

DISPUTE RESOLUTION CENTER NEPAL
(DRCN)

Rules of Arbitration

**Rules of Transparency in
Arbitration**

31st January 2022
Kathmandu, Nepal

Table of Contents

Definitions

Section I: Introduction of Rules

1. Introduction of Rules (Article 1).....**Error! Bookmark not defined.**
2. Notice and Calculation of Time and Periods (Article 2).....**Error! Bookmark not defined.**
3. Notice of Arbitration (Article 3)**Error! Bookmark not defined.**
4. Response to the Notice of Arbitration (Article 4).....**Error! Bookmark not defined.**
5. Expedited Procedure (Article 5).....**Error! Bookmark not defined.**
6. Representation and Assistance (Article 6).....**Error! Bookmark not defined.**
7. Appointing Authority (Article 7).....**Error! Bookmark not defined.**

Section II: Composition of Arbitration Tribunal

8. Number of Arbitrators (Article 8).....**Error! Bookmark not defined.**
9. Sole Arbitrator (Article 9)**Error! Bookmark not defined.**
10. Three arbitrators (Article 10)**Error! Bookmark not defined.**
11. Disclosures by and Challenge of arbitrators (Article 11)..**Error! Bookmark not defined.**
12. Challenge of arbitrators (Article 12)**Error! Bookmark not defined.**
13. Notice of Challenge (Article 13)**Error! Bookmark not defined.**
14. Decision on Challenge (Article 14)**Error! Bookmark not defined.**
15. Replacement of Arbitrator (Article 15)**Error! Bookmark not defined.**
16. Arbitral proceeding in the event of replacement of an Arbitrator (Article 16)**Error! Bookmark not defined.**
17. Exclusion of Liability (Article 17)

Section III: Arbitral Conduct

18. Conduct of Proceedings (Article 18).....**Error! Bookmark not defined.**
19. Plea on Jurisdiction of Arbitrator (Article 19)**Error! Bookmark not defined.**
20. Place/ Seat of Arbitration (Article 20)**Error! Bookmark not defined.**
21. Language (Article 21).....**Error! Bookmark not defined.**
22. Submission by the Parties (Article 22).....**Error! Bookmark not defined.**
23. Amendment to the Statement of Claim or Statement of Defence (Article 22)**Error! Bookmark not defined.**
24. Hearings (Article 24).....**Error! Bookmark not defined.**
25. Appointment of Experts by the arbitral Tribunal (Article 25)..... **Error! Bookmark not defined.**
26. Appointment of Experts/ Witnesses by the Parties (Article 26) **Error! Bookmark not defined.**
27. Additional Authority of Tribunal (Article 27)**Error! Bookmark not defined.**
28. Default of a Party (Article 28)**Error! Bookmark not defined.**
29. Closure of Hearing (Article 29)**Error! Bookmark not defined.**
30. Waiver of right to object (Article 30)**Error! Bookmark not defined.**

Section IV: The Award

31. Interim Relief (Article 31)
32. Fast Track Arbitration (Article 32)
33. Applicable Law, Amiable Compositeur and Ex Aequo et Bono (Article 33)..... 27
34. Award ^[1]_{SEP}(Article 34) 28
35. Forms and contents of Award (Article 35)
36. Settlement on other ground for termination (Article 36)
37. Interpretation of Awards (Article 37).....**Error! Bookmark not defined.**
38. Correction of Awards (Article 38)**Error! Bookmark not defined.**
39. Additional Awards (Article 39).....**Error! Bookmark not defined.**
40. Fees and Deposits (Article 40).....**Error! Bookmark not defined.**

41. Costs of Arbitration (Article 41)	31
42. Tribunal’s Fees and Expenses (Article 42)	Error! Bookmark not defined.
43. Allocation of Cost (Article 43)	Error! Bookmark not defined.
44. Arbitration Cost on direction of the Court (Article 44)	
45. Deposition of Costs (Article 45)	
46. Exclusion of Liability (Article 46)	Error! Bookmark not defined.
47. Confidentiality ^[L] _{SEP} (Article 47)	36

Definition

“Award” includes a partial, interim or final award and an award of an Emergency Arbitrator Arbitration ;

“DRC Nepal” means Dispute Resolution Center Nepal;

“Emergency Arbitrator” means an arbitrator appointed in accordance with Article 32;

“Executive Committee” means the Executive Committee of DRC Nepal, nominated by the Board of Directors;

“Rules” means the Arbitration Rules of the Dispute Resolution Center Nepal (1st Edition, 1st January 2022);

“Secretariat” means the Counsels of DRC Nepal, which looks into all issues related to management of a dispute after its reference to DRC Nepal.

“Tribunal” includes a Sole Arbitrator or all the arbitrators, where more than one arbitrator is appointed.

Please insert all definitions here – ADD MORE

Section I: Introduction of Rules

Article 1

Introduction of Rules

- 1.1. Where the Parties have agreed that disputes between them in respect of legal relationship or contractual or negotiated or evidenced in writing shall be referred under the “Rules of Arbitration of Dispute Resolution Center Nepal (**DRC Nepal Rules**)”, these Rules shall be effect on the date of commencement of the arbitration and shall form a part of dispute agreement.
- 1.2. These Rules shall govern the Arbitration concept and shall come in force after the date of publicizing and effectiveness of these Rules.
- 1.3. These Rules shall govern the Arbitration proceedings unless that any of the Rules is in conflict with the provision of applicable law. In such case of conflict, the applicable law shall take precedence over the Rules.
- 1.4. These Rules are meant to be understood as gender-neutral. Any singular word shall be understood to refer to as plural or vice versa as the case may require.

