

# **FAST TRACK ARBITRATION RULES OF NORDIC OFFSHORE AND MARITIME ARBITRATION ASSOCIATION (NOMA)**

*These Rules shall apply to arbitrations as per these Rules Article 1.*

*The arbitrator(s) and the Parties shall perform the arbitration proceedings taking into account the Best Practice Guidelines attached hereto.*

The Rules are based on UNCITRAL Arbitration Rules, as of 2017.

## **SECTION I INTRODUCTORY RULES**

### **Article 1 Application of the Fast Track Arbitration Rules**

1. These Rules apply whenever the parties have agreed to refer their dispute to the Fast Track Arbitration Rules of NOMA before or after a dispute has arisen and the aggregate amount of the claim and/or counterclaim in dispute does not exceed USD 250,000 or the equivalent amount in another currency, or such other amount as the parties have agreed.
2. The Rules in force at the time of commencement of arbitration shall apply.
3. These Rules shall govern the arbitration except that where any Article of these Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate. In such case the mandatory provision shall prevail.

### **Article 2 Notice and calculation of periods of time**

1. A notice, including a notification, communication or proposal, may be transmitted by any means of communication that provides or allows for a record of its transmission.
2. If an address has been designated by a party or authorized by the arbitral tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means may only be made to an address so designated or authorized.
3. In the absence of such designation or authorization, a notice is:
  - a) Received if it is physically delivered to the addressee; or
  - b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.
4. If, after reasonable efforts, delivery cannot be effected in accordance with paragraphs 2 or 3, a notice is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3 or 4, or attempted to be delivered in accordance with paragraph 4. A notice transmitted by electronic means is deemed to have been received on the day it is sent, except that a notice of arbitration so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.
6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

### **Article 3 Notice of arbitration**

1. The party or parties initiating the arbitration ("Claimant") shall send a notice of arbitration to the other party or parties ("Respondent"). A copy of the notice of arbitration shall also be sent to NOMA by e-mail for information only.
2. Arbitral proceedings shall be deemed to commence on the date on which the notice of arbitration is received by the Respondent.
3. The notice of arbitration shall include the following:
  - a) A demand that the dispute be referred to arbitration;
  - b) The parties to the arbitration;
  - c) Identification of the arbitration agreement that is invoked.

It is recommended that the notice further should include:

- a) The parties' legal representatives and their addresses, if known;
  - b) Identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - c) A brief description of the claim and an indication of the amount involved, if any;
  - d) The relief or remedy sought.
4. The constitution of the arbitral tribunal shall not be hindered by any controversy with respect to the sufficiency of the notice of arbitration, which shall be finally resolved by the arbitral tribunal.

### **Article 4 Representation and assistance**

1. Each party may be represented or assisted by persons chosen by it. The names and addresses of such persons must be communicated to all parties and to the arbitral tribunal. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative

of a party, the arbitral tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the arbitral tribunal may determine.

## **SECTION II COMPOSITION OF THE ARBITRAL TRIBUNAL**

### **Article 5 Appointment of sole arbitrator**

1. The parties shall, as far as possible, appoint a sole arbitrator jointly. If the parties are unable to agree on who should be appointed within 14 days after commencement of the arbitration, NOMA shall, at the written request of a party with a copy to the other party, appoint the sole arbitrator. Both parties shall have the right to submit in writing any arguments relevant to NOMA's appointment within 3 working days from receipt by NOMA of the written request. NOMA shall appoint an arbitrator within 7 working days from receipt of the written request.
2. An arbitrator considered for appointment, shall on request by a party or NOMA, issue a letter of confirmation of availability, impartiality, and applicable rates with respect to its fees.

