



# NEW WEST PARTNERSHIP

**NEW WEST PARTNERSHIP TRADE AGREEMENT**

**2016**

## FOREWORD

This document is a consolidation of the text of the original New West Partnership Trade Agreement (2010) together with all Protocols of Amendment adopted since the signing of the Agreement.

<b>Text</b>	<b>Entry into force</b>
New West Partnership Trade Agreement	July 1, 2010
First Protocol of Amendment	January 6, 2015
Second Protocol of Amendment	December 31, 2016

**Note to Readers:** Article 21(3) of the Agreement provides that the Parties may adopt Joint Decisions relating to the interpretation of the Agreement. These Joint Decisions can be found on the Agreement's website.

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**PART I:  
OPERATING PRINCIPLES**

**The Governments of Manitoba, British Columbia, Alberta and Saskatchewan  
RESOLVED to:**

ESTABLISH a comprehensive agreement on trade, investment and labour mobility that applies to all sectors of the economy;

ELIMINATE barriers that restrict or impair trade, investment or labour mobility;

ENHANCE competitiveness, economic growth and stability;

INCREASE opportunities and choice for workers, investors, consumers and businesses;

REDUCE costs for consumers, businesses and governments;

PROVIDE access to information to facilitate trade, investment and labour mobility;

PROMOTE sustainable and environmentally sound development, and high levels of consumer protection, health and labour standards;

COOPERATE on matters related to trade, investment and labour mobility;

MINIMIZE the impacts of other measures that may adversely affect trade, investment or labour mobility;

RESOLVE disputes in an effective, inexpensive and timely manner;

SUPPORT ongoing trade and investment liberalization both nationally and internationally; and

DEMONSTRATE the benefits of freer trade within Canada by simplifying and expanding upon the scope and coverage of the *Agreement on Internal Trade*;

**HEREBY AGREE** as follows:

## **PART II:**

### **A. EXTENT OF OBLIGATIONS**

#### **Article 1: Relationship to the *Agreement on Internal Trade***

1. This Agreement is established pursuant to Article 1800 (Trade Enhancement Arrangements) of the *Agreement on Internal Trade*, which permits the Parties to enter into additional arrangements to liberalize trade, investment and labour mobility beyond the level required by that Agreement.
2. In the event of an inconsistency between any provision in Parts II and V of this Agreement and any provision of the *Agreement on Internal Trade* or any other agreement to which all Parties are signatories, the provision that is more conducive to liberalized trade, investment and labour mobility prevails among the Parties. In the event that such a provision of the *Agreement on Internal Trade* or any other agreement to which all Parties are signatories is determined to be more conducive to liberalized trade, investment and labour mobility, that provision is hereby incorporated into and made part of this Agreement.

#### **Article 2: Scope and Coverage**

1. This Agreement applies to measures of the Parties and their government entities that relate to trade, investment and labour mobility.
2. Each Party is responsible for compliance with this Agreement by its government entities.
3. The benefits of this Agreement accrue only to the Parties and their persons.

### **B. GENERAL RULES**

#### **Article 3: No Obstacles**

1. Each Party shall ensure that its measures do not operate to restrict or impair trade between, among or through the territory of the Parties, or investment or labour mobility between or among the Parties.

#### **Article 4: Non-Discrimination**

1. Each Party shall accord to:

- (a) like, directly competitive or substitutable goods;
- (b) persons;
- (c) services; and
- (d) investors or investments

of the other Parties treatment no less favourable than the best treatment it accords, in like circumstances, to its own or those of any other Party or non-Party.

2. Each Party shall ensure that any charges it applies to persons, goods, services, investments or investors of the other Parties are the same as those charged to its own, in like circumstances, except to the extent that any difference can be justified by an actual cost-of-service differential.

#### **Article 5: Standards and Regulations**

1. Parties shall mutually recognize or otherwise reconcile their existing standards and regulations that operate to restrict or impair trade, investment or labour mobility.
2. Parties shall, where appropriate and to the extent practicable, specify standards and regulations in terms of results, performance or competence.
3. Parties shall not establish new standards or regulations that operate to restrict or impair trade, investment or labour mobility.
4. Parties shall continue to work toward the enhancement of sustainable development, consumer and environmental protection, and health, safety and labour standards and the effectiveness of measures relating thereto.
5. Parties shall cooperate to minimize differences in standards or regulations adopted or maintained to achieve legitimate objectives.

