



**FEDERATION OF
COCOA COMMERCE**

FCC Arbitration and Appeal Rules
**(Applicable to contracts concluded
on or after 01 July 2021)**

THE FEDERATION OF COCOA COMMERCE LTD
1st FLOOR, 1 SUN STREET, LONDON, EC2A 2EP

Tel: +44 (0) 20 3773 6200

E-mail: fcc@cocoafederation.com

Web: www.cocoafederation.com

Contents

RECORD OF AMENDMENTS	iv
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
1.23. PLACE OF HEARINGS	4
1.24. THE FCC ARBITRATION AND APPEAL PANEL	4
1.25. SAMPLES FOR ARBITRATION	5
1.26. STAY OF ARBITRATION PROCEEDINGS	5
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. – 2.15. HEARINGS	8
2.16. CONSOLIDATED ARBITRATIONS AND CONCURRENT HEARINGS	9
2.17. – 2.19. STRING ARBITRATIONS FOR QUALITY AND/OR CONDITION	9

2.20. – 2.22.	EVIDENCE	10
2.23.	EXPERTS	10
3.	PROCEDURE APPLICABLE TO APPEAL BEFORE A BOARD OF APPEAL	11
3.1.	TIME LIMITS FOR NOTIFICATION OF APPEAL (OTHER THAN APPEAL AGAINST AN AWARD ON JURISDICTION)	11
3.2. - 3.4.	CONSTITUTION OF BOARD OF APPEAL	11
3.5.	ELIGIBILITY OF BOARD MEMBERS	12
3.6. - 3.7.	WITHDRAWAL OF APPEALS	12
3.8. – 3.10.	TIME LIMITS FOR SUBMITTING EVIDENCE (EXCEPT IN APPEAL AGAINST AN AWARD ON JURISDICTION)	12
3.8.1.	For Quality and/or Condition Appeal	13
3.8.2.	For other than Quality and/or Condition Appeal	13
3.11. – 3.12.	APPEAL HEARINGS	13
3.13.	CONSOLIDATED APPEALS AND CONCURRENT HEARINGS	14
3.14.	POSTPONEMENT OF HEARINGS	14
3.15.	BOARD OF APPEAL'S POWERS	15
3.16.	APPEALS ON STRING ARBITRATION AWARDS	15
3.17.– 3.19.	EVIDENCE	16
3.20.	EXPERTS	16
PART 4 – JURISDICTION		17
4.	ISSUES CONCERNING THE JURISDICTION OF A TRIBUNAL AND/OR BOARD OF APPEAL	17
4.1	THE TRIBUNAL AND/OR BOARD OF APPEAL MAY RULE ON ITS OWN JURISDICTION	17
PART 5 – AWARDS		20
5.	AWARDS - APPLICABLE TO PROCEEDINGS BEFORE TRIBUNALS AND BOARDS OF APPEAL	20
5.1. – 5.9.	AWARDS OF FCC ARBITRATION	20
5.10 – 5.11	PAYMENT	21
5.12.	CLOSING OUT	21
5.13.	COSTS	21

5.14.	CORRECTION OF AWARD OR ADDITIONAL AWARD	21
5.15.	INTEREST	22
5.16.	DEFAULTERS	22
5.17.	PUBLICATION OF EDITED AWARDS AND/OR SUBMISSIONS	22

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
1.11	Definitions	01 June 2015	Added definition of award on jurisdiction Amended definition of Contract Rules of the FCC for clarity
1.14-123	Fees & Expenses	01 June 2015	Amended provisions for payment of deposit against FCC fees and arbitrators' fees in arbitration and appeal proceedings
2.2 -2.3	Application for Arbitration	01 June 2015	Amended to reflect the provision for payment of FCC fees and/or expenses and/or deposit
2.6	Constitution of Tribunal	01 June 2015	Clarified that parties do not have the right to challenge without cause a substitute arbitrator
2.10	Withdrawal of arbitration	01 June 2015	Clarified that arbitration proceedings can only be withdrawn with the agreement of parties or without objection from the Respondent
2.14 (a)	Hearings - quality arbitrations	01 June 2015	Clarified that parties are not permitted to be represented at the Tribunal's quality assessment
3.1	Time limits for appeal	01 June 2015	Amended to reflect the provision for payment of FCC fees and/or expenses and/or deposit and also to exclude appeals against award on jurisdiction
3.6-3.7	Withdrawal of appeal	01 June 2015	Clarified that appeal proceedings can only be withdrawn with the agreement of the parties or without objection from the Respondent. Clarified that once an appeal is withdrawn the award of the Tribunal is final and binding on the parties.

