



KFCRI TRIBUNAL SECTARY RULES

[1st Edition, 1 April 2020]

KFCRI

KOVISE FOUNDATION CONFLICT RESOLUTION INTERNATIONAL
Chennai, India

1. Scope of Application and General Provisions

In all arbitrations where a Tribunal Secretary from KFCRI's Tribunal Secretary Panel has been appointed, the Arbitral Tribunal along with the parties shall adopt these Rules. In case the appointed Tribunal Secretary is not from the KFCRI's Tribunal Secretary Panel, the tribunal shall express its consent to the Committee and the Committee reserves the right to grant such allowance. In case of arbitrations administered by an institution, the parties may adopt these rules with the consent of the Committee.

- 1.1. The interpretation of the terms of these Rules shall vest with the Committee. The Committee shall decide upon the scope of application of these rules as it deems appropriate.
- 1.2. If a Tribunal Secretary is appointed, the tribunal shall undertake to comply with the provisions below. Nothing in this clause shall contravene the provisions of rules 1.5 and .16.
- 1.3. In case of Tribunal Secretaries appointed by the Arbitral Tribunal in arbitrations administered by institutions, by adopting these rules, the Tribunal and the Tribunal Secretaries are also subject to the provisions of these rules.
- 1.4. In the event of any disparity between the provisions of this Rules and the provisions of the arbitration agreement, the latter shall prevail.
- 1.5. In the event of any disparity or inconsistency between the provisions of this Rules and the mandatory provisions of the applicable law or rules of arbitration, the latter shall prevail.

- 1.6. In the case of Domestic Arbitrations with the Juridical Seat/Place of Arbitration within the boundaries of India, Tribunal Secretaries under these rules will also be bound by Section 6 of the Arbitration and Conciliation Act, 1996.

2. Definitions

- 2.1. In these rules, unless the context otherwise require,-
- a) “Institution” means KFCRI or any other arbitral institution which appoints tribunal secretary for its arbitration in accordance with the KFCRI Tribunal Secretary Rules, 1st Edition
- 2.2. The words and expressions used in these rules but not defined hereunder, but defined in the KFCRI Arbitration Rules, 2020, such words and meanings shall have the meanings respectively assigned to them in the KFCRI Arbitration Rules, 2020.

3. Appointment, Removal and Withdrawal of Tribunal Secretaries

- 3.1. A Tribunal Secretary may be appointed or removed by the Arbitral Tribunal only after consulting with the parties. The Arbitral Tribunal has complete discretion to select an appropriate candidate as a Tribunal Secretary considering the circumstances of the case.

3.2. A proposed Tribunal Secretary shall be required to sign a declaration (Annexure 1) authenticating his/her availability and his/her independence and impartiality at any time before his/her appointment as secretary.

3.3. A proposed Tribunal Secretary shall be required to sign a form of declaration (Annexure 2) revealing any of the circumstances, which in the view of the secretary is likely to create sustainable doubts regarding his/her impartiality.

3.4. The Arbitral Tribunal shall after consulting with the parties regarding the appointment of a Tribunal Secretary, shall inform the parties about the proposed Tribunal Secretary and disclose his/her identity at any time before the appointment. The tribunal shall forward the following documents to the parties, unless otherwise agreed by the parties, and request their comments about the proposed Tribunal Secretary.

- (a) The curriculum vitae of the proposed Tribunal Secretary;
- (b) The forms of declaration as mentioned in rule 3.2 or 3.3;
- (c) A copy of these rules.

3.5. The tribunal shall appoint the proposed Tribunal Secretary only after considering the parties' comment for the documents sent for consideration as per Rule 3.4

3.6. A Tribunal Secretary is deemed to be appointed, once the notice of appointment is received by all the parties to the arbitration. The addition of parties subsequently to the arbitration does not affect the appointment of Tribunal Secretary.

3.7. If any party to the arbitration, at any time after the appointment of the Tribunal Secretary, intends to raise an objection regarding the impartiality or independence of the secretary, he shall do so by sending a notice of objection. The notice of objection must be sent within 15 days from the date on which the objecting party received notice of appointment of Tribunal Secretary.

