

SECTION IV  
ADAPTATION  
OF CONTRACTS

## STANDARD ADAPTATION OF CONTRACTS CLAUSE

The Parties who wish to refer to the CEPANI Rules of Adaptation of Contracts are advised to insert the following clause in their contracts:

*“The Parties hereby undertake to apply the CEPANI Rules of Adaptation of Contracts, should either one of them so Request.*

*The opinion of the Third Person appointed in accordance with these Rules shall have the authority of a [recommendation] or [decision]”<sup>1</sup>.*

The following provisions may be added to this clause:

*“The seat of the proceedings shall be [\_\_\_]”.*

*“The proceedings shall be conducted in the [\_\_\_] language”.*

*“The adaptation of contracts proceedings shall be followed by arbitration proceedings under the Rules of CEPANI, if so Requested by one of the Parties”.*

## PRELIMINARY PROVISIONS

### Article 1. Belgian Centre for Mediation and Arbitration

The Belgian Centre for Arbitration and Mediation (“CEPANI”) is an independent body which administers adaptation of contracts proceedings in accordance with its Rules. It does not itself resolve disputes and it does not act as a Third Person.

1. Delete as appropriate.

# GENERAL PROVISIONS

## Article 2. Scope

1. Section VI shall apply if one or more Parties wish to have recourse to a Third Person whose mission shall be to complete the contract on items unforeseen by them, or to adapt their common intent to new situations.
2. Only Parties who have so agreed with a specific clause may have recourse to Section VI. Depending on its scope as determined by the Parties, the mission shall lead to a recommendation or a decision.

## COMMENCEMENT OF THE PROCEEDINGS

### Article 3. Request for Adaptation of Contracts

1. A Party wishing to have recourse to the adaptation of contracts proceedings under the CEPANI Rules shall submit its Request for Adaptation of Contracts to the Secretariat.

The Request for Adaptation of Contracts shall include, *inter alia*, the following information:

- a) name, first name and the name in full, function, address, telephone and fax numbers, valid e-mail addresses and VAT-number, if any, of each of the Parties;
- b) Claimant's position;
- c) any comments as to the place and the language of the adaptation of contracts proceedings and the applicable Rules of law.
- d) Proof of payment of the registration costs.

Together with the Request, Claimant shall provide copies of all agreements, in particular the agreement for the adaptation of contracts, the correspondence between the Parties and other relevant documents.

2. Each Request for adaptation of contracts must be accompanied by an advance payment of € 750,00 excl. VAT on administrative costs. Such payment is non-refundable, and shall be credited to the Claimant's portion of the advance on costs for adaptation of contracts.

3. The Request for Adaptation of Contracts and the documents annexed thereto must be submitted in electronic form and in one hard copy.

Upon receipt of the unilateral Request, CEPANI shall send a copy of the Request and the documents annexed thereto by e-mail to the other Party or Parties involved.

If no valid e-mail address is known for the other part(ies), the Request submitted shall be supplied in a number of original and signed copies sufficient to provide one copy for the other Party(ies) and one for the Secretariat.

#### **Article 4. Answer to the Request for Adaptation of Contracts**

1. Within fifteen days after the Request for Adaptation of Contracts has been sent as mentioned in Article 3, the other Party shall submit to the CEPANI Secretariat its comments with respect to the Request.

If no answer is given within the said time limit, the Request for Adaptation of Contracts shall be deemed to have been rejected by the said other Party.

2. If the Request is submitted by one Party only, the date on which the Secretariat informs the other Party of the Request for Adaptation of Contracts and of the annexes thereto shall be deemed to be the date of commencement of the adaptation of contracts proceedings.

If the Request is submitted by all the Parties, the date on which the Secretariat receives the Request for Adaptation of Contracts and the

annexes thereto and the payment for registration costs mentioned in Article 3.1 d) shall be deemed to be the date of commencement of the adaptation of contract proceedings.

The Secretariat shall confirm the date of commencement of the adaptation of contracts proceedings to the Parties.

3. The time limit mentioned in paragraph 1 may be extended pursuant to a reasoned Request of Respondent, or on its own motion, by the Secretariat.

### **Article 5. Lack of a *prima facie* adaptation of contracts agreement**

In the event that there is no *prima facie* adaptation of contracts agreement, the adaptation of contracts proceedings may not proceed should the absent Party not answer within the period of fifteen days mentioned in Article 4, or should it refuse the adaptation of contracts proceedings in accordance with the CEPANI Rules.

