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## **Arbitration Rules of Xiamen Arbitration Commission (2020)**

Revised and adopted at the Fourth Meeting of the Sixth Session of Xiamen Arbitration Commission on January 12, 2020. Effective as of July 1, 2020.

### **Chapter I General Provisions**

#### **Article 1 Institution and Functions**

- (1) Xiamen Arbitration Commission (“XMAC”) is an arbitration institution established in Xiamen, the People’s Republic of China (“PRC”).
- (2) The chairperson of XMAC (“Chairperson”) shall perform the functions and duties vested in him/her by the Arbitration Law of the PRC and the Arbitration Rules of XMAC (the “Rules”), and the deputy chairperson or secretary-general (“Secretary-General”) may, with the Chairperson’s authorisation, perform the functions and duties of the Chairperson.
- (3) XMAC has a Secretariat, which handles XMAC’s routine work under the direction of its Secretary-General. The Secretariat shall designate for each case a case manager (“Case Manager”), who shall take charge of the procedural administration and services relating to the case.

#### **Article 2 Scope of Application**

- (1) The rules formulated by XMAC shall be applied where the parties agree to submit their dispute to XMAC for arbitration, unless otherwise agreed by the parties.
- (2) Where the parties agree on having their dispute arbitrated pursuant to the Rules or any special arbitration rules formulated by XMAC (“Special Rules”) without having an agreement on an arbitration institution, they shall be deemed to have consented to submit their dispute to XMAC for arbitration.
- (3) In case of any inconsistency between the Special Rules and the Rules, the Special Rules shall prevail. The Rules shall apply to

matters not covered in the Special Rules.

- (4) Where the parties agree on having their dispute arbitrated pursuant to the rules formulated by XMAC or other arbitration rules, they shall be permitted to enter into an agreement on the modification of the relevant content of the rules and, subject to the consent of XMAC or the arbitral tribunal (“Arbitral Tribunal”), their agreement shall prevail, except that such agreement is unenforceable or in conflict with the mandatory provisions of the laws applicable to the arbitral proceedings.
- (5) Where a party raises an objection as to whether the rules formulated by XMAC shall apply to its case, XMAC or the Arbitral Tribunal shall make a decision thereon.
- (6) To ensure the fair and efficient resolution of the dispute between the parties, with respect to any matter not expressly provided for in the Rules, XMAC or the Arbitral Tribunal shall have the right to conduct the arbitral proceedings in such manner as it considers appropriate.

### **Article 3 Scope of Acceptance**

XMAC accepts cases involving contractual dispute and other dispute over property rights or interests arising among natural persons, legal persons and other organisations, including:

- (1) international or foreign-related dispute;
- (2) dispute related to the Hong Kong Special Administrative Region, the Macao Special Administrative Region or the Taiwan region; and
- (3) dispute in Chinese mainland.

### **Article 4 Good Faith and Collaboration**

All participants taking part in the arbitral proceedings shall adhere to the principles of good faith and collaboration.

## **Chapter II Arbitration Agreement and Jurisdiction**

### **Article 5 Definition and Form of Arbitration Agreement**

- (1) An arbitration agreement is an agreement by the parties to refer to arbitration any dispute which has arisen or may arise from or in connection with a defined juristic relation between them. An arbitration agreement shall include an arbitration clause provided for in a contract or any arbitration agreement in other written forms.
- (2) An arbitration agreement shall be in written form, which shall include such form that tangibly presents the contents contained therein as contractual instruments, letters and data messages (including facsimiles, electronic data interchange, and e-mails).
- (3) An arbitration agreement shall be deemed to have been concluded in writing where a party expresses in writing its willingness to submit a dispute to XMAC for arbitration, and the other party applies to XMAC for arbitration.
- (4) An arbitration agreement shall be deemed to have been concluded in writing where the parties jointly sign the record of a hearing or other documents during the arbitral proceedings that state their agreement on the submission of their dispute to XMAC for arbitration.
- (5) Where the law applicable to an arbitration agreement provides otherwise as to the form and validity of the arbitration agreement, those provisions shall prevail.

### **Article 6 Independence of Arbitration Agreement**

An arbitration agreement shall exist independently. By no means shall the validity of an arbitration agreement be affected by the establishment, effectiveness, modification, rescission, termination, voidness and nullity, invalidity and revocation of the contract concerned.

## **Article 7    Objection to Jurisdiction**

- (1)    Where a party objects to the jurisdiction over an arbitration case for such reasons as the existence, validity or other issues of an arbitration agreement, it shall raise all objections thereto once and for all in writing prior to the first hearing notified by the Arbitral Tribunal; if a hearing is postponed due to any such objection raised by certain parties, the remaining parties shall also raise their objection to jurisdiction (if any) prior to the first-notified hearing. Where a case is to be arbitrated on the basis of documents, any objection shall be raised in writing prior to the expiration of the period of filing statement of defence (“Statement of Defence”).
- (2)    Where a party fails to raise an objection pursuant to the preceding paragraph, it shall be deemed to have acknowledged the validity of the arbitration agreement and the jurisdiction of XMAC over the arbitration case.
- (3)    The raising of any objection by any party to jurisdiction shall not affect the progress of the arbitral proceedings.
- (4)    Any objection raised by a party to the jurisdiction over an arbitration case shall be decided by XMAC prior to the constitution of the Arbitral Tribunal or, after the constitution of the Arbitral Tribunal, by the Arbitral Tribunal with the authorisation of XMAC. The Arbitral Tribunal may make its decision on jurisdiction either during the arbitral proceedings or in the final award.
- (5)    XMAC may designate its staff to organise the concerned parties for a session, seeking opinions from them in person on the issues of jurisdiction, and making a written record of such opinions.
- (6)    Where there is an objection to the validity of an arbitration agreement, and a party requests XMAC for a decision thereon while the other party requests a people’s court for a ruling thereon; or a party requests XMAC for a decision thereon and also requests a people’s court for a ruling thereon, if XMAC accepts the request

earlier than the people's court does and has made a decision thereon, such decision shall take legal effect; where XMAC has accepted a request but not yet made any decision thereon and a people's court has already accepted the same request, XMAC shall make no decision thereon.

- (7) Where XMAC is satisfied by prima facie evidence that there exists an arbitration agreement providing for arbitration by XMAC, it may make a decision based on such evidence that it has jurisdiction over the case, and the arbitral proceedings shall proceed. Such decision shall not prevent XMAC from making a new decision on jurisdiction based on facts or evidence discovered by the Arbitral Tribunal in the course of hearing that is inconsistent with the prima facie evidence.
- (8) Where XMAC, or the Arbitral Tribunal as authorised by XMAC, has made a decision that it has no jurisdiction over an arbitration case, the case shall be dismissed.
- (9) Any objection (if any) as to whether or not the arbitration claims ("Claim") fall within the scope as specified in an arbitration agreement shall be raised by the parties prior to the closing of the debate and heard by the Arbitral Tribunal who shall subsequently render an award thereon. Where the parties have no such objection, the Arbitral Tribunal shall have the right to hear on whether a party's Claim falls within the scope as specified in the arbitration agreement and render an award accordingly.

### **Chapter III Request for Arbitration, Acceptance and Defence**

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

- (1) A party applying for arbitration ("Claimant") shall submit to XMAC:
  - (a) its request for arbitration ("Request for Arbitration") which shall include:



- (i) in case of a natural person, its identification, residential address and contact information, or in case of a legal person or other organisation, its name, place of registration and place of business as well as the name, title and contact information of its legal representative or of the key person in charge; and
    - (ii) the arbitration agreement under which the Request for Arbitration is submitted; and
    - (iii) the Claim and the facts and grounds on which it is based.
  - (b) the evidence on which the Request for Arbitration is based and the list of evidence.
  - (c) documents certifying the identity of the Claimant.
  - (d) prepayment of the arbitration fees pursuant to Annex I and within the specified time limit.
- (2) Where a Request for Arbitration submitted by a party fails to meet those requirements referred to in item (a), (b) and (c) under Paragraph (1) of this Article, XMAC may request the party to make supplement and correction within a specified time limit. The party failing to make supplement and correction upon the expiration of the specified time limit shall be deemed to have failed to submit a valid Request for Arbitration.
- (3) Where a party fails to prepay the arbitration fees within a specified time limit, it shall be deemed to have failed to submit a valid Request for Arbitration. Where a party delays in the prepayment of the arbitration fees, the time at which the arbitration fees are actually prepaid shall be deemed as the time at which the Request for Arbitration is re-submitted.

## **Article 9 Acceptance**

- (1) XMAC shall, within five (5) days upon receipt of a Request for Arbitration in compliance with Article 8 of the Rules, accept the Request for Arbitration if it deems that the requirements for acceptance have been satisfied and shall notify the party concerned.
- (2) The arbitral proceedings shall commence as from the day on which XMAC accepts the Request for Arbitration.
- (3) Upon acceptance of a Request for Arbitration, XMAC shall serve promptly on the respondent (“Respondent”) a notice of arbitration (“Notice of Arbitration”) together with the Request for Arbitration, evidence and list of evidence, and serve on each party the Rules and a panel of arbitrators (“Panel of Arbitrators”).

