

PROTOCOL ON
**VIRTUAL
ARBITRATION
PROCEEDINGS**
(VAP PROTOCOL)
AND GUIDE
TO THE AIAC
VAP PROTOCOL



ASIAN INTERNATIONAL ARBITRATION CENTRE



Table of Contents

INTRODUCTION	iv
PART I: VAP PROTOCOL.....	1
1. Applicability and Scope.....	1
2. Guide And Definitions	1
3. Agreement for VAP	4
4. VAP Conduct.....	5
4.1. General Provisions	5
4.2. Venue.....	7
4.3. Participants Permitted at the Venue during the VAP	9
4.4. Test Run	10
4.5. Witness Examination	10
5. VAP Etiquette.....	13
6. Document Referencing	14
7. Recording and Confidentiality of the VAP	15
8. No Liability.....	16
Schedule 1 - Undertaking of Confidentiality, Privacy and Security.....	18
PART II. GUIDE TO THE AIAC VAP PROTOCOL	19
I. Arbitral Tribunal's Consideration	19
II. AIAC VAP Online Booking Form	19
III. AIAC VAP Protocol	20
IV. Suitability of VAP	20
V. VAP Platform.....	21
VI. Test Run.....	22
VII. Attendees	23
VIII. Breakout Rooms	23
IX. Screensharing.....	24
X. AIAC IT Support Specialist	24
XI. Tribunal Secretary.....	24
XII. Venue IT Support Specialist	25
XIII. Host of VAP.....	25
XIV. Recordings of VAP.....	25

XV.	Electronic Presentation of Evidence.....	26
XVI.	Declaration	26
XVII.	<i>Ex Parte</i> Communications	26
XVIII.	Procedural Irregularities.....	27
XIX.	Tips and VAP Etiquette.....	27
	General Tips	27
	Before and/or During VAP	30
	During VAP	32

this page is intentionally left blank

INTRODUCTION

Part I contains the AIAC Protocol for Virtual Arbitration Proceedings (AIAC VAP Protocol), which is intended to govern the conduct of VAP. Parties and Arbitral Tribunals may adopt such in whole or in part. When considering whether to adopt the AIAC VAP Protocol, Parties and Arbitral Tribunals should read Part II as well as the AIAC's online booking form. If adopted, such shall be enforceable on the Parties and the Arbitral Tribunal.

Part II contains the Guide to the AIAC VAP Protocol, which aims to assist Parties and Arbitral Tribunals in completing the VAP. The Guide also contains points for consideration by the Parties and the Arbitral Tribunal when conducting a VAP. This document is intended to serve as a reference tool only and shall be read in conjunction with Part I and the AIAC's online booking form.

PART I: VAP PROTOCOL

1. Applicability and Scope

- 1.1. This Protocol on Virtual Arbitration Proceedings (“**Protocol**”) applies to meetings, Witness examinations, and hearings with either no or limited in-person attendance as agreed between the Parties and the Arbitral Tribunal in writing, which shall hereinafter be referred to as Virtual Arbitration Proceedings (“**VAP**”).
- 1.2. The Parties may adopt this Protocol in whole or in part to govern the VAP or may vary or use this Protocol as a guideline in developing their own procedures.
- 1.3. The Protocol is not intended to limit the flexibility that is inherent in, and is the advantage of, arbitration.
- 1.4. Prior to the use of this Protocol for a hearing, the Parties should evince, in writing, their agreement to the conduct of the hearing virtually and acknowledge that they will not subsequently challenge an award on the basis that the hearing was not held in-person.
- 1.5. In the absence of a written agreement pursuant to Clause 1.4., the Arbitral Tribunal is encouraged to specify the reasons for proceeding with the hearing virtually prior to the VAP.

2. Guide And Definitions

- 2.1. All references in the Protocol to the singular shall include the plural where applicable and *vice versa*.
- 2.2. All personal pronouns in the Protocol, whether used in the masculine, feminine, or neutral gender, shall include all other genders.
- 2.3. In this Protocol, unless the context suggests otherwise, the following terms and abbreviations shall be adopted:

- 2.3.1. **“Agreed Bundle of Documents”** means the agreed and indexed set of documents submitted to the Arbitral Tribunal for the purposes of a physical or virtual hearing that the Arbitral Tribunal may reference or be referred to in the course of the hearing. For VAP, the Agreed Bundle of Documents may be in physical, *i.e.*, print or hard copy, and/or electronic form, as directed by the Arbitral Tribunal;
- 2.3.2. **“AIAC IT Support Specialist”** means the IT specialist assigned by the AIAC to support the VAP;
- 2.3.3. **“Arbitral Tribunal”** means a sole arbitrator, or a panel of arbitrators, including an emergency arbitrator;
- 2.3.4. **“Business Day”** means a working day in the Federal Territory of Kuala Lumpur, Malaysia, and excludes weekends and public holidays;
- 2.3.5. **“Clause”** means the numbered paragraphs in Part I;
- 2.3.6. **“Host”** is a person or company that provides or facilitates the use of a Platform or Technology needed for the carrying out of the VAP. The default Host is the AIAC, unless otherwise agreed by the Parties and the Arbitral Tribunal;
- 2.3.7. **“Independent Supervising Officer”** means a neutral and independent individual appointed by a Party, or both Parties, to oversee the examination of a Witness to ensure no improper assistance is provided to the Witness and the evidence is given independently without any interference and influence;
- 2.3.8. **“Interpreter”** means the individual appointed by either Party with the requisite language skills to translate communications or the giving of oral evidence from a foreign language to the language of the arbitration and *vice versa*;

