

PCERA Arbitration Rules

The PCERA Arbitration Rules (the “Rules”) are the UNCITRAL Arbitration Rules (2013) as modified in accordance with the rules set out below. “Rule” refers to the material below and “Article” refers to the articles of the UNCITRAL Arbitration Rules (2013).

Rule 1

General and Interpretation

1. Where parties have agreed in writing to arbitrate their disputes in accordance with the Rules, then:
 - (a) such disputes must be settled or resolved by arbitration in accordance with the Rules; and
 - (b) the arbitration is to be conducted and administered by the Perth Centre for Energy and Resources Arbitration (referred to as “PCERA”) in accordance with the Rules.
2. The Rules applicable to the arbitration are those in force at the time of commencement of the arbitration unless the parties have agreed otherwise. PCERA’s previous rules are superseded by the Rules, effective on 1 July 2017.
3. The Rules apply to arbitrations where an agreement to arbitrate (whether entered into before or after a dispute has arisen) either:
 - (a) provides for these Rules to apply; or
 - (b) provides for arbitration under the UNCITRAL Arbitration Rules ‘as modified by PCERA from time to time’ or ‘to be administered by PCERA’ or words to similar effect.
4. For avoidance of any doubt, in so far as there is any conflict between the Rules and the UNCITRAL Arbitration Rules, these Rules prevail.
5. Emergency Arbitrator Rules means the rules for the appointment of an emergency arbitrator set out in Schedule 1.
6. Appointment and Removal Protocol means the protocol for the appointment and removal of arbitrators set out in Schedule 2.
7. The UNCITRAL Arbitration Rules (2013) are available for download at www.uncitral.org/uncitral/uncitral-texts/arbitration.html or otherwise at www.uncitral.org and follow the links to the rules UNCITRAL Arbitration Rules (2013).
8. PCERA Arbitration Principles means the arbitration principles set out in Schedule 3.

9. A model PCERA arbitration clause is set out in Schedule 4.
10. Schedule of Fees and Charges means the schedule of fees and charges set out in Schedule 5.
11. References in the Rules to “PCERA” means the Board of PCERA or any relevant committee, sub-committee or other body or person specifically designated by it to perform the functions referred to in these Rules, or, where applicable, to the Secretary of PCERA for the time being.
12. These Rules include any Schedule as amended from time to time by PCERA, adopted by PCERA, and in force on the date the arbitration is commenced.
13. Any document, notice, request or like instrument that is required by the Rules to be submitted, lodged, given, made, or otherwise delivered to PCERA, is to be transmitted to PCERA by electronic mail to the address “theseecretary@pcera.org”.
14. A list of frequently asked questions and answers concerning PCERA arbitrations is set out in Schedule 6.
15. PCERA may from time to time issue practice notes to supplement, regulate and implement these Rules for the purpose of facilitating the administration of arbitrations.
16. PCERA may, as required, interpret all provisions of these Rules including any Schedule and the UNCITRAL Arbitration Rules (2013) as modified in accordance with these Rules.

Rule 2

Commencement of Arbitration

1. The party or parties initiating recourse to arbitration under the Rules must submit a written request to PCERA together with a copy of the Notice of Arbitration served on the Respondent pursuant to Article 3 and must be accompanied by the following:
 - (a) a copy of the written arbitration clause and any contract in which the arbitration clause is contained or in respect of which the arbitration arises;
 - (b) confirmation that the Notice of Arbitration has been served on each party to the arbitration by one or more means of service to be identified in such confirmation; and
 - (c) the non-refundable registration fee stipulated in the Schedule of Fees and Charges.

2. The date of receipt by PCERA of the request with all the accompanying documentation and non-refundable registration fee is the date on which the arbitration has commenced for all purposes. PCERA's determination of the commencement date in accordance with this Rule will be final, conclusive, and binding on the parties.

Rule 3

Notification and Pleadings

1. All documents served pursuant to Articles 3, 4, 20, 21, 22, 23 and 24 must be lodged with PCERA at or around the time of such service on the other party.

