

2021 PDRCI ARBITRATION RULES
(Effective as of October 1, 2021)

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Section I: Introductory Provisions

Model Arbitration Clause:

"Any dispute, difference, or claim arising out of or relating to this contract, or the existence, validity, interpretation, breach, or termination thereof shall be finally settled by arbitration in accordance with the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration.

The number of arbitrators shall be ... (one or three). The seat of arbitration is ... (country), whose laws shall be the law of the arbitration agreement. The language(s) of the arbitration shall be ... (language)."

Model Mediation/Arbitration Clause:

"The parties shall settle any dispute, difference, or claim under this contract by mediation pursuant to the Mediation Rules of the Philippine Dispute Resolution Center, Inc. (PDRCI). If there is refusal or failure of mediation, or there is no settlement within 60 calendar days from commencement of the mediation, or such other period agreed upon in writing by the parties, then the dispute shall be finally settled by arbitration under the PDRCI Arbitration Rules then in force at the time of the commencement of the arbitration.

"The number of arbitrators shall be ... (one or three). The seat of arbitration is ... (country), whose laws shall be the law of the arbitration agreement. The language(s) of the arbitration shall be ... (language)."

Model Arbitration/Mediation/Arbitration Clause:

"Any dispute, difference, or claim arising out of or relating to this contract, or the existence, validity, interpretation, breach, or termination thereof shall be finally settled by arbitration in accordance with the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration.

The number of arbitrators shall be ... (one or three). The seat of arbitration is ... (country), whose laws shall be the law of the arbitration agreement. The language(s) of the arbitration shall be ... (language).

In the course of the arbitration, the parties may refer any or all of the claims or issues to mediation under the PDRCI Mediation Rules. The arbitration of such claims or issues shall be suspended upon the commencement of the mediation, without prejudice to their return to arbitration in case mediation fails. The mediation shall not suspend the arbitration of any remaining claims or issues."

Submission Agreement:

"A [dispute/difference/claim] having arisen between the parties concerning [...], the parties hereby agree that the [dispute/difference/claim] shall be referred to and finally settled by arbitration in accordance with the PDRCI Arbitration Rules in force at the time of the commencement of the arbitration.

The number of arbitrators shall be ... (one or three). The seat of arbitration is ... (country), whose laws shall be the law of the arbitration agreement. The language(s) of the arbitration shall be ... (language)."

Article 1: Scope of Application

(1) These rules shall be known as the PDRCI Arbitration Rules ("Rules"). The PDRCI Guidelines on Fees and its Schedules ("*Guidelines on Fees*"; Appendix 1 of the Rules), as may be amended by PDRCI from time to time, shall form part of the Rules. By agreeing to arbitrate under the Rules, the parties are deemed to have accepted the *Guidelines on Fees*.

(2) Where parties have agreed that disputes, differences, or claims ("Disputes") between them shall be referred to arbitration under the Rules, then such Disputes shall be settled in accordance with the Rules, subject to such modification as the parties may agree in writing.

(3) The Rules shall apply to arbitrations commenced on or after October 1, 2021, unless the parties have expressly agreed to apply a particular version of the Rules.

(4) Where any part of the Rules is in conflict with a provision of the law applicable to the arbitration from which the parties cannot derogate, that provision of the law shall prevail.

(5) PDRCI may from time to time issue guidelines to supplement these Rules.

Article 2: Written Communications

(1) A written communication, including a notice or request, may be transmitted by any means that provides or allows for a record of its transmission.

(2) If an address has been designated by a party specifically for this purpose or authorized by the arbitral tribunal, a written communication shall be delivered to the party at such address, and if so delivered shall be deemed to have been received. Delivery by electronic means, such as email or facsimile, may only be made to an electronic address so designated by the party or authorized by the arbitral tribunal.

(3) In the absence of such designation or authorization, a written communication is:

- (a) received, if it is physically delivered to the addressee; or
- (b) deemed to have been received, if it is delivered at the place of business, habitual residence, or mailing address of the addressee.

(4) If after reasonable efforts, delivery cannot be made in accordance with paragraphs 2 or 3 of this Article, a written communication is deemed received if it is sent to the addressee's last known place of business, habitual residence, or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

(5) A written communication is deemed to have been received on the day it is delivered in accordance with paragraphs 2, 3, or 4 of this Article or attempted to be delivered in accordance with paragraph 4 of this Article. A written communication transmitted by electronic means is deemed received on the day it is sent, except a Notice of Arbitration, which is deemed received on the day it reaches the party's electronic address.

(6) All written communications to PDRCI by one party shall at the same time be communicated by that party to all other parties and, if already constituted, to the arbitral tribunal. All written communications between any party and the arbitral tribunal shall be communicated to all other parties and PDRCI.

Article 3: Calculation of Period of Time

For purposes of calculating the period of time under the Rules, such period shall begin to run on the first business day following the day when a written communication is received or is deemed received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day that follows. Official holidays or non-business days occurring within the period of time are included in calculating the period.

Article 4: Notice of Arbitration

(1) The party or parties initiating recourse to arbitration ("claimant") shall communicate to PDRCI a notice of arbitration ("Notice of Arbitration").

(2) The arbitration shall be deemed to commence on the date when PDRCI receives the Notice of Arbitration and the payment of the Filing Fee in accordance with the *Guidelines on Fees*, whichever is later.

(3) The Notice of Arbitration shall include the following:

- (a) A demand that the Disputes be referred to arbitration;
- (b) The names, nationalities, addresses, and other contact details of the parties and their representatives;
- (c) A reference to the arbitration or submission agreement;
- (d) A reference to the contract or legal relationship involved in the Disputes;
- (e) A brief description of the claim and an estimate of the amount involved, including any claim in the alternative;
- (f) The relief sought;
- (g) A proposal as to the number of arbitrators (one or three), if the parties have not previously agreed on such number;
- (h) Proposals regarding the appointment of a sole arbitrator or an arbitrator referred to in Articles 7 (Joinder of Additional Parties) and 8 (Claims between Multiple Parties); and
- (i) Proposal regarding the application of the Expedited Procedure under Article 57.

(4) The Notice of Arbitration may also include the Statement of Claim referred to in Article 30.

(5) The submission of a Notice of Arbitration shall be accompanied by payment of a non-refundable Filing Fee in accordance with the *Guidelines on Fees*.

(6) The claimant shall pay a provisional advance on costs ("Provisional Advance") in accordance with the *Guidelines on Fees*. PDRCI shall not act on the Notice of Arbitration, including any proposals for the appointment of arbitrators, and the respondent shall not be required to submit a response to the Notice of Arbitration, unless the Provisional Advance has been paid.

Article 5: Response to the Notice of Arbitration

(1) Within thirty (30) days from receipt of PDRCI's notice to submit the response to the Notice of Arbitration, the respondent shall communicate to PDRCI a response to the Notice of Arbitration ("Response to the Notice of Arbitration"), which shall include:

- (a) The names, nationalities, addresses, and other contact details of each respondent and their representatives;
- (b) A brief response to the information set forth in the Notice of Arbitration;

- (c) A brief description of any counterclaim, or any other claim for the purpose of set-off, indemnity, or contribution, if any, including an estimate of the principal and alternative amounts involved, and the reliefs sought;
 - (d) Proposals regarding the appointment of a sole arbitrator or an arbitrator referred to in Articles 7 (Joinder of Additional Parties) and 8 (Claims between Multiple Parties); and
 - (e) Proposal regarding the application of the Expedited Procedure under Article 57.
- (2) The Response to the Notice of Arbitration may also include:
- (a) A plea that an arbitral tribunal to be constituted under the Rules lacks jurisdiction or that the Disputes are not arbitrable; and
 - (b) The Statement of Defense referred to in Article 31.
- (3) The respondent shall pay a Provisional Advance in accordance with the *Guidelines on Fees*. Unless the Provisional Advance on costs is paid by the respondent, the arbitral tribunal shall not act on any counterclaim, or any other claim or affirmative relief sought by respondent.
- (4) The constitution of the arbitral tribunal shall not be hindered by a respondent's failure to communicate a Response to the Notice of Arbitration or to pay the Provisional Advance or an incomplete or late Response to the Notice of Arbitration.