3.8. The notice of objection shall be sent to the Arbitral Tribunal, the Tribunal Secretary, and all other parties, pursuant to Rule 3.7. The notice shall be in writing.

3.9. The Arbitral Tribunal shall decide the objection on consultation with the objecting party and all other parties to the arbitration. The decision of the Arbitral Tribunal regarding the objection shall be final. If the tribunal decides that the objection is sustained, the Tribunal Secretary shall be removed from appointment. If the decision for objection is pending, the Tribunal may continue with the proceedings. The Tribunal Secretary shall not undertake any work in relation to the determination of objection.

3.10. A Tribunal Secretary shall be subject to the same standard of impartiality and independence as that of the Arbitral Tribunal. If any justifiable doubts regarding the impartiality and independence of the Tribunal Secretary arise, it is to be disclosed by the Tribunal Secretary to the tribunal and the parties. If any of the parties to arbitration raise a justifiable doubt or an objection, the procedure set out in Rules 3.7, 3.8 and 3.9 shall apply.

3.11. Where two or more arbitrations are consolidated the Arbitral Tribunal in the consolidated proceedings may, after consulting with the parties, continue the

appointment of any existing Tribunal Secretary or appoint a new Tribunal Secretary.

3.12. The arbitral tribunal or the institution shall remove the tribunal secretary at any time during the arbitral proceedings for any reason as the tribunal may deem fit. The notice of removal of the tribunal secretary shall be sent to the secretary, the parties and all others associated with the arbitration before 1 month of removal of the secretary.

3.13. The tribunal secretary may withdraw his appointment at any time during the arbitral proceedings with the consent on the arbitral tribunal. The withdrawing tribunal secretary shall send notice of withdrawal to the parties, the institution, the arbitral tribunal, and all others in arbitration. The tribunal shall confirm his/her withdrawal within 30 days of receiving the notice.