Rule 4

Appointment

1. Unless the parties have agreed on another appointing authority, PCERA is the appointing authority.
2. The expression "arbitral tribunal" means a sole arbitrator or a panel of arbitrators and includes an emergency arbitrator appointed pursuant to Schedule 1.
3. Parties may determine the number of arbitrators.
4. Where the parties fail to determine the number of arbitrators, the arbitral tribunal will:
 - (a) in the case of an international arbitration, as defined in the *International Arbitration Act 1974 (Commonwealth)*, consist of 3 arbitrators; and
 - (b) in any other case, consist of a sole arbitrator.
5. Unless the parties have agreed otherwise, the procedure for the appointment of a sole arbitrator is as follows.
 - (a) If the parties have agreed that a sole arbitrator is to be appointed, the parties may agree on the sole arbitrator.
 - (b) If, within 30 days of the other party's receipt of the Notice of Arbitration, the parties have not agreed on the sole arbitrator, either party may request by notice to PCERA that the sole arbitrator be appointed by PCERA.
6. Unless the parties have agreed otherwise, the procedure for the appointment of three arbitrators is as follows.
 - (a) If the parties have agreed that 3 arbitrators are to be appointed, each party must appoint 1 arbitrator. The 2 arbitrators so appointed must choose the

third arbitrator who will act as the presiding arbitrator of the arbitral tribunal.

- (b) If, within 30 days after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator it has appointed, either party may request by notice to PCERA that PCERA appoint the second arbitrator.
 - (c) If, within 30 days after the appointment of the second arbitrator, the two arbitrators have not agreed on the choice of the presiding arbitrator (**Trigger Event**), either party may request, by notice to PCERA, that PCERA appoint the presiding arbitrator, in which case, PCERA must appoint the presiding arbitrator within 10 days of being notified of the Trigger Event.
7. Upon the request of a party to appoint a sole, presiding, second, substitute or emergency arbitrator, PCERA is to appoint such arbitrator in accordance with the Rules and Appointment and Removal Protocol and in doing so may exercise all powers and discretions specified in the Rules and the Appointment and Removal Protocol.
 8. Where the parties have agreed that any arbitrator is to be appointed by one or more parties, or by any authority agreed by the parties, including where the arbitrators have already been appointed, that agreement is to be treated as an agreement to nominate an arbitrator under these Rules.
 9. Where PCERA is to appoint any arbitrator, PCERA may seek any information from the parties as required.

Rule 5

Challenge to the Arbitrators

1. An arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence or if the arbitrator does not possess any requisite qualification on which the parties have agreed.
2. A party may challenge the arbitrator nominated by that party only for reasons of which that party becomes aware of *after* the appointment has been made.
3. The party who intends to challenge an arbitrator must give notice of challenge within 15 days after the receipt of the notice of appointment of the challenged arbitrator or within 15 days after the circumstances mentioned in Rule 5(1) or Rule 5(2) became known to that party.
4. The notice of challenge must be sent simultaneously to the other party, to the arbitrator who is challenged, to the other members of the arbitral tribunal, if any, and

copied to PCERA. The notice must be in writing and must state the reasons for the challenge.

5. When an arbitrator is challenged by one party, the other party may agree to the challenge. The challenged arbitrator may withdraw from his office. Such conduct, in both cases, does not involve acceptance of the validity of the grounds of the challenge.
6. If within 14 days of the receipt of the notice of challenge, the other party does not agree to the challenge and the arbitrator who is being challenged does not withdraw voluntarily, PCERA must decide on the challenge in accordance with the Appointment and Removal Protocol.
7. Upon withdrawal by an arbitrator or acceptance or upholding of the challenge, the substitute arbitrator is to be appointed in accordance with the procedure provided in Rule 4 (7).
8. PCERA may fix the costs of the challenge and may direct by whom and how such costs must be paid.

Rule 6

Seat of Arbitration

1. The parties may agree on the seat of arbitration. Failing such agreement, the seat of arbitration will be Perth, Australia.
2. The arbitral tribunal may meet at any location it considers appropriate for deliberations, hearing, or the consideration of evidence. Unless otherwise agreed by parties, the arbitral tribunal may also meet at any location it considers appropriate for any purpose.

Rule 7

Interim Relief

1. The arbitral tribunal may, at the request of a party, grant interim measures pursuant to Article 26.
2. A party in need of emergency interim relief prior to the constitution of the arbitral tribunal may apply for such relief pursuant to the Emergency Arbitrator Rules.

Rule 8

Consolidation of Proceedings and Concurrent Hearings

1. The parties may agree:

- (a) that the arbitration proceedings are to be consolidated with any other arbitration proceedings; or
 - (b) that concurrent hearings are to be held, on such terms as may be agreed.
2. Unless the parties agree to confer such powers on the arbitral tribunal or such powers are conferred by applicable law, the tribunal has no power to consolidate proceedings or order concurrent hearings.

Rule 9

Facilities

1. PCERA will, for the applicable fee or charge set out in the Schedule of Fees and Charges, at the request of the arbitral tribunal or either party, arrange for such facilities and assistance for the conduct of the arbitral proceedings as may be required, including suitable venues for sittings of the arbitral tribunal, secretarial assistance, transcription services, video conferencing, and interpretation facilities.

