



FEDERATION OF
COCOA COMMERCE

FCC Arbitration and Appeal Rules

**(Applicable to contracts concluded
on or after 05 March 2014)**

New contact details with effect from 17 November 2014

**FEDERATION OF COCOA COMMERCE LTD
2ND FLOOR, 30 WATLING STREET
LONDON, EC4M 9BR**

Tel: +44 (0) 20 3773 6200

Fax: +44(0) 20 7489 4845

E-mail: fcc@cocoafederation.com

Web: www.cocoafederation.com

**Previous Address:
FEDERATION OF COCOA COMMERCE LTD
FEDERATION DU COMMERCE DES CACAOS
Cannon Bridge House
1 Cousin Lane
London EC4R 3XX**

Contents

PART 1 – GENERAL RULES	1
1. GENERAL RULES APPLICABLE TO ARBITRAL PROCEEDINGS BEFORE A TRIBUNAL AND/OR BOARD OF APPEAL	1
1.1– 1.6. PRELIMINARY	1
1.7. – 1.10. DUTIES AND COMPLIANCE	1
1.11. DEFINITIONS	2
1.12. NOTICES	3
1.13. COUNCIL’S POWER TO EXTEND TIME LIMITS	3
1.14. – 1.23. THE FEES AND EXPENSES OF THE FEDERATION AND OF THE ARBITRATORS AND DEPOSITS ON ACCOUNT OF THE SAME	3
1.24. PLACE OF HEARINGS	4
1.25. THE FCC ARBITRATION AND APPEAL PANEL	4
1.26. SAMPLES FOR ARBITRATION	4
PART 2 – ARBITRATION PROCEDURE BEFORE A TRIBUNAL	6
2. PROCEDURE APPLICABLE TO ARBITRATION BEFORE A TRIBUNAL	6
2.1. TIME LIMITS FOR NOTIFICATION OF ARBITRATION	6
2.2. – 2.3. APPLICATION FOR FCC ARBITRATION	6
2.4. – 2.8. CONSTITUTION OF TRIBUNAL	6
2.9. ELIGIBILITY OF ARBITRATORS	7
2.10. WITHDRAWAL OF ARBITRATION	7
2.11. - 2.13. TIME LIMITS FOR SUBMITTING EVIDENCE	8
2.11.1. For Quality and/or Condition Arbitrations	8
2.11.2. For other than Quality and/or Condition Arbitrations	8
2.14. – 2.19. JURISDICTION	8
2.20. – 2.21. HEARINGS	9
2.22. CONSOLIDATED AND CONCURRENT HEARINGS	10
2.23. – 2.25. STRING ARBITRATIONS FOR QUALITY AND/OR CONDITION	10
2.26. – 2.28. EVIDENCE	10

2.29.	EXPERTS _____	11
-------	---------------	----

PART 3 – ARBITRATION PROCEDURE BEFORE A BOARD OF APPEAL __ 12

3.	PROCEDURE APPLICABLE TO APPEAL BEFORE A BOARD OF APPEAL _____	12
3.1.	TIME LIMITS FOR NOTIFICATION OF APPEAL _____	12
3.2.	FAILURE TO PAY FEES AND DEPOSITS _____	12
3.3.	CURRENCY REGULATIONS _____	12
3.4. - 3.6.	CONSTITUTION OF BOARD OF APPEAL _____	12
3.7.	ELIGIBILITY OF BOARD MEMBERS _____	13
3.8.- 3.9.	WITHDRAWAL OF APPEALS _____	13
3.10. – 3.12.	TIME LIMITS FOR SUBMITTING EVIDENCE _____	14
3.13. – 3.20.	JURISDICTION _____	14
3.21. – 3.22.	APPEAL HEARINGS _____	15
3.23.	CONSOLIDATED AND CONCURRENT HEARINGS _____	16
3.24. – 3.25.	POSTPONEMENT OF HEARINGS _____	16
3.26.	COMPLIANCE WITH RULES _____	17
3.27.	BOARD OF APPEAL’S POWERS _____	17
3.28.	APPEALS ON STRING ARBITRATION AWARDS _____	17
3.29.– 3.31.	EVIDENCE _____	18
3.32.	EXPERTS _____	18

PART 4 – AWARDS _____ 19

4.	AWARDS - APPLICABLE TO PROCEEDINGS BEFORE TRIBUNALS AND BOARDS OF APPEAL _____	19
4.1. – 4.8.	AWARDS OF FCC ARBITRATION _____	19
4.9. – 4.10.	APPEAL AWARDS _____	20
4.11.	PAYMENT _____	20
4.12.	CLOSING OUT _____	20
4.13.	COSTS _____	20
4.14.	CORRECTION OF AWARD OR ADDITIONAL AWARD _____	20
4.15.	INTEREST _____	21

4.16.	DEFAULTERS	21
4.17.	PUBLICATION OF EDITED AWARDS	21

RECORD OF AMENDMENTS

Rule No.	Title	Date of Amendment	Brief Description of Amendment
	Arbitration & Appeal Rules	05 March 2014	Overall restructure of the rules into 4 parts: part 1 – general, part 2 – arbitration procedure (before a Tribunal), part 3 – arbitration procedure (before a Board of Appeal), part 4 – awards
	General Amendments	05 March 2014	General amendments made throughout the document to reflect the new structure of the rules, including but not limited to, those listed below
1.11	Definitions	05 March 2014	Added definition of new terms: FCC Arbitration, Panel, Arbitrators, Board of Appeal, Tribunal
	Hearing Provisions	05 March 2014	Simplification of hearing provisions in the Arbitration and Appeal stages
	Time Limits for Submission of Evidence	05 March 2014	Standardised time limits for submission of evidence in the Arbitration and Appeal stages
1.25	Arbitration & Appeal Panel	05 March 2014	Council granted the power to remove an arbitrator

ARBITRATION AND APPEAL RULES

PART 1 – GENERAL RULES

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 05 MARCH 2014

1. GENERAL RULES APPLICABLE TO ARBITRAL PROCEEDINGS BEFORE A TRIBUNAL AND/OR BOARD OF APPEAL

1.1– 1.6. PRELIMINARY

- 1.1. The objective of FCC Arbitration is the prompt, economical, fair and confidential resolution, by Arbitrators of disputes arising out of, or relating to, any contract for the sale and/or purchase of cocoa beans and/or cocoa products concluded under the Contract Rules of the FCC.
- 1.2. Any dispute arising out of, or relating to, any contract for the sale and/or purchase of cocoa beans and/or cocoa products which is subject to the Contract Rules of the FCC shall be referred to FCC Arbitration. The parties may, either pursuant to an arbitration clause in a contract or by other written agreement, submit any other dispute to FCC Arbitration.
- 1.3. No party to any contract nor any person claiming through or under any such party shall bring any action or other legal proceedings against any other party to that contract in respect of any such dispute until such dispute shall first have been determined by FCC Arbitration in accordance with the edition of these Rules in force on the date of the contract.
- 1.4. The Seat of the Arbitration shall be England and Wales and the provisions of the Arbitration Act 1996 or of any other statutory modification or re-enactment thereof for the time being in force, shall apply to all FCC Arbitrations save insofar as any non-mandatory provisions are modified by, or are inconsistent with, these Rules.
- 1.5. All Arbitrators, including employees, agents and servants of the same, together with the Federation shall not be liable for anything done or omitted in the discharge or purported discharge of their functions under these Rules unless the act or omission is shown to have been in bad faith.
- 1.6. Once lodged with the Federation in accordance with these Rules, an FCC Arbitration may not be further pursued by a Claimant or Appellant as the case may be if any part of the fees, costs and expenses payable to the Federation relating to another FCC Arbitration that the Claimant or Appellant has not been paid.

