



# DISPUTE PREVENTION AND RESOLUTION COMMITTEE RULES

EFFECTIVE AS OF AUGUST 6 2018



The Chamber of Conciliation, Mediation  
and Arbitration CIESP/FIESP

# TABLE OF CONTENTS

**DEFINITIONS 03**

**PREAMBLE 06**

**ARTICLE 1 – PRELIMINARY PROVISIONS 07**

**ARTICLE 2 – FORMATION OF THE DISPUTE PREVENTION AND RESOLUTION COMMITTEE 07**

**ARTICLE 3 – COMMITTEE FOR REVIEW (CR) 11**

**ARTICLE 4 – COMMITTEE FOR ADJUDICATION (CA) 11**

**ARTICLE 5 – HYBRID COMMITTEE (HC) 12**

**ARTICLE 6 – COMMITTEE MEMBERS 13**

**ARTICLE 7 – COMMITTEE FORMATION AND TERMINATION 14**

**ARTICLE 8 – COMMITTEE'S PROCEDURE 15**

**ARTICLE 9 – COMMITTEE'S POWERS 16**

**ARTICLE 10 – COMMUNICATIONS, TIME-PERIODS AND SUBMISSION OF DOCUMENTS 17**

**ARTICLE 11 – INFORMAL ASSISTANCE FOR DISPUTES 18**

**ARTICLE 12 – FORMAL SUBMISSION OF DISPUTES FOR RECOMMENDATION OR DECISION AND  
STATEMENT OF THE CASE 18**

**ARTICLE 13 – ANSWER AND SUPPLEMENTARY DOCUMENTS 19**

**ARTICLE 14 – ORGANIZATION AND CONDUCTION OF HEARINGS 19**

**ARTICLE 15 – ORGANIZATION AND TIME-PERIOD FOR ISSUANCE OF RECOMMENDATION OR  
DECISION 19**

**ARTICLE 16 – CONTENT OF THE RECOMMENDATION OR DECISION 20**

**ARTICLE 17 – DELIBERATION OF THE RECOMMENDATION OR DECISION 21**

**ARTICLE 18 – CORRECTION AND CLARIFICATION ON THE RECOMMENDATION OR DECISION 21**

**ARTICLE 19 – ADMISSIBILITY OF RECOMMENDATION OR DECISION IN SUBSEQUENT PROCEEDINGS  
21**

**ARTICLE 20 – COSTS 21**

**ARTICLE 21 – GENERAL PROVISIONS 22**

**EXHIBIT I – STATEMENT OF FORMATION OF THE COMMITTEE FORM 24**

**EXHIBIT II – TABLE OF COSTS AND MEMBERS' FEES 29**

**EXHIBIT III – NOTICE FORM 33**

**EXHIBIT IV – COMMITTEE'S PROCEDURE OPTIONAL PROTOCOL 36**

## DEFINITIONS

TERM	DEFINITION
CIESP/FIESP CHAMBER	Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration.
<b>AD HOC</b> COMMITTEE	Temporary Committee, formed at any time during the term of the Contract, for purposes to resolve one or more existing Dispute(s), as per Article 2.7 of the Rules, and which shall be formed and terminated under the cases provided for by Article 7 of the Rules.
DISPUTE PREVENTION AND RESOLUTION COMMITTEE OR "COMMITTEE"	Committee formed by one or more Members under the Rules.
HYBRID COMMITTEE OR HC	Has the meaning under Article 5 of the Rules.
PERMANENT COMMITTEE	Committee formed under Article 2.6 of the Rules to operate continually, and which will be formed and terminated under the cases provided for by Article 7 of the Rules.
COMMITTEE FOR ADJUDICATION OR CA	Has the meaning under Article 4 of the Rules.
COMMITTEE FOR REVIEW OR CR	Has the meaning under Article 3 of the Rules.
CONSENSUS	Express agreement or lack of objection between the Parties.
CONTRACT	The contract or contracts based on which the Committee will be formed.

DISPUTE	Dispute, allegation, request or any other issue concerning the interpretation and/or performance of the Contract.
DECISION	Deliberation of the CA or, as applicable, of the HC, as to a Dispute.
DAILY FEE	Criterion to ascertain the Extraordinary Fees to be paid to the Committee due to the holding of Extraordinary Meetings or Measures, or to the issuance of Recommendation or Decision, under Article 4.4 of Exhibit II of these Rules.
DISAGREEMENT	Written notice where the Party reserves rights and states its objection to the Recommendation or Decision.
STATEMENT OF THE CASE	The written statement of the case by the Party submitting a Dispute to the Committee, which is presented to the other Party, to each Committee member and to the Secretariat of Ciesp/Fiesp Chamber
NOTICE FORM	Form contained in Exhibit III of the Rules.
EXTRAORDINARY FEES	Fees that compensate the Committee for holding Extraordinary Meetings or Measures, or for the issuance of Recommendation or Decision, under Article 4 of Exhibit II of these Rules.
MONTHLY FEES	Fees that compensate the Committee for taking part in the Ordinary Meetings and Measures and for seeking amicable solution of Disputes under Article 3 of Exhibit II of these Rules.

MEMBER(S)	Person(s) appointed to the Committee.
PARTY(IES)	Party(ies) to the Contract, including those mentioned in the Notice Form or in the Statement of Formation.
QUESTIONNAIRE	Questionnaire on the Conflict of Interests, Availability and Acceptance of the Office to be completed by potential Committee Members, under Article 2.8.3 of the Rules.
RECOMMENDATIONS	Deliberation of the CR or CH, as applicable, concerning a Dispute.
RULES	Rules of the Ciesp/Fiesp Chamber's Dispute Prevention and Resolution Committee.
ANSWER	Written answer submitted against a Statement of the Case, under Article 13.1 of the Rules.
EXTRAORDINARY MEETINGS AND MEASURES	Meetings and measures not scheduled in the meetings calendar under Article 8.5.
ORDINARY MEETINGS AND MEASURES	Meetings and measures provided for in the meetings schedule, under Article 8.3.
STATEMENT OF FORMATION OF THE COMMITTEE	Instrument adopted in forming the Committee, under Article 7.1 of the Rules.
STARTING DATE	Date on which the Statement of the Case was received by the Chairman of the Committee, under Article 12.2 of the Rules.

## PREAMBLE

The Dispute Prevention and Resolution Committee, "Committee", is an uncontentious method to manage, prevent and resolve disputes within the ambit of a Contract. As it performs its duties, the Committee is formed under the Rules and assists the Parties, in order to avoid any Disputes or to resolve Disputes that may arise.

The development of the Committee's activities requires close and joint action between the Committee, the Parties and the technicians involved in the proceedings. To this end, its conduct should be guided by the principles of good faith and cooperation, with a view, as a matter of priority, to preventing the emergence of Disputes. When Disputes arise, the Committee and the Parties shall make their best efforts to resolve them in a speedy and effective manner, by always giving preference to an amicable resolution of disputes between the Parties.