Article 2

Notice and Calculation of Time and Periods

- 2.1. For the purposes of these Rules, any notice including a notification, communication or proposal may be delivered or transmitted by any means of communication that allows proof of record of its transmission.
- 2.2. If an address has been designated by a party for this purpose or authorized by the Arbitration Tribunal, any notice shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as email and fax shall be deemed to have been received, if delivered to such

designated or authorized address/es. Delivery shall also mean to have received by public 3 consecutive notifications in a National Daily.

- 2.3. In the absence of designation or authorization a notice is:
- a) Received if it is physically delivered to the addressee; or
 - b) Deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee or by designated emails or
 - c) By public 3 consecutive notifications in a National Daily.
- 2.4. If, after reasonable efforts, delivery cannot be affected in accordance with the paragraphs 2.2 or 2.3, a notice is deemed to have been received if it is sent to the addressee's last known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or attempted delivery.
- 2.5. A notice shall be deemed to have been received on the day it is delivered in accordance with paragraphs 2.2, 2.3 or attempted to be delivered in accordance with paragraph 2.4. A notice transmitted by electronic means is deemed to have been received on the day it is sent. A notice by 3 consecutive publications shall deemed to have been received on the day of 3rd such publication.
- 2.6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Non business days occurring during the running of the period of time are included in calculating the period.

Article 3

Notice of Arbitration

- 3.1. A Party (referred to as the "**Claimant**") wishing to instigate recourse to arbitration, under these Rules, shall file a Notice of Arbitration with the DRCN Secretariat, which shall also be communicated to the other Party (referred to as the "**Respondent**"). Notice of Arbitration shall include:
- a) a demand that the dispute be referred to arbitration;
 - b) The names and contact details of the Parties, including email details;
 - c) reference to and a copy of the arbitration agreement invoked;
 - d) reference to and a copy of the contract or other instrument (e.g., investment treaty) out of or in relation to which the dispute arises;
 - e) brief statement describing the nature and circumstances of the dispute, specifying the relief sought and where possible an initial quantification of the claim amount;
 - f) statement of any matters which the parties have previously agreed as to the conduct of the arbitration or with respect to which the claimant wishes to make proposal;
 - g) proposal for the number of arbitrators if not specified in the arbitration agreement;
 - h) proposal on applicable law or language of arbitration, if not specified in the arbitration agreement;
 - i) Submit designation and Power of Attorney to participate in the Arbitration proceedings on behalf of the Parties.
- 3.2. The Notice of Arbitration may also include the statement of Claim referred to in the Article 22.
- 3.3. The date of the receipt of the complete Notice of Arbitration by the Secretariat shall be deemed to be the date of Commencement of the arbitration. The notice of Arbitration is deemed to be complete when all the requirements of Article 3.1 are fulfilled or when the Secretariat determines that there has been substantial compliance with such requirements. The Secretariate shall notify the parties of the commencement of the arbitration.
- 3.4. The Claimant shall send a copy of the Notice of the Arbitration to the Respondent, at the same time that it files the Notice of Arbitration with the Secretariat which shall be simultaneously be communicated to each other.

Article 4

Response to the notice of Arbitration

- 4.1. The Respondent shall file a Response with the Secretariat within 30 days upon receipt of the Notice of Arbitration which include:
 - a) Contact details of the Respondent;
 - b) Response to all or part of the claims, including, where possible, any plea on the Tribunal lack of jurisdiction for which it is constituted;
 - c) a brief statement describing the nature and circumstances of any counterclaim, specifying the relief sought and where possible, an initial quantification of the counterclaim amount;
 - d) any comment in response to any statements contained in the Notice of Arbitration under Article 3.1, or any comment with respect to the matters covered in such Article;
 - e) Notification of the appointment of an arbitrator as per Article 8 and 9;
- 4.2. The response may also include the Statement of Defense and a Statement of Counterclaim, as referred to in Article 22.3.
- 4.3. The Respondent shall file the Response with the Secretariat and the Claimant simultaneously.

Article 5

Expedited Procedure

- 5.1. Prior to the constitution of the Tribunal, a party may file an application with the Secretariat for the arbitral proceeding to be conducted in accordance with the Expedited Procedure under these Rules, provided that any of the following criteria is satisfied:
 - a) the amount in the dispute does not exceed the equivalent amount of NPRs. 50,00,000 representing the aggregate of the claim, counterclaim and any defense of set-off;

- b) the parties so agree; or
- c) in cases of exceptional urgency.

The party applying for the arbitral proceeding to be conducted in accordance with the Expedited Procedure under this Article 5.1, shall send a copy of the application to the other party at the same time as it files an application with the Secretariat, and shall notify with the Secretariat that it has done so.

5.2. Where a party has filed an application with the Secretariat under Article 5.1 and where the Executive Committee determines, after considering the views of the parties, and having regard to the circumstances of the case, that the arbitral proceedings shall be conducted in accordance with the Expedited Procedure, the following procedure shall apply:

- a) the Executive Committee may abbreviate any limits under these Rules;
- b) the case shall be referred to a sole arbitrator unless the executive committee determines otherwise;
- c) The Tribunal may, in consultation with the parties, decide if the dispute is to be decided on the basis of documentary evidence only, or if hearing is required for the examination of any witness and expert as well as for any oral argument;
- d) The final award shall be made within 6 months from the date when the Tribunal is constituted unless, in an exceptional circumstance, the Executive Committee extends the time for making such a final award and;
- e) The Tribunal may state the reasons upon which the final Award is based, unless the parties have agreed that no reasons are to be given.

5.3. By agreeing to the arbitration under these Rules, the parties agree that, where arbitral proceedings are conducted in accordance with the Expedited Procedure under this Article 5, the rules and procedures set forth in Article 5.2 shall apply in compliance with the Contract and Law.

