

IN THE MATTER OF [INTERNATIONAL COMMERCIAL] ARBITRATION UNDER  
THE ARBITRATION AND CONCILIATION ACT, 1996, AS AMENDED<sup>1</sup>

BETWEEN:

1. [Name of Claimant No.1]
2. [Name of Claimant No.2]

... CLAIMANT(S)

AND

1. [Name of Respondent No.1]
2. [Name of Respondent No.2]

... RESPONDENT(S)

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**PROCEDURAL ORDER NO.1**

[Date Month] 2020

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BEFORE THE ARBITRAL TRIBUNAL COMPRISING OF:

- [•] – Presiding Arbitrator
- [•] – Co-Arbitrator
- [•] – Co-Arbitrator

*Note: In view of Section 2(6) and 2(8) of the A&C Act, it is suggested that the legal representatives of all the Parties should be requested to acknowledge, by email, the Parties acceptance of P.O.1. e.g. Para 2 of P.O.1 below varies the rule regarding communications contained in Section 3 of the Act, which begins with “Unless otherwise agreed by the parties”. Pursuant to Paras 5.1 and 5.3 the Arbitral Tribunal retains the power to determine the manner of conduct of proceedings.*

*Note: P.O.1 proceeds on the basis of an identity of interests of Claimant No.1 and Claimant No.2 on the one hand, and an identity of interests of Respondent No.1 and Respondent No.2 on the other hand. If the arbitration involves multiple Claimants and/or Respondents who do not have an identity of interests inter se Claimants and/or Respondents, appropriate modifications may be required.*

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<sup>1</sup> As amended up to and including the amendments introduced by the 2019 Amending Act, and notified as coming into force on 30 August 2019.

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## 1. THE PARTIES

1.1. The Claimants herein are:

<b>Claimant No.1</b>	<b>Name of Party</b> <i>[Registered Office Address]</i>
Attention:	[•]
Email:	[•]

<b>Claimant No.2</b>	<b>Name of Party</b> <i>[Registered Office Address]</i>
Attention:	[•]
Email:	[•]

1.2. The Claimants are represented in this arbitration by:

<i>[Name of Law Firm]</i>	
Address:	[•]
Attention:	[•]
Email:	[•]

1.3. The Respondents herein are:

<b>Respondent No.1</b>	<b>Name of Party</b> <i>[Registered Office Address]</i>
Attention:	[•]
Email:	[•]

<b>Respondent No.2</b>	<b>Name of Party</b> [Registered Office Address]
Attention:	[•]
Email:	[•]

1.4. The Respondents are represented in this arbitration by:

<b>[Name of Law Firm]</b>	
Address:	[•]
Attention:	[•]
Email:	[•]

## 2. COMMUNICATIONS

- 2.1. All communications (i.e. correspondence and filings, including any accompanying documents, as the case may be) in this arbitration directed to the Claimants and the Respondents (each a “**Party**” and jointly, the “**Parties**”) shall be delivered to the Claimants’ legal representatives and the Respondents’ legal representatives, in accordance with the Procedural Directions. References in the Procedural Directions to communications to be sent or copied to a Party or to Parties shall be construed as to be sent or copied to the legal representatives of such Party or Parties.
- 2.2. The subject-line of all e-mail communications should commence with “Arb: [•] & Anr. v. [•] & Anr” for ease of reference.
- 2.3. All communications from the Arbitral Tribunal to a Party shall be copied to the other Parties and all communications sent by a Party to the Arbitral Tribunal shall be copied to the other Parties. Parties should not communicate with any member(s) of the Arbitral Tribunal on an *ex parte* basis on or relating to the subject of the present dispute and arbitration proceedings. The provisions of this Para 2.3 may be varied by subsequent Procedural Directions, in appropriate circumstances (e.g. where the Arbitral Tribunal requests to examine documents in relation to which a Party claims privilege, which claim of privilege is disputed by another Party).

- 2.4. All communications for and on behalf of the Parties (except notification of a change of legal representatives of the Party issuing such communication) shall be made by the Parties' respective legal representatives, named in or pursuant to the Procedural Directions. All communications arising in the course of or in connection with the arbitration shall be deemed to have been validly made to a Party when transmitted to the duly authorised legal representatives of such Party, named in or pursuant to the Procedural Directions.
- 2.5. The Parties/their legal representatives shall immediately notify the other Parties and the Arbitral Tribunal of any change of legal representatives (which change shall become effective as provided herein), address, telephone number or email address. Until receipt of such notification, communications sent in accordance with the provisions contained in this Procedural Order No.1 (including any change in particulars that have been duly notified pursuant hereto) shall be valid.
- 2.6. All deadlines in this Procedural Order No.1 or in any subsequent Procedural Directions, shall be complied with by 23:59 hours Indian Standard Time on the date specified, and any such communications received after the aforesaid time shall be deemed to have been received on the following business day. Receipt by the Presiding Arbitrator shall constitute adequate compliance with the deadline.
- 2.7. The Arbitral Tribunal, as a general principle, should not be copied unnecessarily into inter-Party correspondence. Accordingly, the Arbitral Tribunal should only be sent those communications which the Parties intend the Arbitral Tribunal to read and act upon.
- 2.8. It will not be necessary for the Arbitral Tribunal to acknowledge receipt of any communication (despite any request to that effect), unless the Arbitral Tribunal considers that there is particular reason to do so.

### 3. THE ARBITRAL TRIBUNAL

- 3.1. The Parties confirm that the following Arbitral Tribunal has been validly constituted on [•] in accordance with the arbitration agreement set out in Clause [•] of the [•] Agreement dated [•] and the Arbitration and Conciliation Act, 1996 (as amended, the "Act"):

<p><b>[Name of Co-Arbitrator], Co-Arbitrator</b></p> <p>(jointly appointed by the Claimants in their Notice invoking Arbitration dated [•]) For the purpose of Section 21 of the Act, this Notice was received by the Respondents on [•].</p>	
Address:	[•]

Email:	[•]
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<b>[Name of Co-Arbitrator], Co-Arbitrator</b>	
(jointly appointed by the Respondents in their letter dated [•] / appointed by the order dated [•] of the [•] Court)	
Address:	[•]
Email:	[•]

<b>[Name of Presiding Arbitrator], Presiding Arbitrator</b>	
(jointly appointed by the Co-Arbitrators and accepted by the Presiding Arbitrator in letter dated [•] / appointed by the order dated [•] of the [•] Court). For the purpose of Section 23(4) of the Act, the Presiding Arbitrator received written notice of appointment on [•].	
Address:	[•]
Email:	[•]

- 3.2. Each member of the Arbitral Tribunal confirms that he is and shall remain impartial and independent of the Parties, he has made the requisite disclosure in accordance with Section 12(1) of the Act, and that he will promptly disclose any circumstances as may be required in accordance with Section 12(2) of the Act.
- 3.3. The Parties confirm that they waive any possible objection to the appointment of the abovenamed Arbitrators on the grounds of potential conflict of interest, lack of independence or impartiality, in respect of matters known to them at the date of this Procedural Order No.1, and that for this purpose, this provision of the Procedural Directions shall constitute the written agreement between the Parties waiving the applicability of Section 12(5) of the Act (pursuant to the Proviso thereto) in relation to the abovenamed Arbitrators.
- 3.4. To avoid future conflicts of interest after the appointment of the members of the Arbitral Tribunal, any proposed addition(s) to or change(s) in the legal representatives of a Party shall be communicated to the Arbitral Tribunal by the concerned Party or its legal representatives, and shall only take effect after seven working days, if the Arbitral Tribunal does not, within such time, object thereto. The Arbitral Tribunal reserves the right to withhold approval of any intended addition or change where that could compromise the composition of the Arbitral Tribunal or the finality of any Award (on grounds of possible conflict or similar issues).

