

# Korean Commercial Arbitration Board



**Korean Commercial  
Arbitration Board**

대한상사중재원

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# INTERNATIONAL ARBITRATION RULES



**Korean Commercial  
Arbitration Board**

대한상사중재원

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## MODEL CLAUSE of KCAB

### MODEL CLAUSE FOR FUTURE DISPUTES

Any disputes out of or in connection with this contract shall be finally settled by arbitration in accordance with the International Arbitration Rules of the Korean Commercial Arbitration Board.

The number of arbitrators shall be [one/three]

The seat, or legal place, of arbitral proceedings shall be [Seoul/  
Republic of Korea]

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

### MODEL AGREEMENT FOR EXISTING DISPUTES

We, the undersigned parties, hereby agree that the following dispute shall be referred to and finally determined by arbitration in accordance with the KCAB International Arbitration Rules :

[brief description of the dispute]

The number of arbitrators shall be [one/three]

The seat, or legal place, of arbitral proceedings shall be [Seoul/  
Republic of Korea]

The language to be used in the arbitral proceeding shall be  
[language]

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## CHAPTER 1. INTRODUCTORY RULES

### Article 1. Rules and Institution

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1. These are the international arbitration rules of the Korean Commercial Arbitration Board ("KCAB") and may be referred to as the "International Arbitration Rules" or the "Rules".
2. The KCAB shall appoint, among its secretariat ("Secretariat"), a secretary to administer the matters concerning arbitration proceedings to be conducted in accordance with the Rules.
3. The KCAB shall establish an advisory committee (the "International Arbitration Committee") composed of members of its own choice. The KCAB shall consult with the International Arbitration Committee in making decisions under Articles 12 and 13 of the Rules, and, as it deems necessary under Articles 14 and 15 of the Rules.

### Article 2. Definitions

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Terms used in the Rules shall be defined as follows:

- (a) "Arbitral Tribunal" refers to an arbitral tribunal composed of one or more arbitrators.
- (b) "Claimant" refers to one or more claimants and "Respondent" refers to one or more respondents.
- (c) "International Arbitration" refers to an arbitration where:
  - (i) at least one of the parties to an arbitration agreement, at the time of entering into that agreement, has its place of business in any state other than Korea; or
  - (ii) the place of arbitration set out under an arbitration agreement is in any State other than Korea.
- (d) "Place of business" refers to any of the following items:
  - (i) the principal place of business, if a party has more than one place of business; or
  - (ii) the habitual residence, if a party does not have a place of business.

### Article 3. Scope of Application

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1. In either of the following cases, an arbitration shall be conducted in accordance with the Rules, and the Rules shall be deemed to be part of the arbitration agreement subject to any modifications the parties have agreed in writing:
  - (a) where the parties have agreed in writing to refer their disputes to arbitration under the Rules; or
  - (b) where the parties have agreed in writing to refer their disputes to arbitration before the KCAB, and the arbitration is an International Arbitration.
2. If any of the Rules is in conflict with a provision of law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.

### Article 4. Notification and Document Submission

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1. All written communications and submissions, including supporting documents, submitted by a party, and all notifications and written communications from the Secretariat and the Arbitral Tribunal shall be submitted in accordance with the following, unless otherwise provided for in the Rules or otherwise directed by the Secretariat or the Arbitral Tribunal:
  - (a) submitted in a number of hard copies sufficient to provide one copy for each party, each arbitrator and the Secretariat, or
  - (b) submitted by electronic means that provides a record of transmission, including e-mail and facsimile.
2. All notifications and written communications to a party in accordance with Paragraph 1(a) shall be made to the address designated by that party or, in the absence of such designation, to the last known address of the party or its representative. Any such notification or communication may be made by delivery against receipt, registered post, courier, or any other means that provide a record of dispatch.
3. All notifications and written communications transmitted by electronic means in accordance with Paragraph 1 (b) shall be made to the contact detail agreed or designated by the receiving party for that purpose.
4. A notification or communication shall be deemed to have

been delivered on the day it was received by a party or its representative or the day it ought to have been received by a party or its representative if made to the last known address in accordance with Paragraph 2.

5. Before constitution of the Arbitral Tribunal, all communications between the parties or between each party and the arbitrators shall be made through the Secretariat. The Secretariat shall send copies of any written communication to the parties and the arbitrators. Thereafter, unless otherwise directed by the Arbitral Tribunal, all communications, written or verbal, shall be made directly between the parties or between each party and the Arbitral Tribunal with simultaneous copies to the Secretariat, if written.
6. If the Secretariat sends any written communication to one party on behalf of the Arbitral Tribunal, the Secretariat shall forward a copy to each other party.

#### **Article 5. Time Limits**

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1. For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received on the day it is delivered in accordance with Article 4.
2. For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have complied with a time limit if it is dispatched, in accordance with Article 4, prior to or on the day of the expiration of the time limit.
3. For the purpose of calculating a time limit under the Rules, the relevant period shall commence on the calendar day immediately following the day when the notice or other communication is delivered in accordance with Article 4. If the last day of such period is an official holiday or non-business day at the place of residence or business of the addressee, the period will expire on the following business day. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

#### **Article 6. General Rule**

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The Secretariat and the Arbitral Tribunal shall generally act in the spirit of the Rules and shall make every effort to ensure the Award

is enforceable at law.

#### **Article 7. Representation**

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A party may be represented by any person of its choice in proceedings under the Rules, subject to such proof of authority as the Arbitral Tribunal may require.

## **CHAPTER 2. COMMENCING THE ARBITRATION**

#### **Article 8. Request for Arbitration**

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1. A party intending to have recourse to arbitration under the Rules shall submit its Request for Arbitration ("Request") to the Secretariat, which shall notify the Claimant and the Respondent of the receipt of the Request and the date of such receipt.
2. The date on which the Request is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration proceedings.
3. A Request shall include the following:
  - (a) the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the Claimant;
  - (b) a description of the Claimant - in case of a business, its place of incorporation and corporate form or, in case of an individual, his or her nationality and primary place of residence or employment;
  - (c) the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the Respondent;
  - (d) a statement describing the nature and circumstances of the dispute giving rise to the claims;
  - (e) a statement of the relief being sought, including an indication

- of any amounts claimed to the extent possible;
- (f) a statement of matters related to the proceedings, including the place and language of the arbitration, applicable laws, number of arbitrators, and qualifications and names of arbitrators, on which the parties have already agreed in writing or, the Claimant's proposals in relation to such matters;
  - (g) if the arbitration agreement calls for party nomination of arbitrator, the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the arbitrator nominated by the Claimant;
  - (h) the relevant agreements, including the written arbitration agreement(s) on which the Request is based; and
  - (i) the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the representative.
4. The Claimant shall submit the Request in the number of copies required by Article 4 and shall pay the filing fee as required under Appendix 1 in force on the date the Request is submitted.
  5. In the event that the Claimant fails to comply with any requirements of Paragraph 4, the Secretariat may fix a time limit for the Claimant to comply and, if the Claimant fails to comply within such time limit, the Secretariat may close the proceedings without prejudice to the Claimant's right to submit the same claims in another request.
  6. The Secretariat shall send a copy of the Request and any supporting documents to the Respondent only after the Secretariat has received the required number of copies and the filing fee.

