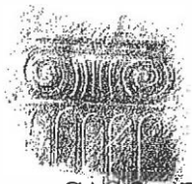

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2017/A/5016 Ihab Abdelrahman v. Egyptian Anti-Doping Organization
CAS 2017/A/5036 WADA v. Ihab Abdelrahman & Egyptian Anti-Doping Organization

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Luigi Fumagalli, Professor and Attorney-at-Law, Milan, Italy

Arbitrators: Mr Olli Rauste, Attorney-at-law, Helsinki, Finland
Hon. Michael J. Beloff M.A. Q.C., Barrister, London, England

between

IHAB ABDELRAHMAN, Egypt
Represented by Mr Hannu Kalkas, Attorney-at-law, Teperi & Co., Helsinki, Finland
Appellant in CAS 2017/A/5016 and Respondent in CAS 2017/A/5036

and

WORLD ANTI-DOPING AGENCY (WADA), Montreal, Canada
Represented by Mr Ross Wenzel, Attorney-at-law, Kellerhals Carrard, Lausanne, Switzerland
Appellant in CAS 2017/A/5036

and

EGYPTIAN ANTI-DOPING AGENCY (EGY-NADO), Cairo, Egypt
Respondent in CAS 2017/A/5016 and in CAS 2017/A/5036

I. THE PARTIES

1. Mr Ihab Abdelrahman (the "Athlete") is an Egyptian javelin thrower, born on 1 May 1989, who competed at international level. The Athlete is registered with the Egyptian Athletics Federation (the "EAF"), which is affiliated to the International Association of Athletics Federations ("IAAF"), the world governing body for track and field.

2. The World Anti-Doping Agency ("WADA" or the "Appellant") is a Swiss private law foundation. Its seat is in Lausanne, Switzerland, and its headquarters are in Montreal, Canada. WADA was created in 1999 to promote, coordinate and monitor the fight against doping in sport in all its forms on the basis of the World Anti-Doping Code (the "WADC"), the core document that harmonizes anti-doping policies, rules and regulations around the world.

3. The Egyptian Anti-Doping Organization ("EGY-NADO") is the national anti-doping organization for Egypt. As such, EGY-NADO has *inter alia* the responsibility to pursue all potential anti-doping rule violations within its jurisdiction according to the Egyptian Anti-Doping Rules (the "EADR"). The EADR were adopted to implement EGY-NADO's responsibilities under the WADC.

4. The Athlete, WADA and EGY-NADO are referred to as the "Parties".

II. BACKGROUND FACTS

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 17 April 2016, the Athlete underwent an out-of-competition doping control in Kafr, Saqr (Egypt). In the doping control form (the "DCF"), the Athlete declared that, in the 7 days preceding the sample collection, he had used the following products: "*Livabion / Osteo Bi-flex / XTend BCAAs / No-XPLode / Paradol Extra / Test Freak / GH Freak*".

7. On 20 July 2016, the Antidoping Laboratory of Barcelona, Spain (the "Laboratory") reported an adverse analytical finding (the "AAF") for the presence in the A sample of the Athlete of "*urinary metabolites of testosterone related steroids*", *i.e.* of Endogenous Anabolic Androgenic Steroids (AAS) administered exogenously, non-specified substances prohibited in- and out-of-competition under S1.b of the list of prohibited substances and methods published by WADA for 2016 (the "Prohibited List").

8. On 21 July 2016, EGY-NADO informed the EAF of the AAF and of the Athlete's provisional suspension.

9. On 24 July 2016, the Athlete was notified of the AAF and of the provisional suspension imposed on 21 July 2016.

10. On 24 July 2016, the Athlete requested the analysis of the B sample.

11. On 25 July 2016, the EAF requested that EGY-NADO conduct the B sample analysis only in the presence of the Athlete and his representative. At the request of the EAF two possible dates for the B sample testing were proposed: 26 July 2016 and 30 August 2016, after the Rio Olympic Games and the summer holidays. Because of the difficulties encountered for the organization of the Athlete's and of his representative's travel to Spain, the Athlete eventually chose to have the B sample analysed on 30 August 2016.

12. On 27 July 2016, the IAAF wrote a letter to the Athlete with regard to the AAF, the Athlete's provisional suspension and the subsequent procedural steps, which included the possibility to provide an explanation for the AAF.

13. On 7 August 2016, the Athlete filed an application against EGY-NADO with the *Ad hoc* Division for the Games of the XXXI Olympiad in Rio de Janeiro of the Court of Arbitration for Sport (the "CAS AHD"). In his application, the Athlete requested the CAS AHD to lift the provisional suspension and to allow him to compete in the Rio Olympic Games.

14. On 11 August 2016, the CAS AHD dismissed the Athlete's application.

15. On 16 August 2016, the grounds of that dismissal were notified.

16. On 30 and 31 August 2016, the B sample provided by the Athlete was analysed by the Laboratory. The Athlete attended the opening and the analysis of the B sample together with his representative, Dr Tarek Hassan.

17. In the Sample Inspection Form (Laboratory Documentation Package for the B sample – the "LDP", p. 27), the following can be noted:

    i. the boxes corresponding to the inspection of the integrity of the sample ("*The Seal and/or identification (whatever present) correspond to those specified in the form*", "*It is properly closed*", "*the Seal (if any) is intact*") where signed as "*Yes*" by Dr Rosa Ventura, Director of the Laboratory,

    ii. the Athlete's representative recorded the following in the "*Additional Comments*" box that: "*The lab staff started broken the sample seal Before the Athlete or representative check the seal. When representative check the seal it was integrated*";

    iii. all the witnesses (including the Athlete and his representative) signed the Sample Inspection Form, including the acknowledgment by Dr Ventura of the verification of the seal of the sample and the manuscript comment set out above;

    iv. Dr Ventura inserted in the lower part of the page the following manuscript addition to the Sample Inspection Form: "*All laboratory staff verified the integrity of the bottle seal before the process of broken the seal was started*".

18. The Sample Inspection Form appears, as a result, as follows:

FUNDACIÓ INSTITUT MAR D'INVESTIGACIONS MÈDIQUES (IMIM)	LABORATORI DE SERVEIS ANALÍTICS / GRUP DE RECERCA EN BIOANALISI I SERVEIS ANALÍTICS	DECLARATION FORM

[illegible]

SAMPLE INSPECTION FORM

The following | ~~transportation bag~~ | ~~supra-container~~ | ~~container~~ | bottle | has been inspected:

SEAL: 3984703 IDENTIFICATION: B3984703

The undersigning witnesses inspect its integrity based on the following:

	Yes	No
- The Seal and/or Identification (whatever present) correspond to those specified in the form.	[signature]	
- It is properly closed.	[signature]	
- The Seal (if any) is intact.	[signature]	

(Sign where appropriate)

Additional comments:
the lab staff started broken the sample seal Before the Athelt or representative check the seal when Reporsontive check the seal it was Integrated.

DATE: 30/08/2016 TIME: 09:29

WITNESSES:

Name	ID.	Position	Signature
ROSA VENTURA	37309778W	DIRECTOR	[signature]
Tarek Hassan	A13072539	Athelt Representative	[signature]
Ihab Abd El Rahman	A09543748	Athelt	[signature]
INMACULADA ROMERA	43318723F	Quality Manager	[signature]
ROSALIA RAMIREZ	34760350-1	CHEMIST	[signature]
MARIA VICENS MORAGAS	43232020-P	Analist	[signature]

All laboratory staff verified the integrity of the bottle seal before the process of broken the seal was started.

[signature]

[illegible] Document [illegible] Page 1/1

19. The B sample analysis confirmed the "*exogenous origin of androsterone and etiocholanolone*", and therefore the AAF.

20. On 6 September 2106, the results of the B sample analysis were communicated by EGY-NADO to the EAF, which in turn informed the Athlete.

21. On 11 September 2016, the EAF informed EGY-NADO that the Athlete had requested that a hearing be held in his case.

22. On 11 November 2016, the Athlete filed with the EGY-NADO Doping Hearing Panel (the "DHP") a "*Statement*" requesting it to rule that:

"I There has been a severe infringement of the integrity of the B sample and hence no sanctions can be ruled on the grounds of the test results from 17th April 2016. The B Sample cannot be considered reliable and the test results based on this sample are invalid.

III If the EGY-NADO Doping Hearing Panel would not consider the infringement severe and would rule that an alleged anti-doping violation has been fulfilled the Panel should rule that the Period of ineligibility for Mr. Abdelrahman has been fully served by the length of the Provisional Suspension, and

II None of Mr. Abdelrahman's results after 17.4.2016 are disqualified".

23. The Athlete's statement of 11 September 2016 had attached an expert opinion signed by Dr Douwe de Boer.

24. On 5 December 2016, a hearing was held before the DHP.

25. On 9 February 2017, the DHP issued a decision (the "Decision") as follows:

"The Committee sees that the Player has manipulated Food Supplements, which the player has mentioned that may be they were polluted with (testosterone) but he didn't take them deliberately or negligently. The player has listed all kinds of food supplements and medicines which he takes in the sampling form. This denotes the good faith and will of the player. The player has run five samples, all made within the first six months in 2016. All analysis results were negative except this sample. Therefore, the Committee has decided the following:

1. *To suspend the player for two years in accordance with Article no. 10/5/2 of the International Code, starting from 20/7/2016 (The date of receiving the analysis result no. 3984703) and ending on 19/7/2018.*
2. *The Egyptian Athletics Federation shall notify all players to stop the manipulation of all food supplements of all kinds and to take instead natural supplements.*
3. *The Committee advises the Egyptian Athletics Federation to take care of players and to appoint nutritionists, sport psychologists and physicians to take care of promising players.*
4. *The grounds of this judgment will be issued with 15 days from the date of issuing this judgment.*
5. *The Egyptian Anti-Doping Organization shall take necessary action and notify all concerned bodies".*

III. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 1 March 2017, pursuant to Article R47 of the Code of Sports-related Arbitration (the "Code"), the Athlete filed with the Court of Arbitration for Sport ("CAS") a statement of appeal against the Decision. The statement of appeal named EGY-NADO as the respondent and contained, *inter alia*, the appointment of Mr Olli Rauste as an arbitrator. The arbitration proceedings started by the Athlete were registered by the CAS Court

Office under CAS 2017/A/5016 *Ihab Abdelrahman v. Egyptian Anti-Doping Organization.*

27. On 10 March 2017, the Athlete filed his appeal brief pursuant to Article R51 of the Code.

28. On 16 March 2017, EGY-NADO appointed The Hon. Michael J. Beloff M.A. Q.C. as an arbitrator.

29. On 20 March 2017, WADA filed with the CAS, pursuant to Article R47 of the Code, a statement of appeal against the Decision. The statement of appeal filed by WADA named the Athlete and EGY-NADO as the respondents and contained, *inter alia*, the appointment of The Hon. Michael J. Beloff M.A. Q.C. as an arbitrator. The arbitration proceedings started by WADA were registered by the CAS Court Office under CAS 2017/A/5036 *WADA v. Ihab Abdelrahman & Egyptian Anti-Doping Organization.*

30. The statement of appeal filed by WADA requested that their appeal be consolidated with the arbitration started by the Athlete (i.e. CAS 2017/A/5016), as well as some procedural proposals.

