

## **Rule 4: Emergency Relief**

These Emergency Relief provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to these Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of the arbitration agreement. Moreover, it is not necessary for the parties to have complied with any requirement to engage in mandatory mediation to seek Emergency Relief.

### **Rule 4.01 – Pre-Tribunal Emergency Relief**

(a) A party in need of emergency relief prior to the appointment of a Tribunal may seek such relief after notifying FedArb and all other parties in writing of the relief sought and the basis for an Award of such relief. This application shall contain:

- i) the name in full, description, address and other contact details of each of the parties;
- ii) the name in full, address and other contact details of any person(s) representing the applicant;
- iii) a statement certifying that all other parties have been notified. If all other parties have not been notified, the Application shall include an explanation of the efforts made to effect such notification
- iv) a description of the circumstances giving rise to the application and of the underlying dispute referred or to be referred to arbitration;
- v) a statement of the emergency measures sought;
- vi) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
- vii) any relevant agreements and, in particular, the arbitration agreement;
- viii) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
- ix) proof of payment of the amount set forth in Rule 4.03;

The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

(b) FedArb shall terminate the emergency relief proceedings if a Notice for Arbitration and related documents has not been received by FedArb from the applicant within 5 days of FedArb's receipt of the application for Emergency Relief, unless FedArb determines that a longer period of time is necessary.

(c) Upon receipt of the Application, FedArb shall promptly appoint an Emergency Arbitrator to rule on the emergency request. When practicable, appointment of an Emergency Arbitrator will be initiated by FedArb within 24 hours of receipt of the request with preference to FedArb's panel of former Article III judges who have agreed to act as Emergency Arbitrators. Within 36 hours the Emergency Arbitrator shall disclose any circumstance likely, on the basis disclosed in the application, to affect the Arbitrator's ability to be impartial or independent. Any challenge to the

appointment of the Emergency Arbitrator shall be made within 24 hours of the disclosures by the Emergency Arbitrator. FedArb will promptly review and decide any such challenge.

(d) Within two business days after appointment, or as soon as practicable thereafter, the Emergency Arbitrator shall establish a schedule for the consideration of the request for emergency relief. The Emergency Arbitrator will have the authority to rule on their own jurisdiction and shall resolve any disputes with respect to the request for emergency relief. The Emergency Arbitrator may conduct the emergency proceedings in any manner determined by the Emergency Arbitrator to be appropriate in the circumstances, taking account of the nature of such emergency proceedings, the need to afford to each party, if possible, an opportunity to be consulted on the claim for emergency relief (whether or not it avails itself of such opportunity), the claim and reasons for emergency relief and the parties' further submissions (if any). The Emergency Arbitrator is not required to hold any hearing with the parties (whether in person, by telephone or otherwise) and may decide the claim for emergency relief on available documentation.

(e) The Emergency Arbitrator shall determine whether the party seeking emergency relief has shown that immediate and irreparable loss or damage will result in the absence of emergency relief and whether the requesting party is entitled to such relief under applicable law. The Emergency Arbitrator shall enter an order or award granting or denying relief, as the case may be, and stating the reasons therefor.

(f) Any request to modify the Emergency Arbitrator's order or award must be based on changed circumstances and may be made to the Emergency Arbitrator until such time as the Tribunal is appointed in accordance with the parties' Agreement and FedArb's usual procedures. Thereafter, any request related to the relief granted or denied by the Emergency Arbitrator shall be determined by the Tribunal appointed in accordance with the parties' Agreement and applicable FedArb procedures.

(g) The Emergency Arbitrator may grant whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. At the Emergency Arbitrator's discretion, any interim award or order for emergency relief may be conditioned on the provision of adequate security by the party seeking such relief.

(h) The Emergency Arbitrator may modify or vacate the interim award or order. Any interim award or order shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.

(i) The emergency arbitrator shall have no further power to act after the arbitral Tribunal is constituted. Once the Tribunal has been constituted it may modify or vacate the interim award or order of emergency relief issued by the Emergency Arbitrator. The Emergency Arbitrator may not serve as a member of the Tribunal unless all the parties agree otherwise.

#### **Rule 4.02 – Post-Tribunal Emergency Relief**

The Emergency Arbitrator shall have no further power to act after the Tribunal is constituted. Once the Tribunal has been constituted, it may reconsider and adopt such interim measures as it deems necessary, including measures for the preservation of assets, the conservation of goods, or the sale of perishable goods. The Tribunal may require appropriate security as a condition of ordering such measures.



### **Rule 4.03 – Costs of Emergency Arbitrator**

To invoke this process the applicant must deposit an amount determined by FedArb; for 2020, the rate is \$50,000, consisting of US \$15,000 for FedArb’s administrative expenses and US \$35,000 for the Emergency Arbitrator’s fees and expenses. It is preferred that the payment for this amount be made by wire transfer contact FedArb at 650.328.9500 for information.

FedArb may, at any time during the Emergency Arbitrator proceedings, decide to increase the Emergency Arbitrator’s fees or FedArb’s administrative expenses taking into account, *inter alia*, the nature of the case and the amount of work performed by the Emergency Arbitrator and FedArb. If the party which submitted the application fails to pay the increased costs within the time limit fixed by FedArb, the application shall be considered as withdrawn. In the event that the emergency relief proceedings do not take place or are otherwise terminated prior to the making of an order or award, FedArb shall determine the amount to be reimbursed to the applicant, if any. An amount of US \$15,000 for FedArb’s administrative expenses is non-refundable in all cases.