Article 6: Representation and Assistance

- (1) Each party may be represented or assisted by any person chosen by it. The participation of any other person in the arbitration shall be subject to the discretion of the arbitral tribunal.
- (2) Once the arbitral tribunal has been constituted, a person shall not accept representation of a Party in the arbitration when a relationship exists between the person and an arbitrator that will create a conflict of interest, unless none of the Parties objects after proper disclosure.
- (3) The arbitral tribunal may take appropriate measures to safeguard the integrity of the arbitration, including the exclusion of the proposed or new representation from participating in all or part of the arbitral proceedings.

Section II: Joinder, Multiple Parties/Contracts and Consolidation

Article 7: Joinder of Additional Parties

- (1) A party wishing to join an additional party to the arbitration shall submit a request for arbitration against the additional party (“Request for Joinder”) to PDRCI, all other parties, and any appointed or confirmed arbitrators.
- (2) An additional party wishing to be joined to the arbitration shall submit a Request for Joinder to PDRCI.
- (3) The date on which the Provisional Advance on the Request for Joinder is paid shall, be deemed to be the date of the commencement of arbitration by or against the additional party.
- (4) A Request for Joinder shall be made no later than the signing of the Terms of Reference, if made by a party, and within the period for the submission of the Statement of Defense by the respondent, if made by an additional party. No Request for Joinder shall be allowed after these periods, except in exceptional circumstances.
- (5) The Request for Joinder shall contain the following information:
 - (a) the case reference of the existing arbitration;
 - (b) the names, addresses, and other contact details of each of the parties, including the additional party;
 - (c) a request that the additional party be joined to the arbitration;
 - (d) information required in Article 4 (Notice of Arbitration) or Article 5 (Response to the Notice of Arbitration) to the extent applicable.
- (6) Upon receipt of the Request for Joinder, PDRCI shall:
 - (a) assess the party requesting the joinder the corresponding Provisional Advance in accordance with the *Guidelines on Fees*, which shall include the additional costs for determining the propriety of the joinder;
 - (b) notify and invite the other parties or additional parties to be joined to submit a response to the propriety of the Request for Joinder; and
 - (c) refer the Request for Joinder to the arbitral tribunal, if already constituted.
- (7) PDRCI or the arbitral tribunal shall, after consulting the parties, have the power to allow an additional party to be joined to the arbitration if:

- (a) there is a *prima facie* determination that an arbitration agreement under the Rules exists and that it binds all the parties and the additional party; or
- (b) all parties, including the additional party, expressly agree.

(8) Any question arising from PDRCI's decision shall be finally decided by the arbitral tribunal once constituted. The arbitral tribunal's decision is final, without prejudice to its power to subsequently decide any question as to its jurisdiction arising from such decision.

(9) If the Request for Joinder is allowed, the other parties or additional parties shall submit a response in accordance with Article 5 (Response to the Notice of Arbitration) to the extent applicable. The response may include claims against any other party in accordance with Article 8 (Claims Between Multiple Parties). PDRCI shall assess any corresponding Provisional Advance in accordance with the *Guidelines on Fees*.

(10) Where an additional party is joined to the arbitration before the arbitral tribunal is constituted, all parties to the arbitration, including the additional party joined, shall decide the constitution of the arbitral tribunal. In the absence of an agreement among them, PDRCI may revoke the appointment or confirmation of any arbitrators and proceed to appoint the new arbitrators.

(11) The revocation of the appointment or confirmation of an arbitrator under the preceding paragraph is without prejudice to:

- (a) the validity of any act done or order made by that arbitrator before the appointment or confirmation was revoked;
- (b) the entitlement of the arbitrator to be paid their fees and expenses; or
- (c) the date when any claim or defense was raised, for the purpose of applying any statute of limitation or any similar rule or provision.

(12) Where all the parties, including the additional party, expressly agree to the joinder, they agree to accept any appointment or confirmation already made or the constitution of the arbitral tribunal.

(13) The parties waive any objection to the validity or enforcement of any award made by the arbitral tribunal, including the validity of its constitution, on the basis of its decision to join an additional party to the arbitration, in so far as such waiver can validly be made.

(14) In case of denial of the Request for Joinder, it shall be deemed withdrawn, unless the requesting party elects to treat it as a separate Notice of Arbitration and notifies PDRCI and the party requested to be joined accordingly, in which case the Request for Joinder may be amended or supplemented within a period to be determined by PDRCI.

Article 8: Claims Between Multiple Parties

(1) In an arbitration with multiple parties, claims may be made by any party against any other party, subject to the provisions of Articles 34 (Pleas as to the Jurisdiction of the Arbitral Tribunal), Article 9 (Multiple Contracts), and this Article and provided that no new claims may be made after the Terms of Reference are signed, except as provided under Articles 32 (Amendments to the Claim or Defense) and Article 33 (Terms of Reference).

(2) In an arbitration involving more than two (2) parties, or involving additional parties joined pursuant to Article 7 (Joinder of Additional Parties), the arbitration shall proceed between those parties with respect to whom there is a *prima facie* determination that an arbitration agreement under the Rules exists and that it binds all of them.

(3) Article 4 (Notice of Arbitration) and Article 5 (Response to the Notice of Arbitration) shall apply, to the extent applicable, to any claim made under this Article.

Article 9: Multiple Contracts

(1) Subject to the provisions of Articles 34 (Pleas as to the Jurisdiction of the Arbitral Tribunal), Article 33 (Terms of Reference) and this Article, claims arising out of or in connection with more than one (1) contract may be made in a single arbitration, whether or not such claims are made under one or more than one (1) arbitration agreement under the Rules.

(2) Where claims pursuant to this Article are made under more than one (1) arbitration agreement, the arbitration shall proceed as to those claims with respect to which a *prima facie* determination is made that the arbitration agreements under which those claims are made may be compatible and those claims can be determined in a single arbitration.

(3) Agreements referring or submitting Disputes to arbitration under the Rules are *prima facie* compatible.

Article 10: Consolidation of Arbitrations

(1) PDRCI shall have the power, at the request of a party and after consulting with the parties and any confirmed arbitrators, to consolidate two or more arbitrations under the Rules ("Request for Consolidation"), where:

(a) the parties agree to consolidate; or

- (b) all the claims in the arbitrations are made under the same arbitration agreement; or
- (c) the claims are made under more than one (1) arbitration agreement, a common question of law or fact arises in both or all of the arbitrations, the rights to relief claimed are in respect of, or arise out of, the same transaction or series of transactions, and PDRCI finds the arbitration agreements to be compatible.

(2) As provided in Article 9(3), arbitration agreements referring or submitting Disputes under the Rules are *prima facie* compatible.

(3) All other parties and any arbitrators shall be given an opportunity to comment on the Request for Consolidation.

(4) In deciding whether to consolidate, PDRCI shall take into account all relevant circumstances including, but not limited to, whether one or more arbitrators have been appointed or confirmed in more than one (1) of the arbitrations, and if so, whether the arbitrators are the same.

(5) Where PDRCI decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or PDRCI decides otherwise, taking into account the circumstances of the case.

