

CPR's Annotated Model Procedural Order for Remote Video Arbitration Proceedings

Introductory Note: *This model procedural order is intended to be used by parties, counsel and arbitrators as a checklist of issues and guidelines to address matters that are unique to remote video arbitration proceedings. It can of course also be used as the starting point for a procedural order, adapted to the specific circumstances of a case, to be issued by a tribunal to govern such a proceeding. In view of that format its provisions are necessarily prescriptive, often couched as actions that “shall” be performed; for use as a checklist or guidelines, however, the prescriptive phrasing can be disregarded. Indeed, a tribunal might request that the parties meet and confer and submit a draft order that addresses these topics and others the parties may identify. Ideally the parties would present an agreed-upon order for discussion with and approval by a tribunal, and in any event a tribunal should issue an order of this sort only after input from the parties.*

This model order is intended to supplement an existing procedural order, or additional procedural terms, that otherwise govern(s) the conduct of the proceeding. Also, these guidelines are intended to apply to a proceeding that is to be conducted entirely remotely -- with each participant in a separate location. They are not intended for use in circumstances in which most participants are in a physical hearing room and only a witness appears for examination by videoconference. They can be readily adapted, however, for use where some participants are together in a location (e.g., three arbitrators together, or some or all of one party's counsel team in a location together).

References to certain commercial service providers in this model order are not intended to endorse their service or product or as any representation as to their quality, adequacy, suitability or reliability; they are identified solely for illustrative purposes.

A final introductory point: “Remote video” is a shorthand for proceedings conducted through videoconferencing systems, in real-time, in which all or most participants are located apart from each other. Remote video proceedings have also come to be described as “virtual” proceedings, but that word often connotes an artificial substitute for something real (e.g. “virtual reality” and “virtual background”). Regardless of the term applied, such proceedings remain “face-to-face,” “live” and arguably even “in person,” with only the hearing “room” appropriately described as “virtual.”

A. Selection of Videoconferencing Platform and Remote Video Hearing Support Functions

1. Platform Selection. The Tribunal shall, in consultation with the Parties, select an appropriate videoconferencing platform (e.g., Zoom (though not its Basic version), Microsoft Teams, WebEx, Bluejeans, GoToMeeting, etc.) (“Platform”). The Platform at a minimum must provide robust protections for the confidentiality and data security of the proceeding.

Note: *There is no one-size-fits-all solution on how information security and data protection may be addressed in this context. Appropriate consideration should be given to the security protections offered by a potential Platform, recognizing that such protections may be updated on a continuing basis. The [ICCA-NYC Bar-CPR Cybersecurity Protocol for International Arbitration \(2020 Edition\)](#), the [IBA Cybersecurity Guidelines \(2018\)](#) and, with respect to personal identifying information, [the ICCA-IBA Roadmap to Data Protection in International Arbitration \(2020 Consultation Draft-Not for citation\)](#) provide useful resources. Once a platform has been selected, careful attention should be paid to the Platform’s user-controlled settings to protect the integrity and confidentiality of the proceedings. See, for example, the [AAA-ICDR Virtual Hearing Guide for Arbitrators and Parties Using Zoom](#).*

In addition, depending on the needs of the arbitration and the Parties’ financial circumstances and the amount at stake in the proceeding, a platform should offer (a) high resolution video imaging and quality audio of Participants, (b) enable subgroups of Participants (e.g., the Tribunal; counsel for a party; counsel and a witness; counsel for the Parties) to meet by themselves during the proceeding when authorized by the Tribunal (“Breakout Room” feature); and (c) enable Participants to display documents on the screen, and allow a cursor to point to selected portions of the document, without completely obscuring the video images of the other Participants.

Note: *While desirable, it is not necessary that all of these features be offered on a single platform. In many circumstances it may be more advantageous to combine features of multiple applications to assemble the best platform for a particular remote video hearing. For example, as contemplated in Paragraph D.15. of this model order, document management and sharing may be more robust if done using a dedicated system rather than a feature of a system directed primarily to video-conferencing. It is also necessary in provisioning a virtual hearing room to consider technical limitations such as bandwidth and network reliability. For example, in some circumstances it may be preferable to use a video-conferencing platform for a video link but to use landline telephones for the audio portion of the conference. A party or counsel team may also wish to use a separate means for its internal communications, subject to the*

restrictions concerning communications with witnesses at Paragraph C.3 and discussed in the annotation to Paragraph A.3.

