



## **ANNEX D**

### **Referee arbitral proceedings ("*Arbitraal Kort Geding*")**

#### *Article 1*

1. Any party wishing to have recourse to a Referee Arbitral Tribunal pursuant to article 26b of the P.R.I.M.E. Finance Arbitration Rules (the "Rules") may apply for the appointment of a Referee Arbitral Tribunal until arbitration proceedings have been commenced pursuant to article 3 paragraph 2 of the Rules and the arbitral tribunal has been constituted pursuant to section II of the Rules (the "Arbitral Tribunal").
2. Articles 1, 2 and 5 of the Rules apply to the referee arbitral proceedings referred to in article 26b of the Rules and in this Annex D. Further provisions of the Rules apply only in so far as reference is made to those provisions in this Annex D.

### **Notice of referee arbitration**

#### *Article 2*

1. The claimant initiating referee arbitral proceedings shall file with each respondent and with P.R.I.M.E. Finance a notice of referee arbitration. The notice shall be accompanied by the exhibits on which the claimant bases its claim. Proof of the notification to each respondent shall at the latest be submitted by the claimant at the hearing referred to in article 5 paragraph 1.
2. The referee arbitral proceedings shall be deemed to commence on the date on which the notice of referee arbitration is received by P.R.I.M.E. Finance. P.R.I.M.E. Finance shall send a written notice of receipt of the notice of referee arbitration to the parties, mentioning the date of receipt of such notice of referee arbitration.
3. The notice of referee arbitration shall contain the information mentioned in article 3 paragraph 3 under (a), (b), (c), (d), (e) and (f) of the Rules, on the condition that the brief description of the claim is accompanied by a description



of the reasons for the claim and for the purported urgency.

4. Upon filing the notice of referee arbitration, the claimant shall pay a registration fee as prescribed in Annex E ("Schedule of institutional costs") in force on the date when the notice of referee arbitration is filed. If the registration fee is not paid upon filing the notice of referee arbitration, P.R.I.M.E. Finance shall not proceed with the referee arbitral proceedings and the referee arbitral proceedings shall be treated as not having been commenced without prejudice to any right of the claimant to submit the same claim(s) at a later date in another notice of referee arbitration or in a notice of arbitration as referred to in article 3 of the Rules.
5. As soon as possible after the filing of the notice of referee arbitration, P.R.I.M.E. Finance shall send a notice to the claimant requesting the payment for administrative costs in accordance with Annex E ("Schedule of institutional costs") in force on the date when the notice of referee arbitration is filed as required by P.R.I.M.E. Finance. Within 7 days of the receipt of such notice, the claimant shall remit to P.R.I.M.E. Finance the payment of administrative costs. In the event that the claimant fails to make the payment as requested, P.R.I.M.E. Finance may fix a time limit within which the claimant must comply, failing which the file will be closed without prejudice to any right of the claimant to submit the same claim(s) at a later date in another notice of referee arbitration or in a notice of arbitration as referred to in article 3 of the Rules.

### **Response to the notice of referee arbitration**

#### *Article 3*

The response to the notice of referee arbitration needs to be filed with P.R.I.M.E. Finance and the claimant within 10 days after the date of the written notice of receipt of the notice of referee arbitration, as referred to in article 2 paragraph 2, and shall include:

- (a) The name and contact details of each respondent; and
- (b) A response to the information set forth in the notice of referee arbitration.



## **Appointment of Referee Arbitral Tribunal**

### *Article 4*

1. Within 5 days of the receipt of the notice of referee arbitration, P.R.I.M.E. Finance shall - in deviation of any appointment process nominated by the parties for proceedings on the merits - appoint the Referee Arbitral Tribunal, consisting of a sole arbitrator, which shall decide in referee arbitral proceedings.
2. The appointment of the Referee Arbitral Tribunal shall be confirmed by P.R.I.M.E. Finance by a letter of appointment addressed to the sole arbitrator. A copy of this letter shall be sent to the parties simultaneously.
3. The following articles of section II of the Rules apply to the referee arbitral proceedings:
  - (a) Articles 11, 12, 13 paragraph 2 and 3 and article 16.
  - (b) Article 13 paragraph 1 shall apply accordingly, except that the notice by which a party challenges an arbitrator shall be sent within 5, instead of 15, days after it has been notified of the appointment of the challenged arbitrator, or within 5 days of the circumstances mentioned in articles 11 and 12 becoming known to that party.
  - (c) Article 13 paragraph 4 shall apply accordingly, except that the party making the challenge may elect to pursue its challenge if, within 5, instead of 15, days from the date of the notice of challenge, all parties do not agree to the challenge or the challenged arbitrator does not withdraw. In that case within 10, instead of 30, days from the date of the notice of the challenge, the challenging party shall seek a decision on the challenge by P.R.I.M.E. Finance.
  - (d) Article 14 shall apply accordingly, except that the substitute arbitrator shall be appointed pursuant to the procedure of article 4 paragraph 1.

