**[-] July 2020**

IN THE MATTER OF AN ARBITRATION

BETWEEN

1. )

*Claimants*

And

*Respondents*

**Procedural Order No.**

**Arbitral Tribunal**

1. **Procedural Background**
2. On\_\_\_\_\_\_at noon (CEST), in accordance with Procedural Order No. 9 as subsequently amended, the Tribunal and the Parties held a pre-hearing telephone conference to discuss the organization of the hearing scheduled from\_\_\_\_\_\_to\_\_\_\_\_\_ (the “Hearing”).
3. The following persons attended the conference call
4. The conference was audio and video recorded.
5. The Tribunal and the Parties discussed the items set out in the draft of this Order, which had been circulated on \_\_\_\_\_- 2020 and other matters raised by the Parties during the conference call.
6. On this basis, the Tribunal now issues this Order in final form.
7. **Advance Testing**
8. A trial videoconference shall be held on **\_\_\_\_\_\_ at AM**  on the Zoom platform [The Tribunal proposes to use Zoom, subject of course to a different choice by the Parties. The proposal is made after confirmation by ­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_that they conduct hearings on such platform. Compared to Cisco Webex, for instance, Zoom has a breakout room function that is very useful] with the members of the Tribunal, the Tribunal Secretary, the Parties’ counsel and representatives, the witness ­­­­­­­­­­­­­­­­­­\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and the court reporter(s) (collectively the “Participants”) to verify the proper functioning of the platform. All Participants shall strive to replicate the conditions under which they will participate in the Hearing:
	1. To the extent possible, at least one Participant per device or connection to be used at the Hearing should attend the pre-hearing videoconference;
	2. Each Participant should join the pre-hearing videoconference with the same device(s) and internet connection and from the same physical location that they intend to use for the Hearing;
	3. Participants will join the pre-hearing videoconference through the waiting room function and will follow the same identification procedure as for the Hearing itself (see paragraphs [-] to [-] below);
	4. The pre-hearing videoconference shall include a test of each of the functions of the Zoom videoconference platform that is intended to be used during the Hearing (e.g., presentation of evidence via shared screen); and
	5. The Parties shall not address the substance of any matter scheduled for discussion at the Hearing, but may raise any procedural issues pertaining to the organization of the Hearing.
9. In addition to the trial videoconference, the Parties are invited to undertake further tests of the Zoom videoconference platform with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of different groups of Participants, both prior to and following the pre-hearing videoconference, in order to facilitate the readiness of all Participants for the Hearing.
10. **Organization of the Hearing**
11. **Videoconference Platform**
12. The Hearing will be held remotely via videoconference using the Zoom videoconference platform. For all purposes, the hearing will be deemed to have taken place in \_\_\_\_\_\_\_\_\_\_\_\_\_\_the seat of the arbitration.
13. The Parties acknowledge that they have made their own investigation as to the suitability and adequacy of the Zoom platform for its proposed use for the hearing and of any risks of using Zoom, including any risks regarding security, privacy or confidentiality.
14. \_\_\_\_\_\_\_\_\_\_\_\_\_will “host” the videoconference and arrange for a technical consultant to assist in case of technical difficulties during the Hearing.
15. To protect the security of the hearing, access to the hearing will be password-protected. The login details for the videoconference will be circulated by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_to the Participants’ email addresses identified by the Parties in the table below (§-) on the day prior to the start of the Hearing at the latest. Participants shall not forward or share the hearing link or password.
16. Once admitted to the videoconference, and barring technical issues or other exceptional circumstances, Participants should remain connected throughout the hearing day.
17. Each Party will make its own arrangements for private communication within its team during the Hearing by instant messenger or other appropriate means.
18. In addition, the Parties will make use of the breakout room functions within the Zoom videoconference platform to avoid delays associated with admitting Participants to the videoconference and to enable the Tribunal to promptly reconvene all Participants following breaks.
19. **Schedule**
20. The Hearing shall take place from \_\_\_\_\_to\_\_\_\_\_\_.
21. The Hearing shall commence each day from\_\_\_\_\_\_to\_\_\_\_\_.
22. The Hearing will be structured as follows, while maintaining certain flexibility:

