

# PROCEDURES FOR THE RESOLUTION OF U.S. INSURANCE AND REINSURANCE DISPUTES

**Regular and Neutral Panel Versions**



**SEPTEMBER 2009**

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**DISCLAIMER**

The Insurance and Reinsurance Dispute Resolution Task Force (Task Force) recommends that interested parties consult their own legal counsel concerning the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes (Procedures), their use or interpretation.

These Procedures do not necessarily reflect the views of individual members of the Task Force or the firms or entities for which they work or which they represent.

## **FORWARD**

The insurance and reinsurance industries have long recognized the value of alternative dispute resolution mechanisms, demonstrated by the fact that arbitration clauses can be found in reinsurance contracts dating as far back as the early 1800's.

The purpose of these Procedures is to formalize what had been an ad hoc, albeit highly developed, process used by the industry for decades. While various alternative dispute resolution service providers have developed generic arbitration procedures, and the members of the Task Force appreciate those efforts, the Task Force believes that specific industry procedures are beneficial, and needed, in order to combine the experience reflected in the generic procedures with the custom and practice developed in the insurance and reinsurance industries.

It is the hope of the Task Force members that these Procedures will provide a helpful framework for the conduct of future industry arbitrations and a sense of greater certainty at the time of entering into contracts about how disputes will be handled in the unfortunate event that they arise.

The Task Force may periodically update these Procedures to take into consideration evolving case law and industry custom and practice.

## INTRODUCTION

The Task Force was established in the fall of 1997. Its mission was to:

Improve the reinsurance dispute resolution process by identifying common problems and recommending industry-wide, flexible, business-like solutions.

The Task Force undertook a variety of tasks, one of which was to draft a set of procedures that could be utilized by the insurance and reinsurance industries for the resolution of their contractual disputes. This set of procedures is referred to as the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes (Procedures).

In undertaking this effort, the Task Force attempted to balance several goals. One was to set forth, in writing, the actual practice that existed in insurance and reinsurance arbitrations. The second was to enhance and clarify minor procedural issues that sometimes resulted in unnecessary skirmishes between parties. And the third was to tackle some of the major issues that caused a lack of confidence and inefficiencies in the current system, and recommend alternative procedures that might result in greater fairness and a higher level of certainty to the parties.

It is important to note that the Task Force consists of representatives from insurance companies, reinsurance companies, trade associations, and arbitration practitioners. The Procedures are the result of many hours of (sometimes heated) discussion among the Task Force members. All points of view were represented and considered to arrive at a consensus on best practices.

The Task Force published the first version of its Procedures in September of 1999. All Task Force members believed that the Procedures were an important step forward in addressing the concerns that had been expressed. Leading industry trade associations encouraged their members to consider incorporating the Procedures into their reinsurance agreements and many did so.

Even though the Task Force stopped meeting following the publication of the original Procedures, there was an acknowledgement that the group should reconvene at some point to review how well the Procedures were being accepted and whether any modifications should be made. In 2003, with the benefit of a number of arbitrations having been conducted using the Procedures and the continued evolution of the arbitration process, the Task Force began meeting again. While there was some turnover in the membership, the same industry segments were represented and many of the members were the same.

The overriding issue discussed by the Task Force in 2003 was the desirability of neutral panels, i.e., panels where none of the arbitrators knows which party appointed them. Many practicing arbitrators had commented that under the traditional party-appointed approach, party arbitrators ran the risk of becoming advocates rather than adjudicators, which made the process more confrontational. Concluding that this was a legitimate concern, the Task Force reworked the panel selection process from the 1999 Procedures to allow for the selection of neutral panels. At

the same time, the Task Force recognized that many parties would want to continue with party-appointed arbitrators, so the 1999 Procedures were retained and updated. The result is the creation of two updated sets of Procedures for 2004: one for Neutral Panels and one with Party-Appointed arbitrators.

Please note that all versions of the Procedures (1999 Procedures, 2004 Procedures, and 2004 Neutral Panel Procedures) will be maintained on the Task Force website – [www.ArbitrationTaskForce.org](http://www.ArbitrationTaskForce.org). All versions will be maintained because arbitration clauses may incorporate any one of the versions and visitors can be assured that the site will contain whichever version may be referenced.

At its meeting in 2004, the Task Force agreed that it would survey its members in 2006 to see whether further updates and/or changes to the Procedures were necessary. As the number and complexity of arbitrations increased, new issues appeared, some of a practical and relatively minor nature, and others raising fundamental issues about how insurance and reinsurance arbitrations should be conducted. In 2007, 2008 and much of 2009, the Task Force reconvened with some of the original members and the same industry segments, albeit reflecting industry consolidation and new participants. The Task Force discussed many possible revisions to the Procedures in response to issues raised by the industry; for example, the use of experts by panels and discovery and conduct of the Alternative Streamlined Procedures. While certain changes were made as reflected in the new version of the Procedures, the Task Force decided that certain other issues raised were either outside the scope of the Procedures or consensus in the industry had yet to be reached.

The Task Force welcomes comments and suggestions from interested parties. Please direct your correspondence to [information@arbitrationtaskforce.org](mailto:information@arbitrationtaskforce.org). We will acknowledge receipt of all correspondence and will retain all suggestions for future consideration.

The Task Force, as a whole, believes that the Procedures are an important step forward in preventing unnecessary friction in the arbitration process and providing parties with more certainty regarding what to expect from the process. It is hoped that contracting parties will consider incorporating these Procedures in their future contracts or, through a separate agreement, applying them to their existing relationships. Parties should feel free to incorporate them, as written, or with modifications appropriate to their unique situations.

**CONSIDERATIONS FOR USE WITH THE  
PROCEDURES FOR THE RESOLUTION OF  
U.S. INSURANCE AND REINSURANCE DISPUTES**

When incorporating the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes (Procedures) into a contract, there are three (3) items that should be considered by the contracting parties and a number of optional items that the parties may choose to consider.

It is the intent of these Considerations to assist the contracting parties in the proper incorporation of the Procedures to ensure that inadvertent omissions do not result in unintended consequences in the event of a dispute.

