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Kenya Branch

ARBITRATION RULES

October 2020

ARBITRATION RULES

NOTES

1. These Rules have been issued by The Chartered Institute of Arbitrators (Kenya Branch) of P.O. Box 50163 - 00200, Nairobi, Kenya. They replace the 2012 Arbitration Rules.
2. Request for appointment of an Arbitral Tribunal is to be accompanied by an appointment fee as determined by the Branch from time to time and any necessary documents as shall be required by the Chairman or on his behalf, as provided in these rules.
3. Where any matter or thing which is not covered by these rules arises, the provisions of the Arbitration Act 1995 Laws of Kenya as amended from time to time, shall apply.
4. These Rules have been adopted to take effect from **1st October, 2020**.
5. These Rules are the copyright of the Chartered Institute of Arbitrators (Kenya Branch) and are not to be reproduced, resold or otherwise dealt with without the express permission of the Branch.

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**THE CHARTERED INSTITUTE OF ARBITRATORS
(KENYA BRANCH)
ARBITRATION RULES, 2020**

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**THE CHARTERED INSTITUTE OF ARBITRATORS
(KENYA BRANCH)**

ARBITRATION RULES

PREAMBLE

1. These rules have been revised to accord with the provisions of the Arbitration Act, No. 4 of 1995 (as amended from time to time) and are primarily applicable to non-administered or non-institutional arbitration within the jurisdiction of the Republic of Kenya.
2. Where an agreement, submission or reference provides for arbitration under the rules of the Chartered Institute of Arbitrators (Kenya Branch) or where the parties so agree the arbitration shall (unless and to the extent otherwise agreed by the parties) be conducted in accordance with the following Rules, or such amended Rules as the Branch has adopted to take effect before the commencement of the arbitration.
3. These Rules shall govern the arbitration except, where any of these Rules are in conflict with the provision of the Act or any other law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail. The Rules include the schedules herein or as shall be in effect at the commencement of the arbitration, where separately amended from time to time by the Branch.

DEFINITIONS

4. In these Rules unless the context otherwise requires:
 - a) “**Act**” means the Arbitration Act, No. 4 of 1995 as amended from time to time;

- b) “**Award**” includes an interim, partial, costs or final award.
- c) “**Arbitral Tribunal**” includes one or more Arbitrators.
- d) “**Branch**” means the Chartered Institute of Arbitrators (Kenya Branch);
- e) “**Branch Committee**” means the elected and ex-official members of the branch
- f) “**Chairperson**” means the Chairperson of the Branch and in his/her absence, the Vice- Chairperson;
- g) “**Chief Executive Officer**” or “**CEO**” means the “Chief Executive Officer” of the Branch and includes any officer acting in that capacity with the authority of the Branch Committee.
- h) “**Applicant**” means the party requesting the appointment of the Arbitrator
- i) “**Claimant**” means the party presetting its claim to the Arbitral Tribunal
- j) “**Respondent**” means the party responding to the application for appointment or answering to the claim before the Arbitral Tribunal
- k) “**Claim**” means statement by the Claimant to the Arbitral Tribunal
- l) “**Response**” or “**Defence**” means statement by the Respondent to the Arbitral Tribunal
- m) “**Electronic media**” includes electronic mail, electronic messaging and short

messaging services, conference call via voice or video and video conferencing.

- n) **“Virtual proceedings”** means where people and or parties who are not present in the same physical location participate in online scheduled meetings and structured Arbitral hearings through use of videoconference and/or audioconference, or such other electronic method.
- o) **“Hybrid proceedings”** means a meeting or hearing allowing for simultaneous physical attendance and virtual participation; and where a section of the participants is together in the same physical location while the rest of the participants join the Arbitral hearing by videoconference and/or audio conference or such other electronic method.
- p) **“Foreign language”** means any other language other than the language of the arbitration agreed to by the parties. Failing such agreement, foreign language would mean any other language other than English.

COMMENCEMENT OF ARBITRATION

Request for Appointment of Arbitrator

- 5. Any party wishing to commence an arbitration under these rules and to have an Arbitral Tribunal appointed by the Branch shall send to the Chief Executive Officer a written Request for Appointment of an Arbitral Tribunal, which shall include or be accompanied by: -

- a) The names, electronic, postal and physical addresses and telephone numbers of all parties to the arbitration.
- b) If the arbitration agreement calls for party nomination of Arbitrators, the name and address (and telephone numbers if known) of the Applicant's nominee.
- c) Copies of the contractual documents under which the arbitration arises with particular reference to the arbitration clause which is invoked.
- d) Any separate submission or reference to any agreement out of, or in relation to, which disputes arises.
- e) A brief statement of the nature and circumstances of the dispute and an indication of the value of the subject matter.
- f) Relief or remedy sought including an estimate of the sum claimed if known.
- g) A statement of any matters on which parties have previously agreed as to the conduct of the arbitration.
- h) A statement whether any interim measure of protection is being sought.
- i) Any particular qualification or experience which the parties wish the Arbitral Tribunal to possess.
- j) A statement that the machinery in the contract document relating to the appointment of an arbitrator has been fully complied with and shall confirm to the Chief Executive Officer that copies have been sent to all other parties.

Response by Respondent

6. The party initiating recourse to arbitration shall deliver to the other party a copy of the written Request for Appointment of an Arbitral Tribunal sent to the Chairman or the Chief Executive Officer of the Branch under Rule 5.
7. For the purpose of facilitating the choice of Arbitrators, within fourteen (14) days of receipt of its copy of the Request for Arbitration, the Respondent may send the Chief Executive Officer a Response containing:
 - a) Confirmation or denial of all the claims;
 - b) A brief statement of the nature and circumstances of any envisaged counterclaims;
 - c) Comment in response to any statements contained in the Request, as called for under Rule 5 (g) on matters relating to the conduct of the Arbitration;
 - d) If the arbitration agreement calls for party nomination of the arbitrators, the electronic, postal and physical addresses and telephone numbers (if known) of the Respondent's nominee; and
 - e) Shall confirm to the Chief Executive Officer that copies have been served on the other parties.

Commencement of Arbitral proceedings

8. Unless the parties otherwise agree, the Arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for the dispute to be referred to arbitration is received by the respondent.