#### **4. APPLICABLE SUBSTANTIVE LAW**

- 4.1. As per Clause [•] of the [•] Agreement dated [•] entered into between the Parties and Section 28(1)(b) of the Act, the Arbitral Tribunal shall decide the disputes in accordance with the laws of [•]. [*In case of international commercial arbitration*] **OR** [*In case of other arbitration*] As per Clause [•] of the [•] Agreement dated [•] entered into between the Parties and Section 28(1)(a) of the Act, the Arbitral Tribunal shall decide the disputes in accordance with the laws of India.

#### **5. APPLICABLE PROCEDURAL LAW**

- 5.1. In accordance with Section 19(3) of the Act, and subject to the non-derogable provisions of Part I of the Act, the procedure for conduct of this Arbitration shall be governed by this Procedural Order and those subsequently issued by the Arbitral Tribunal from time to time.
- 5.2. “*Procedural Directions*” shall mean the procedural directions or orders of this Arbitral Tribunal contained in this Procedural Order No.1, as varied or supplemented in subsequent Procedural Orders that may be passed by the Arbitral Tribunal in these arbitration proceedings.
- 5.2.1. Each Procedural Direction, or simultaneously issued set of Procedural Directions shall be titled as a Procedural Order, numbered sequentially and dated. Subsequent Procedural Orders shall ordinarily be signed only by the Presiding Arbitrator.
- 5.2.2. Pursuant to Section 29(2) of the Act, the Presiding Arbitrator is authorised to decide questions of procedure, and the Procedural Order containing such decision(s) signed by the Presiding Arbitrator shall constitute the decision(s) of the Arbitral Tribunal. However, all communications from the Parties concerning the application for such a ruling must be copied to the co-Arbitrators.
- 5.2.3. The Presiding Arbitrator shall be free, in his discretion, to consult with his co-Arbitrators before he decides a question of procedure, or to refer significant or difficult matters to the full Arbitral Tribunal for decision (in which case the Procedural Order containing such decision shall be signed by all members of the Arbitral Tribunal, or a majority thereof). It is noted, for the record, that this Procedural Order No.1 is signed by the Presiding Arbitrator after consulting with the co-Arbitrators.
- 5.2.4. However, where a Party requests that a particular question of procedure be decided by the Arbitral Tribunal, the Arbitral Tribunal shall consider such request, and as considered appropriate may either decide such question (in which case the Procedural Order containing such decision be signed by all members of the Arbitral Tribunal, or a majority thereof) or leave it to the Presiding Arbitrator to decide such question.

5.3. Any Procedural Direction(s) made by the Arbitral Tribunal (including this Procedural Order No.1) may, at the request of a Party or upon the Arbitral Tribunal’s own initiative, and after considering the views of the Parties, be varied by the Arbitral Tribunal, where the circumstances so require for the proper conduct of these proceedings.

**6. SEAT OF ARBITRATION AND VENUE OF HEARINGS**

6.1. As per Clause [•] of the [•] Agreement dated [•] entered into between the Parties, the juridical seat of this Arbitration shall be [•]. However, if the Parties agree in writing to any other mutually convenient venue, the Arbitral Tribunal may assemble at such venue. A hearing held by videoconference shall be deemed to have been held at the aforesaid juridical seat, and the Parties’ agreement therefor shall not be necessary even if any or all of the members of the Arbitral Tribunal, the Parties or their legal representatives attend such hearing from locations outside the aforesaid juridical seat. The juridical seat shall also be the relevant location for determining whether or not a particular day is a “business day”.

**7. PROCEDURAL CALENDAR**

7.1. The following Procedural Calendar shall be adhered to by the Parties:  
*[Note: The aggregate duration for the steps after filing of the SoC and SoD is approximately 54 weeks, and an appropriate extension, with the consent of the Parties under Section 29(3) of the Act, would be required for completion of all such steps and making an award.]*

<b>DATE</b>	<b>WEEKS/ DAYS</b>	<b>ACTION</b>	<b>BY</b>
[•]	-	Procedural Order No.1	Tribunal
[•]	[•] weeks [~ 8 weeks]	SoC with supporting exhibits. <i>[Note: The time granted for filing of the SoC may be shorter than that granted for filing the SoD. Ordinarily, Claimants have started work on their SoC before the filing date is decided. Further, the SoD may also involve setting out jurisdictional objections and counter-claim(s) in addition to replying to the SoC.]</i>	Claimants

[•]	[•] weeks [~ 10 weeks]	SoD, including jurisdictional objections and counter-claim(s), if any, with supporting exhibits. <i>[Note: Under Section 23(4), inserted pursuant to the 2019 Amendment Act, the SoC and SoD must be filed within 6 months from the date all arbitrators received written notice of their appointment.]</i>	Respondents
[•]	[•] weeks [~ 2 weeks]	Document Requests (in the form of a ‘Redfern Schedule’). <i>[Note: The Document Production phase and further steps may be deferred if the SoD contains jurisdictional objections and the Respondents request bifurcation of some or all of such objections.]</i>	Claimants and Respondents
[•]	[•] weeks [~ 4 weeks]	Responses/Objections to Document Requests.	Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Reply to Responses/Objections to Document Requests. Submission of Redfern Schedules to the Arbitral Tribunal.	Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Arbitral Tribunal’s decisions on Document Requests objected to.  Production of Documents not subject to Objection.	Tribunal  Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Production of Documents as Ordered by the Arbitral Tribunal.	Claimants and Respondents
[•]	[•] weeks [~ 4 weeks]	Rejoinder with supporting exhibits.	Claimants
[•]	[•] weeks [~ 4 weeks]	Sur-Rejoinder with supporting exhibits.	Respondents
[•]	[•] weeks [~ 2 weeks]	Claimants Sur-Rejoinder, if any (“ <b>CSR</b> ”)	Claimants

