (if parties have failed to exchange such statements or comply with such procedure within the time

prescribed by these Rules) to be done at such shorter number of days than that prescribed under these Rules for the party that failed to do so in the first instance.

In any event, such time shall be no longer than the periods prescribed under these Rules;

- b. Directions that any substantive oral hearings are to be held at the premises of the Centre unless parties agree otherwise;
- c. Directions as to the procedure and process for the substantive oral hearings as may be necessary for the expedient determination of the dispute(s) in the reference based on the powers and jurisdiction given to the arbitral tribunal under these Rules;
- d. Directions that all or any applications for further directions or orders be delivered to the arbitral tribunal no later than 7 days from the date of the delivery of the Statement of Reply, (if such statement has not already been exchanged in accordance with these Rules), or 14 days from the date of the Case Management Meeting (if such applications have not by such time already been delivered to the arbitral tribunal) and directions that such application(s) must be supported by a statement signed by or on behalf of the party setting out the grounds for the application and all relevant supporting documents. The arbitral tribunal shall then direct accordingly on the procedure for the expeditious determination of such application(s);

- e. Directions that any and all applications for further directions delivered to the arbitral tribunal after the time limit stipulated in Article 10 Rule 2(d) may be refused by the arbitral tribunal on the sole ground that they were not delivered in accordance with the said time limits. The arbitral tribunal may however consider applications for further directions delivered after the time limit stipulated in Article 10 Rule 2(d) if the arbitral tribunal is of the view that the application is necessary for the fair disposal of the arbitration.
3. Where the arbitration is not a documents only arbitration, the arbitral tribunal may if appropriate in all the circumstances, dispense with the Case Management Meeting but shall no later than 8 weeks after commencement of the arbitration, issue such directions as are necessary or expedient under Article 10 Rule 2.

## **Article 11 – Substantive Oral Hearings**

1. Where the arbitration is not a documents-only arbitration, the arbitral tribunal shall direct that the substantive oral hearings be conducted as soon as reasonably possible and in any event to commence not more than 20 days after the conclusion of all the procedures and processes preceding the substantive oral hearings and that the substantive oral hearings be completed no later than 125 days from the commencement of the arbitration. The arbitral tribunal shall also direct that the substantive oral hearings does not exceed a period of 6 working days.
2. The arbitral tribunal may, if so agreed by the parties, direct a shorter period for the commencement of the substantive oral hearings from the conclusion of all the procedures and processes preceding the substantive oral hearings and/or, direct a shorter period for the

completion of the substantive oral hearings from the commencement of the arbitration and/or, direct a shorter period for the substantive oral hearings itself.

3. The parties agree to cooperate and take every opportunity to save time where possible in order to achieve the maximum periods stated in Article 11 Rule 1 above.
4. All parties may, with the agreement of the arbitral tribunal, extend the maximum periods stated in Article 11 Rule 1 above up to a further maximum of 10 days in relation to the commencement of the substantive oral hearings from the conclusion of all the procedures and processes preceding the substantive oral hearings and/or a further maximum of 30 days in relation to the completion of the substantive oral hearings from the commencement of the arbitration. The period for the substantive oral hearings may only be extended by a further maximum of 4 working days with the agreement of the parties and the arbitral tribunal.

## **Article 12 – Award**

1. Due to the overriding interest of an expeditious determination of the dispute(s) in the reference as a whole, the parties agree that they shall not apply for an interim award under these Rules. In addition, the parties further agree that Section 41 of the Act is opted out of the parties' arbitration agreement.
2. The arbitral tribunal may hear the following applications for rulings and shall be empowered to determine the following:
  - a. Applications for permission to amend the aforesaid statements or other documents delivered in the arbitration;
  - b. Applications for specific disclosure of documents and facts;

- c. Such further or other applications for directions as may appear to the arbitral tribunal to be necessary for the fair and expedient resolution of the dispute under arbitration; and
  - d. Without prejudice to the general powers conferred on the arbitral tribunal under Article 6 Rule 5, make orders as to costs in relation to Article 12 Rule 2 (a) to (c) above.
- 3. In considering any applications under this Rule, the arbitral tribunal shall have due regard to ensuring a fair and expeditious determination of the disputes in reference as a whole.
- 4. The award shall state the reasons upon which it is based. The award shall be signed by the arbitral tribunal and shall contain the date and place in which the award was made.
- 5. With regard to a documents-only arbitration, the arbitral tribunal shall publish the final award expeditiously and no later than 90 days from the commencement of the arbitration.
- 6. With regard to an arbitration with a substantive oral hearing, the arbitral tribunal shall publish the final award expeditiously and no later than 160 days from the commencement of the arbitration subject to such equivalent extensions as may have been agreed by the parties and the arbitral tribunal under Article 11 Rule 4.

### **Article 13 – Extension of Time for the Award**

If it appears to the arbitral tribunal that the final award may not be published within the time limits provided in these Rules, the arbitral tribunal shall no later than 14 days before the lapse of the said time limit notify the Director and the parties in writing explaining and justifying the reasons for the delay,



state the revised estimated date of publication of the award and seek the Director's prior consent for such an extension of time for the publication of the award.

## **Article 14 – Costs and Expenses of the Arbitration**

The term “costs” includes only:

- a. The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with Article 19;
  - b. The reasonable travel and other expenses incurred by the arbitrators;
  - c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - d. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - e. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable.
2. Costs shall be awarded on a summary and commercial basis and in such manner and amount as the arbitral tribunal shall in its absolute discretion consider fair, reasonable and proportional to the matters in dispute. The arbitral tribunal shall specify the amount of such costs. There shall be no taxation or review by the Supreme Court or any other court of such costs, fees and expenses.

3. The parties' recoverable costs are capped so that neither party shall be entitled to recover more than a sum equivalent to 30% of the total amount of claim and counterclaim (if any) in a documents-only arbitration and 50% in an arbitration with substantive oral hearing. For avoidance of doubt, these percentages are maximum figures and the arbitral tribunal may however at any time, and in its absolute discretion, cap the parties' costs to some lesser percentage.
4. If declaratory or other non-monetary relief is sought the arbitral tribunal will, following completion of opening submissions and in its sole discretion, decide what overall cap on costs is to apply.
5. To enable the arbitral tribunal to assess costs, each party will provide a breakdown of those costs as soon as the arbitral tribunal is in a position to proceed to its award.

#### **Article 15 – Waiver of Objections and Time for Challenge**

1. For the purposes of Section 7 of the Act, the time limit for any objection is 7 days.
2. For the purposes of Section 15(1) of the Act, the time limit for any challenge in accordance with the said provision is 7 days.