## **Hearing**

### *Article 5*

1. Immediately after its constitution, the Referee Arbitral Tribunal shall determine the date, time and place of the hearing for the claim in referee arbitral



proceedings and shall promptly notify the parties in writing thereof, taking into account the date for filing the response to the notice of referee arbitration.

2. Written memorials are to be filed only if the Referee Arbitral Tribunal so determines, without prejudice to the provisions of articles 2 and 3.

### **Plea of lack of jurisdiction**

#### *Article 6*

1. If the respondent wishes to raise the plea of lack of jurisdiction of the Referee Arbitral Tribunal, it shall raise this plea in the response to the notice of referee arbitration referred to in article 3. Article 23 paragraph 1 of the Rules applies accordingly.
2. The Referee Arbitral Tribunal may continue the referee arbitral proceedings and make an award, notwithstanding any pending challenge to its jurisdiction before a court.

### **Counterclaim**

#### *Article 7*

1. The respondent is entitled to submit a counterclaim in referee arbitral proceedings. The counterclaim shall be made by means of a written memorial which shall be submitted to the Referee Arbitral Tribunal at the latest in the response to the notice of referee arbitration referred to in article 3.
2. If a counterclaim is filed, even if it is a provisional counterclaim, the respondent shall pay a registration fee as prescribed in Annex E ("Schedule of institutional costs") in force on the date when the counterclaim is filed upon filing the counterclaim. If the registration fee is not paid upon filing the counterclaim, the arbitral tribunal will not take account of the counterclaim without prejudice to the right of the respondent to submit the same counterclaim at a later date, complying with the time deadlines set out in this Annex D.
3. If the respondent files a counterclaim, even if it is a provisional counterclaim, administrative costs shall be paid by the respondent in accordance with Annex E



("Schedule of institutional costs") in force on the date when the counterclaim is filed. As soon as possible after the filing of the counterclaim, P.R.I.M.E. Finance shall send a notice to the respondent requesting the payment of administrative costs. Within 7 days of the receipt of such notice, the respondent shall remit to P.R.I.M.E. Finance the payment of administrative costs required by P.R.I.M.E. Finance. In the event that the respondent fails to make the payment as requested, P.R.I.M.E. Finance may fix a time limit within which the respondent must comply, failing which the counterclaim will be considered abandoned without prejudice to the right of the respondent to submit the same counterclaim at a later date, complying with the time deadlines set out in this Annex D.

4. If the claimant wishes to raise the plea of lack of jurisdiction of the Referee Arbitral Tribunal in respect of the counterclaim in referee arbitral proceedings, it shall raise this plea within at least 3 working days prior to the hearing referred to in Article 5 paragraph 1.

### **Procedure for referee arbitral proceedings**

#### *Article 8*

The provisions of article 17 paragraphs 1, 4 and 5, article 18 paragraph 2, articles 19, 22, 27, 28, 29, article 30 paragraph 2 and 3 and article 32 of the Rules apply accordingly. Article 30 paragraph 1 of the Rules applies with regard to the submission of the response to the notice of referee arbitral proceedings and to the submission of written memorials as referred to in article 5 paragraph 2, if any.

### **Referral to arbitration**

#### *Article 9*

1. If, after a notice of referee arbitration has been made relying on article 1, the Referee Arbitral Tribunal determines that the case is not sufficiently urgent, it may reject the claim either wholly or partially and refer the parties to the arbitral proceedings as referred to in sections I - IV of the Rules.
2. If, after a notice of referee arbitration has been made relying on article 1, the Referee Arbitral Tribunal determines that the case is too complicated to be decided by referee arbitral proceedings, it may reject the claim either wholly or



partially and refer the parties to the arbitral proceedings as referred to in sections I - IV of the Rules.

### **Referee arbitral award**

#### *Article 10*

1. The Referee Arbitral Tribunal shall procure that the award is made as soon as possible after the hearing. The provisions of articles 34, 35 and 36 of the Rules apply accordingly. Articles 37, 38 and 39 of the Rules also apply to the referee arbitral proceedings, though the terms mentioned in these articles as 30 days and 45 days are instead 7 days and 10 days respectively.
2. The referee arbitral award, although expressly recognized as an arbitral award in the meaning of article 1051(3) of the Dutch Code of Civil Procedure, shall in no way prejudice a final decision of the Arbitral Tribunal on the merits of the case.

### **Costs and fees**

#### *Article 11*

The provisions of articles 40, 41, 42 and 43 of the Rules apply to referee arbitral proceedings, save that

- a. where these articles refer to an appointing authority, this should be replaced by P.R.I.M.E. Finance;
- b. the terms mentioned in these articles are all shortened to 7 days, unless P.R.I.M.E. Finance decides to extend this time-limit upon a reasoned request of any party; and
- c. the deposit for costs referred to in article 43 of the Rules shall be deposited prior to the hearing referred to in article 5.