[•]	[•] days [~ 10 days]	Parties to file (i) either an Agreed List of Issues or Parties' respective List of Issues; and (ii) a Memo of Denial of the other Party's documents.	Claimants and Respondents
[•]	[•] days [~ 4 days]	Procedural Teleconference to finalise the List of Issues in the Arbitration and provide estimate of number of witnesses.	Tribunal, Claimants and Respondents
[•]	[•] weeks [~ 6 weeks]	Fact Witness Statements and Expert Reports.	Claimants and Respondents
[•]	[•] weeks [~ 4 weeks]	Reply Fact Witness Statements and Reply Expert Reports	Claimants and Respondents
[•]	[•] week(s) [~ 1 week]	Notification of witnesses and experts of the opposing Parties proposed to be cross-examined.	Claimants and Respondents
[•]	[•] weeks [~ 4 weeks]	Evidentiary Hearing.	Tribunal, Claimants and Respondents
[•]	[•] week(s) [~ 1 week]	Pre-Hearing Procedural Teleconference.	Tribunal, Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Common Core Hearing Bundle of Documents, if agreed and efficacious.	Claimants and Respondents
[•]	[•] [~ 2 weeks]	Exchange of Written Opening Submissions not exceeding [•] pages which are to address only the issues identified in the finalised List of Issues.	Claimants and Respondents
[•]	[•] week(s) [~ 1 week]	Final Oral Hearing at [Venue].	Tribunal, Claimants and Respondents
[•]	[•] weeks [~ 4 weeks]	Post-Hearing Memorials	Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Reply Post-Hearing Memorials	Claimants and Respondents
[•]	[•] weeks [~ 2 weeks]	Costs submissions	Claimants and Respondents

## 8. WRITTEN SUBMISSIONS / FILINGS

- 8.1. All pleadings, applications, documents, witness statements and submissions shall be A4-sized. All pleadings, applications, witness statements and submissions shall be 1.5 line spaced, in numbered paragraphs, duly indexed and paginated. All pleadings, applications and submissions shall also include a table of contents.
- 8.2. All filings and correspondence shall simultaneously be sent to the other Parties and the Arbitral Tribunal:
- (a) By email. All pleadings, applications, witness statements and submissions shall be in searchable PDF format with hyperlinks to the supporting exhibits/annexures (including in the table of contents, where required). Such exhibits/annexures are to be in PDF format, with each exhibit/attachment clearly identified by bookmarks. Where the volume of data to be so transmitted exceeds [•]GB, such e-filing shall be done by making such filing available through a secure virtual data room, and communicating by email the requisite details to allow access thereto. For the purpose of meeting deadlines, such e-filing shall suffice; and
  - (b) If requested by a member of the Arbitral Tribunal, in an encrypted USB stick and/or double-sided hard copy, with exhibits/ attachments clearly identified by tabs, via courier service sent no later than two business days after receipt of such request. Where any of the other Parties experiences difficulty in printing particular exhibit(s)/annexure(s), such Party or Parties may request hard copy(ies) thereof, which shall be sent via courier service, dispatched no later than two business days after receipt of such request.
- 8.3. Exhibits accompanying pleadings should be compiled into volumes, each not exceeding [400] pages ([200] sheets when printed double-sided). Unless unavoidable, an exhibit should not be split between volumes. The pagination of each volume shall begin at “1”. [*Note: To consider whether pagination should be running numbers for the entire volume or whether each exhibit (required to be electronically bookmarked or physically tabbed) should be individually numbered to facilitate compilation of hearing bundles.*] Volumes filed by the Claimant shall be marked “**Vol. CD-x**” and those filed by the Respondent shall be marked “**Vol. RD-x**”. Each volume shall be prefaced by a list of exhibits, setting forth for each exhibit:
- (a) The exhibit number, prefaced by “**C**” for the Claimants’ exhibits and “**R**” for the Respondents’ exhibits followed by the applicable consecutive number (which numbering shall continue in the exhibits to the next filing by such Party);
  - (b) Its date;
  - (c) A brief description of the exhibit; and
  - (d) Page number at which such exhibit begins. [*Note: To consider, depending on whether exhibits in a volume are individually or consecutively paginated.*]

- 8.4. The provisions of Para 8.3 shall apply *mutatis mutandis* to exhibits, if any, accompanying fact witness statements. Volumes shall be marked “**Vol. CW[1]D-x**” and “**Vol. RW[1]D-x**”. The exhibits shall be numbered “**CW[1]/x**” and “**RW[1]/x**”. The exhibit numbering for each witness shall begin at 1, and continue into the exhibits accompanying the reply witness statement, if any, of such witness.
- 8.5. The provisions of Para 8.3 shall apply *mutatis mutandis* to exhibits, if any, accompanying expert reports. Volumes shall be marked “**Vol. CE[1]D-x**” and “**Vol. RE[1]D-x**”. The exhibits shall be numbered “**CE[1]/x**” and “**RE[1]/x**”. The exhibit numbering for each expert shall begin at 1, and continue into the exhibits accompanying the reply expert report, if any, of such expert.
- 8.6. The provisions of Para 8.3 shall apply *mutatis mutandis* to legal exhibits, if any, relied on at the hearing of any application and at the Final Oral Hearing. Volumes of legal exhibits shall be compiled at the end of each hearing, and marked “**Vol. CLD-x**” and “**Vol. RLD-x**”, as the case may be. The legal exhibit number shall be prefaced by “**CL**” and “**RL**”, as the case may be, which numbering shall begin at 1, and continue in the legal exhibits relied on at the next hearing.
- 8.7. The provisions of Para 8.3 shall apply *mutatis mutandis* to annexures, if any, accompanying applications. Volumes shall be marked “**Vol. CAD-x**” and “**Vol. RAD-x**”. The annexures shall be numbered “**CA/x**” and “**RA/x**”. The annexure numbering shall begin at 1, and continue into the annexures accompanying the next application, if any, of such Party.

## 9. LIST OF ABBREVIATIONS AND FOOTNOTE REFERENCES

- 9.1. A consistent use of abbreviations would be of assistance to both the Parties and the Arbitral Tribunal.
- 9.2. Accordingly, in order to promote conciseness and consistency to the highest degree possible, Parties are to provide a list of abbreviations, to be prepared as follows:
- (a) When filing its SoC, the Claimants are to share (in MS Word format separately) a list of the abbreviations it has used in the SoC.

For example:

Abbreviations	Full Description	Reference to where abbreviation first used
XXX	_____	SoC, at p.1, para 1

- (b) Thereafter, whenever a Party makes any filing, it is to add to the list of abbreviations any new abbreviations it has used therein. Where the Parties are directed to file written submissions simultaneously, each Party is to provide a

separate list of abbreviations, listing only any new abbreviations it has used in such written submissions.

- 9.3. Parties should use in their pleadings, submissions and applications only the abbreviations set out in the “Abbreviations” column of the list of abbreviations (including any new abbreviations which a Party has used in such submission for the first time).
- 9.4. Footnote references should be consistent throughout all pleadings, applications, submissions and (to the extent possible) witness statements. In particular:
- (a) If the exhibit has (internal) page numbers and/or paragraph numbers, the following format is to be adopted: Vol. [•], Exhibit [•], at p. [•], para [•].  
For example: Vol. CD-1, Exhibit C-7, at p. 23, para. 17; Vol. RD-1, Exhibit R-3, at p. 37, para. 7; Vol. CW1D-1, Exhibit CW1/1, at p. 1, para 2; Vol. CLD-1, Exhibit CL-4, at p.43, para 7.
- (b) If reference is made in a footnote to a witness statement or expert report, the Parties should use the abbreviation set out in the list of abbreviations.  
For example: if the first witness statement of the Claimants’ second witness, Mr. Alex Ferguson, is abbreviated in the list of abbreviations as “CW2-WS1”, then this abbreviation is to be used also in the footnotes:  
CW2-WS1, at p. 3, para. 7
- (c) If reference is made in a footnote to the transcript of evidence, such reference is to be in the following format: Transcript of [date], at p. [•], Q&A [•]  
For example: Transcript of 3 Mar 2019, at p. 33 Q&A 7  
In case of live transcription:  
Transcript of 3 Mar 2019, at p. 33 line 7  
Transcript of 3 Mar 2019, at p. 33 lines 7-11  
Transcript of 3 Mar 2019, at p. 33 line 7 to p. 34 line 17.
- 9.5. A consistent use of format for dates should be used, as follows:  
3 Mar 2019 or 24 Dec 1989 etc.

