



## **ARIAS • U.S. RULES FOR THE RESOLUTION OF U.S. INSURANCE AND REINSURANCE DISPUTES**

### **1. INTRODUCTION**

1.1 These procedures shall be known as the ARIAS • U.S. Rules for the Resolution of U.S. Insurance and Reinsurance Disputes (“Rules”). When an agreement, submission or reference provides for or otherwise refers to arbitration under the ARIAS • U.S. Rules for the Resolution of U.S. Insurance and Reinsurance Disputes, the Parties agree that the arbitration shall be conducted in accordance with these Rules.

1.2 These Rules are not intended to supersede any express contractual agreement between the Parties. Accordingly, the Parties may agree on any rules or procedures not specified herein, or may alter these Rules by written agreement. These Rules shall control any matters not changed by the Party-agreed procedures.

1.3 Certain provisions are accompanied by explanatory notes. If any note conflicts in any way with the Rules, the Rules shall prevail.

1.4 Any dispute concerning the interpretation of these Rules shall be determined by the Panel.

1.5 The Panel shall have all powers and authority not inconsistent with these Rules, the agreement of the Parties, or applicable law.

### **2. DEFINITIONS**

2.1 Arbitration Agreement — an agreement to submit present or future disputes to arbitration, whether contained in a reinsurance contract or other written document reflecting the agreement of the Parties.

2.2 Decision — any determination by the Panel, including any interim or final award or ruling.

2.3 Disinterested — means that no member of the Panel shall be under the control of either Party, nor shall any member of the Panel have a financial interest in the outcome of the arbitration.

2.4 Neutral — means that the umpire shall be disinterested, unbiased and impartial. The term “neutral” does not mean that the umpire has no previous knowledge of or experience with respect to issues involved in the dispute.

2.5 Notice of Arbitration — the notice sent by the Petitioner in accordance with ¶ 4.1.

2.6 Panel — the body charged with determining the dispute as defined by ¶ 6.1.

2.7 Party or Parties — the Petitioner and the Respondent and any other individuals or entities joined in the proceedings.

2.8 Petitioner — the Party who commences arbitration.

2.9 Rules — as defined by Article 1.

2.10 Respondent — a Party against whom arbitration is commenced.

2.11 Response — the Response to the Notice of Arbitration sent by the Respondent in accordance with ¶ 5.1.

### **3. NOTICE AND TIME PERIODS**

3.1 Notices under these Rules are deemed to be given if delivered, in accordance with ¶ 3.2, to:

(a) the address designated by the receiving Party in the insurance or reinsurance contract or other written agreement; or

(b) if no such address was designated,

(i) if the receiving Party is a corporation, to either the corporate address on file with the Secretary of the State or other registrar of corporations in its jurisdiction of incorporation, or to the corporate address on file with the insurance or reinsurance regulatory authority in the corporation's domiciliary jurisdiction; or

(ii) if the receiving party is a natural person, to his or her home or place of employment.

3.2 Notices required to be given under these Rules are deemed to be given:

(a) if sent by electronic mail, on the date transmitted;

(b) if sent by mail, upon delivery;

(c) if sent by certified, registered mail or another service which produces a receipt, as indicated on the receipt.

Note to ¶ 3.2 - Notices of Arbitration, Responses to Notices of Arbitration and Appointment of Arbitrators should, where possible, be given in a manner that produces proof of receipt (*e.g.*, registered or certified mail or courier). After the arbitration has been commenced, notices and correspondence should, where possible, be given by instantaneous (*e.g.*, e-mail) or other expedited manner of communication.

3.3 When calculating any time period under these Rules, the period shall start to run from the day immediately after that upon which notice is given. Time will then run continuously (including non-business days). If a time period expires at the end of a non-business day in the domiciliary jurisdiction of the recipient, the time period will be deemed extended until the end of the first following business day.

#### **4. COMMENCEMENT OF ARBITRATION PROCEEDINGS**

4.1 An arbitration should be initiated by a demand, in writing, that identifies the (1) Petitioner and the name of the contact person to whom all communications are to be addressed (including telephone and e-mail information); (2) Respondent against whom arbitration is sought; (3) contracts at issue; and (4) a short and plain statement of the nature of the claims and/or issues.

An arbitration demand made pursuant to this Section may be amended as of right until the opening of the Organizational Meeting. After the opening of the Organizational Meeting, an arbitration demand made pursuant to this Section may be amended only by leave of the Panel. In ruling on requests for leave to amend an arbitration demand, the Panel shall consider the effect of the amendment on the efficiency of the proceedings; the potential for prejudice to the opposing Party; and any other appropriate factor(s).