The Committee formed in accordance with the Rules has autonomy to define its own procedural rules and working methodology in anything that does not conflict with the terms of the Rules, the Contract or the Parties' Consensus. In all cases, in the exercise of its duties the Committee shall observe the principles of procedural flexibility, simplicity, orality and autonomy of the Parties. Without prejudice, the Rules allow the Committee and the Parties, if they deem it appropriate, to adopt the standard procedural rules suggested in the **Optional Protocol** contained in **Exhibit IV of the Rules**.

The Committee is not an arbitral tribunal and has no judicial function. The Committee is a contractual body, established at the will of the Parties. The Committee's statements, Recommendations or Decisions are binding on the Parties only within the limits of the Contract and the Rules, and produce, as with all obligations, effects between the Parties. The Recommendations or Decisions of the Committee are not arbitral or judicial awards and may be submitted for consideration by the parties' dispute resolution method, whether arbitration or litigation.

In order to make the final resolution of any Dispute on the Committee's Recommendations or Decisions more effective and agile, it is recommended that the Parties agree to submit such Dispute to arbitration administered by the Ciesp/Fiesp

Chamber.

The Ciesp/Fiesp Chamber will act in support of the Committees and subject to the Rules to ensure efficient administration of the works, providing secretarial support and managing the costs of the Committee's work and acting as the appointing authority of Members, ensuring legal and institutional certainty throughout the whole management of projects adopting such valuable method of dispute prevention and resolution.

## **ARTICLE 1 – PRELIMINARY PROVISIONS**

**1.1.** The Committee, established in accordance with the Rules, is intended to prevent, manage and resolve Disputes, whatever their nature, arising under the Contract. The Committee will be composed of one (1) or three (3) Members, who will be appointed according to the agreement between the Parties, except in case of nomination by the Ciesp/Fiesp Chamber, as provided for in the Rules. The role of the Committee is to assist the Parties in preventing and resolving Disputes that may arise in connection with the Contract, and the Parties shall determine, in accordance with the Rules, whether the Committee shall act as a Committee for adjudication, Committee for Review or as a Hybrid Committee.

**1.2.** Committees' performance will be managed by the Ciesp/Fiesp Chamber under the Rules. Any Disputes regarding Committees Recommendations or Decisions shall be resolved, preferably, by arbitration administered by the Ciesp/Fiesp Chamber, without prejudice to the parties' choosing another dispute resolution method..

## **ARTICLE 2 - FORMATION OF THE DISPUTE PREVENTION AND RESOLUTION COMMITTEE**

**2.1.** The Committee shall be formed pursuant to the terms of the Rules and according to the specific provisions contained in the Contract.

**2.1.1.** The Parties may request the formation of a Committee based on multiple contracts related to the same undertaking by submitting a joint Notice Form.

**2.2.** Parties interested in forming a Committee shall notify the Ciesp/Fiesp Chamber in writing by means of a Notice Form as per the template in Exhibit III of the Rules, and shall indicate the type of Committee, ie, Permanent or *ad hoc*, as well as its operating system, that is, whether CA, HC or CR, collecting the filing fee according to Exhibit I of these Rules.

**2.3.** If the Contract provides for the formation of a Committee under the Rules, any Party may present the Notice Form.

**2.4.** The Committee shall be composed of one (1) or three (3) Members, as stipulated in the Contract or in the Consensus.

**2.5.** If the Contract has no such information, and in the absence of Consensus as to the number of Members, system and type of Committee, Ciesp/Fiesp Chamber shall choose a given number of Members to make up the Committee, after the Parties are duly heard, in that the system will be CA and the type will be Permanent Committee.

**2.6.** Unless otherwise provided in the Contract or upon the Parties' Consensus, the Notice Form under Article 2.2 shall be submitted within up to thirty (30) days from the execution of the Contract, except in the case of *ad hoc* Committee, where it may be submitted at any time, as per Article 2.7 of the Rules.

**2.7.** Unless expressly stated in the Contract, or in the event of Consensus, the Committee may be formed as an *ad hoc* Committee at any time, for purposes of resolving one or more Disputes specified by the Parties, upon written notice in compliance with Article 2.2 of the Rules.

**2.8.** A 3-Member Committee shall be formed as follows:

**2.8.1.** Within up to thirty (30) days from receipt of the Notice Form by Ciesp/Fiesp Chamber, the Parties shall jointly appoint two Committee Members, or shall each individually appoint a Member.

**2.8.2.** If the Contract or the Notice Form has more than two Parties, all those



involved shall make their best efforts to act by Consensus, within thirty (30) days from receipt of the Notice Form, in respect of the appointment of two Members. In the absence of Consensus in the aforementioned time-period, Ciesp/Fiesp Chamber shall appoint all the Committee Members, subject to the provisions of Article 2.10 of the Rules.

**2.8.3.** Ciesp/Fiesp Chamber shall inform the Parties about the appointments and about the potential Committee Members, and request that these latter complete the Questionnaire, within no more than ten (10) days.

**2.8.4.** Subsequently, Ciesp/Fiesp Chamber shall notify the Parties about the completed Questionnaires. In the event of individual appointment of one of the Committee Members, each Party shall have the right to, within fifteen (15) days from receipt of the notice of the Questionnaires, express their views in such respect in writing and, in the event of objection to the appointment made by the other Party, submit the relevant challenge to the appointed Member by providing grounds therefor. Such challenges shall be resolved pursuant to the terms of Article 6.6 of the Rules. Upon expiration of the time-period to submit a challenge, the appointment is deemed accepted.

**2.8.5.** In the event of objection to the appointment of the Committee Member made by a Party is accepted, the other Party shall make another appointment within ten (10) days from the receipt of the decision on the objection.

**2.8.6.** Within fifteen (15) days from the notice sent by the Ciesp/Fiesp Chamber for appointment of two Members, these shall appoint a third Member, who shall preside over the Committee. If the two Members fail to appoint a third one within the time-period above, such third Member shall be appointed by the Ciesp/Fiesp Chamber, pursuant to the terms of Article 2.10 of the Rules.

**2.9.** If the Parties have agreed that the Committee shall be made up of one (1) Member, the Parties shall agree on the appointment of the Sole Member, who must be appointed within thirty (30) days from the receipt of the Notice Form sent by the Ciesp/Fiesp Chamber. If the Parties fail to reach a Consensus as to the appointment of the Sole Member within the aforementioned time-period, then the Ciesp/Fiesp

Chamber shall appoint such Member, subject to the terms of Article 2.10 of the Rules.

**2.10.** If the Parties or Members fail to reach a Consensus or if, by any reason, they fail to appoint the Members or Sole Member of the Committee, under Articles 2.8.1, 2.8.2, 2.8.6 and 2.9, the Ciesp/Fiesp Chamber shall choose the Member(s).

**2.11.** In the event of substitution of any Committee Members by reason of death, revocation of powers, or removal by the President of Ciesp/Fiesp Chamber, the new Committee Member shall be appointed in the same manner as the substituted Member. If within fifteen (15) days from the notice of death, resignation or revocation of powers a new Committee Member is not appointed for whatever reason, the Ciesp/Fiesp Chamber shall appoint the new Committee Member, under Article 2.10 of the Rules.

