PUBLIC

WESM Manual

Dispute Resolution

Issue 10.0 | WESM-DRM

This Market Manual sets out the detailed procedures and requirements for the resolution of WESM related disputes.

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In case of inconsistency between this document and the DOE Circulars, the latter shall prevail.

Document Change History

Issue No.	Proponent	Date of Effectivity	Reason for Amendment
0.0	PJS Law	27 November 2005	Initial draft is based on the Market Manuals of Operation: Dispute Resolution Market Manuals prepared for the Department of Energy under the Asian Development Bank Technical Assistance, entitled Transition to Competitive Electricity Market - TA 4073-PHI
1.0	Legal subcommittee Dispute Resolution Administrator/Group	23 May 2006 27 June 2006	Further revisions changing mode of selection of mediator; clarification on the mediation process, among others.
2.0	Dispute Resolution Group	17 November 2006	Approval of the proposed amendments. Incorporated the proposal of DRG, Legal Sub-Committee and MAG.
3.0*	Dispute Resolution Group	25 August 2010	To clarify and streamline the existing dispute resolution processes.
4.0	Dispute Resolution Administrator	10 April 2013	Proposed amendments to DRMM Issue 2.0 which introduced the new dispute resolution framework and structure into the WESM.
5.0	Rules Change Committee	03 June 2016	Amendment to Section 7.2.1 to clarify that data contained in reports submitted by the System Operator pursuant to Clause 3.5.13.1, already deemed final, shall not be subject of dispute.
6.0	Dispute Resolution Administrator	05 July 2018	Amendments to enhance mediation and arbitration procedures, and revise the schedule of arbitration fees and costs.
	PEMC	26 Jun 2021	Revised formatting for the commencement of the enhanced WESM design and operations.
7.0	PEMC	23 Oct 2021	To clarify the roles and functions of the PEM Board and other WESM organizational units that are involved in the appointment of the DRA in the WESM.

Issue No.	Proponent	Date of Effectivity	Reason for Amendment
8.0	IEMOP	07 January 2022	Reflect amendments regarding rationalization of billing timelines
9.0	Dispute Resolution Administrator	27 August 2022	Reflect amendments regarding dispute resolution framework applicable to Retail Rules and guidelines for virtual hearings and conferences
10.0	Dispute Resolution Administrator	13 February 2024	Reflect amendments regarding the scope of arbitrable disputes under the Retail Rules

**Approved by the PEM Board as Urgent Amendments which effectivity expired on February 24, 2011. The DRM then reverted to Issue 2.0 which became the basis of the proposed amendments for Issue 4.0*

Document Approval

Issue No.	RCC Approval	RCC Resolution No.	PEM Board Approval	PEM Board Resolution No.	DOE Approval	DOE Department Circular No.
1.0	05 January 2006	2006-01	17 March 2006	2006-12	N/A	N/A
2.0	14 November 2006	2006-38	17 November 2006	2006-65	N/A	N/A
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10.0	21 July 2023	2023-08	26 July 2023	2023-62-04	12 January 2024	2024-01-0002

**Approved by the PEM Board as Urgent Amendments which effectivity expired on February 24, 2011. The DRM then reverted to Issue 2.0 which became the basis of the proposed amendments for Issue 4.0*

***Declaring the Commercial Operations of Enhanced WESM Design and Providing Further Policies*

Reference Documents

Document ID	Document Title
	WESM Rules

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SECTION 1 INTRODUCTION

1.1. Purpose

1.1.1. This Market Manual contains a descriptive summary of the related Wholesale Electricity Spot Market (WESM) Rules concerning dispute resolution and provides for the more detailed descriptions of the requirements and procedures for the resolution of WESM related disputes.

1.1.2. The general objectives of this Manual are the following:

a) Establish the mechanisms and procedures to ensure a speedy, efficient and cost effective administration and resolution or settlement of WESM related disputes in a manner that facilitates and provides for relevant expert advice and decision;
b) Establish the requisites and mechanisms that ensure non-discriminatory and transparent resolution procedures for WESM related disputes;
c) Clarify the scope of responsibilities and functions of the persons appointed and designated for dispute resolution;
d) Establish the procedures to refer a dispute to the Dispute Resolution Administrator (DRA);
e) Establish the responsibilities and processes of the DRA, the mediator and the arbitrators to facilitate efficient, knowledgeable and timely resolution of disputes;
f) Describe the relationship between the DRA and the PEM Board.

1.1.3. For the purpose of this Manual, any act, omission, conduct or behavior and the like contrary to or in non-compliance with the WESM Rules, its Market Manuals, the WESM Objectives, rules and regulations, regarding the WESM Rules, shall be considered a breach.

1.2. Scope

1.2.1. This Manual covers all related activities and processes regarding dispute administration and dispute resolution on matters related to the WESM Rules, trading and settlement in the WESM, including the following:

a) Description of the qualifications, functions and responsibilities of the DRA in the administration and facilitation of the resolution of disputes;
b) Process of accrediting WESM Mediators, Arbitrators and ADR Support Service Centers;
c) The process for appointment of mediators and arbitrators, and the conduct of mediation and arbitration proceedings;
d) Procedures on how to refer a dispute to the DRA;
e) Description of the interactions between the DRA, the mediator or the arbitrator, and the PEM Board, in relation to assessments and results of a dispute resolution process;

f) Procedures, submission of information and responsibilities of the parties in the dispute, the System Operator (SO) and the Market Operator (MO) to facilitate the evaluation and provide sufficient data, reports, documents and other relevant information during the dispute resolution process.

1.3. Review and Updates

1.3.1. The PEM Board, with the assistance of the DRA, shall maintain this Manual under review, to identify any need for updates and amendments.

1.3.2. Amendment to the provisions of this Manual shall require the approval of the PEM Board. After approval, the amended Manual shall be published in the Market Information Website. Subject to the Manual of Procedures on Changes to the WESM Rules, the approval of the PEM Board shall specify the date when the amended Manual becomes effective. However, no such amendment and/or change to this Manual shall be retroactively applied.

1.3.3. Amendment proposals to this Manual may arise from:

a) The *PEM Board*, upon its own initiative or upon a recommendation by a *WESM Governance Committee*;
b) A WESM Member, the MO or any party affected by the application of the provisions of this Manual; and
c) The DRA, as a result of:

(i) Experience, problems or other issues identified in the implementation and application of this Manual;
(ii) Amendments to the WESM Rules or other Applicable Law, Rules and Regulations;
(iii) Conflict of interpretation;
(iv) Provisions or parts of this Manual being declared invalid; or
(v) Recommendations from WESM-Accredited Mediators, Arbitrators and ADR Support Service Centers.

1.3.4. Amendment proposals shall be submitted, reviewed and approved in accordance with the procedures in the Rules Change Manual.

1.3.5. The responsibility for drafting the amendments occasioned and approved by the above-described circumstances shall lie with:

a) The Rules Change Committee regarding amendments to this Manual that are required or otherwise attributable to amendments to the WESM Rules or other Applicable Law, Rules and Regulations; or
b) The Dispute Resolution Administrator, provided however that the Dispute Resolution Administrator may request the assistance of the Rules Change Committee.

SECTION 2 DEFINITIONS, INTERPRETATION AND CONSTRUCTION

2.1. Definitions

Unless otherwise defined in this Manual, terms and acronyms used in this Manual have the same definition as that in the WESM Rules.

a) Act refers to the Republic Act No. 9136 also known as the Electric Power Industry Reform Act (EPIRA), as may be replaced or modified by competent authorities from time to time.
b) ADR refers to Alternative Dispute Resolution.
c) ADR Providers means the institutions or persons accredited as mediators, conciliators, arbitrators, neutral evaluators or any person exercising similar functions in any Alternative Dispute Resolution system.
d) ADR Support Service Center (ASSC) refers to the WESM-accredited ADR secretariat appointed to a particular case assisting the Mediator and/or Arbitral Tribunal.
e) Answer refers to a written response setting forth the defenses and/or counter-claims to a Request for Arbitration referred to in Section 9.2.2 of this Manual.
f) Applicable Laws, Rules and Regulations shall include the EPIRA and its Implementing Rules and Regulations, the WESM Rules and the Market Manuals, the Philippine Grid Code, the Philippine Distribution Code, the Competition Rules, and such other codes, rules, regulations and issuances relating to the WESM, as they may be issued or modified by competent authorities from time to time.
g) Arbitral Tribunal refers to the panel comprised of three (3) arbitrators nominated and appointed in the manner prescribed herein, and constituted to hear and decide WESM disputes under Section 9 of this Manual.
h) Arbitration refers to a dispute resolution process in which three (3) arbitrators from the roster of WESM-Accredited Arbitrators are selected and appointed to constitute an Arbitral Tribunal in accordance with this Manual, to resolve a dispute by rendering an award.
i) Arbitration Rules means the arbitration rules contained in Section 9 of this Manual.
j) Arbitrator refers to a person appointed to render an award alone or with others, in dispute that is subject of an arbitration agreement.
k) Award means any partial or final decision by an Arbitral Tribunal in resolving the issue in a controversy or dispute.
l) Basic WESM Course refers to a short training course given by PEMC to educate or make proficient its attendees on the WESM operations, Market Manuals and related matters.
m) Board Selection Committee refers to the committee composed of at least three (3) members of the *PEM Board*, one of whom should be an Independent *PEM Board* director, which is tasked to review and evaluate the qualifications of all

persons nominated to any *WESM Governance Committee* requiring appointment by the *PEM Board*.

n) Claimant means a party to a WESM dispute who is making a claim.

o) DRA is the person appointed by the PEM Board to perform the functions provided for under the WESM Rules and Section 5 of the Manual;

p) DRA Secretariat refers to the Market Assessment Group tasked to assist the DRA in the performance of his/her responsibilities under the WESM Rules.

q) Dispute Management Protocol (DMP) is a system to be followed by the disputing parties and shall form part of the negotiation stage of the WESM dispute resolution framework.

r) Dispute Resolution Process (DRP) means mediation or arbitration or both processes.

s) DOE refers to the Department of Energy, the government agency created pursuant to Republic Act No. 7638.

t) ERC refers to the Energy Regulatory Commission, the independent quasi-judicial regulatory body created by the EPIRA.

u) Independent means a person who is considered as independent of the Philippine electric power industry, in accordance with the criteria set forth in Clause 1.4.2.7 of the WESM Rules.

v) Intending WESM Member means any person or entity who intends to register as a WESM Member, provided that such person can satisfy the MO of its bona fide intent to commence an activity within a reasonable timeframe, which would entitle or require that person or entity to be registered as a WESM Member once that activity is commenced.

w) Manual refers to this Dispute Resolution Market Manual.

x) Market Assessment Group (MAG) refers to the PEMC unit created under Clause 1.4.7.1 of the WESM Rules.

y) Market Information Website means the website for the publication of information and results of the WESM established in accordance with the WESM Rules.

z) Market Manual means a manual of specific procedures, systems and protocols for the implementation of the *WESM Rules* and *Retail Rules*.

aa) Mediation refers to a dispute resolution process in which a mediator, selected by the disputing parties from the roster of WESM-Accredited Mediators, facilitates communication and negotiation, and assists the parties in reaching a voluntary agreement regarding a dispute.

bb) Mediator refers to a person who conducts mediation.

cc) Negotiation refers to a dispute resolution process by which the involved parties voluntarily discuss their differences and attempt to reach an agreement which can be mutually agreed upon by them without the involvement of a third party.

dd) PEM Auditor refers to the auditor appointed by the PEM Board as defined in the WESM Rules and tasked to undertake the functions and activities set out in the PEM Audits Manual.

ee) PEM Board refers to the Board of Directors of the PEMC that is responsible for governing the WESM.

ff) PEMC refers to the Philippine Electricity Market Corporation, a non-stock, non-profit public-private partnership that governs the wholesale electricity spot market (WESM).

gg) PEMC Charter refers to the Articles of Incorporation and By-Laws of the PEMC, as approved by the Securities and Exchange Commission on 18 November 2003, and as they may be amended from time to time.

hh) WESM Governance Committee refers to the working groups created by the *PEM Board* as pursuant to Clause 1.4.6 of the *WESM Rules*.

ii) Request for Arbitration has the meaning ascribed to it in Section 9 of this Manual.

jj) Request for Mediation has the meaning ascribed to it in Section 8 of this Manual.

kk) Respondent means a party to a WESM dispute against whom a claim is made.

ll) Retail Rules refer to the rules promulgated by the Department of Energy governing the integration of retail competition in the operations and governance processes of the WESM, and the management of the transactions of the Suppliers and Contestable Customers in the WESM, and the operations of the Central Registration Body as defined in relevant DOE issuances.

mm) Rules denote the WESM Rules.

nn) Rules Change Committee refers to the Committee established by WESM Rule 8.2 to review and propose amendments to the WESM Rules.

oo) WESM-Accredited Arbitrator, WESM-Accredited Mediator and WESM-Accredited ADR Support Service Center have the meaning ascribed to them, respectively, in Sections 6 of this Manual.

pp) WESM dispute means a dispute of a category and between or among parties mentioned in Section 3.1 of this Manual, or ones relating to or in connection with transactions in the WESM within the context of Rule 7.3.1.1 of the WESM Rules.

qq) WESM Objectives refers to the objectives of the spot market as defined in Clause 1.2.5. of the WESM Rule

rr) WESM Member means a person or entity registered with the MO in accordance with WESM Rules 2.3 and 2.4, which includes Trading Participants (customers, generation companies and suppliers), Metering Services Providers, Network Service Providers, Ancillary Services Providers and the SO.

ss) WESM Participant means a WESM Member or an Intending WESM Member participating in a transaction in the WESM.

2.2. Interpretation and Construction

2.2.1. Any Annex to this Manual shall be considered an integral part hereof.

2.2.2. Any reference to "this Market Manual " or "this Manual" is a reference to the whole of this Dispute Resolution Market Manual, including all its Annexes.

2.2.3. The singular includes the plural and vice versa.

2.2.4. The words “such as”, "include", "including", “for example” and "in particular" shall be construed as being by way of illustration or emphasis only and shall not limit or prejudice the generality of any foregoing words.

2.2.5. Headings in this Manual are for convenience only and shall not affect the construction and interpretation of the provisions of this Manual.

2.2.6. Any reference to any law, regulation made under any law, rules or codes shall be to that item as amended, modified, revised or replaced from time to time.

2.2.7. Unless otherwise stated or contextually inherent, any reference to a numbered rule corresponds to that clause in the WESM Rules.

2.2.8. The provisions in this Manual, the WESM Rules and other Market Manuals shall be read, construed and interpreted in such a manner as to harmonize and reconcile each and every provision thereof. In the event of inconsistency, the WESM Rules shall prevail.

2.2.9. Should any part or provision of this Manual be declared invalid or nullified by any court or authority of competent jurisdiction, provisions not affected by the declaration of invalidity or nullity shall continue to be in full force and effect.

2.2.10. If part of a provision of this Manual be invalidated or nullified by any court or authority of competent jurisdiction, but the rest of such provision would remain valid if part of the wording were deleted, the provision shall apply with such minimum modification as may be:

a) Necessary to make it valid and effective; and
b) Most closely achieves the result of the original wording but without affecting the meaning or validity of any other provision of this Manual.

SECTION 3 APPLICATION

3.1. Dispute Categories and Parties

3.1.1. As established in the WESM Rules, the provisions and procedures in this Manual shall apply in the case of disputes that may arise between or among any of the following parties:

a) The MO;
b) The SO;
c) The PEM Board and its working groups, except the Dispute Resolution Administrator;
d) WESM Members; and
e) Intending WESM Members

For disputes arising under or in connection with or in relation to one or more of the following:

a) The application of any of the provision of the WESM Rules, including its Market Manuals;
b) The interpretation of any of the provisions of the WESM Rules, including its Market Manuals;
c) Any act, omission or behavior by any of the parties mentioned above in a manner inconsistent with the WESM Rules;
d) Any obligation to settle payment under the WESM Rules;
e) Any dispute under or in relation to a contract between two or more persons or entities referred to in Clauses 3.1.1 (a) to (e) where the contract provides that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to that contract with respect to the application of WESM Rules;
f) A dispute under or in relation to the rules and regulations issued by the ERC and DOE under the Act, where such rules and regulations provide that the dispute resolution procedures under the WESM Rules are to apply to any dispute under or in relation to those rules and regulations; or
g) Any dispute relating to or in connection with a transaction in the WESM.

3.2. Resort to ERC

3.2.1. An entity belonging to any of the categories described in Section 3.1.1 should first comply with the dispute resolution process set out in this Manual before filing a formal complaint with the ERC.

SECTION 4 CONTINUING OBLIGATIONS

4.1.1. The initiation of a dispute resolution process shall not stay the payment or recovery of monetary amounts due under the WESM Rules and the payment of monetary amount shall continue to be due and payable at the time specified for payment under the WESM Rules until the dispute is resolved otherwise.

4.1.2. The initiation of a dispute resolution process shall not stay any order made or direction given to a WESM Member by the Market Operator, or the Systems Operator pursuant to the WESM Rules and the party concerned shall or continue to, comply with the order or direction until the dispute is resolved otherwise.

4.1.3. Except for disputes on market settlement where the resolution of the dispute shall be administered in the revised settlement statement in accordance with the WESM Rules, the final resolution of a dispute may include compensatory measures if actual and proven damages were suffered directly from the continuing compliance with an order or direction in dispute and the dispute resolution establishes that such order or direction was inconsistent with the WESM Rules.

SECTION 5 THE DISPUTE RESOLUTION ADMINISTRATOR

5.1. Objectives and Responsibilities

5.1.1. The primary objectives and main responsibilities of the DRA are to facilitate the amicable resolution of disputes, speed up the resolution of conflicts and ensure the application of the provisions of this Manual and the WESM Rules.

5.1.2. The PEM Board, through the President of the PEMC, shall exercise administrative supervision over the DRA. As such, the President shall exercise the following functions:

a) Monitor the performance of the DRA;
b) Provide recommendation on any adjustments of honoraria that may be received by the DRA;
c) Recommend the termination and removal of the DRA as provided under Section 5.5.2.

5.2. Selection and Appointment

5.2.1. The PEM Board shall select and appoint a person with the qualifications established in this Manual to perform the mandate of the DRA.

5.2.2. Selections shall be made at least one month before the expiration of the term of the DRA or within one month after a vacancy has occurred in such position. The PEM Board shall publish in a newspaper of general circulation and post in the Market Information Website a notice calling for the submission of qualified nominees. Any person or entity making such nomination must submit a nomination form as prescribed by the PEM Board.

5.2.3. The *Board Selection Committee* shall pre-screen and shortlist all candidates nominated and request from those that it considers compliant with the qualification requirements, the submission of an expression of interest with their qualifications and experience.

5.2.4. The *Board Selection Committee* will review the submissions received and select the person best qualified and complies with the independence requirements. In determining the list of nominees, the *Board Selection Committee* shall consider foreign professionals only if such professional is known to be an outstanding expert or specialist in the particular field and that the services of such foreigner is urgently necessary either for lack of local experts and if his service will promote the advancement of the *WESM*.

5.2.5. Upon receipt of the list of qualified nominees from the *Board Selection Committee*, the *PEM Board* shall post in the Market Information Website and make available to all *WESM Members* the list of nominees.

5.2.6. The *PEM Board* shall, by resolution, approve and confirm the *DRA* recommended by the *Board Selection Committee* from among the list of qualified nominees.

5.3. Qualifications and Disqualifications

5.3.1. To be the DRA, a person must fulfill and/or possess as the case may be, the following qualifications:

a) A natural person;
b) Of legal age;
c) Of sound mind;
d) At least a college graduate, provided that this qualification shall not apply to one who possesses at least ten (10) years of relevant experience in their field of expertise;
e) Has at least five (5) years experience in alternative dispute resolution practice and procedures which do not involve litigation;
f) Has at least five (5) years experience in the electric power industry; and
g) Independent.

The PEM Board may require additional qualifications to further establish and measure the ability of the person to be appointed as DRA.

5.3.2. In addition to the qualification requirements in the previous section, the DRA must not be and not have been:

a) Convicted by final judgment of an offense involving moral turpitude or any fraudulent act or transgression;
b) Found with finality by a court of competent jurisdiction or a quasi-judicial body to have willfully violated, or aided, abetted, counseled, induced or procured the violation of any Applicable Law, Rules and Regulations;
c) Judicially declared to be insolvent;
d) Found guilty by final judgment by a foreign court or equivalent regulatory authority of acts, violations or misconduct similar to any of the acts, violations or misconduct listed in the foregoing section;
e) Convicted by final judgment of an offense punishable by imprisonment for a period exceeding six (6) years.

5.3.3. Prior to being appointed as the DRA, the person must provide the PEM Board a sworn declaration in the form prescribed by the PEM Board, that a) he shall perform his duties and functions as the DRA to the best of his abilities; b) he shall faithfully comply with

all Applicable Laws; c) he shall observe all the confidentiality restrictions imposed by Applicable Laws; and, d) he possesses all the qualifications and none of the disqualifications required for the DRA.