(6) In case of consolidation of arbitrations, the parties to all such arbitrations shall be deemed to have waived their right to designate an arbitrator. PDRCI may revoke the appointment or confirmation of any arbitrators and proceed to appoint the arbitral tribunal of the consolidated arbitrations, without prejudice to the appointment of the same arbitrators.

(7) The consolidation of two or more arbitrations shall not affect the validity of any act done or order made by a court in support of the arbitration before it was consolidated.

(8) The revocation of the appointment or confirmation of the arbitrators under paragraph 6 of this Article shall not affect:

- (a) the validity of acts done or orders made by the arbitral tribunal before the appointment or confirmation was revoked;
- (b) their entitlement to their fees and expenses; and
- (c) the date when any claim or defense was raised, for the purpose of applying any statute of limitations or any similar rule or provision.

(9) The parties waive any objection to the validity or enforcement of any award made by the arbitral tribunal on the basis of the decision to consolidate proceedings, including the validity of its constitution, insofar as such waiver can validly be made.

(10) In case of a Request for Consolidation, PDRCI may assess a corresponding Provisional Advance, as may be applicable, in accordance with the *Guidelines on Fees*.

Section III. Composition of the Arbitral Tribunal

Article 11 : Arbitral Tribunal

(1) The term “arbitral tribunal” means a sole arbitrator or a panel of arbitrators and includes an Emergency Arbitrator appointed under Article 58 (Emergency Arbitrator).

(2) If the parties have not previously agreed on the number of arbitrators, PDRCI shall determine if one or three arbitrators shall be appointed, taking into account the circumstances of the case. In appropriate cases, PDRCI may determine the number to be other than one or three.

(3) In arbitrations under the Rules, the nomination or appointment of arbitrators, whether as a sole arbitrator or an arbitral tribunal, shall be subject to confirmation by PDRCI. By accepting their nomination or appointment, the arbitrators are deemed to have accepted the Rules and the *Guidelines on Fees*.

Article 12: Sole Arbitrator

(1) If a sole arbitrator is to be appointed, the parties shall propose the name of one or more nominees for sole arbitrator in the Notice of Arbitration or in the Response to the Notice of Arbitration, or in a subsequent communication within the time allowed by PDRCI.

(2) If within thirty (30) days from receipt by a party of another party's proposal made in accordance with paragraph 1 of this Article, the parties have not reached agreement on the choice of a sole arbitrator or either party fails to make any proposal, the sole arbitrator shall be appointed and confirmed by PDRCI.

(3) Unless both parties agree on a procedure for the appointment of the sole arbitrator, PDRCI shall determine the appropriate procedure.

(4) In making the appointment, PDRCI shall ensure the appointment of a qualified, independent, and impartial arbitrator and, when appropriate, it shall appoint an arbitrator of a nationality other than the nationalities of the parties.

Article 13: Three Arbitrators

(1) If three arbitrators are to be appointed, each party may propose one (1) arbitrator in the Notice of Arbitration and one (1) arbitrator in the Response to the Notice of Arbitration, or in a subsequent communication within the time allowed by PDRCI. Unless the parties agree otherwise, the two arbitrators so nominated, upon confirmation, shall choose the third arbitrator, who upon confirmation by PDRCI, will act as the presiding arbitrator.

(2) If either party fails to nominate an arbitrator, PDRCI shall appoint the arbitrator for that party.

(3) If within thirty (30) days after the confirmation of the second arbitrator, the two arbitrators have not agreed on the choice of the third arbitrator, PDRCI shall appoint the third arbitrator in the same manner as a sole arbitrator.

Article 14: Multiple Parties and Arbitrators

(1) For the purpose of Article 13(1), where there are multiple parties as claimants or respondents, the multiple claimants or the multiple respondents shall jointly nominate an arbitrator, unless the parties have agreed to another method of appointment of the arbitrators.

(2) If the parties have agreed that the arbitral tribunal shall be composed of a number of arbitrators other than one or three, the arbitrators shall be appointed according to the method agreed upon by the parties. In the absence of agreement by the parties, PDRCI shall determine the method of appointing the arbitrators and, if necessary, appoint the arbitrators.

Article 15: Constitution of Arbitral Tribunal

(1) The arbitral tribunal is deemed constituted when PDRCI confirms or appoints the sole arbitrator or third arbitrator, or the last arbitrator in case of multiple arbitrators. PDRCI shall send a notice of the confirmation or appointment to the parties and the arbitral tribunal, expressly providing for the date of the arbitral tribunal's constitution.

(2) In case of failure to constitute the arbitral tribunal for any cause under the Rules, PDRCI shall, at the request of any party, constitute the arbitral tribunal and in doing so may revoke any appointment or confirmation already made and appoint or reappoint each of the arbitrators and designate one of them as the presiding arbitrator.

Article 16: Information on Proposed Arbitrators

Where the names of one or more persons are proposed for nomination or appointment as arbitrators, their full names, addresses, contact details, and nationalities shall be indicated, together with a description of their qualifications and their consent to the disclosure and processing of such personal information.

Article 17: Disclosure of Arbitrators

(1) Before confirmation, an arbitrator shall (a) sign a statement confirming their availability to decide the Disputes and their impartiality and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to their impartiality or independence.

(2) An arbitrator, once confirmed and throughout the arbitration, shall disclose to the parties any such circumstances without delay, unless they have been informed by the arbitrator of these circumstances.

(3) By making a disclosure, an arbitrator does not impliedly admit their lack of independence or impartiality.

(4) In order to assist prospective arbitrators and arbitrators in complying with their duties under this Article, each party shall promptly inform PDRCI, the arbitral tribunal, and the other parties of the existence and identity of any third party who has entered into an arrangement for the funding of claims or defences, under which it has an economic interest in the outcome of the arbitration.

Article 18: Challenge of Arbitrators

(1) Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence, or if the arbitrator does not possess the qualifications agreed upon by the parties.

(2) A party may challenge the arbitrator nominated by him or her only for reasons of which they become aware after the confirmation.

Article 19: Notice of Challenge, Acceptance of Challenge

(1) A party who intends to challenge an arbitrator shall send a notice of challenge within fifteen (15) days after it was notified of the confirmation or appointment of the challenged arbitrator or within fifteen (15) days after the circumstances mentioned in

Articles 17 to 18 (Disclosure of Arbitrators, Challenge of Arbitrators) became known to that party.

(2) The notice of challenge shall contain facts and circumstances, in addition to those already disclosed, upon which the challenge is based. It shall be communicated to PDRCI, to the other parties, to the arbitrator who is challenged, and to the other arbitrators. The notice of challenge shall be in writing and shall state the reasons for the challenge.

(3) A notice of challenge shall not be considered made unless the party making the challenge has paid the challenge fee under these Rules in accordance with the Schedule of Fees.

(4) Except for justifiable reasons as may be determined by PDRCI, the notice of challenge shall not suspend the proceedings.

(5) All parties may agree to the challenge, in which case the confirmation or appointment shall be deemed withdrawn. The challenged arbitrator may also withdraw the acceptance of his or her nomination or appointment. Acceptance of the challenge by the nominating party or by the challenged arbitrator shall not imply the validity of the challenge.

Article 20: Resolution of Challenge

(1) If the other party does not agree to the challenge and the challenged arbitrator does not withdraw within fifteen (15) days from notice of the challenge, PDRCI shall decide the challenge within five (5) days from referral by the Secretariat. PDRCI may adopt any appropriate procedure and adjust the time limit to decide the challenge, including hearing the parties and the challenged arbitrator.

(2) If PDRCI sustains the challenge, a substitute arbitrator shall be appointed pursuant to the procedure applicable to the appointment of an arbitrator as provided in Articles 12 to 14 (Sole Arbitrator, Three Arbitrators, and Multiple Parties and Arbitrators).

