

**SCHEDULE 16
DISPUTE RESOLUTION PROCEDURE**

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APPENDIX A 1

APPENDIX B 1

**PART 1
GENERAL**

1.1 Resolution of Disputes

- (a) Each of the Province and Project Co agrees that it shall at all times, provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate the resolution of any dispute and shall make bona fide efforts to:
 - (i) resolve by amicable negotiations any and all disputes arising between the Province and Project Co;
 - (ii) resolve all disputes at the lowest level of management possible; and
 - (iii) exhaust all reasonable efforts to resolve a dispute at all available levels of management, including escalation to the senior executive levels of the Province and Project Co where the dispute is not resolved at lower levels of management, before issuing a notice pursuant to Section 1.1(b) of this Schedule to refer the dispute to any of the escalated dispute resolution processes available pursuant to and in accordance with Part 3 [Referral to Expert Referee], Part 4 [Referral to Expert Panel], Part 5 [Referral to Arbitration] and Part 6 [Court Proceedings] of this Schedule.
- (b) If the Province and Project Co are unable to resolve a dispute pursuant to Section 1.1(a) of this Schedule within 10 Business Days of the dispute having been identified as such by the Province or Project Co, then for any dispute described in Section 18.1 [Disputes] of this Agreement, a party may deliver to Project Co or the Province's Representative, as applicable:
 - (i) when the dispute is a dispute in relation to a decision of the Independent Certifier or where the parties have each waived in writing their right to have a dispute determined by an Expert Referee or an Expert Panel, an Arbitration Dispute Notice issued pursuant to Part 5 [Referral to Arbitration] of this Schedule;
 - (ii) when, pursuant to Section 3.1 of this Schedule, it is reasonably determined that the expected value of a determination of a dispute is less than \$200,000, an Expert Referee Dispute Notice issued pursuant to Part 3 [Referral to Expert Referee] of this Schedule;
 - (iii) when, pursuant to Section 4.1 of this Schedule, it is reasonably determined that the expected value of a determination of a dispute is equal to or greater than \$200,000, an Expert Panel Dispute Notice issued pursuant to Part 4 [Referral to Expert Panel] of this Schedule; or
 - (iv) [Not Used].

To be effective, any such notice must expressly state that it is an Arbitration Dispute Notice, Expert Referee Dispute Notice, or Expert Panel Dispute Notice, as the case may be, set out the particulars of the matter in dispute, describe the remedy or resolution

sought by the party issuing such notice, and comply with any other requirements provided in this Schedule as well as the notice requirements under Section 18.5 [Notices].

1.2 No Joinder

No proceedings to resolve any dispute arising out of or relating to this Agreement in accordance with this Schedule shall include, by consolidation or joinder or in any other manner, any additional person not a party to this Agreement, including any Principal Contractor or Subcontractor, except with the written consent of the parties to this Agreement and any other person sought to be so joined.

1.3 Survival

Notwithstanding any other provision of this Agreement, the provisions of this Schedule will survive the expiry or any earlier termination of this Agreement.

1.4 Limitation Defences

The parties acknowledge and agree that the running of time in relation to a particular dispute as it may apply to any and all defences that are based on the lapse of time, including those prescribed by the *Limitation Act* (British Columbia), will be suspended from the date an Expert Panel Dispute Notice is issued in accordance with Section 4.1 [Referral to Expert Panel] of this Schedule until 60 days after a decision is rendered by the Expert Panel or the parties receive a notification from the Expert Panel of its inability to achieve a unanimous decision, each in accordance with Section 4.9 [Decision of Expert Panel] of this Schedule. For the avoidance of doubt, the suspension of time in accordance with this Section 1.4 does not apply to the running of time in relation to any time period associated with the process and procedure provided under Part 4 [Referral to Expert Panel] of this Schedule.

**PART 2
INDEPENDENT CERTIFIER**

2.1 Decisions of Independent Certifier

Any decision of the Independent Certifier to issue or not to issue a Certificate of Substantial Completion, or sign or not to sign the Final Deficiency List, shall be final and binding on the parties unless and until revised, cancelled, varied or overturned by an Arbitrator or Court in accordance with the provisions of this Schedule, and the parties each expressly waive all rights of appeal in connection with the Independent Certifier's decisions except as expressly provided in this Schedule.

2.2 No Referral to Expert Referee or Expert Panel

Part 3 [Referral to Expert Referee] and Part 4 [Referral to Expert Panel] of this Schedule shall not apply in respect of the resolution of any dispute regarding a decision of the Independent Certifier unless otherwise agreed by the parties in writing.