Effect of the Arbitration Agreement

9. Where the parties have agreed to submit to arbitration under these Rules, they shall be deemed to have submitted to the Rules in effect on the date of the commencement of the arbitration proceedings, unless they have agreed to submit to the Rules in effect on the date of their arbitration agreement.
10. For purposes of these Rules, an arbitration agreement shall be independent of the contract in which it is contained. The validity of the arbitration agreement shall be determined separately, and shall not be affected even where the contract has been concluded, modified, terminated, rescinded or avoided, or is null and void, no longer effective or not yet in force.

Appointment of Arbitral Tribunal

11. Unless the parties have previously appointed an Arbitral Tribunal, the Chairperson shall, within 14 days after the request for appointment is received, but subject to the Applicant complying with any directions made by the Chief Executive Officer on the request, make an appointment of either a sole Arbitrator (or in accordance with the arbitration agreement, submission or reference) two arbitrators, and where a Tribunal of three is called for, a third Arbitrator and shall notify the parties accordingly.
12. If any Arbitrator, after appointment by the Chairperson, dies, refuses or fails to act or to continue to act or becomes unable or unfit to act or withdraws after a challenge, the Chairperson shall, upon request of either party and after seeking the opinion of the other party, revoke the appointment of that Arbitrator and appoint another Arbitrator in his place within fourteen days from the date of the request.

13. In making his appointment, the Chairperson shall have regard to the nature of the contract and the nature and circumstances of the dispute.

Independence and Impartiality of the Tribunal

14. A prospective Arbitrator shall disclose to the Chairman any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. Upon accepting appointment, an Arbitrator shall sign a statement of independence and impartiality, a copy of which shall be forwarded to each party by the Arbitrator.

15. If, at any time, an Arbitrator becomes aware of circumstances relating to either party or its authorized representatives that are likely to lead any party to have justifiable doubts about his or her independence or impartiality, the Arbitrator shall disclose such circumstances in writing.

16. Where the Arbitrator is a member of a Tribunal, he or she shall first make such disclosure to the other members of the Tribunal before writing to the parties or their representatives.

17. The provisions of the Act shall apply to the challenge to an Arbitrator on the basis of circumstances disclosed by the Arbitrator or circumstances which have become known to the party making the challenge.

18. Where any party sends any communication to the Arbitral Tribunal, it shall include a copy for each Arbitrator, and it shall also send copies to all the other parties.

19. The addresses of the parties for the purpose of all communications during the proceedings shall be those set out in the Request, or as any party may at any time notify to the Arbitral Tribunal and to the other parties.

Challenge to the Arbitrator

20. Any Challenges to the Arbitrator shall be dealt with in accordance with the provisions of the Act.

Representation and assistance

21. Each party may be represented or assisted by persons of their choice. The names and addresses inclusive of email and telephone numbers of such persons must be communicated to all parties and to the Arbitral Tribunal. Such communication must specify whether the appointment is being made for the purposes of representation or assistance. Where a person is to act as a representative of a party, the Arbitral Tribunal, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the Arbitral Tribunal may determine.

The Claim

22. The Applicant shall communicate its claim in writing to the Respondent and to the Tribunal, within a period of time to be agreed between the parties or determined by the Arbitral Tribunal if there is no such agreement. The Claim shall be accompanied by the following information:

- a) the names and contact details of the parties;
- b) facts supporting the claim;
- c) the points in contention;
- d) the grounds supporting the claim.
- e) the relief or remedy sought;

- f) written statements signed by witnesses and expert reports; and
- g) copies of all documents and other evidence relied upon by the Claimant, or contain references to them.

The Response

23. The Respondent shall communicate its response or defence in writing to the Claimant and to the Tribunal within a period of time to be agreed by the parties or determined by the Arbitral Tribunal, failing such agreement.
24. The response shall respond to the particulars (b) to (e) of the claim and should be accompanied by all documents and other evidence relied upon by the respondent or contain references to them as set out in Rule 22 above.
25. Where the Respondent wishes to make a counterclaim, the same kind of information that a claimant is obliged to give in his Claim shall apply. The Claimant shall be at liberty to file a Reply to any Counterclaim within a period of time to be agreed by the parties or determined by the Arbitral Tribunal failing such agreement.
26. Arbitral Tribunal may reject any pleadings not filed within the specified period of time, unless the parties agree otherwise or the Arbitral Tribunal after hearing the parties allows the admission.

Amendments to the claim or response

27. During the course of the Arbitral proceedings, a party may amend or supplement its claim or defence, including a counterclaim or a claim for the purpose of a set-off, unless the Arbitral Tribunal considers it inappropriate to allow such

amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defence, including a counterclaim or a claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defence falls outside the jurisdiction of the Arbitral Tribunal.

Joining of Parties

28. The Arbitral Tribunal may, at the request of any party, allow one or more parties to be joined in the arbitration as a party provided such person is a party to the arbitration agreement. Joinder will be allowed unless the Arbitral Tribunal finds, after giving all parties, including the persons or persons proposed to be joined, the opportunity to be heard, that joinder should not be permitted for reasons to be stated. The Arbitral Tribunal may make a single award or several awards in respect of all parties so involved in the arbitration.

Consolidation of Arbitrations

29. The existence of additional arbitrations pending between the same or similar parties that might be consolidated or taken into consideration in the interest of efficiency may be consolidated upon application by a party and the Tribunal shall be guided by the following considerations:

- a. The parties have agreed to consolidation; or
- b. All of the claims in the arbitrations are made under the same arbitration agreement;
- c. The claims in the arbitrations are made under more than one arbitration agreement but circumstances exist that justify them being heard together;

- d. The Arbitrations are between the same parties;
- e. The disputes in the arbitrations arise in connection with the same legal relationship; and
- f. The Arbitral Tribunal finds the arbitration agreements to be compatible.

30. Unless otherwise agreed by the parties, the arbitrations shall be consolidated into the arbitration that commenced first.

THE ARBITRAL PROCEEDINGS

General Provisions and Status Hearing

31. Subject to these Rules, the Arbitral Tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and that at an appropriate stage of the proceedings each party is given a reasonable opportunity of presenting its case. The Arbitral Tribunal, in exercising its discretion, shall conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute.
32. As soon as practicable after its constitution and after inviting the parties to express their views, the Arbitral Tribunal shall establish the provisional timetable of the arbitration. It may also address the matters contained in the Third Schedule to these Rules. The Arbitral Tribunal may, at any time, after inviting the parties to express their views, extend or abridge any period of time prescribed under these Rules or agreed by the parties.
33. Where the arbitration is not based on documents only, the Arbitral Tribunal shall convene a Status

Hearing no later than fourteen (14) days after receiving the claim, response together with a counter claim if any and a reply to the counter claim.

