The goal of these protocols is to enhance the fair and equal treatment of parties and the quality, efficiency and convenience of arbitration by establishing uniform protocols for many of the common logistical aspects of arbitration proceedings. Parties, counsel and arbitrators are invited to adopt these protocols in whole or in part as suitable to the particulars of each case.

1) IBA Rules on the Taking of Evidence in International Arbitration

Option 1
[In addition to the institutional, ad hoc or other rules chosen by the parties,] [t]he parties agree that the arbitration shall be conducted according to the IBA Rules on the Taking of Evidence in International Arbitration as current on the date of [this agreement/the commencement of the arbitration].

Option 2
[In addition to the institutional, ad hoc or other rules chosen by the parties,] [t]he parties agree that in determining any question regarding the taking of evidence, the tribunal [shall/may] refer to the IBA Rules on the Taking of Evidence in International Arbitration as current on the date of [this agreement/the commencement of the arbitration], as guidelines.

Option 3
[In addition to the institutional, ad hoc or other rules chosen by the parties,] [t]he parties agree that [the hearing/document production/etc.] shall be conducted according to the relevant provisions of the IBA Rules on the Taking of Evidence in International Arbitration as current on the date of [this agreement/the commencement of the arbitration].

Option 4
[In addition to the institutional, ad hoc or other rules chosen by the parties,] [t]he parties agree that in determining any question regarding [the hearing/document production/etc.], the tribunal [shall/may] refer to the relevant provisions of the IBA Rules on the Taking of Evidence in International Arbitration as current on the date of [this agreement/the commencement of the arbitration], as guidelines.

2) Use of Technology in Proceedings

[Under discussion.]

3) Confidentiality

Unless the parties expressly agree in writing to the contrary, the parties and the arbitral tribunal undertake to keep confidential all awards and orders in the present arbitration together with all materials in the proceedings created for the purpose of the arbitration and all other documents

1. This formulation is proposed in the Foreword to the current (2010) edition of the IBA Rules on the Taking of Evidence in International Arbitration.
produced by any party in the proceedings save only to the extent that (i) a party may disclose such document or information to the extent that the document or information is in its possession independently of its filing by the other party in this arbitration or (ii) is or becomes publicly known or easily accessible without breach of this confidentiality undertaking, or (iii) disclosure may be required of a party by law, to protect or pursue a legal right, or to enforce or challenge an award in bona fide legal proceedings before a State court or other judicial authority.

The orders in this paragraph replace the provisions of the [INSTITUTIONAL RULES, IF ANY].

The arbitral tribunal has the power to take appropriate measures including issuing an order or award for sanctions or costs if a party breaches any of the orders set out in this paragraph.

4) Communications

Written communications shall be deemed to have been validly made when they have been submitted as follows:

Parties: to the addresses of counsel set forth in Section [__] of the [Terms of Appointment] [Procedural Order No. __];

Tribunal: to the addresses set forth in Section [__] of the [Terms of Appointment] [Procedural Order No. __] [including address of tribunal secretary, if applicable];

[Institution: to the address set forth in Section [__] of the [Terms of Appointment] [Procedural Order No. __] [if applicable].]

All communications from the arbitral tribunal to the parties will be made by e-mail, by the presiding arbitrator [or the Registry on the Tribunal’s behalf][if applicable]. As a general rule, the arbitral tribunal will not provide confirmation copies by facsimile, mail or courier.

The parties will acknowledge without undue delay receipt of any communication from the arbitral tribunal by reply e-mail to the presiding arbitrator [and the registry] [if applicable]. It is sufficient to state in the e-mail “Receipt confirmed”. This rule also applies to communications from a party to the arbitral tribunal. In such case, the [presiding arbitrator] [the registry] [if applicable] as well as the opposing party shall acknowledge receipt by reply e-mail. Each party shall designate one representative to receive/send the confirmations in order to avoid duplication.

The parties shall send copies of correspondence between them to the arbitral tribunal [and to the Registry, and/or Institution][if applicable] only if the correspondence pertains to a matter on which the arbitral tribunal is required to take action or of which it should be apprised.

The parties must not communicate with any member(s) of the arbitral tribunal on an ex parte basis and all statements, documents or other information supplied to the arbitral tribunal by one party shall simultaneously and by the same means be communicated to all tribunal members and parties [and to the Registry, and/or Institution][if applicable].
5) **Pre-hearing Filing (Time Zones)**

If the parties and/or counsel are located in different time zones, the deadlines for filing written submissions shall be set according to the time zone at the place of arbitration.