Rule 10

Arbitration Procedure

1. The arbitral tribunal may conduct the arbitration in such manner as it considers appropriate and without prejudice to the generality of the foregoing may, unless all parties to the arbitration otherwise agree, limit the time available for each party to present its case. The arbitral tribunal must have regard to, and apply, as appropriate, the PCERA Arbitration Principles.

Rule 11

Awards

1. The arbitral tribunal is to render its final award within a period of 3 months. Such time limit will start to run from the date of the closing of final oral or written submissions. The arbitral tribunal must inform PCERA of such date.
2. The time limit may be extended by the arbitral tribunal with the consent of the parties and upon consultation with PCERA.
3. PCERA may extend or further extend the time limit in the absence of consent between the parties for reasonable cause at the request of either party or the arbitral tribunal. PCERA's decision to extend or not extend is final, and binding on the parties and the arbitral tribunal.

4. The arbitral tribunal must deliver sufficient copies of the completed award to PCERA. The award will only be released to the parties upon full settlement of the costs of arbitration.
5. PCERA must notify the parties of its receipt of the award from the arbitral tribunal. The award is deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by email.
6. In the event the parties reach a settlement after the commencement of the arbitration, the arbitral tribunal must, if so requested by the parties, record the settlement in the form of an award made by consent of the parties. If the parties do not require a consent award, the parties must inform PCERA that a settlement has been reached. The arbitration is deemed to be concluded and the arbitral tribunal is discharged upon full settlement of the costs of arbitration.
7. By agreeing to arbitration under these Rules, the parties undertake to carry out the award immediately and without delay, and they irrevocably waive their rights to any form of appeal, review or recourse to any state court or other judicial authority insofar as such waiver may be validly made and the parties further agree that an award is final and binding on the parties from the date it is made.
8. Unless the parties have agreed otherwise or it is otherwise provided by applicable law, the arbitral tribunal may:
 - (a) award interest on any sum of money ordered to be paid by the award on the whole or any part of the period between the date on which the cause of action arose to the date of realisation of the award; and
 - (b) determine the rate of interest.
9. An “award” as referred to in these Rules includes an interim, partial, or final award and an award of an emergency arbitrator.

Rule 12

Costs and exclusion

1. The term “costs” as specified in Article 40 includes the expenses reasonably incurred by PCERA in connection with the arbitration, the administrative costs of PCERA as well as the costs of the facilities used by the parties.
2. The parties and the arbitral tribunal are at liberty to agree on the fees and expenses of the arbitral tribunal within the period of 30 days after the appointment of the arbitral tribunal.
3. The administrative costs of the arbitration shall be fixed by PCERA in accordance with the Schedule of Fees and Charges.

- 4. The fees of the arbitral tribunal and administrative costs of the arbitration under the Rules may, in exceptional, unusual or unforeseen circumstances, be adjusted from time to time any agreement of the parties or PCERA.**
- 5. For the purpose of calculating the amount in dispute, as relevant to the fees applicable, the value of any counterclaim or set-off or both will be added to the amount of the claim.**
- 6. Where a claim or counterclaim does not state a monetary amount, an appropriate value for the claim or counterclaim will be fixed by PCERA in consultation with the arbitral tribunal and the parties for the purpose of computing the administrative costs.**
- 7. The arbitral tribunal may determine, in its discretion, the proportion of costs to be borne by the parties.**
- 8. None of the Board of PCERA nor any committee, sub-committee or other body or person specifically designated by it to perform the functions referred to in these Rules, nor the Secretary of PCERA or other staff members of PCERA, the arbitral tribunal, any tribunal-appointed expert or secretary of the arbitral tribunal is liable for any act or omission in connection with the arbitration, except where such act was done, or omitted to be done, dishonestly.**

