



2017 MODEL DISPUTE RESOLUTION AGREEMENT

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AIPN MODEL CONTRACT DISPUTE RESOLUTION AGREEMENT (2017)

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[Note: Parties may use the model clauses provided below either in the dispute resolution section of their contracts or in a stand-alone agreement. To address various scenarios that users may encounter, this model provides a number of alternative and optional clauses, from which users may select to meet their individual needs. Users should adapt the numbering to fit their choices and their contract. Please refer to the accompanying Guidance Notes for more background information.]

I. GOVERNING [SUBSTANTIVE] LAW

[Note: The designation of the substantive law applicable to the contract/dispute is distinct from the procedural law (lex arbitri) applicable to the arbitration, which is generally governed by the law of the seat of arbitration. The chosen governing law should be consistent with any other references to substantive law in the underlying contract(s).]

A. Alternative No. 1: Standard Governing Law

The substantive laws of _____ [designate state/country], exclusive of any conflicts of laws rules that could require the application of any other law, shall apply to the determination of [disputes, claims, or controversies of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, performance, interpretation, breach, validity, or termination] [Disputes (as defined in this Agreement)] between or among the Parties.

B. Alternative No. 2: Consistent with International Law

The substantive laws of _____ [designate state/country], to the extent consistent with international law, as defined in Article 38 of the Statute of the International Court of Justice and exclusive of any conflicts of law rules that could require application of any other law, shall apply to the determination of [disputes, claims, or controversies of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, performance, interpretation, breach, validity, or termination] [Disputes (as defined in this Agreement)] between or among the Parties. To the extent the laws of _____ [designate state/country] are not consistent with international law, then general principles of international law shall prevail.

II. BASIC MODEL ARBITRATION AGREEMENT

[Note: This Basic Model Arbitration Clause is a self-contained, stand-alone provision that may be inserted in an underlying contract as the sole dispute resolution mechanism. It includes, expressly and by reference to a recognized set of international arbitration rules, the key elements of an effective and enforceable international arbitration agreement, including: (a) express agreement to submit disputes to binding arbitration; (b) definition of the scope of the agreement; (c) designation of applicable arbitral regime and rules; (d) seat (or place) of arbitration; (e) language of arbitration; and (f) the number, qualifications and method of appointment of the arbitrators.]

A. Administered Rules

Any dispute, claim, or controversy of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, performance, interpretation, breach, validity, or termination (“Dispute”), shall be resolved by final, binding arbitration [by three arbitrators] [by a sole arbitrator] in accordance with the _____ [designate international arbitration rules] (“_____ Rules”), in _____ [specify language to be used].

The seat of the arbitration shall be _____ [City, Country]. [Judgment on the award may be entered by any court of competent jurisdiction.]

B. Ad-Hoc (Non-Administered) Rules

Any dispute, claim, or controversy of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, performance, interpretation, breach, validity, or termination (“Dispute”), shall be resolved by final, binding arbitration [by three arbitrators] [by a sole arbitrator] in accordance with the _____ [designate international ad hoc arbitration rules] (“_____ Rules”), in _____ [specify language to be used]. The [designate arbitral institution] shall be the appointing authority. The seat of the arbitration shall be _____ [City, Country]. Judgment on the award may be entered by any court of competent jurisdiction.

III. DETAILED MODEL ARBITRATION AGREEMENT

[Note: Users may use the following more detailed and extensive model provisions to tailor their dispute resolution agreement to meet their particular needs. Parties can choose various alternatives and options to include in their agreement. Note that these provisions are cumulative, and together, if chosen properly, they include all of the elements of an enforceable international arbitration agreement (see above regarding basic agreement). Users may include these arbitration provisions as part of a multi-step dispute resolution process, as described below.]

A. Definition of “Dispute” (Scope of Agreement)

1. Alternative No. 1: Single Contract

[Note: Use if the Arbitration/Dispute Resolution Agreement is to be inserted or incorporated by reference into an underlying contract.]

“Dispute” means any dispute, claim, or controversy of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, validity, interpretation, performance, breach, or termination.

2. Alternative No. 2: Multiple Contracts

[Note: Use if the Arbitration/Dispute Resolution Agreement is to constitute a master or umbrella dispute resolution agreement to govern multiple contracts between or among the Parties. The agreements to be governed by the master dispute resolution agreement should be clearly identified by caption, date, and parties in the definition of Dispute or in a separate appendix.]

“Dispute” means any dispute, claim, or controversy of any nature arising out of or relating to this Agreement or to any or all of [the Agreements listed below] [the Agreements identified in Appendix ____] (collectively, the “Agreements”), including but not limited to their formation,

existence, validity, interpretation, performance, breach, or termination. [Identify Agreements here or in a separate appendix.]

3. Alternative No. 3: Existing Dispute

[Note: Use if the Arbitration Agreement is to constitute a submission agreement by which an existing dispute is to be resolved by arbitration.]

“Dispute” means _____ [describe the dispute with particularity, identifying the contract(s), parties, and dispute, controversy, or claim to be submitted].

B. Agreement to Binding Arbitration

1. Alternative No. 1: Dispute Defined Elsewhere

[Note: Use if “Dispute” is separately defined to establish the scope of the Agreement.]

Any Dispute shall be resolved through final and binding arbitration in accordance with the provisions of this Agreement.