4. Duties

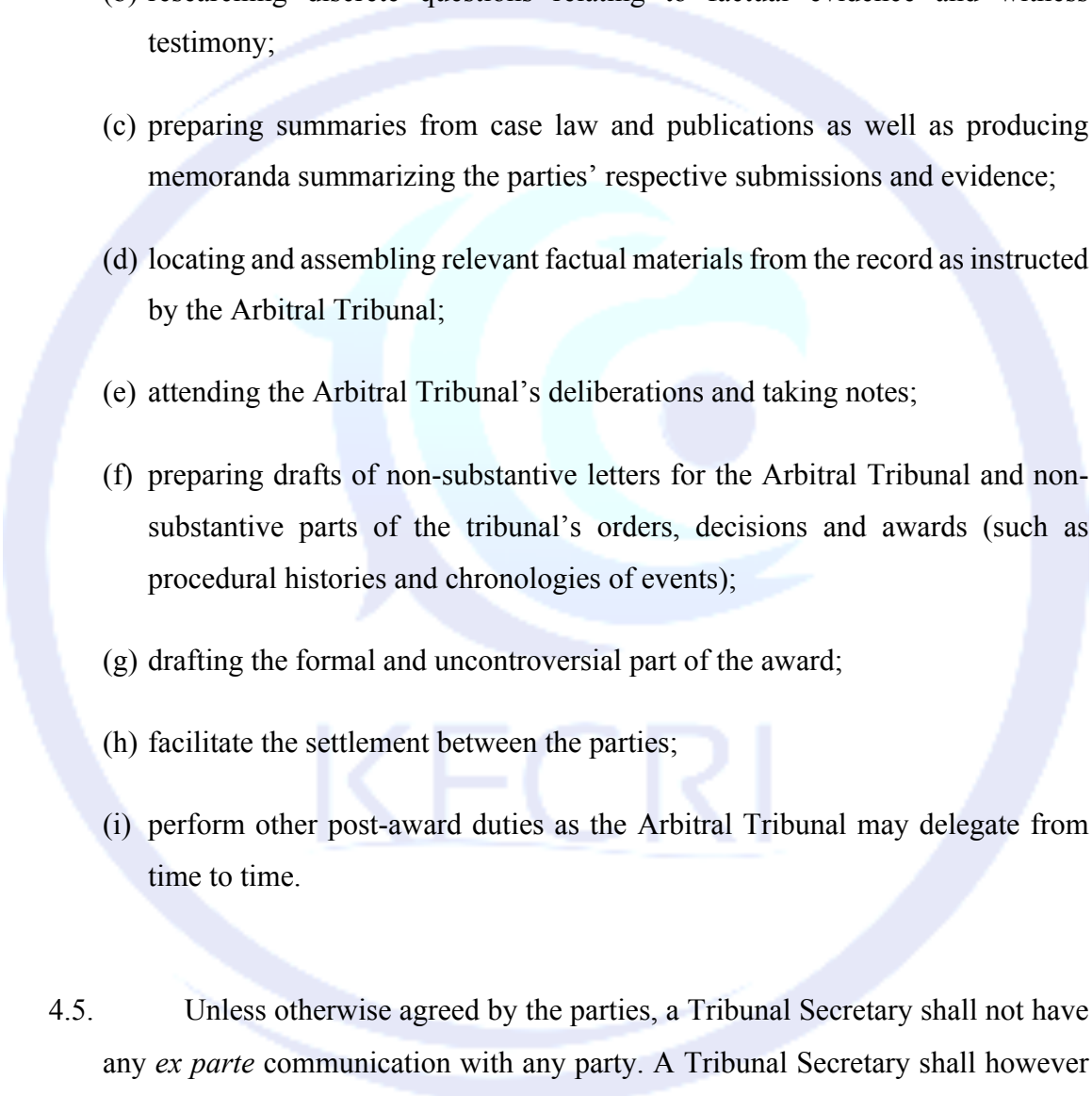
4.1. A Tribunal Secretary appointed by the Arbitral Tribunal shall not act beyond the tribunal's instruction or exceed the scope of authority assigned to him/her. The Arbitral Tribunal shall have strict and complete supervision of the Tribunal Secretary and shall at times be responsible for the conduct of the Tribunal Secretary in connection with the arbitration.

4.2. No decision-making function of the Arbitral Tribunal shall be delegated to the Tribunal Secretary. The secretary shall not be relied to perform any essential duty or mandate of the tribunal.

4.3. Unless the Arbitral Tribunal directs otherwise, a Tribunal Secretary may perform organizational and administrative tasks including, but not limited to, the following:

- (a) transmitting documents and communications on behalf of the Arbitral Tribunal;
- (b) organizing and maintaining the Arbitral Tribunal's files and locating documents;
- (c) organizing hearings and meetings;
- (d) attending hearings and meetings; taking notes or minutes or keeping time;
- (e) proofreading and checking citations, dates and cross-references in procedural orders, directions, and awards, as well as correcting typographical, grammatical or calculation errors;
- (f) preparing, collecting and transmitting the Arbitral Tribunal's invoices;
- (g) creating and maintaining a procedural calendar for the arbitration;
- (h) setting up cyber security and other technological assistance for the tribunal;
- (i) Handling all other organizational and administrative matters which do not fall under the scope of responsibilities of the institution in institutional arbitration;
- (j) Coordinating externally and providing specialized administrative support.