5.3.4. In the performance of its duties and responsibilities within this Manual, the DRA shall endeavor to administer the dispute resolution processes and make recommendations consistent with:

a) The WESM objectives;
b) The development of the WESM in a manner that is sustainable, competitive, efficient, transparent and reliable;
c) Efficiency, consistency and transparency;
d) Non-discrimination as well as the development of full and fair competition; and
e) Efficient and effective mechanisms to resolve disputes.

5.3.5. The DRA shall observe all provisions of the WESM Rules, its Market Manuals and the PEMC Charter that are applicable to its functions and responsibilities within this Manual, as well as any standard of conduct or conflict of interest guidelines prescribed by the PEM Board.

5.4. Powers and Functions

5.4.1. The DRA shall exercise the following powers and functions:

a) Administer and ensure the effective implementation and operation of the dispute resolution provisions of this Manual;
b) Determine preliminarily if the dispute is a WESM dispute under Section 2.1(nn) of this Manual or otherwise falls under the WESM dispute resolution process;
c) Draft and issue standard forms to help expedite the resolution of disputes as contained in this Manual;
d) Facilitate the accreditation process of mediators and arbitrations;
e) Update the list of WESM-Accredited Mediators and Arbitrators published in the Market Information Website;
f) Maintain data, reports and other information regarding the development and results of the disputes referred to the DRA.

5.4.2. The DRA shall be assisted in its work by the Market Assessment Group.

5.5. Term of Appointment

5.5.1. The DRA shall be appointed for a fixed term of five (5) years and shall be eligible for re-appointment for one additional fixed term.

5.5.2. The PEM Board may terminate the appointment of the DRA in the following cases:

a) The DRA fails to perform his duties and responsibilities in accordance with this Manual, or acts contrary to the principles and objectives of the WESM;
b) The PEM Board reasonably considers that the DRA ceases to meet the qualifications established in this Manual; or
c) The person becomes disqualified in accordance with the disqualification conditions in this Manual.

For purposes of this provision, the PEM Board shall constitute an ad hoc committee of three (3) persons, composed of the President of PEMC, an independent director and one member from other committees. The ad hoc committee shall determine and evaluate whether there is sufficient ground to terminate the DRA's appointment. A determination made by the ad hoc group finding insufficient grounds for termination shall be final. However, if the ad hoc group finds that there is sufficient ground to seek the termination of the DRA, the same shall be confirmed by a majority vote of the PEM Board constituting a quorum.

5.5.3. The DRA shall cease to hold office under the following cases:

a) Resignation;
b) Removal pursuant with Section 5.5.2 of this Manual;
c) Incapacity in performing his duties as stated in this Manual; or
d) Death.

5.5.4. Upon receipt of written notice of resignation or before the end of the term of the *DRA*, the *PEM Board*, through the *Board Selection Committee*, shall forthwith select a replacement who meets the established qualifications and requisites for the new *DRA* to be appointed.

5.6. Report Obligations

5.6.1. Within fifteen (15) days upon the resolution of a dispute by an Arbitral Tribunal, the DRA shall prepare and publish in the Market Information Website a Dispute Report, which shall contain the following:

a) A summarized description of the dispute, identifying the parties and the nature of the dispute, with such details as the DRA may deem necessary to prevent future recurrence of similar disputes without necessarily causing any undue prejudice that may occur as a result of any extensive publication. Should a conflict exist, the preventive function of the publication shall prevail.
b) The description of the dispute resolution process utilized; and
c) The results of the award.

5.6.2. The inclusion of information or data in the report will take into consideration the confidentiality practices established in this Manual and other Applicable Law, Rules and Regulations.

5.6.3. The DRA shall prepare monthly Dispute Reports for the PEM Board. The monthly report shall contain:

a) Summaries and updates on new and pending disputes referred to him; and
b) Issues arising from the resolution of such disputes and from the implementation of the procedures and provisions established in this Manual.

SECTION 6 THE WESM-ACCREDITED MEDIATORS, ARBITRATORS AND SERVICE PROVIDERS

6.1. Objectives and Responsibilities

6.1.1. Objectives for Accrediting Mediators, Arbitrators and Service Providers

6.1.1.1. It is the objective of this Manual to attract and maintain a roster of WESM-Accredited Mediators and Arbitrators from a wide array of experts and professionals from the private sector who have the education, training, and experience to mediate or arbitrate WESM disputes on an on-*call basis* i.e., the WESM Members as parties to a dispute will compensate the mediators and arbitrators only for their professional services when mediating or arbitrating a case, but not for maintaining their availability.

6.1.1.2. It is also the objective of this Manual to pre-qualify and accredit ADR Support Service Centers which have the appropriate ADR facilities, trained staffs, and tested organization and systems within Metro Manila to serve the exacting demands for fast, quality and accurate administrative logistics and support that every mediation or arbitration case requires.

6.1.2. Responsibilities of the DRA

6.1.2.1. The DRA shall collaborate with certified ADR Providers (e.g., Philippine Institute of Arbitrators, Inc. [PIArb] and Philippine Dispute Resolution Center, Inc. [PDRCI]) in sourcing adequately trained mediators and arbitrators, who after securing appropriate training on WESM (e.g., undergoing Basic WESM Course) and their professional profiles having been evaluated as adequate, will be recommended to the PEM Board for confirmation and oath-taking as WESM- Accredited Mediators and Arbitrators.

6.1.2.2. The DRA shall also collaborate with PEMC for the conduct of the Basic WESM Course and, where appropriate, examinations to aspiring WESM mediators and arbitrators.

6.1.2.3. The DRA shall spearhead programs for the continuing professional education of the WESM-Accredited Mediators and Arbitrators, and issue and implement guidelines for maintaining their being in good standing.

6.1.2.4. The DRA shall issue, and implement annually, guidelines for maintaining ADR Support Service Centers' being in good standing.

6.1.2.5. The DRA shall post, and periodically update, in the Market Information Website the names of WESM-Accredited Mediators, Arbitrators and ADR Support Service Centers in good standing.

6.1.3. Responsibilities of WESM-Accredited Mediators, Arbitrators and Service Provider

6.1.3.1. The WESM-Accredited Mediators and Arbitrators have the responsibility to undergo continuing professional education and to comply with the guidelines to be issued by the DRA from time to time for maintaining their being in good standing.

6.1.3.2. The WESM-Accredited Service Providers have the responsibility to comply with the guidelines to be issued by the DRA from time to time for maintaining their being in good standing.

6.2. Selection and Accreditation

6.2.1. WESM Mediators

Eligible for accreditation as WESM Mediators are those who passed the examination administered by the DRA for mediators.

6.2.2. WESM Arbitrators

The following are eligible for accreditation as WESM Arbitrators:

a) Members in good standing from certified ADR providers;
b) Any person having the training, education and/or experience in WESM operations/ trading, and have passed an arbitration training course given out by either of PDRCI or PIArb;
c) Upon DRA's recommendation, the PEM Board may consider individuals to be accredited as WESM arbitrators without undergoing the formal accreditation process; and
d) Former WESM DRAs and members of the defunct WESM Dispute Resolution Group.

6.2.3. Examination

6.2.3.1. Except for those listed in Section 6.2.2 (d) of this Manual, all aspirants for accreditation as mediators and arbitrators shall be required to undergo a Basic WESM Course given out by PEMC.

6.2.3.2. Except for those listed in Section 6.2.2(c & d) of this Manual, all aspirants for accreditation shall be required to take and pass an examination on Basic

WESM and Arbitration subjects to be given out by PEMC PEM Board-approved third party provider.

6.2.3.3. At least 2% of the examination questions shall be on arbitration ethics, using the following as study materials: (a) International Bar Association ("IBA") Guidelines on Conflicts of Interest in International Arbitration; and (b) IBA's Rules of Ethics for International Arbitration, or their Philippine equivalents, if any.

6.2.4. WESM ADR Support Service Centers

6.2.4.1. Only those companies or organizations which have adequate facilities, trained staff, tested organization and systems, and have the experience in administering ADR cases, may be eligible for accreditation as WESM ADR Support Service Centers (ASSC).

The DRA shall submit a list of recommended companies or organizations for the approval of the PEM Board as accredited WESM ADR Support Service Centers.

In the selection of a WESM-Accredited ADR Support Service Center for a particular case, the DRA shall consider the convenience of the parties and the least cost to them.

6.2.4.2. Pending the availability of ASSC/s having the qualifications prescribed in this Manual and their being duly accredited as such, the DRA shall tap individuals he/she deems could adequately provide the needed support services on an *ad hoc*/temporary basis until such time that said services are required or the case is closed, whichever comes first.

SECTION 7 GENERAL PROCEDURAL PROVISIONS

7.1. Disputes Between WESM Members and the System Operator and the Market Operator

7.1.1. When a dispute regarding one of the matters described in this Manual arises between and/or among WESM Members including the System Operator and Market Operator, the parties must go through the following steps:

a) Subject to Section 8.3, the parties in dispute should make good faith efforts to amicably settle their dispute between and/or among themselves pursuant to their respective Dispute Management Protocols.

b) Should the negotiation fail, any of the parties may refer the matter in dispute to the DRA in accordance with Section 8.4. Such submission shall set in motion the WESM dispute resolution process established in this Manual. If the DRA determines that the dispute is a WESM dispute under Section 2.1(nn) of this Manual, he shall initiate the selection of a mediator under Section 8.5 of this Manual.

c) Should mediation efforts fail, the Claimant(s) may file with the DRA a Request under Section 9 to resolve the dispute by arbitration.

d) Should the parties decide to dispense with mediation and, provided that there has been a determination by DRA within ninety (90) calendar days from receipt of the dispute that the same is a WESM dispute under Section 2.1(oo) of this Manual, directly proceed to arbitration, the parties may elect to do so subject to the issuance by the Dispute Resolution Administrator of a certification stating that mediation is no longer a viable option for the parties.

e) Should the parties determine that their particular dispute would be better or more expeditiously resolved by Final Offer Arbitration, they may elect to be bound by the Final Offer Arbitration Supplementary Rules set forth in Annex H hereto subject to the issuance by the *Dispute Resolution Administrator* of a certification of the parties such agreement.

7.2. Disputes with the MO on Settlement and Payments

7.2.1. Disputes between a *WESM Member* and the *Market Operator* over the latter's decision on the *WESM Member's* notification of error or discrepancy in a final statement may be referred to the DRA within six (6) months from receipt of the *Market Operator's* decision. The *WESM Member* shall notify the *Market Operator* of its dispute of the *Market Operator's* decision over the final settlement or part of the supporting data,

provided, however, that data contained in reports submitted by the *System Operator* pursuant to *WESM Rules* Clause 3.5.3.1 that have already become final shall not be subject of dispute.

7.2.2. Whenever the DRA receives a notice of dispute regarding the final settlement statement and/or supporting data, the DRA shall request the *Market Operator* for information as to which other WESM Members may be affected by the dispute, particularly any WESM Member whose final settlement statement for the same month as the one in dispute may be affected as a consequence of the resolution of the dispute. The DRA shall then send copies of the dispute referral notice to all the WESM Members that the *Market Operator* signifies as possibly being affected.

7.2.3. Until the dispute is resolved, the final settlement statement and supporting data shall be continued to be treated as valid and all parties are bound by the payment obligations that result from the relevant final statement issued by the *Market Operator* in accordance with the WESM Rules.

7.2.4. Once the dispute is resolved, the *Market Operator* shall issue, if necessary, the revised final statements within three (3) months with the corresponding supporting data, which shall replace the previous final statements. All parties and WESM Members shall be bound by the payment obligations that arise from the revised final statements.

7.3. Disputes Between Supplier and Customer under the Retail Rules

7.3.1. Unless the parties agree otherwise, the resolution of the following illustrative cases involving disputes may be subject to the Final Offer Arbitration Supplementary Rules set forth in Annex H:

(i) The commercial aspect of a Retail Supply Contract that involves fees for its early/pre-termination, which does not affect public interest;
(ii) The commercial aspect of a Retail Supply Contract involving price, but which does not affect public interest; and
(iii) The commercial aspect of a Retail Supply Contract involving its period, within the contemplation of the Retail Rules, which does not affect public interest.

SECTION 8 DISPUTE MANAGEMENT PROTOCOL AND CONDITIONS PRECEDENT TO ARBITRATION

8.1. Intent of the Rules

8.1.1. It is the intent of this Manual for any prospective parties to a WESM dispute to have an established Dispute Management Protocol or system that shall have the object of efficiently and pro-actively settling their disputes amicably between and/or among themselves without having to refer the matter to the DRA for mediation and/or arbitration.

8.1.2. Otherwise, it is the intent of this Manual for the parties to have in place all the legal requirements that shall, if ever arbitration should be resorted to, make the arbitral award valid, binding and enforceable, and none of such that impairs its validity, binding effect, and enforceability.

8.1.3. Finally, it is the intent of this Manual for the parties to first exhaust mediation before resorting to arbitration

8.2. Dispute Management Protocol

8.2.1. Establishment and Posting

8.2.1.1. Within sixty (60) days from the PEM Board's approval and publication of this Manual as amended in the Market Information Website, the MO and all the other WESM Participants shall establish their respective Dispute Management Protocols in the manner required under Rule 7.3.3.1 of the WESM Rules, and submit copies of the same to the DRA for posting in the Market Information Website pursuant to Rule 7.3.3.2 of the WESM Rules.

8.2.1.2. It shall be the responsibility and duty of the DRA to require the MO and every WESM Participant and of every applicant for membership or participation in

the WESM to strictly and timely comply with Sections 8.2.1.1 and 8.2.2 of this Manual.

8.2.1.3. The failure or refusal of a WESM Participant to comply with Sections 8.2.1.1 and 8.2.2 of this Manual shall be considered a breach of the WESM Rules.

8.2.1.4. The MO may not process an application for WESM membership or participation without the original of the proper documents, with the form and substance as may be prescribed by the DRA or this Manual, compliant with Sections 8.2.1.1 and 8.2.2, attached to such application.

8.2.2. Agreement to Submit All Disputes to Mediation and/or Arbitration under this Manual

8.2.2.1. Every WESM Member or an Intending WESM Member shall execute a stand-alone open agreement (i.e., with whomsoever among the MO, the SO, and the WESM Members/Participants, it would be in dispute with as an incident with its membership or participation in the WESM) to submit all disputes to Mediation, and then to Arbitration, under this Manual, stating as follows:

"In the event of any dispute with the Market Operator (MO), the System Operator (SO), and/or any Member in the Philippine Wholesale Electricity Spot Market ("WESM") arising out of or in connection our participation or membership in the WESM, I/we agree to submit the matter to dispute resolution proceedings under the WESM Rules and the WESM Dispute Resolution Market Manual ("DRMM"). If the dispute has not been settled pursuant to the DRMM Mediation Rules, such dispute shall be finally settled under the DRMM Arbitration Rules by three (3) arbitrators appointed in accordance with the DRMM Arbitration Rules."

8.2.2.2. The agreement referred to in Section 8.2.2.1 shall be acknowledged by the WESM Member/Participant/ Applicant or its competent officer or duly authorized representative before a Notary Public and duplicate originals thereof submitted to each of the MO and the DRA.

8.3. Negotiation

8.3.1. The parties in dispute shall act in good faith and use all reasonable efforts and sincerely endeavor to negotiate and amicably settle their dispute through the procedures and mechanisms established in their Dispute Management Protocol.

8.3.2. Parties shall be represented by individuals of sufficiently senior status in their organization and/or other representatives, duly authorized in writing to negotiate the matter in dispute and to participate in the negotiation procedures.

8.3.3. After the lapse of forty five (45) calendar days after commencing negotiations, any of the parties may:

a) File a notice to the other party or parties involved that negotiations have failed and are terminated and refer the dispute to the DRA for resolution; or
b) File a notice to the DRA that the negotiation is successful for records and statistical purposes.

8.4. Referral of Dispute to the DRA

8.4.1. To properly refer a dispute to the *Dispute Resolution Administrator* and trigger the procedures established in this Manual, a party must file a written notice of dispute with the *Dispute Resolution Administrator* by way of a Request for Mediation (RM), in such form as the *Dispute Resolution Administrator* may prescribe. The party filing the RM shall be known as the Claimant/s and shall furnish copies of such notice to all parties involved in the dispute that the party is aware of. The notice shall describe:

a) The names of all other parties involved in the dispute; and
b) A brief history of the dispute including:

(i) The nature and time of the dispute;
(ii) The specific WESM transaction(s) which is/are the subject(s) of the dispute;
(iii) The summary and grounds of the dispute;
(iv) The listing of all unresolved issues, with their description, factual background, arguments and claims including, if possible, an assessment of its value.

c) Where the RM is not filed jointly by all of the parties, the party or parties filing the RM shall simultaneously send the RM to the other party or parties. Such Request may include any proposal regarding the qualifications of a Mediator or any proposal of one or more Mediators to be designated by all of the parties. Thereafter, all of the parties may jointly designate a Mediator or may agree upon the qualifications of a Mediator to be appointed by the DRA. In either case, the parties shall promptly notify the DRA thereof.

8.4.2. The Dispute Resolution Administrator may, in his discretion, require the Claimant(s) to submit additional information or documents.

8.4.3. Within ninety (90) calendar days from the receipt of the RM, the DRA will assess the RM and determine whether the allegations and issues contained therein are considered a *WESM dispute* under Section 2.1 (nn) of this Manual covered by the dispute resolution procedures under the WESM Rules, taking into account:

a) The type of dispute; and
b) The parties involved.

8.4.4. If the DRA reasonably considers that the dispute as contained in the RM is not a *WESM dispute* under Section 2.1 (nn) of this Manual, he/she shall reject the same and notify the Claimant/s and all other parties to the dispute citing his/her reasons therefor.

8.4.5. If the *Dispute Resolution Administrator* makes a preliminary determination that the dispute is a *WESM dispute* under Section 2.1 (nn) of this Manual, he/she shall request the *Market Operator* for information as to which other WESM Members may be affected by the dispute.

The *Dispute Resolution Administrator* shall notify all other relevant parties that may be involved in or affected by the dispute, whether or not identified in the Claimant/s's RM, in such form as the *Dispute Resolution Administrator* may prescribe and may, where applicable, transmit a copy of the RM within five (5) calendar days from receipt thereof.

8.4.6. The *Dispute Resolution Administrator* may summon all parties to attend a compulsory meeting, whether conducted in-person or remotely via electronic or similar medium, for the purpose of expediently identifying which parties intend to participate in the mediation, and selecting and appointing the mediator in accordance to Section 8.5.6.

8.5. Mediation

8.5.1. All parties are obliged to go through the mediation procedures established in this Manual. Any recommendation, statements or documents (in whatever form) submitted by or made by any party in the mediation process shall be given to the DRA in strict confidence.

8.5.2. The DRA shall nominate three (3) possible mediators from the roster of WESM-Accredited Mediators considering the following:

a) The nature and particular circumstances of the dispute;
b) The mediation expertise; and
c) The time availability.

8.5.3. The DRA shall provide each possible mediator with information on the nature of the dispute, the parties involved therein and other pertinent data. A person included in the list of possible mediators may request not to be included if he has:

a) Official, financial or personal conflict of interest with respect to the parties in dispute; or
b) Any other issue that is or may be perceived as affecting his independence or ability to mediate in earnest.

8.5.4. If the basis for the non-inclusion is valid, the DRA shall replace that person with another WESM-Accredited Mediator.

8.5.5. The DRA shall then forward the list of mediators to the parties in dispute within five (5) business days after receiving the reply of the parties with the information requested or within twenty (20) business days after sending the notice advising the initiation of the mediation, whichever is earlier. The DRA shall include a description of the particular expertise in mediation or technical or business experience in the electric power industry or the WESM, or both, as deemed appropriate to mediate the dispute.

8.5.6. The parties involved shall then choose the mediator by alternately striking off one name at a time from the list with the last name on the list becoming the mediator. The party which initiated the complaint shall have the right to strike off first from the list.

If the parties fail to select a mediator after five (5) business days from receipt of the list of nominees or within the meeting convened for the purpose, whether conducted in-person or remotely via electronic or similar medium, the Dispute Resolution Administrator shall select and appoint the mediator, which selection and appointment are binding and final among the parties.

8.5.7. The Mediator shall, upon his appointment, sign a statement of acceptance, impartiality, independence and agreement to devote as much time and attention to the mediation as the circumstances require in order to achieve the objective of a speedy, effective and fair resolution of the dispute. The Mediator shall disclose in writing to the DRA and to the parties any facts or circumstances which might be of such a nature as to call into question the mediator's independence as well as any circumstances that could give rise to reasonable doubts as to the mediator's impartiality.

8.5.8. Appointment of ADR Support Service Center (ASSC)

The *Dispute Resolution Administrator* shall appoint the ASSC who shall assist the mediator in facilitating the mediation proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.

Once the ASSC has been appointed, the *Dispute Resolution Administrator Secretariat* shall turnover to the ASSC the files of the case, and the handling of the account opened for the particular mediation case.

