

THE PERMANENT COURT OF ARBITRATION AT THE HAGUE

ARBITRATION CASE NO. 2020-08

**IN THE MATTER OF AN ARBITRATION UNDER THE RULES OF THE UNITED
NATIONS COMMISSION ON INTERNATIONAL TRADE LAW**

Between

AKGUN INSAAT MAKINA SANAYII VE DIS TICARET LTD. STI.

... Claimant

and

FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA

... Respondent

PROCEDURAL ORDER NO. 1

4 December 2020

The Tribunal issues the following orders and directions with the consent of Parties.

1. The Parties to this Arbitration, their respective addresses and designated in-house representatives (and their telephone numbers and email addresses) are set out below:

Claimant

Name: Akgun Insaat Makina Sanayii ve Dis Ticaret Ltd. Sti.
Address: Bole Subcity 02 House No: 003 Addis Abab Ethiopia
Representative: Yunus Akgun
Email: yunusakgun@akgungroup.net

Respondent

Name: Federal Democratic Republic of Ethiopia
Address: Office of the Attorney General

Bambis, Jomo Kenyatta Avenue P.O Box 1370
Addis Ababa/ Ethiopia

Representative: Dr. Zewdineh Beyene Haile
Email: zewdineh@addislawgroup.com

2. **Seat of Arbitration**

- 2.1. It is agreed between Parties that the seat of the arbitration is The Hague.

3. **IBA Rules on the Taking of Evidence in International Commercial Arbitration (2010) (“IBA Rules”)**

- 3.1. The Tribunal will, in general, be guided (but not bound) by the IBA Rules on the Taking of Evidence in International Arbitration (2010) (“**IBA Rules**”)

4. **Applicable Rules of Arbitration**

- 4.1. It has been agreed between Parties that the United Nations Commission on International Trade Law Arbitration Rules 2010 (with new article 1, paragraph 4, as adopted in 2013) (the “**UNCITRAL Rules**”) are to apply to the arbitration.

5. **Jurisdiction and Constitution of the Tribunal**

- 5.1. The Tribunal notes that, in the Response to the Notice of Arbitration dated 19 July 2019, the Respondent has indicated that it intends to object to the jurisdiction of this Tribunal, and that it will develop this argument further in its Statement of Defence in due course.

6. **Communications**

- 6.1. All notifications and communications (oral or written) for and on behalf of Parties arising in the course of the arbitration shall be made by or to (as the case may

be) Parties' representatives¹ whose details are set out below, by email, mail, or courier service, or telefax.

Name(s)	Claimant: AKGUN INSAAT MAKINA SANAYII VE DIS TICARET LTD. STI.	Respondent: FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA
Acting by their representative(s)	<p>Jones, Swanson, Huddell & Daschbach LLC</p> <p>Pan-American Life Center 601 Poydras Street, Suite 2655 New Orleans, Louisiana 70130 United States of America</p> <p>Tel: +1 504-523-2500 Fax: +1 504-523-2508</p> <p>Email: gjones@jonesswanson.com iersin@jonesswanson.com edaschbach@jonesswanson.com sevliya@jonesswanson.com</p> <p>Fishman Haygood, L.L.P.</p> <p>201 St Charles Avenue, Suite 4600 New Orleans, Louisiana 70170-4600 United States of America</p> <p>Tel: +1 504-586-5252 Fax: +1 504-586-5250</p> <p>Email: jswanson@fishmanhaygood.com breichard@fishmanhaygood.com mwells@fishmanhaygood.com</p> <p>Ilhan & Yavuzturk Attorneys at Law</p> <p>Idealtepe Mahallesi, Bagdat Caddesi, 194/7 Maltepe, 34841, Istanbul, Turkey</p>	<p>Addis Law Group LLP</p> <p>Bole Medihanealem Area Adika Building, 3rd Floor P.O. Box 5707 Addis Ababa Ethiopia</p> <p>Tel: +1 202-587-2750 Fax: -</p> <p>Email: zewdineh@addislawgroup.com won@addislawgroup.com jsk@addislawgroup.com meskertariku@gmail.com htsefaye63@gmail.com</p>

¹ A "representative" includes any person, including a Party's employee, who appears in the arbitration on behalf of a Party and makes submissions, arguments or representations to the Tribunal on behalf of such Party, other than in the capacity as a Witness or Expert, and whether or not legally qualified or admitted to a domestic bar.

	<p>Tel: +90 216-388-6283 Fax: +90 216-388-6286</p> <p>Email: afsin@ilhanlaw.com</p> <p>Verrill Advocacy, LLC</p> <p>Suite M-100 1055 Thomas Jefferson St., NW Washington, DC 20007</p> <p>Tel: +1 202-390-8245 Fax: -</p> <p>Email: charlesverrill@gmail.com</p>	
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6.2. The contact details of the Tribunal are as follows:

Dr Michael Hwang S.C.