1.7. – 1.10. DUTIES AND COMPLIANCE

1.7. All Arbitrators shall:

- (a) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting its case and dealing with that of its opponent; and
- (b) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined pursuant to these Rules.

In exercising their judicial functions no Arbitrator shall act as a representative of any party to an FCC Arbitration.

- 1.8. The parties to an FCC Arbitration shall do all things necessary for the proper and expeditious conduct of that FCC Arbitration including:
- (a) complying without delay with any determination, order or direction of the Arbitrators as to procedural or evidential matters; and
 - (b) where appropriate, taking without delay any necessary steps to obtain a decision of the Court on a preliminary question of jurisdiction or law.
- 1.9. Each party to an FCC Arbitration, whether or not a member of the Federation, thereby agrees to abide by these Rules and by any direction, order or award of the Arbitrators.
- 1.10. Each party to an FCC Arbitration, whether or not a member of the Federation, shall be liable to the Federation (jointly and severally with the other parties to that FCC Arbitration) for all fees and expenses of the Federation and of the Arbitrators in connection therewith. The said fees and expenses shall, upon notification to the parties by the Federation under the provisions of Rule 4.4, become a debt due to the Federation.

1.11. DEFINITIONS

In these Rules:

- (a) “Appellant” means a party commencing arbitral proceedings before a Board of Appeal in accordance with these Rules;
- (b) “Arbitrator(s)” means a person(s) duly appointed from the FCC Arbitration and Appeal Panel to a Tribunal or Board of Appeal to conduct an FCC Arbitration;
- (c) “Board of Appeal” means three Arbitrators appointed in accordance with Rules 3.4 to 3.6 to determine any dispute referred to them;
- (d) “Claimant” means a party commencing arbitral proceedings before a Tribunal in accordance with these Rules;
- (e) “Contract Rules of the FCC” means the Contract Rules for Cocoa Beans incorporating the Quality, Sampling and Weighing Rules and/or the Contract Rules for Cocoa Products (CP1, CP2, CP3 & CP4) and the FCC Arbitration and Appeal Rules;
- (f) “Council” means the Council of the Federation;
- (g) “Court” means the English High Court subject to the provisions of Section 105 of the Arbitration Act 1996;
- (h) “FCC Arbitration” means arbitral proceedings before a Tribunal and/or Board of Appeal as the case may be which are subject to these Rules;
- (i) “Federation” means the Federation of Cocoa Commerce Limited and any officer, employee, agent or servant or director thereof;
- (j) “Officers” means the Chairman, Vice Chairman, Hon Treasurer and the Secretary of the Federation;
- (k) “Panel” means the FCC Arbitration and Appeal Panel selected in accordance with Rule 1.25.
- (l) “Respondent” means the party against whom arbitral proceedings before a Tribunal or Board of Appeal, as the case may be, are commenced;
- (m) “these Rules” means the FCC Arbitration and Appeal Rules;

- (n) “Secretary” means the Secretary of the Federation or any other person appointed to perform the duties of the Secretary of the Federation, including a joint, assistant or deputy Secretary;
- (o) “Senior Arbitrator” means the person appointed by the Council to give general guidance to the Arbitrators and to the Secretary in arbitration and appeal matters;
- (p) “Tribunal” means three Arbitrators appointed in accordance with Rules 2.4 to 2.7 to determine any dispute referred to them.

1.12. NOTICES

All notices required to be served on the parties pursuant to the contract shall be communicated rapidly in legible written form and contain evidence of the date and time of transmission. Methods of rapid communication for the purposes of this clause are defined and mutually recognised as letter, if delivered by hand on the date of writing, or facsimile, or E-mail, or other electronic means, always subject to the proviso that if receipt of any notice is contested, the burden of proof of transmission shall be on the sender who shall, in the case of dispute, establish, to the satisfaction of the Arbitrators appointed pursuant to these Rules, that the notice was actually transmitted to the addressee. If required by the sender, the receiver shall acknowledge receipt of a notice by one of the same methods.

1.13. COUNCIL’S POWER TO EXTEND TIME LIMITS

Whenever it shall appear to the Council that by reason of a state of war, war-like operation, strike, lock-out, riot or civil commotion, parties to contracts which have been or may hereafter be made incorporating these Rules, have been or may be prevented from exercising any of their rights within the limits prescribed by these Rules, the Council shall have, and shall be deemed always to have had, the power to extend any of such time limits at any time and from time to time and to any extent necessary to enable justice to be done between the parties. Such extension may be made generally or with reference to any particular dispute.

In the event of the Council deciding to extend any of such time limits with reference to any particular dispute, notice thereof shall be given by the Council to such of the parties to the contract as can be contacted.

1.14. – 1.23. THE FEES AND EXPENSES OF THE FEDERATION AND OF THE ARBITRATORS AND DEPOSITS ON ACCOUNT OF THE SAME

- 1.14. Arbitrators shall be entitled to charge fees as determined by the Council from time to time and published by the Federation.

An Arbitrator travelling internationally to attend any hearing in relation to an FCC Arbitration at such place as may be fixed by a Tribunal or Board of Appeal pursuant to Rule 1.24 may charge an additional fee as determined by the Council from time to time for each such attendance and published by the Federation.

- 1.15. For each hearing ordered either on the application of a party or on the initiative of a Tribunal or the Board of Appeal, the Federation shall charge a non-refundable booking fee for members and non-members of the Federation as determined by the Secretary in conjunction with the Arbitrators.
- 1.16. Arbitrators shall, at their discretion, be entitled to vary the fees referred to in Rule 1.14 in FCC Arbitrations which they consider, in their discretion, to be of extraordinary complexity and/or value and/or tonnage.
- 1.17. Where a Tribunal or Board of Appeal, in its discretion, considers it appropriate to obtain legal advice from an expert, legal adviser or assessor on any matter arising from an FCC Arbitration or require

legal representation at any hearing, that Tribunal or Board of Appeal shall be entitled to charge to the parties the expenses thus incurred in addition to the fees charged under Rules 1.14 or 1.16.