4.2 The arbitration is commenced under these Rules on the date the Respondent, or its designated representative, receives the Notice of Arbitration.

4.3 The Petitioner shall identify its Party-appointed arbitrator in accordance with ¶ 6.3.

#### **5. RESPONSE BY RESPONDENT**

5.1 Parties who receive a demand for arbitration shall respond to the demand, in writing, within thirty (30) days, and such Response should contain the (1) identification of the entities on whose behalf the Response is sent and the name of the contact person to whom all communications are to be addressed (including telephone and e-mail information); (2) designation of the Respondent's Party-appointed arbitrator, in accordance with ¶ 6.3; (3) a short and plain response to the Petitioner's statement of the nature of its claims and/or issues; and (4) a short and plain statement of any claims of the Respondent.

A response made pursuant to this Section may be amended as of right until the opening of the Organizational Meeting. After the opening of the Organizational Meeting, a response made pursuant to this Section may be amended only by leave of the Panel. In ruling on requests for leave to amend a response, the Panel shall consider the effect of the amendment on the efficiency of the proceedings; the potential for prejudice to the opposing party; and any other appropriate factor(s).

#### **6. APPOINTMENT AND COMPOSITION OF THE PANEL**

6.1 The Panel shall consist of three Disinterested arbitrators, one to be appointed by the Petitioner, one to be appointed by the Respondent and the third to be appointed by the two Party-appointed arbitrators. The third arbitrator shall serve as the umpire, who shall be Neutral.

6.2 The arbitrators and umpire shall be persons who are current or former officers or executives of an insurer or reinsurer, and shall be ARIAS-certified as of the date of their appointment.

6.3 Within thirty (30) days following the commencement of arbitration proceedings, each Party shall provide the other Party with the identification of its Party-appointed arbitrator, his or her address (including telephone, fax and e-mail information), and provide a copy of the arbitrator's curriculum vitae.

6.4 In the event that either Party fails to appoint an arbitrator within thirty (30) days of commencement of the arbitration, the non-defaulting Party will appoint an arbitrator to act as the Party-appointed arbitrator for the defaulting Party.

6.5 The umpire shall be appointed by the two Party-appointed arbitrators as soon as practical (but no later than thirty (30) days) after the appointment of the second arbitrator.

6.6 The Party-appointed arbitrators may consult, in confidence, with the Party who appointed them concerning the appointment of the umpire.

6.7

(a) Where the two Party-appointed arbitrators have failed to reach agreement on an umpire within the time specified in ¶ 6.5, each Party shall exchange, within seven (7) days thereafter, five names of individuals chosen from the list of certified ARIAS • U.S. umpires.

(b) Within seven (7) days of the exchange of names as set forth in ¶ 6.7(a), the Party arbitrators shall send a joint request to the umpire candidates to complete the ARIAS • U.S. Umpire Questionnaire. Candidates will be requested to return such questionnaire to each Party arbitrator so that it is received within twenty (20) days from the date the questionnaire is sent to the candidates. In the event that one Party's candidate pool of 5 individuals is reduced due to the failure to return questionnaires or refusals to serve, that Party shall, within seven (7) days, name additional individuals to replenish its candidate pool to 5 individuals from the list of ARIAS-certified umpires. Each additional candidate shall be asked by the Parties to complete an umpire questionnaire and return such questionnaire to each Party within twenty (20) days from the date the questionnaire is sent to the candidates. Both Parties shall then proceed with 5 individuals each.

(c) Within seven (7) days after the process in subparagraph (b) is completed, each Party shall strike four names from the other Party's list; draw lots from the remaining two names; and the individual chosen by lot shall act as umpire.

(d) Unilateral contact between a Party, its Party-appointed arbitrator or its representative(s) on the one hand, and an individual considered for appointment as an umpire on the other hand, shall not be permitted unless and until the Panel, after being duly constituted, so permits.

6.8 If after appointment any Party-appointed arbitrator is unable or unwilling to serve, the Party who originally appointed the arbitrator shall appoint a replacement within fourteen (14) days of the Party's receipt of notification of the arbitrator's unavailability. If the Party fails to do so, the non-defaulting Party will appoint a replacement within fourteen (14) days.