## **10. TRANSLATION AND INTERPRETATION (IF APPLICABLE)**

- 10.1. The language of this arbitration shall be English.
- 10.2. Exhibits/annexures submitted by any Party in any language other than English shall be accompanied by a translation into the English language. In case of any document produced in response to any document production request, the Party requesting production of such document shall provide its translation into the English language.
- 10.3. If any witness or expert prefers to give oral evidence in any language other than English, the Party intending to call such witness or expert shall:

- (a) Be responsible for providing suitable live interpretation of such evidence into English; and
- (b) Notify the Arbitral Tribunal and the other Parties at least forty-five (45) days prior to the Evidentiary Hearing, providing also the name and qualifications of any proposed interpreter.

10.4. The Parties are thereafter to confer and agree, if possible, on the appointment of a suitably qualified English language interpreter. In the event the Parties are unable to agree on an interpreter within 7 days after notification under paragraph 10.3(b) above, the Parties are to serve on the Arbitral Tribunal their respective proposals for an interpreter together with brief submissions (of no more than [2] pages), following which the Arbitral Tribunal will decide on an interpreter.

10.5. As a general principle, the costs of any translation are to be borne initially by the Party providing the same, and the costs of interpretation are to be borne initially by the Party whose witness or expert requires an interpreter, without prejudice to the decision of the Arbitral Tribunal as to which Party shall ultimately bear those costs and in what amount.

## **11. GUIDELINES**

11.1. The IBA Rules on the Taking of Evidence in International Commercial Arbitration (the “**IBA Rules**”), and the Seoul Protocol on Video Conferencing in International Arbitration may be referred to by the Arbitral Tribunal as general guidelines in this arbitration.

## **12. DENIALS**

12.1. All denials shall be in the following manner:

- (a) In the response to any pleading, it shall be stated which of the allegations in the pleading being responded to are denied, which allegations the Party is unable to admit or deny, but which it requires the other Party to prove, and which allegations are admitted.
- (b) Where an allegation of fact is denied, the reasons for doing so must be stated, and if the Party intends to put forward a different version of events from that given by the other Party, it must state its own version.
- (c) If the jurisdiction of the Arbitral Tribunal is disputed, the Party must state the reasons for doing so, and if it is able, give its own statement as to which legal forum ought to have jurisdiction.
- (d) If the valuation of the claim/counter-claim is disputed, the reasons therefor must be stated, and if possible, the Party disputing such valuation must give its own statement on value thereof.
- (e) Every allegation of fact, if not denied in the manner provided herein, shall be taken to be admitted.

### 13. PLEADINGS AND DOCUMENTS

- 13.1. The Claimants shall file their Statement of Claim (“**SoC**”) stating the facts supporting the claim(s), particulars of claim(s), the points at issue and the relief or remedy sought. The SoC shall contain a declaration that all documents in the possession, control or custody of the Claimants, that the Claimants intend to rely on in connection with their claim(s) in these proceedings (save and except documents to be relied on exclusively for the purpose of establishing the quantum of such claim(s) made) have been disclosed and copies thereof are annexed with the SoC.
- 13.2. The Respondents shall file their Statement of Defence (“**SoD**”) stating their defence in respect of the particulars contained in the SoC, objections to the jurisdiction of the Arbitral Tribunal, if any, and counter-claim(s) or claim(s) for set-off (for brevity’s sake referred to as “counter-claim” in the Procedural Directions), if any. The SoD shall contain a declaration that all documents in the possession, control or custody of the Respondents, that the Respondents intend to rely on in connection with their defence to the Claimants’ claim, and the Respondents’ jurisdictional objections and counter-claim(s), if any, (save and except documents to be relied on exclusively for the purpose of establishing the quantum of such counter-claim(s) made) have been disclosed and copies thereof are annexed with the SoD. In the event that the Respondents request a bifurcation of jurisdictional objections, they shall also submit along with the SoD all legal exhibits that the Respondents intend to rely on in support of such objections.
- 13.3. The Claimants shall file their Rejoinder, in response to the Respondents’ defence and jurisdictional objections (not bifurcated), if any, and setting out the Claimants’ defence to the Respondents’ counter-claim(s), if any. Along with the Rejoinder to the SoD, the Claimants shall only submit (i) documents in relation to the Claimants’ response to any jurisdictional objections (not bifurcated), (ii) documents to be relied on exclusively for the purpose of establishing the quantum of the Claimants’ claim(s) made, where the quantum of such claim(s) has been disputed in the SoD; (iii) documents in relation to the Claimants’ defence to the counter-claim(s) of the Respondents, if any; and (iv) documents produced in response to a Document Request submitted pursuant to the Procedural Directions. The Claimants shall not be allowed to rely on any other documents in relation to their claim, which were in the Claimants’ possession, control or custody and not disclosed along with the SoC, save and except with the leave of the Arbitral Tribunal, and such leave shall be granted only upon the Claimants establishing reasonable cause for non-disclosure of such documents along with the SoC.
- 13.4. The Respondents shall file their Sur-Rejoinder, replying to the Claimants’ response to the Respondents’ defence and jurisdictional objections (not bifurcated), if any, and in response to the Claimants’ defence to the Respondents’ counter-claim(s), if any.

Along with the Sur-Rejoinder, the Respondents shall only submit (i) documents to be relied on exclusively for the purpose of establishing the quantum of the counter-claim(s) made, where the quantum of such counter-claim(s) has been disputed by the Claimants in the Rejoinder; and (ii) documents produced in response to a Document Request submitted pursuant to the Procedural Directions. The Respondents shall not be allowed to rely on any other documents in relation to their defence to the Claimants' claim(s) or the Respondents' jurisdictional objections (not bifurcated) or counter-claim(s), which were in the Respondents' possession, control or custody and not disclosed along with the SoD, save and except with the leave of the Arbitral Tribunal, and such leave shall be granted only upon the Respondents establishing reasonable cause for non-disclosure of such documents along with the SoD.

13.5. The Claimants may file a Sur-Rejoinder (“**CSR**”) to jurisdictional objections (not bifurcated) and counter-claim(s), if any. No documents shall be submitted along with the CSR.

13.6. Documents filed along with an application can be relied on only for the purpose of submissions in relation to such application. Documents accompanying correspondence can be relied on only for the purpose of making the request contained in such correspondence. If a Party wishes to rely on a document accompanying an application or correspondence for any other purpose, a copy thereof should be filed along with such Party's next pleading, if permissible, or after obtaining the leave of the Arbitral Tribunal. Such leave shall be granted only upon the Party establishing reasonable cause for not filing such document along with the appropriate pleading.