## **Article 9. Answer and Counterclaims**

---

1. The Respondent shall submit an answer (the "Answer") within 30 days of receiving the Request from the Secretariat and shall include the following:
  - (a) the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the Respondent;
  - (b) a description of the Respondent - in case of a business,

- its place of incorporation and corporate form or, in case of an individual, his or her nationality and primary place of residence or employment;
  - (c) confirmation or denial of all or part of the claims advanced by the Claimant in the Request and responses to the relief being sought in the Request;
  - (d) any comments concerning the number of arbitrators and the Claimant's nomination, if any, having regard to any proposals made by the Claimant and to Articles 11 and 12 of the Rules, and any nomination of an arbitrator required thereby;
  - (e) any comments as to the place of arbitration, the applicable laws and the language of the arbitration;
  - (f) if the arbitration agreement calls for party nomination of arbitrator, the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the arbitrator nominated by the Respondent; and
  - (g) the full name and address, telephone and facsimile numbers (with country code and city code), e-mail address of the representative.
2. The Secretariat may grant the Respondent an extension of time for submitting the Answer, provided that the application for such an extension contains the Respondent's comments concerning the number and appointment of arbitrator(s) or the appointment of arbitrator(s) under Articles 11 and 12. If the Respondent fails to submit the application for an extension of time as provided, the time limit for submitting the Answer shall not be extended.
  3. The Respondent shall submit the Answer to the Secretariat in accordance with Article 4.
  4. The Respondent's counterclaim shall include the following and be submitted with the Answer. Each counterclaim shall be based on the relevant arbitration agreement.
    - (a) a statement describing the nature and circumstances of the dispute giving rise to the counterclaim; and
    - (b) a statement of the relief being sought, including an indication of any amounts claimed to the extent possible.
  5. A counterclaim may be submitted in subsequent arbitration proceedings despite Paragraph 4, if the Arbitral Tribunal finds that the delay was justified under the circumstances.
  6. If the Arbitral Tribunal considers the Respondent's defense

includes a counterclaim, the Arbitral Tribunal may request the Respondent to clarify whether it intended to file a counterclaim as provided in Paragraph 4 above.

7. Failure to submit an Answer shall not preclude the Respondent from denying any claim or advancing a counterclaim in the arbitration proceeding. However, if the arbitration agreement calls for party nomination of arbitrator, failure to submit an Answer or to nominate an arbitrator within the time limit or at all shall be deemed an irrevocable waiver of that party's right to nominate an arbitrator.

## CHAPTER 3. THE ARBITRAL TRIBUNAL

### Article 10. General Provisions

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1. Arbitrators under the Rules shall be, and remain at all times, impartial and independent.
2. An arbitrator who accepts an appointment or nomination shall sign and submit a Statement of Acceptance and a Statement of Impartiality and Independence in the form provided by the Secretariat. An arbitrator shall disclose to the Secretariat any circumstances likely to give rise to justifiable doubts as to the arbitrator's impartiality or independence, and if at any stage during the arbitration, new circumstances arise that may give rise to such doubts as to the arbitrator's impartiality or independence, the arbitrator shall immediately disclose such circumstances in writing to the parties and to the Secretariat.
3. The Secretariat shall provide to the parties the Statement of Acceptance and the Statement of Impartiality and Independence immediately upon receipt.
4. The decisions of the Secretariat on any matter related to the appointment, replacement or removal of arbitrators shall be final and not subject to appeal.

### Article 11. The Number of Arbitrators

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As a general rule, the disputes under the Rules shall be heard by a sole arbitrator. However, a case may be heard by three arbitrators if the parties have agreed to do so or, in the absence of such an agreement, the Secretariat determines, in its discretion, that it would be appropriate, taking into consideration the parties' intentions, the amount in dispute, the complexity of the dispute, and other relevant circumstances.

### Article 12. Appointment of Arbitrators

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1. Where the dispute is to be referred to a sole arbitrator, the parties shall jointly nominate a sole arbitrator within 30 days of the receipt of the Request by the Respondent or, if the Secretariat decides to refer the dispute to a sole arbitrator in accordance with Article 11, within 30 days of receiving notice of such decision. If the parties fail to jointly nominate a sole arbitrator within the time limit or within such additional period of time as fixed by the Secretariat, the Secretariat shall appoint the sole arbitrator.
2. Where the parties have agreed that the dispute is to be referred to three arbitrators, the Claimant shall nominate an arbitrator in the Request or within such additional period of time as fixed by the Secretariat, and the Respondent shall nominate an arbitrator in the Answer or within such additional period of time as fixed by the Secretariat. Where the Secretariat decides to refer the dispute to three arbitrators pursuant to Article 11, each party shall nominate an arbitrator within 30 days of receiving notice of such decision or within such additional period of time as fixed by the Secretariat. If either party fails to nominate an arbitrator within the applicable time limit, the Secretariat shall appoint such arbitrator. Upon appointment of the first two arbitrators, the two arbitrators shall jointly nominate the third arbitrator, who shall act as chair of the Arbitral Tribunal. If, within 30 days of the appointment of the second arbitrator, the two arbitrators have not nominated a third arbitrator to act as chair, the Secretariat shall appoint such arbitrator.
3. Where there are multiple parties, whether as the Claimant or as the Respondent, and the Arbitral Tribunal consists of three arbitrators, the Claimant parties and/or the Respondent parties shall each jointly nominate one arbitrator pursuant to Paragraph

2.If the Claimant parties or the Respondent parties are unable to nominate an arbitrator within the time period fixed by the Secretariat, the Secretariat shall appoint such arbitrator. If the parties are unable to agree on the composition of the Arbitral Tribunal, the Secretariat shall appoint each member of the Arbitral Tribunal and shall designate one of them to act as chair.

