



# Indian Arbitration Forum

---

## Guidelines for conduct of Arbitrations

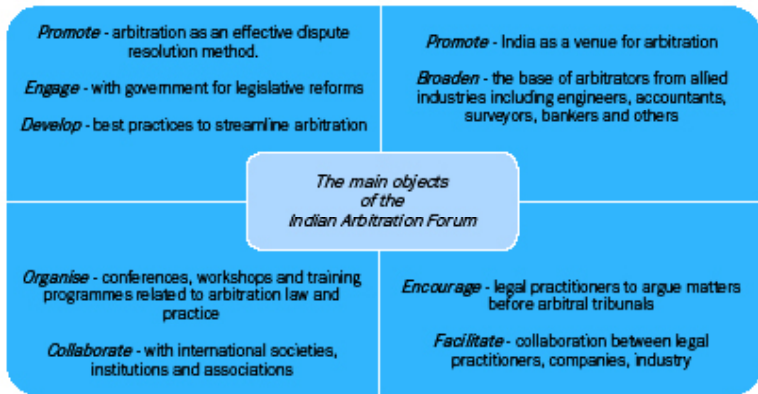
Version 2.0  
February 2020

Supported by:





The Indian Arbitration Forum is an association of leading arbitration practitioners committed to streamlining the conduct of arbitration in India and promoting arbitration as an effective means of dispute resolution in India and abroad.



## PROCESS NOTE

The Indian Arbitration Forum (“IAF”) is an association of leading arbitration practitioners committed to streamlining the conduct of arbitration in India and promoting arbitration as an effective means of dispute resolution in India and abroad. This is a first-of-its-kind initiative by legal practitioners to establish a commercial/arbitration bar in India.

Arbitration in India is fast evolving as the preferred dispute resolution mechanism, especially insofar as commercial disputes are concerned. The Indian Arbitration Forum Best Practices Guidelines for Conduct of Arbitral Proceedings (“IAF Guidelines”) was prepared with a view to provide guidance on evolving best practices in the arbitral process. IAF partnered with COMBAR, UK, in association with Singapore International Arbitration Centre, Mumbai Centre for International Arbitration and Gujarat National Law University.

The IAF Guidelines were the result of a five-step process: (i) research of existing international guidelines; (ii) preparation of a questionnaire to understand the gaps in the Indian arbitration practice; (iii) interviews with domestic and international practitioners; (iv) drafting of the guidelines; and (v) broad review of the guidelines.

IAF provided the drafting team with indicators regarding the conduct of arbitral proceedings. In order to understand the procedures better, practice notes, rules and guidelines prescribed by leading arbitral institutions were studied. To reconcile the international best practices with the existing realities of arbitration in India, a questionnaire was prepared for the purpose of interviewing practitioners. This checklist was prepared with the assistance of Jasbir Dhillon QC, Rajesh Pillai QC and Rebecca Zaman.

The IAF then identified prominent domestic and international practitioners who would be interviewed for the purpose of this exercise. These included Mysore Prasanna, Jasbir Dhillon QC, Anneliese Day QC, Ketan Parikh, Nakul Dewan, Sherina Petit, Siddharth Dhar and Georges Chalfoun. The drafting team along with IAF team members interviewed these practitioners and the responses of these practitioners received during the individual interviews were recorded for the purpose of aggregating the comprehensive data. The broad range of inputs were analysed and a draft of the IAF Guidelines was prepared on the basis of this analysis, attempting to keep a balance between international best practices as well as practical realities in the Indian context.

This draft was then reviewed by legal luminaries like Justice B.N. Srikrishna, Justice A.P. Shah including a panel comprising of the IAF members as well as other leading practitioners. After several rounds of review, additions and edits, the IAF Best Practices Guidelines for Conduct of Arbitral Proceedings was formulated into its current form.

The IAF team expresses its gratitude to the Gujarat National Law University team comprising of Dr. Vikas Gandhi, Dr. Nidhi Buch and the students, Param Bhalerao, Gladwin Issac, Sakshi Pawar, Bhavya Shukla and Akshata Kumta, who were part of the drafting team as well as the above-mentioned process.

Members of the IAF team that drove the abovementioned process were Sahil Kanuga, Vyapak Desai, Raj Panchmatia, Mustafa Motivala, Nusrat Hassan, Tejas Karia, Shashank Garg, Renu Parekh, Nandini Khaitan, Abhinav Bhushan, Manavendra Kane, Meenakshi Iyer, Soorjya Ganguli, Promod Nair, Neeti Sachdeva, Pranav Mago, Anish Wadia, Rishab Gupta, Omar Ahmed, Trisha Mitra, Srinivas Chatti and Chinmayee Pendse.

February 2020: IAF Guidelines - Version 2.0

The IAF is proud to launch the updated version of the IAF Guidelines i.e. IAF Guidelines Version 2.0, which incorporates further inputs received from various eminent jurists including Justice Vibhu Bakhru and Senior Counsel Dr. Birendra Saraf (Honorary Secretary, Bombay Bar Association). The IAF will, periodically, continue to update the guidelines, with a view to incorporate best practices.

# Guidelines For Conduct of Arbitration Proceedings

## **Article 1. General Provisions**

1. The arbitral tribunal<sup>1</sup> may, keeping these guidelines in mind, adopt suitable procedures for the conduct of the arbitration in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.
2. The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration.
3. Unless agreed otherwise by the parties or if the award being passed is a consent award in terms of Section 30 of the Arbitration and Conciliation Act, 1996, the arbitral tribunal shall make every effort to ensure that an award is reasoned and valid.

---

1. Reference to "tribunal" shall also be deemed to mean and include reference to a "sole arbitrator".

# Section I- Conduct of Arbitration

## Communication Between the Parties, Counsel and Tribunal

### **Article 2. Juridical seat and venue of an arbitration**

1. Unless specified otherwise in the arbitration agreement, the juridical seat of arbitration and the venue, if any, for the hearings are to be determined by mutual consent of the parties to the arbitration.
2. In a case where the parties have failed to agree upon or specify the juridical seat of arbitration, the tribunal that is constituted to adjudicate the matter, shall determine the juridical seat of arbitration, at the outset of the arbitration proceedings, having regard to the circumstances of the case.
3. In a case where the parties have failed to agree upon or specify the venue, the tribunal may conduct arbitral proceedings at a venue it considers appropriate having regard to the circumstances of the case, including the convenience of the parties.

### **Article 3. Procedure to be followed for ex-parte communications**

1. Upon constitution, the arbitral tribunal shall, at all circumstances, avoid communication with the parties or their representatives, on an *ex parte* basis, or vice versa. If for any reason, any correspondence is not marked to one of the parties, the same shall be sent to them within 7 days of the original communication.
2. Parties shall mark the other party or their counsel in all the e-mails / letters / faxes and any other written communication with the Tribunal and all discussions inter-se the parties regarding the proceedings, should preferably be in writing or recorded in e-mail or any other record, (including but not limited to adjournment requests, circulating draft issues, request for documents, etc.)

### **Article 4. Procedure to be followed after a Notice of Arbitration has been issued**

1. The notice of arbitration (“**Notice**”) received by the respondent must be with a clear indication that the claimant seeks to resolve the dispute through arbitration. The Notice must also convey the mechanism for appointment of the arbitrators to the dispute.
2. If the arbitration is to be referred to a sole arbitrator to be mutually appointed by the parties or if the arbitration agreement is silent as to the number of arbitrators and the mechanism of their appointment, the respondent should consider the proposed names and convey its assent/dissent to the same in its response. In case of dissent, the respondent should propose alternate names for the claimant’s consideration.
3. If the arbitration is to be referred to three arbitrators, two of whom are to be appointed by each party and the third arbitrator by the nominated arbitrators, the party invoking the arbitration clause should nominate its arbitrator.
4. The respondent, on receipt of the Notice and where applicable, must make arrangements for the nomination of an arbitrator.
5. Once both parties have appointed arbitrators, these two arbitrators will determine and appoint the Presiding Arbitrator of the Tribunal.

6. If the respondent denies receipt of the Notice, the claimant has the burden to prove that the Notice has been received by the respondent.

#### **Article 5. Steps to be taken by parties, counsel and the tribunal leading up to the First Procedural Order**

1. The parties and the Tribunal should ensure that (i) the Tribunal is, failing any exigencies, able to commit sufficient time to the arbitration; and (ii) the Tribunal is willing to adjudicate the matter during regular business hours, in order to resolve the dispute in a timely manner within the timelines envisaged under law.
2. The arbitrator shall disclose in writing any circumstances which may give rise to justifiable doubts as to his independence or impartiality. The arbitrator shall be guided by Section 12 of the Arbitration and Conciliation Act, 1996 in this regard.
3. The fees may be agreed between the parties in advance and/or or as a part of the arbitrator's communication regarding his consent to act as an arbitrator; and if not, would be a subject of decision in the first procedural hearing. The fees (including payment of relevant taxes and currency differentials, if any) of the tribunal shall be decided at the outset by mutual consent of the parties in accordance with the tribunal's specifications and the provisions of the Arbitration and Conciliation Act, 1996. In case of institutional arbitration, the estimated expenses and the methodology of billing of the arbitral institution shall be made clear to the parties at the outset.

