

SCHEDULE 13

DISPUTE RESOLUTION PROCEDURE

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APPENDIX 13A REFEREE AGREEMENT

SCHEDULE 13

DISPUTE RESOLUTION PROCEDURE

1. DISPUTE RESOLUTION

1.1 Procedure

Unless both parties otherwise agree, all Disputes will be resolved in accordance with the provisions of this Schedule (the “**Dispute Resolution Procedure**”) provided that the decision of the Independent Certifier that Service Commencement has been achieved is final and binding on the parties, and such decision will not be the subject of a Dispute and will not be subject to the Dispute Resolution Procedure. Except for the foregoing decision as to achievement of Service Commencement, all other decisions of the Independent Certifier, including as to any Deficiencies, may be the subject of a Dispute and may be subject to the Dispute Resolution Procedure.

1.2 Dispute Notice

The Dispute Resolution Procedure may be commenced by either party by giving notice to the other party (the “**Dispute Notice**”) briefly setting out the pertinent facts, the remedy or relief sought and the grounds on which such remedy or relief is sought.

1.3 Negotiation

Within 5 Business Days of one party receiving a Dispute Notice from the other, or such longer period as the parties may agree, a Representative of each party will meet and make good faith efforts to resolve the Dispute by without prejudice negotiations.

1.4 Fast Track Referee Process

If the Dispute is not resolved pursuant to Section 1.3 [Negotiation] of this Schedule to the mutual satisfaction of the parties within 5 Business Days (or such longer period as the parties may agree) following the receipt of the Dispute Notice by the receiving party, either party may by notice to the other (a “**Referee Notice**”), request the appointment of a referee (“**Referee**”) as provided under the terms of this Section 1.4 [Fast Track Referee Process]. The Referee will be appointed as an expert to resolve the Dispute and will participate in the resolution of the Dispute as set out below:

- (a) if the Referee Notice is given during the Construction Period, then the Independent Certifier will as of the end of the 2nd Business Day following the delivery of the Referee Notice be deemed the Referee unless:
 - (1) within 2 Business Days of the delivery of the Referee Notice either the parties agree that another person would be more suitable considering the nature of the Dispute, or either party gives written notice that it objects to the Independent Certifier acting as Referee in relation to the Dispute; or
 - (2) for any reason the Independent Certifier is unable to perform the duties of the Referee,

and in either such case the Referee will be appointed in the manner described in Section 1.4(b) [Fast Track Referee Process] of this Schedule;

- (b) if the Dispute Notice is given during the Operating Period or Section 1.4(a) [Fast Track Referee Process] of this Schedule requires that this Section 1.4(b) [Fast Track Referee Process] applies, the parties will appoint a Referee in the following manner:
- (1) within 2 Business Days of the delivery of a Referee Notice, each party will submit in writing to the other party, the names of no more than 2 candidates for Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Referee in respect of the Dispute at hand;
 - (2) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party;
 - (3) if for any reason within 3 Business Days of the delivery of a Referee Notice, a Referee has not been appointed, then either party may apply to the British Columbia International Commercial Arbitration Centre for an arbitrator to be promptly appointed under its “Domestic Commercial Arbitration Rules of Procedure” to act as a Referee under this Agreement in relation to the Dispute.
- (c) the parties will enter into an agreement with the Referee to act as Referee generally in the form attached as Appendix 13A (the “**Referee Agreement**”), such agreement to be entered into no later than 2 Business Days after the Referee’s appointment. The Referee’s fees and expenses will be shared equally by the Authority and Project Co. The Authority will pay the full amount of the Referee’s fees and expenses on the day that such fees and expenses are due (including any advances on fees and expenses) in accordance with the Referee Agreement and Project Co will reimburse the Authority, for Project Co’s share of all such fees and expenses within 5 Business Days of receipt of a written demand from the Authority, failing which the Authority will be entitled to deduct the amount of Project Co’s share of the Referee’s fees and expenses from amounts otherwise due to Project Co under the provisions of this Agreement;
- (d) the Referee will conduct an impartial review of the Dispute in such manner as the Referee thinks fit, including carrying out on site inspections and interviews with any persons that the Referee thinks fit. The parties will comply with all reasonable requests from the Referee for additional information, documents and access to personnel which the Referee considers necessary for the review. Any submission or documentation in respect of the Dispute provided to the Referee by a party will also be provided to the other party;
- (e) the Referee may, with the written approval of both parties, retain other professional persons or experts to assist with the review and will pay due regard to any request by either party for him to retain such other professional persons or experts;