- 5.4. Upon application by a party, and after giving the parties an opportunity to be heard, the Tribunal may, having regard to any further information as may subsequently become available, and in consultation with the Secretariat, order that the arbitral proceedings shall no longer be conducted in accordance with the Expedited Procedure. Where the Tribunal decides to grant an application under this Article, the arbitration shall continue to be conducted by the same Tribunal that was constituted to conduct the arbitration in accordance with the Expedited Procedure.

Article 6

Representation and Assistance

Each Party may be represented or assisted by persons chosen or appointed by it. Names and addresses of such person shall be communicated to all the Parties and the Tribunal. Such communication must state whether the appointment is made for the purposes of representation or assistance. Where the person is stated to act as a representative, the Arbitral Tribunal or any of the Party may at any time require proof of authority granted to the person from the represented Party.

Article 7

Appointing Authority

- 7.1 Unless the Parties have agreed on the choice of appointing authority, Parties may propose at any time Dispute Resolution Nepal (DRCN) to serve as an appointing authority.
- 7.2 When the appointing authority is requested to appoint an arbitrator pursuant to article 8 , the party making the request shall send to the appointing authority copies

of notice of arbitration and correspondences regarding initiation of Arbitral process between the parties.

Section II: Composition of Arbitration Tribunal

Article 8

Number of Arbitrator

- 8.1 The Arbitral tribunal shall be composed of one or three arbitrators.
- 8.2 Unless otherwise agreed by the parties or deemed necessary by the Secretariat, the Arbitral Tribunal shall be composed of Three Arbitrators.

Article 9

Sole Arbitrator

- 9.1 If the parties have agreed that a sole arbitrator is to be appointed and if within 30 days after receipt by all other parties of a proposal for the appointment of a sole arbitrator the parties have not reached agreement thereupon, a sole arbitrator shall, at the request of a party, be appointed by the appointing authority.
- 9.2 If within 30 days after the date of commencement of the arbitration, or within the period otherwise agreed by the parties or set by the appointing authority, the parties have not reached an agreement on the nomination of a sole arbitrator, or if at any time either party so requests, the appointing authority shall appoint the sole arbitrator.

Article 10

Three Arbitrators

- 10.1 Each party shall nominate one arbitrator. The two arbitrators thus appointed shall choose the third arbitrator who will act as the presiding arbitrator of the Arbitral Tribunal.
- 10.2 If either party fails to nominate an arbitrator within 30 days after the receipt of a party's nomination of an arbitrator, then upon request by one of the party the appointing authority shall appoint a presiding arbitrator in the same manner as appointment of sole arbitrator.

Article 11

Disclosures by and challenge of arbitrators

- 11.1 When a person is approached in connection with his or her possible appointment as an arbitrator, he or she shall disclose with a copy of CV any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. An arbitrator, from the time of his or her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties and the other arbitrators unless they have already been informed by him or her of these circumstances.

Model statements of independence pursuant to this article as annexed to this Rule shall be filled in.

Article 12

Challenge of arbitrators

- 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 independence.
- 12.2 A party may challenge the arbitrator while being nominated or for the reasons of which it becomes aware after the appointment has been made.
- 12.3 Such a challenge must be made within 15 days of the formation of the Tribunal or after becoming aware of the situation forming the basis of the Challenge.
- 12.4 Any challenges on an arbitrator after due date of expiry under Rule 16.3 will be decided by the remaining two arbitrators and in case of a sole arbitration tribunal will be decided by the DRCN Board.

Article 13

Notice Challenge

- 13.1 If either party desire to Challenge the Arbitrator, the Notice shall be submitted to DRC Nepal, the Arbitral Tribunal and other Party (ies) within the time limit specified in 16.3. Such Notice shall provide specific reasons for challenging the appointment of the Arbitrator.
- 13.2 The dispute proceedings shall be suspended until the challenge is resolved or the Arbitrator voluntarily withdraws. The proceedings shall be initiated once the

challenge is resolved or another Arbitrator is appointed in place of challenged Arbitrator.

- 13.3 The notice of challenge will be deemed to have been received on the date of receipt by the secretariat or by the Tribunal.

Article 14

Decision on Challenge

- 14.1 If, within 15 days of receipt of the notice of challenge under Rule 13, all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it. In such case, the challenge will be decided by the appointing authority within 30 days. Such decision by the appointing authority shall be reasoned, unless otherwise agreed by the parties. The decision of the appointing authority shall be final and binding unless intervened and decided by the Court.

Article 15

Replacement of Arbitrator

- 15.1 In the event of death, resignation, withdrawal or removal of an Arbitrator, a replacement Arbitrator shall be appointed within 15 days pursuant to the procedure provided for in Article 9 or 10.
- 15.2 If the Parties are not able to nominate and appoint a replacement Arbitrator, appointing authority shall appoint the substitute Arbitrator.

Article 16

Arbitral proceeding in the event of replacement of an arbitrator

- 16.1 If an Arbitrator is replaced, the proceeding shall resume at stage where the Arbitrator was replaced, unless the arbitrators and the parties together decide otherwise.

Article 17

Exclusion of Liability

- 17.1 Unless for some wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the arbitrators, the appointing authority and any person appointed by the arbitral tribunal based on any act or overt/ covert act(s) of commissions and omissions in connection with the arbitration.