Address: Michael Hwang Chambers LLC
160 Robinson Road
#19-01 SBF Center
Singapore 068914

Tel: +65 6285 0114
Email: michael@mhwang.com

Professor Philip J. McConaughay

Address: 125 West 110th Street
Apt. 2A, New York
New York 10026

Tel: +1 224-229-1138
Email: pjmcconnaughay@gmail.com

Sir David A R Williams KNZM, QC

Address: Bankside Chambers
Level 22, Lumley Centre
88 Shortland St
Auckland 1010
New Zealand

Tel: +64 9 367 6896
Email: david.williams@DARWilliams.co.nz

- 6.3. Parties should not communicate with any member(s) of the Tribunal on an *ex parte* basis and all communications, documents² (including all Memorials, evidence, witness statements, and other similar documents) or other information supplied to the Tribunal by one Party shall simultaneously be communicated to all Tribunal Members and Parties. A Party's representatives may communicate on an *ex parte* basis with the Tribunal if the other Party is unrepresented and refuses or fails to participate in the arbitration or any stage thereof.
- 6.4. Service of documents, Memorials, witness statements, expert reports and other similar documents, shall be effected in the order set out in section 10.
- 6.5. A notification, submission or communication by a Party to the Tribunal shall be deemed to have been timely made so long as it is electronically sent before midnight local time at the seat of the arbitration on the date specified in this Procedural Calendar.
- 6.6. The Tribunal, Parties and their representatives are to immediately notify each other of any change of address(es), telephone number(s), facsimile number(s) or email address(es). Failing such notification, all communications, documents, or other information sent in accordance with the present provisions shall be valid.
- 6.7. A Party should immediately notify the Tribunal and the other Party of any change or addition of its representatives, together with the address and email address of any new representatives. The Tribunal reserves the right to withhold approval of the intended change or additional where that could compromise the composition of the Tribunal or the finality of any Award (on the grounds of possible conflict or similar issues).
- 6.8. If the representatives for any Party are discharged, and no notification of the name and contact details of any new representatives is given by the relevant Party, all further communications by the other Party and the Tribunal may be made directly to the relevant Party at the address given in [1] above until the name and contact particulars of the replacement representatives are furnished to the other Party and the Tribunal.

7. **Mediation**

- 7.1. Parties are encouraged to keep in mind at all times the possibility of mediation, even if previous attempts have failed. At the first Case Management Conference, Parties will be asked whether they have considered or made efforts at settlement or mediation, and whether they believe such efforts at this time would be productive.

² "Document" means a writing, communication, picture, drawing, program or data of any kind, whether recorded or maintained on paper or by electronic, audio, visual or any other means.

8. **List of Issues**

8.1. The Preliminary List of Issues attached to this Order as Annex A will be used as a basis for the presentation of evidence and submission of arguments in this case subject to revision at the time set out in [9.1(o)] below.

8.2. Parties are to submit their respective Lists of Issues as follows:

8.2.1. Parties are to (if possible) submit an agreed Preliminary List of Issues setting out those areas of fact and law which are in dispute following the submission of their first round of Memorials and corresponding Fact Witness Statements and Expert Reports as set out in [9.1(c)] below. Failing agreement between Parties, each Party should submit its own draft Preliminary List of Issues, and the Preliminary List of Issues will be settled by the Tribunal.

8.2.2. Parties are to submit an agreed Final List of Issues setting out those areas of fact and law which are in dispute following the submission of the final Memorials and Responsive Fact Witness Statements and Expert Reports as set out in [9.1(o)] below. Failing agreement between Parties, each should submit its own draft Final List of Issues, and the Final List of Issues will be settled by the Tribunal.

9. **Sequence of the Proceedings / Provisional Timetable**

9.1. The sequence and timing of the substantive phase of the proceedings after filing of the (i) Notice of or Request for Arbitration; and (ii) Response to such Notice or Request will be as set out below.

	Date	Party/Tribunal	Description
(a)	20 November 2020	Claimant	To file and serve its Statement of Claim: see [10] and [11.1]-[11.4] below
(b)	12 March 2021	Respondent	To file and serve its Statement of Defence, Objections to Jurisdiction and Counterclaims, if any: see [10] and [11.1]-[11.4] below
(c)	31 March 2021	Claimant and Respondent	Submit an agreed Preliminary List of Issues, or, failing agreement between Parties, each Party is to submit its own List of Issues on which its Requests to Produce will be founded: see [8.2.1] above

(d)	7 April 2021	Tribunal, Claimant and Respondent	First Case Management Conference, inclusive of a Directions Meeting for Parties to settle the Preliminary List of Issues and other matters concerning the future conduct of the arbitration
(e)	9 April 2021	Claimant and Respondent	To submit First Request for Production of Documents under Article 3 of the IBA Rules: see 11.7 and [11.7] below
(f)	30 April 2021	Claimant and Respondent	To respond to the other Party's First Request for Production of Documents
(g)	21 May 2021	Claimant and Respondent	To reply to the other Party's response to the First Request for Production of Documents
(h)	28 May 2021	Claimant and Respondent	Submission of First Redfern Schedule to the Tribunal: see [11.4]-[11.7] below
(i)	11 June 2021	Claimant and Respondent	Production of documents as to which no objections have been raised
(j)	11 June 2021	Tribunal	Completion of First Redfern Schedule by the Tribunal
(k)	9 July 2021	Claimant and Respondent	Produce all documents responsive to the completed First Redfern Schedule: see [11] below
(l)	17 September 2021	Claimant	To file and serve its Statement of Reply and Defence to Respondent's Jurisdictional Objections and Counterclaims, if any: see [10] and [11.1]-[11.4] below
(m)	7 January 2022	Respondent	To file and serve its Statement of Rejoinder on the Merits and Reply on Jurisdictional Objections and Counterclaims: see [10] and [11.1]-[11.4] below
(n)	11 March 2022	Claimant	To file and serve its Statement of Rejoinder on Jurisdictional Objections and Counterclaims
(o)	8 April 2022	Claimant and Respondent	Submit an agreed Final List of Issues, or, failing agreement, individual Lists of Issues (modified as necessary from the Preliminary List of Issues): see [8.2.2] above
(p)	18 March 2022	Claimant and Respondent	Last day for the Parties to notify the Tribunal of the witnesses that the Parties intend to call upon during the Evidentiary Hearing

