

**GENERAL TERMS
SCHEDULE "A"
RULES OF ARBITRAL PROCEDURE**

Part I – General

1. Interpretation

1.1 In these Rules

- a) the terms and phrases have the same meanings as may be attributed to them under the *Arbitration Act*, R.S.A. 2000, c. A-43,
- b) "Working Days" means days other than Saturdays, Sundays and statutory holidays.
- c) "Contract" means a contract containing an agreement to refer disputes to arbitration and appending these Rules, or incorporating them by reference, and
- d) "Parties" mean the parties to the Contract.

1.2 In these Rules, time shall be calculated in the same manner as time is calculated in the Contract.

2. Application

2.1 These Rules apply to an arbitration conducted under the Contract.

2.2 The parties to an arbitration may, by agreement, change or make additions to these Rules.

3. Communications

3.1 All communications under these Rules shall be given in the same manner as communications may be given in the Contract.

3.2 There shall not be any oral communications with respect to the issues in dispute between a party and the arbitrator unless it is made in the oral presence of both parties or their legal representative.

3.3 A copy of all written communications between the arbitrator and a party shall be given to the other party at the same time.

4. Objections

4.1 A party shall state any objections to any aspect of the arbitral proceedings or to the conduct of the other party or the arbitrator at the earliest possible time.

Project Name:
Project #:

Section 00 72 13
RFP/Tender #:

- 4.2 The arbitrator may refuse to consider an objection if a party fails to comply with Article 4.1.

Part II - Pre-Arbitration Considerations

5. Commencement

- 5.1 Either party ("the Claimant") may submit a dispute to arbitration as permitted under the Contract by giving the other party ("the Respondent") a written notice containing the following:
 - a) a description of the Contract;
 - b) a statement of the issue in dispute;
 - c) a request that the dispute be referred to arbitration;
 - d) a description of the claim being made; and
 - e) the name or names of proposed arbitrators, along with the resume described in Article 6.2.
- 5.2 For purposes of the calculation of time under these Rules, the arbitration shall be deemed to have commenced on the date the Respondent receives the notice under Article 5.1.

6. Arbitrator

- 6.1 The arbitration shall be conducted before a single arbitrator appointed under these Rules who possesses the qualifications, if any, agreed to by the parties.
- 6.2 If a party proposes an individual as an arbitrator, that party shall also provide a written resume of that individual's work background, qualifications and arbitration experience.
- 6.3 The parties shall make every reasonable effort to reach agreement on an arbitrator within fifteen Working Days after the arbitration commences.
- 6.4 If an agreement is not possible under Article 6.3, either party may make an application to the court for the appointment of an arbitrator.
- 6.5 Before an arbitrator accepts an appointment, she or he shall provide the parties with a written statement declaring that there are no circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality and that she or he will disclose any such circumstances to the parties if they should arise before the arbitration is concluded.
- 6.6 If, for any reason, the arbitrator resigns, is unable or refuses to act or is removed from office, she or he shall be replaced by another arbitrator under these Rules and any oral hearings previously held shall be rescheduled.

Project Name:
Project #:

Section 00 72 13
RFP/Tender #:

- 6.7 If the parties do not agree that the circumstances specified in Article 6.5 exist, either party may apply to the Court for an order that the arbitrator should be replaced.

7. Scheduling a Meeting

- 7.1 Within twenty Working Days after the arbitrator is appointed, the arbitrator shall convene a meeting of the parties to reach a consensus, if possible, and to make orders, if necessary, on:
- a) the procedure to be followed in the arbitration,
 - b) the time periods for taking steps in the proceedings,
 - c) the scheduling of any oral hearings or meetings,
 - d) any preliminary applications or objections a party may have and
 - e) any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.

8. Powers of the Arbitrator

- 8.1 Subject to any limitations in these Rules or any agreement reached by the parties, the arbitrator may conduct the arbitration in any manner she or he considers appropriate but each party shall be treated fairly and shall be given full opportunity to present its case.