#### **Article 6. Adjudication of Preliminary Issues (such as bifurcation of proceedings, jurisdictional challenges, interim protection application etc.)**

As soon as it is practicable, and preferably not later than the drafting of the Terms of Reference, the parties shall identify the preliminary issues (if any), and thereafter, the Tribunal shall pass appropriate directions for their expeditious determination. The Tribunal may, at its discretion, first determine the preliminary issues and then proceed with completion of pleadings, or order that pleadings and the arbitral process shall continue concurrently with the determination of the preliminary issues.

#### **Article 7. Terms of Reference**

1. The tribunal shall have the power to draw up the Terms of Reference in the presence of the parties, if it so deems necessary, on the basis of their most recent submissions, including pleadings.
2. The Terms of Reference shall contain the following:
  - a. the names and details of the parties and their respective representatives, along with their respective postal addresses, email addresses, facsimile number and telephone numbers to which any communications and notifications may be sent to;
  - b. a list of the issues to be determined by the tribunal (including list of preliminary issues, if any);
  - c. parties' position on admissibility and jurisdictional objections;
  - d. the summaries of the parties' substantive claims;
  - e. the relief sought by each party and an estimate of the monetary value of the claims;
  - f. a list of the factual witnesses and expert witnesses that are proposed to give evidence; and
  - g. address issues of procedural matters, including mode of communication with the Tribunal and inter se between the parties, issues related to format of documentation (including indexation and pagination), service (such as electronic or hard copy), applicability of rules of evidence (such as the IBA Rules), etc.

3. No party shall be allowed to derogate from the Terms of Reference or present new claims which fall outside the scope of the prepared Terms of Reference, unless the tribunal or the relevant institutional rules specifically allows it to do so. If such derogation is allowed, the tribunal must have a justifiable reason(s) for doing so, and such reason(s) must be recorded in writing.

#### **Article 8. Case Management Conference**

1. The tribunal shall hold a case management conference soon after drawing of the Terms of Reference.
2. At the case management conference, the procedural timeline may be set for:
  - a. Indication of the time limits for submission of the written evidence and expert reports
  - b. Provisional dates for hearings;
  - c. Setting the date for examination of the witnesses and the experts.
  - d. It must be clarified that if adjournment is sought, costs may be imposed on the party seeking adjournment
3. The Tribunal and the parties shall discuss whether there is the necessity for further written submissions, additional written evidence, or additional procedural meetings
4. Location of the case management conference and attendance of the parties: The case management conference shall be held at any location, which is mutually agreed to by both the parties. In the absence of such a consensus, the tribunal may decide to hold the case management conference at a location that is convenient for both of the parties. However, at all times, first preference should be given (unless of course to the contrary is absolutely required, which discretion would be entirely with the tribunal) to hold the case management conference by video or teleconference, to save time and cost for the parties.
5. At the conclusion of the case management conference, a case management order shall be prepared by the tribunal. A copy of the order shall be provided to the parties and the order shall be binding on both, the parties as well as the tribunal.
6. A party may be allowed to derogate from the agreed terms or delay in submitting documentation, only if it takes and receives prior written permission of the tribunal. If the party in violation of the agreed terms, has not taken the prior permission of the tribunal, then the tribunal must check whether the party had a justifiable reason for the delay or derogation. Based on this, the tribunal has the discretion to either condone or not condone such delay. However, even if the reason(s) is justifiable and the tribunal has condoned such delay or derogation, the tribunal still has the discretion to impose costs on the party so derogating from timelines. Where the reason was not justifiable, but it would be in the interests of justice to allow/condone the delay, then the tribunal may do so only on the precondition of imposition of heavy costs on such a party so derogating from timelines and grant such extensions as a rule of exception. Costs, where imposed, must either be paid immediately, or added to the final costs order, in favour of the other party, as a condition precedent to the condonation of the delay.
7. Where payment is due, and a party fails to make this payment, the Tribunal has the power to impose sanctions on the party. These sanctions include imposition of costs on the party failing to make the payment or the forfeiture of its right to make any further submissions. Such order shall be in writing and with reasons.

## Section II - Opening and Closing Submissions

### **Article 9. Opening Submissions**

1. The Request for Arbitration (and the written statement) may be treated as a primary exchange of opening submissions, if they are written in a detailed manner.
2. If the Request for Arbitration (and written statement) does not have a sufficiently detailed explanation of the facts and circumstances, then parties may, if so directed by the Tribunal, submit separate opening submissions. Parties are encouraged to submit their pleadings in a 'memorial style', substantiated with a well-articulated legal standard, judicial precedents, authorities, witness statements, expert report and other documentary evidence.

### **Article 10. Post-hearing submissions**

1. The submission of post-hearing briefs is dependent on the discretion and preference of the tribunal. The tribunal should exercise this power with restraint.
2. If the tribunal requires further clarification, or a party wishes to substantiate its arguments further, the tribunal may, as an alternative to allowing post-hearing submissions, pose specific questions to the party. In order to expedite the process, the party is encouraged to answer these questions in a succinct manner.
3. A party that wishes to make post-hearing submissions on a particular issue shall make a written application to the tribunal. The tribunal may allow the party to submit a post-hearing brief on that particular issue if it is of the opinion that sufficient evidence has not been presented on that issue, or the party may have relevant additional information to present to the tribunal.
4. In the event that the tribunal adopts a procedure whereby it requests the parties not to present evidence or arguments before the hearings it may allow the parties to submit written post-hearing submissions.



# Section III - Evidence

## **Article 11. General Provisions**

1. Each party shall have the burden of proving the facts relied on to support its claim or defence.
2. The Arbitral Tribunal shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.
3. In addition to the powers specified in these guidelines, and not in derogation of the mandatory rules of law applicable to the arbitration, the Tribunal shall have the power to:
  - a. conduct such enquiries as may appear to the Tribunal to be necessary or expedient;
  - b. order the parties to make any property or item available for inspection;
  - c. order any party to produce to the Tribunal and to the other parties for inspection, and to supply copies of, any document in their possession, custody or control which the Tribunal considers relevant to the case and material to its outcome; and
  - d. determine any claim of legal or other privilege.

## **Article 12: Documents**

1. Within the time ordered by the Arbitral Tribunal, each Party shall submit to the Arbitral Tribunal and to the other Parties all Documents available to it on which it relies, including public Documents and those in the public domain, except for any Documents that have already been submitted by another Party.
2. Subject to the time specified in the First Procedural hearing, any Party may submit to the Arbitral Tribunal and to the other Parties a Request to Produce.
3. A Request to Produce shall contain:
  - a. a description of each requested Document sufficient to identify it, or
  - b. a description in sufficient detail (including subject matter) of a narrow and specific requested category of Documents that are reasonably believed to exist; in the case of Documents maintained in electronic form, the requesting Party may, or the Arbitral Tribunal may order that it shall be required to, identify specific files, search terms, individuals or other means of searching for such Documents in an efficient and economical manner;
  - c. a statement as to how the Documents requested are relevant to the case and material to its outcome; and
  - d. a statement that the Documents requested are not in the possession, custody or control of the requesting Party or a statement of the reasons why it would be unreasonably burdensome for the requesting Party to produce such Documents, and
  - e. a statement of the reasons why the requesting Party assumes the Documents requested are in the possession, custody or control of another Party.
4. Within the time ordered by the Arbitral Tribunal, the Party to whom the Request to Produce is addressed shall produce to the other Parties and, if the Arbitral Tribunal so orders, to it, all the Documents requested in its possession, custody or control as to which it makes no objection.

