MEDIATION AND ARBITRATION CENTER

MAURITIUS

MARC

MARC

ARBITRATION RULES

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IN FORCE AS FROM MAY 21, 2018

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The Mediation and Arbitration Center (Mauritius) Ltd
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About MARC

MARC is an autonomous, non-governmental Alternative Dispute Resolution branch of the Mauritius Chamber of Commerce and Industry ("MCCI"), the first private sector institution established in 1850 to represent businesses. MCCI is a non-profit making organization that cooperates with and is well regarded by corporations, governments, the legal sector and other private sector stakeholders in Mauritius and the Indian Ocean region.

MCCI pioneered institutional arbitration in Mauritius by setting up the MCCI Permanent Court of Arbitration in 1996, which was rebranded as MARC in 2012, and constantly strives to spearhead developments in arbitration and other methods of alternative dispute resolution ("ADR") in Mauritius and the Indian Ocean region. MARC firmly believes that strengthening best practices in the field of dispute resolution will promote cross-border trade and investment by making underlying transactions more secure and predictable.

MARC provides neutral, rapid, efficient, flexible and confidential means of resolving disputes through mediation or arbitration as alternatives to litigation before state courts. It also offers excellent hearing and meeting room facilities and services at its offices in Port Louis, Mauritius.

As a multi-cultural and multi-lingual service provider placed at the crossroads of the African and the Asian continents, MARC has a wide regional and international outreach. Its network includes hundreds of chambers of commerce and industry globally as well as the most important ADR centers. MARC participates actively in the national and regional development of ADR methods in collaboration with regional organisations such as the Indian Ocean Commission and the Union of Chambers of Commerce and Industry of the Indian Ocean Islands. Through its Advisory Board, MARC also strives for excellence in the field of ADR through continuous consultations with the legal and business communities in Mauritius and overseas partners. MARC is well positioned to become a unique neutral ADR interface between Africa and Asia.

As the embodiment of its independence and determination to meet the highest international standards, MARC has established a Court consisting of world-renowned experts originating from most continents, including Africa and Asia.

More information about MARC and its services can be found at www.marc.mu. For further information, please contact the MARC Permanent Secretariat at **secretariat@marc.mu or on +230 203 48 30.**

MARC Arbitration Rules
Introduction

The MARC Arbitration Rules, which are effective as from 21 May 2018, are adopted by the Mauritius Chamber of Commerce and Industry ("MCCI") Arbitration and Mediation Center ("MARC").

The Rules are based on international best practices drawn from the arbitration rules of leading arbitral institutions, including in particular the Hong Kong International Arbitration Centre, International Chamber of Commerce, JAMS and Singapore International Arbitration Centre. MARC acknowledges with gratitude the invaluable contributions made by these rules. The MARC Permanent Secretariat ("Secretariat") administers arbitrations conducted by arbitral tribunals in accordance with the MARC Arbitration Rules ("Rules").

The MARC Court ("Court") is an independent arbitration body empowered to decide upon matters as provided under the Rules. The Court is governed by its constitution, a copy of which is found at Appendix 7. The Court is assisted in its work by the Secretariat. The Secretariat and the Court are the only bodies authorized to administer arbitrations under the Rules.

Application

The Rules may be adopted in an arbitration agreement or by an agreement in writing at any time before or after a dispute has arisen. Provisions regarding the scope of application of the Rules are set out in Article 1.

Suggested Clause

The following model clause may be adopted by the parties to a contract who wish to refer any future disputes to arbitration in accordance with the Rules:

"Any dispute, controversy, difference or claim arising out of or relating to the present contract shall be referred to and finally resolved by arbitration administered by the Arbitration and Mediation Center of the Mauritius Chamber of Commerce and Industry (MARC) under the MARC Arbitration Rules in force when the Request for Arbitration is submitted.
The seat of arbitration shall be [insert seat, e.g. Port Louis, Mauritius].
* The law of this arbitration clause shall be [insert law, e.g. Mauritius law].
** The number of arbitrators shall be [one or three]. The arbitration proceedings shall be conducted in [insert language].

* Optional. This provision should be included particularly where the law of the substantive contract and the law of the seat are different. The law of the arbitration clause potentially governs matters including the formation, existence, scope, validity, legality, interpretation, termination, effects and enforceability of the arbitration clause and identities of the parties to the arbitration clause. It does not replace the law governing the substantive contract.
** Optional

SECTION I.
GENERAL RULES

Article 1 - Scope of Application

1.1 Subject to Article 1.4, where the parties have agreed to arbitration under the Rules, they shall be deemed to have submitted *ipso facto* to the Rules including all Appendices attached thereto, in effect on the date of commencement of the arbitration, unless they have agreed to the Rules in effect on the date of their arbitration agreement.

1.2 Nothing in the Rules shall prevent parties to a dispute or arbitration agreement from naming MARC as appointing authority, or from requesting certain administrative or other services from MARC, without subjecting the arbitration to the provisions contained in the Rules. For the avoidance of doubt, the Rules shall not govern arbitrations where an arbitration agreement provides for arbitration under other rules, including other rules adopted by MARC from time to time.

1.3 By agreeing to arbitration in accordance with the Rules, the parties have accepted that the arbitration shall be administered by the Secretariat in conjunction with the Court.

1.4 Unless otherwise agreed by all of the parties, the provisions relating to the Emergency Arbitrator Procedure, Summary Dismissal and Expedited Procedure contained in Articles 20, 21, 23.1 and Appendix 4 shall apply only if the arbitration agreement was concluded on or after the date on which the Rules came into force.

Article 2 – Notifications, Communications and Calculation of Periods of Time

2.1 All written communications, notifications and pleadings submitted by any party, as well as all supporting documentation shall be communicated to the Secretariat, the arbitral tribunal and all other parties. Such party shall provide confirmation to the Secretariat and the arbitral tribunal that the written communications and pleadings, as well as all supporting documentation have been or are being served simultaneously on all other parties by one or more means of service to be identified in such confirmation. A copy of any notification or communication from the arbitral tribunal to the parties shall be sent to the Secretariat.

2.2 All communications, notifications and pleadings pursuant to the Rules shall be deemed to be received by a party or arbitrator or the Secretariat if:

(a) delivered by hand, registered post or courier service to the last address of the addressee or its representative as notified in writing in the arbitration; or

(b) transmitted by facsimile, email or any other means of telecommunication that provides a record of its transmission, to the facsimile number or email address (or equivalent) of that person or its representative as notified in the arbitration.

2.3 A communication, notification or pleading shall be deemed to be received on the earliest day when it is delivered pursuant to Article 2.2(a) or transmitted pursuant to Article 2.2(b), or would have been received if made in accordance with Article 2.2(a) or Article 2.2(b). For this purpose, the date shall be determined according to the local time at the place of receipt.

2.4 For the purposes of calculating a period of time under the Rules, such period shall begin to run on the day following the day when a notification or communication is received or deemed to be received. If the last day of such period is an official holiday or a non-business day at the place of receipt, the period shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time shall be included in calculating the period.

2.5 If the circumstances of the case so justify, the Secretariat may amend the time limits provided for in the Rules, as well as any time limits that it has set. The Secretariat shall not amend any time limits set by the arbitral tribunal unless the latter directs otherwise.

Article 3 – Interpretation of Rules

3.1 The Court, in consultation with the Secretariat, shall have the power to interpret all provisions of the Rules.

3.2 The Court has no obligation to give reasons for any decision it makes in respect of any arbitration commenced under the Rules. All decisions made by the Court under the Rules are final and, to the extent permitted by any applicable law, not subject to appeal.

3.3 References in the Rules to "Claimant" include one or more claimants and references to "Respondent" include one or more respondents.

3.4. References to "additional party" include one or more additional parties and references to "party" or "parties" include claimants, respondents or additional parties.

3.5 References in the Rules to the "arbitral tribunal" include one or more arbitrators. Such references do not include an Emergency Arbitrator as defined at Article 1 of Appendix 3.

3.6 References in the Rules to "witness" include one or more witnesses and references to "expert" include one or more experts.

3.7 References in the Rules to "claim" or "counterclaim" include any claim or claims by any party against any other party. References to "defence" include any defence or defences by any party to any claim or counterclaim submitted by any other party, including any defence for the purpose of a set-off.

3.8 References in the Rules to an "award" include, *inter alia*, an interim, partial or final award, save for any award or order made by an Emergency Arbitrator as referred to in Appendix 4.

3.9 References in the Rules to the "seat" of arbitration shall mean the place of arbitration as referred to in Article 20.1 of the UNCITRAL Model Law on International Commercial Arbitration (1985), as amended on 7 July 2006.

3.10 The English version of the Rules is the original text and shall be referred to when interpreting any translation of the Rules.

SECTION II. COMMENCEMENT OF THE ARBITRATION

Article 4 – Request for Arbitration

4.1 The party or parties initiating recourse to arbitration (hereinafter called the "Claimant") shall submit a Request for Arbitration and any supporting documentation ("Request") to the Secretariat at its address, facsimile number or email address.

4.2 An arbitration shall be deemed to commence on the date on which the Request is received by the Secretariat.

4.3 The Request shall include the following:

(a) the names and the addresses, telephone and facsimile numbers, and email addresses of each of the parties and their legal representatives;

(b) a copy of the arbitration agreement(s);

(c) where claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each claim is made;

(d) a copy of the contract(s) or other legal instrument(s) out of or in relation to which the dispute arises;

(e) a description of the nature and circumstances of the dispute giving rise to the claim(s) and the basis on which the claim(s) are made;

(f) the relief or remedy sought including an indication of the amount involved, if any;

(g) any application for an Expedited Procedure in accordance with Article 20;

(h) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;

(i) as the case may be, a proposal regarding the appointment of a sole arbitrator under Article 7, or a nomination of an arbitrator under Article 8 including any proposal under Article 8.1(d) or 8.2(b) and Appendix 5;

(j) all relevant details or any proposals on the seat of the arbitration, the applicable rules of law and the language of the arbitration;

(k) details of any funding or insurance agreement or arrangement pursuant to Article 41; and

(l) confirmation that the Request for Arbitration including any supporting documentation have been or are being served simultaneously on all other parties (hereinafter called the "Respondent") by one or more means of service to be identified in such confirmation.

The Claimant may submit any further information or documents with the Request as it considers appropriate, including in relation to any potential joinder of additional parties or consolidation of arbitrations.

4.4 The Request shall be accompanied by payment of the Filing Fee as required by Appendix 1. Payment shall be made in accordance with the banking instructions found on MARC's website at www.marc.mu. The Filing Fee is non-refundable.

4.5 If the Request is incomplete or if the Filing Fee is not paid, the Secretariat may request the Claimant to remedy the defect within an appropriate period of time.

If the Claimant complies with such directions within the applicable time limit, the arbitration shall be deemed to have commenced under Article 4.2 on the date the initial version was received by the Secretariat. If the Claimant fails to comply, the Request shall be deemed not to have been validly submitted and the arbitration shall be deemed not to have commenced under Article 4.2, without prejudice to the Claimant's right to submit the same claim at a later date in a subsequent Request.

4.6 The Claimant shall notify and lodge documentary verification with the Secretariat of the date of receipt by the Respondent of the Request.