- 1.18. For each application for FCC Arbitration, the Federation shall charge a non-refundable administration fee for members and non-members of the Federation as determined by the Council from time to time and published by the Federation. In addition to the administration fee, the Federation shall be entitled to charge any legal or additional administrative expenses which may be incurred by the Federation.
- 1.19. When the Claimant or Appellant is a non-member of the Federation he shall, when applying to the Federation for commencement of FCC Arbitration:
- (a) pay the fee due to the Federation under Rule 1.18 and
 - (b) deposit with the Federation such sum of money as the Federation shall, in its discretion, consider appropriate as security for the estimated fees and expenses of the Federation and the Arbitrators in connection therewith.
- 1.20. At any time after receipt of an application for FCC Arbitration, the Federation, acting on behalf of the Arbitrators, may direct that sums of money be deposited with the Federation by the Claimant, Appellant or counterclaimant, as the case may be, against any fees, and expenses which the Federation or the Arbitrators may incur in connection therewith.
- 1.21. Failure by the Claimant, Appellant or counterclaimant to pay any such sums under Rules 1.18 to 1.20 as directed shall entitle the Arbitrators to dismiss the claim and/or counterclaim, as the case may be.
- 1.22. The Federation shall not be liable to pay any interest which may be deemed to have accrued to the Federation upon deposits held by the Federation.
- 1.23. The Arbitrators shall determine the liability of the parties to pay the fees and expenses referred to in Rules 1.14 to 1.19.

1.24. PLACE OF HEARINGS

All hearings (if any) shall take place in London unless the Arbitrators shall decide otherwise.

1.25. THE FCC ARBITRATION AND APPEAL PANEL

The Council shall select a Panel of Representatives of Voting Members of the Federation (in these Rules referred to as “the Panel”) who may be appointed to act in disputes as Arbitrators.

The Council may from time to time and at any time appoint additional persons to serve on the Panel or remove any Panel member, except when the Panel member is involved in an on-going FCC Arbitration, in which event, his removal shall be subject to the provisions of Rules 2.7 and 3.6.

The membership of the Panel shall be reviewed annually by the Council. The Secretary shall maintain a list of the members of the Panel which shall be published on the Federation's website.

1.26. SAMPLES FOR ARBITRATION

All samples received by the Federation for FCC Arbitration shall become and remain the absolute property of the Federation.

The Federation will retain such samples pending determination of FCC Arbitration. However, the Federation agrees to receive such samples only on terms that it shall not be liable for any loss or damage resulting from or connected with any damage or loss or destruction of any such sample howsoever caused.

All samples must be marked "For the attention of the Federation of Cocoa Commerce Limited" and shall be sent to:-

NYSE Liffe Grading Room
c/o Safestore
85 Stepney Way
Whitechapel
London E1 2EN

PART 2 – ARBITRATION PROCEDURE BEFORE A TRIBUNAL

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 05 MARCH 2014

2. PROCEDURE APPLICABLE TO ARBITRATION BEFORE A TRIBUNAL

2.1. TIME LIMITS FOR NOTIFICATION OF ARBITRATION

The Claimant shall notify the Respondent of an application for FCC Arbitration and submit its application for FCC Arbitration to the Secretary of the Federation within the time limits stipulated in the Contract Rules of the FCC.

If a dispute is not subject to the time limits stipulated in the Contract Rules of the FCC the Claimant shall notify the Respondent of an application for FCC Arbitration and submit its application for FCC Arbitration to the Secretary of the Federation within 56 consecutive days of the dispute having arisen, unless otherwise agreed by the parties.

2.2. – 2.3. APPLICATION FOR FCC ARBITRATION

2.2. The Claimant shall apply to the Federation for arbitration in accordance with Rule 2.1 and shall, if requested by the Secretary, pay on demand to the Federation any fees or expenses or deposits provided for in Rules 1.18 to 1.20 inclusive. The application must be made in writing, in five copies, and each copy of the application must be accompanied by:

- (a) details of the contract and of the dispute; and
- (b) a copy of the notice of the application for FCC Arbitration that has been given to the Respondent in accordance with Rule 2.1.

2.3. In the event of non-compliance with any of the provisions of Rules 2.1 and 2.2, arbitration claims shall be deemed to be waived and absolutely barred, unless the Arbitrators shall, in their discretion, determine otherwise.

2.4. – 2.8. CONSTITUTION OF TRIBUNAL

- 2.4. (a) Upon receipt of an application for FCC Arbitration made in accordance with Rule 2.2, the Secretary shall promptly send one copy of the application to the Respondent to the FCC Arbitration and will request three members of the Panel to accept appointment as Arbitrators in the dispute and will send each of them a copy of the evidence provided by the Claimant pursuant to Rule 2.2.
- (b) After having made appropriate verification of any string and ascertained that they are eligible to act in accordance with Rule 2.9, the three members of the Panel shall each advise the Secretary in writing of their acceptance or refusal of appointment as an Arbitrator.
- (c) In the event of a refusal by one or more members of the Panel so requested to accept appointment as an Arbitrator, the Secretary shall repeat the procedure in Rule 2.4(a) until three acceptances are received, whereupon the Secretary shall give notice to the parties of the constitution of the Tribunal.
- (d) Each party shall have the right to apply in writing to the Secretary to remove, without cause, one Arbitrator only from any Tribunal, in which event a substitute Arbitrator shall be appointed by the Secretary. This right must be exercised within 2 business days of the Secretary giving

notice to the parties of the constitution of the Tribunal.

- (e) In the event that no application for removal of an Arbitrator is made and the constitution of the Tribunal is confirmed, the Tribunal shall appoint one of its members as Chairman, who shall give notice thereof to the Secretary who shall then inform the parties of that appointment.

2.5. The Federation shall be entitled to charge a fee of £50 in respect of each application for the removal of an Arbitrator, such fee to be borne by the party making the application.

2.6. If an Arbitrator appointed to a Tribunal dies, refuses to act, becomes incapable of acting or fails to proceed with an FCC Arbitration, the Secretary shall appoint a substitute Arbitrator as soon as reasonably possible following notice of such death, refusal, incapacity, or failure to proceed, as the case may be.

2.7. With the exception of the provisions set out in Rules 2.4(d) and 2.6, once an Arbitrator is appointed to a Tribunal the authority of that Arbitrator may not be revoked, except by the parties acting jointly or by application to the Court.

2.8. Decisions, orders and awards shall be made by all or a majority of the Tribunal, but the view of the Chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority.

2.9. ELIGIBILITY OF ARBITRATORS

An Arbitrator appointed to a Tribunal under these Rules shall be a person nominated from the Panel, but no person shall be eligible for appointment who is:-

- (a) a person named as a party to the FCC Arbitration, or who is a Partner, Director, employee, agent or servant or member of a firm or company named as a party to the FCC Arbitration or if other circumstances exist that give rise to justifiable doubts as to his ability to act with impartiality (such as having a direct interest in the outcome of the FCC Arbitration); and the word “party” shall include all parties in a string arbitration;
- (b) financially retained by a person, firm or company named as a party to the FCC arbitration;
- (c) a Principal. Partner, Director, employee, agent or servant or member who is financially retained by a person, firm or company financially associated with any party named as a party to the FCC arbitration;
- (d) aware of any circumstances which may affect his impartiality to act as an Arbitrator in the dispute referred to FCC arbitration;

Not more than one representative of any firm or company and/or associated companies shall be appointed to the same Tribunal unless, in exceptional circumstances, no other member of the Panel is available.