2. Alternative No. 2: Dispute Defined in Clause

[Note: Use if “Dispute” is not separately defined to establish the scope of the Agreement.]

Any dispute, claim, or controversy of any nature arising out of or relating to this Agreement, including but not limited to its formation, existence, validity, interpretation, performance, breach, or termination, (“Dispute”) shall be resolved through final and binding arbitration in accordance with the provisions of this Agreement.

C. Applicable Arbitration Rules

[Note: Many accepted sets of international arbitration rules, either administered or ad hoc (non-administered), exist. The Guidance Notes list some of the available institutional and ad hoc rules alternatives. Rules have significant impact on the conduct of the arbitration and parties’ rights, and the user should be familiar with the rules’ contents and make an informed choice based on the parties’ needs and desires.]

1. Alternative No. 1: Administered Rules

[Note: Use if choosing an administered set of arbitration rules.]

The arbitration shall be conducted in accordance with the _____ [designate a single arbitral institution/rules] (the “Rules”) [in effect at the time the arbitration is commenced].

2. Alternative No. 2: Non-Administered Arbitration Rules – UNCITRAL

[NOTE: If designating the UNCITRAL Rules, identify an international arbitral institution to serve as appointing authority if there is a default in appointment. Many of the major institutions, and the secretariat of the Permanent Court of Arbitration at The Hague, will act as appointing authority and, if desired, administer an arbitration under the UNCITRAL Rules. -]

The arbitration shall be conducted in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules (the “**Rules**”) [in effect at the time the arbitration is commenced]. [Designate arbitral institution] _____ shall be the appointing authority [and shall administer the arbitration].

3. Alternative No. 3: ICSID

[Note: ICSID jurisdiction is both limited and complex, and should only be considered after receiving specialist advice, as discussed in the Guidance Notes. Consider the option of designating ICSID arbitration only if the Host Government or, in some cases, a state-owned and controlled entity, is a Party to this Agreement, and if the subject of the dispute concerns a defined “investment.” If this choice would be appropriate and desired, an alternative arbitral institution/rules should also be designated for disputes for which ICSID may lack jurisdiction.]

The arbitration shall be conducted in accordance with the Rules of Procedure of the International Centre for Settlement of Investment Disputes (ICSID) and ICSID Convention Arbitration Rules (“**ICSID Rules**”), or, in the alternative, [if for any reason ICSID arbitration is not available] the United Nations Convention on International Trade Law (UNCITRAL) Arbitration Rules (“**UNCITRAL Rules**”).

D. Number of Arbitrators

[Note: Accepted international arbitration rules contain a designated method for determining the number of arbitrators and their method of appointment. Parties may prefer, however, to specify the number of arbitrators in their agreement, and may in some respects modify the method of appointment.]

1. Alternative No. 1: Tribunal of Three Arbitrators

A tribunal of three arbitrators appointed in accordance with [the provisions of this Agreement and] the Rules shall conduct the arbitration and decide the Dispute.

2. Alternative No. 2. Sole Arbitrator

A sole arbitrator appointed in accordance with [the provisions of this Agreement and] the Rules shall conduct the arbitration and decide the Dispute.

3. Alternative No. 3: Three Arbitrators/One Arbitrator Unless Agreed Otherwise

A [tribunal of three arbitrators] [sole arbitrator] shall conduct the arbitration and decide the Dispute, unless all Parties to the Dispute agree to a [sole arbitrator] [tribunal of three arbitrators] within [•] days after commencing the arbitration.

4. Alternative No. 4: Number of Arbitrators Based on Amount in Dispute

If the Parties' claims or counterclaims equal or exceed _____ [specify amount], exclusive of interest, arbitration costs, or attorneys' fees, a tribunal of three arbitrators shall conduct the arbitration and decide the Dispute; otherwise, a sole arbitrator shall do so. If the Parties are unable to agree whether the amount in controversy meets the threshold for using three arbitrators within [•] days of commencing the arbitration, the _____ [designated arbitral institution or appointing authority] shall determine the number of arbitrators in accordance with the Rules.

If a sole arbitrator shall conduct the arbitration and decide the Dispute, the Parties to the arbitration shall attempt to agree upon a qualified individual to serve as Arbitrator. If the Parties are unable to so agree within [•] days of the date for the response to the Request for arbitration, or such other time as the Parties may agree in writing, then the [institution or appointing authority] shall appoint the Arbitrator in accordance with the Rules.

If three arbitrators shall conduct the arbitration and decide the Dispute, within [•] days after that determination, the Claimant(s) and the Respondent(s), respectively, shall each nominate a person to serve as arbitrator. The two arbitrators so selected [and confirmed] shall, within [•] days of their appointment, nominate a third person who [upon confirmation] shall serve as presiding arbitrator. If the arbitrators so selected [and confirmed] fail to select a third arbitrator within [•] days after their [appointment] [confirmation], the [arbitral institution or appointing authority] shall appoint the third arbitrator in accordance with the Rules.

E. Arbitrator Appointment

[Note: Generally, parties may modify the method of appointment specified in the rules in some respects, but other requirements may not be derogated. The following provisions are options if the parties want to provide for a different method of selection than that set out in the designated rules. Some rules require that, while the parties may nominate persons to serve as arbitrators, the arbitrators' appointment must be confirmed and made by the institution. Users must check the requirements of the rules selected and include the confirmation requirement as appropriate.]