5. If the Party to whom the Request to Produce is addressed has an objection to some or all of the Documents requested, it shall state the objection in writing to the Arbitral Tribunal and the other Parties within the time ordered by the Arbitral Tribunal. The reasons for such objection shall be a failure to satisfy any of the requirements of Article 13(3) as mentioned previously or any of the reasons as follows: -
  - a. lack of sufficient relevance to the case or materiality to its outcome;
  - b. legal impediment or privilege under the legal or ethical rules determined by the Arbitral Tribunal to be applicable;
  - c. unreasonable burden to produce the requested evidence;
  - d. loss or destruction of the Document that has been shown with reasonable likelihood to have occurred;
  - e. grounds of commercial or technical confidentiality that the Arbitral Tribunal determines to be compelling;
  - f. grounds of special political or institutional sensitivity (including evidence that has been classified as secret by a government or a public international institution) that the Arbitral Tribunal determines to be compelling; or
  - g. considerations of procedural economy, proportionality, fairness or equality of the Parties that the Arbitral Tribunal determines to be compelling.
6. Upon receipt of any such objection, the Arbitral Tribunal may invite the relevant Parties to consult with each other with a view to resolving the objection.
7. Either Party may, within the time ordered by the Arbitral Tribunal, request the Arbitral Tribunal to rule on the objection. The Arbitral Tribunal shall then, in consultation with the Parties and in timely fashion, consider the Request to Produce and the objection. The Arbitral Tribunal may order the Party to whom such Request is addressed to produce any requested Document in its possession, custody or control as to which the Arbitral Tribunal determines that (i) the issues that the requesting Party wishes to prove are relevant to the case and material to its outcome; (ii) none of the reasons for objection set forth in Article 13(5)(a) to 13(5)(g) applies; and (iii) the requirements of Article 13(3) have been satisfied. Any such Document shall be produced to the other Parties and, if the Arbitral Tribunal so orders, to it.
8. In exceptional circumstances, if the propriety of an objection can be determined only by review of the Document, the Arbitral Tribunal may determine that it should not review the Document. In that event, the Arbitral Tribunal may, after consultation with the Parties, appoint an independent and impartial expert, bound to confidentiality, to review any such Document and to report on the objection. To the extent that the objection is upheld by the Arbitral Tribunal, the expert shall not disclose to the Arbitral Tribunal and to the other Parties the contents of the Document reviewed.
9. If a Party wishes to obtain the production of Documents from a person or organisation who is not a Party to the arbitration and from whom the Party cannot obtain the Documents on its own, the Party may, within the time ordered by the Arbitral Tribunal, ask it to take whatever steps are legally available to obtain the requested Documents, or seek leave from the Arbitral Tribunal to take such steps itself. The Party shall submit such request to the Arbitral Tribunal and to the other Parties in writing, and the request shall contain the particulars as applicable. The Arbitral Tribunal shall decide on this request and shall take, authorize the requesting Party to take, or order any other Party to take, such steps as the Arbitral Tribunal considers appropriate if, in its discretion, it determines that: -

- a. the Documents would be relevant to the case and material to its outcome,
  - b. the requirements of Article 13(3) as applicable, have been satisfied and
  - c. none of the reasons for objection set forth in Article 13(5)(a) to 13(5)(g) applies.
10. At any time before the arbitration is concluded, the Arbitral Tribunal may (i) request any Party to produce Documents, (ii) request any Party to use its best efforts to take or (iii) itself take, any step that it considers appropriate to obtain Documents from any person or organisation. A Party to whom such a request for Documents is addressed may object to the request for any of the reasons set forth in Article 13(5)(a) to 13(5)(g). In such cases, Article 13(6) to Article 13(8) shall apply correspondingly.
11. The parties and/or tribunal may approach the Appropriate Court in order to compel a third party to produce documents and/or appear as a witness. Such application shall contain:
- a. The names and addresses of the parties and the tribunal;
  - b. The nature of the claim and relief sought;
  - c. Evidence to be obtained from the third party;
12. The Appropriate Court may execute the request by directing that the evidence be submitted to the tribunal directly or compelling attendance of a witness before the tribunal. Any violation of the orders of the appropriate court may entail consequences as provided in law.
13. Within the time ordered by the Arbitral Tribunal, the Parties may submit to the Arbitral Tribunal and to the other Parties any additional Documents on which they intend to rely or which they believe have become relevant to the case and material to its outcome as a consequence of the issues raised in Documents, Witness Statements or Expert Reports submitted or produced, or in other submissions of the Parties.
14. With respect to the form of submission or production of Documents:
- a. Copies of Documents shall conform to the originals and, at the request of the Arbitral Tribunal, any original shall be presented for inspection;
  - b. Documents that a Party maintains in electronic form shall be submitted or produced in the form most convenient or economical to it that is reasonably usable by the recipients, unless the Parties agree otherwise or, in the absence of such agreement, the Arbitral Tribunal decides otherwise;
  - c. A Party is not obligated to produce multiple copies of Documents which are essentially identical unless the Arbitral Tribunal decides otherwise; and
  - d. Translations of Documents shall be submitted together with the originals and marked as translations with the original language identified.
15. If the party fails to disclose documents that it is ordered to produce by the tribunal, the tribunal shall have the power to draw an adverse inference to that party's submission, such that it shall affect the outcome of the case.

### **Article 13. Document Production and Disclosure of Documents**

1. The stage at which document production and disclosure of documents will be made shall be mandated by the terms in the case management conference, which are agreed to by both parties.

2. Subject to the case management conference, document production or disclosure shall take place after the completion of the round of pleadings, and before filing of evidence. The tribunal may direct certain rules of evidence to apply as it deems fit (for example, the IBA Guidelines). The parties shall arrange for documents in a foreign language to be translated into the language of the arbitration.

#### **Article 14. Request for Documents**

1. All requests for documents should preferably be made in the form of a 'Redfern Schedule' and upon which the tribunal will render its decision, as applicable.
2. A party has the right to request the other party to produce or disclose a particular document or set of documents. Generally, such exchange shall take place between the parties themselves.
3. In the event that the other party contests the production or disclosure of a particular document/(s), it must accord specific, written reasons for the same, to the tribunal. The tribunal, then, shall have the duty to determine whether the production or disclosure of that document is necessary. If the tribunal decides that the document is relevant to the proceeding or material to the outcome of the dispute, it may order the other party to mandatorily produce or disclose it by a particular date.
4. If the party fails to disclose documents that it is ordered to produce by the tribunal, the tribunal shall have the power to draw an adverse inference to that party's submission, such that it shall affect the outcome of the case.

#### **Article 15. Consequences of late submissions or failure to submit**

1. The parties are obligated to adhere to the procedural timeline for submission of documents, as shall be prescribed by the case management conference. They are also obligated to adhere to the tribunal's order for mandatory submission of certain documents.
2. In the event of a party's failure to submit or late submission a document, the tribunal shall give a written notice to the party, whereby it asks the party to provide reasons for its failure to adhere to the set time limits. Further, the tribunal shall make clear to the party, the consequences of its failure to submit documents, which have been requested, or the late submission, upon their receipt of the notice. Such consequences may be in the form of monetary sanctions on the violating party or a forfeiture of the violating party's submissions, as the tribunal deems fit.
3. If the party fails to acknowledge the receipt of the notice, the tribunal shall have the power to pass an award solely on the basis of the evidence before it.

#### **Article 16. Power of the tribunal with regard to document production**

1. Upon a request being made by one party, the tribunal may decline the other party's request to access certain documents, if such documents are irrelevant to determine the facts in the proceedings. Any such denial must be recorded in writing and submitted to the party being denied access to the document.
2. Document production or disclosure may take place prior to drafting of the written submissions if the party has to rely on certain documents in the other party's possession to determine its claims. However, this must be the exception and the reasoning of the party requesting such documents must satisfy the tribunal.

#### **Article 17. Admissibility**

If the tribunal is concerned with the admissibility of the documentary evidence, then it may clarify the legal position with regard to the admissibility of that evidence with the parties.

**Article 18. Strict enforcement of timeline for document production**

1. The parties may decide in the case management conference if documentary evidence introduced after the date of document production will be relied on during the arbitral proceedings.
2. If the parties have not decided during the case management conference whether such documentary evidence may be relied on, the late production of documents will be subject to monetary sanctions or forfeiture of the admissions disclosed in such documents, as may be determined by the tribunal
3. Provided that even after the exercise of due diligence on behalf of the parties, the document could not be introduced at the time of document production, the tribunal may, at its discretion, permit it to be admitted without imposing sanctions.

**Article 19. Evidence from Third Parties**

The parties and / or tribunal may approach the Appropriate Court in order to compel a third party to produce documents and / or appear as a witness in accordance with law.

# Section IV - Examination and Role of Witnesses

## Witnesses of Fact

### **Article 20. Identification of witnesses**

1. A provisional list of witnesses may be prepared by the parties and incorporated into the Terms of Reference.
2. The tribunal shall have the power to allow potential witnesses, whose names are not listed, to give their testimony. The tribunal may, if it so wishes, interview such witnesses, prior to the addition of their names to the provisional list, to ensure the credibility of their statements. To ensure efficiency in management of the proceedings, all the names of the witnesses should be listed conclusively, at the time of making the statement of claim.
3. Witness statements should be served at the time of, or soon after the pleadings are filed. Whether they are served together with the pleadings depends on whether 'memorial style' pleadings are being filed.]