## **Article 10 Defence**

- (1) The Respondent shall, within fifteen (15) days [thirty (30) days for a Respondent having no domicile in Chinese Mainland] upon receipt of the Notice of Arbitration, submit its statement of defence (“Statement of Defence”) and documents certifying its identity to XMAC, and confirm its address for service to XMAC. Failure of making the said submissions within the prescribed time limit shall not affect the progress of the arbitral proceedings.
- (2) XMAC shall, upon receipt of the Statement of Defence, serve promptly the same on the Claimant.

## **Article 11 Counterclaim**

- (1) The Respondent shall file in writing its counterclaims (“Counterclaim”), if any, within the period of filing Statement of Defence specified in Article 10 of the Rules. The Counterclaim shall be filed by reference to Article 8 of the Rules.
- (2) The decision on whether to accept a Counterclaim filed after the expiration of the time limit shall be made by the Arbitral Tribunal or,

if the Arbitral Tribunal has not been constituted, by XMAC. When determining whether to accept a Counterclaim filed after the expiration of the time limit, XMAC or the Arbitral Tribunal shall take into account such factors as the necessity to hear the Counterclaim and the Claim in a single arbitration, the extent of the delay in filing the Counterclaim, and unnecessary delay that will be caused to the arbitral proceedings.

- (3) Any other matters concerning the Counterclaim which are not provided for in the Rules shall be dealt with by reference to the relevant provisions of the Rules concerning the Claim.

## **Article 12 Amendments to Claim or Counterclaim**

- (1) Where any party requests to amend its Claim or Counterclaim, the decision on whether to accept such request shall be made by the Arbitral Tribunal or, if the Arbitral Tribunal has not been constituted, by XMAC. If XMAC or the Arbitral Tribunal considers that the request by a party to amend a Claim or Counterclaim is so late that may delay the arbitral proceedings, it may reject such request.
- (2) Any other matters concerning the amendments to a Claim or Counterclaim which are not provided for in the Rules shall be dealt with by reference to the relevant provisions of the Rules concerning the Claim.

## **Article 13 Joinder of Additional Parties**

- (1) Any party already in the arbitral proceedings may apply in writing for the joinder of an additional party. The decision on whether to accept such application shall be made by the Arbitral Tribunal or, if the Arbitral Tribunal has not been constituted, by XMAC.
- (2) A non-party may, after reaching consensus with the parties, apply in writing for becoming a party to the case. The decision on whether to accept such application shall be made by the Arbitral Tribunal or, if the Arbitral Tribunal has not been constituted, by XMAC.

- (3) In the event of joinder of an additional party, the joining party may nominate an arbitrator jointly with the Claimant or the Respondent, failing which the arbitrator shall be appointed by the Chairperson.

#### **Article 14 Claim among Multiple Parties**

- (1) Where there are no less than two Claimants or Respondents in a single arbitration, or any additional party is joined to the arbitration, any party may file its Claim against any other parties under the same arbitration agreement. The decision on whether to accept such Claim shall be made by the Arbitral Tribunal or, if the Arbitral Tribunal has not been constituted, by XMAC.
- (2) With respect to any new Claim, the status of each party therein shall be determined pursuant to their status in the original Claim, and the status of the joining party shall be determined pursuant to the new Claim.
- (3) Article 8 to 12 of the Rules shall apply, *mutatis mutandis*, to the submission and acceptance of, defence and amendment to the said Claim.

#### **Article 15 Single Arbitration under Multiple Contracts**

- (1) With respect to any disputes between the parties involving multiple contracts, if the arbitration agreements contained in all such contracts require the disputes to be submitted to XMAC for arbitration, and the disputes concerned arise from the same transaction or a series of related transactions, the Claimant may apply for a single arbitration concerning disputes in connection with the multiple contracts. XMAC or the Arbitral Tribunal shall determine whether to accept the single arbitration or not.
- (2) Where the Respondent raises an objection to the single arbitration, XMAC or the Arbitral Tribunal shall make a decision thereon.

## **Article 16 Consolidation of Arbitrations**

- (1) XMAC may, upon the written consent of the parties, decide to consolidate no less than two related arbitrations already commenced into a single arbitration to be heard by the same Arbitral Tribunal.
- (2) Unless otherwise agreed by the parties or otherwise decided by XMAC, arbitrations shall be consolidated into the arbitration that commenced first.
- (3) After the consolidation of arbitrations, the procedural matters shall be decided by the Arbitral Tribunal or, if the Arbitral Tribunal has not been constituted, by XMAC.
- (4) After the consolidation of arbitrations, the Arbitral Tribunal shall have the right to render awards respectively or to render a single award with respect to the disputes between the parties; where the parties have reached a settlement, the Arbitral Tribunal shall have the right to render statements of mediation respectively or to render a single statement of mediation (“Statement of Mediation”).

## **Article 17 Representative**

- (1) A party may authorise one to four representatives to carry out arbitration activities and handle matters relating to the arbitration.
- (2) Where a party needs to authorise no less than five representatives, it shall file a written application stating the reasons. The Arbitral Tribunal shall, having regard to the specific circumstances of the case, decide whether to accept the request or not; if the Arbitral Tribunal has not been constituted, XMAC shall make such decision.
- (3) A representative shall submit to XMAC a power of attorney (“Power of Attorney”) issued by its principal. The Power of Attorney shall specify the entrusted matters and the authority. If a representative files, recognises, waives, or amends the Claim or Counterclaim, or reaches settlement all on behalf of its principal, it may only do so with special authorisation of its principal. The

principal shall notify XMAC in writing of any change to or rescission of the authority of its representative.

#### **Chapter IV Preservation**

##### **Article 18 Application for Preservation Pursuant to Laws of Chinese Mainland**

- (1) A party may apply to XMAC for property preservation or specific performance or injunction if, as the result of an act of the other party or for some other reasons, it is likely that an award may be difficult to enforce or other detriments may be caused to such party.
- (2) A party may apply to XMAC for evidence preservation if such evidence is likely to be lost or destroyed, or become difficult to obtain in the future.
- (3) Where a party submits any such application to XMAC, XMAC shall forward it to the people's court in accordance with the law.

##### **Article 19 Application for Preservation Pursuant to Laws of Countries and Regions outside Chinese Mainland**

- (1) A party may apply to XMAC for preservation in accordance with laws of countries and regions outside Chinese mainland; the preservation measures to be applied for shall include but not be limited to property preservation, evidence preservation, and specific performance or injunction.
- (2) XMAC shall, in accordance with applicable laws and the Rules, forward the party's application to the competent court for a ruling or to the Arbitral Tribunal for a decision or an award.
- (3) To the extent permitted by applicable laws, the Arbitral Tribunal referred to in Paragraph (2) of this Article may request the party applying for preservation to provide appropriate security.
- (4) Subject to applicable laws of countries and regions outside Chinese Mainland, a party may, in accordance with Annex III hereof, apply

in writing to XMAC for the appointment of an emergency arbitrator. The emergency arbitrator shall have the right to examine the preservation application in such manner as he/she deems appropriate. The decision or award rendered by the emergency arbitrator shall be binding on the parties.

## **Chapter V Arbitral Tribunal**

### **Article 20 Number of Arbitrators**

- (1) Unless otherwise agreed by the parties or otherwise provided for in the Rules, an Arbitral Tribunal shall be composed of three arbitrators.
- (2) An Arbitral Tribunal composed of three arbitrators is a three-arbitrator tribunal which has a presiding arbitrator.

### **Article 21 Nomination of Arbitrator**

- (1) Arbitrators may be nominated by the parties from the Panel of Arbitrators.
- (2) Except for dispute in Chinese Mainland, the parties may nominate an arbitrator candidate from outside of the Panel of Arbitrators to act as an arbitrator, and may agree to jointly nominate an arbitrator candidate from outside of the Panel of Arbitrators to act as a presiding arbitrator or a sole arbitrator.
- (3) Where a party nominates an arbitrator candidate from outside of the Panel of Arbitrators to act as an arbitrator, the party shall, pursuant to Annex IV hereof, submit to XMAC the information of such candidate within the time limit specified in Article 22 and 61 herein. In case the consent thereto is given by the Chairperson upon his/her confirmation according to the law, such candidate is eligible to act as an arbitrator; if such nomination is refused, the party who nominates such candidate shall, within five (5) days upon receipt of such refusal, nominate an arbitrator from the Panel of Arbitrators or authorise the Chairperson to appoint an arbitrator.

## **Article 22 Arbitral Tribunal Composed of Three Arbitrators**

- (1) Unless otherwise agreed by the parties, the Claimant and the Respondent shall, within ten (10) days [twenty (20) days for a party having no domicile in Chinese Mainland] upon receipt of the notices of arbitration, respectively nominate or authorise the Chairperson to appoint an arbitrator, failing which the arbitrator shall be appointed by the Chairperson.
- (2) Unless the parties have agreed otherwise, the parties shall, within ten (10) days [twenty (20) days for a party having no domicile in Chinese Mainland] upon receipt of the notices of arbitration, jointly nominate or jointly authorise the Chairperson to appoint a presiding arbitrator. Where the parties fail to do so, a presiding arbitrator shall be appointed by the Chairperson or determined through other reasonable methods; where a party declares in writing its waiver of the said joint nomination or joint authorisation, a presiding arbitrator shall be directly appointed by the Chairperson without being subject to the aforesaid time limit.
- (3) Where there are no less than two parties on the side of Claimant/Respondent, the parties on such side shall jointly nominate or jointly authorise the Chairperson to appoint an arbitrator. If no agreement on joint nomination or joint authorisation has been reached within ten (10) days [twenty (20) days for a party having no domicile in Chinese Mainland] upon receipt of the notices of arbitration by the last party, the arbitrator shall be appointed by the Chairperson.
- (4) All parties may, within the time limit specified in Paragraph (1) of this Article, jointly request the two arbitrators nominated by them or appointed by the Chairperson to jointly nominate a presiding arbitrator. If such two arbitrators fail to reach an agreement on the nominee within ten (10) days upon receipt of the notice of XMAC, the presiding arbitrator shall be appointed by the Chairperson, unless the parties have agreed otherwise.