6.9 If after appointment an umpire is unable or unwilling to serve, a replacement umpire shall be chosen by the two Party-appointed arbitrators as soon as practical (but no later than fourteen (14) days) after notification of the umpire's inability or unwillingness to serve. Where the two Party-appointed arbitrators are unable to reach agreement, the parties shall appoint a replacement umpire in accordance with the procedure set forth in ¶ 6.7.

6.10 Unless otherwise awarded by the Panel pursuant to Article 8 or ¶ 15.3, each Party shall bear the costs of its Party-appointed arbitrator and shall share equally the cost of the umpire.

6.11 Unless otherwise agreed to in advance by all the members of the Panel, all members of the Panel shall consult with each other on each and every Decision presented to the Panel or to be made by the Panel and each and every Decision shall be made by casting of at least two of three possible votes.

## **7. CONFIDENTIALITY**

7.1 Unless otherwise agreed by the Parties, or ordered by the Panel upon the motion of a Party and a showing of good cause, all meetings and hearings of the Panel are private and confidential to the Parties. Only the Panel, the Parties, the duly authorized representatives of the Parties and others participating in the proceedings may be admitted to meetings and hearings. If the Parties agree that any meeting or hearing is to be non-confidential, they shall inform the Panel of their agreement as soon as reasonably practical after reaching it.

7.2 Unless otherwise agreed by the Parties, or ordered by the Panel upon the motion of a Party and a showing of good cause, the Panel and the Parties shall use their best efforts to maintain the confidential nature of the arbitration proceedings and any Decision, including the hearing and any written explanation of any Decision, except (a) as necessary in connection with a judicial proceeding relating to the arbitration or any Decision; (b) as otherwise required by law, regulation, independent accounting audit or judicial decision; (c) if the arbitration proceedings relate to a direct insurance dispute, then to support the insurer's reinsurance recoveries; (d) if the arbitration proceedings relate to a reinsurance dispute, then to support the reinsurer's retrocessional recoveries; or (e) as otherwise agreed by the Parties. The Parties shall use their best efforts to maintain this confidentiality when pursuing any of the exceptions set forth in this paragraph, including the filing of pleadings under seal when permitted.

## **8. INTERIM DECISIONS**

8.1 A Panel may issue Decisions for interim relief.

8.2 The Panel shall have the power to impose sanctions for failure to comply with an interim Decision by the Panel or for discovery-related abuse. Such possible sanctions shall include but are not limited to: striking a claim or defense; excluding evidence on an issue; drawing an adverse inference against a Party; and imposing costs, including attorneys' fees, associated with such abuse or failure to comply.

## **9. LOCATION OF PROCEEDINGS**

9.1 The location of all proceedings shall be at a place specified in the Arbitration Agreement or as otherwise agreed to by the Parties. In the absence of agreement, the Panel shall select the location of the proceedings, taking into account the convenience of the Panel; the convenience of the Parties; the availability of processes to compel attendance by (or the production of materials from) non-parties; the effect of the proceedings' location on confirmation or vacation proceedings; the avoidance of unnecessary expense or delay; and such other factors as the Panel may deem relevant.

## **10. PRE-HEARING PROCEDURE**

10.1 Prior to the organizational meeting, the Parties shall confer and seek agreement on all issues that are expected to be considered at the organizational meeting, with a focus on those items identified in ¶ 10.7.

The Panel shall conduct an organizational meeting with the Parties and any authorized representatives for the purposes of clarifying the focus of the arbitration hearing, resolving any outstanding issues relating to the conduct of the hearing and establishing a schedule for the conduct of the proceedings in general. The organizational meeting may be conducted by telephone or video conference if agreed to by the Parties or, in the absence of agreement, if decided appropriate by the Panel.

10.2 At the organizational meeting, all members of the Panel shall reveal on the record their past, present and any known future business and personal relationships with the Parties, the Parties' counsel, with other Panel members, and with potential witnesses if identified in documents provided to the Panel members. Once disclosures have been made by all Panel members, Parties may be asked by the Panel to accept the Panel as duly constituted. All Panel members shall have a continuing obligation to disclose such information to the Panel and the Parties.

10.3 At the organizational meeting, and prior to any request that the Parties accept the Panel as duly constituted, each Party-appointed arbitrator shall disclose whether communications with the appointing Party or its counsel have taken place. In complying with this disclosure requirement, it is sufficient that the Party-appointed arbitrator disclose the fact that such communication has occurred without disclosing the content of the communication, except that Party-appointed arbitrators shall disclose any documents that they have examined relating to the proceeding. Such documents shall be furnished to the remainder of the Panel and the other Party. The umpire shall also disclose whether any party representative, Party-appointed arbitrator

or counsel contacted him or her regarding any work done in return for compensation (*e.g.*, service on a Panel, expert work, consulting work) to the extent not already disclosed in his or her completed ARIAS • U.S. Neutral Umpire Questionnaire. Each Panel member shall have a continuing obligation to disclose whether either party or their respective counsel or Party-appointed arbitrator have approached him or her to serve on an arbitration panel in other matters.