**PART 3
REFERRAL TO EXPERT REFEREE**

3.1 Referral to Expert Referee

If the Province and Project Co are unable to resolve a dispute in the manner contemplated in Section 1.1(a) of this Schedule and it is reasonably determined by the initiating party that the expected value of a determination of the dispute is less than \$200,000 then, subject to Section 2.2 [No Referral to Expert Referee or Expert Panel], a party may by written notice to the other party (the “**Expert Referee Dispute Notice**”) require the dispute to be resolved on an expedited basis by an appointed referee (the “**Expert Referee**”). If the other party does not give a notice of objection (“**Notice of Objection to Expert Referee**”) to the initiating party within two Business Days following the delivery of the Expert Referee Dispute Notice, then the Expert 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) the Independent Certifier will, as of the end of the second Business Day following the delivery of the Expert Referee Dispute Notice, be deemed the Expert Referee unless:
 - (i) within three Business Days of the delivery of the Expert Referee Dispute 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 Expert Referee in relation to the dispute; or
 - (ii) for any reason the Independent Certifier is unable to perform the duties of the Referee, including if the parties have not yet selected the Independent Certifier,and in either such case the Expert Referee will be appointed in the manner described in Section 3.1(b) of this Schedule; or
- (b) subject to Section 3.1(a), the parties will appoint an Expert Referee in the following manner:
 - (i) within two Business Days of the delivery of an Expert Referee Dispute Notice, each party will submit in writing to the other party, the names of no more than two candidates for Expert Referee who are independent of the parties, experienced in the resolution of similar disputes and immediately available to perform the role of Expert Referee in respect of the dispute at hand;
 - (ii) if a party has an objection to a proposed candidate, it will give written notice of such objection with reasons to the other party;
 - (iii) if for any reason within three Business Days of the delivery of an Expert Referee Dispute Notice, an Expert 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 an Expert Referee under this Agreement in relation to the dispute.

3.2 Expert Referee Agreement

The parties will enter into an agreement with the Expert Referee to act as Expert Referee generally in the form attached as Appendix A (the “**Expert Referee Agreement**”), such agreement to be entered into no later than two Business Days after the Expert Referee’s appointment.

3.3 Procedure for Expert Referee Review

The Expert Referee:

- (a) will conduct an impartial review of the dispute in such manner as the Expert Referee thinks fit, including carrying out on site inspections and interviews with any persons that the Expert Referee thinks fit. The parties will comply with all reasonable requests from the Expert Referee for additional information, documents and access to personnel which the Expert Referee considers necessary for the review. Any submission or documentation in respect of the dispute provided to the Expert Referee by a party will also be provided to the other party;
- (b) 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 the Expert Referee to retain such other professional persons or experts; and
- (c) will not be obliged to conduct enquiries in the presence of the parties or receive submissions from the parties, except to the extent that the Expert Referee thinks fit, and may render a decision notwithstanding the failure of a party to participate in the proceedings.

3.4 Decision of the Expert Referee

- (a) The Expert Referee will render a brief, written, reasoned and impartial decision on the dispute, with copies to both parties within five Business Days of the signing by the Expert Referee and both parties of the Expert Referee Agreement referred to in Section 3.2 of this Schedule, or such longer period as agreed to in writing by both parties. The Expert Referee’s decision will be in the form of a proposed determination of the rights of the parties having regard to the Expert Referee’s understanding of the relevant contractual provisions, the applicable law and the facts as agreed by the parties or as best the Expert Referee is able to determine them;
- (b) Each party acknowledges the value of having the Expert Referee render a timely decision regarding the dispute. If the Expert Referee is unable to render a decision within the time set or as extended by mutual agreement of the parties, then the parties will request that the Expert Referee provide to the parties within such time such analysis of the dispute as the Expert Referee is able to make within that time and describe the further work the Expert Referee recommends would be required in order to arrive at a reasoned decision; and

- (c) A decision of an Expert Referee is not binding on the parties but is intended to assist the parties to reach agreement with respect to the dispute.

3.5 Confidentiality of Expert Referee

- (a) The proceedings under this Section 3.1 will be confidential and all information, data or documentation disclosed or delivered by either party to the Expert Referee as a result or in connection with the Expert Referee's duties as Expert Referee will be treated as confidential and neither the parties nor the Expert Referee will 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 Expert Referee; and
- (b) The proceedings by or before an Expert Referee will be without prejudice in any subsequent proceedings.