3.8-3.10	Time limits for submitting evidence in appeals	01 June 2015	Clarified that these provisions do not apply to appeals against award on jurisdiction
3.10		01 June 2015	Clarified the powers of the Board of Appeal to dismiss an appeal
3.11 (a)	Hearings - quality appeals	01 June 2015	Clarified that parties are not permitted to be represented at the Board of Appeal's quality assessment
3.18	Postponement of hearings	01 June 2015	Clarified the powers of the Board of Appeal in case of parties' failure to comply with its directions
4	Jurisdiction	01 June 2015	Added new section on jurisdiction with specific provisions and time limits for appeals against awards on jurisdiction
1.25	Samples for arbitration	01 October 2015	Updated address of grading room. Samples to quote arbitration reference
1.24	Arbitration & Appeal Panel	01 March 2017	Added provision for representatives of Associate Members to become FCC arbitrators
1.26	Stay of arbitration proceedings	01 March 2017	New rule with provision for requests for arbitral proceedings to be put on hold
1.15	Fees and Deposits on account	01 July 2019	Any Claimant or Appellant, <u>when applying for</u> FCC Arbitration shall have to pay the FCC fees in advance and a deposit for the estimated fees and expenses of the FCC and of the Arbitrators
5.9	Appeal Awards	01 July 2019	Added provision for the Secretariat to automatically submit an appeal award to the first tier arbitrators
5.17	Publication of Edited Awards	01 July 2019	Added provision for parties consent to the FCC publishing edited final awards and/or submissions for educational purposes
5.4-5.9	Awards of FCC arbitration	01 July 2021	Clarified the procedure and definition of FCC arbitration award
5.16	Defaulters	01 July 2021	Clarified the procedure for posting defaulters in respect of an FCC arbitration award.

ARBITRATION AND APPEAL RULES

PART 1 – GENERAL RULES

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2021

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 involving that 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 Arbitrators shall not 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, 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 5.4, 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) “Award on Jurisdiction” means an Award ruling as a preliminary issue on an objection that the Tribunal lacks substantive jurisdiction at the outset of the proceedings in accordance with Part 4 of these Rules;
- (d) “Board of Appeal” means three Arbitrators appointed in accordance with Rules 3.4 to 3.6 to determine any dispute referred to them;
- (e) “Claimant” means a party commencing arbitral proceedings before a Tribunal in accordance with these Rules;
- (f) “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 and/or CP4) all of which incorporate the FCC Arbitration and Appeal Rules.
- (g) “Council” means the Council of the Federation;
- (h) “Court” means the English High Court subject to the provisions of Section 105 of the Arbitration Act 1996;
- (i) “FCC Arbitration” means arbitral proceedings before a Tribunal and/or Board of Appeal as the case may be which are subject to these Rules;
- (j) “Federation” means the Federation of Cocoa Commerce Limited and any officer, employee, agent or servant or director thereof;
- (k) “Officers” means the Chairman, Vice Chairman, Hon Treasurer and the Secretary of the Federation;
- (l) “Panel” means the FCC Arbitration and Appeal Panel selected in accordance with Rule 1.24.
- (m) “Respondent” means the party against whom arbitral proceedings before a Tribunal or Board of Appeal, as the case may be, are commenced;
- (n) “these Rules” means the FCC Arbitration and Appeal Rules;

- (o) “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;
- (p) “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;
- (q) “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 these Rules 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 either 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 time 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. For each application for FCC Arbitration, the Federation shall charge a non-refundable administration fee 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.

1.15. Any Claimant or Appellant shall, when applying to the Federation for commencement of FCC Arbitration:

- (a) pay the fee due to the Federation under Rule 1.14 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.