6) **Time Limits**

Time-limits are fixed and extended by the arbitral tribunal in appropriate circumstances as determined by the tribunal.

[Short extensions may be agreed between the parties as long as they do not affect any subsequent time limits, and provided that the arbitral tribunal is informed before the original due date.]

The parties shall strictly comply with the time limits set by the arbitral tribunal. For any extension, a reasonable request shall be made promptly after the need for extension arises and, in any event, before the date of expiration of the time limit.

7) **Default**

If one of the parties fails to observe a time-limit or to adhere to the procedural rules as set forth in this [Procedural Order No. 1] or any subsequent Procedural Order without giving sufficient reasons for such default or non-compliance, the arbitral tribunal may disregard the factual allegations, denials and offers of evidence submitted in such manner, but is not bound to do so.

8) **Formatting Requirements**

The parties shall file all their Submissions, including exhibits, witness statements and expert reports, in a format that complies with the following requirements:

All hard copies of the Submissions shall be filed in [A4] [A5] [A4 or US Letter] paper size. All Submissions shall be unbound, have [two] [three] punch-holes and be contained in ring binders. Individual documents within the Submissions shall not be stapled. Parties shall use double-sided printing.

All ring binders shall contain spine labels which provide the name(s) of the submitting law firm(s), the case number, the parties to the dispute, the title of the filing (e.g., Reply, Witness Statements) and its date. The same information shall be included in the cover sheet of each binder. The cover sheet shall not contain any further information.

The parties shall submit a (consolidated) table of contents of their ring binders.

All Submissions shall make use of paragraph numbering in Arabic numbers, as applicable.

[The parties shall adopt a suitable numbering scheme to identify the level of headings used in any Memorials.] [All Memorials shall use headings in the following format: 1st level “A., B., C. etc.”, 2. See definition under Heading 13) below.]

-3-
2nd level “I., II., III. etc.”, 3rd level “1., 2., 3. etc.”, 4th level “a), b), c) etc.”, 5th level “aa), bb), cc)”, 6th level “aaa), bbb), ccc) etc.” and 7th level “(i), (ii), (iii) etc.”] All Memorials shall contain a table of contents that shows all headings up to the fifth level.

[The Memorials shall also contain a (consolidated) [chronology] [timeline] of all events mentioned in the narrative of its memorials and reference the paragraphs of the pertinent Memorials and/or evidence [in the format as annexed].]

Legal submissions, witness statements and expert reports shall use font size [11] and leave a margin on the right hand side of the paper of [4 cm] and on the left hand side of [2 cm].

9) Written Submissions

On the due date, the submitting party shall send its submission (without exhibits or attachments) by e-mail simultaneously to the opposing party, [and] each member of the arbitral tribunal [and to the Registry, and/or Institution][if applicable].

On the next business day, the submitting party shall dispatch, by express courier, hard copies of the documents sent electronically as well as all exhibits or attachments to the opposing party, [and] each member of the arbitral tribunal [and to the Registry, and/or Institution][if applicable].

In addition, the submitting party shall include with each hard-copy submission a USB flash drive containing electronic versions of all documents submitted by that party in paper format during the entire course of the proceedings, if possible in searchable Adobe Portable Document Format (“PDF”). On the USB flash drive, documents pertaining to the same category (i.e. submissions, fact exhibits, witness statements and expert reports, legal authorities) shall be grouped together within a distinct folder. Within each folder, documents shall be identified by their unique exhibit numbers as file names (i.e., C-1.pdf, C-2.pdf, etc.).

Alternative language in the event of electronic briefs

[In addition,] the parties shall dispatch to the arbitral tribunal, [the Registry, and/or Institution][if applicable] and the opposing party, within [15] days of the due date, a full electronic version of the submission, including all exhibits, witness statements, expert reports and legal authorities, in the form of a hyperlinked electronic brief (“eBrief”) on a USB flash drive.

In the eBrief, any references within the main submission to documentary exhibits, witness statements, expert reports and legal authorities shall be hyperlinked. There is no need to create hyperlinks for references within exhibits, witness statements, expert reports or legal authorities.

10) Unscheduled Submissions

Parties shall seek permission from the arbitral tribunal before submitting any unscheduled filings. When seeking permission, the parties shall submit a brief description of the matter to be addressed in the submission excluding any supporting documentation.

3 See definition under Heading 13) below.
If permission is granted for the unscheduled filing, the arbitral tribunal will inform the parties of the submission schedule.