(3) PDRCI's decision on the challenge shall be final. The arbitral tribunal shall allocate the costs of the challenge, if any, including the challenge fee and the costs incurred by the challenged arbitrator and the opposing party.

Article 21: Termination of Mandate

When an arbitrator fails to act or it becomes impossible for an arbitrator to perform their functions, the procedure in respect of the challenge of an arbitrator as provided in Article 19 (Notice of Challenge, Acceptance of Challenge) shall apply.

Article 22: Replacement of Arbitrators

(1) Subject to paragraph (2) of this Article, in any event where an arbitrator has to be replaced pursuant to Articles 18 (Challenge of Arbitrators) and 21 (Termination of Mandate) in the course of the arbitration, a substitute arbitrator shall be appointed following the procedure provided in Articles 12 to 14 (Sole Arbitrator, Three Arbitrators, and Multiple Parties and Arbitrators) applicable to the appointment of the arbitrator being replaced. This procedure shall apply even if in the appointment of the arbitrator to be replaced, a party may have failed to exercise its right to nominate or to participate in the nomination.

(2) At the request of a party, PDRCI may (a) appoint the substitute arbitrator; or (b) after the hearings are closed, authorize the other arbitrators to proceed with the arbitration without delay and make an award. In making such determination, PDRCI shall take into account the^[1]_{SEP} views of the remaining arbitrators and of the parties^[1]_{SEP} and such other matters that it considers appropriate in the circumstances.

Article 23: Repetition of Hearings

If an arbitrator is replaced, the proceedings shall resume at the stage where the arbitrator who was replaced ceased to perform their functions without repeating the previous hearings, unless the arbitral tribunal decides otherwise.

Article 24: File Counsel

(1) A Counsel-in-Charge of the File ("File Counsel") shall be appointed by the Secretary General upon commencement of the arbitration from a list of qualified individuals. The File Counsel, who is independent of the arbitral tribunal, shall monitor the arbitration on behalf of PDRCI. The File Counsel shall not perform the function of a Tribunal Secretary.

(2) The File Counsel shall be subject to Article 17 on Disclosure and to Articles 18 and 19 on Challenge by any party. The resolution of the challenge by PDRCI shall be final.

(3) The File Counsel may attend the case management conference and the hearings.

Article 25: Tribunal Secretary

(1) The arbitral tribunal or its presiding arbitrator may appoint a secretary ("Tribunal Secretary") to assist in performing its functions. The Tribunal Secretary shall be appointed from a list of qualified individuals recommended by the Secretary General. In

making the recommendation, the Secretary General shall consult with the arbitral tribunal or its presiding arbitrator.

(2) The Tribunal Secretary shall serve for the duration of the arbitration, unless they are earlier retired or replaced by the arbitral tribunal or its presiding arbitrator. The Tribunal Secretary shall not perform the function of File Counsel.

(3) The Tribunal Secretary shall be subject to Article 17 on Disclosure and to Articles 18 and 19 on Challenge by any party. The resolution of the challenge by the arbitral tribunal or its presiding arbitrator shall be final.

Section IV: Arbitral Proceedings

Article 26 : General Provisions

(1) Subject to the Rules, the arbitral tribunal may conduct the arbitration in such manner as it considers appropriate, provided that the parties are treated with equality and given a reasonable opportunity of presenting their case. The arbitral tribunal shall provide a fair and efficient process of settling the Disputes, avoiding unnecessary delay and expense.

(2) If so requested by a party, the arbitral tribunal shall hold hearings at an appropriate stage of the proceedings for the presentation of evidence, including expert testimony, or for oral argument. In the absence of such a request, the arbitral tribunal shall decide whether to hold such hearings or whether the issues shall be decided on the basis of documents and other materials.

Article 27 : Seat of Arbitration

(1) If the parties have not previously agreed on the seat of arbitration, the seat of arbitration shall be the Philippines, unless the arbitral tribunal, having regard to the circumstances of the case, determines that another seat is more appropriate.

(2) The award shall be deemed to have been made at the seat of arbitration.

(3) The arbitral tribunal may meet at any location or venue it considers appropriate for deliberations. Unless otherwise agreed by the parties, the arbitral tribunal may also meet at any location or venue it considers appropriate for any other purpose, including hearings.

Article 28 : Language

(1) Subject to an agreement by the parties, the arbitral tribunal shall, promptly after its constitution, determine the language(s) to be used in the proceedings, including the submissions of the parties, oral hearings, and final award. In the absence of such agreement, the language of the arbitration shall be English.

(2) The arbitral tribunal may order that any documents annexed to the submissions of the parties and any supplementary documents or exhibits submitted in the course of the proceedings, delivered in their original language, shall be accompanied by a translation into the language(s) agreed upon by the parties or determined by the arbitral tribunal; or, in the absence of such determination, in English.

Article 29: Case Management Conference

(1) As soon as the arbitral tribunal has received the file from PDRCI and at any time upon the discretion of the arbitral tribunal, it shall convene the parties to a case management conference ("Case Management Conference") in person or, in appropriate cases, by video or audio conference, as the arbitral tribunal may direct to discuss, among others, the procedural measures that may be adopted. The arbitral tribunal may invite the parties to submit proposals in advance of the Case Management Conference.

(2) During or following such conference, the arbitral tribunal shall issue a procedural order which may include the following particulars:

- (a) the names, addresses, and other contact details of the parties, their representatives, and counsel, if any;
- (b) the addresses to which notices and communications arising in the course of the arbitration may be made;
- (c) the particulars of the appointment of the arbitral tribunal including the names, addresses, and other contact details of each of the arbitrators;
- (d) the particulars of any appointment of a Tribunal Secretary to be made by the arbitral tribunal under Article 25 (Tribunal Secretary);
- (e) the seat of the arbitration;
- (f) the language(s) of the arbitration;
- (g) unless the arbitral tribunal considers it inappropriate, a list of issues to be determined;

- (h) the particulars of the applicable procedural rules other than the Rules and, if necessary, reference to the power conferred upon the arbitral tribunal to act as *amiable compositeur* or to decide *ex aequo et bono*;
- (i) the provisional procedural timetable; or
- (j) any other procedural matters that the arbitral tribunal considers appropriate.

(3) The procedural order or any part thereof may be issued in the form of a Terms of Reference as defined in Article 33.

(4) If the procedural order is issued in the form of a Terms of Reference, the arbitral tribunal may issue supplemental Terms of Reference on other procedural matters that cannot be determined with finality during the Case Management Conference.

Article 30 : Statement of Claim

(1) The claimant shall communicate its statement of claim ("Statement of Claim") in writing to PDRCI, to respondent, and to each of the arbitrators within a period of time to be determined by the arbitral tribunal. The claimant may elect to treat the Notice of Arbitration as the Statement of Claim, provided that the Notice of Arbitration also complies with the requirements of paragraphs 2 to 4 of this Article.

(2) The Statement of Claim shall include the following particulars:

- (a) The names, addresses, and other contact details of the parties;
- (b) A statement of the facts supporting the claim;
- (c) The points at issue;
- (d) The legal grounds or arguments supporting the claim;
- (e) The value of the claims and the amounts involved, or if the relief sought is non-monetary, an estimate of its value; and
- (f) The relief sought.

(3) A copy of any contract or other legal instrument out of or in relation to which the Disputes arise and of the arbitration agreement shall be annexed to the Statement of Claim.

(4) As far as possible, all documents and other evidence relied upon by the claimant shall be submitted together with or referenced in the Statement of Claim.