Payment of the said fees and deposits shall reach the Federation’s account within five business days of the date of receipt by the Claimant or Appellant (as the case may be) of the Federation’s invoice. In their discretion, the Arbitrators may allow additional time for payment, but only if the Claimant or Appellant provides evidence satisfactory to the Arbitrators of (i) the date of receipt by it of the

Federation's invoice and (ii) a bank transfer of the relevant sum(s) to the Federation's account within the required five business days.

- 1.16. 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.

- 1.17. 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.

- 1.18. Arbitrators shall, at their discretion, be entitled to vary the fees referred to in Rule 1.17 in FCC Arbitrations which they consider, in their discretion, to be of extraordinary complexity and/or value and/or tonnage.

- 1.19. For any 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 as determined by the Secretary in conjunction with the Arbitrators.

- 1.20. Where a Tribunal or Board of Appeal, in its discretion, considers it appropriate to obtain 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 1.17 to 1.18.

- 1.21. Failure by the Claimant, Appellant or counterclaimant to pay any sum(s) which it is required to pay pursuant to Rules 1.14 to 1.16 and/or 1.19 as and when required pursuant to the provisions of those Rules shall entitle the Arbitrators to dismiss the claim, appeal 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. PLACE OF HEARINGS

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

1.24. THE FCC ARBITRATION AND APPEAL PANEL

The Council shall select a Panel of Representatives of Voting Members or Associate 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 3.4.

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.

1.25. 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 quote the appropriate arbitration reference provided by the Secretariat and shall be sent to:-

ICE Futures Europe Grading Room
Coffee & Cocoa Grading Room
c/o IMPERIUM 315
Gardiners Lane South
Basildon
Essex
SS14 3AP

1.26. STAY OF ARBITRATION PROCEEDINGS

If all the parties to arbitration proceedings agree that such proceedings should be stayed, and provided and on condition that all the actual and anticipated fees and expenses of the FCC and of the Arbitrators up to and as at the date of any stay have been received by the FCC, the Arbitrators will order a stay of proceedings until such time as one or more of the parties requests the Arbitrators to resume such proceedings. If, at the time of a request from a party to resume the proceedings and one or more of the arbitrators is unable to act, then the FCC shall appoint replacements as necessary.

PART 2 – ARBITRATION PROCEDURE BEFORE A TRIBUNAL

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2021

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 pay to the Federation any fees and/or expenses and/or deposits provided for in Rules 1.14 to 1.16 inclusive as and when required pursuant to the provision of those Rules. 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 Rule 2.2, arbitration claims shall be deemed to be waived and 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, 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, implementing the aforesaid procedure of this Rule. 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, implementing the procedure of Rule 2.4 (a) to (c), 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. Rule 2.4(d) shall not apply following any such appointment.
- 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 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 and a Tribunal has been appointed, a Claimant shall only be permitted to withdraw the arbitration proceedings and thereby bring the FCC Arbitration to an end either if the Respondent agrees or if the Respondent fails to object no later than 21 days from the date of the Tribunal’s notice that such withdrawal will be permitted, subject to the provisions of this Rule.

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 shall have first been paid to the Federation. After payment of all such fees and expenses, the Federation shall refund to the depositor any balance of fees or sum paid on account.

In the case of string arbitrations, pursuant to Rules 2.17 -2.19 a withdrawal by the Claimant is binding upon all other parties in the string.

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 2.14 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 2.14 below, the Tribunal will proceed to determine the issues referred to it and make its Award, and the Secretary will advise all parties accordingly.

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

2.14. – 2.15. HEARINGS

2.14. In accordance with Rule 1.7, FCC Arbitrations before a Tribunal 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 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 1.19 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, in which case the provisions of the following paragraphs of this Rule 2.14 shall apply.

A party shall not be permitted to be represented at the Tribunal's quality assessment.

(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.

2.15. Where the parties have been permitted to be legally represented pursuant to Rule 2.14, 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.

2.16. CONSOLIDATED ARBITRATIONS 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; and/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.

2.17. – 2.19. STRING ARBITRATIONS FOR QUALITY AND/OR CONDITION

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

2.18. 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.

- 2.19. 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.

2.20. – 2.22. EVIDENCE

- 2.20. 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.
- 2.21. 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.
- 2.22. 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.

