



## **Dispute Resolution**

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### **1. Negotiation**

The Company and the Reinsurer agree that should any dispute, disagreement, controversy, question or claim arise between them in connection with this Agreement including without limitation, those concerning the formation and validity of this Agreement (a “Dispute”), they will, before initiating mediation or arbitration to settle or resolve such Dispute pursuant to paragraphs 2 or 3 below, attempt in good faith to resolve the Dispute by negotiation between executives within their respective organizations who have authority to settle the Dispute and who are sufficiently senior to take a dispassionate view of the Dispute. Either party may give the other party written notice of any Dispute (the “Negotiation Notice”). If any Dispute has not been resolved within 30 days after delivery of the Negotiation Notice, either party may initiate mediation, or mediation and arbitration, as provided for in paragraphs 2 and 3 below.

### **2. Mediation**

The Company and the Reinsurer agree to consider settlement of any Dispute that has not been resolved by negotiation within the 30-day period provided for in paragraph 1 above by mediation. To initiate mediation a party must give written notice (the “Mediation Notice”) to the other party to the Dispute requesting a mediation. The party receiving the Mediation Notice must respond within 7 days advising whether it is willing to attempt to settle by means of mediation. If it is agreed that mediation will take place, the choice of mediator will be agreed between the parties by the exchange of lists of three names. The parties shall agree to one of those so named. If the parties are unable to agree as to the choice of mediator within 21 days of the Mediation Notice being given, each party shall nominate three individuals. Each party shall then decline two of the nominations presented by the other party. The mediator shall then be chosen from the remaining two by drawing lots. If any Dispute that the parties have agreed to mediate pursuant to this paragraph 2 has not been settled by mediation within 60 days after delivery of the Mediation Notice, either party may initiate arbitration as provided for in paragraph 3 below.

### **3. Arbitration**

All Disputes (if not resolved by negotiation or mediation as provided for in paragraphs 1 and 2 above), shall, as a condition precedent to any right of action, be referred to arbitration as set out below. The parties agree that: (i) the applicable provincial International Commercial Arbitration Act, or equivalent, of the jurisdiction in which the Canadian head office of the Company is located, shall apply, including the UNCITRAL Model Law and New York Convention scheduled thereunder; (ii) the Arbitration is an “international commercial arbitration” within the meaning and intent of such Act and the UNCITRAL Model Law, and (iii) that province’s domestic Arbitration Act, or equivalent, shall not apply.

- (a) Arbitration shall be initiated by delivery of a written notice by one party to the other requesting arbitration (the “Arbitration Notice”). Within 30 days of delivery of the Arbitration Notice, each party shall appoint an Arbitrator and the two so named shall, within a further 30 days, appoint an Umpire who has agreed to act.

- (b) The Arbitrators and the Umpire (the Arbitration Panel) shall be disinterested current or past executive officers of insurance companies, reinsurance companies, or Syndicates at Lloyd's, with experience transacting in Canada the kind of business that is the subject of this Agreement. The Arbitration Panel shall not include anyone acting for this Dispute as a mediator in paragraph 2 above.
- (c) In the event of one party failing to name its Arbitrator within 30 days allowed for in (a) above, the other party may appoint the second arbitrator. In the event of the Arbitrators failing to agree upon the appointment of an Umpire within 30 days of the appointment of the second Arbitrator, each arbitrator shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The Umpire shall then be chosen from the remaining two by drawing lots.
- (d) If an Arbitrator or Umpire subsequent to his or her appointment is unwilling or unable to act, a new Arbitrator or Umpire shall be appointed in his or her stead by the procedure set out herein
- (e) Within 30 days of the appointment of the Umpire, the Arbitration Panel shall meet and determine a timely period for discovery procedures and schedules for hearings.
- (f) The Arbitration Panel shall interpret the Agreement as a legal obligation and, in making its award, may consider current insurance and reinsurance market practice. The evidence and procedural rules of the courts of the jurisdiction where the Canadian Head Office of the Company is located shall govern all procedural issues; however, upon order of the Arbitration Panel or by the agreement of parties, time limits contained therein may be shortened or lengthened.
- (g) The Arbitration Panel shall make its decision in writing within 90 days of the appointment of the Umpire, failing which, unless an extension is agreed to by both parties, a new Arbitration Panel shall be appointed in accordance with the procedure set out in this paragraph 3.
- (h) A decision shall be rendered by the majority of the Arbitration Panel and shall be final and binding on both parties. The award of the Arbitration Panel shall direct, if appropriate, by whom the costs of the arbitration shall be borne and paid, and may award prejudgment interest calculated from the date that the Dispute Notice was delivered to the date of the award and/or post-judgment interest calculated from the date of the award on any sums awarded, in accordance with the applicable arbitration statute of the jurisdiction where the Canadian Head Office of the Company is located. Judgment may be entered upon the award in any court having jurisdiction.
- (i) The arbitration shall be held in the town or city where the Canadian Head Office of the Company is located, unless otherwise agreed.