SCHEDULE 1

EMERGENCY ARBITRATOR RULES

- 1. A party may, concurrent with or following the filing of a Notice of Arbitration but prior to the constitution of the arbitral tribunal, make an application for emergency interim relief.**
- 2. The application for emergency relief must be made in writing and must be sent to PCERA and each other party to the arbitration. The application for emergency interim relief must include:**
 - (a) the applicant's name, description, address and contract details of other parties;**
 - (b) the name, description and address of people representing the applicant;**
 - (c) a description of circumstances giving rise to the application;**
 - (d) the reasons why the applicant requires the emergency relief;**
 - (e) a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify the other parties;**
 - (f) the relevant arbitration clause or arbitration agreement; and**
 - (g) the emergency arbitrator application fee in accordance with the Schedule of Fees and Charges.**
- 3. PCERA must, if it determines to accept the application, seek to appoint an emergency arbitrator within 2 days of receipt by PCERA of such application and payment of any required fee.**
- 4. Prior to accepting appointment, a prospective emergency arbitrator shall disclose to PCERA any circumstance that may give rise to justifiable doubts as to his or her impartiality or independence.**
- 5. An emergency arbitrator must not act as an arbitrator in any future arbitration relating to the dispute, unless agreed by the parties.**
- 6. Once the emergency arbitrator has been appointed, PCERA must notify the parties. Thereafter, all written communications from the parties must be submitted directly to the emergency arbitrator with a copy to the other party and PCERA.**
- 7. In the event there is any challenge to the appointment of the emergency arbitrator, it must be made within one business day of the communication by PCERA to the parties of the appointment of the emergency arbitrator or the circumstances disclosed. Rule**

5 shall apply to the emergency arbitrator, except that the time limits set out in the Rules 5(3) and 5(6) are reduced to one business day.

- 8. Upon withdrawal of the emergency arbitrator, or acceptance or upholding of the challenge, a substitute emergency arbitrator must be appointed in accordance with the procedure provided in Rule 4(7).**
- 9. If the parties have agreed on the seat of arbitration, such seat shall be the seat of the emergency interim relief proceedings. Where the parties have not agreed on the seat of arbitration, the seat of the emergency interim relief proceedings will be Perth, Australia.**
- 10. The emergency arbitrator must, as soon as possible but in any event within 2 business days of appointment, establish a schedule for consideration of the application for emergency interim relief. The schedule must provide a reasonable opportunity to all parties to be heard, but may provide for proceedings by telephone conference or on written submissions. The emergency arbitrator has the powers vested in the arbitral tribunal pursuant to the Rules and the Emergency Arbitrator Rules, including the authority to rule on his or her own jurisdiction, and may resolve any disputes over the application of the Emergency Arbitrator Rules.**
- 11. The emergency arbitrator has the power to order or award any interim relief that is deemed necessary. The emergency arbitrator must give written reasons for any decision.**
- 12. Any order or award of the emergency arbitrator must be made within 10 days from the date of appointment notification to parties and this period of time may be extended by agreement of the parties or, in appropriate circumstances, by PCERA.**
- 13. PCERA must notify the parties of its receipt of the order or award from the emergency arbitrator. The order or award is deemed to have been received by the parties upon collection by hand by an authorised representative or upon delivery by email.**
- 14. Upon the constitution of the arbitral tribunal:**
 - (a) the emergency arbitrator will have no further power to act;**
 - (b) the arbitral tribunal may reconsider, modify or vacate the interim award or order of emergency interim relief issued by the emergency arbitrator; and**
 - (c) the arbitral tribunal is not bound by the reasons given by the emergency arbitrator.**
- 15. Any order or award issued by the emergency arbitrator will cease to be binding:**
 - (a) if the arbitral tribunal is not constituted within 100 days of such order or award; or**

- (b) when the arbitral tribunal makes a final award; or**
 - (c) when the arbitral tribunal overrules or vacates the order or award; or**
 - (d) if the claim is withdrawn.**
- 16. Any interim award or order of emergency interim relief may be conditional on provision of appropriate security by the party seeking such relief.**
 - 17. An order or award pursuant to the Emergency Arbitrator Rules is binding on the parties when rendered. By agreeing to arbitration under the Rules, the parties undertake to comply with such an order or award without delay.**
 - 18. The costs associated with any application pursuant to the Emergency Arbitrator Rules will initially be apportioned by the emergency arbitrator, subject to the power of the arbitral tribunal to determine the final apportionment of such costs.**
 - 19. The decision of the emergency arbitrator as to such matters is final and not subject to appeal.**

SCHEDULE 2

APPOINTMENT AND REMOVAL PROTOCOL

Clause 1

Application

1. These Rules apply to any circumstance where PCERA is nominated as an appointing authority, whether under an arbitration agreement, subsequent agreement of the parties or otherwise.

Clause 2

Appointment Committee

1. PCERA must constitute a committee of three people for the purposes of the Appointment and Removal Protocol (“Appointment Committee”).
2. The Appointment Committee is to comprise two members of Board and one member of the Steering Committee as appointed from time to time.
3. If any member of the Appointment Committee has a conflict of interest, which will be determined at the time of the request for appointment, then the Appointment Committee is to be reconstituted by three people comprising, first up to two remaining members of the Board and, second up to three members of the Steering Committee and, third up to three members of the Advisory Committee, who do not have conflicts of interest.
4. The Appointment Committee is to make appointments within 72 hours of the receipt of the request for appointment.