**Required Considerations**

1. The parties should specifically refer to the Procedures in their contract or in expressing their intent to utilize them in the event of a dispute. Samples of arbitration clauses (Regular Panel Version and Neutral Panel Version) incorporating the Procedures are contained in Appendices 1 and 2.
2. The parties should indicate in the arbitration clause which set of arbitrator and umpire qualifications they intend to incorporate from the Procedures. ¶6.2 of the Procedures [¶6.3 in the Neutral Panel Version] requires designation of individuals who are current or former officers, or executives of an insurer or reinsurer, while Alternative ¶6.2 of the Procedures [Alternative ¶6.3 in the Neutral Panel Version] broadens those qualifications to some extent.
3. The parties should indicate what list of default umpires will be used in the event that they are unable to agree on an umpire, or, if the Neutral Panel Version is being used, which list of candidates will be used for the selection of the entire Panel.<sup>1</sup> ¶6.7 of the Procedures [¶6.4 in the Neutral Panel Version] contemplates that the parties will designate this list in their contract, and a space to fill in this information is included in the sample arbitration clause referred to above.

If the parties are not using, or wish to edit, the sample arbitration clause, alternative language that could be used is the following:

The parties hereby designate the umpire list maintained by [insert name of entity maintaining list] as the list to be used in the event that ¶6.7(a) of the Procedures is invoked.

Sample language that could be used for the Neutral Panel Version is the following:

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<sup>1</sup> Selection of a particular entity may result in that entity administering the process.

The parties hereby designate the arbitrator list maintained by [insert name of entity maintaining list] as the list to be used in 6.4(a).

### **Optional Considerations**

In addition to the items included in the sample arbitration clause, the parties may consider whether or not to include the following items in their arbitration clause. Please note that this list is suggestive, not exhaustive.

1. Consolidation. The parties may consider whether to include a consolidation provision and the content of any such provision.
2. Choice of Law.
3. Language requiring use of the Alternative Streamlined Procedures (Article 16) for disputes not exceeding a stipulated amount or under other agreed criteria.

# **PROCEDURES FOR THE RESOLUTION OF U.S. INSURANCE AND REINSURANCE DISPUTES**

**SEPTEMBER 2009**

**PROCEDURES FOR THE RESOLUTION  
OF U.S. INSURANCE AND REINSURANCE DISPUTES  
September 2009**

**1. INTRODUCTION**

- 1.1 These procedures shall be known as the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes ("Procedures"). When an agreement, submission or reference provides for or otherwise refers to arbitration under the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes, the Parties agree that the arbitration shall be conducted in accordance with these Procedures.
- 1.2 The Parties may agree on any procedures not specified herein or may alter these Procedures by written agreement. Any such Party-agreed procedures shall be enforceable as if contained in these Procedures. These Procedures 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 Procedures, the Procedures shall prevail.
- 1.4 Any dispute concerning the interpretation of these Procedures shall be determined by the Panel.
- 1.5 The Panel shall have all powers and authority not inconsistent with these Procedures and the agreement of the Parties.

**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 voluntarily, by compulsion or contractually joined in the proceedings.
- 2.8 *Petitioner* – the Party who commences arbitration.
- 2.9 *Procedures* – 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**

#### Notices

- 3.1 Notices under these Procedures are deemed to be given if delivered, in accordance with ¶3.2, to a Party's principal place of business or other address designated by the Party or if delivered to another entity designated by the Party in the reinsurance contract or other written agreement.
- 3.2 Notices required to be given under these Procedures are deemed to be given:
- (a) if sent by fax, 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 (registered or certified mail or courier). After the arbitration has been commenced, notices and correspondence should, where possible, be given by instantaneous (fax or e-mail) or other expedited manner of communication.

#### Time Periods

- 3.3 When calculating any time period under these Procedures, 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 country 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, fax and e-mail information); (2) Respondent, as identified in the reinsurance contract, against whom arbitration is sought; (3) contracts at issue; and (4) nature of the claims and/or issues.
- 4.2 The arbitration is commenced under these Procedures 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 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, fax and e-mail information); (2) designation of the Respondent's Party-appointed arbitrator, in accordance with ¶6.3; and (3) identification of any claims of the Respondent.

#### **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.

**Alternative 6.2:** The arbitrators and umpire shall be persons who are current or former officers or executives of an insurer or reinsurer or other professionals with no less than ten years of experience in or serving the insurance or reinsurance industry.<sup>1</sup>

- 6.3 Within thirty (30) days following the commencement of arbitration

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<sup>1</sup> In the event that the Parties fail to designate in the Arbitration Agreement, whether ¶6.2 or Alternative ¶6.2 applies, the Parties shall, in the absence of agreement, default to the use of ¶6.2.

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 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 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 7 days thereafter, eight names of individuals chosen from the list maintained by \_\_\_\_\_ for the purpose of umpire selection.<sup>2</sup>
- (b) Within 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 a candidate questionnaire consistent with Appendix III of these Procedures. Candidates will be requested to return such questionnaire to each Party arbitrator so that it is received within 20 days from the date the questionnaire is sent to the candidates. If any individual fails to return a questionnaire within the required time period or refuses to serve, the process set forth in this article shall continue with the remaining names. In the event that one Party's candidate pool of 8 individuals is reduced due to the failure to return questionnaires or refusals to serve, the other Party shall, within 7 days, reduce its candidate pool to the same number of individuals. If, however, one Party's candidate pool falls below 3 individuals, that Party shall, within the same 7 days, name additional individuals to replenish its candidate pool to 3 individuals from the list designated in subparagraph (a). Each additional candidate shall be asked by the Parties to complete an umpire questionnaire and return such questionnaire to each Party within 20 days from the date the questionnaire is sent to the candidates. During the same 7-day period that the candidate pool is being replenished to 3 individuals, the other Party shall reduce its

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<sup>2</sup> The Parties should insert an entity (or multiple entities) that maintains a list of arbitrators and/or umpires such as the American Arbitration Association, ARIAS (U.S.), Reinsurance Association of America or other organization maintaining a list acceptable to the Parties.

candidate pool to 3 individuals. Both Parties shall then proceed with 3 individuals each.