(5) Upon the filing of the Statement of Claim, PDRCI shall determine the amount of the claimant's final advance on costs ("Final Advance") and shall require the claimant to pay the same, less any amounts paid by way of Provisional Advance, in accordance with the *Guidelines on Fees*, subject to Article 32 (Amendment to the Claim or Defense) of these Rules.

Article 31 : Statement of Defense

(1) Within a period of time to be determined by the arbitral tribunal, the respondent shall communicate its statement of defense ("Statement of Defense") in writing to PDRCI, to claimant, and to each of the arbitrators. The respondent may elect to treat the Response to the Notice of Arbitration as the Statement of Defense, provided that the Response to the Notice of Arbitration also complies with the requirements of paragraph 2 of this Article.

(2) The Statement of Defense shall reply to the particulars required by Article 30 (2) (b) to (f). As far as possible, all documents and other evidence relied upon by the respondent shall be submitted together with or referenced in the Statement of Defense.

(3) In the Statement of Defense, or at a later stage upon the discretion of the arbitral tribunal, respondent may make a counterclaim, or rely on any other claim for the purpose of a set-off provided that the arbitral tribunal has jurisdiction over it.

(4) The provisions of Article 30 (2) shall apply to a counterclaim and any other claim relied on for the purpose of a set-off.

(5) Upon the filing of the Statement of Defense and the counterclaim, or any other claim, PDRCI shall determine the respondent's Final Advance and shall require respondent to pay the same, less any amounts paid by way of Provisional Advance, in accordance with the *Guidelines on Fees*, subject to Article 32 (Amendment to the Claim or Defense) of these Rules.

Article 32 : Amendment to the Claim or Defense

(1) In the course of the arbitration, a party may amend or supplement its claim or defense, including a counterclaim or any other claim for the purpose of a set-off, unless the arbitral tribunal considers it inappropriate to allow such amendment or supplement having regard to the delay in making it or prejudice to other parties or any other circumstances. However, a claim or defense, including a counterclaim or any other claim for the purpose of a set-off, may not be amended or supplemented in such a manner that the amended or supplemented claim or defense falls outside the jurisdiction of the arbitral tribunal.

(2) PDRCI may adjust the Final Advances of the parties if any amendment or supplement increases or decreases the amount in dispute or the claims and counterclaims of the parties, in accordance with the *Guidelines on Fees*.

Article 33 : Terms of Reference

(1) The arbitral tribunal shall prepare on the basis of the parties' submissions, a document defining its terms of reference ("Terms of Reference").

(2) The Terms of Reference shall include the following:

- (a) a summary of the parties' respective claims and of the relief sought by each party, together with the amounts of such claims, including, to the extent possible, an estimate of the value of non-monetary claims;
- (b) a list of issues to be determined;
- (c) any supplement or amendment to the procedural order or the Terms of Reference referred to in Article 29;
- (d) any reservation of the arbitral tribunal's authority to clarify or refine issues in the course of the arbitral proceedings.

(3) The Terms of Reference may be in the form of a procedural order issued by the arbitral tribunal or in the form of a joint submission by the parties. If in the form of a procedural order, it shall be issued within fifteen (15) days from the date of the receipt of the last submission required in the procedural timetable of the arbitral tribunal. Unless in the form of a procedural order, the Terms of Reference shall be reviewed and signed by the parties and the arbitral tribunal. Once signed by the parties and the arbitral tribunal, it may not be modified without their consent, unless there is a reservation pursuant to paragraph 2 (d) of this Article.

(4) If a party refuses or is unable to sign the Terms of Reference, the arbitration shall proceed on the basis of the Terms of Reference signed by at least one party and the arbitral tribunal.

Article 34: Pleas as to the Jurisdiction of the Arbitral Tribunal

(1) The arbitral tribunal shall have the power to rule on objections that it has no jurisdiction, including any objections with respect to the scope, existence, or validity of the arbitration clause or arbitration agreement, or if all of the claims or counterclaims may be determined in a single arbitration.

(2) An arbitration clause forming part of a contract and that provides for arbitration under the Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is void shall not automatically entail the invalidity of the arbitration clause.

(3) A plea that the arbitral tribunal does not have jurisdiction, or that the claims or counterclaims may not be determined in a single arbitration, shall be raised not later than in the Statement of Defense or, with respect to a counterclaim or any other claim for the purpose of set-off, in the reply. A party is not precluded from raising such a plea by the fact that it has nominated, or participated in the nomination of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be made as soon as the matter alleged to be beyond the scope of its authority is raised in the arbitration. However, the arbitral tribunal may admit a later plea if it considers the delay justified.

(4) The arbitral tribunal shall rule on a plea concerning its jurisdiction, either as a preliminary question or in an award on the merits. The arbitral tribunal may continue the arbitration and make an award, notwithstanding any pending challenge to its jurisdiction before a court if allowed under the applicable law.

(5) In cases when the propriety of the consolidation of two or more arbitrations is in issue, PDRCI shall decide if and to what extent the arbitrations shall proceed, in accordance with Article 10 (Consolidation of Arbitrations).

Article 35: Summary Disposition

(1) Not later than fifteen (15) days from the last submission of the relevant claims or defenses, any party may apply to the arbitral tribunal for the summary disposition of one or more claims, counterclaims, or defenses that are manifestly without merit.

(2) The arbitral tribunal may refuse the application or allow it to proceed. If the application is allowed to proceed, the arbitral tribunal shall give the other parties an opportunity to respond to the application.

(3) The arbitral tribunal may adopt the procedural measures it considers appropriate, after consulting the parties, and may hear the parties on the application. Except only on justifiable grounds, further presentation of evidence shall not be allowed.

(4) The arbitral tribunal shall make its summary disposition in the form of an order or award, which may include an award on the costs of the application pursuant to Article 54 (Definition of Costs), within sixty (60) days from the allowance of the application, or such further time that may be allowed by PDRCI.

Article 36: Further Written Statements

The arbitral tribunal shall decide what further written statements, in addition to the Statement of Claim and the Statement of Defense, shall be required from the parties or may be presented by them. The arbitral tribunal shall fix the periods of time for communicating such statements.

Article 37: Periods of Time

- (1) PDRCI may, in appropriate circumstances, modify any time period provided in the Rules.
- (2) The period of time fixed by the arbitral tribunal for the communication of written statements (including the Statement of Claim and Statement of Defense) shall not exceed forty-five (45) days for each party. However, the arbitral tribunal may extend the time limit if it finds that an extension is justified.

Article 38: Interim Measures of Protection

- (1) It is not incompatible with an arbitration agreement for a party, before the constitution of the arbitral tribunal, to request a court to grant an interim measure of protection (“Interim Measure”) or to apply for Emergency Relief pursuant to Article 58.
- (2) After the constitution of the arbitral tribunal and during the arbitration, a request for an Interim Measure or its modification may be made with the arbitral tribunal or, to the extent that the arbitral tribunal has no power to act or is unable to act effectively, with the court.
- (3) Any party may request that an Interim Measure be granted against any other party. The request shall be accompanied by payment of the non-refundable fee and requisite deposits under these Rules.
- (4) An Interim Measure, whether in the form of an order, award, or other form, is a temporary measure issued to, among others:
 - (a) prevent irreparable loss or injury;
 - (b) provide security for the performance of any obligation;
 - (c) produce or preserve any evidence;
 - (d) maintain or restore the status quo pending the determination of the Disputes;