**2.12.** All the actions by the Committee taken before the substitution of any Members shall remain valid following their substitution, except as the new panel of the Committee deems that some actions have been affected by the reasons that justified the Member(s) substitution.

**2.13.** Up until the effective substitution, the remaining Committee Members shall refrain from holding hearings or issuing Decisions or Recommendations without the express agreement of the Parties.

**2.14.** Where the appointment of a Committee Member is to be made by the Ciesp/Fiesp Chamber, this latter shall take into consideration the qualifications of the candidate that are relevant for the case, their availability, nationality and language background; any observations, remarks or requests of the Parties may also be taken into consideration for such purpose.

## **ARTICLE 3 - COMMITTEE FOR REVIEW (CR)**

**3.1.** Committees formed as CRs issue Recommendations aimed at preventing and resolving Disputes. CRs may also informally assist the Parties, under Article 11.

**3.2.** Except for the situation provided for by Article 3.4 of these Rules, the Recommendations are not binding or final on the Parties.

**3.3.** The Parties may duly perform the Recommendation from receipt thereof, or within fifteen (15) days following the receipt of the Recommendation or of the corrections and clarifications under Article 18 of the Rules, whichever occurs later, express their Disagreement by sending a notice thereon to the other Party, to the CR and to the Ciesp/Fiesp Chamber. Such notice may mention, for purposes of information, the reasons underlying the Disagreement of the Party.

**3.4.** In the absence of Disagreement, the Recommendation shall become final and binding on the Parties, who shall promptly perform it.

**3.5.** In the event of Disagreement, the Recommendation shall not become final and binding, and the Dispute shall be definitively resolved, preferably through arbitration administered by the Ciesp/Fiesp Chamber, without prejudice to the Parties' right to choose another dispute resolution method.

## **ARTICLE 4 - COMMITTEE FOR ADJUDICATION (CA)**

**4.1.** Committees formed as CAs issue Decisions aimed at resolving Disputes. CAs may also provide informal assistance to the Parties, under Article 11.

**4.2.** The Decision becomes effectively immediately and binds the Parties as of receipt thereof, regardless of any Disagreement.

**4.3.** The Party who disagrees with the Decision shall send its Disagreement with the Decision to the other Party, to the CA and to the Ciesp/Fiesp Chamber within fifteen (15) days following receipt thereof or receipt of the deliberation under Article 18 of the Rules, whichever occurs later. Such notice may state the reasons for

Disagreement of the Party, for purposes of information.

**4.4.** If neither Party presents a Disagreement to the Decision as provided for in Article 4.3, the Decision shall become not only binding, but also final between the Parties.

**4.5.** If a Disagreement is presented, the Dispute shall be definitively resolved preferably through arbitration administered by the Ciesp/Fiesp Chamber, without prejudice to the Parties' right to choose another dispute resolution method.

## **ARTICLE 5 - HYBRID COMMITTEE (CH)**

**5.1.** Committees formed as CHs issue Recommendations aimed at preventing and resolving Disputes under Article 3 of the Rules and, exceptionally, render Decisions, under Article 4 of the Rules. CHs may also provide informal assistance to the Parties, under Article 11 of the Rules.

**5.1.1.** The Recommendations issued by the CH have the same nature and effects as the Recommendations under Article 3 of the Rules, and shall observe the rules therein stated as to the applicable procedure.

**5.1.2.** The Decisions issued by the CH have the same nature and effects as the Decisions under Article 4 of the Rules, and shall observe the rules therein stated as to the applicable procedure.

**5.2.** If either Party requests that a Decision be issued by the CH in respect of a given Dispute, and if no other Party objects said request within five (5) days, the CH shall issue a Decision.

**5.3.** If either Party requests that a Decision be issued by the CH and any other Party objects such request within the time-period under Article 5.2 of the Rules, then the CH, on a final and duly grounded basis shall decide whether it shall issue a Recommendation or issue a Decision. To do so, the CH shall take into consideration, among other factors it deems equally relevant, the following:

(a) If the situation is urgent or other relevant considerations, such as if the Decision shall expedite the performance of the Contract or shall avoid a relevant loss to either Party;

(b) If the Decision shall avoid the interruption of performance of the Contract; and

(c) If the Decision is needed to preserve evidence.

**5.4.** Any request for Recommendation or Decision by the Party which submits a Dispute to the CH shall be made in the Statement of the Case, as per Article 12 of the Rules. Any similar request from another Party shall be made in writing before presentation of the Answer of the Party at issue, as per Article 13 of the Rules.

## **ARTICLE 6 - COMMITTEE MEMBERS**

**6.1.** The Committee shall be made up of professionals as agreed between the Parties. If for any reason the Members are to be appointed by the Ciesp/Fiesp Chamber, Article 2.14 of the Rules shall be observed.

**6.2.** All the Members appointed to the Committee shall execute the statement of independence and availability and immediately communicate, in writing, to the Parties, the other Committee Members and the Secretariat of Ciesp/Fiesp Chamber, all the facts and circumstances that may raise any doubt, before the Parties, as to their independence and impartiality, including those facts and circumstances that may arise in the course of their office.

**6.3.** In accepting their appointment, every Committee Member agrees to exercise their duties in accordance with these Rules.

**6.4.** Every Committee Member shall preserve the balance between the Parties' right to participate in and their decision-making power, by acting in an impartial, competent, careful, secret and speedy manner.

**6.5.** Unless otherwise agreed between the Parties or required by the applicable law,

all information obtained by a Committee Member in the exercise of its functions shall be used exclusively for the Committee's activities, and shall be treated as confidential.

**6.6.** A Party wishing to challenge a Committee Member must do so by presenting a request to the Ciesp/Fiesp Chamber within fifteen (15) days from the knowledge of the facts that caused said challenge. The matter shall be decided by an arbitrator included in the Ciesp/Fiesp Chamber's List of Arbitrators designated by the President of the Ciesp/Fiesp Chamber, within thirty (30) days from their acceptance or from the receipt of the last manifestation on the matter by the arbitrator, whichever is later. The challenged member, the other Committee Members and Parties involved shall all be entitled to express their view thereon.

**6.7.** If the challenge made to a Committee Member is accepted, the Member shall be substituted upon observance of the same procedure adopted for appointment, under Article 2 of the Rules.

**6.8.** Unless otherwise agreed between the Parties, the Committee Member may not participate in any court proceeding, arbitral proceeding or similar proceeding connected with the Dispute submitted to the Committee, either in the capacity of arbitrator, expert, expert witness, witness, representative or advisor of either Party.

**6.9.** The President of the Ciesp/Fiesp Chamber shall, at the request of either Party, decide on the removal of any Member in the event of failure to comply with his or her duties or whenever he or she fails to observe the Rules or the Statement of Formation of the Committee in performing his or her duties.

## **ARTICLE 7 – COMMITTEE FORMATION AND TERMINATION**

**7.1.** The Committee shall be formed through the execution of a Statement of Formation of the Committee (see template in Exhibit I), to be signed by the Parties, by each Committee Members and by a representative of the Ciesp/Fiesp Chamber.

**7.2.** Upon execution of the Statement of Formation of the Committee, the Committee's activities shall be deemed to have started.