#### **Article 6: Legitimate Objectives**

1. A Party may adopt or maintain a measure that is inconsistent with Articles 3, 4 or 5, or Part II(C) provided the Party can demonstrate:
  - (a) the purpose of the measure is to achieve a legitimate objective;
  - (b) the measure is not more restrictive to trade, investment or labour mobility than necessary to achieve that legitimate objective; and
  - (c) the measure is not a disguised restriction to trade, investment or labour mobility.



2. Subject to paragraph 1, Parties may establish the level of protection necessary to achieve a legitimate objective.
3. No Party shall prohibit or restrict an investment or the import of any good or service from any other Party or the export of any good or service to any other Party for a legitimate objective unless the prohibition or restriction on investment or the import of the like good or service from all Parties and non-Parties or the export of the like good or services to all Parties and non-Parties is similarly prohibited or restricted.

#### **Article 7: Transparency**

1. Each Party shall ensure that its measures covered by this Agreement are made readily accessible.
2. A Party proposing to adopt or amend a measure covered by this Agreement shall, to the extent practicable:
  - (a) notify the other Parties of its intention;
  - (b) provide a copy of the proposed measure to any other Party upon request; and
  - (c) provide the other Parties with an opportunity to comment on the measure, and take such comments into consideration.
3. Each Party shall ensure that documents requested by another Party or interested persons of a Party are supplied in a non-discriminatory manner and that any fees charged therefor are reasonable.
4. Nothing in this Agreement shall be construed to require a Party to provide or allow access to information the disclosure of which would:
  - (a) be contrary to its freedom of information or privacy legislation;
  - (b) impede law enforcement;
  - (c) prejudice the legitimate commercial interests of particular enterprises;
  - (d) involve a waiver of privilege; or
  - (e) otherwise be contrary to the public interest.
5. This Article applies notwithstanding any other provision of this Agreement.
6. The provision of notice under paragraph 2 is without prejudice as to whether the measure is consistent with this Agreement.

### **Article 8: Exceptions**

1. With the exception of this Article, measures listed in Part V are not subject to Parts II and IV, except as otherwise provided in Part V.
2. Additional measures may be added to Part V only by agreement of the Parties.
3. A Party may, of its own accord, remove any of its measures listed in Part V.

### **Article 9: Transitional Measures**

1. With the exception of this Article, measures listed in Appendix I are not subject to Parts II and IV, except as otherwise provided therein.
2. Parties shall:
  - (a) ensure that no measure listed in Appendix I is amended or renewed in a manner that would decrease its consistency with this Agreement; and
  - (b) seek to minimize any adverse effects of measures listed in Appendix I on the other Parties and their persons.
3. A Party may, of its own accord, remove any of its measures listed in Appendix I.
4. Additional measures may be added to Appendix I only by agreement of the Parties.
5. For greater certainty, subject to paragraph 6, nothing in Appendix I affects the rights and obligations of this Agreement as among British Columbia, Alberta and Saskatchewan.
6. No Party or person shall have recourse to Part IV regarding any measure of British Columbia, Alberta or Saskatchewan falling within the scope of one of the subject matters specified in Appendix I, as that measure applies to Manitoba or a Manitoba person, during the transition period provided to Manitoba for the same subject matter.

## **C. SPECIAL PROVISIONS**

### **Article 10: Purpose**

1. The special provisions in this Part II(C) augment and further elaborate upon the general rules in Part II(B).
2. Except for Article 6, where a provision in this Part II(C) is inconsistent with a provision in Part II(B), the provision in this Part shall prevail to the extent of the inconsistency.

## **Article 11: Investment**

1. (a) Parties shall reconcile their business registration and reporting requirements so that an enterprise meeting such requirements of one Party shall be deemed to have met those of all other Parties.  
  
(b) Parties and their municipal governments shall consider options to provide for the reconciliation of municipal business licenses. Until such time as the matter is resolved, subparagraph (a) will not apply to municipal business licenses.
2. No Party shall require an enterprise of another Party to establish or maintain a representative office or enterprise, or to be resident, in its territory as a condition for carrying on business activities.
3. A requirement by a Party that an enterprise has an agent located within its territory for service of notices of proceedings or other judicial documents is deemed not to be a requirement to establish or maintain a local presence or to be resident in its territory. Parties shall further consider options for eliminating measures requiring the designation or maintenance of agents for service.
4. Nothing in this Agreement shall be construed to prevent a Party from maintaining, designating, or regulating a monopoly for the provision of goods or services within its own territory.