#### **Article 16 – Exclusions**

Parties agree not to hold the Centre, its officers, employees, agents and committees responsible or liable for anything done or omitted to be done in the discharge or purported discharge of any power, function or duty under these Rules or in connection with any arbitral tribunal or arbitration under these Rules.

## **Article 17 – Ex- parte Hearings**

If without sufficient cause a party fails to attend or be represented at any of the oral hearings of which due notice was given or where a party fails after due notice to submit written evidence or lodge written submissions, the arbitral tribunal may continue the proceedings in the absence of that party or as the case may be, without any written evidence or written submission on his behalf, and deliver an award on the basis of the evidence before the arbitral tribunal.

## **Article 18 – Confidentiality**

1. The parties and the arbitral tribunal shall at all times treat all matters relating to the arbitration and the award as confidential.

A party or any arbitrator shall not, without the prior written consent of the other party or the parties, as the case may be, disclose to a third party any such matter except:

2. For the purpose of making an application to any competent court;
  - a. For the purpose of making an application to the courts of any State to enforce the award;
  - b. Pursuant to the order of a court of competent jurisdiction;
  - c. In compliance with the provisions of the laws of any State which is binding on the party making the disclosure; or
  - d. In compliance with the request or requirement of any regulatory body or other authority which, if not binding nonetheless would be observed customarily by the party making the disclosure.

## **Article 19 – Arbitral Tribunal's Fees**

1. The Secretary General of the Centre shall fix the fees of the arbitral tribunal in accordance with the Schedule of Fees. As a general rule, the USD scale is intended to apply to international arbitrations whereas the JMD scale is intended to apply to domestic arbitrations.
2. The fees of the arbitral tribunal are inclusive of the Centre's administrative costs. The Centre's administrative costs shall be (20%) of the arbitral tribunal's fees.
3. The Centre's administrative costs shall be deducted from (and not added to) the arbitral tribunal's fees.
4. The fees of the arbitral tribunal and the Centre's administrative costs above may, in exceptional or unusual or unforeseen circumstances, be adjusted from time to time at the discretion of the Secretary General of the Centre.
5. For the purpose of calculating the amount in dispute, the value of any counterclaim and/or set-off will be added to the amount of the claim.
6. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim shall be determined by the Secretary General of the Centre in consultation with the arbitral tribunal and the parties for the purpose of computing the arbitrator's fees and the administrative costs.

7. Pursuant to Article 19 Rule 1 and 2 above, and from time to time thereafter, the Secretary General of the Centre shall notify and require the parties to each provide a deposit or further supplementary deposits towards the applicable fees and administrative costs.
8. The parties shall within 14 days of receipt of such requests pay such deposits directly to the Centre, providing that at no time shall the Centre request deposits which collectively surpass the fees applicable.

## **Article 20 – Deposits and Payment**

1. The Secretary General may apply the deposits towards the fees and expenses of the arbitral tribunal and the Centre's administrative costs in such manner and at such times as the Secretary General thinks fit. Any interest which may accrue on such deposits shall be retained by the Centre.
2. If any party fails or refuses to pay its portion of the deposit or supplementary deposit as requested, the Centre shall so inform the parties in order that any other party may make the requested payment. If such a payment is then not made by the other party within 14 days of being informed by the Centre (and if no payment has been forthcoming from the defaulting party), the arbitral tribunal may at his exclusive discretion either:
  - a. Proceed with the arbitration and the hearings and exercise a lien over the award until all payments of any outstanding deposit or supplementary deposit has been paid by the defaulting party or by any other party; or
  - b. Suspend or terminate the arbitration proceedings or any part thereof until and unless all deposits requested has been paid by the defaulting party or by any other party.

3. Upon any award being published, the arbitral tribunal shall submit 5 sealed copies of the award with the Centre and notify the parties that either party may take up the award upon full settlement of the cost of the award to the Centre.
4. In the event of a mutual settlement of issues or disputes between the parties before the award is made, the parties shall be jointly and severally responsible to pay to the arbitral tribunal any outstanding sums towards the applicable fees including if any deposits paid prior to the mutual settlement, if any, are found to be insufficient to cover the applicable fees. This rule applies irrespective of whether or not a consent award is required to be made or delivered.
5. If the whole arbitration or any issue is settled at the pre-hearing stage reducing the quantum claimed, then the fee applicable is to be recalculated on the new quantum and 40% of the difference between the new applicable fees and the previous applicable fees becomes payable within 14 days. If the settlement occurs during the hearing or after the hearing but before the award, 80% of the applicable fee is payable or if an issue is settled reducing the quantum claimed then 80% of the difference between the new applicable fees and the previous applicable fees becomes payable within 14 days.
6. The parties shall remain jointly and severally liable to the Centre and the arbitral tribunal for payment of all fees and expenses until they have been paid in full even if the arbitration is abandoned, suspended or concluded, by agreement or otherwise before the final award is made.

## **Article 21 – Correction of the Award**

Within 14 days of receipt of an award, any party upon written notice to the others may request the arbitral tribunal to correct any errors of computation, any clerical or typographical errors, slips or omissions in the award and the arbitral tribunal may within 14 days of receipt of the request make such corrections to the award. This does not prevent the arbitral tribunal of his or her own volition from making such limited corrections to the award within 21 days of the delivery of the award to the parties (or any party as the case may be). All corrections to the award shall be in writing and shall form part of the award.

## SCHEDULE

### A. Fees and Costs

#### INTERNATIONAL ARBITRATION FEES AND COSTS

Amount in Dispute (USD)	Administrative Costs (USD)
Up to 50,000	1500
From 50,001 to 100,000	1,500 + 1.15% excess over 50,000
From 100,001 to 500,000	2,075 + 0.65% excess over 100,000
From 500,001 to 1,000,000	4,675 + 0.5% excess over 500,000
From 1,000,001 to 2,000,000	7,175 + 0.35% excess over 1,000,000
From 2,000,001 to 5,000,000	10,675 + 0.13% excess over 2,000,000
From 5,000,001 to 10,000,000	14,575 + 0.08% excess over 5,000,000
From 10,000,001 to 50,000,000	18,575 + 0.05% excess over 10,000,000
From 50,000,001 to 80,000,000	18,575 + 0.05% excess over 10,000,000
From 80,000,001 to 100,000,000	
From 100,000,001 to 500,000,000	
Above 500,000,001	

