



KFCRI

**Guidelines for conducting
Virtual Dispute Resolution
(VDR) Proceedings**

August, 2020

Preamble

Kovise Foundation Conflict Resolution International (**KFCRI**) advocates for the proper use of Virtual Platforms in Dispute Resolution proceedings. The Major Objective of KFCRI is to mitigate disputes of all nature (Remote, Domestic and International) by applying a suitable channel of Alternative Dispute Resolution (ADR) mechanism. As a part of our effort to promote the mobilization and usage of ADR to resolve disputes, KFCRI, being a prominent service provider in ADR, has also been accentuating the practice of Online Dispute Resolution, prominently known as ODR. The COVID-19 pandemic in 2020 has resulted in restrictions on movement and gathering throughout the world. Almost all the countries have imposed a complete or partial lockdown to forestall the contamination. These restrictions have not failed to demark an imprint on Trade, Business, Commerce and the Global Economy.

There is a steady rise in the number of disputes in all segments of life. KFCRI strongly believes that the dispute resolution process should not be discouraged by any external circumstances. Disputes are inevitable and the same appertains to their Resolution also. At this juncture, it is highly essential to indulge the application of Information Communication Technology (ICT), technological development and tele-communicational advancements into the dispute resolution process. KFCRI affirms the disputing parties and dispute resolution professionals a peaceful resolution of their disputes by implication of proper checks and audits in a **Virtual Dispute Resolution (VDR)** proceeding as laid out in these Guidelines.

These Guidelines shall not only be germane for dispute resolution in this pandemic, but it is intended to facilitate a legitimate VDR process even after the pandemic. The perks of VDR have already been envisaged by KFCRI and global experts at various instances. These Guidelines are devised on the basis of the current needs and accessible technology. However, this shall be updated and amended from time to time, owing to any developments, advancements and innovations. We would be happy to incorporate the suggestions and recommendations of our Members, Well-wishers, Fellow institutions and Auxiliaries around the world.

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Objectives of the Guidelines

The Kovise Foundation Conflict Resolution International (**KFCRI**) Guidelines for conducting Virtual Dispute Resolution (**VDR**) proceedings has been drafted and released with the intent of promoting the use of virtual platforms in a dispute resolution process, thereby reckoning the use of Alternative Dispute Resolution (**ADR**) as a quick, economic and dynamic mechanism to settle disputes. The **Objectives** of these guidelines are as follows:

1. **Encourage** the use of video-conferencing, virtual meetings, video calls, web-conferencing and online platforms for conducting ADR hearings and proceedings in situations where there are impediments to hold physical hearings due to political, health, social or any other restrictions; or when the parties intend to accede their disputes to VDR.
2. **Provide** a peaceful dispute resolution process through virtual platforms with least technological glitches and interruptions.
3. **Facilitate** the selection and usage of appropriate video-conferencing platforms/applications that are suitable for the dispute and the type of ADR mechanism (Arbitration, Mediation, Conciliation, Negotiation, Hybrid Dispute Resolution Mechanisms, etc).
4. **Envisage** the steps to be taken to assure the cybersecurity and safety of VDR to the parties, representatives, neutrals and all other stakeholders connected with the resolution of a dispute.
5. **Mitigate** the issues and complications arising in a VDR.

6. **Ensure** the confidentiality and security of the VDR proceedings and hearings.
7. **Notify** the precautions and safeguard steps to be taken by the parties, neutrals and all other stakeholders before scheduling an online hearing and also during and after the hearing.
8. **Conscript** a code of conduct that should be incorporated during the VDR proceedings, by the parties, representatives, neutrals and all other stakeholders connected with the resolution of a dispute.
9. **Support** the exchange and submission of relevant documents, pleadings, evidence, reports, expert opinions, minutes and orders in an electronic or virtual format.
10. **Promote** the usage of VDR in all disputes, wherever possible.

A large, light blue watermark logo is centered on the page. It features a stylized circular emblem with a central dot and a curved line below it, resembling a speech bubble or a stylized 'K'. Below the emblem, the acronym 'KFACRI' is written in a bold, sans-serif font.

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I. Preliminary

1. Short Title

These Guidelines shall be called the ‘KFCRI Guidelines for Conducting Virtual Dispute Resolution Proceedings, 2020’. Hereinafter, this shall be referred to as “Guidelines”.

2. Definitions

For the purpose of these Guidelines:

- i. “Alternative Dispute Resolution” (ADR) means the procedure for settling disputes excluding litigation that includes arbitration, mediation, negotiation, conciliation and hybrid dispute resolution mechanism.
- ii. “Commencement of VDR Proceedings” means the beginning of the Virtual Dispute Resolution Proceedings. The VDR Proceeding is deemed to have commenced:
 - Where the Dispute Resolution Clause has a provision for VDR, the date on which the first notice of dispute resolution was received by a party.
 - Where a dispute has already arisen and the parties enter into an agreement to resolve the dispute through VDR, the date on which such agreement was signed by all the parties.
 - Where the ADR proceedings have already commenced and the Neutrals had requested and the parties have accepted the request to convert the dispute resolution proceedings conducted physically into VDR proceedings, the date of such acceptance by all the parties.
- iii. “Neutral” means an impartial or unbiased person(s) who presides over a dispute resolution proceeding and delivers a decision, order, settlement or award for resolving the disputes. A neutral shall include an Arbitrator, an Arbitral Tribunal, a Mediator and a Conciliator.
- iv. “ODR Case Manager” means a person who assists in the planning, coordination and monitoring of a VDR hearing and facilitates the Neutrals in carrying out the procedural mandate of the dispute resolution proceeding. A tribunal secretary, if appointed by the neutrals, shall continue as the ODR Case Manager or otherwise an ODR Case Manager shall be appointed by the Neutrals or the VDR service provider¹.

¹ See KFCRI Tribunal Secretary Rules, 1st Ed, 2020.