## **Article 12: Business Subsidies**

1. Parties shall not directly or indirectly provide business subsidies that:
  - (a) provide an advantage to an enterprise that results in material injury to a competing enterprise of another Party;
  - (b) entice or assist the relocation of an enterprise from another Party; or
  - (c) otherwise distort investment decisionsunless such subsidy is to offset a subsidy being offered by a non-Party or to an entity not subject to this Article.
2. Parties shall jointly encourage non-Parties to eliminate subsidies to business and refrain from bidding wars.

## **Article 13: Labour Mobility**

1. Any worker certified for an occupation by a regulatory authority of a Party shall be recognized as qualified to practice that occupation by the other Parties.

2. Requirements imposed on workers to obtain a license, certification, or to register with a Party or one of its regulatory authorities prior to commencing work within the territory of that Party shall be deemed to be consistent with paragraph 1 provided that no material additional training, education, experience or examinations are required as part of that registration procedure and registrations are processed on a timely basis.
3. For greater certainty, and without limiting the general application of Part II(B) to such measures, a regulatory authority of a Party may refuse to certify or recognize a worker, or may impose conditions or restrictions on a worker, provided that the refusal or imposition of conditions or restrictions complies with Article 6.
4. Any worker certified to practice a trade under the Red Seal Program shall be recognized as qualified to practice that trade by the Parties.

#### **Article 14: Procurement**

1. Further to Articles 3 and 4, Parties will provide open and non-discriminatory access to procurements of the following government entities:
  - (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of a Party where the procurement value is:
    - (i) \$10,000 or greater for goods;
    - (ii) \$75,000 or greater for services; or
    - (iii) \$100,000 or greater for construction; and
  - (b) Crown corporations, government owned commercial enterprises, and other entities that are owned or controlled by a Party through ownership interest where the procurement value is:
    - (i) \$25,000 or greater for goods;
    - (ii) \$100,000 or greater for services; or
    - (iii) \$100,000 or greater for construction; and
  - (c) regional, local, district or other forms of municipal government, school boards, publicly-funded academic, health and social service entities, as well as any corporation or entity owned or controlled by one or more of the preceding entities where the procurement value is:
    - (i) \$75,000 or greater for goods;
    - (ii) \$75,000 or greater for services; or
    - (iii) \$200,000 or greater for construction.

2. Articles 3 and 4 do not apply to any procurement under the thresholds specified in paragraph 1.
3. Parties shall ensure that government entities post tender notices for all covered procurement through an electronic tendering system or systems provided by the Party. Additional means of providing notices may be used.
4.
  - (a) Part IV(B) sets out a dispute resolution process available to suppliers of the Parties seeking resolution of complaints relating to specific procurements covered by this Agreement; and
  - (b) Part IV(A) does not apply to a dispute relating to a specific procurement.
5.
  - (a) A government entity participating in a buying group shall ensure that any procurement undertaken through the buying group is carried out in a manner consistent with the government entity's obligations under this Agreement.
  - (b) Notwithstanding paragraph (a) but subject to paragraph (c), this Agreement does not apply to procurements of a government entity undertaken through a buying group that includes a participating non-government entity if the buying group is not controlled or directed by one or more government entities.
  - (c) If a government entity participates in a buying group as described in paragraph (b) then:
    - (i) the government entity must ensure that any specific procurement in which the government entity participates is undertaken by that buying group in a manner consistent with the government entity's obligations under Article 4; and
    - (ii) the government entity has no obligations under this Agreement relating to any specific procurement of that buying group in which the government entity does not participate.

## **Article 15: Energy**

1. Parties shall ensure that their standards-related electricity measures are not incompatible with generally accepted and applicable North American standards or standards of the Western Interconnection Region, including those relating to energy system security and reliability.
2. Parties shall work toward improving existing arrangements and promote enhanced interjurisdictional trade in energy.

## **Article 16: Transportation**

1. Parties shall require all vehicles owned by a person of a Party to be licensed and registered in the Party where the person is ordinarily resident.
2. Each Party shall provide full and free registration reciprocity for temporary inter- and intra-provincial vehicle operations as provided for by the *Canadian Agreement on Vehicle Registration* (CAVR) without exceptions or additional registration fees for those Category B vehicles described in paragraph 1(a)(i) of CAVR. For the purposes of this Agreement, temporary intra-provincial operation as referenced in paragraph 4 of CAVR means operation for a period of up to 90 days in a calendar year. A Party may require carriers operating such vehicles in its territory in excess of 90 days in any calendar year to obtain a prorated license or temporary operating permit.
3. Upon request, a Party shall identify to the requesting Party its carriers having a National Safety Code number for any vehicle with a licensed gross vehicle weight of less than 11,794 kg.
4. Parties shall continue to work toward the enhancement of public safety and preservation of highway infrastructure through measures relating to cargo securement, and vehicle configurations, weights and dimensions.