4. If more than one reinsurer is involved in the same Dispute under this Agreement, such reinsurers may consolidate and act as one party for the purposes of negotiation, mediation or arbitration pursuant to this Article. Communications by the Company shall be made individually to each reinsurer, including any acting as one party. Nothing herein shall change the liability of reinsurers from several to joint, nor impair the rights of any reinsurer under the terms of this agreement to assert separate rather than joint defences or claims or to retain separate counsel.

#### **Notes to accompany publication:**

*Arbitration continues to be an important tool in reinsurance dispute resolution. However, the RRC recognizes the value of alternate dispute resolution (ADR) techniques and their growing use among a wide range of commercial enterprises. Negotiation and mediation have always been available to reinsurance parties, but the formal introduction of these valuable steps to dispute resolution encourages a more rapid dispute process at reduced cost – even if the parties nevertheless find themselves in arbitration. ADR tends to reveal if not resolve or eliminate elements of dispute. Though non-binding, these early efforts are likely to clarify or even foretell the likely outcome of a much more costly arbitration. Even in arbitration, the early efforts of one or both parties to negotiate and mediate in good faith are likely to inform on the actions and conclusions of the arbitration panel – again encouraging the best efforts and intentions of the concerned parties*

#### **DISPUTE RESOLUTION**

*The name of the clause has been changed to reflect its broader ADR objectives*

##### **. Negotiation**

*The clause is designed to address progressively the three stages of dispute resolution. Sections 1 and 2 deal with Negotiation and mediation respectively. The former arbitration clause becomes Section 3. A fourth section addresses negotiation, mediation and arbitration when more than one reinsurer participates*

The Company and the Reinsurer agree that should any dispute, disagreement, controversy, question or claim arise between them in connection with this Agreement including without limitation, those concerning the formation and validity of this Agreement (a “Dispute”), they will, before initiating mediation or arbitration to settle or resolve such Dispute pursuant to paragraphs 2 or 3 below, attempt in good faith to resolve the Dispute by negotiation between executives within their respective organizations who have authority to settle the Dispute and who are sufficiently senior to take a dispassionate view of the Dispute. Either party may give the other party written notice of any Dispute (the “Negotiation Notice”). If any Dispute has not been resolved within 30 days after delivery of the Negotiation Notice, either party may initiate mediation, or mediation and arbitration, as provided for in paragraphs 2 and 3 below.

## 2. Mediation

The Company and the Reinsurer agree to consider settlement of any Dispute that has not been resolved by negotiation within the 30-day period provided for in paragraph 1 above by mediation. To initiate mediation a party must give written notice (the “Mediation Notice”) to the other party to the Dispute requesting a mediation. The party receiving the Mediation Notice must respond within 7 days advising whether it is willing to attempt to settle by means of mediation. If it is agreed that mediation will take place, the choice of mediator will be agreed between the parties by the exchange of lists of three names. The parties shall agree to one of those so named. If the parties are unable to agree as to the choice of mediator within 21 days of the Mediation Notice being given, each party shall nominate three individuals. Each party shall then decline two of the nominations presented by the other party. The mediator shall then be chosen from the remaining two by drawing lots. If any Dispute that the parties have agreed to mediate pursuant to this paragraph 2 has not been settled by mediation within 60 days after delivery of the Mediation Notice, either party may initiate arbitration as provided for in paragraph 3 below.

*The method of selecting a mediator generates a roster of six candidates from which the disputing parties should be able to draw at least one mutually acceptable individual*

## 3. Arbitration

All Disputes (if not resolved by negotiation or mediation as provided for in paragraphs 1 and 2 above), shall, as a condition precedent to any right of action, be referred to arbitration as set out below. The parties agree that: (i) the applicable provincial International Commercial Arbitration Act, or equivalent, of the jurisdiction in which the Canadian head office of the Company is located, shall apply, including the UNCITRAL Model Law and New York Convention scheduled thereunder; (ii) the Arbitration is an “international commercial arbitration” within the meaning and intent of such Act and the UNCITRAL Model Law, and (iii) that province’s domestic Arbitration Act, or equivalent, shall not apply. Following the Court of Queen’s Bench of Alberta decision dated March 19, 2018, we have added words to clarify that the International Arbitration Act of the particular province is meant to be used, rather than the domestic Arbitration Act.