3.6 Costs of Expert Referee Review

Notwithstanding Section 9.1 [Indemnification by Project Co], Section 9.6 [Indemnification by the Province] and Section 9.7 [Limited Province Indemnity for Contamination] of this Agreement, or any other provision of this Agreement and without limiting Section 4.3 [Retention Payments to Expert Panel Members] of this Schedule, the Province and Project Co shall each bear its own costs of the process for resolution of the dispute by the Expert Referee (including all legal fees and expenses). As between the Province and Project Co, and notwithstanding the terms of the Expert Referee Agreement, the Province and Project Co shall share equally, and be responsible for their respective share of all costs of the Expert Referee as and when due.

PART 4 REFERRAL TO EXPERT PANEL

4.1 Referral to Expert Panel

If:

- (a) the Province and Project Co are unable to resolve a dispute in the manner contemplated in Section 1.1(a) of this Schedule;
- (b) it is reasonably determined by the initiating party that the expected value of a determination of the dispute is greater than \$200,000; or
- (c) a party delivers a Notice of Objection to Expert Referee in accordance with Section 3.1[Referral to Expert Referee] of this Schedule,

then, subject to Section 2.2 [No Referral to Expert Referee or Expert Panel] of this Schedule, a party may by written notice to the other party and the Expert Panel (the "**Expert Panel Dispute Notice**") require the dispute to be resolved on an expedited basis by a qualified and experienced Expert Panel, or where the parties both agree, by a single member of the Expert Panel, in accordance with this Part 4.

4.2 Expert Panel

- (a) The Province and Project Co shall jointly appoint one panel of three experts (the “**Expert Panel**”) within 120 days following the Effective Date consisting of:
 - (i) at least one expert who shall have demonstrated experience with design or construction work, or both; and
 - (ii) at least one expert who shall be a barrister and solicitor duly licensed to practice law in the Province of British Columbia.
- (b) If any Expert Panel member resigns, dies or otherwise withdraws from the Expert Panel at any time, a replacement expert shall be appointed by the Province and Project Co jointly as soon as practicable thereafter and in a manner consistent with the Expert Panel composition requirements provided for in this Section 4.2 and Section 4.4(a) of this Schedule.
- (c) If the Province and Project Co fail to agree on the identity of any expert to be appointed to the Expert Panel pursuant to Section 4.2(a) of this Schedule within the 120 day period following the Effective Date or, pursuant to Section 4.2(b) of this Schedule, within a reasonable time, the Province or Project Co may apply to the BCICAC or to a judge of the Supreme Court of the Province of British Columbia for appointment of such expert or experts, in which case the BCICAC or such Court shall appoint an expert or experts at the earliest opportunity from the list of potential experts submitted by the Province and Project Co or, if a party fails to submit its list of potential experts within 10 days of applying to the BCICAC or to the Court, the BCICAC or such Court may appoint such person or persons as members of the Expert Panel who meet the requirements set out in this Schedule.
- (d) The parties will enter into an agreement with each Expert Panel member to act as Expert Panel member generally in the form attached as Appendix B (the “**Expert Panel Member Agreement**”), such agreement to be entered into no later than two Business Days after the Expert Panel member’s appointment.

4.3 Retention Payments to Expert Panel Members

As between the Province and Project Co, and notwithstanding the terms of the Expert Panel Member Agreement, Project Co shall be responsible for the payment of retention payments to the members of the Expert Panel, in such amounts and at such times as determined by the parties, each acting reasonably.

4.4 No Conflict for Expert Panel Members

- (a) Unless the Province and Project Co otherwise agree, no person shall be nominated or appointed to act as a member of the Expert Panel who, or any of whose partners, shareholders, unitholders or Affiliates, is or at any time has been involved or interested in the conduct of:

- (i) any of the Project Work on behalf of Project Co or any of its Principal Contractors or Subcontractors;
 - (ii) the Project on behalf of the Province; or
 - (iii) is a present or former Expert Referee.
- (b) The parties shall cause each expert appointed to the Expert Panel, as part of the documentation required to retain the Expert Panel member, to sign a statement declaring that the Expert Panel member knows of no circumstance likely to give rise to justifiable doubts as to his or her independence or impartiality and that he or she agrees to disclose any such circumstance to the parties should such circumstance arise after that time.