13.7. All documentary evidence is to be produced in its entirety. If a Party wishes to redact or partially reproduce any document, it must specify, in the filing which such document accompanies, in relation to each such document, the precise basis for such redaction(s) or partial reproduction by reference to the grounds in Article 9.2 of the IBA Rules. In the event that the opposing Party objects to such redactions or partial reproduction, the Arbitral Tribunal shall rule on the appropriateness thereof, having regard to Article 9.2. If the objection is upheld, the unredacted or complete document would have to be filed.

13.8. As a general principle, filing of documents which are not relevant or material, and unnecessarily burdening the record, is to be avoided.

13.9. Not less than two weeks prior to the commencement of the Evidentiary Hearing, the Claimants shall submit a chronological index of all factual exhibits submitted by the Parties in these proceedings.

## 14. BIFURCATION OF JURISDICTIONAL OBJECTION

- 14.1. Where the Respondents have raised jurisdictional objections in the SoD, and request a bifurcation of any or all of such objections, the Arbitral Tribunal shall invite the Claimants to file a written response to such request for bifurcation.
- 14.2. The Arbitral Tribunal shall then decide the request for bifurcation, giving reasons for its decision. If the Arbitral Tribunal decides to bifurcate any jurisdictional objections, the Document Production Phase and further steps set out in the Procedural Calendar shall be suspended until the adjudication of such bifurcated jurisdictional objection(s). The decision for bifurcation shall also set out the timelines for the filings, Jurisdictional Hearing and the Arbitral Tribunal's decision, referred to in Paras 14.3 and 14.4. If the Arbitral Tribunal rejects the request for bifurcation, Parties shall continue to adhere to the steps set out in the Procedural Calendar, and the Respondents' jurisdictional objections shall be heard and decided at the time of the final award.
- 14.3. In case of bifurcation, the Arbitral Tribunal shall permit the Claimants to file their reply to the bifurcated jurisdictional objection(s), along with documents relating to such objection(s), including legal exhibits. The Arbitral Tribunal shall permit the Respondents to file a rejoinder thereto, accompanied only by documents (including legal exhibits) that are in response to the Claimants' aforesaid reply. If requested by the Claimants, the Arbitral Tribunal shall permit a brief sur-rejoinder, accompanied only by legal exhibits in response to the Respondents' contentions in the aforesaid rejoinder.
- 14.4. The Arbitral Tribunal shall hold a Jurisdictional Hearing, and thereafter decide such bifurcated jurisdictional objection(s). If the Arbitral Tribunal rejects the bifurcated jurisdictional objection, or all bifurcated jurisdictional objections, it shall forthwith issue a revised Procedural Calendar and continue with the arbitration proceedings.

## 15. DOCUMENT REQUESTS AND MEMO OF DENIAL OF DOCUMENTS

- 15.1. A Party may request another Party to produce documents relevant to this arbitration ("**Document Request**") at the stage indicated in the Procedural Calendar. Any other Document Request may be made only after obtaining leave from the Arbitral Tribunal.
- 15.2. When making a Document Request, the Requesting Party shall send the Answering Party a Redfern Schedule<sup>2</sup> (in MS Word format), to be completed as follows:
- (a) In the second column (from left), the Requesting Party shall set out a brief description of each document or category of documents requested so that the documents requested are clearly identified. In the case of documents maintained in electronic form, the Requesting Party may, or the Arbitral Tribunal may order

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<sup>2</sup> As per format in Annexure - I hereto.

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.

- (b) In the third column, the Requesting Party shall describe specifically as to how each document or category of documents requested are relevant to the case and material to its outcome, and give references to the relevant paragraphs in the pleadings. The third column shall also contain a statement that the documents requested are not in the possession, custody or control of the Requesting Party or the reasons why it would be unreasonably burdensome for the Requesting Party to produce such documents, and the document(s) requested is believed to be in the possession, custody or control of the Answering Party. At this time the fourth and fifth columns shall remain blank.
- (c) The Answering Party, on receipt of such Document Request, shall then complete the fourth column with a brief statement of whether it has each document or category of documents in question in its possession, custody or control, and (if it objects to the production thereof) the reasons why it objects to produce them (which shall be any of those set forth in Article 9.2 of the IBA Rules or a failure to satisfy any of the requirements of Article 3.3 thereof). The Answering Party shall return the Redfern Schedule to the Requesting Party.
- (d) The Requesting Party shall then provide its comments in response, limited to the Answering Party's objections, by completing the fifth column of its Redfern Schedule and submitting it to the Arbitral Tribunal for directions.
- (e) The sixth column shall be completed by the Arbitral Tribunal as it rules on the document requests to which there is an objection.

15.3. To the extent not objected to, a Party shall produce copies of the requested documents by the date indicated in the Procedural Calendar, and shall produce copies of those documents which the Arbitral Tribunal has ordered production of, within [2] weeks of communication of the Arbitral Tribunal's ruling on the Redfern Schedules. Documents produced pursuant to a Document Request shall be exchanged *inter partes* and shall only form part of the record if and when they are submitted with the Rejoinder by the Claimants or the Sur-Rejoinder by the Respondents.

15.4. In all Document Requests, the Parties shall take into account, and the Arbitral Tribunal shall be guided by, the criteria set out in the IBA Rules. Copies of documents produced must conform fully to the originals (including colour copies where the original documents contains colours other than black and white). All electronic documents must be produced in native format in order to prevent loss of information. At the request of the Arbitral Tribunal, any original must be presented for inspection.

15.5. When producing documents pursuant to a Document Request or the Arbitral Tribunal's ruling thereon, documents shall be organized in a manner that allows the Requesting Party to ascertain which document corresponds to which request.

15.6. All documentary evidence submitted to the Arbitral Tribunal shall be deemed authentic and complete, including evidence submitted in the form of copies, unless a Party disputes its authenticity or completeness. At the request of the Arbitral Tribunal, any original must be presented for inspection.

15.7. Each Party may file a Memo of Denial of the other Party's documents, listing and describing only those documents, the authenticity/existence/completeness of which it disputes or does not admit, setting out the reasons therefor in brief. All other documents of such other Party shall be available for being read in evidence, dispensing with the need of formal proof thereof, leaving the questions of admissibility, relevance, materiality and evidentiary value to be attached to the document and its contents open for consideration by the Arbitral Tribunal at the time of the Final Oral Hearing.

## **16. WITNESS EVIDENCE**

16.1. Evidence of fact witnesses, if any, shall be submitted through witness statements, which shall constitute the examination-in-chief of the witnesses, and be read as evidence in the arbitration, subject to any cross-examination by the other Party. Witness statements shall be filed by the Parties in accordance with the Procedural Calendar.