- (c) Within 7 days after the process in subparagraph (b) is completed, each Party shall finalize the other Party's list by selecting three names therefrom (no selection is necessary if each Party's candidate pool is already at 3) and notifying the other Party of its selections. (Notification shall be simultaneous and such lists of 3 candidates shall be the "Final Lists.") The umpire shall then be determined as follows:
- (i) If there is one common individual on the Final Lists, that individual shall act as umpire.
  - (ii) If there is more than one common individual on the Final Lists, the Parties shall draw lots from among those common individuals, and the individual chosen by lot shall act as umpire.
  - (iii) If there is no common individual on the Final Lists, within 7 days thereafter, each Party shall rank each of the 6 selected umpire names in order of preference, with the number "1" being the most preferred and notify the other Party of such ranking. (Notification shall be simultaneous.) The individual with the lowest total numerical ranking shall act as umpire. If the ranking results in a tie, the Parties shall draw lots from among the individuals tied for the lowest total numerical rank, and the individual chosen by lot shall act as umpire.
  - (iv) If either Party fails to meet the time periods required in this ¶6.7, the non-defaulting Party will appoint the umpire from its original candidate pool identified in subparagraph (a).

*Note to 6.7* - Unilateral contact between a Party-appointed arbitrator and an individual considered for appointment as a default umpire under this paragraph should not be permitted. It is intended that the individuals named not be advised of which Party initiated their selection.

- 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 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 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 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 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.
- 7.2 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) to support reinsurance or retrocessional recoveries; or (d) 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, including pre-award security.
- 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 sanctions shall include but are not limited to: striking a claim or defense; barring 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 location shall be in a convenient location as decided by the Panel.

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

### Organizational Meeting

- 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 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, 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 identify 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.
- 10.4 The Panel may require that each Party submit concise written statements of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law 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 shall address and decide 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;
- (c) Confidentiality agreements to ensure the confidentiality provided in Article 7;
- (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; and
  - (ix) timeframes for any meet and confer requirements relating to this schedule.
- (h) 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 non-privileged 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, subject to applicable privileges, 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.
- 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 may limit discovery on appropriate grounds, including burdensomeness, duplication, privilege or relevance.

### **12. MEDIATION OR SETTLEMENT**

- 12.1 The Parties may agree, at any stage of the arbitration proceedings, to submit to mediation.
- 12.2 If the Panel determines that settlement may be appropriate under the circumstances, the Panel may request that the Parties consider settlement, through mediation or otherwise, provided such efforts do not delay the arbitration proceedings.

### **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 Procedures do not intend to waive their rights under the Federal Arbitration Act 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 should 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 interpret the underlying agreement, which is the subject of the arbitration, 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 underlying agreement which is the subject of the arbitration.
- 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, the Panel is also authorized to award any remedy or sanctions 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 either Party objects to a written rationale, the Panel shall not issue one.
- 15.5 The prohibition on ex parte communications shall remain in effect until the earlier of the Parties waiving their right to challenge the final award, the expiration of the time period during which a challenge could be filed without any such challenge being filed, or the conclusion of any challenge to the final award.

## 16. ALTERNATIVE STREAMLINED PROCEDURES

16.1 The Parties may stipulate to the use of the alternative streamlined procedures (“Streamlined Procedures”) in this Article in their arbitration clause or they may reach an agreement to use these Streamlined Procedures at the time a dispute arises.

*Note to 16.1* - The purpose of these Streamlined Procedures is to provide a fair, fast and efficient alternative process for resolving disputes in which the Parties agree that streamlined procedures are appropriate. They are designed to be the basic process which the Parties can add to, modify or adapt as they deem appropriate. The Parties are encouraged to discuss these added features and reach agreement prior to invoking the use of this Article.

16.2 If the Parties have not agreed to the use of these Streamlined Procedures in their reinsurance contract:

- (a) the Petitioner may make a request for arbitration utilizing these Streamlined Procedures in its Notice of Arbitration. The Respondent must agree, in writing, no later than 7 days from the date of receiving such request. Failure of the Respondent to agree or reply within 7 days shall be deemed to be a rejection of the request, and the arbitration will proceed in accordance with the provisions of Articles 1 through 15 of these Procedures, or
- (b) the Respondent may request the use of these Streamlined Procedures, in writing, no later than 7 days after receipt of the Notice of Arbitration. The Petitioner must agree, in writing, no later than 7 days from the date that the Petitioner receives such request. Failure of the Petitioner to respond within 7 days shall be deemed a rejection of the request, and the arbitration will proceed in accordance with the provisions of Articles 1 through 15 of these Procedures.

16.3 The Panel shall consist of one Neutral arbitrator. The Parties shall endeavor in good faith to select the Neutral arbitrator by agreement within 15 days of the receipt of the Notice of Arbitration (if the parties agreed to use these Streamlined Procedures in their reinsurance contract) or the agreement in writing to use these Streamlined Procedures pursuant to ¶16.2. The Parties shall select the Neutral arbitrator as follows if they cannot agree on an appointment:

- (a) each Party shall exchange, within 7 days thereafter, eight names of individuals chosen from the list maintained by \_\_\_\_\_<sup>3</sup>;
- (b) within 7 days of the exchange of names as set forth in ¶16.3(a), the Parties shall send a joint request to the candidates to complete a candidate questionnaire consistent with Appendix III of these Procedures, which shall not advise the candidate of which Party submitted his or her name, and shall include the following additional question:

This arbitration is to be conducted pursuant to the attached Streamlined Procedures. Are you available to hold an organizational meeting by telephone conference within 21 days and render a Decision, at the latest, within 180 days of your selection?

Candidates will be requested to return such questionnaire to the Parties so that it is received within 10 days from the date the questionnaire is sent. If any individual fails to return a questionnaire within the required time period or refuses to serve, the process set forth in this article shall continue with the remaining names. In the event that one Party's candidate pool of 8 individuals is reduced due to the failure to return questionnaires or refusals to serve, the other Party shall, within 4 business days, reduce its candidate pool to the same number of individuals. If, however, one Party's candidate pool falls below 3 individuals, that Party shall, within the same 4 business days, name additional individuals to replenish its candidate pool to 3 individuals from the list designated in subparagraph (a). Each additional candidate shall be asked by the Parties to complete a questionnaire and return such questionnaire to each Party within 10 days from the date the questionnaire is sent. During the same 4 business day period that the candidate pool is being replenished to 3 individuals, the other Party shall reduce its candidate pool to 3 individuals. Both Parties shall then proceed with 3 individuals each.