4.5 Appointment of Single Expert Panel Member

- (a) The parties may agree in writing to have a single, specific member of the Expert Panel resolve a particular dispute.
- (b) Upon the Expert Panel receiving a notice executed by both parties indicating the parties' agreement to have a specified Expert Panel member resolve a dispute, the specified Expert Panel member shall thereafter take conduct of the dispute.
- (c) Where a single member of the Expert Panel is jointly appointed by the parties in accordance with this Section 4.5, the provisions of this Schedule, including Sections 4.7 through 4.12 of this Part 4, will apply *mutatis mutandi* as though the single Expert Panel member were standing in the place of the Expert Panel.

4.6 Expert Panel Dispute Notice

The Expert Panel Dispute Notice will provide the following and be limited to 15 single-sided pages:

- (a) a summary of the issues in dispute and the position of the initiating party with respect to those issues;
- (b) the relief sought by the initiating party and, where applicable, particulars of any costs or damages claimed;
- (c) the specific provision(s) of this Agreement relied on by the initiating party in relation to its position; and
- (d) a list of any documentary, witness or other form of evidence that the initiating party intends to rely on in support of its position.

4.7 Response to Expert Panel Dispute Notice

Within 28 days following receipt of an Expert Panel Dispute Notice, the party receiving the Expert Panel Dispute Notice, hereafter and for the purposes of this Part 4 referred to as the responding party, shall submit to the initiating party and the Expert Panel a response to the Expert Panel Dispute Notice, which shall be limited to 15 single-sided pages in total and shall include:

- (a) a summary of the responding party's position in response to the initiating party's claim;
- (b) identification of any additional related issues;
- (c) any relief sought by the responding party or, where applicable, the responding party's position with respect to any costs or damages claimed;
- (d) any provision(s) of this Agreement relied on by the responding party in relation to its position; and
- (e) a list of any documentary, witness or other form of evidence that the responding party intends to rely on in support of its position.

4.8 Procedure for Expert Panel Review

The procedure for an Expert Panel resolution process will be as follows:

- (a) Subject to Section 4.8(b) of this Schedule, within 28 days following receipt of the responding party's response to the Expert Panel Dispute Notice and in consultation with the parties as required, the Expert Panel shall:
 - (i) determine the issues to be resolved;
 - (ii) determine what documents will need to be produced and by what date;
 - (iii) determine what witness evidence will be required and, if required, determine how it will be provided and any dates associated with securing such evidence;
 - (iv) determine if a physical site inspection is required and, if required, arrange a date for inspection;
 - (v) determine if any independent expert evidence will be required and, if required, how such evidence will be obtained and a date for submission; and
 - (vi) any other determinations required to allow the Expert Panel to conduct its investigation and render a decision with respect to the dispute.
- (b) The Expert Panel shall determine the appropriate process for the timely and cost effective resolution of the dispute and, without limiting the generality of the foregoing, have discretion to, among other things:
 - (i) solicit submissions and documents from the parties, and impose deadlines for the receipt of such submissions;
 - (ii) require a party to supply or prepare for examination by the Expert Panel and the other parties any document or written or oral information or evidence the Expert Panel considers necessary and provide any process associated therewith;

- (iii) proceed with the Expert Panel process notwithstanding any failure or refusal of a party to comply with the provisions of this Part 4 or with the Expert Panel's directions or determinations or to attend any meeting or hearing, but only after giving such party reasonable notice that the Expert Panel intends to do so;
- (iv) convene meetings of the parties to have the parties discuss the issues in dispute in the presence of the Expert Panel;
- (v) provide process for the parties to communicate with the Expert Panel; and
- (vi) seek advice from any other qualified independent professional advisors in respect of the dispute,

all with the objective of devising and adopting the simplest, least expensive and most expeditious manner of determining the dispute in issue and the Expert Panel shall use all reasonable efforts to complete the Expert Panel's investigation of the dispute within six weeks of any determinations made in accordance with Section 4.8(a) of this Schedule.

- (c) Neither the Province nor Project Co shall unreasonably delay or impede the Expert Panel in completing its investigation and determination with respect to any dispute and both parties acknowledge that the resolution process by the Expert Panel is intended to be based on an investigative process directed by the Expert Panel.

4.9 Decision of Expert Panel

- (a) The Expert Panel shall render a unanimous decision as soon as possible and, in any event, shall use all reasonable efforts to render a decision no later than 14 days after the Expert Panel has completed its investigations in accordance with Section 4.8 of this Schedule. The Expert Panel shall give written reasons or a written summary of reasons for the Expert Panel's decision.
- (b) Where the Expert Panel cannot reach a unanimous decision, the Expert Panel will notify the parties of its inability to achieve a unanimous decision no later than 14 days after the Expert Panel has completed its investigations in accordance with Section 4.8 of this Schedule, without providing any details with respect to the conflicting opinions of the Expert Panel members, and upon receipt of any such notification either of the parties may refer the matter to arbitration by issuing an Arbitration Dispute Notice in accordance with Part 5 [Referral to Arbitration] of this Schedule.