### **Article 6 Appointment of three arbitrators**

1. If the parties have agreed on appointing a tribunal of three arbitrators, the parties shall, as far as possible, appoint the arbitrators jointly. The arbitrators shall be impartial and independent of the parties, qualified for the task and available within the time frame required.
2. An arbitrator considered for appointment, shall on request by a party or NOMA, issue a letter of confirmation of availability, impartiality, and applicable rates with respect to its fees.
3. If the parties are unable to agree on who should be appointed [within 7 days], each party shall appoint one arbitrator. The party that first makes its appointment, shall notify the other party of the person appointed. The other party shall appoint its arbitrator within 7 days after receipt of the notice. The two arbitrators thus appointed shall try to agree on the third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.
4. If the party receiving the notice of appointment of arbitrator does not appoint an arbitrator within 7 days, the party having appointed its arbitrator may request NOMA to appoint the second arbitrator.
5. If the two arbitrators appointed fail to appoint the third arbitrator within 7 days after the appointment of the second arbitrator, NOMA shall on request by one party appoint the third arbitrator who will act as the presiding arbitrator. In arbitrations where the parties are of different nationalities, NOMA shall, unless the parties agree otherwise, not appoint an arbitrator of the same nationality as one of the parties.

6. If it is agreed or decided in accordance with Article 23 that an oral hearing shall be held, and any of the arbitrators is not able to prepare for and attend a hearing within a reasonable time, a party can request that NOMA remove such arbitrator. The party having appointed said arbitrator shall then appoint another arbitrator who will comply with the criteria set by NOMA. If the party fails to appoint a new arbitrator within 7 days, NOMA shall make the appointment.

#### **Article 7 Disclosures by arbitrators**

1. When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

#### **Article 8 Challenge of arbitrators**

1. Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence.
2. A party may challenge the arbitrator appointed by it, only for reasons of which it becomes aware after the appointment has been made.
3. In the event that an arbitrator fails to act or in the event of the *de jure* or *de facto* impossibility of his or her performing his or her functions, the procedure in respect of the challenge of an arbitrator as provided in Article 9 shall apply.

#### **Article 9 Deadlines for challenge of arbitrators**

1. A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after it has been notified of the appointment of the challenged arbitrator, or within 15 days after the circumstances mentioned in Article 7 and Article 8 became known to that party.
2. The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge.
3. When an arbitrator has been challenged by a party, all parties may agree to the challenge. The arbitrator may also, after the challenge, withdraw from his or her office. In neither case does this imply acceptance of the validity of the grounds for the challenge.
4. If, within 15 days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, NOMA shall decide on the challenge if the party making the challenge requests NOMA to do so within 15 days from the date of the notice of challenge.

#### **Article 10 Replacement of an arbitrator**

1. Subject to paragraph 2, in any event where an arbitrator has to be replaced during the course of the arbitral proceedings, a substitute arbitrator shall be appointed or chosen pursuant to the procedure provided for in Article 5 Appointment of sole arbitrator. Article 8 that was applicable to the appointment or choice of the arbitrator being replaced. This procedure shall apply even if during the process of appointing the arbitrator to be replaced, a party had failed to exercise its right to appoint or to participate in the appointment.
2. If, at the request of a party, NOMA determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to appoint a substitute arbitrator, NOMA may, after giving an opportunity to the parties and the remaining arbitrators to express their views: (a) appoint the substitute arbitrator; or (b) after the closure of the hearings, authorize the other arbitrators to proceed with the arbitration and make any decision or award.

#### **Article 11 Repetition of hearings in the event of the replacement of an arbitrator**

1. If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

#### **Article 12 Exclusion of liability**

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

### **SECTION III ARBITRAL PROCEEDINGS**

#### **Article 13 General provisions**

1. Subject to these Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The arbitral tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute. The arbitral tribunal shall take the Best Practice Guidelines into consideration when exercising its discretion in a manner which is consistent with these Rules.
2. As soon as practicable after the constitution of the arbitral tribunal, the arbitral tribunal shall in consultation with the parties make such orders and directions as set forth in the

Best Practice Guidelines, and the parties shall follow these Guidelines subject to any agreement between the parties or orders by the arbitral tribunal to the contrary.

3. All communications to the arbitral tribunal by one party shall be communicated by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the arbitral tribunal if it may do so under applicable law.