- (c) Within 4 business days after the process in subparagraph (b) is completed, each Party shall finalize the other Party's list by selecting three names therefrom (no selection is necessary if each Party's candidate pool is already at 3) and notifying the other Party of its selections. (Notification shall be simultaneous and such lists of 3 candidates shall be the "Final Lists.")

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<sup>3</sup> The Parties should insert an entity (or multiple entities) that maintains a list of arbitrators and/or umpires such as the American Arbitration Association, ARIAS (U.S.), Reinsurance Association of America or other organization maintaining a list acceptable to the Parties.

- (i) If there is one common individual on the Final Lists, that individual shall act as the Neutral arbitrator.
  - (ii) If there is more than one common individual on the Final Lists, the Parties shall draw lots from among those common individuals, and the individual chosen by lot shall act as the Neutral arbitrator.
  - (iii) If there is no common individual on the Final Lists, within 4 business days thereafter, each Party shall rank each of the 6 selected arbitrator names in order of preference, with the number "1" being the most preferred and notify the other Party of such ranking. (Notification shall be simultaneous.) The individual with the lowest total numerical ranking shall act as Neutral arbitrator. If the ranking results in a tie, the Parties shall draw lots from among the individuals tied for the lowest total numerical rank, and the individual chosen by lot shall act as Neutral arbitrator.
- (d) If either Party fails to meet the time periods required in this ¶16.3, the non-defaulting Party will appoint the Neutral arbitrator from its original candidate pool identified in subparagraph (a).
- 16.4 If after appointment the Neutral arbitrator is unable or unwilling to serve, a replacement Neutral arbitrator shall be chosen by agreement by the Parties as soon as practical (but no later than 10 days) after notification of the Neutral arbitrator's inability or unwillingness to serve. Where the Parties are unable to reach agreement, they shall appoint a replacement Neutral arbitrator in accordance with the procedure set forth in ¶16.3.
- 16.5 Ex parte communication with the Neutral arbitrator is prohibited at any time, and the Neutral arbitrator shall not be advised of which Party initiated his or her selection.
- 16.6 Within 21 days from the date the Neutral arbitrator is agreed upon, the Parties and the Neutral arbitrator will conduct an organizational meeting by telephone conference call to familiarize the Neutral arbitrator with the issues in dispute and to agree on a schedule for submission of briefs. Briefs shall be submitted and, as applicable, the hearing shall conclude as soon as practicable but in no case later than 180 days from the date the Neutral arbitrator is selected, unless otherwise agreed by the Parties.
- 16.7 The Parties shall comply with the exchange of documents pursuant to ¶11.1 within 30 days after the organizational meeting or the time period ordered by the Neutral arbitrator. There shall be no other discovery, unless: (i) the Parties agree otherwise; or (ii) upon the application of a Party at the

organizational meeting the Neutral arbitrator orders limited additional discovery, consistent with the purpose and intent of this Article.

- 16.8 The dispute shall be submitted to the Neutral arbitrator on briefs and documentary evidence only, unless: (i) the Parties agree otherwise; (ii) upon the application of a Party at the organizational meeting, the Neutral arbitrator orders a hearing, which shall not exceed one day, and shall apportion time equitably to the Parties; or (iii) the Neutral arbitrator believes in his or her discretion that a hearing, which shall not exceed one day and shall apportion time equitably to the Parties, will assist in resolving the Parties' dispute. No documentary evidence may be referenced in briefs or submitted to the Neutral arbitrator unless produced to the other Party pursuant to ¶16.7. Any disagreement about the proper role or admissibility of affidavits shall be determined by the Neutral arbitrator.
- 16.9 The Neutral arbitrator shall render its Decision in accordance with the provisions of Article 15 of these Procedures.
- 16.10 All communications under these Streamlined Procedures shall be sent by a method that provides for delivery within one day (e.g., electronic mail, express mail, courier or facsimile).
- 16.11 Articles 1 – 15 of these Procedures shall govern arbitrations conducted pursuant to these Streamlined Procedures to the extent they are consistent with this Article.

## **17. SEVERABILITY**

- 17.1 If any provision of these Procedures, or amendments thereto, is held invalid, such invalidity shall not affect other provisions or applications of these Procedures which can be given effect without the invalid application or provision, and to this end each provision of these Procedures, and any amendments thereto, is severable.

# **PROCEDURES FOR THE RESOLUTION OF U.S. INSURANCE AND REINSURANCE DISPUTES**

**NEUTRAL PANEL VERSION  
SEPTEMBER 2009**

**PROCEDURES FOR THE RESOLUTION OF U.S. INSURANCE AND  
REINSURANCE DISPUTES  
Neutral Panel Version  
September 2009**

**1. INTRODUCTION**

- 1.1 These procedures shall be known as the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes, Neutral Panel Version ("Procedures"). When an agreement, submission or reference provides for or otherwise refers to arbitration under the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes, Neutral Panel Version, the Parties agree that the arbitration shall be conducted in accordance with these Procedures.
- 1.2 The Parties may agree on any procedures not specified herein or may alter these Procedures by written agreement. Any such Party-agreed procedures shall be enforceable as if contained in these Procedures. These Procedures 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 Procedures, the Procedures shall prevail.
- 1.4 Any dispute concerning the interpretation of these Procedures shall be determined by the Panel.
- 1.5 The Panel shall have all powers and authority not inconsistent with these Procedures and the agreement of the Parties.

**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 arbitrator shall be disinterested, unbiased and impartial. The term "neutral" does not mean that the arbitrator 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 voluntarily, by compulsion or contractually joined in the proceedings.
- 2.8 *Petitioner* – the Party who commences arbitration.
- 2.9 *Procedures* – 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

#### Notices

- 3.1 Notices under these Procedures are deemed to be given if delivered, in accordance with ¶3.2, to a Party's principal place of business or other address designated by the Party or if delivered to another entity designated by the Party in the reinsurance contract or other written agreement.
- 3.2 Notices required to be given under these Procedures are deemed to be given:
- (a) if sent by fax, 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 (registered or certified mail or courier). After the arbitration has been commenced, notices and correspondence should, where possible, be given by instantaneous (fax or e-mail) or other expedited manner of communication.