8.5.9. Fees and Cost

8.5.9.1. The party or parties filing a RM shall pay an advance on mediation fees and costs, as set out in the Annex D hereto. No RM shall be processed unless accompanied by the requisite payment. Such advance will be refunded if the *Dispute Resolution Administrator* determines that the RM does not raise a WESM dispute within thirty (30) calendar days from the issuance of the determination.

8.5.9.2. If the *Dispute Resolution Administrator* has determined that the RM raises a WESM dispute, the *DRA Secretariat* or the ASSC shall request the parties to pay within five (5) business days a deposit in an amount likely to cover the administrative expenses of the Secretariat and the fees and expenses of the Mediator for the Mediation proceedings, as set out in the Annex C hereto. The Mediation proceedings shall not proceed until payment of such deposit has been received by the Secretariat.

8.5.9.3. In any case where the *Dispute Resolution Administrator* considers that the deposit is not likely to cover the total administrative costs of the Mediation proceedings, the amount of such deposit may be subject to adjustment and/or readjustment. The parties shall be notified in writing by the *Dispute Resolution Administrator* of such determination and the reasons therefor. The *Dispute Resolution Administrator* may stay the Mediation proceedings until the corresponding payments are made by the parties.

8.5.9.4. Upon termination of the Mediation proceedings, the Secretariat shall prepare and render an accounting of the total costs of the proceedings and shall, as the case may be, refund to the parties for any excess payment or bill the parties for any balance required pursuant to this Manual.

8.5.9.5. All above deposits and costs shall be borne in equal shares by the parties, unless they agree otherwise in writing. However, any party may be free to, within the period stated in the request for payment of deposit, pay the unpaid balance of such deposits and costs should another party fail to pay its share.

8.5.9.6. A party's other expenditure shall remain the responsibility of that party.

8.5.9.7. If any of the parties refuse or fail to pay its share of mediation fees and costs, the *Dispute Resolution Administrator* may direct the *Market Operator* to enforce the settlement of such payment, or request the PEM Board on behalf of the affected party to make a demand for payment, or both.

The *Dispute Resolution Administrator* may declare a failure of mediation in any event the required deposit is not paid.

8.5.10. The parties shall have thirty (30) calendar days within which to complete the mediation process, unless the time is extended by mutual agreement. The mediator shall propose and the parties shall agree on the mediation milestones and timetable.

8.5.11. With the assistance of the mediator, the parties in dispute shall attempt in good faith to resolve their dispute following the procedures and timetable established by the mediator.

8.5.12. To facilitate the mediation, the mediator may:

a) Require the parties to meet for face-to-face discussions, with or without the mediator;
b) Act as intermediary between the disputing parties; and/or
c) Require the disputing parties to submit written statement of issues and positions.

8.5.13. If a settlement agreement has been reached by the parties to the dispute, the Mediator shall send within the next five (5) business days, a report of a settlement agreement being reached including, when appropriate, a summary of the settlement agreement to:

a) The DRA; and
b) The PEM Board.

8.5.14. If after the meeting described in the previous section the parties are unable to resolve the dispute:

a) The parties and/or the Mediator shall sign a declaration that the mediation has failed and is terminated, and the mediator shall send a copy thereof to the DRA; and
b) The recommendation of the Mediator, and any statements made by any party in the mediation process, shall have no further force and effect, and shall not be admissible for any purpose, in the arbitration or any administrative or judicial proceeding.

8.5.15. Upon the written declaration and transmittal thereof that the mediation has failed, the Mediator shall cause the destruction of all documents made in connection with the mediation process. Any statements made or documents submitted during the mediation process shall have no legal effect and shall not be admissible for any purpose, in arbitration, or any administrative or judicial proceeding.

8.5.16. The agreement reached during a mediation process shall be binding and enforceable on each and all the parties in dispute. The resolution therein shall be considered as an obligation under WESM Rules and shall include, but not limited to:

a) any decision on settlement of payment; and/or
b) any provision as to specific performance by any of the parties.

8.5.17. Failure to comply with the agreement reached during the mediation process shall be considered a breach.

8.5.18. Neither the Mediator, nor the DRA and the members of its Secretariat shall be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the Mediator, DRA and the members of its Secretariat acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

SECTION 9 THE WESM ARBITRATION RULES

9.1. Introductory Provisions

9.1.1. Role of the DRA

The DRA does not resolve disputes. He/she administers the resolution of *WESM disputes* by overseeing the implementation of Arbitration Rules.

9.1.2. Written Notifications or Communications

9.1.2.1. All pleadings and other written communications submitted by any party, as well as all documents annexed thereto, shall be supplied in such number of copies sufficient to provide one copy for each party, plus one for each arbitrator, and one for the DRA. A copy of any notification or communication from the Arbitral Tribunal to the parties shall be sent to the Secretariat.

9.1.2.2. All notifications or communications from the Secretariat and the Arbitral Tribunal shall be made to the address of the party registered with the MO or indicated in the DMP of the WESM Participant concerned. Such notification or communication may be made in accordance with the mode of service and receipt of notice of dispute and other related notice as provided in the DMP.

9.2. Commencing the Arbitration

9.2.1. Request for Arbitration

9.2.1.1. Subject to Section 7.1.1 (d) or 8.5.14, as the case may be, a party wishing to have recourse to arbitration under these Arbitration Rules shall submit its Request for Arbitration (RA) to the *Dispute Resolution Administrator*. The Secretariat shall notify the Claimant(s) and Respondent(s) of the receipt of the RA and the date of such receipt.

9.2.1.2. The date on which the RA is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of the arbitration.

9.2.1.3. The RA shall contain the following information:

a) the name in full, description, address and other contact details of each of the parties;
b) the name in full, address and other contact details of any person(s) representing the Claimant(s) in the arbitration;
c) a description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made;
d) specific WESM transaction(s) that is/are the subject of the dispute;
e) a statement of the relief sought, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
f) any relevant agreements;
g) any nomination of an arbitrator required by Section 9.4.2; and
h) all relevant particulars and any observations or proposals as to the place and/or conduct of the arbitration.

The Claimant/s may submit such other documents or information with the RA as it considers appropriate or that may contribute to the efficient resolution of the dispute.

9.2.1.4. Together with the RA, the Claimant/s shall:

a) submit the number of copies thereof required by Section 9.1.2.1; and
b) make payment of an advance on arbitration fees and costs required by Annex E hereto (“Arbitration Costs and Fees”) in force on the date the RA is submitted.

In the event that the Claimant/s fail to comply with either of these requirements, the Dispute Resolution Administrator may fix a time limit within which the Claimant/s must comply, failing which, the file shall be closed without prejudice to the Claimant/s’s right to submit the same claims at a later date in another RA.

9.2.1.5. The Secretariat shall transmit a copy of the RA and the documents annexed thereto to the Respondent for its Answer to the Request once the Secretariat has sufficient copies of the Request and the required advance on arbitration fees and costs pursuant to Section 9.9.1.

9.2.2. Answer to the Request: Counterclaims

9.2.2.1. Within fifteen (15) calendar days from the receipt of the RA from the Secretariat, the Respondent shall submit an Answer which shall contain the following information:

a) its name in full, description, address and other contact details;
b) the name in full, address and other contact details of any person(s) representing the Respondent(s) in the arbitration;
c) its comments as to the nature and circumstances of the dispute giving rise to the claims and the basis upon which the claims are made;
d) its response to the relief sought;
e) any nomination of an arbitrator required by Section 9.4.2;
f) any observations or proposals as to the place and/or conduct of the arbitration; and
g) counterclaims, if any, in the manner provided for in Section 9.2.2.5.

The Respondent/(s) may submit such other documents or information with the Answer as it considers appropriate or that as may contribute to the efficient resolution of the dispute.

9.2.2.2. The DRA may grant the Respondent/(s) an extension of the time for submitting the Answer, provided the application for such an extension contains the Respondent/s's nomination of an arbitrator. If the Respondent fails to do so, the DRA shall proceed in accordance with these Arbitration Rules.

9.2.2.3. The Answer shall be submitted to the DRA in the number of copies specified by Section 9.1.2.1.

9.2.2.4. The Secretariat shall communicate the Answer and the documents annexed thereto to all other parties.

9.2.2.5. Any counterclaims made by the Respondent/(s) shall be submitted with the Answer and shall provide:

a) a description of the nature and circumstances of the dispute giving rise to the counterclaims and of the basis upon which the counterclaims are made;
b) a statement of the relief sought together with the amounts of any quantified counterclaims and, to the extent possible, an estimate of the monetary value of any other counterclaims; and
c) any relevant agreements.

The Respondent/(s) may submit such other documents or information with the counterclaims as it considers appropriate or that as may contribute to the efficient resolution of the dispute.

9.2.2.6. The Claimant shall submit a Reply to any counterclaim within ten (10) calendar days from the date of receipt of the counterclaims communicated by the Secretariat. Prior to the transmission of the files of the case to the Arbitral

Tribunal, the *Dispute Resolution Administrator* may grant the Claimant no more than one (1) extension of time for submitting the Reply.

9.2.3. Effect of the Arbitration Agreement

9.2.3.1. The parties, in their DMP or otherwise in compliance with the last paragraph of Clause 7.3.1.1 of the WESM Rules, have submitted to the Arbitration Rules in effect on the date of commencement of the arbitration.

9.2.3.2. If any party against which a claim has been made does not submit an Answer, or raises one or more pleas concerning whether all of the claims made in the arbitration may be determined together in a single arbitration, the arbitration shall proceed and any question of jurisdiction or of whether the claims may be determined together in that arbitration shall be decided directly by the Arbitral Tribunal, otherwise the DRA shall decide on this preliminary matter under Section 9.2.3.3.

9.2.3.3. In all cases falling under Section 9.2.3.2, the DRA shall decide whether and to what extent the arbitration shall proceed. The arbitration shall proceed if and to the extent that the DRA is *prima facie* satisfied that Section 9.2.3.1 applies. In particular, where there are more than two parties to the arbitration, the arbitration shall proceed between those of the parties, including any additional parties joined pursuant to Section 9.2.4 or 9.2.6, with respect to which the DRA is *prima facie* satisfied that among or between them have arisen a "dispute relating to or in connection with transactions in the WESM" within the context of Rule 7.3.1.1 of the WESM Rules.

The DRA's decision pursuant to this Section 9.2.3.3 is without prejudice to the admissibility or merits of any party's plea or pleas.

9.2.3.4. In all matters decided by the DRA under Section 9.2.3.3, any decision as to the jurisdiction of the Arbitral Tribunal, except as to parties or claims with respect to which the DRA decides that the arbitration cannot proceed, shall then be taken by the Arbitral Tribunal itself.

9.2.3.5. Where the DRA has decided pursuant to Section 9.2.3.3 that the arbitration cannot proceed in respect of any of the claims, such decision shall not prevent a party from reintroducing the same claim at a later date in other proceedings.

9.2.3.6. If any of the parties refuses or fails to take part in the arbitration or any stage thereof, the arbitration shall proceed notwithstanding such refusal or failure.

9.2.4. Multiple Parties, Multiple Transactions and Consolidation

9.2.4.1. Joinder of Additional Parties

a) A party wishing to join an additional party to the arbitration shall submit its RA against the additional party and a Request for Joinder (RJ) to the DRA. The date on which the RJ is received by the Secretariat shall, for all purposes, be deemed to be the date of the commencement of arbitration against the additional party. Any such joinder shall be subject to the provisions of Sections 9.2.3.2 to 9.2.3.5 and 9.2.6. No additional party may be joined after the confirmation or appointment of any arbitrator, unless all parties, including the additional party, otherwise agree. The DRA may fix a time limit for the submission of a RJ.

b) The RJ shall contain the following information:

(i) the case reference of the existing arbitration;
(ii) the name in full, description, address and other contact details of each of the parties, including the additional party;
(iii) the information specified in Section 9.2.1.3 subparagraphs (c), (d) and (e); and
(iv) a written comment secured from the MO on the matter.

The party filing the RJ may submit therewith such other documents or information as it considers appropriate or that may contribute to the efficient resolution of the dispute.

c) Notwithstanding Section 9.2.4.1(a), the DRA may on his/her own join any additional party or parties to the arbitration those who, in his/her opinion based on any information relevant to the dispute or volunteered by or secured from the MO, may be a *real party in interest*, an *indispensable party*, and/or a *necessary party* among the WESM Participants.

(i) a *real party in interest* is a WESM Participant who stands to be benefitted or injured by an Arbitral Award, or a WESM Participant entitled to the avails of the arbitration;
(ii) an *indispensable party* is a WESM Participant without whom no final determination can be had of a claim in the arbitration; and
(iii) a *necessary party* is a WESM Participant who is not indispensable but who ought to be joined if complete relief is to be accorded as to those already parties, of for a complete determination or settlement of the claim subject of the arbitration

d) The provisions of Sections 9.2.1.4 and 9.2.1.5 shall apply, *mutatis mutandis* (i.e., by changing those things which need to be changed; or, simply, the necessary changes having been made), to the RJ.

e) The additional party shall submit an Answer, in accordance with the provisions of Sections 9.2.2.1 to 9.2.2.4. The additional party may make claims against any other party in accordance with the provisions of Section 9.2.5.

9.2.5. Claims Between Multiple Parties

9.2.5.1. In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Sections 9.2.3.2 to 9.2.3.5 and 9.2.6 and provided that no new claims may be made after the Terms of Reference are signed or approved by the DRA, without the authorization of the Arbitral Tribunal pursuant to Section 9.6.7.4.

9.2.5.2. Any party making a claim pursuant to Section 9.2.5.1 shall provide the information specified in Section 9.2.1.3 subparagraphs (c), (d) and (e).

9.2.5.3. Before the Secretariat transmits the file to the Arbitral Tribunal in accordance with Section 9.6.1, the following provisions shall apply, *mutatis mutandis* to any claim made: Section 9.2.1.4 subparagraph (a); Section 9.2.1.5; Section 9.2.2.1 except for subparagraphs (a), (b), (e) and (f); Section 9.2.2.2; Section 9.2.2.3 and Section 9.2.2.4. Thereafter, the Arbitral Tribunal shall determine the procedure for making a claim.

9.2.6. Multiple Transactions

Subject to the provisions of Sections 9.2.3.2 to 9.2.3.5 and 9.6.7.4, claims arising out of or in connection with more than one WESM transaction, may be made in a single arbitration.

9.2.7. Consolidation of Arbitrations

The DRA may, at the request of a party, consolidate two or more disputes pending arbitration under these Arbitration Rules into a single arbitration process, where:

a) the parties have agreed in writing to the consolidation; or
b) all of the claims in the arbitrations arose from related WESM transactions that, in the determination of the DRA, may be consolidated.

In deciding whether to consolidate, the DRA may take into account any recommendation on the matter by the MO. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties.

9.3. General Provisions

9.3.1. The disputes shall be decided by an Arbitral Tribunal which shall be comprised of three (3) arbitrators.

9.3.2. Every arbitrator must be and remain impartial and independent of the parties involved in the arbitration.

9.3.3. The DRA shall decide the appointment, confirmation, challenge or replacement of an arbitrator.

9.3.4. By accepting their appointment as such, the arbitrators undertake to carry out their responsibilities in accordance with the Arbitration Rules.

9.4. Selection and Appointment of Arbitrators

9.4.1. The DRA shall publish and maintain in the Market Information Website a list of WESM-Accredited Arbitrators. The DRA shall include a description of the particular expertise of each of the WESM-Accredited Arbitrators in the list.

9.4.2. The Claimant/s shall nominate in the RA six (6) names, and the Respondent/s shall nominate in the Answer six (6) names, from the list of WESM-Accredited Arbitrators, which names shall be ranked in order of preference from most to least preferred. The DRA shall select the highest ranked arbitrator from each list submitted taking into consideration the nominees' availability, conflict of interest and such factors which may affect the ability of the arbitrator to act independently, impartially and expeditiously. If the highest ranked arbitrator is not available, the DRA shall go down the list until one arbitrator is available. In the event of failure of either the Claimant/s or the Respondent/s to submit a list, the arbitrator shall be selected by DRA.

The two arbitrators shall select the third arbitrator from the list of WESM-Accredited Arbitrators, excluding those who were nominated by the parties, and provided that the third arbitrator does not suffer from any conflict of interest

9.4.3. The DRA shall prior to confirming a nomination or appointing an arbitrator, inform each nominee-arbitrator as to the nature and circumstances of the dispute in consideration. After an initial appraisal of the facts and circumstances of the dispute, an arbitrator may decline his nomination in view of:

a) Official, financial or personal conflict of interest with respect to the issues or parties in dispute; or
b) Any other issue or circumstance that is or may be perceived as affecting his ability to assess and resolve the dispute in an independent manner.

9.4.4. Each arbitrator shall, upon his appointment, sign a statement of acceptance, impartiality, independence and agreement to devote as much time and attention to the arbitration as the circumstances require in order to achieve the objective of a speedy,

effective and fair resolution of the dispute. Each arbitrator shall disclose in writing to the DRA any facts or circumstances which might be of such a nature as to call into question the arbitrator's independence as well as any circumstances that could give rise to reasonable doubts as to the arbitrator's impartiality. The DRA shall provide such information to the parties in writing and fix a time limit for any comments from them.

9.4.5. An arbitrator shall immediately disclose in writing to the DRA and to the parties any facts or circumstances of a similar nature to those referred to in Section 9.4.4 concerning the arbitrator's impartiality or independence which may arise during the arbitration.

9.4.6. Once the selection has been finalized, the DRA shall constitute the Arbitral Tribunal comprised of the members selected in accordance herewith and shall designate one of them to be the chairperson of the said tribunal.

9.5. Challenge and Replacement of Arbitrators

9.5.1. A challenge of an arbitrator, whether for an alleged lack of impartiality or independence, or otherwise, shall be made by the submission to the DRA of a written statement specifying the facts and circumstances on which the challenge is based.

9.5.2. For a challenge to be admissible, it must be submitted by a party either within ten (10) calendar days from receipt by that party of the notification of the appointment or confirmation of the arbitrator, or within ten (10) calendar days from the date when the party making the challenge was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

9.5.3. The DRA shall decide on the admissibility and, at the same time, if necessary, on the merits of a challenge, after the DRA has afforded an opportunity for the arbitrator concerned, the other party or parties and any other members of the Arbitral Tribunal to comment in writing within a suitable period of time. Such comments shall be communicated by the Secretariat to the parties and to the arbitrators.

9.5.4. An arbitrator shall be replaced upon death, upon acceptance by the DRA of the arbitrator's resignation, upon finding by the DRA of an arbitrator's lack of impartiality and independence, or upon acceptance by the DRA of a request of all the parties.

9.5.5. An arbitrator shall also be replaced on the DRA's own initiative when he/she decides that the arbitrator is prevented by right or in fact from fulfilling the arbitrator's functions, or that the arbitrator is not fulfilling those functions in accordance with the Arbitration Rules or within the prescribed time limits.

9.5.6. When, on the basis of information that has come to its attention, the DRA considers applying Section 9.5.5, it shall decide on the matter after the arbitrator concerned, the parties and any other members of the Arbitral Tribunal have had an opportunity to

comment in writing within a suitable period of time. Such comments shall be communicated by the Secretariat to the parties and to the arbitrators.

9.5.7. When an arbitrator is to be replaced, the DRA shall as much as practicable, follow the original nominating process. Once reconstituted, and after having invited the parties to comment, the Arbitral Tribunal shall determine if and to what extent prior proceedings shall be repeated before the reconstituted Arbitral Tribunal.

9.5.8. Subsequent to the closing of the proceedings, instead of replacing an arbitrator who has died or been removed by the DRA pursuant to Sections 9.5.4 or 9.5.5, the DRA may decide, when he/she considers it appropriate, that the remaining arbitrators shall continue the arbitration. In making such a determination, the DRA shall take into account the views of the remaining arbitrators and of the parties and such other matters that he/she considers appropriate in the circumstances.

9.6. Appointment of ADR Support Service Center (ASSC)

Unless an ASSC has already been appointed for the case under Section 8.5.7, the *Dispute Resolution Administrator* shall appoint the ASSC who shall assist the Arbitral Tribunal in facilitating the arbitration proceedings. The ASSC which shall provide administrative support in the case shall be selected on rotation basis among the WESM-accredited ASSCs.

Once the ASSC has been appointed, the *Dispute Resolution Administrator Secretariat* shall turnover to the ASSC the files of the case who shall keep safe and secure custody of the same on behalf of the Arbitral Tribunal, and the handling of the deposit account opened for the purpose of the arbitration.

9.7. The Arbitral Proceedings

9.7.1. Transmission of the File of the Dispute to the Arbitral Tribunal

The *Dispute Resolution Administrator Secretariat* or the ASSC, as the case may be, shall transmit the file of the arbitration to the Arbitral Tribunal as soon as it has been constituted, provided the advance on fees and costs at this stage has been paid.

9.7.2. Proof of Authority

At any time after the commencement of the arbitration, the Arbitral Tribunal or the Secretariat may require proof of the authority of any party's representative/s.

9.7.3. Place of Arbitration

9.7.3.1. The place of the arbitration shall be in Metro Manila, unless a different place is fixed by the DRA or agreed upon by the parties in writing.

