MODEL TERMS OF REFERENCE

DISCLAIMER

This model is intended solely to assist arbitrators acting in ICC arbitrations in the drafting of the Terms of Reference. It does not constitute an exhaustive, mandatory or otherwise binding document.

This model is provided for guidance only and should be adapted to the facts and circumstances of each case.

If a party does not sign the Terms of Reference, provisions which reflect additional agreements of the Parties need to be adapted or removed.

Square brackets demarcate the beginning and end of the optional sentences suggested in the model, and slashes refer to the various options.

For any questions, the arbitrators may contact their respective case management teams.

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**TERMS OF REFERENCE**

Pursuant to Article 23 of the ICC Arbitration Rules in force as of [1 January 2012] /[1 March 2017]
[check the relevant Article of other versions of the Rules where applicable]

**ICC Arbitration****/***  
Claimant/s v/ Respondent/s v/ Additional Party/Parties

The Parties and their Representatives

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The Arbitral Tribunal

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[Administrative Secretary]
NAME
Law firm
Address
Telephone
Fax
Email

ICC Case Management Team [select one of the following addresses]

**Headquarters**
Counsel__________
Deputy Counsel______
International Court of Arbitration
International Chamber of Commerce
33-43 avenue du Président Wilson
75116 Paris – France
Email: ica***@iccwbo.org

**Hong Kong Office**
Counsel__________
Deputy Counsel______
International Court of Arbitration
International Chamber of Commerce
Suite 2, 12/F, Fairmont House
8 Cotton Tree Drive
Central – Hong Kong
Email: ica8@iccwbo.org

**North America Office**
Counsel__________
Deputy Counsel______
In affiliation with SICANA Inc.
140 East 45th Street, Suite 14C
New York, NY 10017 – USA
Email: ica9@iccwbo.org

**Brazil Office**
Counsel__________
Deputy Counsel______
In affiliation with SCIAB LTDA.
Rua Surubim, 504, Brooklin Novo
CEP 04571-050
São Paulo – Brazil
Email: ica10@iccwbo.org

**Singapore Office**
Counsel__________
Deputy Counsel______
In affiliation with SICAS
32 Maxwell Road
#03-05B Maxwell Chambers
Singapore 069115
Email: ica11@iccwbo.org
Optional Provision

I. Defined Terms

1. The following defined terms are used in these Terms of Reference:
   - International Chamber of Commerce ("ICC")
   - International Court of Arbitration of the International Chamber of Commerce ("Court")
   - Secretariat of the International Court of Arbitration ("Secretariat")
   - Arbitral Tribunal, includes one or more arbitrators ("Tribunal")
   - Claimant/s, Respondent/s and any Additional Party/Parties together ("Parties")
   - [Any other definition that may be necessary]

II. The Parties and their Representatives

2. Any addition or change to the registered office of any party or to a party’s legal representation after the date of these Terms of Reference must be notified to the other Parties, the Tribunal and the Secretariat in writing immediately after such addition or change.

3. When a relationship exists between a new party representative and an arbitrator which in the Tribunal’s view may create a conflict of interest, the Parties agree that the Tribunal may take appropriate measures to ensure the integrity of the arbitration, including the exclusion of the new party representative from participating in all or part of the arbitration.

4. By signing these Terms of Reference, the Parties confirm that the above mentioned representatives of the Parties are duly authorised to act and express themselves in this arbitration in the name and for the account of the party that appointed them, in particular for the execution of these Terms of Reference. Each may validly exercise his/her power and authority individually or collectively.

III. Constitution of the Tribunal

5. The Tribunal was constituted as follows:

   On ____, _____ [name]
   /[was confirmed as co-arbitrator by the [Secretary General/Court] upon [joint]
   nomination by Claimant/s [and the Additional Party/Parties], pursuant to Article 13(1).]
   /was appointed as co-arbitrator by the Court on behalf of Claimant/s [and the
   Additional Party/Parties] upon the proposal of the ____ ICC National Committee/Group
   of the ICC, pursuant to Article 13(3).]
   /was appointed directly by the Court as co-arbitrator on behalf of Claimant/s [and the
   Additional Party/Parties], pursuant to Article [13(3).] /[13(4)/(a)/(b)].]

   On ____, _____ [name]
   /was confirmed as co-arbitrator by the [Secretary General/Court] upon [joint]
   nomination by Respondent/s [and the Additional Party/Parties], pursuant to Article
   13(1).]
Terms of Reference - ICC Arbitration *****/****

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Optional Provision [Add where an administrative secretary has been/is being appointed]

6. The Parties agree to the appointment of _____ as administrative secretary for the Tribunal, in conformity with the section on Administrative Secretaries of the Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration.