2.10. WITHDRAWAL OF ARBITRATION

Once an FCC Arbitration has been commenced, a Claimant shall be permitted to withdraw an application for arbitration and thereby bring the FCC Arbitration to an end only if the Respondent either agrees or if the Respondent fails to object no later than 21 days from the date of the Tribunal’s notice that such application for withdrawal will be permitted if no such objection is made. However, it shall be a pre-requisite of any such withdrawal that all the fees and expenses of the Federation and of the Tribunal (if any) incurred to the date of the withdrawal and consequent upon it shall have first been paid to the Federation. After payment of all such fees and expenses incurred to the date of the withdrawal and consequent upon it, the Federation shall refund to the depositor any balance of fees or sum paid on account.

2.11. - 2.13. TIME LIMITS FOR SUBMITTING EVIDENCE

2.11. Each party shall submit to the Federation its written submissions (including all documentary evidence on which it wishes to rely) in five copies in a clear and concise form in accordance with the following standard timetable.

The Secretary shall then forward each party's submissions to the Tribunal and to the other party.

The standard timetable below may be varied by the Tribunal in accordance with its general duty under Rule 1.7.

2.11.1. For Quality and/or Condition Arbitrations

- (i) The Claimant's statement of case shall be submitted at the same time as the Claimant's application for FCC Arbitration under Rule 2.2.
- (ii) The Respondent's statement of defence shall be submitted no later than 21 days from receipt by the Respondent of the Claimant's statement of case.

On completion of the exchange of the parties' submissions and documentary evidence, including the exchange of any further statements and documentary evidence permitted by the Tribunal, pursuant to Rule 2.11 above, and on completion of any hearings which may be ordered by the Tribunal pursuant to Rule 2.20 below, the Tribunal will proceed to determine the issues referred to it and make its Award, and the Secretary will advise all parties accordingly.

2.11.2. For other than Quality and/or Condition Arbitrations

- (i) The Claimant's statement of case shall be submitted no later than 21 days from the date of the Claimant's application for FCC Arbitration under Rule 2.2.
- (ii) The Respondent's statement of defence (and counterclaim submissions if any) shall be submitted no later than 21 days from receipt by the Respondent of the Claimant's statement of case.
- (iii) The Claimant's reply to the Respondent's statement of defence (and defence to counterclaim submissions if any) shall be submitted no later than 21 days from receipt by the Claimant of the Respondent's defence submissions (and counterclaim submissions if any).

2.12. On completion of the exchange of the parties' submissions and documentary evidence, including the exchange of any further statements and documentary evidence permitted by the Tribunal pursuant to Rule 2.11 above, and on completion of any hearings which may be ordered by the Tribunal pursuant to Rule 2.20 below, the Tribunal will proceed to determine the issues referred to them and make its Award, and the Secretary will advise all parties accordingly.

2.13. The Tribunal shall have the power to make an order dismissing any claim or counterclaim on the grounds of inordinate and inexcusable delay.

2.14. – 2.19. JURISDICTION

2.14. The Tribunal may rule on its substantive jurisdiction, that is, as to:-

- (a) whether there is a valid arbitration agreement within the meaning of these Rules;
- (b) whether the Tribunal is properly constituted; and
- (c) what matters have been submitted to FCC Arbitration in accordance with an arbitration clause in a contract or by other written agreement.

Any objection that the Tribunal lacks substantive jurisdiction shall be made promptly pursuant to the terms of Section 31 of the Arbitration Act 1996. The Tribunal shall award as to whether it has jurisdiction and it shall forthwith notify the parties to the dispute and the Federation in writing of their decision. Such decision shall be final and binding upon the parties and upon the Federation, subject to the right to appeal against the finding of jurisdiction to a Board of Appeal by any party in accordance with the provisions contained in Rules 3.1 to 3.3.

- 2.15. The Tribunal may in its discretion lay down the procedure to be adopted at the determination of the preliminary issue and may order any one or all of the parties to the dispute to lodge with the Federation within a specified time such deposit on account of the fees and expenses of the Federation and the Tribunal as the Tribunal considers reasonable as a condition of the determination of the preliminary issue.
- 2.16. If the Tribunal concludes that it does not have jurisdiction to determine a dispute it shall make an award to this effect.
- 2.17. If the Tribunal awards that it does have jurisdiction to determine the dispute then unless there is any appeal against its finding on jurisdiction, the Tribunal already appointed shall proceed to determine the dispute in accordance with these Rules.
- 2.18. Unless otherwise agreed by all the parties, the Tribunal may continue with the proceedings in accordance with these Rules and proceed to make an award notwithstanding that an application to the Court to determine the question of the substantive jurisdiction of the Tribunal is pending pursuant to Section 32 of the Arbitration Act 1996.
- 2.19. The Tribunal shall have discretion to make such order by way of the costs of the preliminary issue as is deemed just and equitable.

2.20. – 2.21. HEARINGS

- 2.20. In accordance with Rule 1.7, FCC Arbitrations may proceed and be determined and awards made without a hearing being required. However, if, on the application of a party or if, on their own initiative, the Tribunal orders that oral evidence and/or oral submissions is/are to be heard, the Tribunal shall fix one or more dates for a hearing for this purpose.

If a hearing is ordered on the application of a party, a non-returnable booking fee shall be payable to the Federation by that party and if a hearing is ordered on the initiative of the Arbitrators a non-returnable booking fee shall be payable to the Federation by the Claimant. The applicable fees shall be determined in accordance with Rule 1.15 above.

- (a) For Quality and/or Condition Arbitrations
Quality and/or Condition arbitrations shall be determined without a hearing, unless the Tribunal in its discretion decides otherwise.
- (b) For other than Quality and/or Condition Arbitrations
A party may be represented at a hearing by one of its officers or employees. Alternatively a party may be represented by an agent engaged, or who has been engaged, in the trade and who has been duly appointed in writing. However, a representative shall not be a solicitor or barrister, or other legally qualified advocate, wholly or principally engaged in private practice in England or elsewhere, unless permitted by the Tribunal.

A party shall advise the Tribunal of the identity of its representative no later than 7 days before the date of a hearing. A natural person ordered or permitted to give oral evidence at a hearing must give that oral evidence in person and not through a representative. Unless the Tribunal decides otherwise, no other persons shall be permitted to attend the hearing, which shall be in private.

- (c) If at, or in relation to, a hearing any party or any party's representative, in the opinion of the Tribunal, acts unreasonably and causes a counterparty and/or the Tribunal to incur unnecessary costs and/or delay, that party may in the discretion of the Tribunal be ordered to bear such costs in any event.

2.21. Where the parties have been permitted to be legally represented pursuant to Rule 2.20, the Tribunal may order one or more parties to provide security for the costs of an FCC Arbitration, including the legal and other costs of the parties. If a party fails to comply with a peremptory order of the Tribunal to provide security for costs, the Tribunal may make an award dismissing his claim or counterclaim.

2.22. CONSOLIDATED AND CONCURRENT HEARINGS

- (a) When the same parties are involved in two or more FCC Arbitrations, the Tribunal shall have the power on its own initiative to order:
 - (i) that the FCC Arbitrations may be consolidated; or
 - (ii) that concurrent hearings (if any) involving the FCC Arbitrations may be held, on such terms as may be ordered by the Tribunal
- (b) When the same parties are not involved in two or more FCC Arbitrations, the Tribunal shall have the powers aforesaid but only after an application for consolidation or concurrent hearings shall have been made in writing to the Federation and that any two of the Chairman, Senior Arbitrator and the Secretary of the Federation shall have first decided that the circumstances concerning the request are exceptional and that it is appropriate for the Tribunal to order consolidation or concurrent hearings as the case may be.