(q)	8 April 2022	Claimant and Respondent	Last day by which experts are to meet to prepare an Experts' Joint List of Issues upon which they have reached agreement, and those issues upon which no agreement has been reached: see [13.3] below
(r)	22 April 2022	Claimant and Respondent	To submit to Tribunal Experts' Joint List of Issues upon which they have reached agreement, and the reasons for any remaining disagreement or differences: see [13.3] below
(s)	18 May 2022	Claimant and Respondent	Submission of Agreed Hearing Bundles: see [15] below
(t)	18 May 2022	Claimant and Respondent	To exchange Written Opening Slides
(u)	April 2022	Tribunal, Claimant and Respondent	Second Case Management Conference, to discuss and resolve any outstanding administrative issues before the evidentiary hearing commences
(v)	18-31 May 2022	Tribunal, Claimant and Respondent	Evidentiary Hearing
(w)	To be decided by the Tribunal following the close of the Evidentiary Hearing	Claimant and Respondent	To file post-hearing /Closing Written Submissions, if any
(x)	To be decided by the Tribunal	Tribunal	To produce Final Award

9.2. Any extension of the dates above must be approved by the Tribunal. Extensions of time should first be sought on a mutually agreed upon basis by Parties before approaching the Tribunal. If Parties are unable to reach an agreement, the extensions may be granted by the Tribunal in its discretion: (i) in exceptional cases only; (ii) provided that a request is submitted before the date scheduled; and as soon as it appears that the deadline cannot be complied with. Parties may also agree between themselves short extensions of time, on the basis of mutual courtesy, as long as those extensions do not materially affect the timetable (the date scheduled for the Evidentiary Hearing must not be affected) and that the Tribunal is informed prior to the scheduled deadline.

9.3. The Parties are also invited not to copy the Tribunal on their correspondence (including complaints to the other Party) and to address the Tribunal only to comply with the above calendar or when they want the Tribunal to decide a disputed issue.

- 9.4. Parties may serve requests for document disclosures outside of the document production stage envisioned in sections 9.1(e) to 9.1.(k) only upon permission from the Tribunal.
- 9.5. Parties are encouraged to agree on as much documentary disclosure as possible and to submit Redfern Schedules to the Tribunal only if they have not been able to reach agreement on any document or category of documents. Parties are referred to [11.1] to [11.4] below.
- 9.6. When correspondence to the Tribunal is constituted by an email attaching a substantive letter from the sender, it would be helpful if the covering email could set out in a couple of sentences the purpose of the letter and in particular the relief sought. The covering email need not set out in detail the reasons for the relief sought, but simply give a short description of the nature of the letter.

10. **Written Submissions**

- 10.1. The Memorial system will be adopted for this Arbitration. Memorials are written submissions accompanied by witness statement(s), expert report(s), factual exhibits and legal authorities, which should set out in sufficient detail the factual and legal basis for each party's case. These would include the (i) Statement of Claim; (ii) Statement of Defence, Objections to Jurisdiction and Counterclaims, (iii) Statement of Reply, and Defence to Respondent's Jurisdictional Objections and Counterclaims; (iv) Statement of Rejoinder on the Merits and Reply on Jurisdictional Objections and Counterclaims, and (v) Statement of Rejoinder on Jurisdictional Objections and Counterclaims, which are referred to in [9] above.
- 10.2. The Tribunal will treat the Memorials as containing each Party's best case on fact and law at the time of the exchange. All legal authorities relied upon are to be produced together with Parties' Memorials and only in electronic form, and highlighted as to those passages to which the Tribunal's attention is to be drawn. The legal authorities should be submitted in the following form:
 - 10.2.1. The authorities are to be numbered consecutively throughout these proceedings (such number will be referred to as the "Legal Authority Number").
 - 10.2.2. The softcopy of each authority should bear its Legal Authority Number in its file name, preceded by the letter "CLA" for documents submitted by the Claimant, and the letter "RLA" for documents submitted by the Respondent.
 - 10.2.3. Each softcopy submission of authorities is to contain a document listing these exhibits, setting out for each authority: (i) the Legal Authority Number; (ii) its date; and (iii) a brief description of the authority. The lists of legal authorities should be updated with each new submission of documents in these proceedings.