- v. “Online Dispute Resolution” (ODR) means a form of ADR which takes advantage of the speed and convenience of the Internet and Information Communication Technologies (ICT), whereby the dispute resolution process is conducted through an online forum.
- vi. “Personal Technical Aid” (PTA) means a person who is a specialist in the technical aspects of video-conferencing appointed by the Neutrals or the parties in order to assist them personally in the technical aspects and troubleshoot the technical glitches of a VDR hearing.
- vii. “VDR hearing” means a dispute resolution hearing conducted through a virtual meeting platform/application for the adjudication of the disputes with the presence of the Neutrals and the parties.
- viii. “VDR Proceedings” means the accumulation of all the VDR hearings, deliberations and correspondence of a particular dispute from the commencement till the publication of award or settlement or termination of the proceedings.
- ix. “VDR Service Provider” means any third-party establishment/institution that facilitates and specializes in the conduct of Virtual Dispute Resolution (VDR).
- x. “VDR Technician” means a person who is a specialist in the technical details of video-conferencing and facilitates the scheduling and hosting of a VDR hearing. The VDR Technician shall be appointed by the Neutrals or the VDR service provider.
- xi. “Virtual Dispute Resolution” (VDR) means a form of ODR/ADR in which settlement of disputes through online mode of communication/interaction between the disputed parties and the Neutrals either partially or wholly, without the need for a physical dispute resolution proceeding and shall also include the conduct of dispute resolution hearings through a virtual platform/application.

3. Scope of the Guidelines

The ‘KFCRI Guidelines for conducting Virtual Dispute Resolution (VDR) Proceedings’ shall set out the procedural recommendations, ethics and etiquette which may be followed by the Neutrals, the parties and other participants during a VDR Proceeding as well as a VDR Hearing if expressly agreed by them. If any provision of these Guidelines is contrary to the law of the seat, the agreed procedural law, institutional rules, the applicable substantive law or the terms of agreement between the parties, they shall prevail and these Guidelines shall not override them.

4. Future Amendments

The First Edition of the Guidelines is released in August 2020 and therefore referred to as the 'KFCRI Guidelines for Conducting Virtual Dispute Resolution Proceedings, 2020'. The Drafting Committee has drafted these Guidelines with the scope of the basic and fundamental technology available. These Guidelines shall undergo timely amendments based on the evolution of technological developments, cyber threats, cyber-space initiatives, dispute resolution regulations & alterations, practical difficulties, executional challenges, etc.



II. Elementary Considerations

1. The consent of all the parties to a dispute before commencing a VDR proceeding shall be of paramount importance. The consent and declaration of all parties to a dispute, to resort to VDR shall be affirmed through any one or all of the following methods;
 - (a) Where the agreement referred in the dispute, which expressly specifies the use of online/virtual platform to conduct hearings for resolving any dispute arising out of the agreement;²
 - (b) Where a separate VDR agreement is entered between the parties either before or after the dispute has arisen, thereby expressing their consent to employ the use of VDR;³
 - (c) Where the Neutrals have requested the use of VDR proceedings and the parties have consented for the same.
2. The parties may expressly agree on estopping from revocation of their consent to participate in the VDR proceedings after its commencement. If the parties intend to agree so, they should ensure the availability of all technical requirements stated in these Guidelines⁴ before expressing their consent. The Neutrals may have the discretion to decide on continuation of VDR proceedings, when either of the parties' request for discontinuation for any reasonable grounds thereof.
3. The feasibility of time zones of the parties, the counsels, the Neutrals and all others concerned with the dispute should be reasonably considered and agreed upon before the commencement of the VDR proceedings.
4. The most essential consideration in a cross-border dispute is that the disputing parties would attend the deliberations from different time zones. Hence, the duration and timetable of such hearings may be scheduled after considering the feasibility and obtaining the consent of all the parties.
5. The Law of the Seat shall be strictly adhered in a VDR proceeding, as if the hearings were conducted physically.
6. The parties shall not use the adoption of VDR mechanism as a ground for challenging the settlement / final award / decision if they have expressly consented⁵. However, this shall

² See *Appendix I*.

³ See *Appendix II*.

⁴ As per Guideline No.13 under Before the Proceeding – Considerations.

⁵ See *Appendix III*.

not prohibit the parties from challenging the settlement / final award / decision on any other grounds as defined by law.

7. The parties shall not indulge in any act of fraudulent nature which may give rise to reasonable doubt to the Neutrals regarding the mala fide/unethical intention of the parties during the VDR proceedings.



III. Before the Proceeding – Considerations

(Appointment of Third-Party Support)

1. The Neutrals with the consent of the parties may appoint an Institution or any other third-party as a VDR Service Provider. The VDR Service Provider shall ensure the facilitation of all administrative mandates of the Neutrals in a VDR proceeding. If a VDR Service Provider is appointed, it shall facilitate the appointment of an ODR Case Manager and VDR Technician whose role shall lie in the same lines as elaborated further below.
2. The Neutrals with the consent of the parties may appoint a VDR technician who will be responsible for the technical aspects of the VDR proceedings. The VDR technician shall not provide any other third-party support to the neutral except the technical mandates of the virtual meeting.
3. The Neutrals with the consent of the parties may appoint an ODR Case Manager to manage the administrative mandate of the VDR proceedings. The ODR Case Manager shall be appointed in similar terms and scope to the appointment of a Tribunal Secretary⁶. In case of a dispute in which the proceedings have already started physically and a Tribunal Secretary has been appointed, the same person shall continue to be the ODR Case Manager.
4. The VDR Technician and the ODR Case Manager shall be independent and impartial persons, whose role shall be to assist in the administration of VDR proceedings, as directed by the Neutrals.
5. The Neutrals may employ any other third-party support for the VDR proceedings such as a transcriber, translator, expert, etc. with the consent of the parties before the commencement of the proceedings or whenever required.
6. It is advisable that the Neutrals and each party shall appoint a Personal Technical Aid (PTA), if they are not well versed with the online-conferencing technology. The PTA shall facilitate the smooth conduct of VDR proceedings and troubleshoot technical difficulties faced by them personally.

(Schedules & Regulations)

7. The Neutrals may draft a schedule for VDR hearings after consulting with the parties. The schedule shall include the date, time and deadlines for the VDR hearings and submissions.

⁶ KFCRI Tribunal Secretary Rules, 1st Ed,2020.