4.10 Confidentiality of Expert Panel

The parties shall cause each member of the Expert Panel, as part of the documentation required to retain the Expert Panel member, to agree to keep all information about the dispute confidential and to not disclose that information to anyone other than the parties and, as required, representatives and advisors of each of them or as required by the Expert Panel in accordance with Section 4.8(b)(vi) of this Schedule, on an as-needed basis.

4.11 Costs of Expert Panel Review

Notwithstanding Section 9.1 [Indemnification by Project Co], Section 9.6 [Indemnification by the Province] and Section 9.7 [Limited Province Indemnity for Contamination] of this Agreement, or any other provision of this Agreement and without limiting Section 4.3 [Retention Payments to Expert Panel Members] of this Schedule, the Province and Project Co shall each bear its own costs of the process for resolution of the dispute by the Expert Panel (including all legal fees and expenses). As between the Province and Project Co, and notwithstanding the terms of the Expert Panel Member Agreement, the Province and Project Co shall share equally, and be responsible for their respective share of all costs of the Expert Panel as and when due.

4.12 Expert Panel Decision Binding

The Expert Panel's award or determination shall be final and binding on the parties unless and until revised, cancelled, varied or overturned by an Arbitrator or Court in accordance with the provisions of this Schedule, and each of the parties expressly waives all rights of appeal in connection with the Expert Panel's decision except as expressly provided in this Schedule.

PART 5 REFERRAL TO ARBITRATION

5.1 Referral to Arbitration

- (a) A party may commence arbitration proceedings in respect of a dispute by giving a written notice (the "**Arbitration Dispute Notice**") to another party requiring that the dispute be resolved by arbitration proceedings in accordance with this Part 5 in the following circumstances:
 - (i) where a dispute has arisen between the Province and Project Co in relation to a decision of the Independent Certifier; or
 - (ii) where a dispute has arisen between the Province and Project Co other than in relation to a decision of the Independent Certifier and one of the following applies:
 - (A) the parties have referred the dispute for resolution through reference to an Expert Referee pursuant to Part 3 [Referral to Expert Referee] of this Schedule and the dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Expert Referee's decision and a notice of objection ("**Notice of Objection to Arbitration**") is not delivered to the initiating party within 5 Business Days from receipt of the Arbitration Dispute Notice;
 - (B) the parties have referred the dispute for resolution through reference to an Expert Panel pursuant to Part 4 [Referral to Expert Panel] of this Schedule, and the:
 - (1) amount awarded to a party through that process; or

- (2) determination results in a party doing or not doing something that has a value or consequence to that party or to another party that, in the reasonable opinion of the initiating party,

is more than \$500,000 in the aggregate;
 - (C) the determination by the Expert Panel involves issues other than monetary claims by one party against another party that the initiating party reasonably believes are material and significant to the initiating party;
 - (D) the Expert Panel notifies the parties that it is unable to reach a unanimous decision with respect to the dispute in accordance with Section 4.9(b) of this Schedule; or
 - (E) the parties agree in writing in any other circumstance to refer a dispute to be resolved by arbitration in accordance with this Part 5, including where the parties waive their right to resolve the dispute through reference to an Expert Referee or Expert Panel.
- (b) Without limitation and subject to Section 5.9 [Inadmissibility of Prior Decisions] of this Schedule, the Arbitration Dispute Notice shall set out, in addition to the requirements provided for in Section 1.1(b) of this Schedule, as applicable:
- (i) the determination of the Independent Certifier;
 - (ii) the determination of the Expert Referee;
 - (iii) the determination of the Expert Panel; or
 - (iv) the notification of the Expert Panel to the parties of the Expert Panel's inability to reach a unanimous decision.