Amount in Dispute (USD)	Arbitrator's Fees (USD)
Up to 50,000	3,000
From 50,001 to 100,000	3,000 + 7.5% excess over 50,000
From 100,001 to 500,000	6,750 + 3.5% excess over 100,000
From 500,001 to 1,000,000	20,750 + 2.75% excess over 500,000
From 1,000,001 to 2,000,000	34,500 + 1.25% excess over 1,000,000
From 2,000,001 to 5,000,000	47,000 + 0.55% excess over 2,000,000
From 5,000,001 to 10,000,000	63,500 + 0.32% excess over 5,000,000
From 10,000,001 to 50,000,000	79,500 + 0.16% excess over 10,000,000
From 50,000,001 to 80,000,000	143,500 + 0.07% excess over 50,000,000
From 80,000,001 to 100,000,000	164,500 + 0.05% excess over 80,000,000
From 100,000,001 to 500,000,000	174,500 + 0.03% excess over 100,000,000
Above 500,000,001	294,500 + 0.02% excess over 500,000,000 up to a maximum of 2,000,000



## DOMESTIC ARBITRATION FEES AND COSTS

Amount in Dispute (JMD)	Arbitrator's Fees (JMD)
Up to 2,000,000	150,000
From 2,000,001 to 5,000,000	150,000 + 10% of excess over 2,000,000
From 5,000,001 to 10,000,000	450,000 + 12.5% of excess over 5,000,000
From 10,000,001 to 20,000,000	1,075,000 + 15% of excess over 10,000,000
From 20,000,001 to 50,000,000	2,575,000 + 17.25% of excess over 20,000,000
From 50,000,001 to 75,000,000	7,750,000 + 12% of excess over 50,000,000
From 75,000,001 to 120,000,000	10,750,500 + 8.75% of excess over 75,000,000
From 120,000,001 to 150,000,000	14,688,000 + 5.25% of excess over 120,000,000
From 150,000,001 to 240,000,000	16,263,000 + 3.45% of excess over 150,000,000
From 240,000,001 to 300,000,000	19,368,000 + 2.15% of excess over 240,000,000
From 300,000,001 to 1,500,000,000	20,658,000 + 0.75% of excess over 300,000,000
Above 1,500,000,000	29,658,000 + 0.05% of excess over 1,500,000,000 up to a maximum of 50,000,000

Amount in Dispute (JMD)	Administrative Costs (JMD)
Up to 2,000,000	50,000
From 2,000,001 to 5,000,000	50,000 + 3.5% excess over 2,000,000
From 5,000,001 to 10,000,000	155,000 + 2.25% excess over 5,000,000
From 10,000,001 to 20,000,000	492,500 + 1.75% excess over 20,000,000
From 20,000,001 to 50,000,000	1,017,500 + 1.25% excess over 50,000,000
From 50,000,001 to 75,000,000	1,330,000 + 0.75% excess over 75,000,000
From 75,000,001 to 120,000,000	1,667,000 + 0.35% excess over 120,000,000
From 120,000,001 to 150,000,000	1,772,000 + 0.15% excess over 150,000,000
From 150,000,001 to 240,000,000	1,907,000 (maximum)
From 240,000,001 to 300,000,000	
From 300,000,001 to 1,500,000,000	
Above 1,500,000,000	

## Emergency Interim Relief Costs and Fees

The following fees shall be payable upon making an application under Rule 7 for emergency interim relief:

### International Arbitration

Administration Costs for Emergency Interim Relief Applications (non-refundable):	USD1,500.00
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Emergency Arbitrator's Fees:	USD7,000.00
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### Domestic Arbitration

Administration Costs for Emergency Interim Relief Applications (non-refundable):	JMD150,000.00
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Emergency Arbitrator's Fees:	JMD750,000.00
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## **Notes on Fees**

### **Registration Fees**

1. The registration fee as specified in Rule 2(1) (c), is non-refundable and does not constitute part of JAIAC's administrative costs.
2. The registration fee shall be payable by the claimant in full and shall not be subjected to any deductions.

### **Arbitral Tribunal Fees**

1. The fees payable to the arbitrator do not include any possible taxes such as service tax, withholding tax or other taxes or charges applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however the recovery of any such taxes or charges is a matter solely between the arbitrator and the parties.
2. Arbitrator's expenses:
  - a. An arbitrator shall be entitled to claim for reasonable out-of-pocket expenses relating to reasonable travel, living and other miscellaneous expenses whilst attending to the arbitration proceedings.
  - b. The arbitral tribunal's reasonable out- of-pocket expenses necessarily incurred shall be borne by the parties and reimbursed at costs.
  - c. The expenses will be reimbursed upon submission and verification by JAIAC of the supporting invoices and receipts in original.
  - d. An arbitrator who is required to travel outside his place of residence will be reimbursed with business class airfare,

subject to the submission of invoice or receipt in original to JAIAC for verification.

- e. In addition to the out-of-pocket expenses, a per diem of USD400.00 shall be paid to an arbitrator who is required to travel outside his place of residence, whenever overnight accommodation is required. Where no overnight accommodation is required, a per diem of USD100.00 shall be paid.
  - f. The expenses covered by the per diem above shall include the following items which are not claimable as out-of-pocket expenses:
    - i. Hotel accommodation;
    - ii. Meals/beverages;
    - iii. Laundry/dry cleaning/ironing;
    - iv. City transportation (excluding airport transfers);
    - v. Communication costs (telephone, faxes, internet usage etc.); and
    - vi. Tips.
3. Any disbursement towards the arbitrator's out-of-pocket and per diem expenses shall be additional to the arbitrator's fees and do not form part of the advance preliminary deposits. Parties shall bear these costs separately in equal shares upon request by the Secretary General of the JAIAC.
4. Payment of fees to arbitrator:
- a. The arbitrator's fees shall only be payable upon the delivery of the award to the Secretary General in accordance with Rule 13.

- b. The arbitrator shall not be entitled to any interim fees.
- c. Where the arbitral tribunal constitutes more than one arbitrator, the chairman of the arbitral tribunal shall receive 40% of the total arbitrator's fee and the co-arbitrators shall receive the remaining 60% in equal shares.
- d. Where an arbitration matter is settled or disposed of before the commencement of hearing, the costs of the arbitration shall be determined by the Secretary General.

### **JAIAC Administrative Costs**

- 1. The JAIAC administrative costs shall be calculated in accordance with the provisions made in the Schedule.
- 2. The JAIAC administrative costs shall be payable by the parties in equal shares and shall form a part of the advance preliminary deposit.
- 3. The JAIAC administrative costs are not inclusive of other services such as rental of facilities, refreshments, secretarial assistance, transcription services, videoconferencing and interpretation services which shall be chargeable on the requesting party separately.