#### **Article 14 Place of arbitration**

1. If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case. The award shall be deemed to have been made at the place of arbitration.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location it considers appropriate for any other purpose, including any oral hearings.

#### **Article 15 Language**

1. Unless agreed otherwise by the parties, the arbitral tribunal decides the language to be used in the proceedings. English language shall normally be used, unless the parties, their representatives, and the arbitrators are Scandinavian. The arbitral tribunal may decide that each party may submit pleadings and other written statements in Norwegian, Swedish or Danish. This also applies to any oral statement during the proceedings.
2. The arbitral tribunal may order that any document submitted in its original language shall be accompanied by a certified or office translation into English or the language determined by the arbitral tribunal.

#### **Article 16 Statement of claim**

1. The Claimant shall communicate its statement of claim in writing to the Respondent and to the arbitral tribunal within 21 days after commencement of the arbitration. The Claimant may elect to treat its notice of arbitration referred to in Article 3 as a statement of claim, provided that the notice of arbitration also complies with the requirements of paragraphs 2 to 4 of this article.
2. The statement of claim shall include the following particulars:
  - a) The names and contact details of the parties;
  - b) A statement of the facts supporting the claim;
  - c) The points at issue;
  - d) The relief or remedy sought;
  - e) The legal grounds or arguments supporting the claim.

3. A copy of any contract or other legal instrument out of or in relation to which the dispute arises and of the arbitration agreement shall be annexed to the statement of claim.
4. The statement of claim should, as far as possible, be accompanied by all documents and other evidence relied upon by the Claimant, or contain references to them.

#### **Article 17 Statement of defence**

1. The Respondent shall communicate its statement of defence in writing to the Claimant and to the arbitral tribunal within 21 days after the date on which the statement of claim is received by the Respondent. The Respondent may elect to treat its response to the notice of arbitration referred to in Article 3 as a statement of defence, provided that the response to the notice of arbitration also complies with the requirements of paragraph 2 of this article.
2. The statement of defence shall reply to the particulars (b) to (e) of the statement of claim (Article 16, paragraph 2). The statement of defence should, as far as possible, be accompanied by all documents and other evidence relied upon by the Respondent, or contain references to them.
3. In its statement of defence, the Respondent may make a counterclaim or rely on a claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.
4. The provisions of Article 16, paragraphs 2 to 4, shall apply to a counterclaim, and a claim relied on for the purpose of a set-off.

#### **Article 18 Further written statements**

1. The parties may not submit more than one written statement each in addition to the statement of claim and the statement of defence (and counterclaim/claim for the purpose of a set-off, if any). Subsequent written statements shall be submitted within 14 days after receipt of the statement of defence (if counterclaim/claim for the purpose of a set-off, 21 days for the reply to the counterclaim/claim for the purpose of a set-off) and the Claimant's reply to the statement of defence (and counterclaim/claim for the purpose of a set-off), respectively.

#### **Article 19 Extension of time limits**

1. The arbitral tribunal may decide, upon written request by a party that the time limits in Articles 16 to 18 for submitting a statement shall be extended, or that further written statements shall be allowed.

#### **Article 20 Pleas as to the jurisdiction of the arbitral tribunal**

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause that forms part of a contract shall be treated as an

agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null shall not entail automatically the invalidity of the arbitration clause.

2. A plea that the arbitral tribunal does not have jurisdiction shall be raised no later than in the statement of defence or, with respect to a counterclaim or a claim for the purpose of a set-off, in the reply to the counterclaim or to the claim for the purpose of a set-off. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may in either case admit a later plea if it considers the delay justified.
3. The arbitral tribunal may rule on a plea referred to in paragraph 2 either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

#### **Article 21 Interim measures**

1. The arbitral tribunal may, at the request of a party, grant interim measures.
2. An interim measure is any temporary measure by which, at any time prior to the issuance of the award by which the dispute is finally decided, the arbitral tribunal orders a party, for example and without limitation, to:
  - a) Maintain or restore the status quo pending determination of the dispute;
  - b) Take action that would prevent, or refrain from taking action that is likely to cause, (i) current or imminent harm or (ii) prejudice to the arbitral process itself;
  - c) Provide a means of preserving assets out of which a subsequent award may be satisfied; or
  - d) Preserve evidence that may be relevant and material to the resolution of the dispute.
3. The party requesting an interim measure under paragraphs 2 (a) to (c) shall satisfy the arbitral tribunal that:
  - a) Harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
  - b) There is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.



