

## ANNEX I. GUIDELINE FOR VIRTUAL HEARINGS

### Article 1 – Introduction

This **Guideline for Virtual Hearings** is intended to serve as a guide to best practice for conducting virtual hearings in Wholesale Electricity Spot Market (WESM) Arbitration.

Whether or not a virtual hearing, in part or in full, is suitable for a particular matter remains a matter for the parties and the arbitral tribunal.

This Guideline is being made available with reference to any dealings during a circumstance that prevents physical meetings.

Although an understanding of virtual hearing includes, but is not limited to, video and audio conferences, email and offline means such as documents-only proceedings, this Guideline will focus on the use of video and audio conferencing. The parties are encouraged to primarily use combined video or audio conferencing whenever possible. This is because combined video and audio allows participants to create a “working environment” that allows participants to be more engaged in the process. Further, combined video and audio conferencing is a more efficient means of resolving complex disputes where physical hearings or meetings are not feasible.

### Article 2 - Application for Conduct of Virtual Hearings

1. Health and safety considerations as well as travel restrictions may significantly affect conferences and hearings, and may even make it impossible to convene physically in a single location.
2. When faced with such a situation, parties, counsel and arbitral tribunals should consider whether the hearing or conference should be postponed, whether it can be conducted by physical presence with special precautions, or whether to proceed with a virtual hearing.
3. In deciding on the appropriate procedural measures to proceed with the arbitration in an expeditious and cost-effective manner, an arbitral tribunal should take account of all the circumstances, including those that are the consequence of a pandemic, the nature and length of the conference or hearing, the complexity of the case and number of participants, whether there are particular reasons to proceed without delay, whether rescheduling the hearing would entail unwarranted or excessive delays, and as the case may be the need for the parties to properly prepare for the hearing.
4. If the parties agree, or the arbitral tribunal determines, that convening in a single physical location is indispensable yet impossible under current conditions, arbitral tribunals and parties should make every effort to reschedule the hearing or conference in a way that minimizes delay. Parties and arbitral tribunals should in such case consider available options to make progress on at least part of the case despite the postponement, including by using the procedural tools discussed in the present Guideline.

5. If the parties agree, or the arbitral tribunal determines, that convening in a single physical location is indispensable and that doing so is possible despite current conditions, the arbitral tribunal and the parties should consult to discuss and apply the specific rules and advisory guidance at the physical location of the hearing and the appropriate sanitary measures to ensure the safety of all participants, in particular by allowing sufficient distance between participants, making masks and disinfectant gel available, and any other appropriate measures.
6. If the parties agree, or the arbitral tribunal determines, to proceed with a virtual hearing, then the parties and the arbitral tribunal should take into account, openly discuss and plan for special features of proceeding in that manner, including those addressed below and in the Appendices hereto.
7. If an arbitral tribunal determines to proceed with a virtual hearing without party agreement, or over party objection, it should carefully consider the relevant circumstances, assess whether the award will be enforceable at law, and provide reasons for that determination. In making such a determination, arbitral tribunals may wish to take account of their broad procedural authority under the following, to, after consulting the parties, "adopt such procedural measures as [the arbitral tribunal] considers appropriate, provided that they are not contrary to any agreement of the parties"<sup>1</sup>:

- a. Section 30 of Republic Act No. 9285, otherwise known as the "Alternative Dispute Resolution Act of 2004", which states:

**"SEC. 30. Place of Arbitration.** - The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be in Metro Manila, unless the arbitral tribunal, having regard to the circumstances of the case, including the convenience of the parties shall decide on a different place of arbitration.

"The arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts, or the parties, or for inspection of goods, other property or documents."

- b. Articles 18 and 19 of the United Nations Commission on International Trade Law (UNCITRAL) Model Law, which state:

**"CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS**

***"Article 18. Equal treatment of parties***

"The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

***"Article 19. Determination of rules of procedure***

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<sup>1</sup> Clause 9.7.6.2 of the WESM Dispute Resolution Manual.



“(1) Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

“(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.”

- c. Sections 19 and 33 of Republic Act No. 9285, otherwise known as the “Alternative Dispute Resolution Act of 2004”, adopting the provisions of the UNCITRAL Model Law referred to in Article 3(b) above and their applicability hereto, as follows:

**“SEC. 19. Adoption of the Model Law on International Commercial Arbitration.** - International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the “Model Law”) adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix “A”.