34. At the Status Hearing, the Arbitral Tribunal shall enquire into the status of the arbitration and shall consider directions for the conduct of the arbitration, including:

- a) Directions that all or any applications for interim rulings, interim relief, awards and/or directions be delivered to the Arbitral Tribunal no later than seven (7) days from the date of the Status Hearing (if such applications have not by such time already been delivered to the Arbitral Tribunal); and for a resumed Status Hearing to be held no later than twenty one (21) days of the original Status hearing at which all application for interim measures, awards and/or directions are to be heard and disposed;
- b) Directions, as may be appropriate for the presentation of evidence by witnesses, including expert witnesses, if any, or for oral argument where necessary.

Interim Measures

35. The Arbitral Tribunal may, at the request of a party, grant interim measures.

36. The Arbitral Tribunal has power to order a party, without limitation to:-

- a) Maintain or restore the status quo pending determination of the dispute;
- b) Take action that would prevent, or refrain from taking action that is likely to cause,

- (i) current or imminent harm or,
 - (ii) prejudice to the Arbitral process itself;
- c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
 - d) Preserve evidence that may be relevant and material to the resolution of the dispute;
 - e) Order the preservation, storage, sale or other disposal of any property or thing under the control of any party and relating to the subject matter of the arbitration;
 - f) Order on a provisional basis, subject to final determination in an award, any relief which the Arbitral Tribunal may have power to grant in an award, including a provisional order for the payment of money or the disposition of property as between any parties; and
 - g) Order for security for any party's own costs, and to secure all or part of any amount in dispute in the arbitration;

37. Subject to Rule 42 below, at any stage of the arbitration prior to the Status Hearing, parties may deliver to the Arbitral Tribunal applications for interim rulings, awards and or directions. Such applications shall set out the grounds being relied upon and must have all supporting documents.

38. Applications for interim relief, awards and/or directions delivered to the Arbitral Tribunal after the time limit stipulated in Rule 42 below may be refused by the Arbitral Tribunal on the sole ground that they are not delivered in accordance with the said time limits. The Arbitral Tribunal may consider applications for interim relief, awards and/or directions delivered after the time limit stipulated in Rule 42 below if it is of the view that

the application is necessary for the fair disposal of the arbitration.

39. The Arbitral Tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, on its own motion in exceptional circumstances.
40. The Arbitral Tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure, within a period specified by the tribunal.
41. The Arbitral Tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the interim measure was requested or granted.
42. The party requesting an interim measure may be liable for any costs and damages caused by the measure to any party if the Arbitral Tribunal later determines that, in the circumstances then prevailing, the measure should not have been granted. The Arbitral Tribunal may award such costs and damages at any point during the proceedings.
43. A request for interim relief made by a party to the High Court under the Act prior to the appointment of the Arbitral Tribunal, or in exceptional circumstances thereafter, is not incompatible with these Rules.
44. The Applicant shall inform the Arbitral Tribunal and all other parties of the existence of any application or orders made in accordance with Rule 45 above.

Virtual Proceedings

45. Unless otherwise agreed by the parties and bearing in mind the overriding objective of conducting the arbitration proceedings in an expeditious and cost-

effective manner, the Tribunal may, on the application of either party or on its own motion, direct the conducting of a virtual and/or hybrid Arbitral hearing where it is not possible to hold a face-to-face hearing or for any other reason to be stated and approved by the Tribunal after hearing the parties on the question of virtual and or hybrid proceedings.

46. If the parties agree to proceed with a virtual and or hybrid proceeding or the Tribunal so directs then the parties and the Tribunal are encouraged to consider adopting the procedures from any of the virtual proceedings guidance notes or protocols as set out in the Fourth Schedule.

Mode of Proceedings

47. Unless otherwise agreed by the parties that the proceedings shall be on documents only basis, or where the Arbitral Tribunal determines as such after hearing all the parties on this question, the Arbitral Tribunal shall hold oral hearings.]
48. The Arbitral Tribunal may at any time fix the date, time, duration and location of meetings or hearings in the arbitration, and shall give the parties adequate notice of these which unless otherwise agreed, shall not be less than 14 days.
49. An Arbitral Tribunal may in advance of a hearing submit to the parties a list of questions which it wishes them to answer with special attention.

Evidence

50. Each party shall have the burden of proving the facts relied on to support its claim or defence.
51. If a party that bears the burden of proof fails to produce evidence within the specified period of time, or if the evidence produced is insufficient to

discharge its burden of proof, it shall bear the adverse consequences of such failure.

52. At any time during the proceedings, the Arbitral Tribunal may order parties to produce other documents, exhibits or other evidence it deems necessary or appropriate either at the request of a party or for its own understanding of the matters in issue, within such a period of time as the Arbitral Tribunal shall determine.
53. If a party makes an application and the Arbitral Tribunal considers it necessary, or there is no such application but the Arbitral Tribunal considers it necessary according to the particular circumstances of the case, to collect and adduce further evidence, the Arbitral Tribunal may grant such orders as are necessary for this objective. Costs incurred in this exercise shall be borne by the party making the request and if it is by the Arbitral Tribunal on its own motion, the costs shall be borne by the parties equally, unless the Arbitral Tribunal directs otherwise in its final orders on costs in the Award.
54. Unless otherwise agreed by the parties, evidence and written documents submitted in a foreign language shall be accompanied by an English translation. The Arbitral Tribunal may, if necessary, require the parties to provide a translation of the evidence and of any written documents in another language or other languages.
55. Where an oral hearing is to be held, evidence exchanged between the parties prior to the hearing shall be presented by them for examination during the hearing. Evidence produced by a party may be admitted and accepted as the basis of fact finding without being presented at the hearing for examination if the other party has acknowledged its admissibility and the Arbitral Tribunal has,

during the hearing, confirmed the other party's acknowledgment of this.