### **Advance Preliminary Deposit**

- 1. Advance preliminary deposit and/or additional deposits shall include the following:
  - a. Fees of the arbitral tribunal [for a panel of more than one arbitrator, the total arbitrator's fee shall be derived by multiplying the amount of an arbitrator's fees with the number of the arbitrators].
  - b. JAIAC administrative costs (as per Schedule of Fees).

- c. Bank charges amounting to JMD10,000.00 for domestic arbitrations or USD150.00 for international arbitrations.
- 2. The advance preliminary deposit and additional deposits, if any, shall be payable by the parties in equal shares pursuant to Rule 14.

### **Emergency Arbitrator**

- 1. A party in need of emergency interim relief may, concurrent with or following the filing of a Commencement Request pursuant to Rule 2, but prior to the constitution of the arbitral tribunal, make an application for emergency interim measures.
- 2. The application for emergency interim measures shall be made in writing and shall be sent simultaneously to the Secretary General and all other parties to the arbitration.
- 3. The application for emergency interim relief shall include:
  - a. name and contact details of the applicant;
  - b. a copy of the relevant agreements, in particular of any written arbitration clause;
  - c. a brief description of the legal and factual basis supporting the application;
  - d. a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify the other parties; and
  - e. the JAIAC administrative fee pursuant to this Schedule.
- 4. If the Secretary General grants the application, the Secretary General shall seek to appoint an emergency arbitrator within 2 days after the JAIAC has received the completed application pursuant to paragraph 3 of this Schedule.

5. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to the Secretary General any circumstance that may give rise to justifiable doubts as to his impartiality or independence.
6. An emergency arbitrator may not act as an arbitrator in any future arbitration relating to the dispute, unless agreed by the parties.
7. Once the emergency arbitrator has been appointed, the JAIAC shall so notify the parties. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and JAIAC.
8. In the event there is any challenge to the appointment of the emergency arbitrator, it must be made within one business day of the communication by the Secretary General to the parties of the appointment of the emergency arbitrator or the circumstances disclosed. Rule 5 shall apply to the emergency arbitrator, except that the time limits set out in the Rules 5(3) and 5(6) are reduced to one business day.
9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency interim measures proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant Rule 7, the seat of the emergency interim measures proceedings shall be Kingston, Jamaica.
10. The emergency arbitrator shall, as soon as possible but in any event within 2 days of appointment, establish a schedule for consideration of the application for emergency interim relief. Such schedule shall provide a reasonable opportunity to all parties to be heard but may provide for proceedings by telephone conference or on written submissions

as alternatives to a formal hearing. The emergency arbitrator shall have the powers vested in the arbitral tribunal pursuant to these Rules, including the authority to rule on his own jurisdiction, and shall resolve any disputes over the application of this Schedule. The emergency arbitrator shall have the power to order or award any interim relief that he deems necessary.

11. The emergency arbitrator shall give reasons for his decision in writing.
12. Any order or award of the emergency arbitrator shall be made within 15 days from the date of appointment notification to parties and this period of time may be extended by agreement of the parties or, in appropriate circumstances, by the Secretary General.
13. The emergency arbitrator shall deliver sufficient copies of the order or award to the Secretary General.
14. The JAIAC shall notify the parties of its receipt of the order or award from the emergency arbitrator. The order or award shall be deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by registered post.
15. Upon the constitution of the arbitral tribunal:
  - a. the emergency arbitrator shall have no further power to act;
  - b. the arbitral tribunal may reconsider, modify or vacate the interim award or order of emergency interim relief issued by the emergency arbitrator; and
  - c. the arbitral tribunal is not bound by the reasons given by the emergency arbitrator.



16. Any order or award issued by the emergency arbitrator shall cease to be binding: if the arbitral tribunal is not constituted within 90 days of such order or award; when the arbitral tribunal makes a final award; or if the claim is withdrawn.
17. Any interim award or order of emergency interim measures may be conditional on provision of appropriate security by the party seeking such relief.
18. An order or award pursuant to this Schedule shall be binding on the parties when rendered. By agreeing to arbitration under these Rules, the parties undertake to comply with such an order or award without delay.
19. The costs associated with any application pursuant to this Schedule shall initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine the final apportionment of such costs.

## **B. Model Fast Track Arbitration Clause**

*“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 JAIAC Fast Track Arbitration Rules.”*

Recommended additions:

The language to be used in the arbitral proceedings shall be [...]

This contract shall be governed by the law of [...]

Before referring the dispute to arbitration, the parties shall seek an amicable settlement of that dispute by mediation in accordance with the JAIAC Mediation Rules, as in force on the date of the commencement of the mediation.

## **C. Model Submission Agreement**

Parties wishing to substitute an existing arbitration clause for one referring the dispute to arbitration under the JAIAC Arbitration Rules may adopt the following form of agreement:

*“The parties hereby agree that the dispute arising out of the contract dated \_\_\_\_\_ shall be settled by arbitration under the JAIAC Fast Track Arbitration Rules.”*

This form may also be used where a contract does not contain an arbitration clause and the parties wish to have an ad hoc submission to Fast Track arbitration.

## **D. Model Statements of Impartiality, Independence and Availability**

### ***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 the adopted article 11 of the UNCITRAL Arbitration Rules of (a) my past and present professional, business and other relationships with the parties, and (b) other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. Furthermore, 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.

### ***Statement of availability***

I confirm, on the basis of the information now 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.

# MEDIATION

Rules and Materials



## Foreword

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### BY THE HONOURABLE MINISTER DELROY CHUCK, QC, MP

It is with pleasure that I write this foreword in endorsement of the efforts by the Jamaica International Arbitration Centre Limited (JAIAC) to publish these Rules, and I also take this opportunity to urge my fellow countrymen to come on board; *“Discourage litigation. Persuade your neighbours to compromise whenever you can. Point out to them how the nominal winner is often the real loser – in fees, and expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough”* - Abraham Lincoln.

The use of mediation to settle disputes has been a part of our local jurisprudence for several decades. Mediation has then been one of the most ubiquitous ADR mechanisms, and it has had a significant impact on how disputes are managed and resolved, primarily because of its flexibility. Mediation has the capacity for broad application, and has been used to resolve both criminal and civil disputes. Under the Criminal Justice Reform Act, 1978, a judge can order that a defendant and a victim go to mediation, where certain crimes have been committed. For civil matters, under Part 74 of the Civil Procedure Rules, there are provisions for automatic referral to mediation.