#### Time Periods

- 3.3 When calculating any time period under these Procedures, 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 country 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, fax and e-mail information); (2) Respondent, as identified in the reinsurance contract, against whom arbitration is sought; (3) contracts at issue; and (4) nature of the claims and/or issues.
- 4.2 The arbitration is commenced under these Procedures on the date the Respondent, or its designated representative, receives the Notice of Arbitration.
- 4.3 The Petitioner shall submit candidates for the Neutral Panel in accordance with Article 6 of these Procedures.

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

- 5.1 Parties who receive a demand for arbitration shall respond to the demand, in writing, within 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, fax and e-mail information); and (2) identification of any claims of the Respondent.
- 5.2 The respondent shall submit candidates for the Neutral Panel in accordance with Article 6 of these Procedures.

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

- 6.1 The Panel shall consist of three Neutral arbitrators, one of whom shall act as chair. The chair shall be selected in accordance with ¶6.4.
- 6.2 Under no circumstances shall either Party or anyone acting on the Party's behalf engage in any communication with any prospective Panel member that could reasonably lead such Panel member to identify the Party that initiated the proposed Panel member's selection. Ex parte communications between the Parties and the Panel in relation to the arbitration is prohibited.
- 6.3 The Panel members shall be persons who are current or former officers or executives of an insurer or reinsurer.

**Alternative 6.3:** The Panel members shall be persons who are current or former officers or executives of an insurer or reinsurer or other professionals with no less than ten years of experience in or serving the insurance or reinsurance industry.<sup>1</sup>

- 6.4 (a) Within 30 days following the commencement of arbitration proceedings, each Party shall simultaneously submit to the other Party 10 names of

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<sup>1</sup> In the event that the Parties fail to designate in the Arbitration Agreement, whether ¶6.3 or Alternative ¶6.3 applies, the Parties shall, in the absence of agreement, default to the use of ¶6.3.

individuals chosen from the list maintained by \_\_\_\_\_ for the purpose of Panel selection.<sup>2</sup>

- (b) Within 7 days of the exchange of names set forth in (a), the Parties shall send a joint request to the candidates to complete a questionnaire, consistent with Appendix III of these Procedures. The questionnaire shall be for the purpose of determining conflicts of interest and availability and willingness to serve. Candidates will be requested to return such questionnaire to each Party so that it is received within 20 days from the date the questionnaire is sent to the candidates. If any individual fails to return a questionnaire within the required time period or refuses to serve, the process set forth in this Article shall continue with the remaining names.
- (c) In the event that one Party's candidate pool of 10 individuals is reduced due to the failure to return questionnaires or refusals to serve, the other Party shall, within 7 days, reduce its candidate pool to the same number of individuals. If, however, one Party's candidate pool falls below 5 individuals, the Party shall, within the same 7 days, name additional individuals from the list designated in subparagraph (a) to replenish its candidate pool to 5 individuals. Each additional candidate shall be asked by the Parties to complete a questionnaire and return such questionnaire to each Party within 20 days from the date the questionnaire is sent to the candidates. During the same 7 day period that the candidate pool is being replenished to 5 individuals, the other Party shall reduce its candidate pool to 5 individuals. Both Parties shall proceed in accordance with subparagraph (d) with 5 individuals each.
- (d) Within 7 days after the process in subparagraph (c) is completed, each Party shall finalize the other Party's list by selecting 3 names therefrom and notifying the other Party of its selections. (Notification shall be simultaneous.) Any common individuals on the final lists of 3 candidates (the "Final Lists") shall act as Panel members, with the full Panel being determined as follows:
  - (i) If there is one common individual on the Final Lists, that individual shall act as chair, and each Party shall select one Panel member from the other Party's Final List.
  - (ii) If there are two common individuals on the Final Lists, the Parties shall draw lots to determine which of the two shall act as chair. The Parties shall also draw lots to determine the third member from the remaining 2 candidates (i.e., the remaining candidate from each Party's Final List).

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<sup>2</sup> The Parties should insert an entity or multiple entities that maintain a list of arbitrators and/or umpires such as the American Arbitration Association, ARIAS (U.S.), Reinsurance Association of America or other organization(s) maintaining a list acceptable to the Parties.

- (iii) If there are three common individuals on the Final Lists, the Parties shall draw lots to determine which of the three shall act as chair.
  - (iv) If there are no common individuals on the Final Lists, each Party shall select one Panel member from the other Party's Final List. The Parties shall draw lots to determine the third Panel member, with the loser of the draw making the selection from the other Party's Final List. The chair shall be determined by the drawing of lots from among the first two Panel members selected.
  - (e) The parties shall jointly notify the selected Panel members and should notify those candidates who returned questionnaires that were not selected.
  - (f) If either Party fails to meet the time periods required in this ¶6.4, the non-defaulting Party will appoint the panelist(s) not yet appointed from its original candidate pool identified in subparagraph (a).
- 6.5 (a) If after appointment a Panel member is unable or unwilling to serve, the two remaining Panel members shall select a replacement. In the absence of an agreement on a replacement, the Parties shall appoint a replacement in accordance with the procedures set forth in ¶6.4. The Parties shall exchange the names required by ¶6.4 (a) as soon as practical (but no later than 14 days) after notification of the individual's inability or unwillingness to serve.
- (b) In the event of the appointment of a replacement Panel member, the Panel shall determine in its sole discretion whether it is necessary to repeat all or part of any prior proceedings.
- 6.6 Unless otherwise awarded by the Panel pursuant to Article 8 or ¶15.3, each Party shall share equally the cost of the Panel.
- 6.7 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 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.
- 7.2 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) to support reinsurance or retrocessional recoveries; or (d) 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, including pre-award security.
- 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 sanctions shall include but are not limited to: striking a claim or defense; barring 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 location shall be in a convenient location as decided by the Panel.