11) Witness Statements

Any person may present evidence as a witness, including a party or a party’s officer, employee or other representative.

For each witness, a written and signed witness statement shall be submitted to the arbitral tribunal. Each witness statement shall contain at least the following: the name, birth date, and present address of the witness; a picture of the witness; a description of the witness’s position and qualifications, if relevant to the dispute or to the contents of the statement; a description of any past and present relationship between the witness and the parties, counsel, or members of the arbitral tribunal; a description of the facts on which the witness’s testimony is offered and, if applicable, the source of the witness’s knowledge; and the signature of the witness.

Witness statements shall be numbered discretely from other documents and properly identified as such. Witness statements submitted by the Claimant shall begin with the letters “CWS” followed by the name of the witness (i.e., CWS-Picasso, CWS-Richter, etc.); witness statements submitted by the Respondent shall begin with the letters “RWS” followed by the name of the witness (i.e., RWS-Rembrandt, RWS-Rubens, etc.).

(Witness statements shall stand in lieu of direct examination during the oral hearing.)

It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts and prepare the witness statements. [If required, add qualification to preclude certain forms of contact with the witness.]

12) Expert Reports

Each party may retain and submit the evidence of one or more experts to the arbitral tribunal.

Expert reports shall be accompanied by any documents or information upon which the experts rely, unless such documents or information have already been submitted with the parties’ written submissions.

Subject to any further orders that the arbitral tribunal may make in consultation with the parties, the provisions set out in relation to witnesses shall apply mutatis mutandis to the evidence of experts.

13) Documentary Evidence and Legal Authorities

The parties shall submit with their [Statement of Claim and Statement of Defence] [memorials (the “Memorials”) all evidence and authorities on which they intend to rely in support of the factual and legal arguments advanced therein, including witness statements, expert reports, documents, and all other evidence in whatever form (together the “Submissions”).
With their Reply and Rejoinder, the parties shall submit only additional evidence as is necessary to respond to or rebut the matters raised in the other party’s immediately prior written submission or evidence, or additional evidence that was not previously available to them.

Exhibits and legal authorities shall be consecutively numbered throughout the proceedings. Exhibits submitted by the Claimant shall begin with the letter “C” followed by the applicable number (i.e. C-1, C-2, etc.); exhibits submitted by the Respondent shall begin with the letter “R” followed by the applicable number (i.e. R-1, R-2, etc.). Similarly, legal authorities submitted by the Claimant shall begin with the letters “CLA” followed by the applicable number (i.e. CLA-1, CLA-2, etc.); legal authorities submitted by the Respondent shall begin with the letters “RLA” followed by the applicable number (i.e. RLA-1, RLA-2, etc.).

The parties shall provide with each written submission a full (consolidated) index of all exhibits and legal authorities. The index shall be organized in a table format setting forth the exhibit number in the first column, the date of the exhibit in the second column, a short description of the exhibit by type, author(s), recipient(s) and content (e.g., E-mail by X to Y dated … concerning …) in the third column and references to the legal submission, witness statement and/or expert report in which reference is made to the exhibit in the fourth column.

14) Document Translations

Documents submitted into evidence which have contents not in the language of the arbitration shall be accompanied by a translation into the language of the arbitration at the cost of the submitting party, subject to a final award on costs. The translation need not be certified unless so required by the applicable rules or laws, or so ordered by the arbitral tribunal.

Generally, a party is not required to provide translations of documents produced to another party in response to a document production request[, unless there is already a translation possessed by the requested party and such party will submit the translation later into the arbitration record].

To the extent feasible, the translation must be in similar format to the original document, including pagination, page layout, indentation, bullet and numbered lists, tables and charts, font and font variations such as size, bolding, italicization and underlining, etc. For witness statements and expert reports filed in another language, the translation of each page must be formatted as identically as possible to the original page utilizing these protocols.

Each page of the translation must be marked to indicate that it is a translation, for instance by adding the annotation “[Translation]” in the upper left corner. The translation must be presented in front of the original, with a colored sheet separating them.

If a party disputes the accuracy of a translation, the parties shall confer and try come to agreement on the translation. If the parties cannot agree, the tribunal shall decide on a manner of handling the disagreement. If the parties agree on a revised translation, the party that submitted the document shall make arrangements to conveniently replace the translation in whole or in the relevant part (for instance, by providing the correction on sticky paper to be pasted over the relevant portion of the prior translation) for all members of the arbitral tribunal, counsel for the other party and any others who require it.