31. On 24 March 2017, the Athlete agreed to the consolidation of the proceedings.

32. On 4 April 2017, EGY-NADO filed its answer in CAS 2017/A/5016.

33. On 5 April 2017, the CAS Court Office informed the Parties that the President of the Appeals Arbitration Division had decided to consolidate the arbitrations started by the Athlete and by WADA.

34. On 18 April 2017, WADA filed its appeal brief pursuant to Article R51 of the Code. Such submission attached, *inter alia*, a declaration signed by Dr Rosa Ventura, director of the Laboratory.

35. On 9 May 2017, the Athlete and EGY-NADO filed their respective answers to WADA's appeal.

36. On 11 May 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the Parties that the Panel appointed to hear the dispute between the Parties was constituted as follows: Professor Luigi Fumagalli, President; Mr Olli Rauste and The Hon. Michael J. Beloff M.A. Q.C., Arbitrators.

37. On 15 May 2017, EGY-NADO was directed by the Panel to file an index of the exhibits lodged with its submissions, as well as the English translation of some documents.

38. On 7 June 2017, after extensions of the time limit, EGY-NADO filed an index of the exhibits and the requested translations.

39. On 14 June 2017, the CAS Court Office informed the Parties that the Panel had decided to allow a further and final round of succinct written submissions, as per the Parties' request. As a result:

    i. on 23 June 2017, the Athlete filed his "*1st Extra Submission*";

    ii. on 5 July 2017, WADA and EGY-VADO filed their second submissions.

40. On 6 July 2017, the CAS Court Office drew the Athlete's attention to two requests set out in WADA's submission of 5 July 2017, and notably to a request for production by the Athlete of a prescription issued by Dr Mansour and of a request for CAS to invite the other parties to consent to the "use" violation being adjudicated by this Panel, inviting the Athlete and EGY-NADO to state their position in such respect.

41. On 12 July 2017, the CAS Court Office, failing any reaction to the letter dated 6 July 2017, advised the Parties on behalf of the Panel of the following:

    "***Prescription for GH Freak***: *In accordance with Article R44.3 of the Code of Sports-related Arbitration, the Athlete is invited to file any prescription and/or instructions for use issued by a medical doctor of the Egyptian Athletics Federation and/or Dr. Mansour with respect to the ingestion of GH Freak* ***within three (3) days.***

    Adjudication of the Alleged "Use" Violation: *The Panel notes that the Athlete and EGY NADO did not consent to the adjudication of WADA's alleged "Use" violation as part of these proceedings. Considering that the parties do not agree, and noting that such alleged violation was not part of the proceedings below, the Panel will not entertain WADA's request in this regard*".

42. On 13 July 2017, the Athlete's counsel indicated that "*we do not have the prescription issued by Dr Mansour*", and that the Athlete did not consent to the use violation to be decided by this Panel.

43. On 13 July 2107, the CAS Court Office requested the Athlete to clarify whether by his declaration he was stating that no prescription existed or, alternatively, that such prescription existed but that he was not in a position to produce it.

44. On 14 July 2017, the Athlete filed a witness statement signed by Dr Ahmed Mansour.

45. On 17 July 2017, then, the Athlete's counsel declared that he does not have a prescription and that he does not know if there has ever been a prescription.

46. On 19 July 2017, the Athlete and WADA signed and returned the order of procedure. The EGY-NADO did not return an executed order of procedure or otherwise object to its contents.

47. On 24 July 2017, a hearing was held in Lausanne. The Panel was assisted by Mr Brent J. Nowicki, CAS Managing Counsel. The following persons attended the hearing for the Parties:

    i. for the Athlete: Mr Hannu Kalkas, counsel, and the Athlete himself, assisted by Ms Amira Galal Sayed Ahmed Elrity, interpreter;

    ii. for WADA: Mr Ross Wenzel and Mr Nicolas Zbinden, counsel;

iii. for EGY-NADO: by telephone connection, Professor Ahmed El-Sheik, Chairman of the DHP, and Dr Mohamoud Ramadan, DHP member.

48. At the opening of the hearing, both Parties confirmed that they had no objection to the constitution of the Panel. The Panel, thereafter, heard opening statements by counsel. In that context, the Athlete's counsel filed, with the consent of WADA and the authorization of the Panel, a document describing the "*Supplement Facts*" of a product, named *GH Freak* (the "Product"), he was using at the time of the doping control (as declared on the DCF) in its "*Hybrid Formula*", which does not contain any prohibited substance.

49. The Panel, then, heard declarations from the Athlete, Dr Tarek Ramadan Hassan Saleh, Dr Ahmed Mansour Abdelkarim, Dr Douwe de Boer and Dr Rosa Ventura.[1] The contents of their respective statements can be summarised as follows:[2]

i. the Athlete denied the use of any prohibited substance, mentioned the circumstances of the doping control which eventually returned the AAF, explained his consumption of the Product, and described the events which occurred at the opening of the B sample, in the following terms:

- on 17 April 2016, the doping control officer could not find the Athlete at the address provided of his daily availability for a control and accordingly left. However, the Athlete was immediately informed of the visit of the officer, and was able to call him back, and undergo the doping control;
- he started using the "*Hybrid Formula*" of the Product in January 2016, upon the prescription of Dr Mansour, in order to sleep better; in February 2016, then, at an event in South Africa he indicated for the first time on the DCF his use of "*GH Freak*". The Product was provided to him in personal meetings by Dr Mansour, who bought it from a pharmacy. He used to take two tablets each day before sleeping; therefore, every container of the Product contained sufficient tablets for about 45 days use. As a result, on the occasion of the doping control of 17 April 2016, he was not using tablets taken from the same container as the one used in February 2016. However, every time he started a new container (bought by Dr Mansour always from the same pharmacy) he checked, together with Dr Mansour, the ingredients against the Prohibited List, in order to be sure that the Product did not contain any prohibited substance;
- in the Laboratory room where the B sample analysis was conducted there were several sample bottles and he could not identify which of the bottles contained his sample;
- while attending the B sample analysis, he was not allowed to verify the integrity of the seal of the bottle before it was broken. Even after the seal was partially broken, he could not directly check it: Dr Ventura did not allow him to have the bottle itself in his hands, and he could not verify the

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1 Dr Mansour, Dr de Boer and Dr Ventura were heard by telephone.

2 The summary which follows is intended to give an indication of only a few salient points touched on at the hearing. The Panel, in fact, considered the entirety of the declarations rendered at the hearing and/or contained in the relevant witness statements filed for the purposes of this arbitration.

seal of the bottle kept by Dr Ventura because when he touched it the sharp edge of the broken glass caused him some hurt and bleeding. As a result of these events, he and Dr Mansour wished to leave, but were only persuaded to remain by Dr Ventura. In addition, when his representative wished to insert a declaration on the Sample Inspection Form, Dr Ventura put pressure on him to avoid a full description of what had happened, and suggested the use of different words. On the second day, then, Dr Ventura prepared a two-page document, intended to absolve herself, and asked the Athlete and his representative to sign it, which the Athlete and the representative refused to do;

ii. Dr Hassan, a biochemist who assisted the Athlete as his representative at the opening and analysis of the B sample, declared that in the Laboratory room where the B sample analysis was conducted there were several sample bottles and that he could not identify any of the bottles. Dr Hassan told that they "made the paper work first" with Dr Ventura, and he routinely signed the Sample Inspection Form with no specific remarks, including also the indications that the sample seal was "*intact*" and the sample bottle was "*properly closed*", without checking the sample. He explained his signing by saying that "*it's about trust*". Thereafter, he was discussing with Dr Ventura about the IRMS analysis process when she suddenly said loudly to the analyst who was opening the sample bottle: "*STOP*". Dr Ventura immediately brought the sample bottle to Dr Hassan and the Athlete for their inspection. According to Dr Hassan, the cap of the sample bottle was loose, and it was possible to open and close the bottle. Dr Hassan said to Dr Ventura that they needed to write a note about that on the Sample Inspection Form. Dr Hassan said he had known Dr Ventura for many years, since their first encounter at a meeting in Egypt in 2008. Dr Ventura had been Dr Hassan's teacher and professor at the university. He therefore could not resist the pressure put by Dr Ventura to refrain from an exact description of what had happened. In fact, Dr Ventura told him that any such description would have been a disaster for the Laboratory. Therefore, even though he had initially written on the Sample Inspection Form only that "*The lab staff started broken the sample seal before the Athlete or representative check the seal*", he was pressured to insert a second sentence which eventually became "*When representative check the seal it was integrated*" (even though Dr Ventura actually wanted him to write "*closed*" instead of "*integrated*"). However, the seal was "*broken*" and "*loose*": integrated to his way of thinking meant only "*attached*", "*not removed*" from the bottle. Dr Hassan had already signed the Sample Inspection Form before it was filled in, but added this note to the Form afterwards. It was Dr Ventura who added the sentence appearing at the bottom of the Sample Inspection Form only later and after he and the Athlete had left. As to the second day of the analysis, Dr Hassan confirmed that only he, and not the Athlete, attended, as a result of a "gentle suggestion" of Dr Ventura, but accepted that Dr Ventura did not specifically tell the Athlete that he could not attend. Finally, Dr Hassan confirmed that Dr Ventura had prepared a two page document for signature, but that he could not remember its content;

iii. Dr Mansour confirmed his collaboration with the EAF and with the Egyptian Olympic team as a nutritionist. He noted that, as a dentist, he is allowed to advise athletes on nutrition issues. Dr Mansour, then, described his prescription to the