4. Where the Secretariat is to appoint an arbitrator, the Secretariat shall consider the prospective arbitrator's experience, availability, nationality and residence. Upon either party's request, the Secretariat shall appoint a sole arbitrator or chair of the Arbitral Tribunal, whose nationality is different from the nationalities of the parties. The above request shall be submitted within three days from the date the Secretariat may exercise its appointing authority and if such request is submitted, the Secretariat shall provide the other party an opportunity to comment on such request.
5. Where the Secretariat has allowed claims under multiple contracts to be submitted in a single Request pursuant to Article 22, the parties shall nominate the arbitrator(s) in accordance with Paragraphs 1, 2 and 3 as if all such claims arise under a single arbitration agreement.
6. Upon constitution of the Arbitral Tribunal, the Secretariat shall, without delay, notify the parties and all arbitrators in writing of the full names, addresses, and occupations of the arbitrators.

### **Article 13. Confirmation of Arbitrators**

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1. The nomination of any arbitrator by the parties or of the third arbitrator by the other arbitrators shall be deemed appointed upon confirmation by the Secretariat. Even if the parties agree to appoint an arbitrator in their arbitration agreement, such agreement is deemed to be an agreement to nominate an arbitrator pursuant to the Rules.
2. Upon confirmation of any arbitrator, the Secretariat shall, without delay, notify the parties and arbitrators in writing of the confirmation.
3. If the Secretariat determines, in its discretion, that a nomination is clearly inappropriate, the Secretariat may refuse to confirm the nomination after giving the parties and the arbitrator(s) an opportunity to comment.
4. If a nomination is not confirmed by the Secretariat, the

nominating party or arbitrators shall nominate another arbitrator within the period of time as fixed by the Secretariat.

### **Article 14. Challenge of Arbitrators**

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1. A party may challenge an arbitrator if circumstances give rise to justifiable doubts as to the arbitrator's impartiality or independence. A party that nominates an arbitrator may challenge such arbitrator only for reasons of which the party becomes aware after the nomination.
2. A challenge of an arbitrator for lack of impartiality or independence, or for other reasons, shall be made by submitting a written statement to the Secretariat specifying the facts and circumstances on which the challenge is based. Such statement shall be copied to the Arbitral Tribunal and to each other party.
3. A challenge shall be considered valid only if it is made within 15 days from either of the following:
  - a) the date of receipt of the confirmation if the parties nominated the arbitrator, or the date of receipt of the appointment if the Secretariat appointed the arbitrator; or
  - b) the date on which the party making the challenge becomes aware of the facts and circumstances giving rise to such challenge.
4. The challenged arbitrator, the other party or parties, and any other member of the Arbitral Tribunal may submit written comments on the challenge to the Secretariat within 15 days of their receipt of the challenge. Such comments shall be copied to the Arbitral Tribunal and each other party.
5. When an arbitrator has been challenged by one party, the arbitrator shall withdraw if all of the parties so agree. The challenged arbitrator may also withdraw voluntarily. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge. If all of the parties do not agree to the challenge, and the challenged arbitrator does not withdraw voluntarily, the Secretariat shall decide upon the challenge.

### **Article 15. Replacement and Removal of Arbitrators**

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1. An arbitrator shall be replaced upon death, acceptance by the Secretariat of the arbitrator's resignation, a decision of the

Secretariat to sustain a challenge, or a request of all the parties to the arbitration.

2. The Secretariat may remove any arbitrator who fails to perform his or her duties, unduly delays such performance of his or her duties, or is unable to perform his duties legally or actually.
3. Where an arbitrator is replaced during the proceedings, a substitute arbitrator shall be appointed or nominated pursuant to the procedure provided in Articles 12 and 13 that applied to the appointment or nomination of the arbitrator being replaced.
4. If an arbitrator is replaced, the reconstituted Arbitral Tribunal shall, after consultation with the parties, determine if and to what extent prior proceedings before the reconstitution of the Arbitral Tribunal will be repeated.
5. Subsequent to the closure of the proceedings, instead of replacing an arbitrator who has died, resigned, or been removed, the Secretariat may decide that the remaining arbitrators shall complete the arbitration. In making such a determination, the Secretariat shall consult with the remaining arbitrators and the parties, and may consider such other matters that it considers appropriate in making its decision.

## CHAPTER 4. ARBITRATION PROCEEDINGS

### Article 16. Conduct of the Proceedings

---

1. Subject to the Rules and any agreement between the parties, the Arbitral Tribunal may conduct the arbitration in any manner it considers appropriate, provided that the parties are treated with equality and that each party is given a fair opportunity to present its case at appropriate stages of the proceedings.
2. The Arbitral Tribunal may, in its discretion, bifurcate proceedings and direct the parties to focus their submissions to those issues that could dispose of all or part of the case.
3. The Arbitral Tribunal shall hold hearings for the examination

of witnesses or the presentation of arguments at appropriate stages of the proceedings unless the parties expressly agree otherwise.

### Article 17. Rules Governing the Proceedings

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The Arbitral Tribunal shall conduct the proceedings in accordance with the Rules and, where the Rules are silent, any rules which the parties or, failing them, the Arbitral Tribunal may settle on.

### Article 18. Procedural Timetable

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1. The Arbitral Tribunal may hold a preliminary procedural conference with the parties to discuss the arbitration proceedings.
2. After its constitution, the Arbitral Tribunal shall establish a provisional timetable for the arbitration without delay at a preliminary procedural conference or after discussing with the parties through other means, and shall send it to the Secretariat and the parties. The Arbitral Tribunal may change any time periods provided in the provisional timetable at any time after consulting with the parties.

### Article 19. Additional Submissions

---

1. The Arbitral Tribunal may, in its discretion, allow or require the parties to make additional written submissions in addition to the Request and the Answer (Counterclaim) and shall fix the time limits for such submissions.
2. The time limits fixed by the Arbitral Tribunal for each submission shall not exceed 45 days.
3. The party making an additional submission in accordance with Paragraph 1 shall provide the other party and the Arbitral Tribunal with such submission accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the party concerned relies and which have not previously been submitted by any party, and by any relevant samples and exhibits.

## **Article 20. Amendment to Claims, Defenses and Counterclaims**

---

During the arbitration proceedings, any party may amend or supplement its claim, counterclaim or defense and notify the other party and the Secretariat thereof, unless the Arbitral Tribunal considers such amendment or supplement inappropriate due to delay of the proceedings, prejudice to the other parties, or any other reasons. A party may not amend or supplement a claim, counterclaim or defense if such amendment or supplement would fall outside the scope of the arbitration agreement.