2. Use of Remote Video Support Provider. In conjunction with the selection of the Platform, the Tribunal in consultation with the Parties shall determine whether the Parties will retain an appropriate third-party service provider (“Remote Video Support Provider”) to arrange, monitor, support and troubleshoot the videoconferencing system, (e.g., *Opus 2; Immediation; Arbitration Place Virtual*), including during the conduct of the proceeding, and that will commit to the relevant confidentiality and privacy undertakings (“Remote Video Support Functions”), or whether they will rely on the Parties or Tribunal to perform those functions (Paragraph A.3 below).
3. Remote Video Support Functions by Parties. If the Parties do not retain a third-party service provider, the Tribunal shall either designate representatives of the Parties to perform the Remote Video Support Functions or assume that role itself. In either event, a capable trouble-shooting resource should be available on short notice during the conduct of the proceeding.

Note: *Apart from the Remote Video Support Functions, the Tribunal and the parties should discuss a plan for who will have control of the various features of the Platform during the hearing, i.e., perform the “host” function. Absent unusual circumstances, the Tribunal, with assistance from the Remote Video Support Provider as appropriate, should have the ability to, inter alia, admit and exclude Participants, including “locking” the attendees; move Participants to breakout rooms; control such features as the video display (including the ability of Participants to make use of the screen-sharing function and associated annotation features), the document management features of the system, and the muting of Participants’ microphones.*

In the event a three-person Tribunal is afforded control of these functions, the Tribunal should consider allocating control to a single arbitrator. Regardless of the size of the Tribunal, the Tribunal may wish to consider with the Parties the desirability of appointing a Tribunal secretary to assist.

The Tribunal should also discuss with the Parties in advance of the proceeding the technical capabilities and limitations of the Platform being used with respect to (a) avoiding ex parte contacts with the arbitrators (e.g., use of a “waiting room” feature); (b) avoiding unauthorized communications with witnesses (e.g., disabling a “private chat” feature); and (c) providing private, privileged communications channels.

4. Costs. Absent good cause, the Parties shall share the cost of Remote Video Support Functions, whether performed by the Participants, the Tribunal or a third-party

provider, as such costs are incurred. The Tribunal is authorized to shift the costs in any final award on costs consistent with the Parties' agreement and applicable rules.

B. Preparatory Activities

1. Equipment. The Parties and Tribunal shall ensure that each Participant in the proceeding tests the compatibility of that Participant's equipment (e.g., laptop, desktop computer, webcam, headphones, internet capacity) with the selected Platform. Such testing by individual Participants shall occur reasonably in advance of the group test session described below. "Participants" include arbitrators, counsels, party representatives, witnesses, and if applicable, court reporters, interpreters, representatives of CPR, and any separate litigation support vendors retained by a Party. The Parties are responsible to ensure the compatibility and functioning of each Participant's equipment, other than the Tribunal's; the Tribunal may call upon the Parties for assistance as appropriate.

- a. Participants should be encouraged, if practicable under the circumstances, to use a device with a screen size adequate to view effectively any Participant who is speaking.

Note: *It is necessary that the Tribunal utilize devices with screens of sufficient size to enable arbitrators to see the witness during testimony in a manner that ensures as full comprehension of the testimony as possible and that facilitates assessment of credibility. The Tribunal should not use smartphones for that purpose; other Participants should be discouraged from using smartphones unless it is the only practicable alternative for certain of them because the use of a smartphone for participation in a remote video proceeding risks undermining a Participant's ability to pay full attention and to comprehend the proceeding fully. The Tribunal should be alerted to any such device limitation in advance so that it may consider steps to rectify the issue. As one example, in a matter in which a Party is impecunious and does not have access to a laptop or desktop computer or tablet of sufficient screen size, a Tribunal could request the opposing Party, where appropriate, or a third party to lend equipment (suitably safeguarded from a data privacy standpoint) to the other Party for purposes of the remote video proceeding.*

- b. Participants are encouraged to have two screens available, so that one may be used to display the videoconference proceeding and the other may be used to display documentary and demonstrative exhibits, or have a single screen of sufficient size to accommodate simultaneous display of separate windows for the video images and documents.