Requests for PCERA to act as appointing authority

Clause 3

1. A party who wishes for PCERA to act as appointing authority must submit a written request to PCERA.
2. The written request must contain the following information:
 - (a) details of all parties and their representatives;
 - (b) a copy of the arbitration agreement and any other relevant contractual agreements;
 - (c) a copy of any Notice of Arbitration and any response to the notice;

- (d) a summary of the dispute;
 - (e) the number of arbitrators required to be appointed;
 - (f) whether the party seeks PCERA to appoint a presiding arbitrator;
 - (g) whether the party seeks PCERA to appoint another party's arbitrator;
 - (h) any particular qualifications required;
 - (i) the applicable rules; and
 - (j) payment of the appointment fee in accordance with the Schedule of Fees and Charges;
3. The party who submits the appointment application must serve a copy of the application on all other parties at the same time that the request is submitted to PCERA.

Clause 4

Appointment procedure

1. When appointing the sole or presiding arbitrator, the Appointment Committee will ordinarily follow the List Procedure outlined in Article 8(2). The Appointment Committee reserves the right to follow a different procedure if it determines that the List Procedure is not appropriate to a particular matter.
2. When considering appropriate candidates for appointment as arbitrator, the Appointment Committee may consider:
 - (a) the subject matter of the dispute;
 - (b) the expertise, experience and qualifications of the arbitrator;
 - (c) the nationality of the parties and arbitrators;
 - (d) the arbitrator's availability;
 - (e) the arbitrator's independence and impartiality;
 - (f) the applicable law;
 - (g) the language of the arbitration;
 - (h) any stipulations contained in the arbitration agreement;
 - (i) any specific requests made by the parties; and

- (j) any other information that the Appointment Committee considers relevant to the appointment of an appropriate arbitrator.
- 3. PCERA will maintain an internal list of arbitrators and the Appointment Committee may draw from this list when appointing an arbitrator. The Appointment Committee may also consult with members of the Advisory Committee and Steering Committee who do not have any conflict of interests when appointing an arbitrator.
- 4. Before being appointed as arbitrator, a proposed arbitrator must provide the Appointment Committee with written notice stating that the arbitrator is available, independent and impartial.
- 5. The Appointment Committee will notify the arbitrator and all parties of the appointment in writing.
- 6. If an arbitrator subsequently resigns or is removed, the Appointment Committee will appoint a substitute arbitrator in accordance with the Rules.

Clause 5

Challenges to appointments

- 1. A party may challenge the appointment of an arbitrator in accordance with Rule 5 of the Rules.
- 2. The Appointment Committee will determine the challenge in accordance with the UNCITRAL Arbitration Rules (2013), amended as follows:
 - (a) all notices required under the UNCITRAL Arbitration Rules (2013) must be communicated to PCERA;
 - (b) all references in the UNCITRAL Arbitration Rules (2013) to the appointment authority will be read as references to the Appointment Committee; and
 - (c) after a challenge has been received by PCERA, the Appointment Committee will give the arbitrator and all other parties the opportunity to respond to the challenge. Any response must be received in writing within 15 days.
- 3. The Appointment Committee may decide to uphold the appointment or remove the arbitrator. If the Appointment Committee decides to remove the arbitrator, then PCERA will appoint a substitute arbitrator in accordance with the procedures above.
- 4. The Appointment Committee will notify all parties and the arbitrator of its decision in writing.
- 5. The decision of the Appointment Committee is final, conclusive, and binding.

Clause 6

Costs of appointment

1. A party seeking PCERA to act as appointing authority must pay the applicable appointment fee set out in the Schedule of Fees and Charges, as amended from time to time.
2. The appointment fees applicable at the date of this protocol are as follows.
 - (a) Appointment of a sole or presiding arbitrator – \$1,100 (incl GST).
 - (b) Appointment of a panel of arbitrators – \$2,200 (incl GST)
3. The appointment fee must be paid with the appointment application.

Clause 7

Arbitrator's fees and expenses

1. PCERA is not responsible for arranging the payment of fees charged by individual arbitrators. The amount and payment of this fee will be a matter to be determined between the parties and each arbitrator.

SCHEDULE 3

PCERA ARBITRATION PRINCIPLES

Most arbitration rules confer appropriate discretion upon the arbitrator as to the procedure to be followed in the arbitration. These principles guide the manner in which PCERA arbitrators will exercise those discretions. They are intended to encourage savings in time and cost by focusing upon a practical and commercial approach.