**“SEC. 33. Applicability to Domestic Arbitration.** - Article 8, 10, 11, 12, 13, 14, 18 and 19 and 29 to 32 of the Model Law and Section 22 to 31 of the preceding Chapter 4 shall apply to domestic arbitration.”

- d. Chapters II and III of Republic Act No. 8792, otherwise known as the “Electronic Commerce Act of 2000”, which state:

**“CHAPTER II  
LEGAL RECOGNITION OF ELECTRONIC WRITING  
OR DOCUMENT AND DATA MESSAGES**

**“Section 6. Legal Recognition of Electronic Data Messages** - Information shall not be denied legal effect, validity or enforceability solely on the grounds that it is in the data message purporting to give rise to such legal effect, or that it is merely referred to in that electronic data message.

**“Section 7. Legal Recognition of Electronic Documents** - Electronic documents shall have the legal effect, validity or enforceability as any other document or legal writing, and -

“(a) Where the law requires a document to be in writing, that requirement is met by an electronic document if the said electronic document maintains its integrity and reliability and can be authenticated so as to be usable for subsequent reference, in that -

"i. The electronic document has remained complete and unaltered, apart from the addition of any endorsement and any authorized change, or any change which arises in the normal course of communication, storage and display; and

"ii. The electronic document is reliable in the light of the purpose for which it was generated and in the light of all relevant circumstances.

"(b) Paragraph (a) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the document not being presented or retained in its original form.

"(c) Where the law requires that a document be presented or retained in its original form, that requirement is met by an electronic document if -

"i. There exists a reliable assurance as to the integrity of the document from the time when it was first generated in its final form; and

"ii. That document is capable of being displayed to the person to whom it is to be presented: Provided, That no provision of this Act shall apply to vary any and all requirements of existing laws on formalities required in the execution of documents for their validity.

"For evidentiary purposes, an electronic document shall be the functional equivalent of a written document under existing laws.

"This Act does not modify any statutory rule relating to admissibility of electronic data messages or electronic documents, except the rules relating to authentication and best evidence.

**"Section 8. Legal Recognition of Electronic Signatures.** - An electronic signature on the electronic document shall be equivalent to the signature of a person on a written document if that signature is proved by showing that a prescribed procedure, not alterable by the parties interested in the electronic document, existed under which -

"(a) A method is used to identify the party sought to be bound and to indicate said party's access to the electronic document necessary for his consent or approval through the electronic signature;

"(b) Said method is reliable and appropriate for the purpose for which the electronic document was generated or communicated, in the light of all circumstances, including any relevant agreement;

"(c) It is necessary for the party sought to be bound, in or order to proceed further with the transaction, to have executed or provided the electronic signature; and



"(d) The other party is authorized and enabled to verify the electronic signature and to make the decision to proceed with the transaction authenticated by the same.

**"Section 9. *Presumption Relating to Electronic Signatures*** - In any proceedings involving an electronic signature, it shall be presumed that

"(a) The electronic signature is the signature of the person to whom it correlates; and

"(b) The electronic signature was affixed by that person with the intention of signing or approving the electronic document unless the person relying on the electronically signed electronic document knows or has noticed of defects in or unreliability of the signature or reliance on the electronic signature is not reasonable under the circumstances.

**"Section 10. *Original Documents***. -

"(1) Where the law requires information to be presented or retained in its original form, that requirement is met by an electronic data message or electronic document if;

"(a) the integrity of the information from the time when it was first generated in its final form, as an electronic data message or electronic document is shown by evidence aliunde or otherwise; and

"(b) where it is required that information be resented, that the information is capable of being displayed to the person to whom it is to be presented.

"(2) Paragraph (1) applies whether the requirement therein is in the form of an obligation or whether the law simply provides consequences for the information not being presented or retained in its original form.

"(3) For the purpose of subparagraph (a) of paragraph (1):

"(a) the criteria for assessing integrity shall be whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage and display ; and

"(b) the standard of reliability required shall be assessed in the light of purposed for which the information was generated and in the light of all the relevant circumstances.