Athlete of the Product "*GH Freak*", starting in 2016, designed to help the Athlete sleep. He was sure that the Product was clean because he used to buy it from the same pharmacy (and not through the Internet) and then check its ingredients every time a container was purchased. He was aware that "*GH Freak*" is sold in two different compositions, and that the respective containers look the same, but he always made certain that he was providing the Athlete with the version without prohibited substances: the Athlete never took tablets from a bottle of the Product in the version containing prohibited substances. In light of the foregoing, he has no explanations for the AAF;

iv. Dr de Boer mentioned the WADA rules that in his opinion were violated when the seal was broken before the Athlete and/or his representative could check its integrity, and underlined that it is a fundamental right of the Athlete to verify the integrity of the seal. Such verification is usually effected by trying the seal by hand. If the integrity is not guaranteed, the B sample analysis is discontinued in order to avoid any risk of subsequent invalidation. In addition, the laboratory could be subject to sanctions by WADA. At the same time, Dr de Boer confirmed that nothing could have entered the B sample bottle, even if the seal had been broken, if the cap had not been removed;

v. Dr Ventura, the director of the Laboratory, declared that the Athlete and Dr Hassan were in a position, after the bottle was brought from the freezer to the room where the analysis was to be conducted, to freely see the bottle during the period in which the sample thawed and when she verified the codes. Even though the Athlete and Dr Hassan did not touch the seal, they could visually verify its integrity. Then, while she was filling in the Sample Inspection Form, an analyst started to operate the dedicated equipment for the opening of the seal. However, she immediately ordered to that analyst to halt the process because it was not in line with the internal standard practice, given that as she had not yet completed the Sample Inspection Form. Immediately thereafter all present could verify that only the external part of the seal had been broken, but that the bottle itself had remained closed: Dr Hassan himself had declared that the partial breaking of the seal did not affect the validity of the process. In fact, when the operations were resumed, it was again necessary to use the same equipment because the seal could not be removed manually. (In any case, Dr Ventura emphasised that if the seal is removed, it cannot be reinserted on the bottle). After the "incident", Dr Hassan had been free to write any declaration he wished: she put no pressure on him. She added the final lines at the bottom of the Sample Inspection Form when the Athlete and his representative were still present. As to the second day of analysis, Dr Ventura declared that she did not prevent the Athlete from attending the analysis: since he was clearly not interested in the detail of the analytical process, she merely offered him the opportunity to stay at a more comfortable location, which offer he accepted after consultation with Dr Hassan. If he had wished, she would have allowed him to stay. The purpose of the two page document prepared on the second day was to set out a detailed description of the salient events.

50. At the conclusion of the hearing, after concluding pleadings by counsel and a final declaration of the Athlete, the Parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.

IV. THE POSITION OF THE PARTIES

51. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Panel confirms, however, that it has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. The Position of the Athlete

52. In his appeal brief, the Athlete requests the following relief:

"*1. The Appeal of Mr Abdelrahman is admissible.*

2. The decision rendered by EGY NADO 9 February 2017 is set aside.

3. If the decision rendered by EGY NADO 9 February 2017 is not set aside, length of ineligibility must be reduced at maximum of the length of provisional suspension.

4. Mr Abdelrahman is granted an award for costs".

53. Such requests for relief were also confirmed in the Athlete's answer to the appeal filed by WADA.

54. The position of the Athlete in support of its requests can be summarized as follows:

i. "*breaches of WADC and of ISL*". According to the Athlete, the seal of the B sample was broken by the Laboratory staff before the Athlete and his representative could check its integrity: the impossibility for the Athlete to check the integrity of the sample was confirmed by the depositions at the hearing and, not effectively contradicted by Dr Ventura, who had an interest in declaring that no departure occurred, and whose evidence on this point is therefore suspect. Such procedure was not in accordance with Article 7.3 WADC and Articles 5.2.4.3.2.6 and 5.2.3.2 of the International Standard for Laboratories established by WADA (the "ISL"). As a result, the test results are invalid, because a fundamental right of the Athlete was breached (as recognized in CAS 2008/A/1607). The denial of an opportunity to the Athlete to check the integrity of the sample can be equated to the denial to him of an opportunity to attend the analysis of the sample. As a result, the test results are invalid because a fundamental right of the Athlete was breached (as recognized in CAS 2008/A/1607). In addition, the Athlete was also prevented from verifying whether manipulation, sabotage, contamination, or other events had occurred before the partial breaking of the seal. Consequently, the Decision must be set aside and no sanction imposed on the Athlete. The Athlete further submits that:

- the AAF regarding the A sample must be the result of some reason (tampering, sabotage, mishandling) other than doping, which the Athlete strongly denies;
- the A sample analysis was affected by some inconsistence with the ISL provisions. For instance, the analysis took place 3 months after the sample collection, even though Article 5.2.6.5 of the ISL requires reporting within 10 days of receipt by the laboratory;

- some pages of the B sample LDP (p. 77-79, 80) show the initials of some employees who were not listed (at p. 3) as involved in the test, and
- on the second day of the B Sample analysis, the director of the Laboratory Dr Ventura allowed the presence only of the Athlete or of his representative and not both.

All the above shows that the requisite procedures have not been properly executed: the test results are unreliable and the Athlete cannot be sanctioned. The *de novo* proceedings before CAS are not sufficient to cure such departures, which put in doubt the reliability of the results of the analysis: the impossibility to check the integrity of the seal should lead to the acquittal of the Athlete even in the event that the presence of a prohibited substance in the sample is apparently confirmed;

ii. violation of the "*principle of good governance*". The Athlete also cannot be sanctioned because of "*significant and continuous non compliance with rules*" by EGY-NADO. In fact:

- the Athlete learned of the AAF regarding the A sample from a journalist, and then was formally informed of the AAF and his provisional suspension by the IAAF. EGY-NADO violated Article 14 of the EADR about confidentiality and public disclosure;
- the DHP did not allow the Athlete to make use of a legal representative at the hearing of 5 December 2016;
- the reasons of the Decision have not been notified, in disregard of the applicable time limit, and in violation of Articles 8.3.1 and 8.3.2 of the EADR, as well as of its own terms (which indicated that the reasons would be issued within 15 days). Such violation itself infringes a basic right of the Athlete because no sanction can validly be imposed without a reasoned justification;
- the Athlete was not even allowed to train following the publication of the B sample analysis, in breach of his fundamental rights;
- EGY-NADO should strictly respect the rules which it requires others to respect. The sporting system (as well as the anti-doping rules) are based on a contract between the athlete and the organization: when the organization itself breaches the rules, it cannot request compliance by the athlete or sanction an athlete if he/she does not comply;

iii. "*no intention, no significant fault nor negligence*". The Athlete has always declared on his DCF all food supplements, products and medications he was taking. In addition, the Athlete used those products "*upon prescription of doctor of EAF Ahmed Mansour*", who was also sanctioned by the EAF (with a 2-month salary deduction) as a result of the Athlete's AAF. The Athlete submitted to other doping controls when using those products, but the tests always returned negative results. It follows that the products he used cannot cause an AAF, which must therefore be attributable to a different cause. If there is an anti-doping rule violation (which is denied), the violation is not intentional, and if a sanction of ineligibility is to be applied, its period must be reduced for no significant fault or negligence;

iv. Furthermore, and as to at to the issues relating to "*ineligibility*", in fact, if there was an anti-doping rule violation, the AAF must have been caused by a product

prescribed by the doctors. Since such product was used in accordance with the doctor's prescription, the Athlete was not guilty of "*intentional use of a prohibited substance*" and Articles 10.2.2 (No Intent) and 10.5 (No Significant Fault or Negligence) of the EADR should apply. As a result, following CAS precedents, the maximum period of ineligibility for the Athlete should be the length of his provisional suspension.

55. With regard to the source of the prohibited substance found in his body, the Athlete, in his submission dated 22 June 2017, as declared also on his DCF, indicated that he used the Product called "*GH Freak*". As clarified at the hearing, two different versions of the Product exist on the market: one containing a prohibited substance (DHEA), the other not containing any prohibited substance. The labels and packages of these two different versions of "*GH Freak*", manufactured by the same producer, are almost identical. The Athlete never intentionally ingested the Product in the version containing a prohibited substance. He was aware of the existence of these two different versions of "*GH Freak*", and always checked together with Dr Mansour that he was using the "Hybrid Formula". Any inadvertent use of tablets of the Product in the version containing a prohibited substance could only therefore be the result of contamination, mistake or mix-up by the producer. In any case, the Product was used upon the doctor's prescription in order to promote "*deep sleep*", and not to enhance sporting performance. In addition, the use of the Product followed a careful check of its ingredients. It was declared on the very DCF which related to the collection of the sample which gave rise to the AAF, as well as on at least a dozen other different occasions, when the tests proved negative, without causing any reaction.

56. In the submission dated 22 June 2017, and then at the hearing, the Athlete raised also the following additional points:

    i. as underlined by Dr Douwe de Boer, the LDP contains a minimal amount of information. Even though this is strictly in accordance with the WADA provisions on the matter, such a severe sanction, as sought by the WADA, requires a maximum amount of evidence;

    ii. in the determination of the level of fault, there are the following elements in favour of the Athlete:

        - the Athlete demonstrated his good faith because he voluntarily submitted to the doping control, by contacting the doping control officer who had already left;
        - the use of the Product has been indicated by the Athlete on the DCF;
        - the Product was used upon prescription of a doctor;
        - the Product was used within the limits of the doctor's prescription;
        - the use of the Product was in no way hidden;
        - the Product had been used before the positive test, but the preceding tests had always produced negative results;

    iii. as to the sanction of disqualification of results sought by WADA, after the test that gave rise to the AAF, the Athlete competed on 28 May 2016 in Eugene and on 16/17 June 2016 in Stockholm, while he was also using the Product. Therefore, fairness requires that the results obtained on those occasions should not be

cancelled, bearing in mind as well that the Athlete already lost the opportunity to compete at the 2016 Olympic Games.

57. With respect to costs, the Athlete requests full compensation, whatever the outcome of his appeal, taking into account in particular the failure of EGY-NADO to state the reasons of the Decision which failure has contributed to the Athlete's need to file an appeal before the CAS.

B. The Position of WADA

58. In its submissions before this Panel, WADA requests the following relief:

"*1. The appeal of WADA in CAS 2017/A/5036 is admissible.*

2. The decision of the Doping Hearing Panel of EGY-NADO dated 9 February 2017 in the matter of Mr. Ihab Adbelrahman is set aside.

3. Mr. Ihab Abdelrahman is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility that has been effectively served, whether imposed on, or voluntarily accepted by, Mr. Ihab Abdelrahman before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Mr. Ihab Abdelrahman from and including 17 April 2016 are disqualified, with all resulting consequences (including forfeiture of medals, points and prizes).