7. By signing these Terms of Reference, each party confirms that the Tribunal has been properly constituted.

8. Accordingly, the Parties waive any objections in respect of matters known to the Parties at the date of signature.

IV. Notifications and Communications

9. Pursuant to Article 3 of the Rules, the Parties and the Tribunal must send copies of all written correspondence directly to all other Parties’ representatives, each arbitrator and the Secretariat simultaneously to the addresses indicated on page ____.

10. Communications shall be sent to the Party representatives’ email addresses as set out above on or before any date set by the Tribunal and by courier only when required.

11. Documents must be sent to the Secretariat in electronic form only.

12. [Any requirement regarding notification and/or depositing of an award at the place of arbitration may need to be addressed.]

13. Subject to any requirements of mandatory law that may be applicable, and unless the Parties agree otherwise, (1) the Terms of Reference may be signed in counterparts and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 of the Rules by email or any other means of telecommunication that provides a record of the sending thereof.

14. Likewise, subject to any requirements of mandatory law that may be applicable, the Parties may agree (1) that any award be signed by the members of the Tribunal in counterparts and/or (2) that all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 34 of the Rules.
V. Procedure to Date

15. On _____, the Secretariat received a Request for Arbitration filed by Claimant/s.

16. In its/their Request, Claimant/s [indicated that in accordance with the arbitration agreement/s the arbitration is submitted to a sole arbitrator / three-member Tribunal [and nominated _____ as co-arbitrator.] / [proposed that the arbitration be submitted to a sole arbitrator / three-member Tribunal [and nominated _____ as co-arbitrator.]]

17. The Secretariat notified the Request for Arbitration to Respondent/s on _____.

18. On _____, [following an extension of time granted by the Secretariat], [the Secretariat received an Answer to the Request for Arbitration /[and counterclaims.] filed by Respondent/s.] /[The Secretariat also received a Request for Joinder filed by Respondent/s.]

19. In the Answer, Respondent/s [indicated that in accordance with the arbitration agreement/s the arbitration is submitted to a sole arbitrator / three-member Tribunal [and nominated _____ as co-arbitrator.] / [proposed that the arbitration be submitted to a sole arbitrator / three-member Tribunal [and nominated _____ as co-arbitrator.] / [agreed with Claimant/s to submit the arbitration to a sole arbitrator / three-member Tribunal.]

20. [The Secretariat notified the Request for Joinder to Claimant/s and the Additional Party/Parties on ______.]

21. On _____, [following an extension of time granted by the Secretariat], Claimant/s and/or Additional Party/Parties filed an Answer to the Request for Joinder.

22. [Respondent/s/The Additional Party/Parties raised a plea/s pursuant to Article 6(3) of the Rules or did not submit an Answer.] [It/They however requested that said plea/s be decided directly by the Tribunal.] [Such plea/s will be decided directly by the Tribunal, after providing the Parties with an opportunity to comment.] [The matter was not referred to the Court. The Tribunal must decide any question of jurisdiction or of whether the claims may be determined together, after providing the Parties with an opportunity to comment.] [At its session of _____, the Court decided pursuant to Article 6(4) [that this arbitration will proceed. ] /[that this arbitration will not proceed as to *** and ***. ] /[that this arbitration will not proceed as to Claimant’s/s’ /Respondent’s/s’ /the Additional Party/s/Parties’ claims brought under *** and *** ] /[name of contracts].]

23. Pursuant to Article 16 of the Rules the file was transmitted to the Tribunal on ______.

24. [As required by Article 24 of the Rules, the Tribunal convened a case management conference which took place [via telephone conference] on _____ to consult the Parties on procedural measures that may be adopted pursuant to Article 22(2) of the Rules and Appendix IV to the Rules.]

25. [At its session of *** the Court extended the time limit for establishing the Terms of Reference until *** pursuant to Article 23(2) of the Rules.]

VI. Arbitration Agreement

26. /[Claimant/s /Respondent/s /the Additional Party/Parties] made claims under arbitration agreement/s contained in [mention agreement(s), date(s), signatories], which provides:
[Quote in full the dispute resolution clause(s).]

VII. Applicable Substantive Law

27. [Quote in full the choice of law clause(s) and/or any subsequent agreement by the parties or with the Tribunal for instance that the Tribunal may decide ex aequo et bono/amiable compositeur; otherwise indicate whether this must be determined by the Tribunal.]

VIII. Applicable Procedural Rules

28. Pursuant to Article 19 of the Rules, the proceedings shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

IX. Language of the arbitration

29. [Refer to the arbitration agreement(s) and/or any subsequent agreement by the parties; failing agreement, the Tribunal must decide on the language prior to establishing the Terms of Reference and reflect its decision in the Terms of Reference.]