While these, and other significant mediation steps have been taken, there remained a significant lacuna to be filled, in that, before now there were no localized institutional rules for the conduct of mediation. The effect of this lacuna has included that, save for the rules established for court

connected mediation, no rules existed that were specifically devised to deal with situations where the dispute was not referred by the court. The Jamaica International Arbitration Centre Limited (JAIAC) is now assisting in narrowing this breach and has implemented a well-considered set of rules that were crafted in Jamaica for application in domestic as well as international mediation proceedings. These rules are not a replacement for or competition to the Part 74 of the Civil Procedure Rules. They will instead, complement the CPR and add to the body of formal rules that govern mediation, despite how the parties come to mediation.

The Jamaican Government, through the Ministry of Justice, under my leadership as Minister, has made it clear that there needs to be greater reliance on mediation for the resolution of disputes. It must become deeply entrenched in our culture. The Government's commitment to facilitating this shift can be observed in the message being promoted by the Ministry of Justice that persons should "Mediate rather than litigate", and further solidified when Jamaica became one of 46 countries that signed the Singapore Convention on Mediation, when it opened for signing in Singapore on 7 August 2019.

This publication of the JAIAC Mediation Rules and other materials must be commended. It is nothing short of an enormous undertaking that culminated in the compilation of a comprehensive set of rules, specifically relevant to this region. These rules can now be adopted in the conduct of both domestic and international mediation in Jamaica or wherever else they may be called into aid. The publication has very usefully also included the Code of Conduct for Mediators and Guide to the Mediation Rules of the JAIAC.

I am keen to see settlement of disputes without violence, unnecessary adjudicative action and unnecessary delays. Furthermore, it is my view that the use of mediation will soon become a leading method for the settlement of domestic and international disputes. We must embrace the view that, *“The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.”* – Sandra Day O’Connor.

The Ministry is in lock step with this effort of the JAIAC and as Minister, I fully endorse the initiative, anticipating that this publication will be of great value to practitioners, end-users of mediation, policy-makers, academics and students in, as well as outside of Jamaica and the broader Caribbean region. I here also confirm that I am committed to supporting the broadest possible application of mediation in Jamaica and at the global level.



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**Delroy Chuck, QC, MP**

Minister of Justice, Jamaica

October 2019

# Message

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**BY PROF TREVOR MUNROE, CD, DPHIL (OXON)**

I am pleased to endorse this very timely booklet on mediation, and commend the Jamaica International Arbitration Centre (JAIAC) for its publication.

In promoting its mandate of advancing good governance in Jamaica, the National Integrity Action (NIA) has since 2012 partnered with projects and programmes of the Ministry of Justice its Departments and Agencies. Our objective has been, and remains, to build capacity in our Justice system and to strengthen the effectiveness of its institutions and processes, not least among them competencies in mediation and arbitration.

In fact, in April 2019 Minister Chuck and I signed a Memorandum of Understanding to promote Restorative Justice Training, training for Justices of the Peace with content centering on alternative dispute resolution mechanisms, seminars for Judges, Prosecutors, Police Officers, Court Staff and as well Child Diversion Sensitization.

Strengthening Jamaica's capacity for alternative dispute resolution and, with that, mediation is a critical element of this programme. The rules in this booklet are specifically designed "to promote mediation as a viable commercial option for parties in the Caribbean region and abroad".



As such, their widespread understanding and application will undoubtedly assist in dealing with a perennial challenge facing Jamaica's Justice system, namely, the considerable backlog in cases before the courts. This backlog delays and, sometimes denies, the timely dispensation of justice thereby contributing to declining trust in this coequal arm of the state. The more widespread utilisation of mediation shall undoubtedly arrest this worrisome decline in confidence. As one wise sage put it "an ounce of mediation is worth a pound of arbitration and a ton of litigation!".

More generally, I hope that those who shall learn and practice these rules will be moved to impart their spirit more generally amongst the wider citizenry. Too often, too many of our people seek to resolve disputes, not even in the courts, but by harsh words, physical confrontation with the gun or the knife. This then leads to a spiral of reprisals. Through mediation and other forms of alternative dispute resolution let us apply the adage, in a society too wracked by violence, "peace cannot be kept by force; it can only be achieved by understanding" (Albert Einstein). The NIA is honoured to be among the sponsors of this important publication in print, and we encourage its widespread use.



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**Trevor Munroe, CD, DPhil (Oxon)**

Executive Director

National Integrity Action

October 2019

# **CODE OF CONDUCT FOR MEDIATORS**

## **1. General**

For the purpose of this Code of Conduct, 'JAIAC Rules' means the JAIAC Mediation Rules.

## **2. Appointment**

When approached with an appointment, a mediator shall conduct reasonable enquiries with regard to potential conflicts of interest that may arise from his appointment for that particular matter that may affect impartiality and independence. The International Bar Association (IBA) Guidelines on Conflicts of Interest will be a point of reference in determining the disclosure requirement and whether a mediator is conflicted.

A mediator shall only accept an appointment if he is fully satisfied that he is independent of the parties at the time of the appointment, and able to remain so until a settlement agreement has been reached, able to discharge his duties without bias, has adequate knowledge of the language of the proceedings, has adequate experience and ability for the case at hand, and is able to give to the proceedings the time and attention which parties are reasonably entitled to expect.

## **3. Disclosure**

A prospective mediator shall disclose to the JAIAC, the parties or co-panellists (if any) of all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence as soon as the information becomes available.

The International Bar Association (IBA) Guidelines on Conflicts of Interest will be a point of reference in determining the disclosure requirement and whether a mediator is conflicted.

Before accepting an appointment, a prospective mediator must disclose:

Any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any representative of a party;

The extent of any prior knowledge he may have of the dispute.

Following such disclosure, the Secretary General shall reassess the suitability of the mediator for the matter at hand and retains the discretion to appoint a different mediator.

This duty of disclosure shall continue throughout the mediation with regard to new facts and circumstances.

Failure to disclose may be a basis for removal as a JAIAC Panellist even if the non-disclosed facts or circumstances do not justify removal or disqualification.

#### **4. Communications**

Before accepting an appointment, a mediator may only enquire as to the general nature of the dispute, the names of the parties, the amount in dispute and the expected time period required for the proceeding.

No mediator shall confer with any of the parties or their counsel until after the Secretary General gives notice of the appointment of the mediator.

Any correspondence and communication between the mediator and parties shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute and the JAIAC, unless the parties agree otherwise.

## **5. Conduct during proceedings**

A mediator shall at all times keep the JAIAC informed on the status of the proceedings.

Before proceeding, a mediator shall always confer with the JAIAC with regard to the deposits made by each party.

Once the mediation proceedings commence, the mediator shall acquaint himself with all the facts and arguments presented and all the discussions relative to the proceedings so that he may properly understand the dispute.