- 10.3. A Party may amend its claim, counterclaim or other submissions unless the Tribunal considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other Party or any other circumstances. However, a claim or counterclaim may not be amended in such a manner that the amended claim or counterclaim falls outside the scope of the arbitration agreement. This sub-paragraph shall be without prejudice to the power of the Tribunal to decide upon any issue which arises in the arbitration, whether pleaded or not, provided that each Party has been given a full opportunity of presenting its case on that issue.
- 10.4. The Tribunal shall decide which further submissions shall be required from Parties or may be presented by them. The Tribunal shall fix the periods of time for communicating such submissions.
- 10.5. All submissions referred to in [9] shall be accompanied by copies of all supporting documents which have not previously been submitted by any Party.
- 10.6. The paragraphs of all written submissions (e.g., Memorials, Witness Statements and Expert Reports) are to be numbered consecutively (with a decimalised system of numbering e.g. 1.1, 1.2, 1.2.1 etc) and submissions should include a table of contents. All pages should be individually numbered.
- 10.7. For each of their written submissions (e.g., Memorials, Witness Statements and Expert Reports), Parties must clearly indicate the documentary evidence which they rely upon in support thereof by reference to the relevant page and paragraphs. Where reference is made within a written submission to an earlier statement in that same submission (typically prefaced by the phrase "As mentioned/stated earlier"), Parties must also clearly identify where that earlier reference is to be found.
- 10.8. The written submissions will be supplied to the Tribunal in electronic versions only. Such version will contain hyperlinks to all exhibits and legal authorities cited therein.
- 10.9. The communication of the written submissions, including the supporting witness statements and expert reports, will be effected by email (written submissions to be provided in PDF searchable format; each document named separately), followed by the transmission by courier within three business days of the electronic submission of: a "Thumb drive"/memory stick version of the written submissions, including the supporting witness statements and expert reports, as well as supporting exhibits and legal authorities (written submissions to be provided in PDF searchable format; supporting exhibits and legal authorities to be provided in PDF format; each document named separately). The courier tracking number is to be provided by email once the submissions are sent.
- 10.10. All claims or applications for a final or partial award or interlocutory relief shall append a draft of the actual dispositive sections of the award or actual relief sought by way of interlocutory relief.

11. Documentary Evidence

- 11.1. Written submissions are to be accompanied by all essential documentary evidence relied upon by the relevant Party. Parties have a duty to disclose, on a rolling basis, any documents which are responsive to the other Party's document production request. For any other disclosure the Tribunal's permission must be sought.
- 11.2. The documents should be submitted in the following form:
 - 11.2.1. The exhibits are to be numbered consecutively throughout these proceedings (such number will be referred to as the "Exhibit Number").
 - 11.2.2. The softcopy of each exhibit should bear its exhibit number in its file name, preceded by the letter "C" for documents submitted by the Claimant, and the letter "R" for documents submitted by the Respondent.
 - 11.2.3. The hardcopy of each exhibit submitted in the Hearing Bundle or Core Bundle should have a divider bearing on the tab the exhibit's letter ("R" or "C") and exhibit number.
 - 11.2.4. Each softcopy and hardcopy submission of exhibits is to contain a document listing these exhibits, setting out for each exhibit: (i) the exhibit number; (ii) its date; and (iii) a brief description of the exhibit. The lists of exhibits should be updated with each new submission of documents in these proceedings.
- 11.3. All documentary evidence submitted to the Tribunal will be deemed true and complete, including evidence submitted in the form of copies, unless a Party disputes its authenticity or completeness within fourteen (14) days of its receipt.
- 11.4. An application for production of documents, as outlined in [9.1] above, is to take the form of a submission in tabular form ("**Redfern Schedule**") in Microsoft Word format, with one or two of the following sections (as the case may be): (i) Claimant's application for the disclosure of documents; and (ii) Respondent's application for the disclosure of documents.
- 11.5. The submission(s) should be presented in four columns, as follows:
 - 11.5.1. first column: identification of the document(s) or categories of documents that have been requested;
 - 11.5.2. second column: short presentation of the reasons for each request and rebuttal (if any) to the objection(s);
 - 11.5.3. third column: a summary of the objections by the other Party to the production of the document(s) requested;
 - 11.5.4. fourth column: left blank for the decision of the Tribunal.

- 11.6. A sample Redfern Schedule will be provided by the Tribunal on request.
- 11.7. Having regard to Article 3 of the IBA Rules, the Tribunal considers that the following standards should guide its decision on Requests for Production:
 - 11.7.1. The Requests for Production must identify each document or specific category of documents sought with precision.
 - 11.7.2. The Requests must establish the relevance and materiality of each document or specific category of documents sought in such a way that the other Party and the Tribunal are able to refer to factual allegations in the submissions filed by Parties to date. This will not prevent a Party from referring to factual allegations yet to be made (in subsequent written submissions) provided that such factual allegations are made (or at least summarised) in the request for production of documents. In other words, the requesting Party must make it clear with reasonable particularity what facts / allegations each document (or category of documents) sought is intended to establish.
 - 11.7.3. The Tribunal will only order the production of documents or category of documents if they exist and are within the possession, power, custody or control of the other Party. If contested, the requesting Party will have to make a case that it is likely that the document is indeed within the possession, power, custody or control of the other Party.
 - 11.7.4. If necessary, the Tribunal may also balance the Request for Production against the legitimate interests of the other Party, including any applicable privileges, the extent to which the request places an unreasonable burden on the other Party, and the need to safeguard confidentiality, taking into account all the surrounding circumstances.
 - 11.7.5. Before making the decision, the Tribunal may exercise its discretion, at the request of a Party, to hear oral submissions.
- 11.8. Documents which are ordered by the Tribunal to be produced must be so produced promptly and in accordance with the Tribunal's instructions. Parties should endeavour to ensure that the disclosure process is orderly and not disruptive. If, subsequent to the filing of an opposing Party's written submissions (as set out in [9.1] above), a Party wishes to make a further Request for Production, permission should first be requested from the Tribunal. If permission is granted, the procedure detailed in [11.7] above will be applicable.
- 11.9. All documentary evidence is to be produced in its entirety unless it is voluminous in which case a Party may produce an excerpt clearly marked as such. If a Party wishes to redact any document or portion thereof, it may only do so after receiving leave of the Tribunal. Application for leave to redact should be made before the redacted document is produced to the opposing Party.