2.23. 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 01 JULY 2021*****3. PROCEDURE APPLICABLE TO APPEAL BEFORE A BOARD OF APPEAL****3.1. TIME LIMITS FOR NOTIFICATION OF APPEAL (OTHER THAN APPEAL AGAINST AN AWARD ON JURISDICTION)**

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

Parties have the right to appeal against an Arbitration Award other than an Award on Jurisdiction (the conditions for which are set out in Rule 4.10), 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 shall pay to the Federation any fees and/or expenses and/or deposits which it is required to pay pursuant to Rules 1.14 - 1.16 as and when required pursuant to the provisions of those Rules.
- (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.

3.2. - 3.4. CONSTITUTION OF BOARD OF APPEAL

- 3.2.
 - (a) Upon receipt of a notice of Appeal, 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 3.5, 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 3.2(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 this Rule 3.2 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
- 3.3. 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.

- 3.4. With the exception of the provisions set out in Rule 3.3, 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 the Court.

3.5. 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 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.

3.6. - 3.7. WITHDRAWAL OF APPEALS

- 3.6. Once an appeal has been commenced and a Board of Appeal appointed, an Appellant shall only be permitted to withdraw an appeal and thereby bring the appeal to an end either if the Respondent agrees, or if the Respondent fails to object no later than 21 days from the date of the Board of Appeal’s notice to the parties that such withdrawal will be permitted, subject to the provisions of this Rule.

It shall be a pre-requisite of any withdrawal of an 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 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.

If an appeal is withdrawn in accordance with the provisions of this Rule, the award of the Tribunal shall become final and binding.

- 3.7. In the case of appeal on string arbitration awards, pursuant to Rule 3.16 a withdrawal by the Appellant shall be binding upon every other party in the string.

3.8. – 3.10. TIME LIMITS FOR SUBMITTING EVIDENCE (EXCEPT IN APPEAL AGAINST AN AWARD ON JURISDICTION)

- 3.8. Except in the case of an Appeal against an Award on Jurisdiction (to which Rule 4.11 applies), 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.

3.8.1. 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.

3.8.2. 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).

3.9. 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 3.8 above, and on completion of any hearings which may be ordered by the Board of Appeal pursuant to Rule 3.11 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.

3.10. The Board of Appeal shall have the power to make an award dismissing an Appeal on the grounds of inordinate and inexcusable delay on the part of the Appellant. In such award the Board of Appeal:

- (a) shall confirm the Arbitration Award of the Tribunal which is the subject of the Appeal; and
- (b) may direct that any money which may have been deposited pursuant to Rule 3.14 (with interest, if any, less any tax deductible) be paid to the party and/or parties entitled thereto in accordance with the terms of its award; and
- (c) may award the payment of the costs of the FCC Arbitration before the Board of Appeal.

3.11. – 3.12. APPEAL HEARINGS

3.11. 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 1.19 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, in which case the provisions of the following paragraphs of this Rule 3.11 shall apply.

A party shall not be permitted to be represented at the Board of Appeal's quality assessment.

(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.

3.12. Where the parties have been permitted to be legally represented pursuant to Rule 3.11 (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.

3.13. CONSOLIDATED APPEALS 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; and/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.

3.14. POSTPONEMENT OF HEARINGS

- (a) If the Appellant, on receiving from the Board of Appeal notice of the date fixed for any hearing of an 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 the Board of Appeal may make an award dismissing the Appeal. In such award the Board of Appeal:
 - (i) shall confirm the Arbitration Award of the Tribunal which is the subject of the Appeal; and
 - (ii) may award the payment of the costs of the FCC Arbitration before the Board of Appeal.

3.15. 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.

3.16. APPEALS ON STRING ARBITRATION AWARDS

In any case in which a string Arbitration Award shall have been made by a Tribunal pursuant to Rules 2.17 to 2.19 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 2.17 to 2.19.

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.

3.17.– 3.19. EVIDENCE

- 3.17. 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.
- 3.18. 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.
- 3.19. 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.

3.20. 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 – JURISDICTION

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2021

4. ISSUES CONCERNING THE JURISDICTION OF A TRIBUNAL AND/OR BOARD OF APPEAL

4.1. THE TRIBUNAL AND/OR BOARD OF APPEAL MAY RULE ON ITS OWN JURISDICTION

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

- (a) whether there is a valid arbitration agreement;
- (b) whether it is properly constituted; and
- (c) what matters have been submitted to arbitration in accordance with an arbitration clause in a contract or by other written agreement.