16.2. A witness statement shall be by way of an affidavit of evidence, which must comply with the following form and requirements:

- (a) it should be confined to, and should preferably follow the chronological sequence of, the dates and events that are relevant for proving any fact or any other matter dealt with;
- (b) mere reproduction of pleadings and legal submissions shall be avoided, and such portions thereof may be directed by the Arbitral Tribunal to be disregarded, in order to avoid unnecessarily prolonging the cross-examination of such witness;
- (c) each paragraph of an affidavit should, as far as possible, be confined to a distinct portion of the subject;
- (d) a witness statement shall:
  - (i) state that such witness is a witness of fact;
  - (ii) contain the name and address of the witness, and a description of the witness' qualifications;
  - (iii) describe the witness' relation to any of the Parties;
  - (iv) state which of the statements in it are made on the basis of the witness' own knowledge and which are matters of information or belief, identifying the source for any such matters of information or belief;
  - (v) annexe only (i) such documents that are in the possession, custody or control of the witness (and not of the Party that calls such witness); and (ii) any charts, tabulations, diagrams or models prepared by the witness to assist in

giving evidence in this arbitration, provided that no new evidence is contained therein;

(vi) contain an affirmation of the truth of its contents;

(vii) be initialled by the witness at the foot of each page, and at the end shall be signed by the witness and give the date and place of signature.

(e) a witness statement should be in accordance with the provisions of Paras 8.1 to 8.4 above, as applicable, and give appropriate references (preferably in the manner indicated in Paras 9.4 and 9.5 above) to documents referred to in the body of the affidavit which are annexed to the affidavit or any other pleadings.

16.3. In case of a witness whose attendance has been secured with the assistance of the Court, pursuant to Section 27 of the Act, the Party at whose request such attendance has been secured should endeavour to ensure that such witness submits a witness statement in compliance with the Procedural Directions, to the maximum extent possible.

16.4. A Party which has not filed any fact witness statement(s) shall be entitled to file reply fact witness statement(s) only with the leave of the Arbitral Tribunal, identifying (in its application for such leave) the precise statements in the opposing Party's fact witness statement(s) which are to be dealt with in the proposed reply fact witness statement(s).

16.5. Reply fact witness statements (including any documents accompanying the same) are to be limited solely to responding to matters raised in the opposing Party's fact witness statements. To ensure compliance with this limitation, a reply fact witness statement must quote each statement in the opposing Party's fact witness statement which is being dealt with, and then set out the response thereto. In the event that portions of a reply fact witness statement go beyond responding to matters raised in the opposing Party's fact witness statement (including matters in relation to which such Party should reasonably have known it was required to submit the evidence of a fact witness in the first place), the Arbitral Tribunal may either direct that such portions be disregarded, or if the Arbitral Tribunal considers it more appropriate, allow the opposing Party to file a further witness statement limited to responding to such portions. The Arbitral Tribunal may also direct that any document(s) accompanying a reply fact witness statement, which document(s) ought to have been submitted at an earlier stage in accordance with the Procedural Directions, shall be omitted from the record of these arbitration proceedings. Any application objecting to any portion of a reply fact witness statement or any document accompanying the same shall be filed by the Party so objecting no later than [1] week from the date on which such reply fact witness statement is submitted, and shall be accompanied by any document(s) that such Party wishes to seek leave of the Arbitral Tribunal to rely on in response to the such portion or document objected to.

16.6. It shall be the responsibility of each Party to procure the attendance at the Evidentiary Hearing of its own witnesses at its own cost, subject to the decision of the Arbitral Tribunal as to which Party shall ultimately bear the costs of the proceedings. If a witness, without reasonable cause, fails to appear at the Evidentiary Hearing, or a witness statement is withdrawn by the Party submitting such witness statement, the Arbitral Tribunal may disregard the evidence of such witness and/or draw such inferences as it deems appropriate in the circumstances.

## **17. EXPERT WITNESSES**

17.1. Each Party will be confined to one expert in relation to each field/discipline, unless permission is granted by the Arbitral Tribunal for additional experts. An expert should not comment directly on contentious statements of fact in witness statements or documentary evidence, but should only offer opinions on the basis of given assumptions. Each expert report shall conform to Article 5.2 of the IBA Rules, Paras 8.1 to 8.3 and 8.5 above, and:

- (a) Be headed by a table of contents.
- (b) Identify specifically any document relied upon and exhibit any such document not already exhibited in the arbitration.
- (c) Provide a curriculum vitae of the expert.
- (d) Contain an acknowledgment that the expert's duty is to the Arbitral Tribunal and not to the Appointing Party.
- (e) Reply expert witness reports are to be limited solely to responding to matters raised in the opposing Party's expert witness report(s).

17.2. It shall be the responsibility of each Party to procure the attendance at the Evidentiary Hearing of its own expert witness(es) at its own cost, subject to the decision of the Arbitral Tribunal as to which Party shall ultimately bear the costs of the proceedings.

17.3. The Arbitral Tribunal may resort to 'hot-tubbing' of expert witnesses, requiring such expert witnesses to give evidence before the Arbitral Tribunal simultaneously, with the same question being put to each expert witness, in an attempt to identify key issues of a dispute, and where possible, evolve a common resolution of such issues. Broadly, the process shall be as follows:

- (a) After the exchange of expert reports, the expert witnesses will participate in a meeting, and prepare a Joint Statement, signed by each expert. Such Joint Statement shall list the positions on which the experts are agreed, and the issues on which the experts do not agree. Copies of the Joint Statement shall be submitted to the Arbitral Tribunal and the Parties.
- (b) Reply expert witnesses (including any documents accompanying the same) are to be limited solely to responding to matters raised in the opposing Party's expert witness report(s) in relation to issues on which the experts do not agree.
- (c) A Party may submit to the Arbitral Tribunal, with copies to the other Parties, a suggested list of questions to be put to the experts.

- (d) At the Evidentiary Hearing, expert witnesses shall give evidence before the Arbitral Tribunal simultaneously, with the same question being put by the Arbitral Tribunal to each expert witness, for him to answer and also explain why he disagrees with the other expert's view. A Party's legal representative may put questions to the expert witnesses only if permitted by the Arbitral Tribunal. If, and to the extent, there is agreement between the expert witnesses on any additional matters, such agreed positions shall be listed in a Further Joint Statement, signed by each expert.
- (e) The Arbitral Tribunal shall decide, based on the evidence placed before it (including pursuant to Para 17.4, where applicable), the issues on which the expert witnesses do not agree.

17.4. Pursuant to Section 26 of the Act, the Arbitral Tribunal may appoint one or more expert(s). Copies of the report of such expert(s) shall be provided to the Arbitral Tribunal and the Parties. The participation of such expert(s) at the Evidentiary Hearing, as provided in Section 26(2) of the Act, shall be required only if the Arbitral Tribunal considers the same necessary, either on its own or upon the request of a Party. Upon the request of a Party, such expert(s), shall comply with the requirements of Section 26(3) of the Act. The Arbitral Tribunal shall consult with the Parties on the selection of such expert(s), his/their terms of reference and the form of the report(s) the expert(s) is/are expected to produce. The costs of any expert appointed by the Arbitral Tribunal shall, subject to further orders of the Arbitral Tribunal, be shared equally by the Parties in the first instance and be paid in advance as and when directed by the Arbitral Tribunal.