A mediator shall decide all the issues submitted for determination after careful deliberation and the exercise of his own impartial judgment and shall not permit outside pressure, fear of criticism or any form of self-interest to affect his decisions.

## **6. Fees**

For matters conducted under the JAIAC Mediation Rules, a mediator must adopt the JAIAC Scale of Fees and adhere to JAIAC's Guidelines for costs and disbursements. However, a mediator may adopt a different scale of fees subject to the agreement of parties as provided for in the JAIAC Mediation Rules.

In the event parties agree to adopt a different scale of fees, a mediator must disclose and explain the basis of his fees and expenses to the parties at or before the first mediation session.

Immediately after the first mediation session, the mediator shall notify the JAIAC, in writing, of the agreed fees and expenses.

The mediator shall keep the JAIAC informed, in writing, of any changes in the amount in dispute during the proceeding as it affects the scale of fees applicable.

## **7. Confidentiality**

The proceedings shall remain confidential. A mediator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage or advantage for others or to affect adversely the interest of another.

This Code of Conduct is not intended to provide grounds for the setting aside of any settlement agreement.

## **MEDIATION OVERVIEW**

The JAIAC Mediation Rules are a set of procedural rules covering all aspects of the mediation process in relation to domestic as well as international disputes. The aim of the JAIAC is then to promote mediation as a viable commercial option for parties in the Caribbean region and abroad, as interest-based mediated negotiations can result in settlements that are more satisfactory to all parties than simple compromise decisions. The streamlined rules of the JAIAC ensures that the mediation process addresses the interests of all parties, which in turn preserves the working relationship of the parties and ensures that those who negotiate their own settlements have more control over the outcome of their dispute.

## **GUIDE TO MEDIATION RULES**

### **1. What are the JAIAC Mediation Rules?**

The JAIAC Mediation Rules are a set of procedural rules covering all aspects of the Mediation process to help parties resolve their domestic or international disputes.

### **2. Where can I find the JAIAC Mediation Rules model clause?**

Parties who wish to resort to the JAIAC Mediation Rules may incorporate the JAIAC model clause in their agreements. These Model Clauses can be found in the Schedule to the Rules.

### **3. What do I do if I do not have a model mediation clause in my agreement?**

These Rules may also apply where the parties are agreeable that the dispute must be resolved via mediation according to the JAIAC Mediation Rules as a facilitative way of achieving an agreed outcome.

### **4. What type of disputes can be resolved by mediation under the JAIAC Mediation Rules?**

The majority of disputes arise out of construction, commodities, insurance, landlord and tenants, distribution agreement or joint research and development (R&D) contracts or any other kind of commercial disputes.

### **5. What are the advantages of the JAIAC Mediation Rules?**

The JAIAC Mediation Rules are flexible rules with provisions sensitive to the need for the protection of confidentiality. The JAIAC provides administrative assistance to the mediator and the parties by making available facilities, through the appointment of mediators, by providing reasonable fixed schedule of fees and by providing a balance account of the fees and costs applied to the proceedings.

## **6. How do I begin a matter under the JAIAC Mediation Rules?**

A party initiating mediation proceedings shall be required to submit a written request to the JAIAC providing the information as required under Rule 3 of the Mediation Rules, pay a non-refundable registration fee of USD50.00 for international Mediations or JMD5,000.00 for domestic mediations.

## **7. When is the mediation deemed to have commenced under the JAIAC Mediation Rules?**

Mediation under the auspices of the JAIAC shall be deemed to have commenced when JAIAC receives written notice of the other party's/parties' acceptance of the Request.

## **8. How much will it cost to mediate under the JAIAC Mediation Rules?**

The JAIAC Schedule of Fees will be applicable to the mediation unless the mediator and the parties agree otherwise. The cost to mediate would include payment of a non-refundable registration fee by the party initiating the mediation, amounting to USD50.00 for an international mediation and JMD5,000.00 for a domestic mediation. The mediator's fees are calculated based on the amount of days required for the mediation as well as the hourly rate for the review of documents and related works. The JAIAC administrative costs are fixed at USD200.00 for international mediations and JMD15,000.00 for domestic mediations.



## **9. How are mediators appointed under the JAIAC Mediation Rules?**

The parties are free to agree upon a proposed mediator. If, within 30 days of the Request for mediation under Rule 4, all parties have not agreed upon a proposed mediator willing to serve and not disqualified under Rule 10, then the Secretary General of JAIAC shall appoint approved the appointment made by the Secretary General of JAIAC.

## **10. Can an appointed mediator be disqualified under the Rules?**

Yes. If any party objects to the service of the mediator, the mediator will be disqualified.

## **11. What happens if parties fail to pay the required fees, costs and expenses?**

Payment of fees, costs and expenses are regulated by Rule 40. If parties fail to pay, the Secretary General of JAIAC shall so inform the parties in order that one or another of them may make the required payment. If any such payment is not made, the mediator, after consultation with the Secretary General of JAIAC, may order the suspension or termination of the mediation.

## **12. Are Mediation proceedings confidential in nature?**

Yes. mediation under the JAIAC Mediation Rules is private and confidential in nature as provided under Rules 19-21. The mediator, the parties, the participants and JAIAC shall keep confidential all matters relating to the mediation proceedings unless disclosure is compelled by law or if it is necessary for purposes of implementation and enforcement or it is with the consent of the parties to the mediation.

**13. Are parties restricted to appointing mediators from the JAIAC's Panel of Mediators or when mediating under the JAIAC Mediation Rules?**

No. There are no restrictions imposed and parties are free to appoint mediators of their choice.

**14. How long would the entire proceedings take?**

Under Rule 28(d), the mediation shall be completed within 3 months from the date of the Request for Mediation under Rule 4, unless the parties have agreed otherwise.

## **JAIAC MEDIATION RULES**

(In force as from 1 January 2017)

### **Article 1 - Application of the Rules**

1. These rules apply to any mediation of any present or future dispute where the parties have agreed that the JAIAC Mediation Rules (“the Rules”) will apply.
2. Where any of the Rules is in conflict with the provision of law from which the parties cannot derogate, that provision prevails.