1. Alternative No. 1: Three Arbitrators, Party Nomination

The Claimant(s) shall, in the notice of arbitration, nominate one person to serve as arbitrator. The Respondent(s) shall, in the response, nominate one person as arbitrator. The two arbitrators so selected [and confirmed] shall [after consultation with the parties], within [•] days

of their appointment, nominate a person to serve as the third arbitrator, who [upon confirmation] shall serve as the presiding arbitrator. If the arbitrators so selected [and confirmed] fail to select a third arbitrator within [•] days after their appointment, the [arbitral institution or appointing authority] shall appoint the third arbitrator in accordance with the Rules.

2. Alternative No. 2: Sole Arbitrator, Agreed by Parties

The parties shall attempt to agree upon a qualified individual to serve as the sole arbitrator. If the parties are unable to so agree within [•] days of the Respondent(s)' receipt of the notice of arbitration, then the [institution or appointing authority] shall appoint the arbitrator in accordance with the Rules.

F. Arbitrator Appointment if There Are Multiple Parties.

[Note: Many rules require that, if there are multiple claimants or respondents, all claimants must agree on the claimant-selected arbitrator and all respondents must agree on the respondent-selected arbitrator. If all claimants or all respondents fail to agree, then the institution will appoint all three arbitrators. This requirement likely cannot be derogated.]

If there are more than two Parties to the Dispute, then all Claimants shall jointly nominate one arbitrator in the notice of arbitration and all Respondents shall jointly nominate one arbitrator in the response. The two arbitrators so selected [and confirmed] shall [after consultation with the parties], within [•] days of their appointment, nominate a third person who [upon confirmation] shall act as presiding arbitrator. If either all Claimants or all Respondents fail to make a joint [nomination] [appointment] of an arbitrator, the _____ [arbitral institution or appointing authority] shall appoint all three arbitrators.

G. Arbitrator Qualifications and Nationality

[Note: All recognized and accepted international arbitration rules require that arbitrators be neutral (independent and impartial). Thus, there is no need to specify in the dispute provisions that the arbitrators be so. The requirement that all arbitrators be neutral cannot be waived in international arbitration. Parties may specify other qualifications and nationality requirements.]

Arbitrators shall be qualified by education, training, or experience to resolve matters in the nature of the Dispute. The Arbitrators shall be fluent in the language[s] of the arbitration.

1. Optional/Alternative No. 1: Sole/Presiding Arbitrator Nationality

The [Arbitrator] [Presiding Arbitrator] shall be of a nationality other than that of any of the Parties [or their ultimate parent entities].

2. Optional/Alternative No. 2: All Tribunal Members Nationality

None of the Arbitrators shall be of the same nationality as that of any of the Parties [or their ultimate parent entities].

H. Seat of Arbitration.

[Note: The seat of the arbitration is very important, as it generally supplies the procedural law governing the arbitration and is the only place at which an award may be set aside. If possible, designate a (preferably neutral) seat of arbitration in a country that is party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (New York Convention).]

Unless otherwise agreed by all Parties to the Dispute, the seat of arbitration shall be _____ [City, Country]. If the Parties agree [or the Tribunal/Arbitrator orders], [the Tribunal/Arbitrator] may hold hearings in other locations without changing the seat of arbitration.

1. Option No. 1: English Arbitration Act 1996

[Note: Use if the parties choose London or elsewhere in England as the seat of arbitration or provide for the English Arbitration Act 1996 to govern the arbitration proceedings and do not want the English courts to have authority to review questions of law.]

The Parties waive any right to make application regarding or appeal decisions on questions of law under Sections 45 or 69 of the English Arbitration Act 1996 (or any amendment thereto).

I. Language

1. Alternative No. 1: Single Language

The arbitration shall be conducted in _____ [specify language].

2. Alternative No. 2: Two Languages

[Note: Use only if parties are unable to agree on a single designated language. Using two languages can significantly increase costs, but if parties cannot agree, having a clause that does not require translation of documents and submissions can reduce those costs.]

Unless the Parties agree otherwise, the arbitration shall be conducted in both _____ and _____ [specify languages]. The Arbitrators must be fluent in both of these languages. Submissions may be made in either _____ or _____. Documents and other disclosed materials may be disclosed in their original language [, including existing translations, if any]. If a document submitted as evidence is not in one of the agreed languages, the Party submitting the document must provide a translation into one of the agreed languages if the entire document is 5 pages or less, or of the relevant portions of longer documents. Parties may argue and witnesses may testify in either of the agreed languages (or witnesses in their native language), with simultaneous interpretation. The Award shall be issued in both _____ and _____.

J. Entry of Judgment on the Award.

[Note: Use for arbitrations seated in the United States or if there is a chance that the award will need to be enforced in the United States.]

The award of the Arbitral Tribunal shall be final and binding. Judgment on the award may be entered and enforced by any court of competent jurisdiction.

IV. OPTIONAL ARBITRATION PROVISIONS

[Note: Most modern international arbitration rules address the matters set out in this part IV. Therefore, unless otherwise noted, these provisions need not (and in many cases should not) be included in the agreement unless the designated rules do not address the specific issue or the parties wish to derogate from, modify, or add to the designated rules for some reason.]

A. Emergency Arbitrator/Emergency Measures

1. Alternative No. 1: Arbitration Rules Do Not Provide for Emergency Arbitrator

[Note: Use if desired, and if the selected arbitration rules do not otherwise address emergency arbitrators or require express consent to use of emergency arbitrator procedures.]