**7.3.** The Committee shall be terminated:

(a) At any time, upon a joint decision of the Parties, without the need for justification and which shall be immediately effective; or

(b) In the case of an *ad hoc* Committee, upon resolution of the Dispute(s) that gave rise to formation thereof.

**7.4.** The Parties may, through a Consensus, substitute Committee Members, by notifying all the Members by correspondence, under Article 10.1.

## **ARTICLE 8 – COMMITTEE’S PROCEDURE**

**8.1.** The provisions of Article 8 apply to the Permanent Committee, unless otherwise agreed in the Statement of Formation of the Committee. The *ad hoc* Committee shall be conducted in the manner as determined by the Members, upon adoption, if applicable, of the provisions contained in Article 8 of the Rules.

**8.2.** Following the formation of the Committee, the Parties shall continually provide the information needed for it to be updated as to the circumstances of the Contract and performance thereof.

**8.2.1.** The Committee Members agree to keep continually updated as to the circumstances of the Contract and as to the progress of its performance.

**8.3.** Early at the beginning of its activities, the Committee shall consult with the Parties to set a schedule of meetings, measures and, if necessary, depending on the nature of the Contract, visits to the places of performance of the relevant obligation under the Contract (“Ordinary Meetings and Measures”).

**8.4.** The Committee shall take part in meetings and visits to the places of performance of the relevant obligation under the Contract, and the Parties shall be previously informed thereof.

**8.5.** In addition to the Ordinary Meetings and Measures, either Party may request additional or urgent meetings or measures ("Extraordinary Meetings and Measures").

**8.5.1.** Upon request for Extraordinary Meetings and Measures, except as otherwise stated in the Statement of Formation, the Committee shall estimate the Extraordinary Fees and the costs involved, informing the Parties and the Secretariat of Ciesp/Fiesp Chamber in order for the costs to be collected, without prejudice to any supplementary values or return of exceeding values to the Parties.

**8.5.2.** Upon payment of the Extraordinary Fees and of the other related costs, the Secretariat of Ciesp/Fiesp Chamber shall so inform the Committee and the Parties.

**8.5.3.** Except as otherwise directed by the Committee, the Extraordinary Meeting or Measure shall start only after full payment of the Extraordinary Fees provided for in Exhibit II of these Rules.

**8.6.** Following each meeting and measure, the Committee shall arrange for the drafting of the meeting minutes or report.

## **ARTICLE 9 – COMMITTEE'S POWERS**

**9.1.** The proceeding before the Committee shall be governed by these Rules, and in the absence of specific provision, by the rules stipulated by the Contract, the Statement of Formation, or the Parties, or in the lack thereof, by those stipulated by the Committee, upon due observance of the principles of equal treatment of the Parties and the opportunity to be heard (*audi alteram partem*). In the absence of agreement between the Parties, the Committee may outline the rules that shall govern the works and take all the necessary steps toward the exercise of its functions as a Committee, including but not limited to:



- (a) Defining the language of proceedings to be administered by the Committee;
- (b) Establishing the form and time intervals within which documents shall be submitted to the Committee;
- (c) Calling meetings, scheduling visits and setting hearings, as well as the forms and time intervals thereof;
- (d) Defining the procedural issues raised by the Parties; and
- (e) All the measures needed for the exercise of the Committee's functions.

**9.1.1.** If deemed convenient, the Committee, or the Parties, upon their mutual consensus, may adopt the procedural rules recommended by the Optional Protocol contained in Exhibit IV of the Rules.

**9.2.** The deliberations of the Committee concerning the rules governing the proceeding shall be taken by majority vote. In the absence of such majority, the vote of the Chairman of the Committee shall prevail.

**9.3.** In performing its obligation to keep secret the information provided, the Committee shall take all the actions towards protecting trade secrets and confidential information.

**9.4.** If more than two parties are Parties to the Contract, these Rules may be adapted to the multi-party circumstance, as appropriate, by mutual agreement of all Parties or, in the lack thereof, by the Committee.

## **ARTICLE 10 - COMMUNICATIONS, TIME-PERIODS AND SUBMISSION OF DOCUMENTS**

**10.1.** Except as otherwise provided in the Statement of Formation, communications may be made by any means agreed between the Parties at the addresses mentioned in the Statement of Formation and subsequently confirmed by regular mail service with acknowledgment of receipt, or through other appropriate electronic communication media or platforms as elected by the Parties.

**10.2.** All the statements of the Parties shall be submitted in writing. Before Formation of the Committee, all statements and documents shall be sent to the Ciesp/Fiesp Chamber by letter, electronic mail or equivalent means. Following Formation of the Committee, the Parties and the Members shall send all the statements and documents directly to the Parties, the Members and to the Ciesp/Fiesp Chamber.

**10.3.** The time-periods stipulated in the Rules shall be suspended during Ciesp/Fiesp Chamber's holiday closure. However, the Committee shall remain at the Parties' disposal to hold and conduct Extraordinary Meetings and Measures or urgent Recommendations/Decisions, if needed. The Chairman of the Committee shall be responsible for keeping the minutes and materials produced in this period, and shall forward them to the Ciesp/Fiesp Chamber at the end of the holidays, so that the internal organization is resumed.

## **ARTICLE 11 – INFORMAL ASSISTANCE FOR DISPUTES**

**11.1.** Informal assistance may be conducted (i) orally between the Committee and the Parties; (ii) at a meeting between the Committee and one of the Parties, upon the Parties' prior consent; (iii) through informal opinions issued by the Committee to the Parties; or (iv) by any other means of assistance that may help the Parties to resolve or prevent a Dispute.

**11.2.** The informal assistance, whatever the form, either written or oral, shall not bind the Committee in any manner whatsoever, if the same issue is submitted for Recommendation or Decision, under these Rules.

## **ARTICLE 12 - FORMAL SUBMISSION OF DISPUTES FOR RECOMMENDATION OR DECISION AND STATEMENT OF THE CASE**

**12.1.** The Party wishing to submit a Dispute to the Committee for Recommendation or Decision shall present to the other(s), to each Committee Member and to the Secretariat of Ciesp/Fiesp Chamber the written statement of the Dispute ("Statement of the Case").

**12.2.** The date on which the Statement of the Case is received by the Chairman of the Committee shall be considered, for all purposes, the Starting Date of the proceedings for resolution of the Dispute.

**12.3.** At any time, the Parties shall remain free to settle the Dispute with or without the Committee's assistance, in that the Committee and the Secretariat of the Ciesp/Fiesp Chamber shall be duly notified thereof. Following any such notice of settlement, the Committee shall not issue any Recommendation or Decision on the Dispute.

## **ARTICLE 13 – ANSWER AND SUPPLEMENTARY DOCUMENTS**

**13.1.** Unless otherwise agreed between the Parties or instructed by the Committee, the respondent shall submit a written answer to the Statement of the Case ("Answer") within the fifteen (15) days following receipt of the Statement of the Case.

## **ARTICLE 14 – ORGANIZATION AND CONDUCTION OF HEARINGS**

**14.1.** Hearings may be held for the production of evidence, unless otherwise agreed between the Parties and the Committee, upon due observance of the principles of equality between the Parties and of the full opportunity to defend and be heard (*audi alteram partem*).