- (5) All parties may, within the time limit specified in Paragraph (1) of this Article, jointly request to determine a presiding arbitrator in the following ways: the Chairperson shall recommend a list of seven nominees for the presiding arbitrator. Both sides shall then rank the seven nominees in sequential order according to their own agreed preferences within ten (10) days upon receipt of the list. After the ranking, the nominee ranked in the last place on their respective lists will be excluded in turn starting from the list of the Claimant, and the nominee excluded by one side will also be automatically excluded by the other side. The last remaining nominee on the lists of both sides will be the presiding arbitrator. If either side fails to submit its ranking list, the Chairperson shall appoint the nominee ranked in the first place on the list submitted by the other side to act as the presiding arbitrator.

### **Article 23 Remuneration of Arbitrator**

- (1) The remuneration of an arbitrator shall be either:
- (a) paid from the arbitration fees charged by XMAC as per Annex I, and determined by XMAC after taking such factors as the time spent by the arbitrator on the case, the amount in dispute, the complexity of the case, the degree of diligence and efficiency of the arbitrator into comprehensive consideration; or
  - (b) determined on an hourly rate with regard to the disputes specified in Paragraph (1) and (2) of Article 3 of the Rules.
- (2) With regard to the dispute specified in Paragraph (1) and (2) of Article 3 of the Rules, if both sides have agreed that the remuneration of an arbitrator shall be determined on an hourly-rate basis, they shall notify XMAC thereof within ten (10) days upon the last party receiving notices of arbitration. The nomination and remuneration of the arbitrator shall be determined pursuant to Annex II of the Rules.

#### **Article 24 Expenses for Conducting the Arbitration by Arbitrator**

Each party shall bear its nominee's expenses of traveling, accommodation and other necessary expenses for conducting the arbitration at a place which is different from the nominee's residential address. Where any party fails to prepay such expenses within the time limit notified by XMAC, it shall be deemed as having not nominated an arbitrator, and the Chairperson will appoint an arbitrator for that party in accordance with the Rules.

#### **Article 25 Considerations for Appointing an Arbitrator**

When appointing an arbitrator pursuant to the Rules, the Chairperson shall take into consideration the law applicable to the dispute, the seat of the arbitration, the language of arbitration, the nationalities of the parties, and any other factors that the Chairperson considers necessary.

#### **Article 26 Notice on the Constitution of an Arbitral Tribunal**

After an Arbitral Tribunal has been constituted, XMAC shall promptly notify each party in writing of the constitution of the Arbitral Tribunal.

#### **Article 27 Status of Arbitrator**

- (1) An arbitrator shall remain independent of all parties and treat them impartially and equally.
- (2) Any arbitrator who has accepted the nomination or appointment shall sign a statement of independence and impartiality.

#### **Article 28 Information Disclosure by Arbitrator**

- (1) Upon accepting nomination or appointment, if, during the arbitral proceedings, an arbitrator becomes aware of any circumstance which is likely to lead a party or a representative to have reasonable doubt about the impartiality and independence of the arbitrator, the arbitrator shall forthwith make written disclosure of such circumstance.

- (2) XMAC shall forward such written disclosure to each party. Any party shall state in writing its opinion on whether to challenge the arbitrator within five (5) days upon receipt of such written disclosure.
- (3) Paragraph (1), (2), (4) and (5) of Article 29 of the Rules shall apply where a party challenges an arbitrator on the basis of the circumstances disclosed by the arbitrator.
- (4) If a party fails to challenge an arbitrator within the time limit specified in Paragraph (2) of this Article, it shall no longer challenge the arbitrator on the basis of the circumstances previously disclosed by the arbitrator.

#### **Article 29 Challenge to Arbitrator**

- (1) In any of the following circumstances, an arbitrator shall withdraw from the case, and any party shall also have the right to challenge the arbitrator, if such arbitrator:
  - (a) is either a party to the case or a close relative of a party or of a party's representative;
  - (b) has an interest in the case;
  - (c) has some other relationship with a party to the case or with a party's representative, which could possibly affect the impartiality of the arbitration; or
  - (d) has met in private with a party or the representative thereof or has accepted any gift or entertainment offered by any of them.
- (2) A party shall challenge an arbitrator in writing, stating the facts and grounds and producing corresponding evidence.
- (3) A challenge to an arbitrator shall be made prior to the first hearing. Where any ground for a challenge occurs or becomes known after the first hearing, the challenge shall be raised no later than the

closing of the last hearing. Where the parties agree not to hold a hearing, the challenge shall be raised within ten (10) days upon receipt of the notice on the constitution of the Arbitral Tribunal.

- (4) Where a party challenges an arbitrator and the other parties so agree, or the arbitrator being challenged withdraws from the case voluntarily after being informed of the challenge, such arbitrator shall no longer participate in the case. Neither of these circumstances shall imply that the grounds on which the challenge is raised by the party are justifiable.
- (5) In circumstances other than those specified in Paragraph (4) of this Article, the Chairperson shall decide on the challenge. The arbitrator being challenged shall continue to fulfill his/her functions and duties until a decision on the challenge has been made by the Chairperson.
- (6) A party who, after becoming aware of the constitution of the Arbitral Tribunal, authorises a representative whose authorisation may give rise to grounds for the challenge of the arbitrator not nominated by such party, shall be deemed to have waived its right to challenge such arbitrator on those grounds; the right of all other parties to challenge the arbitrator shall not, however, be affected. If no challenge has been raised by other parties, they shall be deemed to have no objection, and consequently the arbitrator shall not be required to withdraw from the case. In case of any delay caused thereby to the arbitral proceedings, the party giving rise to the grounds for challenge shall bear any additional cost resulting therefrom.

### **Article 30 Replacement of Arbitrator**

- (1) Where an arbitrator is unable to perform his/her functions and duties for specific cause or fails to perform his/her functions and duties pursuant to the requirements in the Rules, the Chairperson shall have the right to replace the arbitrator at his/her own discretion.
- (2) Where an arbitrator withdraws from a case voluntarily, or pursuant

to the decision of the Chairperson, or at the request of all parties, the arbitrator shall be replaced.

- (3) Where the replaced arbitrator is nominated by a party, the party shall nominate an alternative arbitrator within five (5) days [ten (10) days for a party having no domicile in Chinese Mainland] upon receipt of notice; where the replaced arbitrator is appointed by the Chairperson, the Chairperson shall appoint an alternative arbitrator, and shall promptly serve on each party a notice for the appointment.
- (4) After the replacement of the arbitrator, any party may request that the arbitral proceedings in progress begin anew in whole or in part, and the Arbitral Tribunal shall decide whether to approve such request. The Arbitral Tribunal may also decide at its own discretion whether the arbitral proceedings in progress begin anew in whole or in part. Where all parties request that the arbitral proceedings in progress begin anew in whole or in part, the arbitral proceedings shall begin anew.

#### **Article 31 Continuation of Arbitral Proceedings by Majority of Arbitrators**

After the closing of the last hearing, if an arbitrator on an arbitral tribunal of three arbitrators is unable to proceed with the arbitration for specific cause, the other two arbitrators may request the Chairperson to replace that arbitrator pursuant to Article 30 of the Rules. Upon approval of all parties and the Chairperson, the other two arbitrators may also proceed with the arbitral proceedings and make a decision, or render an award. XMAC shall notify each party of the aforesaid circumstances.

### **Chapter VI Hearing Cases**

#### **Article 32 Forms of Hearing Cases**

The Arbitral Tribunal shall hear a case in the form of a hearing. If all parties agree not to hold a hearing, or if the Arbitral Tribunal deems that a hearing is unnecessary and all parties so agree, the Arbitral Tribunal may conduct a documents-only arbitration on the basis of the Request for

Arbitration, the Statement of Defence and other materials submitted by the parties to render an award.

### **Article 33 Conducts of Hearing Cases**

- (1) Unless the parties have agreed otherwise, the Arbitral Tribunal shall have the right to decide on specific conduct of hearing cases.
- (2) Prior to a hearing, the Arbitral Tribunal may, if it considers necessary, take conducts such as producing timetable of the arbitration, issuing procedural orders, holding pre-hearing meetings, and conducting preliminary hearings; or may, upon expiration of period of filing Statement of Defence but prior to the hearing, organise the parties to exchange evidence, and may, in the course of evidence exchange, record in files uncontested facts and evidence, and jointly determine the issues in dispute.
- (3) The Arbitral Tribunal shall, prior to a hearing or during any phase of hearing a case, have the right to request the parties to produce evidence and answer questions so as to ascertain the facts of the case.
- (4) A hearing may be conducted in any form deemed appropriate by the Arbitral Tribunal, such as in-person hearing and virtual hearing.