- 2.3.9. “**Observer**” means the individual who is present during the VAP other than the Parties, Arbitral Tribunal, Tribunal Secretary, Witness, Transcriber, and Interpreter, and whose presence has been agreed by the Parties and the Arbitral Tribunal. This includes the individual authorised by either Party or other disputant to watch or listen to the proceedings, if any, provided this individual is permitted by the Arbitral Tribunal to observe the proceedings;
- 2.3.10. “**Participant**” means the Parties, Arbitral Tribunal, Tribunal Secretary, Witness, Transcriber, Interpreter, Independent Supervising Officer, and all other persons identified in Clause 4.3.1. that are present in the VAP upon the direction of the Arbitral Tribunal;
- 2.3.11. “**Party**” means the Claimant, Respondent and/or other disputants in the arbitration, including its Party Representative, the person who the Party appoints and appears in the arbitration on behalf of the Party and makes submissions and/or arguments, if any, save where explicitly distinguished;
- 2.3.12. “**Platform**” means the video conferencing solution agreed by the Parties and the Arbitral Tribunal for the conduct of VAP;
- 2.3.13. “**Seat**” means the seat of arbitration if determined in, or pursuant to, the arbitration agreement, submission agreement, or otherwise determined by the Arbitral Tribunal;
- 2.3.14. “**Technology**” means any hardware including equipment such as microphones, headsets, web camera, etc., and software used in the VAP;
- 2.3.15. “**Transcriber**” means the individual from the transcription services company engaged by the Parties to transcribe the VAP;
- 2.3.16. “**Translator**” means the individual appointed by either Party with the requisite language skills to translate written communications

and documents from a foreign language to the language of the arbitration and *vice versa*;

2.3.17. “**Tribunal Secretary**” means the individual appointed by the Arbitral Tribunal, upon agreement with the Parties, to carry out secretarial assistance pursuant to the terms and conditions set out in the request for the appointment of a tribunal secretary and its schedule of duties, or pursuant to other terms and conditions agreed between the Parties and the Arbitral Tribunal;

2.3.18. “**Venue**” means the video conferencing venue location from which the Participants access the VAP, which may or may not be the Seat;

2.3.19. “**Venue IT Support Specialist**” means the individual providing IT support at the Venue and is not affiliated with the AIAC;

2.3.20. “**Virtual Arbitration Proceedings**” or “**VAP**” means any hearing, meeting, and/or conference conducted during the arbitral proceedings on or using the agreed Platform and Technology; and

2.3.21. “**Witness**” means the individual who is subject to subpoena, submits a witness or an expert report and/or is the subject of an examination or cross-examination in the course of the VAP.

3. Agreement for VAP

3.1. By adopting this Protocol, the Parties and the Arbitral Tribunal agree to conduct the VAP in accordance with this Protocol.

3.2. The VAP will be deemed to have been conducted in place of an in-person meeting or hearing, as the case may be, at the agreed Seat.

3.3. The Parties and the Arbitral Tribunal shall agree on a Platform and Technology to be used for the VAP and notify the AIAC of such within five (5) Business Days before the intended VAP, subject to the availability of the Platform and Technology at the AIAC.

3.4. The Parties shall check and satisfy themselves that:

3.4.1. the Platform to be used, including access thereto:

- (a) meets the requirements for the fair and expeditious conduct of the VAP;
- (b) is compatible with the Participants' Technology used for accessing the VAP; and
- (c) adequately safeguards the confidentiality and privacy required of the VAP, for example, against any hacking, illicit access, unlawful recording, or interception by third parties;

3.4.2. all Participants of the VAP have engaged with the Host for a test run of the Platform and Technology; and

3.4.3. there are adequate contingency measures implemented for all Participants in case of sudden technical failures, disconnection, or power outages, such as teleconference and alternative communication channels, which include, but are not limited to, designated phone numbers for telephone calls and technical support, the form of which is agreed before the VAP takes place.

3.5. Unless expressly reserved by any Party in writing to the Arbitral Tribunal and all other Parties prior to the commencement of the VAP, by participating in a VAP, a Party is deemed to have satisfied itself that the matters in Clause 3.4. have been adequately considered and fulfilled.

4. VAP Conduct

4.1. General Provisions

4.1.1. Prior to the commencement of any VAP, at the first preliminary meeting, or the earliest opportunity after the constitution of the Arbitral Tribunal, the Parties and the Arbitral Tribunal shall:

- (a) review and agree on the items in Part II, and should the Parties fail to agree on any of the items within Part II, the Arbitral Tribunal shall rule on such item upon hearing the Parties;
- (b) identify which issues are essential for the VAP and which can be dealt with on a “documents only” basis so that the taking of evidence shall be limited to the issues for which oral evidence, submissions, or directions are required;
- (c) agree on the number and list of Participants attending the VAP, for example, the number and identity of the Arbitral Tribunal, Parties, Party Representative, Witness, Tribunal Secretary, Interpreter, Transcriber, Independent Supervising Officer, and technicians, and the Venue from which such Participants will access the VAP;
- (d) agree on the identity of Participants for each Venue and the necessary camera and audio set-up for all Venues;
- (e) consider and agree, if necessary, on the number of virtual breakout rooms assigned to the Arbitral Tribunal and each Party, as the case may be, to converse and deliberate privately among themselves during the VAP;
- (f) ensure that virtual breakout rooms are secure and only accessible to those Participants to whom the rooms are allocated;
- (g) consider and agree on the allocation of time for the Parties’ opening, closing, witness examination, or other oral submissions, taking into consideration that technical difficulties may arise during the VAP and time may be lost troubleshooting the same; and

- (h) consult and agree on the virtual hearing dates, duration, and daily timetable, taking into account the time zones of each Venue.

4.1.2. The Arbitral Tribunal may terminate the VAP at any time if the Arbitral Tribunal deems the video and/or audio conferencing facilities are so unsatisfactory that it is unfair to either Party to continue.

4.2. Venue

4.2.1. Participants may join the VAP from separate Venues, and shall ensure that the Venues from which they participate, and the Technology used, fulfil the threshold logistical and technological requirements set out in Clause 4.2.2. to enable them to participate in the VAP to the extent permitted.