5. The appeal of the Athlete in CAS 2017/A/5016 is dismissed.

6. EGY-NADO and the Athlete shall bear the entirety of the arbitration costs and be ordered to pay WADA a significant contribution to its legal and other costs incurred in connection with these proceedings".

59. In support of such claims, and by way of challenge to the Athlete's factual submissions, WADA describes, by reference to the declarations of Dr Ventura, the events concerning the opening and the analysis of the B sample, in the following terms:

- the Athlete attended the opening and analysis of the B sample together with his representative, Dr Tarek Hassan. More specifically, the following persons were present in Laboratory room 240.05 for the purposes of the inspection and opening of the B sample bottle: Ms Marta Vicen Morales (analyst), Dr Rosa Ventura (Laboratory director), Ms Immaculada Figuera (quality manager), Ms Rosalia Ramirez (chemist), the Athlete and his representative;
- the B sample was removed from the frozen storage by Ms Vicen Morales at 09:09 am on 30 August 2016 and taken to the Laboratory room 240.05 for inspection and opening. When the bottle of urine arrived in room 240.05, it was placed on a bench in order to thaw. Contrary to the Athlete's declarations, there were no other bottles containing samples of other athletes in the Laboratory room where the analysis was conducted;
- at this stage and in the presence of the Athlete and his representative, Dr Ventura verified that the B bottle showed no signs of tampering;

- the entire thawing process lasted half an hour, *i.e.* until 09:39 am. During this time, the B sample bottle remained visible to the Athlete and his representative, who were able to verify that the seal was intact;
- the Sample Inspection Form was printed at 09:29 am: Dr Ventura read out and explained it to the Athlete and his representative; in particular, she explained that she would fill out the form and that the witnesses would express their agreement by countersigning the same;
- Dr Ventura checked and showed to the Athlete and his representative that the bottle codes matched the DCF and that the bottle was properly closed, with the seal intact. In fact, the Sample Inspection Form records that the bottle was "*properly closed*" and that the seal was "*intact*";
- while filling out the Sample Inspection Form, Dr Ventura noticed after only a few seconds that Ms Vicen Morales had loaded the bottle into the equipment and begun the process to remove the seal. She immediately called out to Ms Vicen Morales to stop that process;
- all the attendees (including the Athlete and his representative) then went over to the seal-removal equipment and inspected the B-sample bottle. The seal had not been fully removed: only its outside part had been broken, and the cap of the bottle remained closed;
- the Athlete and his representative were given the opportunity to observe that the seal was only partially broken and that the bottle remained fully closed. All of the attendees, including the Athlete's representative, accepted that this was the case. In particular, the Athlete's representative explicitly accepted that, as the seal remained integrated, this did not affect the validity of the B-sample analysis. This was recorded on the Sample Inspection Form by the Athlete's representative in the "*Additional Comments*" box. Dr Ventura also made a manuscript addition to the Sample Inspection Form to confirm that all Laboratory staff had verified the integrity of the bottle seal before the process of breaking the seal was started. All the witnesses (including the Athlete and his representative) signed the Sample Inspection Form, including the manuscript comments therein contained;
- Ms Vicen Morales then resumed the breaking of the seal before proceeding with the aliquotting of the sample. The use of the dedicated equipment was necessary because the bottle was still closed and the seal, notwithstanding the partial breaking, could not be opened manually;
- the B-sample analysis continued throughout 30 August 2016 and resumed on 31 August 2016. The Athlete representative followed all the operations of the B sample analysis. The Athlete, on the other hand, spent most of the time on a stool close to the bench where the analytical work was taking place, looking at his mobile phone. On the second day, Dr Ventura asked the Athlete whether he might prefer to move to a more comfortable area of the Laboratory. After checking with his representative, he accepted this proposal and left the Laboratory room 240.05.

60. WADA, also in light of the foregoing, submits that the B-sample analysis confirmed the AAF and that the Athlete failed to establish any departure that could reasonably have caused such AAF. Therefore, the anti-doping rule violation was established.

61. At the same time, WADA addresses the Athlete's submissions relating to alleged breaches of the WADC and the ISL as follows:

i. as to the alleged breach of Article 7.3 of the WADC and of Articles 5.2.4.3.2.6 and 5.2.3.2 of the ISL, said to have occurred because neither the Athlete nor his representative was "*given a chance to verify the respective integrity of the B sample*":

a. the contention is wrong in point of fact. In particular:

- the Athlete and his representative had the opportunity to visually inspect the integrity of the B sample bottle during the thawing process, which took thirty minutes. The bottle was visible and accessible to the Athlete and his representative throughout this period;
- the Athlete and his representative examined the state of the bottle and its seal after Ms Vicen Morales began to break the seal. After the partial breaking of the seal, the Athlete's representative noted on the Sample Inspection Form that the seal was still integrated;
- the Athlete and his representative signed an acknowledgement on the Sample Inspection Form that the seal was intact and that the bottle properly closed;

b. even assuming that there was some departure, the Athlete does not explain how that departure could have caused the anti-doping rule violation. It is undisputed between the Parties that the bottle remained closed (*i.e.*, with the lid screwed on it) when the seal was partially broken. In such circumstances, any breach could not have resulted in metabolites (elements produced by biotransformation) of exogenous Testosterone entering the B-sample bottle. The partial breaking of a seal on a closed bottle does not give rise to any possibility of sabotage or contamination; it could not have caused the prohibited substance to enter the sample;

c. in summary, there is no departure and, in any event, such departure as alleged could not reasonably have caused the anti-doping rule violation. The facts of this case are far removed from those cases where CAS Panels held that there was a fundamental breach sufficient to invalidate the analytical results regardless of questions of causality: those cases concerned situations in which the athlete was wholly deprived of the right to attend the B sample opening and/or analysis, a situation which was not replicated in the case of the Athlete;

ii. as to the alleged three other "*minor deviations from the ISL*" (as so described by the Athlete):

a. it is alleged that the A sample analysis took 3 months and, therefore, longer than the 10 working days (post-receipt of the sample) envisaged by Article 5.2.6.5 of the ISL. However,

- the first certificate of analysis was produced within the required 10-working day period. More particularly, the sample was received on 22 April 2016 and the initial certificate of analysis was produced on 9 May 2016. However, as a result of fluctuations in the Athlete's steroid profile, the Laboratory was required to conduct a

quantification of the steroid profile parameters and an IRMS procedure in order to ascertain the possible presence of exogenous steroids, and collect the opinion of a second laboratory on the IRMS results. After these various steps had been undertaken, the AAF was reported on 19 July 2016;

- as a result, there is no departure from the ISL and, in any event, the Athlete has not explained how any delay in the analytical process could result in the presence of exogenous Testosterone in his sample;

b. it is alleged that two persons, Mr Xavier Matabosch and Mr Sergio Peña, worked on the B analysis, but are not included in the list of staff involved in the testing. However, the two technicians are mentioned in the LDP in connection with the operations they performed. In addition, name, initials and signature of these two individuals are set out at p. 18 of the B Sample LDP. Even though they are not mentioned in the list of Laboratory personnel at p. 3 of the same LDP, it is explicitly stated in the relevant technical document established by WADA (TD2009LDOC) that deviations of this nature will not invalidate the analytical results. Once again, the Athlete has not even sought to explain how a clerical issue of this nature could result in exogenous Testosterone being present in his sample;

c. the Athlete claims that, on the second day of the analysis, the Laboratory only allowed one of he or his representative to be present during the analysis. Such contention, however, lacks any factual basis: the Athlete was generally not focused on the analysis, but rather pre-occupied with his mobile phone; he was asked whether he wished to move to a more comfortable part of the Laboratory and he accepted this offer having first checked with his representative;

iii. in view of the foregoing, in WADA's view, the B sample confirmed the AAF and the Athlete failed to establish any departure that could reasonably have caused the anti-doping rule violation. Therefore, the anti-doping rule violation is established.

62. With respect to the issues raised by the Athlete under the heading "*Principle of Good Governance*", WADA notes that these alleged facts, as regrettable as they might (potentially) be, have no relevance to the establishment of the anti-doping rule violation and the applicable sanction. The so-called "*good governance*" matters raised by the Athlete could not impact on the sample in any way, not least as they post-date the B-sample analysis. In any event, WADA recalls that any procedural flaws are cured by the CAS *de novo* proceedings, which are also part of the "contractual arrangement" invoked by the Athlete.

63. With respect to the determination of the applicable sanction, WADA, in its submission dated 18 April 2017, indicated that it is a condition for an athlete wishing to prove that the violation is not intentional to establish how the substance entered his body. In this case, since the Athlete failed to identify the specific source of the prohibited substance, the sanction should be of 4 years of ineligibility, for an intentional anti-doping rule violation.

64. In its submission dated 4 July 2017, however, WADA noted that in the brief of 22 June 2017 the Athlete referred to the Product (which contains DHEA – as also noted by Dr

de Boer in an opinion filed together with the Athlete's brief) as the source of the AAF. Such submission, inconsistent with the primary case that a departure from the ISL may have caused the AAF, constitutes an admission of an anti-doping rule violation ("use" of a prohibited substance) and in any case does not excuse the Athlete. Having said that, WADA would be willing to accept that the DHEA contained in the Product may have caused the AAF, but the characteristics of the Product and the way it is advertised in the Internet show that the Athlete failed to take even the most basic precautions. Therefore, even though the total lack of due diligence would probably allow WADA to contend that the Athlete acted with indirect or constructive intent, WADA, in view of the specific facts of the case, and the disclosure of use contained in the DCF, would have been willing to accept that the violation was not intentional and to amend its request for relief to accept a two-year period of ineligibility. However, in light of the declarations made at the hearing, that the Athlete used a "*Hybrid Formula*" of the Product, which does not contain any prohibited substance, and denied the intentional use of the Product in the version which contains DHEA, WADA has come to the conclusion that the Athlete failed to establish the origin of the prohibited substance found in his body: as admitted by the Athlete's counsel, only "speculation" on the point is offered. Therefore, the Athlete has not been able to prove that the anti-doping rule violation was not intentional: a 4-year ineligibility period should consequently be imposed.

65. Finally, in WADA's opinion, the Athlete's results after the positive test, left untouched by the Decision, have to be cancelled: the steroids used by the Athlete have long time effects of enhancement; in addition, no "fairness" exception applies in a situation of intentional doping. Consequently all results achieved from 17 April 2016 through to the commencement of the period of provisional suspension have to be annulled. The Decision has to be modified on this aspect too.