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

### **Organizational Meeting**

- 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 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, 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 identify 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.
- 10.4 The Panel may require that each Party submit concise written statements of position, including summaries of the facts and evidence a Party intends to present, discussion of the applicable law 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 7 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 ¶10.3, whether or not written submissions were requested or received by the Panel.
- 10.7 The Panel shall address and decide the following:
- (a) "Hold Harmless" or indemnification agreement from the Parties flowing to the Panel;
  - (b) Confidentiality agreements to ensure the confidentiality provided in Article 7;
  - (c) Procedures for requests, if any, for interim Decisions as set forth in Article 8;
  - (d) The extent to which discovery, including depositions, interrogatories, document requests and third party discovery will be allowed;
  - (e) 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; and
  - (ix) timeframes for any meet and confer requirements relating to this schedule.
- (h) 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 non-privileged 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, subject to applicable privileges, 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 such depositions or other discovery as is reasonably necessary.
- 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 may limit discovery on appropriate grounds, including burdensomeness, duplication, privilege or relevance.

## **12. MEDIATION OR SETTLEMENT**

- 12.1 The Parties may agree, at any stage of the arbitration proceedings, to submit to mediation.
- 12.2 If the Panel determines that settlement may be appropriate under the circumstances, the Panel may request that the Parties consider settlement, through mediation or otherwise, provided such efforts do not delay the arbitration proceedings.

## **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 Procedures do not intend to waive their rights under the Federal Arbitration Act 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 should 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 interpret the underlying agreement, which is the subject of the arbitration, 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 underlying agreement which is the subject of the arbitration.
- 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 determines 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, the Panel is also authorized to award any remedy or sanctions 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 either Party objects to a written rationale, the Panel shall not issue one.
- 15.5 The prohibition on ex parte communications shall remain in effect until the earlier of the Parties waiving their right to challenge the final award, the expiration of the time period during which a challenge could be filed without any such challenge being filed, or the conclusion of any challenge to the Award.

### **16. ALTERNATIVE STREAMLINED PROCEDURES**

- 16.1 The Parties may stipulate to the use of the alternative streamlined procedures ("Streamlined Procedures") in this Article in their arbitration clause or they may

reach an agreement to use these Streamlined Procedures at the time a dispute arises.

*Note to 16.1* – The purpose of these Streamlined Procedures is to provide a fair, fast and efficient alternative process for resolving disputes in which the Parties agree that streamlined procedures are appropriate. They are designed to be the basic process which the Parties can add to, modify or adapt as they deem appropriate. The Parties are encouraged to discuss these added features and reach agreement prior to invoking the use of this Article.

16.2 If the Parties have not agreed to the use of these Streamlined Procedures in their reinsurance contract:

- (a) the Petitioner may make a request for arbitration utilizing these Streamlined Procedures in its Notice of Arbitration. The Respondent must agree, in writing, no later than 7 days from the date of receiving such request. Failure of the Respondent to agree or reply within 7 days shall be deemed to be a rejection of the request, and the arbitration will proceed in accordance with the provisions of Articles 1 through 15 of these Procedures, or
- (b) the Respondent may request the use of these Streamlined Procedures, in writing, no later than 7 days after receipt of the Notice of Arbitration. The Petitioner must agree, in writing, no later than 7 days from the date that the Petitioner receives such request. Failure of the Petitioner to respond within 7 days shall be deemed a rejection of the request, and the arbitration will proceed in accordance with the provisions of Articles 1 through 15 of these Procedures.

16.3 The Panel shall consist of one Neutral arbitrator. The Parties shall endeavor in good faith to select the Neutral arbitrator by agreement within 15 days of the receipt of the Notice of Arbitration (if the parties agreed to use these Streamlined Procedures in their reinsurance contract) or the agreement in writing to use these Streamlined Procedures pursuant to ¶16.2. The Parties shall select the Neutral arbitrator as follows if they cannot agree on an appointment:

- (a) each Party shall exchange, within 7 days thereafter, eight names of individuals chosen from the list maintained by \_\_\_\_\_<sup>3</sup>,
- (b) within 7 days of the exchange of names as set forth in ¶16.3(a), the Parties shall send a joint request to the candidates to complete a candidate questionnaire consistent with Appendix III of these Procedures, which shall not advise the candidate of which Party submitted his or her name, and shall include the following additional question:

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<sup>3</sup> The Parties should insert an entity (or multiple entities) that maintains a list of arbitrators and/or umpires such as the American Arbitration Association, ARIAS (U.S.), Reinsurance Association of America or other organization maintaining a list acceptable to the Parties.

This arbitration is to be conducted pursuant to the attached Streamlined Procedures. Are you available to hold an organizational meeting by telephone conference within 21 days and render a Decision, at the latest, within 180 days of your selection?

Candidates will be requested to return such questionnaire to the Parties so that it is received within 10 days from the date the questionnaire is sent. If any individual fails to return a questionnaire within the required time period or refuses to serve, the process set forth in this Article shall continue with the remaining names. In the event that one Party's candidate pool of 8 individuals is reduced due to the failure to return questionnaires or refusals to serve, the other Party shall, within 4 business days, reduce its candidate pool to the same number of individuals. If, however, one Party's candidate pool falls below 3 individuals, that Party shall, within the same 4 business days, name additional individuals to replenish its candidate pool to 3 individuals from the list designated in subparagraph (a). Each additional candidate shall be asked by the Parties to complete a questionnaire and return such questionnaire to each Party within 10 days from the date the questionnaire is sent. During the same 4 business day period that the candidate pool is being replenished to 3 individuals, the other Party shall reduce its candidate pool to 3 individuals. Both Parties shall then proceed with 3 individuals each.

- (c) Within 4 business days after the process in subparagraph (b) is completed, each Party shall finalize the other Party's list by selecting three names therefrom (no selection is necessary if each Party's candidate pool is already at 3) and notifying the other Party of its selections. (Notification shall be simultaneous and such lists of 3 candidates shall be the "Final Lists.")
- (i) If there is one common individual on the Final Lists, that individual shall act as the Neutral arbitrator.
- (ii) If there is more than one common individual on the Final Lists, the Parties shall draw lots from among those common individuals, and the individual chosen by lot shall act as the Neutral arbitrator.
- (iii) If there is no common individual on the Final Lists, within 4 business days thereafter, each Party shall rank each of the 6 selected arbitrator names in order of preference, with the number "1" being the most preferred and notify the other Party of such ranking. (Notification shall be simultaneous.) The individual with the lowest total numerical ranking shall act as Neutral arbitrator. If the ranking results in a tie, the Parties shall draw lots from among the individuals tied for the lowest total numerical rank, and the individual chosen by lot shall act as Neutral arbitrator.