Article 5 – Answer to the Request for Arbitration

5.1 Within 30 days from receipt of the Request for Arbitration, the Respondent shall submit to the Secretariat an Answer to the Request for Arbitration and any supporting documentation ("Answer"). The Answer shall include the following:

(a) the name, address, telephone and facsimile numbers, and email address of the Respondent and of its legal representative;

(b) comments on the nature and circumstances of the dispute giving rise to the claim(s) and the basis on which the claim(s) are made;

(c) response to the relief or remedy sought in the Request;

(d) any application for a Summary Dismissal in accordance with Article 21;

(e) response to the Claimant's application, if any, for an Expedited Procedure in accordance with Article 20 or alternatively, any application for the same;

(f) a proposal as to the number of arbitrators (i.e. one or three), if the parties have not previously agreed thereon;

(g) as the case may be, the parties' joint nomination of a sole arbitrator under Article 7, or the Respondent's nomination of an arbitrator under Article 8 including any response to the Claimant's proposal under Article 8.1(d) or 8.2(b) and Appendix 5 or alternatively, any proposal for the same;

(h) details or any proposals on the seat of the arbitration, the applicable rules of law and the language of the arbitration.

(i) details of any funding or insurance agreement or arrangement pursuant to Article 41; and

(j) confirmation that the Answer including any supporting documentation have been or are being served simultaneously on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

The Respondent may submit any further information or documents with the Answer as it considers appropriate, including in relation to any potential joinder of additional parties or consolidation of arbitrations.

5.2 Any counterclaim, set-off or cross-claim shall to the extent possible be raised with the Respondent's Answer, which should include in relation to any such counterclaim, set-off or cross-claim:

(a) the arbitration agreement(s);

(b) where counterclaims, set-offs or cross claims are made under more than one arbitration agreement, an indication of the arbitration agreement under which each counterclaim is made;

(c) a copy of the contract(s) or other legal instrument(s) out of or in relation to which it arises;

(d) a description of the nature and circumstances of the dispute giving rise to the counterclaim(s) and the basis on which the counterclaim(s) are made;

(e) the relief or remedy sought including an indication of the amount involved, if any.

The Respondent may submit any further information or documents with the counterclaim(s) as it considers appropriate.

5.3 The Respondent shall notify and lodge documentary verification with the Secretariat of the date of receipt by the Claimant of the Answer.

5.4 The Claimant may submit a Reply to any counterclaim, set-off or cross-claim. Any such Reply shall be submitted within 30 days from receipt of the counterclaims. The Claimant shall notify and lodge documentary verification with the Secretariat and the arbitral tribunal, where constituted, of the date of receipt by the Respondent of the Reply.

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

SECTION III. THE ARBITRAL TRIBUNAL

Article 6 – Number of Arbitrators

6.1. If the parties have not agreed upon the number of arbitrators within 30 days from the date the Request for Arbitration is received by the Respondent, the Court shall decide whether the case shall be referred to a sole arbitrator or to three arbitrators, taking into account the circumstances of the case.

6.2. Where a case is handled under an Expedited Procedure in accordance with Article 20, the provisions of Article 20.2(a) and (b) shall apply.

Article 7 – Appointment of a Sole Arbitrator

7.1 Unless the parties have agreed otherwise and subject to Articles 9 and 11:

(a) Where the parties have agreed before the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly nominate the sole arbitrator within 30 days from the date when the Request for Arbitration was received by the Respondent.

(b) Where the parties have agreed after the arbitration commences that the dispute shall be referred to a sole arbitrator, they shall jointly nominate the sole arbitrator within 15 days from the date of that agreement.

(c) Where the parties have not agreed upon the number of arbitrators and the Court has decided that the dispute shall be referred to a sole arbitrator, the parties shall jointly nominate the sole arbitrator within 30 days from the date when the Court's decision was received by the last of them.

7.2 If the parties fail to jointly nominate the sole arbitrator within the applicable time limit, the Court shall appoint the sole arbitrator as soon as possible.

Article 8 – Appointment of Three Arbitrators

8.1 Where a dispute between two parties is referred to three arbitrators, the arbitral tribunal shall be constituted as follows unless the parties have agreed otherwise:

(a) Where the parties have agreed before the arbitration commences that the dispute shall be referred to three arbitrators, each party shall nominate, in the Request and the Answer, respectively, one arbitrator. If either party fails to nominate an arbitrator, the Court shall appoint the arbitrator as soon as possible.

(b) Where the parties have agreed after the arbitration commences that the dispute shall be referred to three arbitrators, the Claimant shall nominate an arbitrator within 15 days of the date of that agreement, and the Respondent shall nominate an arbitrator within 15 days of receipt of the Claimant's nomination. If either party fails to nominate an arbitrator, the Court shall appoint the arbitrator as soon as possible.

(c) Where the parties have not agreed upon the number of arbitrators and the Court has decided that the dispute shall be referred to three arbitrators, the Claimant shall nominate an arbitrator within 15 days from the date of receipt of the Court's decision and the Respondent shall nominate an arbitrator within 15 days from the date of receipt of the Claimant's nomination. If a party fails to nominate an arbitrator, the Court shall appoint the arbitrator as soon as possible.

(d) Where the parties have agreed that the two party-nominated arbitrators shall not be informed which party or parties nominated each of them, these two arbitrators shall be appointed in accordance with the procedure in Appendix 5.

(e) The two arbitrators shall nominate a third arbitrator who shall act as the presiding arbitrator of the arbitral tribunal. Failing such nomination within 30 days from the appointment of the second arbitrator, the Court shall appoint the presiding arbitrator as soon as possible.

8.2 Where there are more than two parties to the arbitration and the dispute is to be referred to three arbitrators, the arbitral tribunal shall be constituted as follows unless the parties have agreed otherwise:

(a) The Claimant or group of Claimants shall jointly nominate an arbitrator and the Respondent or group of Respondents shall jointly nominate an arbitrator in accordance with the procedure in Article 8.1(a), 8.1(b) or 8.1(c), as applicable.

(b) Where the parties have agreed that the two party-nominated arbitrators shall not be informed which party or parties nominated each of them, these two arbitrators shall be appointed in accordance with the procedure in Appendix 5.

(c) If the parties have nominated arbitrators in accordance with Article 8.2(a) or 8.2(b), the procedure in Article 8.1(e) shall apply for the appointment of the presiding arbitrator.

(d) In the event of any failure to nominate arbitrators in accordance with the procedure in Article 8.2(a) or 8.2(b) and where all parties are unable to agree to a method for the constitution of the arbitral tribunal, the Court may appoint all members of the arbitral tribunal as soon as possible with or without regard to any party's nomination.

8.3 The constitution of the arbitral tribunal pursuant to Article 8.1 or 8.2 shall be subject to Articles 9, 10 and 11.

Article 9 – Confirmation of the Arbitral Tribunal

9.1 All nominations of any arbitrator, whether made by the parties or the arbitrators, are subject to confirmation by the Court, upon which the nominations shall become effective.

9.2 The nomination of an arbitrator shall be confirmed by the Court on the terms of:
(a) Appendix 2; or
(b) Appendix 3,

as applicable, in accordance with Article 10 and subject to any variations agreed by all parties and any changes the Secretariat considers appropriate.

9.3 In confirming an arbitrator, the Court shall also take into account any information provided under Article 11.4.

Article 10 – Fees and Expenses of the Arbitral Tribunal

10.1 The fees and expenses of the arbitral tribunal shall be determined according to:

(a) an hourly rate in accordance with Appendix 2, including the terms and conditions contained therein; or

(b) the schedule of fees based on the sum in dispute referred to in Appendix 3, including the terms and conditions contained therein.

10.2 The parties shall agree the method for determining the fees and expenses of the arbitral tribunal, and shall inform the Secretariat of the applicable method within 30 days of the date on which the Respondent receives the Request of Arbitration. If the parties fail to agree on the applicable method, the arbitral tribunal's fees and expenses shall be determined in accordance with Appendix 2.

10.3 Where the fees of the arbitral tribunal are to be determined in accordance with Appendix 2,

(a) the applicable rate for each co-arbitrator shall be the rate agreed between that co-arbitrator and the designating party; and

(b) the applicable rate for a sole or presiding arbitrator nominated by the parties or the co-arbitrators, as applicable, shall be the rate agreed between that arbitrator and the parties,

subject to paragraphs 9.3 and 9.5 of Appendix 2. Where the rate of an arbitrator is not agreed in accordance with Article 10.3(a) or 10.3(b), or where the Court appoints the arbitrator, the Secretariat shall determine the rate of that arbitrator.

10.4 Where the fees of the arbitral tribunal are determined in accordance with Appendix 3, such fees shall be fixed in accordance with that Appendix and the following rules:

(a) The fees of the arbitral tribunal shall be reasonable in amount, taking into account the amount in dispute, the complexity of the subject-matter, the time spent by the arbitral tribunal and any secretary appointed under Article 15.5 and any other circumstances of the case, including, but not limited to, the discontinuation of the arbitration in case of settlement or for any other reason.

(b) Where a case is referred to three arbitrators, the Secretariat shall have the right to increase the total fees up to a maximum which shall normally not exceed three times the fees of a sole arbitrator.

(c) The arbitral tribunal's fees may exceed the amounts calculated in accordance with Appendix 3 where in the opinion of the Secretariat, there are exceptional circumstances, which shall include but shall not be limited to the parties conducting the arbitration in a manner not reasonably contemplated at the time the arbitral tribunal is constituted.

(d) If the amount in dispute exceeds MUR 500,000,000 or its equivalent in Euros, the arbitral tribunal's fees shall be fixed by the Court, taking into account the circumstances of the case including the factors mentioned in Article 10.4(a) of the Rules.

Article 11 – Qualifications of the Arbitral Tribunal

11.1 Every arbitrator confirmed or appointed under the Rules shall be and remain at all times impartial and independent of the parties.

11.2 Subject to Article 11.3, where the parties to an arbitration under the Rules are of different nationalities, a sole arbitrator or the presiding arbitrator shall not have the same nationality as any party unless specifically agreed otherwise by all parties in writing. The nationality of any party shall be understood to include that of its controlling shareholder or interest.

11.3 Notwithstanding Article 11.2, in appropriate circumstances and provided that none of the parties objects within a time limit set by the Secretariat, a sole arbitrator or the presiding arbitrator may be of the same nationality as any of the parties.

11.4 Before confirmation or appointment, a prospective arbitrator shall:

(a) sign a statement confirming his or her acceptance of the mandate to resolve the parties' dispute in accordance with the Rules, his or her availability to decide the dispute and his or her impartiality and independence; and

(b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence.

An arbitrator, once confirmed or appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been disclosed.

11.5 Subject to Article 11.6, no party or its representative shall have any *ex parte* communication relating to the arbitration with any arbitrator, or with any candidate to be confirmed as arbitrator by a party, except to advise the candidate of the general nature of the dispute, to discuss the candidate's qualifications, availability, impartiality or independence, or to discuss the suitability of candidates for the nomination of a third arbitrator, where the parties or party-nominated arbitrators are to nominate that arbitrator. No party or its representative shall have any *ex parte* communication relating to the arbitration with any candidate for the presiding arbitrator.

11.6 Where the parties agree that the two party-nominated arbitrators shall not be informed which party or parties nominated each of them in accordance with Articles 8.1(d) or 8.2(b), no party or its representative shall have any *ex parte* communication relating to the arbitration with any arbitrator, or with any candidate to be confirmed as arbitrator by a party, or with any candidate for the presiding arbitrator.

Article 12 – Challenge of the Arbitral Tribunal

12.1 Any arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or otherwise, or if the arbitrator does not possess qualifications agreed by the parties. A party may challenge the arbitrator appointed by it or in whose appointment it has participated only for reasons of which it becomes aware after the appointment has been made.