56. Where evidence is produced by any party during or after the hearing and the Arbitral Tribunal decides to admit the evidence without holding any further hearings, the Arbitral Tribunal may require the other party to comment on such evidence in writing within a specified period of time.
57. The Arbitral Tribunal shall have the authority to assess the evidence. It shall determine the admissibility, relevance, materiality and weight of the evidence offered. It shall also decide on whether to adopt an expert opinion.
58. When assessing any evidence, the Arbitral Tribunal may, in addition to referring to relevant laws, regulations and judicial interpretations, conduct its assessment by taking into consideration factors such as industry practices and trade usages, and shall consider the matter in its totality.
59. Unless otherwise agreed by the parties, strict rules of evidence shall not apply in an arbitration under these rules.

Experts appointed by the arbitral tribunal

60. After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues. To be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
61. The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the

arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.

62. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
63. Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
64. At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue.

Record of Hearing

65. The arbitrator's notes in any arbitration conducted under these Rules, whether handwritten or electronic, shall remain confidential to preserve the integrity and confidentiality of the proceedings and

the arbitrator shall be under no duty to supply copies of his notes to the parties.

66. Upon a joint request by both parties, or a request by one party that has been approved by the Arbitral Tribunal, the Arbitral Tribunal may in consultation with the parties appoint one or more stenographers to record the hearing. The resulting additional costs shall be borne by the parties or the requesting party, as the case may be.
67. The Arbitral Tribunal, the person who makes the recording, the parties and other participants in the arbitration may sign the written record whenever it is agreed that such should be supplied.
68. A party or any other participant in the arbitration may request the rectification of any omission or error in the written record of their oral evidence. The request shall be recorded if the Arbitral Tribunal does not allow the rectification.
69. A full recording of the virtual hearing shall be made available to the Arbitral Tribunal and the parties unless otherwise agreed. The Arbitral Tribunal shall discuss and agree with the parties the manner in which the virtual hearing is recorded and in what format.
70. Any recordings of the virtual hearing shall be used to produce hearing transcripts which shall be circulated to the Parties within timelines agreed at the end of the virtual hearing.

Closure of hearings

71. The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.

72. The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Waiver of Right to Object

73. A party who knows that any provision of this Act from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is prescribed, within such period of time, is deemed to have waived the right to object.

EXPEDITED PROCEDURE

Documents-Only Arbitration

74. Where parties agree specifically to a Documents-Only arbitration, the arbitrator shall, upon receipt of the Claim and Defence (where applicable) and such other documents as the Arbitral Tribunal may direct or require, proceed to consider the dispute and publish its Award in accordance with these Rules.

75. Physical attendance by parties for a substantive oral hearing shall not be required in a documents-only arbitration unless, in exceptional circumstances, the Arbitral Tribunal deems it necessary for the resolution of the dispute.

76. If, during the course of the arbitration on the basis of submissions and documentary evidence only, the Arbitral Tribunal considers that a full formal hearing is after all required, the Arbitral Tribunal shall advise the parties of this alternative proposal for the conduct of the arbitration. The arbitration

shall, unless otherwise directed by the Arbitral Tribunal, continue from the point already reached.

Fast Track Procedure

77. Any party may deliver a request for Appointment of an Arbitral Tribunal under Rules 5 and 6 with an additional request to the Chief Executive Officer of the Branch for the Arbitral proceedings to be conducted in accordance with the Expedited Procedure under this part, provided that any of the following criteria is satisfied:

- a) The amount in dispute does not exceed the equivalent amount of Kshs. 10,000,000/= representing the aggregate of the claim, counterclaim, any defence of set-off exclusive of claimed interest, advocates or representative's fees, arbitration fees and costs;
- b) The parties so agree in writing;

78. The Chairperson shall appoint a sole arbitrator from a pool of arbitrators who are pre-qualified by the Branch to preside over expedited procedure arbitrations.

79. The Arbitral Tribunal shall convene a Status Hearing no later than 7 days from the date of its appointment by the chairperson.

80. At the Status Hearing, the Arbitral Tribunal shall give directions:

- a) For the party or parties who requested the arbitration ('the Claimant') to deliver to the Arbitral Tribunal and the Respondent a Claim together with copies of all Witness Statements and documents to be relied upon in the proceedings within 7 days.

- b) For the other party or parties if there is more than one ('the Respondent'), to deliver to the Arbitral Tribunal and the Claimant a Defence together with copies of all documents and Witness Statements to be relied upon in the proceedings within 7 days of the receipt of the Claim. Where the Respondent desires to advance a counterclaim, a Counterclaim must be included in the same document as the Defence.
- c) For the Claimant to deliver to the Arbitral Tribunal and the Claimant a Reply within 7 days of receipt of the Defence (and Counterclaim if any). Where the Respondent has advanced a counterclaim against the Claimant, a Defence to the Counterclaim shall be included in the same document as the Reply.
- d) On the presentation of evidence by witnesses, including expert witnesses, if any.
- e) That the filing shall be closed 7 days after delivery of the Reply (and defence to counterclaim, if any) or, if neither is delivered, 7 after service of the Defence.
- f) That after the close of filings, no party shall amend its documents nor supply additional witness statements or documents, unless the Arbitral Tribunal, for compelling reasons, so permits, provided the application by the party for amendment or and or additional witness statements and or documents is made before close of proceedings or the compelling reasons arise from circumstances or evidence discovered by the Applicant after the close of the filings.
- g) Schedule a hearing at a date no later than 14 days after the close of filings, if the Tribunal

directs that there shall be an oral hearing. Save in exceptional circumstances, hearing shall not exceed one day.

- h) Unless otherwise agreed by the parties in writing, the Tribunal may limit the time for oral evidence and submissions and limit the length of filings, witness statements and written submissions.
- i) The parties shall address the quantum of costs and expenses in the submissions.
- j) There shall be no opening submissions and closing submissions shall be made orally at the close of hearing.

81. The Award shall be rendered within 1 month of the close of hearing unless, in exceptional circumstances, the Arbitral Tribunal extends the time for making such final Award for a period not exceeding a further 7 days.

82. The Tribunal shall state the reasons upon which the Award is based, unless the parties have agreed that no reasons are to be given.

83. In all matters falling under this part, the Arbitral Tribunal and the parties shall act in spirit of the Rules governing Expedited Procedures and shall make every effort to expedite the process. The Arbitral Tribunal and the parties may use electronic means of communication for the purposes of communication, service of documents, status hearings and substantive hearing.