A party must, in principle, translate the entirety of any document or part of a document that is not in the language of the arbitration. A partial or excerpt translation may be submitted where, due to length
or otherwise, the burden of translating is deemed to outweigh the relevance and materiality of the excluded portions. However, in such cases:

(i) the partial translation must provide sufficient context so as to not misrepresent or distort the document as a whole;
(ii) in principle, the entire original document must be submitted into evidence with the partial translation, except for reason of excessive length, lack of relevance or other good cause; and
(iii) the submitting party must submit a complete or additional translation upon reasonable request by the other party or an order of the tribunal.

15) Presence of Party Representatives

The arbitral tribunal may request the attendance of the parties in person or through an internal representative at any management conference, procedural meeting, or hearing.

The arbitral tribunal may at any time during the proceedings decide to hear the parties or their internal representative on any procedural issue.

16) Pre-Hearing Teleconference

No later than [14 days] prior to the hearing, the arbitral tribunal shall convene a teleconference call to determine the logistical details and procedures for the hearing, including but not limited to (where applicable):

(i) Hearing start and end times, with expected schedule of breaks;
(ii) Allocation of time to each party based on the chess-clock system or any other time-keeping system permitted by the tribunal;
(iii) Each party's expected order of presentation of its evidence, including whether the witnesses will be grouped by subject matter (e.g., fact witnesses, technical experts, legal experts, damages experts);
(iv) Sequestration of witnesses;
(v) Logistical details related to the venue;
(vi) Arrangements for interpretation† and/or transcription;‡
(vii) Use of demonstratives at hearing, including whether they will be shared with the opposing party prior to introduction to allow for an opportunity to object; and/or
(viii) Any outstanding evidentiary objections.

Each party shall notify the tribunal and opposing party at least [7 days] prior to the teleconference its position with respect to these or any other procedural matters to be discussed at the teleconference.

17) Pre-hearing Deliberations

The arbitral tribunal shall agree to meet in person in advance of the hearing at a specified time and for a specified duration in order to examine the case file.

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4. To be discussed in teleconference if not already dealt with in an earlier procedural order as per Item 22), “Hearing Transcript”, below.
5. To be discussed in teleconference if not already dealt with in an earlier procedural order as per Item 20), “Interpretation of Oral Testimony”, below.
Following this pre-hearing meeting, the arbitral tribunal shall notify the parties of those issues that the tribunal would like the parties to address.

18) New Evidence

Parties must not use new evidence during the hearing. All evidence presented during the hearing (i.e., evidence referenced in opening and closing PowerPoints) shall contain an exhibit number so that the other party can ascertain that the evidence is not new to the record. Demonstrative exhibits are permissible, as long as they rely solely upon documents in the record.

19) Hearing Bundles

Hearing bundles—compilations of the parties’ Memorials, witness statements, documentary evidence, legal authorities and other selected materials—shall be prepared and provided reasonably in advance of the hearing at which they are required.

The parties, in consultation with the arbitral tribunal (if necessary), must discuss and try to agree on the contents, structure and preparation of the hearing bundles.

The bundles must be well organized in a logical structure suited to the particularities of the case and its documents, such as the following example:

(i) BUNDLE A: the parties’ written submissions, in chronological order.
(ii) BUNDLE B: the witness statements submitted by the parties, in sub-bundles for each party. Optionally, legal and technical expert reports may also be included in this bundle.
(iii) BUNDLE C: fact exhibits, presented in sub-bundles for each party, or combined into chronological or other order. If the exhibits are presented in a different order and renumbered, a cross-reference chart must be provided.
(iv) BUNDLE D: legal expert reports and legal authority exhibits, in sub-bundles for each party. Alternatively, legal expert reports may be included in Bundle B and Bundle D would only comprise legal authority exhibits.
(v) BUNDLE E: other expert reports, e.g. technical or quantum, with attendant exhibits, in sub-bundles for each party. Alternatively, the expert reports may be included in Bundle B, particularly if they have no exhibits or the exhibits have been included in Bundle C.
(vi) Optional bundles:
   (1) If the exhibits are voluminous, the parties may also jointly agree on and prepare other bundles they deem to be helpful, such as a bundle of “Key Exhibits” or “Core Bundle”.
   (2) If there have been many procedural disputes and decisions, it may be helpful to prepare a bundle of procedural orders and procedure-related correspondence.

If a bundle requires multiple binders, the binders shall be sub-numbered, e.g., BUNDLE A-1, BUNDLE A-2, etc.