12.2 A party that intends to challenge an arbitrator shall send notice of its challenge within 15 days after the confirmation or appointment of that arbitrator has been notified to the challenging party or within 15 days after that party became aware of the circumstances mentioned in Article 12.1.

12.3 The challenge shall be notified to the Secretariat, all other parties, the arbitrator who is challenged and the other members of the arbitral tribunal. The notification shall be in writing and shall state the reasons for the challenge. The Secretariat shall grant the other parties, the challenged arbitrator and the other members of the arbitral tribunal an opportunity to provide comments within a suitable time period.

12.4 Unless the arbitrator being challenged resigns or the non-challenging party agrees to the challenge within 15 days from receipt of the challenge, the Court shall decide on the challenge. Pending the determination of the challenge, the arbitral tribunal (including the challenged arbitrator) may continue to conduct the arbitration.

12.5 The Court may, upon the request of a party, provide brief reasons for its decision on the challenge.

12.6 If an arbitrator resigns or a party agrees to a challenge, no acceptance of the validity of any ground referred to in Article 12.1 shall be implied.

Article 13 – Replacement of an Arbitrator

13.1 The Court may also replace an arbitrator on its own initiative if the arbitrator becomes *de jure or de facto* unable to perform his or her functions in accordance with the Rules or for other reasons fails to act without undue delay.

13.2 Subject to Article 13.3, where an arbitrator dies, has been successfully challenged, has been otherwise removed or has resigned, a substitute arbitrator shall be appointed pursuant to the rules that were applicable to the appointment of the arbitrator being replaced. These rules shall apply even if during the process of appointing the arbitrator being replaced, a party had failed to exercise its right to appoint or to participate in the appointment.

13.3 If, at the request of a party, the Court determines that, in view of the exceptional circumstances of the case, it would be justified for a party to be deprived of its right to designate a substitute arbitrator, the Court may, after giving an opportunity to the parties and the remaining arbitrators to express their views:

(a) appoint the substitute arbitrator; or

(b) authorise the other arbitrators to proceed with the arbitration and make any decision or award.

13.4 If an arbitrator is replaced, the arbitration shall resume at the stage where the arbitrator was replaced or ceased to perform his or her functions, unless the arbitral tribunal decides otherwise.

Article 14 – Transmission of the File to the Arbitral Tribunal

The Secretariat shall transmit the file to the arbitral tribunal as soon as it has been constituted, provided that the deposit requested by the Secretariat has been fully paid, unless the Secretariat determines otherwise.

SECTION IV. CONDUCT OF ARBITRATION

Article 15 – General Provisions

15.1 Subject to the Rules and any agreement between the parties, the arbitral tribunal shall adopt any suitable procedures for the conduct of the arbitration as it sees fit, in order to avoid unnecessary delay or expense, having regard to the complexity of the issues and the amount in dispute, and provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their respective cases.

15.2 The arbitral tribunal and the parties shall do everything necessary to ensure the fair and efficient conduct of the arbitration.

15.3 By consenting to arbitrate under the Rules, the parties agree that any statutory time limits shall be varied in accordance with the time limits fixed by the arbitral tribunal, in so far as such an agreement can validly be made.

15.4 At an early stage of the arbitration and in consultation with the parties, the arbitral tribunal shall prepare a procedural timetable for the arbitration, which shall be provided to the parties and the Secretariat. Any modifications to the procedural timetable shall be communicated to all parties and the Secretariat.

15.5 The arbitral tribunal may, after consulting with the parties, appoint a secretary. The secretary shall remain at all times impartial and independent of the parties, and shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence prior to his or her appointment. A secretary, once appointed and throughout the arbitration, shall disclose without delay any such circumstances to the parties unless they have already been informed by him or her of these circumstances.

15.6 Subject to the following and Article 15.7, the parties may be represented by persons of their choice. The names, addresses, telephone and facsimile numbers, and email addresses of party representatives shall be communicated in writing without delay to the other parties and the Secretariat. The arbitral tribunal or the Secretariat may require proof of authority of any party representatives.

15.7 After the constitution of the arbitral tribunal, any intended change or addition by a party to its legal representatives shall be notified promptly in writing to all other parties, the arbitral tribunal and the Secretariat. The arbitral tribunal may exclude new legal representatives appointed after the arbitral tribunal has been transferred

the file pursuant to Article 14 if such appointment may result in or potentially result in a conflict of interest arising in respect of any member of the arbitral tribunal.

15.8 Where the parties agree to pursue other means of settling their dispute after the arbitration commences, the Secretariat, the arbitral tribunal or the Emergency Arbitrator may suspend the arbitration. The arbitration shall resume at the request of any party to the Secretariat, the arbitral tribunal or the Emergency Arbitrator. Except with the express consent of all parties, no arbitrator or Emergency Arbitrator may act in any capacity to facilitate settlement of the dispute if he or she is to engage in *ex parte* communications with any party.

15.9 In all matters not expressly provided for in the Rules, the Court, the Secretariat, the arbitral tribunal and the parties shall act in the spirit of the Rules.

15.10 The arbitral tribunal shall make every reasonable effort to ensure that an award is valid and enforceable.

Article 16 – Seat and Venue of the Arbitration

16.1 The parties may agree on the seat of arbitration. Where there is no agreement as to the seat, the seat of arbitration shall be decided by the Court taking into account the circumstances of the case.

16.2 Unless the parties have agreed otherwise, the arbitral tribunal may meet at any location outside of the seat of arbitration which it considers appropriate for consultation among its members, hearing witnesses, experts or the parties, or the inspection of goods, other property or documents. The arbitration shall nonetheless be treated for all purposes as an arbitration conducted at the seat.

Article 17 – Language

17.1. The arbitration shall be conducted in the language or languages of the arbitration. Where the parties have not agreed on such language or languages, any party may submit its written communications in English or French prior to any determination by the arbitral tribunal pursuant to Article 17.2.

17.2. Subject to agreement by the parties, the arbitral tribunal shall, promptly after its appointment, determine the language or languages of the arbitration. This determination shall apply to all written submissions, any further written statements, any award and to the language or languages to be used in any oral hearings.

17.3. The arbitral tribunal may order that any documents annexed to written submissions, and any supplementary documents or exhibits submitted during the course of the arbitration, delivered in their original language, shall be accompanied by a translation into the language or languages of the arbitration as agreed by the parties or determined by the arbitral tribunal.

Article 18 – Applicable Rules of Law

18.1. The parties may agree upon the rules of law to be applied by the arbitral tribunal to the merits of the dispute. In the absence of any such agreement, the arbitral tribunal shall apply the law determined by the conflicts of laws rules which it considers applicable.

18.2. The arbitral tribunal shall decide in accordance with the terms of the contract(s) between the parties and shall take into account any relevant trade usages.

18.3. The arbitral tribunal shall decide as amiable compositeur or *ex aequo et bono* only if the parties have expressly authorized it to do so.

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Article 19 – Jurisdiction

19.1 Subject to Article 19.2, if a question arises as to:

(a) the existence, validity or scope of the arbitration agreement(s); or

(b) whether all claims have been properly made in a single arbitration pursuant to Article 28; or

(c) the competence of MARC to administer an arbitration before the constitution of the arbitral tribunal; or

(d) the joinder of an additional party to the arbitration pursuant to Article 26; or

(e) any other issue relating to the jurisdiction of the arbitral tribunal,

the arbitration shall proceed and any such question shall be decided by the arbitral tribunal.

19.2 Prior to the constitution of the arbitral tribunal, the arbitration shall proceed and any question of whether an arbitration agreement exists or whether the arbitration has been properly commenced under Article 28 shall be determined by the arbitral tribunal, unless the Secretariat decides to refer the matter to the Court pursuant to Article 19.3.

19.3 Where cases are referred to the Court by the Secretariat under Article 19.2, the matter shall proceed if and to the extent that the Court is *prima facie* satisfied that an arbitration agreement under the Rules may exist, or the arbitration has been properly commenced under Article 28.

19.4 Prior to the constitution of the arbitral tribunal, where an application is made to join an additional party to the arbitration in accordance with Article 26, the Court may decide whether, *prima facie*, the additional party is bound by an arbitration agreement under the Rules giving rise to the arbitration, including any arbitration under Article 27 or 28. If so, the Court may join the additional party to the arbitration. The Court may take into account the provisions of Articles 26.8(a), (b) or (c).

19.5 Any question as to the jurisdiction of the arbitral tribunal arising from the Court's decision shall be decided by the arbitral tribunal pursuant to Article 19.1.

19.6 The Court's decision pursuant to Article 19.2 or 19.3 is without prejudice to the admissibility or merits of any party's pleas.

19.7 The arbitral tribunal may rule on its own jurisdiction under the Rules, including any objections with respect to the existence, validity or scope of the arbitration agreement(s) or the admissibility of any claims and defences.

19.8 The arbitral tribunal shall have the power to determine the existence or validity of any contract of which an arbitration agreement forms a part. For the purposes of Article 19, an arbitration agreement which forms part of a contract and which 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 null and void shall not necessarily entail the invalidity of the arbitration agreement.

19.9 A plea that the arbitral tribunal does not have jurisdiction shall be raised as soon as possible and at the latest in the statement of defence. A party is not precluded from raising such a plea by the fact that it has nominated or appointed, or participated in the nomination or appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitration. The arbitral tribunal may admit a later plea if it considers the delay justified.

Article 20 – Expedited Procedure

20.1. Prior to the constitution of the arbitral tribunal, a party may apply to the Secretariat in writing for the arbitration to be conducted in accordance with Article 20.2 where:

(a) the amount in dispute representing the aggregate of any claim and counterclaim (or any set-off defence or cross-claim) does not exceed 25, 000, 000 MUR, or

(b) the parties so agree.

20.2. When the Secretariat, after considering the views of the parties, grants an application made pursuant to Article 20.1, the arbitral proceedings shall be conducted in accordance with an Expedited Procedure based upon the Rules, subject to the following changes:

(a) the case shall be referred to a sole arbitrator, unless the arbitration agreement provides for three arbitrators;

(b) if the arbitration agreement provides for three arbitrators, the Secretariat shall invite the parties to agree to refer the case to a sole arbitrator. If the parties do not agree, the case shall be referred to three arbitrators;

(c) the Secretariat may shorten the time limits provided for in the Rules, as well as any time limits that it has set;

(d) the arbitral tribunal shall decide the dispute on the basis of documentary evidence only, unless it decides that it is appropriate to hold one or more hearings;

(e) the award shall be made within six months from the date when the Secretariat transmitted the file to the arbitral tribunal. In exceptional circumstances, the Secretariat may extend this time limit; and

(f) the arbitral tribunal may state the reasons upon which the award is based in summary form, unless the parties have agreed that no reasons are to be given.

20.3. Unless the parties agree otherwise, the Expedited Procedure shall not apply to any consolidated proceedings under Article 27 or to any arbitration commenced under Article 28.

20.4. Upon the request of any party and after consulting with the other parties and any confirmed or appointed arbitrators, the Secretariat may, having regard to any new circumstances that have arisen, decide that the Expedited Procedure shall no longer apply to the arbitration. Unless the Court considers that it is appropriate to revoke the confirmation or appointment of any arbitrator, the arbitral tribunal shall remain in place.

20.5. The Secretariat may adjust the Administrative Costs and the arbitral tribunal's fees after a Request for Expedited Procedure has been submitted.

Article 21 – Summary Dismissal of Claims and Defences

21.1. A party may apply to the arbitral tribunal for the summary dismissal of one or more claims or defences ("Summary Dismissal") on the basis that:

(a) the claim(s) or defence(s) are manifestly without merit; or

(b) the claim(s) or defence(s) are manifestly outside the jurisdiction of the arbitral tribunal.