## **ARTICLE 15 – ORGANIZATION AND TIME-PERIODS FOR ISSUANCE OF RECOMMENDATION OR DECISION**

**15.1.** Upon receipt of the Statement of the Case or of the Answer, whichever is later, the Committee shall estimate the Extraordinary Fees and the costs needed to issue a Decision or Recommendation concerning the Statement of the Case, and inform the Parties and the Secretariat of Ciesp/Fiesp Chamber so that they arrange for the payment of the relevant amounts.

**15.1.1.** Unless otherwise instructed by the Committee, the Recommendations or Decisions shall be formally stated only after full payment of the Extraordinary Fees under Exhibit II of these Rules.

**15.1.2.** The date on which the Secretariat of Ciesp/Fiesp Chamber informs the Committee and the Parties of the full advance payment of the Extraordinary Fees and costs shall be deemed, for all purposes, the starting date of the time-period in which the Committee shall issue the Recommendation or Decision.

**15.2.** The Committee may, at any time, request that a Party provide additional clarifications in writing or supplementary documents to support it as it prepares its Decision or Recommendation. It may also set a date for the clarifications to be made orally, in that all interested parties shall be called. Each such request shall be notified in writing by the Committee to the Parties, with a copy to the Secretariat of Ciesp/Fiesp Chamber.

**15.3.** The Committee shall issue its Recommendation or Decision as soon as possible and, in any case, within no more than thirty (30) days from the Starting Date defined in Article 12.2. Said time-period may be extended at the request of the Committee, considering the nature and complexity of the Dispute, as well as other relevant circumstances.

## **ARTICLE 16 - CONTENT OF THE RECOMMENDATION OR DECISION**

**16.1.** The Recommendations or Decisions shall mention the name of the Parties, the date on which they were issued, the findings of the Committee, as well as the reasons supporting them. In the event of an HC, a duly grounded statement on the nature of the deliberation at issue must be presented, i.e., why it is a Decision or a Recommendation.

**16.2.** The Recommendations or Decisions shall also mention the stipulation and the proration of the costs, expenses and fees resulting from submission of the Dispute.

**16.2.1.** Any reimbursements shall be made under Article 5.8 of Exhibit II of these Rules.

## **ARTICLE 17 - DELIBERATION OF THE RECOMMENDATION OR DECISION**

**17.1.** Should the Committee be composed of three (3) Members, the Committee shall make its best efforts to decide unanimously. In the lack of unanimous decision, the Recommendation or Decision shall be issued by majority vote. If no majority vote is obtained, the Committee shall notify the Parties that it failed to succeed in deciding the issue and may recommend submission of the Dispute to the dispute resolution means provided in the contract.

## **ARTICLE 18 - CORRECTION AND CLARIFICATION ON THE RECOMMENDATION OR DECISION**

**18.1.** By its own initiative, or upon request of the Parties, the Committee may correct any material error, typo or typographic error, or any similar mistakes found in the Recommendation or Decision, provided that such correction is submitted to the Parties within fifteen (15) days from the date of issuance of the Recommendation or Decision.

## **ARTICLE 19 – ADMISSIBILITY OF RECOMMENDATION OR DECISION IN SUBSEQUENT PROCEEDINGS**

**19.1.** Unless otherwise agreed between the Parties, a Recommendation or Decision shall be accepted as evidence in any subsequent proceeding, provided that all the Parties to such subsequent proceeding have been Parties to said proceeding in the Committee wherein the Recommendation or Decision was issued.

## **ARTICLE 20 - COSTS**

**20.1.** The Ciesp/Fiesp Chamber shall prepare a Table of Costs and Fees owed to the Committees Members and other expenses, stating the payment means and terms applicable thereto (see Exhibit II hereof).

**20.2.** The Table mentioned in Article 20.1 may be reviewed from time to time by the Ciesp/Fiesp Chamber, and apply to the Committees as of its publication.

**20.3.** All the expenses applicable and incurred as of formation of the Committee up until termination thereof shall be equally borne by the Parties, except in situations involving unilateral request for Extraordinary Meeting or Measure, Recommendations or Decisions, agreement to the contrary between the Parties or determination of the Committee.

**20.4.** Failure by either Party to pay the respective portion of the advance payment or of the effective payment of the monthly installment, fees and/or expenses, within the thirty (30) days following receipt of the collection document sent by the Ciesp/Fiesp Chamber automatically authorizes this latter to, without prejudice to other rights, suspend the services of the Committee after expiration of fifteen (15) days from the sending of a notice of suspension to both the Parties and the Committee Members. The suspension shall be effective until full payment of all amounts not paid. The responsibility for payment of both Members' Fees and Committee's expenses fall exclusively on the Parties. The Ciesp/Fiesp Chamber shall not be liable in the event of lack of payment of any fees or Expenses Fund.

**20.5.** Failure to pay for Extraordinary Fees and any expenses by the Party who unilaterally requested the Extraordinary Meeting or Measure, Recommendation or Decision shall cause no examination of the Dispute by the Committee Members, unless the other Party pays for said costs.

**20.6.** If either Party fails to pay to Ciesp/Fiesp Chamber its portion of the fees and expenses upon the stipulated date, the other Party may pay for the outstanding amount, without such payment implying such Party's waiver of its rights. The Party making such payment shall be entitled, without prejudice to the other rights, to receive from the infringing Party all the amounts paid on such account, under the law.

## **ARTICLE 21 – GENERAL PROVISIONS**

**21.1.** Under no circumstance shall the Members or Ciesp/Fiesp Chamber and/or its employees be held liable for any damages resulting from the Committee's activities. The Parties assume liability to the broadest and fullest extent for compensating the Committee Members, Ciesp/Fiesp Chamber and/or its employees for any damages resulting from or related to the activities of the respective Committee.

**21.2.** In all cases not expressly provided for in these Rules, the Committee shall act in accordance with the purposes underlying these Rules, by making all the efforts so that the Recommendations or Decisions be issued in a speedy manner and in due compliance with these Rules, the Contract and the applicable law.

**21.3.** The Ciesp/Fiesp Chamber may refuse to administer the Committee if the Contract's rules are inconsistent with the conduction of works and the administrative organization of the Ciesp/Fiesp Chamber.

## EXHIBIT I - STATEMENT OF FORMATION OF THE COMMITTEE FORM

The Parties to this Statement of Formation of Dispute Resolution Committee (“Statement of Formation of the Committee”):

Committee Member[s]

1. [**full name, details and address**] (Chairman/sole Member);
  2. [**full name, details and address**] (Member); a
  3. [**full name, details and address**] (Member),
- hereinafter collectively referred to as “Committee Members”, on the one side,  
and

Party 1 [**full name and address**], and  
Party 2 [**full name and address**], on the other side,

[other parties, if any]

hereinafter collectively referred to as “Parties”.