### **Article 34 Applicable Law**

- (1) The Arbitral Tribunal shall render an award on a dispute pursuant to the applicable law agreed by the parties. Unless otherwise agreed by the parties, the agreed applicable law shall refer to substantive law rather than rules of conflict of laws.
- (2) In the absence of a choice of law, the Arbitral Tribunal shall determine the applicable law according to the relevant circumstances of the case.
- (3) The Arbitral Tribunal may only render an award *ex aequo et bono*, if the parties have agreed in their arbitration agreement, or the parties

have agreed unanimously in the arbitral proceedings. However, such award shall not violate the mandatory provisions of the law or harm the public interest.

### **Article 35 Consolidation of Hearing Cases**

Where no less than two arbitration cases involve the same or related factual issues, the Arbitral Tribunal may, when it deems appropriate or at the request of a party, hear cases on a consolidated basis upon consent of all parties. Where the constitution of the arbitral tribunals is different, the consolidation of hearing cases shall not apply.

### **Article 36 Seat of Arbitration**

- (1) Where the parties have agreed on the seat of arbitration, their agreement shall prevail.
- (2) In the absence of the above-mentioned agreement, the seat of arbitration shall be the place where XMAC is located. XMAC may also determine another place as the seat of arbitration based on the particular circumstances of a case.
- (3) An arbitral award shall be deemed as being rendered at the seat of arbitration.

### **Article 37 Place of In-person Hearing**

- (1) An in-person hearing shall be conducted in the place where XMAC is located; it may also be held at another place, if the parties have agreed so, or the parties so request and the Arbitral Tribunal approves, or the Arbitral Tribunal so decides based on the actual circumstances of the case and the Secretary-General of XMAC approves.
- (2) Where a hearing is conducted at a place other than the location of XMAC according to the agreement of the parties, or at the request of any party and with such request being approved by the Arbitral Tribunal, the Arbitral Tribunal may notify the concerned party to

prepay necessary expenses of site, traveling and accommodation incurred thereby. The party failing to prepay such expenses within the prescribed time limit shall be deemed to have waived such agreement or request.

#### **Article 38 Notice of Hearing**

- (1) XMAC shall serve a notice of hearing on each party three (3) days [ten (10) days for a party having no domicile in Chinese Mainland] prior to the day of hearing; with consent of all parties, the Arbitral Tribunal may decide to conduct a hearing ahead of schedule. A party having justifiable reasons may request a postponement of the hearing. However, such request must be submitted to the Arbitral Tribunal in writing three (3) days prior to the day of hearing. The Arbitral Tribunal shall decide whether to allow such postponement. The Arbitral Tribunal may, if it deems necessary, decide at its own discretion to postpone a hearing and notify each party thereof.
- (2) A notice on the date of any subsequent hearing or a postponed hearing shall not be subject to the preceding paragraph.

#### **Article 39 Default**

- (1) If, upon being notified in writing, the Claimant fails to appear at a hearing without any justifiable cause or leaves from an ongoing hearing without the approval of the Arbitral Tribunal, it shall be deemed as having withdrawn its Request for Arbitration. If, upon being notified in writing, the Respondent fails to appear at a hearing without any justifiable cause or leaves from an ongoing hearing without the approval of the Arbitral Tribunal, the Arbitral Tribunal may render a default award.
- (2) Counterclaim shall be heard according to the preceding paragraph.

#### **Article 40 Production of Evidence**

- (1) The Arbitral Tribunal shall have the right to request the parties to submit evidentiary materials within the specified time limit for



production of evidence. If the parties have agreed otherwise on such time limit and the Arbitral Tribunal so consents, their agreement shall prevail. The parties shall submit evidentiary materials within the specified time limit. Where the parties are unable to submit evidentiary materials within the specified time limit for production of evidence, they may, prior to the last day of such time limit, apply for an extension thereof and state their grounds. The Arbitral Tribunal shall decide whether to approve such application. Where the parties submit evidentiary materials beyond the specified time limit, the Arbitral Tribunal shall decide whether to accept such materials.

- (2) With respect to the claim of the parties, the Arbitral Tribunal shall have the right to decide the allocation of burden of proof.
- (3) A party who requests a witness to appear at a hearing for testimony shall submit a written application which includes the identification of such witness, matters to be testified and the language to be used by the witness.
- (4) With respect to legal and other professional issues, a party may appoint an expert witness to submit written opinions thereon or to testify at the hearing.
- (5) Each party shall classify and number each copy of the evidentiary materials submitted by it, briefly stating the sources, objects and contents of the evidentiary materials, with its signature and seal affixed thereto and the date of submission indicated therein.
- (6) Unless otherwise agreed by the parties, the documentary evidence in foreign language submitted by the parties shall be accompanied by a Chinese translation; provided, however, that no Chinese translation is required to accompany if the Arbitral Tribunal so agrees. The Arbitral Tribunal may, if it deems necessary, request the parties to provide corresponding translation in any other languages.

#### **Article 41 Investigation into Facts and Collection of Evidence by the Arbitral Tribunal**

- (1) The Arbitral Tribunal may, if it deems necessary, investigate into facts and collect evidence on its own initiative. When investigating into facts and collecting evidence, the Arbitral Tribunal shall, if it deems necessary, promptly notify the parties to be present. If any party fails to be present after being notified, the investigation and collection by the Arbitral Tribunal shall proceed without being affected.
- (2) Evidence collected by the Arbitral Tribunal shall be served on each party who shall then submit its opinions thereon within a specified time limit.

#### **Article 42 Expert Report**

- (1) Where the Arbitral Tribunal deems it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal may refer the professional issues involved in a case to the expert agreed upon by all parties for expert report. Absent such agreement, the expert shall be appointed by the Arbitral Tribunal.
- (2) The Arbitral Tribunal shall have the right to require the parties, and the parties shall be under the obligation, to provide or present any document, data, property or any other item that is required for expert report.
- (3) With respect to a party bearing the burden of proof for issues for which an expert report is required, if it fails to submit the request without any justifiable cause within the time limit specified by the Arbitral Tribunal, or fails to prepay relevant expenses or refuses to provide relevant materials, thus making the facts of the dispute unable to be ascertained through an expert report, such party shall bear the adverse consequences resulting therefrom.
- (4) The Arbitral Tribunal shall make a decision on the disagreement

between any party and the expert as to whether any document, data, property or other items required for expert report is relevant to the case.

- (5) A copy of the expert report shall be served on each party who shall then submit its opinion of examination thereon within a specified time limit. A party failing to do so shall be deemed to have acknowledged the conclusion of such expert report.
- (6) Where the Arbitral Tribunal deems it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal shall notify the expert to take part in a hearing. With the permission of the Arbitral Tribunal, any party may question the expert.
- (7) Any request by a party for a new expert report shall be subject to the approval of the Arbitral Tribunal.

#### **Article 43 Examination of Evidence**

- (1) The Arbitral Tribunal may, according to the needs for hearing a case, require the parties to verify on their own whether the photocopies of evidentiary materials are identical with the originals thereof. The Arbitral Tribunal may delegate the Case Manager to organise the parties to conduct the aforesaid verification.
- (2) Where there is a hearing, evidentiary materials shall be presented at the hearing and examined by the parties. Evidentiary materials acknowledged by the parties in the process of evidence exchange and recorded in files may, after the notification thereof by the Arbitral Tribunal at the hearing, directly act as the ground for ascertaining the case fact without being presented at the hearing.
- (3) With respect to the evidentiary materials submitted by any party during or after the hearing and, if the Arbitral Tribunal has decided to admit such materials without holding any further hearings, the Arbitral Tribunal may require all other parties to submit their opinions of examination in writing within a specified time limit,

unless all parties request unanimously for further hearings.

#### **Article 44 Debate and Final Statement**

- (1) The parties shall have the right to debate during the arbitral proceedings.
- (2) The presiding arbitrator shall ask the parties to make their final statements at the closing of the debate.
- (3) Investigation into the facts of a case may be resumed where a party submits new facts after the closing of the debate or if the Arbitral Tribunal considers it necessary.

#### **Article 45 Record of Hearing**

- (1) During a hearing, the Arbitral Tribunal may make a record of the hearing or take minutes stating the main points thereof. The Arbitral Tribunal may also make an audio-visual record as it deems appropriate.
- (2) If any party and the relevant participant in the arbitration hold that there is any omission or error in the record of their statements, any of them may apply for supplement or correction thereto. The application shall be recorded if the Arbitral Tribunal refuses such supplement or correction.
- (3) The written record of or the minutes stating the main points of the hearing shall be signed or sealed by the arbitrators, recorder, the parties and the relevant participants in the arbitration. Any refusal by the parties and the relevant participants in the arbitration to sign or affix their seals thereon shall be recorded by the Arbitral Tribunal.
- (4) XMAC may, at the request of any party and upon approval of the Arbitral Tribunal, or if the Arbitral Tribunal deems necessary, hire a stenographer to make a record of the hearing for the Arbitral Tribunal or may make such record by other means.