## **Article 21. Joinder of Additional Parties**

---

1. The Arbitral Tribunal may allow third parties to be joined in the arbitration proceedings by application of a party, provided that one of the following conditions is met. A third party being joined as a party shall hereinafter be referred to as the "Additional Party".
  - (a) All parties and the Additional Party have all agreed in writing to the joinder of the Additional Party to the arbitration proceedings; or
  - (b) The Additional Party is a party to the same arbitration agreement with the parties and the Additional Party has agreed in writing to the joinder in the arbitration proceedings.
2. Even if an Additional Party is joined by the decision of the Arbitral Tribunal, this shall not affect the constitution of the Arbitral Tribunal.
3. Even if the requirements under Paragraph 1 are satisfied, the Arbitral Tribunal may refuse joinder of an Additional Party where there is a reasonable ground to do so, such as a delay of the arbitration proceedings.
4. Article 8 shall apply *mutatis mutandis* to an application for joinder and claims against the Additional Party, and Article 9 to the corresponding Answer and counterclaims.
5. This Article shall apply only to arbitrations in which an arbitration agreement was entered into by the parties after the effective date of the Rules.

## **Article 22. Single Arbitration under Multiple Contracts**

---

The Secretariat may allow submission of claims arising out of multiple contracts within a single Request, provided that the Secretariat is prima facie satisfied that all of the contracts provide for arbitration under the Rules, the arbitration agreements' compatibility is recognized, and the claims arise out of the same transaction or series of transactions. If the Secretariat determines that the claims should be heard in separate proceedings, the parties shall submit separate Requests without prejudice to the right of any party to request consolidation under Article 23 at a later time.

## **Article 23. Consolidation of Claims**

---

1. The Arbitral Tribunal may, at the request of a party, consolidate claims made in a separate but pending arbitration if such arbitration is also under the Rules and between the same parties. Provided that, the Arbitral Tribunal may not do so if any one arbitrator of an arbitral tribunal has been appointed in such separate arbitration proceedings.
2. The Arbitral Tribunal shall, in determining whether or not to consolidate claims under Paragraph 1, give the parties a reasonable opportunity to make submissions, and shall take into account the arbitration agreement(s), the nature of the claims, and any other relevant circumstances.

## **Article 24. Place of Arbitration**

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1. The place of the arbitration, in the absence of an agreement by the parties, shall be Seoul, the Republic of Korea, unless the Arbitral Tribunal determines that another place is more appropriate in light of the circumstances.
2. The Arbitral Tribunal may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate.
3. The Arbitral Tribunal may deliberate at any location it considers appropriate.

## **Article 25. Pleas as to the Jurisdiction of the Arbitral Tribunal**

---

1. The Arbitral Tribunal shall have the power to rule on objections to its jurisdiction, including any objections with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.
2. The Arbitral Tribunal shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause 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 and void shall not entail automatically the invalidity of the arbitration clause.
3. An objection to the jurisdiction of the Arbitral Tribunal shall be raised no later than in the Answer, as provided in Article 9, or, with respect to a counterclaim, in the Answer to the counterclaim.
4. In general, the Arbitral Tribunal should rule on an objection to its jurisdiction as a preliminary question but may proceed with the arbitration and rule on such objection in its final Award.

## **Article 26. Evidence**

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1. Unless otherwise agreed by the parties in writing, the Arbitral Tribunal may at any time during the proceeding order the parties:
  - (a) to produce documents, exhibits or other evidence it deems necessary and appropriate; or
  - (b) to make any property, site, or object under their control and relating to the subject matter of the arbitration available for inspection by the Arbitral Tribunal, any other party, or any expert.
2. The Arbitral Tribunal may require a party to deliver to the Arbitral Tribunal and to the other parties a summary of the documents and other evidences which that party intends to present in support of its claim, counterclaim or defense.
3. Each party shall have the burden of proving the facts relied upon to support any claim, counterclaim or defense.
4. The power conferred upon the Arbitral Tribunal shall include the

power to determine the admissibility, relevance, materiality and weight of any evidence.

## **Article 27. Experts**

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1. The Arbitral Tribunal may appoint one or more experts to report to it on specific issues to be determined by the Arbitral Tribunal and communicated to the parties. A copy of the expert's terms of reference, established by the Arbitral Tribunal, shall be communicated to the parties.
2. The Arbitral Tribunal may require a party to give the expert any relevant information or to provide access to any relevant documents, goods or other property for his inspection.
3. Upon receipt of the expert's report, the Arbitral Tribunal shall send a copy of the report to all parties and shall give the parties an opportunity to comment on the report. A party may examine any document on which the expert has relied in preparing such a report.

## **Article 28. Language of the Arbitration**

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1. Unless otherwise agreed by the parties, the Arbitral Tribunal shall determine the language(s) of the arbitration, with due regard to the language of the contract and other relevant circumstances.
2. Upon request from the Secretariat or the Arbitral Tribunal, a party shall submit a translation of the submitted documents, evidence, and other written exhibits.

## **Article 29. Applicable Law**

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1. The parties shall be free to agree upon the substantive laws or rules of law to be applied by the Arbitral Tribunal to the merits of the dispute. In the absence of any such agreement, the Arbitral Tribunal shall apply the substantive laws or rules of law which it deems appropriate.
2. In all cases, the Arbitral Tribunal shall take into account the provisions of the contract between the parties and relevant trade usages.
3. The Arbitral Tribunal shall assume the powers of an amiable

compositeur or decide *ex aequo et bono* only if the parties have expressly agreed to give it such powers.

### **Article 30. Hearings**

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1. The Arbitral Tribunal shall direct the parties to appear at the hearing, if any, by giving reasonable notice of the time and place fixed by it.
2. The Arbitral Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Unless approved by the Arbitral Tribunal and the parties, persons not involved in the arbitration shall not be present.
3. The parties may participate in person and/or through duly authorized representatives, and they may be assisted by advisors.
4. Hearings are private unless the parties agree otherwise or the law provides to the contrary. The Arbitral Tribunal may require any witness or witnesses to retire during the testimony of other witnesses. The Arbitral Tribunal may determine the manner in which witnesses are examined.
5. The Secretariat may, at the request of the Arbitral Tribunal or a party, make tape recordings and arrange for interpretation, stenographic transcription, reservation of hearing rooms and the like as necessary for conducting the proceedings, with the costs to be borne by the parties.

### **Article 31. Closure of the Proceedings**

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1. When it is satisfied that the parties have had a reasonable opportunity to present their cases, the Arbitral Tribunal shall declare the proceedings closed. Thereafter, no further submission or argument may be made, or evidence produced, unless requested or authorized by the Arbitral Tribunal.
2. The Arbitral Tribunal may, on its own initiative or upon application of a party, reopen the hearing at any time before the Award is made.