C. The Position of EGY-NADO

66. In its submissions in this arbitration, EGY-NADO requested that the Panel, in essence, confirm the Decision.

67. The position of EGY-NADO is summarized in the brief of 5 July 2017 as follows:

i. the out-of-competition test on the Athlete of 17 April 2016 was performed in compliance with the applicable rules without any departure;

ii. the Athlete admitted the use of prohibited substances pursuant to Article 3.2 of the EADR;

iii. as to the B sample opening:

- "*B-sample opening* [did] *not change the result of A-sample ..., but it confirmed the presence of Exogenous Testosterone Hormone which* [is] *listed in Prohibited List of 2016 (Section S1)*";
- "*in the LDP of B sample the athlete representative stated that one of the lab staff started to open the B sample bottle but the B sample* [was] *still integrated, this means that the Athlete representative confirmed the integrity of the B sample*";

- "*all the submission done ... didn't affect the fact of the AAF of A sample and AAF of B sample*";

iv. as to the use of the Product:

- the fact that the Athlete declared on the DCF the use of this "*GH Freak*" does not exclude the use by the Athlete of other undisclosed products;
- it is not logical for an Athlete to use a supplement for years just to promote "*deep sleep*";
- athletes are warned of the risks implied in the use of food supplements, which may cause an AAF for which the athletes are personally responsible;

v. the grounds of the Decision are the following:

- "*there is no departure from ISTI and ISL*";
- "*all submission by athlete and his representative about departure of ISL did not affect the result of B sample but confirmed the AAF result of A sample*";
- "*Athlete mentioned in his DCF some food supplements he used, which may be contaminated with Testosterone Hormone*";
- "*according to the strict liability principle ... the athlete ... committed an ADRV and must be sanctioned according to Article 10.2.2*" EADR;

vi. as to the absence of intention, significant fault or negligence and the period of ineligibility:

- the Athlete used an unsafe food supplement, which contains a prohibited substance;
- the use of the Product over the years constitutes a violation of the WADC and the EADR;
- the doctor who prescribed the Product "*is neither physician, nutritionist nor specialist but he is dentist*";
- the Athlete is of international level and is "*wise enough*" to understand what is prohibited and what is not.

68. In conclusion, according to EGY NADO, "*the ineligibility period* [of] *2 years is a fine punishment, not as a maximum base*".

V. JURISDICTION

69. Article R47 of the Code provides as follows:

> *An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

70. The jurisdiction of CAS is accepted by the Parties, as confirmed by the Order of Procedure, signed by the Parties without any reservation on the point, and is contemplated by Articles 13.1 and 13.2 of the EADR.

71. The Panel, therefore, confirms that CAS has jurisdiction to decide the present dispute.

VI. ADMISSIBILITY

72. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

73. The statements of appeal were filed by the Athlete and WADA, respectively, within the deadline set in Article 13.7.1 of the EADR and complied with the requirements of Article R48 of the Code. The admissibility of the appeals is not challenged by any party.

74. The Panel therefore confirms that these appeals are admissible.

VII. SCOPE OF THE PANEL'S REVIEW

75. According to Article R57 of the Code,

"*the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. ...*".

76. In this respect, the Panel notes that, on such basis, it hears the case *de novo* and is not limited to considerations of the evidence that was adduced before the DHP: the Panel can consider all new evidence produced before it. This implies that, even if a violation of the principle of due process occurred in prior proceedings, it may be cured by a full appeal to the CAS (CAS 94/129, *USA Shooting & Q. v. UIT*; CAS 98/211, *B. v. Fédération Internationale de Natation*; CAS 2000/A/274, *S. v. Fédération Internationale de Natation*; CAS 2000/A/281, *H. v. Fédération Internationale de Motocyclisme*; CAS 2000/A/317, *A. v/ Fédération Internationale des Luttes Associés*; CAS 2002/A/378, *S. v. Union Cycliste Internationale & Federazione Ciclistica Italiana*). In fact, the virtue of an appeal system which allows for a full re-hearing before an appellate body is that issues relating to the fairness of the hearing before the tribunal of first instance "*fade to the periphery*" (CAS 98/211, *B. v. Fédération Internationale de Natation*, citing Swiss doctrine and case law).

VIII. APPLICABLE LAW

77. The law applicable in the present arbitration is identified by the Panel in accordance with Article R58 of the Code.

78. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

79. In the present case the "*applicable regulations*" for the purposes of Article R58 of the Code are, indisputably, those contained in the EGY-NADO rules because the appeals are directed against a decision issued by the DHP, which was passed applying the EADR.

80. As a result, EADR shall apply primarily. Egyptian Law, being the law of the country in which EGY-NADO is domiciled, applies subsidiarily. The Panel, however, notes that it was not directed to the application of any specific rule of Egyptian law which could affect the outcome dictated by the applicable regulations.

81. The provisions of the EADR which are relevant in this case (and are based on the WADC) are the following:

Article 2 "*Anti-doping rule violations*"

2. The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Athlete's sample [...]

Article 3 "*Proof of Doping*"

3.1 Burdens and Standards of Proof

EGY-NADO shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether EGY- NADO has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

3.2 Methods of Establishing Facts and Presumptions

Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:

3.2.1 Analytical methods or decision limits approved by WADA after consultation within the relevant scientific community and which have been the subject of peer review are presumed to be scientifically valid. Any Athlete or other Person seeking to rebut this presumption of scientific validity shall, as a condition precedent to any such

challenge, first notify WADA of the challenge and the basis of the challenge. CAS on its own initiative may also inform WADA of any such challenge. At WADA's request, the CAS panel shall appoint an appropriate scientific expert to assist the panel in its evaluation of the challenge. Within 10 days of WADA's receipt of such notice, and WADA's receipt of the CAS file, WADA shall also have the right to intervene as a party, appear amicus curiae, or otherwise provide evidence in such proceeding.

3.2.2 WADA-accredited laboratories, and other laboratories approved by WADA, are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Athlete or other Person may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding. If the Athlete or other Person rebuts the preceding presumption by showing that a departure from the International Standard for Laboratories occurred which could reasonably have caused the Adverse Analytical Finding, then EGY-NADO shall have the burden to establish that such departure did not cause the Adverse Analytical Finding. [...]

Article 7 "*Results Management*"

7.3 Notification After Review Regarding Adverse Analytical Findings

7.3.1 If the review of an Adverse Analytical Finding [...] does not reveal an applicable TUE or entitlement to a TUE as provided in the International Standard for Therapeutic Use Exemptions, or departure from the International Standard for Testing and Investigations or the International Standard for Laboratories that caused the Adverse Analytical Finding, EGY-NADO shall promptly notify the Athlete, and simultaneously the Athlete's International Federation, the Athlete's National Federation and WADA in the manner set out in Article 14.1, of: [...] (e) the opportunity for the Athlete and/or the Athlete's representative to attend the B Sample opening and analysis in accordance with the International Standard for Laboratories [...].

7.3.3 The Athlete/or and his representative shall be allowed to be present at the analysis of the B Sample. Also, a representative of EGY-NADO as well as a representative of the Athlete's National Federation shall be allowed to be present. [...]

Article 10 "*Sanctions on Individuals*" [...]

10.2 Ineligibility for Presence, Use or Attempted Use, or possession of a Prohibited Substance or a Prohibited Method

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a

Specified substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and EGY-NADO can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an adverse analytical finding for a substance which is only prohibited in-competition shall be rebuttably presumed to be not "intentional" if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of- Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered "intentional" if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance. [...]

10.4 *Elimination of the Period of Ineligibility where there is No Fault or Negligence*

If an Athlete or other Person establishes in an individual case that he or she bears No fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 *Reduction of the Period of Ineligibility based on no Significant Fault or Negligence*

10.5.1Reduction of Sanctions for ... Contaminated Products for Violations of Articles 2.1, 2.2 or 2.6 [...]

10.5.1.2 Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[Comment to Article 10.5.1.2: In assessing that Athlete's degree of Fault, it would, for example, be favourable for the Athlete if the Athlete had declared the product which

was subsequently determined to be contaminated on his or her Doping Control form.]

10.5.2Application of No Significant Fault or Negligence beyond the Application of Article 5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. [...]

10.8 *Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation*

In addition to the automatic Disqualification of the results in the Competition which produced the positive Sample under Article 9, all other competitive results of the Athlete obtained from the date a positive Sample was collected (whether In-Competition or Out-of- Competition), or other anti-doping rule violation occurred, through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes.

10.12 *Status during Ineligibility*

10.12.1 Prohibition Against Participation During Ineligibility

No Athlete or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programs) authorized or organized by any Signatory, Signatory's member organization, or a club or other member organization of a Signatory's member organization, or in Competitions authorized or organized by any professional league or any international or national level Event organization or any elite or national-level sporting activity funded by a governmental agency.

Appendix 1 "*Definitions*":

Contaminated Product: "*A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search*"

Fault: "*Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Athlete or other Person's degree of Fault include, for example, the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances*

considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behavior. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Athlete only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2"

[Comment: "*The criteria for assessing an Athlete's degree of Fault is the same under all Articles where Fault is to be considered. However, under Article 10.5.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Athlete or other Person was involved*"]

No Fault or Negligence: "*The Athlete or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system*"

No Significant Fault or Negligence: "*The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system*".

82. In respect of these rules, and more in general of the EADR, the Panel notes that, pursuant to its Article 20.5, the EADR provisions "*shall be interpreted in a manner that is consistent with applicable provisions*" of the WADC.

83. Reference was made in these proceedings also to the following provisions of the ISL:

5.2.3.2 Before the initial opening of a Sample bottle, the device used to ensure the integrity of the Sample (e.g., security tape or a bottle sealing system) shall be inspected and its integrity documented".

5.2.4.3.2.6 The Athlete and/or his/her representative, a representative of the entity responsible for Sample collection or results management, a representative of the National Olympic Committee, National Sport Federation, International Federation, and a translator shall be authorized to attend the "B" confirmation.

If the Athlete declines to be present or the Athlete's representative does not respond to the invitation or if the Athlete or the Athlete's representative continuously claims not to be available on the date of the opening, despite reasonable attempts by the Laboratory to accommodate their dates, the Testing Authority or the Laboratory shall proceed regardless and appoint an independent witness to verify that the "B" Sample container shows no signs of Tampering and that the identifying numbers match that on the collection documentation. At a minimum, the Laboratory Director or representative and the Athlete or his/her representative or the independent witness shall sign Laboratory

documentation attesting to the above.