4.2.2. Unless otherwise agreed by the Parties and the Arbitral Tribunal, all Venues shall satisfy the following minimum logistical and technological requirements:

- (a) the video and audioconferencing facilities shall be of sufficient quality to allow for clear audio and video and/or audio-only transmission;
- (b) the bandwidth requirements to ensure internet connection stability for group video calling as recommended by the respective Platform;
- (c) there shall be sufficient microphones for all Participants for the amplification of the Participant's voice, as well as sufficient microphones to allow for the transcription and/or interpretation of the Participant's testimony and/or statement, where transcription and/or interpretation are required;

- (d) there shall be adequate placement and control of the cameras to ensure that all Participants can be seen;
 - (e) the Parties shall use the best efforts to ensure that the video and/or audio connection between the Venues is as smooth as possible, with sounds and images being accurately and properly aligned to minimise any delays;
 - (f) each Venue shall have:
 - (i) reasonable access to a Venue IT Support Specialist with adequate technical knowledge and logistical ability to assist in planning, testing, and conducting the VAP with the use of the agreed Platform and Technology;
 - (ii) an AIAC IT Support Specialist assigned to resolve any technical difficulties as far as practicable; and
 - (iii) the Venue IT Support Specialist and the AIAC IT Support Specialist shall ensure they have set up a backup communication system which includes, but is not limited to, external teleconference, WhatsApp, iMessage, Slack, or Skype;
 - (g) the Venue shall be at a location that provides for the fair, equal, and reasonable right of access to the Parties, as appropriate; and
 - (h) the Venue should be equipped with printing and scanning facilities.
- 4.2.3. Where there is to be more than one person at a Venue, each person at that Venue shall be visible to, and shall also be able to see, all other Participants who will be speaking during the VAP.

4.3. Participants permitted at the Venue during the VAP

4.3.1. Unless otherwise agreed by the Parties or directed by the Arbitral Tribunal, only the following Participants may be present at the Venue during the VAP:

- (a) Party;
- (b) Party Representative;
- (c) Arbitral Tribunal;
- (d) Tribunal Secretary;
- (e) Witness;
- (f) Interpreter;
- (g) Transcriber;
- (h) Independent Supervising Officer;
- (i) AIAC IT Support Specialist, when necessary;
- (j) Venue IT Support Specialist, when necessary;
- (k) Observer; and
- (l) any other person permitted or directed by the Arbitral Tribunal.

4.3.2. Each Party shall provide the identity of every individual present at the Venue to the other Party and the Arbitral Tribunal prior to the VAP.

4.3.3. The Arbitral Tribunal shall take the necessary steps to confirm the identity of each individual present at the start of the VAP.

4.4. Test Run

- 4.4.1. All Participants of the VAP shall engage in a test run with the Host using the Platform and Technology for the VAP at least two (2) Business Days before the commencement of that VAP, and if not practicable, the Parties shall communicate their unavailability as soon as possible to the Arbitral Tribunal and the Host.
- 4.4.2. Participants may also schedule separate test runs with the AIAC or other Participants, as necessary.
- 4.4.3. The separate test runs shall be at least two (2) Business Days prior to the collective test run that is intended for all Participants to ensure familiarity with and connectivity to the Platform.
- 4.4.4. Where video and/or audio conferencing facilities are required for only a particular Participant, that Participant shall ensure that they can access the VAP smoothly and is ultimately responsible for arranging the booking of video and/or audio conferencing facilities with the AIAC and notifying all Participants of such arrangements.
- 4.4.5. The Arbitral Tribunal has the power to and shall determine who bears the cost of the VAP.

4.5. Witness Examination

- 4.5.1. The examination of the Witness shall be conducted as directed by the Arbitral Tribunal.
- 4.5.2. Unless otherwise agreed by the Parties, the camera for the video conferencing facilities at the Venue shall:
 - (a) allow for a sufficient part of the interior of the Venue in which the Witness is located is visible to the Arbitral Tribunal to show that the Witness is able to give his/her

evidence at the hearing independently without any interference and influence; and

- (b) retain sufficient proximity to the camera for the Arbitral Tribunal to observe the demeanour of the Witness.

4.5.3. The use of audio conferencing facilities, as opposed to video conferencing facilities, should only be considered in limited circumstances where there is no necessity or minimal need for Participants to observe the location and/or demeanour of the Witness.

4.5.4. To ensure evidence is given independently without any interference and influence:

- (a) the Arbitral Tribunal may, at any point during the VAP, direct *suo moto*, or upon request of the Parties and/or Parties' Representatives, the Witness to orient his/her camera to provide a 360-degree view of the Venue in order to confirm that no unauthorised person is present; or
- (b) the Arbitral Tribunal may direct, where circumstances permit, a representative of each Party, representative of the opposing Party, and/or Independent Supervising Officer to be present in-person observing the taking of evidence of a Witness at the Venue; and
 - (i) if an Independent Supervising Officer is appointed, the identity of the individual shall be communicated in advance to the Arbitral Tribunal in writing; and
 - (ii) without limiting the definition of Observer, the Arbitral Tribunal may specify or restrict the participation of any Observer to ensure that the integrity of the evidence taken and fairness are not compromised.

- 4.5.5. Where an Interpreter is required for a Witness during the VAP, the Interpreter shall be briefed before the commencement of the VAP with regard to the arrangements for video and audio conferencing that may impact or require adjustment of the interpretation service.
- 4.5.6. Where the interpretation is to be conducted simultaneously in more than one language, arrangements shall be made for the Participants to be able to select which audio channel, and language of choice, they wish to hear. The arrangement shall be subject to the technical capability of the third party real-time interpretation service provider mutually agreed to be appointed by the Parties.
- 4.5.7. Prior to the VAP, if an oath or affirmation is required:
 - (a) the Parties and the Arbitral Tribunal shall agree in writing on the manner and procedure by which the Witness shall give an oath or affirmation; and
 - (b) the Parties shall ensure that any relevant religious or other text necessary to take an oath or affirmation is available at the Venue where the Witness is located for examination and/or cross-examination.
- 4.5.8. The Witness is permitted to have physical or electronic access to the documents produced in the Agreed Bundle of Documents while at their empty desk or lectern.
- 4.5.9. All documents referred to by the Witness, whether in print or electronic, shall be simultaneously visible and legible to the Participants, save for Observers.
- 4.5.10. The Parties shall agree on the Platform and Technology to be used by the Witness to give demonstrative/illustrative evidence in the course of the examination.