### **Article 6. Effect of the adaptation of contracts agreement**

When the Parties agree to resort to CEPANI for the adaptation of contracts proceedings, they thereby submit to the CEPANI Rules, including the annexes, in effect on the date of the commencement of the adaptation of contracts proceedings, unless they have agreed to submit to the Rules in effect on the date of their adaptation of contracts agreement.

### **Article 7. Written notifications or communications and time limits**

1. The Request for Adaptation of Contracts, the Answer to the Request for Adaptation of Contracts, all pleadings, and the appointment of the Third Person, subject to Article 17, paragraph 2 shall be valid if it is notified or communicated in electronic form to a valid e-mail address, which allows proof of the sending. If no valid e-mail address is known for a Party, the

notification or communication shall be validly made if remitted by courier service against receipt, sent by registered mail or by fax.

2. If a Party is represented by Counsel, all notifications or communications shall be made to the latter, unless that Party Requests otherwise.

All notifications or communications shall be valid if dispatched to the last address of the Party to whom they are addressed or its Counsel who is the addressee, as notified.

3. A notification or communication, made in accordance with paragraph 1, shall be deemed to have been made when it was received or should have been received by the Party itself, by its Representative or its Counsel.

4. Periods of time specified in the present Rules, shall start to run on the day following the date a notification or communication is deemed to have been made in accordance with paragraph 2. If the last day of the relevant period of time granted is an official holiday or a non-business day in the country where the notification or communication has to be made, the period of time shall expire at the end of the first following business day.

A notice or communication shall be treated as having been sent timely if it is dispatched in accordance with paragraph 1 prior to, or on the date of, the expiry of the time limit.

## **THE THIRD PERSON**

### **Article 8. General provisions**

1. Only those persons who are independent of the Parties and of their Counsel and who comply with the Rules of good conduct for proceedings organized by CEPANI, may serve as Third Persons in adaptation of contracts proceedings organized by CEPANI.

2. The Appointments Committee or the Chairman shall appoint the Third Person. The Parties may nominate the Third Person by mutual consent, subject to the approval of the Appointments Committee or the Chairman.

3. Prior to his appointment or confirmation, the Third Person who was appointment is being proposed shall sign a statement of availability, acceptance and independence. He shall disclose in writing to the Secretariat any facts or circumstances which might be of such a nature as to call into question the Third Person's independence in the eyes of the Parties. The Secretariat shall provide such information to the Parties in writing and fix a time limit for any comments from them.

4. The Third Person shall immediately disclose in writing to the Secretariat and to the Parties any facts or circumstances of a similar nature as those mentioned in paragraph 3 which may arise during the adaptation of contracts proceedings.

5. The decisions of the Appointments Committee or the Chairman as to the appointment, approval of the nomination or replacement of the Third Person shall be final. The reasons for the decision shall not be communicated.

6. By accepting to serve, every Third Person undertakes to carry out his responsibilities until the end in accordance with these Rules.

7. Unless otherwise agreed by the Parties, the Third Person shall not act as an arbitrator, Representative or Counsel of a Party in arbitral or judicial proceedings relating to the dispute which was the subject of the adaptation of contracts proceedings.

## **Article 9. Appointment of the Third Person**

1. The Parties may nominate the Third Person by mutual consent, subject to the approval of the Appointments Committee or the Chairman. Should

the Parties fail to agree on his nomination within fifteen days from the notification of the Request for Adaptation of Contracts to the other Party, or within such additional time as may be allowed by the Secretariat, the Third Person shall be automatically appointed by the Appointments Committee or the Chairman. Where the Appointments Committee or the Chairman refuses to approve the nomination of the Third Person, it or he shall proceed with the replacement within a period of fifteen days of the notification of this refusal to the Parties.

2. The Appointments Committee or the Chairman appoints or approves the nomination of the Third Person after the payment by the Parties, or by one of them, of the advance on Adaptation of Contracts costs in accordance with the provisions of Article 19. It thereby takes into account more particularly the availability, the qualifications and the ability of the Third Person to conduct the adaptation of contracts proceedings in accordance with these Rules.

### **Article 10. Replacement of the Third Person**

1. In the event of a Third Person's death, challenge, accepted withdrawal, or if there is a cause preventing him from fulfilling his duties, or upon Request of all Parties, the Third Person shall be replaced.

2. A Third Person shall also be replaced when the Appointments Committee or the Chairman finds that the Third Person is prevented *de jure* or *de facto* from fulfilling his duties in accordance with these Rules or within the allotted time limits.

In such event, the Appointments Committee or the Chairman shall decide on the matter after having invited the Third Person and the Parties to comment in writing to the Secretariat within the time limit allotted by the latter. Such comments shall be communicated to the Parties and to the Third Person.