- 11.10. If documentary evidence which a Party is directed by the Tribunal to produce or file contains privileged or proprietary information or trade secrets, that Party should so indicate to the Tribunal and to the other Party. In that case, the Tribunal will determine, after consultation with Parties, the appropriate measures to be implemented in order to respect the proprietary or privileged nature of the information or the trade secret(s) while, to the extent possible, allowing the production of such evidence for the purpose of the arbitral proceedings.
- 11.11. The use of demonstrative exhibits (such as charts, tabulations, diagrams or other similar materials) will be allowed at the Evidentiary Hearing, provided that no new evidence is contained in such exhibits. Parties are to exchange copies of proposed demonstrative exhibits at the time the Opening Slides are filed. For the avoidance of doubt, PowerPoint slides, demonstrative exhibits and charts or other similar materials in aid of argument may be used by either Party during any oral hearing, subject to the direction of the Tribunal and, provided always that such slides or materials reflect evidence on the record (with citations to such evidence) and do not constitute or introduce any new evidence, whether directly or indirectly.
- 11.12. As there is only one prescribed document production stage in this arbitration (see [9.1(e)-(k)] above), a further *ad hoc* process of Requests for Production may be utilised by either Party, providing Parties the right to submit any disputes regarding document production that might arise after the First Redfern Schedule is issued by the Tribunal. This process will allow for either Party, if necessary, to request a decision on any remaining disputes on document production by the Tribunal. The provisions of [11.5] to [11.10] above are applicable, *mutatis mutandis*, to such *ad hoc* Requests for Production.
- 11.13. The deadline to submit *ad hoc* requests for a decision on disputed Requests for Production, if any, to the Tribunal is no later than 10 calendar days before the first day of the commencement of the Evidentiary Hearing pursuant to [9.1(v)] above.

12. **Evidence of Fact Witnesses**

- 12.1. If a Party wishes to adduce testimonial evidence in respect of its allegations, it must so indicate in its written submissions and submit written witness statements. These written witness statements should be filed together with the Parties' Memorials (as provided in [9.1] above).
- 12.2. Any person may present evidence as a witness, including a Party, a Party's officers, employees or other representatives.
- 12.3. Each witness statement should:
- 12.3.1. be in numbered paragraphs;

- 12.3.2. where the statement is lengthy, be divided into sections, with each section having a heading describing the nature of the evidence given in that section;
 - 12.3.3. contain the name and address of the witness, his or her relationship to any of the Parties (past and present, if any) and a description of his or her qualifications; contain a full and detailed description of the facts, and the source of the witness' information as to those facts;
 - 12.3.4. state if the witness: (i) prepared the statement in English or (ii) in a foreign language and the statement was then translated into English. If the answer is (ii), then a copy of the statement in its original language should be produced to the Tribunal and the other Party;
 - 12.3.5. state to what extent, if any, the witness was assisted by other persons in the preparation of the statement;
 - 12.3.6. identify with specificity any document or other material relied on and, if not already provided in the document exchange, attach a copy of the document or other material relied on;
 - 12.3.7. be signed by the witness and give the date and place of signature;
 - 12.3.8. contain an affirmation of the truth of the statement; and
 - 12.3.9. include an attached photograph of the witness (if possible).
- 12.4. Each witness statement should be sufficiently complete so as to stand as examination in chief of the witness at the Evidentiary Hearing. All documents intended to be referred to in the evidence in chief of the witness must be identified in the Hearing Bundles (see [15] below) or attached to the witness statement.
 - 12.5. A Party may request the presence of any of the other Party's witnesses at the Evidentiary Hearing for cross-examination, as provided in [12.6] below. If a Party waives the cross-examination of a witness, this does not mean that a Party accepts the relevant witness statement to be true. If an allegation is made against any witness, the latter must be given an opportunity to rebut that allegation.
 - 12.6. Each Party must, by 18 March 2022, notify the other Party, with a copy to the Tribunal, of the names of the witnesses of the other Party whom that Party wishes to cross-examine at the Evidentiary Hearing. If any witness requested to attend cannot attend the Hearing in person, notice of non-attendance must be given at the earliest possible opportunity to the other Party and to the Tribunal. In case of such non-attendance, the Party which introduced the witness will ensure that a witness will testify through video conferencing or similar means.