8. The Neutral may either adopt the Model House-keeping & Etiquette Regulations⁷ or personally draft (or instruct the ODR Case Manager to draft) a House-keeping & Etiquette Regulations for the VDR proceedings. The Regulations shall be in accordance with the chosen type of dispute resolution and feasibility of the parties & the Neutrals. It shall consist of basic rules and guidelines to be followed during the online meetings and shall be amended by the Neutrals from time to time.
9. The parties shall submit a list of all the participants who shall participate in the VDR proceedings (i.e. Neutrals, parties, counsel, witnesses, experts, administrative secretaries, interpreters, stenographers, technicians, etc.) along with their personal and contact details to the Neutrals at least 10 days before the meeting. The Neutrals shall examine the list and approve the valid participants (and forward the same to the ODR Case Manager & VDR Technician). Only the approved participants shall be permitted for the proceedings.
10. Prior to the commencement of the VDR proceedings, the parties may agree on the terms of submission of evidence and examination of witnesses.⁸

(Virtual Infrastructure)

11. The Neutrals may choose a suitable video-conferencing platform with the consent of the parties. There are numerous virtual meeting platforms/applications available for online conferencing like Zoom, Cisco WebEx, Google Meet, Microsoft Teams, Skype, GoToMeeting, Adobe Connect, Blue Jeans, KUDO, Loopup, Vidyo Cloud, JioMeet etc.
12. While choosing the appropriate virtual meeting platforms/applications, the following facets should be deliberated:
 - a) Necessary requirements for the particular VDR proceeding, eg. video-conferencing, audio-conferencing, multi-party meetings, document exchanging/sharing applications, live transcription etc;
 - b) cyber-security;
 - c) cost;
 - d) unique requirements like breakout rooms, polls, screen-share, gallery view, etc;
 - e) the number of participants accommodated by the platform simultaneously;
 - f) other legal and technical considerations.
13. The Neutrals and all the parties shall ensure the availability of the required technology and equipment for the VDR proceedings. The essential requirements include:

⁷ See *Appendix IV*.

⁸ See *Appendix V*.

- a) Personal Computer or Laptop with proper audio and video clarity. It is advisable to not attend online deliberations through smart phones and tablets;
- b) High-speed internet connection. A hard-wired connection shall be preferable against a wireless internet connection;
- c) Web-cam or inbuilt computer camera with High Definition clarity;
- d) Audio equipment like headphone, microphone, speaker, earphone, etc. depending on individual needs;
- e) Connection to Printer/Photo-Copier/Scanner/Fax subject to requirement;
- f) 360-degree camera for witnesses who are subject to examination.

14. The cybersecurity of the VDR shall be ensured by the Neutral and the parties before the commencement of the proceedings. The ODR Case Manager (if appointed) shall submit a report of minimum cybersecurity standards of the platform/application to the Neutrals and the parties before choosing the platform. The report shall consist the following:

- a) whether the platform/application is protected with end to end encryption;
- b) whether the meetings hosted in the platform/application is password protected;
- c) whether platform/application uses multi-factor authentication;
- d) the considerable data protection policy;
- e) other cyber security considerations.

15. In addition to the platform/application selected to be used by the Neutrals and the parties for the VDR proceedings, another platform may be chosen to be used as backup in the event of any unforeseen circumstances.

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IV. During the Hearing – Considerations

(The role of the Neutrals derived from the Guidelines 1 to 8 of this Chapter may be delegated to an appointed VDR Technician, among other roles mentioned in these Guidelines)

1. The Neutrals shall (or direct the VDR Technician to) schedule and host the VDR hearings. The details of the hearings should be sent to all the approved participants.
2. The Neutrals shall (or direct the VDR Technician to) host the VDR hearings with a system generated unique meeting Id and a secured password for every hearing.
3. The Neutrals shall (or direct the VDR Technician to) ensure proper audio and video connectivity of all the participants.
4. The Neutrals shall (or direct the VDR Technician to) conduct a trial or mock at least 5 days before the first VDR hearing.
5. The Neutrals shall (or direct the VDR Technician to) ensure the connection and complete participation of all the participants throughout the hearing. If a participant is disconnected from the hearing, it shall be paused immediately. The Neutrals and other participants shall be immediately muted and their video shall be disabled in order to ensure that there is no ex-parte communication.
6. The Neutrals shall (or direct the VDR Technician to) ensure that there is no ex-parte communication in the absence of any party during the VDR proceedings.
7. The Neutrals shall (or direct the VDR Technician to) record the video of the VDR proceedings with the consent of the parties⁹.
8. The Neutrals shall (or direct the VDR Technician to) facilitate the arrangement of breakout rooms during the VDR proceedings¹⁰.

(The role of the Neutrals derived from the Guidelines 8 to 17 of this Chapter may be delegated to an appointed ODR Case Manager, among other roles mentioned in these Guidelines)

9. A trial or mock may be scheduled at least 5 days before the first VDR hearing. The invitation for the trial or mock shall be sent to the Neutrals and all approved participants. During the trial or mock the features and effective utilization of the platform/application shall be demonstrated (by the ODR Case Manager & VDR Technician). All the participants should be permitted to execute the trial run and clarify relevant doubts.

⁹ See Recording & Transcription – Considerations.

¹⁰ See Breakout Room – Considerations.

10. The Neutrals shall (or direct the ODR Case Manager to) take notes of all happenings and proceedings of the VDR hearing and record it for future reference.
11. The Neutrals shall (or direct the ODR Case Manager to) communicate the details of meeting to all the parties of the VDR proceeding.
12. The Neutrals shall (or direct the ODR Case Manager to) have the control to screen share the relevant documents during the VDR hearing. (If an ODR Case Manager is engaged in other administrative tasks such as recording minutes of the meeting, this control shall be vested with the VDR Technician)
13. The Neutrals shall (or direct the ODR Case Manager to) communicate the relevant documents submitted by the parties to the other participants in a VDR proceeding.
14. The Neutrals may (or direct the ODR Case Manager to) employ the requisite stenography services when live transcription of the proceedings is necessary as may be agreed by the parties, such as during the VDR Hearings.
15. The Neutrals shall (or direct the ODR Case Manager to) draft the procedural orders and other documents for the VDR proceedings.
16. The Neutrals shall (or direct the ODR Case Manager to) ensure that the relevant documents and details are submitted in accordance with the timeline agreed upon.
17. If an ODR Case Manager is appointed, in addition to the administrative mandate mentioned in Guidelines 8 to 13 of this Chapter, he/she shall aid the Neutrals by:
 - a) recording the minutes of all the meetings;
 - b) researching in the subject matter of the dispute;
 - c) advising on the required technical and procedural support;
 - d) drafting the procedural orders and other documents on behalf of the Neutrals;
 - e) raising invoices for all the costs incurred during the VDR proceedings.
 - f) engaging in any other task duty or task delegated by the Neutrals.
18. The Neutrals shall (or direct the ODR Case Manager to) have the control to screen share the relevant documents during the meeting. (If an appointed ODR Case Manager is engaged in other administrative tasks such as recording the minutes of proceedings, this control shall be vested with the VDR Technician, if so appointed).