## **PART III: ADMINISTRATIVE PROVISIONS**

### **Article 17: Ministerial Committee**

1. Each Party shall appoint a Minister to a Ministerial Committee to:
  - (a) ensure the implementation of and ongoing adherence to this Agreement;
  - (b) review annually the exceptions listed in Part V with a view to reducing their scope;
  - (c) oversee consultations and negotiations relating to Appendix I;
  - (d) consider reports of any working groups formed under this Agreement;
  - (e) subject to Articles 8(3) and 9(3), approve any amendments to the Agreement; and
  - (f) consider any other matter that may affect the operation of this Agreement.

### **Article 18: Ministerial Committee Structure and Procedures**

1. The Ministerial Committee shall be composed of cabinet level representatives authorized to act on behalf of their respective governments in matters pertaining to this Agreement.
2. The Ministerial Committee shall be convened upon the request of any Party.
3. The Ministerial Committee may establish its own practices and procedures.
4. All decisions and recommendations of the Ministerial Committee shall be taken by consensus.

### **Article 19: Administrative Facilities**

1. Parties shall appoint and fund an administrator pursuant to the administrator agreement and shall publish the contact details for the administrator on the Agreement's website.
2. Each Party shall maintain a contact point for the other Parties or interested persons of the other Parties to answer or refer reasonable enquiries and to provide information in a timely manner pertaining to its existing and proposed measures and other matters

covered by this Agreement. The Parties shall publish the contact points on the Agreement's website.

**Article 20: Accession and Withdrawal**

1. Further to Article 1800 (Trade Enhancement Agreements) of the *Agreement on Internal Trade*, any Canadian province, territory or the Federal Government may accede to this Agreement upon acceptance of its terms.
2. A Party may withdraw from this Agreement on 12 months written notice to the other Parties.

**Article 21: Further Negotiations and Joint Decisions**

1. The Parties may enter into negotiations to amend this Agreement.
2. The Parties may establish such working groups as they consider necessary to ensure that the obligations of this Agreement are met.
3. The Parties may, at any time, issue a joint decision declaring their interpretation of this Agreement. All such joint decisions shall be binding on panels and arbiters, and any subsequent decision or award of a panel issued under Part IV(A) or any final report of an arbiter issued under Part IV(B) must be consistent with all such prior joint decisions. The Parties shall post all such joint decisions on the Agreement's website.

**Article 22: Further Cooperation**

1. Parties shall cooperate to promote their mutual interests nationally and internationally.
2. Parties shall continue to jointly advocate for the removal of any Federal Government measures that operate to restrict, impair or distort trade, investment and labour mobility among the Parties.

**Article 23: Entry Into Force**

1. This Agreement shall enter into force on July 1, 2010.



**PART IV:  
DISPUTE RESOLUTION**

**A. DISPUTE RESOLUTION MECHANISM**

**Article 24: Application**

1. Subject to Article 14(4)(b), this Part IV(A) applies to the avoidance and resolution of disputes between Parties, or between persons and Parties, regarding the interpretation or application of this Agreement.
2. A person of a Party must exhaust all other reasonable means to resolve a matter prior to using the procedures set out in this Part IV(A).
3. Further to paragraph (2), where a dispute falls within the jurisdiction of a regulatory body with an established dispute resolution process, that process must be used prior to using the procedures set out in this Part IV(A).
4. A person is not required to complete a judicial review application or other court proceeding in order to comply with the requirements of paragraph 2. However, any engagement in such a proceeding related to the same matter will result in suspension of the proceeding under this Part IV(A) until that other proceeding has been completed.
5. A person may not initiate proceedings under this Part IV(A) if more than two years have elapsed from the later of:
  - (a) the date on which the person first acquired, or should have first acquired, knowledge of the alleged inconsistency; and
  - (b) the date on which all the requirements of paragraph 2 have been met.
6. Where a Party or person believes that a measure is inconsistent with this Agreement and any other trade agreement, that Party or person must choose which agreement's dispute resolution process to use and, once chosen, will have no recourse to the other process regarding that same measure.

**Article 25: Consultations**

1. A Party may request that another Party engage in consultations to resolve any matter regarding the interpretation or application of this Agreement.
2. Where a person of a Party has met the requirements of Article 24, that person may request that a Party initiate consultations with the responding Party on the person's behalf, using the form of request set out in Schedule 1.