9.7.3.2. The Arbitral Tribunal may, after consultation with the parties, conduct hearings and meetings at any location it considers appropriate, unless otherwise agreed by the parties in writing.

9.7.3.3. The Arbitral Tribunal may deliberate among themselves at any location it considers appropriate.

9.7.4. Rules Governing the Proceedings

The proceedings before the Arbitral Tribunal shall be governed by these Arbitration Rules and, where these Arbitration Rules are silent, by any rules which the parties or, failing them, the Arbitral Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a law to be applied to the arbitration.

9.7.5. Applicable Rules of Law

9.7.5.1. Whenever applicable or appropriate, the latest provisions of Republic Act No. 9136 (otherwise known as the *EPIRA*), the WESM Rules and its Market Manuals, the Philippine Grid Code, the Philippine Distribution Code, the implementing rules and regulations, as well as rulings over specific issues, if any, promulgated from time to time by the Energy Regulatory Commission (the “ERC”) and/or the Department of Energy (the “DOE”), shall be applied by the Arbitral Tribunal to the merits of the dispute.

9.7.5.2. The Arbitral Tribunal shall take into account the provisions of the contract, if any, between the parties, the relevant provisions of the New Civil Code, and of any relevant trade usages.

9.7.5.3. The Arbitral Tribunal shall assume the powers of an *amiable compositeur* (i.e., one having the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness) or decide *ex aequo et bono* (i.e., according to what is just and fair, or according to equity and good conscience) only if the parties have agreed to give it such powers.

9.7.6. Conduct of the Arbitration

9.7.6.1. The Arbitral Tribunal and the parties shall make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.

9.7.6.2. In order to ensure effective case management, the Arbitral Tribunal, after consulting the parties, may adopt such procedural measures as it considers appropriate, provided that they are not contrary to any agreement of the parties.

9.7.6.3. Upon the request of any party, the Arbitral Tribunal may make orders concerning the confidentiality of the arbitration proceedings or of any other matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.

9.7.6.4. In all cases, the Arbitral tribunal shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

9.7.6.5. The parties undertake to comply with any order made by the Arbitral Tribunal.

9.7.7. Terms of Reference

9.7.7.1. As soon as it has received the file of the arbitration from the *Dispute Resolution Administrator Secretariat* or the ASSC, the Arbitral Tribunal shall draw up, on the basis of documents or in the presence of the parties and in the light of their most recent submissions, a document defining its Terms of Reference. This document shall include the following particulars:

a) the names in full, description, address and other contact details of each of the parties and of any person(s) representing a party in the arbitration;
b) the addresses to which notifications and communications arising in the course of the arbitration may be made;
c) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
d) unless the Arbitral Tribunal considers it inappropriate, a list of issues to be determined;
e) the names in full, address and other contact details of each of the arbitrators;
f) the place of the arbitration; and
g) particulars of the applicable procedural rules and, if such is the case, reference to the power conferred by the parties upon the Arbitral Tribunal in accordance with Section 9.7.5.3 to act as *amiable compositeur* (i.e., one having the power to depart from the strict application of rules of law and decide a dispute according to justice and fairness) or to decide *ex aequo et bono* (i.e., according to what is just and fair, or according to equity and good conscience).

9.7.7.2. The Terms of Reference shall be signed by the parties and the Arbitral Tribunal. Within two (2) months of the date on which the file of the dispute has been transmitted to it, the Arbitral Tribunal shall transmit to the DRA the Terms of Reference signed by it and by the parties. The DRA may extend

this time limit pursuant to a reasonable request from the Arbitral Tribunal, or on its own initiative, if it decides it is necessary to do so.

9.7.7.3. However, if any of the parties refuse to take part in drawing up of the Terms of Reference or to sign the same, it shall be submitted to the *Dispute Resolution Administrator* for approval. When the Terms of Reference have been signed in accordance with Section 9.7.7.2 or approved by the *Dispute Resolution Administrator*, the arbitration shall proceed.

9.7.7.4. After the Terms of Reference have been signed by the parties and the Arbitral Tribunal or approved by DRA, no party shall make new claims which fall outside the limits of the Terms of Reference unless it has been authorized to do so by the Arbitral Tribunal, which shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

9.7.8. Case Management Conference and Procedural Timetable

9.7.8.1. When drawing up the Terms of Reference or as soon as possible thereafter, the Arbitral Tribunal shall convene a case management conference to consult the parties on procedural measures that may be adopted pursuant to Section 9.7.6.2. Such measures may include one or more of the case management techniques described in Annex B hereto.

9.7.8.2. During or following such conference, the Arbitral Tribunal shall establish the procedural timetable that it intends to follow for the conduct of the arbitration. The procedural timetable and any modifications thereto shall be communicated to the DRA and the parties.

9.7.8.3. To ensure continued effective case management, the Arbitral Tribunal, after consulting the parties by means of a further case management conference or otherwise, may adopt further procedural measures or modify the procedural timetable.

9.7.8.4. Case management conferences may be conducted through a meeting in person, by video conference, telephone or similar means of communication. In the absence of an agreement of the parties, the Arbitral Tribunal shall determine the means by which the conference will be conducted. The Arbitral Tribunal may request the parties to submit case management proposals in advance of a case management conference and may request the attendance at any case management conference of the parties in person or through an internal representative.

9.7.9. Establishing the Facts of the Case

9.7.9.1. The Arbitral Tribunal shall proceed within as short a time as possible to establish the facts of the case by all appropriate means.

9.7.9.2. After studying the written submissions of the parties and all documents relied upon, the Arbitral Tribunal shall hear the parties together in person if any of them so requests or, failing such a request, it may of its own motion decide to hear them.

9.7.9.3. The Arbitral Tribunal may decide to hear witnesses, experts appointed by the parties or any other person, in the presence of the parties, or in their absence provided they have been duly summoned.

9.7.9.4. The Arbitral Tribunal, after having consulted the parties, may appoint one or more experts, define their terms of reference and receive their reports. At the request of a party, the parties shall be given the opportunity at a hearing to question any such expert.

9.7.9.5. At any time during the proceedings, the Arbitral Tribunal may request data, documents and other information from the parties in dispute and other parties as well. Evidence from the disputing parties and other intervening parties shall be submitted in written form. The Arbitral Tribunal may exclude any evidence that is irrelevant, immaterial and unduly repetitious.

9.7.9.6. The Arbitral Tribunal may decide the case solely on the documents submitted by the parties unless any of the parties requests a hearing.

9.7.10. Hearings

9.7.10.1. When a hearing is to be held, the Arbitral Tribunal, giving reasonable notice, shall summon the parties to appear before it on the day and at the place fixed by it.

9.7.10.2. If any of the parties, although duly summoned, fails to appear without valid excuse, the Arbitral Tribunal shall have the power to proceed with the hearing.

9.7.10.3. The Arbitral Tribunal shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Except with the approval of the Arbitral Tribunal and the parties, persons not involved in the proceedings shall not be admitted in the hearings.

9.7.10.4. The parties may appear in person or through duly authorized representatives. In addition, they may be assisted by advisers.

9.7.11. Except as to conduct of the proceeding or the rendering to the decision itself, the Arbitral Tribunal may refer to an appropriate committee, office or entity of the WESM, who are not among the disputing parties, the interpretation of or clarification on any of the Applicable Law, Rules or Regulations, standards, requirement, pricing methodology, tariff, principle, plan or criterion. Any such interpretation or clarification shall not relieve the Arbitral Tribunal of the responsibility of resolving the dispute or deciding the dispute in the sound exercise of its judgment.

9.7.12. Closing of the Proceedings and Date for Submission of Draft Awards

As soon as possible after the last hearing concerning matters to be decided in an award or the filing of the last authorized submissions concerning such matters, whichever is later, the Arbitral Tribunal shall:

a) declare the proceedings closed with respect to the matters to be decided in the award; and
b) inform the Secretariat and the parties of the date by which it expects to submit its draft award to the *Dispute Resolution Administrator* Secretariat for scrutiny as to form and mathematical computations.

After the proceedings are closed, no further submission or argument may be made, or evidence produced, with respect to the matters to be decided in the award, unless requested or authorized by the Arbitral Tribunal.

9.8. Documents and Other Information

9.8.1. The parties in dispute, other intervening parties or third parties asked to provide relevant information must submit the complete data, documents and other information requested or relevant to the dispute and in their possession, in a timely manner.

9.8.2. Nothing in this Manual or its confidentiality provisions shall preclude the use of documents or information properly obtained outside the dispute proceedings, or otherwise public, for any legitimate purpose, notwithstanding that the information was also obtained in the course of the proceeding.

9.8.3. The final decision shall be binding among the parties to the dispute and all other parties affected by the decision; provided that such other parties affected must have been notified of the pending dispute by the DRA and have been given the opportunity to participate in the dispute resolution process. A resolution of the Arbitral Tribunal shall be binding on the parties, whether the resolution provides for payment or the performance or non-performance of actions. Failure to comply with a decision of the Arbitral Tribunal shall be considered a breach of the WESM Rules.

9.9. Interim Measures; Awards

9.9.1. Conservatory and Interim Measures

9.9.1.1. At any time, the Arbitral Tribunal may issue written interlocutory orders requiring an action or measure on matters related to the dispute, in order to minimize damages or to protect the rights and obligations established in the WESM Rules and other Applicable Law, Rules and Regulations. The parties shall be bound by such written interlocutory order pending the final decision of the Arbitral Tribunal and outcome of the dispute.

9.9.1.2. As soon as the file of the dispute has been transmitted to it, the Arbitral Tribunal may, at the request of a party, order any interim or conservatory measure it deems appropriate. The Arbitral Tribunal may make the granting of any such measure subject to appropriate security being furnished by the requesting party. Any such measure shall take the form of an order, giving reasons, or of an award, as the Arbitral Tribunal considers appropriate.

9.9.1.3. Before the file of the dispute is transmitted to the Arbitral Tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an Arbitral Tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the Arbitral Tribunal.

9.9.1.4. Any such application and any measures taken by the judicial authority must be notified without delay to the Secretariat. The Secretariat shall inform the Arbitral Tribunal thereof.

9.9.2. Emergency Arbitrator

9.9.2.1. A party that needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal (“Emergency Measures”) may make an application for such measures pursuant to the Emergency Arbitrator Rules in Annex C. Any such application shall be accepted only if it is received by the *DRA Secretariat* prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the Manual and irrespective of whether the party making the application has already submitted its Request for Arbitration.

9.9.2.2. The emergency arbitrator’s decision shall take the form of an order. The parties undertake to comply with any order made by the emergency arbitrator.

9.9.2.3. The emergency arbitrator’s order shall not bind the arbitral tribunal with respect to any question, issue or dispute determined in the order. The arbitral tribunal may modify, terminate or annul the order or any modification thereto made by the emergency arbitrator.

9.9.2.4. The arbitral tribunal shall decide upon any party's requests or claims related to the emergency arbitrator proceedings, including the reallocation of the costs of such proceedings and any claims arising out of or in connection with the compliance or non-compliance with the order.

9.9.2.5. The Emergency Arbitrator Provisions are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent judicial authority at any time prior to making an application for such measures, and in appropriate circumstances even thereafter, pursuant to the Rules. Any application for such measures from a competent judicial authority shall not be deemed to be an infringement or a waiver of Clause 7.3.1.1 of the *WESM Rules*. Any such application and any measures taken by the judicial authority must be notified without delay to the *DRA Secretariat*.

9.9.3. Time Limit for the Final Award

9.9.3.1. The Arbitral Tribunal must render its final Award within six (6) months reckoned from the date of the last signature by the Arbitral Tribunal and the parties of the Terms of Reference or, in the case of application of Section 9.7.7.3, the date of the notification to the Arbitral Tribunal by the Secretariat of the approval of the Terms of Reference by the *Dispute Resolution Administrator*, whichever is later.

9.9.3.2. The DRA may extend the time limit pursuant to a reasonable request from the Arbitral Tribunal or on its own initiative if it decides it is necessary to do so.

9.9.4. Making of the Award

9.9.4.1. The Award is made by a majority decision. If there is no majority, the award shall be made by the chairman of the Arbitral Tribunal alone.

9.9.4.2. The Award shall state the reasons upon which it is based.

9.9.4.3. The Award shall be deemed to be made at the place of the arbitration and on the date stated therein.

9.9.5. Award by Consent

If the parties reach a settlement after the file of the dispute has been transmitted to the Arbitral Tribunal, the settlement shall be recorded in the form of an award made by consent of the parties, if so requested by the parties and with if the approval of the Arbitral Tribunal.

9.9.6. Notification, Deposit and Enforceability of the Award

9.9.6.1. Once the Arbitral Tribunal has made the final award, the Chairperson shall notify each of the parties involved in or affected by the dispute in writing within five (5) calendar days after the decision is made of its award, with a copy furnished to the DRA, provided always that the costs of the arbitration have been fully paid to the Secretariat by the parties or by one of them. The notice shall also require each party to submit a written reply, with copy furnished to the DRA, within five (5) calendar days from receipt of such notice.

9.9.6.2. The reply of the parties shall contain the following:

a) Acknowledging receipt of the award; and
b) A description of all actions taken or to be taken by the party as a consequence of the award.

9.9.6.3. If a party does not respond within the deadline specified or does not describe all the actions to be taken, the party shall be considered in breach of the Rules.

9.9.6.4. Every Award shall be binding on the parties. By submitting the dispute to arbitration under the Arbitration Rules, the parties undertake to carry out any Award without delay and shall be deemed to have waived their right to any form of recourse insofar as such waiver can validly be made.

9.9.7. Correction and Interpretation of the Award; Remission of Awards

9.9.7.1. On its own initiative, the Arbitral Tribunal may correct a clerical, computational or typographical error, or any errors of similar nature contained in an Award, provided such correction is submitted for approval to DRA within fifteen (15) calendar days of the date of such award.

9.9.7.2. Any application of a party for the correction of an error of the kind referred to in Section 9.8.6.1, or for the interpretation of an Award, must be made to the Secretariat within fifteen (15) calendar days of the receipt of the award by such party, in a number of copies as stated in Section 9.1.2.1. After transmittal of the application to the Arbitral Tribunal, the latter shall grant the other party time not exceeding fifteen (15) calendar days from the receipt of the application by that party, to submit any comments thereon. The Arbitral Tribunal shall submit its decision on the application in draft form to the DRA not later than thirty (30) calendar days following the expiration of the time limit for the receipt of any comments from the other party or within such other period as the DRA may decide.

9.9.7.3. A decision to correct or to interpret the award shall take the form of an addendum and shall constitute part of the Award. The provisions of Sections 9.9.4, 9.9.6 and 9.9.7 apply *mutatis mutandis.*

9.9.7.4. Where a competent authority remits an award to the Arbitral Tribunal, the provisions of Sections 9.9.4, 9.9.6 and 9.9.7 and this Section 9.9.7.4 shall apply *mutatis mutandis* to any addendum or Award made pursuant to the terms of such remission. The *Dispute Resolution Administrator* may take any steps as may be necessary to enable the Arbitral Tribunal to comply with the terms of such remission and may fix an advance payment to cover any additional fees and expenses of the Arbitral Tribunal and any additional Secretariat administrative expenses.

9.10. Costs and Payments

9.10.1. Payment to Cover the Fees and Costs of the Arbitration

9.10.1.1. After receipt of the RA under Section 9.2.1.1, the Secretariat may request the Claimant/s to pay a provisional advance payment in an amount intended to cover the fees and costs of the arbitration until the Terms of Reference have been drawn up. Any provisional advance paid will be considered as a partial payment by the Claimant/s of any costs fixed pursuant to this Section 9.9.1.

The provisional advance to be paid by the Claimant/s shall be in accordance with the Schedule of Arbitration Fees and Costs as set forth in Annex E hereto.

9.10.1.2. As soon as practicable, the *Dispute Resolution Administrator* shall fix the advance payment on costs in an amount likely to cover the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance with the Schedule of Administrative Expenses and Arbitration Fees in effect as set forth in Annex E hereto for the claims which have been referred to it by the parties, unless any claims are made under Section 9.2.4 or 9.2.5 in which case Section 9.10.1.4 shall apply. The advance on costs fixed by the Dispute Resolution Administrator pursuant to this Section 9.10.1.2 shall be payable in equal shares by the Claimant/s and the Respondent/s.

9.10.1.3. Where counterclaims are submitted by the Respondent/s under Section 9.2.2 or otherwise, the DRA may fix separate advance payments on costs for the claims and the counterclaims. When the DRA has fixed separate advance payments on costs, each of the parties shall pay the advance payment on costs corresponding to its claims as a condition precedent for the inclusion of the counterclaim/s in the proceedings.

9.10.1.4. Where claims are made under Section 9.2.4 or 9.2.5, the *Dispute Resolution Administrator* shall fix one or more advance payments on costs that shall be payable by the parties as decided by the *Dispute Resolution Administrator*. Where the *Dispute Resolution Administrator* has previously fixed any advance payment on costs pursuant to this Section 9.10.1, any such advance shall be replaced by the advance(s) fixed pursuant to this Section 9.10.1.4, and the amount of any advance previously paid by any party will be considered as a partial payment by such party of its share of the advance(s) on costs as fixed by the *Dispute Resolution Administrator* pursuant to this Section 9.10.1.4.

9.10.1.5. The amount of any advance on costs fixed by the *Dispute Resolution Administrator* pursuant to this Section 9.9.1 may be subject to adjustment and/or readjustment at any time during the arbitration. In all cases, any party shall be free to pay any other party's share of any advance on costs should such other party fail to pay its share.

9.10.1.6. When a request for an advance on costs has not been complied with, and after consultation with the Arbitral Tribunal, the *Dispute Resolution Administrator* may direct the Arbitral Tribunal to suspend its work and set a time limit, which must not be less than fifteen (15) calendar days, on the expiry of which the relevant claims shall be considered as withdrawn. Should an affected party wish to object to this measure, it must make a request within the aforementioned period for the matter to be decided by the DRA. Such party shall not be prevented, on the ground of such withdrawal, from reintroducing the same claims at a later date in another proceeding.

9.10.1.7. If one of the parties claims a right to a set-off with regard to any claim, such set-off shall be taken into account in determining the advance to cover the costs of the arbitration.

9.10.2. Decision as to the Costs of the Arbitration

9.10.2.1. The costs of the arbitration shall include the fees and expenses of the arbitrators and the Secretariat administrative expenses, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the Arbitral Tribunal and the reasonable legal and other costs incurred by the parties for the arbitration.

9.10.2.2. At any time during the arbitral proceedings, the Arbitral Tribunal may make decisions on costs, other than those to be fixed by DRA, and order payment.

9.10.2.3. The final award shall fix the costs of the arbitration and applying Article 2208 of the New Civil Code, decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

9.10.2.4. In making decisions as to costs, the Arbitral Tribunal may take into account such circumstances as it considers relevant, including the extent to which each party has conducted the arbitration in an expeditious and cost-effective manner.

9.10.2.5. In the event of the withdrawal of all claims or the termination of the arbitration before the rendering of a final Award, the *Dispute Resolution Administrator* shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses in accordance to the *Guidelines for the ASSC in the Conduct of their Duties in Respect of WESM Arbitration Proceedings*, taking into consideration the relevant stage of the arbitration and the work undertaken by the arbitrators and the Secretariat.

9.11. Effect of Award

9.11.1. The awards made by an Arbitral Tribunal resolving a dispute are binding and enforceable on each and all the parties involved in the dispute. The resolution therein shall be considered as an obligation under the WESM Rules and shall include, but not limited to:

a) Any Award on settlement of payment; and
b) Any provision as to specific performance by any of the parties.

9.11.2. Failure to comply with an Award of the Arbitral Tribunal to settle payments shall be considered a breach of the WESM Rules.

9.12. Enforcement

9.12.1. If any of the party refuses, upon receipt of Award rendered by the Arbitral Tribunal, to comply with a payment of compensation or costs, or to fully comply with the decision rendered by Arbitral Tribunal, the *Dispute Resolution Administrator* may direct the *Market Operator* to enforce any settlement or judgment, or request the *PEM Board* on behalf of the affected party make a demand for payment, or both.

9.13. Recording and Publication

9.13.1. When the resolution of a dispute has been made by an Arbitral Tribunal, the chairperson of the Arbitral Tribunal shall, within the next five (5) calendar days, send a report with the details of the resolution to:

a) The Dispute Resolution Administrator;
b) The PEM Board;
c) The DOE
d) The ERC; and
e) The Market Operator.

SECTION 10 DATA AND INFORMATION

10.1. Obligations

10.1.1. The parties in dispute, intervening parties or third parties required information, shall submit the complete data, documents and other information related to the dispute as ordered by a mediator or an Arbitral Tribunal in the soonest possible time and no later than the time specified in the order. Failure to comply with such an obligation shall be deemed to be a breach of the WESM Rules.

10.1.2. Unless otherwise specified in this Manual or otherwise directed by the DRA, a mediator or an Arbitral Tribunal, only one copy of any document is required to be served or filed.