Note: In the event that a stenographic transcript is created in real-time during the proceeding, it will likely be preferable for the Tribunal and Parties to utilize an additional screen.

- c. Participants are encouraged to use headphones with an embedded microphone or a microphone system to maximize audibility.
- d. The Parties should make best efforts to ensure that the remote location in which each Participant is located has adequate internet bandwidth to support the use of the Platform without interruption; and should inform the arbitrators and other Parties in advance if it appears that bandwidth problems or other technical limitations may require adjustments to the hearing protocol.

Note: *It may be useful for whomever is providing Remote Video Support Functions to advise Participants on steps that can improve the speed and reliability of internet connections and equipment, including use of wired networks, locating wireless devices close to a router, etc. As provided in Paragraph C.7 of this model order, use of public Wifi networks is not permitted, and use of virtual private networks is encouraged.*

- e. Participants must locate their cameras so that the Participant appears, well lit, against a neutral and not-distracting background, with only head and shoulders visible. Backlighting, such as light from a bright window behind a participant, substantially reduces visibility and should be avoided. No Participant (other than the Tribunal, Tribunal secretary, or CPR) may substitute a “virtual background” for the actual room in which the Participant is located without express approval of the Tribunal.

Note: *The use of a “virtual background” potentially jeopardizes the security and confidentiality of the proceeding by obscuring the location in which a Participant is appearing. Where a Participant’s location does not offer a neutral, non-distracting background, however, the Tribunal may exercise its discretion to permit the use of a neutral virtual background.*

2. Orientation Program. The Parties shall make best efforts to ensure that all Participants engage in an on-line orientation or training program offered by the company that provides the software Platform to familiarize themselves with the Platform’s features and operation, unless the Participant represents to the Tribunal that the Participant has substantial and successful prior experience with that specific Platform.
3. Witness Familiarity. Counsel shall be responsible for ensuring that all witnesses called by the Party whom counsel represents are familiar with the Platform and have suitable

equipment to participate in the proceeding without undue delays. If appropriate, the Party calling a witness shall take reasonable steps to ensure that the witness is able to participate in the videoconference with one device and review exhibits on the other; such steps may include lending sufficient equipment to the witness, *e.g.* two laptops or equivalent, for use in the proceeding. Counsel for the Party calling the witness shall conduct a test session with the witness in advance of the proceeding in which the witness practices use of both the Platform and the process to view any electronic exhibits.

Note: *In addition to the technical preparation outlined above, counsel calling a witness are responsible for preparing the witness on the legal ground rules for video testimony of the sort described below in this Note. Where possible, the Parties should prepare an agreed-upon document describing such ground rules and all counsel would provide that document to their respective witnesses in advance of their testimony; the agreed-upon ground rules document should also be available at the time of each witness' testimony. In any event, counsel must alert witnesses that the proceeding is confidential, that there must not be any other person in the room, whether or not off camera. Nor is the witness permitted to record, whether audio, video or screen shot, any part of the proceedings. As provided in Paragraph D.3 of this model order, during the witness's testimony there must not be any chat window, texting application or similar system open by which any person can communicate with the witness without everyone on the remote video proceeding also seeing or hearing the communication. The witness should also not be afforded access to any real-time transcript that may be available to other Participants. The witness should be informed that in addition to an oath or affirmation to tell the truth, the witness will be asked to formally confirm these points before beginning testimony.*

4. Test Session. At least 48 hours before the scheduled start of the proceeding, or such shorter time as the Tribunal approves in light of exigent circumstances, all Participants other than non-party witnesses shall participate in a test session devoted solely to the operation of the Platform.
 - a. The test session shall enable each Participant to conduct all activities that Participants are expected to take part in during the proceeding. For example, all counsel who will be examining a witness, or representing a witness during cross-examination, shall engage in a short “mock” examination during the test session (on a subject unrelated to the proceeding); such mock examinations shall include the use of documentary exhibits and include objections by defending counsel and the use of an interpreter, if applicable. Counsel who will address the

Tribunal shall practice doing so, without any reference to the factual or legal issues in the proceeding.