### **Article 21. Dispensing with witness statements**

1. If the parties and the tribunal do not intend to examine a particular witness, it may not be necessary for that witness to attend the arbitral proceedings. However, the tribunal must consider due process before allowing a witness to refrain from attending the arbitral proceedings.
2. The tribunal must ordinarily not refuse the examination of a witness. Such refusal may be done in exceptional circumstances where the evidence of the witness is to be disregarded altogether, and the tribunal must record the reasons for refusal.

### **Article 22. Sequestration order for witnesses**

In ordinary cases, the tribunal may not bar a witness from being present in the arbitral proceedings prior to his/her witness statement. In sensitive cases, however, the tribunal may order for the witness to not be allowed inside the room where the arbitral proceedings are taking place, prior to his/her statement being delivered.

## Expert Witnesses

### **Article 23. Appointment of expert witnesses**

1. Expert witnesses may be appointed in cases involving technical and/or financial nuances. The parties and/or the tribunal may decide on the appropriate experts for the case.
2. The need for experts should be raised at the case management conference, and the decision of having party appointed experts or a tribunal appointed joint expert may be taken at this stage. A single joint expert may be appointed when there is a paucity of expertise, or where the issue is very narrow, and the parties are in disagreement regarding the issue.

#### **Article 24. Criteria for expert witnesses**

The integrity and independence of the expert witnesses is of prime importance. The nature and substance of the technical/financial dispute in the relevant case must correspond with the area of expertise of the expert witness.

#### **Article 25. Role of the Expert Witnesses <sup>2</sup>**

The experts may produce a first round of reports after assessing the parties' claims. The reports may be exchanged between the experts of the parties and the areas of disagreement may be tabulated into a memorandum. The supplementary memoranda of the experts may be prepared in accordance with the areas of disagreement identified.

#### **Article 26. Role of the party representatives in preparing the expert's report**

1. The party representatives may work alongside the expert while preparing the expert's report.
2. The role of party representatives should be limited to the clarification of the scope of the report, providing information, which the expert may not be privy to, and reviewing the expert's report to verify whether the expert has worked in accordance with the required mandate.
3. The final report, however, must consist of the expert's opinion alone, which is not influenced by the parties or their representatives.

---

2. Unless otherwise agreed by the parties, appointment of an expert is discretionary depending on the facts and circumstances of each case.

# Section V - Procedure For Witness Examination and Cross Examination

## **Article 27. Procedure for witness examination**

1. The examination and cross-examination of witnesses shall take place as per the agreed Terms of Reference and case management conference.
2. Any witnesses, whose names are not included in the schedule proposed for the Terms of Reference, shall not be barred from giving testimony. However, their names shall subsequently be added to the schedule.
3. The intent to examine or cross-examine a witness should be indicated 4 to 6 weeks prior to the next hearing to ensure the availability of the witness. It should be endeavoured to schedule consecutive testimonies of witnesses in a hearing in the interest of saving costs and time. The party representatives, for efficacious witness examination, may adopt the 'chess-clock method', whereby a specific time limit is set for each party's witness.
4. The tribunal, at its discretion, shall have the power to extend the time period that is set for witness examination, if it feels that additional time is required for the thorough examination of all witnesses, provided that the benefit of such extension is given equally to both the parties.
5. The parties and their counsel must very strictly avoid repetition of questions and should not go beyond the relevant issues during witness examination. If the parties / their counsel fails to conduct the examination in an efficient and streamlined manner, the tribunal may impose such sanctions as it deems fit on such party.

## **Article 28. Hot-tubbing of Experts**

1. 'Hot-tubbing' is a method of joint presentation of testimony of experts, whereby, the tribunal and the party representatives question two or more expert witnesses that are presented by either one or both the parties, together on a particular subject.
2. Hot-tubbing should be allowed only when the experts are fluent in the language of the proceeding. If the experts require translation, the arbitral tribunal should discourage hot-tubbing.
3. The experts should be intimated in advance that hot-tubbing shall be used as a part of the arbitration proceedings.
4. The arbitral tribunal should be in effective control of the process of hot-tubbing to ensure that the experts do not go beyond their mandate.

## **Article 29. Examination of witnesses via video conferencing**

Video conferencing of witnesses may be allowed if the witness is unable to be present for a particular hearing. The tribunal may insist on the physical presence of the witness, depending on the materiality of his/her statement.



**Article 30. Control of the tribunal over witness examination**

The tribunal shall not intervene in the cross-examination, as long as it is of the opinion that the parties are discussing relevant issues and are not indulging in unnecessary repetition, legal jargon, etc. If the cross-examination goes beyond the relevant issues, the tribunal may intervene to cause the cessation of discussion of irrelevant issues. The tribunal should avoid interrupting the parties during cross-examination to ask follow-up questions, unless it is of the opinion that a pertinent question must be asked of the witness.

# Section VI – Hearings

## **Article 31. Oral Arguments**

1. Unless the parties have agreed on a documents-only arbitration or as provided in these guidelines, the Tribunal shall, if either party so requests or the Tribunal so decides, hold a hearing for the presentation of oral arguments on the merits of the dispute. The discretion would be entirely with the tribunal to hold the hearing by video or teleconference, to save time and cost for the parties.
2. The Tribunal may, in advance of any hearing, submit to the parties a list of questions which it wishes them to answer with special attention.
3. The Tribunal shall fix the date, time and place of any meeting or hearing and shall give the parties reasonable notice.
4. If any party to the proceedings fails to appear at a hearing without showing sufficient cause for such failure, the Tribunal may proceed with the arbitration and may make the Award based on the pleadings and evidence before it.
5. Unless the parties agree otherwise, all meetings and hearings shall be in private, and any recordings, transcripts, documents or other materials used shall remain confidential.

## **Article 32. Post-hearing submissions**

1. The submission of post-hearing briefs is dependent on the discretion and preference of the tribunal. This power of the tribunal, however, should be exercised with restraint, in cases where parties have already made their submissions.
2. If the tribunal requires further clarifications, or a party wishes to substantiate its arguments further, the tribunal may, as an alternative to allowing post-hearing submissions, pose specific questions to the party. In order to expedite the process, the party is encouraged to answer these questions in a succinct manner.
3. A party that still wishes to make post-hearing submissions on a particular issue shall make a written application to the tribunal. The tribunal may, at its discretion, allow the party to submit a post-hearing brief on that particular issue, if it is of the opinion that sufficient evidence has not been presented on that matter or that the party may have pertinent additional information to present to the tribunal.
4. In the event that the tribunal follows a procedure, whereby it requests the parties not to present evidence or arguments before the hearings, then it may allow the parties to submit written post-hearing submissions.

## Section VII – Expedited Proceedings

### **Article 33. Fast-track Proceedings**

1. In the event that the parties opt to have expedited arbitration proceedings, they may follow the following for Fast-track proceedings:
  - a. Fast track proceedings shall be characterised by an absence of oral hearings, unless both parties make a request to the tribunal or the tribunal wants clarifications on certain issues.
  - b. The dispute shall be resolved by means of written submissions and documentary evidence filed by both parties before the tribunal.
  - c. The tribunal shall notify the parties if it feels that additional information or clarifications are required for a proper analysis and adjudication of the matter.
  - d. The tribunal shall pass the award, within the time period decided by the parties at the commencement of the arbitration. This time period shall be between 3-6 months from date of arbitral tribunal stepping into reference. Time taken for filing an application and seeking order from a Court for third party evidence under Section 27 of the Act, shall not be considered for the purpose of the time period for completing the proceedings.

# Section VIII - Management of the Hearing and The Pleadings

## **Article 34. Secretary to an arbitral tribunal**

1. The tribunal has the power to appoint a tribunal secretary for administrative support, only if it is of the opinion that it requires additional aid for the efficacious resolution of the dispute. The tribunal has the duty to notify the parties of the appointment of a tribunal secretary.
2. The tribunal secretary who is appointed is expected to remain independent and impartial during the proceedings.
3. The tribunal secretary may be asked to perform a broad spectrum of functions from organisational tasks, such as preparing rooms for the hearing and co-ordinating administrative services, to more substantive tasks such as legal research, collection of legal jurisprudence on the subject matter at hand etc.
4. It is strictly clarified (and an undertaking must be obtained from the tribunal secretary to this effect) that a tribunal must never subsume the role of an arbitrator, i.e. to offer his/her analysis on the dispute to the tribunal or to prepare, in any manner whatsoever, any substantive portions of the award (which is exclusively in the tribunal's domain) or to (in the event that the tribunal secretary is a qualified lawyer or has technical/financial or other knowledge relevant to the dispute) offer any 'guidance' to the tribunal on whether any particular party submissions are right or wrong (based on such technical/financial or other knowledge).
5. A tribunal secretary must mandatorily give a written clarification that he or she is not conflicted with respect to the proceeding that he or she is appointed in. Furthermore, the parties must consent to the appointment of the tribunal secretary, after he or she has given such written clarification.
6. Costs for the tribunal secretary will be borne by parties equally. Final cost may be made a part of the final costs order, which will be allocated in the costs award.