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6. The parties may consider building in an opportunity to submit new documents prior to the hearing.
7. Often, the claimant will take a primary role in preparing the hearing bundles and the respondent should cooperate so that the process is completed smoothly, efficiently and to mutual satisfaction.
8. Parties may also want to bring to the hearing, in digital form, copies of all other documents produced between the parties but not submitted as exhibits, for convenient reference.
Unless otherwise agreed or ordered by the arbitral tribunal hearing bundles shall be provided in hard copy by the party preparing them in the following quantities:

(i) one set for each member of the tribunal and the tribunal’s secretary, if any,
(ii) one set for the witness seat at the hearing for reference by witnesses and experts being questioned and
(iii) two or more sets for use by opposing counsel, as may be agreed between counsel for the parties.

Unless it is technically unfeasible or overly burdensome, the hearing bundles shall also be provided in a digital format such as Adobe Acrobat, which may be indexed and searchable.

The party preparing the hearing bundles must endeavour to produce them in sizes preferred by the recipients, e.g. A4 or A5, and print on both sides of each page to minimize bulk.

As a general rule, duplication of documents among the hearing bundles must be avoided. The main exception to this is the optional creation of a “Key Exhibits” bundle as mentioned above.

Each bundle shall:

(i) have a cover page and spine clearly labeled with the case number, party names and binder number and contents, which must be color-coded by party;
(ii) include a contents list at the beginning;
(iii) use tabbed cardstock pages before each document to identify the document contents, e.g., exhibit number (in case exhibits are reordered and renumbered in Bundle C, then chronologically numbered tabs would be used in lieu of exhibit number tabs), memorial title, witness name, etc.; and
(iv) as a general rule, be organized with Claimant’s materials first followed by Respondent’s, unless the contents dictate otherwise (e.g., if the parties agree to compile all exhibits in chronological order to form Bundle C).

Hearing bundles must be paginated to enable the hearing participants to precisely cite to particular content and quickly locate it. This is particularly important for exhibits, which generally do not have consistent internal pagination. Generally, if pagination is added to the hearing bundle by the parties, it must be inserted in the bottom right corner of each page, in square brackets.

Hearing bundles must be bound in high-quality binders that minimize damage to or loss of pages, and facilitate easy page-turning. When shipped, the binders must be carefully packaged to prevent damage, and timely delivered to the hearing venue or other location specified by each recipient.

20) **Direct and Cross Bundles**

Before beginning any direct examination, a party may submit to its witness or expert a binder containing a copy of the witness’s or expert’s written testimony submitted during the proceedings and any other document to which the party intends to refer to during the direct examination. A copy of the binder must be distributed to each member of the tribunal, to the secretary of the tribunal, the other party, and transcribers.

Before beginning any cross-examination, a party may submit a binder of documents to the other party’s witness or expert, containing documents to which the party intends to refer during its cross-
examination. A copy of the binder must be distributed to each member of the tribunal, to the secretary of the tribunal, the other party, and transcribers.

All documents in a bundle shall be identified by using the exhibit numbers recorded over the course of the arbitration. Long exhibits of over 100 pages may be extracted, but shall indicate as such. In addition, all excerpts shall provide sufficient context such that the evidence is not taken out of context.

Translations of exhibits used during cross examination shall be provided to witnesses or experts who do not understand the original language of the document. The translation must provide sufficient context for the witness to understand its context.9

21) Interpretation of Oral Testimony

Witnesses and experts who are to give oral evidence in a language other than the language of the arbitration shall be assisted by an interpreter at the cost of the party presenting the witness, subject to a final award on costs.

Parties may retain any competent interpreter10 without regard to licensing or certification unless required by applicable rules or by order of the arbitral tribunal.

Parties may retain an interpreter jointly or independently.

(i) In the case of jointly retained interpreters, the costs shall be shared by the parties, subject to a final award on costs. In the case of independently retained interpreters, the retaining party shall bear the costs, subject to a final award on costs.

(ii) An independently retained interpreter may be present during a hearing to check the accuracy of the interpreter retained by the other party. [In addition, except to the extent restricted by applicable rules of ethics or other rules, independently retained interpreters may assist in preparations outside of the hearing, including simulated cross-examination sessions, in order to aid the interpreter in providing accurate interpretation at the hearing and to assist witnesses and experts in becoming familiar the process of providing testimony with interpretation.]

Any interpreter appointed by either or both parties must agree to be bound by the same confidentiality rules as those to which the parties have agreed.

The parties must attempt to reach agreement whether interpretation at the hearing will be consecutive,11 simultaneous12 or a hybrid.13

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9. The parties may consider ICSID Administrative and Financial Regulation Rule 30(4), which requires a statement that the omission of the remainder of the text does not render the portion presented misleading.