5.2 Initiation of Court Proceedings rather than Arbitration

- (a) Expert Referee Decision
 - (i) If the parties have referred the dispute for resolution through reference to an Expert Referee pursuant to Part 3 [Referral to Expert Referee] of this Schedule and the dispute is not completely resolved by agreement between the parties within 10 Business Days of the receipt of the Expert Referee's decision and:
 - (A) no Arbitration Dispute Notice 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 initiating party within five Business Days of receipt of the Arbitration Dispute Notice;

then either party may commence proceedings in respect of the dispute in the courts of British Columbia. 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 an Arbitration Dispute Notice, the party commencing such proceedings will either give the Notice of Objection to Arbitration or serve such party the required notice within five Business Days of receipt of the Arbitration Dispute Notice, failing which the dispute will be resolved by Arbitration pursuant to Section 5.1 [Referral to Arbitration] of this Schedule.

(b) Expert Panel Decision

(i) If the amount in respect of a specific dispute, as determined by the Expert Panel in accordance with Section 5.1(a)(ii)(B) of this Schedule, is greater than \$2,000,000:

(A) an initiating party may, instead of issuing an Arbitration Dispute Notice pursuant to Section 5.1(a)(ii) of this Schedule in respect of such dispute, give to the other party written notice that it will initiate a proceeding in a Court to resolve the dispute in accordance with Section 6.1(a)(i) of this Schedule; or

(B) a responding party may, within 14 days of receipt of an Arbitration Dispute Notice pursuant to Section 5.1(a)(ii)(B) of this Schedule in respect of such dispute, give a Notice of Objection to Arbitration to the initiating party, and may initiate a proceeding in a Court to resolve the dispute in accordance with Part 6 of this Schedule.

(ii) If a responding party issues a Notice of Objection to Arbitration to an initiating party pursuant to Section 5.2(b)(i)(B) of this Schedule then, unless within 14 days of receiving notice from the responding party:

(A) the initiating party gives written confirmation to the responding party that it will initiate Court proceedings to resolve the dispute in accordance with Part 6 [Court Proceedings] of this Schedule; or,

(B) the initiating party has initiated Court proceedings; or

(C) the responding party has initiated Court proceedings;

the initiating party shall have no further access to any appeal, arbitration, litigation or other dispute resolution process in respect of such dispute without the express written agreement of the responding party.

5.3 Arbitration Act and BCICAC Rules of Procedure

The parties acknowledge and agree that any dispute referred to arbitration pursuant to this Part 5 is governed by the *Arbitration Act* (British Columbia) and that the Domestic Commercial Arbitration Rules shall apply to any arbitration conducted hereunder except to the extent that its provisions are modified by the express provisions of this Part 5 or by written agreement of the parties.

5.4 Appointment of Arbitrator

- (a) Within 21 days following receipt of an Arbitration Dispute Notice by the responding party under Section 5.1(a) [Referral to Arbitration] of this Schedule, and subject to the responding party issuing a Notice of Objection to Arbitration pursuant to Section 5.1(a)(ii)(A), 5.2(a)(i) or 5.2(b)(i)(B) of this Schedule, the initiating party and the responding party shall designate a single arbitrator acceptable to both of them.
- (b) If the parties fail to appoint such a single arbitrator within the period of time and in the circumstances set out in Section 5.4(a) of this Schedule, either party may apply to the BCICAC to select the arbitrator, in which case the BCICAC shall appoint the arbitrator at the earliest opportunity in accordance with Article 14 of the Domestic Commercial Arbitration Rules.

5.5 No Conflict for Arbitrator

Unless the Province and Project Co otherwise agree, no person may be nominated or appointed to act as arbitrator pursuant to Section 5.4 [Appointment of Arbitrator] of this Schedule (the “**Arbitrator**”) who, or any of whose partners, shareholders, unitholders or Affiliates:

- (a) is or at any time has been involved or interested in the conduct of:
 - (i) any of the Project Work on behalf of Project Co or any of its Principal Contractors or Subcontractors; or
 - (ii) the Project on behalf of the Province; or
- (b) is a present or former Expert Referee or Expert Panel member.

5.6 Qualifications of Arbitrator

The Arbitrator shall have appropriate qualifications by profession or occupation to decide the matter in dispute.

5.7 No Oral Discovery

There shall be no oral discovery unless otherwise ordered by the Arbitrator.

5.8 Meetings and Hearings of Arbitrator

Meetings and hearings of the Arbitrator shall take place in Vancouver, British Columbia or in such other place as the Province and Project Co may agree. Subject to the foregoing, the Arbitrator may at any time fix the date, time and place of meetings and hearings in the arbitration and shall give the Province and Project Co adequate notice thereof. All meetings and hearings shall be in private unless the Province and Project Co otherwise agree, and each party may be represented at any meetings or hearings by legal counsel. Where the Arbitrator directs the parties to provide oral evidence, each party may examine and re-examine its witnesses and cross-examine those of the other party during the conduct of the arbitration.