### **Article 32 . Conservatory and Interim Measures**

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1. Unless the parties have agreed otherwise, as soon as the file

has been transmitted to it, the Arbitral Tribunal may order any of the following conservatory and interim measures it deems appropriate at the request of a party:

- (a) To maintain or restore the status quo pending determination of the dispute;
  - (b) To take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitration proceedings themselves;
  - (c) To provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - (d) To preserve evidence that may be relevant and material to the resolution of the dispute.
2. The Arbitral Tribunal may grant a measure in Paragraph 1 subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order with reasons or of an Award, as the Arbitral Tribunal considers appropriate.
  3. Before the file is transmitted to the Arbitral Tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for conservatory and interim measures. The application of a party to a judicial authority for such measure or for the implementation of any such measure ordered by the Arbitral Tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the Arbitral Tribunal. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat and the Secretariat shall inform the Arbitral Tribunal thereof.
  4. In arbitrations in which an arbitration agreement was entered into after the effective date of the Rules, a party in need of urgent conservatory and interim measures prior to the constitution of the Arbitral Tribunal may apply for such measure pursuant to the procedures set forth in Appendix 3.

### **Article 33. Default**

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1. If, within the time limit fixed by the Arbitral Tribunal, a party fails to make any submission without showing sufficient cause for such failure, the Arbitral Tribunal shall proceed with the

arbitration.

2. If a party fails to appear at or participate in a hearing after duly receiving notice without showing sufficient cause for such failure, the Arbitral Tribunal may proceed with the hearing.
3. If, within the time limit fixed by the Arbitral Tribunal, a party fails to produce documents.

#### **Article 34 . Withdrawal of a Claim**

---

1. Before the final Award, a Claimant may withdraw its claim, in whole or in part, in writing.
2. Before the constitution of the Arbitral Tribunal, a claim may be withdrawn by submitting to the Secretariat a notice of withdrawal of the claim in whole or in part. However, if the Respondent has already submitted its Answer, the Respondent must agree to the withdrawal, and if the Respondent does not object within 30 days from the date of receipt of the notice of withdrawal, the Respondent is deemed to have agreed to such withdrawal.
3. After the constitution of the Arbitral Tribunal, a request for withdrawal of the claim must be made to the Arbitral Tribunal, which shall give the Respondent an opportunity to comment thereto. The Arbitral Tribunal shall approve a request for withdrawal of a claim unless the Respondent does not agree to the withdrawal and the Arbitral Tribunal determines that the Respondent has a legitimate interest in resolving the dispute.

## **CHAPTER 5. THE AWARD**

#### **Article 35. Decisions**

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Where there is more than one arbitrator and the arbitrators fail to agree on an issue, an Award or decision shall be made by a majority of the arbitrators. Failing a majority decision on an issue,

the decision shall be made by the chair of the Arbitral Tribunal.

#### **Article 36. Form and Effect of the Award**

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1. All Awards shall be in writing. Unless otherwise agreed by the parties, each Award shall state the reasons upon which it is based.
2. Each Award shall state its date and be signed by all the members of the Arbitral Tribunal. If a minority arbitrator refuses or fails to sign an Award, the remaining arbitrators shall state the reasons for the absence of the signature. The Award shall be deemed to be made at the place of the arbitration and on the date stated therein.
3. Each Award shall be binding on the parties. The parties undertake to carry out the Award without delay.

#### **Article 37. Interim, Interlocutory or Partial Awards**

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1. In addition to making a final Award, the Arbitral Tribunal shall be entitled to make interim, interlocutory or partial Awards.
2. In case of partial Awards, the Arbitral Tribunal may make Awards on different issues at different times, which shall be subject to correction under the procedure specified under Article 41. Unless stated otherwise by the Arbitral Tribunal, such Awards shall be individually enforceable as soon as they are made.

#### **Article 38 . Time Limits for the Final Award**

---

1. Unless all parties agree otherwise, the Arbitral Tribunal shall make its Award within 45 days from the date on which final submissions are made or the hearings are closed whichever is later.
2. The Secretariat may extend the time limit for the final Award pursuant to a reasoned request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

#### **Article 39. Award by Consent**

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If the parties reach a settlement after the Request is filed and

the advance cost is paid under the Rules, the Arbitral Tribunal may render a consent Award recording the settlement upon any party's request. If the parties do not request a consent Award, then upon written confirmation by the parties to the Secretariat that a settlement has been reached, the Arbitral Tribunal shall be discharged and the arbitration concluded, subject to payment by the parties of any outstanding costs of the arbitration.

#### **Article 40. Notification and Deposit of the Award**

---

1. Once an Award is made and the costs of the arbitration have been fully paid by one or both parties, the Secretariat shall send the Arbitral Tribunal's signed Award to the parties. By virtue of the notification made in accordance with the above, the parties waive any other form of notification or deposit on the part of the Arbitral Tribunal.
2. The Arbitral Tribunal and the Secretariat shall assist the parties in complying with any further formalities that may be necessary in the Award.

#### **Article 41. Correction and Interpretation of an Award**

---

1. The Arbitral Tribunal may, on its own initiative, correct any errors contained in an Award such as a clerical, computational or typographical error, within 30 days of the date of the Award.
2. Unless otherwise agreed by the parties, a party may, by notice to the Secretariat within 30 days of receipt of an Award, request the Arbitral Tribunal to correct any error referred to in Paragraph 1 or for an interpretation of such Award. Any correction or interpretation shall be given in writing within 30 days after receipt of such request. Such corrections or interpretation shall form part of the Award.

#### **Article 42. Additional Award**

---

Unless otherwise agreed by the parties, a party may, with notice to the Secretariat and the other party or parties within 30 days of receipt of the Award, request the Arbitral Tribunal to make an additional Award as to claims presented in the arbitration proceedings but not dealt with in the Award. If the Arbitral Tribunal considers the request to be justified, it shall make the additional

Award within 60 days of receipt of the request.

## **CHAPTER 6. EXPEDITED PROCEDURE**

#### **Article 43. Scope of Application**

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The provisions in this Chapter of the Rules ("Expedited Procedures") shall apply in either of the following cases:

- (a) where the claim amount does not exceed KRW 500,000,000; or
- (b) where the parties agree to be subject to the Expedited Procedures under this Chapter.

#### **Article 44. Time Limits to Counterclaims, and Increases to Claim and Counterclaim Amounts**

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1. If the amount of the counterclaim exceeds KRW 500,000,000, the Respondent shall file a counterclaim within the time limit set out in Article 9 [4]. In such cases, the arbitration proceedings shall not be administered pursuant to the Expedited Procedures, unless the parties agree otherwise.
2. The Expedited Procedures under this Chapter shall not apply when, due to a party's application for an increase, the amount of the claim or counterclaim exceeds KRW 500,000,000, unless the parties agree that the Expedited Procedures shall continue to govern the arbitration proceedings notwithstanding such an increase, and the Arbitral Tribunal, if already constituted, approves.