- (f) the Referee will not be obliged to conduct his enquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Referee thinks fit, and may render his decision notwithstanding the failure of a party to participate in the proceedings;
- (g) the Referee will render a brief, written, reasoned and impartial decision on the Dispute, with copies to both parties within 5 Business Days of the signing by the Referee and both parties of the Referee Agreement referred to in Section 1.4(c) [Fast Track Referee Process] of this Schedule, or such longer period as agreed to in writing by both parties. The Referee's decision will be in the form of a proposed determination of the rights of the parties having regard to the Referee's understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Referee is able to determine them;
- (h) each party acknowledges the value of having the Referee render a timely decision regarding the Dispute. If the Referee is unable to render his decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Referee provide to the parties within such time such analysis of the Dispute as the Referee is able to make within that time and describe the further work the Referee recommends would be required in order to arrive at a reasoned decision;
- (i) subject to the provisions of Section 2.3 [Interim Decision] of this Schedule, a decision of a Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the Dispute;
- (j) the parties will agree to release and save harmless the Referee from any liability arising from the Referee's actions, made in good faith, in carrying out the duties of the Referee as described in this Schedule or as may be described in the Referee Agreement referred to in Section 1.4(c) [Fast Track Referee Process] of this Schedule;
- (k) the proceedings under this Section 1.4 [Fast Track Referee Process] will be confidential and all information, data or documentation disclosed or delivered by either party to the Referee as a result or in connection with his duties as Referee will be treated as confidential and neither the parties nor the Referee will, except as would be permitted under Section 17 [General] of this Agreement, disclose to any Person any such information, data or documentation unless the parties otherwise agree in writing. Nothing contained in this provision will prevent the submission in any subsequent proceedings of any evidence other than evidence that came into existence for the express purpose of submission to, or assistance of, the Referee; and
- (l) the proceedings by or before a Referee will be without prejudice in any subsequent proceedings.

1.5 Commencement of Proceedings

If the Dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Referee's decision or analysis pursuant to Section 1.4 [Fast Track Referee Process] of

this Schedule (or such longer period as the parties may agree) or within 10 Business Days of the date on which the Referee's decision or analysis ought to have been received under Section 1.4 [Fast Track Referee Process] of this Schedule then either party may commence proceedings to have the Dispute finally settled, either by arbitration under Section 1.6 [Arbitration] of this Schedule or by litigation as contemplated in Section 1.7 [Litigation] of this Schedule. In any such proceedings the scope of issues will not be limited strictly to the terms of the Dispute Notice but may extend to include directly related matters for the purpose of completely resolving the Dispute.

1.6 Arbitration

If a party is entitled under Section 1.5 [Commencement of Proceedings] of this Schedule to commence proceedings to have a Dispute finally resolved, then:

- (a) the party may give the other party notice ("**Notice of Intention to Arbitrate**") of its intention to submit the Dispute to binding arbitration; and
- (b) if the other party does not deliver a notice of objection (the "**Notice of Objection to Arbitration**") within 5 Business Day of receipt of the Notice of Intention to Arbitrate then either party may refer the Dispute to be finally resolved by arbitration as follows:
 - (1) the "Domestic Commercial Arbitration Rules of Procedure" of the British Columbia International Commercial Arbitration Centre will apply to the arbitration, as modified by this Schedule or as otherwise agreed by the parties;
 - (2) arbitration proceedings will be commenced by a party (the "**Initiating Party**") giving notice to the other party (the "**Responding Party**");
 - (3) the arbitrator(s) will have the authority to award any remedy or relief that a court or judge of the Supreme Court of British Columbia could order or grant in accordance with the Agreement, including specific performance of any obligation created under the Agreement, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process;
 - (4) meetings and hearings of the arbitrator(s) will take place in the City of Vancouver or in such other place as the parties agree and such meetings and hearings will be conducted in the English language unless otherwise agreed by such parties;
 - (5) the arbitrator(s) may at any time fix the date, time and place of meetings and hearings in the arbitration, upon reasonable notice to the parties;
 - (6) subject to any adjournments permitted by the arbitrator(s) the final hearing will be continued on successive Business Days until it is concluded;
 - (7) all meetings and hearings will be in private unless the parties agree otherwise and either party may be represented at any meetings or hearings by legal counsel;