- 8.2 The arbitrator may:

- a) order an adjournment of the proceedings from time to time,
- b) make an interim order on any matter with respect to which the arbitrator may make a final award, including an interim order for preservation of property which is subject matter of the dispute,
- c) order inspection of documents, exhibits or other property at any location,
- d) order the recording of any oral hearing or meeting; and
- e) extend or abridge a period of time required in these Rules or fixed or determined by the arbitrator where she or he considers it just and appropriate in the circumstances.

- 8.3 The arbitrator may adjourn the proceedings from time to time if the arbitrator considers that it would facilitate settlement discussions between the parties.

Part III - Proceedings

9. Exchange of Statements

Project Name:
Project #:

Section 00 72 13
RFP/Tender #:

- 9.1 The parties shall exchange written statements of their respective positions in the dispute in the following manner:
- a) the Claimant shall give a statement outlining the facts, the matters in issue and the relief or remedy requested no later than ten Working Days after the scheduling meeting is held in Article 7.1,
 - b) the Respondent shall give a statement outlining its response to the Claimant's statement and its counterclaim, if any, no later than ten Working Days after receiving the Claimant's statement and
 - c) the Respondent, by counterclaim, shall give a statement outlining its defence to the counterclaim no later than ten Working Days after receiving the counterclaim.
- 9.2 The parties shall provide the arbitrator with copies of the statements exchanged in Article 9.1.

10. Disclosure

- 10.1 Within 20 Working Days after providing the statement required by Article 9.1, each party shall provide a list of documents:
- a) upon which it intends to rely and
 - b) which describes each document by kind, date, author, addressee and subject matter.
- 10.2 During the arbitration proceedings the arbitrator may allow a party to amend or add to any statement made in Article 9.1 unless:
- a) the amendment or addition goes beyond the terms of the arbitration agreement in the Contract, or
 - b) the other party would be prejudiced by the delay in making the amendment or addition.
- 10.3 The arbitrator may order a party to produce any documents not disclosed under Articles 10.1 and 10.2 that it has in its care, custody or control and that the arbitrator considers to be relevant, within the time the arbitrator specifies.
- 10.4 Each party shall allow the other party the necessary access at reasonable times to inspect and take copies of all documents that the former party has listed in Article 10.1 or 10.2 or that the arbitrator has ordered to be produced in Article 10.3.
- 10.5 The parties shall prepare and send to the arbitrator an agreed statement of facts within the time specified by the arbitrator.

- 10.6 Each party shall, not later than fifteen Working Days before the oral hearing commences, provide the other party with the name and address of any witnesses to be called and a written summary of their evidence.
- 10.7 In the case of an expert witness, notwithstanding Article 10.6, each party shall, not later than forty Working Days before the oral hearing commences, provide the other party with, a written statement or report prepared by the expert witness.
- 10.8 In the case of an expert witness called by a party to rebut the written statement of an expert called by the other party, that party shall, not later than twenty Working Days before the oral hearing commences, provide the other party with a written statement or report prepared by the expert witness.
- 10.9 Each party shall, not later than twenty Working Days before the oral hearing commences, give to the other party and the arbitrator an assembly of all documents to be introduced at the hearing.

11. Hearings and Meetings

- 11.1 The arbitrator shall give the parties written notice of not less than:
 - a) five Working Days of any oral hearings, or
 - b) three Working Days of any meetings,which have not been previously scheduled under Article 7.1.
- 11.2 All oral hearings and meetings in the arbitrations shall be conducted in private and the arbitrator and the parties shall keep all written communications and documents in respect of these proceedings strictly confidential.
- 11.3 All oral hearings shall be conducted in Edmonton, Alberta, Canada.

12. Evidence

- 12.1 The arbitrator shall not be required to apply the legal rules of evidence and shall determine the relevance and materiality of the evidence presented.
- 12.2 All oral evidence shall be taken in the presence of the arbitrator and all the parties unless a party is absent by default or has waived the right to be present.
- 12.3 The arbitrator may order any individual to be examined under oath or on affirmation in relation to the issues in dispute and to produce before the arbitrator all relevant documents within the individual's care, custody and control.
- 12.4 The document assemblies delivered under Article 10.5 shall be deemed to have been entered into evidence at the oral hearing without further proof and without being readout at the hearing but a party may challenge the admissibility

of any document so introduced.