All PCERA appointed arbitrators agree to give effect to these principles.

Statement of Material Facts and Statement of Issues

1. Following appointment of the arbitrator, each party will usually be required to file a certified *statement of material facts*, a *draft statement of issues* expressed as questions and a short *preliminary outline of contentions* stating the party's claim as to how each issue should be resolved and the main reasons supporting that claim. The purpose of these documents is to guide the arbitrator in establishing the procedure for the arbitration. In cases where the claim comprises a number of discrete amounts or heads of claim under a contract then the documents will usually be required to be divided up by reference to each discrete amount or head of claim. The same procedures will apply to any cross-claim.

Procedural Conference

2. At the earliest opportunity thereafter, the arbitrator will convene a procedural conference at which the parties will discuss the directions required for the proper conduct of the arbitration. The arbitrator may adjourn the conference if the parties are not ready to establish the procedure for the arbitration and may make interim directions to clarify the issues in dispute. After the procedural conference, the arbitrator will issue draft directions timetabling all steps in the arbitration and propose final hearing dates. If the parties do not agree the directions then the arbitrator will convene a further procedural conference at which any disputed directions will be resolved.

Case Management Meetings

3. The timetable will usually include provision for the legal representatives of the parties to meet face to face at specified times to discuss any issues of preparation. Notice of issues for discussion shall be given at least 24 hours before each

meeting. These meeting times may not be changed without the consent of the arbitrator and must be attended by a senior legal representative with conduct of the matter.

Hearings

4. Save in the most exceptional case, each arbitration will be confined to no more than 12 days of oral hearing. Directions will be made on that basis.
5. Save in the most exceptional case or with the consent of all parties, the oral hearing dates will not be changed once set by the arbitrator.

Revised Statements and Agreed Facts

6. Usually, the directions will first require the claimant to file a revised statement of material facts and a revised statement of issues and the respondent to file a response to each of those documents which will be followed by a reply by the claimant to each of the respondent's documents. These documents may be amended at any time provided that any amendment may be disallowed on application to the arbitrator. Amendments will usually be disallowed where they expand the issues in a manner that will prejudice the other party having regard to the available time until the oral hearing.
7. In the statement of material facts, so far as possible, each fact must be stated in a separate paragraph to facilitate a response that either agrees or disputes each fact. The response to the statement of material facts shall state, in the same form, all additional facts alleged by the respondent.
8. At any point in the process up to 5 days before the oral hearing a party may propose a fact to be agreed by the other party. The claimant will maintain a document that records the facts that have been agreed which shall be made available to the respondent or the arbitrator upon request and, in any event, 5 days before the oral hearing.

Statement of Contentions

9. The directions will usually provide for the parties to file detailed contentions dealing with the matters raised by the issues as stated by both parties. These contentions may be supplemented by further written and oral submissions as directed by the arbitrator.

Evidence and Discovery

10. The directions will usually provide for the parties to exchange statements of the evidence of each witness. The statements must not be expressed in argumentative terms. The statements will be reviewed by the arbitrator and argumentative material will be struck out. Each party may seek leave to adduce further evidence concerning matters struck out from the statements. The witness statements will be accepted into evidence, subject to submissions as to weight and relevance. Unless objected to on the grounds of authenticity, all documents referred to in the statements shall be evidence in the arbitration.
11. Subject to any direction by the arbitrator as to topics where such an approach will not apply, all disputed factual matters may be established by any means that would inform and guide usual commercial decision making including by hearsay evidence where the source of a statement is given.
12. In the usual case, leave to issue any subpoenas must be sought at about the same time as the filing of witness statements. The arbitrator will carefully review proposed subpoenas to ensure they are necessary and confined to the issues in the arbitration.
13. In the usual case, there will be no order for discovery. Parties will be required to provide copies of documents referred to in statements of material facts and witness statements. After the exchange of witness statements, the claimant will be required to provide to the respondent an electronically indexed and fully searchable electronic copy of the documents upon which the party intends to rely at the oral hearing which must include directly any documents that are inconsistent with the party's statement of material facts or witness statements. The

respondent will then be required to provide a similar bundle of any additional documents. Thereafter, each party may make limited requests of the other to provide specific documents that are necessary for the conduct of the party's case. Each party may also seek leave to file additional witness statements confined to matters raised by the discovery of documents. The arbitrator will resolve any dispute concerning requests for specific documents at a directions hearing convened for that purpose.