## **18. PRE-HEARING PROCEDURAL TELECONFERENCE**

- 18.1. The Arbitral Tribunal, subject to any subsequent Procedural Direction, requests that Parties confer and agree, if possible, on the following matters:
- (a) duration of the Evidentiary Hearing and duration of the Final Oral Hearing (including timetable for each day's hearing);
  - (b) arrangements for videoconferencing, where required;
  - (c) arrangements for visible real time transcription and electronic document management, if practicable;
  - (d) common core hearing bundles;
  - (e) use and (prior) production of demonstrative exhibits (if any);
  - (f) attendance at the Evidentiary Hearing and Final Oral Hearing;
  - (g) order of witnesses at the Evidentiary Hearing;
  - (h) sequestration of witnesses;
  - (i) examination of expert witnesses, in particular whether there is to be 'hot-tubbing' of expert witness;
  - (j) the timing, length, and form of the filing of Cost Submissions.

18.2. No later than 7 working days before the Pre-Hearing Procedural Teleconference as scheduled in the Procedural Calendar, the Claimants are to make the necessary arrangements and thereafter, inform the Respondents and the Arbitral Tribunal of the same. No later than 5 working days prior to the Pre-Hearing Procedural Teleconference, the Parties should forward to the Arbitral Tribunal and each other, their respective proposals regarding the matters listed in Para 18.1, setting out separately matters on which agreement has been reached and matters on which they have been unable to agree. Matters on which the Parties are agreed would nevertheless require confirmation by the Arbitral Tribunal, which may be provided in advance in order to curtail the duration of the Pre-Hearing Procedural Teleconference.

## **19. EVIDENTIARY HEARING**

19.1. The Evidentiary Hearing shall continue from day-to-day on consecutive working days. The procedure for recording of evidence at the Evidentiary Hearing shall, as a general principle, be the following:

- (a) The total number of hours available will be, as far as possible, equally divided between the Claimants and the Respondents.
- (b) Witnesses will be heard on affirmation or under oath.
- (c) The Claimants' fact witness(es) will be examined first, followed by the Respondents' fact witness(es). Thereafter, the Claimants' expert witness(es) shall be examined followed by the Respondents' expert witness(es), unless the Arbitral Tribunal resorts to 'hot-tubbing' of experts.
- (d) Fact witnesses should not be examined in-chief for more than fifteen minutes, without prior permission from the Arbitral Tribunal. The examination-in-chief should not seek to introduce new evidence, save to address new evidence introduced in reply fact witness statements of the opposing Party. The Arbitral Tribunal may limit the examination-in-chief of an expert witness, in further consultation with the Parties.
- (e) The scope of the re-examination shall be limited to matters that have arisen in the cross-examination of such witness.
- (f) The Arbitral Tribunal shall have the right to examine all witnesses at any time and to interject questions during the examinations by the Parties legal representatives.
- (g) The Arbitral Tribunal shall have at all times complete control over the procedure in relation to any witness giving oral evidence, including the right to recall a witness and the right to limit or deny, on its own motion or at the request of a Party, the right of a Party to conduct any lines of examination-in-chief, cross-examination or re-examination if it appears to the Arbitral Tribunal that such examination or evidence is unlikely to serve any relevant purpose.
- (h) Only documents on record may be relied on, save and except document(s) not on record used only for the purpose of confronting a witness with regard to an answer given by such witness during cross-examination.

19.2. During the Pre-Hearing Procedural Teleconference, the Arbitral Tribunal shall determine, in consultation with the Parties, whether fact and expert witnesses may be present during the examination of other witnesses. Ordinarily, a witness whose examination has been completed may (unless such witness is likely to be re-called) be present during the examination of other witnesses.

19.3. The legal representatives of the Parties agree to keep the cross-examination as brief as possible in order to conclude the exercise within the time appointed therefor. Accordingly, the Parties agree to dispense with the following practices during cross-examination:

- (a) putting the respective case of the Party to the witnesses of the other Party in the form of suggestions.
- (b) challenging the answers given by the witness in the cross-examination by suggesting that the answers are false.
- (c) posing questions about the contents of contracts or the contents of documents whose contents are admitted.

It is clarified that the absence of such suggestions will not be treated as an admission of the case of the opposing Party, or acceptance of the evidence of the witness being cross-examined.

## **20. FINAL ORAL HEARING**

20.1. The total number of hours available at the Final Oral Hearing will be, as far as possible, equally divided between the Claimants and the Respondents.

20.2. Subject to further Procedural Directions from the Arbitral Tribunal, the Final Oral Hearing shall proceed as follows:

- (a) The Claimants' arguments regarding their claim(s);
- (b) The Respondents' arguments regarding their jurisdictional objections, their defence to the Claimants' claim(s), and regarding the Respondents' counter-claim(s);
- (c) Claimants' reply to the jurisdictional objections, brief rejoinder to the Respondents' defence, and Claimants' arguments regarding their defence to the Respondents' counter-claim(s).
- (d) Respondents' brief rejoinder regarding jurisdictional objections and the Claimants' defence to the counter-claims.
- (e) A brief sur-rejoinder by the Claimants or the Respondents shall only be with the permission of the Arbitral Tribunal, and confined to matters that the Arbitral Tribunal permits. No additional time will be allowed for a sur-rejoinder, and the time taken must be from the remaining time available to such Party. If a Party has exhausted all the time allotted to it, a sur-rejoinder will not be permitted.

20.3. The Parties are also encouraged to identify what matters are common ground or (if earlier disputed) are no longer in dispute. The Arbitral Tribunal may, to expedite

proceedings at the Final Oral Hearing, seek to identify such matters before Parties commence arguments.

20.4. As a general principle, no Party shall be permitted to advance any new factual allegations or any new legal arguments at the Final Oral Hearing, unless expressly permitted by the Arbitral Tribunal, for reasons to be recorded in the award.

20.5. As a general principle, no new documents may be presented by any Party at the Final Oral Hearing.

20.6. The timing, length, and form of the Post-Hearing Memorials and Reply Post-Hearing Memorials will be decided by the Arbitral Tribunal, in consultation with the Parties at the conclusion of the Final Oral Hearing. No exhibits or annexures (factual or legal) shall be permitted, and documents referred to must be part of the record. Legal arguments shall be limited to those advanced during the Final Oral Hearing.

20.7. Within [1] week of the conclusion of the Final Oral Hearing, each Party shall provide to the Arbitral Tribunal and the other Parties a compilation of legal exhibits relied on by such Party at the Final Oral Hearing. Such compilation shall be prepared in compliance with Paras 8.1 to 8.3 and Para 8.6 above.

## **21. HEARING BY VIDEOCONFERENCE**

21.1. The Arbitral Tribunal may allow one or more witness(es) or expert(s) to be examined, or the Evidentiary Hearing or the Final Oral Hearing to take place, by videoconference and will issue Procedural Directions in this regard.

21.2. A witness or expert whose evidence is recorded before the Arbitral Tribunal by videoconference shall be considered to have appeared at the Evidentiary Hearing.

21.3. The Arbitral Tribunal may conduct hearings of urgent applications, including pursuant to Section 17 of the Act, by videoconference.

21.4. Parties agree that no objection shall be taken to the decision, order or award of the Arbitral Tribunal following any such hearing on the basis that the hearing was held by videoconference.