### **Article 2 - Commencement of Mediation Proceedings**

3. Any party wishing to commence mediation proceedings pursuant to the Rules shall give to JAIAC a written Request for Mediation which shall contain the following:
  - a. the names, addresses (including e-mail addresses), telephone numbers of the parties and any legal or other representatives involved;
  - b. a reference to any mediation clause or a copy of the separate mediation agreement, if any;
  - c. a reference to the contract (if any) or other legal relationship (if any) out of or in relation to which the dispute arises;
  - d. a brief explanation of the nature of dispute, the amount involved, if any, and any specific relief or outcome sought by any party; and
  - e. the Registration Fee set out in accordance with the Schedule of Fees annexed hereto (“Registration Fee”).
4. Upon receipt of a written Request for Mediation under Rule 3, JAIAC shall send a copy of the Request for Mediation to the other party/parties named.

5. The mediation process shall be deemed to have commenced when JAIAC receives written notice of the other party's/parties' acceptance of the Request.
6. If the other party/parties reject(s) the Request or if the Secretary General does not receive a reply within 30 days from the date of written notice of the Request under Rule 4, the Secretary General may elect to treat this as a rejection of the Request and inform the party/parties initiating the mediation accordingly.

### **Article 3 - Appointment of the Mediator**

6. Where all parties have agreed upon a proposed mediator, who is willing to serve and is not disqualified under Rule 10, the parties will jointly appoint that person as the mediator.
7. If, within 30 days of the Request for Mediation under Rule 4, all parties have not agreed upon a proposed Mediator willing to serve and not disqualified under Rule 10, then the Secretary General shall appoint the mediator and the parties are deemed to have approved the appointment made by the Secretary General.
8. There shall be one mediator, unless the parties otherwise agree.
9. No person may act as a mediator in any dispute in which that person has any financial or personal interest or any conflict of interest likely to affect or which might reasonably be perceived to affect the mediator's independence or ability to act impartially at all times, save where the parties have been notified in writing of such circumstances and have subsequently expressly consented in writing to the appointment of a mediator.
10. If, following appointment, a Mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator shall immediately

so inform the parties and, where the mediator was appointed by Secretary General, shall immediately inform the Secretary General. If any party objects to the continued service of the mediator, the mediator shall be disqualified. In this event, the parties will have a further 30 days from disqualification of the mediator to appoint a new mediator. In the event that the parties do not within such 30-day period agree upon a substitute proposed mediator willing to serve and not disqualified under Rule 10, then the Secretary General shall appoint the mediator and the parties are deemed to have approved the appointment made by the Secretary General.

#### **Article 4 - Role of the Mediator**

11. The mediator shall assist the parties in an independent and impartial manner to reach an amicable settlement of the dispute.
12. The mediator may conduct the mediation in such manner as the mediator considers appropriate, having regard to the circumstances of the dispute, the wishes of the parties and any practical considerations which might be relevant for the satisfactory and prompt resolution of the dispute.
13. Prior to or during the mediation, the mediator may communicate with the parties together, or with any party separately, with or without its representatives, either in person, by telephone, video conference or electronically as the mediator sees fit.
14. The parties may be required by the mediator to participate in a preliminary conference prior to

the commencement of the formal mediation. The purpose of the preliminary conference is to enable the parties, with the assistance of the mediator, to:

- a. discuss and agree upon issues in dispute or formulate a process by which those issues are to be clarified and agreed;
- b. make provision for, in accordance with the mediator's directions, the service and exchange of documentary material relevant to the mediation including position papers by all parties;
- c. make provision for such other planning and administrative arrangements as are necessary and appropriate to enable the mediation to proceed.

## **Article 5 - Role of the Parties**

15. Each party to the mediation has a duty to participate in good faith in the mediation. Each party and their representatives will use their best endeavours to co-operate with each other and with the mediator to settle their differences.

## **Article 6 - Authority and Representation**

16. Each party to a mediation may be assisted or represented by any person it chooses (including legal advisers). The identity, contact details and roles of any such persons must be disclosed to all parties and to the mediator.
17. Each party to the mediation must have authority to settle a dispute or be represented

by a person or persons having full authority to settle the dispute. In the event that any such authority is limited, the limits of authority must be disclosed to the parties and the mediator.

## **Article 7 - Confidentiality**

18. All mediation proceedings shall be private and confidential. All parties and participants in the mediation shall execute a written undertaking in the form of the Confidentiality Undertaking as provided for in Schedule A to give effect to this requirement.
19. Any information given to the mediator by a party in caucus or private session shall be kept confidential as between the party furnishing the information and the mediator unless the party providing the information consents to its disclosure to any other party to the Mediation.
20. The mediator, all parties and participants in the mediation must keep all matters relating to or arising out of the mediation private and confidential, except:
  - a. where disclosure is compelled by law;
  - b. if necessary to give effect to a mediation agreement or to enforce an agreement reached to settle or resolve the whole or any part of the dispute;
  - c. with the consent of the parties to the mediation.

## **Article 8 - Proceedings**

21. Unless parties agreed otherwise, the mediation proceedings shall be held in the facilities provided or identified by the JAIAC.
22. The parties will be notified of the time and venue of the mediation proceedings which shall be subject to the parties' agreement.
23. The parties shall ensure that they have all

necessary additional services where required for the mediation.

## **Article 9 - Termination of the Mediation**

24. The mediator may suspend or terminate the mediation or withdraw as mediator when he or she reasonably believes the circumstances require it, including when he or she has reasonable grounds to suspect that:
  - a. the parties are involved in illegal/ fraudulent conduct; or
  - b. the parties are unable to participate meaningfully and reasonably in negotiations; or
  - c. continuation of the mediation process would cause significant harm to any party or a third party.
25. When the mediator determines that it is necessary to suspend or terminate a mediation or to withdraw, the mediator must do so without violating the obligation of confidentiality and in a manner that will cause the least possible harm to the parties.
26. The mediator shall promptly inform the Secretary General of the termination.
27. In addition to termination occurring under Rule 25, the mediation shall be deemed to be terminated upon:
  - a. upon the signing by the parties of a written settlement agreement;
  - b. a written declaration of the mediator, after consultation with the parties, to the effect that further attempts at mediation are no longer justified;
  - c. a written declaration by any of the



parties addressed to the mediator to the effect that the Mediation is hereby terminated; or

- d. expiry of 3 months from the date of the Request for Mediation under Rule 4, unless agreed otherwise by the parties; or
- e. by order of the Secretary General in the event that any monies properly payable under Rule 30 are not paid as required by these Rules.

## **Article 10 - Costs**

- 28. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear its own costs of the mediation.
- 29. The costs and expenses of the mediation shall include but are not limited to:
  - a. the professional fees of the mediator;
  - b. the cost of the venue hire, including meeting rooms, breakout rooms, meals, translation fees, photocopying fees, internet access, telephone and communication expenses, administrative costs incurred under Rule 30(d), and any other costs reasonably and properly incurred in respect of the organisation or conduct of the mediation;
  - c. any fees or costs set out above in respect of expert advice or expert witnesses who attend or provide such advice with the consent of the parties;
  - d. the proper administrative charges of

the JAIAC relating to the conduct of the mediation fixed in accordance with this Rule. Without limiting the foregoing, the costs of the JAIAC may include:

- i. the Registration Fees;
- ii. an Appointment Fee; and
- iii. any Administrative Costs.