5.9 Inadmissibility of Prior Decisions

- (a) If a party is entitled to refer a decision of an Expert Referee under Part 3 [Referral to Expert Referee] or an Expert Panel under Part 4 [Referral to Expert Panel] of this Schedule to arbitration pursuant to Section 5.1 [Referral to Arbitration] of this Schedule or otherwise to initiate or pursue any dispute resolution process, appeal or legal proceeding, then, subject to Section 5.9(b) of this Schedule or unless the parties otherwise expressly agree in writing:
 - (i) all submissions prepared by a party in connection with any proceedings under Part 3 [Referral to Expert Referee] or Part 4 [Referral to Expert Panel] of this Schedule and all information, documents, notes and records prepared by the Expert Referee or Expert Panel and all decisions and determinations of the Expert Referee or Expert Panel shall be confidential and inadmissible in any arbitration or other such dispute resolution process, appeal or legal proceeding, unless otherwise provided by the terms of this Schedule; and
 - (ii) all submissions prepared by a party in connection with any proceedings involving the Arbitrator and all information, documents, notes and records prepared by the Arbitrator and all decisions and determinations of the Arbitrator shall be confidential and inadmissible in any other such dispute resolution process, appeal or legal proceeding, unless otherwise provided by the terms of this Schedule.
- (b) The restrictions on admissibility set out in Section 5.9(a) of this Schedule shall not apply to any appeal or litigation permitted pursuant to Section 5.11 [Limitation on Appeal of Arbitrator's Decision] of this Schedule or any proceeding permitted under Section 5.2 [Initiation of Court Proceedings Rather than Arbitration] of this Schedule.
- (c) For greater certainty, nothing herein shall prevent the tendering of the same oral or written evidence before a proceeding adjudicated by an Expert Panel and a proceeding adjudicated by an Arbitrator or a judge of the Supreme Court of British Columbia, as the case may be, and, despite Section 5.9(a)(i) above, a party will not be precluded from making the same or similar submissions to an Arbitrator or a judge to those made by that party before an Expert Panel.
- (d) No Expert Referee, Expert Panel member nor any Arbitrator may be required to testify or otherwise be compellable in or in connection with any dispute resolution process, litigation, arbitration, appeal or legal proceeding.

5.10 Decision of Arbitrator

Subject to the provisions of the *Arbitration Act* (British Columbia), the Arbitrator shall send a decision in writing to the Province and Project Co within 45 days following the conclusion of all hearings referred to in Section 5.8 [Meetings and Hearings of Arbitrator] of this Schedule unless such period of time is extended for a fixed period by the Arbitrator on written notice to each party because of illness or other cause beyond the Arbitrator's control and, unless the Province and Project Co otherwise agree, shall state the reasons for the decision.

5.11 Limitation on Appeal of Arbitrator's Decision

Subject to the rights of appeal that either party may have under the provisions of the *Arbitration Act* (British Columbia), the decision of the Arbitrator shall be final and binding on the Province and Project Co.

5.12 Arbitrator's Powers

The object of an arbitration hereunder is to ensure the just, expeditious, economical and final determination of the dispute. Without limiting the jurisdiction or powers of the Arbitrator under the *Arbitration Act* (British Columbia), a submission to arbitration hereunder shall confer on the Arbitrator the jurisdiction and power to:

- (a) determine any question of law arising in the arbitration;
- (b) determine any question as to the Arbitrator's jurisdiction;
- (c) determine any question of good faith or dishonesty arising in the dispute;
- (d) order any party to furnish further details of its case, in fact or in law to another party;
- (e) proceed with the arbitration notwithstanding any failure or refusal of a party to comply with these provisions or with the Arbitrator's orders or directions or to attend any meeting or hearing, but only after giving such party reasonable notice that the Arbitrator intends to do so;
- (f) receive and take into account such written or oral evidence tendered by the parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
- (g) make one or more interim awards;
- (h) hold meetings and hearings and make a decision (including without limitation a final decision) in British Columbia or elsewhere with the concurrence of the parties;
- (i) order the parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any books and records, documents, materials and other information in their possession or control which the Arbitrator determines to be relevant;
- (j) order the preservation or storage of any property or thing relevant to the subject matter of the arbitration under the control of either of the parties; and
- (k) include, as part of any award, the payment of interest at the Prime Rate from an appropriate date as determined by the Arbitrator.