Whereas:

The Parties have heretofore entered into a contract on [...] (“Contract”) for purposes of [**contract object or project name**], which shall be performed in ... [**city and country of performance of the contract**];

[other Contracts, if any]

The Contract provides that the Parties shall submit the relevant Disputes to a [**CR / CA / HC**], pursuant to the Ciesp/Fiesp Chamber’s Dispute Prevention and Resolution Committee Rules (the “Rules”), and

The undersigned persons have been appointed to exercise the functions of Committee Members,



NOW, THEREFORE, The Committee Members and the Parties agree as follows:

## **ARTICLE 1 - OBJECT**

1.1. This Statement of Formation is intended to govern the contractual legal relationship hereby established between the Parties to the Contract and the Committee members. The analysis, review and dispute resolution procedure is provided for in the Rules, which is a separated document.

## **ARTICLE 2 - UNDERTAKING**

2.1. The Committee Members undertake to comply with their duties in accordance with the provisions of the Contract, the Rules and this Statement of Formation. The Committee Members agree that they are and shall remain independent of the Parties and impartial upon conduction of the proceeding and as to the Decision issued.

2.2. The Committee Members agree that they are available to comply with the provisions of the Contract, the Rules and this Statement of Formation.

2.3. The Committee Members agree to be experienced professionals in relation to the Contract and performance thereof.

## **ARTICLE 3 – COMMITTEE STRUCTURE AND CONTACT DETAILS**

3.1. The appointed Committee Members are listed below, who may be contacted as follows:

Chairman: *[name, address, telephone, fax and email]*

Committee Member: *[name, address, telephone, fax and email]*

Committee Member: *[name, address, telephone, fax and email]*

The Parties are the abovementioned persons, and their contact details are

as follows:

Party 1: [*name, name of the person responsible for the Contract, address, telephone, fax and email*]

Party 2: [*name, name of the person responsible for the Contract, address, telephone, fax and email*]

[other parties, if any]

**3.2.** Any change to the contact data shall be immediately notified to all parties involved, which notice shall be deemed received when addressed to anyone who failed to notify any change to his or her contact address.

## **ARTICLE 4 - QUALIFICATIONS**

**4.1.** As to any Committee Member appointed by the Parties, the undersigned Parties acknowledge that such Member holds the professional qualifications and language skills necessary to comply with their duties as a Committee Member, under the Rules and/or Contract.

## **ARTICLE 5 – COSTS AND FEES**

**5.1.** The Parties shall equally share the administrative costs related to the Ciesp/Fiesp Chamber, as well as the Monthly Fees owed to Committee Members, as per Article 20 of the Rules.

[Should the Parties wish to adapt the provisions relative to Members' fees]

**5.2.** The Parties and Members agree that the Monthly Fees owed to the Members shall correspond to [•], [*amount in numbers and in words*].

**5.3.** The Parties and Members agree that the Extraordinary Fees owed to the Members, if any, shall correspond to the fixed amount of [•], [*amount in numbers and in words*].

[or]

**5.3.** The Parties and Members agree that the Extraordinary Fees owed to the Members, if any, shall be estimated by the Committee based on the number of Monthly Fees necessary to complete the provision requested, upon consideration that the amount of each daily fee corresponds to [•], **[amount in numbers and in words]**.

## **ARTICLE 6 – TERM AND TERMINATION OF THE CONTRACT**

**6.1.** Subject to the terms of this Article, the Committee Members agree to exercise their office (duties) for as long as the Committee exists.

**6.2.** The Parties may, by mutual agreement, terminate this Statement of Formation or the Committee at any time, upon prior written notice of [specify] months to the Câmara Ciesp/ Fiesp and the Committee Members.

**6.3.** Committee Members may renounce their office at any time, by notifying the Parties, the other Members and the Câmara Ciesp/ Fiesp in writing, under Article 6.10 of the Rules.

**6.4.** The cases of renunciation of the office and subsequent substitution of Committee Members shall be governed by Article 6.10 of the Rules.

## **ARTICLE 7 - INDEMNIFICATION**

**7.1.** The Parties and the Members acknowledge that the Ciesp/Fiesp Chamber shall not be held liable in the event the Parties fail to pay for the Members' fees. The Parties jointly and severally agree to indemnify the Committee Members and the Ciesp/Fiesp Chamber in the event of third-party claims concerning any act or omission committed by a Committee Member, in the exercise or alleged exercise of his or her functions, except as such act or omission has been provenly exercised in bad faith.

## ARTICLE 8 - DISPUTES AND APPLICABLE LAW

8.1. All the Disputes arising out of or relating to this Statement of Formation shall be finally resolved by arbitration administered by Ciesp/Fiesp Chamber, under the terms of its arbitration rules. This Statement of Formation shall be governed by the laws of [*specify the applicable law*]. The seat of the arbitration shall be [*name the city and country*]. The language of the arbitration shall be [*specify language*].

The Parties and the Members execute this Statement of Formation on [*state the date*], in [*specify the place*].

Committee Member (Chairman/sole Member) [*signature*]

[*if applicable*] Committee Member [*signature*]

[*if applicable*] Committee Member [*signature*]

Party 1 [*signature*]

Party 2 [*signature*]

Câmara de Conciliação, Mediação e Arbitragem Ciesp/Fiesp [*signature*]

Witness 1 [*RG, CPF and signature*]

Witness 2 [*RG, CPF and signature*]

## EXHIBIT II - TABLE OF COSTS AND MEMBERS' FEES

**1. Filing Fee** owed to the Ciesp/Fiesp Chamber, to be paid upon request for formation of the Committee: five thousand Brazilian reais (R\$ 5,000.00). The receipt of payment of the Filing Fee shall be enclosed with the Notice Form.

**1.1.** The Filing Fee is not reimbursable.

**2. Management Monthly Fee** owed by each Party to the Ciesp/Fiesp Chamber during the effective term of the Committee: one thousand five hundred Brazilian reais (R\$ 1,500.00) paid every month, as of the month of the filing of the Notice Form (including the month of filing) up to the month of termination of the Committee (including such month).

**2.1.** The Management Monthly Fees owed during the effective term of the Committee are not reimbursable, including that corresponding to the month in which it is terminated.

**2.2.** The Management Monthly Fees provisioned for the months following termination of the Committee shall be reimbursed to the Parties under Article 5.8 of this Exhibit.

### **3. Members' Monthly Fees:**

**3.1.** Unless otherwise provided in the Contract or in the Statement of Formation, as compensation for the routine study and analysis of the documentation provided by the Parties, attendance of Ordinary Meetings and Measures and exercise of duties in an attempt to resolve the Disputes amicably, the Members shall be entitled to Monthly Fees calculated in accordance with the table below:

AMOUNT OF THE CONTRACT		FEES PER MEMBER
FROM	TO	
0	R\$ 50,000,000.00	R\$ 5,000.00
R\$ 50,000,000.01	R\$ 100,000,000.00	R\$ 7,500.00
R\$ 100,000,000.01	R\$ 500,000,000.00	R\$ 10,000.00
R\$ 500,000,000.01	R\$ 1,000,000,000.00	R\$ 15,000.00
FROM 1,000,000,000.01		R\$ 20,000.00

**3.1.1.** The Monthly Fees shall be due as of the month of formation of the Committee (including such month) until the month of termination thereof (including such month).