10. Parties should endeavour to retain the best quality interpretation services available to aid the tribunal in understanding the interpreted testimony. Although interpretation services can be expensive, poor quality interpretation can, in the longer term, be far more costly (both substantively and monetarily). Therefore, parties should retain interpreters who are skilled in providing accurate and natural interpretation in the environment of an arbitration hearing and who are able to handle the technical, legal or other terminology that will be used by the particular witnesses or experts they will interpret for.

11. In consecutive interpretation, the interpreter waits for a pause in the speaker’s words—i.e., after a sentence or group of sentences—and then provides the interpretation while the speaker waits. This approach is more drawn out than simultaneous interpretation but is less costly on an hourly basis and provides an opportunity for another interpreter or bilingual counsel to check the accuracy of the interpretation.

12. In simultaneous interpretation, rather than waiting for the speaker to reach a pause or finish his or her statement, the interpreter, usually listening in a separate room or enclosed booth, begins interpreting through an audio link in real-time as speaker is speaking. Listeners generally hear the interpretation through earpieces. This approach is speedier, though not necessarily cheaper since interpreters with this skill charge higher rates. It also hinders effective checking of the interpretation since both the testimony and the interpretation are being heard at the same time.
Parties may assist the interpreter(s) by providing a joint glossary of important terms and names in advance of the hearing. They may also provide copies of any other materials submitted in the arbitration to assist the interpreter in becoming familiar with the case and therefore provide more accurate interpretation.\textsuperscript{14}

Objections to the accuracy of interpretation must be raised, in principle, promptly after the alleged error is made.

\textbf{22) Hearing Transcript}

Unless the tribunal otherwise orders, the parties shall jointly engage a transcriber.

The transcriber must agree to be bound by the same confidentiality rules as those to which the parties have agreed.

The costs of provision of the transcript shall be shared equally between the parties in the first instance, subject to any later award of costs. Parties shall, after consultation with the arbitral tribunal, agree on any necessary arrangements and shall inform the tribunal of such arrangements at the pre-hearing teleconference.

Prior to the hearing, the parties may provide the transcriber with all written submissions to facilitate accurate transcription during the hearing.

The transcriber shall make an audio recording of the hearing, including the original and interpreted versions of all witness testimony, in order to facilitate the process of adjudicating requests for correction of the transcript. The transcriber must make this audio recording available to the tribunal on request.

Unless otherwise agreed by the parties and upon consent of the arbitral tribunal, a LiveNote transcript shall be made at the hearing and made available to the parties and arbitral tribunal in real-time and on a daily basis. Screens shall be provided to the tribunal, the parties and, while they are testifying, to witnesses requiring interpretation.

The party proposing correction to the transcript must notify the opposing party and arbitral tribunal no later than \([10\text{ days}]\) after the final transcript has been received by the parties. All agreed corrections must be in the form of an errata sheet, showing the original transcription and agreed corrections. Any remaining disputes over the proposed corrections will be decided by the tribunal. The tribunal may make a correction to the transcript on its own initiative.

\textbf{23) Quorum of the Tribunal}

The president of the arbitral tribunal shall conduct the hearing and preside over the tribunal’s deliberations.

\textsuperscript{13} A third option is to use a hybrid approach, such as having simultaneous interpretation of the question, and consecutive interpretation of the answer. This provides a happy medium in terms of speed, but is even more expensive since it requires multiple interpreters. It also hinders effective checking of the interpretation of the questions by others in the room during the simultaneous translation, as mentioned.

\textsuperscript{14} If real-time transcription services are retained, access to the real-time transcript should be provided to the interpreter(s).
Quorum – Option 1
The presence of a majority of the members of the tribunal shall be required at its sittings (except if the parties otherwise agree).

Quorum – Option 2
All members of the tribunal shall be required at its sittings (except if the parties otherwise agree).

24) Time allocation and Chess Clock

Prior to the hearing, the parties must attempt to agree to the schedule for the hearing days, including start and stop times, and lunch and coffee breaks, taking into account how many hours are to be devoted to the hearing each day. In the absence of party agreement by [date], the tribunal will decide on the schedule. The chess-clock system shall be used to police the timing to be administered by the arbitral tribunal [or registry].

Time allocation – Option 1
Each party will have an equal amount of time to present its case.

Time allocation – Option 2
The amount of time allocated to each party during the oral procedure shall be determined by the tribunal based upon the relevant factors, including the number of witnesses for each side.