10.2. Confidentiality

10.2.1. The dispute resolution proceedings contained in this Manual take into consideration the confidentiality of commercially sensitive documents. In the interest of justice at large and resolving disputes in particular, the Arbitral Tribunal has the right to require the submission of such documents subject to the following principle and qualifications established in this Manual.

10.2.2. No document shall be presumed to be confidential. A party providing any document or other information in the course of a mediation process or an arbitration proceeding that otherwise would not be available to the receiving party, including information contained in said documents or other means of recording information created during the course of the proceeding of an Arbitral Tribunal, may request that the document or information be designated as confidential, if such document or information qualifies as confidential according to the confidentiality provisions in the WESM Rules. The Arbitral Tribunal shall assess the confidentiality claim and, at its own discretion, determine the validity of the request. If the Arbitral Tribunal agrees that

the document or information qualifies as confidential, the document or information will be designated and marked as “Confidential”.

10.2.3. Parties in dispute, mediators, Arbitral Tribunals or any party gaining access to documents submitted in the course of a dispute resolution process shall implement procedures as may be reasonable and necessary to protect the confidentiality and commercial value of documents or other information obtained during the dispute resolution process and marked as “Confidential”, and shall comply with all confidentiality provisions in the WESM Rules.

10.2.4. In all cases, the documents or other information designated as “Confidential” shall not be used by the receiving party or anyone working for and in behalf of the receiving party, for any purpose other than the dispute resolution proceeding.

10.2.5. Each party in dispute, intervening parties, mediators, each member of the Arbitral Tribunal and the DRA shall execute sworn confidentiality undertakings, the terms and conditions of which, including the penalties for violation thereof, shall be prescribed by the PEM Board.

SECTION 11 MISCELLANEOUS

11.1. Limitation of Liability

11.1.1. The arbitrators, any person appointed by the Arbitral Tribunal, the *Dispute Resolution Administrator* and its Secretariat, and the ASSC shall not be liable for any loss or damage suffered by a Participant or any other person as a consequence of any act or omission of those persons unless the arbitrators, any person appointed by the Arbitral Tribunal, the *Dispute Resolution Administrator* and its Secretariat, and the ASSC acted with malice, manifest partiality, bad faith, gross incompetence or gross negligence.

11.2. Modified Time Limits

11.2.1. The parties may agree to shorten the various time limits set out in the Arbitration Rules. Any such agreement entered into subsequent to the constitution of an Arbitral Tribunal shall become effective only upon the approval of the Arbitral Tribunal.

11.2.2. The DRA, on its own initiative, may extend any time limit which has been modified pursuant to Section 11.2.1 if it decides that it is necessary to do so in order that the Arbitral Tribunal and the DRA may fulfill their responsibilities in accordance with the Arbitration Rules.

11.3. Waiver

11.3.1. A party which proceeds with the arbitration without raising its objection to a failure to comply with any provision of the Arbitration Rules, or of any other rules applicable to the proceedings, any direction given by the Arbitral Tribunal, or any requirement under the arbitration agreement relating to the constitution of the Arbitral Tribunal or the conduct of the proceedings, shall be deemed to have waived its right to object.

11.4. General Rule

11.4.1. In all matters not expressly provided for in the Arbitration Rules, the DRA and the Arbitral Tribunal shall act in the spirit of the Arbitration Rules and shall make every effort to make sure that the award is enforceable at law.

ANNEX A ESTABLISHMENT OF DISPUTE MANAGEMENT PROTOCOL

1. OBJECTIVES

To encourage the timely and voluntary settlement of disputes, this document has the following objectives:

a) Establish the processes in the management of disputes between the parties; and
b) Govern the processes in the requests for information and negotiation stage to avoid resorting to formal dispute resolution processes.

2. DMP FOCAL PERSON

The DMP Focal Person is the first point of contact for the notification of disputes relating to WESM disputes. The MO and all WESM Members shall submit to the DRA, through the Market Assessment Group, their Focal Persons and Alternates which will be published in the market website.

2.1. In the identification of the DMP Focal Person and his/her Alternate, the following shall be considered:

2.1.1. Access to the DMP Focal Person and his/her Alternate

a) The Focal Person and his/her Alternate is easily accessible through landline phone, mobile, fax, email and postal address contact on weekdays, during office hours; and
b) The Focal Person shall notify the DRA of any changes to keep the records updated.

2.1.2. Training of DMP Focal Person

The Focal Person must be familiar with and has understanding of the dispute resolution processes in the WESM Rules. The DMP Focal Person must have proper training and experience in negotiation and conflict management.

2.1.3. Authority of DMP Focal Person

A high level of authority for the resolution of disputes or has a quick and easy access to people with requisite level of authority is required for a DMP Focal Person. This will ensure that all agreements reached during the negotiation are binding to all concerned parties.

3. NOTICE OF DISPUTE

Parties to a dispute shall complete the following steps before taking any other action:

a) Serve a notice of dispute to the other parties and furnish a copy to the DRA; and
b) Attempt to resolve the dispute in good faith through negotiation.

3.1. Protocols on sending a Notice of Dispute

a) To properly notify the other party of a WESM-related dispute, the party shall fill-up the Notice of Dispute (Form 1) and transmit the form to the other party/ies addressed to the DMP Focal Person. The mode of transmittal may be through fax, email or personal service depending on the order of preference of the receipt of Notice of Dispute mentioned in the other party's DMP.
b) The Notice of Dispute must be signed by an officer who has the proper authority to prepare and sign a Notice of Dispute.

3.2. Protocols on receiving a Notice of Dispute

a) An acknowledgement of receipt should be properly made by the DMP Focal Person within five (5) calendar days.
b) The acknowledgement receipt shall be transmitted in accordance with the mode of transmittal depending on the order of preference of receipt mentioned in the other party's DMP.

4. REQUESTS FOR INFORMATION

4.1. The DMP shall set out the procedures for responding to requests for information from another WESM Member and/or MO in relation to a WESM dispute.

4.1.1. Documents for Information Request

After a Notice of Dispute has been transmitted and received by the other party, either party may fill-up the Document Request Form (Form 2) that shall include details on the information needed and the relevance of the information requested. The requested party may file a response on the same document (Form 2) with an option on raising the exchange of information confidential and privileged and not binding if the dispute reaches mediation or arbitration stage.

4.1.2. Time period for Information Request

There should be a response to the request within ten (10) calendar days of receipt of the request.

4.1.3. Dispute on Information Request

In the event that the information request is something that cannot be easily responded to for whatever reason, the DMP Focal Person should respond quickly to the requesting party in identifying the aspects of the request which are contentious. If the requested party would not heed on the requested information, the parties may thresh out this issue in the negotiation stage.

5. NEGOTIATION

5.1. Within fifteen (15) calendar days after the receipt of the Notice of Dispute, the parties must meet by agreement to determine the feasibility of voluntary and amicable settlement of the dispute.

5.2. Before the conduct of negotiation, it may be useful if the parties will consider exchanging written summaries of the issues in dispute to apprise all the concerned parties of the unresolved issues including their description, factual background, arguments and claims.

5.3. During the negotiation stage, the parties have forty five (45) calendar days from the Notice of Dispute to resolve the dispute by themselves. The parties may agree in writing to extend this 45-calendar day period.

Should there be failure of negotiation, either of the parties may file a Request for Mediation to the DRA.

ATTACHMENTS

Form 1- Notice of Dispute
Form 2- Document Request Form

NOTICE OF DISPUTE

Form 1

Note: The Dispute Resolution Administrator must be furnished a copy of the Notice of Dispute with the address below:

Dispute Resolution Administrator
c/o Market Assessment Group
18th Floor, Robinsons Equitable Tower,
ADB Avenue, Ortigas Center,
Pasig City

I. PARTY SERVING NOTICE OF DISPUTE

Name of Company: _____

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Signature: _____

Name: _____

Date: _____

II. PARTY/IES NOTIFIED

(1) Name of Company: _____

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

(2) Name of Company: _____

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

(3) Name of Company: _____

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

(Please attach additional sheets if necessary)

III. CIRCUMSTANCES GIVING RISE TO THE DISPUTE

Date(s) dispute arose: _____

A description of the nature and circumstances of the dispute giving rise to the claims and of the basis upon which the claims are made, including copies of any relevant documents and amount of claims, if any. (Please attach additional sheets if necessary)

IV. REMEDY/RELIEF SOUGHT

DOCUMENT REQUEST FORM

Form 2

Date: _____

I. REQUESTING PARTY

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

II. REQUESTED PARTY

Main DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

Alternate DMP Contact

Name: _____

Position: _____

Tel.: _____ Mobile: _____

Fax: _____ Email: _____

Address:

III. PLEASE SPECIFY THE DOCUMENTS REQUESTED.

(Kindly attach additional sheets if necessary)

IV. PLEASE STATE RELEVANCE OF THE REQUESTED DOCUMENTS TO THE DISPUTE.

(Kindly attach additional sheets if necessary)

V. RESPONSE OF REQUESTED PARTY

(To be filled-up by the requested party)

Date:	
Name:	
Signature:	

ANNEX B CASE MANAGEMENT TECHNIQUES

The following are examples of case management techniques that can be used by the Arbitral Tribunal and the parties for controlling time and cost. Appropriate control of time and cost is important in all cases. In cases of low complexity and low value, it is particularly important to ensure that time and costs are proportionate to what is at stake in the dispute.

a) Bifurcating the proceedings or rendering one or more partial awards on key issues, when doing so may genuinely be expected to result in a more efficient resolution of the case.

b) Identifying issues that can be resolved by agreement between the parties or their experts.

c) Identifying issues to be decided solely on the basis of documents rather than through oral evidence or legal argument at a hearing.

d) Production of documentary evidence:

(i) requiring the parties to produce with their submissions the documents on which they rely;
(ii) avoiding requests for document production when appropriate in order to control time and cost;
(iii) in those cases where requests for document production are considered appropriate, limiting such requests to documents or categories of documents that are relevant and material to the outcome of the case;
(iv) establishing reasonable time limits for the production of documents;
(v) using a schedule of document production to facilitate the resolution of issues in relation to the production of documents.

e) Limiting the length and scope of written submissions and written and oral witness evidence (both fact witnesses and experts) so as to avoid repetition and maintain a focus on key issues.

f) Using telephone or video conferencing for procedural and other hearings where attendance in person is not essential and use of IT that enables online communication among the parties, the Arbitral Tribunal and the Secretariat of the DRA.

g) Organizing a pre-hearing conference with the Arbitral Tribunal at which arrangements for a hearing can be discussed and agreed and the Arbitral Tribunal can indicate to the parties issues on which it would like the parties to focus at the hearing.

h) Settlement of disputes:

(i) informing the parties that they are free to settle all or part of the dispute either by negotiation or through any form of amicable dispute resolution methods such as, for example, mediation under the WESM Mediation Rules;

(ii) where agreed between the parties and the Arbitral Tribunal, the Arbitral Tribunal may take steps to facilitate settlement of the dispute, provided that every effort is made to ensure that any subsequent award is enforceable at law.

ANNEX C EMERGENCY ARBITRATOR RULES

Article 1 – Application for Emergency Measures

1. A party wishing to have recourse to an emergency arbitrator pursuant to Section 9.8.2 of the Manual shall submit its Application for Emergency Measures (the "Application") to the *DRA Secretariat*.

2. The Application shall be supplied in a number of copies sufficient to provide one copy for each party, plus one for the emergency arbitrator, and one for the *DRA Secretariat*.

3. The Application shall contain the following information

    a) the name in full, description, address and other contact details of each of the parties;
    b) the name in full, address and other contact details of any person(s) representing the applicant;
    c) a description of the circumstances giving rise to the Application and of the underlying dispute referred or to be referred to arbitration;
    d) a statement of the Emergency Measures sought;
    e) the reasons why the applicant needs urgent interim or conservatory measures that cannot await the constitution of an arbitral tribunal;
    f) any relevant agreements and, in particular, the arbitration agreement;
    g) any agreement as to the place of the arbitration, the applicable rules of law or the language of the arbitration;
    h) proof of payment of the amount referred to in Article 7(1) of this Annex; and
    i) any Request for Arbitration and any other submissions in connection with the underlying dispute, which have been filed with the *DRA Secretariat* by any of the parties to the emergency arbitrator proceedings prior to the making of the Application.

    The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient examination of the Application.

4. If and to the extent that the DRA considers, on the basis of the information contained in the Application, that the Emergency Arbitrator Provisions apply with reference to Section 9.8.2.5 and 9.8.2.6 of the Manual, the *DRA Secretariat* shall transmit a copy of the Application and the documents annexed thereto to the responding party within two (2) working days. If and to the extent that the DRA considers otherwise, the *DRA Secretariat* shall inform the parties that the emergency arbitrator proceedings shall not take place with respect to some or all of the parties and shall transmit a copy of the Application to them for information within 48 hours.

5. The DRA shall terminate the emergency arbitrator proceedings if a Request for Arbitration has not been received by the *DRA Secretariat* from the applicant within ten (10) calendar

days of the *DRA Secretariat's* receipt of the Application, unless the emergency arbitrator determines that a longer period of time is necessary.

Article 2 - Appointment of the Emergency Arbitrator; Transmission of the File

1. The DRA shall appoint an emergency arbitrator within as short a time as possible, normally within two (2) calendar days from the *DRA Secretariat's* receipt of the Application.

2. The emergency arbitrator shall come from the pool of WESM-accredited Arbitrators. Every month, two (2) WESM Arbitrators shall be assigned as stand-by emergency arbitrators, one primary and one alternate, subject to their indication of availability. If a dispute requiring emergency arbitration is filed within the period when the WESM Arbitrator is assigned, he/she will be automatically contacted to handle the case.

3. Upon receipt of the Application for Emergency Arbitration, the *DRA Secretariat* shall, within one (1) working day, contact the assigned WESM Arbitrator through telephone, electronic mail and courier to confirm their availability and commence their appointment as emergency arbitrator.

4. No emergency arbitrator shall be appointed after the file has been transmitted to the arbitral tribunal pursuant to Section 9.6.1 of the Manual. An emergency arbitrator appointed prior thereto shall retain the power to make an order within the time limit permitted by Article 6(4) of this Annex.

5. Once the emergency arbitrator has been appointed, the *DRA Secretariat* shall so notify the parties and shall transmit the file to the emergency arbitrator. Thereafter, all written communications from the parties shall be submitted directly to the emergency arbitrator with a copy to the other party and the *DRA Secretariat*. A copy of any written communications from the emergency arbitrator to the parties shall be submitted to the *DRA Secretariat*.

6. Every emergency arbitrator shall be and remain impartial and independent of the parties involved in the dispute.

7. Before being appointed, a prospective emergency arbitrator shall sign a statement of acceptance, availability, impartiality and independence. The *DRA Secretariat* shall provide a copy of such statement to the parties.

8. An emergency arbitrator shall not act as an arbitrator in any arbitration relating to the dispute that gave rise to the Application.

Article 3 – Challenge of an Emergency Arbitrator

1. A challenge against the emergency arbitrator must be made within three (3) calendar days from receipt by the party making the challenge of the notification of the appointment or from the date when that party was informed of the facts and circumstances on which the challenge is based if such date is subsequent to the receipt of such notification.

2. The challenge shall be decided by the DRA after the *DRA Secretariat* has afforded an opportunity for the emergency arbitrator and the other party or parties to provide comments in writing within five (5) working days.

Article 4 - Place of Emergency Arbitrator Proceedings

1. If the parties have agreed upon the place of the arbitration, such place shall be the place of the emergency arbitrator proceedings. In the absence of such agreement, the DRA shall fix the place of the emergency arbitrator proceedings, without prejudice to the determination of the place of the arbitration pursuant to Section 9.6.3 of the Manual.

2. Any meetings with the emergency arbitrator may be conducted through a meeting in person at any location the emergency arbitrator considers appropriate or by video conference, telephone or similar means of communication.

Article 5 – Proceedings

1. The emergency arbitrator shall establish a procedural timetable for the emergency arbitrator proceedings within as short a time as possible, normally within two (2) calendar days from the transmission of the file to the emergency arbitrator pursuant to Article 2(3) of this Annex.

2. The emergency arbitrator shall conduct the proceedings in the manner which the emergency arbitrator considers to be appropriate, taking into account the nature and the urgency of the Application. In all cases, the emergency arbitrator shall act fairly and impartially and ensure that each party has a reasonable opportunity to present its case.

Article 6 – Order

1. Pursuant to Section 9.8.2.2 of the Manual, the emergency arbitrator's decision shall take the form of an order (the "Order").

2. In the Order, the emergency arbitrator shall determine whether the Application is admissible pursuant to Section 9.8.2.1 of the Manual and whether the emergency arbitrator has jurisdiction to order Emergency Measures.

3. The Order shall be made in writing and shall state the reasons upon which it is based. It shall be dated and signed by the emergency arbitrator.

4. The Order shall be made no later than fifteen (15) calendar days from the date on which the file was transmitted to the emergency arbitrator pursuant to Article 2(3) of this Annex. The DRA may extend the time limit no more than fifteen (15) days and not more than one occasion pursuant to a reasoned request from the emergency arbitrator, or on the DRA's own initiative if the DRA decides it is necessary to do so.

5. Within the time limit established pursuant to Article 6(4) of this Annex, the emergency arbitrator shall send the Order to the parties, with a copy to the *DRA Secretariat*, by any of the means of communication permitted by Section 9.1.2 of the Manual that the emergency arbitrator considers will ensure prompt receipt.

6. The Order shall cease to be binding on the parties upon:

    a) the DRA's termination of the emergency arbitrator proceedings pursuant to Article 1(6) of this Annex;
    b) the acceptance by the DRA of a challenge against the emergency arbitrator pursuant to Article 3 of this Annex;
    c) the arbitral tribunal's final award, unless the arbitral tribunal expressly decides otherwise; or
    d) the withdrawal of all claims or the termination of the arbitration before the rendering of a final award.

7. The emergency arbitrator may make the Order subject to such conditions as the emergency arbitrator thinks fit, including requiring the provision of appropriate security.

8. Upon a reasoned request by a party made prior to the transmission of the file to the arbitral tribunal pursuant to Section 9.6.1 of the Manual, the emergency arbitrator may modify, terminate or annul the Order.

Article 7 – Costs of the Emergency Arbitrator Proceedings

1. The applicant must pay an amount of PhP 250,000, consisting of PhP 50,000 for the *DRA Secretariat* administrative expenses and PhP 200,000 for the emergency arbitrator's fees and expenses. Notwithstanding Article 1(5) of this Annex, the Application shall not be notified to the other party/ies until the payment of PhP 250,000 is received by the *DRA Secretariat*.

2. The DRA may, at any time during the emergency arbitrator proceedings, decide to increase the emergency arbitrator's fees up to PhP 500,000 or the *DRA Secretariat* administrative expenses up to PhP 125,000 taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the emergency arbitrator and the costs of the *DRA Secretariat*. If the party which submitted the Application fails to pay

the increased costs within the time limit fixed by the *DRA Secretariat*, the Application shall be considered as withdrawn.

3. The emergency arbitrator's Order shall fix the costs of the emergency arbitrator proceedings and decide which of the parties shall bear them or in what proportion they shall be borne by the parties.

4. The costs of the emergency arbitrator proceedings include the *DRA Secretariat* administrative expenses, the emergency arbitrator's fees and expenses and the reasonable legal and other costs incurred by the parties for the emergency arbitrator proceedings.

5. In the event that the emergency arbitrator proceedings do not take place pursuant to Article 1(5) of this Annex or are otherwise terminated prior to the making of an Order, the DRA shall determine the amount to be reimbursed to the applicant, if any.

Article 8 – General Rule

1. The DRA shall have the power to decide, at the DRA's discretion, all matters relating to the administration of the emergency arbitrator proceedings not expressly provided for in this Annex.

2. In the DRA's absence or otherwise at the DRA's request, a member of the *DRA Secretariat* so designated by the DRA shall have the power to take decisions on behalf of the DRA. At least 24 hours prior to his/her leave of absence, the DRA shall specify in writing to the *DRA Secretariat* the powers, if any, he/she will be temporarily authorizing the *DRA Secretariat* to exercise on his/her behalf in, and for the duration of, his/her absence.

3. In all matters concerning emergency arbitrator proceedings not expressly provided for in this Annex, the DRA and the emergency arbitrator shall act in the spirit of the Rules and this Annex.

ANNEX D SCHEDULE OF MEDIATION COSTS

A. The party or parties filing a Request for Mediation shall include with the Request an advance of PhP50,000 to cover the costs of processing the Request for Mediation. No Request for Mediation shall be processed unless accompanied by the requisite payment. Such advance shall be credited to the Claimant's share of the advance on fees and costs

B. The administrative expenses of the Secretariat for the Mediation proceedings shall be fixed at the DRA's discretion depending on the tasks carried out by the Secretariat. Such administrative expenses shall not exceed the maximum sum of PhP150,000. However, the parties are not precluded from agreeing between/among them to disburse beyond the prescribed maximum amount if they or the circumstances of the dispute resolution proceedings so require.