4. With regard to a request for an interim measure under paragraph 2 (d), the requirements in paragraphs 3 (a) and (b) shall apply only to the extent the arbitral tribunal considers appropriate.
5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal own initiative.
6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.
7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
8. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the proceedings.
9. A request for interim measures addressed by any party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement.

## **Article 22 Evidence**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence unless otherwise provided by the applicable law.
2. Witnesses, including expert witnesses, who are presented by the parties to testify to the arbitral tribunal on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party.
3. At any time during the arbitral proceedings the arbitral tribunal may require the parties to produce documents, exhibits or other evidence within such a period of time as the arbitral tribunal shall determine.
4. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence offered.

## **Article 23 Hearings**

1. The proceedings shall be conducted on the basis of documents only without any hearing, unless otherwise agreed by the parties in writing. The arbitral tribunal may decide, upon written request by a party, that an oral hearing shall be held, and if so, the scope and procedure of such hearing.

2. In the event of an oral hearing, the arbitral tribunal shall consult with the parties, and shall give the parties adequate advance notice of the date, time and place thereof.
3. Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
4. Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the retirement of any witness or witnesses, including expert witnesses, during the testimony of such other witnesses, except that a witness, including an expert witness, who is a party to the arbitration shall not, in principle, be asked to retire.
5. The arbitral tribunal may direct that witnesses, including expert witnesses, be examined through means of telecommunication (such as videoconference).

#### **Article 24 Default**

1. If, within the period of time fixed by these Rules or the arbitral tribunal, without showing sufficient cause:
  - a) The Claimant has failed to communicate its statement of claim, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings, unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so;
  - b) The Respondent has failed to communicate its response to the notice of arbitration or its statement of defence, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the Claimant's allegations; the provisions of this subparagraph also apply to a Claimant's failure to submit a defence to a counterclaim or to a claim for the purpose of a set-off.
2. If a party, duly notified under these Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
3. If a party, duly invited by the arbitral tribunal to produce documents, exhibits or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

#### **Article 25 Closure of proceedings**

1. Unless there are exceptional circumstances, the arbitral tribunal shall declare the hearings closed when the arbitral tribunal has determined that the parties have had the opportunity to present their cases in accordance with these Rules.
2. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

## **Article 26 Waiver of right to object**

A failure by any party to object promptly to any non-compliance with these Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

## **SECTION IV THE AWARD**

### **Article 27 Decisions**

1. If the parties agree on appointing a tribunal of three members pursuant to Article 6 of these Rules, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators.
2. In the case of questions of procedure, when there is no majority or when the arbitral tribunal so authorizes, the presiding arbitrator may decide alone, subject to revision, if any, by the arbitral tribunal.

### **Article 28 Form and effect of the award**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. The arbitral tribunal shall make the final award no later than [6] months after commencement of the arbitration. In exceptional circumstances, and after consultation with the parties, the arbitral tribunal may extend the time for making such final award.
3. All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.
4. The arbitral tribunal shall state the reasons upon which the award is based only in summary form.
5. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
6. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
7. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

### **Article 29 Applicable law, amiable compositeur**

1. The arbitral tribunal shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the arbitral tribunal shall apply the law which it determines to be appropriate.

2. The arbitral tribunal shall decide as amiable compositeur or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so.
3. In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

### **Article 30 Settlement or other grounds for termination**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of Article 29, paragraphs 3, 5, 6 and 7, shall apply.

### **Article 31 Correction of the award**

1. 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 45 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 29 shall apply.