4.4. Unless the parties agree or the Arbitral Tribunal directs otherwise, a Tribunal Secretary may provide the following assistance to the Arbitral Tribunal, provided that the Arbitral Tribunal ensures that the Tribunal Secretary does not perform any decision-making function or otherwise influence the Arbitral Tribunal's decisions in any manner:

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- (a) conducting legal or similar research; collecting case law or published commentaries on legal issues defined by the Arbitral Tribunal; checking on legal authorities cited by the parties to ensure that they are the latest authorities on the subject matter of the parties' submissions;
 - (b) researching discrete questions relating to factual evidence and witness testimony;
 - (c) preparing summaries from case law and publications as well as producing memoranda summarizing the parties' respective submissions and evidence;
 - (d) locating and assembling relevant factual materials from the record as instructed by the Arbitral Tribunal;
 - (e) attending the Arbitral Tribunal's deliberations and taking notes;
 - (f) preparing drafts of non-substantive letters for the Arbitral Tribunal and non-substantive parts of the tribunal's orders, decisions and awards (such as procedural histories and chronologies of events);
 - (g) drafting the formal and uncontroversial part of the award;
 - (h) facilitate the settlement between the parties;
 - (i) perform other post-award duties as the Arbitral Tribunal may delegate from time to time.

4.5. Unless otherwise agreed by the parties, a Tribunal Secretary shall not have any *ex parte* communication with any party. A Tribunal Secretary shall however have *ex parte* communication, if directed by the Arbitral Tribunal or the institution, in case of institutional arbitration.

- 4.6. The Arbitral Tribunal shall not be relieved from its duty to personally review the relevant files and materials on requesting a Tribunal Secretary to prepare notes, memoranda or drafts. The Arbitral Tribunal shall also not delegate its duty to draft any substantive parts of its orders, decisions and awards.
- 4.7. Unless otherwise agreed by the parties, a Tribunal Secretary shall maintain confidentiality of the arbitration and decisions made by the Arbitral Tribunal.
- 4.8. A Tribunal Secretary shall not be liable for any act or omission in connection with the arbitration, unless where such act was done or omitted to be done dishonestly or intentionally.
- 4.9. A Tribunal Secretary shall not be under any obligation to make statements to any person about any matter concerning the arbitration.
- 4.10. Neither the Tribunal nor a party shall seek to make the Tribunal Secretary a party or witness in any legal or other proceedings arising out of the arbitration.
- 4.11. Notwithstanding anything contained in these rules, the Arbitral Tribunal shall not delegate any duties to the Tribunal Secretary, which the tribunal or institution considers as essential mandate of the tribunal or the institution in case of institutional arbitration.

5. Remuneration

- 5.1. Unless otherwise agreed, the Tribunal Secretary's remuneration shall be allocated by the arbitral tribunal or the institution in any of the following ways:
- a. Inclusion in the arbitration costs

- b. Allocation from the Arbitrator's fees
- c. Allocation from the institutional fees.

5.2. Unless otherwise agreed, the Tribunal Secretary's remuneration shall be not less than 10 percent of the arbitrator's fee in case of sole arbitrator. In the event of an Arbitral Tribunal, the Tribunal Secretary's fees shall not be less than 10 percent of one of the arbitrator's fees. Nothing herein contained shall restrict the institution or tribunal from fixing the remuneration of Tribunal Secretary at any rate above the 10 percent of the arbitrator's fee.

5.3. Where the fees of the Arbitral Tribunal are determined based on the amount in dispute, fees of a Tribunal Secretary shall form part of the Arbitral Tribunal's fees. Where the Arbitral Tribunal is composed of three arbitrators, the fees of a Tribunal Secretary shall in principle be shared equally among the members of the Arbitral Tribunal, unless the tribunal decides otherwise.

5.4. The tribunal secretary shall be remunerated on an hourly basis if the fees of the tribunal is determined on an hourly basis, or as the tribunal may deem fit.

5.5. The apportionment, rate and amount of tribunal secretary's fees shall be in accordance with Annexure 3 of these rules.

5.6. In case of removal of Tribunal Secretary, the Arbitral Tribunal shall decide the amount of fees and expenses payable for the removed Tribunal Secretary's services (if any), having taken into account the circumstances of the case.

5.7. The Arbitral Tribunal or the institution in case of institutional arbitration shall take into consideration, the Tribunal Secretary's remuneration before fixing an advance on the costs of arbitration.

5.8. A Tribunal Secretary's expenses shall be borne by the parties and reimbursed in accordance with rules 5.9 and 5.10 below.