21.2. An application for Summary Dismissal under Article 21.1 shall state in detail the facts and legal basis supporting the application. The party applying for Summary Dismissal shall, at the same time as it submits the application to the arbitral tribunal, send a copy of the application to all other parties and the Secretariat, and shall notify the arbitral tribunal that it has done so, specifying the mode of service employed and the date of service.

21.3. The arbitral tribunal may, in its discretion, allow the application for Summary Dismissal to proceed. If the application is allowed to proceed, the arbitral tribunal shall, after giving the parties the opportunity to be heard, decide whether to grant, in whole or in part, the application for Summary Dismissal.

21.4. If the application is allowed to proceed, the arbitral tribunal shall make an order or award on the application, with reasons, which may be in summary form. The order or award shall be made within 60 days of the date of filing of the application, unless, in exceptional circumstances, the Secretariat extends the time limit.

Article 22 – Evidence, Hearings and Experts

22.1. Each party shall have the burden of proving the facts relied on to support its claim or defence.

22.2. The arbitral tribunal shall determine the admissibility, relevance, materiality and weight of the evidence, including whether to apply strict rules of evidence.

22.3. Subject to Article 22.4, at any time during the arbitration the arbitral tribunal may allow or require a party to produce documents, exhibits or other evidence that the arbitral tribunal determines to be relevant to the case and material to its outcome. The arbitral tribunal shall have the power to admit or exclude any documents, exhibits or other evidence.

22.4. The parties may agree that they shall only produce those documents that they intend to rely on in their respective pleadings, subject to the arbitral tribunal's power to order production of additional documents in exceptional circumstances.

22.5. The arbitral tribunal shall decide whether to hold oral hearings for presenting evidence or for oral arguments, or whether the arbitration shall be conducted on the basis of documents and other materials. The arbitral tribunal shall hold such hearings at an appropriate stage of the arbitration, if so requested by a party or if it considers fit. In the event of an oral hearing, the arbitral tribunal shall give the parties adequate advance notice of the relevant date, time and place. If any party, although duly summoned, fails to appear without valid excuse, the arbitral tribunal shall have the power to proceed with the hearing.

22.6. The arbitral tribunal is free to determine the manner in which a witness or an expert is examined. If a witness or expert is to be heard, each party shall communicate to the arbitral tribunal and all other parties the name and address of the witness or expert it intends to present, and the subject(s) upon and the language in which such witness or expert will give his or her testimony, within such time as shall be agreed or as shall be specified by the arbitral tribunal.

22.7. The arbitral tribunal may make directions for the translation of oral statements made at a hearing and for a record of the hearing if it deems that either is necessary in the circumstances of the case.

22.8. Hearings shall be held in private unless the parties agree otherwise. The arbitral tribunal may require any witness or expert to leave the hearing room at any time during the hearing.

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

Article 23 – Interim Measures of Protection and Emergency Relief

23.1. A party may apply for urgent interim or conservatory relief ("Emergency Relief") prior to the constitution of the arbitral tribunal pursuant to the procedures set out in Appendix 4 ("Emergency Arbitrator Procedure").

23.2. At the request of either party, the arbitral tribunal may order any interim measures it deems necessary or appropriate.

23.3. An interim measure, whether in the form of an order or award or in another form, is any temporary measure ordered by the arbitral tribunal at any time before it issues the award by which the dispute is finally decided, that a party, for example and without limitation:

(a) maintain or restore the *status quo* pending determination of the dispute; or

(b) take action that would prevent, or refrain from taking action that is likely to cause, current or imminent harm or prejudice to the arbitral process itself; or

(c) provide a means of preserving assets out of which a subsequent award may be satisfied; or

(d) preserve evidence that may be relevant and material to the resolution of the dispute.

23.4. When deciding a party's request for an interim measure under Article 23.2, the arbitral tribunal shall take into account the circumstances of the case. Relevant factors may include, but are not limited to:

(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 on this possibility shall not affect the discretion of the arbitral tribunal in making any subsequent determination.

23.5. The arbitral tribunal may modify, suspend or terminate an interim measure it has granted, upon application of any party or, in exceptional circumstances and upon prior notice to the parties, on the arbitral tribunal's own initiative.

23.6. The arbitral tribunal may require the party requesting an interim measure to provide appropriate security in connection with the measure.

23.7. The arbitral tribunal may require any party promptly to disclose any material change in the circumstances on the basis of which an interim measure was requested or granted.

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

23.9. A request for interim measures addressed by any party to a competent authority shall not be deemed incompatible with the arbitration agreement(s), or as a waiver thereof.

Article 24 – Security for Costs

The arbitral tribunal may make an order requiring a party to provide security for the costs of the arbitration.

Article 25 – Default

25.1. If, within the period of time set by the arbitral tribunal, the Claimant has failed to communicate its case without showing sufficient cause for such failure, the arbitral tribunal shall issue an order for the termination of the arbitration unless the Respondent has brought a counterclaim and wishes the arbitration to continue, in which case the arbitral tribunal may proceed with the arbitration in respect of the counterclaim.

25.2. If, within the period of time set by the arbitral tribunal, the Respondent has failed to communicate its defence without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration.

25.3. If one of the parties, duly notified under the Rules, fails to present its case in accordance with the Rules including as directed by the arbitral tribunal, without showing sufficient cause for such failure, the arbitral tribunal may proceed with the arbitration and make an award on the basis of the evidence before it.

Article 26 – Joinder of Additional Parties

26.1. Any Request for Joinder shall be submitted as soon as possible before the constitution of the arbitral tribunal, except with the consent of all parties including the additional party and the arbitral tribunal.

26.2. Before the constitution of the arbitral tribunal, a party wishing to join an additional party to the arbitration shall communicate the Request for Joinder to the Secretariat and all other parties.

26.3. After the arbitral tribunal is constituted, a party wishing to join an additional party to the arbitration shall communicate the Request for Joinder to the arbitral tribunal, the Secretariat and all other parties.

26.4. The Request for Joinder shall include the following:

(a) the case reference of the existing arbitration;

(b) the names and addresses, telephone and facsimile numbers, and email addresses of each of the parties, including the additional party, and their legal representatives; and

(c) the information specified in Articles 4.3(b), (c), (d), (e), (f), (g), (j), (k) and (l); and

(d) comments on the constitution of the arbitral tribunal if the Request for Joinder is granted,

as well as any further information or documents with the Request for Joinder as the party considers appropriate.

26.5. The provisions of Articles 4.5 and 4.6 shall apply, *mutatis mutandis*, to the Request for Joinder.

26.6. Within 30 days of receiving the Request for Joinder, the additional party shall communicate to the arbitral tribunal, where constituted, the Secretariat and all other parties an Answer to the Request for Joinder in accordance, *mutatis mutandis*, with the provisions of Articles 5.1 (save for Articles 5.1 (f) and (g)), 5.2, 5.3 and 26.4(d), as well as any further information or documents with the Answer to the Request for Joinder as the party considers appropriate.

26.7. Within 30 days of receiving the Request for Joinder, the other parties may submit comments on the Request for Joinder to the arbitral tribunal, where constituted, the Secretariat and all other parties.

26.8. The arbitral tribunal shall have the power to allow an additional party to be joined to the arbitration provided it is satisfied that:

(a) the additional party may be bound by an arbitration agreement under the Rules giving rise to the arbitration, including any arbitration under Article 27 or 28; or

(b) where the additional party may be bound by a different arbitration agreement under the Rules, a common question of law or fact arises, the claims arise out of or are in respect of the same transaction or series of related transactions, and the arbitration agreements may be compatible; or

(c) all parties, including the additional party, agree to the joinder.

26.9. Any decision pursuant to Article 26.8 is without prejudice to the arbitral tribunal's power to decide any question as to its jurisdiction arising from such decision.

26.10. Where an additional party is joined to the arbitration, the date on which the Request for Joinder is received by the Secretariat (if the Request for Joinder is made before the constitution of the arbitral tribunal), or the arbitral tribunal (if the Request for Joinder is made after the constitution of the arbitral tribunal), shall be deemed to be the date on which the arbitration in respect of the additional party commences.

26.11. The parties waive any objection, on the basis of any decision to join an additional party to the arbitration, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration, in so far as such waiver can validly be made.

26.12. The Secretariat may adjust the Administrative Costs and the arbitral tribunal's fees (where appropriate) after a Request for Joinder has been submitted.

Article 27 – Consolidation of Arbitrations

27.1. The Court shall have the power, at the request of a party and after consulting with the parties and any confirmed or appointed arbitrators, to consolidate two or more arbitrations pending under the Rules where:

(a) the parties agree to consolidate; or

(b) all of the claims in the arbitrations are made under the same arbitration agreement; or

(c) the claims are made under more than one 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 group of related transactions, and the arbitration agreements are compatible.

27.2. A party wishing to consolidate two or more arbitrations pursuant to Article 27.1 shall communicate the Request for Consolidation to the Secretariat, all other parties and any confirmed or appointed arbitrators.

27.3. The Request for Consolidation shall include any information or documents that the requesting party considers appropriate, including comments on the provisions of Articles 27.1(a), (b) or (c), and comments on the constitution of the arbitral tribunal if the Request for Consolidation is granted.

27.4. In deciding whether to consolidate, the Court shall take into account any circumstances it considers relevant, including whether one or more arbitrators have been confirmed or appointed in more than one of the arbitrations, and if so, whether they are the same or different persons.

27.5. Where the Court decides to consolidate two or more arbitrations, the arbitrations shall be consolidated into the arbitration that commenced first, unless all parties agree or the Court decides otherwise taking into account the circumstances of the case. The Secretariat shall provide copies of the Court's decision to all parties and to any confirmed or appointed arbitrators.

27.6. The consolidation of two or more arbitrations is without prejudice to the validity of any act done or order made by a competent authority in support of the relevant arbitration before it was consolidated.

27.7. The parties waive any objection, on the basis of the Court's decision to consolidate, to the validity and/or enforcement of any award made by the arbitral tribunal in the consolidated proceedings, in so far as such waiver can validly be made.

27.8. The Secretariat may adjust the Administrative Costs and the arbitral tribunal's fees (where appropriate) after a Request for Consolidation has been submitted.

Article 28 – Multiple Contracts

28.1. Claims arising out of or in connection with more than one contract may be made in a single arbitration, provided that:

(a) a common question of law or fact arises under each arbitration agreement giving rise to the arbitration;

(b) the rights to relief claimed are in respect of, or arise out of, the same transaction or group of transactions; and

(c) the arbitration agreements under which those claims are made are compatible.

28.2. The parties waive any objection, on the basis of the commencement of a single arbitration under Article 28, to the validity and/or enforcement of any award made by the arbitral tribunal in the arbitration, in so far as such waiver can validly be made.

Article 29 – Closure of Proceedings

29.1. When it is satisfied that the parties have had a reasonable opportunity to present their case, whether in relation to the entire proceedings or a specific phase thereof, the arbitral tribunal shall declare the proceedings closed. Thereafter, no further submissions or arguments may be made, or evidence produced in respect of the entire proceedings or a specific phase, as applicable, unless the arbitral tribunal reopens the proceedings in accordance with Article 29.2.

29.2. The arbitral tribunal may, if it considers it necessary, decide on its own initiative or upon application of a party, to reopen the proceedings at any time before the award is made.

Article 30 – Waiver

A party that knows or ought reasonably to know that any provision of, or requirement arising under, the Rules (including the arbitration agreement(s)) has not been complied with and yet proceeds with the arbitration without promptly stating its objection to such non-compliance, shall be deemed to have waived its right to object.