- 12.7. Parties are to be responsible for securing the presence of their potential witnesses at the Evidentiary Hearings.
- 12.8. The witnesses should, in principle, be summoned by the Party which relies on their evidence. Where the witness is ultimately not able to attend the Evidentiary Hearing in person or by other means as envisaged in section 12.6. for a valid reason, the Tribunal will hear Parties on this issue and decide, after taking into account all relevant circumstances, including Parties' legitimate interests, what weight should be given to the testimony of that said witness, if any.
- 12.9. The truth, admissibility, relevance, weight and materiality of the evidence offered by a witness or a Party are to be determined by the Tribunal.
- 12.10. The initial costs and expenses of a witness' appearance are to be borne by the Party summoning the witness, without prejudice to the decision of the Tribunal as to which Party will ultimately bear those costs and to what extent.

13. **Evidence of Expert Witnesses**

- 13.1. The provisions of [12] above are applicable, *mutatis mutandis*, to expert witnesses. The expert must identify his or her area of expertise. Each Party will be confined to one expert per discipline unless permission is granted by the Tribunal for additional experts. The expert's report will contain the expert's opinion, including a description of the method, evidence and information used in arriving at the expert conclusions.
- 13.2. The Tribunal may also appoint one or more experts on its own initiative, or at the request of a Party. In such event, the Tribunal will consult with Parties in defining the expert's mission and drafting questions to the expert. The Tribunal will be guided (but not bound) by Article 6 of the IBA Rules in dealing with Tribunal-appointed experts.
- 13.3. The Tribunal will also be guided (but not bound) by Article 5 of the IBA Rules, which provides that, in case Parties submit expert reports, the Tribunal may, if it deems appropriate, order that the Party-appointed experts meet and confer on their reports. At such meeting, the experts should attempt to reach agreement on those issues as to which they had differences of opinion in their expert reports. They should try to narrow them and they should record in writing the issues on which they reached agreement or in relation to which they have been able to narrow their differences, and the reasons for any remaining disagreement or differences. The experts' joint report shall be prepared in the format of a Redfern Schedule with the following columns:
 - 13.3.1. The first column will identify the issue of expertise which the Tribunal needs to decide on.
 - 13.3.2. The second column will set out Expert A's views on that issue in brief but will provide cross references to his/her full report where his/her views are explained in full.

- 13.3.3. The third column will set out Expert B's views and will *mutatis mutandis* be in the same format as Expert A's summary.
- 13.3.4. The fourth column will set out Expert A's reasons why he/she disagrees with Expert B's views.
- 13.4. The Tribunal may determine any issue as to the relevant law on the basis of the written submissions of the Parties and of the legal authorities submitted by Parties to the Tribunal without the need for either Party to call expert evidence on the law.
- 13.5. Experts (particularly legal experts) should not usurp the functions of the Tribunal. Experts should not give an opinion on the express question that the Tribunal has to decide. The function of an expert is to assist the Tribunal by providing it with the tools with which to make its decision. It follows that an expert should not comment directly on contentious statements of fact in witness statements or documentary evidence, but should only offer opinions on the basis of given assumptions and should not offer opinions on the merits of the dispute.
- 13.6. An Expert Witness shall prepare their Expert Reports following the guidelines set out in Article 5 of the IBA Rules on the Taking of Evidence in International Arbitration.
- 13.7. The Tribunal will discuss with Parties at a date to be determined later whether there should be Witness Conferencing in relation to the expert witnesses (if any). Whatever may be that decision, the following procedure will apply.
 - 13.7.1. All expert witnesses who have given written evidence relating to a particular issue will be examined together on the day(s) set aside for that issue.
 - 13.7.2. If the Joint Report referred to in [13.3] above has not yet been prepared jointly by the experts, then they shall do so before the hearing.
 - 13.7.3. The Schedule is to be served on the Tribunal one (1) week before the date of the Hearing.
 - 13.7.4. Each Party's expert will give a brief oral exposition of his or her position.
 - 13.7.5. The Tribunal will commence the examination by asking each expert to clarify his or her views on each issue and why he or she disagrees with the other expert's view.
 - 13.7.6. Each Party's representatives may then cross examine the opposing expert and invite their own witness to respond to the opposing expert's answer(s).
 - 13.7.7. The Tribunal reserves the right to intervene with additional questions at any time.

14. **Evidentiary Hearing**

- 14.1. Parties are agreed that the time reserved for the Evidentiary Hearing is to be divided more or less equally, with provision being made for each Party to make an Opening Presentation prior to the examination of witnesses. Subject to further order, the procedure for examining witnesses at the Evidentiary Hearing will be the following:
 - 14.1.1. The Claimant's witnesses will be examined first, followed by the Respondent's witnesses.
 - 14.1.2. Each witness should first of all be invited to confirm his or her written statement (with corrections if applicable).
 - 14.1.3. The Tribunal has the right to examine the witnesses and to interject questions during the examination by the Parties' representatives. Each Party is to have the opportunity to re-examine a witness with respect to questions raised by the Tribunal.
 - 14.1.4. After a short presentation/examination by the Party producing the witness not normally exceeding ten (10) minutes (the purpose of which will mainly be to allow the witness to summarise, in his or her own words, the highlights of his witness statement), the other Party will proceed to cross-examine the witness, followed by a re-examination if the first Party so wishes. The scope of the examination-in-chief should not seek to introduce new evidence, save to address new evidence introduced in rebuttal witness statements (in which case the ten (10) minute rule above will be modified as circumstances require). The scope of the cross-examination should be limited only by relevance, but questions having no relevance other than for testing credibility will not normally be allowed. The scope of the re-examination is to be limited to matters that have arisen in the cross-examination.
 - 14.1.5. The Tribunal will at all times have complete control over the procedure in relation to a witness giving oral evidence, including the right to limit or exclude any question to, or to refuse to a Party permission to examine, a witness when it considers that the factual allegation(s) on which the witness is intended to be examined is (are) sufficiently proven by exhibits or other witnesses or that the particular witness' examination as such is irrelevant, immaterial, burdensome or duplicative.
 - 14.1.6. A decision as to whether witnesses of fact and expert witnesses may be present in the hearing room during the examination of other witnesses of fact will be determined at the Second Case Management Conference (see [9.1(u)] above). However, each Party's principal representative (as nominated by that Party) has the right to remain in the hearing room at all times even if such representative is also a