5.9. A Tribunal Secretary required to travel outside his or her usual place of residence or business for the purpose of the arbitration shall:

(a) be reimbursed the cost for expenses he or she reasonably incurs travelling from and returning to his or her usual place of residence or business, including inter alia airfares, train fares, transport to and from an airport or train station, upon receipt and verification by the Arbitral Tribunal with supporting invoices or receipts. The reimbursement of the cost of air travel shall be limited to flexible economy or business class fares; and

(b) The expenses covered by the per diem allowance include the following items, which will not be reimbursed at cost:

- (i) hotel accommodation (if applicable);
- (ii) meals and beverages;
- (iii) laundry, dry cleaning, ironing and other housekeeping services;
- (iv) inner-city transport (excluding travel to and from an airport or train station);
- (v) Communication costs (telephone calls, faxes, internet, post etc); and
- (vi) gratuities.

A Tribunal Secretary is required to submit receipts or invoices in order to claim the per diem allowance as an evidence of travel for the purpose of the arbitration.

5.10. A Tribunal Secretary not required to travel outside his or her usual place of residence or business for the purpose of the arbitration shall be reimbursed at cost for expenses he or she reasonably incurs:

(a) on inner-city transport travelling from and returning to his or her usual place of residence or business; and

(b) purchasing meals and beverages; upon receipt and verification by the Arbitral Tribunal with supporting invoices or receipts.

5.11. Notwithstanding anything contained in these rules, the Arbitral Tribunal or the institution shall reimburse any costs or expenses, other than those contained in Rules 4.8(A) and 4.8(B), upon submission of valid receipts and invoices by the Tribunal Secretary.

5.12. The entire cost of tribunal secretary shall be borne by the parties to arbitration, if they have agreed to do so and if such agreement is approved by the arbitral tribunal.

5.13. Payments to a Tribunal Secretary shall generally be made at the same time payments are made to the Arbitral Tribunal.

5.14. Payments to a Tribunal Secretary shall be made in Indian Rupees unless the Arbitral Tribunal directs otherwise.

5.15. The parties are jointly and severally liable for the fees and expenses of a Tribunal Secretary.

6. Appointment of Tribunal secretary in other ADRs

6.1 The KFCRI Tribunal Secretary rules shall be applicable for the scope, appointment, removal, duties and remuneration of tribunal secretaries in other Alternate Dispute Resolutions i.e. Mediation, Conciliation etc. mutatis mutandis, in the same manner as such provisions apply to a tribunal secretary in arbitration proceedings.



ANNEXURE I

In the Case of _____ v. _____

(Arb Case No. _____ of 2019)

Before the Arbitral Tribunal consisting of

_____ , _____ , _____

TRIBUNAL SECRETARY'S DECLARATION

(As per Rule 2.2 of the KFCRI Tribunal Secretary Rules)

I, the undersigned,

Name: _____

Contact Details:

Address:

Phone :

Email :

Prior Experience:

Number of ongoing Arbitrations:

I hereby declare that **I accept** to serve as tribunal secretary under the Kovise Foundation Conflict Resolution International Tribunal Secretary Rules (KFCRI Tribunal Secretary Rules) on the Use of a Secretary to the Arbitral Tribunal in the above-referenced case. In so declaring, I confirm that I have familiarized myself with the requirements of the Rules and that I am available to serve as a tribunal secretary/administrative assistant. I undertake to comply with all provisions of the Guidelines. In particular, I confirm that my schedule is such that I will be able to devote sufficient time to deal with the above-referenced case in the ordinary course of its development and to assist the arbitral tribunal to conduct the arbitral proceedings in a timely and cost-effective manner.

I am impartial and independent with respect to each of the parties and intend to remain so. To the best of my knowledge, there are no facts or circumstances, past or present, which need be disclosed that are likely to give rise to justifiable doubts as to my impartiality or independence as per Rule 2.2 of the KFCRI Tribunal Secretary Rules.