30. The parties are jointly and severally liable for costs and expenses set out in Rule 30 above.

### **Article 11 - Administrative Assistance**

31. Subject to Rule 24 above, the Secretary General at the request of the mediator or the parties may, arrange for translators, administrative assistance, or other facilities in order to facilitate the mediation.

### **Article 12 - Exclusion of Liability**

32. Except in the case of fraud on the part of the JAIAC or the person claiming immunity or protection from suit under this rule, neither the JAIAC nor the mediator shall be liable to any party or to any other participant in the mediation for any act or omission in relation to or arising out of the mediation conducted under these rules or in respect of or arising out of any settlement reached in any mediation conducted under these rules.

33. All statements whether written or oral made in the course of the mediation shall not be relied upon to institute or maintain any action for defamation, libel, slander or any related complaint.

### **Article 13 - Role of Mediator in Other Proceedings**

34. The mediator shall not, without the consent of the parties, act as an arbitrator or as a representative or counsel of a party or appear as a witness in any arbitral or judicial proceedings or give advice to any person whatsoever in respect of a dispute that is the subject of the mediation.
35. The parties and the mediator agree that they will not present the mediator as a witness in any such proceedings, nor will they subpoena or endeavour to compel the mediator to give evidence or to produce documents in any subsequent judicial proceedings or arbitration.

#### **Article 14 - Schedule of Fees**

36. Parties are free to agree with the mediator on the Mediator's Fees. Unless otherwise agreed, the Schedule of Fees shall apply.
37. The Schedule of Fees provides the fee scale for international and domestic mediation,:
- a. "international mediation" means a mediation where –
    - i. one of the parties to the mediation has its place of business in any State other than Jamaica;
    - ii. any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is in any state other than Jamaica; or
    - iii. the parties have expressly agreed that the subject

matter of the mediation relates to more than one State.

b. “domestic mediation” is any mediation which is not an international mediation.

38. Prior to the commencement of the mediation, each party shall pay the Registration Fees, Appointment Fee (if any) and deposit the Mediator’s Fees and Administration Costs with the JAIAC in accordance with the Schedule of Fees annexed hereto.
39. At any time during the course of the mediation, the Secretary General may require additional deposits to be paid by the parties on account of the costs and expenses referred to in Rule 30. Any additional such sums requested by the Secretary General on account of the costs and expenses referred to in Rule 30 shall be payable 15 days after the receipt of the request for additional deposits.
40. If any of the monies referred to in Rules 29 and 30 are not paid in full by both parties within 15 days after the receipt of the Request, the Secretary General shall so inform the parties in order that one or another of them may make the required payment.
41. If any such payment is not made, the mediator, after consultation with the Secretary General, may order the suspension or termination of the mediation.
42. The Secretary General may apply the deposit towards the fees and disbursements incurred by the JAIAC and the mediator for the mediation.
43. Upon termination of the mediation, the Secretary General shall render an account to the parties of the deposit received and used and return any unexpended balance to the parties.

## **SCHEDULE**

### **A. Fees and Costs**

#### **DOMESTIC MEDIATION**

##### **Registration Fee**

A non-refundable registration fee of JMD5,000.00 is payable by the party initiating mediation (Rule 3(e)).

##### **Administrative Costs**

The Administrative Costs for mediation shall be fixed at JMD15,000.00 per case.

##### **Mediator's Fee**

- (i) JMD75,000.00 per day; and
- (ii) JMD10,000.00 per hour for review of documents and related works

#### **INTERNATIONAL MEDIATION**

##### **Registration Fee**

A non-refundable registration fee of USD50.00 is payable by the party initiating mediation (Rule 3(e)).

##### **Administrative Costs**

The Administrative Costs for mediation shall be fixed at USD200.00 per case.

##### **Mediator's Fee**

- (i) USD2,500.00 per day; and
- (ii) USD250.00 per hour for review of documents and related works.

## **B. Model Mediation Clause**

*“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the Jamaica International Arbitration Centre Limited (JAIAC) Rules for Mediation as at present in force.”*

## **C. Model Submission Agreement**

Parties wishing to substitute an existing mediation clause for one referring the dispute to mediation under the JAIAC Mediation Rules may adopt the following form of agreement:

*“The parties hereby agree that the dispute arising out of the contract dated \_\_\_\_\_ shall be resolved by amicable settlement in mediation under the JAIAC Mediation Rules.”*

This form may also be used where a contract does not contain an arbitration clause and the parties wish to have an ad hoc submission to mediation.

## **Non-application**

Mediation under the JAIAC Mediation Rules shall not apply to:

1. proceedings involving a question which arises as to the effect of any provision of the Constitution.
2. suits involving prerogative writs.
3. proceedings involving the remedy of temporary or permanent injunctions.
4. election petitions.
5. proceedings involving compulsory acquisition of land by Government.
6. proceedings involving the exercise of the original jurisdiction of the Supreme Court under the Constitution.

7. Judicial Review.
8. Appeals.
9. Law Revision.
10. Criminal matters

## D. Confidentiality Agreement and Undertaking Parties:

.....  
.... And

.....  
.....And

### (“The Mediator”)

have entered into a Mediation Agreement dated the day of in accordance with which the Mediator will conduct a mediation.

1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
2. Each of the undersigned undertakes to the parties and the mediator:
  - a. to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the Mediation including the preliminary steps (“**confidential information**”);
  - b. not to act contrary to the undertaking in sub-paragraph (a) unless compelled by law to do so or with the consent of the party who disclosed the confidential information; c) not to use confidential information for a purpose other than the mediation.
3. Each of the undersigned undertakes to the parties and the mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the parties to the mediation:



- a. any settlement proposal whether made by a party or the mediator;
  - b. the willingness of a party to consider any such proposal;
  - c. any admission or concession made by a party;
  - d. any statement or document made by the mediator.
- 4. The parties acknowledge that the mediator may disclose information during or obtained in connection with the mediation in any one or more of the following circumstances:
  - a. with the consent of the person from whom the information was obtained;
  - b. in connection with the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement;
  - c. if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;
  - d. if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organisation, Bar Association, Law Society or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
  - e. in accordance with a requirement imposed by or under a law of a country or a state.

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