C. The fees of the Mediator shall be calculated on the basis of the time reasonably spent by the Mediator in the Mediation proceedings, at an hourly rate fixed for such proceedings by the DRA in consultation with the Mediator and the parties. Such hourly rate shall be reasonable in amount and shall be determined in light of the complexity of the dispute and any other relevant circumstances. The amount of reasonable expenses of the Mediator shall be fixed by the DRA.

D. Amounts paid to the Mediator do not include any possible value added taxes (VAT) or other taxes or charges and imposts applicable to the Mediator's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the Mediator and the parties.

ANNEX E ARBITRATION COSTS AND FEES

Article 1 - Advance on Costs

1. Each request to commence an arbitration pursuant to these Arbitration Rules must be accompanied by an advance to cover the costs of the initial stages of arbitration. Such payment shall be credited to the Claimant's portion of the advance on costs.

2. The provisional advance fixed by the Secretariat according to Section 9.10.1.1 of the Manual shall normally not exceed the amount obtained by adding together the Secretariat administrative expenses, the minimum of the fees (as set out in the scale hereinafter) based upon the amount of the claim and the expected reimbursable expenses of the Arbitral Tribunal incurred with respect to the drafting of the Terms of Reference. If such amount is not quantified, the provisional advance shall be fixed at the discretion of the *Dispute Resolution Administrator*. Payment by the Claimant shall be credited to its share of the advance on costs fixed by the *Dispute Resolution Administrator*.

3. In general, after the Terms of Reference have been signed or approved by the DRA and the procedural timetable has been established, the Arbitral Tribunal shall, in accordance with Section 9.9.1.6 of the Manual, proceed only with respect to those claims or counterclaims in regard to which the whole of the advance on costs has been paid.

4. The advance on costs fixed by the DRA according to Sections 9.9.1.2 or 9.9.1.4 of the Manual comprises the fees of the arbitrators, any arbitration-related expenses of the arbitrators and the Secretariat administrative expenses.

5. Each party shall pay its share of the total advance on costs in cash.

6. The DRA may authorize the payment of advances on costs, or any party's share thereof, in installments, subject to such conditions as the DRA thinks fit, including the payment of additional Secretariat administrative expenses.

7. A party that has already paid in full its share of the advance on costs fixed by the DRA may, in accordance with Section 9.9.1.5 of the Manual, pay the unpaid portion of the advance owed by the defaulting party in cash.

8. When the DRA has fixed separate advances on costs pursuant to Section 9.9.1.3 of the Manual, the Secretariat shall invite each party to pay the amount of the advance corresponding to its respective claim(s).

9. When, as a result of the fixing of separate advances on costs, the separate advance fixed for the claim of either party exceeds one half of such global advance as was previously fixed (in respect of the same claims and counterclaims that are the subject of separate advances). In the event that the amount of the separate advance is subsequently increased, at least one half of the increase shall be paid in cash.

10. As provided in Section 9.10.1.5 of the Manual, the advance on costs may be subject to adjustment and/or readjustment at any time during the arbitration, in particular to take into account fluctuations in the amount in dispute, changes in the amount of the estimated expenses of the arbitrator, or the evolving difficulty or complexity of arbitration proceedings.

11. Before any expertise ordered by the Arbitral Tribunal can be commenced, the parties, or one of them, shall pay an advance on costs fixed by the Arbitral Tribunal sufficient to cover the expected fees and expenses of the expert as determined by the Arbitral Tribunal. The Arbitral Tribunal shall be responsible for ensuring the payment by the parties of such fees and expenses.

12. The amounts paid as advances on costs do not yield interest for the parties or the arbitrators.

Article 2 - Costs and Fees

1. Subject to Section 9.10.2.2 of the Manual, the *Dispute Resolution Administrator* shall fix the fees of the arbitrators in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, the Arbitral Tribunal shall fix their fees in accordance with sub-clause 2 below.

2. In setting the arbitrators' fees in a situation where the amount in dispute is not stated, the Arbitral Tribunal shall take into consideration the diligence and efficiency of the arbitrators, the time spent, the rapidity of the proceedings, the complexity of the dispute and the timeliness of the submission of the draft award, so as to arrive at a figure within the limits specified or, in exceptional circumstances (Section 9.10.2.2 of the Manual), at a figure higher or lower than those limits.

3. The arbitrators' fees and expenses shall be fixed exclusively by the DRA as required by the Manual. Separate fee arrangements between the parties and the arbitrators are contrary to the Manual.

4. The DRA shall fix the Secretariat administrative expenses of each arbitration in accordance with the scale hereinafter set out or, where the amount in dispute is not stated, at its discretion. This does not preclude the parties from agreeing between/among them to disburse beyond the administrative expenses prescribed in the scale, if they or the circumstances of the dispute resolution proceedings so require. Should the parties fail to agree, the Arbitral Tribunal is allowed to fix the administrative fees in the amount they deem fit, subject to the concurrence of the DRA.

5. At any time during the arbitration, the DRA may fix as payable a portion of the Secretariat administrative expenses corresponding to services that have already been performed by the DRA and the Secretariat.

6. The DRA may require the payment of administrative expenses in addition to those provided in the scale of administrative expenses as a condition for holding an arbitration in abeyance at the request of the parties or of one of them with the acquiescence of the other.

7. If an arbitration terminates before the rendering of a final award, the *Dispute Resolution Administrator* shall fix the fees and expenses of the arbitrators and the Secretariat administrative expenses at its discretion, taking into account the stage attained by the arbitral proceedings and any other relevant circumstances.

8. Any amount paid by the parties as an advance on costs exceeding the costs of the arbitration fixed by the DRA shall be reimbursed to the parties having regard to the amounts paid.

9. In the case of an application under Section 9.9.7.2 of the Manual or of a remission pursuant to Section 9.9.7.4 of the Manual, the *Dispute Resolution Administrator* may fix an advance to cover additional fees and expenses of the Arbitral Tribunal and additional Secretariat administrative expenses and may make the transmission of such application to the Arbitral Tribunal subject to the prior cash payment in full to the Secretariat of such advance. The *Dispute Resolution Administrator* shall fix at its discretion the costs of the procedure following an application or a remission, which shall include any possible fees of the arbitrators and Secretariat administrative expenses.

10. When an arbitration is preceded by an attempt at amicable resolution pursuant to the WESM Dispute Resolution, one half of the Secretariat administrative expenses paid for such ADR proceedings shall be credited to the Secretariat administrative expenses of the arbitration.

11. Amounts paid to the arbitrator do not include any possible value added tax (VAT) or other taxes or charges and imposts applicable to the arbitrator's fees. Parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the arbitrator and the parties.

12. Any Secretariat administrative expenses may be subject to value added tax (VAT) or charges of a similar nature at the prevailing rate.

13. It is not inconsistent with the Manual if the MO proves, and the Arbitral Tribunal so finds to its satisfaction, that it is interpleading or being impleaded as an "indispensable party" in a case by virtue merely of its functioning as the administrator of the WESM operations, however not being a "real party" (i.e., someone who stands to be benefitted or injured by the judgment in the suit, or the party entitled to the avails of the suit), with the effect that it may not be adjudged liable for the costs of and fees in arbitration every time a case is filed for arbitration.

Article 3 - Schedule of Administrative Expenses and Arbitrator's Fees

1. The Schedule of Administrative Expenses and Arbitrator's Fees set forth below shall be effective upon PEM Board's approval.

2. To calculate the Secretariat administrative expenses and the arbitrator's fees, the amounts calculated for each successive tranche of the amount in dispute must be added together.

3. All amounts fixed by the DRA or pursuant to any of the appendices to the Manual are payable in Philippine Pesos ("PHP") except where there is a justification otherwise, in which case the DRA may apply a different scale and fee arrangement in another currency.

Schedule of Arbitrators' Fees

SUM IN DISPUTE (SID) (in PhP)	FEES FOR 3 ARBITRATORS (in PhP)
UP TO 100M	500,000
OVER 100M - 200M	500,000 + 0.2% of SID in excess of 100M
OVER 200M - 300M	700,000 + 0.2% of SID in excess of 200M
OVER 300M - 400M	900,000 + 0.2% of SID in excess of 300M
OVER 400M - 500M	1,100,000 + 0.2% of SID in excess of 400M
OVER 500M - 1B	1,300,000 + 0.15% of SID in excess of 500M
OVER 1B - 2B	2,050,000 + 0.1% of SID in excess of 1B
OVER 2B - 5B	3,050,000 + 0.075% of SID in excess of 2B
OVER 5B - 10B	5,300,000 + 0.05% of SID in excess of 5B
OVER 10B	7,800,000 + 0.025% of SID in excess of 10B

Schedule of Administrative Costs

SUM IN DISPUTE (SID) (in PhP)	ADMINISTRATIVE COSTS (in PhP)
UP TO 100M	200,000
OVER 100M – 200M	200,000 + 0.12% of SID in excess of 100M
OVER 200M – 400M	320,000 + 0.08% of SID in excess of 200M
OVER 400M – 500M	480,000 + 0.04% of SID in excess of 400M
OVER 500M	520,000 + 0.02% of SID in excess of 500M

ANNEX F TREASURY SERVICES

I. The WESM-Accredited ADR Support Service Center ("ASSC"), appointed according to these Rules to assist the Mediator and/or Arbitral Tribunal on the administrative aspects of a particular case shall also provide the integrated services of (1) billing/invoicing the parties for fees, costs, expenses, etc. imposable to them under these Rules; (2) keeping the funds collected in an interest-bearing checking account/savings account; (3) issuing receipts, and like services, all under its own name, letterhead, official receipt, etc. but only acting as a trustee or in a fiduciary capacity for the said funds so received; (4) disbursing payments to the Mediator/s and/or Arbitrator/s their fees, and to suppliers of services, facilities or goods the costs therefor and such other expenses as may be authorized by the DRA, Mediator/s, and Arbitral Tribunal, as the case may be, according to or under these Rules, as well as to (5) act as the Withholding Agent in favor of the Government for taxes that needed to be withheld under applicable laws; (6) rendering accounting services for each account as aforesaid, including bookkeeping entries , etc., and submitting records and reports on the same to the PEM Board through the DRA; and (7) to do whatever services are necessary under the circumstances or towards the final and complete disposition of the subject dispute or case.

II. After the subject dispute/case has been terminated (i.e., upon the date of the promulgation of the final Award) or otherwise has for whatever situation or reason closed (i.e., upon the date of the report to the DRA by the Mediator e.g., of the successful closure of a mediation case, or by the Arbitral Tribunal e.g., of the parties' having withdrawn their case, etc.) , the ASSC shall maintain any and all excess or unused funds from that particular dispute/case, in the bank until after one (1) year (when it is reasonably certain that no expenditures would need be made for the said dispute/case), in which case the ASSC concerned shall submit a final accounting and report on the said account to the PEM Board through the DRA.

III. Finally, the ASSC concerned shall dispose of the aforesaid excess or unused funds including interest earned, if any, only in the manner instructed in writing by the PEM Board.

IV. Treasury services provided under this section shall not be a separate fee chargeable to the parties.

ANNEX G OATH OF OFFICE

OATH OF OFFICE

I, _____, do solemnly swear that I will faithfully and conscientiously discharge my responsibilities as (an arbitrator/a mediator) of the Wholesale Electricity Spot Market (WESM) of the Philippines.

I will preserve and support the Rules of the Wholesale Electricity Spot Market (WESM Rules); I will promote its aims and objectives; I will faithfully observe its Dispute Resolution Market Manual; I will conduct myself in a manner becoming of (an arbitrator/a mediator) of the WESM, according to the best of my knowledge and ability, with all good fidelity; and I impose upon myself these voluntary obligations, without any mental reservation or purpose of evasion.

SO HELP ME GOD.

(Date)

_____
Inductee

_____
Inducting Officer

ANNEX H FINAL OFFER ARBITRATION SUPPLEMENTARY RULES

(also referred to as PENDULUM ARBITRATION SUPPLEMENTARY RULES)
*[*These Supplementary Rules are patterned after that of USA's International Center for Dispute Resolution or ICDR]*

1. Applicability

These *Final Offer Arbitration Supplementary Rules* ("Supplementary Rules") shall apply to disputes where: (a) parties which are bound hereby have not mutually agreed otherwise; or (b) parties which are not bound hereby have mutually agreed to be so bound. Thus, parties who are bound by these Supplementary Rules as their default mode may choose to "opt-out" and mutually agree to be bound by the conventional mode of arbitration. On the other hand, parties who are not bound by these Supplementary Rules may also "opt-out" from the conventional mode or their default mode of arbitration and mutually agree to "opt-in" and be bound by these Supplementary Rules.

2. Exchange of Settlement Offers

Each party shall directly exchange with the other party or parties at least two (2) settlement offers after the commencement of the arbitration and prior to the arbitration hearing. The first of the two settlement offers shall be exchanged between the parties (in the manner set forth in Paragraph 3 below) not more than 30 days after the commencement of the arbitration. The second of the two settlement offers shall be exchanged between the parties (in the manner set forth in Paragraph 3 below) not less than 30 days prior to the arbitration hearing. Such settlement offers will not be shared with the arbitral tribunal.

3. Exchange of Final Offers

At least two (2) weeks prior to the commencement of the arbitration hearing, each party shall submit to the other party or parties and the arbitral tribunal its final offer. In order to ensure simultaneous exchange of final offers, the parties shall submit their offers to the tribunal, which shall hold the offers until all offers are received (but without reading them) and then distribute them to all parties as nearly simultaneously as practicable. The parties (but not the tribunal) may view the final offers at that time.

The tribunal shall not open the final offers until the arbitration hearings have been closed. The tribunal may, in its discretion, require an earlier or later exchange of final offers prior to the commencement of the arbitration hearing, but in no event later than the commencement of the arbitration hearing. In rendering its award, the tribunal shall give consideration only to the final offer submitted by each party.

If a party fails to file a settlement or final offer, the tribunal may proceed with the arbitration.

4. Amendments to Final Offers

Absent mutual agreement of the parties, there is no right to amend final offers once submitted to the arbitral tribunal. If any such amendments to the final offers are submitted, they shall be exchanged in accordance with the procedures set forth in Rule 3 above, except that they may be submitted, if necessary, within two weeks prior to the commencement of the arbitration hearing.

5. Scope of Final Offer

Each party's final offer shall be a single monetary amount that includes all breaches, controversies and claims arising out of or relating to the contract or transaction between the parties to the arbitration, including without limitation all affirmative claims, defenses, setoffs/offsets, counterclaims and/or cross-claims that are at issue in the arbitration. The offer shall identify the currency applicable to such amount, as well as which party is responsible for the payment of such amount and to whom such payment is to be made. The arbitral tribunal may prescribe the form of final offer submissions.

Each final offer shall exclude prejudgment and/or post-judgment interest, which may be added by the tribunal to its final award as applicable and appropriate. Such final offers shall also exclude the costs associated with the arbitration, which shall be awarded in accordance with the governing arbitration rules as determined and allocated by the tribunal.

6. Award

The arbitral tribunal shall be limited to choosing only one of the final offers submitted by the parties. The tribunal's award shall be based solely thereon, plus any interest, costs, or fees to be awarded pursuant to the governing arbitration rules, applicable law, or the agreement of the parties.

The tribunal's award shall be reasoned, stating the rationale for its selection of one party's final offer over that of the other party or parties.

7. Modifications by Agreement of the Parties

The parties may modify these procedures by written agreement.

ANNEX I: GUIDELINE FOR VIRTUAL HEARINGS

Article 1 – Introduction

This ***Guideline for Virtual Hearings*** is intended to serve as a guide to best practice for conducting virtual hearings in Wholesale Electricity Spot Market (WESM) Arbitration.

Whether or not a virtual hearing, in part or in full, is suitable for a particular matter remains a matter for the parties and the arbitral tribunal.

This Guideline is being made available with reference to any dealings during a circumstance that prevents physical meetings.

Although an understanding of virtual hearing includes, but is not limited to, video and audio conferences, email and offline means such as documents-only proceedings, this Guideline will focus on the use of video and audio conferencing. The parties are encouraged to primarily use combined video or audio conferencing whenever possible. This is because combined video and audio allows participants to create a "working environment" that allows participants to be more engaged in the process. Further, combined video and audio conferencing is a more efficient means of resolving complex disputes where physical hearings or meetings are not feasible.

Article 2 - Application for Conduct of Virtual Hearings

1. Health and safety considerations as well as travel restrictions may significantly affect conferences and hearings, and may even make it impossible to convene physically in a single location.

2. When faced with such a situation, parties, counsel and arbitral tribunals should consider whether the hearing or conference should be postponed, whether it can be conducted by physical presence with special precautions, or whether to proceed with a virtual hearing.

3. In deciding on the appropriate procedural measures to proceed with the arbitration in an expeditious and cost-effective manner, an arbitral tribunal should take account of all the circumstances, including those that are the consequence of a pandemic, the nature and length of the conference or hearing, the complexity of the case and number of participants, whether there are particular reasons to proceed without delay, whether rescheduling the hearing would entail unwarranted or excessive delays, and as the case may be the need for the parties to properly prepare for the hearing.

4. If the parties agree, or the arbitral tribunal determines, that convening in a single physical location is indispensable yet impossible under current conditions, arbitral tribunals and parties should make every effort to

reschedule the hearing or conference in a way that minimizes delay. Parties and arbitral tribunals should in such cases consider available options to make progress on at least part of the case despite the postponement, including by using the procedural tools discussed in the present Guideline.

5. If the parties agree, or the arbitral tribunal determines, that convening in a single physical location is indispensable and that doing so is possible despite current conditions, the arbitral tribunal and the parties should consult to discuss and apply the specific rules and advisory guidance at the physical location of the hearing and the appropriate sanitary measures to ensure the safety of all participants, in particular by allowing sufficient distance between participants, making masks and disinfectant gel available, and any other appropriate measures.

6. If the parties agree, or the arbitral tribunal determines, to proceed with a virtual hearing, then the parties and the arbitral tribunal should take into account, openly discuss and plan for special features of proceeding in that manner, including those addressed below and in the Appendices hereto.

7. If an arbitral tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, it should carefully consider the relevant circumstances, assess whether the award will be enforceable at law, and provide reasons for that determination. In making such a determination, arbitral tribunals may wish to take account of their broad procedural authority under the following, to, after consulting the parties, "adopt such procedural measures as [the arbitral tribunal] considers appropriate, provided that they are not contrary to any agreement of the parties"[1]:

    a. Section 30 of Republic Act No. 9285, otherwise known as the “Alternative Dispute Resolution Act of 2004”, which states:

> “**SEC. 30. *Place of Arbitration*.** - The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties, shall decide on a different place of arbitration.
>
> The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property or documents.”

[1] Clause 9.7.6.2 of the WESM Dispute Resolution Manual.

b. Articles 18 and 19 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law, which state:

> "**CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS**
>
> *Article 18. Equal treatment of parties*
>
> The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.
>
> *Article 19. Determination of rules of procedure*
>
> (1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
>
> (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence."

c. Sections 19 and 33 of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004", adopting the provisions of the UNCITRAL Model Law referred to in Article 3(b) above and their applicability hereto, as follows:

> "**SEC. 19. *Adoption of the Model Law on International Commercial Arbitration*.** - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix "A".
>
> **SEC. 33. *Applicability to Domestic Arbitration*.** - Article 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Section 22 to 31 of the preceding Chapter 4 shall apply to domestic arbitration."

d. Chapters II and III of Republic Act No. 8792, otherwise known as the "Electronic Commerce Act of 2000", which state:

"CHAPTER II
LEGAL RECOGNITION OF
ELECTRONIC WRITING OR DOCUMENT
AND DATA MESSAGES

Section 6. *Legal Recognition of Electronic Data Messages* - Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the data message purporting to give rise to such legal effect, or that it is merely referred to in that electronic data message.

Section 7. *Legal Recognition of Electronic Documents* - Electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing, and -

(a) Where the law requires a document to be in writing, that requirement is met by an electronic document if the said electronic document maintains its integrity and reliability and can be authenticated so as to be usable for subsequent reference, in that -

i. The electronic document has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and

ii. The electronic document is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

(b) Paragraph (a) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the document not being presented or retained in its original form.

(c) Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document if -

i. There exists a reliable assurance as to the integrity of the document from the time when it was first generated in its final form; and

ii. That document is capable of being displayed to the person to whom it is to be presented:

Provided, That no provision of this Act shall apply to vary any and all requirements of existing laws on formalities required in the execution of documents for their validity.

For evidentiary purposes, an electronic document shall be the functional equivalent of a written document under existing laws.