#### **Article 46 Settlement between the Parties**

- (1) The parties may reach a settlement by themselves through negotiation.
- (2) During the arbitral proceedings, the parties may request the Arbitral Tribunal either to issue a Statement of Mediation or to render an award in accordance with the terms of the settlement agreement. Where the Arbitral Tribunal has not yet been constituted, unless the parties have agreed otherwise, the Chairperson shall appoint a sole arbitrator to constitute the Arbitral Tribunal, and subsequently the Arbitral Tribunal shall either issue a Statement of Mediation or render an award in accordance with the terms of a settlement agreement. Upon the written consent of the parties, the specific procedures for arbitral proceedings shall not be subject to other terms of the Rules.
- (3) XMAC or the Arbitral Tribunal shall have the right to request the parties to make representations and warranties as to the legality and authenticity of both the settlement agreement and the related transaction, and to undertake not to harm the interest of a non-party and the public interest. Where the Arbitral Tribunal has reasonable doubts as to the legality and authenticity of the settlement agreement, or where it deems that the award rendered or the Statement of Mediation issued in accordance with the terms of the settlement agreement may harm the interest of a non-party or the public interest, it may refuse to render the award or issue the Statement of Mediation in accordance with the terms of the settlement agreement, and directly render an award based on the facts that have been ascertained.

#### **Article 47 Mediation by the Arbitral Tribunal**

- (1) The Arbitral Tribunal may, at the request of or with the consent of the parties, conduct a mediation in an appropriate manner that is favourable for the parties to reach a settlement.

- (2) In the course of mediation by the Arbitral Tribunal, if any party proposes to terminate the mediation or the Arbitral Tribunal deems it impossible to have a successful mediation, the mediation shall be terminated.
- (3) Where the parties have reached a settlement agreement through mediation, the Arbitral Tribunal shall either issue a Statement of Mediation or render an award based on the agreement. The Statement of Mediation shall set forth the Claim and the outcome of the agreement between the parties. The Statement of Mediation shall be signed by the arbitrators, affixed with the seal of XMAC, and served on the parties. The Statement of Mediation shall take legal effect once signed for receipt by the parties. If any party reneges on its words before the Statement of Mediation is signed for receipt, the Arbitral Tribunal shall duly render an award.
- (4) If the mediation fails, the arbitral proceedings shall resume and the Arbitral Tribunal shall duly render an award.
- (5) If the mediation fails, no party shall, in the subsequent arbitral proceedings, judicial proceedings and any other proceedings, adduce any statement or opinion that is made by all other parties or the Arbitral Tribunal in the course of mediation as the basis of its Claim, Counterclaim or defence.

#### **Article 48 Independent Mediation and Joint Mediation**

- (1) In the arbitral proceedings, the parties may apply for independent mediation to Xiamen International Commercial Mediation Centre or other mediation institutions recognised by XMAC.
- (2) In the arbitral proceedings, the Arbitral Tribunal may, at the request of or upon the consent of the parties, authorise Xiamen International Commercial Mediation Centre or other mediation institutions recognised by XMAC to conduct independent mediation.
- (3) In the arbitral proceedings, the Arbitral Tribunal may, at the request

of or upon the consent of the parties, conduct mediation jointly with Xiamen International Commercial Mediation Centre or other mediation institutions recognised by XMAC.

#### **Article 49 Correction to Statement of Mediation**

The Arbitral Tribunal shall make correction to such errors as clerical and computational errors in a Statement of Mediation. The parties shall also have the right to request such correction within thirty (30) days upon the Statement of Mediation is signed for receipt. The correction to the Statement of Mediation shall form part thereof and shall take legal effect once signed for receipt by the parties.

#### **Article 50 Suspension and Resumption of Arbitral Proceedings**

- (1) If all parties jointly request, or if a party requests and all other parties raise no objection thereto, the arbitral proceedings may be suspended. If any party requests to resume the arbitral proceedings or XMAC or the Arbitral Tribunal deems it necessary, the arbitral proceedings shall be resumed.
- (2) If any exceptional circumstances occur that necessitate suspension, the arbitral proceedings may be suspended. The arbitral proceedings shall be resumed once such circumstances cease to exist.
- (3) The decision on the suspension and resumption of the arbitral proceedings shall be made by XMAC prior to the constitution of the Arbitral Tribunal, or by the Arbitral Tribunal after its constitution.

#### **Article 51 Withdrawal of Request for Arbitration and Dismissal of Cases**

- (1) A party may withdraw its Claim or Counterclaim in its entirety. The withdrawal by the Claimant of its Claim in its entirety shall not affect the case being heard and the award on the Counterclaim of the Respondent being rendered by the Arbitral Tribunal. The withdrawal by the Respondent of its Counterclaim in its entirety shall not affect the case being heard and the award on the Claim of the Claimant being rendered by the Arbitral Tribunal.

- (2) Where the Claim and Counterclaim have been withdrawn in their entirety, or where it becomes impossible for the arbitral proceedings to proceed due to other reasons, the Arbitral Tribunal may make a decision on the dismissal of the case; where a case is to be dismissed prior to the constitution of the Arbitral Tribunal, XMAC may make such decision.
- (3) Where, after a hearing, a party requests to withdraw its Claim or Counterclaim in its entirety, the Arbitral Tribunal may offer a reasonable opportunity to the opposing side to state its opinions. If a party from the opposing side raises justifiable objections thereto and the Arbitral Tribunal believes that there are justifiable grounds for the resolution of the dispute by rendering an award, the Arbitral Tribunal shall have the right to proceed with the arbitral proceedings.
- (4) Where the case has been dismissed, XMAC shall, according to the circumstances of the case, have the right to decide whether to refund the prepayment of arbitration fees or of any other fees, and decide the specific amount of such refund.

## **Chapter VII     Decision and Award**

### **Article 52   Arbitration Decision**

- (1) Any decision of an Arbitral Tribunal comprising three arbitrators shall be made by a majority of arbitrators. If the Arbitral Tribunal fails to reach a majority decision, the decision of the presiding arbitrator shall prevail.
- (2) The presiding arbitrator may, with the consent of all parties or the authorisation of the Arbitral Tribunal, make a decision on the procedural matters.

### **Article 53   Time Limit for Rendering an Award**

- (1) An award shall be rendered within four (4) months [six (6) months for a case involving a party having no domicile in Chinese Mainland]



as from the day on which the Arbitral Tribunal is constituted. In case that any special circumstance necessitates an extension of the said time limit, the Secretary-General of XMAC may approve an appropriate extension thereof at the request of the presiding arbitrator.

- (2) The time limit for rendering an award shall not include the period for handling jurisdictional objection, the period for suspension of the arbitral proceedings, the period for seeking expert report on professional issues, the period during which all parties are reaching settlement or having mediation and other periods agreed by all parties.

#### **Article 54 Rendering an Award**

- (1) With respect to a case heard by an Arbitral Tribunal consisting of three arbitrators, an award thereon shall be rendered by all three arbitrators or a majority of the arbitrators. The dissenting opinion shall be recorded in writing and archived into the file and may be attached to the award, but it shall not form part of such award. In case of no majority opinion is reached, the award shall be rendered according to the opinion of the presiding arbitrator.
- (2) The award shall state the Claim, the facts of the dispute, the reasons on which the award is based, the decision on the Claim, the allocation of arbitration fees, the date of rendering the award, and the seat of the arbitration. The facts of the dispute and the reasons on which the award is based may not be stated in the award if all parties so agree.
- (3) The award shall be signed by all arbitrators. A dissenting arbitrator may elect either to sign or not to sign the award. Where the dissenting arbitrator elects not to sign it, the validity of the award shall not be affected.
- (4) With respect to cases accepted by XMAC or by any arbitration centre (court) established by XMAC for specific industries and

professions, the awards thereon shall all be affixed with the seal of XMAC.

- (5) An award shall be legally binding as from the date on which it is rendered.

#### **Article 55 Interim Award, Partial Award and Partial Mediation**

- (1) Where the Arbitral Tribunal considers it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal may, prior to rendering a final award, render an interim award on procedural or substantive issues of the dispute.
- (2) Where the Arbitral Tribunal considers it necessary, or where a party so requests and the Arbitral Tribunal approves, the Arbitral Tribunal may, prior to rendering a final award, render a partial award on particular Claim.
- (3) Where, before the final award is rendered by the Arbitral Tribunal, the parties have reached a settlement agreement on particular Claim, the Arbitral Tribunal shall either issue a partial Statement of Mediation or render a partial award based on such agreement.
- (4) The interim and partial award shall be legally binding as from the date on which they are rendered. The partial Statement of Mediation shall take legal effect upon being signed for receipt by the parties. If any party reneges on its words before the partial Statement of Mediation is signed for receipt, the Arbitral Tribunal shall duly render an award.

#### **Article 56 Allocation of Fees**

- (1) The Arbitral Tribunal shall determine the proportion of fees payable by each party based on such factors as the extent of the liability of each party and the particular circumstances of the case. Where the parties reach a settlement either by themselves or as a result of mediation by the Arbitral Tribunal, they may agree upon the proportion of arbitration fees payable by each party, failing which

the Arbitral Tribunal shall decide thereon.

- (2) Where the arbitral proceedings are delayed as a result of any failure of a party to observe the principles of good faith or due to other reasons attributable to a party, any additional costs resulting therefrom shall be borne by such party.
- (3) With respect to any travel, accommodation and site expenses and relevant fees as a result of the arbitrator nominated by either side conducting the arbitration at a place which is different from the nominee's residential address, or of an in-person hearing conducted in a place agreed by the parties other than the location of XMAC, as well as any related expenses resulting from seeking expert report, hiring translators, etc., the Arbitral Tribunal shall have the right to render an award deciding which party shall finally bear such expenses.
- (4) The Arbitral Tribunal shall have the right to decide, pursuant to a party's request, in an award that one side shall bear the other side's reasonable expenses as a result of conducting the arbitration, including but not limited to attorney's fees, preservation expenses, travel expenses, notarial fees, and witness fees. In determining the amount of the said expenses, the Arbitral Tribunal shall take into full consideration such relevant factors as the decision on the Claim, the complexity of the case, the actual workload of the parties or their representatives, the amount in dispute, and the standard rates set by competent authorities.