#### **Article 45. Appointment of Arbitrator**

---

1. The Secretariat shall appoint a sole arbitrator without recourse to Article 12 of the Rules unless otherwise agreed by the parties.

2. If the arbitration agreement provides for three arbitrators, the Secretariat may encourage the parties to agree to refer the case to a sole arbitrator.

#### **Article 46. Hearing Procedures**

---

1. The Arbitral Tribunal shall fix the date and place of the hearing, and notify the parties and the Secretariat by any appropriate means including orally, in person, by telephone or in writing.
2. The hearing shall generally be held only once, provided, however, the Arbitral Tribunal may hold subsequent hearings or require further submission of documents after the hearing, if it deems necessary.

#### **Article 47. Documentary Proceedings**

---

1. Unless otherwise agreed by the parties, where neither party's claim exceeds KRW 50,000,000, the dispute shall be resolved on the basis of documentary evidence only, provided, however, that the Arbitral Tribunal may hold a hearing at the request of a party or on its own initiative.
2. The Arbitral Tribunal shall establish appropriate procedures for the fixing of time periods and methods for written submissions.

#### **Article 48. The Award**

---

1. The Award shall be made within 6 months from the date of constitution of the Arbitral Tribunal, provided, however that the Secretariat, at the request of the Arbitral Tribunal or on its own initiative, may decide to allow extension of the time limit, if it deems necessary.
2. The Arbitral Tribunal shall state the reasons upon which the Award is based in summary form, unless otherwise agreed by the parties.

#### **Article 49. Application *Mutatis Mutandis***

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The provisions of the Rules shall apply *mutatis mutandis* to matters which are not prescribed in this Chapter.

## **CHAPTER 7. COSTS**

#### **Article 50 . Obligation to Pay Arbitration Costs**

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1. The Arbitration Costs shall include the filing fees, the administrative fees, and the fees and expenses of the arbitrators incurred during the arbitration proceedings in accordance with Appendix 1 (Regulations on Filing Fees and Administrative Fees) and Appendix 2 (Regulations on Arbitrator Fees and Expenses).
2. The parties shall be jointly and severally liable for payment of the Arbitration Costs to the Secretariat.
3. If the amount in dispute is reduced by an amendment of a claim or counterclaim in accordance with Article 20, the administrative fees and the arbitrator's fees already paid shall not be refunded.

#### **Article 51. Advance on Costs**

---

1. The parties shall advance to the Secretariat a sum of money fixed by Secretariat to cover the Arbitration Costs (the "Advance on Costs"). The Advance on Costs shall be paid in the manner and within the period of time determined by the Secretariat and may be adjusted by the Secretariat at any time during the arbitration.
2. The Secretariat shall fix the amount of the Advance on Costs and any adjustments during the arbitration. The Secretariat shall request each party to deposit a certain amount as an Advance for Costs.
3. Unless otherwise agreed by the parties, the Advance on Costs shall be payable in equal shares by the Claimant and the Respondent in cash.
4. In case of multiple parties comprising the Claimant or the Respondent, such multiple parties shall be jointly and severally liable for the payment of the Advance on Costs. Unless otherwise agreed by the parties, such multiple parties shall pay in equal shares.
5. If the Claimant or the Respondent fails to pay the Advance on Costs or any adjustment by the Secretariat in accordance with the preceding paragraphs, the Secretariat may, after consultation with the Arbitral Tribunal, suspend or terminate the proceedings.

6. Any party shall be free to pay any other party's share of the Advance on Costs should such other party fail to pay its share. In such case, the party paying the entire amount may request the Arbitral Tribunal to order the other party to pay its share through an interim, interlocutory or partial Award.
7. The Secretariat shall determine the amount of the Advance on Costs remaining, if any, at the end of the proceedings. The Secretariat shall refund any remaining Advance on Costs to the party or parties who paid such Advance on Costs.
8. No interest on the Advance on Costs shall be refunded.

#### **Article 52. Apportionment of Arbitration Cost**

---

1. The Arbitration Costs, including the administrative fees, shall in principle be borne by the unsuccessful party. However, the Arbitral Tribunal may, taking into account the circumstances of the case, apportion the Arbitration Costs between the parties in any manner it deems appropriate.
2. The Arbitral Tribunal shall apportion responsibility for the Arbitration Costs in each Award, provided that the Arbitral Tribunal may in its discretion postpone apportionment of any Arbitration Costs in case of an interim, interlocutory or partial Awards until the final Award.

#### **Article 53. Costs Incurred by a Party**

---

Legal costs and necessary expenses incurred by the parties in connection with the proceedings, including legal fees and costs for experts, interpreters and witnesses, shall be allocated by the Arbitral Tribunal in the final Award. Unless otherwise agreed by the parties, the Arbitral Tribunal shall have the power to allocate the necessary expenses incurred during the proceedings in any manner it deems appropriate taking into account the circumstances of the case.

## **CHAPTER 8. MISCELLANEOUS**

#### **Article 54. Modified Time Limits**

---

The parties may modify any time limits set out in the Rules by written agreement. The Arbitral Tribunal may extend any time limits in the Rules as it deems appropriate except the period for rendering an Award. The Arbitral Tribunal shall notify the parties and the Secretariat when modifying a time limit and indicate the reasons for such modification.

#### **Article 55. Waiver**

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A party who knows that any provision of the Rules, the arbitration agreement, any other rules in relation to the proceedings, or the Arbitral Tribunal's order has not been complied with and proceeds with the arbitration without promptly stating its objection shall be deemed to have waived its right to object.

#### **Article 56. Exclusion of Liability**

---

The arbitrators and the Secretariat shall not be liable for any act or omission in connection with an arbitration conducted under the Rules, unless such act or omission is shown to constitute willful misconduct or recklessness.

#### **Article 57. Confidentiality**

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1. Arbitration proceedings, and records thereof, shall be closed to the public.
2. The arbitrators, emergency arbitrators, the Secretariat, the parties, and their representatives and assistants shall not disclose facts related to the arbitration cases or facts learned through the arbitration except where disclosure is consented to by the parties, required by law, or required in court proceedings.
3. Notwithstanding Paragraphs 1 and 2, with regard to arbitral awards, the Secretariat may publish an Award after redacting the names, places, dates and any other identifying information in relation to the parties or the dispute, but only if the parties

do not explicitly object to such disclosure within the time limit determined by the Secretariat.