V. After the Hearing – Considerations

1. The Neutrals may (or direct the ODR Case Manager to) schedule the date and time of the next VDR hearing with the consent of all the parties. The next meeting should be scheduled before a VDR hearing is concluded.
2. The Neutrals shall (or direct the ODR Case Manager to) ensure that the relevant documents and recording of the proceedings are shared with the parties as per the timeline scheduled earlier.
3. The Neutrals may have internal meetings whenever required through the platform/application. (This shall be facilitated by the ODR Case Manager, if so appointed)
4. The Neutrals shall issue/pass necessary orders or award or settlement agreement after the VDR hearing is concluded, which shall be forwarded by the Neutrals (or the ODR Case Manager, if so appointed) to all the parties within 24 hours of issuing/passing the order.
5. The Neutrals shall (or direct the ODR Case Manager to) ensure that all the documents, submissions and recordings are compiled in the cloud/online drive, where the other relevant documents of the VDR proceedings are stored.
6. The Neutrals shall (or direct the ODR Case Manager to) ensure that all the cost incurred during the VDR hearings or VDR proceedings have been apportioned and settled as consented to.

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VI. Cost – Considerations

1. The Neutrals shall ensure the payment of probable costs which may be incurred during the VDR Proceeding, such as:
 - a) The cost of the virtual meeting platform/application;
 - b) The fees of VDR technician;
 - c) The fees of ODR Case Manager;
 - d) The cost payable for cloud/online drive, in case it is a paid service;
 - e) other technical costs arising out of the virtual meetings.
2. The cost of technical equipment and the internet charges of respective participants shall not be included in the cost of the VDR proceedings.
3. The cost of the VDR proceedings shall be apportioned between the parties in any of the following ways:
 - a) the cost of each VDR hearing may be borne equally by all the parties;
 - b) the cost of every alternative VDR hearing may be paid by either party;
 - c) the cost of the entire VDR proceedings may be borne by all the parties;
 - d) at the discretion of the Neutrals;
 - e) any other manner agreed between the parties.
4. If the Neutrals with the consent of the parties had resorted to an institution as a third-party VDR Service Provider, all the costs of the VDR proceedings shall be paid through the VDR Service Provider.¹¹
5. If the ODR Case Manager is not appointed by the VDR Service Provider, his/her fees shall not be included in the payment made to the VDR Service Provider.

¹¹ See *Appendix VI*.

VII. Documents – Considerations

1. The Neutrals may direct the parties to submit all documents relevant to the VDR proceedings in an electronic or virtual format. The relevant documents may include:
 - a) Statement of Claim;
 - b) Statement of Defence;
 - c) Affidavits of both the parties;
 - d) Relevant exhibits and documents filed by the parties;
 - e) Letter of Authorisation of Counsels;
 - f) Procedural Orders;
 - g) Subsequent Orders & Interim Orders;
 - h) Notice of Hearings and Summons;
 - i) Documentary evidences;
 - j) Other relevant documents.
2. The Neutrals may also serve notices and orders to the parties to their submitted contact details¹² (email Id, telephone number) in an electronic or virtual format.
3. In a proceeding that has already commenced and the parties have filed the documents physically, the Neutrals may direct the parties to file any further documents in an electronic or virtual format. The Neutrals shall (or direct the ODR Case Manager to) convert the essential relevant documents filed physically into an electronic or virtual format.
4. The Neutrals shall (or direct the ODR Case Manager to) store the documents submitted by the parties in a cloud/online drive which shall be password protected with end to end encryption. The Neutrals and the parties alone shall have access to it.
5. All the documents which the parties shall require to display during the VDR hearings through screen share, shall be submitted at least 2 days prior to the meeting. The introduction of any new documents or evidence by the parties or their counsels shall be submitted upon the approval of the Neutrals and the other parties.
6. When a particular document is displayed through the screen share option, the Neutral shall (or direct the VDR Technician to) ensure that all the parties have simultaneous access to it. If any of the participants is unable to view the document that is screen shared, the Neutrals (or VDR technician) shall be immediately prompted regarding the same. The Neutrals shall (or direct VDR technician to) resolve the technical issue or pause the screen share.

¹² See Guideline No.9 in Before the Proceeding – Considerations.

7. If the documents require the signature of the Neutrals or the parties, a digital signature may be used for attestation. If the digital signature is not feasible, the documents shall be printed and signed physically. A scanned copy of the attested document shall be compiled by the Neutrals (or the ODR Case Manager) along with other documents and shared to all the parties.
8. It is advisable that the Neutrals use a separate screen to view the screen-shared documents, in order to enable them to have a simultaneous view of all the participants and the documents. This may be decided according to the comfort and preference of the Neutrals.