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. This schedule is subject to any changes that the Tribunal may deem necessary or appropriate during the Hearing, in particular due to delays or other interruptions caused by technical problems in the functioning of the videoconference.
2. **Participants**
3. The following Participants will attend the hearing:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Any person not included on the lists of Participants provided by the Parties will not be admitted to the videoconference, unless otherwise decided by the Tribunal on request of any of the Parties.
2. Access to the videoconference shall be restricted to Participants, who bear an ongoing duty to warn of the presence of any other person on the videoconference.
3. All Participants (subject to the witness) shall join the videoconference at least 20 minutes in advance of the start of each day. The Parties are encouraged to join the videoconference earlier to facilitate the identification of Participants and any technical difficulties.
4. Participants will join the videoconference through a “waiting room” to be managed by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_staff. Each Party shall identify all of its representatives at the opening of each day of the Hearing. In order to facilitate identification of all attendees, Participants must join the videoconference showing a username that enables them to be readily identified in line with the list of representatives (i.e., [First Name][Last Name][“(Claimants)” or “(Respondent 1 and 2)” or “(Respondent 3)”] ). Any participant who cannot be identified shall not be granted access to the videoconference, unless otherwise decided by the Tribunal on request of any of the Parties.
5. After having been identified, Participants will be assigned to their appropriate breakout room until the hearing commences.
6. **Internet Connection and Devices**
7. The Parties are responsible for ensuring that each of their representatives connects to the videoconference through a stable internet connection offering sufficient bandwidth and uses a camera, microphone, and speaker of good quality.
8. Participants should consider using a wired Ethernet connection instead of Wi-Fi. Participants are also encouraged to keep a smartphone or tablet, having at the minimum a 4G data connection and mobile hotspot functionality, available as a backup internet connection at all times during the hearing.
9. A dial-in telephone audio option shall be offered as a backup option for Participants experiencing difficulties with computer audio.
10. Each Participant is encouraged to have at least two devices or screens available for use during the Hearing, one to connect to the videoconference and another for the transcription.
11. **Videoconference Etiquette**
12. During the videoconference, the Participants shall always be in view of the camera. If two or more people are attending the Hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.
13. Participants shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other Participants of technical difficulties.
14. In order to facilitate the accurate transcription of the Hearing, speakers shall speak slowly and with pauses between phrases.
15. Participants who are not playing an active role should maintain their audio on mute to limit potential interruptions. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_staff will have the ability to mute and unmute any Participant if needed.
16. The Tribunal reserves the right to request Participants without an active role to turn off their video in order to preserve internet bandwidth for active Participants.
17. Participants may not use a “Virtual Background.” Instead, the room in which they are located must be visible.
18. Participants should join the hearing from a location without background noise and with adequate lighting. Participants may also consider using a complete headset (headphones with integrated microphone) of good quality.
19. Each Party shall provide a list of its Participants who will speak to a specific issue by email to all other Participants at least one hour prior to the start of each day. Similarly, the Parties should, insofar as possible, circulate any speaking notes to the court reporter prior to the start of the day.
20. These provisions on etiquette may be adjusted or supplemented by the Tribunal in consultation with the Parties in the course of the Hearing or during the trial videoconference.
21. **Documentation**
22. The Parties may use demonstrative exhibits (such as charts, tabulations, etc. compiling information which is on record but not presented in such form), provided that they (i) identify the source in the record from which the information is derived, (ii) do not contain information not in the record, and (iii) are filed in electronic format on\_\_\_\_\_\_ they are part of the opening statements or by\_\_\_\_\_\_\_ if used in the course of the closing statements. Hard copies shall not be required.
23. The display of PowerPoints presentations, including demonstrative exhibits, shall be made through the screen-sharing function of the videoconference platform in order that the speaker and the relevant document can be seen simultaneously at all times. The Parties are encouraged to designate one person on each side who shall be responsible for such display.
24. Before the hearing, the Parties shall liaise in order to provide Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_just before the start of his examination with a clean, unannotated hard copy of his witness statements and of the exhibits to which it he may be referred during his cross-examination (collectively, the “Examination Bundle”).At any time, the Tribunal may ask Mr. \_\_\_\_\_\_\_\_\_\_\_to display the Examination Bundle to verify that it does not bear any annotations. The Examination Bundle shall be made available electronically to the Tribunal, each Party, and the court reporter(s) no later **than\_\_\_\_\_\_\_\_.** Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_shall not be aided by any notes or otherwise, unless permitted by the Tribunal upon application by a Party.