- 4.5.11. During the VAP, the Arbitral Tribunal may give such directions as are necessary for the fair and efficacious taking of the evidence of the Witness.

5. VAP Etiquette

- 5.1. To achieve the necessary level of cooperation and coordination for a successful VAP, each Participant undertakes to observe the following:
 - 5.1.1. identify its lead speaker before the commencement of the VAP;
 - 5.1.2. refrain from interrupting any speaker, especially to avoid audio/video lag;
 - 5.1.3. reasonable and responsible use of the Platform and Technology;
 - 5.1.4. avoid using Technology that interferes with connectivity;
 - 5.1.5. refrain from any unauthorised recording;
 - 5.1.6. mute microphones when not speaking to minimise background noise;
 - 5.1.7. use headphones or earphones to minimise echo and sound interruption;
 - 5.1.8. put other electronic gadgets on silent mode throughout the VAP;
 - 5.1.9. refrain from the consumption of food and beverages that may cause audible disruption to the proceedings; and
 - 5.1.10. comply with any other rules as set by the Arbitral Tribunal.
- 5.2. In the event that one of the Participants essential to the hearing does not join the VAP without reasonable cause, the Arbitral Tribunal may proceed with the VAP in the absence of that Participant and to alleviate concerns

regarding *ex parte* communications, the Arbitral Tribunal shall provide written reasons for proceeding in such a manner.

- 5.3. In the event an essential Participant is disconnected during the VAP for any reason, the Arbitral Tribunal may adjourn the proceedings, and the recordings shall prevail in the case of any dispute as to what transpired immediately after the Participant's connection had dropped.

6. Document Referencing

- 6.1. Documentary evidence shall be referred to electronically during the VAP.
- 6.2. Alternatively, the Arbitral Tribunal may direct that documentary evidence only be referenced physically, *i.e.*, in print or hard copy, during the VAP, or both physically and electronically, as desired.
- 6.3. Where electronic documents are to be produced and referred to:
- 6.3.1. the Parties shall agree on the Platform and Technology to be used for the electronic production and the electronic reference of documents during the VAP;
 - 6.3.2. where required, more than one (1) Platform and/or Technology may be adopted by the Participants;
 - 6.3.3. the Platform and Technology shall enable the Participants, save for Observers, at all Venues to simultaneously view and read the documents;
 - 6.3.4. the Parties may agree on utilising a shared virtual document repository or server to be made available via computers at all Venues, provided that the Parties are satisfied with the security and confidentiality of the Platform and Technology used;
 - 6.3.5. the Arbitral Tribunal may limit the Participants' ability to access such electronic documents during the VAP;

- 6.3.6. unless the Parties agree otherwise, electronic documents shall be referred to and recorded in accordance with the electronic page numbers ascribed by the Platform and Technology; and
 - 6.3.7. participants shall be cognisant that pagination may vary across Platforms and/or Technology and shall inform the Arbitral Tribunal of such at the earliest opportunity to ensure appropriate directions can be made by the Arbitral Tribunal regarding the manner of pagination.
- 6.4. All other documents on the record which the Witness will refer to during the course of his/her evidence, including where the Arbitral Tribunal permits, upon the application of a Party, the referencing of a document outside the Agreed Bundle of Documents, or permits the addition of a certain page to the Agreed Bundle of Documents, must be clearly identified, paginated, and made available to the Witness.
- 6.5. Unless otherwise agreed in writing by the Parties, the Witness shall be provided with an unmarked copy, *i.e.*, a copy without any annotations, notes, or mark-ups, of the Agreed Bundle of Documents or such volumes of the Agreed Bundle of Documents as the Parties agree or are required, at the start of the examination of the Witness.

7. Recording and Confidentiality of the VAP

- 7.1. Further to Clause 3.4.1., the Parties and the Arbitral Tribunal shall satisfy themselves that the Platform and Technology utilised for the VAP adequately safeguard the confidentiality and privacy required of the VAP, for example, against any hacking, illicit access, unlawful recording, or interception by third parties, and compliance with data protection laws of the relevant countries.
- 7.2. Unless otherwise agreed in writing by the Parties, all Participants of the VAP shall provide a written undertaking of confidentiality on terms to be determined by the Arbitral Tribunal.¹

¹ Some recommended terms are set out in Schedule 1

- 7.3. Where the recording option has been selected, and disclaimer agreed to in the AIAC's online booking form, the VAP shall be recorded by the AIAC, and the recording shall only be disseminated by the AIAC.
- 7.4. No other recordings of the VAP, including a recording by the Host, shall be made without prior leave of the Arbitral Tribunal.
- 7.5. In the event the Parties agree and require the AIAC to record the VAP:
 - 7.5.1. such shall be recorded on the Platform hosted by the AIAC;
 - 7.5.2. the Parties shall give the AIAC written notice of at least two (2) Business Days before the start of the VAP to arrange for the recording; and
 - 7.5.3. the recording may be deleted by the AIAC after two (2) Business Days from the day the recording is disseminated.
- 7.6. The Parties and the Arbitral Tribunal shall ensure that the recording of the VAP will be kept confidential upon dissemination.
- 7.7. Unless otherwise agreed by the Parties, all matters relating to the VAP shall be kept confidential, except where disclosure is necessary for the implementation and enforcement of the award or, to the extent that disclosure may be required by law, to protect or pursue a legal right or to challenge an award in legal proceedings before a court or other judicial authority.

8. No Liability

- 8.1 Neither the AIAC, its employees, Director, Arbitral Tribunal, nor any Tribunal Secretary, shall be liable for any act or omission related to the conduct of the VAP governed under the Protocol.

- 8.2 Neither the AIAC, its employees, nor the Director can be compelled to give evidence in any arbitration or court proceedings relating to the VAP conducted under the Protocol.
- 8.3 The AIAC shall not be liable for any data protection, confidentiality, or privacy breaches which may arise from the use of the third party Platform.
- 8.4 The AIAC shall be reimbursed for any claims and proceedings issued by a third party for breach of data protection arising from third party Platform, equipment, and software.