10.4 The Panel may require that each Party submit concise written statements of position, including the issues that the Parties' anticipate will arise in the arbitration, summaries of the facts and evidence a Party intends to present, and the basis for the requested Decision or denial of relief sought. The statements, which may be in letter form, shall be provided to the other Party and the Panel at least seven days prior to the organizational meeting.

10.5 A formal record or transcript of the organizational meeting shall be kept, unless waived by the Parties. The cost of the record or transcript shall be shared equally by the Parties. The Panel shall place on the record the disclosures required by ¶ 10.2.

10.6 The Panel may allow the Parties to present a brief overview of the matters set forth in ¶ 10.4, whether or not written submissions were requested or received by the Panel.

10.7 The Panel and the Parties shall address the following:

- (a) Establish a protocol for the interim suspension, if any, and the termination of ex-parte communications between Parties and their Party-appointed arbitrators;
- (b) "Hold Harmless" or indemnification agreement from the Parties flowing to the Panel and whether the ARIAS • U.S. form agreement should be used;
- (c) Confidentiality agreements to ensure the confidentiality provided in Article 7. If, however, the parties have not agreed to confidentiality as provided in Article 7 or otherwise, the Panel shall have the power to order that the arbitration proceedings be kept confidential;
- (d) Procedures for requests, if any, for interim Decisions as set forth in Article 8;
- (e) The extent to which discovery, including depositions, interrogatories, document requests and third party discovery, will be allowed;
- (f) The extent to which expert evidence will be allowed;
- (g) The arbitration schedule, including:
  - (i) all discovery-related deadlines, including for the production of documents and any privilege logs;
  - (ii) any periodic status reports;

- (iii) deadline for resolution of any discovery issues and any briefing schedule related thereto;
- (iv) deadlines related to expert discovery, if allowed;
- (v) deadline for dispositive motions and any briefing schedule related thereto;
- (vi) deadline for disclosure of hearing witnesses (both fact and expert) and exhibit designations;
- (vii) pre-hearing briefing schedule, including the number of briefs, whether briefs are to be sequential or simultaneous and any page limitation;
- (viii) hearing length, dates and location;
- (ix) timeframes for any meet and confer requirements relating to this schedule;
- (x) as described in ¶ 12.2, unless there is an explicit reason for not including it, the agenda for the organizational meeting should include the topic of mediation; and
- (xi) whether the Parties prefer a written rationale for Panel Decisions.

## **11. DISCOVERY**

11.1 Prior to the organizational meeting, the Parties shall confer and seek to agree on an exchange of all documents relevant to the dispute and on the confidentiality to be afforded to the documents.

11.2 The Panel shall have the power to order the disclosure of such documents or class of documents relevant to the dispute as it considers necessary for the proper resolution of the dispute.

11.3 The Panel shall have the power to authorize the Parties to conduct depositions or other discovery as is reasonably necessary in light of the issues in dispute as well as the nature and size of the dispute.

11.4 The Panel will require each Party to provide a list of witnesses whom it intends to call at the hearing.

11.5 The Panel has the discretion to limit discovery on various grounds, including burdensomeness, expense, duplication, privilege, work product or lack of relevance. Nothing in these Rules may be construed as a waiver by any Party of its right to assert that information is protected from discovery by the attorney-client privilege, work product doctrine, or other applicable privilege or protection, or on grounds of burdensomeness, expense, duplication, or lack of relevance. Additionally, no Party waives any contention available to it under applicable law respecting the authority of



the Panel to order the production of attorney-client privileged or work product information.

## **12. MEDIATION OR SETTLEMENT**

12.1 The Parties may agree, at any stage of the arbitration proceedings, to submit to mediation.

12.2 The Panel should include the topic of mediation as an agenda item for the organizational meeting, unless there is an explicit reason for not including it (*e.g.*, either party objects in advance to its inclusion).

The Panel should also consider raising the possibility of mediation at key junctures in the arbitration, including but not limited to:

- (a) At the close of discovery;
- (b) When pre-hearing briefs are exchanged;
- (c) Upon motion for summary disposition, but before commencement of the hearing.