- (e) take action to prevent, or refrain from taking action that is likely to cause current or imminent harm or prejudice to the arbitration;
 - (f) provide a means of preserving the goods in dispute and any other assets out of which the award may be satisfied, including appointment of receivers or detention, preservation, and inspection of property; or
 - (g) compel any other appropriate act or omission.
- (5) The party requesting an Interim Measure under paragraph 4 (a), (d), (e), and (f) of this Article shall satisfy the arbitral tribunal that:
- (a) harm not adequately reparable by an award of damages is likely to result if the measure is not ordered, and such harm substantially outweighs the harm that is likely to result to the party against whom the measure is directed if the measure is granted; and
 - (b) there is a reasonable possibility that the requesting party will succeed on the merits of the claim. The determination of this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.
- (6) With respect to other forms of Interim Measure, the requirements under paragraph 5 of this Article shall apply only to the extent the arbitral tribunal considers appropriate.
- (7) An Interim Measure may be requested by written application transmitted by reasonable means to the arbitral tribunal and to the party against whom the measure is sought, describing in appropriate detail the precise relief, the party against whom the relief is requested, the grounds for the relief, and the evidence supporting the request.
- (8) The order shall be binding upon the parties.
- (9) The arbitral tribunal may modify, suspend, or terminate the Interim Measure it has granted, upon application of any party or, in exceptional circumstances and after prior notice to the parties, on the arbitral tribunal's own initiative.
- (10) A party who does not comply with the Interim Measure shall be liable for all damages and other sanctions as the arbitral tribunal may deem appropriate, including all costs and reasonable legal fees paid in obtaining judicial enforcement.
- (11) Either party may apply with the court for assistance in implementing or enforcing the Interim Measure ordered by the arbitral tribunal.
- (12) The arbitral tribunal may require any party to promptly disclose any material change in the circumstances on the basis of which the Interim Measure was requested or granted.

(13) The order granting an Interim Measure may be conditioned upon the provision of security for any act or omission specified in the order.

(14) The party requesting an Interim Measure may be liable for any costs and damages caused by the Interim Measure to any party if the arbitral tribunal later determines that, in the circumstances then prevailing, the Interim Measure should not have been granted. The arbitral tribunal may award such costs and damages at any point during the arbitration.

Article 39: Production of Evidence

(1) Immediately after the Statement of Defense is communicated by respondent, but not later than the Case Management Conference, or at such other time allowed by the arbitral tribunal, each party may offer or request in writing to the other party to (a) stipulate on relevant facts and documents that are material to the claim, counterclaim, or defense, (b) produce and exchange oral or written testimony, documents, expert reports, or other evidence in its possession, custody, or control, or (c) inspect and reproduce or allow the inspection and reproduction of documents and other evidence in its possession, custody, or control. A party may also request the production of evidence by other means.

(2) Except to receive the testimony of witnesses who may not be available for examination during the hearing, depositions and interrogatories are not allowed. However, the parties may agree to depose any witnesses or to serve interrogatories on each other. The arbitral tribunal may also allow the deposition of any witnesses or the service of interrogatories upon such terms as it shall determine.

(3) The arbitral tribunal may allow the production of evidence, provided it is relevant to the case, material to its outcome, and not dilatory to the proceedings.

(4) Any objection to the production of evidence requested shall be promptly communicated to the arbitral tribunal, who shall rule on the objection at the Case Management Conference or at such other time allowed by it.

(5) The arbitral tribunal may include in the Procedural Timetable the details of the production of evidence requested, the due dates, the nature of the testimony or document sought, the party responsible for the response, and the place of production or deposition, among others.

(6) In allowing the production of evidence, the arbitral tribunal shall act fairly and expeditiously, but without any unnecessary formality. It may impose costs or other sanctions against any party's (a) unjustified failure or refusal to comply with the order or agreement to produce evidence, or (b) attempt to delay or defeat the production of evidence or to overwhelm the requesting party with irrelevant or immaterial evidence.

(7) Evidence produced pursuant to this Article shall form part of the record and shall be subject to Article 46 (Confidentiality of Proceedings).

Article 40: Evidence and Burden of Proof

- (1) Each party shall have the burden of proving the facts relied on to support its claim or defense.
- (2) Witnesses, including expert witnesses, who are presented by the parties to testify on any issue of fact or expertise may be any individual, notwithstanding that the individual is a party to the arbitration or in any way related to a party. Unless otherwise directed by the arbitral tribunal, statements by witnesses, including expert witnesses, shall be in writing and signed by them.
- (3) At any time before the close of hearings, the arbitral tribunal may require the parties to produce oral or written testimony, documents, or other evidence and to allow the inspection and reproduction of such evidence, upon such terms as it shall determine.
- (4) The arbitral tribunal shall have the power to determine the admissibility, relevance, materiality, and weight of a party's evidence.

Article 41: Hearings

- (1) In case of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the date, time, and place of such hearing.
- (2) Witnesses, including expert witnesses, may be heard under the conditions and examined in the manner set by the arbitral tribunal.
- (3) Hearings shall be held *in camera* unless the parties agree otherwise. The arbitral tribunal may require the exclusion of any witness or witnesses, including expert witnesses, during the testimony of other witnesses, except that a witness who is a party or a party representative to the arbitration shall be entitled to attend the hearings without being excluded.
- (4) The taking of evidence shall be subject to conditions as the arbitral tribunal shall prescribe. In appropriate cases, after consulting the parties, the arbitral tribunal may direct that the evidence be taken by video or audio conference or other means.

Article 42: Experts Appointed by the Arbitral Tribunal

- (1) After consulting the parties, the arbitral tribunal may appoint one or more experts to report to it in writing on specific issues to be determined by the tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.

(2) Before accepting the appointment, the expert shall submit to the arbitral tribunal and to the parties a description of their qualifications and a statement of their impartiality and independence. Within the time allowed by the arbitral tribunal, the parties may object to the expert's qualifications, impartiality, or independence. The arbitral tribunal shall promptly decide such objections.

(3) The parties shall give the expert all relevant information or produce for their inspection all relevant documents, information, goods, or other evidence that they may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.

(4) Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, who shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in their report.

(5) At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to examine the expert. At this hearing, either party may present expert witnesses in order to testify on the points at issue. The provisions of Article 41 (Hearings) shall be applicable to such hearing.

Article 43: Default

- (1) If, within the period of time fixed by the Rules or by the arbitral tribunal:
 - (a) the claimant, without sufficient cause, fails to communicate the Statement of Claim, the arbitral tribunal may issue an order for the termination of the arbitration.
 - (b) the respondent, without sufficient cause, fails to communicate the Response to the Notice of Arbitration or the Statement of Defense, the arbitral tribunal shall order that the proceedings continue, without treating such failure in itself as an admission of the claims. This subparagraph shall also apply to a failure to submit a defense to a counterclaim, or any other claim.
- (2) If a party, duly notified under the Rules, fails to appear at a hearing, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.
- (3) If a party requested by the arbitral tribunal or by its appointed expert to produce documents, information, goods, or other evidence, fails to do so within the established period of time, without showing sufficient cause for such failure, the arbitral tribunal may make the award on the evidence before it.

Article 44: Closure of Hearings

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

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

Article 45: Waiver of Right to Object

A failure by any party to object promptly to any non-compliance with the Rules or with any requirement of the arbitration agreement shall be deemed to be a waiver of the right of such party to make such an objection, unless such party can show that, under the circumstances, its failure to object was justified.

Article 46: Confidentiality of Proceedings

Any information relating to the subject of arbitration, expressly intended by the source not to be disclosed or obtained under circumstances that would create such a reasonable expectation on behalf of the source of the information that it will not be disclosed, shall not be disclosed. It shall include statements, information, goods, submissions, evidence, and all other papers filed or submitted in an arbitration or for expert evaluation.

Section V: The Award

Article 47: Awards / Decisions

(1) Any award or decision of the arbitral tribunal shall be made within one (1) year from constitution of the arbitral tribunal.

(2) When there is more than one (1) arbitrator, any award or decision on any issue by the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, unless the parties agree otherwise, the award or decision on any issue shall be made by the presiding arbitrator of the arbitral tribunal.