If, prior to the [establishment of the Arbitral Tribunal] [appointment of the Arbitrator], a Party needs urgent interim or conservatory measures that cannot await the [constitution of the Tribunal] [appointment of the Arbitrator] ("**Emergency Measures**"), the Party may apply to the _____ [designated institution or appointing authority] for immediate appointment of an Emergency Arbitrator to hear and rule on the application for Emergency Measures. The _____ [designated institution or appointing authority] shall, as soon as possible, appoint an individual to serve as Emergency Arbitrator, who shall have the power to order any interim or conservatory measures the Emergency Arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property.

The Emergency Arbitrator may hold hearings on applications for Emergency Measures in person, by telephone, or video conference, or by other means that permit the Parties to the Dispute to present evidence and arguments. The Emergency Arbitrator's decision shall take the form of an order or award, with which the Parties shall undertake to comply. The order or award may require any Party to provide appropriate security regarding any interim or conservatory measures.

The Emergency Arbitrator shall have no further power to act after the [Arbitral Tribunal is constituted] [the Arbitrator is appointed]. The Emergency Arbitrator's order or the interim award shall not bind the [Arbitral Tribunal] [Arbitrator] on any question, issue, or dispute determined in any order on Emergency Measures. The [Arbitral Tribunal] [Arbitrator] may

modify, terminate, or annul any order or an interim award or any modification thereto made by the Emergency Arbitrator. The [Tribunal] [Arbitrator] may apportion costs and fees incurred in connection with Emergency Arbitrator proceedings in the Award.

Optional: [The Parties agree that these Emergency Arbitrator provisions do not prevent a Party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making the application for Emergency Measures, or, in appropriate circumstances, even thereafter, and any such resort to a competent judicial authority for emergency or interim measures shall not waive or impair the effectiveness of this arbitration agreement or its enforceability.]

2. Alternative No. 2: Opt Out of Emergency Arbitrator Provisions

[Note: Use if the designated rules provide for emergency arbitrator procedures and the parties want to opt out of them.]

The Parties agree that the emergency arbitrator provisions in the Rules shall not apply to Disputes under this Agreement.

B. Interim Measures of Relief

[Note: Most rules address availability of interim measures. Therefore, these provisions need not be included in the agreement unless the designated rules do not address interim measures or the parties wish to derogate from or modify the rules.]

Any Party to the Dispute may apply [before the Arbitral Tribunal is appointed] [at any time] to a court of competent jurisdiction for interim or conservatory measures of relief, including injunction, attachment, or conservation orders. The Parties agree that seeking and obtaining such court-ordered interim measures shall not waive the right to arbitration or impair the effectiveness of this arbitration agreement or its enforceability.

Any Party may, at any time, apply to the [Arbitral Tribunal] [Arbitrator] for interim or conservatory measures, including injunction, attachment, or conservation orders. The [Arbitral Tribunal (or in matters of urgency the Presiding Arbitrator acting alone if one or more of the other Arbitrators is unable to participate in a timely fashion)] [Arbitrator] may grant interim or conservatory measures in appropriate circumstances, which may be immediately enforced by court order. Hearings on requests for interim measures may be held in person, by telephone or video conference, or by other means that permit the Parties to the Dispute to present evidence and arguments. The Arbitrators may require any Party to provide appropriate security in connection with any interim or conservatory measures.

C. Expedited Arbitration/Time Limits on Conducting Arbitration

[Note: Most rules address time limits, and many rules provide for expedited proceedings if the parties so agree or circumstances warrant. Users should be careful not to set impracticable time limits in their agreement.]

1. Alternative No. 1 – Expedited Arbitration

In the notice of arbitration or the response, a Party may request that the procedures for Expedited Arbitration in the Rules shall apply to the Dispute. If a Party objects to application of the Expedited Arbitration procedures, then the [designated arbitral institution or appointing authority] shall determine the application in accordance with the Rules.

2. Alternative No. 2 – Time Limit on Issuing Award

[Note: If the Arbitral Tribunal/Arbitrator fails to issue the award by the deadline stated, the Tribunal/Arbitrator may be functus officio and without power to act. Any award issued after the deadline would be ineffective. Parties should therefore be very careful with setting time limits.]

Unless the Parties agree otherwise, the [Arbitral Tribunal] [Arbitrator] shall issue the final Award within [•] days/months] of the date the [Arbitral Tribunal is constituted] [Arbitrator is appointed], unless the [Arbitral Tribunal] [Arbitrator] determines, in a reasoned decision, that the complexity of the case and the interest of justice require that such time limit be extended].

3. Alternative No. 3 – Efficient Proceedings and Award

The Parties want the arbitration of any Dispute to proceed efficiently and expeditiously. Unless the Parties agree otherwise, the [Arbitral Tribunal] [Arbitrator] shall endeavor to issue the final Award within [•] days/months] of the date the [Arbitral Tribunal is constituted] [Arbitrator is appointed]. Failure to timely issue the Award shall not render the [Arbitral Tribunal] [Arbitrator] *functus officio* or impair the validity or enforceability of the Award.