- (8) either party may examine, and re-examine, all its own witnesses at the arbitration and may cross-examine all of the other party's witnesses;
- (9) the arbitration will be kept confidential and the existence of the proceeding and any element of it (including any pleadings, briefs or other documents submitted or exchanged, and testimony or other oral submission and any awards) will not be disclosed to any party other than the arbitrators, the parties (and their respective directors, officers, shareholders and legal counsel), the Senior Lenders and such other persons as may be necessary to the conduct of the proceeding or required by law; and
- (10) the arbitrator(s) will deliver a decision in writing within 15 Business Days after the conclusion of the hearing and, unless the parties agree otherwise, will set out reasons for the decision.

1.7 Litigation

If either party is entitled under Section 1.5 [Commencement of Proceedings] of this Schedule to commence proceedings to have a Dispute finally resolved and:

- (a) no Notice of Intention to Arbitrate has been delivered by one party to the other; or
- (b) a Notice of Objection to Arbitration has been delivered by one party to the other in response to a Notice of Intention to Arbitrate;

then either party may commence proceedings in respect of the Dispute in the courts of British Columbia and for purposes of certainty, the provisions of Section 17.5 [Law of Agreement] of this Agreement will apply to such litigation. If a party has commenced such proceedings but has not served the other party as required for such proceedings prior to the other party delivering a Notice of Intention to Arbitrate, the party commencing such proceedings will either give the Notice of Objection to Arbitrate or serve such party the required notice within the time required under Section 1.6(b) [Arbitration] of this Schedule, failing which the Dispute will be resolved by arbitration under Section 1.6 [Arbitration] of this Schedule.

2. GENERAL

2.1 Other Remedies

Nothing contained in this Schedule will preclude a party from initiating a proceeding in a court of competent jurisdiction for the purpose of obtaining an effective emergency or provisional remedy to protect its rights as necessary in the circumstances, including obtaining temporary and preliminary injunctive relief and other orders, whether before or after the Dispute has been initiated by a Dispute Notice.

2.2 Strict Compliance with Time Limits

The parties acknowledge that timely resolution of Disputes is mutually beneficial and the time limits set out in this Schedule, or as otherwise agreed by the parties, will therefore be strictly complied with and enforced.

2.3 Interim Decision

If a Dispute occurs then the Authority and Project Co will in good faith carry out their respective obligations under this Agreement pending resolution of the Dispute pursuant to the Dispute Resolution Procedure. Prior to resolution of the Dispute, the Authority may in its discretion by notice to Project Co direct Project Co to proceed in respect of the matter in Dispute or any related matter and Project Co will comply with and implement the direction. Such direction will be without prejudice to Project Co's rights to compensation or other rights under the Agreement. Nothing in this Schedule will limit the Authority's right to require a Change.

**APPENDIX 13A
REFEREE AGREEMENT**

BETWEEN:

[Name and address of Referee]
(the "Referee")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA
AS REPRESENTED BY THE MINISTER OF LABOUR, CITIZENS' SERVICES AND
OPEN GOVERNMENT**
(the "Authority")

AND:

BROOKFIELD INFRASTRUCTURE PARTNERSHIPS SURREY
(“Project Co”)

We write to confirm your appointment as a Referee under the Project Agreement dated June 13, 2011 between the Authority and Project Co (the “**Project Agreement**”). The terms of your appointment are as contained in Section 1.5 [Commencement of Proceedings] of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement.

We confirm our agreement for you to review the Dispute(s) described in the Dispute Notice in accordance with the provisions of the Project Agreement, and to perform the functions of a Referee as described in Section 1.5 [Commencement of Proceedings] of Schedule 13 [Dispute Resolution Procedure] to the Project Agreement. A copy of the Project Agreement and related materials will be forwarded to you shortly.

We confirm that your daily/hourly rate for fees is \$_____. In addition to your invoiced fees, the Authority will pay any and all reasonable disbursements incurred in providing your services. Please submit your invoices on a monthly basis directly to Stacy McGhee, Ministry of Labour, Citizen's Services & Open Government (the “Authority’s Representative”). The Authority will make payment within 30 calendar days of receipt.

Please confirm your agreement to the terms as set out in this letter by signing a copy of the enclosed letter and returning it to the Authority's Representative.

Yours truly,

Authorized Signatory of the Authority

Date

Authorized Signatory of Project Co

Date

Referee

Date