## **Article 35. Hearings to be conducted in an expeditious and efficacious manner**

1. The tribunal and parties must estimate and agree on the length of time needed for the hearing and the time to be allocated to each party's case, at the case management conference.
2. The hearings must be conducted expeditiously, preferably over consecutive days. Each hearing day must take place during the regular business hours, beginning at approximately 10:00 a.m. and concluding at 6:00 p.m., as a standard.
3. The tribunal must endeavour to ensure that it has only one hearing spread over multiple days to discern oral and closing submissions and evidence from both sides. This is to avoid fragmented hearings, which are spread over multiple months/years. Only, if the tribunal deems necessary, could the parties have multiple sets of hearings. However, it is encouraged that this be the exception and not the rule.

## **Article 36. Strict enforcement of the procedural timeline by the tribunal.**

1. The tribunal shall ensure that both sets of parties mandatorily adhere to the Terms of reference, case management conference and procedural order decisions decisions with respect to the set deadlines and time limits for pleadings.

2. The tribunal shall not tolerate inordinate delays by the parties, without justifiable reasons. The tribunal shall have the power to impose sanctioning consequences on the parties for delaying the procedural timeline. Such sanctioning consequences could be in the form of costs imposed on the derogating party or foreclosure of the party's right to file pleadings. However, even if the party has a justifiable reason for delaying, the tribunal may, at its discretion, impose the abovementioned sanctions, as it deems fit.
3. For the purpose of this section, "justifiable excuse" shall mean a legitimate reason as to why the party has delayed the proceedings or failed to make its submissions in a timely manner. Mere appearance of a 'reasonable excuse' shall not be sufficient to constitute a 'justifiable excuse'. There must be some explicit event or situation, which prevents the party from making its submission in a timely manner. If justifiable, the tribunal has the discretion to either allow or disallow such submission(s). However, even if the reason(s) are deemed justifiable, the tribunal must impose costs on the party so derogating from timelines. Further, if the reason was not justifiable but it would be in the interests of justice to allow the submission(s), then the tribunal must do so only on the precondition of imposition of costs on such a party so derogating from timelines. In both situations, costs must be paid immediately, or added to the final costs order, in favour of the other party, as a condition precedent to allowing the submission(s).

#### **Article 37. Record or live transcription of the proceedings**

1. The tribunal shall have the duty to consult with the parties and determine a method for recording the oral statements and the witness testimony during proceedings.
2. This may be done by the incorporation of live transcription during the proceedings while a more cost-effective method may be to maintain a record either by a member of the tribunal itself, or by the tribunal secretary.
3. Further, the hearings may also be tape-recorded for the convenience of the parties in the event of a disagreement at a later date regarding the proceeding.

#### **Article 38. Misconduct by a party representative/counsel/witness**

1. The following acts of a party representative / counsel / witness shall be treated as acts of misconduct for the purpose of an arbitral proceeding, if he / she:
  - a. suppresses or conceals, or advises the party to suppress or conceal, documents that have been requested by another party.
  - b. encourages or coerces a witness into giving false evidence.
  - c. submits evidence which it knows to be fraudulent, incorrect, erroneous, misrepresented or fallacious.
  - d. reveals confidential information regarding the arbitral proceeding to a third party to the arbitration.
  - e. makes requests for disclosure of documents with the purpose of causing a delay or harassing the other party.
  - f. forges documents for submission or submits fraudulently obtained evidence.

**Article 39. Consequences of misconduct by a party representative/counsel/witness**

1. The tribunal may draw adverse inferences for a party representative / counsel / witness' act of misconduct. Further, the tribunal shall assess the potential impact of the misconduct and check whether the material reliability of the evidence submitted has been compromised. On the basis of this analysis, the tribunal may draw appropriate inferences in assessing the evidence relied upon, or the legal arguments advanced by a party representative / counsel / witness;
2. The arbitral tribunal may take appropriate decisions, based on the integrity of the parties and their representatives/counsel/witnesses, in order to preserve the fairness of the arbitration.

# Section IX – Award

## **Article 40. Decisions**

The Tribunal shall make reasoned award in writing within the timeline prescribed under the Act.

## **Article 41. Form and effect of awards**

1. The arbitral tribunal may make separate awards on different issues at different times.
2. All awards shall be made in writing and shall be final and binding on the parties.
3. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.
4. An award shall be signed by the arbitrators and it shall contain the date on which the award was made and indicate the place of arbitration. Where there is more than one arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature.
5. The award must be duly stamped as per the stamping provisions applicable with respect to the seat of arbitration.
6. An award may be made public with the consent of all parties or where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right or in relation to legal proceedings before a court or other competent authority.
7. Copies of the award signed by the arbitrators shall be communicated to the parties by the arbitral tribunal.

## **Article 42. Settlement or other grounds of termination**

1. If, before the award is made, the parties agree on a settlement of the dispute, the arbitral tribunal shall either issue an order for the termination of the arbitral proceedings or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.
2. If, before the award is made, the continuation of the arbitral proceedings becomes unnecessary or impossible for any reason not mentioned in paragraph 1, the arbitral tribunal shall inform the parties of its intention to issue an order for the termination of the proceedings. The arbitral tribunal shall have the power to issue such an order unless there are remaining matters that may need to be decided and the arbitral tribunal considers it appropriate to do so.
3. Copies of the order for termination of the arbitral proceedings or of the arbitral award on agreed terms, signed by the arbitrators, shall be communicated by the arbitral tribunal to the parties. Where an arbitral award on agreed terms is made, the provisions of the previous Article 42, paragraphs 2, 4 and 5, shall apply.

## **Article 43. Interpretation of award**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request that the arbitral tribunal give an interpretation of the award.
2. The interpretation shall be given in writing within 30 days after the receipt of the request. The interpretation shall form part of the award and the provisions of Article 42 above, paragraphs 2 to 6, shall apply.

**Article 44. Correction of award**

1. Within 30 days after the receipt of the award, a party, with notice to the other parties, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature. If the arbitral tribunal considers that the request is justified, it shall make the correction within 30 days of receipt of the request.
2. The arbitral tribunal may within 30 days after the communication of the award make such corrections on its own initiative.
3. Such corrections shall be in writing and shall form part of the award. The provisions of Article 42 above, paragraphs 2 to 6, shall apply.



## Section X – Costs

### **Article 45. Definition of costs**

1. The arbitral tribunal shall fix the costs of arbitration in the final award and, if it deems appropriate, in another decision.
2. The term “costs”, unless otherwise specified in the rules of an arbitral institution, includes only:
  - a. The fees of the arbitral tribunal to be stated separately as to each arbitrator and to be fixed by the tribunal itself in accordance with the following Article 47;
  - b. The reasonable travel and other expenses incurred by the arbitrators;
  - c. The reasonable costs of expert advice and of other assistance required by the arbitral tribunal;
  - d. The reasonable travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
  - e. The legal and other costs incurred by the parties in relation to the arbitration to the extent that the arbitral tribunal determines that the amount of such costs is reasonable;
  - f. Any fees and expenses of the arbitral institution.
3. In relation to interpretation, correction or completion of any award the arbitral tribunal may charge the costs referred to in paragraphs 2 (b) to (f), but no additional fees.