12.5 The arbitrator may permit a document to be introduced at the oral hearing which was not previously disclosed under Article 9.3 or provided as required under Article 10.4 (b) or 10.5. However, the arbitrator may take that default into account when determining the costs to be awarded in the arbitration.

12.6 If the arbitrator permits the evidence of a witness to be presented as a written statement, the other party may require that witness to be made available for cross examination at the oral hearing.

12.7 The arbitrator may order a witness to appear and give evidence, and in that event, the parties may cross examine that witness and call evidence in rebuttal.

13. Arbitrator Retained Experts

13.1 The arbitrator may:

- a) retain one or more experts to give a written report on specific issues and
- b) for that purpose, require a party to make available relevant documents, goods or other property for the expert's inspection.

13.2 The arbitrator shall give a copy of the expert's report to the parties who shall have the opportunity to reply to it.

13.3 On a request of a party, an expert retained under Article 13.1 shall:

- a) make available to the party for examination all documents, goods or other property in the expert's possession with which she or he was provided in order to prepare a report, and
- b) provide the party with a list of all documents, goods or other property not in the expert's possession, but with which was provided in order to prepare a report, and a description of the location of those documents, goods or other property.

13.4 The parties may cross examine an expert on the report and may call evidence in rebuttal.

14. Default

14.1 Where a Claimant, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Article 9.1(a) within the required time, the arbitrator can terminate the arbitration with respect to that claim.

14.2 Where a Respondent, without sufficient cause and after five Working Days notice from the arbitrator, fails to provide the statement required in Article 9.1(b) within the required time, the arbitrator shall:

- a) continue the arbitration, and
- b) require the Claimant to submit such evidence to support the claim as the arbitrator may require before making an award.

14.3 Where a party without sufficient cause, fails to appear at a scheduled oral hearing, or fails to produce any evidence, the arbitrator may continue the arbitration and make an award based upon the evidence before the arbitrator.

15. Close of Hearings

15.1 The arbitrator shall close the oral hearings when:

- a) the parties advise they have no further evidence to give or submissions to make, or
- b) the arbitrator considers further hearings to be unnecessary or inappropriate.

15.2 Where the arbitrator considers it to be just and appropriate to do so, the arbitrator may reopen the oral hearings at any time before making the final award.

Part IV - The Award

16. Award

16.1 An arbitrator shall decide the dispute in accordance with the law.

16.2 The arbitrator shall, not later than twenty Working Days after the hearings have been closed:

- a) advise the parties as to when the arbitrator will make a final award; or
- b) make a final award not later than twenty Working Days after the hearings have been closed and give a signed copy of the award to each party.

16.3 The final award of the arbitrator shall be dated, be in writing and state the reasons upon which it is based.

16.4 The arbitrator may order interest to be paid in the final award.

16.5 The final award is final and binding on the parties and the parties agree to comply with it as soon as possible.

17. Costs

17.1 The arbitrator shall fix the costs of the arbitration in the final award, which costs may include, but are not limited to, the following:

Project Name:
Project #:

Section 00 72 13
RFP/Tender #:

- a) the fees of the arbitrator,
- b) any necessary expenses incurred by the arbitrator,
- c) the fees, travel costs and other expenses of witnesses approved by the arbitrator,
- d) any fees, charges or expenses for providing services to the arbitrator or the parties in connection with the arbitration.

17.2 Except for the costs of legal fees and legal expenses of the successful party, the costs of the arbitration shall be apportioned between the parties unless the arbitrator considers it appropriate in the circumstances that the costs be borne by the unsuccessful party.

17.3 Each party, regardless of the outcome of the arbitration shall be responsible for and bear its own costs of legal fees and legal expenses. The arbitrator shall have no discretion to vary this Article 17.3.

17.4 The fees of the arbitrator shall be reasonable in amount, taking into account the amount in the dispute, the complexity of the subject matter, the time spent by the arbitrator and any other relevant circumstances.

18. Amendments and Corrections to the Award

18.1 Upon application by a party, an arbitrator may amend or vary a final award to correct:

- a) a clerical or typographical error, or
- b) an arithmetical error made in a computation.

18.2 An application by a party to the arbitrator pursuant to Article 18.1 shall be made within ten Working Days after that party receives the final award