Note: *The test session's mock examination should be wholly unrelated to the facts and circumstances at issue in the case. Potential scripts for mock examinations may be found online. See, e.g.,*

<https://www.lawlessons.ca/teaching-resources/mock-trial-scripts>; <https://www.courts.ca.gov/documents/mocktrials-script-contra.pdf>; <https://www.shakespearetheatre.org/events/winter-mock-trial/>

- b. The test session shall briefly include use of the Breakout Room function, including by the Tribunal and counsel for each side.
 - c. The test session shall enable the Tribunal to review the camera angle, background, and lighting used by each Participant to ensure that they are acceptable. Participants shall use the same attributes during the proceeding as they used during the test session.
 - d. The test session shall include each Participant accessing the electronic exhibit files that each Participant has obtained from the Parties in advance of the test session. For that purpose, the Parties shall each include at least one non-substantive “test” document in the electronic document files they have made available to Participants for use in the proceeding.
5. Oaths. The Parties shall endeavor to advise the Tribunal, at least 48 hours before any proceeding at which sworn testimony will be taken, whether the applicable law authorizes the Tribunal to administer oaths to witnesses by videoconferencing, and if not, the process the Parties propose the Tribunal should follow to ensure reliable testimony. In conjunction with the administration of the Oath, the sole or presiding arbitrator shall inquire of the witness about the adequacy of the witness' equipment and the witness' familiarity with it. The arbitrator shall also ensure that the witness is aware of and commits to comply with the obligations set out in Paragraph D.2. of this model order.
6. Interpreters. If any witness or other Participant requires the use of an interpreter, the Tribunal, in consultation with the Parties, shall determine whether interpretation shall be consecutive or simultaneous.

Note: *Simultaneous translation appears unlikely to be well-suited for a remote video proceeding and should be undertaken only if the Tribunal is persuaded, ideally after a practice session, that it will be effective and fair.*

C. Requirements During the Proceeding

1. Advance Log-On. All Participants who seek to attend a session of the remote video proceeding, other than witnesses, shall log on to the Platform at least 10 minutes in advance of the scheduled start time of the proceeding. Log-on will be password protected with passwords communicated separately to each Participant by the Tribunal or person providing Remote Video Support Functions or, in the case of a witness, by counsel for the Party on whose behalf the witness is appearing. The proceeding shall not begin until the Tribunal has satisfied itself that all necessary Participants are adequately connected to the Platform.

Note: *Appropriate security precautions should be taken with respect to generating, transmitting and securing passwords. Although some Platforms may simplify the use of passwords by embedding them in invitations to Participants, that convenience may jeopardize the security of the proceeding and should not be used unless the Parties and Tribunal agree.*

2. Time Zones. If Participants are located in materially different time zones, the proceeding shall be scheduled to be reasonably convenient for all, which may require a shorter than traditional hearing day.
3. Hearing Location. The proceeding shall be deemed to take place at the place of arbitration. The Tribunal may participate from a single location provided all members of the Tribunal are able to be present. No Party or counsel may be present at any location used by any member of the Tribunal. No *ex parte* communications may occur between any Party and any member of the Tribunal.
4. Emergency Notifications/Back-up Plan. The Tribunal shall devise a process, in consultation with the Parties, by which any Participant who has temporarily lost an adequate connection to the Platform or experienced a security incident may promptly notify the Tribunal of that event. This may include use of text-messaging or a telephone call to a single designated number that will ring in the vicinity of the Tribunal, the presiding arbitrator if the arbitrators are in different locations, or the person performing Remote Video Support Functions. Such number shall be dedicated during the proceeding solely to the receipt of emergency communications to avoid unnecessary interruptions in the proceeding. The Tribunal, in consultation with the Parties, shall also identify a back-up plan pursuant to which the Parties and Tribunal will reconvene, *e.g.* by teleconference with previously-distributed call-in information, if technical challenges prevent one or more Participants from continuing to participate in the proceeding; the back-up communication may be used to trouble-shoot the technical

problem, to reschedule the proceeding, or otherwise to facilitate the completion of the proceeding.

Note: *This proposed emergency notification process will necessarily interrupt the proceeding and is therefore intended to apply only where the compromised connection affects one or more Participants whose attendance is required for the fair and orderly conduct of the proceeding. With respect to the potential loss of a connection by a Participant whose attendance is not so required, e.g., a junior member of a counsel team, the Parties should devise their own emergency notification plans; lead counsel is of course free in such circumstances to request the Tribunal to pause the proceeding, if appropriate, while the problem is resolved.*

Separately, as part of back-up planning, the Parties may wish to supply Participants with physical flash drives containing their documentary exhibits in case access to an internet-based document repository is disrupted during the proceeding for one or more Participants. See Paragraph D.1. (a) below.