SECTION V. AWARDS, DECISIONS & ORDERS OF THE ARBITRAL TRIBUNAL

Article 31 – Decisions

31.1. When there is more than one arbitrator, any award or other decision of the arbitral tribunal shall be made by a majority of the arbitrators. If there is no majority, the award shall be made by the presiding arbitrator alone.

31.2. With the prior agreement of all members of the arbitral tribunal, the presiding arbitrator may make procedural rulings alone.

Article 32 – Costs of the Arbitration

32.1. The arbitral tribunal shall determine the costs of the arbitration in one or more orders or awards. Such costs include:

(a) fees of the arbitral tribunal, as determined in accordance with Article 10;

(b) reasonable travel and other expenses incurred by the arbitral tribunal;

(c) reasonable costs of assistance required by the arbitral tribunal such as expert advice and any tribunal secretary;

(d) reasonable costs for legal representation and other assistance, including fees and expenses of any witnesses and experts;

(e) the Filing Fee and Administrative Costs payable to MARC in accordance with Appendix 1.

32.2. The arbitral tribunal may apportion all or part of the costs of the arbitration between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case.

32.3. With respect to the costs of legal representation and other assistance referred to in Article 32.1(d), the arbitral tribunal, taking into account such circumstances it considers relevant, may direct that the recoverable costs of the arbitration, or any part of the arbitration, shall be limited to a specified amount.

32.4. Where arbitrations are consolidated pursuant to Article 27, the arbitral tribunal in the consolidated arbitration shall allocate the costs of the arbitration in accordance with Articles 32.2 and 32.3. Such costs shall include, but shall not be limited to, the fees of any confirmed or appointed arbitrator and any other costs incurred in an arbitration that was subsequently consolidated into another arbitration.

32.5. When the arbitral tribunal issues an order for the termination of the arbitration or makes an award on agreed terms, it shall determine the costs of the arbitration and the apportionment of such costs between the parties, in the text of that order or award.

Article 33 – Form and Effect of the Award

33.1. The arbitral tribunal may make a single award or separate awards regarding different issues at different times in the form of interim, partial or final awards. If appropriate, the arbitral tribunal may also issue interim awards on costs.

33.2. The award shall be binding on the parties. Subject to Article 38, the parties shall be deemed to have waived their rights to any form of appeal, recourse or defence in respect of enforcement and execution of any award, in so far as such waiver can validly be made.

33.3. The parties undertake to comply without delay with any award or order made by the arbitral tribunal, including any award or order made in any consolidated proceedings under Article 27 or any arbitration under Article 28.

33.4. The award shall state the reasons upon which it is based unless the parties have agreed that no reasons are to be given. Where reasons are given, the arbitral tribunal may, in its absolute discretion, state its reasons as succinctly as possible without any need to re-state the procedural history of the arbitration or the parties' submissions save to the extent necessary for such reasons.

33.5. The award shall be signed by the arbitral tribunal. It shall state the date on which it was made, the seat of the arbitration and shall be deemed to have been made at the seat of the arbitration. Where there are three arbitrators and any of them fails to sign, the award shall state the reason for the absence of the signature(s).

33.6. The arbitral tribunal shall communicate to the Secretariat originals of the award signed by the arbitrators. The Secretariat shall affix MARC's seal to the award and, subject to any lien, communicate it to the parties.

Article 34 – Settlement or Other Grounds for Termination

34.1. If, before the arbitral tribunal is constituted, a party requests the termination of the arbitration, it shall communicate this in writing to the other parties and the Secretariat. The Secretariat shall set a time limit for all other parties to submit their comments. If no party objects to the termination within the time limit, the Secretariat shall terminate the arbitration. If any party raises an objection, the arbitration shall proceed in accordance with the Rules.

34.2. If, after the arbitral tribunal is constituted and before the award is made, the parties agree to settle their dispute, the arbitral tribunal shall either issue an order for the termination of the arbitration or, if requested by the parties and accepted by the arbitral tribunal, record the settlement in the form of an award on agreed terms.

34.3. If, before the award is made, the continuation of the arbitration becomes unnecessary or impossible for any reason not mentioned in Article 34.2, the arbitral tribunal shall issue an order for the termination of the arbitration. The arbitral tribunal shall issue such an order unless a party raises a justifiable objection, having been given a reasonable opportunity to comment upon the proposed course of action.

34.4. The arbitral tribunal shall communicate copies of the order for termination of the arbitration or of the award on agreed terms, signed by the arbitral tribunal, to the Secretariat. Subject to any lien, the Secretariat shall communicate the order for termination of the arbitration to the parties. Where an award on agreed terms is made, the provisions of Articles 33.2 to 33.6 shall apply.

Article 35 – Correction of the Award

35.1. Within 30 days after receipt of an award, any party, with notice to all other parties and the Secretariat, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors, or any errors of similar nature. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for the other parties to comment on such request.

35.2. The arbitral tribunal shall make any corrections it considers appropriate within 30 days after receipt of the

the request but may extend such period of time if necessary.

35.3. The arbitral tribunal may within 30 days after the date of the award make such corrections on its own initiative.

35.4. The arbitral tribunal has the power to make any further correction to the award which is necessitated by or consequential on (a) the interpretation of any point or part of the award under Article 36; or (b) the issue of any additional award under Article 37.

35.5. Any such corrections shall form part of the award and the provisions of Articles 33.2 to 33.6 shall apply.

Article 36 – Interpretation of the Award

36.1. Within 30 days after receipt of an award, any party, with notice to all other parties and the Secretariat, may request that the arbitral tribunal give an interpretation of the award. The arbitral tribunal may set a time limit, normally not exceeding 15 days, for the other parties to comment on such request.

36.2. Any interpretation considered appropriate by the arbitral tribunal shall be given in writing within 30 days after receipt of the request but the tribunal may extend such period of time if necessary.

36.3. The arbitral tribunal has the power to give any further interpretation of the award which is necessitated by or consequential on (a) the correction of any error in the award under Article 35; or (b) the issue of any additional award under Article 37.

36.4. Any interpretation given under Article 36 shall form part of the award and the provisions of Articles 33.2 to 33.6 shall apply.

Article 37 – Additional Award

37.1. Within 30 days after receipt of an award, any party, with notice to all other parties and the Secretariat, may request the arbitral tribunal to make an additional award as to claims presented in the arbitration but omitted from the award. The arbitral tribunal may set a time limit, normally not exceeding 30 days, for the other party to comment on such request.

37.2. If the arbitral tribunal considers the request for an additional award to be justified, it shall make the additional award within 60 days after receipt of the request but may extend such period of time if necessary.

37.3. The arbitral tribunal has the power to make an additional award which is necessitated by or consequential on (a) the correction of any error in the

award under Article 35; or (b) the interpretation of any point or part of the award under Article 36.

37.4. When an additional award is made, the provisions of Articles 33.2 to 33.6 shall apply.

Article 38 – Optional appeal procedure

38.1. At anytime during the arbitration, the parties may agree to the Optional Appeal Procedure in Appendix 6. All parties to the arbitration must agree in writing to the Appeal Procedure in order for it to be effective.

38.2. Any appeal under the Optional Appeal Procedure shall be strictly limited to points of law.

Article 39 – Deposits for Costs

39.1. As soon as practicable after receipt of the Request for Arbitration by the Respondent, the Secretariat shall, in principle, request the Claimant and the Respondent each to deposit with MARC an equal amount as an advance for the costs referred to in Article 32.1(a), (b), (c) and (e). The Secretariat shall provide a copy of such request to the arbitral tribunal.

39.2. Where a Respondent submits a counterclaim or a cross-claim, or it otherwise appears appropriate in the circumstances, the Secretariat may request separate deposits with MARC.

39.3. During the course of the arbitration, including where a party amends its claim, counterclaim or cross-claim, the Secretariat may request the parties to make supplementary deposits with MARC. The Secretariat shall provide a copy of such requests to the arbitral tribunal.

39.4. If the required deposits are not paid in full within 30 days after receipt of the request, the Secretariat shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the arbitration, or continue with the arbitration on such basis and in respect of such claim, counterclaim or cross-claim as the tribunal considers fit.

39.5. If a party pays the required deposits on behalf of another party, the arbitral tribunal may, at the request of the paying party, make an award for reimbursement of the payment.

39.6. The final award rendered by the arbitral tribunal shall include an account to the parties of the deposits received by MARC. Any unexpended balance shall be returned to the parties by MARC in the proportions paid by the parties, or as otherwise instructed by the arbitral tribunal.

SECTION VI. OTHER PROVISIONS

Article 40 – Confidentiality

40.1. Unless otherwise agreed by the parties, no party or party representative may publish, disclose or communicate any information relating to:

(a) the arbitration under the arbitration agreement(s); or

(b) an award made in the arbitration, including any Emergency Decision.

40.2. The provisions of Article 40.1 also apply to the arbitral tribunal, any Emergency Arbitrator appointed in accordance with Appendix 4, expert, witness, secretary of the arbitral tribunal, the Secretariat and the Court.

40.3. The provisions in Article 40.1 do not prevent the publication, disclosure or communication of information referred to in Article 40.1 by a party:

(a) (i) to protect or pursue a legal right or interest of the party; or

(ii) to enforce or challenge the award referred to in Article 40.1(b);

in legal proceedings before a court or other authority, provided the party takes all available steps to limit further disclosure of the information concerned;

(c) to a professional or any other adviser of any of the parties, including any actual or potential witness or expert; or

(d) to any party and confirmed or appointed arbitrator for the purposes of any written communications on the Request for Joinder under Article 26 or the Request for Consolidation under Article 27; or

(e) to a person for the purposes of having or seeking third party funding or insurance for the arbitration from that person.

40.4. Nothing in Article 40.3 shall permit the publication, disclosure, communication or use of information referred to in Article 40.1 by any person referred to in Articles 40.1 and 40.2 for any purpose unrelated to the arbitration.

40.5. The deliberations of the arbitral tribunal are confidential.

40.6. MARC may publish any award in its entirety or in the form of excerpts or a summary, only under the following conditions:

(a) all references to the parties' names and any other identifying information are deleted; and

(b) no party objects to such publication within the time limit fixed for that purpose by MARC. In the case of an objection, the award shall not be published.

Article 41 – Disclosure of Third Party Funding or Insurance

41.1. If an agreement or arrangement is made for third party funding or insurance, the funded or insured party shall notify in writing all other parties, the arbitral tribunal and the Secretariat of:

(a) the fact that an agreement or arrangement for funding or insurance has been made; and

(b) the name of the third party funder or insurer.

41.2. The notification referred to in Article 41.1 must be given:

(a) in respect of an agreement or arrangement for funding or insurance made on or before the arbitration commences, in the Request for Arbitration (where the funded or insured party is the Claimant) or the Answer to the request for arbitration where the funded or insured party is the Respondent); or

(b) in respect of an agreement or arrangement for funding or insurance made after the arbitration commences, within 15 days after said agreement or arrangement is made.

41.3. If an agreement or arrangement for funding or insurance ends during the course of the arbitration, within 15 days thereof the funded or insured party shall notify in writing all other parties, the arbitral tribunal and the Secretariat of:

(a) the fact that the agreement or arrangement for funding or insurance has ended; and

(b) the date on which such agreement or arrangement ended.

Article 42 – Exclusion of Liability

42.1. No member of the Secretariat, the Court or other body or person specifically designated by MARC or MCCI to perform the functions referred to in the Rules, the arbitral tribunal, any Emergency Arbitrator, tribunal-appointed expert, tribunal secretary or appeal panel shall be liable for any act or omission in connection with an arbitration conducted under the Rules, save where such act was done or omitted to be done in bad faith.