## SUPPLEMENTARY PROVISIONS

1. These Rules shall be effective on and from February 1, 2007.
2. Any arbitral proceedings initiated before these Rules come into effect shall be governed by the Arbitration Rules of the KCAB; provided that subsequent proceedings may, upon agreement of the parties, be conducted pursuant to these Rules. In the event of such an agreement between the parties, the proceedings that already have been conducted pursuant to the Arbitration Rules of the KCAB shall remain valid.

## SUPPLEMENTARY PROVISIONS

1. (Effective Date) These Rules shall be effective on and from September 1, 2011.
2. (Transitional Measures for Ongoing Arbitrations) Where the arbitration proceeding has commenced prior to September 1, 2011, the former rules will apply. However, the parties may agree to apply these Rules after September 1, 2011 without affecting the validity of the arbitration proceedings held prior to this date.
3. (Applicability) These Rules shall apply to arbitrations in which an arbitration agreement under Article 3 of these Rules was entered into by the parties after the effective date above.

## SUPPLEMENTARY PROVISIONS

1. (Effective Date) The Rules shall be effective on and from June 1, 2016.
2. (Transitional Measures for Ongoing Arbitrations) Where the arbitration proceeding has commenced prior to June 1, 2016, the former rules will apply. However, the parties may agree to apply the Rules after June 1, 2016 without affecting the validity of the arbitration proceedings held prior to this date.
3. (Applicability) The Rules that are in force at the time the arbitration proceeding is commenced shall be deemed to apply where there is an arbitration agreement under Article 3 (1) of the Rules. However, if the parties explicitly agree to apply the rules that are in force on the date of the arbitration agreement, such rules shall apply. Articles 21 and 32 (4) shall apply only to arbitrations in which an arbitration agreement was entered into by the parties after the effective date of the Rules.

## APPENDIX 1. REGULATIONS ON FILING FEES AND ADMINISTRATIVE FEES

### Article 1. Filing Fees

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1. When submitting a Request, the Claimant shall pay a filing fee of KRW 1,000,000. However, the Secretariat may, in its discretion, exempt payment of the filing fee where the claimed or counterclaimed amount is below a specific amount as determined by the Secretariat.
2. The Secretariat shall not proceed with an arbitration until the Claimant has paid the filing fee.
3. The filing fee is not refundable.

4. The above provisions shall also apply to any counterclaim.

## Article 2. Administrative Fees

1. The parties shall pay administrative fees to the Secretariat on the basis of the amount in dispute as specified in the following schedule.

	AMOUNT IN DISPUTE	ADMINISTRATIVE FEES
I	up to 10,000,000 KRW	2%(minimum 50,000 KRW)
II	from 10,000,000 KRW to 50,000,000 KRW	200,000 KRW + [amt. - 10,000,000 KRW] × 1.5%
III	from 50,000,000 KRW to 100,000,000 KRW	800,000 KRW + [amt. - 50,000,000 KRW] × 1.0%
IV	from 100,000,000 KRW to 5,000,000,000 KRW	1,300,000 KRW + [amt. - 100,000,000 KRW] × 0.5%
V	from 5,000,000,000 KRW to 10,000,000,000 KRW	25,800,000 KRW + [amt. - 5,000,000,000 KRW] × 0.25%
VI	over 10,000,000,000 KRW	38,300,000 KRW + [amt. - 10,000,000,000 KRW] × 0.2%
VII	Unquantified Claim	3,000,000 KRW

(a) The maximum amount of the administrative fees shall be 150,000,000 Korean won.

(b) The Secretariat may, at its discretion, reduce the administrative fees payable by the parties.

2. For the purpose of determining the amount in dispute:

(a) claims and counterclaims shall be added together;

(b) amount claimed for interest shall not be taken into account, unless the interest claim exceeds the principal amount claimed, in which case the interest claim alone shall be considered in calculating the amount in dispute; and

(c) if the amount in dispute is not clear, the Secretariat may determine the amount in dispute taking account of all relevant circumstances.

3. In case where the Request for Arbitration has been withdrawn or the case has been settled between the parties before issuance of the final Award, the Secretariat may refund a part of the administrative fees as determined in accordance with its internal regulation.

## Article 3. Administrative Fees for Emergency Arbitrator Proceeding

1. A party making an application for Emergency Measures pursuant to Appendix 3 (Emergency Measures by Emergency Arbitrator) of the Rules shall pay an administrative fee of KRW 3,000,000 to the Secretariat when filing the application.
2. In case the application is withdrawn before the appointment of the emergency arbitrator, the Secretariat shall refund the administrative fee to the applicant.

## APPENDIX 2. REGULATIONS ON ARBITRATOR'S FEES AND EXPENSES

### Article 1. Arbitrator's Fees

1. Unless otherwise agreed by the parties, the remuneration of arbitrator(s) shall be determined by the Secretariat and shall be between the minimum amount and the maximum amount specified in the following schedule, taking into account the nature of the dispute, the amount in dispute, the time spent by the arbitrator(s), and other relevant factors.

	AMOUNT IN DISPUTE	ARBITRATOR'S FEE	
		MINIMUM	MAXIMUM
I	up to 50,000,000	1,000,000	2,000,000
II	from 50,000,001 to 100,000,000	1,000,000 + 1% × [amt. - 50,000,000]	2,000,000 + 5% × [amt. - 50,000,000]
III	from 100,000,001 to 500,000,000	1,500,000 + 0.75% × [amt. - 100,000,000]	4,500,000 + 3% × [amt. - 100,000,000]
IV	from 500,000,001 to 1,000,000,000	4,500,000 + 0.5% × [amt. - 500,000,000]	16,500,000 + 2.8% × [amt. - 500,000,000]
V	from 1,000,000,001 to 5,000,000,000	7,000,000 + 0.25% × [amt. - 1,000,000,000]	30,500,000 + 1% × [amt. - 1,000,000,000]
VI	from 5,000,000,001 to 10,000,000,000	17,000,000 + 0.04% × [amt. - 5,000,000,000]	70,500,000 + 0.2% × [amt. - 5,000,000,000]
VII	from 10,000,000,001 to 50,000,000,000	19,000,000 + 0.025% × [amt. - 10,000,000,000]	80,500,000 + 0.1% × [amt. - 10,000,000,000]

VIII	from 50,000,000,001 to 100,000,000,000	29,000,000 + 0.015% × [amt. – 50,000,000,000]	120,500,000 + 0.07% × [amt. – 50,000,000,000]
IX	over 100,000,000,001	36,500,000 + 0.007% × [amt. – 100,000,000,000]	155,500,000 + 0.03% × [amt. – 100,000,000,000]

- For the purpose of determining the amount in dispute, Article 2 (2) of Appendix 1 shall apply *mutatis mutandis*.
- If the Request is withdrawn or the arbitration is settled between the parties before issuance of the final Award, the Secretariat shall pay such fees to the arbitrator(s) as it deems appropriate in accordance with its internal regulations.