To the extent the Parties agree to mediate, the Panel cannot order the parties to disclose any mediation-related discussions, material or submissions prepared by the parties.

## **13. SUMMARY DISPOSITION AND EX PARTE HEARING**

13.1 The Panel may hear and decide a motion for summary disposition of a particular claim or issue, either by agreement of all Parties or at the request of one Party, provided the other interested Party has reasonable notice and opportunity to respond to such request.

Note to ¶ 13.1: By authorizing the Panel to grant summary disposition, the Parties using these Rules do not intend to waive their rights under the Federal Arbitration Act or any other applicable law to contest the appropriateness of such an action, where such rights have been reserved.

13.2 If a Party has failed to participate in the pre-hearing proceedings and the Panel reasonably believes that the Party will not participate in the hearing, the Panel may proceed with the hearing on an ex parte basis or may dispose of some or all issues pursuant to ¶ 13.1. The non-participating Party shall be provided with notice thirty (30) days prior to the hearing or disposition pursuant to ¶ 13.1.

## **14. ARBITRATION HEARING**

14.1 Unless the Parties otherwise agree, there shall be a stenographic record kept of the proceedings.

14.2 The Panel may decide whether and to what extent there should be oral or written evidence or submissions.

14.3 The Panel shall not be obligated to follow the strict rules of law or evidence.

Alternative Version That May Be Chosen By Contract:

The Panel Shall interpret this contract as an honorable engagement, and shall not be obligated to follow the strict rules of law or evidence. In making their Decision, the Panel shall apply the custom and practice of the insurance and reinsurance industry, with a view to effecting the general purpose of the this contract.

14.4 Subject to the control of the Panel, the Parties may question any witnesses who appear at the hearing. Panel members may also question such witnesses.

14.5 A Party may request that the other Party produce at the hearing all witnesses in their employ or under their control without need of a subpoena. The Panel may issue subpoenas for the attendance of witnesses or the production of documents. A Party or subpoenaed person may file an objection with the Panel who shall promptly rule on the objection, weighing both the burden on the producing Party and the need of the proponent for the witness or other evidence.

14.6 The Panel shall require that witnesses testify under oath, unless waived by all Parties. The Panel shall have the discretion to permit testimony by telephone, affidavit, or recorded by transcript, videotape, or other means, and may rely upon such evidence as it deems appropriate. Where there has been no opportunity for cross examination by the other Party, such evidence may be permitted by the Panel only for good cause shown. The Panel may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

14.7 In the event that a representative of a Party is also a testifying witness, the Panel shall have discretion to determine whether such duly authorized representative may attend hearings or review hearing transcripts prior to giving testimony.

14.8 When the Panel decides that all relevant and material evidence and arguments have been presented, the Panel shall declare the evidentiary portion of the hearing closed.

14.9 At the conclusion of the evidentiary portion of the hearing, the Parties shall submit a proposed form of order to the Panel and to the other Party that precisely identifies the nature of the relief that the Parties seek from the Panel.

14.10 The Panel shall close the hearing following closing arguments and/or post hearing briefs, if any.

## **15. FINAL AWARD**

15.1 Absent good cause for an extension as determined by the Panel, the Panel shall render the final award within thirty (30) days after the date of the closing of the hearing or, if an arbitration hearing has been waived or otherwise dispensed with, within thirty (30) days after the date that the Panel received all materials submitted by the Parties for disposition.

15.2 The final award of a majority of the Panel shall be final and binding on the Parties.

15.3 The Panel is authorized to award any remedy permitted by the Arbitration Agreement or subsequent written agreement of the Parties. In the absence of explicit written agreement to the contrary, it is within the Panel's power to award any remedy allowed by applicable law, including, but not limited to: monetary damages; equitable relief; pre- or post- award interest; costs of arbitration; attorney fees; and other final or interim relief.

15.4 The final award shall consist of a written statement signed by a majority of the Panel setting forth the disposition of the claims and the relief, if any, awarded. If both Parties request a written rationale for the Panel's final award, the Panel shall provide one. If one Party requests a written rationale but the other party objects, the decision whether to issue one is at the Panel's discretion.

15.5 The prohibition on ex parte communications shall remain in effect until the Panel issues its final award. If the Panel issues a written rationale separately from its final award, the prohibition on ex parte communications shall remain in effect until the Panel has issued both. Neither the Parties nor their representatives, including counsel, should request that an arbitrator reveal the contents of the deliberations of the arbitrators.