21.5. (i) There shall be no unauthorised recording of the proceedings by or on behalf of any Party, or otherwise. (ii) No person who would not be permitted to attend a hearing in person (including witnesses to be sequestered) shall be permitted to view or attend a hearing by video conference, and such other safeguards or measures necessary to ensure adherence to the obligation of confidentiality in Para 24.1 shall be put in place. (iii) Appropriate safeguards to prevent unauthorised assistance to a witness or expert must be ensured. (iv) Appropriate provisions should be made to facilitate a witness or

expert being shown a document in connection with his examination. (v) Appropriate technical facilities should be provided to ensure private audio communication between members of the Arbitral Tribunal, if all are not physically present at the same location. (vi) Appropriate technical facilities should be provided to ensure that the Arbitral Tribunal is able to control who addresses the Arbitral Tribunal, and to mute all other microphones. (vii) Any grievance that any prejudice was caused due to any technical deficiency should be raised no later than the end of the day on which such prejudice is claimed to have occurred, provided that the transcript for such day has been circulated to the Arbitral Tribunal and the Parties. In case the Arbitral Tribunal finds substance in such grievance, it shall direct appropriate remedial steps.

21.6. The Arbitral Tribunal may require a witness or expert to provide appropriate proof of identity by email in advance of the Evidentiary Hearing.

## 22. COST SUBMISSIONS

22.1. Cost Submissions shall be filed by the Parties as per the Procedural Calendar.

22.2. The timing, length, and form of the filing of Cost Submissions shall be discussed at the Pre-Hearing Procedural Teleconference.

## 23. REMUNERATION AND EXPENSES OF THE ARBITRAL TRIBUNAL

23.1. The remuneration for each of the Arbitrators, as concurred with by all the Parties, is as per the following schedule:

<p><b>Arbitrator's Fees</b></p> <p><b>Reading Fees:</b></p> <p><b>Hearing Fees:</b></p> <p><b>Other Fees:</b></p>	<p>INR [•]per Arbitrator by each Party</p> <p>INR [•]per session (not exceeding 3 hours) per Arbitrator of hearing in-person or by telephone/videoconference.</p> <p>For matters on which an Arbitrator has spent time although the Arbitral Tribunal not assembled for a hearing (such as issuing further Procedural Directions, passing orders on Document Requests and interim applications): INR [•] per hour.</p>
<p><b>Travel and Accommodation</b></p>	<p>For each hearing, all members of the Arbitral Tribunal shall be entitled to Business Class air tickets to and from the venue, 5-star hotel accommodation and local conveyance, to be paid for by the Parties.</p>
<p><b>Venue and Secretarial Assistance</b></p>	<p>To be arranged by the Parties after mutual discussion with each other.</p>

23.2. The Arbitral Tribunal will charge a cancellation fee, as follows:

- a) For any session vacated less than [12] weeks before the day on which such session is scheduled, but more than [6] weeks before such day, a cancellation fee equivalent to [30]% of the fee that would have been payable for such session.
- b) For any session vacated less than [6] weeks before the day on which such session is scheduled, but more than [2] weeks before such day, a cancellation fee equivalent to [50]% of the fee that would have been payable for such session.
- c) For any session vacated less than [2] weeks before the day on which such session is scheduled, a cancellation fee equivalent to [100]% of the fee that would have been payable for such session.

23.3. If any of the Arbitrators undertakes expenses towards travel and accommodation on their own, such amount shall be reimbursed by the Parties and added to the Cost Submissions in the Arbitration.

23.4. All fees and expenses of the Arbitral Tribunal shall be shared and paid equally by the Parties. GST on the fees payable to the Arbitral Tribunal is the responsibility and liability of the Parties, in accordance with relevant Indian laws.

23.5. The Claimants shall make the necessary arrangements for the Evidentiary Hearing and the Final Oral Hearing. If an application made by a Party requires a hearing to be held, the Party making the application shall make the necessary arrangements for such hearing. All expenses incurred in connection with the arrangements for such hearings shall be shared equally by the Parties, and recorded in the Costs Submissions in the arbitration.

23.6. On or before [•], each of the Parties shall, in accordance with Section 38 of the Act, deposit an amount of INR [•] with each Arbitrator.

23.7. All payments to the Arbitrators shall be made either by Cheque or by Bank Transfer, with reference to the following details:

<b>Description</b>	<b>[Presiding Arbitrator]</b>	<b>[Co-Arbitrator]</b>	<b>[Co-Arbitrator]</b>
Name in Bank Records	[•]	[•]	[•]
Name and Address of Bank	[•]	[•]	[•]
Account No.	[•]	[•]	[•]
IFSC Code	[•]	[•]	[•]

PAN No.	[•]	[•]	[•]
Postal Address:	[•]	[•]	[•]

## 24. CONFIDENTIALITY

24.1. The Arbitral Tribunal and the Parties undertake to maintain the obligation of confidentiality as provided in Section 42A of the Act notwithstanding the repeal or striking down of such provision in future, so long as the performance of such obligation does not render them in breach of any applicable Indian law.

## 25. EXTENSIONS OF TIME

25.1. If any Party should become aware of any difficulty with regard to adherence to any time-limit, it is imperative that such difficulties are notified to the other Party(ies) and the Arbitral Tribunal as soon as it arises, and in any event before the expiry of the time-limit. It would be preferable if the Parties could agree on an extension of time before communicating with the Arbitral Tribunal. However, the grant of such extension will remain the prerogative of the Arbitral Tribunal, *inter alia* in order to ensure that the Procedural Calendar is not materially affected. Subject to Section 23(4), and without prejudice to Section 25 of the Act, the Arbitral Tribunal may, for reasonable cause, grant an extension of time, upon application by a Party or on the Arbitral Tribunal's own motion.

25.2. Being conscious of Section 29A of the Act, the Parties should strictly adhere to the timelines in the Procedural Calendar (as may be amended from time to time). Default in making any filing, other than the SoC and SoD, as referred to in sub-sections (a) and (b) of Section 25 of the Act, within the time-limit (or extended time-limit, if any) determined by the Arbitral Tribunal shall result in forfeiture of the right to make such filing. Failure to file a Memo of Denials within the time-limit determined by the Arbitral Tribunal will lead to the presumption that the defaulting Party has no objection to the documents of the other Party.

## 26. CONDUCT OF THE PARTIES

26.1. Parties shall conduct themselves in a manner consistent with the efficient use of time and resources. When exercising its discretion to apportion costs, the Arbitral Tribunal shall take into account conduct such as excessive document requests, unduly long legal arguments, baseless denials, unduly long cross-examination, dilatory tactics, exaggerated claims, etc.

## **27. SETTLEMENT**

27.1. In the spirit of Section 30 of the Act, the Parties may approach the Arbitral Tribunal for assistance in reaching an amicable settlement of the dispute(s).

For the Arbitral Tribunal,

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***[Presiding Arbitrator]***

**ANNEXURE - I**

**Redfern Schedule**

1	2	3		4	5	6
No.	Documents or Category of Documents Requested	Relevance and Materiality According to Requesting Party		Responses/ Objections to Document Request	Reply to Objections to Document Request	Arbitral Tribunal's Decisions
		Ref. to Submissions, Exhibits, Witness Statements or Expert Reports	Comments			