The Laboratory Director may limit the number of individuals in Controlled Zones of the Laboratory based on safety or security considerations.

The Laboratory Director may remove, or have removed by proper authority, any Athlete or representative(s) interfering with the testing process. Any behavior resulting in removal shall be reported to the Testing Authority and may be considered an anti-doping rule violation in accordance with Article 2.5 of the Code, "Tampering, or Attempted Tampering with any part of Doping Control"".

5.2.6.5 Reporting of "A" Sample results should occur within ten working days of receipt of the Sample. The reporting time required for specific Competitions may be substantially less than ten days. The reporting time may be altered by agreement between the Laboratory and the Testing Authority".

IX. MERITS

84. The object of this arbitration is the Decision, which found the Athlete responsible for the anti-doping rule violation contemplated by Article 2.1 of the EADR and imposed on him the ineligibility for a period of 2 years pursuant to Article 10.2.2 of the EADR: the Athlete's violation was found to be not "intentional", within the meaning of Article 10.2.3, for the purposes of Article 12.2.1 of the EADR; however, the Athlete was not considered to be entitled to a fault-related reduction of the period of ineligibility pursuant to Article 10.5 of the EADR. The Athlete disputes this conclusion and requests the Decision to be set aside, and the sanction cancelled or reduced. WADA, on the other hand, requests this Panel to find that the anti-doping rule violation was "intentional", and therefore to impose on the Athlete a sanction of 4 years of ineligibility and to disqualify pursuant to Article 10.8 of the EADR all the Athlete's results following the doping test of 17 April 2017. EGY-NADO, on its side, requests the Panel to dismiss the appeals brought by the Athlete and by WADA and to confirm the Decision.

85. As a result of the Parties' requests and submissions, there are three main issues that need to be addressed by this Panel:

i. is the Athlete responsible for the anti-doping rule violation found by the Decision?

ii. if so, what is the proper sanction to be applied?

iii. are any of the Athlete's results to be disqualified?

86. The Panel will consider each of those issues separately and in sequence.

i. Is the Athlete responsible for the anti-doping rule violation found by the Decision?

87. The first issue to be addressed concerns the commission by the Athlete of the anti-doping rule violation contemplated by Article 2.1 of the EADR ["*Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's sample*"] for which he was found responsible by the DHP.

88. In this context, it is undisputed (i) that both the A and the B sample analyses resulted in an AAF for the presence in the Athletes' body of "*urinary metabolites of testosterone related steroids*", *i.e.* of Endogenous Anabolic Androgenic Steroids (AAS) administered exogenously, non-specified substances prohibited in- and out-of-competition under S1.b of the Prohibited List, and (ii) that the Athlete had no Therapeutic Use Exception to justify such presence. As such, therefore, the anti-doping rule violation would be established.

89. The Athlete, however, denies this conclusion, by invoking a number of reasons, mainly based on violations of the EADR or of the ISL for which the procedure resulting in the AAF and leading to the Decision has to be nullified. Such violations are:

i. the breaking of the seal of the bottle containing the B sample before the Athlete and/or his representative could verify the integrity of that seal;

ii. the breach of the Athlete's right to attend with a representative the analysis of the B sample, because on 31 August 2016, the second day of the process, the director of the Laboratory only allowed one of them to attend, and therefore prevented one of the Athlete or his representative from being present;

iii. the breach of the obligation to report the A-sample analysis results within 10 working days after the receipt of the sample;

iv. the participation in the test of some employees who were not listed as involved therein;

v. the breach of the rules on confidentiality and public disclosure;

vi. the prohibition for the Athlete's counsel to attend to hearing before the DHP;

vii. the prohibition to train imposed on the Athlete following the publication of the B-sample results;

viii. the failure of the DHP to publish the reasons of the Decision.

90. Such violations, in the Athlete's opinion, have a "fundamental" nature, affect his basic rights and amount to breaches of the contractual relationship between the anti-doping organization and the Athlete.

91. As already noted, the Athlete claims in fact that the authority to impose sanctions on him by EGY-NADO is based on a contractual relationship. A common principle in contract law is that a party in a breach of contract cannot require the other party to fulfil its contractual obligations. Therefore, EGY-NADO, being in breach of its obligations because of the mentioned violations, could not sanction the Athlete for his breaches.

92. The Panel agrees that the authority of international or national federations and/or national anti-doping organizations to impose sanctions on athletes is normally based on a contractual relationship. Such relationship may be grounded on the athlete obtaining a licence to participate in competitions organized under the rules of a federation, or on an agreement – either explicit or implicit – on participation in a specific sport event.

93. The terms of this contractual relationship consist *inter alia* of the relevant anti-doping rules. While obtaining a licence to compete from a federation or when participating in a

sport event, an athlete accepts that the anti-doping rules of that federation or event organizer bind him/her.

94. In such respect, however, the Panel underlines that, while the relevant anti-doping rules are incorporated as the terms of the contractual relationship between an athlete and his or her international or national federation and/or the relevant anti-doping organisation, as the case may be, such anti-doping rules are incorporated *in their entirety*. As a result, incorporation includes also those rules describing the effects of any departure by the anti-doping organizations (or related entities – such as WADA-accredited laboratories) from the provisions governing their activity, as well as those providing for the CAS jurisdiction and the powers of the CAS Panels while dealing with those departures.

95. In other words, part of such contractual arrangement is also Article 3.2.3 of the EADR, which stipulates that any departure from the rules or standards do not invalidate the test result, unless such departure could have caused the AAF. In the same way, the stipulation providing for the CAS full power of review of the facts and the law is also part of the aforementioned contractual relation.

96. As a result, the question to be addressed by the Panel turns on whether, under the rules (contractually) binding EGY-NADO and the Athlete, an anti-doping rule violation can be established: there is no independent basis, derived from general principles of contract law, allowing the conclusion that a departure from the rules by the anti-doping organization prevents *per se* the finding of an anti-doping rule violation committed by the Athlete. More specifically, the Panel is called to verify pursuant to the applicable provisions whether the alleged procedural flaws on the part of EGY-NADO (or the Laboratory acting on its behalf) have occurred, and, if so, what kind of consequences they might have.

97. In such exercise, the following rules are relevant:

    i. according to Article 3.2.2 of the EADR, the Laboratory is presumed to have conducted the analysis and custodial procedures relating to the Athlete's sample in accordance with the ISL. The Athlete may rebut this presumption by establishing that a departure from the ISL occurred which could reasonably have caused the AAF. If the Athlete rebuts this presumption, then EGY-NADO shall have the burden to establish that such departure did not cause the AAF;

    ii. the *de novo* nature of CAS proceedings implies that violations of the principle of due process occurred in the proceedings before the DHP are cured by a full appeal to the CAS.

98. The first, and mostly widely debated, departures from the ISL invoked by the Athlete concerns the opening and analysis of the B sample at the Laboratory on 30-31 August 2016. The Athlete claims in fact that his right to attend the opening of the B sample and to verify its integrity was violated. According to the Athlete, on 30 August 2016 the seal of his B sample was broken before he was given the opportunity to verify its integrity. In addition, the Athlete claims that on 31 August 2016 he was not allowed to attend the analysis together with his representative because the Laboratory director had permitted the presence of only one of them. Additional departures, then, occurred with the respect to the A-sample analysis.

99. In the Athlete's opinion, the events which occurred on 30-31 August 2016 amount to a "fundamental breach" of his rights with regard to the B sample analysis. Such "fundamental breach", in turn, would make the whole analysis of the B sample invalid regardless of whether the alleged breach could have caused the AAF or not. This contention is based on CAS jurisprudence, which developed a distinction according to the nature of the breach of the relevant rules affecting an athlete's rights with respect to the B sample analysis: in "normal" deviations, the principle imposed in Article 3.2.2 of the WADC (which corresponds to Article 3.2.2 of the EADR) applies, and therefore departures which could not have caused the AAF do not invalidate the test result; however, if the breach of the rules concerns the rights which are deemed "fundamental" for safeguarding the athlete's interests in the analysis of his/her B sample, the causality requirement imposed in Article 3.2.2 of the WADC shall not be applied and the analysis result shall be deemed invalid regardless of the actual effect – or any potential effect – of the breach on the result of the analysis.

100. In such context, this Panel would be called to verify whether any departure from the ISL occurred when the Athlete's samples were analysed by the Laboratory, and, if so, whether it constituted a "fundamental breach", before examining the existence and relevance of any impact on the AAF.

101. The Athlete's rights regarding the B-sample analysis are derived from Articles 7.3.1 and 7.3.3 of the EADR, which respectively provide (i) for the EGY-NADO's obligation to notify the athlete, following the report of an AAF resulting from the A sample analysis, of "*the opportunity for the Athlete and/or the Athlete's representative to attend the B Sample opening and analysis in accordance with the International Standard for Laboratories*", and (ii) for the right of "*the Athlete... and his representative ... to be present at the analysis of the B Sample*". The ISL, then, in this connection, at Article 5.2.4.3.2.6 confirms that "*the Athlete and/or his/her representative ... shall be authorized to attend the "B" confirmation*". In addition, two other provisions in the ISL can be noted:

    i. "*before the initial opening of a Sample bottle, the device used to ensure the integrity of the Sample (e.g., security tape or a bottle sealing system) shall be inspected and its integrity documented*" (Article 5.2.3.2);

    ii. "*the Laboratory Director may limit the number of individuals in Controlled Zones of the Laboratory based on safety or security considerations. The Laboratory Director may remove, or have removed by proper authority, any Athlete or representative(s) interfering with the testing process. ...*" (Article 5.2.4.3.2.6).

102. The Panel notes three preliminary points.

103. First. No objection was raised regarding the notification to the Athlete of the opportunity to attend the B sample "*opening and analysis*". The question is whether the Athlete was actually granted such opportunity.

104. Second. It is obvious that mere attendance of the athlete and/or his/her representative somewhere inside the premises of the laboratory would not fulfil the requirements of the rules, if the athlete is not given *a real possibility* to attend, *i.e.* to verify the accuracy of the opening process: this includes the possibility to be present when the identity of the

sample and the integrity of the seal or similar device are verified, when the sample bottle is opened and when the analytical procedures are initiated. The purpose of the rules are to allow the athlete and/or his/her representative to participate in the identification of the sample and in the checking of the integrity of the seal or other similar device in order to verify that the sample belongs to him or her and the sample bottle is intact. If the athlete and/or his/her representative is denied the opportunity to attend these two important steps in the verification process, the purpose of the rules would not be satisfied.