30. /[Accordingly], the language of the arbitration is ______.

X. Place of Arbitration

31. [Refer to the arbitration agreement(s) and/or any subsequent agreement by the parties or any decision by the Court.]

32. The place of arbitration was not provided in the arbitration agreement/s. [The Court decided to fix _____ (city/country) as place of arbitration (Article 18(1)).] /[The Parties subsequently agreed on _____ (city/country) as place of arbitration.]

33. Pursuant to Article 18(2) of the Rules, the Tribunal may, after consultation with the Parties, conduct hearings and meetings at any location it considers appropriate.

34. Pursuant to Article 18(3) of the Rules, the Tribunal may deliberate at any location it considers appropriate.

XI. Parties’ Respective Positions and Relief Sought

35. The purpose of the following summaries is to satisfy the requirement of Article 23(1) of the Rules, without prejudice to any other or further allegations, arguments, contentions and denials contained in the submissions already on record, and in future pleadings or submissions in this arbitration, subject to Article 23(4) of the Rules.

36. Therefore, no Party shall make new claims which fall outside the limits of these Terms of Reference once they have been signed or approved, unless it has been authorised to do so by the Tribunal who shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

37. No statement or omission in the summary of any Party is to be interpreted as a waiver or admission of any issue of fact or law. The summary neither reflects any fact finding by the Tribunal nor any admission by any other Party.
38. [The summaries of the Parties’ respective positions and relief sought provided in these Terms of Reference are based on the submissions made by the Parties to date: Request for Arbitration dated ____, [Answer to the Request for Arbitration dated ____], [Request for Joinder dated ____], [Answer to the Request for Joinder dated ____].]

39. [Based on the Parties’ submissions, a summary of facts is hereafter provided.] /[The following summary of facts is uncontested.] /[The Parties’ have summarised their position as follows.]

40. By signing these Terms of Reference, the Parties neither subscribe nor acquiesce to the summary of the other Party’s position set forth below.

A- Claimant’s Position and Relief sought

[to be completed]

B- Respondent’s Position and Relief sought

41. [Respondent/s [and the Additional Party/Parties] raise jurisdictional objections on the ground that ____].

42. [Any question of jurisdiction or admissibility shall be decided by the Tribunal.]

43. [By signing these Terms of Reference, [Respondent/s [and the Additional Party/Parties] do/does not waive its/their jurisdictional objections.]

[to be completed]

C- Additional Party’s/Parties’ Position and Relief sought

[To be completed.]

XII. Amount in Dispute

44. [The amount in dispute is currently quantified at US$/[other currency] ____.] /[To date, Claimant’s/s’ quantified claims amount to ____ and Respondent’s/s’ quantified counterclaims amount to ____] /[The amount in dispute is currently unquantified; Claimant’s /Respondent’s /the Parties will determine the amount of their claims or quantify the damages during the arbitration.]

XIII. Issues to be determined

45. The issues to be determined by the Tribunal may include but are not limited to the following:

[to be completed; include any jurisdictional issues and issues related the costs to be determined by the Tribunal; where Terms of Reference are to be approved, identify any issue of jurisdiction as an issue to be determined]

46. In any event, the issues to be determined shall be those resulting from the Parties’ submissions, including forthcoming submissions, and those relevant to the decision of the Parties’ respective claims and defenses, without prejudice to Article 23(4) of the Rules.
47. The Tribunal shall be free to decide any issue by way of partial or interim awards, or by a final award as it may deem appropriate and after having provided the Parties a reasonable opportunity to present their case.

XIV. Other Procedural Matters

48. Any procedural matter may be determined by way of procedural orders after consultation with the Parties.

49. Any procedural order may be made by the President alone on behalf of the Tribunal, after consulting with the co-arbitrators. In case of urgency, the President may, after attempting to consult with the co-arbitrators, issue procedural orders and directions alone.

50. In accordance with Article 22(1) of the Rules, the Tribunal and the Parties agree to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.

Optional Provisions

The Tribunal and the Parties may consider adding provisions related to any confidentiality agreement, any value added tax due on the arbitrators’ fees, any reference to soft law such as the IBA Rules on Taking of Evidence and the IBA Guidelines on Party Representation and any reference to the use of ICC expertise services or the possibility of settling the dispute in accordance with the ICC Mediation Rules.

Expertise

Any party and/or the Tribunal may request the ICC International Centre for ADR to propose experts pursuant to the Proposal of Experts and Neutrals Rules.

Mediation

The parties may, at any time, without prejudice to the present arbitration, seek to settle their dispute in accordance with the ICC Mediation Rules.
XV. Signature of the Terms of Reference

Place of arbitration: (city, country)

Signatures:

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