D. Elements of Relief/Remedies

[Note: Most rules address the arbitrators' powers to award damages, declaratory relief, costs, fees, interest, and other remedies. Some rules specifically exclude the availability of certain remedies, such as exemplary damages. These provisions need not be included in the agreement unless the specific issue is not addressed in the designated rules or if the parties wish to derogate from or modify the designated rules.]

1. Interest

[Note: If the agreement or arbitration is subject to Shari'ah law or a party intends to enforce an award in a Shari'ah jurisdiction, then the application of interest on an award may invalidate part or all of the award and render part or all of it unenforceable in such jurisdictions.]

The Award may include interest from the date of any default, breach, or other accrual of a claim until the Award is paid in full.

2. Currency of Award

The Award shall be made and payable in _____ [designate currency], free of any tax or other deduction whatsoever.

3. Consequential and Exemplary or Moral Damages

[Note: Some international arbitration rules expressly deny arbitrators the authority to award exemplary, moral, or other non-compensatory damages, while others allow them if permitted by applicable law.]

a) Alternative No. 1: Waive All Non-Compensatory Damages

The Parties waive their rights to claim or recover, and the [Arbitral Tribunal] [Arbitrator] shall not award, any consequential, punitive, multiple, exemplary, or moral damages, unless the applicable law requires that compensatory damages be increased in a specified manner [, and except to the extent such damages have been awarded to a third party and are subject to apportionment among the Parties to the Dispute]. This provision does not apply to an award of arbitration costs and fees for misconduct in the course of the arbitration.

b) Alternative No. 2: Authorize Exemplary or Moral Damages

The [Arbitral Tribunal] [Arbitrator] is authorized to award punitive, exemplary, moral, or similar damages in appropriate circumstances, unless any applicable law prohibits the award of such damages.

E. Costs and Fees

1. Alternative No. 1: Costs Awarded at Tribunal's Discretion

The [Arbitral Tribunal] [Arbitrator] is authorized to award costs of arbitration, including costs of document disclosure and other evidence, attorneys' fees, and expert witness fees, and to apportion them among the Parties.

2. Alternative No. 2: Costs Follow Event

The [Arbitral Tribunal] [Arbitrator] may [shall] award costs of arbitration, including costs of document disclosure and other evidence, attorneys' fees, and expert witness fees, to the prevailing Party, if any and as determined in the [Tribunal's] [Arbitrator's] discretion.

3. Alternative No. 3: Each Party Bears Its Own Costs

All costs and expenses of the [Arbitral Tribunal] [Arbitrator] [and of the arbitral institution] shall be borne by the Parties equally. Each Party shall bear its own costs and expenses (including of its own counsel, experts and witnesses) involved in preparing and presenting its case.

F. Joinder of Parties

[Note: Most rules address joinder of parties. These provisions need not be included in the agreement unless the specific issue is not addressed in the designated rules or the parties wish to derogate from or modify the designated rules.]

A Party wishing to join an additional party to the arbitration may file a request to do so with the [designated institution], identifying the party to be joined and the claims against the new party. No additional party may be joined after the [appointment of any Arbitrator] [appointment of the sole Arbitrator] unless all Parties, including the additional party, agree to the joinder.

G. Consolidation

[Note: Most rules address consolidation of arbitrations. These provisions need not be included in the agreement unless the specific issue is not addressed in the designated rules or the parties wish to derogate from or modify the designated rules.]

1. Alternative No. 1 – Arbitrators Decide Consolidation

If (i) multiple arbitrations exist between or among the same parties, (ii) the subject matters of the multiple arbitrations are related by common questions of law or fact and (iii) the multiple arbitrations could result in conflicting or inconsistent awards, then in appropriate circumstances the multiple arbitrations may be consolidated into a single arbitration. If all Parties do not agree on the consolidation, then the [first-formed Tribunal] [first-appointed Arbitrator] among the arbitrations in question shall, after [•] days of the date set for final submissions on consolidation, determine whether consolidation is appropriate. In making that determination, the [Tribunal] [Arbitrator] shall take into account the status of the arbitrations (including progress and arbitrator appointments), whether the arbitration agreements and applicable law are compatible, whether the disputes raise common issues of law or fact, whether justice, efficiency, and economy will be served by consolidation, and applicable law. If one or more of the arbitrations are consolidated, then, unless the Parties agree otherwise, the [first-formed Tribunal] [first appointed Arbitrator] shall serve in the consolidated arbitration.

2. Alternative No. 2 – Consolidation Arbitrator

[Note: Appointment of a consolidation arbitrator may not be enforceable or practicable under some arbitration rules.]

If (i) multiple arbitrations exist between or among the same Parties, (ii) the subject matters of the multiple arbitrations are related by common questions of law or fact and (iii) the multiple arbitrations could result in conflicting or inconsistent awards, then in appropriate circumstances the multiple arbitrations may be consolidated into a single arbitration. If all Parties do not agree on the consolidation, then the [arbitral institution or appointing authority] shall appoint a Consolidation Arbitrator to determine whether consolidation is appropriate, taking into

account the status of the arbitrations (including progress and arbitrator appointments), whether the arbitration agreements and applicable law are compatible, whether the disputes raise common issues of law or fact, whether justice, efficiency, and economy will be served by consolidation, and applicable law. Unless the Parties agree otherwise, the Consolidation Arbitrator shall not be an arbitrator in any of the arbitrations considered for consolidation. If one or more of the arbitrations are consolidated, then, unless the Parties agree otherwise, the [first-formed Tribunal] [first appointed Arbitrator] shall serve in the consolidated arbitration.