This Act does not modify any statutory rule relating to admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

Section 8. *Legal Recognition of Electronic Signatures.* - An electronic signature on the electronic document shall be equivalent to the signature of a person on a written document if that signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document, existed under which -

(a) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document necessary for his consent or approval through the electronic signature;

(b) Said method is reliable and appropriate for the purpose for which the electronic document was generated or communicated, in the light of all circumstances, including any relevant agreement;

(c) It is necessary for the party sought to be bound, in or order to proceed further with the transaction, to have executed or provided the electronic signature; and

(d) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

Section 9. *Presumption Relating to Electronic Signatures* - In any proceedings involving an electronic signature, it shall be presumed that -

(a) The electronic signature is the signature of the person to whom it correlates; and

(b) The electronic signature was affixed by that person with the intention of signing or approving the electronic document unless the person relying on the electronically signed electronic document knows or has noticed defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

Section 10. *Original Documents.* -

(1) Where the law requires information to be presented or retained in its original form, that requirement is met by an electronic data message or electronic document if;

(a) the integrity of the information from the time when it was first generated in its final form, as an electronic data message or electronic document is shown by evidence aliunde or otherwise; and

(b) where it is required that information be presented, that the information is capable of being displayed to the person to whom it is to be presented.

(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

(3) For the purpose of subparagraph (a) of paragraph (1):

(a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display; and

(b) the standard of reliability required shall be assessed in the light of purpose for which the information was generated and in the light of all the relevant circumstances.

Section 11. *Authentication of Electronic Data Messages and Electronic Documents.* - Until the Supreme Court by appropriate rules shall have so provided, electronic documents, electronic data messages and electronic signatures, shall be authenticated by demonstrating, substantiating and validating a claimed identity of a user, device, or another entity is an information or communication system, among other ways, as follows;

(a) The electronic signature shall be authenticated by proof than a letter, character, number or other symbol in electronic form representing the persons named in and attached to or logically associated with an electronic data message, electronic document, or that the appropriate methodology or security procedures, when applicable, were employed or adopted by such person, with the intention of authenticating or approving in an electronic data message or electronic document;

(b) The electronic data message or electronic document shall be authenticated by proof that an appropriate security procedure, when applicable was adopted and employed for the purpose of verifying the originator of an electronic data message and/or electronic document, or detecting error or alteration in the communication, content or storage of an electronic document or electronic data message from a specific point, which, using algorithm or codes, identifying words or numbers, encryptions, answers back or acknowledgement procedures, or similar security devices.

The supreme court may adopt such other authentication procedures, including the use of electronic notarization systems as necessary and advisable, as well as the certificate of authentication on printed or hard copies of the electronic document or electronic data messages by electronic notaries, service providers and other duly recognized or appointed certification authorities.

The person seeking to introduce an electronic data message or electronic document in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic data message or electronic document is what the person claims it to be.

In the absence of evidence to the contrary, the integrity of the information and communication system in which an electronic data message or electronic document is recorded or stored may be established in any legal proceeding -

a.) By evidence that at all material times the information and communication system or other similar device was operating in a manner that did not affect the integrity of the electronic data message and/or electronic document, and there are no other reasonable grounds to doubt the integrity of the information and communication system;

b.) By showing that the electronic data message and/or electronic document was recorded or stored by a party to the proceedings who is adverse in interest to the party using it; or

c.) By showing that the electronic data message and/or electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using the record.

Section 12. *Admissibility and Evidential Weight of Electronic Data Message or Electronic Document.* - In any legal proceedings, nothing in the application of the rules on evidence shall deny the admissibility of an electronic data message or electronic document in evidence -

(a) On the sole ground that it is in electronic form; or

(b) On the ground that it is not in the standard written form, and the electronic data message or electronic document meeting, and complying with the requirements under Sections 6 or 7 hereof shall be the best evidence of the agreement and transaction contained therein.

In assessing the evidential weight of an electronic data message or electronic document, the reliability of the manner in which it was generated, stored or communicated, the reliability of the manner in which its originator was identified, and other relevant factors shall be given due regard.

Section 13. *Retention of Electronic Data Message or Electronic Document.* - Notwithstanding any provision of law, rule or regulation to the contrary -

(a) The requirement in any provision of law that certain documents be retained in their original form is satisfied by retaining them in the form of an electronic data message or electronic document which -

(i) Remains accessible so as to be usable for subsequent reference;

(ii) Is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to accurately represent the electronic data message or electronic document generated, sent or received;

(iii) Enables the identification of its originator and addressee, as well as the determination of the date and the time it was sent or received.

(b) The requirement referred to in paragraph (a) is satisfied by using the services of a third party, provided that the conditions set forth in subparagraphs (i), (ii) and (iii) of paragraph (a) are met.

Section 14. *Proof by Affidavit.* - The matters referred to in Section 12, on admissibility and Section 9, on the presumption of integrity, may be presumed to have been established by an affidavit given to the best of the deponent's knowledge subject to the rights of parties in interest as defined in the following section.

Section 15. *Cross* - Examination.

(1) A deponent of an affidavit referred to in Section 14 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

(2) Any party to the proceedings has the right to cross-examine a person referred to in section 11, paragraph 4, sub paragraph c.

CHAPTER III.
COMMUNICATION OF ELECTRONIC DATA MESSAGES OR ELECTRONIC DOCUMENTS

Section 16. *Formation of Validity of Electronic Contracts.*

(1) Except as otherwise agreed by the parties, an offer, the acceptance of an offer and such other elements required under existing laws for the formation of contracts may be expressed in, demonstrated and proved by means of electronic data messages or electronic documents and no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all of the elements required under existing laws for the formation of contracts is expressed, demonstrated and proved by means of electronic data messages or electronic documents.

(2) Electronic transactions made through networking among banks, or linkages thereof with other entities or networks, and vice versa, shall be deemed consummated upon the actual dispensing of cash or the debit of one account and the corresponding credit to another, whether such transaction is initiated by the depositor or by an authorized collecting party: Provided, that the obligation of one bank, entity, or person similarly situated to another arising therefrom shall be considered absolute and shall not be subjected to the process of preference of credits.

Section 17. *Recognition by Parties of Electronic Data Message or Electronic Document.* - As between the originator and the addressee of an electronic data message or electronic document, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic data message.

Section 18. *Attribution of Electronic Data Message.* -

(1) An electronic data message or electronic document is that of the originator if it was sent by the originator himself.

(2) As between the originator and the addressee, an electronic data message or electronic document is deemed to be that of the originator if it was sent:

(a) by a person who had the authority to act on behalf of the originator with respect to that electronic data message or electronic document; or

(b) by an information system programmed by, or on behalf of the originator to operate automatically.

(3) As between the originator and the addressee, an addressee is entitled to regard an electronic data message or electronic document as being that of the originator, and to act on that assumption, if:

(a) in order to ascertain whether the electronic data message or electronic document was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

(b) the electronic data message or electronic document as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic data messages as his own.

(4) Paragraph (3) does not apply:

(a) as of the time when the addressee has both received notice from the originator that the electronic data message or electronic document is not that of the originator, and has reasonable time to act accordingly; or

(b) in a case within paragraph (3) sub-paragraph (b), at any time when the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was not that of the originator.

(5) Where an electronic data message or electronic document is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic data message or electronic document as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic data message or electronic document as received.

(6) The addressee is entitled to regard each electronic data message or electronic document received as a separate electronic data message or electronic document and to act on that assumption, except to the extent that it duplicates another electronic data message or electronic document and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was a duplicate.

Section 19. *Error on Electronic Data Message or Electronic Document.* - The addressee is entitled to regard the electronic data message or electronic document received as that which the originator intended to send, and to act on that assumption, unless the addressee knew or should have known, had the addressee exercised reasonable care or used the appropriate procedure –

(a) That the transmission resulted in any error therein or in the electronic document when the electronic data message or electronic document enters the designated information system, or

(b) That electronic data message or electronic document is sent to an information system which is not so designated by the addressee for the purposes.

Section 20. *Agreement on Acknowledgement of Receipt of Electronic Data Messages or Electronic Documents.*- The following rules shall apply where, on or before sending an electronic data message or electronic document, the originator and the addressee have agreed, or in that electronic document or electronic data message, the

originator has requested, that receipt of the electronic document or electronic data message be acknowledged:

a.) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by or through any communication by the addressee, automated or otherwise, or any conduct of the addressee, sufficient to indicate to the originator that the electronic data message or electronic document has been received.

b.) Where the originator has stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgement thereof, the electronic data message or electronic document is treated as though it has never been sent, until the acknowledgement is received.

c.) Where the originator has not stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within the reasonable time, the originator may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and if the acknowledgement is not received within the time specified in subparagraph (c), the originator may, upon notice to the addressee, treat the electronic document or electronic data as though it had never been sent, or exercise any other rights it may have.

Section 21. *Time of Dispatch of Electronic Data Messages or Electronic Documents.* - Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic data message or electronic document occurs when it enters an information system outside the control of the originator or of the person who sent the electronic data message or electronic document on behalf of the originator.

Section 22. *Time of Receipt of Electronic Data Messages or Electronic Documents.* - Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic data message or electronic document is as follows:

a.) If the addressee has designated an information system for the purpose of receiving electronic data message or electronic document, receipt occurs at the time when the electronic data message or electronic document enters the designated information system: Provide, however, that if the originator and the addressee are both participants in the designated information system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee;

b.) If the electronic data message or electronic document is sent to an information system of the addressee that is not the designated information system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee;

c.) If the addressee has not designated an information system, receipt occurs when the electronic data message or electronic document enters an information system of the addressee.

These rules apply notwithstanding that the place where the information system is located may be different from the place where the electronic data message or electronic document is deemed to be received.

Section 23. *Place of Dispatch and Receipt of Electronic Data Messages or Electronic Documents.* - Unless otherwise agreed between the originator and the addressee, an electronic data message or electronic document is deemed to be dispatched at the place where the originator has its place of business and received at the place where the addressee has its place of business. This rule shall apply even if the originator or addressee had used a laptop or other portable device to transmit or received his electronic data message or electronic document. This rule shall also apply to determine the tax situs of such a transaction.

For the purpose hereof -

a. If the originator or addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business.

b. If the originator or the addressee does not have a place of business, reference is to be made to its habitual residence; or

c. The "usual place of residence" in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

Section 24. *Choice of Security Methods.* - Subject to applicable laws and /or rules and guidelines promulgated by the Department of Trade and Industry with other appropriate government agencies, parties to any electronic transaction shall be free to determine the type of level of electronic data message and electronic document security needed, and to select and use or implement appropriate technological methods that suit their need."

e. Clause 9.7 of the WESM's Dispute Resolution Manual as provided herein above.

8. While Clause 9.7.9.2 of the WESM Dispute Resolution Manual provides that after studying the written submissions of the parties and all documents relied upon, the arbitral tribunal "shall hear the parties together in person if any of them so requests," this language can be construed [as the International Chamber of Commerce (ICC) does in paragraph 23 of its *Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic* issued on 9 April 2020] "as referring to the parties having an opportunity for a live, adversarial exchange and not to preclude a hearing taking place 'in person' by virtual means if the circumstances so warrant."

9. Clause 9.7.9.1 of the WESM Dispute Resolution Manual broadly provides that the arbitral tribunal "shall proceed within as short a time as possible to establish the facts of the case *by all appropriate means*" (emphasis added). In context, Clause 9.7.9.2 thereof is structured to regulate whether the arbitral tribunal can decide the dispute based on written submissions and documents only or whether there should also be a live hearing. Hence, whether the arbitral tribunal construes Clause 9.7.9.2 as requiring a face-to-face hearing, or whether the use of video or teleconferencing suffices, will depend on the

circumstances of the case. Accordingly, an arbitral tribunal may, in appropriate circumstances, adopt different approaches as it exercises its authority to establish procedures suitable to the particular circumstances of each arbitration and fulfills its overriding duty to conduct the arbitration in an expeditious and cost-effective manner.

Article 3 – Procedural Issues

1. Service of Documents and Notifications

   a. The parties may be required that new requests for arbitration (including pertinent exhibits) and other initiating documents be filed with the Secretariat in electronic form. The Secretariat thereafter to promptly liaise with the claimant parties to ascertain whether notification of the request for arbitration by email is feasible.

   b. Arbitral tribunals and parties are encouraged to sign the Terms of Reference in counterparts and electronic form.

   c. To mitigate the current difficulties for the submissions of hard copies, arbitral tribunals should encourage the parties to use electronic means of communication for the submissions and exhibits to the full extent possible. It is here required that communications with and from the Secretariat be in electronic form.

   d. Timely notification of awards to the parties requires proactive communication between arbitral tribunals and the Secretariat. To minimize delay, arbitral tribunals should promptly alert the Secretariat as soon as they have begun signing originals of the award. The Secretariat's counsel in charge of the file shall thereafter indicate to the arbitral tribunal the office of the Secretariat to which the originals should be sent.

   e. Subject to any requirements of mandatory law that may be applicable, the parties may agree that: (i) any award be signed by the members of the arbitral tribunal in counterparts, and/or (ii) all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means that provides a record of the sending thereof. Parties are encouraged to agree, whenever possible, to the electronic notification of the award. The Secretariat shall in principle not proceed with an electronic notification of the award unless explicitly agreed by the parties.

2. To ensure that parties are treated with equality and each party is given a full opportunity to present its case during a virtual hearing, the arbitral tribunal should consider:

a. Different time zones in fixing the hearing dates, start and finish times, breaks and length of each hearing day;

b. Logistics of the location of participants including but not limited to total number of participants, number of remote locations, extent to which any participants will be in the same physical venue, extent to which members of the arbitral tribunal may be in the same physical venue as one another and/or any other participants, availability and control of break out rooms;

c. Use of real-time transcript or another form of recording;

d. Use of interpreters, including whether simultaneous or consecutive;

e. Procedures for verifying the presence of and identifying all participants, including any technical administrator;

f. Procedures for the taking of evidence from fact witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved;

g. Use of demonstratives, including through shared screen views; and

h. Use of an electronic hearing bundle hosted on a shared document platform that ensures access by all participants.

i. For further efficiency, parties should utilize electronic bundles for cross examination of witnesses and experts. Electronic bundles may be shared immediately before the commencement of the cross examination, operating the facilities for which best preserves the integrity of the arbitral process, preserves confidentiality and ensures proper data protection.

j. Ensuring with the parties that any video conferencing platform that is used for virtual hearings is licensed and is set to maximum security settings e.g., Zoom, Microsoft Teams, Google Meet, BlueJeans, Cisco, and Skype for Business, preferably with technical support to assist arbitral tribunals with using such platforms, joining a meeting (or hearing), operating in-meeting audio and video functions, and operating screen sharing functions.

k. Considering documents sharing platforms for electronic bundles. Like video conference platforms, these also range from customized hearing solutions offered by some hearing centers and/or service providers (such as Opus, Transperfect and XBundle). Customized or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.

Disclaimer: The DRA does not endorse or make any representation or warranty with respect to any of the third-party vendors mentioned in this Guidance Note. Parties, counsel and arbitral tribunals should make their own due diligence as to the suitability of each of them in any given case.

Article 4 – Definition of Terms

Agree Bundle of Documents - shall mean the agreed and indexed documents submitted to the Arbitral Tribunal for the purposes of the hearing.

Hearing Venue - shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.

Observer - shall mean any individual who is present in the Venue other than the Parties, Arbitral Tribunal, Witness, interpreter.

Party/ Parties - shall mean the party or parties to the arbitration.

Remote Venue - shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing Venue), typically where a minority of the participants are located.

Tribunal - shall mean the arbitral tribunal.

Venue - shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).

Witness - shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.

APPENDIX A OF ANNEX I: CHECKLIST FOR A PROTOCOL ON VIRTUAL HEARINGS

1. Pre-hearing Plan, Scope and Logistics

a. Identifying whether and which issues are essential to be on a hearing agenda and which can be dealt with on "documents only";

b. Agreeing the number and list of participants (arbitrators, parties, counsel, witnesses, experts, administrative secretaries, interpreters, stenographers, technicians, etc.);

c. Agreeing the number of participants per virtual room and whether a 360º view for all participating rooms is required or necessary;

d. Agreeing regarding virtual rooms that will permit the arbitrators, and each side in the case, to confer privately amongst themselves during the hearing;

e. Identifying all log-in locations and points of connection;

f. Agreeing that each individual present in each virtual room will be identified at the start of the videoconference; and

g. In light of the above, consulting and agreeing among parties and arbitral tribunal on the hearing date, duration and daily timetable taking into account the different time zones.

2. Technical Issues, Specifications, Requirements and Support Staff

a. Consultation between the arbitral tribunal and the parties regarding:

   i. the preferred platform and technology to be used (including legal access to such platform and technology);

   ii. the minimum system specifications and technical requirements for smooth connectivity (audio and video), adequate visibility and lighting in each location;

   iii. whether certain equipment is required in each location (phones, back-up computers, connectivity boosters/extenders, any other equipment or audio- visual aids as deemed necessary by the parties);

b. Preliminary check on compatibility of selected platform and technology to be used;

c. Considering the need for tutorials for participants who are not familiar with the technology, platform, applications and/or equipment to be used in the hearing;

d. Consultation between the arbitral tribunal and the parties regarding the contingency measures to be implemented in case of sudden technical failures, disconnection, power outages (alternative communication channels and virtual technical support for all participants); and

e. Running a minimum of two mock sessions within the month preceding the hearing to test connectivity and streaming, with the last session being held one day before the hearing to ensure everything is in order.

3. Confidentiality, Privacy and Security

a. Consultation between the arbitral tribunal and the parties on whether the virtual hearing will remain private and confidential to participants;
b. Agreeing an access and confidentiality undertaking that binds all participants;

c. Consultation between the arbitral tribunal and the parties on:

i. the recording of the virtual hearing (audio-visual recording, confidentiality of the recording and value of recording compared to any produced written transcript, etc.);

ii. any overriding privacy requirements or standards that may impact access or connectivity of certain participants; and

iii. the minimum requirements of encryption to safeguard the integrity and security of the virtual hearing against any hacking, illicit access, etc.

4. Online Etiquette and Due Process Considerations

a. Consultation between the arbitral tribunal and the parties on the practices needed to safeguard the rights and obligations of participants in a virtual environment. This includes: identifying lead speakers, non-interruption, observing reasonable and responsible use of the platform and bandwidth, avoiding use of equipment that interferes with connectivity or allows illicit recording, agreeing a procedure for objections, etc.;

b. Obtaining written statements from the parties/counsel that the tested platform and technology are adequate as tested by the parties;

c. Confirming the parties' agreement on proceeding with a virtual hearing or identifying the legal basis for proceeding with a virtual hearing absent such agreement by the parties; and

d. Advising the parties on their duty to cooperate on technical matters prior to and during the virtual hearing.

5. Presentation of Evidence and Examination of Witnesses and Experts

a. Consultation between the arbitral tribunal and the parties on the organization and presentation of oral pleadings;

b. Identifying whether counsel will be using multi-screens for online pleadings, presentation of evidence and agreeing the modalities for submitting and showing demonstrative exhibits in a virtual environment;

c. Consultation between the arbitral tribunal and the parties on the examination of witnesses and experts (order of calling and examining witnesses/experts, connection time and duration of availability, virtual sequestration, the permission/prohibition of synchronous or asynchronous communications between witnesses and parties/counsel in chat rooms or through concealed channels of communications, interaction between the examiner and the witness/expert in an online environment, etc.); and

d. Consultation between the arbitral tribunal and the parties on virtual transcription and the use of stenographers and interpreters that are capable and able to deliver the necessary level of service in a virtual environment.

APPENDIX B OF ANNEX I: SUGGESTED CLAUSES FOR VIRTUAL HEARINGS PROTOCOLS AND PROCEDURAL ORDERS DEALING WITH ITS ORGANIZATION

1. PARTICIPANTS

"The tribunal confirms and directs that the hearing scheduled for (*insert date and time*) shall be conducted by videoconference.

Based on the information currently provided by the parties, the following participants ("**Participants**") shall take part in the hearing from the locations specified herein below:

a. **Claimant**
   (List names and log-in location(s) and point of connection)
b. **Claimant's Counsel**
   (List names and log-in location(s) and point of connection)
c. **Respondent**
   (List names and log-in location(s) and point of connection)
d. **Respondent's Counsel**
   (List names and log-in location(s) and point of connection)
e. **Tribunal**
   (List names of members of the tribunal and their location(s) and point of connection)
f. **Witnesses / Experts / Transcription Provider / Support Staff & Technicians / Other participants (as applicable)**
   (List names and log-in location(s) and point of connection)

Each Participant will promptly notify, by email communication circulated to all Participants, any change to their log-in location or connection details."

2. TECHNICAL ISSUES, SPECIFICATIONS, REQUIREMENTS AND SUPPORT STAFF

"The parties shall each secure a reliable video link connection of sufficient quality that will enable all Participants to participate effectively in the hearing through the chosen platform. The parties shall discuss amongst themselves and shall furnish the tribunal with a joint list of agreed providers of reliable video conferencing services within days from the date hereof, and the tribunal shall consult the parties on their preferred choice from the list of agreed providers prior to selecting a provider.

The parties shall consult and seek to agree on the following within days from the date hereof:

(i) the minimum system specifications and technical requirements for continuous and adequate audio-visual connectivity (types of operating systems to be used, processors' speeds, RAM capacity, transmission speeds, network bandwidth, etc.);

(ii) any hardware, equipment (display screens, high-resolution webcams, noise cancelling microphones or headphones, phones, back-up computers, connectivity boosters/extenders, any other equipment or audio-visual aids as deemed necessary by the parties) and software applications required for the hearing; and

(iii) any location-specific requirements with respect to any location from which a connection is initiated.