14. Save in the most exceptional case, all expert evidence in a particular field of expertise will be given by a single expert appointed by the arbitrator. Any party seeking to adduce expert evidence shall propose to the other party a draft brief to the expert and a proposed expert (together with a full disclosure of any matters known to the party or the expert relating to the degree of independence that the expert would bring in considering the matters in dispute). Any party making inquiries as to the availability of a prospective expert shall not communicate with the expert concerning any matter relating to the merits of any issue in the arbitration. The expert will answer questions proposed by each party. If necessary, the arbitrator will determine at a directions hearing convened for that purpose the identity of each expert, the questions to be answered, and the arrangements for briefing, conferences with and payment of the expert.
15. In an appropriate case, the arbitrator may direct that any party may be entitled to file a statement from an expert engaged by that party in response to the single expert. In any event, each party will usually be allowed to cross-examine the expert.

Reasons

16. The arbitrator will deliver written reasons preferably within 6 weeks but no later than 3 months of the conclusion of the oral hearing or final submissions.

Costs

17. Each party shall provide to the arbitrator on request, from time to time, and to each party to the arbitration a summary of all costs incurred by the party from commencement on each of legal fees, counsel fees, arbitrator's fees, expert fees and disbursements.
18. In allocating the percentage of overall costs to be paid by each party the arbitrator will, in addition to other relevant matters, take into account any substantive failure by a party to co-operate in the procedural steps in the conduct of the arbitration.

Primacy of Arbitration Agreement

19. These principles will only apply to the extent that they are not inconsistent with the terms of any arbitration agreement.

SCHEDULE 4

MODEL ARBITRATION CLAUSE

Any dispute, controversy or claim arising out of or in connection with this contract, or claims about its breach, termination or invalidity, must be settled by arbitration in accordance with the Perth Centre for Energy and Resources Arbitration Ltd (PCERA) Arbitration Rules.

PCERA is the appointing authority.

The number of arbitrators is _____

The language to be used in the arbitral proceedings is _____

The seat of the arbitration is Perth, Western Australia.

SCHEDULE 5

SCHEDULE OF FEES AND CHARGES

Registration

- **Standard** \$11,000
- **Non-standard (difficult)** \$22,000
- **Non-standard (straightforward)** \$5,500

- **Existing *ad hoc* arbitrations** \$1,100
(commenced before 30 June 2015)

Arbitrator Nomination Fee \$1,100

Panel Nomination Fee \$2,200

Tribunal Associates \$275/hr (max)

\$2,200/day (max)

Other Services \$104.50/hr

- **Arranging hearing facilities** Hourly rate
- **Arranging transcription services** Hourly rate
- **Arranging accommodation** Hourly rate
- ***Ad hoc* agreed services** Hourly rate

Appointment of Emergency Arbitrator \$5,000

Emergency Arbitrator Fee (or as agreed with the Emergency Arbitrator) \$30,000

Arbitrator Fees

- **PCERA will not charge fees other than those outlined above. The fees charged by arbitrators will be as agreed between the parties and the arbitrators.**

* All fees are exclusive of GST. PCERA was registered for GST on and from 1 July 2015.

An explanation of PCERA fees and the basis for charging is set out below.

EXPLANATION OF SCHEDULE OF FEES

Registration fees

PCERA will charge a single standard registration fee of \$11,000 (incl GST) for all arbitrations registered with PCERA.

After appointment of the arbitral tribunal, the arbitrator(s) will assess whether the dispute is standard, difficult or straightforward.

For non-standard difficult disputes, the registration fee is \$22,000 (incl GST). Parties will be required to pay the additional amount in equal shares before the arbitration proceeds.

For non-standard straightforward disputes, the registration fee is \$5,500 (incl GST). Parties will be refunded part of the registration fee after notification of the tribunal's assessment.

Further, PCERA will accept registration of existing *ad hoc* arbitrations for a one-off fee of \$1,100 (incl GST) where the parties (and any arbitrator(s)) agree to adopt the PCERA Arbitration Principles and the arbitration was commenced before 30 June 2015. In these cases, the parties (and any arbitrator(s)) will then be able to take advantage of the services provided by PCERA and outlined below.

Arbitral Appointments

PCERA will provide two services relating to the appointment of arbitral tribunals after registration.

First, where PCERA is the nominating authority, it will charge a nomination fee of \$1,100 (incl GST) to nominate an arbitrator.

Second, PCERA will also provide any party to the arbitration with a list of arbitrators potentially suitable for the parties' specific dispute. PCERA will charge a fee of \$2,200 (incl GST) for this service.