Section III: Arbitral Conduct

Article 18

Conduct of Proceedings

- 18.1 The Arbitral Tribunal shall conduct meetings in a suitable **venue** in such manner as it considers appropriate to conduct arbitration, after consulting with the parties, to achieve speedy, fair, economical and final resolution of the dispute.
- 18.2 The arbitral tribunal may meet at any location it considers appropriate for deliberations. Unless otherwise decided by the parties, the arbitral tribunal may also meet at any locations it considers appropriate, as per situation/ environment, for any purpose including hearings.
- 18.2 As soon as practicable after the constitution of the Tribunal, the Tribunal shall conduct a preliminary meeting with the parties, in person or by any other means of applicable communication in order to instigate and decide the arbitral process.

Article 19

Plea on Jurisdiction of Arbitrator

- 19.1 The arbitral tribunal may rule on its own jurisdiction, including ruling on any objections with respect to the existence or validity of the arbitration agreement, and for that purpose, -
- a. An arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and
 - b. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.
- 19.2 A plea that the tribunal does not have jurisdiction shall not be raised later than the submission of Statement of defence. However, a party will not be excluded from raising such plea just because he has appointed, or participated in the appointment of an arbitrator.
- 19.3 A plea that the arbitral tribunal is exceeding the scope of authority shall be raised as soon as the Party becomes aware that the matter alleged is beyond the scope of its authority comes to light during the arbitral proceedings.
- 19.4 The arbitral tribunal may, in either of the cases referred to in Rule 19.5 and 19.6, admit a later plea if it considers the delay is justified.
- 19.5 Where the arbitral tribunal takes a decision rejecting or accepting the plea, an **Arbitration Order** shall be issued by the Tribunal. Where the plea has been rejected, the arbitral proceedings will continue further. Where plea has been accepted, the Tribunal will continue the arbitral proceeding taking into consideration due regard to the plea.
- 19.6 A party aggrieved by such arbitral award may make an application for setting aside such arbitral award in accordance with the prevailing law.

Article 20

Place/ Seat of Arbitration

- 20.1 In case it is mentioned in the contract, the place of Arbitration shall be the same as written in the contract and If not previously agreed in the Contract on the place of arbitration, the Parties may mutually propose to the Tribunal on the seat/place of Arbitration. If the parties do not agree on the seat/place of arbitration, the Place/Seat of arbitration shall be decided by the Tribunal. In such case, the Arbitral award shall be deemed to have been made at the place of arbitration.

Article 21

Language

- 21.1 Subject to an agreement by the Parties, the Arbitral Tribunal shall decide the language to be used for the arbitration proceeding. Such determination shall apply to the Statement of Claim, Statement of Defence and other written submissions.
- 21.2 Any submissions annexed to the parties' submissions may be accompanied by a translation into the language agreed upon by the parties or determined by the Tribunal as necessary.
- 21.3 Interpretation or translation requirement by any party of any arbitral document including award, may only be made by the Party at his own cost additional cost. The Tribunal will not take any liability of any misunderstanding created from such translations/interpretations.

Article 22

Submission by the Parties

- 22.1 The parties shall submit in writing, the Statement of Claims (SOC), Statement of Defence (SOD), Counter Claims and Rejoinder to the Arbitration Tribunal, appointing authority with a copy to the other party(ies) within a period of time as agreed with the Arbitration Tribunal or as per these Rules.

- 22.2 The Statement of Claim shall be submitted by the Claimant within 90 days, unless otherwise agreed by the Tribunal, of the Preliminary meeting to the Arbitration Tribunal with a copy to the Claimant. The Claimant may elect to treat its notice of arbitration referred to in article 3 as a Statement of Claim. It shall set out the statement of facts substantiating the claim on legal and technical grounds and proofs/evidences and arguments supporting the claim for relief claimed together with the quantifiable amount if any. The Statement of Claim shall be submitted along with the relevant Contract Agreement, Arbitration Agreement, Additional Agreement (if any), and all evidences related to it. Further the Claimant may also submit list of witnesses presenting the case, if any, and shall submit a Power of Authority representing the Claimant for all Arbitral proceedings.
- 22.3 The Statement of Defense shall be submitted within 30 days, unless otherwise agreed by the Tribunal, upon receipt of the Statement of Claim to the Arbitration Tribunal with a copy to the Claimant. The Statement of Defense shall set out the statement of facts substantiating the document on legal and technical grounds and proofs/evidences and arguments supporting the claim. In addition, the Statement of Defense may also include any counterclaim that the Respondent may think it worth. Further the Respondent may also submit list of witnesses presenting the case, if any, and shall submit a Power of Authority representing the Respondent for all Arbitral proceedings.
- 22.4 A Rejoinder to Statement of Defense may be submitted to the Tribunal with a copy to the Respondent within 30 days, unless otherwise agreed by the Tribunal, of receipt of the Statement of Defense.
- 22.5 In case any party fails to submit their defense and rejoinder within the time limit mentioned in the clause 22.3 and 22.4 due to circumstances beyond its control, such party shall submit an application to the Tribunal for an extension of the time limit within 15 days from the date of expiry of the time limit, explicitly mentioning satisfactory reasons for its failure to do so. The arbitrator may, if he/she finds the reasons mentioned in the application to be satisfactory, extend the time limit for not more than seven days.
- 22.6 All documents submitted during the Arbitration proceeding including Statement of Claim, Statement of Defence, Rejoinder, Additional Documents, the outcome of Oral

Hearing, Minutes of Meetings, reports, evidences and Award shall remain confidential unless the Parties agree that it can be a public document.

Article 23

Amendments to the Statement of Claim or Statement of Defence

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

Article 24

Hearings

24. 1. Unless otherwise agreed by the Parties, the Arbitral Tribunal shall decide whether to hold an oral hearing for the presentation of evidences or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials.
24. 2. In the event of an oral hearing, the arbitral Tribunal shall give the Parties adequate advance notice of date, time and place thereof in consultation with the Parties. The Tribunal may decide on reasonable method of communication to have an oral hearing.
24. 3. Absence of any Party, even after repeated requests, shall not deter the oral hearing to be conducted nor such absence will be a ground for the Arbitration proceedings to be deterred and differed.