Signature: _____ Date: _____

ANNEXURE II

In the Case of _____ v. _____

(Arb Case No. _____ of 2019)

Before the Arbitral Tribunal consisting of

_____ , _____ , _____

TRIBUNAL SECRETARY’S DECLARATION

(As per Rule 2.3 of the KFCRI Tribunal Secretary Rules)

I, the undersigned,

Name: _____

Contact Details:

Address:

Phone :

Email :

Prior Experience:

Number of on going Arbitrations:

I hereby declare that **I accept** to serve as tribunal secretary under the Kovise Foundation Conflict Resolution International Tribunal Secretary Rules (KFCRI Tribunal Secretary Rules) on the Use of a Secretary to the Arbitral Tribunal in the above-referenced case. In so declaring, I confirm that I have familiarized myself with the requirements of the Rules and that I am available to serve as a tribunal secretary/administrative assistant. I undertake to comply with all provisions of the Guidelines. In particular, I confirm that my schedule is such that I will be able to devote sufficient time to deal with the above-referenced case in the ordinary course of its development and to assist the arbitral tribunal to conduct the arbitral proceedings in a timely and cost-effective manner.

I am impartial and independent with respect to each of the parties and intend to remain so; **however**, in consideration of Rule 2.3 of the KFCRI Tribunal Secretary Rules, I call your attention to the following facts and circumstances which I hereafter disclose because they might give rise to justifiable doubts as to my impartiality or independence. (Enclosed)