Schedule 1 - Undertaking of Confidentiality, Privacy and Security

I, _____ (NRIC/ Passport No. _____), hereby undertake that:

- (a) I shall not record any part of the VAP in whatever form unless authorised in advance by the Parties and the Arbitral Tribunal;
- (b) I shall not access the documents stored in the [name of the agreed platform] without prior authorisation from the Parties and the Arbitral Tribunal;
- (c) I shall not disclose the documents, information, or contents of the VAP to third parties without prior authorisation from the Parties and the Arbitral Tribunal unless required by the law; and
- (d) I shall not allow the presence of any other person at the Venue who is not a Participant to the VAP unless agreed by the Parties and directed by the Arbitral Tribunal.

[Signature]

.....

Name:

Date:

PART II. GUIDE TO THE AIAC VAP PROTOCOL

I. Arbitral Tribunal's Consideration

The Arbitral Tribunal shall ensure that all the Participants are properly notified of the agenda for the VAP and that the Parties and Participants arrange for the necessary technical aspects to test and connect to the Platform. In scheduling the VAP, the Arbitral Tribunal shall consider:

- a) the different time zones of Participants, where applicable;
- b) the number of Venues and the possibility for the Arbitral Tribunal to be present in the same Venue;
- c) the method of taking evidence from Witnesses to ensure that the integrity of any oral evidence is preserved and given independently without any interference and influence;
- d) the method for confirming and identifying all Participants, including any AIAC IT Support Specialist, Venue IT Support Specialist, or Independent Supervising Officer;
- e) the possibility of using demonstratives including screensharing views or electronic Agreed Bundle of Documents hosted on a shared document platform that guarantees access by all Participants;
- f) when allocating time during the VAP, the Arbitral Tribunal shall set aside time for housekeeping matters, objections, applications, and any other unexpected incidents or events; and
- g) to make any procedural order as the Arbitral Tribunal deems necessary.

II. AIAC VAP Online Booking Form

The AIAC online booking form shall be completed in advance of each VAP booking at the AIAC. This booking form indicates the preliminary selection of the VAP Platform, date and timing of the VAP, test run date, and other technical assistance that may be

required for the VAP by the Parties and the Arbitral Tribunal. This booking form may also be used by the AIAC to provide a quotation of the AIAC's services for the intended VAP. The Parties should be mindful to inform the AIAC ahead of time whether any technological, logistical, legal, and administrative assistance and/or tools are required and identify the Participants, specifying whether any breakout rooms are only for certain Participants. The booking form shall be completed at least five (5) Business Days prior to the scheduled VAP.

III. AIAC VAP Protocol

The Protocol (Part I) serves as a reference document for best practices in conducting a VAP. Although non-binding in nature, the Protocol contains definitions of terms used in a VAP², which may be adopted by Participants of a VAP and guidance on the procedural and practical aspects of conducting a VAP, including technological and logistical requirements at the Venue, Witness examination, hearing etiquette, document production, and matters pertaining to the recording and confidentiality of a VAP. The Parties and the Arbitral Tribunal are requested to familiarise themselves with the Protocol and endeavour to conduct the VAP according to the same.

IV. Suitability of VAP

Even if the Parties have access to virtual hearing solutions to conduct an arbitration proceeding, consideration should be given to the suitability of conducting the proceedings, especially a hearing, virtually. The Arbitral Tribunal shall bear in mind that there have been occasions in arbitration proceedings across the globe where Parties have raised procedural unfairness issues when an Arbitral Tribunal has ordered a proceeding to be conducted virtually. Below is a non-exhaustive list of considerations an Arbitral Tribunal should consider when deciding whether or not to proceed with a VAP:

- a) existence of travel restrictions;
- b) funding issues, including the cost of arranging for airfares/accommodation for the Arbitral Tribunal, Witnesses, and Parties;

² Any and all definitions used in the VAP Protocol shall have the same meaning herein.

- c) availability and access to sufficient infrastructures such as internet and electronic resources for the Arbitral Tribunal, Parties, and Witnesses to participate fully in the proceedings;
- d) technological skills of the Parties, Witnesses, and Arbitral Tribunal involved, including whether everyone is comfortable using the Technology;
- e) number and types of Witnesses to be examined and/or cross-examined;
- f) unique requests from the Parties;
- g) complexity of the dispute;
- h) types of evidence to be produced; and
- i) need to promote time and cost efficiencies.

If one Party is compelled to appear virtually, the other Party should also appear virtually before the Arbitral Tribunal.

Where the Parties are not in agreement to conduct the proceedings virtually, in making its decision, the Arbitral Tribunal should provide reasons for nevertheless proceeding virtually or physically, either in the form of an interim ruling and/or a discussion of the same in the award, whether it be partial or final.

V. VAP Platform

The selection of the most suitable VAP Platform is essential for the efficient and effective conduct of a VAP. There are two main categories of a VAP Platform – teleconferencing platforms and videoconferencing platforms.

Both categories can be further sub-divided into:

- a) **IP-based platforms**, *i.e.*, those which rely on dedicated hardware/equipment typically found in large firms and hearing centres, such as a Polycom system; and

- b) **Cloud-based platforms**, *i.e.*, those which allow individual participants remote access through specialised software applications, such as Zoom, WebEx, Microsoft Teams, BlueJeans, and Skype for Business.

The VAP platforms available for use at the AIAC are third party solutions. The Parties and the Arbitral Tribunal shall satisfy themselves that the third party platform, equipment, and software utilised for the VAP adequately safeguard the confidentiality and privacy required of the proceedings, for example, against any hacking, illicit access, unlawful recording, or interception by third parties. The AIAC will not be liable for any data protection, confidentiality, or privacy breaches that may arise from the use of the third party VAP solution.

The AIAC has licences for the use of the Polycom System, Zoom, and WebEx to facilitate VAP. Further information on the available platforms can be obtained by contacting reservations.team@aiac.world.