**"Section 11. *Authentication of Electronic Data Messages and Electronic Documents***. - Until the Supreme Court by appropriate rules shall have so provided, electronic documents, electronic data

messages and electronic signatures, shall be authenticated by demonstrating, substantiating and validating a claimed identity of a user, device, or another entity is an information or communication system, among other ways, as follows;

“(a) The electronic signature shall be authenticated by proof than a letter, character, number or other symbol in electronic form representing the persons named in and attached to or logically associated with an electronic data message, electronic document, or that the appropriate methodology or security procedures, when applicable, were employed or adopted by such person, with the intention of authenticating or approving in an electronic data message or electronic document;

“(b) The electronic data message or electronic document shall be authenticated by proof that an appropriate security procedure, when applicable was adopted and employed for the purpose of verifying the originator of an electronic data message and/or electronic document, or detecting error or alteration in the communication, content or storage of an electronic document or electronic data message from a specific point, which, using algorithm or codes, identifying words or numbers, encryptions, answers back or acknowledgement procedures, or similar security devices.

“The supreme court may adopt such other authentication procedures, including the use of electronic notarization systems as necessary and advisable, as well as the certificate of authentication on printed or hard copies of the electronic document or electronic data messages by electronic notaries, service providers and other duly recognized or appointed certification authorities.

“The person seeking to introduce an electronic data message or electronic document in any legal proceeding has the burden of proving its authenticity by evidence capable of supporting a finding that the electronic data message or electronic document is what the person claims it be.

“In the absence of evidence to the contrary, the integrity of the information and communication system in which an electronic data message or electronic document is recorded or stored may be established in any legal proceeding -

“a.) By evidence that at all material times the information and communication system or other similar device was operating in a manner that did not affect the integrity of the electronic data message and/or electronic document, and there are no other reasonable grounds to doubt the integrity of the information and communication system,

“b.) By showing that the electronic data message and/or electronic document was recorded or stored by a party to the proceedings who is adverse in interest to the party using it; or



"c.) By showing that the electronic data message and/or electronic document was recorded or stored in the usual and ordinary course of business by a person who is not a party to the proceedings and who did not act under the control of the party using the record.

**"Section 12. *Admissibility and Evidential Weight of Electronic Data Message or Electronic Document.*** - In any legal proceedings, nothing in the application of the rules on evidence shall deny the admissibility of an electronic data message or electronic document in evidence -

"(a) On the sole ground that it is in electronic form; or

"(b) On the ground that it is not in the standard written form, and the electronic data message or electronic document meeting, and complying with the requirements under Sections 6 or 7 hereof shall be the best evidence of the agreement and transaction contained therein.

"In assessing the evidential weight of an electronic data message or electronic document, the reliability of the manner in which it was generated, stored or communicated, the reliability of the manner in which its originator was identified, and other relevant factors shall be given due regard.

**"Section 13. *Retention of Electronic Data Message or Electronic Document.*** - Notwithstanding any provision of law, rule or regulation to the contrary -

"(a) The requirement in any provision of law that certain documents be retained in their original form is satisfied by retaining them in the form of an electronic data message or electronic document which -

"(i) Remains accessible so as to be usable for subsequent reference;

"(ii) Is retained in the format in which it was generated, sent or received, or in a format which can be demonstrated to accurately represent the electronic data message or electronic document generated, sent or received;

"(iii) Enables the identification of its originator and addressee, as well as the determination of the date and the time it was sent or received.

"(b) The requirement referred to in paragraph (a) is satisfied by using the services of a third party, provided that the conditions set forth in subparagraphs (i), (ii) and (iii) of paragraph (a) are met.

**"Section 14. *Proof by Affidavit.*** - The matters referred to in Section 12, on admissibility and Section 9, on the presumption of integrity, may be presumed to have been established by an affidavit given to the best of

the deponent's knowledge subject to the rights of parties in interest as defined in the following section.

**"Section 15. *Cross - Examination.***

"(1) A deponent of an affidavit referred to in Section 14 that has been introduced in evidence may be cross-examined as of right by a party to the proceedings who is adverse in interest to the party who has introduced the affidavit or has caused the affidavit to be introduced.

"(2) Any party to the proceedings has the right to cross-examine a person referred to in section 11, paragraph 4, sub paragraph c.

**"CHAPTER III.  
COMMUNICATION OF ELECTRONIC DATA MESSAGES OR  
ELECTRONIC DOCUMENTS**

**"Section 16. *Formation of Validity of Electronic Contracts.***

"(1) Except as otherwise agreed by the parties, an offer, the acceptance of an offer and such other elements required under existing laws for the formation of contracts may be expressed in, demonstrated and proved by means of electronic data messages or electronic documents and no contract shall be denied validity or enforceability on the sole ground that it is in the form of an electronic data message or electronic document, or that any or all of the elements required under existing laws for the formation of contracts is expressed, demonstrated and proved by means of electronic data messages or electronic documents.