#### **Article 57 Scrutiny of Draft Award**

The Arbitral Tribunal shall, prior to signing on an award, submit its draft award to XMAC for scrutiny. With respect to relevant matters of the award, XMAC may bring them to the attention of the Arbitral Tribunal without prejudice to the Arbitral Tribunal's independence in hearing the case.

## **Article 58 Supplement and Correction to an Award**

- (1) In case of any omissions in an award, any party may, within thirty (30) days upon receipt of the award, submit a written application to the Arbitral Tribunal for rendering a supplementary award, and the Arbitral Tribunal shall, within thirty (30) days upon receipt of such written application, make a supplementary award.
- (2) The Arbitral Tribunal shall correct any clerical error, computational error or any errors of a similar nature in the award, and address any omission in the award of the final decision regarding a Claim that the Arbitral Tribunal has, however, stated the reasoning thereof. Any party may, within thirty (30) days upon receipt of the award, request the Arbitral Tribunal in writing to render a corrective award; upon verification thereof, the Arbitral Tribunal shall render a corrective award within thirty (30) days upon receipt of such written request.
- (3) The Arbitral Tribunal shall notify the concerned party in writing if it refuses the request for rendering a corrective or supplementary award.
- (4) The Arbitral Tribunal may, within a reasonable time period after rendering an award, make supplement or correction to the award in writing by itself.
- (5) The supplementary award or the corrective award form a part of the original award.
- (6) Where the Arbitral Tribunal renders a supplementary or corrective award, XMAC shall not charge any extra fees.

## **Article 59 Re-arbitration**

- (1) The original Arbitral Tribunal shall hear the case where the competent court notifies it under the law to re-arbitrate such case. In the event that an arbitrator of the original Arbitral Tribunal is unable to perform his/her functions and duties due to challenge, voluntary withdrawal or other specific reasons, the arbitrator shall be replaced

in accordance with Article 30 of the Rules.

- (2) The specific arbitral proceedings of the case to be re-arbitrated shall be decided by the Arbitral Tribunal.
- (3) The Arbitral Tribunal shall render a new award in accordance with the Rules.
- (4) Such new award shall supersede the original one, and shall be performed by all parties.
- (5) If re-arbitration is caused by any party, XMAC shall have the right to notify the party to separately pay the arbitration fee and render a final award on the allocation of such fee.

## **Chapter VIII Expedited Procedure**

### **Article 60 Application of Expedited Procedure**

- (1) Unless otherwise agreed by the parties, an expedited procedure (“Expedited Procedure”) shall apply if the amount in dispute does not exceed 2,000,000 yuan (i.e. RMB, the same below).
- (2) Where the amount in dispute exceeds 2,000,000 yuan, the Expedited Procedure shall apply if the parties so agree.
- (3) The Expedited Procedure shall apply where the parties have agreed on having their case heard by a sole arbitrator.
- (4) The Expedited Procedure shall not apply where the parties have agreed on having their case heard by an Arbitral Tribunal consisting of three arbitrators.
- (5) With respect to a single arbitration under multiple contracts, if the applicable procedures and the number of arbitrators as set forth in such contracts are not consistent or only some of such contracts have provided for them, XMAC shall decide whether the Expedited Procedure shall apply to such case.

- (6) Unless otherwise agreed by the parties, if the amount in dispute is not specified or not clear, XMAC shall, upon full consideration of the complexity of the case, the interests involved and other relevant factors, determine whether to apply the Expedited Procedure, and shall notify each party in writing thereof. Any party may raise its objection (if any) thereto in writing within five (5) days upon receipt of the notice, and the Chairperson shall determine whether to accept it.

#### **Article 61 Constitution of Sole-Arbitrator Tribunal**

- (1) An Arbitral Tribunal consisting of one arbitrator is a sole-arbitrator tribunal.
- (2) A case under the Expedited Procedure shall be heard by a sole-arbitrator tribunal.
- (3) Unless the parties have agreed otherwise or the Chairperson has determined otherwise, the parties shall, within five (5) days [ten (10) days for a party having no domicile in Chinese Mainland] upon receipt of the notices of arbitration, jointly nominate or jointly authorise the Chairperson to appoint the sole arbitrator. Where the parties fail to do so, the sole arbitrator shall be appointed by the Chairperson.
- (4) The sole arbitrator may be nominated in the manner set forth in Paragraph (2), (3) and (5) of Article 22 of the Rules.

#### **Article 62 Time Limit for Defence and Counterclaim**

A Respondent shall, within ten (10) days [twenty (20) days for a Respondent having no domicile in Chinese Mainland] upon receipt of the Notice of Arbitration, submit its Statement of Defence and documents certifying its identity to XMAC, and confirm its address for service to XMAC. In case of any Counterclaim, the Respondent shall submit its application thereof and documents certifying its identity within the said time limit.

### **Article 63 Change of Procedure**

- (1) The proceedings of the Expedited Procedure shall not be affected by any amendment to a Claim or the filing of a Counterclaim, which causes the amount in dispute to exceed 2,000,000 yuan. If any party or the Arbitral Tribunal deems it inappropriate to apply the Expedited Procedure, it may apply for a change of procedure to the Chairperson who shall then decide whether to approve such application.
- (2) Where a case is to be heard by a three-arbitrator tribunal after the change of procedure, either side shall, within five (5) days upon receipt of a notice thereof, respectively nominate or authorise the Chairperson to appoint one arbitrator in accordance with the Rules. Unless otherwise agreed by the parties, the original sole arbitrator shall become the presiding arbitrator. The Expedited Procedure shall cease to apply to the arbitral proceedings upon the constitution of a new Arbitral Tribunal.
- (3) Unless otherwise agreed by the parties, if the amount in dispute does not exceed 2,000,000 yuan as a result of the amendment to the Claim, the procedure of the case shall be changed into the Expedited Procedure prior to the constitution of the Arbitral Tribunal, and no change shall be made to the procedure after the constitution of the Arbitral Tribunal.
- (4) If the procedure is changed after the constitution of the Arbitral Tribunal, the Arbitral Tribunal newly constituted shall determine whether the proceedings already conducted are valid.

### **Article 64 Time Limit for Rendering an Award**

The Arbitral Tribunal shall render an award within two (2) months [three (3) months for a case involving a party having no domicile in Chinese Mainland] as from the date on which it is constituted. In case that any special circumstance necessitates an extension of the said time limit, the Secretary-General of XMAC may approve an appropriate extension

thereof at the request of the sole arbitrator.

#### **Article 65 Application of Provisions**

With respect to matters not expressly provided for in this Chapter, the most relevant provisions of the Rules shall apply, or shall apply *mutatis mutandis*.

### **Chapter IX Miscellaneous**

#### **Article 66 Waiver of Right to Object**

Where a party knows or shall have known that any terms or conditions of the Rules or an arbitration agreement have not been complied with, but nevertheless takes part in or proceeds with the arbitral proceedings without promptly raising its objection in writing to such non-compliance, it shall be deemed to have waived its right to object to such non-compliance.

#### **Article 67 Language of Arbitration**

- (1) Where the parties have agreed on the language of arbitration, their agreement shall prevail. In the absence of such agreement, the Arbitral Tribunal shall decide a language or several languages of arbitration upon taking into appropriate consideration both the languages of arbitration agreements or of the contracts involved in a dispute and other particular circumstances of the case.
- (2) If a party or its representative or witness requires translation at a hearing, a translator may be hired either by the party itself or by XMAC upon the party's request.
- (3) The Arbitral Tribunal or XMAC may, if it deems necessary, require the parties to submit a corresponding translation of their relevant documents and evidentiary materials in one language or several languages agreed by the parties or decided by the Arbitral Tribunal.



- (4) An award shall be rendered in the language of arbitration determined under Paragraph (1) of this Article.

#### **Article 68 Time Limit**

- (1) For the purpose of the Rules, “within”, “up to”, “over”, “no less than”, “expiration”, “expiry” shall include the given figures; and “exceed”, “prior to” shall exclude the given figures.
- (2) Any time limit specified in the Rules or determined in accordance with the Rules shall start to run on the day following the date on which such time limit commences. The day on which such time limit commences shall not be included in the time limit.
- (3) If the day following the date on which the time limit commences falls on a public holiday or non-business day in a place where relevant documents have been served, the time limit shall start to run on the first following business day. If the expiration day of a time limit falls on the public holiday or non-business day, the time limit shall expire on the first following business day. Otherwise, the public holiday or non-business day shall be included in the time limit.
- (4) Any relevant arbitral documents, notices or materials that have been mailed or sent prior to the expiration of a time limit shall be deemed as not exceeding the time limit.
- (5) If a time limit is exceeded due to force majeure or other justifiable causes, a party may apply for an extension thereof within ten (10) days after relevant circumstances no longer exist. The decision on whether to approve such application shall be made by the Arbitral Tribunal or, if the Arbitral Tribunal has not yet been constituted, by XMAC.
- (6) With respect to the time limit specified in the Rules that falls within the scope of XMAC’s case management functions, it may, upon the approval of the Secretary-General of XMAC, be extended according

to the actual conditions.