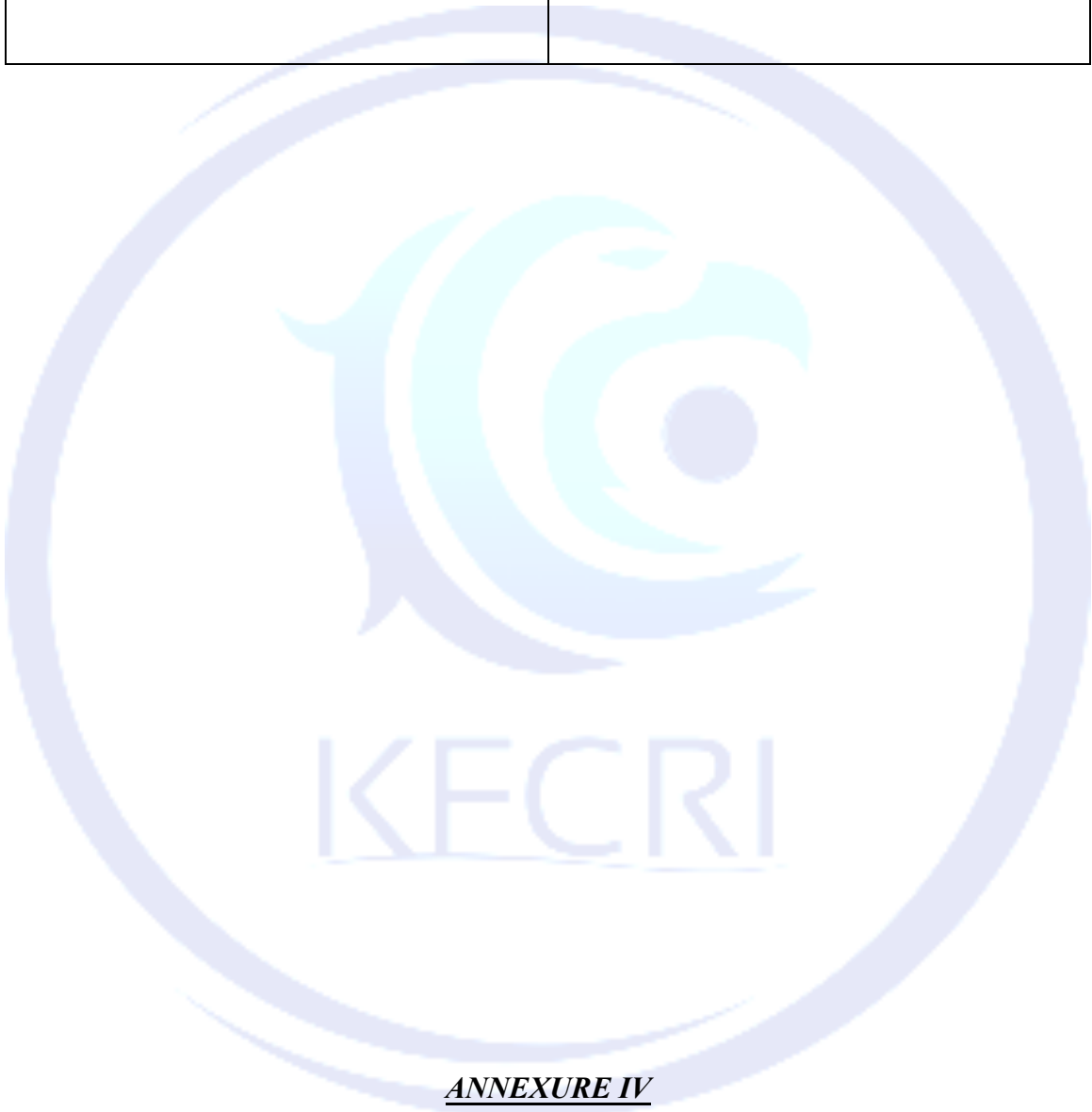
Signature: _____

Date: _____

ANNEXURE III

Tribunal secretary’s remuneration based on arbitrators fees

Domestic arbitrations	10% – 15% of the arbitrator’s fees
International arbitrations	10 % - 15% of the arbitrator’s fees



ANNEXURE IV

**Consent Letter to Appoint Tribunal Secretary / Administrative Assistant
(3 person Arbitral Tribunal)**

Subject – Consent to appoint Tribunal Secretary/Administrative Assistant in Case of _____ v. _____ (Arb Case No. _____ of 2019) -reg.

Body –

Greetings,

In reference to the proceeding of _____ v. _____ (Arb Case No. _____ of 2019), the members of the arbitral tribunal have conferred and consider that in the discharge of their duties they would be greatly assisted by the appointment of a secretary to the tribunal. It is apparent that this arbitration will involve considerable documentation and the tribunal would prefer that the appointment is made at an early stage of the proceedings. My co-arbitrators are in complete agreement with this proposal.

The tribunal proposes to appoint [name] of [organisation] of [address] as a Tribunal Secretary or an Administrative Assistant. [name] is a _____ by qualification as of [date]. His/her curriculum vitae is attached.

Initial enquiries made of [name] indicate that there is no conflict of interest, and that he/she would be independent and impartial. I have previously worked with [name] in this manner on [number] occasions. Neither of my co-arbitrators has worked with [name] before. [name] is employed by [organisation] and plays the role of [_____] in it. He/she will be bound by the Tribunal Secretary/Administrative Assistant Rules of KFCRI if so appointed.

If the appointment is confirmed, [name] will be asked to make a declaration in the same manner as made by the members of the tribunal and the appointment will be conditional upon satisfactory completion of such declaration.

The appointment can be initiated as per the Section 6 of the Arbitration and Conciliation Act, 1996 (Amended) with the consent of the parties. To that effect I request the Parties or Parties via their counsels to express their consent as a reply to this letter.

Thanking you,

Presiding Arbitrator

ANNEXURE V

**Consent Letter to Appoint Tribunal Secretary / Administrative Assistant
(Sole Arbitrator)**

Subject – Consent to appoint Tribunal Secretary/Administrative Assistant in Case of _____ v. _____ (Arb Case No. _____ of 2019) -reg.

Body –

Greetings,

In reference to the proceeding of _____ v. _____ (Arb Case No. _____ of 2019), I have conferred and consider that in the discharge of my duties I would be greatly assisted by the appointment of a secretary to the tribunal. It is apparent that this arbitration will involve considerable documentation and I would prefer that the appointment is made at an early stage of the proceedings.