### **Article 46. Fees and Expenses of arbitrators**

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject matter, the time spent by the arbitrators and any other relevant circumstances of the case.
2. If there is an arbitral institution and it applies or has stated that it will apply a schedule or particular method for determining the fees for arbitrators in international cases, the arbitral tribunal in fixing its fees shall take that schedule or method into account to the extent that it considers appropriate in the circumstances of the case.
3. Promptly after its constitution, the arbitral tribunal shall inform the parties as to how it proposes to determine its fees and expenses, including any rates it intends to apply. Within 15 days of receiving that proposal, any party may refer the proposal to the arbitral institution for review. If, within 45 days of receipt of such a referral, the arbitral institution finds that the proposal of the arbitral tribunal is inconsistent with paragraph 1, it shall make any necessary adjustments thereto, which shall be binding upon the arbitral tribunal.
4. When informing the parties of the arbitrators' fees and expenses that have been fixed, the arbitral tribunal shall also explain the manner in which the corresponding amounts have been calculated;
5. A referral under paragraph 4 shall not affect any determination in the award other than the arbitral tribunal's fees and expenses;

**Article 47. Allocation of costs**

1. The costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.
2. The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

**Article 48. Deposit of costs**

1. The arbitral tribunal, on its establishment, may request the parties to deposit an equal amount as an advance for the costs.
2. During the course of the arbitral proceedings the arbitral tribunal may request supplementary deposits from the parties.
3. If an arbitral institution has been agreed upon or designated, and when a party so requests and the arbitral institution consents to perform the function, the arbitral tribunal shall fix the amounts of any deposits or supplementary deposits only after consultation with the arbitral institution, which may make any comments to the arbitral tribunal that it deems appropriate concerning the amount of such deposits and supplementary deposits.
4. If the required deposits are not paid in full within 30 days after the receipt of the request, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitral proceedings.
5. After a termination order or final award has been made, the arbitral tribunal shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

# Annexure - I

IN THE MATTER OF AN ARBITRATION UNDER THE [#NAME OF  
INSTITUTION] ARBITRATION RULES

-between-

[Name of the Claimant(s)]

(the “Claimant(s)”)

-and-

[Name of the Respondent(s)]

(the “Respondent(s)”, and together with the Claimant(s), the “Parties”)

---

[DRAFT] PROCEDURAL ORDER NO. 1

---

[Name(s) of Arbitrator(s)]

[Date]

# Contents

<b>1. Notifications</b>	<b>29</b>
<b>2. Place of arbitration</b>	<b>29</b>
<b>3. Language</b>	<b>29</b>
<b>4. Procedural Calendar</b>	<b>30</b>
<b>5. Written Submissions</b>	<b>30</b>
<b>6. Documents</b>	<b>30</b>
<b>7. Document Production</b>	<b>31</b>
<b>8. Evidence and Legal Authorities</b>	<b>32</b>
<b>9. Witnesses</b>	<b>33</b>
<b>10. Experts</b>	<b>34</b>
<b>11. Hearings</b>	<b>35</b>
<b>12. Confidentiality</b>	<b>36</b>
<b>Annex 1</b>	<b>37</b>
<b>Annex 2</b>	<b>41</b>

Pursuant to [#insert relevant provision from Rules], the Arbitral Tribunal, having consulted with the Parties, issues the following Procedural Order No. 1, setting out the procedural rules to be applied in this arbitration.

These rules are made in consultation and with the Parties' consent in order to complement, clarify or derogate from the otherwise applicable rules, in particular the [#name of institution] Rules. The Tribunal retains its discretion to amend them after having consulted the Parties when the circumstances require such an amendment.

## **1. Notifications**

1. Notifications and communications between the Parties and the Arbitral Tribunal shall be made by e-mail only.
2. The Parties shall send copies of correspondence between them to the Arbitral Tribunal only if it pertains to a matter in which the Tribunal is required to take some action, or be apprised of some relevant event.
3. Any time limit set by the Arbitral Tribunal for the filing of communications, notifications, or written submissions shall be deemed to have been complied with provided that (i) the communication, notification or written submissions and accompanying documents (without exhibits) is sent by e-mail on the due date (by midnight Indian Standard Time) and (ii) for the hard copy of the written submissions and USB stick, as required in Section 5, dispatched by appropriate service within three business days immediately following the due date in accordance with this Section 1.

## **2. Place of arbitration**

1. In accordance with the [#Name of Institution] Arbitration Rules ("the Rules"), and pursuant to the Parties' agreement, the seat of the arbitration is [#Name of city and country].
2. In accordance with Article [#Insert Provision] of the Rules, the Arbitral Tribunal may hold any hearing at any convenient geographical place in consultation with the Parties.

## **3. Language**

1. The language of the arbitration shall be English.
2. The Arbitral Tribunal's awards shall be issued in English. Communications, procedural orders, and other decisions of the Arbitral Tribunal too shall be issued in English.
3. Written Submissions of the Parties and their accompanying documents shall be submitted in English. In the case of exhibits, translations may be limited to relevant excerpts, provided that the full original document is submitted and the excerpt is sufficient to allow a full appreciation of its context. For ease of reference, the Parties shall paginate any translation in the same way as the original document, placing the translation first both in the hard copy version and in the electronic version.
4. Informal translations will be accepted as accurate unless contested by the other Party, in which case, the Parties shall attempt to reach an agreement on the translation (including, if needed, through the introduction of certified translations). If no agreement is reached, the Arbitral Tribunal shall take the necessary decision, for which it may appoint a certified translator to have the document(s) in question translated.
5. Oral argument before the Arbitral Tribunal shall be made in English.
6. Documents produced in response to requests or orders for production may be produced in their

original language. If a Party submits any such document as an exhibit, paragraph 3.3 of this Procedural Order shall apply.

7. The Arbitral Tribunal reserves the right to require a Party to translate any document in whole or in part.

#### **4. Procedural Calendar**

1. The Procedural Calendar is enclosed as Annex 1 to this order.
2. The President of the Arbitral Tribunal may extend the time limits as necessary or appropriate. The President will only grant the extension of a time limit as an exception and provided that the request for an extension is made without undue delay and before the time limit to be extended has lapsed.

#### **5. Written Submissions**

1. The Parties shall submit their written submissions in accordance with the Procedural Calendar set out in Annex 1 and with the rules set out below.
2. The written submissions, as well as accompanying witness statements and expert reports, shall be submitted by e-mail (without exhibits).
3. This is to be followed by courier or registered mail service within three business days of (i) a hardcopy of the written submissions, accompanying documents and exhibits, and (ii) a searchable electronic copy of the written submissions, accompanying documents and exhibits on a USB stick. The hardcopy and the USB stick shall be sent only to the first law firm listed by each Party in the Terms of Reference or in its list of representatives, the Arbitral Tribunal, the Tribunal Secretary, and the [#Insert Name of Institution].

[Drafting Note: Parties may choose to dispense with hardcopies of exhibits for cost and environmental considerations.]

4. The hardcopy of written submissions and accompanying documents shall be submitted in double-sided A4 or letter format. The hardcopy of exhibits shall also be submitted in A4 or letter format, and may be printed on one side or double-sided, as each Party chooses.
5. For any simultaneous submissions, each side shall submit the electronic copies only to the Arbitral Tribunal and the [#Insert Name of the Institution]. Once both submissions have been received, the [#Insert Name of the Institution]/Arbitral Tribunal will then distribute copies to the opposing counsel.

#### **6. Documents**

1. Pursuant to Section 4 above, the Parties shall submit all exhibits with the written submissions that expressly refer to them. In exceptional cases, the Arbitral Tribunal may permit a Party to submit further exhibits at a later date, if appropriate in view of all of the circumstances.
2. Each legal and fact exhibit produced in the arbitration shall be mentioned in the submission immediately after each fact alleged, which such exhibit is intended to prove.
3. This Section 5 applies only to documents filed by either Party; the Arbitral Tribunal may order the production of documents at any time, provided that reasonable notice is given to the Parties requested to produce one or several documents. The presentation and indexing requirements set out in paragraphs 5.3 to 5.8 below shall nevertheless apply to the filing of any and all documents.
4. The Parties shall submit hard copies of all fact exhibits in chronological or other appropriate order in files with a separate tab for each exhibit. A list describing each of the exhibits by exhibit number, date, type of document, author and recipient (as applicable) shall be submitted along with the

hardcopy of the written submission and placed in the front of each binder.

5. Each time documents are filed in this arbitration, an updated index setting out all the documents filed shall be filed together with the documents. Exhibits shall be numbered consecutively, and continue from the last exhibit number on record.
6. Each fact exhibit submitted by the Claimant shall commence with the letter "C" and that submitted by the Respondent shall commence with the letter "R" followed by the applicable number. Legal authorities shall commence with the letters "CLA" for the Claimant and "RLA" for the Respondent, followed by the applicable number.
7. Each Party shall file its exhibits also in electronic format in a USB stick. Each exhibit shall constitute a single electronic document. Electronic versions of exhibits shall commence by the appropriate exhibit number, so that they may be ordered consecutively. An electronic copy of the exhibit list shall also be provided.
8. The use of demonstrative exhibits (such as charts, tabulations, etc.) is allowed during the hearing, provided that no new evidence is contained therein and that the exhibits or submissions from which the information is retrieved are clearly identified. Each Party shall number its demonstrative exhibits consecutively. A hard copy of any such exhibit shall simultaneously be provided by the Party submitting such exhibit to the other Party and to the Arbitral Tribunal on a date to be determined by the Arbitral Tribunal.