## **Article 69 Service**

- (1) Where the parties have agreed on the way of service, their agreement shall prevail.
- (2) The server may serve on the parties or their representatives in person or by a notice posted at the place of the addressee or by inviting a notary to record the service process on site, or by mail, courier, facsimile, e-mail, or other means of electronic data interchange that may provide a record thereof or any other means that XMAC or the Arbitral Tribunal deems appropriate.
- (3) The documents shall be deemed to have been received if they have been delivered by the server to the addressee or if they have been delivered successfully by mail or courier to the addressee's place of business, place of registration, residential address, address indicated on household registration, address indicated on ID card, address for service agreed by the parties or address for service confirmed by the parties verbally or in writing or any of other correspondence addresses. The refusal by the addressee of the receipt shall not affect the validity of the service.
- (4) If, in accordance with Paragraph (3) of this Article or by other appropriate means, such documents are unable to be served by the server, they shall be deemed to have been received if they are sent by mail or courier or by other recordable means to the addressee's last known place of business, place of registration, residential address, address indicated on household registration, address indicated on ID card, or other correspondence addresses, or the address for service agreed by the parties.
- (5) The time of service shall be subject to the time at which such documents have been first served to the addressee by the aforesaid means.

- (6) With the consent of the parties, XMAC or the Arbitral Tribunal may determine that a party may directly send to other parties the relevant arbitral documents and evidentiary materials when it submits the same, or may send them to the online storage system available on XMAC Online Service Platform, and submit the service record thereof to XMAC or the Arbitral Tribunal. The time of service shall be confirmed by XMAC or the Arbitral Tribunal according to the service record.

#### **Article 70 Copies of Submissions**

- (1) All written documents submitted by the parties shall have enough copies that each party and arbitrator and XMAC shall respectively hold one copy thereof.
- (2) The parties may provide corresponding electronic form while submitting such written documents.

#### **Article 71 Form of Signature or Seal**

Both the signatures of arbitrators and the seal of XMAC in relevant arbitral documents may be signed or affixed either directly or electronically.

#### **Article 72 Confidentiality**

- (1) The arbitration shall be conducted in private. Where the parties agree on having their case heard in public, the arbitration may be conducted in public, with the exception that any state secrets are involved.
- (2) Where the case is heard in private, the parties, their representatives, witnesses, translators, arbitrators, and experts, relevant staffs of XMAC, and the persons consented by all parties to attend a hearing, etc., shall by no means disclose to the outside any information concerning the arbitration, whether substantive or procedural.

### **Article 73 Challenge to Case Manager**

- (1) The challenge to a Case Manager shall refer to Article 29 of the Rules.
- (2) The challenge to a Case Manager shall be decided by the Secretary-General of XMAC.

### **Article 74 Interpretation of the Rules**

- (1) The Rules shall be interpreted by XMAC.
- (2) Other documents issued by XMAC shall not form a part of the Rules, unless XMAC states otherwise.

### **Article 75 Official Versions of the Rules**

Each of the Chinese, English and other language versions of the Rules published by XMAC is official. In the event of any discrepancy or inconsistency between the Chinese version and the version in any other language, the Chinese version shall prevail.

### **Article 76 Implementation of the Rules**

The Rules shall be implemented as of July 1, 2020. For cases accepted before the implementation of the Rules, the arbitration rules effective at the time of such acceptance shall apply. The Rules may, however, apply if the parties so agree and with the approval of XMAC.

**Annex I:****Determination of Arbitration Fees****Calculation Standard of Acceptance Fee (Schedule I)**

<b>Amount in Dispute (RMB)</b>	<b>Rate</b>	<b>Case Acceptance Fee (RMB)</b>	<b>Capped at</b>
Up to 1,000 yuan		100 yuan	100 yuan
1,001 yuan to 50,000 yuan	5%	100 yuan + 5% of the amount in dispute over 1,000 yuan	2,550 yuan
50,001 yuan to 100,000 yuan	4%	2,550 yuan + 4% of the amount in dispute over 50,000 yuan	4,550 yuan
100,001 yuan to 200,000 yuan	3%	4,550 yuan + 3% of the amount in dispute over 100,000 yuan	7,550 yuan
200,001 yuan to 500,000 yuan	2%	7,550 yuan + 2% of the amount in dispute over 200,000 yuan	13,550 yuan
500,001 yuan to 1,000,000 yuan	1%	13,550 yuan + 1% of the amount in dispute over 500,000 yuan	18,550 yuan
Over 1,000,000 yuan	0.5%	18,550 yuan + 0.5% of the amount in dispute over 1,000,000 yuan	

### Calculation Standard of Handling Fee (Schedule II)

Amount in Dispute (RMB)	Rate	Case Handling Fee (RMB)	Capped at
Up to 200,000 yuan		1,250 yuan	1,250 yuan
200,000 yuan to 500,000 yuan	1%	1,250 yuan + 1% of the amount in dispute over 200,000 yuan	4,250 yuan
500,000 yuan to 1,000,000 yuan	0.5%	4,250 yuan + 0.5% of the amount in dispute over 500,000 yuan	6,750 yuan
1,000,000 yuan to 10,000,000 yuan	0.25%	6,750 yuan + 0.25% of the amount in dispute over 1,000,000 yuan	29,250 yuan
Over 10,000,000 yuan	0.15%	29,250 yuan + 0.15% of the amount in dispute over 10,000,000 yuan	

### Fees When Applying Other Arbitration Rules (Schedule III)

Amount in Dispute (RMB)	Case Administrative Fee (RMB)
Up to 1,000,000 yuan	1.4% of the amount in dispute, minimum 4,000 yuan
1,000,001 yuan to 5,000,000 yuan	14,000 yuan + 1% of the amount in dispute over 1,000,000 yuan
5,000,001 yuan to 10,000,000 yuan	54,000 yuan + 0.6% of the amount in dispute over 5,000,000 yuan
10,000,001 yuan to 50,000,000 yuan	84,000 yuan + 0.4% of the amount in dispute over 10,000,000 yuan
Over 50,000,000 yuan	244,000 yuan + 0.2% of the amount in dispute over 50,000,000 yuan

1. The rate above applies to the cases accepted by XMAC. Where XMAC has set up special provisions on the standard rate, such provisions shall prevail.
2. The amount of money claimed by a party shall be deemed the amount in dispute. If there is no monetary claim or the amount in dispute is not clear, XMAC shall determine the amount of arbitration fees to be prepaid.
3. Where the amount in dispute is less than 2,000,000 yuan, if the parties agree that the case concerned shall be heard by an Arbitral Tribunal composed of three arbitrators or that the Expedited Procedure is not applicable, the arbitration fee shall be calculated as if the amount in dispute was 2,000,000 yuan.
4. Where the parties agree on submitting their dispute to XMAC for arbitration while referring to other arbitration rules, with administrative services to be provided by XMAC, XMAC shall charge the case administrative fee under Schedule III of this Annex.
5. Based on the specific circumstances of a case, XMAC may charge an extra percentage of arbitration fees calculated as per the above rate. Such circumstances shall include but not be limited to the case involving no less than two Claimants or Respondents, the arbitration involving multiple contracts, the parties agreeing on no less than two languages as the languages of the arbitration, and any other special circumstances.
6. Based on the specific circumstances of a case, XMAC shall have the right to adjust the arbitration fees prepaid by a party.

## **Annex II:**

### **Constitution of Arbitral Tribunal and Payment of Remuneration (Based on an Hourly Rate)**

1. Where both sides have agreed to determine the arbitrator's remuneration on the basis of an hourly rate according to Article 23 of the Rules, they shall nominate the arbitrators of an Arbitral Tribunal, negotiate with such arbitrators on the rate of remuneration, and make appropriate prepayment of such arbitrators' remunerations according to the time limit and methods determined by XMAC.
2. When an arbitrator is remunerated at an hourly rate, his/her remuneration shall be reasonable, taking into account the amount in dispute, the complexity of the case, the time spent and any other circumstances of the case. Based on the above factors, XMAC shall have the right to make necessary adjustments to the arbitrator's remuneration, and any of such adjustments shall be binding on the arbitrator. In principle, an arbitrator's hourly rate shall not exceed 5,000 yuan.
3. Where a side fails to nominate the arbitrators of an Arbitral Tribunal, negotiate on the hourly rate, or make appropriate prepayment of such arbitrators' remunerations according to the time limit and methods determined by XMAC, it shall be deemed as having not nominated the arbitrators of the Arbitral Tribunal, and the Chairperson shall appoint the arbitrators of the Arbitral Tribunal for that side in accordance with Article 22 or 61, in which case, the remunerations of such arbitrators shall be determined by XMAC according to Paragraph (1)(a) of Article 23 of the Rules. With respect to cases to which the Expedited Procedure is not applicable, if one side fails to make the prepayment as scheduled, the other side who has made the prepayment shall nominate another arbitrator in accordance with Article 22 of the Rules.
4. Upon the constitution of an Arbitral Tribunal, XMAC may, based on the actual circumstances of the case, request the parties to make supplementary prepayment for the remunerations of the arbitrators of the Arbitral Tribunal.
5. An Arbitral Tribunal shall, according to the relevant provisions of the Rules, decide on the allocation of the actual remunerations of the arbitrators of the Arbitral Tribunal to be borne by the parties. XMAC shall refund any overpayment or request a supplementary payment for any deficiency of the aforementioned actual



remunerations.