Article 25

Appointment of Experts by the arbitral Tribunal

- 25.1 After consultation with the parties, the arbitral tribunal may appoint one or more independent experts to report to it, in writing, on specific issues to be determined by the arbitral tribunal. A copy of the expert's terms of reference, established by the arbitral tribunal, shall be communicated to the parties.
- 25.2 The expert shall, in principle before accepting appointment, submit to the arbitral tribunal and to the parties a description of his or her qualifications and a statement of his or her impartiality and independence. Within the time ordered by the arbitral tribunal, the parties shall inform the arbitral tribunal whether they have any objections as to the expert's qualifications, impartiality or independence. The arbitral tribunal shall decide promptly whether to accept any such objections. After an expert's appointment, a party may object to the expert's qualifications, impartiality or independence only if the objection is for reasons of which the party becomes aware after the appointment has been made. The arbitral tribunal shall decide promptly what, if any, action to take.
- 25.3 The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or goods that he or she may require of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the arbitral tribunal for decision.
- 25.4 Upon receipt of the expert's report, the arbitral tribunal shall communicate a copy of the report to the parties, which shall be given the opportunity to express, in writing, their opinion on the report. A party shall be entitled to examine any document on which the expert has relied in his or her report.
- 25.5 At the request of any party, the expert, after delivery of the report, may be heard at a hearing where the parties shall have the opportunity to be present and to interrogate the expert. At this hearing, any party may present expert witnesses in order to testify on the points at issue. The provisions of article 27 shall be applicable to such proceedings.

Article 26

Appointment of Experts/ Witnesses by the Parties

- 26.1 The Parties shall give details such as names, address, number, qualification(s) of the experts/witness to the Tribunal seven days before the Oral Hearings take place.
- 26.2 The Tribunal shall have the power to allow, refuse, or limit appearance of experts/witness (es) as necessary.
- 26.3 The experts/witness(es) so called, shall give written testimony, either as signed statements or sworn affidavits. If experts/witness that are served due summons, do not appear for hearing without a reasonable cause shall be disregarded for any arbitral matters.
- 26.4 Experts/ Witness(es) who gives oral evidence during oral hearing shall not be cross-questioned by parties or their representatives. Experts/ Witness(es) shall provide only evidences with proofs and supporting document. Any opinion expressed by the Experts/ Witness(es) will be disallowed.

Article 27

Additional Authority of Tribunal

- 27.1. Unless contravened by existing law, the Arbitration Tribunal shall have the following additional **authority**:
 - a) Any matter to lead arbitration award to a successful conclusion.

Article 28

Default of a Party

- 28.1 If the Claimant fails to communicate his Statement of Claim in accordance with Article 25.2, the Arbitral Tribunal shall terminate the proceedings;
- 28.2 If the Respondent fails to communicate his Statement of Defense in accordance with Article 22.3, the Arbitral Tribunal shall continue the proceedings without treating that the failure in itself as an admission of the allegations by the Claimant and shall have the discretion to treat the right of the Respondent to file such Statement of Defence as having been forfeited.
- 28.3 If the Party fails to appear at an oral hearing or to produce documentary evidence, the tribunal may continue the proceedings and make an Arbitral Award on the evidences before it.

Article 29

Closure of Hearing

- 29.1 The arbitral tribunal may inquire of the parties if they have any further proof to offer or witnesses to be heard or submissions to make and, if there are none, it may declare the hearings closed.
- 29.2 The arbitral tribunal may, if it considers it necessary owing to exceptional circumstances, decide, on its own initiative or upon application of a party, to reopen the hearings at any time before the award is made.

Article 30

Waiver of right to object

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

Section IV: Arbitral Award and Termination of Proceedings

Article 31

Interim Relief

- 31.1 The arbitral tribunal may, at the request of a party, grant interim relief at the time of submission of Statement of Claim or Statement of Defence.
- 31.2 An interim relief is any temporary measure by which, at any time prior to the issuance of the award for which the dispute is finally decided, the arbitral tribunal may order a party, without limitation, to:
- a) Maintain or restore the status quo pending determination of the dispute;
 - b) Take action that would prevent, or refrain from taking action that would likely cause,
 - (i) current or imminent harm; or
 - (ii) prejudice to the arbitral process itself;
 - c) Provide a means of preserving assets out of which a subsequent award may be satisfied;
 - d) Preserve evidence that may be relevant and material to the resolution of the dispute.

- 31.3 The Tribunal may, at the request of a party, issue an order granting an injunction or any other interim relief it deems appropriate provided the Law does provide such authority.
- 31.4 The application for interim relief shall include a brief statement of facts leading to the application; reasons why the party is entitled to such relief, the nature of relief sought. Such application shall be submitted to the Tribunal, the Secretariat and the other party respectively.