### **Article 32 Additional award**

1. Within 30 days after the receipt of the termination order or the award, a party, with notice to the other parties, may request the arbitral tribunal to make an award or an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

2. If the arbitral tribunal considers the request for an award or additional award to be justified, it shall render or complete its award within 60 days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time within which it shall make the award.
3. When such an award or additional award is made, the provisions of Article 29, paragraphs shall apply.

### **Article 33 Definition of costs**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs” includes only:
  - a) The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the arbitral tribunal itself in accordance with Article 35;
  - b) The reasonable travel and other expenses incurred by the arbitral tribunal;
  - c) The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - d) The reasonable travel and other expenses of witnesses
  - e) The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - f) Any fees and expenses of NOMA
3. In relation to interpretation, correction or completion of any award under Article 31 to Article 32, the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

### **Article 34 Costs**

1. The arbitral tribunal’s fee for rendering its award shall be capped at 5% of the total amount in dispute. However, the cap shall not be less than USD 10,000. The capped fee of 5% of the total amount in dispute or USD 10,000 shall be increased by USD 2,000 for each oral hearing day, if any. In addition to the fee, the arbitral tribunal may also recover reasonable expenses incurred in connection with the arbitration.
2. If the parties agree on appointing a tribunal of three arbitrators pursuant to Article 5, the arbitral tribunal’s total fee shall be capped at 10% of the total amount in dispute, but not less than USD 20,000 unless otherwise determined by the arbitral tribunal.
3. If no Terms of engagement have been issued prior to appointment pursuant to Article 5, paragraph 4 or Article 6, paragraph 2, the arbitral tribunal shall promptly after its constitution, inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to NOMA for review. If, within 45 days of

receipt of such a referral, NOMA finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.

4. If the arbitral tribunal has issued Terms of engagement in accordance with Article 5, paragraph 4 or Article 6, paragraph 2, prior to the constitution of the arbitral tribunal, a party may refer such Terms of engagement to NOMA for review within 15 days after receipt of such Terms. Paragraph 2 above to apply.
5. Within 15 days of receiving the arbitral tribunal determination of fees and expenses pursuant to Article 34, paragraph 1, any party may refer such determination to NOMA for review.
6. If NOMA finds that the arbitral tribunal determination is inconsistent with the arbitral tribunal proposal (and any adjustment thereto) under paragraph 3 or is otherwise manifestly excessive, it shall, within 45 days of receiving such a referral, make any adjustments to the arbitral tribunal determination that are necessary to satisfy the criteria in paragraph 1. Any such adjustments are binding upon the arbitral tribunal.
7. Any adjustments under paragraph 5 shall either be included by the arbitral tribunal in its award or, if the award has already been issued, be implemented in a correction to the award, to which the procedure of Article 32, paragraph 3, shall apply.
8. Throughout the procedure under paragraphs 2 to 5, the arbitral tribunal shall proceed with the arbitration, in accordance with Article 14, paragraph 1.
9. A referral under paragraphs 2 to 4 shall not affect any determination in the award other than the arbitral tribunal fees and expenses; nor shall it delay the recognition and enforcement of all parts of the award other than those relating to the determination of the arbitral tribunal fees and expenses.
10. NOMA may issue a tariff of costs to be paid to the arbitrators which shall serve as a guideline for the arbitrators' fees.

### **Article 35 Allocation of costs**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case. In doing so, the arbitral tribunal shall take into account whether any of the parties have caused any unnecessary increase of documents or arguments which has resulted in an unnecessary protraction of the arbitral proceedings. The arbitral tribunal shall also take into account whether a party has rejected a reasonable offer of settlement.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

### **Article 36 Deposit of costs**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs referred to in Article 34, paragraphs 2(a) to (c).
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
4. If one party has deposited its part of the deposit required by the arbitral tribunal under paragraphs 1 to 2, but the other has not paid in full its part of said deposit within the 30 days' deadline under paragraph 3, the arbitral tribunal shall, upon the first party's request, and provided the first party has paid the other party's part of the deposit, issue a partial award on the first party's right of reimbursement from the other party for such part of the deposit.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

**1 APRIL 2021**