VI. Test Run

At least two (2) Business Days prior to any VAP, the AIAC will conduct a test run with the Parties, Arbitral Tribunal, AIAC IT Support Specialist, and any other Participants and/or Observers. The purpose of this test run is to ensure that the selected Technology, services, and Platform work smoothly and as required for all Participants. The test run also allows the Parties and the Arbitral Tribunal to: familiarise themselves with virtual solutions, associated Technology, and functions used; request for any unforeseen technological, logistical, or administrative support from the AIAC; and/or to resolve any troubleshooting queries with respect to the Technology used to conduct the VAP.

The duration of the test run depends on the number of Participants involved, the types of Technology used, the scope of the services to be provided by the AIAC, and the complexity of any troubleshooting queries. Generally, the test run will be anywhere between 30 to 90 minutes.

The Parties and the Arbitral Tribunal shall also consider whether any individual test runs are required. This may be useful where a presiding or sole arbitrator decides to be a Host of the VAP. By allowing the arbitrator to test the Technology at his own pace, it will allow for him to be more familiar and comfortable with the Platform and thereby

giving him/her more command of its features during the VAP. If an individual test run is required, the AIAC shall be notified of the same at least two (2) Business Days prior to the test run with all Participants to ensure the smooth conduct of the VAP.

VII. Attendees

The potential attendees in a VAP are identified in Clause 4.3.1. of Part I. To safeguard the privacy and confidentiality of the VAP, it is imperative that only those authorised to be present at the VAP are provided with an electronic link to log in to the VAP.

In some instances, the Parties and the Arbitral Tribunal may consider live streaming the main hearing to authorised Observers through a designated link. If such is agreed, the AIAC must be informed to create the appropriate link and monitor the Observers.

VIII. Breakout Rooms

During a hearing, breakout rooms may be required for private deliberations. A similar mechanism can be replicated in virtual platforms such as Zoom, whereby a virtual breakout room can be created.

The Parties and the Arbitral Tribunal need to consider the number of virtual breakout rooms that may be required during a hearing. Configurations for such virtual breakout rooms may include rooms for the:

- a) Arbitral Tribunal only or Arbitral Tribunal and Tribunal Secretary;
- b) Parties and/or Party Representatives;
- c) Arbitral Tribunal and Party Representatives;
- d) Party Representatives; and
- e) Witnesses only.

For this reason, the AIAC requests for a list of Participants for each dedicated virtual breakout room to ensure that the room allocations are appropriately managed and confidentiality concerns are mitigated in a timely manner.

IX. Screensharing

Screensharing is a function of the Platform that allows a Participant to share their display screen with all other Participants in the VAP. It is advantageous where an electronic Agreed Bundle of Documents is to be used as part of the proceedings, especially in the absence of engaging a third party Electronic Presentation of Evidence (“EPE”) provider. Where the screensharing function will be used, the AIAC will run through the operation of this function with the relevant Participants during the test run.

X. AIAC IT Support Specialist

An AIAC IT Support Specialist will be assigned to every VAP. The scope of the AIAC IT Support Specialist’s role will be as follows:

- a) to provide adequate technical support to ensure that any technological difficulties encountered by the Participants are minimised;
- b) to take control of a Participant’s device remotely, with the Participant’s consent for the purpose of rendering technical assistance; and
- c) to be available on-call throughout the VAP where physical presence is not required for its entirety.

The AIAC IT Support Specialist cost is embedded into the AIAC’s VAP rates, which are available [here](#).

XI. Tribunal Secretary

The Tribunal Secretary is an optional service offered by the AIAC, pursuant to a request for the appointment of a Tribunal Secretary. For more information about the process for requesting and the associated charges for a Tribunal Secretary, please email arbitration@aiac.world or contact the case counsel in charge.

Subject to the request for the appointment of a Tribunal Secretary, the Tribunal Secretary will be a case counsel from the AIAC’s legal services team who has been trained to provide assistance in arbitral proceedings. The role and scope of responsibilities of the Tribunal Secretary are as per the AIAC’s Tribunal Secretary

Guideline and Schedule of Duties, which is available at www.aiac.world. Alternatively, the Parties and the Arbitral Tribunal may determine that the scope of the Tribunal Secretary's responsibilities is merely administrative support for the entirety of the proceedings or just the VAP.

The AIAC assumes no liability for any acts or omission by the Tribunal Secretary in the conduct of the VAP.

XII. Venue IT Support Specialist

The Participants who log in remotely from a Venue shall ensure a Venue IT Support Specialist is on standby to assist them during the VAP. The Participants are at liberty to designate the Venue IT Support Specialist of their choice. The identity of the designated Venue IT Support Specialist shall be circulated amongst the Participants of the VAP before the same takes place.

XIII. Host of VAP

The Host is the individual who has overall technological control of the VAP. The functions a Host can undertake include placing people, including a Witness, into and out of a breakout room and controlling the commencement and closure of each VAP session.

Generally, the Hosts will be the AIAC IT Support Specialist assigned to the VAP, and the Tribunal Secretary, if any, would be a co-Host where such has been agreed to by the Parties and the Arbitral Tribunal.

In some instances, sole and presiding arbitrators may also be inclined to be the co-Host of the VAP. In such a case, the AIAC can do a test run with the relevant member of the Arbitral Tribunal to ensure they are comfortable with using the Host functions. This is an option that is available in the online booking form.

XIV. Recordings of VAP

The AIAC is able to record VAP for the use of the Parties and the Arbitral Tribunal. Both audio-only and audio & video recording options are available. Guidance on the AIAC's recording services for VAP is found in the Protocol. Where the Parties and the

Arbitral Tribunal indicate that they would like a VAP recording, the same may be specified in the AIAC online booking form.

XV. Electronic Presentation of Evidence

An EPE system allows evidence to be displayed to all Participants in a VAP simultaneously. The Parties may manage the system themselves by having counsel navigate, or it may be operated and managed by a third party service provider such as Scribe, Opus 2, and Epiq with access to the Agreed Bundle of Documents.