5. Termination. The Tribunal shall pause or terminate the proceeding if it determines that the videoconferencing format is not working as anticipated, confidentiality or security are compromised, or the format is otherwise inadequate, prejudicial to any Party or to the integrity of the proceeding. The Tribunal shall determine in consultation with the Parties (and any Remote Video Support Provider) whether the problem can be resolved or whether the remote video format must be rejected in favor of a single-location physical hearing to be scheduled in the future.
6. Disclosure of Participants. At the outset of the proceeding each Participant shall identify any other persons present at the Participant's location. Each Participant has an ongoing obligation to alert the Tribunal and other Parties if any additional person joins the Participant, and shall represent at the beginning and end of each session that the Participant has fully disclosed all persons who have or had access to the proceeding or any portion of it. The Tribunal may request any Participant to use the Participant's webcam to display on the screen the full extent of the room in which the Participant is located.
7. Confidentiality and Security. The Parties shall take all steps necessary to ensure the confidentiality of the proceeding. No person shall have access to the live video and/or audio feed of the proceeding other than disclosed Participants. All Participants must avoid the use of open or public wifi networks and shall join through wired or secure wifi networks, which may include the use of a reliable virtual private network ("VPN").
8. Recording. No Participant may record any part of the proceeding without the advance, written authorization of the Tribunal. The Tribunal may record any or all of the

proceeding provided it alerts the Parties in advance that it will do so. If a recording has been authorized, the Tribunal shall determine, in consultation with the Parties, whether the stenographic record, if created, shall be the sole official record of the proceeding. No Participant may take any screen shots of the video screens at any time during the proceeding absent express consent of the Parties and Tribunal.

Note: *The Platform may offer recording of the video and audio of the proceeding; the Parties should consider with the Tribunal the advantages and disadvantages of making use of that feature. The advantages may include the ability to “catch up” a Participant whose internet connection has been temporarily compromised; in such circumstances the availability of a recording could avoid any material delay in the proceeding. The Parties might also choose to forgo the use of a court reporter in real time in favor of retaining a court reporter to transcribe the recording of the proceeding. Disadvantages include that the security of the proceeding may be reduced if the recording feature is turned on, and in any event the Parties and Tribunal would need to address security measures to protect the recording, including where and for how long it is to be stored, to whom access is given, and how possible clarifications or amplifications of the recording could be made and by whom.*

D. Documents and Witness Examinations

1. Participant Access to Exhibits. For any proceeding in which documentary or demonstrative exhibits will be used, the Parties shall confer and report to the Tribunal at least one week in advance of the proceeding, absent exigent circumstances warranting a shorter time period approved by the Tribunal, on how they propose to enable Participants to see and review such exhibits.
 - a. The Parties are encouraged to place all exhibits in the form of electronic files in a secure, electronically-accessible document repository available for the Tribunal and the Parties. Exhibits in the form of spreadsheets shall be provided in native format where appropriate. The Parties and the Tribunal shall use best efforts in advance of the test session held pursuant to Paragraph B.4. of this Order to arrange for all of the Parties’ exhibits to be accessible from their respective devices. The Parties are also encouraged to share such files with witnesses in advance of the proceeding (subject to applicable law and ethical requirements) but are not obligated to do so if such advance disclosure would, in the good faith opinion of the Parties’ counsel, risk jeopardizing the full and fair presentation of a Party’s case.

- b. To the extent Parties rely on exhibits in electronic format, the Tribunal members will use their best efforts to access such files. As noted in Paragraph B.1(b) above, to the extent practicable Tribunal members shall use a second laptop or other device to display exhibits while viewing the video images of the Participants on a primary laptop or device, or shall use a single screen sufficiently large to accommodate two viewing windows. Other Participants are encouraged to do likewise.
- c. Notwithstanding the foregoing, any member of the Tribunal may request, upon at least 10 days' notice to the Parties, to receive exhibits in hard copy.

Note: Pandemic-related public health considerations may make it advisable to allow the Tribunal or other participants to print out the documents themselves.

2. Witness Access to Exhibits. Counsel shall be responsible for arranging for any witness to be examined by that counsel, on direct or cross-examination, to have full and fair access to any exhibits upon which the witness may be examined or to which reference is made during the witness' examination.