42.2. After the award has been made and the possibilities of correction, interpretation, additional awards and appeal referred to in Articles 35 to 38 have lapsed or been exhausted, neither the Secretariat, the Court, the arbitral tribunal, any Emergency Arbitrator, tribunal-appointed expert, tribunal secretary or appeal panel shall be under an obligation to make statements to any person about any matter concerning the arbitration, nor shall a party seek to make any of these persons a witness in any legal or other proceedings arising out of the arbitration.

APPENDIX 1
FILING FEE & ADMINISTRATIVE COSTS

IN FORCE AS FROM OCTOBER 2, 2017

Filing Fee

1. Filing Fee

1.1 When submitting a Request for Arbitration, the Claimant shall pay a Filing Fee of MUR 65,000.

1.2 If the Claimant fails to pay the Filing Fee, the Secretariat shall not proceed with the arbitration subject to Article 4.5 of the Rules.

1.3 The Filing Fee is not refundable.

2. MARC's Administrative Costs

2.1 The Administrative Costs shall be determined in accordance with the following table.

Administrative fees in MUR**

SUM IN DISPUTE (MUR)			FEES (MUR)			
Up to	1,500,000		75,000			
From	1,500,001 to	3,000,000	75,000	+ 1%	of the sum above	1,500,000
From	3,000,001 to	12,000,000	90,000	+ 0,50%	of the sum above	3,000,000
From	12,000,001 to	24,000,000	135,000	+ 0,40%	of the sum above	12,000,000
From	24,000,001 to	45,000,000	183,000	+ 0,30%	of the sum above	24,000,000
From	45,000,001 to	90,000,000	350,000	+ 0,20%	of the sum above	45,000,000
From	90,000,001 to	150,000,000	450,000	+ 0,10%	of the sum above	90,000,000
From	150,000,001 to	300,000,000	550,000	+ 0,05%	of the sum above	150,000,000
From	300,000,001 to	500,000,000	600,000	+ 0,05%	of the sum above	300,000,000

Administrative fees in EUR**

SUM IN DISPUTE (EUR)			FEES (EUR)			
Up to	37,500		1,875			
From	37,501 to	75,000	1,875	+ 1%	of the sum above	37,500
From	75,001 to	300,000	2,250	+ 0,50%	of the sum above	75,000
From	300,001 to	600,000	3,375	+ 0,40%	of the sum above	300,000
From	600,001 to	1,125,000	4,575	+ 0,30%	of the sum above	600,000
From	1,125,001 to	2,250,000	8,750	+ 0,20%	of the sum above	1,125,000
From	2,250,001 to	3,750,000	11,250	+ 0,10%	of the sum above	2,250,000
From	3,750,001 to	7,500,000	13,750	+ 0,05%	of the sum above	3,750,000
From	7,500,001 to	12,500,000	15,000	+ 0,05%	of the sum above	7,500,000

*1 Euro = MUR 40. Rates will be adjusted if the Euro rises above MUR 40.
**If the sum in dispute is above MUR 500,000,000 or its equivalent in Euros, the MARC Court shall decide.

Administrative fees do not include:

- Costs and expenses incurred by the arbitral tribunal.
- Usage costs of facilities and additional services in relation with the arbitration (ex. rental of meeting/conference room, transcription, translation, interpretation, video conference). These costs are at the charge of the parties and will be charged as advance payment in equal proportion to the parties for provision of these additional services and facilities by MARC.

2.2 Claims and counterclaims are aggregated for the determination of the amount in dispute. The same rule applies to any set-off defence or cross-claim, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence or cross-claim will not require significant additional work.

2.3 An interest claim shall not be taken into account for the calculation of the amount in dispute, except where the Secretariat determines that doing so would be appropriate. In addition, when the interest claim exceeds the amounts claimed in principal, the interest claim alone shall be considered in calculating the amount in dispute.

2.4 Pursuant to Articles 20.5, 26.12, 27.8 or where in the opinion of the Secretariat there are exceptional circumstances, the Secretariat may depart from the table in paragraph 2.1 when calculating the Administrative Costs.

2.5 If the amount in dispute exceeds MUR 500,000,000 or its equivalent in Euros, the Administrative Costs shall be fixed by the Court, taking into account the circumstances of the case.

2.6 Amounts in currencies other than Mauritian Rupees shall be converted into Mauritian Rupees at the rate of exchange published by the Bank of Mauritius on the date the Request for Arbitration is submitted or at the time any new claim, set-off defence, cross-claim or amendment thereof is filed.

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

2.8 MARC Administrative Costs may be subject to value-added tax or charges of a similar nature at the prevailing rate.

2.9 The parties are jointly and severally liable for the Administrative Costs.

APPENDIX 2
ARBITRAL TRIBUNAL'S FEES, EXPENSES, TERMS & CONDITIONS BASED ON HOURLY RATES

IN FORCE AS FROM MAY 21, 2018

1. Scope of Application and Interpretation

1.1 Subject to Article 9.2 of the Rules, this Appendix shall apply to arbitrations in which the arbitral tribunal's fees and expenses are to be determined in accordance with Article 10.1(a) of the Rules and to the appointment of an Emergency Arbitrator under Appendix 4.

1.2 This Appendix shall not apply to the appointment of arbitrators under Articles 8.1(d) and 8.2(b).

1.3 The Secretariat may interpret the terms of this Appendix as well as the scope of application of the Appendix as it considers appropriate.

1.4 This Appendix is supplemented by the Practice Note on Costs of Arbitration Based on Appendix 2 and Hourly Rates in force on the date the Request for Arbitration is submitted.

2. Payments to Arbitral Tribunal

2.1 Payments to the arbitral tribunal shall generally be made by MARC from funds deposited by the parties in accordance with Article 39 of the Rules. The Secretariat may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.

2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.

2.3 Payments to the arbitral tribunal shall be made in Mauritian Rupees unless the tribunal directs otherwise.

2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.

3. Arbitral Tribunal's Expenses

3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.3 of this Appendix.

3.2 The expenses of the arbitral tribunal shall not be included in the arbitral tribunal's fees charged by reference to hourly rates under paragraph 9 of this Appendix.

4. Administrative Expenses

The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 39 of the Rules as and when they are incurred.

5. Fees and Expenses Payable to Replaced Arbitrators

Where an arbitrator is replaced pursuant to Article 13 of the Rules, the Secretariat shall decide the amount of fees and expenses to be paid for the replaced arbitrator's services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject matter.

6. Fees and Expenses of Tribunal Secretary

Where the arbitral tribunal appoints a secretary in accordance with Article 15.5 of the Rules, such secretary shall be remunerated at a rate which shall not exceed the rate set by MARC, as stated on MARC's website at www.marc.mu on the date the Request for Arbitration is submitted. The secretary's fees and expenses shall be charged separately. The arbitral tribunal shall determine the total fees and expenses of a secretary under Article 32.1(c) of the Rules.

7. Lien on Award

MARC and the arbitral tribunal shall have a lien over any awards issued by the tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.

8. Governing Law

The terms of this Appendix and any non-contractual obligation arising out of or in connection with them shall be governed by and construed in accordance with Mauritian law.

9. Arbitral Tribunal's Fee Rates

9.1 An arbitrator shall be remunerated at an hourly rate for all work reasonably carried out in connection with the arbitration.

9.2 Subject to paragraphs 9.3 and 9.4 of this Appendix, the rate referred to in paragraph 9.1 is to be agreed in accordance with Article 10.2 of the Rules. An arbitrator shall agree in writing upon fee rates in accordance with paragraph 9 of this Appendix prior to the confirmation of his or her appointment by the Court in accordance with Article 9 of the Rules.

9.3 An arbitrator's agreed hourly rate shall not exceed a rate set by MARC, as stated on MARC's website at www.marc.mu on the date the Request for Arbitration is submitted.

9.4 Subject to paragraph 9.3, an arbitrator may review and increase his or her agreed hourly rate by no more than 10% on each anniversary of his or her confirmation or appointment.

9.5 Higher rates may be charged if expressly agreed in writing by all parties to the arbitration or if the Secretariat so determines in exceptional circumstances.

9.6 If an arbitrator is required to travel for the purposes of fulfilling obligations as an arbitrator, the arbitrator shall be entitled to charge and to be reimbursed for:

(a) time spent travelling but not working at a rate of 50% of the agreed hourly rate; and

(b) time spent working whilst travelling at the full agreed hourly rate.

10. Cancellation Fees

10.1 All hearings booked shall be paid for, subject to the following conditions:

(a) if a booking is cancelled at the request of the arbitral tribunal, it will not be charged;

(b) if a booking is cancelled at the request of a party less than 30 days before the day booked it shall be paid at a daily rate of 75% of eight times the applicable hourly rate;

(c) if a booking is cancelled at the request of a party less than 60 days but more than 30 days before the day booked it shall be paid at a daily rate of 50% of eight times the applicable hourly rate;

(d) if a booking is cancelled at the request of a party more than 60 days before the day booked it will not be charged; and

(e) in all cases referred to above, credit will be given against all time spent on the case during the day(s) booked.

Where hearing days are cancelled or postponed other than by agreement of all parties, this may be taken into account when considering any subsequent allocation of costs.

APPENDIX 3
ARBITRAL TRIBUNAL'S FEES, EXPENSES, TERMS & CONDITIONS BASED ON SUM IN DISPUTE

IN FORCE AS FROM AUGUST 8, 2018

1. Scope of Application and Interpretation

1.1 This Appendix applies to all arbitrations conducted in accordance with the Rules where the arbitral tribunal has been transferred the file.

1.2 This Appendix shall not apply to the appointment of an Emergency Arbitrator under Appendix 4.

1.3 The Secretariat may interpret the terms of this Appendix as well as the scope of application of the Appendix as it considers appropriate.

1.4 This Appendix is supplemented by the Practice Note on Costs of Arbitration Based on Appendix 3 and the Sum in Dispute in force on the date the Request for Arbitration is submitted.

2. Payments to Arbitral Tribunal

2.1 Payments to the arbitral tribunal shall generally be made by MARC from funds deposited by the parties in accordance with Article 39 of the Rules. The Secretariat may direct the parties, in such proportions as it considers appropriate, to make one or more interim or final payments to the arbitral tribunal.

2.2 If insufficient funds are held at the time a payment is required, the invoice for the payment may be submitted to the parties for settlement by them direct.

2.3 Payments to the arbitral tribunal shall be made in Mauritian Rupees unless the tribunal directs otherwise.

2.4 The parties are jointly and severally liable for the fees and expenses of an arbitrator, irrespective of which party appointed the arbitrator.

3. Arbitral Tribunal's Expenses

3.1 The arbitral tribunal shall be reimbursed for its reasonable expenses in accordance with the Practice Note referred to at paragraph 1.4 of this Appendix.

3.2 The expenses of the arbitral tribunal shall not be included in the determination of fees charged in accordance with paragraph 6 of this Appendix.

4. Administrative Expenses

The parties shall be responsible for expenses reasonably incurred and relating to administrative and support services engaged for the purposes of the arbitration, including, but not limited to, the cost of hearing rooms, interpreters and transcription services. Such expenses may be paid directly from the deposits referred to in Article 39 of the Rules as and when they are incurred.