The time spent by a party on opening, closing, direct (and re-direct) examination of its own witnesses/experts and the cross (and re-cross) examination of the other party’s witnesses/experts is counted against that party’s time. The time allocated to each party will also include (i) time of interpretation, if any, and (ii) time devoted to discussing and addressing any procedural objection raised by a party. The time spent by any witness/expert answering questions by the tribunal is not counted against any party’s time.

The parties may agree in advance the maximum time to be allocated for opening and closing statements (if any).

25) Appearance of Witnesses and Experts at the Hearing

Prior to the hearing, the parties must notify the tribunal of the factual witnesses and expert witnesses (having filed written statements and expert reports) whom they intend to cross-examine.

Arrangements for calling witnesses – Option 1
Each party will identify the experts and witnesses of the opposing party whom it intends to cross-examine; those not named by the opposing party will not appear at the hearing unless called by the tribunal.

Arrangements for calling witnesses – Option 2
Each party must identify the experts and witnesses of the opposing party whom it intends to cross-examine; a witness or expert not called by the opposing party can still be called up by the tribunal or the party putting up that expert or witness.

Any witness who submits written testimony in support of a party’s case shall appear for examination by the other party or the tribunal, should he or she be called upon to do so.
Effect of witness’s failure to appear – Option 1
If the witness / expert has not been asked to appear, none of the parties are deemed to have agreed to the correctness of the content of the witness statement.

Effect of witness’s failure to appear – Option 2
The prior testimony of a witness or expert who does not appear is set aside, absent extraordinary circumstances (and / or a showing of good cause).

Effect of witness’s failure to appear – Option 3
In the event that a party does not make a witness available, the requesting party may apply for any additional ruling from the tribunal, including the drawing of an adverse inference.

Where legally permissible, examination by videoconference may be permitted for justified reasons at the discretion of the tribunal. Any party may apply for permission for a particular witness to appear by videoconference, stating the reasons why that particular witness is unable to appear in person and a proposed protocol. The parties must ensure that the witness testifies under the same conditions as he / she would in the hearing, i.e. without conferring with anyone else during the testimony and having access to the relevant direct and cross bundles (if any).

26) Tribunal-appointed Experts

The tribunal-appointed expert must be present at the evidentiary hearing and available for questioning at that hearing, so long as any party or the arbitral tribunal requests such presence. The parties or their party-appointed experts may question the tribunal-appointed expert at the hearing. However, the scope of this questioning is limited to the issues covered in his or her expert report and parties’ submissions including pleadings, witness statements, and party-appointed expert reports.

27) Pre-hearing Conference for Experts

The tribunal may order the party-appointed experts to meet to discuss issues in advance of the hearing, in order to identify points of agreement and narrow the dispute. In addition, the experts may convene during the evidentiary hearing.

The parties must attempt to agree a protocol for such expert meetings, including whether counsel should be present, records of minutes taken, or a joint report be prepared. In the absence of such agreement, the tribunal may agree a protocol.

28) Sequence of Witness and Expert Examinations

Prior to the hearing, the parties may agree on the sequence of witness and expert examinations. If no agreement is reached, the sequence will be:

(i) Direct examination by the party putting forward the witness/expert in question;

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(ii) Cross-examination by the opposing party;
(iii) Re-direct examination by the party putting forward the witness/expert;
(iv) Re-cross examination (only where there has been a re-direct examination and in exceptional circumstances described below).

Prior to the hearing, the parties must try to agree to a specific sequence of witnesses and experts to be heard at the hearing. If the parties are unable to agree to a given sequence, the order proposed by each party must be submitted to the tribunal for its consideration. If no agreement is reached, Claimant’s witnesses shall appear first, followed by Respondent’s witnesses, followed by Claimant’s experts, followed by Respondent’s experts.

The parties may agree or the tribunal may order scheduling by issue or phase, so that each topic is dealt with discretely. 16

29) Testimony of Co-Signing Experts

Option 1
If two or more experts have signed a report jointly, they shall be jointly and simultaneously cross-examined. If the experts have identified in their joint report that one of them is responsible only for a selected part of the report, then he/she shall only be cross-examined on that part of the report. 17

Option 2
In the event that two or more experts have jointly authored a report, the primary author may be called for cross-examination to answer questions regarding the entirety of the report. In the event that the primary author is not competent to testify as to the entirety of the report, the party shall so inform the other party by [date], and indicate with particularity (i.e., with reference to specific sections and/or paragraphs) which sections of the report each co-author is competent to address. The other party may then decide to call one or both authors to be cross-examined with respect to the portions of the report for which they are responsible.