- (a) Arbitration shall be initiated by delivery of a written notice by one party to the other requesting arbitration (the “Arbitration Notice”). Within 30 days of delivery of the Arbitration Notice, each party shall appoint an Arbitrator and the two so named shall, within a further 30 days, appoint an Umpire who has agreed to act.
- (b) The Arbitrators and the Umpire (the Arbitration Panel) shall be disinterested current or past executive officers of insurance companies, reinsurance companies, or Syndicates at Lloyd’s, with experience transacting in Canada the kind of business that is the subject of this Agreement. The Arbitration Panel shall not include anyone acting for this Dispute as a mediator in paragraph 2 above.

*At the recommendation of Canadian reinsurance intermediaries, the qualifications of the arbitration panel have been expanded to include Canadian experience in the Agreement’s subject business*

- (c) In the event of one party failing to name its Arbitrator within 30 days allowed for in (a) above, the other party may appoint the second arbitrator. In the event of the Arbitrators failing to agree upon the appointment of an Umpire within 30 days of the appointment

of the second Arbitrator, each arbitrator shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by the other arbitrator. The Umpire shall then be chosen from the remaining two by drawing lots.

*This method of selecting an Umpire replaces the questionable practice of naming of a third party (such as the president of an industry association) to make the selection*

- (d) If an Arbitrator or Umpire subsequent to his or her appointment is unwilling or unable to act, a new Arbitrator or Umpire shall be appointed in his or her stead by the procedure set out herein
- (e) Within 30 days of the appointment of the Umpire, the Arbitration Panel shall meet and determine a timely period for discovery procedures and schedules for hearings.

*In light of the newly introduced ADR structure, the Arbitration Panel, and not this clause will establish the timing of proceedings*

- (f) The Arbitration Panel shall interpret the Agreement as a legal obligation and, in making its award, may consider current insurance and reinsurance market practice. The evidence and procedural rules of the courts of the jurisdiction where the Canadian Head Office of the Company is located shall govern all procedural issues; however, upon order of the Arbitration Panel or by the agreement of parties, time limits contained therein may be shortened or lengthened.

*The sub-section dealing with procedural law has been replaced by an acknowledgement that procedural issues are to be determined by the procedural rules of the local court. RRC has noted that Canadian arbitrations are often hampered and delayed unnecessarily by lengthy discussions regarding evidentiary and procedural law. This correction allows the panel to instead focus its time and energy on their forte, substantive law.*

- (g) The Arbitration Panel shall make its decision in writing within 90 days of the appointment of the Umpire, failing which, unless an extension is agreed to by both parties, a new Arbitration Panel shall be appointed in accordance with the procedure set out in this paragraph 3.
- (h) A decision shall be rendered by the majority of the Arbitration Panel and shall be final and binding on both parties. The award of the Arbitration Panel shall direct, if appropriate, by whom the costs of the arbitration shall be borne and paid, and may award prejudgment interest calculated from the date that the Dispute Notice was delivered to the date of the award and/or post-judgment interest calculated from the date of the award on any sums awarded, in accordance with the applicable arbitration statute of the jurisdiction where the Canadian Head Office of the Company is located. Judgment may be entered upon the award in any court having jurisdiction.

*The panel's ability to direct costs is more clearly stated. In addition, pre and post-judgment interest may be awarded (at rates specified by local statute)*

- (i) The arbitration shall be held in the town or city where the Canadian Head Office of the Company is located, unless otherwise agreed.

4. If more than one reinsurer is involved in the same Dispute under this Agreement, such reinsurers may consolidate and act as one party for the purposes of negotiation, mediation or arbitration pursuant to this Article. Communications by the Company shall be made individually to each reinsurer, including any acting as one party. Nothing herein shall change the liability of reinsurers from several to joint, nor impair the rights of any reinsurer under the terms of this agreement to assert separate rather than joint defences or claims or to retain separate counsel.

*This standard paragraph dealing with multiple reinsurers has been altered to encompass negotiation and mediation as well as arbitration. Greater clarity has been added by noting the freedom of consolidating reinsurers to nevertheless retain separate counsel, and by confirming that this Section applies only to the Agreement at hand.*

The Reinsurance Research Council of Canada (RRC) has developed and distributed technical bulletins on a variety of topics of interest and relevance to the property and casualty insurance industry since 1984. These Bulletins have been made available to the Canadian property and casualty insurance and reinsurance industry as a reference tool. It should be noted that these bulletins are recommended wordings only, and their use is at the discretion of RRC members.