"(2) Electronic transactions made through networking among banks, or linkages thereof with other entities or networks, and vice versa, shall be deemed consummated upon the actual dispensing of cash or the debit of one account and the corresponding credit to another, whether such transaction is initiated by the depositor or by an authorized collecting party: Provided, that the obligation of one bank, entity, or person similarly situated to another arising therefrom shall be considered absolute and shall not be subjected to the process of preference of credits.

**"Section 17. *Recognition by Parties of Electronic Data Message or Electronic Document.*** - As between the originator and the addressee of an electronic data message or electronic document, a declaration of will or other statement shall not be denied legal effect, validity or enforceability solely on the ground that it is in the form of an electronic data message.

**"Section 18. *Attribution of Electronic Data Message.*** -

"(1) An electronic data message or electronic document is that of the originator if it was sent by the originator himself.



"(2) As between the originator and the addressee, an electronic data message or electronic document is deemed to be that of the originator if it was sent:

"(a) by a person who had the authority to act on behalf of the originator with respect to that electronic data message or electronic document; or

"(b) by an information system programmed by, or on behalf of the originator to operate automatically.

"(3) As between the originator and the addressee, an addressee is entitled to regard an electronic data message or electronic document as being that of the originator, and to act on that assumption, if:

"(a) in order to ascertain whether the electronic data message or electronic document was that of the originator, the addressee properly applied a procedure previously agreed to by the originator for that purpose; or

"(b) the electronic data message or electronic document as received by the addressee resulted from the actions of a person whose relationship with the originator or with any agent of the originator enabled that person to gain access to a method used by the originator to identify electronic data messages as his own.

"(4) Paragraph (3) does not apply:

"(a) as of the time when the addressee has both received notice from the originator that the electronic data message or electronic document is not that of the originator, and has reasonable time to act accordingly; or

"(b) in a case within paragraph (3) sub-paragraph (b), at any time when the addressee knew or should have known, had it exercised reasonable care of used any agreed procedure, that the electronic data message or electronic document was not that of the originator.

"(5) Where an electronic data message or electronic document is that of the originator or is deemed to be that of the originator, or the addressee is entitled to act on that assumption, then, as between the originator and the addressee, the addressee is entitled to regard the electronic data message or electronic document as received as being what the originator intended to send, and to act on that assumption. The addressee is not so entitled when it knew or should have known, had it exercised reasonable care or used any agreed procedure, that the transmission resulted in any error in the electronic data message or electronic document as received.

"(6) The addressee is entitled to regard each electronic data message or electronic document received as a separate electronic data message or electronic document and to act on that assumption, except to the extent

that it duplicates another electronic data message or electronic document and the addressee knew or should have known, had it exercised reasonable care or used any agreed procedure, that the electronic data message or electronic document was a duplicate.

**"Section 19. *Error on Electronic Data Message or Electronic Document.*** - The addressee is entitled to regard the electronic data message or electronic document received as that which the originator intended to send, and to act on that assumption, unless the addressee knew or should have known, had the addressee exercised reasonable care or used the appropriate procedure -

"(a) That the transmission resulted in any error therein or in the electronic document when the electronic data message or electronic document enters the designated information system, or

"(b) That electronic data message or electronic document is sent to an information system which is not so designated by the addressee for the purposes.

**"Section 20. *Agreement on Acknowledgement of Receipt of Electronic Data Messages or Electronic Documents.***- The following rules shall apply where, on or before sending an electronic data message or electronic document, the originator and the addressee have agreed, or in that electronic document or electronic data message, the originator has requested, that receipt of the electronic document or electronic data message be acknowledged:

"a.) Where the originator has not agreed with the addressee that the acknowledgement be given in a particular form or by a particular method, an acknowledgement may be given by or through any communication by the addressee, automated or otherwise, or any conduct of the addressee, sufficient to indicate to the originator that the electronic data message or electronic document has been received.

"b.) Where the originator has stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgement thereof, the electronic data message or electronic document is treated as though it has never been sent, until the acknowledgement is received.