I proposes to appoint [name] of [organisation] of [address] as a Tribunal Secretary or an Administrative Assistant. [name] is a _____ by qualification as of [date]. His/her curriculum vitae is attached.

Initial enquiries made of [name] indicate that there is no conflict of interest, and that he/she would be independent and impartial. I have previously worked with [name] in this manner on [number] occasions. [name] is employed by [organisation] and plays the role of [_____] in it.He/she will be bound by the Tribunal Secretary Rules of KFCRI if so appointed.

If the appointment is confirmed, [name] will be asked to make a declaration in the same manner as made by myself as the Sole Arbitrator and the appointment will be conditional upon satisfactory completion of such declaration.

The appointment can be initiated as per the Section 6 of the Arbitration and Conciliation Act, 1996 (Amended) with the consent of the parties. To that effect I request the Parties directly or Parties via their counsels to express their consent as a reply to this letter.

Thanking you,

Sole Arbitrator

ANNEXURE VI

[Claimant(s)]

v.

Respondent(s)]

[Case No.]

Tribunal Secretary Terms of Appointment

[Name of Tribunal Secretary]

1 Appointment

1.1 The Arbitral Tribunal appoints Mr./Ms. [Name of Tribunal Secretary] as its secretary or administrative assistant (hereinafter the secretary). The Arbitral Tribunal's appoints the secretary as per Section 6 of the Arbitration and Conciliation Act, 1996.

1.2 The Arbitral Tribunal has proposed the appointment of the secretary in its letter of [date of Appointment Proposal].

The parties have consented to the appointment during the initial case management conference of [date].

[or]

The parties have not raised any objections to this proposal within the allocated time prior to [date].

1.3 The secretary confirms her/his availability to accept an appointment as secretary in this arbitration. The secretary's contact details are as follows:

Name :
Organisation :
Postal Address :
(Address of Official Communication)

Telephone :
Mobile :
Fax :

Email :

1.4 The secretary's curriculum vitae and declaration of impartiality and independence are enclosed.

2 Scope of Secretary's Mandate

2.1 It is the secretary's task to facilitate the conduct of the above-referred arbitration. Specifically, the secretary will comply with the KFCRI Tribunal Secretary Rules.

2.2 At all times, the secretary shall act under the express instructions and continuous control and supervision of the Arbitral Tribunal. In particular, the Tribunal ensures that the secretary complies with the tasks set out in the preceding paragraph.

3 Impartiality and Independence

3.1 The secretary is and will remain impartial and independent throughout the course of the arbitration until he/she has discharged all of his/her above - referenced duties.

3.2 He/she will immediately disclose any circumstances that may give rise to reasonable doubts as to his/her impartiality and independence.

4 Confidentiality

4.1 The secretary shall keep confidential all information coming to his/her knowledge as a result of his/her participation in the arbitration, as well as the contents of any award made by the arbitral tribunal.

5 Fees and Expenses

5.1 The fees of the secretary shall be 10 % (ten percentage) of the Arbitrator Fees.

5.2 The fees of the secretary and reimbursement of his/her expenses shall be included among the 'cost of arbitration', to be borne by the parties in accordance with the Arbitral Tribunal's ultimate decision as to costs.

5.3 The fee and expenses of the secretary are due at same instance as the Arbitrator receives his/her fees.

5.4 The agreed fees shall be transferred via NEFT/RTGS/IMPS to the below mentioned account:

Account Name :
Account Number :
Bank Branch :
Branch Address :
IFSC Code :

6 Exclusion of Liability

6.1 The secretary shall be accorded the same immunities as the Arbitral Tribunal.

7 Signature of Terms of Appointment

7.1 These Terms of Appointment may be signed in counterparts, collectively forming one composite document.

Place:

Date:

Sole Arbitrator

Tribunal Secretary

[Claimant(s)]

[Respondent(s)]

Enclosures:

1. Secretary's curriculum vitae
2. Secretary declaration of impartiality and independence
3. KFCRI Tribunal Secretary Rules