# THE ADAPTATION OF CONTRACTS PROCEEDINGS

## Article 11. Transmission of the file to the Third Person

Provided that the advance on adaptation of contracts costs set out in Article 19 has been fully paid, the Secretariat shall transmit the file to the Third Person as soon as the latter has been appointed or his nomination approved.

## Article 12. Language of the adaptation of contracts proceedings

1. The language of the adaptation of contracts proceedings shall be determined by mutual agreement between the Parties. Failing such an agreement, the language or languages of the adaptation of contracts proceedings shall be determined by the Third Person, due regard being given to the circumstances of the case and, in particular, to the language of the contract.

2. The Third Person shall have full authority to decide which of the Parties shall bear the translation costs, if any, and to what extent.

## Article 13. Place of the adaptation of contracts proceedings

1. The Appointments Committee or the Chairman shall determine the place of the adaptation of contracts proceedings, unless the Parties have agreed this.

2. Unless otherwise agreed by the Parties and after having consulted with them, the Third Person may decide to hold his hearings and meetings at any other location that he considers appropriate.

## Article 14. Examination of the case

The Third Person is free to organize the proceedings as he/she sees fit.

## **Article 15. Confidentiality of the Adaptation of Contracts Proceedings**

Unless it has been agreed otherwise by the Parties or there is a legal obligation to disclose, the adaptation of contracts proceedings shall be confidential.

## **DECISION OR RECOMMENDATION AND END OF THE ADAPTATION OF CONTRACTS PROCEEDINGS**

### **Article 16. Decision or recommendation of the Third Person**

The mission of the Third Person shall end when he/she draws up his conclusions in a written decision or recommendation.

### **Article 17. Notification of the decision of recommendation**

1. Once the decision or recommendation has been made, the Third Person shall transmit it to the Secretariat in as many original versions as there are Parties involved, plus one original version for the Secretariat
2. The Secretariat shall notify the original signed decision or recommendation to the Parties, by registered mail or by courier service against receipt and a copy shall be sent by mail, provided that the adaptations of contracts costs have been fully paid to the CEPANI by the Parties or by one of them.

## **ADAPTATION OF CONTRACTS COSTS**

### **Article 18. Nature and amount of the costs of the adaptation of contracts proceedings**

1. The costs of the adaptation of contracts proceedings shall include the fees and expenses of the Third Person, as well as the administrative

expenses of CEPANI. They shall be fixed by the Secretariat in consultation with the appointed Third Person and due regard being given to the nature and scope of his mission.

2. The Parties' costs include the expenses of the Parties such as the expenses incurred for their defence and the expenses relating to the presentation of evidence. They are not included in the costs relating to the adaptation of contracts proceedings and are borne by this Party.

### **Article 19. Advance on the costs of the Adaptation of Contracts proceedings**

1. The advance required to cover the costs of the adaptation of contracts proceedings, as determined in accordance with Article 18, paragraph 1 shall be paid to the CEPANI prior to the appointment or the approval of the nomination of the Third Person by the Appointments Committee or the Chairman.

2. Further advance payments may be required if and when any adjustments are made to the costs of the adaptation of contracts proceedings in the course of the proceedings.

3. The advance on adaptation of contracts costs, as well as the additional advance on adaptation of contracts costs, shall be payable in equal shares by the Parties. However, any Party shall be free to pay the whole of the advance on adaptation of contracts costs should the other Party fail to pay its share.

4. When the advance on adaptation of contracts costs exceeds € 50.000,00 a bank guarantee may be posted to cover such payment.

5. When a Request for an additional advance on adaptation of contracts costs has not been complied with, and after consultation with the Third

Person, the Secretariat may direct the Third Person to suspend his work and set a time limit, which must be not less than fifteen days, on the expiry of which the procedure shall be considered as withdrawn. This shall not prevent the Party in question from reintroducing the same procedure at a later date.

#### **Article 20. Decision on the Adaptation of Contracts costs**

1. The adaptation of contracts costs shall be finally fixed by the Secretariat.
2. Unless otherwise agreed, the Parties shall each bear one half of the costs of the adaptation of contracts proceedings.
3. The decision or the recommendation of the Third Person set forth the adaptation of contracts costs, as determined by the Secretariat, and set out the agreement between the Parties, if any, on the allocation of the adaptation of contracts costs.

### **FINAL PROVISIONS**

#### **Article 21. Limitation of liability**

For any act or omission in the course of the adaptation of contract proceedings, the Third Person, CEPANI and its members and personnel shall not incur any liability except in the case of fraud or gross negligence.