- (d) If either Party fails to meet the time periods required in this ¶16.3, the non-defaulting Party will appoint the Neutral arbitrator from its original candidate pool identified in subparagraph (a).
- 16.4 If after appointment the Neutral arbitrator is unable or unwilling to serve, a replacement Neutral arbitrator shall be chosen by agreement by the Parties as soon as practical (but no later than 10 days) after notification of the Neutral arbitrator's inability or unwillingness to serve. Where the Parties are unable to reach agreement, they shall appoint a replacement Neutral arbitrator in accordance with the procedure set forth in ¶16.3.
- 16.5 Ex parte communication with the Neutral arbitrator is prohibited at any time, and the Neutral arbitrator shall not be advised of which Party initiated his or her selection.
- 16.6 Within 21 days from the date the Neutral arbitrator is agreed upon, the Parties and the Neutral arbitrator will conduct an organizational meeting by telephone conference call to familiarize the Neutral arbitrator with the issues in dispute and to agree on a schedule for submission of briefs. Briefs shall be submitted and, as applicable, the hearing shall conclude as soon as practicable but in no case later than 180 days from the date the Neutral arbitrator is selected, unless otherwise agreed by the Parties.
- 16.7 The Parties shall comply with the exchange of documents pursuant to ¶11.1 within 30 days after the organizational meeting or the time period ordered by the Neutral arbitrator. There shall be no other discovery, unless: (i) the Parties agree otherwise; or (ii) upon the application of a Party at the organizational meeting the Neutral arbitrator orders limited additional discovery, consistent with the purpose and intent of this Article.
- 16.8 The dispute shall be submitted to the Neutral arbitrator on briefs and documentary evidence only, unless: (i) the Parties agree otherwise; (ii) upon the application of a Party at the organizational meeting, the Neutral arbitrator orders a hearing, which shall not exceed one day, and shall apportion time equitably to the Parties; or (iii) the Neutral arbitrator believes in his or her discretion that a hearing, which shall not exceed one day and shall apportion time equitably to the Parties, will assist in resolving the Parties' dispute. No documentary evidence may be referenced in briefs or submitted to the Neutral arbitrator unless produced to the other Party pursuant to ¶16.7. Any disagreement about the proper role or admissibility of affidavits shall be determined by the Neutral arbitrator.
- 16.9 The Neutral arbitrator shall render its Decision in accordance with the provisions of Article 15 of these Procedures.
- 16.10 All communications under these Streamlined Procedures shall be sent by a method that provides for delivery within one day (e.g., electronic mail, express mail, courier or facsimile).

16.11 Articles 1 – 15 of these Procedures shall govern arbitrations conducted pursuant to these Streamlined Procedures to the extent they are consistent with this Article.

**17. SEVERABILITY**

17.1 If any provision of these Procedures, or amendments thereto, is held invalid, such invalidity shall not affect other provisions or applications of these Procedures which can be given effect without the invalid application or provision, and to this end each provision of these Procedures, and any amendments thereto, is severable.

**APPENDIX I**  
(Procedures for the Resolution of  
U.S. Insurance and Reinsurance  
Disputes, September 2009)

**SAMPLE ARBITRATION CLAUSE – REGULAR PANEL VERSION**

A. As a condition precedent to any right of action arising hereunder, any dispute arising out of this Agreement, including without limitation its formation or validity, whether arising before or after termination of this Agreement, shall be submitted to binding arbitration. Except as provided in this Article or otherwise agreed between the parties, arbitration will be in accordance with the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes dated September 2009, [choose Regular Panel Version/Neutral Panel Version], (the “Procedures”).

B. 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. The arbitrators and umpire shall be persons who are current or former officers or executives of an insurer or reinsurer.<sup>1</sup> Within thirty (30) days following the commencement of the 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. 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. 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. The Party-appointed arbitrators may consult, in confidence, with the Party who appointed them concerning the appointment of the umpire.

C. Where the two Party-appointed arbitrators have failed to reach agreement on an umpire within the time specified in paragraph B, each Party shall propose to the other in writing, within seven (7) days thereafter, eight names of individuals chosen from the list maintained by [insert the name of an entity that maintains a list of arbitrators and/or umpires]. The umpire will then be selected in accordance with ¶ 6.7(b)-(d) of the Procedures.

D. Unless otherwise agreed by the Parties, the arbitration proceeding shall take place in [identify location].

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<sup>1</sup> The parties should indicate here if they wish to broaden the qualifications of the arbitrators and umpire per Alternative ¶ 6.2.

E. Unless prohibited by law, the *[identify court(s)]* shall have *[choose exclusive/nonexclusive]* jurisdiction over any and all court proceedings that either Party may initiate in connection with the arbitration.

F. For purposes of this Article, the terms "Disinterested," "Neutral," "Panel," "Party" (or "Parties"), "Petitioner" and "Respondent" shall have the meanings set forth in Article 2 of the Procedures (Definitions).

G. In the event of any conflict between the Procedures and this Article, the provisions of this Article will govern.

H. This Article shall survive the expiration or termination of this Agreement.

**APPENDIX II**  
(Procedures for the Resolution of  
U.S. Insurance and Reinsurance  
Disputes, September 2009)

**SAMPLE ARBITRATION CLAUSE – NEUTRAL PANEL VERSION**

A. As a condition precedent to any right of action arising hereunder, any dispute arising out of this Agreement, including without limitation its formation or validity, whether arising before or after termination of this Agreement, shall be submitted to binding arbitration. Except as provided in this Article or otherwise agreed between the parties, arbitration will be in accordance with the Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes dated September 2009, *[choose Regular Panel Version/Neutral Panel Version]*, (the “Procedures”).

B. The Panel shall consist of three Neutral arbitrators, one of whom shall act as chair. The Panel members shall be persons who are current or former officers or executives of an insurer or reinsurer.<sup>9</sup> The three Neutral arbitrators shall be selected in accordance with ¶6.4 of the Procedures, which provides in part that, within thirty (30) days following the commencement of the arbitration proceedings, each Party shall simultaneously submit to the other Party ten (10) names of individuals chosen from the list maintained by *[insert the name of an entity that maintains a list of arbitrators and/or umpires]* for the purpose of Panel selection. If either Party fails to meet the time periods required in ¶6.4 of the Procedures, the non-defaulting Party will appoint the panelist(s) not yet appointed from its original candidate pool of ten (10) names.