3. Alternative No. 3 – Consolidation with Non-Identical Parties

If multiple arbitrations of Disputes exist involving common questions of law or fact and if the multiple arbitrations could result in conflicting or inconsistent awards, then in appropriate circumstances, even if the parties to the arbitrations are not identical, such arbitrations may be consolidated into a single arbitration, so long as all of the parties to the arbitrations consent to consolidation. Unless the parties agree otherwise, the [first-formed Tribunal] [first-appointed Arbitrator] shall serve in the consolidated arbitration.

H. Document Disclosure and Taking of Evidence

[Note: Most international arbitration rules provide for the arbitrators to determine the conduct of the arbitration proceedings, and to order disclosures of documents and certain other forms of evidence, if justified, taking into account privileges and trade secrets.]

1. Alternative No. 1: IBA Evidence Rules Apply

Parties may request, and the [Arbitral Tribunal] [Arbitrator] may order, disclosure of documents in accordance with the Rules and with the [then current] IBA Rules on the Taking of Evidence in International Arbitration (“**IBA Evidence Rules**”). In requesting and ordering disclosure and any other taking of evidence, the Parties and the [Tribunal] [Arbitrator] shall always take into account the goals of providing an efficient, economical, and fair process for the taking of evidence in international arbitrations, particularly those between Parties from different legal traditions.

2. Alternative No. 2: IBA Evidence Rules as Guidelines

Parties may request, and the [Arbitral Tribunal] [Arbitrator] may order, disclosure of documents in accordance with the Rules. The Parties and the [Tribunal] [Arbitrator] shall use the [then current] IBA Rules on the Taking of Evidence in International Arbitration (“**IBA Evidence Rules**”) as guidelines in developing the procedures for document disclosure and the taking of evidence, taking into account the goals of providing an efficient, economical, and fair process for the taking of evidence.

3. Alternative No. 3: No Document Disclosure

The Parties shall submit all evidence upon which they intend to rely, in accordance with the Rules. The Parties are not required to disclose documents other than those they submit and

intend to rely upon as evidence. [The Parties shall not have the right to request disclosure of documents, or seek other forms of discovery, other than documents that the Parties are required to provide to the other Parties under the Agreement, including pursuant to audit rights.] [In extraordinary circumstances and to avoid injustice, the [Arbitral Tribunal] [Arbitrator] may order disclosure of specifically identified documents known to exist and that may be material to the outcome of the Dispute].

4. Alternative No. 4: Expanded Document Disclosure

The Parties intend that any Dispute be resolved in light of the relevant documentary evidence, regardless of which Party holds the evidence. Therefore, the Parties shall submit copies of all documents they consider relevant to the matters in dispute along with their respective [request for arbitration and answer] [statements of claim or defense] and any counterclaim or reply. The Parties may subsequently seek, and the [Arbitral Tribunal] [Arbitrator] may order, disclosure of any additional documents that are relevant to the issues in dispute. The [Tribunal] [Arbitrator] shall take into account and seek to preserve any legal privileges, confidentiality, and trade secrets applicable to the documents and the information they contain.

I. Confidentiality

All negotiations, mediation or conciliation, arbitration, and expert determinations relating to a Dispute (including any settlement, arbitral award, documents exchanged or produced (unless otherwise public), and memorials, briefs, or other documents prepared for [mediation/conciliation or] arbitration) are confidential and may not be disclosed by the Parties, their employees, officers, directors, counsel, consultants, and expert witnesses, except to the extent necessary to enforce any settlement agreement, arbitration award, or expert determination, to enforce other rights of a Party, as required by law or regulation, or for a *bona fide* business purpose, such as disclosure to accountants, shareholders, or third-party purchasers; provided, however, that breach of this confidentiality provision shall not void any settlement, expert determination, or award.

J. Waiver of Sovereign Immunity

[NOTE: Confirm the authority of each Party to waive its sovereign immunity under applicable local laws.]

Any Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets waives any such immunity from either jurisdiction or enforcement to the fullest extent permitted by the laws of any applicable jurisdiction. This waiver includes immunity from (i) any expert determination, mediation, or arbitration proceeding commenced pursuant to this Agreement; (ii) any judicial, administrative, or other proceedings to aid the expert determination, mediation, or arbitration commenced pursuant to this Agreement; and (iii) any effort to confirm, enforce, or execute any decision, settlement, award, judgment, service of process, execution order, or attachment (including pre-judgment attachment) that results from an expert determination, mediation, arbitration, or any judicial or administrative proceedings commenced

pursuant to this Agreement. Each Party acknowledges that its rights and obligations subject to this Agreement are of a commercial and not a governmental nature.

K. Notices

Any papers, notices, or process required by this Agreement or necessary or proper for any proceedings hereunder may be served on a Party by registered or certified mail, courier, facsimile transmission, e-mail, or any other means of communication that provides a record of the receipt thereof. *[Identify party representative as point of contact for receipt of notices under the Agreement.]*

V. OPTIONAL: MULTI-STEP DISPUTE RESOLUTION

[Note: The following are optional provisions for non-binding alternative dispute resolution processes in addition to arbitration. Parties may choose to include one or more of these processes in their agreement.]

A. Definition of Dispute

[Use one of the alternative clauses defining “Dispute” set out above in part III.]