#### **4. Extraordinary Fees**

**4.1.** For each Decision or Recommendation, as well as for each Extraordinary Meeting or Measure, including all the studies and analysis of documentation relative to the matters to be discussed at such meeting/measure and upon preparation of documents of any nature, to be issued as a result of said meeting/measure, the Committee Members shall be entitled to the payment of a portion of the Extraordinary Fees.

**4.3.** In the Statement of Formation, the Parties and the Members may stipulate the amount of the Extraordinary Fees, and set a fix amount for each Decision, Recommendation, Extraordinary Meeting or Measure, or by establishing the criteria for the Committee to estimate the Extraordinary Fees.

**4.4.** Unless otherwise provided in the Statement of Formation, the Extraordinary Fees shall be estimated by the Committee based on the number of Daily Fees necessary to complete the provision requested:

AMOUNT OF THE CONTRACT		DAILY FEE PER MEMBER
FROM	TO	
0	R\$ 50,000,000.00	R\$ 2,500.00
R\$ 50,000,000.01	R\$ 100,000,000.00	R\$ 5,000.00
R\$ 100,000,000.01	R\$ 500,000,000.00	R\$7,500.00
R\$ 500,000,000.01	R\$ 1,000,000,000.00	R\$ 8,000.00
FROM 1,000,000,000.01		R\$ 12,000.00

**4.2.1.** Unless otherwise provided in the Statement of Formation, the Committee shall estimate the number of Daily Fees needed to complete the Extraordinary Meeting or Measure, as well as the Recommendation or Decision requested, in that the two latter shall be limited to five (5) Daily Fees.

## **5. General Provisions**

**5.1.** The amounts provided for in Articles 3 and 4 of Exhibit II shall e for each Member, and shall be paid in advance to an account held by the Ciesp/Fiesp Chamber, and which shall then be transferred to the accounts of the respective beneficiaries or to legal entities to which these are partners, and whose company purpose allow for the provision of technical or legal advisory services.

**5.2.** The Ciesp/Fiesp Chamber shall notify the Parties so that the pay in advance the amounts corresponding to six (6) months corresponding to Management Monthly Fees and Monthly Fees provided for by Articles 2 and 3.1 of Exhibit II following formation of the Committee, besides the Expenses Fund. The amounts shall be kept in an account to be held by the Ciesp/Fiesp Chamber, which shall be responsible for transferring the Monthly Fees and for deducting from the expenses fund any costs incurred by the Committee.

**5.2.1.** In the event of need for supplementary amounts to Expenses Fund or for advance payment of Management Monthly Fees

and Members' Fees during operation of the Committee, the Ciesp/Fiesp Chamber shall notify the Parties for them to make a new advance payment.

**5.3.** The Party requesting an Extraordinary Meeting or Measure, Recommendation or Decision shall pay in advance the Extraordinary Fees and any expenses. The Ciesp/Fiesp Chamber shall transfer to the Members the Extraordinary Fees previously deposited together with Monthly Fees owed in the month following the date of issuance of the Recommendation or Decision or following the holding of the Extraordinary Meeting or Measure requested.

**5.4.** Before formation of the Committee, the Ciesp/Fiesp Chamber shall request that the Members provide the data for receipt of their fees or for reimbursement of expenses, namely to what individual or legal entity and to what bank account the fees must be sent. The Parties shall pay for the expenses needed to make payment to the Members and the Ciesp/Fiesp may determine that the Parties pay in advance the costs needed for purposes of payment of any fees, taxes and contributions applicable to the payments, especially in the case of international transfers.

**5.5.** In the event of renunciation (of the office), substitution or removal of a Member, the Monthly Fees shall be owed until the date of renunciation or removal, which shall be calculated *pro rata die*, except for the case under Article 7.4 of the Rules, wherein the Parties shall ensure remuneration of the Member(s) for the three months subsequent to the formal notice of their dismissal.

**5.6.** In the event of challenge of a Member, the Parte presenting the challenge shall, together with the request, pay the amount of the Management Monthly Fee and the advance the payment of the fees owed to the arbitrator chosen by the President of Ciesp/Fiesp Chamber to decide the matter, who shall be entitled to overtime pay corresponding to the hours effectively worked in examining the challenge, in that a minimum of ten (10) hours shall be guaranteed. The amount of the hour shall be five hundred reals



(R\$ 500.00).

**5.7.** The Ciesp/Fiesp Chamber may grant additional time for the Parties to make any payments.

**5.8.** The Ciesp/Fiesp Chamber shall manage the provisioning of all amounts paid for conduction of the Committee's work, particularly the Management Monthly Fees, the Members' Fees and the Expenses Fund. Upon termination of the Committee, the Ciesp/Fiesp Chamber shall present to the Parties a statement of the Management Monthly Fees, the Members' Fees and the Expenses Fund, by asking them to make any remaining payments or by organizing the return of any exceeding amounts.

**5.8.1.** The Ciesp/Fiesp Chamber, upon Termination of the Committee, shall return any exceeding amounts to the party that has paid for it.

**5.8.2.** Any payments of amounts stated in the Recommendation or Decision shall be made by one Party to the other.

### **EXHIBIT III - NOTICE FORM**

Notice date: [**date**]

Contract: [**Contract name – an entire copy of the signed contract shall be presented together with this Notice Form**]

Nature of the Contract: [**Contract specifications, e.g. “consortium for construction of hydropower plant”**]

Made on: [**date on which the Contract was made**]

Parties: [**Party to the Contract**] [**Party to the Contract**] [**Party to the Contract**]

Part/Parties signing the Notice Form: [**Party 1, 2 etc.**]

Other related Parties: [*for purposes of, among other things, checking Members' conflict of interests*]

Dispute Resolution Committee Provision: [*reference to the provision of a Dispute Resolution Committee (number)*]

Type of Dispute Resolution Committee: [*Ad hoc Committee / Permanent Committee*]

Specification of the Dispute Resolution Committee: [*Hybrid Committee / Committee for adjudication / Committee for review*]

Number of Members: [*number of Dispute Resolution Committee Members*]

Parties' contacts:

[**Party 1**], representative: [contractually designated representative],  
address: [**address** .....],  
telephone: [**contact telephone number**], email: [**contact email**.....],

[**Party 2**], representative: [contractually designated representative],  
address: [**address** .....],  
telephone: [**contact telephone number**], email: [**contact email**.....],  
[If wishing to provide the appointment in advance, please specify the data below].

Members:

Member appointed by [**Party 1**]:

Name and details: [**name**], [**nationality**], [**profession**], [**marital status**]

Contact and telephone: address:  
[**address**.....],  
telephone: [**contact telephone**], email: [**contact email**.....]

Member appointed by [**Party 2**]:

Name and details: [**name**], [**nationality**], [**profession**], [**marital status**]

Contact and telephone: address:  
[**address**.....],

telephone: [**contact telephone**], email: [**contact email.....**]

Additional Considerations:

[additional considerations relevant to the formation of the Dispute Resolution Committee and special provisions on the Committee's remuneration, if any]

This Form is presented pursuant to the terms of the Rules applicable to Dispute Resolution Committee of the Ciesp/Fiesp Conciliation, Mediation and Arbitration Chamber.