105. Third. There is no specific rule specifying how the verification of the integrity of the seal or other similar device should in practice be carried out. In the absence of any specific rule, the Panel is of the opinion that even visual inspection of the verification process by the athlete and/or his/her representative fulfils the requirement of "attendance" in the opening of the sample, provided that the integrity of the seal or other device can be sufficiently verified by vision.

106. On the basis of the foregoing, the Panel notes the contradictory declarations heard at the hearing: on one side, the Athlete and his representative deny that they had the opportunity to verify the integrity of the seal before the breaking procedure was started; on the other side, the director of the Laboratory declared that the Athlete and his representative had the B sample bottle in front of them for almost half an hour, when its content was thawing and the codes were verified. The Panel is therefore required to resolve that contradiction.

107. For this purpose the majority of the Panel finds the declarations of the director of the Laboratory more convincing:

i. they are confirmed by a contemporary document, i.e. the Sample Inspection Form, filled and signed by the representatives of the Laboratory, the Athlete and his representative at the time the analysis was conducted. On that form, the signatories confirmed to have inspected the integrity of the sample based on three issues separately listed on the form (*i.e.* that the identification number on the sample corresponded to the number on the DCF, that the seal of the sample was "intact", and that the sample bottle was properly closed);

ii. it is not credible that for the entire period in which the bottle was in the same room as the Athlete and his representative, they did not have a look at it (as they claim);

iii. further, in the view of the majority of the Panel, the Athlete (and for him his representative) have a more compelling personal interest (avoidance of an actual finding of an anti-doping rule violation and its disciplinary consequences) than the director of the Laboratory in declaring in their favour (avoidance of a theoretical risk of a sanction on the Laboratory. (The Panel notes that the Director has herself accepted that there was some departure from ordinary laboratory practice, albeit without causative effect).

108. With respect to the events which followed the partial breaking of the seal, the Panel notes that the Athlete and his representative had the opportunity to verify by hand whether the bottle could be opened as a result of the operation, and that, as a result of such verification, the representative of the Athlete marked on the Sample Inspection

Form that the seal was "*integrated*". On the basis of the declaration at the hearing, and of the plain meaning of such expression, the Panel understand that the seal had remained on the bottle. In addition, nobody present maintained that the cap (below the seal) had been opened.

109. The Panel notes that there was disagreement between the Parties on the meaning of the word "*integrated*" used by Dr Hassan on the Sample Inspection Form. WADA understood this word as meaning that the integrity of the sample was preserved. Dr Hassan himself explained to have meant that the cap was still physically integrated ("*attached*") with the bottle. It is, however, common ground between the Parties that the cap had not been opened between the partial breaking of the seal and the moment when the Athlete and Dr Hassan could themselves verify its consequences and that the cap, once opened, cannot be reinserted on the bottle. At the same time, the Panel notes the Athlete's contention that such written acknowledgment by his Representative was somehow forced on him by the director of the Laboratory or was the result of some feeling of reverence or respect that he had for her. Of such constraints on him (faintly, if at all, credible in themselves), however, there is, in the Panel's view, no evidence.

110. As a result, the Panel concludes that no "fundamental" departure occurred when the B sample was opened because the Athlete and his representative were present when the identity of the sample and the integrity of its seal were verified, when the sample bottle was opened and when the analytical procedures were initiated. In other words, the basic right of the Athlete (to be given a real opportunity to verify the accuracy of the sample opening process) was materially respected: the process of breaking the seal of the sample should, admittedly, not have started before the Sample Inspection Form had been completed, in order to allow everybody to direct their attention to that process; however, it did not result in the removal of the seal and the opening of the bottle. Therefore, its relevance has to be evaluated according to Article 3.2.2 of the ADR.

111. In that regard, the Panel finds that any departure that may have occurred because the seal of the sample was partially broken when the directory of the Laboratory was still completing the Sample Inspection Form cannot have caused the AAF. In fact, it is common ground, and cannot be disputed, that no (metabolites of a) substance (corresponding to those detected in the A sample) could have entered a closed bottle, properly sealed (as verified, at least visually, by all attending the test) up to the moment the process of the breaking the seal was started. In any case, the Athlete failed to establish how such departure could reasonably have caused the AAF. Therefore, the Athlete's contentions, based on the allegedly untimely partial breaking of the seal of the bottle containing the B sample, have to be dismissed.

112. The Athlete also submits that, on the second day of the analyses, he was denied the right to attend the analysis together with his representative because the Laboratory director had permitted the presence of only one of them.

113. Such contention, however, is not supported by any evidence and is even contradicted by the declarations of the representative, Dr Hassan, who at the hearing indicated that Dr Ventura had advanced only a "gentle suggestion" and did not tell the Athlete that he could not attend.

114. As a result, the Athlete's right to "*be present at the analysis of the B Sample*" (Article

7.3.3 of the EADR and Article 5.2.4.3.2.6 of the ISL) was not breached. The Athlete's submissions in this respect must be rejected.

115. Again likewise the Panel does not agree with the Athlete's contentions that a number of other alleged violations of the EADR, of the ISL or of "*principles of good governance*", affecting the procedure which resulted in the AAF and leading to the Decision, justify its setting aside:

i. as to the alleged breach of the obligation to report the A-sample analysis results within 10 working days after the receipt of the sample, the Panel notes that indeed under Article 5.2.6.5 of the ISL "*Reporting of "A" Sample results should occur within ten working days of receipt of the Sample. The reporting time required for specific Competitions may be substantially less than ten days. The reporting time may be altered by agreement between the Laboratory and the Testing Authority*". The final laboratory report regarding the A sample was issued on 19 July 2016, while the A sample was received on Friday 22 April 2016. At the same time, however, the Panel notes that the initial report of the analysis results was produced on Monday 9 May 2016, which was within ten working days after the receipt of the sample as required by the ISL. Based on the initial report, the Laboratory requested on 12 May 2016 the EGY-NADO for permission for further analysis, which permission the EGY-NADO granted the same day. As a result of fluctuations in the Athlete's steroid profile, the Laboratory was required to conduct a quantification of the steroid profile parameters and an IRMS procedure in order to ascertain the possible presence of exogenous steroids, and thereafter collect the opinion of a second laboratory on the IRMS results. The Panel therefore notes that the final reporting time has been altered by agreement on 12 May 2016 between the Laboratory and the Testing Authority, and there has been no deviation from Article 5.2.6.5 of the ISL. In any case, the alleged departure from Article 5.2.6.5 of the ISL cannot reasonably have caused the AAF;

ii. as to the participation in some operations of employees of the Laboratory who were not listed as involved in the test some pages of the B sample LDP, the Panel indeed notes that at p. 77-79 the initials of Mr Xavier Matabosh Geronés appear, and that p. 80 shows the initials of Mr Sergio Peña Segura, whose names are not included in the list of p. 3, mentioning the "*Laboratory staff involved in the test*". However, their names and initials are included in the list of the Laboratory staff (p. 17-19 of the B sample LDP). In addition, the Athlete failed to establish how such circumstance could reasonably have caused the AAF;

iii. the alleged breach of the rules on confidentiality and public disclosure, in the same way, cannot have caused the AAF, not least because they occurred after the AAF had been reported by the Laboratory;

iv. the alleged prohibition for the Athlete's counsel to attend to hearing before the DHP, mentioned in the Athlete's written submission, was not additionally substantiated and evidenced. In any case, the Panel remarks that the Athlete did present his position in the proceedings before the DHP, both in writing and at that hearing. In addition, any violation of the right to be heard before the DHP has been cured by the appeal to CAS, where the Athlete's right to state his case has been, as explicitly acknowledged by him, fully respected;

v. as to the prohibition to train imposed on the Athlete following the publication of the B-sample results, itself irrelevant to the AAF, the Panel notes that after the notification of the A-sample analysis the Athlete was provisionally suspended and that in the period of provisional suspension an athlete is barred from participating in any competition or activity authorized or organized by the EAF or any sports club under its governance (EADR 10.12.1). The prohibition to participate in any organized training activity imposed on the Athlete is thus a direct consequence of the provisional suspension mandated by the EADR;

vi. as to the failure of the DHP to publish the reasons of the Decision, the Panel agrees with the Athlete that the DHP did not comply with its obligation to timely explain the reasons of its Decision. The grounds are a vital part of any judicial ruling, as they allow the possibility for the parties concerned to understand the underlying rationale and to challenge it if they are dissatisfied. In addition, the obligation to state the reasons is a safeguard against arbitrary decisions. However, such violation has been cured by the appeal to the CAS, where the Athlete's right to state his case has been fully respected: the Athlete explained why he should not be sanctioned; and this Panel, fully entitled to review the facts and the law, issues a new decision replacing the challenged one. As a result, the failure of the DHP to publish the grounds of the Decision is not *per se* a reason to set aside the Decision and absolve the Athlete, because, even in the absence of such publication, the Panel is both requested and required to ascertain whether an anti-doping rule violation was committed (and what sanctions are to be imposed if it was).

116. As a result, the Athlete's contentions must be rejected: the Panel confirms that the A and B sample analyses show the presence of a prohibited substance and that there is no basis to discard such analytical results. The Athlete has therefore committed the anti-doping rule violation contemplated by Article 2.1 ("*Presence of a prohibited substance or its metabolites or markers in a Athlete's sample*") of the EADR.

ii. What is the proper sanction to be applied?

117. In light of the foregoing, the second issue to be examined in this arbitration relates to the measure of the sanction to be imposed on the Athlete for such violation.

118. According to Article 10.2.1 of the EADR, the sanction provided for the violation committed by the Athlete is a suspension for 4 years. Such sanction, however, can be replaced with a suspension of 2 years, if it is proven by the Athlete that the violation was not intentional (Article 10.2.2 of the EADR). Then, it can be eliminated or reduced if the Athlete proves that he bears "*no fault or negligence*" or "*no significant fault or negligence*" (Article 10.5 of the EADR).

119. The DHP held in its Decision that the anti-doping rule violation was not intentional, but that the Athlete was not entitled to any fault-related reduction. This conclusion is challenged before the CAS by WADA, which submits that the Athlete has not proved that the anti-doping rule violation was not intentional. As a result, the sanction should be a suspension for 4 years. On the other hand, the Athlete seeks a reduction of the suspension imposed by the DHP, by pleading his "*no significant fault or negligence*".