Option 3
If two or more experts have signed a report jointly, they shall be separately cross-examined.

30) Scope of Examinations

Direct examination
The parties may consider limiting the scope of direct examination to the following:

(i) The witness may provide a brief direct examination for the sole purposes of introducing the witness or expert, confirming the written testimony or report and identifying any corrections that such witness or expert might wish to make, and/or
(ii) The direct examination may not introduce new matters not already covered by the written statement or report, save in response to new matters raised in the Rejoinder. In such a case, the

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16. This sequence is helpful for arbitrations organized into separate issues or phases (such as jurisdiction, liability and damages or technical and legal issues).
17. Parties at times require earlier on in the proceeding that, when experts submit joint reports, they should attribute specific sections to specific witnesses, as that witness will be expected to testify on that point at the hearing.
opposing party’s witnesses or experts may respond to the issues raised in direct examination related to allegations raised in the Rejoinder, and/or

(iii) In addition to (i) or (ii), brief direct examination (e.g. 20 minutes) as agreed by the parties or determined by the tribunal solely on matters covered by the witness statement or expert report.

Cross-examination
The parties may consider the following means to limit the scope of cross-examination, as well as the examinations conducted thereafter, to the following:

(i) The cross-examination may include any matter relevant to the arbitration; or
(ii) The scope of the cross-examination must be limited to the content of the witness/expert’s written statement, his/her credibility, any issues raised in direct examination and any question directly related to the dispute with which the witness had direct personal involvement.

Re-direct
The scope of a re-direct examination will be determined solely based on the content of the other party’s cross-examination, such that no questions may be asked on issues not raised in that cross-examination.

Re-cross
The scope of a re-cross examination shall be determined solely by the content of the other party’s re-direct examination, such that no questions may be asked on issues not raised in that examination. Re-cross examination should take place only in exceptional circumstances and not in every instance where a witness/expert has had re-direct examination.

31) Sequestration of Witnesses and Experts
Once their testimonies have begun, witnesses and experts shall be isolated until they have completed their testimony and shall have no contact with the party who put them forward, or that party’s lawyers, during any recesses or interruptions that may arise. The parties must make their best efforts to start and finish the examination of a witness/expert on the same day.

32) Presence of Witnesses and Experts Before and After Testimony
The parties must attempt to agree regarding whether witnesses and experts can be present in the hearing room when they are not testifying.

Option 1
Witnesses and experts shall not be allowed in the hearing room before giving their oral evidence.

Option 2
Fact witnesses shall not be allowed in the hearing room before giving their oral evidence.

Option 3
Witnesses and experts shall not be allowed in the hearing room before or after giving their oral evidence.

[Notwithstanding the general rule, fact witnesses who are also party representatives shall be allowed in the hearing room at any time.]
[Notwithstanding the general rule, witnesses or experts shall be allowed in the hearing room at any time with the express permission of the tribunal upon request from a party.]

33) Closing Statements

The parties may agree to have closing statements in addition to / in lieu of post-hearing briefs.

The parties may agree to a maximum length of closing statements or they may agree to use any remaining time under the chess clock.

34) Post Hearing Briefs

Option 1
The parties must submit simultaneous post-hearing briefs on [date], with the length to be decided by the tribunal, following consultation with the parties [before or during the hearing].

The parties shall submit subsequent post-hearing briefs on [date], with the length to be decided by the tribunal, following consultation with the parties [before or during the hearing].

Option 2
The parties will determine the necessity of post hearing briefs at the close of the hearing, with the length to be decided by the tribunal, following consultation with the parties.¹⁸

The scope of the Post Hearing Brief shall be limited to the issues that arose during the hearing, and the parties shall not reiterate what has already been said in their pleadings. In addition, the tribunal shall indicate specific topics upon which it would like the parties to comment.

The Post Hearing Briefs shall contain the parties’ cost submissions; in the event that Post Hearing Briefs are not exchanged, the parties shall submit simultaneous cost submissions.

35) Close of the Hearing

The tribunal shall officially close the hearing following the last hearing or filing. The tribunal may in exceptional circumstances decide on its own initiative or upon application of the parties to reopen the hearings at any time before the award is made.

36) Decision

At the end of the hearing, the tribunal shall indicate to the parties the date by which it expects to submit its award.

¹⁸ Oftentimes, the parties agree to a closing presentation in lieu of the post hearing briefs.