Article 32

Fast Track Arbitration

- 32.1 At any time, either before or at the time of appointment of arbitral tribunal, the parties to an arbitration agreement may agree in writing to have their disputes resolved by this method.
- 32.2 While agreeing to resolution of disputes by fast track method the parties may agree to appointment of sole Arbitrator who shall be chosen by the Parties. In case the parties are unable to appoint an Arbitrator, the sole Arbitrator shall then be chosen by the appointing authority in consensus with the Parties.
- 32.3 The arbitration tribunal shall adhere to following procedure while conducting arbitration proceedings under this article:
- a. The arbitral tribunal shall decide the dispute on the basis of written pleadings, documents and submissions filed by the parties;
 - b. The Tribunal shall have authority to call for any further information or clarification from the parties in addition to the pleadings and documents filed by them;
 - c. An oral hearing may be held only, if, all the parties make a request or if the arbitral tribunal considers it necessary to have an oral hearing for clarifying certain issues;
 - d. The arbitral tribunal may dispense with any technical formalities and adopt such procedure as deemed appropriate for expeditious disposal of the case;

- 32.4 The Award under this section shall be made within a period of 4 months from the date the arbitral tribunal enters upon the reference.
- 32.5 If the award is not made within the period specified the general proceedings of this Rule of Arbitration shall apply;
- 32.6 The fees payable to the arbitrator and the manner in payment in fees shall be such as may be agreed between the arbitrator and the parties and shall not be less than 25% added on top of normal sole arbitration fee.
- 32.7 This Rule shall not prejudice any party's right to apply to a state court or other legal authority for any interim or conservatory measures before the formation of the Arbitration Tribunal; and it shall not be treated as an alternative to or substitute for the exercise of such right. During the fast-track proceedings, any application to and any order by such court or authority shall be communicated promptly in writing to the Sole Arbitrator, the Secretariat and all other parties.

Article 33

Applicable Law, Amiable Compositeur and Ex Aequo et Bono

- 33.1 The Tribunal shall apply the law or rules as designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, the Tribunal shall apply the law or rules which it determines to be appropriate. For arbitration conducted for ICB or NCB contracts under domestic arbitration, the law of Nepal shall apply as substantive law.
- 33.2 The Tribunal shall decide as *amiable compositeur* or *ex aequo et bono* only if the parties have expressly authorized it to do so.
- 33.3 In all cases, the Tribunal shall decide in accordance with the terms of the contract, if any, and shall take into account any usage of trade and commerce applicable to the

transaction.

Article 34

The Award

- 34.1 Where there is more than one arbitrator, the Tribunal shall decide the Award by a majority. The arbitral tribunal shall state the reasons upon which the award is based, unless the parties agree that no reasons are to be given. Failing a majority decision, the presiding arbitrator, when the arbitral so authorize, alone shall make the Award for the Tribunal.
- 34.2 If any arbitrator fails to cooperate in the making of the Award, having been given a reasonable opportunity to do so, the remaining arbitrators may proceed. The arbitrator failing to agree with the majority decision shall provide a “Note of Dissent” explaining the reason why he does not agree with the majority. If the dissenting arbitrator does not provide a note of dissent event after request by the arbitral tribunal, the point will be noted in the award by the majority and publish the award accordingly in absence of the dissenting arbitrator.

Article 35

Form and contents of Award

- 35.1 The arbitral tribunal may make separate awards on different dates on different issues at different stages of arbitral proceedings and at the place as agreed in the Arbitration Agreement.
- 35.2 All awards shall be made in writing and shall be final and binding on the parties. Parties shall comply to execute out the award.
- 35.3 The award shall be processed and delivered to the Parties through secretariate only. No later than 45 days of declaring the arbitration proceedings close by the Arbitral Tribunal, the Award shall be forwarded to the secretariate which shall be responsible to systematically arrange the Award in a standard format. No changes in the substance of the Award can be adjusted by the secretariate. Within another 45 days the secretariate shall deliver the award to each Party. The Award shall be dated and signed by the Arbitrator.
- 35.4 A copy of the award will be deposited with the relevant High Court, as necessary, as per existing legislation in force.
- 35.5 A sum directed to be paid by the arbitral award, shall unless the award otherwise directs, carry interest (simple or compounded as per the discretion of the arbitral tribunal) as per the current rate of interest prevalent on the date of award in consonance with the existing legislation in place.
- 35.6 The secretariate may, with the consent of the parties and the Tribunal, publish any Award with the names of the parties and other identifying information redacted.

Article 36

Settlement or other grounds for termination

- 36.1 If before the award is made, in the event of an amicable settlement, and if the parties so request, the Tribunal may make a consent Award recording the settlement. In the event of termination of arbitral proceeding under this Article, the arbitral tribunal will not be obliged to give reasons for such an award.

- 36.2 If the parties do not require a consent Award, the parties shall confirm to the Secretariat, that a settlement has been reached, following which the arbitral proceedings will be terminated and the arbitration concluded upon due settlement of the costs of the arbitration. In such case, a breakdown of expenses will be provided to the Parties and any additional amount, if any, will be returned to the Parties.

Article 37

Interpretation of Award

- 37.1 Within 10 days of receipt of an Award, a party may, by written notice to the Secretariat and the other party, request the arbitral Tribunal to give an interpretation of the Award.
- 37.2 If the arbitral Tribunal considers the request to be justified, it shall provide the interpretation in writing within 15 days after receipt of the request. The interpretation shall form part of the Award. a

Article 38

Correction of Awards

- 38.1 Within 10 days of receipt of an Award, a party, by written notice to the Secretariat and the other party, may request the Tribunal to correct any error in computation, clerical or typographical error or any error of a similar nature in the Award. If the Tribunal considers the request to be justified, it shall make the correction within 15 days of receipt of the request. Any correction, made in the original Award or in a separate memorandum, shall constitute part of the Award.

38.2 The Tribunal may correct any error of the type referred to in Rule 38.1 on its own initiative within 30 days of the date of the Award.

Article 39

Additional Award

39.1 Within 10 days of receipt of an Award, a party may, by written notice to the Secretariat and the other party, request the Tribunal to make an additional Award as to claims presented in the arbitration but not dealt with in the Award. If the Tribunal considers the request to be justified, it shall make the additional Award within 15 days of receipt of the request.

39.2 The arbitral tribunal may, if necessary, extend the period of time within which the Arbitral Tribunal shall make a correction of an Award under this Rule.