### Article 2. Arbitrator's Expenses

Arbitrator's expenses consist of actual expenses that an arbitrator necessarily incurs for the arbitration proceedings, including expenses for travel, hotels, meals and other expenses arising during the arbitration.

### Article 3. Emergency Arbitrator's Fees

- The amount of remuneration of an emergency arbitrator shall be KRW 15,000,000.
- If proceedings are terminated prior to an emergency arbitrator's decision on Emergency Measures, the Secretariat may reduce the remuneration of an emergency arbitrator, if it deems appropriate, taking into account all circumstances including whether the hearing had taken place. In such case, the Secretariat shall notify the emergency arbitrator of the reduced amount without delay.

## APPENDIX 3. EMERGENCY MEASURES BY EMERGENCY ARBITRATOR

### Article 1. Application for Emergency Measures

- In accordance with Article 32 of the Rules, a party seeking conservatory and interim measures may, concurrent with or following the submission of the Request but before constitution of the Arbitral Tribunal, apply in writing to the Secretariat for conservatory and interim measures by an emergency arbitrator ("Emergency Measures").
- The application for Emergency Measures shall include the following:
  - the full names and addresses, telephone and facsimile numbers (with country code and city code), email addresses of the parties, to the extent such information is reasonably available to the applicant;
  - the full names and addresses, telephone and facsimile numbers (with country code and city code), email addresses of the representatives, to the extent such information is reasonably available to the applicant;
  - a summary of the dispute;
  - a statement of the Emergency Measures being sought by the party;
  - a reference to the arbitration agreement; and
  - specific facts supporting the necessity for the Emergency Measures.
- A copy of the arbitration agreement and the Request for Arbitration shall be attached to the application for Emergency Measures.
- A power of attorney shall be attached to the application for Emergency Measures, if the applicant is represented by counsel.
- When submitting an application for Emergency Measures, the applicant shall pay in advance the Secretariat's administrative

fees under Appendix 1 Article 3 and the emergency arbitrator's fees under Appendix 2 Article 3.

6. The application shall not be deemed to have been received by the Secretariat until such fees have been paid in full in accordance with Paragraph 5 above.
7. Article 4 (1) and Article 8 (6) of the Rules shall apply *mutatis mutandis* when the application for Emergency Measures is submitted.

## Article 2. Appointment of Emergency Arbitrator

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1. The Secretariat shall appoint a sole emergency arbitrator.
2. The emergency arbitrator shall remain impartial and independent at all times. No person shall be appointed as emergency arbitrator if there are any circumstances that give rise to justifiable doubts as to his or her impartiality or independence.
3. The emergency arbitrator shall, immediately after his or her appointment, submit to the Secretariat an Acceptance of Appointment and a Statement of Impartiality and Independence stating that no circumstances exist that likely give rise to doubts as to his or her impartiality or independence.
4. The Secretariat shall endeavor to appoint an emergency arbitrator within two business days from its receipt of the application for Emergency Measures, if the application for Emergency Measures conforms to all of the requirements set out in Appendix 3 Article 1, and the Secretariat, in its discretion, considers it appropriate to appoint an emergency arbitrator.
5. On appointment of an emergency arbitrator, the Secretariat shall send to the parties the Notice of Appointment without delay together with copies of the emergency arbitrator's Acceptance of Appointment and Statement of Impartiality and Independence.
6. Any party may challenge an emergency arbitrator in accordance with Article 14 of the Rules by submitting a written statement to the Secretariat specifying the facts and circumstances on which the challenge is based within two business days from the date on which the party receives the Notice of Appointment or the date on which the party becomes aware of the circumstances that give rise to justifiable doubts as to the emergency

arbitrator's impartiality or independence, whichever comes later. The Secretariat shall make a decision on the challenge.

7. No party may challenge an emergency arbitrator after the power of the emergency arbitrator is terminated, and any challenge proceedings pending under a previously filed application shall be terminated.
8. Article 10 (4) of the Rules shall apply *mutatis mutandis* to the appointment, replacement or removal of an emergency arbitrator.

## Article 3. Power of Emergency Arbitrator

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1. The emergency arbitrator may order any Emergency Measures that he or she deems appropriate in accordance with Article 32 (1), and may modify, suspend or terminate such order.
2. The emergency arbitrator shall establish a procedural timetable for Emergency Measures within two business days of his or her appointment.
3. The emergency arbitrator may hold a hearing if he or she deems it necessary, or proceed by a telephone conference and/or written submissions in lieu of a formal hearing.
4. The emergency arbitrator shall make a decision on an application for Emergency Measures within 15 days from his or her appointment and may not extend this time limit. However, the Secretariat may extend the time limit if all of the parties agree or other exceptional circumstances exist, such as when the case is complex.
5. The parties are bound by, and shall carry out, the Emergency Measures ordered by the emergency arbitrator. The Emergency Measures shall be deemed to be conservatory and interim measures granted by the Arbitral Tribunal when it is constituted. The Emergency Measures shall remain in effect until the Arbitral Tribunal modifies, suspends or terminates such Emergency Measures under Appendix 3 Article 4 (2).
6. Emergency Measures shall no longer be effective, if:
  - (a) the Arbitral Tribunal is not constituted within 3 months of the decision granting the Emergency Measures; or
  - (b) the arbitration proceeding is terminated because the continuation of the arbitration proceedings has become

unnecessary or impossible for any reason, such as withdrawal of the Request for Arbitration or failure to pay the Advance on Costs.

7. The power of the emergency arbitrator shall be terminated upon constitution of the Arbitral Tribunal.
8. An emergency arbitrator may not act as the arbitrator in the same dispute, unless otherwise agreed in writing by the parties.

#### **Article 4. Approval, Modification, Suspension and Termination by Arbitral Tribunal**

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1. No decision on the Emergency Measures by the emergency arbitrator shall be binding on the Arbitral Tribunal.
2. The Arbitral Tribunal may approve, modify, suspend or terminate the Emergency Measures in whole or in part.

#### **Article 5. Application *Mutatis Mutandis***

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The provisions of the Rules shall apply *mutatis mutandis* to the emergency arbitrator and to Emergency Measure proceedings unless in contrast with the nature of the emergency arbitrator and Emergency Measures.

## International Arbitration Rules

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