Place and date: [**place and date for submission of the Identification Form**]

I agree.

By [**Party 1**]:

Name:

Title:

Name:

Title:

By [**Party 2**]:

Name:

Title:

Nome:

Title:

## **EXHIBIT IV - COMMITTEE'S PROCEDURE OPTIONAL PROTOCOL**

1. Upon consultation of the Parties, the Committee shall inform, in writing, the nature, the form and the time intervals in which performance reports shall be sent to it. For routine study of the characteristics of the Contract and of the development of its performance, the Committee shall preferably refer to the reports and documents provided for in the Contract, in that it shall only request for preparation of performance reports or for information in a form and time intervals other than those provided for in the Contract if the Committee believes that said information is not sufficiently clarified in the documents provided for in the Contract.
2. The visits shall consist of informal discussions with authorized representatives of the Parties and direct observations concerning the development of the Contract. During said discussions, the Committee may facilitate the dialogue between the representatives of the Parties in an attempt to resolve any deadlocks that may turn into Disputes.
3. The time intervals of the scheduled meetings and visits shall be of at least every quarter and sufficient to keep the Committee informed of the performance of the Contract of any Dispute, except as otherwise agreed between the parties and the Committee.
4. The meetings and visits shall only be held or occur in the presence of the representatives of the Parties.
5. Should a Party fail to attend any scheduled meetings or visits, the Committee shall decide on the holding of the meeting or conduction of the visit without attendance of the Party at issue.
6. If, on an exceptional basis, a Member is unable to attend any of the scheduled meetings or visits, the other Members shall decide, by joint decision, whether the meeting shall be held without the presence of the Member. In the event of a deadlock, the meeting shall not be held.

**7.** The Committee Members shall accept any request for urgent visit or meeting as soon as possible and shall make their best efforts to be available for the meeting or visit within no more than fifteen (15) days following the request.

**8.** All the statements of the Parties and documents submitted before formation of the Committee shall be sent to the Ciesp/Fiesp Chamber by letter, electronic mail or an equivalent means. Should the Party opt for sending hard copies, these shall be sent to the Ciesp/Fiesp Chamber in a sufficient number so that each Party, the Members and the Secretariat of Ciesp/Fiesp Chamber receive, each, a copy, in addition to a copy of the filing registration.

**9.** The Parties may opt for hiring the system of organization and sharing of documents which is exclusively electronic, which allows for access and control of all documentation by the Parties, the Members and the Secretariat of Ciesp/Fiesp Chamber, in which case the sending of hard copies of the documents will not be necessary. The information contained in the electronic sharing system shall be kept available to the Parties, the Committee Members and the Secretariat of Ciesp/Fiesp Chamber for a period of at least five (5) years following completion of the Committee's activities.

**10.** The time-periods shall be computed per calendar days, in that the starting date and including the due date shall be excluded. The starting date and the due date shall be transferred to the next business day if it falls on days wherein the Ciesp/Fiesp Chamber is no open for business.

**11.** Upon formally submission of a Dispute to the Committee, the Party shall present a Statement of the Case, which shall contain the following elements:

- (a)** A clear and concise description of the nature and circumstances of the Dispute and the remedies considered applicable;
- (b)** A list of the issues submitted to the Committee for Recommendation or Decision, as the case may be, and a statement

of the Claimant's position on such issues;

**(c)** The grounds supporting the position of the Claimant, as well as the relevant documents, drawings, schedules and correspondences;

**(d)** The request for Recommendation or Decision submitted to the Committee by the Claimant; and

**(e)** In the event of an HC, if the Party wishes that a Decision is issued, the request for a Decision and the statement of the reasons why the Party understands that the HC is to issue a Decision, rather than a Recommendation.

**12.** The Answer, in turn, shall include:

**(a)** A clear statement of the position of the Party in respect of the Dispute;

**(b)** Any grounds supporting the position of the Party, such as the relevant documents, drawings, schedules and correspondence;

**(c)** The claim of the Respondent; and

**(d)** In the event of an HC, the answer to any request for Decision submitted by the Claimant or, if this latter has made no such request, a request for Decision by the Respondent, with the reasons supporting this latter's understanding that the HC is to issue a Decision, rather than a Recommendation.

**13.** If a hearing is needed, it may be held either in person or by teleconference/videoconference, if the Parties and the Committee so wish. All the Committee Members must attend, unless the Committee decides, in specific circumstances and following consultation with the Parties, that it is convenient to hold the hearing even in the absence of one of the Committee Members.

**13.1.** The Committee shall have full powers to conduct the hearings in the manner as it deems appropriate, and shall define how it will be processed.

**13.2.** The Committee shall conduct the proceeding in an equal and impartial manner, and it shall ensure each Party the opportunity to submit their arguments and applicable evidence.

**13.3.** The Parties shall attend in person or through duly authorized representatives who have responsibility and knowledge of performance of the. They may also be assisted by advisors.

**14.** If either Party refuses to take part in a Committee's proceeding or in any of its stages without justification, the Committee shall proceed despite said refusal or absence.

**15.** The Recommendations or Decisions issued by the Committee may include the following information, without limitation, and regardless of the order below:

- (a)** A Report containing a description of the summary of the Dispute, the allegations of the Parties and the request for Recommendation or Decision;
- (b)** A chronological statement of the significant events;
- (c)** A summary of the proceeding adopted by the Committee.

**16.** The Parties may, within fifteen (15) days from receipt of the Recommendation or Decision, request that the Committee correct an error mentioned in Article 18.1 or provide clarifications on the Recommendation or Decision. Following receipt of the request by the Chairman of the Committee, the Committee shall allow for the other Party to present its comments thereon within ten (10) days. The deliberation on the correction or clarification by the Committee shall be conducted within thirty (30) days from the date of expiration of the time-period for receipt of the other Party's comments thereon.

The Ciesp/Fiesp Chamber thanks the commission of works in charge of drafting these rules, namely Giovanni Ettore Nanni, president of the commission, and the members Augusto Barros de Figueiredo, Jéssica Cacique de Araújo, Lenora Hage Santos Bento de Faria, Luís Alberto Salton Peretti, Pedro Bento de Faria e Pedro Guilhardi. We also thank José Carlos de Magalhães, Adriana Braghetta and Fernando Marcondes, who contributed to the review and improvement of this work.



The Ciesp/Fiesp Chamber of Conciliation, Mediation and Arbitration is intended to administer, with autonomy and independence, conciliations, mediations, arbitrations and committees for resolution of disputes over alienable assets, interests or property in the civil and commercial areas.

The Chamber cares for the proper development of the proceedings, by keeping absolutely secret the disputes administered by it.

Learn more about the Chamber: [www.cmasp.com.br](http://www.cmasp.com.br).

**Ciesp - Centro das Indústrias do Estado de São Paulo (Center of Industries of the State of São Paulo)**

**Fiesp - Federação das Indústrias do Estado de São Paulo (The Federation of Industries of the State of São Paulo)**

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The Chamber of Conciliation, Mediation  
and Arbitration CIESP/FIESP