(3) The presiding arbitrator may decide questions of procedure when there is no majority or when the parties or the arbitral tribunal so authorizes.

(4) The arbitral tribunal may make a single or separate awards in respect of all parties or issues involved in the arbitration.

Article 48: Form and Effect of Awards

(1) All awards shall be made in writing and shall be final and binding on the parties. The parties shall carry out all awards without delay.

(2) The arbitral tribunal shall state the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

(3) An award shall be signed by the sole arbitrator or by majority of the arbitrators and shall state the date on which the award was made and the place of arbitration. Where there is more than one (1) arbitrator and any of them fails to sign, the award shall state the reason for the absence of the signature. Where there is no majority, the presiding arbitrator shall sign the award.

(4) An award may be made public (a) with the consent of all parties; or (b) where and to the extent disclosure is required of a party by legal duty, to protect or pursue a legal right, or in relation to legal proceedings before a court or other competent authority. PDRCI may publish a concise summary of the award, which shall be written in plain language by the tribunal without any references to the parties' identities or to any information deemed privileged or confidential. Before publication, PDRCI shall provide the summary to the parties for an opportunity to comment.

(5) Original and certified copies of the award shall be provided to the parties.

(6) Upon the issuance of the final award, the arbitral tribunal shall have no further jurisdiction, except to the extent allowed by the Rules or the applicable law.

Article 49: Applicable Law, *Amiable Compositeur*

(1) The arbitral tribunal shall apply the law designated by the parties as applicable to the substance of the Disputes. Failing such designation by the parties, the arbitral tribunal shall apply the law that it determines to be appropriate.

(2) The arbitral tribunal shall act as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized the arbitral tribunal to do so. However, if the law applicable to the arbitral procedure permits such arbitration, the parties may agree to waive or restrict such authority.

(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade applicable to the transaction.

Article 50: Settlement or Other Grounds for Termination

(1) If, before the award is made, the parties agree to settle the Disputes, the arbitral tribunal shall issue an order terminating the arbitration or, if requested by both parties and accepted by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms. The arbitral tribunal is not obliged to give reasons for such an award.

(2) The order terminating the arbitration or the award on agreed terms, signed by the arbitral tribunal, shall be communicated by PDRCI to the parties. Where an award on agreed terms is made, Article 48 shall apply.

(3) If the claimant withdraws its claim and the respondent who has a counterclaim or any other claim objects to the termination of the arbitration, the order terminating the arbitration shall apply only to the claim but not to the counterclaim or any other claim. A party is not excused from liability for arbitration fees and costs when its claim is withdrawn.

(4) If, before the award is made, the arbitration proceeding becomes unnecessary or impossible for any reason not mentioned in paragraph 1 of this Article, the arbitral tribunal shall notify the parties of its intention to issue an order to terminate the proceeding. The arbitral tribunal may hear any objection before issuing an order of termination.

(5) Where there are multiple claims or parties, the arbitral tribunal may issue an order directing the dismissal or withdrawal of the claims or the exclusion of the parties and continue the arbitration as to the remaining claims or parties.

(6) Except for justifiable circumstances, grounds for avoiding arbitration such as lack of jurisdiction of the arbitral tribunal, statute of limitations, bar by prior judgment, or any other ground then available shall be raised as defenses in the Response to the Notice of Arbitration or in the Statement of Defense. A request to dismiss or other similar request may be treated as a Response to Notice of Arbitration or as a Statement of Defense.

Article 51: Interpretation of Award

(1) Within thirty (30) days after the receipt of the award, a party, with notice to the other party, may request that the arbitral tribunal give an interpretation of a specific point or part of the award.

(2) If the arbitral tribunal considers the request to be justified, it shall make the interpretation in writing within thirty (30) days from receipt of the request. The interpretation shall form part of the award and the provisions of Article 48 shall apply.

Article 52: Correction of Award

(1) Within thirty (30) days after the parties' receipt of the award, the arbitral tribunal, on its own initiative, or any of the parties, with notice to the other party, may request the arbitral tribunal to correct in the award any error in computation, any clerical or typographical error, or any error or omission of a similar nature.

(2) If the arbitral tribunal considers the party's request to be justified, it shall make the correction within thirty (30) days from receipt of the request. Such corrections shall be in writing and shall form part of the award. The provisions of Article 48 shall apply.

Article 53: Additional Award

(1) Within thirty (30) days after the receipt of the termination order under Article 50 (2) or the award, a party, with notice to the other party, may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but not decided by the arbitral tribunal.

(2) If the arbitral tribunal considers the request to be justified, it shall render an additional award or complete its award within sixty (60) days after the receipt of the request. The arbitral tribunal may extend, if necessary, the period of time to make the award.

(3) When such an award or additional award is made, the provisions of Article 48 shall apply.

Section VI. Costs

Article 54: Definition of Costs

(1) The arbitral tribunal shall fix the costs of arbitration in its Award. The term "costs" shall include:

- (a) The arbitrators' fees and any Filing Fees, administrative fees, and expenses set by PDRCI in accordance with the Rules and the *Guidelines on Fees*;
- (b) The travel and other expenses incurred by the arbitrators;
- (c) The costs of expert advice and of other assistance required by the arbitral tribunal;

- (d) The travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- (e) The costs of legal representation and assistance reasonably incurred by the successful party in connection with the arbitration, provided such costs were claimed and proved during the arbitral proceedings; and
- (f) The costs of all other incidents in the arbitration, including Emergency Relief, where appropriate.

(2) In relation to the interpretation, correction, or completion of any award under Articles 51 (Interpretation of the Award), 52 (Correction of the Award) and 53 (Additional Award), PDRCI may charge costs in accordance with the *Guidelines on Fees*.

Article 55: Allocation of Costs

(1) The costs of arbitration shall in principle be borne by the unsuccessful party. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is appropriate, taking into account the circumstances of the case.

(2) The arbitral tribunal shall in the final award or, if it deems appropriate, in any other award, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

(3) The arbitral tribunal may also allocate interim costs, whenever appropriate, subject to the allocation of costs in the final award.

(4) When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it shall allocate the costs of arbitration in the order or award.

Article 56: Advance on Costs

PDRCI shall set the advances on costs and require payment in accordance with the Rules, *Guidelines on Fees*, and other PDRCI issuances.

Section VII: Other Provisions

Article 57: Expedited Procedure

(1) Prior to the constitution of the arbitral tribunal, a party may apply to PDRCI in writing for the arbitration to be conducted in accordance with this Article where:

- (a) the amount in dispute representing the aggregate of any claim, counterclaim, or any other claim does not exceed Twenty-Five Million (PhP25,000,000) Pesos; or
- (b) the parties so agree; or
- (c) in cases of exceptional urgency.