witness. The Tribunal may direct that such representatives testify at a particular time.

- 14.1.7. The Evidentiary Hearing should be transcribed by court reporters using real-time software such as “Transcend” (by Epiq) or “Magnum” (by Opus2), the costs of which are to be borne by each Party in equal shares, without prejudice to the decision of the Tribunal as to which Party will ultimately bear these costs and to which extent. The hiring of the court reporters and all necessary arrangements for the production of a real-time transcript for the Evidentiary Hearing should be done by Parties themselves. A screen should be provided for witnesses and interpreters as well as (where applicable) the Tribunal Secretary.
- 14.1.8. A Party proposing a correction to a transcript should notify the Opposing Party and the Tribunal no later than seven (15) days after the final transcript has been received by Parties. If the Opposing Party does not agree, then the Tribunal will rule on the proposal.
- 14.1.9. The Tribunal may make a correction to a transcript on its own initiative at any time after consulting Parties.
- 14.1.10. Further directions for the timing and detailed procedures for the conduct of the Evidentiary Hearing will be issued at the Second Case Management Conference (see [9.1(u)] above).
- 14.2. Parties are encouraged to develop full Opening Presentations which should (i) include a submission on the facts; (ii) include a submission on the legal and accompanying authorities intended to be used to establish its case; (iii) explain how, if proved, the facts will be applied to support the legal and accompanying authorities; and (iv) respond to the opposing Party’s contentions of fact and law in the Memorials and Witness Statements. The Tribunal will normally permit up to half a day for each Party’s Opening Oral Statement and, before the close of the Evidentiary Hearing, for each Party’s Closing Oral Statement.
- 14.3. The Tribunal shall, before the close of the Evidentiary Hearing, address the extent to which written Post-Hearing Submissions will be required, if at all. In addition, the Tribunal may pose specific questions to Parties for written responses after the close of the Evidentiary Hearing.
- 14.4. The Parties shall pay in the first instance in equal shares the costs and expenses of the venue and transcription facilities (including any deposits that may be required by the venue and transcription providers), subject to such order as the Tribunal may make at the conclusion of the Hearing, and in an appropriate award, as to who should bear such costs and in what proportion.

15. **Hearing Bundles and Timetable**

- 15.1. Parties are to liaise and work out a common system for the preparation of paginated Hearing Bundle(s) designed for the Tribunal’s easy reference to be

made available before the hearing (“**Hearing Bundle**”) and core bundles of the essential documents to be made available before the Evidentiary Hearing (“**Core Bundle**”). To the extent possible and with a view towards limiting environmental harm, the bundles will be produced electronically. The Parties will inform the Tribunal of the agreed method, and seek the Tribunal’s acceptance of same no later than 60 days prior to commencement of the Evidentiary Hearing. Hard copies of all the documents which the Parties have referred to in the Evidentiary Hearing shall be furnished to the Tribunal by no later than the next hearing day.

- 15.2. Parties must confer and agree (if possible) on a hearing timetable by the time the Second Case Management Conference is held. If Parties are unable to agree, they may submit separate timetables for the Tribunal’s consideration.
- 15.3. Each Party must provide the witness, the Tribunal and the other Party with a bundle of documents (“**Cross Examination Bundle**”) immediately prior to the commencement of the cross-examination of that witness containing those documents extracted from the Hearing Bundle that the cross-examining Party intends to refer to in the course of cross-examination. Permission must be sought from the Tribunal for any document to be shown to a witness which has not been previously disclosed to the other Party in the arbitration.

16. **Confidentiality**

- 16.1. The arbitral proceedings shall be held in private.
- 16.2. The Parties consent to the publication by the PCA on its website to general case information denoting the identity of parties, counsel, tribunal members, reporting on the stage of the case. The Parties may subsequently agree to the publication of the Memorials without their attachments and rulings of the Tribunal.
- 16.3. With the exception of the limited publication described in 16.2 above, the content of the arbitral proceedings, shall be kept confidential by the Parties, their counsel, the Tribunal, witnesses and experts, and all other persons involved in the arbitration, except (i) to the extent that disclosure may be required of a Party to fulfil a legal duty, protect or pursue a legal right, or enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority, or (ii) with the prior written consent of both Parties. For the avoidance of doubt, the obligations of confidentiality apply also to all the documents and evidence disclosed and/or produced in the course of the arbitration which are not otherwise in the public domain.
- 16.4. The orders in this paragraph replace Article 7 of the UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. For avoidance of doubt, the said Rules are not applicable to this arbitration.
- 16.5. The Tribunal has the power to take appropriate measures, including issuing an order or award for sanctions or costs if a Party breaches any of the orders set out in this paragraph.