- a. If such access is to be effected through displaying the document on a screen, counsel for the Party on whose behalf the witness has been called shall, if appropriate, take reasonable steps to ensure that the witness has two screens available so that the witness can see the Participants on one screen and review exhibits on the other and is reasonably proficient in accessing electronic exhibits, as provided in Paragraph B.3 above.

Note: *Examining counsel in many instances will be permitted to display the exhibit, and the portion of an exhibit to which counsel is directing the witness' attention, on the screen by utilizing the "screen-sharing" function of the Platform; that objective can be accomplished if the witness has only a single screen. Nonetheless, the witness and the witness' counsel, if applicable, are often entitled to review the balance of the exhibit's content, reading at their own pace, before the witness is obligated to answer counsel's question concerning the document, and that document review process may be cumbersome if it can be performed solely with the screen-sharing function. A second screen on which the witness can control the display of the exhibit and review the portions the witness views as pertinent is may therefore be desirable.*

- b. If access is to be effected with hard copies, counsel for each examining Party shall arrange to deliver the hard copies to the witness (and the witness' counsel, if applicable) sufficiently in advance of the proceeding to ensure the documents have arrived before the witness examination is

anticipated to commence. To preserve the Party's work product, counsel is free to deliver the hard copies in a sealed envelope or other receptacle to the witness, and to request that the witness open the receptacle for the first time during the examination in view of the witness' webcam.

Note: *In light of the additional challenges that a remote video format creates for effective witness examination, the Tribunal and Parties should consider the use of written witness statements to constitute each witness' direct testimony. That procedure will ensure that the witness' direct testimony is full and comprehensible and shorten the duration of the remote video testimony. In that event, counsel for the Party calling the witness to testify in that Party's case may still conduct a brief direct examination of the witness in the remote video proceeding, among other purposes to acquaint the Tribunal with the witness and familiarize the witness with the process before the commencement of cross-examination. The testimony will, however, be focused on cross-examination and potential re-direct and re-cross examinations, as is customary in international arbitration.*

3. Testimonial Safeguards. A witness shall disclose whether any other person is in the room in which the witness is providing testimony, or is otherwise able to see or hear the proceeding, and shall take all reasonable steps to avoid any such circumstance. The witness may not communicate, by any means, with any person on the subject matter of the witness' testimony while the testimony is in progress, except that a witness represented by counsel may consult privately with such counsel so long as the occurrence of such consultation is evident to the Tribunal and examining counsel (as it would be in a proceeding held in a single physical location). The witness shall not have access to any real-time transcript that is being made available to other Participants. To the extent the witness views any document during the witness' testimony other than an exhibit displayed by examining counsel or the witness' own written statement, the witness shall identify such document and may be called upon by the Tribunal to display the document.

Note: *See the annotation to Paragraph B.3. above.*

4. Telephonic Testimony. In exceptional circumstances the Tribunal may permit a witness to testify by telephone, provided the Tribunal is satisfied that in view of the nature of the witness and the subject of the testimony, a telephonic examination will be fair and not prejudice the presentation of the case of any Party.

E. Other

1. [If applicable:] Enforcement of Award. By stipulation dated [*insert date*] the Parties have agreed as follows:

- a. Remote videoconferencing constitutes an acceptable means of holding hearings and taking of evidence by the Tribunal pursuant to Parties' arbitration agreement and the rules and legal requirements applicable in this matter, including those at the juridical seat of the arbitration;
- b. The Tribunal may use remote videoconferencing as the means for conducting the arbitral hearing in this matter; and
- c. No Party will seek to vacate or oppose enforcement of any resultant arbitral award on the basis that the arbitral hearing was conducted by remote videoconferencing.

-OR-

[If applicable:] Enforcement of Award. By its order dated [*insert date*], the Tribunal has determined that a remote video proceeding is appropriate in this matter. For the reasons stated in that order, the Tribunal has concluded that the interests of the Parties will be protected in such a proceeding, that no material prejudice will affect any Party, and that the Parties' interests in the efficiency, promptness and fairness of this arbitration will be protected [*if applicable*: and will be better served by conducting a remote video proceeding rather than by deferring the evidentiary hearing in this matter until such time as it is possible to schedule a hearing in a single physical location in which most or all Participants can be present]. The Tribunal is cognizant of the challenges created by the remote video hearing format and will take all reasonable steps to ensure that the proceeding is fair to all Parties and does not jeopardize the ability of any Party to fully present its case and/or defense. The Tribunal will monitor the proceeding continually to ensure that is the case, will take corrective steps as necessary in the course of the proceeding, and will exercise its authority to terminate the proceeding, provided at Paragraph C.5. of this Order, if it concludes that the full and fair hearing it currently anticipates cannot be accomplished by remote video means.