C. Under no circumstances shall either Party or anyone acting on the Party's behalf engage in any communication with any prospective Panel member that could reasonably lead such Panel member to identify the Party that initiated the proposed Panel member's selection. Ex parte communications between the Parties and the Panel in relation to the arbitration is prohibited.

D. Unless otherwise agreed by the Parties, the arbitration proceeding shall take place in *[identify location]*.

E. Unless prohibited by law, the *[identify court(s)]* shall have *[choose exclusive/nonexclusive]* jurisdiction over any and all court proceedings that either Party may initiate in connection with the arbitration.

F. For purposes of this Article, the terms "Neutral," "Panel," "Party" (or "Parties"), "Petitioner" and "Respondent" shall have the meanings set forth in Article 2 of the Procedures (Definitions).

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<sup>9</sup> The parties should indicate here if they wish to broaden the qualifications of the arbitrators and umpire per Alternative ¶ 6.3.

G. In the event of any conflict between the Procedures and this Article, the provisions of this Article will govern.

H. This Article shall survive the expiration or termination of this Agreement.

**APPENDIX III**  
 (Procedures for the Resolution of  
 U.S. Insurance and Reinsurance  
 Disputes, September 2009)

**CANDIDATE QUESTIONNAIRE**

In the Matter of the Arbitration Between:

,  
 Petitioner,

and

,  
 Respondent.

To assist the parties in evaluating the qualifications of persons nominated to serve as a panel member in the arbitration between the parties listed above, and to identify any potential conflict of interest, please supply the following information.

1. Please attach a current resume or curriculum vitae.
2. This arbitration involves [insert a short neutral description of the dispute between the parties]. If the parties can agree, a jointly written short summary is preferred.

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Would these facts or circumstances prevent you from rendering an unbiased decision in this arbitration?

Yes  No

If yes, please return this questionnaire.

3. Are you presently or have you ever been an employee, officer, director, shareholder, agent or consultant of any of the companies listed below?

[Parties shall specifically list all applicable subsidiaries, affiliates or parents]

Yes  No

If yes, please explain.

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4. Have you ever served as an arbitrator, umpire, attorney, or expert witness in a matter involving any of the companies listed in question 3?

Yes  No

If yes, please explain.

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5. Have you ever had any substantial involvement in an insurance or reinsurance transaction or dispute involving any of the companies listed in question 3?

Yes  No

If your answer is yes, briefly describe the details and nature of the transaction or dispute.

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6. Have you ever had any involvement in an insurance or reinsurance transaction or dispute involving any of the specific claims, policies and/or treaties at issue in this matter as listed below?

Yes  No

If yes, please explain.

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7. To your knowledge, do any of the companies with which you are presently affiliated have a substantial ongoing business relationship with any of the companies listed in question 3?

Yes  No

If yes, please explain.

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8. Have you ever served on an arbitration panel with \_\_\_\_\_? [Fill in name of arbitrator. Not applicable for neutral panels.]

Yes  No

If yes, for each such arbitration, state the approximate date of commencement and termination (or whether still pending) and the respective capacities in which you and \_\_\_\_\_ acted, i.e., as arbitrator or umpire.

9. Do you, or a company with which you are presently affiliated, have a financial interest in the outcome of this arbitration?

Yes  No

If yes, please explain.

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10. Have you ever served as an arbitrator, umpire, expert witness or consultant in an arbitration or litigation at the request of any counsel involved in this arbitration?

LIST COUNSEL

Yes  No

If yes, identify counsel and disclose type of service and approximate date so engaged.

11. Are you aware of any facts or circumstances which (1) might impair your ability to serve or (2) might create an appearance of partiality on your part in the above-captioned arbitration?

Yes  No

If yes, please explain.

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Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## Members of the Insurance and Reinsurance Dispute Resolution Task Force – 2009

Eric Kobrick (Chair)  
American International Group, Inc.

Kimberly Welsh (Vice Chair)  
Reinsurance Association of America

Linda Barber

Elaine Caprio Brady  
Liberty Mutual Insurance Co.

Steve Broadie  
Property Casualty Insurers Association of  
America

Dale Diamond  
AXA Corporate Solutions Reinsurance Co.

Caleb Fowler

Arthur Gang  
Partner Reinsurance Co. of the U.S.

Mark Gurevitz  
The Hartford

Debra J. Hall  
Hall Arbitrations

Robert M. Hall  
RMH Consulting

Janet Kloenhamer  
Fireman's Fund Insurance Co.

Reka Koerner  
Swiss Reinsurance America Corporation

Tracey Laws  
Reinsurance Association of America

Myra Lobel  
Guy Carpenter & Company

Andrew Maneval  
Chesham Consulting, LLC

Mark Megaw  
ACE Group Holdings, Inc.

Daniel O'Keefe  
AON Benfield

Michael O'Malley  
Liberty Mutual Insurance Co.

James Powers

Anne Quinn  
ACE Group

Adam Roberts  
General Reinsurance Corporation

Richard Shaw  
Towers Perrin Reinsurance

James Sporleder  
Allstate Insurance Company

Michael Zeller  
American International Group, Inc.

## **Statement of Insurance and Reinsurance Trade Associations**

The undersigned trade associations have reviewed the suggested Procedures for the Resolution of U.S. Insurance and Reinsurance Disputes – both the regular and the neutral panel versions, dated September 2009, and believe that the Procedures are an important step forward in preventing unnecessary friction, addressing areas of uncertainty and providing parties with greater clarification of what to expect from the arbitration process. Insurers and reinsurers may consider the use of the suggested Procedures as a resource when developing reinsurance contract language or modifying arbitration procedures under existing reinsurance contracts.

**American Insurance Association**

**Association of Insurance & Reinsurance Run-Off Companies**

**International Underwriting Association of London**

**National Association of Mutual Insurance Companies**

**Property Casualty Insurers Association of America**

**Reinsurance Association of America**