25. Documents that do not form part of the record may not be presented at the Hearing, unless otherwise agreed by the Parties or authorized by the Tribunal.
26. **Witness Examination**
27. The examination of Mr. \_\_\_\_\_\_\_\_\_\_\_shall be governed by sections XVIII of Procedural Order No. 1 (“PO 1”), subject to any different rule in this Order. Particularly:
	1. Mr. \_\_\_\_\_\_\_\_shall give evidence sitting at an empty desk or table, and his face shall be clearly visible in the video;
	2. To the extent possible, the camera should be positioned at face level, relatively close to Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_\_; and,
	3. Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_shall speak directly to the camera while testifying and avoid making quick movements.
28. At any time, the Tribunal may ask Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_to orient his camera to provide a 360-degree view of the room in which he is sitting. Any Participant who attends the Hearing in the room with Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_must be identified at the (re)start of the examination. In addition, one technician may be in the room with Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_if needed.
29. The Claimants shall (i) give Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_the details of the person in charge at \_\_\_\_\_\_\_\_\_\_\_\_to be contacted (off platform) in the event of a disconnection or other technical failure; and (ii) instruct Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_that it is impermissible to record the Hearing and to allow unauthorized observers, i.e. persons who are not Participants as defined above, to attend.
30. Mr. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_shall join the Zoom meeting on \_\_\_\_\_\_\_\_\_20 minutes before the start of the Hearing. He shall also participate in the trial run to be held on 26 July.
31. Mr.\_\_\_\_\_\_\_\_\_\_\_\_\_shall not attend the hearing, view a recording thereof, or read the transcript prior to the end of his examination.
32. **Allocation of Time**
33. Time shall be allocated as specified in paragraph 17 above, whereby the Tribunal may allow for some flexibility if the remaining time permits and circumstances require.
34. The \_\_\_\_\_\_\_\_\_\_\_\_\_\_shall keep the time.
35. **Logistics**
36. **Language**
37. The hearing shall be conducted in English.
38. **Transcripts**
39. Live transcripts of the hearing will be organized by \_\_\_\_\_\_\_\_\_\_and made available on a separate platform. \_\_\_\_\_\_\_\_\_\_\_\_\_will circulate the connection details for the transcript at the latest on the day prior to the trial run. Participants are encouraged to use a second device or a second screen for viewing the transcript. Transcripts will be circulated by email at the end of each day.
40. The Parties will have an opportunity to agree corrections to the transcript within two weeks after the close of the Hearing.
41. **Recordings**
42. The Tribunal will control when the hearing is “on” and “off” the record.
43. No Participant, other than the court reporter(s), shall record, via audio, video or screenshot, any part of the hearing, unless the Tribunal grants express leave to this effect.
44. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_will arrange to record the hearing in both audio and video.
45. **Technical Problems**
46. Each Party shall designate, by no later than\_\_\_\_\_\_\_\_\_ one of its representatives to act as videoconferencing contact person (“VC Emergency Contact Person”) for purposes of addressing any technical incidents which may arise during the videoconference. The VC Emergency Contact Person shall be responsible for immediately advising the Tribunal on the videoconference if an essential Participant from their side is disconnected or otherwise cannot participate, such that the Tribunal is requested to pause the Hearing. Otherwise, the VC Emergency Contact Person shall notify and address technical issues with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_and/or the Tribunal, without interrupting the Hearing.
47. The Tribunal may temporarily or permanently suspend the Hearing if it deems the functioning of the videoconference system to be inadequate or likely to prejudice the due process rights of either of the Parties or the integrity of the proceeding. The Parties are asked to bear in mind that full recordings and transcripts will be available, mitigating any prejudice arising from the failure of any given participant to be able to follow the entire Hearing on the videoconference platform.
48. **Other logistical aspects**
49. The Parties may liaise with \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_on other logistical aspects as necessary.
50. **CONFIDENTIALITY**
51. Pursuant to Rule 39 of the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Arbitration Rules, the Hearing shall be held in camera. Accordingly, access to the videoconference, transcripts, and recordings shall be limited to the members of the Tribunal, Party representatives, counsel, \_\_\_\_\_\_\_\_\_\_\_\_staff, and court reporter(s). Participants bear an ongoing duty to warn of the presence of any individual external to the proceeding.
52. **Post-Hearing Briefs and Cost Statements**
53. In accordance with paragraph 116 of PO1, in consultation with the Parties, the Tribunal will determine at the end of the hearing whether there shall be post-hearing briefs. In the affirmative, the Tribunal will address the time limits for, and the length, format, and content of, the post-hearing briefs. No additional evidence may be produced together with the post-hearing briefs, except with leave from or on the request of the Tribunal. In accordance with paragraph 117 of PO1, the Tribunal will issue directions on the Parties’ statements of costs at the end of the Hearing (or shortly thereafter).

On behalf of the Tribunal

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_