(2) When PDRCI, after consultation with the parties, grants an application for expedited procedure, the arbitration shall be conducted in accordance with the Rules but subject to the following changes:

- (a) the case shall be heard by a sole arbitrator, unless the arbitration agreement provides for a different number of arbitrators;
- (b) if the arbitration agreement provides for more than one (1) arbitrator, PDRCI shall invite the parties to agree to a sole arbitrator and to terminate the mandate of any arbitrator. If the parties do not agree, the case shall be heard by the number of arbitrators as provided in the arbitration agreement, including the arbitrators previously nominated by the parties;
- (c) if the parties agree that the case shall be heard by a sole arbitrator but have not agreed on one within five (5) days, they shall choose the sole arbitrator, in their order of preference, from a list of five (5) arbitrators provided by PDRCI, within five (5) days from receipt of the list. PDRCI shall appoint the arbitrator in accordance with the order of preference indicated by the parties;
- (d) where the arbitration agreement provides for more than one (1) arbitrator and the parties do not agree to a sole arbitrator, the parties shall nominate the arbitrators in accordance with the arbitration agreement, except for the presiding arbitrator who shall be appointed in the same manner as a sole arbitrator;
- (e) if one party fails to nominate an arbitrator or to choose one from the list provided by PDRCI, or where no common arbitrator is nominated by the parties, PDRCI shall appoint the arbitrator within five (5) days from the request of the Secretary General;

- (f) PDRCI may shorten the time limits provided in the Rules, including the periods for challenge of the arbitrators, as well as any other time limits that it has set;
- (h) the arbitral tribunal shall adopt a simplified procedure to expedite the arbitration, including shorter time limits for submission of evidence and documents;
- (i) after the submission of the Response to the Notice of Arbitration, the parties shall in principle be entitled to submit one Statement of Claim and one Statement of Defense (and counterclaim, or any other claim);
- (j) the arbitral tribunal shall decide the Disputes on the basis of documents and materials only, unless it decides that it is appropriate to hold one or more oral hearings;
- (k) the award shall be made within six (6) months from the date PDRCI transmits the file to the arbitral tribunal. In exceptional circumstances, PDRCI may extend this time limit; and
- (l) the arbitral tribunal may state in summary form the reasons upon which the award is based, unless the parties have agreed that no reasons are to be given.

Unless the parties agree otherwise, the expedited procedure provided in this Article shall not apply to any consolidated arbitrations under Article 10 (Consolidation of Arbitration) or to any arbitrations under Articles 7 (Joinder of Additional Parties), 8 (Claims between Multiple Parties), or 9 (Multiple Contracts).

(3) At the request of a party or the arbitral tribunal, PDRCI may, after consultation with the parties and the arbitral tribunal, decide that the Expedited Procedure shall no longer apply to the case. Unless PDRCI considers it appropriate to replace or reconstitute the arbitral tribunal, the arbitral tribunal shall remain in place.

Article 58: Emergency Arbitrator

(1) A party may apply for an Interim Measure concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal ("Emergency Relief") by submitting an application for the appointment of an emergency arbitrator ("Emergency Arbitrator") to PDRCI ("Application").

(2) The Application shall be submitted in the same manner as the Notice of Arbitration pursuant to Articles 4 and 5 of the Rules and shall include the following information:

- (a) the names, addresses, and other contact details of the parties to the Application and of their counsel;

- (b) the circumstances giving rise to the Application and the relevant agreements;
- (c) the Emergency Relief sought;
- (d) the reasons for the issuance of Emergency Relief on an urgent basis;
- (e) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law;
- (f) confirmation of payment of the deposit in accordance with the *Guidelines on Fees* ("Emergency Arbitration Fee"); and
- (g) confirmation that copies of the Application and any exhibits included therewith have been or are being served simultaneously on all other parties to the Application.

(3) The Application may contain such other documents or information as the applicant considers appropriate or as may contribute to the efficient determination of the Application.

(4) Upon receipt of the Application, PDRCI shall:

- (a) determine if it should accept the Application;
- (b) assess the applicant the further Emergency Arbitration Fees, in accordance with the *Guidelines on Fees*, taking into account the nature of the case and the estimated amount of work to be performed by PDRCI and the Emergency Arbitrator;
- (c) endeavor to appoint an Emergency Arbitrator within two (2) days after receipt of the Application and the Emergency Arbitration Fee, whichever is later; and
- (d) refer the Application and transmit the file to the Emergency Arbitrator once appointed, with notice to the other parties.

(5) If the applicant fails to pay the Emergency Arbitration Fee or any further fees that PDRCI may assess in connection with the Application, within the time limit provided by PDRCI, the Application shall be dismissed.

(6) Upon notice of the appointment of the Emergency Arbitrator, all written communications from the parties shall be submitted directly to the Emergency Arbitrator with copies to the other parties and PDRCI. All written communications from the Emergency Arbitrator to the parties shall also be given to PDRCI.

(7) A party who intends to challenge an Emergency Arbitrator shall send notice of its challenge, in accordance with Article 19(2), within three (3) days after it was notified of the appointment of the challenged arbitrator or after the circumstances mentioned in Articles 17 to 18 (Disclosure of Arbitrators, Challenge of Arbitrators) became known to that party. If the other party does not agree to the challenge and the challenged arbitrator does not withdraw within three (3) days from notice of the challenge, PDRCI shall decide the challenge. PDRCI may adopt any appropriate procedure and time limit to decide the challenge, including hearing the parties and the challenged arbitrator. If PDRCI sustains the challenge, or the Emergency Arbitrator otherwise becomes incapable of performing his or her functions, a substitute arbitrator shall be appointed. PDRCI's decision on the challenge shall be final.

(8) If an Emergency Arbitrator is replaced, the Emergency Relief proceedings shall resume at the stage where the Emergency Arbitrator was replaced or ceased to perform his or her functions, unless the substitute Emergency Arbitrator decides otherwise.

(9) The Emergency Arbitrator may conduct the proceedings in such a manner as he or she considers appropriate, taking into account the urgent nature of the proceedings. The Emergency Arbitrator shall have the power to rule on objections to his or her jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration clause(s) or of the separate arbitration agreement(s), and shall decide any disputes involving the applicability of this Article 58. The Application may be decided by the Emergency Arbitrator in the form of a decision, order, or award ("Emergency Decision").

(10) The Emergency Decision shall be made within fifteen (15) days from the date in which PDRCI transmitted the file to the Emergency Arbitrator. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by PDRCI.

(11) The Emergency Decision shall:

- (a) be in writing;
- (b) state in summary form the reasons upon which the decision is based, unless the parties have agreed that no reasons are to be given;
- (c) state the date when it was made and be signed by the Emergency Arbitrator; and
- (d) set the costs of the Emergency Relief proceedings and allocate such costs in accordance with Article 55 (Allocation of Costs) of the Rules.

(12) Article 38 (Interim Measure of Protection) shall be applicable to Emergency Reliefs, except that references to the arbitral tribunal shall be deemed to be references to the Emergency Arbitrator.

(13) The Emergency Arbitrator shall have no further power to act once the arbitral tribunal is constituted. However, the arbitral tribunal, notwithstanding receipt of the file,

may allow the Emergency Arbitrator to make the Emergency Decision, in which case the Emergency Decision shall be deemed made by the arbitral tribunal.

- (14) Any Emergency Decision ceases to be binding:
- (a) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;
 - (b) upon the withdrawal of all claims or the termination of the arbitration before the rendering of a final award; or
 - (c) if the arbitral tribunal is not constituted within ninety (90) days from the date of the Emergency Decision, unless this period is extended by agreement of the parties or by PDRCI.
- (15) Any Emergency Decision may, upon request of a party, be modified, suspended or terminated by the arbitral tribunal, once constituted.
- (16) The Emergency Arbitrator may not act as arbitrator in any arbitration relating to the dispute that gave rise to the application and in respect of which the Emergency Arbitrator has acted, unless otherwise agreed by the parties to the arbitration.
- (17) This Article on Emergency Relief shall not prevent any party from seeking urgent Interim Measures from a competent judicial authority at any time.
- (18) In all matters not expressly provided for in this Schedule, the Emergency Arbitrator shall act in the spirit of the Rules.
- (19) The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

Article 59: Limitation of Liability

PDRCI, its trustees and employees, file counsel, and the arbitral tribunal or any person appointed by PDRCI or by the arbitral tribunal, including the tribunal secretary and expert witnesses, shall not be liable to any person for any act or omission made in connection with the arbitration, except upon a clear showing of bad faith, malice, or gross negligence.

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