84. The Expedited Procedure Rules under this Part shall not apply if the parties have agreed in writing to opt out of the Expedited Procedure Rules.

85. The Arbitral Tribunal's shall give an account for time spent in determining the dispute and shall

raise its fees based on the stipulated hourly charges as prescribed by the Branch excluding any VAT or other taxes where applicable.

86. In addition to the fee charged under Rule 81, the Arbitral Tribunal may also recover reasonable expenses incurred in connection with the arbitration.
87. The Arbitral Tribunal shall determine and apportion the costs and expenses in the Final Award as provided in the Act:

JURISDICTION AND POWERS OF THE TRIBUNAL

88. Notwithstanding the provisions of Sections 21 and 23 of the Act, the Arbitral Tribunal shall have jurisdiction and the powers to decide on the juridical seat of arbitration, and the location of any hearing or meeting, the working days and hours of the hearing and the language of the Arbitral proceedings and the conduct of the arbitration in order to ensure the just, expeditious, economical and final determination of the dispute.
89. By submitting to Arbitration under the foregoing Rules, the parties confer on the Arbitral Tribunal the following jurisdiction and powers, to be exercised by it and in its absolute and unfettered discretion for the purpose of ensuring the just, expeditious, economical and final determination of the dispute referred to it.
90. The Arbitral Tribunal has jurisdiction:
- a) To determine any questions as to the existence, validity, extent of, continuation in force of any agreement between the parties, including one in which an arbitration clause forms a part. Such an arbitration clause shall be treated as independent of other terms of the agreement.

- b) To order on application by a party, the correction or amendment of any such agreement, and of the arbitration agreement, submission or reference, but only to the extent required to rectify any manifest error, mistake, or omission which it decides to be common to all the parties.
- c) Subject to the Act, to decide any question of law arising in the arbitration.
- d) To decide any question as to its own jurisdiction including any objection with regard to the existence or validity of the arbitration agreement.
- e) To decide any question of bad faith, dishonesty or fraud arising in the dispute.
- f) To order any party to furnish it with such further details of the party's case, in fact or in law, as it may require;
- g) To proceed in the arbitration notwithstanding the failure or refusal of any party to comply with these Rules or with its orders and directions, or to attend any meeting or hearing, but only after giving that party written notice that it intends to do so;
- h) To receive and take into account such written or oral evidence as it decides to be relevant, whether on oath or otherwise, and if it so decides, to administer oaths or take affirmations from parties and witnesses;
- i) To hold meetings and hearings in Kenya or elsewhere, in consultation with the parties;

- j) To award simple or compound interest on any sum from and to any date, at such rates and with such rests as it decides to be appropriate;
- k) To express awards in any currency;
- l) To order specific performance of a contract.
- m) To direct that any status hearing, procedural meeting, oral hearing, or oral submissions be carried out virtually, provided that sufficient safeguards are in place to ensure that parties are given equal treatment and no party is disadvantaged.

91. Unless all parties at any time agree otherwise, or a contrary intention has been expressed in the arbitration agreement, the Arbitral Tribunal may on the application of any of the parties, but in either case only after hearing or receiving any representations from the parties concerned:

- a) order for the concurrent hearing of disputes where there are two or more Claimants or Respondents and the arbitrations involve the same or related subject matter;
- b) or appoint one or more advisers or experts on any matter (including law) to assist in the conduct of the arbitration, and to decide how, when and by whom the fees of such adviser or expert shall be paid;
- c) Conduct such enquiries as may appear to it to be necessary or expedient;
- d) Order the parties to make any property, sample or thing available for its inspection, and inspect it in their presence;
- e) Order the parties to produce to it, and to each other and to any adviser or expert for

inspection, any documents or classes of documents in their possession or power which it decides are relevant, and to supply copies thereof;

- f) To conduct the arbitration in whatever manner it considers appropriate provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case;

92. In addition, the Arral Tribunal has such further jurisdiction and powers as may be allowed to it by the laws of Kenya, the agreement between the parties, or the law of any place outside Kenya in which it holds hearings or in which witnesses attend before it.

COMMUNICATION, NOTICES AND PERIODS OF TIME

93. All communications to the Arbitral Tribunal by one party shall be sent by that party to all other parties. Such communications shall be made at the same time, except as otherwise permitted by the Arbitral Tribunal if it may do so under applicable law.

94. Any notice or other communication that may or is required to be given under these Rules shall, without prejudice to more explicit instructions given by the Arbitral Tribunal, be in writing and shall be delivered if not by physical delivery, by registered post or courier service, or transmitted by email, fax or other electronic means of communication that provide a record thereof.

95 Unless otherwise agreed by the parties, a party's last-known residence, place of business or functional e-mail address, shall be a valid address for the purpose of any notice or other communication in the absence of any notification of a change by the party.

96. Communication may, in any event, be addressed to a party in the manner agreed contractually, or, failing such an agreement, according to the practices followed in the course of the dealings between the parties.
97. For the purpose of determining the date of commencement of a time limit, a notice or other communication shall be deemed to have been received 3 working days after it is dispatched to the correct address or, in the case of electronic messaging, transmitted in accordance with Rule 89 and 90 above, within the day of sending, unless there is evidence of non-delivery of the notice.
98. For the purpose of determining compliance with a time limit, a notice or other communication shall be deemed to have been sent, made or transmitted if it is dispatched, in accordance with instructions of the Arbitral Tribunal or otherwise with Rule 89 and 90 above, prior to or on date of the expiration of the time limit.
99. For the purpose of calculating a period of time under these rules, such period shall begin to run on the day following the day when a notice or any other communication is received. If the last day of such period is an official public holiday the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of a period of time exceeding 7 days are included in calculating the period, unless otherwise directed by the Tribunal.
100. The Arbitral Tribunal shall have the power to extend or abbreviate any time limits provided by these rules or by its directions.

DEFAULT

101. If a party fails to comply with any order or direction of the Arbitral Tribunal, the Arbitral Tribunal may proceed to issue orders prescribed under Section 26 or any other sections of the Act.

APPLICABLE LAWS

102. The Arbitral Tribunal shall apply the laws or rules of law designated by the parties as applicable to the dispute. Failing such a designation by the parties, the Arbitral Tribunal shall apply such law or laws as it determines to be appropriate.