4.2. - 4.8. OBJECTION TO THE SUBSTANTIVE JURISDICTION OF THE TRIBUNAL AT THE OUTSET OF THE PROCEEDINGS

4.2. Any objection by the Respondent that the Tribunal lacks substantive jurisdiction at the outset of the proceedings must be notified in writing to the Secretary not later than the time that the Respondent takes the first step in the proceedings to contest the merits of any matter in relation to which it challenges the Tribunal's jurisdiction. The Tribunal may allow an objection later only if it considers the delay justified.

4.3. Each party shall deliver to the Secretary its written submissions on the objection to the Tribunal's jurisdiction (including all documentary evidence on which it wishes to rely) in five copies in a clear and concise form in accordance with the following timetable, which may be varied by the Tribunal in accordance with its general duty under Rule 1.7. The Secretary shall forward each party's submissions to the Tribunal and to the other party.

- (i) The Respondent's submissions on its objection to the Tribunal's jurisdiction, together with its statement of defence (and counterclaim if any) pursuant to Rule 2.11, shall be delivered to the Secretary no later than 21 days from the date when it received the Claimant's statement of case submitted pursuant to rule 2.11.
- (ii) The Claimant's submissions in response to the Respondent's objection, together with its reply to the Respondent's statement of defence (and defence to counterclaim submissions if any), shall be delivered to the Secretary no later than 21 days from receipt by the Claimant of the Respondent's submissions pursuant to subparagraph (i) above.

4.4. Where an objection is duly taken to the Tribunal's substantive jurisdiction at the outset of the proceedings in accordance with these Rules, the Tribunal may either rule on the objection as a preliminary issue in an Award as to Jurisdiction or else it may deal with the objection in its award on the merits. If the parties agree which of these courses the Tribunal should take, the Tribunal shall proceed accordingly. Failing such agreement, the Tribunal will advise the parties, after completion of the exchange of the parties' submissions and documentary evidence under Rule 4.3, which course it intends to take.

4.5. If the Tribunal decides to determine the objection to its jurisdiction as a preliminary issue in an Award on Jurisdiction, then on completion of any hearings which it may order pursuant to Rule 2.14, the Tribunal will proceed to determine the preliminary issue and make its award. The Tribunal shall award the costs of the preliminary issue in accordance with the principles set out in Rule 5.13.

4.6. An Award on Jurisdiction shall be final and binding upon the parties, subject to the right of either party to appeal to a Board of Appeal in accordance with the provisions of Rules 4.9 to 4.15.

4.7. If the Tribunal concludes that it does not have jurisdiction to determine the dispute it shall make an award to that effect.

4.8. If in an Award on Jurisdiction the Tribunal determines that it has jurisdiction, then unless there is an appeal against that award in accordance with Rules 4.9 to 4.15, the Tribunal shall proceed to determine the merits of the dispute and may issue such directions for that purpose as it considers appropriate.

4.9.-4.15. APPEAL AGAINST AN AWARD ON JURISDICTION

4.9. APPLICATION OF RULES

The provisions of Part 3 of these Rules shall apply to an appeal against a Tribunal's Award on Jurisdiction, subject to the modifications contained in Rules 4.10 to 4.15 below.

4.10. TIME LIMITS FOR NOTIFICATION OF APPEAL AGAINST AN AWARD ON JURISDICTION

Parties have the right to appeal against an Award on Jurisdiction, 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 Award on Jurisdiction as required by paragraph (c) of this Rule and shall pay to the Federation any fees and/or expenses and/or deposits which it is required to pay pursuant to Rules 1.14 – 1.16 as and when required pursuant to the provisions of those Rules.
- (b) The Appellant's Notice of Appeal shall reach the Secretary not later than 12 noon on the 14th consecutive day after the date of the Award on Jurisdiction.
- (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 Award on Jurisdiction shall be paid.