## **7. Document Production**

1. Document production shall take place in accordance with the Procedural Calendar in Annex 1.
2. Party may request the other Party to produce specific documents, or narrow and specific categories of documents, within its possession, custody or control. Such a request for production shall identify each document or category of documents sought with precision, in the form of a Redfern Schedule as attached in Annex 2 hereto, in both Word and .pdf format, specifying why the documents sought are relevant to the case and material to its outcome.
3. Within the time limit set in Annex 1, the other Party shall either produce the requested documents or, using the Redfern Schedule provided by the first Party (in both Word and .pdf format), provide the requesting Party and the Tribunal with its reasons and/or objections for its failure or refusal to produce responsive documents.
4. Within the time limit set in Annex 1, the requesting Party may reply to the other Party's objections in that same Redfern Schedule (in both Word and .pdf format).
5. The Parties shall seek agreement on production requests to the greatest extent possible.
6. To the extent that agreement cannot be reached between the requesting and the requested Party, the Parties shall submit all outstanding requests to the Arbitral Tribunal for a ruling having regard to the legitimate interests of the other Party and all of the surrounding circumstances.
7. The Arbitral Tribunal shall rule on any such application and may for this purpose refer to the IBA Rules on the Taking of Evidence in International Arbitration 2010.
8. Documents ordered by the Arbitral Tribunal to be disclosed shall be produced within the time limit set forth in the Procedural Calendar.
9. The Parties shall not copy the Arbitral Tribunal or the [#Insert Name of Institution] on their correspondence or exchanges of documents in the course of the document production phase. Documents produced by the Parties in response to document production requests shall only

form part of the evidentiary record if a Party subsequently submits them as exhibits to its written submissions or upon authorization of the Arbitral Tribunal after the exchange of submissions.

10. The failure of a Party to produce documents as ordered by the Arbitral Tribunal may lead the Arbitral Tribunal to draw the negative inferences it deems appropriate in relation to the documents not produced.
11. Pursuant to the [#Insert name of Arbitral Rules], the Arbitral Tribunal may also, on its own motion, request the production of documents. In that case, the documents shall be submitted to the other Party and to the Arbitral Tribunal in accordance with Section 5 above and shall be considered to be on record.

## **8. Evidence and Legal Authorities**

1. In addition to the relevant articles of the [#Insert Name of Arbitral Rules] and the provisions on document production above, the Arbitral Tribunal may use, as an additional guideline, the IBA Rules on the Taking of Evidence in International Arbitration 2010, when considering matters of evidence.
2. The Parties shall submit with their written submissions all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, exhibits, legal authorities and all other evidence and authority in whatever form.
3. In the Statement of Reply, Statement of Defence to Cross-claim and Statement of Reply to the Defence to Cross-claim, such evidence shall only be submitted in support of the factual or legal arguments advanced in rebuttal to the other Party's prior written submission or in relation to new evidence arising from document production.
4. Following submission of the Statement of Reply, Statement of Defence to Cross-claim and Statement of Reply to the Defence to Cross-claim, the Arbitral Tribunal shall not consider any evidence that has not been introduced as part of the written submissions of the Parties, unless the Arbitral Tribunal grants leave on the basis of a reasoned request justifying why such documents were not submitted earlier together with the Parties' written submissions or showing other exceptional circumstances. Should such leave be granted to one Party, the other Party shall have an opportunity to submit counter-evidence.
5. The Parties shall identify each exhibit submitted to the Arbitral Tribunal with a distinct number. Each exhibit submitted by the Claimant shall begin with a letter "C" followed by the applicable number (i.e., C 1, C 2, etc.); each exhibit submitted by the Respondent shall begin with a letter "R" followed by the applicable number (i.e., R 1, R 2, etc.). The Parties shall use sequential numbering throughout the proceedings.
6. The Parties shall identify each legal authority submitted to the Arbitral Tribunal with a distinct number. Each legal authority submitted by the Claimant shall begin with the letters "CLA" followed by the applicable number (i.e., CLA 1, CLA 2, etc.); each legal authority submitted by the Respondent shall begin with the letters "RLA" followed by the applicable number (i.e., RLA 1, RLA 2, etc.). The Parties shall use sequential numbering throughout the proceedings.
7. All evidence submitted to the Arbitral Tribunal shall be deemed to be authentic and complete, including evidence submitted in the form of copies, unless a Party disputes within a reasonable time its authenticity or completeness, or the Party submitting the relevant evidence indicates the respects in which any document is incomplete.
8. Excel spreadsheets or other calculations performed by experts shall be provided in their native electronic format (i.e., in Excel format rather than PDF).



9. Legal authorities shall be submitted in electronic version only, unless specifically requested by the Arbitral Tribunal in hard copy.

## 9. Witnesses

1. If a Party wishes to adduce testimonial evidence in respect of its allegations, it shall submit written witness statements together with its submissions and indicate the relevant facts in such submissions to which they relate. A witness who has not submitted a written witness statement may provide testimony to the Tribunal only in extraordinary circumstances and upon a showing of good cause; if these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
2. Any person may present evidence as a witness, including a Party's officer, employee or other representative. It shall not be improper for a Party or its counsel to have contacts with a witness prior to the submission of his/her witness statement and to his/her appearance at the hearing.
3. Witness statements shall be submitted in the language of the arbitration or with a translation into that language.
4. Each witness statement shall contain at least the following:
  - a. the name, date of birth, and present address of the witness;
  - b. a description of the witness's position and qualifications, if relevant to the dispute or to the contents of the statement;
  - c. (c)a description of any past and present relationship between the witness and the Parties, counsel, or the Arbitral Tribunal;
  - d. (d)a description of the facts on which the witness's testimony is offered and, if applicable, the source of the witness's knowledge; and
  - e. the signature of the witness.
5. The witness statements shall be numbered independently from other documents and properly identified. If a Party submits two or more witness statements by the same witness, the subsequent witness statement shall be identified as "Second", the third as "Third", and so on.
6. Each Party shall notify the other Party, with a copy to the Arbitral Tribunal, of the names of the witnesses of the other Party whom that Party wishes to cross-examine at the evidentiary hearing, within the time limit to be determined by the Arbitral Tribunal.
7. The Arbitral Tribunal may summon to appear as a witness any person who may have knowledge of relevant facts and has not been offered as a witness by the Parties.
8. Should a Party wish to present any of its own witnesses or experts for examination at the hearing who have not been called by the Arbitral Tribunal or the other Party, it shall request leave of the Arbitral Tribunal.
9. Each Party shall be responsible for the practical arrangements, costs, and availability of any witness it offers. The Arbitral Tribunal will decide upon the appropriate allocation of any related costs in the final award.
10. If a witness fails to appear when first summoned to a hearing, the Arbitral Tribunal may in its discretion summon the witness to appear a second time if satisfied that (i) there was a compelling reason for the failure to appear; (ii) the testimony of the witness appears to be relevant to the outcome of the dispute, and (iii) providing a second opportunity for the witness to appear will not unduly delay the proceedings.

11. The Arbitral Tribunal may consider the written statement of a witness who provides a valid reason for failing to appear when summoned to a hearing, having regard to all the surrounding circumstances, including the fact that the witness was not subject to cross-examination. The Arbitral Tribunal shall not consider the witness statement of a witness who fails to appear and does not provide a valid reason.
12. At the hearing, the examination of each witness shall proceed as follows:
  - a. If the mandatory procedural law requires an oath, the witness shall take oath;
  - b. The Party who has presented the witness may briefly examine the witness for purposes of asking introductory questions, including to confirm and/or correct that witness's written statement, and to address matters which have arisen after such statement was drafted;
  - c. The adverse Party may then cross-examine the witness on relevant matters that were addressed or presented in the witness statement;
  - d. The Party presenting the witness may then re-examine the witness with respect to any matters or issues arising out of the cross-examination; the Tribunal may then in its discretion allow more questions from the adverse Party;
  - e. The Arbitral Tribunal may examine the witness at any time, either before, during or after examination by any of the Parties; and
  - f. (f)The Arbitral Tribunal may order two or more witnesses to be examined concurrently (witness conferencing).
13. Unless the Parties agree otherwise, or the Arbitral Tribunal rules otherwise, a factual witness shall not be present in the hearing room during the hearing of oral testimony, discuss the testimony of any other witness, or read any transcript of any oral testimony, prior to his or her examination.
14. The Arbitral Tribunal shall, at all times, have complete control over the hearing, including all aspects concerning the procedure for hearing a witness.