17. **Translations and Interpretation**

- 17.1. Witness statements, documents and authorities in another language than English must be submitted with a translation in English. This obligation does not extend to the production of documents requested by the other Party. The requesting Party shall bear the cost of translation. In any case, for the avoidance of doubt, the original language version must also be provided. For documents and authorities, only the relevant parts have to be translated. Such translations may first be made “unofficially”, without the need for an “official” third Party certified translation. However, if the opposing Party challenges the appropriateness or accuracy of the “unofficial” translation, Parties will work jointly in good faith to arrive at an agreed wording.
- 17.2. Oral testimony in a language other than English will have to be interpreted into English. The cost of interpretation will be met initially by the Party presenting the witness but will be included in the costs of the arbitration.
- 17.3. Parties should agree on the appointment of a suitably qualified English language interpreter for the witness(es), if any, who will be testifying at the Evidentiary Hearing. The name and qualifications of any proposed interpreter should be submitted to the other Party for agreement or comment. Any dispute regarding the suitability of an interpreter(s) will be resolved by the Tribunal two weeks before the Evidentiary Hearing.
- 17.4. Translation of documents submitted should be made by, and at the initial expense of, the Party requesting or relying on that document, subject to any other or later order that may be made by the Tribunal.
- 17.5. Where the oral testimony of witnesses needs to be translated (whether consecutively or simultaneously), the Parties’ representatives should take care to keep their questions to one sentence at a time as far as possible to avoid the problem of “lost in translation” (especially as the standard of interpreters cannot always be guaranteed).

18. **Venue of the Hearings**

- 18.1. The venue of the Evidentiary Hearings will be at The Hague. Parties are to make all necessary administrative arrangements for the booking of the Evidentiary Hearing. Costs of the Evidentiary Hearing are to be borne equally by Parties, subject to later order of the Tribunal.
- 18.2. Notwithstanding [18.1] above, the Tribunal shall have the fullest authority under the Arbitration Agreement to establish the conduct of a hearing, including its date, form, content, procedure, time-limits and geographical place. As to form, a hearing may take place by video or telephone conference in person (or a combination of all three). As to content, the Arbitral Tribunal may require the Parties to address a list of specific questions or issues arising from the Parties’ dispute. Before the Tribunal takes a decision on any of the issues stated herein,

it must consult with the Parties. In deciding whether to change the mode or place of the hearing, every effort must be made to preserve the hearing dates.

19. **Conduct of the Parties**

19.1. Parties shall conduct themselves in a manner consistent with the efficient use of time and resources. The Tribunal shall take into account when using its discretion to allocate costs any unreasonable behaviour by a Party.

19.2. Unreasonable behaviour could include, but is not limited to, (i) excessive document requests; (ii) excessive legal argument; (iii) excessive cross-examination; (iv) dilatory tactics; (v) exaggerated claims; (vi) failure to comply with procedural orders and directions; (vii) unjustified interim applications; and (viii) unjustified failure to meet the deadlines contained in this, or any other, order.

20. **Rulings by Presiding Arbitrator**

20.1. The Arbitrators and Parties agree that the Presiding Arbitrator may make procedural rulings alone provided that:

20.1.1. all correspondence is copied to the co-arbitrators;

20.1.2. the Presiding Arbitrator is to be free to consult, in his discretion, with the other Arbitrators and may refer significant or difficult matters to the full Tribunal for decisions;

20.1.3. the full Tribunal is to hear and determine any procedural matter if requested by either Party or an arbitrator; and

20.1.4. a direction or order of the Tribunal is sufficiently given to Parties if given under the hand of the Presiding Arbitrator of the Tribunal.

21. **Comment and Consent of Parties**

21.1. The Tribunal notes that both Parties have consented to the entirety of the provisions of this Procedural Order.

22. **Interpretation of this Procedural Order**

22.1. In the interpretation of this Procedural Order, unless the context otherwise requires, words importing the singular shall include the plural and vice-versa.

22.2. A Party may, upon notifying the opposing Party, make a written request for the Tribunal to provide Parties with an interpretation of any provision in this, or any other, Procedural Order.

23. **Amendments**


23.1. Either Party may request the amendment any provisions of this Procedural Order. The Tribunal may in a reasonable exercise of its discretion accept or deny such request.

23.2. This Procedural Order may be amended or supplemented, and the procedures for the conduct of this Arbitration may be modified pursuant to such further directions or Procedural Orders as the Tribunal may from time to time issue.

24. **Costs of this Order**

24.1. Costs of and incidental to this Order are to be costs in the Arbitration.

Dated: 4 December 2020

A handwritten signature in blue ink, appearing to read "Michael Hwang", with a horizontal line drawn above it.

Dr Michael Hwang S.C.
Presiding Arbitrator
For and on behalf of the Tribunal

ANNEX A

**AGREED PRELIMINARY LIST OF ISSUES FOR DISCUSSION
AT THE DIRECTIONS MEETING ON [DATE]**

[ISSUES]

Dated **[DATE]**