"c.) Where the originator has not stated that the effect or significance of the electronic data message or electronic document is conditional on receipt of the acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed, within the reasonable time, the originator may give notice to the addressee stating that no acknowledgement has been received and specifying a reasonable time by which the acknowledgement must be received; and if the acknowledgement is not received within the time specified in subparagraph (c), the



originator may, upon notice to the addressee, treat the electronic document or electronic data as though it had never been sent, or exercise any other rights it may have.

**"Section 21. *Time of Dispatch of Electronic Data Messages or Electronic Documents.*** - Unless otherwise agreed between the originator and the addressee, the dispatch of an electronic data message or electronic document occurs when it enters an information system outside the control of the originator or of the person who sent the electronic data message or electronic document on behalf of the originator.

**"Section 22. *Time of Receipt of Electronic Data Messages or Electronic Documents.*** - Unless otherwise agreed between the originator and the addressee, the time of receipt of an electronic data message or electronic document is as follows:

"a.) If the addressee has designated an information system for the purpose of receiving electronic data message or electronic document, receipt occurs at the time when the electronic data message or electronic document enters the designated information system: Provide, however, that if the originator and the addressee are both participants in the designated information system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee;

"b.) If the electronic data message or electronic document is sent to an information system of the addressee that is not the designated information system, receipt occurs at the time when the electronic data message or electronic document is retrieved by the addressee;

"c.) If the addressee has not designated an information system, receipt occurs when the electronic data message or electronic document enters an information system of the addressee.

"These rules apply notwithstanding that the place where the information system is located may be different from the place where the electronic data message or electronic document is deemed to be received.

**"Section 23. *Place of Dispatch and Receipt of Electronic Data Messages or Electronic Documents.*** - Unless otherwise agreed between the originator and the addressee, an electronic data message or electronic document is deemed to be dispatched at the place where the originator has its place of business and received at the place where the addressee has its place of business. This rule shall apply even if the originator or addressee had used a laptop other portable device to transmit or received his electronic data message or electronic document. This rule shall also apply to determine the tax situs of such transaction.

"For the purpose hereof -

"a. If the originator or addressee has more than one place of business, the place of business is that which has the closest relationship to the underlying transaction or, where there is no underlying transaction, the principal place of business.

"b. If the originator or the addressee does not have a place of business, reference is to be made to its habitual residence; or

"c. The "usual place of residence" in relation to a body corporate, means the place where it is incorporated or otherwise legally constituted.

**"Section 24. Choice of Security Methods.** - Subject to applicable laws and /or rules and guidelines promulgated by the Department of Trade and Industry with other appropriate government agencies, parties to any electronic transaction shall be free to determine the type of level of electronic data message and electronic document security needed, and to select and use or implement appropriate technological methods that suit their need."

- e. Clause 9.7 of the WESM's Dispute Resolution Manual as provided herein above.
- 8. While Clause 9.7.9.2 of the WESM Dispute Resolution Manual provides that after studying the written submissions of the parties and all documents relied upon, the arbitral tribunal "shall hear the parties together in person if any of them so requests," this language can be construed [as the International Chamber of Commerce (ICC) does in paragraph 23 of its *Guidance Note on Possible Measures Aimed at Mitigating the Effects of the COVID-19 Pandemic* issued on 9 April 2020] "as referring to the parties having an opportunity for a live, adversarial exchange and not to preclude a hearing taking place 'in person' by virtual means if the circumstances so warrant."
- 9. Clause 9.7.9.1 of the WESM Dispute Resolution Manual broadly provides that the arbitral tribunal "shall proceed within as short a time as possible to establish the facts of the case *by all appropriate means*" (emphasis added). In context, Clause 9.7.9.2 thereof is structured to regulate whether the arbitral tribunal can decide the dispute based on written submissions and documents only or whether there should also be a live hearing. Hence, whether the arbitral tribunal construes Clause 9.7.9.2 as requiring a face-to-face hearing, or whether the use of video or teleconferencing suffices, will depend on the circumstances of the case. Accordingly, an arbitral tribunal may, in appropriate circumstances, adopt different approaches as it exercises its authority to establish procedures suitable to the particular circumstances of each arbitration and fulfills its overriding duty to conduct the arbitration in an expeditious and cost-effective manner.