2.23. – 2.25. STRING ARBITRATIONS FOR QUALITY AND/OR CONDITION

2.23. There will be no string arbitrations except on quality and/or condition disputes.

2.24. As regards disputes in respect of quality and/or condition, where a party claims that the contract forms part of a string of contracts which are subject to the FCC Contract Rules and are in all relevant material points identical in terms, except as to price, any FCC arbitration for quality and/or condition may be held between the first Seller and the last Buyer in the string as though they were the only contracting parties, provided that every party against whom FCC Arbitration is claimed and who claims to be in the string, shall with due despatch supply his contracts and all relevant information to the Tribunal, which shall in their discretion determine whether such contracts constitute a string for the purpose of this Rule.

2.25. The Tribunal appointed by the Federation shall be deemed to have been appointed on behalf of all parties in the string in their selling and buying capacities respectively so that any award so made, hereinafter referred to as a string award, shall, subject to the right of appeal, be binding on all parties in the string and may be enforced by any party in the string against his immediate contracting party as though a separate award had been made under each contract.

2.26. – 2.28. EVIDENCE

2.26. The Tribunal shall not be obliged to apply the strict rules of evidence and may use its discretion as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered by any party on any matters of fact or opinion. The Tribunal shall also determine the time, manner and form in which such material should be exchanged and presented.

2.27. The Tribunal shall not be obliged to take the initiative in ascertaining any facts or any questions of law which are not raised by one of the parties as aforesaid.

2.28. The Tribunal shall have no power to give directions to a party in relation to any property which is the subject of the proceedings or for the preservation of any evidence in the custody or control of any party.

2.29. EXPERTS

Section 37(1) of the Arbitration Act 1996 shall not apply.

- (a) A Tribunal may appoint experts and/or legal advisers to report to it and/or appoint legal assessors to assist it on technical matters and may allow any such expert, legal adviser or assessor to attend the proceedings.
- (b) A Tribunal may, in its discretion and on such terms as it may determine, give parties a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

The fees and expenses of any such person for which the Tribunal is liable are expenses of the Tribunal and shall be payable as directed by the Tribunal pursuant to these Rules. Copies of all written reports or opinions obtained by the Tribunal pursuant to this sub-Rule shall be sent to the Federation.

PART 3 – ARBITRATION PROCEDURE BEFORE A BOARD OF APPEAL

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 05 MARCH 2014

3. PROCEDURE APPLICABLE TO APPEAL BEFORE A BOARD OF APPEAL

3.1. TIME LIMITS FOR NOTIFICATION OF APPEAL

Only Arbitration Awards made by Tribunals may be appealed to a Board of Appeal.

Parties have the right to appeal against an Arbitration Award, provided the following conditions are met:

- (a) The Appellant shall give written notice of appeal to the Secretary accompanied by a copy of the notice sent by him to the other party to the Arbitration Award as required by paragraph (c) of this Rule and pay to the Federation such fees and deposits in accordance with Rules 1.18 - 1.19 as appropriate.
- (b) The Appellant's notice of Appeal shall reach the Secretary not later than 12 noon on the 21st consecutive day after the date of the Arbitration Award.
- (c) The Appellant when giving notice of Appeal, shall also despatch written notice thereof to the other party.
- (d) The total fees and expenses of the Arbitration Award shall be paid before the Appeal is determined.

3.2. FAILURE TO PAY FEES AND DEPOSITS

The Appeal shall be deemed to be withdrawn and the Arbitration Award shall become final if the Appellant fails to pay the fees and deposits under Rules 1.18 - 1.19 within the time limit set out by the Federation.

3.3. CURRENCY REGULATIONS

If any Appellant is precluded by currency regulations from paying immediately any money due to be paid by him under Rule 3.1 and notifies the Federation in writing (a) in the case of payment of the Appeal fee when giving notice of Appeal and (b) in the case of any further sum being called for under Rule 3.1(d) or being directed to be paid under Rule 1.20 within 9 consecutive days of the money being demanded, accompanied in every case by evidence from a bank that he has already made application for the transfer of the required sum, he shall be entitled to an extension of up to 35 consecutive days from the date when the said payment became due in which to pay such sum.

3.4. - 3.6. CONSTITUTION OF BOARD OF APPEAL

- 3.4. (a) Upon receipt of a notice of Appeal made in accordance with Rule 3.1, the Secretary shall, at his discretion, request three members of the Panel to constitute a Board of Appeal before whom the parties in dispute may state their case in accordance with these Rules.
- (b) After having made appropriate verification of any string and ascertained that they are eligible to act in accordance with Rule 3.7, the three members of the Panel shall each advise the Secretary in writing of their acceptance or refusal of appointment as an Arbitrator.
- (c) In the event of a refusal by one or more members of the Panel so requested to accept appointment as an Arbitrator, the Secretary shall repeat the procedure in Rule 3.4(a) until three acceptances are

received, whereupon the Secretary shall give notice to the parties of the Arbitrators appointed to the Board of Appeal.

- (d) Once a Board of Appeal has been constituted in accordance with Rule 3.4 it shall appoint one of its members as Chairman, who shall give notice thereof to the Secretary who shall then inform the parties of that appointment.
- (e) Decisions, orders and awards shall be made by all or a majority of the Board of Appeal, but the view of the Chairman shall prevail in relation to a decision, order or award in respect of which there is neither unanimity nor a majority

3.5. If an Arbitrator appointed to a Board of Appeal dies, refuses to act, or becomes incapable of acting or fails to proceed with the Appeal, the Secretary shall appoint a substitute member of the Board of Appeal as soon as reasonably possible following notice of such death, refusal, incapacity, or failure to proceed, as the case may be.

3.6. With the exception of the provisions set out in Rule 3.5, once an Arbitrator is appointed to a Board of Appeal, the authority of that Arbitrator may not be revoked, except by the parties acting jointly or by application to the Court.

3.7. ELIGIBILITY OF BOARD MEMBERS

An Arbitrator appointed to a Board of Appeal under these Rules shall be a person nominated from the Panel, but no person shall be eligible for appointment who is:

- (a) a person named as a party to the FCC Arbitration, or who is a Partner, Director, employee, agent or servant or member of a firm or company named as a party to the FCC Arbitration or if other circumstances exist that give rise to justifiable doubts as to his ability to act with impartiality (such as having a direct interest in the outcome of the FCC Arbitration); and the word “party” shall include all parties in a string arbitration;
- (b) financially retained by a person, firm or company named as a party to the FCC Arbitration;
- (c) a Principal, Partner, Director or employee, agent or servant or member of a firm or company which is financially retained by a person, firm or company financially associated with any party to the FCC Arbitration;
- (d) an Arbitrator who made ~~in~~ the Arbitration Award subject to the Appeal;
- (e) a Partner, Director or employee of the same firm or company to which any Arbitrators who made the Arbitration Award subject to the Appeal is also a Partner, Director or employee;
- (f) aware of any circumstances which may affect his impartiality including acting as a witness or a representative for one of the parties in the FCC Arbitration.