## **10. Experts**

1. Each Party may retain and submit the evidence of one or more experts to the Arbitral Tribunal.
2. Expert reports shall be accompanied by any documents or information upon which they rely, unless such documents or information have already been submitted with the Parties' written submissions, in which case the reference to the number of the exhibit will be enough. Such documents or information shall be subject to the rules on language set forth in Section 3 above.
3. The provisions set out in Section 8 in relation to witnesses shall apply, mutatis mutandis, to the evidence of experts, except that, unless the Parties agree otherwise, expert witnesses shall be allowed to be present in the hearing room at any time.
4. The Arbitral Tribunal may, on its own initiative or at the request of a Party, appoint one or more experts after consultation with the Parties. The Arbitral Tribunal shall consult with the Parties on the selection, terms of reference (including expert fees), and conclusions of any such expert. The Arbitral Tribunal may, on its own initiative or at the request of any Party, take oral evidence of such expert(s).

## 11. Hearings

1. Hearings before the Arbitral Tribunal, other than procedural or organizational meetings, shall be subject to the rules set out in this Section 10.
2. After consultation with the Parties, the Arbitral Tribunal shall issue, for each hearing, a procedural order convening the meeting, establishing its place, time, agenda, and all other technical and ancillary aspects.
3. The Parties shall jointly arrange for hearings to be recorded and transcribed by a qualified court reporter in real time as follows:
  - a. Unless the Tribunal directs otherwise, Live Note transcription software, or comparable software, shall be used to make the hearing transcripts instantaneously available to the disputing parties and members of the Arbitral Tribunal in the hearing room
  - b. Transcripts of proceedings should be made available on a same day service basis.
  - c. The transcript shall be in the language of the arbitration and there shall be simultaneous interpretation for witnesses or experts testifying in another language. There shall also be a sound recording of all testimony in both the language of the testimony and the simultaneous interpretation. Issues of translation arising in the course of the hearing shall as a rule be raised immediately at the hearing.
  - d. The Parties shall settle the transcript within [#Insert number] days after the hearing.
4. In principle, each Party will have an equal time allocation to examine witnesses and/or experts at the hearing, subject to adjustments if due process so requires.
5. Prior to the hearing, the Parties will determine in consultation with the Arbitral Tribunal whether they will make oral opening and/or closing statements.
6. The Parties will jointly make all necessary arrangements for the selection, booking and payment of the hearing room and break-out rooms, as well as court reporting. They will timely, and at the latest 1 month before the scheduled hearing, inform the Arbitral Tribunal of the arrangements made.
7. The expenses of hearing rooms, transcript writers and others incurred in connection with the hearing will initially be shared equally between the Parties, without prejudice to the Tribunal's decision on the costs of the arbitration.
8. No new evidence may be presented at the hearing except with leave of the Arbitral Tribunal. PowerPoint slides and demonstrative exhibits in aid of argument may be used by any Party during the hearing, provided that those materials reflect evidence on the record and do not introduce new evidence, directly or indirectly. Should the Arbitral Tribunal grant leave to a Party to present new evidence in the course of the hearing, it shall grant the other Party the opportunity to introduce new evidence to rebut it.
9. Each Party shall provide the Arbitral Tribunal with a complete attendance list of the persons to attend the hearing on its behalf. Such list will be sent to the Arbitral Tribunal and the other Party in accordance with the Procedural Timetable.
10. All other matters related to the hearing shall be discussed at the pre-hearing telephone conference.

**12. Confidentiality**

1. Pursuant to [#Insert relevant provision of the institutional Rules], the arbitral proceedings will remain confidential. All awards in the arbitration, together with all materials in the arbitration created for the purpose of the arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain, save and to the extent that disclosure may be required of a Party by legal duty, to protect or pursue a legal right, or to enforce or challenge an award in legal proceedings before a state court or other legal authority.
2. No award or section of an award will be published by the [#Insert name of the institution] without the prior written consent of all Parties and the Arbitral Tribunal.

Seat of arbitration: (City, Country)

Date:

**For the Arbitral Tribunal**

[signature]

---

Presiding/Sole Arbitrator

# Annex 1

**Claimant(s) v/ Respondent(s)**

**Arbitration No. \_\_\_\_\_**

## DRAFT PROCEDURAL CALENDAR

<b>CLAIMANT(S)</b>	<b>ARBITRAL TRIBUNAL</b>	<b>RESPONDENT(S)</b>
<p><b>Notice of Arbitration</b></p> <p>[Date]</p>		
	<p><b>First Procedural Hearing/ Case Management Conference</b></p> <p>[Date]</p>	
<p><b>Full Statement of Claim</b> – together with all documentary evidence and witness statements (expert and fact witnesses, if any)</p> <p>[Date]</p>		
		<p><b>Full Statement of Defence [and Counterclaim]</b> – together with all documentary evidence and witness statements (expert and fact witnesses, if any)</p> <p>[Date]</p>
<p><b>Simultaneous Request for Document Production</b></p> <p>[Date]</p>		<p><b>Simultaneous Request for Document Production</b></p> <p>[Date]</p>
<p>Simultaneous voluntary production of documents, and/ or reasoned objections to opposing Party’s Request for Document Production</p> <p>[Date]</p>		<p>Simultaneous voluntary production of documents, and/ or reasoned objections to opposing Party’s Request for Document Production</p> <p>[Date]</p>
<p>Simultaneous response to objections and application for an Order to Produce</p> <p>[Date]</p>		<p>Simultaneous response to objections and application for an Order to Produce</p> <p>[Date]</p>
	<p><b>Order on Document Production (“Order”)</b></p> <p>[Date]</p>	

<b>CLAIMANT(S)</b>	<b>ARBITRAL TRIBUNAL</b>	<b>RESPONDENT(S)</b>
Production of documents ordered to be produced by the Tribunal [Date]		Production of documents ordered to be produced by the Tribunal [Date]
<b>Full Reply [and Defence to Counterclaim]</b> , together with all documentary evidence and witness statements (expert and fact witnesses) [Date]		
		<b>Full Rejoinder [and Reply on Counterclaim]</b> , together with all documentary evidence and witness statements (expert and fact witnesses, if any) [Date]
<b>Full Rejoinder on Counterclaim</b> [Date]		
<b>Simultaneous notification of the other Party's witnesses for cross-examination</b> [Date]		<b>Simultaneous notification of the other Party's witnesses for cross examination</b> [Date]
	<b>Pre-hearing Conference</b> [Date]	
	<b>Evidentiary Hearing</b> [Date(s)]	
<b>Simultaneous filing of Post-hearing Brief</b> (if deemed necessary) [Date]		<b>Post-hearing Brief</b> (if deemed necessary) [Date]
<b>Simultaneous filing of submissions on Costs</b> [Date]		<b>Simultaneous filing of submissions on Costs</b> [Date]
<b>Simultaneous filing of reply submissions on Costs</b> [Date]		<b>Simultaneous filing of reply submissions on Costs</b> [Date]
	<b>Award</b> To be decided by the Tribunal	

Seat of Arbitration: (City, Country)

Date:

\_\_\_\_\_  
President/ Sole Arbitrator

**Supplementary calendar for arbitrations with a request for interim/conservatory measures**  
*(Note: Meant to be integrated into the main calendar)*

<b>APPLICANT PARTY</b>	<b>ARBITRAL TRIBUNAL</b>	<b>OPPOSING PARTY</b>
<b>Request for Interim and Conservatory Measures</b> [Date]		
		<b>Answer to the Request for Interim and Conservatory Measures</b> [Date]
<b>Reply to the Request for Interim and Conservatory Measures</b> [Date]		
		<b>Rejoinder to the Request for Interim and Conservatory Measures</b> [Date]
	<b>Hearing on the request for interim and conservatory measures</b> [Date]	
	<b>Partial award on request for interim and conservatory measures</b> [Date]	

**Supplementary calendar for arbitrations with Jurisdictional Objections**  
*(Note: Meant to be integrated into the main calendar)*

<b>CLAIMANT</b>	<b>ARBITRAL TRIBUNAL</b>	<b>RESPONDENT</b>
		<b>Submission on Jurisdiction</b> [Date]
<b>Answer on Jurisdiction</b> [Date]		
		<b>Reply on Jurisdiction</b> [Date]
<b>Rejoinder on Jurisdiction</b> [Date]		
	<b>Hearing on Jurisdiction</b> [Date]	
	<b>[Partial] Award on Jurisdiction</b> [Date]	



Annex 2

Model Redfern Schedule for Document Requests

<b>No.</b>	<b>Documents or category of documents requested (requesting Party)</b>	<b>Relevance and materiality, incl. references to submission (requesting Party)</b>	<b>Reasoned objections to document production request (objecting Party)</b>	<b>Response to objections to document production request (requesting Party)</b>	<b>Decision (Arbitral Tribunal)</b>
		<b>References to Submissions, Exhibits, Witness Statements or Expert Reports</b>	<b>Comments</b>		