39.3 All such awards resulting from correction, interpretation, or addition Award shall be reasoned and shall be final and binding.

Article 40

Fees and Deposits

40.1 The Tribunal's fees and secretariate fees shall be ascertained in accordance with the Schedule of Fees in force at the time of commencement of the arbitration. The parties may agree to alternative methods of determining the Tribunal's fees prior to the constitution of the Tribunal.

40.2 Payment and modality of deposit shall be decided at the time of the preliminary meeting conducted by the arbitral tribunal assisted by the secretariate.

- 40.3 The Secretariate, on the advice of the arbitral tribunal, may from time-to-time direct parties to make further deposits towards the costs of the arbitration, if any alterations is observed from the facts agreed in the preliminary meeting or if additional costs is required for purposes unseen during the preliminary meeting.
- 40.4 Parties are jointly and severally liable for the costs of the arbitration. In absence of one party to deposit his share towards the costs of the arbitration, the other party may deposit the full amount which shall be adjusted by the arbitral tribunal in the Award.
- 40.5 If the parties fail to deposit the cost of arbitration, the arbitral tribunal may direct the secretariate to inform the Parties that the proceedings have been terminated.
- 40.6 In all cases, the account of cost of arbitration will be provided by the Secretariat to the Parties at on the conclusion of the arbitral proceedings. The Secretariat shall have regard to all the circumstances of the case, including the stage of proceedings at which the arbitration concluded. In the event that the costs of the arbitration determined are less than the deposits made, there shall be a refund in the same proportions as deposited by the parties.
- 40.7 All deposits towards the costs of the arbitration shall be made to and held by the Secretariat. Any interest which may accrue on such deposits shall be retained by the Secretariat.

Article 41

Costs of Arbitration

- 41.1 Unless otherwise agreed by the parties, the Tribunal shall specify in the Award the total amount of the costs of the arbitration and also determine in the Award the apportionment of the costs of the arbitration among the parties.

41.2 The term “costs of the arbitration” includes:

- a) the Tribunal’s fees and expenses and the Fast-Track Arbitration fees and expenses, where applicable;
- b) reasonable travel expenses incurred by the arbitral tribunal;
- c) Secretariate administration fees and expenses; and
- d) the costs of experts appointed by the Tribunal and of any other assistance reasonably required by the Tribunal.
- e) The reasonable cost of travel and other expenses of witnesses to the extent such expenses are approved by the arbitral tribunal;
- f) Legal and other costs incurred by the parties in connection with the arbitration on condition that the arbitral tribunal determines such amount as reasonable;

Article 42

Tribunal Fees and Expenses

42.1 The fees of the Tribunal and that of the Secretariat shall be as specified and be in accordance with the applicable Schedule of Fees or, if applicable, with the method agreed by the parties pursuant to Rule 33.1, and the stage of the proceedings at which the arbitration concluded. In exceptional circumstances, the Secretariat may determine that an additional fee over that prescribed in the applicable Schedule of Fees shall be paid.

42.2 The Tribunal’s reasonable out-of-pocket expenses necessarily incurred and other allowances shall be reimbursed as per actual expenses against the invoices and bills.

Article 43

Allocation of Costs

- 43.1 The costs in generally shall be apportioned and equally shared by the Parties. However, the party/ parties may choose that the cost in principle be borne by the unsuccessful party or parties.
- 43.2 The arbitral tribunal shall in the final award or, if it deems appropriate, determine any amount that a party may have to pay to another party as a result of the decision on allocation of costs.

Article 44

Arbitration cost on redirection by the Court

- 44.1 If the Court directs the same Arbitral Tribunal to conduct review of its Award, the cost of Arbitration in such case will be 50% of the cost arrived at under Article 43 and 44. The Parties will be directed to deposit accordingly by the arbitral tribunal

Article 45

Deposition of Costs

- 45.1 The arbitral tribunal, during the preliminary meeting, may request the parties to deposit an equal amount as an advance for the costs of arbitration.
- 45.2 Supplementary deposits, if any, may be requested during the course of arbitral proceedings.
- 45.3 If the required deposits are not paid within the time stated in the preliminary meeting, the arbitral tribunal shall so inform the parties in order that one or more of them may make the required payment. If such payment is not received, the arbitral tribunal may suspend or terminate the arbitral proceedings.

Article 46

Exclusion of Liability

- 46.1 Any arbitrator including any Fast-Track Arbitrator, any person appointed by the Tribunal including any administrative staff, experts, the Executive Committee members, directors, officers of the secretariate shall not be liable to any person or party for any negligence, act or omission in connection, overt or covert act with and in connection with these arbitral proceedings.
- 46.2 The Arbitration Tribunal, secretariat or any person appointed by the Tribunal shall not be under any obligation to make any statement in connection with any arbitration administered in accordance with these Rules.

Article 47

Confidentiality

- 47.1 The arbitral tribunal including the secretariat and personnel involved during the arbitration proceeds shall at all times treat all matters relating to the proceedings including the Award as confidential. The discussions and deliberations of the Tribunal shall be confidential.
- 47.2 No arbitral proceedings will be disclosed to the third party without the prior written consent of the parties, except:
- a) for the purpose of making an application to any competent court of any State to enforce or challenge the Award;
 - b) in compliance with the provisions of the laws of any State which are binding on the party making the disclosure or the request or requirement of any regulatory body or other authority;
 - c) pursuant to an order by the Tribunal on application by a party with proper notice to the other parties.
- 47.3 The Tribunal has the power to take appropriate measures, including issuing an order or Award for sanctions or costs, if a party breaches the provisions of this Rule.