When using an EPE, the Parties should agree on a practical naming convention to be used throughout the Agreed Bundle of Documents. Such should also be communicated to the third party service provider, if involved. This allows for the evidence to be easily displayed on the EPE and assists with keeping track of the record within the transcript.

To ensure the EPE runs smoothly, the Parties should confirm that it is compatible with the bundling format and system used for the VAP.

XVI. Declaration

By completing the AIAC online booking form, the Parties and the Arbitral Tribunal agree to use the VAP Platform at their own risk. To reiterate, the VAP Platform used by the AIAC is a third party platform. Hence, the AIAC shall not be liable for any failures, breaches of data and/or confidentiality, losses, or damages that may occur.

XVII. Ex Parte Communications

In the event that an essential Participant does not join the VAP without reasonable cause, the Arbitral Tribunal may proceed with the VAP in the absence of that Participant. To alleviate concerns regarding *ex parte* communications, the Arbitral Tribunal shall provide written reasons for proceeding in such a manner following the VAP.

XVIII. Procedural Irregularities

In the event a procedural irregularity occurs due to a technical or connectivity issue, the Arbitral Tribunal shall ensure that all reasonable measures were taken to avoid any advantages being provided to one Party. For the avoidance of doubt, if the Arbitral Tribunal is concerned that an advantage may be provided, it should adjourn the VAP until the issue can be resolved and shall provide written reasons for proceeding in such a manner.

XIX. Tips and VAP Etiquette

The following is a non-exhaustive list of tips and etiquette for the Participants to consider when preparing for or conducting a VAP. These tips and etiquette are merely recommendations and not mandatory guidelines for VAP.

General Tips

- a) Internet Connection: at times, wireless internet connection can be unstable; therefore, where possible, use an ethernet cable.
- b) Bandwidth Requirements: each Platform recommends a minimum standard of bandwidth requirements to ensure a smooth connection. Parties are advised to check the bandwidth requirements of the agreed Platform. Zoom, for example, has the following minimum requirements:³

For group video calling:

800kbps/1.0Mbps (up/down) for high quality video

For gallery view and/or 720p HD video: 1.5Mbps/1.5Mbps (up/down)

Receiving 1080p HD video requires 2.5Mbps (up/down)

Sending 1080p HD video requires 3.0 Mbps (up/down)

- c) Room Settings: quiet room, away from distractions or uninvited guests, including animals, that may disrupt the VAP.

³ See [https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#:~:text=For%201%3A1%20video%20calling%3A%20600kbps%20\(down\)%20for,%3A%2060%2D80kbps%20\(down\)](https://support.zoom.us/hc/en-us/articles/201362023-System-requirements-for-Windows-macOS-and-Linux#:~:text=For%201%3A1%20video%20calling%3A%20600kbps%20(down)%20for,%3A%2060%2D80kbps%20(down))

- d) Audio: use of a noise-cancelling headset or headphones is recommended to minimise external disruptions. Desktop speakers with a microphone with USB connectivity may be used but is not recommended.
- e) Camera: where possible, use a separate webcam from the built-in camera on a laptop, which is typically not of high quality. Position the camera at eye level.
- f) Lighting: to avoid shadowing effects and squinting, replace natural light with lamps. If using lamps, white bulbs are preferred over yellow incandescent bulbs.
- g) Background Set-up: virtual backgrounds and/or blurring functions in any form shall not be used in the VAP to ensure full confidentiality and to prohibit third party interference with the VAP, such as Witness coaching. When positioning their camera, Participants shall ensure that the background is proper, *i.e.*, neutral-coloured walls or office or library settings.
- h) Backup Communication: in the event of technological difficulties, which may be encountered, a backup communication system should be in place, with options, including external teleconference, WhatsApp, iMessage, Slack, Skype, *etc.*
- i) Screen Set-up: ideally, Participants should have more than one screen available. These may include the primary desktop, laptop, and external screens. One possible set-up is to have four screens for the (1) video stream, (2) EPE, (3) transcript, and (4) communications.
- j) Visible Participants: throughout the duration of the VAP, the Arbitral Tribunal and Party Representatives, or Parties, if not represented, shall be visible at all times. During the examination of any Witness, or Witnesses in the event of hot-tubbing, the Witnesses shall be visible to all Participants.
- k) Translation and/or Interpretation: in the event translation and/or interpretation services are required, such shall be done simultaneously. The Parties and the Arbitral Tribunal may either agree to have a Translator simultaneously translate the transcript or for an Interpreter to be present and simultaneously translate the oral submissions or Witness examinations as may be the case.

l) Disconnection:

(i) *Arbitral Tribunal member*: in the event a member of the Arbitral Tribunal is disconnected, the VAP shall stop, and the other Arbitral Tribunal members or the AIAC IT Support Specialist shall contact the disconnected Arbitral Tribunal member by means of the backup communication to resolve the issue. If the issue is not resolved within a timely manner (15-20 minutes), then the VAP shall adjourn until the technical difficulty can be resolved.

(ii) *Party Representative, or Party if not represented*: in the event a Party Representative is disconnected, the VAP shall stop and, if still connected, another individual from the Party Representative's team or the AIAC IT Support Specialist shall contact the disconnected Party Representative by means of the backup communication to resolve the issue. If the issue is not resolved within a timely manner (15-20 minutes), then the VAP shall adjourn until the technical difficulty can be resolved.

(iii) *Participant, other than those in items a and b above*: in the event a Participant is disconnected from the VAP, the VAP should continue to proceed, and the Party with whom that Participant is associated should contact the Participant using a backup communication to swiftly resolve the issue. The AIAC IT Support Specialist will be available to assist if needed.

m) Chess-clock: if the Parties and the Arbitral Tribunal decide to use chess-clock, and a technical issue arises that disrupts the VAP, such shall not be included in the calculation of how much time has been used. To ensure that enough time has been designated for the VAP, a "buffer" should be added to the time allotted for each Party as per item (o) below.

n) Connectivity: in the event the connectivity, *i.e.*, the connection to the Platform and Technology, is clear during one of the Party's submissions, examinations, *etc.*, but "spotty", "lagging", or otherwise having issues during another Party's submissions, examinations, *etc.*, the Parties and the Arbitral Tribunal should consider adjourning the VAP until the connectivity is clear.