Not more than one representative of any firm or company and/or associated companies shall be appointed to the same Board of Appeal unless, in exceptional circumstances, no other member of the Panel is available.

3.8. - 3.9. WITHDRAWAL OF APPEALS

Once an appeal has been commenced, an Appellant shall be permitted to withdraw a notice of appeal and thereby bring the appeal to an end only if the Respondent either agrees, or if the Respondent fails to object no later than 21 days from the date of the Board of Appeal’s notice that such application for withdrawal will be permitted if no such objection is made.

- 3.9. It shall be a pre-requisite of any withdrawal of appeal that all the fees and expenses of the Federation and of the Board of Appeal (if any) incurred to the date of the withdrawal and consequent upon it shall have first been paid to the Federation. After such payment, the Federation shall refund to the depositor any balance of fees or sum paid on account.

3.10. – 3.12. TIME LIMITS FOR SUBMITTING EVIDENCE

- 3.10. Each party shall submit to the Federation its written submissions (including all documentary evidence on which it wishes to rely) in five copies in a clear and concise form in accordance with the following standard timetable.

The Secretary shall then forward each party's submissions to the Board of Appeal and to the other party.

The standard timetable below may be varied by the Board of Appeal in accordance with its general duty under Rule 1.7.

3.10.1. For Quality and/or Condition Appeal

- (i) The Appellant's statement of case shall be submitted within 21 consecutive days from its notice of Appeal under Rule 3.1.
- (ii) The Respondent's statement of defence shall be submitted no later than 21 days from receipt by the Respondent of the Appellant's statement of case.

3.10.2. For other than Quality and/or Condition Appeal

- (i) The Appellant's statement of case shall be submitted no later than 21 days from the date of the Appellant's notice of Appeal under Rule 3.1.
- (ii) The Respondent's statement of defence (and counterclaim submissions if any) shall be submitted no later than 21 days from receipt by the Respondent of the Appellant's statement of case.
- (iii) The Appellant's reply to the Respondent's statement of defence (and defence to counterclaim submissions if any) shall be submitted no later than 21 days from receipt by the Appellant of the Respondent's defence submissions (and counterclaim submissions if any).

- 3.11. On completion of the exchange of the parties' submissions and documentary evidence, including the exchange of any further statements and documentary evidence permitted by the Board of Appeal pursuant to Rule 3.10. above, and on completion of any hearings which may be ordered by the Board of Appeal pursuant to Rule 3.20 below, the Board of Appeal will proceed to determine the issues referred to it and make its Appeal Award, and the Secretary will advise all parties accordingly.

- 3.12. The Board of Appeal shall have the power to make an order dismissing an Appeal on the grounds of inordinate and inexcusable delay on the part of the Appellant.

3.13. – 3.20. JURISDICTION

- 3.13. The Board of Appeal may rule on its substantive jurisdiction, that is, as to:-

- (a) whether there is a valid arbitration agreement within the meaning of these Rules;
- (b) whether the Board of Appeal is properly constituted; and
- (c) what matters have been submitted to FCC Arbitration in accordance with an arbitration clause in a contract or by other written agreement.

Any objection that the Board of Appeal lacks substantive jurisdiction shall be made promptly pursuant to the terms of Section 31 of the Arbitration Act 1996. The Board of Appeal shall award as to whether it has jurisdiction and it shall forthwith notify the parties to the dispute and the Federation in writing of their decision. Such decision shall be final and binding upon the parties and upon the Federation.

- 3.14. The Board of Appeal may in its discretion lay down the procedure to be adopted at the determination of the preliminary issue and may order any one or all of the parties to the dispute to lodge with the Federation within a specified time such deposit on account of the fees and expenses of the Federation and the Board of Appeal as the Board of Appeal consider reasonable as a condition of the determination of the preliminary issue.
- 3.15. The Board of Appeal shall either uphold or reverse the decision of the Tribunal on the preliminary issue which shall be promptly notified in writing to the parties, the Tribunal and the Federation.
- 3.16. If the Board of Appeal concludes that it does not have jurisdiction to determine a dispute it shall make an award to this effect.
- 3.17. If the Board of Appeal awards that it does have jurisdiction to determine the dispute then the Board of Appeal shall remit the dispute back to the Tribunal.
- 3.18. Unless otherwise agreed by all the parties, the Board of Appeal may continue with the proceedings in accordance with these Rules and proceed to make an award notwithstanding that an application to the Court to determine the question of the substantive jurisdiction of the Arbitrators is pending pursuant to Section 32 of the Arbitration Act 1996.
- 3.19. The Board of Appeal appointed to determine the preliminary issue shall, on the application of all the parties, have power to determine the merits of the dispute and to make an award thereon in lieu of ordering the dispute to be remitted back to the Tribunal under Rule 3.17 and such award shall be deemed in all respects to be an award of a Board of Appeal under these Rules.
- 3.20. The Board of Appeal shall have discretion to make such order by way of costs in respect of the preliminary issue as is deemed just and equitable.

3.21. – 3.22. APPEAL HEARINGS

- 3.21. In accordance with Rule 1.7 appeals may proceed and be determined and awards made without a hearing being required. However, if, on the application of a party or if, on its own initiative, the Board of Appeal orders that oral evidence and/or oral submissions is/are to be heard, the Board of Appeal shall fix one or more dates for a hearing for this purpose.

If a hearing is ordered on the application of a party, a non-returnable booking fee shall be payable by that party and if a hearing is ordered on the initiative of the Board of Appeal, a non-returnable booking fee shall be payable by the Appellant. The applicable fees shall be determined in accordance with Rule 1.15 above.

- (a) For Quality and/or Condition Appeals
Quality and/or Condition Appeals shall be determined without a hearing, unless the Board of Appeal in its discretion decides otherwise.
- (b) For other than Quality and/or Condition Appeals
A party may be represented at a hearing by one of its officers or employees. Alternatively a party may be represented by an agent engaged, or who has been engaged, in the trade and who has been duly appointed in writing. However, a representative shall not be a solicitor or barrister, or other legally qualified advocate, wholly or principally engaged in private practice in England or elsewhere, unless permitted by the Board of Appeal.

A party shall advise the Board of Appeal of the identity of its representative no later than 7 days before the date of a hearing. A natural person ordered or permitted to give oral evidence at a

hearing must give that oral evidence in person and not through a representative. Unless the Board of Appeal decides otherwise, no other persons shall be permitted to attend a hearing, which shall be in private.

- (c) If at, or in relation to, a hearing any party or any party's representative, in the opinion of the Board of Appeal, acts unreasonably and causes a counterparty and/or the Board of Appeal to incur unnecessary costs and/or delay, that party may in the discretion of the Board of Appeal be ordered to bear such costs in any event.

3.22. Where the parties have been permitted to be legally represented pursuant to Rule 3.21 (b), the Board of Appeal may order one or more parties to provide security for the costs of the Appeal, including the legal and other costs of the parties. If a party fails to comply with a peremptory order of the Board of Appeal to provide security for costs, the Board of Appeal may make an award dismissing its claim or counterclaim.