The jurisdiction and powers referred to in this Section 5.12 shall be exercised at the discretion of the Arbitrator subject only to applicable Laws and the provisions of this Agreement.

5.13 Costs of Arbitration

Notwithstanding Section 9.1 [Indemnification by Project Co], Section 9.6 [Indemnification by the Province] and Section 9.7 [Limited Province Indemnity for Contamination] of this Agreement, or any other provision of this Agreement, each party shall bear its own costs of the process for resolution of the dispute by arbitration (including all legal fees and expenses). The Province and Project Co shall share equally, and be responsible for their respective share of all costs of the Arbitrator, as and when due.

**PART 6
COURT PROCEEDINGS**

6.1 Court Proceedings

- (a) The Province or Project Co may initiate a proceeding in a Court to resolve a dispute between the parties in the following circumstances:
 - (i) the circumstances set out in Section 5.2(a) of this Schedule;
 - (ii) [Not Used];
 - (iii) a party has given notice to the other party of its intention to initiate proceedings in a Court in accordance with Section 5.2(b)(i)(A) of this Schedule;
 - (iv) a party has delivered a Notice of Objection to Arbitration in accordance with Section 5.1(a)(ii)(A) or 5.2(b)(i)(B) of this Schedule;
 - (v) a party has given notice to the other party of its intention to initiate proceedings in a Court in accordance with Section 5.2(b)(ii)(A) of this Schedule; or
 - (vi) such party is appealing a decision of the Arbitrator in accordance with Section 5.11 [Limitation on Appeal of Arbitrator's Decision] of this Schedule.
- (b) Notwithstanding any other provision of this Schedule, no party shall be precluded from initiating a proceeding in a Court for the purpose of obtaining any emergency or provisional remedy to protect its rights that may be necessary and that is not otherwise available under this Agreement, including temporary and preliminary injunctive relief and restraining orders and the appointment of a receiver or receiver and manager or any remedy or relief as expressly contemplated by Sections 14.5(b)(ii) or 15.1(c) of this Agreement.

**APPENDIX A
EXPERT REFEREE AGREEMENT**

BETWEEN:

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

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND
INFRASTRUCTURE**
(the " Province ")

AND:

▼
("Project Co")

We write to confirm your appointment as an Expert Referee under the Project Agreement (the "Project Agreement") dated ▼ among the Province, BC Transportation Financing Authority and Project Co. The terms of your appointment are as contained in Part 3 of Schedule 16 [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 an Expert Referee as described in Part 3 [Referral to Expert Referee] of Schedule 16 [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 Province will pay any and all reasonable disbursements incurred in providing your services.

Please submit your invoices on a monthly basis directly to _____ **[Insert name of Province's Representative]** (the "**Province's Representative**"). The Province 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 Province's Representative.

Yours truly,

Authorized Signatory of the Province

Date

Authorized Signatory of Project Co

Date

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT
SCHEDULE 16: DISPUTE RESOLUTION PROCEDURE**

***Commercial in Confidence
EXECUTION COPY***

Expert Referee

Date

**APPENDIX B
EXPERT PANEL MEMBER AGREEMENT**

BETWEEN:

[Name and address of Expert Panel member]
(the "Expert")

AND:

**HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF BRITISH COLUMBIA,
AS REPRESENTED BY THE MINISTER OF TRANSPORTATION AND
INFRASTRUCTURE**
(the " Province ")

AND:

▼
("Project Co")

We write to confirm your appointment as an Expert Panel member under the Project Agreement (the "Project Agreement") dated ▼ among the Province, BC Transportation Financing Authority and Project Co. The terms of your appointment are as contained in Part 4 of Schedule 16 [Dispute Resolution Procedure] to the Project Agreement.

We confirm our agreement for you to review the disputes that may be referred to the Expert Panel from time to time in accordance with the provisions of the Project Agreement, and to perform the functions of an Expert Panel member as described in Part 3 [Referral to Expert Panel] of Schedule 16 [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 Province will pay any and all reasonable disbursements incurred in providing your services.

Please submit your invoices on a monthly basis directly to _____ **[Insert name of Province's Representative]** (the "**Province's Representative**"). The Province 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 Province's Representative.

Yours truly,

Authorized Signatory of the Province

Date

Authorized Signatory of Project Co

Date

**BROADWAY SUBWAY PROJECT
PROJECT AGREEMENT
SCHEDULE 16: DISPUTE RESOLUTION PROCEDURE**

***Commercial in Confidence
EXECUTION COPY***

Expert Panel Member

Date