VIII. Examination of Witness – Considerations

1. The Neutral and all the parties shall conduct any examination of a witness during VDR hearing and all the participants shall be available throughout such hearing. The schedule of date and time for the examination shall be intimated to the witness at least 10 days before the commencement of examination in order to ensure the availability and presence of the witness during the chief examination, cross examination or re-examination as required by the Neutrals and the parties.
2. A witness may be called for administration of oath¹³ which shall be affirmed through either video-conferencing or by signing a declaration in writing and submitting the scanned copy of the same or both.
3. The Neutrals with the consent of the parties shall issue the terms of administering oath from the witnesses, prior to the commencement of the VDR proceedings.
4. If the law of the seat does not mandate the administration of oath, the examination of witnesses shall commence without administration of an oath, unless otherwise agreed by the parties.
5. During the administration of oath, the witness shall declare that he/she shall not refer to any documents, e-mails or external communications on the same device or any other device during the course of the examination. If the witness requires the reference to any document, the Neutral shall (or direct the ODR Case Manager to) screen share the relevant documents.
6. Prior to the commencement of examination of a witness, the Neutrals shall (or direct the ODR Case Manager to) ensure that the witness is attending the meeting alone, from a private place and not accompanied by the parties, counsel or any unauthorised person. This may be done by the use of a 360-degree camera throughout the examination, in order to prevent witness coaching and influencing the statements through prompts.
7. If the witness is unable to use a 360-degree camera, multiple devices can be used by the witness to join the meeting. The camera of each device shall focus the different parts of the room where the witness is present, thereby ensuring that he is not being coached and the authenticity of his/her testimony.
8. Prior to the examination of the witness, the Neutrals shall (or direct the ODR Case Manager to) ensure that the witness can clearly hear and see the parties and the Neutrals. The witness

¹³ See *Appendix VII*.

should have proper audio and video connectivity, to enable him/her to hear the questions of the counsel and respond accordingly.

9. The camera of the witness shall be positioned in such a way that all his gestures and facial expressions are visible to the Neutrals and the parties.
10. The witness shall not be permitted to use a virtual background.
11. The Neutrals shall have the discretion to disregard the validity of a witness, even after the examination of witnesses is completed, on the grounds of reasonable doubts like witness coaching, unfairness to either party, etc.
12. The mode of recording the cross examination of witnesses shall be decided by the Neutrals with the consent of the parties before the commencement of the examination. The examination of witnesses can be recorded either through video recording or live transcription.
13. The Neutrals with the consent of the parties may allow a witness to be accompanied by a Personal Technical Assistant (PTA) to troubleshoot any technical issues. The PTA should be visible in the camera throughout the course of examination and he shall not use a mobile phone, laptop or any device through which communication is possible during the examination. The PTA shall not have any conversation with the witness, except when required.
14. The Neutrals shall (or direct the VDR Technician to) pause the examination of a witness as soon as any party has lost connection to the VDR hearing.
15. The engagement of an Expert witness in the VDR proceeding shall be administered in the same manner as any other witnesses.

IX. Recording & Transcription – Considerations

1. The VDR proceeding may be recorded through such as video recording or live transcription.
2. The Neutrals shall (or direct the ODR Case Manager to) obtain the consent of all the parties for recording and transcription of the VDR hearings in writing before the commencement of proceeding.
3. If consented, the Neutrals shall (or direct the VDR Technician to) record the video of the VDR hearings. The parties shall not be allowed to record the proceeding and such options should be turned off before the VDR hearings.
4. The Neutral shall (or direct the VDR Technician to) store the recorded video of the VDR hearings in a cloud/online drive, protected with password and end to end encryption. The recordings shall be shared to the parties within 24 hours of the VDR hearing or as per any other agreed schedule/timeline.
5. The Neutral shall (or direct the ODR Case Manager to) employ stenography services for live transcription of the VDR hearings, the same may be done through applications such as Google sheets, Team viewer, etc. The use of these applications for live transcription ensures that the Neutrals and the parties can simultaneously view the transcription.
6. If the Neutrals or the parties do not consent to the use of any above-said applications, the transcriber shall screen share the particular document in which he is transcribing the live proceedings and ensure that all participants can simultaneously view the transcription.
7. The access to edit or change any of the transcribed documents shall be reserved to the discretion of the Neutrals.
8. The ODR Case Manager can also be requested by the Neutrals to transcribe the VDR hearings.
9. It is advisable that the Neutrals and the parties use a separate screen to view the live transcription, in order to enable them to have a simultaneous view of all the participants and the transcription. This can be decided according to the comfort and preference of the Neutrals and the parties.
10. Any other third party support for live transcription maybe utilised upon requirement of the Neutrals and the parties.

X. Breakout Rooms – Considerations

1. The Breakout room option is available in certain video-conferencing platforms/applications to facilitate privileged communications and caucus sessions in a VDR proceeding.
2. The Neutrals with the consent of the parties shall use the Breakout rooms for circumstances, provided that the particular dispute resolution mechanism permits the use of it as mentioned below:
 - a) any privileged communications between the Neutrals;
 - b) any privileged communication between the Neutrals and the ODR Case Manager or the VDR Technician;
 - c) private counselling;
 - d) private caucus sessions;
 - e) any other breakout room sessions agreed by the parties and the Neutrals.
3. The Breakout rooms shall be facilitated by the Neutral (or VDR Technician). During the breakout room sessions, the other participants shall stay online in the main hearing room, but outside the breakout room.
4. The Breakout rooms shall be allocated on the discretion of the Neutrals. If the parties have already agreed on breakout room sessions, the details of participants to be included in a particular breakout room shall be submitted to the Neutrals prior to the meetings. However, the Neutrals shall have the discretion to request a breakout room session, even if it was not scheduled earlier.
5. During a breakout room session, the Neutrals (or VDR Technician) shall ensure that the parties other than those approved by the Neutrals, do not enter the breakout room. It should also be ensured that the other participants who are waiting in the main hearing room are unable to hear or see the breakout room proceedings.
6. The proceedings in a breakout room shall not be recorded as video or transcribed, except otherwise agreed by the parties.