- o) “Time Buffers” and/or Backup Dates: when determining the time allocated for the VAP, especially if the Parties and the Arbitral Tribunal have agreed to use chess-clock, the Parties and the Arbitral Tribunal should consider allocating time buffers and/or backup dates for the VAP. For any submissions, examinations, etc., that require simultaneous translation and/or interpretation, a time buffer should be allocated for such. A time buffer should also be allocated for cross-examinations. Additionally, if, for example, the connectivity, *i.e.*, connection to the Platform and Technology, is clear during one of the Party’s submissions, examinations, *etc.*, but “spotty”, “lagging”, or otherwise having issues during another Party’s submissions, examinations, *etc.*, the Parties and the Arbitral Tribunal should consider adjourning the VAP until the connectivity is clear.

- p) Independent Supervising Officer: if an Independent Supervising Officer is appointed to observe a Witness during examination and/or cross-examination, such Independent Supervising Officer shall produce an affidavit stating it is neutral, independent, and impartial of all Parties, Party Representatives, Arbitral Tribunal members, and Tribunal Secretary, and that it shall undertake the overseeing of the Witness examination and/or cross-examination to ensure no improper assistance is provided to the Witness and the evidence is given independently without any interference and influence.

- q) Venue: all Venues of the VAP, *i.e.*, the individual locations from which the participants will participate in the VAP, should have printing and emailing facilities in case documents need to be sent, viewed, and/or executed during the course of the VAP.

Before and/or During VAP

- a) The Arbitral Tribunal, Tribunal Secretary, and Party Representatives, or Parties, if not represented, shall be visible with their cameras on before and during the VAP.

- b) The Parties and the Arbitral Tribunal shall agree on the compilation and labelling of the electronic Agreed Bundle of Documents to be used in the VAP well in advance. Options for the electronic storage of the Agreed Bundle of

Documents should also be considered by the Parties and the Arbitral Tribunal, such as a virtual document repository through a cloud-based storage system, including Dropbox, Google Drive, *etc.*

- c) If hard copy bundles of documents are to be referenced during the VAP, all Participants shall have access to the relevant documents, and the hard copies must be identically paginated, collated, and labelled.
- d) Prior to any virtual hearing, the Parties and the Arbitral Tribunal shall agree to the duration and frequency of breaks throughout the VAP, as well as the logistics in respect thereof, including whether: everyone needs to sign in and sign out; everyone will be placed into breakout rooms; the video should continue running but audio set on mute, *etc.*
- e) At the outset of the VAP, the Parties shall identify the lead speaker as well as provide a list of all Participants to the Arbitral Tribunal and Transcriber, if applicable.
- f) Throughout the duration of the VAP to ensure there are minimal interruptions and the VAP proceeds smoothly, Participants shall: refrain from interrupting any speaker, use the Platform and Technology reasonably and responsibly, avoid the use of any Technology that interferes with connectivity; refrain from any unauthorised recording; mute microphones when not speaking; put other electronic gadgets on silent mode throughout the VAP; and, except for breaks, refrain from consuming food and beverages that may cause audible disruption to the proceedings .
- g) For Witness examination, Witnesses should be asked to join the VAP well in advance of the scheduled examination to ensure the VAP runs on time. Where Witnesses join the VAP prior to their scheduled examination, they can be placed in a virtual Witness waiting room and brought into the VAP by the Host once it is their turn to be examined or cross-examined as the case may be.
- h) With expert Witnesses, consider whether hot-tubbing is appropriate and, if so, how the hot-tubbing of experts in multiple locations will be managed. For instance, the Parties and the Arbitral Tribunal should decide whether

concurrent evidence be obtained in some matters and individual cross-examination on others.

- i) Where the Parties and the Arbitral Tribunal have decided to adopt the “chess-clock method”, they should determine beforehand the individuals in charge of and the mechanism for time monitoring, and consider adding “buffers” for technical issues that may be experienced during the VAP and troubleshooting thereof to ensure that the “chess-clock” procedure runs timely.
- j) Where transcription services are to be engaged, consider: whether access to live transcription will be possible and whether it is required; how live transcription will be displayed at each Venue, including the need for additional screens; whether the transcription provider’s platform allows for annotations and notes; and how daily transcriptions will be shared between the Parties and the Arbitral Tribunal.
- k) Where Translators or Interpreters are to be engaged, consider: whether a simultaneous or sequential interpretation and translation are required; whether the interpretation and translation are to be made in multiple languages which require separate audio feeds; etiquette to minimise the interruption of the interpreters; whether audio recordings of the interpretation and translation are required to verify their accuracies, *etc.* Timing should also be considered where translators are engaged as it will invariably extend the duration of the Witness examination and/or cross-examination being undertaken.
- l) Where Observers are present only to observe and are not to appear, participate, or speak in the proceedings, the Parties and the Arbitral Tribunal should consider having a separate live stream of the main proceedings through a password-protected link.

During VAP

- a) At the commencement of each VAP, the Arbitral Tribunal should verify the identities of the Participants and confirm that the Observers have been given provided access.

- b) At all times, the Arbitral Tribunal and the individual speaking should be visible to the Participants. Those not speaking should mute their audio to minimise any interference with sound/audio quality.
- c) Participants in the VAP should use their best endeavours to adhere to the Hearing Etiquette set out in Clause 5. of Part I.
- d) Screensharing should be used for the presentation of demonstrative exhibits and visual aids where possible.
- e) Witnesses Examination: either a 360-degree camera should be used or one with a wide-angle that allows for a reasonable part of the room's interior to be captured. The Witness should be in close enough proximity to the camera that he is clearly depicted. The Witness should not use virtual backgrounds and/or blurring functions. If possible, either a Party Representative from the opposing side, assistants, or an Independent Supervising Officer should be present in the room to supervise the Witness.