4.11. – 4.12. TIME LIMITS FOR SUBMITTING EVIDENCE

4.11. Once the Board of Appeal is constituted, the Secretary shall send to each member of the Board of Appeal a copy of the Award on Jurisdiction, of the parties' submissions on the preliminary issue and of any documentary evidence served therewith. The Board of Appeal shall have regard to such submissions and evidence in determining the appeal and the parties shall be entitled to adopt or refer to the contents of such submissions and documents for the purposes of their submissions delivered pursuant to Rule 4.12 below, without the necessity to deliver further copies to the Secretary.

4.12. Each party shall deliver to the Secretary its written submissions (including any documentary evidence on which it wishes to rely in addition to the documentary evidence sent to the Board of Appeal pursuant to Rule 4.11) in five copies in a clear and concise form in accordance with the following timetable, which may be varied by the Board of Appeal in accordance with its general duty under Rule 1.7. The Secretary shall then forward each party's submissions to the Board of Appeal and to the other party.

- (i) The Appellant's statement of case shall be delivered no later than 21 days from the date of the Award on Jurisdiction.
- (ii) The Respondent's statement of case shall be delivered no later than 14 days from receipt by the Respondent of the Appellant's statement of case.

- (iii) The Appellant's reply (if any) to the Respondent's statement of case shall be delivered no later than 7 days from receipt by the Appellant of the Respondent's statement of case.

4.13.–4.15. APPEAL AWARD ON JURISDICTION

- 4.13. On completion of the exchange of the parties' submissions and documentary evidence, and on completion of any hearings which may be ordered by the Board of Appeal pursuant to Rule 3.11, the Board of Appeal will proceed to determine the issues referred to it and make its Appeal Award on Jurisdiction, and the Secretary shall advise the parties accordingly. The Board of Appeal shall award the costs of the preliminary issue in accordance with the principles set out in Rule 5.13.
- 4.14. If the Board of Appeal concludes that the Tribunal does not have jurisdiction to determine the dispute it shall make an award to that effect.
- 4.15. If the Board of Appeal awards that the Tribunal has jurisdiction to determine the dispute, then the Board shall remit the dispute back to the Tribunal which shall proceed to determine the dispute and may issue such directions for that purpose as it may consider appropriate.

PART 5 – AWARDS

APPLICABLE TO CONTRACTS CONCLUDED ON OR AFTER 01 JULY 2021

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

5.1. – 5.9. AWARDS OF FCC ARBITRATION

- 5.1. 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.
- 5.2. Awards shall state the Arbitrators' reasons and the terms of any award of interest made under Rule 5.15. In the case of contracts where Pounds Sterling is not the currency of the contract, Arbitrators shall have discretion to determine the appropriate base rate.
- 5.3. 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.
- 5.4. The Arbitrators shall submit to the Federation three draft official copies of their Award of FCC Arbitration duly signed by the Chairman. The Secretary shall date and sign the Award, whereupon the Award shall be deemed to be the Award of the Arbitrators, 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.
- 5.5. If the fees and expenses are not paid in accordance with Rule 5.4 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.
- 5.6. Where a deposit made under Rules 1.15 and/or 1.16 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.
- 5.7. An FCC Arbitration Award (subject to the rights of challenge and/or appeal mentioned in these Rules and in the Arbitration Act 1996) 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.
- 5.8. No Award shall be challenged or subject to any appeal except as provided for in these Rules and the Arbitration Act 1996.

- 5.9. An Award of a Board of Appeal shall be made available to a Tribunal whose Award is the subject of the Appeal.

5.10. – 5.11. PAYMENT

- 5.10. All amounts due under any FCC Arbitration Award of a Tribunal shall be paid within 21 consecutive days from the date of the Award, unless the Arbitrators direct otherwise.
- 5.11. All amounts due under any FCC Appeal Award shall be paid within 28 consecutive days from the date of the Appeal Award, unless the Board of Appeal directs otherwise.

5.12. 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.

5.13. 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.

5.14. 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.

5.15. 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 of that Award (including any award of interest and any award as to costs).

5.16. DEFAULTERS

In the event of any party to an FCC Arbitration held under these Rules neglecting or refusing to carry out or abide by an FCC Arbitration Award (other than an Award of a Tribunal in respect of which the time for giving Notice of Appeal pursuant to these Rules has not expired and/or an appeal to a Board of Appeal is pending) 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.

5.17. PUBLICATION OF EDITED AWARDS AND/OR SUBMISSIONS

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

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