XI. Cybersecurity – Considerations

1. The Neutrals and the parties shall take necessary precautions and measures to ensure the confidentiality and security of the information processed in relation to the VDR proceedings as appropriate.
2. The Neutral shall (or direct the VDR Technician to) ensure that all hearings are scheduled with system-generated unique Meeting ID for every hearing. It is of paramount importance to ensure that all the hearing shall require a password for any participant to enter.
3. The Neutrals and parties shall confer in advance of the commencement of the VDR proceedings as to what reasonable cyber security measures are to be taken to safe-guard sensitive information and amicable conduct of the VDR proceedings.
4. The Neutrals and the parties shall identify any sensitive data, confidential data or data of personal nature which is to be shared and take initiative to minimize its use and mitigate its vulnerability.
5. The Neutrals with the consent of the parties shall (or direct the ODR Case Manager to) ensure a reasonable back-up of all relevant documents, recordings and all the submissions of the VDR proceedings. It is advisable that the back-up be stored in three different storage media, i.e. Two different hard drives (preferably one with the Neutrals and one with the ODR Case Manager) and one cloud/online drive.
6. All the devices, video conferencing platforms/applications, document sharing software, storage drives or clouds, back-up data and any other relevant media are advised to be protected with gateway security such as passwords, unlock codes, biometric identifications, etc.
7. The passwords used to ensure cybersecurity of the relevant VDR data should be strong (minimum 8 letters and at least comprise of one Uppercase & Lowercase alphabet, a number and a special character such as \$, &, #, *, !) and the passwords should be changed at regular intervals.
8. It is advisable to enable multi-factor authentication like One-Time password in addition to the security password.
9. The user privileges granted to the parties in the relevant VDR documents and storage cloud/drive should be periodically reviewed. It is advisable that the parties are granted access only to view the documents and not make any alterations after submission.

10. The data being transmitted during the VDR proceedings or stored in the cloud/drive should remain inaccessible to an intruder or unauthorised participant through encryption of such data. Encryption is the process of deciphering the data, whereby the data becomes unreadable to any intruder or unauthorised participant during the process of transmission or storage. The Neutrals and the parties shall ensure that the technology and infrastructure used has encryption software embedded in it.
11. The Neutrals and the parties shall refrain from the use of unprotected public internet or Wi-fi networks for VDR proceedings or transmitting any relevant data. The Public internet or Wi-Fi network available in restaurants, hotels, airports or any other public forum shall be vulnerable to any illegal interception or intrusion or interruption of data transmission or storage.
12. It is advisable to not use any portable storage media such as Universal Serial Bus (USB) or other portable peripheral devices (such as thumb/pen drives) for the transmission and storage of data.
13. The Neutrals and the parties shall ensure the application of cyber-security parameters such as anti-malware, anti-spyware, anti-virus, firewalls and other software available for continuous protection of data.
14. The Neutrals and the parties shall make any other arrangements and provisions to secure and establish the cybersecurity of VDR hearings and proceedings.

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Appendix 1

Arbitration Clause with provision for VDR

“Any dispute, conflict, differences or claim arising out of or in relation to this agreement, including any question regarding its validity, breach, dereliction, infringement, existence or termination of the legal relationships established by this agreement, shall be finally resolved by arbitration under the _____ (Applicable Procedural Law). It is agreed that

- The Number of Arbitrators shall be _____.
- The Place of the Arbitration shall be _____.
- The Language of the Arbitration shall be _____.

The Arbitration proceedings and hearings shall be conducted virtually, where the disputes are capable of being determined fairly through virtual hearings or it is unable to resolve the disputes through physical hearings for any reason thereof and the Arbitral tribunal has issued an order directing the same. The Arbitrators and the parties shall agree upon the procedure and etiquette which may be followed in the Virtual Dispute Resolution proceedings.”*

*This Arbitration Clause may be altered for application of other dispute resolution mechanisms such as Mediation, Conciliation etc.

*The ‘KFCRI Guidelines for conducting Virtual Dispute Resolution (VDR) Proceedings’ may be referred for the procedure and etiquette which may be followed in the Virtual Dispute Resolution proceedings.

Hybrid Dispute Resolution Clause with provision for VDR

“Any dispute conflict, differences or claim arising out of or in relation to this agreement, including any question regarding its validity, breach, dereliction, infringement, existence or termination of the legal relationships established by this agreement, which cannot be resolved by negotiation between the parties within ___ days of either party giving notice to the other party that a dispute has arisen shall be submitted to mediation pursuant to the _____ (Any Mediation Rules) failing settlement of that dispute by mediation within ___ days thereafter, the dispute shall be submitted by any party for final resolution by arbitration by ___ (Sole/Three) arbitrator(s) conducted in _____ (Place of Arbitration) in the _____ (Language of Arbitration) language and in accordance with the _____ (Applicable Procedural Law).

The Dispute Resolution proceedings and hearings (Negotiation, Mediation and Arbitration accordingly) shall be conducted virtually, where the disputes are capable of being determined fairly through virtual hearings or it is unable to resolve the disputes through physical hearings for any reason thereof and the Neutrals have directed the same. The Arbitrators and the parties shall agree upon the procedure and etiquette which may be followed in the Virtual Dispute Resolution proceedings.”*

*The ‘KFCRI Guidelines for conducting Virtual Dispute Resolution (VDR) Proceedings’ may be referred for the procedure and etiquette which may be followed in the Virtual Dispute Resolution proceedings.

Appendix 2

Model VDR Agreement

Where the dispute resolution proceedings has not been commenced

Agreement between _____ & _____ to resort to VDR proceedings

“The disputes, conflicts, differences or claims that have arisen pursuant to clause ___ of the _____ (Agreement in dispute) entered between the parties for the purpose of _____ shall be resolved through Virtual Dispute Resolution with virtual hearings regarding the preliminary meetings, deliberations, claims, defences, arguments, pleadings, oral submissions, written submissions, examination of witnesses and parties. The hearing shall be conducted virtually and the KFCRI Guidelines for conducting Virtual Dispute Resolution Proceedings shall be referred for the incorporation of procedure and etiquette which may be followed in the Virtual Dispute Resolution proceedings.

All other prospects of the dispute resolution shall be governed in accordance with the dispute resolution agreement in clause ___ of the _____ (Agreement in dispute) and the applicable law agreed by the parties. It is further agreed that no objection shall be raised by either of parties against any direction of the Neutrals (Arbitrator or Arbitral Tribunal or Mediator or Conciliator) regarding the conduct of the Virtual Dispute Resolution Proceedings.