B. Notice of Dispute

1. Alternative No. 1 – Notice Commences ADR Prerequisite to Arbitration

[Note: Use if the parties want to provide for non-binding ADR processes that must be completed as a jurisdictional prerequisite before a party may initiate arbitration.]

A Party who wants to submit a Dispute for resolution shall commence the Dispute resolution process by providing the other Parties to the Dispute a written notice of the existence of a Dispute (“**Notice of Dispute**”). The Notice of Dispute shall identify the Parties to the Dispute and contain a brief statement of the nature of the Dispute. The submission of a Notice of Dispute shall toll any applicable statutes of limitation or prescriptive periods related to the Dispute, pending the conclusion or abandonment of dispute resolution proceedings under this Agreement.

2. Alternative No. 2 – Notice Commences ADR Parallel to Arbitration

[Note: Use if the parties choose to provide for non-binding ADR processes but do not want any of them to be a jurisdictional prerequisite to initiating arbitration.]

To commence the Dispute resolution process, a Party shall provide the other Party[ies] to the Dispute a written notice of the existence of a Dispute (“**Notice of Dispute**”). The Notice of Dispute shall identify the Parties to the Dispute and contain a brief statement of the nature of

the Dispute. The submission of a Notice of Dispute shall toll any applicable statutes of limitation or prescriptive periods related to the Dispute, pending the conclusion or abandonment of dispute resolution proceedings under this Agreement. If a Party chooses to initiate arbitration, it may do so simultaneously with the issuance of the Notice of Dispute.

Notwithstanding the Parties' agreement and duty to attempt to resolve the Dispute through the non-binding alternative dispute resolution processes set out in this Article ____, any Party may initiate arbitration in accordance with Article ____ at any time after a Dispute arises. The Parties agree that none of the non-binding dispute resolution processes are a jurisdictional prerequisite to arbitration, and arbitration may occur concurrently with any of those processes.

C. Senior Executive Negotiations

[Note: Include the second paragraph of this clause if the parties want negotiations to be a jurisdictional prerequisite to arbitration, in which case specified time limits are required to trigger the next phase of dispute resolution and avoid delays and disputes over whether the parties have satisfied the ADR requirements.]

The Parties shall seek to resolve any Dispute by negotiations among their Senior Executives. A "**Senior Executive**" means an individual with authority, subject to any necessary board of directors' approvals, to settle the Dispute for a Party. Within [•] days after the date the Notice of Dispute is issued, the Senior Executives representing the Parties to the Dispute shall meet at a mutually acceptable time and place to attempt to resolve the Dispute. At least [•] business days before the scheduled meeting, each Party shall give notice to the other Parties of who shall attend the meeting on behalf of the Party, including attorneys. Further negotiations may be held in any manner.

If the Dispute is not resolved through negotiation within [•] days after the Notice of Dispute, or such other period as the Parties may agree in writing, then any Party may [make a request for mediation/conciliation in accordance with Article ____] [initiate arbitration in accordance with Article ____].

D. Mediation/Conciliation

1. Alternative No. 1 – Mediation Under Institutional Rules

[Note: Several accepted sets of administered international mediation rules exist. The Guidance Notes list some of the available rules alternatives. Rules may have significant impact on the conduct of the mediation, and the user should be familiar with the rules' contents and make an informed choice based on the parties' needs and desires. Include the final paragraph of this clause if the parties want mediation to be a jurisdictional prerequisite to arbitration, in which case specified time limits are required to trigger the next phase of dispute resolution and avoid delays and disputes over whether the parties have satisfied the ADR requirements.]

[If the Dispute is not resolved by negotiation pursuant to Article ____ within [•] days after the Notice of Dispute, the] [The] Parties to the Dispute shall seek to resolve the Dispute by mediation conducted in accordance with the _____ [designate mediation rules] (“**Mediation Rules**”).

The Parties to the Dispute shall attempt to jointly [appoint] [nominate] a neutral mediator. If they are unable to do so within [•] days after the [mediation request] [Notice of Dispute], the _____ [mediation administrator or institution] shall appoint the mediator in accordance with the Mediation Rules. The mediator shall meet with the Parties to the Dispute to mediate the Dispute within [•] days after the written request for mediation.

If the Dispute is not resolved through mediation within [•] days after the request for mediation, or such other time as the Parties may agree in writing, any Party may initiate arbitration in accordance with Article _____.

2. Alternative No. 2 – Ad Hoc Conciliation/Mediation After Negotiation

[Note: Include the final paragraph of this clause if the parties want mediation to be a jurisdictional prerequisite to arbitration, in which case specified time limits are required to trigger the next phase of dispute resolution and avoid delays and disputes over whether the parties have satisfied the ADR requirements.]

[If the Parties are unable to resolve the Dispute by negotiation pursuant to Article ____ within [•] days after the Notice of Dispute, the] [The] Parties to the Dispute shall seek to resolve the Dispute by [mediation] [conciliation], and any Party may initiate [mediation] [conciliation] by sending all other Parties to the Dispute a written request that the Dispute be [mediated] [conciliated].

The Parties to the Dispute shall attempt to jointly select a neutral mediator. If they are unable to do so within [•] days after the [mediation/conciliation request] [Notice of Dispute], any Party may apply to the _____ [designate institution or appointing authority] to appoint the [mediator] [conciliator].