5. Fees and Expenses Payable to Replaced Arbitrators

Where an arbitrator is replaced pursuant to Article 13 of the Rules, the Secretariat shall decide the amount of fees and expenses to be paid for the replaced arbitrator's services (if any), having taken into account the circumstances of the case, including, but not limited to, the applicable method for determining the arbitrator's fees, work done by the arbitrator in connection with the arbitration, and the complexity of the subject matter.

6. Determination of Arbitral Tribunal's Fees

6.1 The arbitral tribunal's fees shall be calculated in accordance with the following table. The fees calculated in accordance with the table represent the maximum amount payable to one arbitrator.

Arbitration costs (excluding VAT)
One Arbitrator's Fees** (in MUR

SUM IN DISPUTE (MUR)	FEES (MUR)
Up to 1,500,000	165,000
From 1,500,001 to 3,000,000	165,000 + 4% of the sum above 1,500,000
From 3,000,001 to 12,000,000	220,000 + 2% of the sum above 3,000,000
From 12,000,001 to 24,000,000	260,000 + 1.5% of the sum above 12,000,000
From 24,000,001 to 45,000,000	340,000 + 1% of the sum above 24,000,000
From 45,000,001 to 90,000,000	800,000 + 0,50% of the sum above 45,000,000
From 90,000,001 to 150,000,000	1,100,000 + 0,50% of the sum above 90,000,000
From 150,000,001 to 300,000,000	1,500,000 + 0,50% of the sum above 150,000,000
From 300,000,001 to 500,000,000	1,800,000 + 0,50% of the sum above 300,000,000

One Arbitrator's Fees** (in Euros*)

SUM IN DISPUTE (EUR)			FEES (EUR)			
Up	37,500		4,125			
From	37,501 to	75,000	4,125	+ 4%	of the sum above	37,500
From	75,001 to	300,000	5,500	+ 2%	of the sum above	75,000
From	300,001 to	600,000	6,500	+ 1.5%	of the sum above	300,000
From	600,001 to	1,125,000	8,500	+ 1%	of the sum above	600,000
From	1,125,001 to	2,250,000	20,000	+ 0,50%	of the sum above	1,125,000
From	2,250,001 to	3,750,000	27,500	+ 0,50%	of the sum above	2,250,000
From	3,750,001 to	7,500,000	37,500	+ 0,50%	of the sum above	3,750,000
From	7,500,001 to	12,500,000	45,000	+ 0,50%	of the sum above	7,500,000

*1 Euro = MRU 40. Rates will be adjusted if the Euro rises above MUR 40.
If the sum in dispute is above MUR 500,000,000 or its equivalent in Euros, the MARC Court shall decide.

**If a foreign arbitrator is appointed, the above fees do not include expenses related to transport and accommodation of the arbitrator in Mauritius; these expenses are at the charge of the parties and will be charged as advance payment in equal proportion to the parties prior to any travel arrangements made by the arbitrator(s).

6.2 The arbitral tribunal's fees shall cover the activities of the arbitrator from the time of his or her confirmation or appointment until the last award.

6.3 Claims and counterclaims are added for the determination of the amount in dispute. The same rule applies to any set-off defence or cross-claim, unless the arbitral tribunal, after consulting with the parties, concludes that such set-off defence or cross-claim will not require significant additional work.

6.4 An interest claim shall not be taken into account for the calculation of the amount in dispute except where the Secretariat determines that doing so would be appropriate. In addition, when the interest claim exceeds the amounts claimed in principal, the interest claim alone shall be considered in calculating the amount in dispute.

6.5 Pursuant to Articles 10.4(c), 10.4(d) of the Rules or in other exceptional circumstances, the arbitral tribunal's fees may exceed the amounts calculated in accordance with paragraph 6.1 of this Appendix.

7. Lien on Award

MARC and the arbitral tribunal shall have a lien over any awards issued by the tribunal to secure the payment of their outstanding fees and expenses, and may accordingly refuse to release any such awards to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.

8. Governing Law

The terms of this Appendix and any non-contractual obligation arising out of or in connection with it shall be governed by and construed in accordance with Mauritian law.

APPENDIX 4
EMERGENCY ARBITRATOR PROCEDURES

IN FORCE AS FROM MAY 21, 2018

1. A party requiring Emergency Relief may, concurrent with or following the filing of a Request for Arbitration but prior to the constitution of the arbitral tribunal, submit an application (the "Application") for the appointment of an emergency arbitrator (the "Emergency Arbitrator") to the Secretariat.

2. The Application shall be submitted in accordance with any of the means specified in Article 2.2 of the Rules. The Application shall include the following information:

(a) the names and (in so far as known) the addresses, telephone and facsimile numbers, and email addresses of the parties to the Application and of their representatives;

(b) a description of the circumstances giving rise to the Application and of the underlying dispute referred to arbitration;

(c) a statement of the Emergency Relief sought;

(d) the reasons why the applicant needs the Emergency Relief on an urgent basis that cannot await the constitution of an arbitral tribunal;

(e) the reasons why the applicant is entitled to such Emergency Relief;

(f) any relevant agreement(s) and, in particular, the arbitration agreement(s);

(g) comments on the language, the seat of the Emergency Relief proceedings, and the applicable law;

(h) confirmation of payment of the amount referred to in paragraph 6 of this Appendix (the "Application Deposit"); and

(i) confirmation that copies of the Application including any supporting documentation have been or are being served simultaneously on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

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

4. Two copies of the Application shall be provided, one copy for the Emergency Arbitrator and one copy for the Secretariat.

5. If the Court determines that it should accept the Application, the Court shall seek to appoint an Emergency Arbitrator within 24 hours after receipt of both the Application and the Application Deposit.

6. The Application Deposit is the amount stated on MARC's website at www.marc.mu on the date the Application is submitted. The Application Deposit consists of MARC's administrative expenses and the Emergency Arbitrator's fees and expenses. The Secretariat may, at any time during the Emergency Relief proceedings, decide to increase the Emergency Arbitrator's fees or the administrative expenses, taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the Emergency Arbitrator and the Secretariat. If the party which submitted the Application fails to pay the increased fees and/or expenses within the time limit fixed by the Secretariat, the Application shall be dismissed.

7. Once the Emergency Arbitrator has been appointed, the Secretariat shall notify the parties to the Application and shall transmit the file to the Emergency Arbitrator. Thereafter, the parties shall submit all written communications directly to the Emergency Arbitrator with a copy to the other parties and the Secretariat. A copy of any written communications from the Emergency Arbitrator to the parties shall also be copied to the Secretariat.

8. Article 12 of the Rules shall apply to the Emergency Arbitrator, except that the time limits set out in Articles 12.2 and 12.4 are shortened to three days.

9. Where an Emergency Arbitrator dies, has been successfully challenged, has been otherwise removed, or has resigned, the Court shall seek to appoint a substitute Emergency Arbitrator within 24 hours. If the 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.

10. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the Emergency Relief proceedings. Where the parties have not agreed on the seat of arbitration, and without prejudice to the arbitral tribunal's determination of the seat of arbitration pursuant to Article 16.1 of the Rules, the seat of the Emergency Relief proceedings shall be decided by the Court taking into account the circumstances of the case.

11. Taking into account the urgency inherent in the Emergency Relief proceedings and ensuring that each party has a reasonable opportunity to be heard on the Application, the Emergency Arbitrator may conduct such proceedings in such a manner as the Emergency Arbitrator considers appropriate. The Emergency Arbitrator shall have the power to rule on objections that the Emergency Arbitrator has no 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 resolve any disputes over the applicability of this Appendix.

12. Any decision, order or award of the Emergency Arbitrator on the Application (the "Emergency Decision") shall be made within 14 days from the date on which the Secretariat transmitted the file to the Emergency Arbitrator. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by the Secretariat.

13. The Emergency Decision may be made even if in the meantime the file has been transmitted to the arbitral tribunal.

14. Any Emergency Decision shall:

(a) be made in writing;

(b) state the date when it was made and reasons upon which the Emergency Decision is based, which may be in summary form (including a determination on whether the Application is admissible under the Rules and whether the Emergency Arbitrator has jurisdiction to grant the Emergency Relief); and

(c) be signed by the Emergency Arbitrator.

15. Any Emergency Decision may fix the costs of the Emergency Relief proceedings, subject always to the power of the arbitral tribunal to fix and apportion such costs in accordance with Article 32 of the Rules. The costs of the Emergency Relief proceedings include MARC's administrative expenses, the Emergency Arbitrator's fees and expenses and the reasonable and other legal costs incurred by the parties for the Emergency Relief proceedings.

16. Any Emergency Decision shall have the same effect as an interim measure granted pursuant to Article 23 of the Rules and shall be binding on the parties when rendered. By agreeing to arbitration under the Rules, the parties undertake to comply with any Emergency Decision without delay.

17. The Emergency Arbitrator shall be entitled to order the provision of appropriate security by the party seeking Emergency Relief.

18. Any Emergency Decision may, upon a reasoned request by a party, be modified, suspended or terminated by the Emergency Arbitrator or the arbitral tribunal (once constituted).

19. Any Emergency Decision ceases to be binding:

(a) if the Emergency Arbitrator or the arbitral tribunal so decides;

(b) upon the arbitral tribunal rendering a final award, unless the arbitral tribunal expressly decides otherwise;

(c) upon the termination of the arbitration before the rendering of a final award; or

(d) if the arbitral tribunal is not constituted within 90 days from the date of the Emergency Decision. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by the Secretariat.

20. Subject to paragraph 13 of this Appendix, the Emergency Arbitrator shall have no further power to act once the arbitral tribunal is constituted.

21. 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.

22. The Emergency Arbitrator Procedures are not intended to prevent any party from seeking urgent interim or conservatory measures from a competent authority at any time.

23. In all matters not expressly provided for in this Appendix, the Emergency Arbitrator shall act in the spirit of the Rules.

24. The Emergency Arbitrator shall make every reasonable effort to ensure that an Emergency Decision is valid.

APPENDIX 5
BLIND APPOINTMENT OF ARBITRATORS

IN FORCE AS FROM MAY 21, 2018

1. Pursuant to Article 8.1(d) or 8.2(b) of the Rules, where the parties have agreed on an arbitral tribunal consisting of three arbitrators, two of whom are to be appointed without knowing which party or parties nominated each of them, the two party-nominated arbitrators shall be appointed as follows, unless the parties have agreed otherwise.

2. Unless the parties have already made their respective nominations of arbitrators, within 7 days of the date of the parties' agreement that the two party-nominated arbitrators are to be appointed without knowing which party or parties nominated each of them, the Claimant or group of Claimants shall jointly nominate an arbitrator and the Respondent or group of Respondents shall jointly nominate an arbitrator within 7 days of receipt of the Claimant's or group of Claimants' nomination.

3. The Secretariat will contact the prospective arbitrators simultaneously without stating which party or parties nominated each of them in order to obtain the information required under Article 11.4 of the Rules.

4. The provisions of Article 9 shall apply, *mutatis mutandis*, to the confirmation of the party-nominated arbitrators.

5. Where arbitrators are appointed in accordance with Appendix 5, their fees shall be fixed in accordance with Appendix 3 and shall not be fixed in accordance with Appendix 2.

APPENDIX 6
OPTIONAL APPEAL PROCEDURE

IN FORCE AS FROM MAY 21, 2018

1. In accordance with Article 38 of the Rules, all parties to the arbitration must have agreed in writing to the Optional Appeal Procedure. Any appeal under this Procedure shall be strictly limited to points of law raised by a party during the course of the arbitration.