Schedule of Fees

Remuneration of a Sole Arbitrator for NCB Contracts

S.no.	Claimed Amount		Fixed Amount	Variable Amount in %	Maximum Limit
	From	To			
1	Upto	10,00,000.00	50,000.00		50,000.00
2	10,00,000.00	25,00,000.00	85,000.00	3.00%	1,30,000.00
3	25,00,000.00	50,00,000.00	1,30,000.00	2.30%	1,87,500.00
4	50,00,000.00	1,00,00,000.00	1,87,500.00	1.50%	2,62,500.00
5	1,00,00,000.00	2,00,00,000.00	2,62,500.00	0.80%	3,42,500.00
6	2,00,00,000.00	5,00,00,000.00	3,42,500.00	0.60%	5,22,500.00
7	5,00,00,000.00	10,00,00,000.00	5,22,500.00	0.20%	6,22,500.00
8	10,00,00,000.00	20,00,00,000.00	6,22,500.00	0.15%	7,72,500.00
9	20,00,00,000.00	50,00,00,000.00	7,72,500.00	0.030%	8,62,500.00
10	Above	50,00,00,000.00	8,62,500.00	0.020%	

Remuneration of the sole Arbitrator in ICB Contract

S.no.	Claimed Amount		Fixed Amount	Variable Amount in %	Maximum Limit
	From	To			
1	Upto	10,00,000.00	1,90,000.00		1,90,000.00

2	10,00,000.00	25,00,000.00	3,00,000.00	10.00%	4,50,000.00
3	25,00,000.00	50,00,000.00	4,50,000.00	6.00%	6,00,000.00
4	50,00,000.00	1,00,00,000.00	6,00,000.00	4.00%	8,00,000.00
5	1,00,00,000.00	2,00,00,000.00	8,00,000.00	2.00%	10,00,000.00
6	2,00,00,000.00	5,00,00,000.00	10,00,000.00	1.00%	13,00,000.00
7	5,00,00,000.00	10,00,00,000.00	13,00,000.00	0.80%	17,00,000.00
8	10,00,00,000.00	20,00,00,000.00	17,00,000.00	0.50%	22,00,000.00
9	20,00,00,000.00	50,00,00,000.00	22,00,000.00	0.20%	28,00,000.00
10	Above	50,00,00,000.00	28,00,000.00	0.10%	

Remuneration of the Three Arbitrators in NCB Contract

S.no.	Claimed Amount		Fixed Amount	Variable Amount in %	Maximum Limit
	From	To			
1	Upto	10,00,000.00	1,25,000.00		1,25,000.00
2	10,00,000.00	25,00,000.00	2,00,000.00	7.00%	3,05,000.00
3	25,00,000.00	50,00,000.00	3,05,000.00	5.00%	4,30,000.00
4	50,00,000.00	1,00,00,000.00	4,30,000.00	3.00%	5,80,000.00
5	1,00,00,000.00	2,00,00,000.00	5,80,000.00	2.00%	7,80,000.00
6	2,00,00,000.00	5,00,00,000.00	7,80,000.00	1.25%	11,55,000.00
7	5,00,00,000.00	10,00,00,000.00	11,55,000.00	0.46%	13,85,000.00
8	10,00,00,000.00	20,00,00,000.00	13,85,000.00	0.25%	16,35,000.00
9	20,00,00,000.00	50,00,00,000.00	16,35,000.00	0.13%	20,25,000.00
10	Above	50,00,00,000.00	20,25,000.00	0.03%	

Remuneration of the Three Arbitrators in ICB Contract

S.no.	Claimed Amount		Fixed Amount	Variable Amount in %	Maximum Limit
	From	To			
1	Upto	10,00,000.00	3,00,000.00		3,00,000.00

2	10,00,000.00	25,00,000.00	5,00,000.00	15.00%	7,25,000.00
3	25,00,000.00	50,00,000.00	7,25,000.00	10.00%	9,75,000.00
4	50,00,000.00	1,00,00,000.00	9,75,000.00	6.00%	12,75,000.00
5	1,00,00,000.00	2,00,00,000.00	12,75,000.00	5.00%	17,75,000.00
6	2,00,00,000.00	5,00,00,000.00	17,75,000.00	2.00%	23,75,000.00
7	5,00,00,000.00	10,00,00,000.00	23,75,000.00	1.20%	29,75,000.00
8	10,00,00,000.00	20,00,00,000.00	29,75,000.00	1.00%	39,75,000.00
9	20,00,00,000.00	50,00,00,000.00	39,75,000.00	0.35%	50,25,000.00
10	Above	50,00,00,000.00	50,25,000.00	0.20%	

Administrative Cost of DRCN

S.no.	Claimed Amount		Fixed Amount	Variable Amount in %	Maximum Limit
	From	To			
1	Upto	10,00,000.00	40,000.00		40,000.00
2	10,00,000.00	25,00,000.00	75,000.00	3.0%	1,20,000.00
3	25,00,000.00	50,00,000.00	1,20,000.00	2.00%	1,70,000.00
4	50,00,000.00	1,00,00,000.00	1,70,000.00	1.00%	2,20,000.00

5	1,00,00,000.00	2,00,00,000.00	2,20,000.00	0.75%	2,95,000.00
6	2,00,00,000.00	5,00,00,000.00	2,95,000.00	0.40%	4,15,000.00
7	5,00,00,000.00	10,00,00,000.00	4,15,000.00	0.20%	5,15,000.00
8	10,00,00,000.00	20,00,00,000.00	5,15,000.00	0.1000%	6,15,000.00
9	20,00,00,000.00	50,00,00,000.00	6,15,000.00	0.05%	7,65,000.00
10	Above	50,00,00,000.00	7,65,000.00	0.05%	