6. The parties are jointly and severally liable for the supplementary payment of the remunerations of the arbitrators of the Arbitral Tribunal, irrespective of which side has nominated the arbitrator. If the parties fail to make such supplementary payment within the time limit prescribed by XMAC, the Arbitral Tribunal may suspend hearing the case or dismiss the case.

### **Annex III:**

#### **Emergency Arbitrator Procedures and Costs**

1. Prior to the constitution of the Arbitral Tribunal, no matter whether any party has submitted the Request for Arbitration to XMAC, any party who needs to apply for preservation in case of any emergency may submit a written application to XMAC for the appointment of an emergency arbitrator in accordance with applicable laws of countries and regions outside Chinese mainland. XMAC shall decide whether to approve such application.
2. The written application shall contain the following:
  - (1) in case of a natural person, its identification, residential address and contact information; or in case of a legal person or other organisation, its name, place of registration and place of business as well as the name, title and contact information of its legal representative or of the key person in charge;
  - (2) the contract concluded between the parties and the arbitration agreement contained therein;
  - (3) the specific preservation measures to be applied for and the reasons for such application;
  - (4) applicable law and the relevant provisions thereof with respect to the preservation measures to be applied for;
  - (5) opinions on the place and the language of the emergency arbitrator procedures; and
  - (6) any other materials in relation to the application for preservation.
3. Where XMAC decides that the emergency arbitrator procedures shall apply, it shall appoint an emergency arbitrator within three (3) days after a party submits the application and prepays the emergency arbitration fees under this Annex, and shall notify all parties of such appointment. XMAC shall at the same time forward the application materials and attachments submitted by the applicant to all other parties.
4. If, before submitting a Request for Arbitration, a party submits its written

application to XMAC for the appointment of an emergency arbitrator and XMAC approves such application, XMAC shall set the time limit for such party to submit the Request for Arbitration to XMAC while giving such approval. If such party fails to submit the Request for Arbitration within the time limit, the emergency arbitrator shall make a decision on the termination of the emergency arbitrator procedures. Such party may apply for an extension of the said time limit, which shall be subject to the approval of XMAC.

5. The provisions of Articles 28, 29 and 30 shall apply, *mutatis mutandis*, to disclosure by, challenge to and replacement of an emergency arbitrator. Specifically, a party requesting to challenge an emergency arbitrator shall make such request within two (2) days upon receipt of the notice issued by XMAC with respect to the appointment and disclosure of the emergency arbitrator; if the emergency arbitrator is required to be replaced, XMAC shall appoint a new emergency arbitrator within three (3) days after being aware of the circumstances requiring for such replacement.
6. An emergency arbitrator shall make arrangements for matters in relation to the emergency arbitrator procedures within two (2) days upon acceptance of the appointment. The emergency arbitrator shall have the right to examine the preservation application in such manner as he/she deems appropriate, and shall ensure that all parties have a reasonable opportunity to make their statements.
7. The emergency arbitrator shall render a decision or an award within fourteen (14) days after his/her appointment. The emergency arbitrator may apply for an extension of the said time limit, which shall be subject to the approval of XMAC. The parties shall abide by the decision or award rendered by the emergency arbitrator.
8. Any request by a party to amend, suspend or set aside the decision or award rendered by an emergency arbitrator shall be decided by the emergency arbitrator before the constitution of an Arbitral Tribunal, or by an Arbitral Tribunal after its constitution. The Arbitral Tribunal may also, on its own initiative, amend, suspend or set aside the decision or award rendered by an emergency arbitrator.
9. The party applying for preservation shall, within five (5) days upon receipt of

the decision on the amendment to the preservation measures, notify the competent court thereof.

10. The decision or award rendered by an emergency arbitrator will no longer bind the parties, if:
- (1) the emergency arbitrator procedures have been terminated according to Article 4 of this Annex;
  - (2) the Arbitral Tribunal amends, suspends or sets aside such decision or award;
  - (3) the Arbitral Tribunal has rendered a final award, unless the Arbitral Tribunal deems that the decision or award rendered by the emergency arbitrator shall continue to be binding;
  - (4) the Arbitral Tribunal is not constituted within ninety (90) days from the date of the decision of the emergency arbitrator. Such time limit may be extended by agreement of the parties or by XMAC under circumstances it deems appropriate; or
  - (5) after the constitution of the Arbitral Tribunal, the arbitral proceedings have been suspended for sixty (60) consecutive days.
11. The authority of an emergency arbitrator and the emergency arbitrator procedures shall cease on the date of the constitution of the Arbitral Tribunal. Unless otherwise agreed by the parties, the emergency arbitrator shall not subsequently act as an arbitrator for the case.
12. Where a party applies to XMAC for the appointment of an emergency arbitrator in accordance with this Annex and applies to such emergency arbitrator for preservation, the applicable fees are as follows:

<b>Application for Preservation</b>	<b>Amount (RMB)</b>
One preservation application	10,000 yuan
Multi-preservation applications	10,000 yuan + (n-1) × 2,000 yuan
Note: “n” refers to the number of preservation applications by the party	

## **Annex IV:**

### **Special Provisions on Nomination of Arbitrator Candidate from Outside of the Panel of Arbitrators**

1. Relevant information and materials required to be submitted when a party nominates arbitrator candidates from outside of the Panel of Arbitrators
  - (1) Typically, a party requesting to nominate a person from outside of the Panel of Arbitrators as an arbitrator shall submit the identification and contact information, expertise, educational and academic certificates of such person, as well as other relevant materials proving that the conditions set forth in Article 2 of this Annex are met.
  - (2) XMAC shall have the right to request, based on the actual circumstances, the party or the nominee to submit other relevant materials and information.
  - (3) To act as an arbitrator, the nominee must abide by the relevant provisions of the Arbitration Law of the PRC, and make written commitments on his/her impartiality and independence in hearing the case.
2. To act as an arbitrator, the nominee from outside of the Panel of Arbitrators shall meet one of the conditions set forth below:
  - (1) having passed the National Unified Legal Professional Qualification Examination of PRC and obtained a legal professional qualification, and been engaged in arbitration work for at least eight years;
  - (2) having worked as a lawyer for at least eight years;
  - (3) having served as a judge for at least eight years;
  - (4) having been engaged in legal research or legal education and having a senior professional title; or
  - (5) having acquired the knowledge of law, engaged in the professional work in the field of economy and trade, etc., possessing a senior professional title or having an equivalent professional level.
3. XMAC shall have the right to examine the qualifications of the nominee and make other specific requirements.

**Annex V:****Timetable for Arbitral Proceedings (For Reference Only)****Timetable for Procedure (Schedule I)**

<b>Procedure</b>	<b>Time Limit</b>
Acceptance by XMAC	5 days after conditions are satisfied
Nomination of arbitrator by the parties	10 days upon receipt of notices of arbitration
Constitution of the Arbitral Tribunal	10 days upon expiry of the time limit for the nomination of arbitrator
Hearing	30 days after constitution of the Arbitral Tribunal
Rendering an award	120 days after constitution of the Arbitral Tribunal

**Timetable for Expedited Procedure (Schedule II)**

<b>Procedure</b>	<b>Time Limit</b>
Acceptance by XMAC	5 days after conditions are satisfied
Nomination of arbitrator by the parties	5 days upon receipt of notices of arbitration
Constitution of the Arbitral Tribunal	10 days upon expiry of the time limit for the nomination of arbitrator
Hearing	20 days after constitution of the Arbitral Tribunal
Rendering an award	60 days after constitution of the Arbitral Tribunal

### Other Event and Corresponding Time Limit (Schedule III)

Event	Time Limit
Objection to jurisdiction	The decision shall be made within reasonable time limit by XMAC or the Arbitral Tribunal authorised by XMAC
Expert report	It shall be determined by consultation with the expert
Suspension of arbitral proceedings	It shall be determined according to Article 50 of the Rules
Production of evidence	The time limit specified by the Arbitral Tribunal or agreed upon by the parties
Extension of time limit for rendering an award	The time limit may be extended appropriately upon approval of the Secretary-General of XMAC

1. The specific timetable will be adjusted pursuant to the progress of the arbitral proceedings. The parties may, based on the actual circumstances of the case, agree to shorten the time limit as set forth in the Schedules above, provided that such time limit shall not fall within the scope of XMAC's case management functions.
2. A party may, based on the actual circumstances of the case, take the following measures to accelerate the arbitral proceedings: applying for consolidated arbitrations of related cases or hearing related cases on a consolidated basis; making efforts to reach a settlement with the other parties; selecting a documents-only arbitration or virtual hearings; specifying in an agreement the specific method of service for relevant arbitral documents, etc..

### **Model arbitration clause**

**Any dispute arising out of or in connection with this contract shall be submitted to Xiamen Arbitration Commission (“XMAC”) for arbitration in accordance with its arbitration rules. Documents (including arbitral documents) shall be deemed to have been received by a party if such documents are sent to the address where the party sets forth in this contract (in case of any change, the other party and XMAC shall be notified thereof in writing).**

The parties may, pursuant to the Arbitration Rules of XMAC, agree in the above arbitration clause on the application of the Expedited Procedure. The parties may also, pursuant to the Rules and relevant laws, agree in the arbitration clause upon such matters as the applicable law, the seat of arbitration, the place of hearing and the language of arbitration.