103. In arbitrations involving the application of contracts, the Arbitral Tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.

SETTLEMENT OR OTHER REASONS FOR TERMINATION

104. The parties may, at any time prior to the award, agree in writing to stay the Arbitral proceedings for an agreed period, in order to explore amicable settlement.

105. The stay of the Arbitral proceedings shall commence on the day the consent of the parties is received by the Arbitral Tribunal, and shall expire automatically after 30 days, except if it agreed between the parties in writing for it to be extended for a further period of 30 days.

106. The Arbitral Tribunal shall not play any role in the proposed settlement by the parties, and upon expiry of the stay, unless extended under Rule

100 above, shall reactivate the Arbitral proceedings.

107. If the parties settle the dispute before an award is made, the Arbitral Tribunal shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of an award on agreed terms. The Arbitral Tribunal is not obliged to give reasons for such an award.
108. If the continuation of the proceedings becomes unnecessary or impossible for any other reason, the Arbitral Tribunal shall give notice to the parties of its intention to terminate the proceedings. The Arbitral Tribunal shall thereafter issue an order terminating the Arbitration, unless a party raises justifiable grounds of objection to termination of the proceedings, within 21 days of the arbitrator's notice.

THE AWARD

109. After close of the hearing, if any, and after having considered the evidence and submissions, the Arbitral Tribunal shall make its award in writing.
110. The award shall be made and published within the period stated in the agreement, submission or reference or as mutually agreed by the parties or failing agreement within such reasonable time as the Arbitral Tribunal shall decide.
111. When the Arbitral Tribunal has made and published its award it shall inform the parties accordingly and shall specify how and where it may be taken up upon due payment of its fees.
112. The award shall be final and binding on all parties to the reference and no recourse is

available against the award otherwise than in the manner provided by the Act.

113. The Arbitral Tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons need be given.
114. With regard to a “Documents-Only” arbitration, the Arbitral Tribunal shall publish its final award expeditiously and as far as practicable but not later than 2 months from the date of close of pleadings.
115. With regard to an arbitration with an oral hearing, the Arbitral Tribunal shall publish his final award expeditiously and as far as practicable but no later than 3 months from the date of close of the hearing.
116. If it appears to the Arbitral Tribunal that the final award may not be published within the time limits provided in these Rules, the Arbitral Tribunal shall, notify the parties in writing and the branch where the arbitrator is appointed by the branch, of the revised estimated date of publication of the award.
117. After the award has been made (and any accidental mistake or omission, if any, corrected), the Arbitral Tribunal is under no obligation to make any statement to any person about any matter concerning the arbitration, nor may any party seek to make it a witness in any legal proceedings arising out of the arbitration.

COSTS OF THE AWARD

Arbitral Tribunal’s Fees

118. Unless otherwise agreed in writing, the parties are jointly and severally liable for the fees and

expenses of the Tribunal. The Arbitral Tribunal's fees shall be calculated by reference to the work done by it in connection with the arbitration, and shall be charged at rates appropriate to the particular circumstances of the case, including its size and complexity, and any special qualifications of the Arbitral Tribunal. These rates shall be established by the Arbitral Tribunal according to the Branch's guidelines and communicated to the parties at the commencement of the reference. Costs shall also include costs of assistance from experts.

Expenses

119. Specific outgoing expenses incurred by the Arbitral Tribunal in connection with the arbitration for travel, subsistence, hire of arbitration rooms, postage, email, telephone, copying, recording and transcribing services reports of experts and advisers, and any other items, shall be charged at cost.
120. The Arbitral Tribunal shall specify the total amount of costs of the award in its award. Unless all the parties agree otherwise, the award shall state which party shall pay them.
121. Any party may take up the award upon payment of any costs of the award then still outstanding.
122. If the Arbitral Tribunal has decided that all or any part of the costs of the award shall be paid by any party other than a party which has already paid them, that party may recover the appropriate amount from that other party.
123. 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.

124. 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.

Deposits of Costs

125. When claims are filed, the Arbitral Tribunal may request the parties to deposit appropriate amounts, as an advance for the costs referred to in Rule 113 hereof.
126. During the course of the Arbitral proceedings, the Arbitral Tribunal may request supplementary deposits from the parties.
127. If the deposits requested 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 the other of them may pay the balance of the required deposit. If such payments are not made, the Arbitral Tribunal may order the suspension or termination of the proceedings.
128. After the 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.

Abandonment/Suspension/ Cancellation

129. If the arbitration is abandoned, suspended or concluded by agreement before a final award is made, the parties shall pay the costs of the arbitration incurred up to that time, in such proportion as they agree or, failing agreement, as the Arbitral Tribunal decides.

INTERPRETATION OR CORRECTION OF THE AWARD

130. Within thirty (30) days after the receipt of an award, any party, with notice to the other parties, may request the Arbitral Tribunal to interpret the award or correct any clerical, typographical or computation errors or make an additional award as to claims presented but omitted from the award.
131. If the Arbitral Tribunal considers such a request justified, after considering the contention of the parties, it shall comply with such a request within thirty (30) days after the request and proceed as provided under the Act.

INTERPRETATION OF RULES

132. The Arbitral Tribunal shall interpret and apply these Rules.
133. A party who knows that any provision of, or requirement under these Rules has not been complied with, but proceeds with the arbitration without promptly stating an objection in writing thereto, shall be deemed to have waived the right to object.

CONFIDENTIALITY

134. Unless otherwise determined by consent of the parties, the proceedings of the arbitration shall be confidential and private, and in particular no disclosure shall be made at any time, other than to the parties, of the Claim, Defence/Counterclaim, proceedings, contents of the document bundles, witness statements (whether of fact or of opinion), records of meeting and hearings and of the award except where

disclosure may be 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.

135. The staff of the Branch, the parties, ~~and~~ their representatives, and members of the Arbitral Tribunal, its mentees, assistants or advisors, the witnesses of fact and opinion and observers admitted by agreement of the parties, owe an equal duty of confidentiality and privacy to the parties and the Arbitral Tribunal.

SERVICES OFFERED TO ARBITRAL TRIBUNAL

Security for Costs

136. The Branch may receive and hold in a separate deposit account money ordered by the Arbitral Tribunal to be paid by the parties as security for the Arbitral Tribunal's costs. Such costs shall be released only on the instructions of the Arbitral Tribunal.