- The VDR platform/application to be used for the conduct of the VDR hearings and proceedings shall be _____.
- The parties agree that _____ shall be the unique requirement(s) for the VDR proceedings and that the chosen VDR platform/application fulfils the same.
- The Cloud/Online Drive to be used for storage and communication of documents and files relevant to the VDR hearings and proceedings shall be _____.
- The parties agree and affirm the availability of sufficient and requisite technology and infrastructure to effectively participate in the VDR hearings and proceedings.
- The parties agree to a fixed schedule (To be attached) after reasonable considerations of the feasibility of the varied time zones of the participants.
- The appointed VDR Service Provider shall be _____. (Details to be attached)
- The appointed VDR Technician shall be _____. (Details to be attached)

- The appointed ODR Case Manager shall be _____. (Details to be attached)
- The parties agree to the appointment of Personal Technical Aids (PTA(s)) by any of the participants, upon intimation.
- The parties agree that all files, evidence and any other document relevant to the VDR proceedings shall be submitted and communicated in electronic format hereafter.
- The parties agree that the VDR proceedings and hearings shall be recorded through _____ (video recording and/or method of transcription).
- The parties agree that the witnesses of all the parties shall be examined (chief, cross and re-examination) during the VDR proceedings.
- The parties agree that they shall adhere to the “Housekeeping and Etiquette Regulation” as determined by the Neutrals and the parties.
- The parties agree to take utmost care in relation to maintenance of cybersecurity and not indulge in any act that might result in the disruption/corruption of confidential data and documents in the VDR proceedings.
- The parties agree to apportion the cost arising out of the conduct of VDR proceedings _____ (equally/any other manner agreed between the parties).”
- The parties declare that they shall not indulge in any act of fraudulent nature which may give rise to reasonable doubt to the Neutrals regarding the mala fide/unethical intention of the parties during the VDR proceedings.

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Where the dispute resolution proceedings has commenced

Agreement between _____ & _____ to shift the dispute resolution to VDR proceedings

“In reference to the dispute resolution proceedings of _____ vs. _____ (Case No. _____ of 2020), the dispute resolution proceedings and hearings which have so far been conducted physically until _____ (Date of last physical hearing) shall be resumed through Virtual Dispute Resolution with virtual hearings regarding the preliminary meetings, deliberations, claims, defences, arguments, pleadings, oral submissions, written submissions, examination of witnesses and parties. The hearing shall be conducted virtually and the ‘KFCRI Guidelines for conducting Virtual Dispute Resolution Proceedings’ shall be referred for the incorporation of procedure and etiquette to be followed in the Virtual Dispute Resolution proceedings.

All other prospects of the dispute resolution shall be the same as agreed by the parties for the physical hearings. It is further agreed that no objection shall be raised by either of the parties against any direction of the Neutrals (Arbitrator (or) Arbitral Tribunal (or) Mediator (or) Conciliator) regarding the conduct of the Virtual Dispute Resolution Proceedings.

- The VDR platform/application to be used for the conduct of the VDR hearings and proceedings shall be _____.
- The Neutrals and the parties agree that _____ shall be the unique requirement(s) for the VDR proceedings and that the chosen VDR platform/application fulfils the same.
- The Cloud/Online Drive to be used for storage and communication of documents and files relevant to the VDR hearings and proceedings shall be _____.
- The Neutrals and parties agree and affirm the availability of sufficient and requisite technology and infrastructure to effectively participate in the VDR hearings and proceedings.
- The Neutrals and the parties agree to a fixed schedule (To be attached) after reasonable considerations of the feasibility of the varied time zones of the participants.
- The appointed VDR Service Provider shall be _____. (Details to be attached)
- The appointed VDR Technician shall be _____. (Details to be attached)
- The appointed ODR Case Manager shall be _____. (Details to be attached)

- The Neutrals and the parties agree to the appointment of Personal Technical Aids (PTA(s)) by any of the participants, upon intimation.
- The Neutrals and the parties agree that all files, evidence and any other document relevant to the VDR proceedings shall be submitted and communicated in electronic format hereafter.
- The Neutrals and the parties agree that the VDR proceedings and hearings shall be recorded through _____ (video recording and/or method of transcription).
- The Neutrals and the parties agree that the witnesses of all the parties shall be examined (chief, cross and re-examination) during the VDR proceedings.
- The Neutrals and the parties agree that they shall adhere to the “Housekeeping and Etiquette Regulation” as determined by the Neutrals and the parties.
- The Neutrals and the parties agree to take utmost care in relation to maintenance of cybersecurity and not indulge in any act that might result in the disruption/corruption of confidential data and documents in the VDR proceedings.
- The parties agree to apportion the cost arising out of the conduct of VDR proceedings _____ (equally / any other manner agreed between the parties).
- The parties declare that they shall not indulge in any act of fraudulent nature which may give rise to reasonable doubt to the Neutrals regarding the mala fide/unethical intention of the parties during the VDR proceedings.

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Appendix 3

Declaration by the parties that Award shall not be challenged

In the Case of

_____ v. _____

(Case No. _____ of 2020)

“We, the undersigned parties hereby whole-heartedly declare and consent to the conduct of Virtual Dispute Resolution proceedings for the above referred case and shall abide by the order and directions of the Neutrals (Arbitrator or Arbitral Tribunal or Conciliator). It is further agreed that the parties shall not challenge the decision, order, or award of the Neutrals on the ground that the hearing regarding the dispute was conducted virtually or through VDR. The parties, however shall not be deprived of their right to challenge the decision, order, or award on any other ground permitted by the applicable law or terms of agreement.” *

*This ADR Clause may be altered for application of other dispute resolution mechanisms such as Mediation.

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Appendix 4

Model Housekeeping Rules and Etiquette Regulations

1. The Neutrals and the parties shall decide and adhere to the schedules/timetable of VDR hearings taking into consideration the different time zones of the Neutrals and other participants.
2. The Neutral and the participants shall ensure that they attend the mock/trial conducted before the first VDR Hearing.
3. The name of all the virtual meetings shall be the Cause Title or the assigned Case Number.
4. The Neutrals and the participants are should to log-in/join the VDR Hearing platform/application at least 15 minutes prior to the commencement of the hearing, in order to examine the following:
 - a. Internet connectivity
 - b. Video quality
 - c. Audio quality
 - d. Any other technical issues which needs to be rectified
5. The device/screen used to participate in the VDR hearing should not be available for other purposes and the participants must disable any pop-up notifications within platforms/applications such as Outlook and Skype to prevent these from appearing on screen during the VDR proceedings.
6. The Neutrals and the participants must keep away any other device such as mobile phones, etc., which could cause disturbance or affect the internet connection, audio or video quality during the VDR hearing.
7. The Neutrals and the participants should not join the VDR hearing with multiple devices from the same venue. If it is required to do so, the audio shall not be connected in more than one device.
8. The Neutrals and the participants may determine whether they would like to connect with computer speakers/microphones or headphones to ensure best quality communication.
9. The Neutrals and the participants should have their microphones unmuted even when they are not speaking. The participants shall take necessary precautions to ensure that there are no audio interruptions such as background noise, echo, etc during the VDR hearing.
10. It is preferable for the Neutrals and participants to use good quality webcams which support High-Definition video clarity and ensure proper lighting. Backlighting is not desirable.