120. As a result of the Parties' submissions, the first question that the Panel has to examine is whether the violation can be considered to be intentional for the purposes of Article 10.2.1 of the EADR. In fact, only in the event that the anti-doping rule violation is held to be not intentional, is an examination relating to the Athlete's fault or negligence warranted at all.

121. As mentioned, pursuant to Articles 10.2.3 of the EADR, "*the term "intentional" is meant to identify those Athletes who cheat*". It requires, therefore "*that the Athlete ... engaged in conduct which he ... knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk*". In the Athlete's case, as a result of the burden of proof placed on him by Article 10.2.1.**1**, it is thus for the Athlete to prove by a balance of probability pursuant to Article 3.1 of the EADR that he did not engage in a conduct which he knew constituted an anti-doping rule violation, or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.

122. The Panel endorses in respect of this provision the recent CAS jurisprudence (CAS 2016/A/4534, *Fiol Villanueva v. FINA*; CAS 2016/A/4676, *Ademi v. UEFA*; CAS 2016/A/4919, *WADA v. WSF and Iqbal*), which found that the establishment of the source of the prohibited substance in an athlete's sample is not mandated in order to prove an absence of intent. In particular, this Panel is impressed by the fact that the provisions of the EADR concerning "intent" do not refer to any need to establish source, in direct contrast to Article 10.5, combined with the definitions of "*No Fault or Negligence*" and "*No Significant Fault or Negligence*", which expressly and specifically require to establish source.

123. The Panel, indeed, observes that it could be *de facto* difficult for an athlete to establish lack of intent to commit an anti-doping rule violation demonstrated by presence of a prohibited substance in his sample if he cannot even establish the source of such substance: proof of source would be an important, even critical, first step in any exculpation of intent, because intent, or its lack, are more easily demonstrated and/or verified with respect to an identified "route of ingestion". However, the Panel can envisage the possibility that it could be persuaded by an athlete's assertion of lack of intent, where it is sufficiently supported by all the circumstances and context of his or her case, even if, in the opinion of the majority of the Panel, such a situation may inevitably be extremely rare: where an athlete cannot prove source, it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him.

124. The foregoing, in fact, does not mean that the Athlete can simply plead his lack of intent without giving any convincing explanations, to prove, by a balance of probability, that he did not engage in a conduct which he knew constituted an anti-doping rule violation or knew that there was a significant risk that said conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. The Panel repeats that the Athlete, even though he is not bound to prove the source of the prohibited substance, has to show, on the basis of the objective circumstances of the anti-doping rule violation and his behaviour, that specific circumstances exist disproving his intent to dope.

125. In this context, therefore, it is this Panel's opinion that, in order to disprove intent, an athlete may not merely speculate as to the possible existence of a number of conceivable explanations for the AAF (such as sabotage, manipulation, contamination, pollution, accidental use, etc.) and then further speculate as to which appears the most likely of those possibilities to conclude that such possibility excludes intent. There is in fact a wealth of CAS jurisprudence stating that a protestation of innocence, the lack of sporting incentive to dope, or mere speculation by an athlete as to what may have happened does not satisfy the required standard of proof (balance of probability) and that the mere allegation of a possible occurrence of a fact cannot amount to a demonstration that that fact did actually occur (CAS 2010/A/2268, *I. v. FIA*; CAS 2014/A/3820, *WADA v. Robinson and JADCO*): unverified hypotheses are not sufficient (CAS 99/A/234-235, *Meca-Medina v. FINA*). Instead, the CAS has been clear that an athlete has a stringent requirement to offer persuasive evidence that the explanation he offers for an AAF is more likely than not to be correct, by providing specific, objective and persuasive evidence of his submissions. In short, the Panel cannot base its decision on some speculative guess uncorroborated in any manner.

126. In this connection, the Panel notes that the Athlete has not provided any evidence whatsoever of how "*urinary metabolites of testosterone related steroids*" came to be present in his urines. The Athlete denies having taken intentionally any product (including the Product) containing such substance, and expressly declared that he has no idea of how it entered into his system. The Appellant, however, submits some possible explanations intended to substantiate his pleading of lack of intent beyond the missing prove of the "route of administration" of the prohibited substance:

    i. as a first hypothesis, the majority of the Panel understands that the Athlete contends that he could have been the victim of an act of sabotage or manipulation prior to or at analysis of the B sample;

    ii. as a second hypothesis, the Athlete avers that his advisor Dr Mansour bought and gave him, and that he used, the Product in its "*Hybrid Formula*", but remarks that the Product is commercialized in a form that contains a prohibited substance corresponding to the substance found in his urine. Even though he denies having ever bought (and used) the Product commercialized in this other form containing a prohibited substance, and proved by witness deposition that the Product was always checked before ingestion, the Athlete submits that contamination or mistakes may have occurred during the production process.

127. As to the first point, the majority of the Panel notes that the Athlete's contention, so understood, is at least consistent with the Athlete's main submission relating to the alleged violations of his right to verify the integrity of the B sample. However, the majority of the Panel repeats that no violations of the Athlete's right to verify the integrity of the B sample were found, circumstance which deprives the Athlete's contention of credibility.

128. As to the second point, the majority of the Panel, while aware that the prohibited substance found in the Athlete's samples matches the prohibited substance contained in one of the versions of the Product, also notes the emphatic declarations of the Athlete, supported by Dr Mansour, that he always used the clean version, as demonstrated, for instance, by his declaration on the DCF, and therefore that an inadvertent use of tablets from a bottle of the other version has been ruled out by the Athlete himself and cannot

therefore comment itself to the majority of the Panel. In addition, in the opinion of the majority of the Panel, this contention is inconsistent with the Athlete's primary case since any explanation of the AAF as caused by the use of the Product leaves no scope for an explanation of the AAF as caused by departures from the applicable rules about the opening of the B sample.

129. In general, and without prejudice to the above, the various explanations put forward by the Appellant as to the presence of the prohibited substance are, in the opinion of the majority of the Panel, no more than theoretical possibilities, not even linked to definite circumstances, still less verified by evidence as to, for example, when, where, how and why there was any manipulation or sabotage or contamination or mislabelling in or after the production process.

130. The final point raised by the Athlete (that he voluntarily submitted to the doping control, because the DCO had already left) is, in the view of the majority of the Panel, unpersuasive. First, because the Athlete by inviting back the Officer was remedying his own failure to be present where he had indicated that he would be for an out of competition test with a duty he had. Second, because such behaviour could, in the opinion of the majority of the Panel, be explained by a (misplaced) confidence that no AAF would be returned notwithstanding the quantum of prohibited substances in his system in fact revealed by the analyses.

131. Accordingly, the majority of the Panel cannot find that the Athlete has discharged the burden which lies upon him to establish by a balance of probability non-intentional use of a prohibited substance. It reminds itself that it is not confined to a binary choice: intention or non intention. It is sufficient for it to find that the Athlete has not disproved intention. It can itself construct theories which both inculpate and which exculpate the Athlete from intentional use; but its only function as an arbitral body is to make findings based on the evidence and arguments adduced before it.

132. As a result, for the above reasons, the majority of the Panel finds that the Athlete failed to prove lack of intent. The sanction of the suspension for 4 years is therefore necessarily to be imposed on the Athlete. The Decision has to be modified accordingly.

iii. Are any of the Athlete's results to be disqualified?

133. Pursuant to Article 10.8 of the EADR, "*all ... competitive results of the Athlete obtained from the date a positive Sample was collected ..., through the commencement of any Provisional Suspension or Ineligibility period, shall, unless fairness requires otherwise, be Disqualified with all of the resulting Consequences including forfeiture of any medals, points and prizes*".

134. The sample was collected on 17 April 2016. The Athlete was provisionally suspended on 21 July 2016. As a result, Article 10.8 of the EADR mandates the disqualification of all the Athlete's results between 17 April 2016 and 21 July 2016.

135. The Panel sees no reason to depart from such conclusion, based on the "fairness" exception allowed by Article 10.8 of the EADR. In fact, no reason of fairness is engaged with respect to an athlete found responsible for an intentional anti-doping rule violation.

136. As a result, the Panel finds that all the Athlete's results between 17 April 2016 and 21 July 2016 are to be disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

X. COSTS

137. Article R64.4 of the Code provides:

"*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

- *the CAS Court Office fee,*
- *the administrative costs of the CAS calculated in accordance with the CAS scale,*
- *the costs and fees of the arbitrators,*
- *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
- *a contribution towards the expenses of the CAS, and*
- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties".

138. Article R64.5 of the Code provides:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties*".

139. In light of the foregoing, the Panel is of the view, having taken into account the outcome of the arbitration and in the light of all the circumstances and of the financial resources of the Parties, that the Athlete and EGY-NADO shall bear, as to 50% each, the costs of the arbitration, as determined by the CAS Court Office at the end of the proceedings.

140. At the same time, taking into consideration all the relevant circumstances, the Panel holds that the Athlete and EGY-NADO shall pay the amount of CHF 3,000 (three thousand Swiss Francs) each to WADA as a contribution towards the costs, for legal fees and other expenses, that WADA has incurred with respect to these arbitration proceedings. In this regard, the Panel notes that the Athlete himself requested a hearing, which required the participation of WADA's legal team.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Ihab Abdelrahman on 1 March 2017 against the decision rendered on 9 February 2017 by the EGY-NADO Doping Hearing Panel is dismissed.

2. The appeal filed by the World Anti-Doping Agency on 20 March 2017 against the decision rendered on 9 February 2017 by the EGY-NADO Doping Hearing Panel is upheld.

3. Mr Ihab Abdelrahman is declared ineligible for a period of four years from 21 July 2016, the date of his provisional suspension. All competitive results obtained by Mr Ihab Abdelrahman between 17 April 2016 and 21 July 2016 are disqualified, with all of the resulting consequences, including forfeiture of any medals, points and prizes.

4. Mr Ihab Abdelrahman and EGY-NADO shall bear as to 50% each the costs of the arbitration proceedings, to be determined and served to the parties by the CAS Court Office.

5. Mr Ihab Abdelrahman and EGY-NADO shall pay to the World Anti-Doping Agency an amount of CHF 3'000 (three thousand Swiss Francs) each towards the legal costs and expenses incurred in connection with the present proceedings.

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 18 December 2017

THE COURT OF ARBITRATION FOR SPORT

Luigi Fumagalli
President

Olli Rauste
Arbitrator

Michael J. Beloff M.A. Q.C
Arbitrator