Where PCERA is requested to nominate a panel of potential arbitrators or an arbitrator it will draw from its list of arbitrators and the experience of the PCERA Advisory Committee to nominate, where possible, an arbitrator or arbitrators with experience and otherwise suited to the parties' specific dispute. PCERA nominations will not be confined to Australian arbitrators or retired judicial officers and will include international arbitrators, in particular, with experience in the Asia Pacific region.

Tribunal Associates

PCERA will arrange for the appointment of one or more associates to assist the arbitrator or arbitral tribunal. PCERA will charge up to \$275 (incl GST) per hour, or up to \$2,200 (incl GST) per day for associate services.

Other Services

PCERA will charge on a time costing basis at the rate of \$104.50 (incl GST) per hour to undertake the following kinds of services for parties:

- (a) arranging appropriate hearing rooms for the arbitration and (or) any interlocutory hearings;
- (b) arranging transcription services;
- (c) arranging accommodation for arbitrators;
- (d) providing administrative support to arbitrators; and
- (e) other requested services PCERA agrees to perform.

Arbitrators' Fees

Other than the fees referred to above, PCERA will not charge parties for conducting arbitrations registered with PCERA. The amount of the fee to be charged by individual arbitrators will be a matter to be determined between the parties and the arbitrators.

SCHEDULE 6

FAQS

1. Where can I find a PCERA Arbitration Rules model clause?

Parties who wish to use the PCERA Arbitration Rules may use the PCERA model clause in their agreement. The model clause can be found under Schedule 4 and at <https://pcera.org/rulesandguidelines/>.

2. What to do if I do not have a model arbitration clause in my agreement?

If both parties are agreeable that the dispute must be resolved according to the PCERA Arbitration Rules, but there is no arbitration clause in their original agreement; then they may enter into an arbitration agreement in the form as specified.

3. What type of disputes can be resolved by arbitration under the PCERA Arbitration Rules?

Disputes may arise out of construction, project, mining, insurance, energy or any other kind of commercial dispute arising from or concerning the energy and resources area.

4. What are the advantages of using the PCERA Arbitration Rules?

The PCERA Rules incorporate the UNCITRAL Arbitration Rules. They are comprehensive, well known and internationally accepted.

5. How much will it cost to arbitrate under the PCERA Arbitration Rules?

PCERA charges in accordance with the Schedule of Fees and Charges (Schedule 5).

PCERA charges a one-off registration fee of \$5,500, \$11,000 or \$22,000 (inclusive of GST) depending on whether the matter in question is straight-forward, standard or difficult.

If PCERA is requested to nominate an arbitrator it will charge a nomination fee of \$1,100 (inclusive of GST). If PCERA is requested to nominate a panel of potential arbitrators it will charge a fee of \$2,200 (inclusive of GST).

PCERA charges other fees for service on an ad hoc basis and as set out in the Schedule of Fees and Charges.

PCERA does not charge a fee for the arbitration. Individual arbitrators' fees are a matter for negotiation between the arbitrators and the parties.

6. How are arbitrators appointed under the PCERA Arbitration Rules?

The arbitrator's appointment shall be made by PCERA in accordance with the Appointment and Removal Protocol (Schedule 2).

7. Can an appointed arbitrator be challenged under the Rules?

Yes. The procedure is set out in Rule 5 of the PCERA Arbitration Rules and Clause 5 of the Appointment and Removal Protocol.

8. Are parties restricted to appointing arbitrators from PCERA's list of arbitrators when arbitrating under the PCERA Arbitration Rules?

No.

9. How long would the entire proceedings take?

PCERA has put forward certain mechanisms which ensure the arbitration proceeds in a time efficient manner. For instance, under Rule 7 the arbitral tribunal is accorded with powers to conduct the matter in such manner as it considers appropriate and may limit the time available for each party to present its case. Under Rule 11 the arbitral tribunal is required to render its final award within a period of 3 months from the date of delivery of the closing oral submissions or written statements. Also, arbitrations should be conducted in accordance with the PCERA Arbitration Principles (Schedule 3).

10. How does a party apply for an Emergency Arbitrator?

Rule 7 and the Emergency Arbitrator Rules allow the party in need of emergency interim relief to make such an application. The application must be made concurrently with or after the filing of a Notice of Arbitration but not after the constitution of the arbitral tribunal.

Emergency arbitrators may be appointed in accordance with the Emergency Arbitrator Rules (Schedule 1). PCERA charges a one-off fee for its services in arranging an Emergency Arbitrator. The Emergency Arbitrator's fees will be no less than \$20,000 but may be greater, depending on circumstances, subject to the agreement of the parties.