Sealed Offers

137. The Chief Executive Officer may receive, register and hold a sealed offer on the request of a party in arbitration, with notice to the arbitrator, and shall release it as and when requested by the originating party at any time with notice to the arbitrator.

EXCLUSION OF LIABILITY

138. The Branch, the Arbitral Tribunal, their staff or any person appointed by them in the arbitration shall not be liable to any party for any act or omission in connection with any arbitration conducted in good faith in the discharge or purported discharge of his/her functions

pursuant to these rules except where the Act or omission is proved by the party alleging so, to constitute intentional action committed by the Branch, the Tribunal or persons alleged to be liable to them.

GENERAL RULES

139. The parties to arbitration shall do all things necessary for the proper and expeditious conduct of the Arbitral proceedings.
140. A party who knows that a provision of the arbitration agreement or these Rules has not been complied with and opts to proceed with the arbitration without promptly stating its objection to such non-compliance, shall be considered as having irrevocably waived the right to object.
141. In all matters not expressly provided for in the Act and these Rules, the Arbitral Tribunal and the parties shall act in accordance with the provisions of the Act and these Rules and shall make every reasonable effort to ensure that an Award is legally enforceable.
142. Unless the parties agree otherwise or circumstances of the case dictate otherwise, electronic media may be used at the commencement of or at any time during the Arbitral proceedings.
143. The Branch may, from time to time amend these Rules.

SCHEDULES

FIRST SCHEDULE

Model Arbitration Clauses

The following model clauses may be adopted by the parties to a contract who wish to have any future disputes referred to arbitration under the Chartered Institute of Arbitrators (Kenya Branch) Rules.

1. Parties who desire to arbitrate under these rules may insert into their contract an arbitration clause in the following terms:

“Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, interpretation or termination, shall be determined by arbitration in accordance with the rules of the Chartered Institute of Arbitrators (Kenya branch) that are applicable at the commencement of arbitration.”

2. Where parties wish specifically to elect for a **“Document-Only”** arbitration, they may wish to insert the following provision into their contract:

“Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, interpretation or termination, shall be determined by arbitration in accordance with the rules of the Chartered Institute of Arbitrators (Kenya Branch) that are applicable at the commencement of arbitration. The arbitration shall be conducted as a “Documents-Only” arbitration under the Rules of the Branch.”

3. Where parties wish specifically to elect for arbitration under the Expedited Procedure Rules,

they may wish to insert the following provision into their contract:

“Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, interpretation or termination, shall be determined by arbitration in accordance with the rules of the Chartered Institute of Arbitrators (Kenya Branch) that are applicable at the commencement of arbitration. The arbitration shall be conducted under the Expedited Procedure Rules of the Branch.”

4. Any parties to a contract without an existing arbitration clause intending to commence an arbitration under the Chartered Institute of Arbitrators (Kenya Branch) Rules; or any parties to a contract with an existing arbitration clause intending to substitute the clause in the contract for a clause making reference to the Chartered Institute of Arbitrators (Kenya Branch) Rules may adopt the following by agreement:

“The parties hereby agree that any dispute, controversy or claim arising out of or in connection to the contract dated....., or breach, termination or invalidity thereof shall be settled by arbitration in accordance with the Chartered Institute of Arbitrators (Kenya Branch) Rules.”

SECOND SCHEDULE

Model statements of impartiality and independence pursuant to Rule 14

No circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties and the other arbitrators of any such circumstances that may subsequently come to my attention during this arbitration.

Circumstances to disclose

I am impartial and independent of each of the parties and intend to remain so. Attached is a statement made pursuant to article 14 of these Rules of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances regarding [include statement]. I confirm that those circumstances do not affect my impartiality and independence. I shall promptly notify the parties and the other arbitrators of any such further relationships or circumstances that may subsequently come to my attention during this arbitration. *

*Any party may consider requesting from the arbitrator the following addition to the statement of impartiality and independence:

“I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this arbitration diligently, efficiently and in accordance with the time limits set out in these Rules.”

THIRD SCHEDULE

Matters for potential consideration by the parties and the Arbitral Tribunal at the case management conference

In determining the matters to be addressed at the case management conference, the Arbitral Tribunal and the parties should take into account the size of the parties' claims and the complexity of the dispute.

The following checklist identifies matters that the Arbitral Tribunal and the parties might address at the conference. The list below may be supplemented or modified by either of them in light of the subject matter and issues involved in the case:

1. Applicable arbitration rules

- a) any dispute regarding the meaning or applicability of the Rules;
- b) any agreements by the parties to opt out of, or modify, any of the applicable Rules.

2. Place of arbitration and applicable procedural law

Any dispute or agreement regarding what arbitration law applies to the proceedings.

3. Applicable substantive law

Any dispute or agreement regarding what substantive law governs the parties' dispute.

4. Language(s), translation and interpretation

- a) any dispute or agreement regarding the language(s) of the arbitration proceedings;
- b) any need for translation of documents or the use of interpreters in hearings or conferences, and, if so, when and how any of these arrangements will be made and paid for.

5. Tribunal's fees and expenses

Arrangements for the payment of the arbitrators' fees and costs.

6. Deposits of costs

Any issues concerning the payment and administration of advance deposits covering arbitrators' fees and expenses.

7. Tribunal's jurisdiction

Any dispute regarding the Arbitral Tribunal's jurisdiction to decide the issues presented by the parties in their claims, counterclaims and defences.

8. Tribunal's impartiality and independence

- a) whether the parties wish to raise any unwaived matters regarding the arbitrators' availability, impartiality and independence;
- b) the possible adoption of any guidelines or protocols dealing with conflicts of interest.

9. Interim measures

Whether either party anticipates seeking interim or conservatory measure and, if so, when a request for either type of relief should be filed.

10. Any pending litigation relating to the claim and defences

Any pending litigation relating in any way to the claims, counterclaims and defences asserted in the arbitration proceedings.

11. Representation

The possible adoption of any specific guidelines or protocols dealing with party representation.

12. Confidentiality

Any confidentiality or trade secret concerns that will require particular measures to protect confidential or proprietary information.

13. Communications with the Tribunal

The use of electronic means of communication in submissions to the Arbitral Tribunal and any other communication among the parties and the Arbitral Tribunal.