11. The Neutrals and the participants should not use any virtual backgrounds during the VDR hearings.
12. The Neutrals and all the participants shall not turn off their video throughout the VDR hearings.
13. The Neutrals and the participants must display their full name and designation throughout the meeting to avoid any misrepresentation (For Eg. Karl Specter, Counsel for Claimant).
14. The options of “private chat” and “recording by participants” shall be disabled to ensure the security of VDR proceedings.
15. The Neutrals and the parties shall ensure that their voice is clear and audible when they speak. It is of paramount importance for them to listen carefully and not interrupt or cause any disturbance when other participants are speaking.
16. The Neutrals and the participants shall adhere to the dress code as business formals.
17. If there are any technical difficulties, the particular participant shall immediately inform the Neutral (and the VDR Technician) as well as the other participants for the same. He/she shall try to mitigate any such circumstances and have arranged for back-up internet or Wi-Fi networks.

The logo for KFECRI is a large, light blue circular emblem. It features a stylized, swirling design in the center that resembles a flame or a dynamic wave. Below this central graphic, the acronym 'KFECRI' is written in a bold, sans-serif font. The entire logo is centered on the page.

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Appendix 5

Terms of Submission of Evidence and Examination of Witness

1. The parties shall file their written submissions before the Neutrals with their allegation of facts & law in a detailed, specific and comprehensive manner in .pdf format with their respective electronic signatures adduced or scanned copy of the physically signed documents.
2. The Parties shall submit an electronic version of their written submissions, including the briefs, expert reports and witness statements, and an index of their exhibits and legal authorities by email (preferably, .pdf format) to the other disputing party and to the arbitrators in accordance with the scheduled agreed.
3. The Neutrals shall not receive any evidence that has not been introduced with the electronic written submissions, unless the Neutrals determine that exceptional circumstances exist.

Documents

4. The Parties shall identify each exhibit submitted in electronic format to the Neutrals with a distinct number.
5. The Parties shall submit all exhibits in chronological or other appropriate order. A list describing each of the exhibits by exhibit number, date, type of document, author and recipient, as applicable, shall be included at the beginning of each exhibit file.
6. All exhibits and legal authorities shall be submitted in the original language together with a translation into English (if the document is in a language other than English).
7. All the documents submitted to the Neutrals in electronic form shall be deemed to be authentic unless disputed by the other party.
8. The Parties shall either submit all documents to the Neutrals in a complete form or indicate the respects in which any document is incomplete.

Witness

9. Any person may present a testimony as a witness, including a Party or a Party's officer, employee or other representative.

10. For each witness, a written and e-signed witness statement shall be submitted to the Neutrals (preferably in .pdf format). A witness who has not submitted a written witness statement may provide testimony to the Neutrals only in extraordinary circumstances and upon a showing of good cause. If these conditions are met, the other Party shall be given an appropriate opportunity to respond to such testimony.
11. Witness statements shall be submitted in electronic format together with the Parties' written submissions.
12. Each Party shall be responsible for summoning its own witnesses to the applicable VDR hearing, except when the other Party has waived cross-examination of a witness and the Neutrals do not direct his or her appearance.
13. Each Party shall bear the costs of appearance of its own witnesses. The Neutrals will decide upon the appropriate allocation of such costs at the time the VDR is concluded.
14. At the request of a Party, the Neutrals may summon the witnesses to appear.
15. If a witness could not appear during the scheduled dates or without notice fails to appear when first summoned to a VDR hearing, the Neutrals may, at its discretion, summon the witness to appear a second time, if it is satisfied that:
 - a) there was a compelling reason for the witness' first failure to appear;
 - b) the testimony of the witness is relevant to the adjudication of the dispute; and
 - c) providing a second opportunity for the witness to appear will not unduly delay the proceeding.
16. If required, the Neutrals shall make a procedural order prior to the first VDR hearing with respect to the language in which the witnesses will testify and the requirements for the translation of any testimony in a language other than English.

Appendix 6

Cost of VDR Service Provider

A VDR Service Provider shall be any third-party establishment/institution that facilitates and specializes in the conduct of VDR proceedings. The VDR Service provider shall ensure the fulfilment of all administrative mandates of a VDR proceeding with a reasonable fee/charge for the services. The Neutrals with the consent of the parties, if decides to engage a VDR Service Provider, all the cost of VDR hearings and proceedings shall be taken care by the service provider. The Neutrals shall ensure the payment of all the costs of the VDR Service provider. The probable fees of the VDR Service Provider shall include:

- 1) Cost of conduct of VDR hearings online;
- 2) Cost of maintenance and communication of electronic documents and files;
- 3) Cost of recording of proceedings and storage;
- 4) Fees of VDR Technician;
- 5) Fees of ODR Case Manager (if appointed by the VDR Service Provider);
- 6) Fees of Transcripator (if employed);
- 7) Cost of any application or software desired by the Neutrals and parties;
- 8) Applicable service charge;
- 9) Any other Expenses in relation to the VDR hearings and proceedings.

Appendix 7

Witness oath

“In accordance with the ‘KFCRI Guidelines for Conducting Virtual Dispute Resolution Proceedings’ I _____ (Name) c/o _____ (Guardian’s Name) residing at _____ swear to follow the Guidelines and the Neutral’s procedures regarding the accuracy and truthfulness of my testimony, to the best of my ability. I affirm that there is no one else with me in the location from where I am connecting, except authorized attendees and that I will not be communicating with any of the parties or their representatives during the course of my testimony, and that I am not being assisted in the presentation of my testimony except as authorized by the Neutrals.”



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