Note: *Obtaining a stipulation by all Parties that it is appropriate to conduct the hearing by a remote video process is desirable to ensure that any award based on evidence adduced at the hearing will not be subject to challenge on the grounds that a remote video proceeding is incompatible with due process or natural justice, the opportunity to present a Party's case fully and fairly, or other applicable legal requirements.*

Such a stipulation, however, will not bar a Party from challenging an award based upon the manner in which a remote video proceeding was actually conducted. To protect the enforceability of an award, it is incumbent on the Tribunal at all times to monitor the proceeding to ensure that every Party's right to present its case has not been jeopardized, and to act quickly to rectify any incident that may have been prejudicial to one or more Parties. In that context,

the Tribunal may wish to inquire of counsel from time to time in the course of the remote video proceeding whether any incidents have occurred that the Tribunal should seek to rectify.

Should there be a disagreement between the Parties regarding whether to proceed with a remote video hearing, the Tribunal shall decide whether to proceed with such a proceeding over the objection of a Party. In making such a determination, the Tribunal should take into consideration all of the relevant circumstances of the dispute at issue. Relevant considerations include, but are not limited to:

- the Tribunal's authority to convene a virtual arbitration hearing under the applicable arbitration rules and the Parties' arbitration agreement;*
- the applicable law, including any relevant and/or mandatory provisions regarding the conduct of hearings and the presentation of evidence, and data protection;*
- whether the Tribunal, on careful review, concludes that the logistical and technical challenges of holding a remote video hearing can likely be overcome and that such a hearing can be fairly managed by all parties and the Tribunal based on the particular circumstances of the case at hand;*
- whether concerns about fairness and/or equal treatment of the parties (e.g., different levels of access to technical capabilities and resources or relative abilities to prepare for the hearing) can be reasonably overcome;*
- whether cybersecurity concerns have been adequately addressed; and*
- whether postponement until a hearing may be held in a single physical location in which all or most Participants are present could result in excessive delay, risks to health and safety and/or prejudice.*

The Tribunal should record its determination and the reasons upon which it is based in a written procedural order or decision prior to implementing and starting a remote video proceeding.

The Tribunal may wish to obtain the Parties' assistance in assessing the permissibility of remote video proceedings under the applicable rules and law. In that context, it bears noting that CPR's Rules – and those of other institutional providers – confer considerable discretion upon the Tribunal to determine the manner in which a hearing will be conducted and testimony will be offered. See, e.g., 2019 CPR Administered Arbitration Rules, Rule 12.1 ("The Tribunal shall decide the manner in which the parties shall present their cases"); 12.2 ("Testimony may be presented in written and/or oral form as the Tribunal may

determine is appropriate”); 12.4 (“The Tribunal shall determine the manner in which witnesses are to be examined”); Commercial Arbitration Rules of the American Arbitration Association (2013), Rule R-32; International Arbitration Rules of the International Centre for Dispute Resolution (2014), Art. 20; Arbitration Rules of the International Chamber of Commerce (2017), Art. 22. Other rules expressly authorize the use of videoconferencing in certain specified circumstances. See also, e.g., U.S. Federal Arbitration Act § 10(a)(3) (authorizing vacatur where refusal to postpone a hearing constitutes “misconduct”).

Whether the remote video hearing is conducted as a result of a stipulation of the Parties or by order of the Tribunal, the touchstone of the resulting award’s susceptibility to challenge will likely be the manner in which the hearing was actually conducted. The Tribunal must undertake the burden to ensure that the proceeding is conducted in a fundamentally fair manner or otherwise must terminate the proceeding as contemplated in Paragraph C.5. of this model order.

2. Modification. The Parties may seek modification of any of the foregoing requirements by submission of a brief explanatory email to the Tribunal. The Tribunal may modify any of the foregoing requirements on its own initiative after consultation with the Parties.

Date:

[Signature Block]

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