### Article 3 – Procedural Issues

- 1. Service of Documents and Notifications



- a. The parties may be required that new requests for arbitration (including pertinent exhibits) and other initiating documents be filed with the Secretariat in electronic form. The Secretariat thereafter to promptly liaise with the claimant parties to ascertain whether notification of the request for arbitration by email is feasible.
  - b. Arbitral tribunals and parties are encouraged to sign the Terms of Reference in counterparts and electronic form.
  - c. To mitigate the current difficulties for the submissions of hard copies, arbitral tribunals should encourage the parties to use electronic means of communication for the submissions and exhibits to the full extent possible. It is here required that communications with and from the Secretariat be in electronic form.
  - d. Timely notification of awards to the parties requires proactive communication between arbitral tribunals and the Secretariat. To minimize delay, arbitral tribunals should promptly alert the Secretariat as soon as they have begun signing originals of the award. The Secretariat's counsel in charge of the file shall thereafter indicate to the arbitral tribunal the office of the Secretariat to which the originals should be sent.
  - e. Subject to any requirements of mandatory law that may be applicable, the parties may agree that: (i) any award be signed by the members of the arbitral tribunal in counterparts, and/or (ii) all such counterparts be assembled in a single electronic file and notified to the parties by the Secretariat by email or any other means that provides a record of the sending thereof. Parties are encouraged to agree, whenever possible, to the electronic notification of the award. The Secretariat shall in principle not proceed with an electronic notification of the award unless explicitly agreed by the parties.
2. To ensure that parties are treated with equality and each party is given a full opportunity to present its case during a virtual hearing, the arbitral tribunal should consider:
- a. Different time zones in fixing the hearing dates, start and finish times, breaks and length of each hearing day;
  - b. Logistics of the location of participants including but not limited to total number of participants, number of remote locations, extent to which any participants will be in the same physical venue, extent to which members of the arbitral tribunal may be in the same physical venue as one another and/or any other participants, availability and control of break out rooms;
  - c. Use of real-time transcript or another form of recording;
  - d. Use of interpreters, including whether simultaneous or consecutive;
  - e. Procedures for verifying the presence of and identifying all participants, including any technical administrator;

- f. Procedures for the taking of evidence from fact witnesses and experts to ensure that the integrity of any oral testimonial evidence is preserved;
- g. Use of demonstratives, including through shared screen views; and
- h. Use of an electronic hearing bundle hosted on a shared document platform that ensures access by all participants.
- i. For further efficiency, parties should utilize electronic bundles for cross examination of witnesses and experts. Electronic bundles may be shared immediately before the commencement of the cross examination, operating the facilities for which in a manner that best preserves the integrity of the arbitral process, preserves confidentiality and ensures proper data protection.
- j. Ensuring with the parties that any videoconferencing platform that is used for virtual hearings is licensed and is set to maximum security settings e.g., Zoom, Microsoft Teams, Google Meet, BlueJeans, Cisco, and Skype for Business, preferably with technical support to assist arbitral tribunals with using such platforms, joining a meeting (or hearing), operating in-meeting audio and video functions, and operating screen sharing functions.
- k. Considering documents sharing platforms for electronic bundles. Like videoconference platforms, these also range from customized hearing solutions offered by some hearing centres and/or service providers (such as Opus, Transperfect and XBundle). Customised or licensed, fee-based document sharing platforms may offer greater security, confidentiality and data protection than free-to-use, public platforms.
- l. (The DRA does not endorse or make any representation or warranty with respect to any of the third-party vendors mentioned in this Guidance Note. Parties, counsel and arbitral tribunals should make their own due diligence as to the suitability of each of them in any given case.)

#### Article 4 – Definition of Terms

**Agree Bundle of Documents**- shall mean the agreed and indexed documents submitted to the Arbitral Tribunal for the purposes of the hearing.

**Hearing Venue** - shall mean the site of the hearing, being the site of the requesting authority, typically where the majority of the participants are located.

**Observer** - shall mean any individual who is present in the Venue other than the Parties, Arbitral Tribunal, Witness, interpreter.

**Party/ Parties** -shall mean the party or parties to the arbitration.



**Remote Venue**- shall mean the site where the remote Witness is located to provide his/her evidence (i.e. not the Hearing Venue), typically where a minority of the participants are located.

**Tribunal** - shall mean the arbitral tribunal.

**Venue** - shall mean a video conferencing location, including the Hearing Venue and the Remote Venue(s).

**Witness**- shall mean the individual who is the subject of the examination by video, including fact witnesses and experts.