If no agreement is reached regarding the points listed above, the parties shall communicate to the tribunal their separate proposals together with an explanation of technical reasons for the specifications and requirements they contend are reasonably required for the selected video conference provider/platform within _____ days from the expiry of the date set in the prior paragraph. The parties' separate proposals shall be submitted to the tribunal.

The tribunal shall consider the parties' joint proposal or separate proposals and confirm or determine the reasonable requirements and technical specifications to be adopted for the hearing. In determining the said reasonable requirements and specifications the tribunal may be assisted by two party nominated IT experts or a tribunal appointed expert (at the parties' cost), acting independently and objectively assisting the tribunal to facilitate the determination of the reasonable requirements and specifications. If needed, the tribunal shall, following consultation with the parties, issue any necessary protocol to set out the work and assistance to be provided by the IT experts.

When agreeing all or part of the specifications and requirements listed above, or when the parties communicate to the tribunal their separate proposals, the parties shall consider the compatibility of their reasonable requirements and specifications with (i) any requirements of the selected provider/platform and (ii) any location- specific requirements for all other participants.

Any tutorials needed for effective and efficient utilization of the services of the selected video conference service shall be promptly scheduled. The parties shall furnish to the tribunal, within days from the date of selection of the video conference provider/platform, a proposed schedule for such tutorials. The said

tutorials will provide an overview of the features and tools available to Participants.

The parties shall consult and agree (or make separate proposals) on detailed contingency measures to be followed in case of technical failures, disconnection, power outages, or other interruptions to the hearing within days from the date hereof.

Representatives of the parties, each of the members of the tribunal and any other Participants in the hearing shall participate in a minimum of two test runs to (i) establish that the equipment and technical requirements adopted for the hearing are functional and adequate, and (ii) simulate the connections for hearing conditions within the month preceding same. The parties shall coordinate and agree with the tribunal on the dates, times and duration of such test runs.

For the avoidance of doubt, it is understood and agreed that the parties, in fulfilling their obligations herein, shall use competent support staff possessing the requisite expertise.

The above requirements shall apply regardless of the type of videoconferencing used, including point-to-point video conferencing, multi-point video conferencing, web-based videoconferencing, video conferencing over ISDN, etc.)."

3. CONFIDENTIALITY, PRIVACY AND SECURITY

"As a matter of principle, attendance at the hearing will be restricted to the Participants identified in this PO No. or in accordance with its terms. For the avoidance of doubt, any technical consultants/support staff working with the Participants to facilitate the conduct of the hearing shall also be considered to be attending the hearing and shall be identified as Participants. In the event that a party wishes any other person to attend any portion of the hearing, it shall raise a request well in advance with the reasons such attendance is necessary or desirable. The parties shall attempt to reach agreement on such requests, failing which the tribunal shall decide whether to authorize the request.

No recording of any part of the hearing (including the audio track) may be made unless authorized in advance by the tribunal. An audio recording of the hearing shall be made by the stenographers retained for the purposes of preparing a common transcript. Any other proposed recording shall be requested at least 48 hours in advance of the relevant portion of the hearing.

In any event, the official record of the hearing shall be the written transcript as corrected or commented upon by the parties.

The parties are responsible for jointly considering and raising well in advance of the hearing (no less than two weeks) any laws applicable at the location of any Participant that may present an obstacle or issue of legal compliance with privacy, confidentiality, data protection and security requirements. After consulting the parties, the tribunal shall decide on what measures, if any, to take to address any applicable privacy and security requirements or standards that may impact the access or connectivity of any of the Participants.

In the event that any party considers that further security measures are required to safeguard the integrity of the hearing or reduce the risk of cyber attacks, infiltration or unauthorized access to the hearing, that party must raise such concerns immediately upon learning of the reason for such concerns. After consulting the parties, the tribunal shall decide what further measures, if any, shall be taken in this regard."

4. ONLINE ETIQUETTE AND DUE PROCESS CONSIDERATIONS

"To achieve the necessary level of cooperation and coordination for a successful hearing by videoconference, each Participant undertakes to observe the following:

(i) identify its lead speaker(s);
(ii) refrain from interrupting any speaker;
(iii) reasonable and responsible use of the video conference facilities;
(iv) avoid using equipment that interferes with connectivity;
(v) refrain from any unauthorized recording;
(vi) avoid wasting time during the hearing;
(vii) mute microphones when not speaking;
(viii) require the Participants which it brings to the hearing to observe the same obligations; and
(ix) take whatever measures or practices are necessary to support the procedural efficiency of the hearing.

The tribunal - in consultation with the parties - shall set the mechanism for objections on the first hearing day during the introductory discussion of housekeeping matters.

The parties shall each, within ____ days from the date hereof, confirm in writing that (i) they have conducted the test runs envisaged above and (ii) the service provider, equipment, technical specifications and requirements are adequate for their participation in the hearing."

5. PRESENTATION OF EVIDENCE AND EXAMINATION OF WITNESSES AND EXPERTS

"The tribunal understands that the parties' oral pleadings will include the use of demonstrative exhibits and presentation of certain evidence on record. Accordingly, the parties should ensure that the demonstrative exhibits will be clear and visible on a screen to all tribunal members, the other party [parties] and any Participants authorized to attend that portion of the hearing. If multi-screens are required for the presentation of demonstrative exhibits and evidence, the parties should ensure that such multi-screens are included in the list of required equipment.

The parties shall coordinate amongst themselves, with a view to agreeing the following within days from the date hereof:

(i) order of calling and examining witnesses/experts;
(ii) connection time and duration of availability for each witness/expert;
(iii) modalities for virtual sequestration of witnesses/experts (if any);
(iv) permissibility/prohibition of synchronous or asynchronous communications between witnesses/experts and parties/counsel in chat rooms or through concealed channels of communications;
(v) whether the witness/expert will be sitting in his/her location together with anyone else and whether he/she will be assisted by anyone whilst giving his/her testimony; and
(vi) whether a witness/expert will require the assistance of an interpreter and the arrangements needed to ensure that the interpreter is able to provide his/her services virtually, and whether interpretation will be simultaneous or consecutive, and whether certain additional equipment is needed to ensure that the examination process is efficiently well managed.

In case no agreement is reached regarding any or all of the items listed above, the parties shall communicate to the tribunal their separate proposals within days from the expiry of the date set above.

The tribunal shall consider the parties' joint proposal or separate proposals with a view to making its determination.

The parties agree that the hearing shall be transcribed and the parties undertake to jointly propose a virtual transcription provider/stenographer who is capable and able to promptly deliver its service via video conference. If the use of transcription requires further additional equipment, then parties shall agree with the tribunal on the additional equipment which shall be included in the list of required equipment established per the above.

The tribunal may agree with the parties or require them to make their witnesses/experts available for a hot-tubbing session. If so agreed or required, the parties should ensure that their witnesses/experts are readily available at the time and for the duration of the hot- tubbing and the process shall proceed as instructed by the tribunal.

APPENDIX C OF ANNEX I: ENHANCED TECHNOLOGY AND LOGISTICAL CONSIDERATIONS / CHECKLIST (OPTIONAL)

1. Preliminary considerations

1.1. Procedures to be followed, schedules and deadlines, as well as participants to be involved in the remote proceeding should be planned and agreed in advance.

1.2. Technology, software, equipment and type of connection to be used in a remote proceeding should be agreed upon by the parties and tested with all participants in advance of any meetings or hearings.

1.3. Sufficient Time Frames should be allocated to eliminate possible connection or other technical failures once a meeting or hearing has begun. Technical assistance and monitoring of the status of connection at all stages of remote proceedings should be provided for wherever possible and arranged in advance.

1.4. The highest possible quality of audio and/or video connection available to parties should be used. Connections should be capable of showing a full image of the persons involved and clear audio of their pleadings and interventions. This will not only ensure more dynamic proceedings, but also eliminate prolongation of time frames needed for due process observance.

1.5. The level of cybersecurity and security technology required to cover remote proceedings should be taken into consideration and agreed by the parties in advance of any remote meeting, conference, or hearing.

1.6. In the case of a semi-remote hearing, parties should discuss and agree in advance whether a party and a neutral may be physically in the same room. This can arise where one party and one or more neutrals are located in a jurisdiction where they are not subject to social distancing restrictions. In the interests of equality, it is preferable that if one party must appear to the arbitral tribunal remotely, both parties should do so. However, parties may agree otherwise.

2. Procedural documentation

2.1 In a remote proceeding, a list of documents to be presented in the remote hearing, including, but not limited to, memorials, witness statements, exhibits, slides, and graphics, should be available to all parties in digital form.

2.2 A procedure and a digital platform for transmission and storage of documentation for a remote proceeding should be agreed by parties before commencing the proceeding. This is to prevent duplicate communication of documents and to ensure the accessibility of all documentation that has been made available to neutrals.

2.3 Parties should agree and list which documents can be shared with all or with only certain participants during the proceedings and to create secure digital platforms to this end. It is recommended to choose platforms which allow files to have permissions set to allow or restrict the ability to download and / or print the documents shared.

2.4 The use of electronic bundles is also encouraged to allow participants to share content concurrently (for instance, in a “share screen” mode).

3. Documents

3.1 All documents on the record which the Witness will refer to during the course of his/her evidence must be clearly identified, paginated and made available to the Witness.

3.2 The Party whose Witness is giving evidence by video conference shall provide an unmarked copy (without any annotations, notes or mark-ups) of the Agreed Bundle of Documents (or such volumes of the Agreed Bundle of Documents as the Parties agree or are required) at the start of the examination of the Witness.

3.3 The Parties may agree on utilizing a shared virtual document repository (i.e. document server) to be made available via computers at all Venues, provided that the Parties use best efforts to ensure the security of the documents (i.e. from unlawful interception or retention by third parties).

3.4 If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show the relevant documents to the Witness during the course of questioning.

4. Video Conferencing Venue

4.1 To the extent possible, and as may be agreed to by the Parties or ordered by the Arbitral Tribunal, the video conference shall occur at a Venue which meets the following minimum standards:

a. The Parties shall use best efforts to ensure that the connection between the Hearing Venue and the Remote Venue is as smooth as possible, with sounds and images being accurately and properly aligned so as to minimize any delays. This principle applies equally to situations where there is more than one Remote Venue. Where a connection between additional Venues is required (for example when an interpreter is connected from a third location), the connection may be established through the use of a third party video conferencing bridge service, such as

multi- point control units or third party router vendors that interlink and connect multiple video conferencing systems together in a single conference.

b. The Venue shall have at least one on-call individual with adequate technical knowledge to assist in planning, testing and conducting the video conference.

c. Venue shall be in a location that provides for fair, equal and reasonable right of access to the Parties and their related persons, as appropriate. Similarly, cross- border connections should be adequately safeguarded so as to prevent unlawful interception by third parties, for example, by IP-to-IP encryption.

4.2 The Parties shall use their best efforts to ensure the security of the participants of the video conferencing, including the Witnesses, Observers, interpreters, and experts, among others.

4.3 Virtual hearing rooms are the preferred way to conduct hearings remotely. These are organized via the use of commercial digital platforms and can be equipped to create an atmosphere approximating face-to-face proceedings. All participants should be visible and audible in the chosen virtual hearing room. Simultaneous access to shared documentation through means such as screen sharing should also be provided.

4.3.1 A breakout room, or a separate meeting from the virtual hearing room, can be used for caucus proceedings. The other party should not have the ability to hear or view muted caucus proceedings as body language of participants, important in mediation proceedings.

4.3.2 Separate virtual breakout rooms for arbitral tribunal deliberations and caucusing by parties are recommended. However, party breakout rooms should never be visible or audible to neutrals to prevent the possibility of inadvertent ex parte communication. Likewise, arbitral tribunal deliberations should never be visible or audible to parties. Should a neutral or party find that they are able to hear a separate caucus within a breakout room, they should report this to all participants immediately and sever the connection.

5. Technical Requirements

5.1 The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of the Witness, the Arbitral Tribunal and the Parties, and there shall be compatibility between the hardware and software used at the Venues. While the Parties and the Arbitral Tribunal may agree on the technical

requirements for the video conferencing, as a guide, minimum transmission speeds should not be less than 256 kbs/second, 30 frames/second, and the minimum resolution should be HD standard. The Hearing Venue should also be equipped with both ISDN and IP communication line capabilities and all Venues should be equipped with appropriate portable equipment in the event of unforeseen technical complications.

5.2 For any individual participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the transcription of the individual's testimony as appropriate. There shall also be adequate placement and control of the cameras to ensure that all participants can be seen.

5.3 There shall be appropriate microphones and connections to allow for the amplification of the relevant persons at the Hearing Venue so that the Witness and Observers may adequately hear the relevant individual(s) at the Hearing Venue.

5.4 Under appropriate circumstances, Parties may agree to use web-based video conferencing solutions instead of ISDN or IP communication lines. When using a web-based video conferencing solution, the Venue should provide for a sufficiently large screen that can project the video transmission displayed through the video conferencing solution and ensure that the Ethernet or wireless internet connection is secure and stable throughout the proceedings.

5.5 If the Witness is located in the Remote Venue and is giving testimony through a web- based video conferencing solution, the audio output device in the Hearing Venue should be of sufficient quality and volume so as to ensure that the testimony can be accurately transcribed or recorded in the Hearing Venue.

6. Confidentiality, Privacy and Security

6.1 Any virtual hearing requires a consultation between the arbitral tribunal and the parties with the aim of implementing measures sufficient to comply with any applicable data privacy regulations. Such measures shall also deal with the privacy of the hearing and the protection of the confidentiality of electronic communications within the arbitration proceeding and any electronic document platform.

6.2 It is imperative to ensure that the technology used allows the participants to feel secure about the confidentiality of the information they disclose in a remote hearing. Access to all virtual hearing rooms and breakout rooms should be strictly limited to their allocated participants.

6.3 Full names and roles of all participants to a remote proceeding including, but not

limited to, council, parties, witnesses, interpreters, tribunal secretaries and computer technicians as well as their allocated virtual hearing and breakout rooms should be circulated between parties and neutrals in advance and strictly adhered to.

6.4 Physical rooms occupied by participants in a remote proceeding, either at homes, offices, or in special hearing venues, should be completely separate from non-participants to the remote proceeding, soundproofed where possible, and have sufficient visibility to eliminate possibility of the presence of undisclosed non-participating individuals in the room and/or any audio/video recording equipment that has not been agreed to. The use of headsets is recommended to increase both privacy and audibility of participants.

6.5 To achieve the foregoing, it may be necessary for:

a. all cloud-based video conferences should be password protected;

b. a list of participants, their full names, roles, professional affiliation, and details of the locations from which they will be joining the hearing, should be agreed and circulated to the parties and the arbitral tribunal in advance;

c. the arbitral tribunal or hearing manager shall only allow individuals on the approved list of participants to join the hearing. Any change to the list of participants shall be immediately circulated to the parties and the arbitral tribunal and notified to the hearing manager where the parties and/or the arbitral tribunal have separate virtual break-out rooms facilitated by separate video-conferencing sessions, these shall be password protected. Separate lists of participants to those rooms shall be provided to the hearing manager, who shall adhere to them strictly.

7. Witness Examination Generally

7.1 The Parties shall ensure, to the extent practicable, that any and all Venues meet the logistical and technological requirements as stated in this Guideline.

7.2 The video conferencing system at the Venue shall allow a reasonable part of the interior of the room in which the Witness is located to be shown on screen, while retaining sufficient proximity to clearly depict the Witness. It may be necessary:

a. to arrange, where possible, for a hearing invigilator to attend at the same premises as the witness or expert, to ensure the integrity of the premises (i.e., that there is no person or recording-device present that was not approved or agreed);

b. to arrange for a 360-degree viewing of the room by video at the beginning

of each session of the virtual hearing to ensure the integrity of the room;

c. for the arbitral tribunal to recall the witness's or expert's obligation of truthfulness including by presenting their evidence in the manner agreed and without improper influence (by administering an oath, declaration, affirmation or otherwise).

7.3 The Witness shall give his/her evidence sitting at an empty desk or standing at a lectern, and the Witness's face shall be clearly visible.

7.4 As a general principle, the Witness shall give his/her evidence during the course of the hearing under the direction of the Arbitral Tribunal. Only under exceptional circumstances and subject to the direction of the Arbitral Tribunal would evidence from a Witness be given/ conducted outside of the hearing.

7.5 A computer with email facilities and a printer should be located at all Venues.

7.6 The parties shall ensure that an agreed translation of the oath to be administered is placed before the Witness in the remote hearing room.

7.7 The Arbitral Tribunal may terminate the video conference at any time if the Arbitral Tribunal deems the video conference so unsatisfactory that it is unfair to either Party to continue.

8. Online Etiquette Generally

8.1 Remote proceedings inherently limit personal connections between all participants to a dispute. Therefore, active listening and verbal engagement, expressive body language and clear speech, as well as any other step necessary to create a comfortable professional environment should be used. This is particularly important for neutrals who should take every opportunity to assure parties of their full attention to proceedings.

8.2 Neutrals in remote arbitration proceedings should make themselves visible and audible to all the parties in the proceeding at all times, save in cases of deliberations and/or discussions between members of the arbitral tribunal.

8.3 When appearing by video conference, participants should:

a. mute microphones unless speaking;
b. use physical gestures to announce that they wish to speak, e.g., by raising a hand and keeping it raised, or use the raise hand function on the electronic system if available;
c. avoid speaking at the same time as any other participant;
d. avoid back-lighting such as sitting in front of a window or bright light. Back-lighting will prevent the participant being seen clearly on screen;

e. ensure their camera is positioned at eye-level;
f. look at the camera, not their screen;
g. use a headset with integrated microphone where possible to protect the privacy of the proceedings at their location and improve audio quality for all participants;
h. avoid wearing a face-mask when cameras that automatically track speakers by facial movement are being used. If that is not possible, manually operated cameras should be used.

9. Technical Specifications Generally

9.1 Video conferencing equipment used should ideally meet minimum industry standards in order to ensure the efficient and smooth operation of each hearing.

a. Channels, bandwidth and bridging

i. Minimum of six channels for room video-conferencing systems using ISDN that has the capacity to use 3 ISDN lines. If Integrated Services Digital Network (ISDN) is not available, Digital Subscriber Line or DSL may be used as connectivity to the internet with ideally a backup line.

ii. Standards for Codecs:
- H.261 (full motion video coding for audiovisual services at p x 64 Kbps);
- H.263 (video coding for low bitrate communication i.e. less than 64 Kbps); or
- H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps).

For DSL, the ideal bandwidth is 10Mbps for both upload and download.

iii. Bandwidth On Demand Inter-Networking Group (BONDING) standards (ISDN and H.320 only) for inverse multiplexers. Although bandwidth on demand is ideal for optimized use, 10Mbps stable bandwidth can also be recommended.

iv. H.243 (the H.320/H.323 Standard for Bridging Technology).

b. Video

i. For ISDN-based networks:
- H.320 Standard (umbrella recommendation for narrow-band

video conferencing over circuit-switched networks i.e. N-ISDN, SW56, dedicated networks); and

- H.310 Standard (wide-band (MPEG-2) video conferencing over ATM and B-ISDN)

DSL is also recommended using secured video/voice over IP or VoIP. At least 720P resolution at 30fps minimum should be supported for quality video.

ii. For video over Internet/LAN-conferencing:

- H.323 Standard (narrow-band video conferencing over non-guaranteed quality-of service packet networks (Internet, LAN, etc.))

c. Data Conference / Data Collaboration

i. T.120 Standard.

d. Audio

i. Standards for audio coding:

- G.711 (3kHZ audio-coding within 64 kbit/s)
- G.722 (7kHZ audio-coding within 48 or 56 kbit/s)

ii. Echo-cancellation microphones with a frequency range of 100-7,000 Hz, audio muting, on/off switch and full-duplex audio.

iii. H.281 (umbrella standard for local and far-end camera control protocol for ISDN (H.320) video conferencing calls, with camera(s) that have the ability to pan, tilt and zoom, both manually and using pre-sets).

e. Picture

i. H.263 (video coding for low bitrate communication i.e. less than 64 Kbps);

ii. H.264 (new video codec standard that offers major improvements to image quality. Picture quality standard of 30 frames per second Common Intermediate Format (CIF) at between 336 and 384 kbps); or

iii. H.239 (Picture-in-picture (PIP) or DuoVideo H.239. H.239 defines the role management and additional media channels for H.300-series multimedia terminals, and allows endpoints that support H.239 to receive and transmit multiple, separate media streams).

iv. H.460 (the standard for the traversing of H.323 video conferencing

signals across firewalls and network address translation (NAT)).

10. Test Conferencing and Audio-Conferencing Backup

10.1 As a general principle, testing of all video conferencing equipment shall be conducted at least twice: once in advance of the commencement of the hearing, and once immediately prior to the video conference itself.

10.2 The Parties shall ensure that there are adequate backups in place in the event that the video conference fails. At a minimum, these should include cable back-ups, teleconferencing, or alternative methods of video/audio conferencing.