3.23. CONSOLIDATED AND CONCURRENT HEARINGS

- (a) When the same parties are involved in two or more appeals, the Board of Appeal shall have the power on its own initiative to order:
 - (i) that the appeals may be consolidated; or
 - (ii) that concurrent hearings (if any) involving the appeals may be held, on such terms as may be ordered by the Board of Appeal.
- (b) When the same parties are not involved two or more appeals, the Board of Appeal shall have the powers aforesaid but only after an application for consolidation or concurrent hearings shall have been made in writing to the Federation and that any two of the Chairman, Senior Arbitrator and the Secretary shall have first decided that the circumstances concerning the request are exceptional and that it is appropriate for the Board of Appeal to order consolidation or concurrent hearings as the case may be.

3.24. – 3.25. POSTPONEMENT OF HEARINGS

- 3.24. (a) If the Appellant, on receiving from the Board of Appeal notice of the date fixed for any hearing of the appeal, requests a postponement of more than 14 consecutive days, or at the first or any subsequent hearing of the appeal requests an adjournment, then in such event the Board of Appeal may in its discretion direct that, as a condition of granting a postponement or an adjournment, all or any part of the money required by the terms of the Arbitration Award to be paid by the Appellant to any party or parties shall be deposited in such bank in such currency (either in the United Kingdom or abroad) as the Board of Appeal may direct. Such money shall be held by such bank in an account in the name of the Federation and on such terms as the Board of Appeal may direct. The Board of Appeal shall, where such money has been deposited, direct in its award how and to which of the parties the amount so held shall be paid out.
 - (b) If the Appellant fails to make such payment as aforesaid in accordance with the directions of the Board of Appeal, and within such time as the Board of Appeal stipulates, then, subject to the provisions of Rule 3.26 the Appeal shall be deemed to be withdrawn.
- 3.25. If in the opinion of the Board of Appeal after hearing the parties, the Appellant shall thereafter be guilty of undue delay in proceeding with his Appeal, he shall, after due warning and if the Board of Appeal so decide, be deemed to have withdrawn his Appeal (with consequences as stated in Rules 3.8 and 3.9 in which event money on deposit (with interest, if any, less any tax deductible) shall immediately become due and payable to the party and/or parties entitled thereto under the terms of the Arbitration Award.

3.26. COMPLIANCE WITH RULES

Any disputes as to whether any of the conditions referred to in Rules 3.24 to 3.25 inclusive have been complied with shall be determined by the Board of Appeal. If the Board of Appeal shall determine that any of those conditions have not been complied with, it may in its discretion extend the time for compliance (notwithstanding that the time may already have expired) or dispense with the necessity for compliance and may proceed to determine the Appeal as if each and all of those conditions had been complied with. The determination of the Board of Appeal of any matter to which this sub-rule applies shall be final, conclusive and binding.

3.27. BOARD OF APPEAL'S POWERS

Appeal proceedings are new proceedings in which fresh submissions and evidence may be submitted, and the Board of Appeal may by a majority confirm, vary, amend or set-aside the Arbitration Award which is the subject of the Appeal. In particular, (but not by way of restriction) the Board of Appeal may:

- (a) vary the Arbitration Award by increasing or reducing, if the Board of Appeal shall see fit, the liability of any party;
- (b) correct any errors in the Arbitration Award or otherwise alter or amend it ;
- (c) award interest on any sum(s) awarded by way of damages and costs ; and/or
- (d) award the payment of the costs of the FCC Arbitration before the Tribunal and / or the Board of Appeal; such costs shall normally follow the event.

3.28. APPEALS ON STRING ARBITRATION AWARDS

In any case in which a string Arbitration Award shall have been made by a Tribunal pursuant to Rules 2.23 to 2.25 inclusive if the first Seller, or the last Buyer, or any intermediate party bound thereby shall be dissatisfied therewith (whether the Arbitration Award shall be in his favour or against him), the first Seller, the last Buyer, and any intermediate party (as the case may be) or any of them shall be entitled to appeal against that Arbitration Award to a Board of Appeal provided that each of the following provisions, in addition to the provisions of Rule 3.1, shall first have been complied with:-

- (a) If the Appellant is an intermediate party he shall state in his notice of Appeal whether he is appealing as a Buyer or Seller.
- (b) If the Appellant is the first Seller or the last Buyer he shall, when giving notice of Appeal, also despatch written notice thereof to the intermediate party in immediate contractual relationship with him.
- (c) If the Appellant is an intermediate party and is appealing as a Buyer or a Seller he shall, when giving notice of Appeal, also despatch written notice thereof to his own immediate Seller or Buyer, as the case may be.
- (d) Every notice given to an intermediate party by a first Seller, a last Buyer, or by any intermediate party, shall be passed on with due despatch, and such passing on shall, as between any party passing the same on and the party to whom the same is passed on, be deemed to be in compliance with the said conditions relating to appeals.

The Board of Appeal shall not be bound by a determination by the Tribunal that the contracts constituted a string for the purpose of Rules 2.23 to 2.25.

The Board of Appeal may in its discretion decide to determine an Appeal against a string arbitration award as an appeal between the first Seller and the last Buyer in the string of contracts as though they were the only contracting parties. In this case the Board of Appeal shall be deemed to have been

appointed on behalf of all parties in the string of contracts in their selling and buying capacities respectively. Any Appeal Award so made, referred to as a string Appeal Award, shall be binding on all parties to the string of contracts and may be enforced by any party in the string against his immediate contracting party as though a separate Appeal Award had been made under each contract.

The Board of Appeal may in its discretion decide to determine an Appeal against a string arbitration award as a separate appeal by the Appellant against its immediate contracting party. In this case the Board of Appeal shall have the power to grant to each intermediate party to the string Arbitration Award, if necessary, such extension of time as the Board of Appeal considers appropriate to commence an Appeal against the string Arbitration Award.

3.29.– 3.31. EVIDENCE

- 3.29. The Board of Appeal is not obliged to apply the strict rules of evidence and may use its discretion as to the admissibility, relevance or weight of any material (oral, written or other) sought to be tendered by any party on any matters of fact or opinion. The Board of Appeal shall also determine the time, manner and form in which such material should be exchanged and presented.
- 3.30. The Board of Appeal shall not be obliged to take the initiative in ascertaining any facts or any questions of law which are not raised by one of the parties as aforesaid.
- 3.31. The Board of Appeal shall have no power to give directions to a party in relation to any property which is the subject of the proceedings or for the preservation of any evidence in the custody or control of any party.

3.32. EXPERTS

Section 37(1) of the Arbitration Act 1996 shall not apply.

- (a) A Board of Appeal may appoint experts and/or legal advisers to report to it and/or appoint assessors to assist it on technical matters and may allow any such legal expert, legal adviser or assessor to attend the proceedings.
- (b) A Board of Appeal may, in its discretion and on such terms as it may determine, give parties a reasonable opportunity to comment on any information, opinion or advice offered by any such person.

The fees and expenses of any such person for which the Board of Appeal are liable are expenses of the Board of Appeal and shall be payable as directed by the Board of Appeal pursuant to these Rules. Copies of all written reports or opinions obtained by the Board of Appeal pursuant to this sub-Rule shall be sent to the Federation.