2. Within 15 days of receipt of the award from the Secretariat, the Appellant shall submit its Request for Appeal to the Secretariat containing:

a) the names and the addresses, telephone and facsimile numbers and email addresses of each of the parties to the arbitration and their legal representatives;

b) a copy of the award appealed against;

c) a specification of those point(s) of law of the award that are being appealed and a brief statement of the basis for the appeal;

d) a proposal as to one or three members of the appeal panel, if the parties have not previously agreed thereon;

e) a copy of the parties' agreement to apply the Optional Appeal Procedure;

f) confirmation of payment of the amount referred to in paragraph 7 of this Appendix (the "Appeal Deposit"); and

g) confirmation that copies of the Request for Appeal including any supporting documentation have been or are being served simultaneously on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

The Appellant may submit any further information with the Request for Appeal as it considers appropriate.

3. Two or four copies of the Request for Appeal shall be provided as applicable, one copy for each member of the Appeal Panel and one copy for the Secretariat.

4. Within 15 days of receipt of the Request for Appeal, the other party or parties shall submit to the Secretariat an Answer to the Request for Appeal ("Answer to Appeal"). The Answer to Appeal shall include the following:

a) the name, address, telephone and facsimile numbers and email address of the party and its legal representatives;

b) response to the Appellant's appeal;

c) any cross-appeal on point(s) of law in the award;

d) a proposal as to one or three members of the appeal panel, if the parties have not previously agreed thereon; and

e) confirmation that copies of the Answer to Appeal including any supporting documentation have been or are being served simultaneously on all other parties to the arbitration by one or more means of service to be identified in such confirmation.

The party may submit any further information with the Answer to Appeal as it considers appropriate.

5. Two or four copies of the Answer to Appeal shall be provided as applicable, one copy for each member of the Appeal Panel and one copy for the Secretariat.

6. If a party refuses or fails to submit an Answer to Appeal within the time limit stated in paragraph 4, the Appeal Procedure shall proceed notwithstanding such refusal or failure.

7. The Appeal Deposit is the amount stated on MARC's website at www.marc.mu on the date the Request for Appeal is received. The Application Deposit consists of MARC's administrative expenses and the Appeal Panel's fees and expenses. The Secretariat may, at any time during the Appeal Procedure, decide to increase the Appeal Panel's fees or the administrative expenses, taking into account, *inter alia*, the nature of the case and the nature and amount of work performed by the Appeal Panel and the Secretariat, and request payment thereof from one or more parties in the proportion(s) it deems appropriate. If the increased fees and/or expenses are not paid by any of the parties within the time limit fixed by the Secretariat, the Request for Appeal shall be dismissed.

8. The Appeal Panel will consist of three members, unless the parties agree that there will be one member.

9. Where the Appeal Panel will consist of one member, as soon as possible after the submission of a Request for Appeal in accordance with paragraph 2 and any Answer to Appeal in accordance with paragraph 4, the Secretariat shall provide the parties with a list of three candidates for the Appeal Panel as approved by the Court. Within 7 days of receipt of the list, each of the parties shall rank the three candidates in order of preference and communicate their ranking to the Secretariat, without copying the other parties. The candidate with the highest cumulative score shall be appointed as the Appeal Panel. In the event two or more candidates have the same cumulative scores, the Court shall decide as soon as possible which candidate to appoint as the Appeal Panel.

10. Where the Appeal Panel will consist of three members, upon the submission of an appeal in accordance with paragraph 2 and any Answer to Appeal in accordance with paragraph 4, the Secretariat shall provide the parties with a list of six candidates for the Appeal Panel as approved by the Court. Within 7 days of receipt of the list, each of the parties shall rank the six candidates in order of preference and communicate their ranking to the Secretariat, without copying the other parties. The three candidates with the highest cumulative scores shall be appointed as members of the Appeal Panel. In the event two or more candidates have the same cumulative scores, the Court shall decide as soon as possible which candidate(s) to appoint as members of the Appeal Panel.

11. The constitution of the Appeal Panel pursuant to paragraph 9 or 10 shall be subject to Articles 10 and 11 of the Rules.

12. Once the Appeal Panel is constituted, the Secretariat shall notify the parties and shall transmit the file to the Appeal Panel. Thereafter, the parties shall submit all written communications directly to the Appeal Panel with a copy to the other parties and the Secretariat. A copy of any written communications from the Appeal Panel to the parties shall also be copied to the Secretariat.

13. Article 12 of the Rules shall apply to the Appeal Panel, except that the time limits set out in Articles 12.2 and 12.4 are shortened to 7 days.

14. Where a member of the Appeal Panel dies, has been successfully challenged, has been otherwise removed, or has resigned, the Court shall seek to appoint a substitute member within 7 days.

15. Once a Request for Appeal has been submitted within the time limit specified in paragraph 2 of this Appendix, the award is no longer considered final for purposes of seeking judicial enforcement.

16. Subject to the Rules including this Appendix and any agreement of the parties, the Appeal Panel shall conduct the Appeal Procedure in the manner it considers appropriate, provided that all parties are treated equally and afforded a reasonable opportunity to be heard.

17. Unless the parties agree otherwise, the Appeal Procedure shall be decided on the basis of documentary evidence only. Any written submissions shall have a page limit to be determined by the Appeal Panel. The Appeal Procedure shall be completed within six months from the date of receipt of the Request for Appeal by the Secretariat. This period of time may be extended by agreement of the parties or, in appropriate circumstances, by the Secretariat.

18. Upon a party's application, the Appeal Panel may order security for costs against the Appellant. Thereafter, if the Appellant fails to pay security for costs as ordered within the time limit granted by the Appeal Panel, the Appeal Procedure shall be terminated and the award shall be considered final for purposes of seeking judicial enforcement.

19. The Appeal Panel shall have the power to review any points of law in the award, and may affirm, reverse or modify any points of law in the award.

20. The Appeal Panel may not remand to the original arbitral tribunal but may re-open the proceedings in order to review evidence that had been improperly excluded by the arbitral tribunal, or evidence that is now necessary in light of the Appeal Panel's interpretation of the relevant substantive law. After consulting the parties, the Appeal Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing.

21. A three-member Appeal Panel will make its decision on the Appeal by majority vote and, absent good cause for an extension, will issue the decision within 21 days of the date of either oral argument, the receipt of the new evidence or receipt of the file and of all pleadings, whichever is applicable or later. The Appeal Panel's decision will consist of a concise written explanation as to why the award shall not be amended, or set out a concise written explanation as to why it is amended and the precise amendments required to make the award consistent with the decision.

22. The Appeal Panel shall communicate to the Secretariat originals of the decision signed by the Appeal Panel. Provided the Appellant has paid the Appeal Deposit in full, the Secretariat will affix MARC's seal to the decision and communicate it to the parties. Upon service of the Appeal Panel's decision, the award, together with any amendments to the award as set out in the decision, will be final for purposes of judicial review.

APPENDIX 7
CONSTITUTION OF THE MARC COURT

IN FORCE AS FROM MAY 21, 2018

MARC (formerly known as the Permanent Court of Arbitration of the MCCI)was established in 1996 as the alternative dispute resolution arm of MCCI, a non-profit making, non-governmental institution established in 1850 representing the private sector in Mauritius.

MARC hereby establishes a Court consisting of international arbitration experts (hereafter referred to as the "MARC Court" or "Court") primarily to exercise its powers under the MARC Arbitration Rules.

Every member of the MARC Court shall accept and comply with the constitution of the Court, as set out below.

Functions of the MARC Court

1. The Court's primary function is to exercise its powers in accordance with the MARC Arbitration Rules. The Court may perform additional functions as may be agreed from time to time with MARC.

2. In addition, the Court shall be empowered to carry out the following functions:

(a) Responding to issues raised by the MARC Permanent Secretariat in relation to draft awards; and
(b) Decisions and / or advice on other issues related to procedure and case management as may be submitted by the MARC Permanent Secretariat.

3. At all times, the Court shall act independently of the MARC Permanent Secretariat and MCCI.

4. No Court member may be appointed as arbitrator by the Court. A member appointed as arbitrator by one or more parties to an arbitration must comply with the provisions of paragraph 14 below.

Decisions of the Court

5. Decisions of the Court in exercising its functions under the MARC Arbitration Rules shall be taken during committee sessions by simple majority vote. At least three Court members shall constitute a quorum. The President of the Court shall select the members constituting each committee and shall chair each committee session unless he or she is unavailable or excused as described in paragraph 14 below.

6. Committee sessions may be held through any means of communication including emails and need not be held in person. Urgent decisions may be made by telephone conference or video conference. Documents should be submitted to committee members at least 24 hours before the committee session by the MARC Permanent Secretariat and / or the Court's rapporteur.

7. The MARC Permanent Secretariat shall render administrative and secretarial assistance to the Court for each committee session, and shall maintain minutes and records of each committee session. The minutes of each committee session must be approved by the chairperson of that committee. The same applies for any meetings of the Court, as described below.

8. The MARC Permanent Secretariat shall notify the Court's decisions to the parties and arbitrators. Decisions made with respect to an arbitration shall be communicated solely by the Permanent Secretariat to the parties and arbitrators in that particular arbitration.

9. The Court's rapporteur shall be selected by the President and need not be a member of the Permanent Secretariat. The rapporteur shall respect the strictly confidential nature of the Court's work.

10. The Court may meet to discuss other matters when convened by the President, by using any means of communication including email. At least three Court members shall constitute a quorum. Decisions shall be made by simple majority vote. A member of the MARC Permanent Secretariat may be invited to attend such meetings on an *ex officio* basis.

Confidentiality

11. The work of the Court and any decisions made by the Court are strictly confidential.

12. Committee sessions of the Court are open only to its members, the Court's rapporteur and the MARC Permanent Secretariat.

13. Any documents drawn up for the purpose of the Court's work shall only be communicated to its members, the Court's rapporteur and the MARC Permanent Secretariat.

14. Any Court member who may have a conflict of interest or may be involved in any arbitration conducted under the MARC Arbitration Rules shall immediately inform the MARC Permanent Secretariat and the President of the Court and shall not receive any information in respect of the arbitration. The Court member shall be excused from participating in committee sessions where the arbitration is discussed. If the President of the Court is so excused, he or she shall designate a Court member to act in his or her place.

Appointment and replacement of Court members

15. There shall be a maximum of fifteen Court members at any given time, including the President. The members may originate from different geographic regions and need not be Mauritian citizens or resident in Mauritius.

16. No Court member may be employed by or receive any funding from MCCI or MARC, whether directly or indirectly, nor may any Court member serve concurrently on any other body established by MARC or MCCI including the MARC Advisory Board and the MARC Permanent Secretariat, save in relation to the reimbursement of reasonable expenses agreed in advance.

17. Subject to the following paragraph, each member shall serve a three-year term, which may be renewed for further periods of three years with the consent of MARC.

18. At any time during his or her term, a member may be removed from the Court for unethical conduct or any conduct which may bring the Court into disrepute. The President or MARC may convene a meeting to discuss the matter, which shall be held in the manner described at paragraph 10. Any decision of the Court with respect to the removal of a member shall be made by simple majority vote, the outcome of which shall be communicated to MARC. The final decision on the removal of a member shall be made by MARC.

19. Save where a member is removed as set out above, each outgoing member may propose his or her successor, who may originate from the same geographic region, to the other members of the Court for discussion. Decisions on prospective members shall be made by simple majority vote during meetings held in the manner described at paragraph 10 above. The names of successful candidates will be communicated to MARC.

Limitation of liability

20. Neither the Court nor any of its members shall be liable to any person for any act or omission in connection with the discharge or purported discharge of any functions (whether in respect of any arbitration or otherwise) of the Court, except to the extent such limitation of liability is prohibited by applicable law.

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