The Parties shall each submit a confidential written summary of their positions in the Dispute to the [mediator] [conciliator] in advance of the [mediation] [conciliation] meeting. The [mediator] [conciliator] shall meet with the Parties to the Dispute and their counsel within [•] days after the written request for [mediation] [conciliation]. The Parties may present argument and documentary evidence at the session.

All submissions, arguments, offers, and communications in the course of the [mediation] [conciliation] are confidential and without prejudice to the Parties’ positions in the Dispute, and may not be used or disclosed in arbitration or any other proceeding other than to confirm that the [mediation] [conciliation] occurred in accordance with this Agreement.

If the Dispute is not resolved through [mediation] [conciliation] within [•] days after the request for [mediation] [conciliation], or such other time as the Parties may agree in writing, any Party may initiate arbitration in accordance with Article ____.

VI. ALTERNATIVE: EXPERT DETERMINATION

[Note: Expert Determination is independent of arbitration and other alternative dispute resolution processes. Unlike an arbitral award, an expert determination is not directly enforceable in the courts of foreign jurisdictions. The decision of an expert is only binding contractually. As a result, if an expert determination is not carried out voluntarily by one of the parties, further legal proceedings would be necessary. Under such circumstances, a party could either enforce an expert determination in a court with competent jurisdiction for breach of contract or a party could enforce the expert determination by initiating an arbitration whose award could then be enforced through an arbitration treaty such as the New York Convention.]

Parties must take extreme care in defining the issues subject to expert determination, which should be limited to discrete and defined technical, accounting, valuation, and similarly narrow questions suitable for analysis by an expert. Failing to do so can lead to disputes over whether an issue may be submitted to arbitration or must be submitted to expert determination. Certain institutions are willing to appoint experts and administer expert determination proceedings. The Guidance Notes list some of these available alternatives. These rules and procedures may have significant impact on the conduct of the expert determination proceedings, and the user should be familiar with the rules' contents and make an informed choice based on the parties' needs and desires.]

If a Dispute regarding _____ [describe technical or valuation issue, referencing relevant contract clauses] occurs, a Party wanting an expert determination of the matter shall give written notice to the other Parties of the existence of a matter requiring determination by an independent expert (the “**Notice of Expert Determination**”). The Notice of Expert Determination shall describe the nature of the Dispute and the matters for which expert determination is required.

The Parties shall attempt to identify and agree on the appointment of an independent expert who is qualified by experience and education to determine the matters in issue (the “**Expert**”). If the Parties are unable to agree on the individual to serve as Expert within [•] days of delivery of the Notice of Expert Determination, then the Expert shall be appointed by _____ [designate institution or appointing authority].

[The _____ [designated institution] shall administer the expert determination in accordance with its expertise procedures.] [Subject to the terms of this Agreement, the Parties and the Expert shall attempt to agree on the procedures for making the expert determination. If they are unable to agree on the procedures within [•] days of the date of the appointment of the Expert, then the Expert may conduct the expert determination

procedure as it deems appropriate, subject to the terms of this Agreement.] The expert determination proceedings shall be confidential, and the Parties and Expert shall take measures to ensure protection of confidential, trade secret, and proprietary information. The Parties shall provide the Expert with documents and information relevant to the Expert's Determination.

The decision of the Expert on the matters referred to it (the "**Determination**") shall be in writing and shall state the reasons for the Determination. The Expert shall issue its Determination within [•] days of the Expert's appointment, or such other time as the Parties may agree in writing. The expert is not an arbitrator of the Dispute and shall not be deemed to be acting in an arbitral capacity. Each Party shall bear its own fees and costs, and the fees and costs for the conduct of the expert determination procedure shall be borne equally by the Parties.

Alternative 1: The Expert's Determination shall not be binding on the Parties to the Dispute.

Alternative 2: The Expert's Determination shall be binding on the Parties to the Dispute and the Parties undertake to comply with that Determination, unless challenged in an arbitration pursuant to Article _____ within [•] days of the date the Determination is received by the Parties to the Dispute and until replaced by a subsequent arbitral award. In the arbitration (i) the expert determination on the specific matter shall be entitled to a rebuttable presumption of correctness; and (ii) the expert shall not (without the written consent of the Parties to the Dispute) be appointed to act as an arbitrator or as adviser to the Parties to the Dispute.

VII. ALTERNATIVE: COURTS

*[NOTE: This Court selection clause should **not** be used with provisions that provide for binding arbitration. They are mutually exclusive. Including both the courts and arbitration in your dispute resolution clause would lead to jurisdictional disputes and possibly void the arbitration agreement.]*

*The clause provided below should only be used if parties wish to use the courts for resolving their dispute **and** they want to specify a particular jurisdiction in which the court proceedings may be brought. Use of this clause will contractually modify the parties' otherwise applicable rights to seek the resolution of disputes in courts of law under applicable statutes, procedural rules and legal precedent. If parties decide to use the clause below and wish to select a specific court, the advice of qualified counsel should be sought to fully evaluate the effects of such modification.]*

Any dispute [may][shall] be settled [non-exclusively] [exclusively] by the Courts of [specify the jurisdiction], and the Parties irrevocably attorn and submit to the personal jurisdiction of those Courts. The Parties irrevocably waive any objection to venue in those Courts and any objection based on the doctrine of *forum non conveniens* or similar grounds that those Courts are inconvenient for determination of a dispute.