14. Defining issues (and early disposition)

- a) any threshold or dispositive issues that can be decided efficiently early in the proceedings through the issuance of one or more partial awards;
- b) the possible adoption, with respect to the granting of partial dispositive relief, of any specific guidelines or protocols dealing with early disposition of issues.

15. Bifurcation

The parties and the tribunal may consider the possible separation of the proceedings so as to deal with the jurisdictional issues before merits, liability before merits and so forth.

16. ADR mechanisms

Whether the parties have considered attempting to either settle or resolve their dispute through any other alternative dispute resolution mechanism.

17. Written submissions and exhibits

- a) the need for submission of a more detailed or amended statement of claim, counterclaim, or defence;
- b) any limitations on the length or scope of written submissions;
- c) any arrangements that may be made for real-time stenography, electronically searchable transcripts, electronically available and searchable exhibits and briefs containing

electronic links to transcript pages, exhibits and authorities;

- d) the potential use of summary exhibits intended to supplement or serve as a substitute for voluminous exhibits or collective exhibits.

18. Production of documents

- a) each party shall properly bind, number, and paginate its claim and defence. The documents shall be accompanied by a list stating briefly the title of each piece of evidence and the purpose of producing it.
- b) Any reproduction, photograph, duplicate, or abridged version of any document or any item produced by one party to another shall be deemed to be identical to the original copy unless the other party challenges its authenticity at any time before the close of the pleadings.
- c) whether and to what extent the parties will exchange requests for production of documents;
- d) in the event that the parties are to exchange requests for documents, deadlines for objecting to specific requests, for the filing of objections relating to the sufficiency of document production, for responses to such objections, and for a hearing date on such objections should the Arbitral Tribunal conclude that an oral hearing would be useful;
- e) a possible requirement that the parties confer in good faith and attempt to agree on the production of documents and other information prior to seeking a ruling from the Arbitral Tribunal that certain documents or information should be disclosed;

- f) whether the parties wish to agree on a specific standard for the disclosure of documents, in the absence of which the Arbitral Tribunal shall apply to all document and information requests a standard of materiality of such documents and information to any claim or defence;
- g) any issues relating to the production of electronically stored information, including how costs are to be borne for searches for requested information or documents, and how those issues should be resolved.

19. Site inspection

Whether the parties anticipate the need for a site inspection by the Arbitral Tribunal or a Tribunal-appointed expert, and, if so, when the inspection should be conducted and under what procedure.

20. Witnesses and expert witnesses

- a) counsels' communications with witnesses in the course of testimony;
- b) the possibility that the parties might be able to resolve certain issues with the involvement of their experts;
- c) whether the parties will present expert witnesses, and if so, what schedule should be established with respect to the identification of experts and the exchange of expert reports;
- d) the potential use of joint written reports by opposing expert witnesses, in which the experts identify and explain points of agreement and disagreement;
- e) the potential use of witness panels involving opposing experts or lay witnesses who will testify on the same or similar subject matter;

- f) the need or desirability for the Arbitral Tribunal to appoint one or more experts.

21. Presentation of evidence

- a) the order in which the parties will present their evidence and the manner in which such evidence will be presented, including the possibility of the receipt of oral testimony via videoconference or other means.
- b) Deadlines for:
 - i. the identification of all witnesses and the subject matter of their anticipated testimonies;
 - ii. the exchange of written witness statements; and
 - iii. the exchange of pre-hearing submissions, including exhibits.

22. Multiple parties

Whether all necessary or appropriate parties have been joined in the arbitration.

23. Consolidation

The existence of additional arbitrations pending between the same or similar parties that might be consolidated or taken into consideration in the interest of efficiency.

24. Dates of subsequent or additional meetings

Whether any additional case management conferences, including a prehearing organisational meeting, should be scheduled at this time.

25. Hearing

- a) the date, time and place of the arbitration hearing;
- b) logistical considerations relating to the place at which the hearing will be conducted, including technological needs and any special needs of

the parties, their representatives, the witnesses and the Arbitral Tribunal members;

- c) time limits at the hearing for argument and witness examination;
- d) the potential sequestration of witnesses at the hearing;
- e) whether, at the arbitration hearing:
 - i. testimony will be presented in person, in writing, by videoconference, internet, telephonically or by other means;
 - ii. there will be a stenographic transcript or other record of the proceeding, and, if so, the arrangements that will be made for it.

26. Arbitral awards

The form of the arbitration award:

- i. an award with no statement of supporting reasons;
- ii. an award with a limited statement of supporting reasons; or
- iii. an award with a full statement of supporting reasons.

27. Any other business

Any other matter the Arbitral Tribunal or the parties may wish to address, including the use of any other guidelines and/or protocols where appropriate.

Following the case management conference, the Arbitral Tribunal should promptly issue a written order memorializing decisions made and agreements reached in the conference. The order should include, but not be limited to, a timetable setting forth pertinent deadlines, action dates and other scheduling matters dealt with at the conference. In the interest of efficiency and of ensuring a fair and orderly process, the Arbitral

Tribunal may later alter the timetable after consulting with the parties.

FOURTH SCHEDULE

Virtual Proceedings

Parties may consider adopting the procedures from any of the following virtual proceedings guidance notes or protocols or any other protocols or guidance notes that they bring to the Tribunal's attention.

- a) Guidance Note on Remote Dispute Resolution Proceedings of the Chartered Institute of Arbitrators.

<https://www.ciarb.org/media/8967/remote-hearings-guidance-note.pdf>

- b) Africa Arbitration Academy Protocol on Virtual Hearings In Africa.

<https://www.africaarbitrationacademy.org/protocol-virtual-hearings>

- c) ICC Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic.

<https://iccwbo.org/publication/icc-guidance-note-on-possible-measures-aimed-at-mitigating-the-effects-of-the-covid-19-pandemic>

- d) Seoul Protocol on Video Conferencing in International Arbitration

[https://globalarbitrationreview.com/digital-assets/9eb818a3-7fff-4faa-aad3-3e4799a39291/Seoul-Protocol-on-Video-Conference-in-International-Arbitration-\(1\).pdf](https://globalarbitrationreview.com/digital-assets/9eb818a3-7fff-4faa-aad3-3e4799a39291/Seoul-Protocol-on-Video-Conference-in-International-Arbitration-(1).pdf)