PART 4 – AWARDS

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 05 MARCH 2014

4. AWARDS - APPLICABLE TO PROCEEDINGS BEFORE TRIBUNALS AND BOARDS OF APPEAL

4.1. – 4.8. AWARDS OF FCC ARBITRATION

- 4.1. All FCC Arbitration Awards shall be issued in writing by the Federation and shall be signed by the Chairman of the Tribunal or Board of Appeal on behalf of all the Arbitrators. Tribunals and Boards of Appeal shall have the power to award the costs of FCC Arbitrations, and may assess their own fees. The Federation's fees shall be those for the time being in force as prescribed by the Council.
- 4.2. Awards shall state the Arbitrators' reasons and the terms of any award of interest made under Rule 4.15. In the case of contracts where Pounds Sterling is not the currency of the contract, Arbitrators shall have an discretion to determine the appropriate base rate.
- 4.3. Awards of Tribunals and Boards of Appeal on the quality and/or condition of cocoa beans shall be issued within the following time limits.
- (a) Quality and/or condition on arrival
Awards shall be issued promptly and, in any case, no later than 56 days after the final day of landing at the place of final delivery unless the Arbitrators advise the parties otherwise.
 - (b) Quality and/or condition on departure
Awards shall be issued promptly and, in any case, no later than 56 days after the Bill of Lading date unless the Arbitrators advise the parties otherwise.
 - (c) Quality and/or condition in/ex store
Awards shall be issued promptly and, in any case, no later than 56 days after the contracted prompt day unless the Arbitrators advise the parties otherwise.
- 4.4. The Arbitrators shall submit to the Federation three official copies of ~~the~~ Awards of FCC Arbitration duly signed by the Chairman. The Secretary shall date and sign the Award, and shall give notice to the parties named in the Award that the Award is at their disposal upon payment to the Federation of the fees and expenses of the Federation and of the Arbitrators. No party shall be entitled to the Award or to any copies thereof until all the said fees and expenses shall have been paid to the Federation.
- 4.5. If the fees and expenses are not paid in accordance with Rule 4.4 within 7 consecutive days after the date of the Award, the Federation may call upon any one of the parties named in the Award to take up the Award and in such case the party so called upon shall pay all the fees and expenses as directed.
- 4.6. Where a deposit made under Rules 1.19 and 1.20 exceeds the amount of the fees and expenses of the Federation and of the Arbitrators, the Federation shall forthwith, on the dating of the Award, issue it to the parties and refund to the depositor concerned any surplus moneys which have been deposited with the Federation.
- 4.7. An FCC Arbitration Award (subject to the rights of appeal hereinafter mentioned) shall be final, conclusive and binding on the parties with respect to all matters which are the subject of that Award including, but not limited to, all matters in dispute and to all awards of damages, interest and costs.
- 4.8. No Award shall be challenged or subject to any appeal except as provided for in these Rules and the Arbitration Act 1996.

4.9. – 4.10. APPEAL AWARDS

4.9. The Award of a Board of Appeal (subject to the rights of appeal herein mentioned), whether confirming, varying, amending, or setting aside the Tribunal's Award which is the subject of the Appeal, shall state the Board of Appeal's reasons and shall be signed by the Chairman on behalf of all members of the Board of Appeal, and when so signed shall be deemed to be an Award of the Board of Appeal and shall be final, conclusive and binding on the parties with respect to all matters which are the subject of that Award including but not limited to all matters in dispute and to all awards of damages, interest and costs.

4.10. All amounts due under any Appeal Award shall be paid within 28 consecutive days from the date of the Appeal Award, unless the Board of Appeal directs otherwise.

4.11. PAYMENT

All amounts due under any FCC Arbitration Award shall be paid within 21 consecutive days from the date of the Award, unless the Arbitrators direct otherwise.

4.12. CLOSING OUT

Subject always to the provisions of the Contract Rules of the FCC, the Arbitrators shall determine the terms upon which any dispute in relation to closing out shall be settled including, when appropriate, whether an event giving rise to a closing out has taken place and the date and market price relevant thereto.

4.13. COSTS

The Arbitrators shall award the costs of FCC Arbitrations on the general principle that costs should follow the event except where it appears to the Arbitrators that in the circumstances this is not appropriate in relation to the whole or any part of the costs (even to the extent of awarding that the winner shall pay any part of the costs of the losing party). Boards of Appeal shall apply this general principle to any order of costs made by a Tribunal if they set aside or vary an Award of a Tribunal.

The expression "costs" shall mean:

- a) the fees and expenses of the Arbitrators; and
- b) the fees and expenses of the Federation; and
- c) the legal or other costs of the parties.

4.14. CORRECTION OF AWARD OR ADDITIONAL AWARD

Section 57 (3) to (7) of the Arbitration Act 1996 shall apply, as set out below:

- (3) The Arbitrators may on their own initiative or on the application of a party -
- (a) correct an award so as to remove any clerical mistake or error arising from an accidental slip or omission or clarify or remove any ambiguity in the award, or
 - (b) make an additional award in respect of any claim (including a claim for interest or costs) which was presented to the tribunal but was not dealt with in the award.

These powers shall not be exercised without first affording the other parties a reasonable opportunity to make representations to the tribunal.

- (4) Any application for the exercise of those powers must be made within 28 days of the date of the award or such longer period as the parties may agree.

- (5) Any correction of an award shall be made within 28 days of the date the application

was received by the Arbitrators or, where the correction is made by the Arbitrators on their own initiative, within 28 days of the date of the award or, in either case, such longer period as the parties may agree.

(6) Any additional award shall be made within 56 days of the date of the original award or such longer period as the parties may agree.

(7) Any correction of an award shall form part of the award.

4.15. INTEREST

Arbitrators may award simple or compound interest from such dates, at such rates and with such rests, as they consider meets the justice of the case:-

- (a) on the whole or any part of any amount awarded by the Arbitrators, in respect of any period up to the date of an Award;
- (b) on the whole or any part of any amount claimed in an FCC Arbitration and outstanding at the commencement of the FCC Arbitration but paid before an FCC Award was made, in respect of any period up to the date of payment; and
- (c) from the date of an Award (or any later date) until payment of the outstanding amount an Award (including any award of interest and any award as to costs).

4.16. DEFAULTERS

In the event of any party to an FCC Arbitration held under these Rules neglecting or refusing to carry out or abide by a final award made under these Rules, the Council may post on the Federation's website and/or circularise to members or other organisations in any way thought fit notification to that effect. The parties to any such FCC Arbitration shall be deemed to consent to the Council taking such action as aforesaid.

4.17. PUBLICATION OF EDITED AWARDS

By commencing or submitting to FCC Arbitration pursuant to these Rules, every party to a final award consents to the Council of the Federation publishing the same to members or any of them for any educational or teaching purposes having first deleted the names of the parties and, in the opinion of the Council, any other facts or information which might identify the parties.

The Council shall submit a draft of any such award to the parties and each party shall have 14 days in which to submit written comments or objections to the said draft, which comments or objections the Council may accept or reject in its discretion.