3. The Party must respond to the person's request within 21 days of its delivery. Any failure to respond to the request within 21 days shall be deemed to be a rejection of the request.
4. A person may proceed with its own request for consultations if:
  - (a) the person's request was rejected under paragraph 3; or
  - (b) the person's request was accepted under paragraph 2, but more than 60 days have passed since the delivery of its request under paragraph 2 and the requested Party has failed to request the establishment of a panel under Article 26(2);

and not more than six months have elapsed since the date the person delivered the request under paragraph 2.

5. A request for consultations under paragraph 1 or 4 shall:
  - (a) be in the form set out in Schedule 2;
  - (b) provide the factual basis for the matter, including the measure or proposed measure at issue;
  - (c) list those provisions of this Agreement considered to apply to the matter;
  - (d) describe in detail the alleged inconsistency and the possible economic effect of the measure;
  - (e) describe the relief or remedy sought; and
  - (f) provide an address for service.

Should the matter proceed to a panel under Article 26, the consultation request shall establish the basis of the complaint.

6. A copy of a request for consultations made under this Article shall be simultaneously delivered to the administrator.
7. Any other Party may participate in the consultations upon providing written notice to the administrator within ten days of receiving a copy of the request for consultations.
8. The consulting parties shall exchange all information necessary to enable a full examination of the matter.
9. Consulting parties may include relevant sectoral and trade officials in the consultations and, by agreement, may use mediation or other cooperative means to resolve the matter.

10. Consultations shall be confidential and without prejudice to the rights of the consulting parties in any further proceedings.
11. Consultations shall be completed within 30 days from delivery to the responding Party of the request for consultations.
12. Any failure by a responding Party to engage in consultations does not prejudice the right of a consulting party to request the establishment a panel.

#### **Article 26: Establishment of a Panel**

1. Each Party will maintain a list of at least five individuals that meet the criteria set out in Schedule 3 to act as panellists. If a Party fails to maintain a list, the other Parties' lists of panellists shall be exclusively used.
2. If consultations under Article 25 have failed to resolve the matter, any consulting party individually, or two or more consulting parties collectively, may request the establishment of a panel to consider the matter by delivering a request therefor to the administrator.
3. If no request to establish a panel has been made within two years after the date the request for consultations was delivered, the proceeding is automatically terminated.
4. In order for a person to access the panel process established under this Article, the person must acknowledge, in writing, its consent and provide a financial deposit in accordance with Schedule 4. The panel may require the provision of further deposits at its discretion. Failure to provide any such financial deposits shall result in automatic termination of the proceedings.
5. Where a request has been delivered under paragraph 2, within 15 days of delivery of the request the responding Party and the complainant shall each select one panellist. No Party shall select from its own list and no person shall select from its Party's list. If a disputant fails to select a panellist within 15 days, the administrator shall select a panellist by lot from the applicable lists on that disputant's behalf.
6. Within ten days of their appointment, the two panellists shall choose, by consensus, a panellist from the list of any Party to chair the proceedings. If the two panellists are unable to agree, they shall choose a chair by lot from the lists of the Parties.
7. As an alternative to the panel selection process under paragraphs 5 and 6, the disputants may, by agreement and within 15 days of the commencement of the selection process under paragraph 5, choose a single panellist to consider the matter. For greater certainty, the selected panellist need not be chosen from the lists established under paragraph 1.
8. All panellists selected must be independent and impartial in the matter under dispute and otherwise comply with the code of conduct. Any alleged violations of the code of

conduct shall be dealt with in accordance with the procedures provided in the code of conduct.

9. If for any reason a panellist is removed or is unable to further participate in a proceeding, a replacement panellist shall be appointed using the same process that was used to appoint the original panellist.

## **Article 27: Panel Proceedings**

1. Following delivery of the panel request under Article 26(2), any non-disputant Party may, by delivering a written notice to the administrator, participate in the proceeding as an intervenor and attend all hearings, make written and oral submissions to the panel and receive the written submissions of the disputants. Any such notice must be delivered within 15 days of the date of delivery of the panel request under Article 26(2), failing which the non-disputant Party shall not participate further in the proceeding.
2. If at any time prior to the hearing, one or more additional requests under Article 26(2) are received by the administrator relating to the same measure, the proceedings shall thereafter be consolidated into one proceeding. In the event of a consolidation of proceedings, the panel may adjust the remaining time periods accordingly.
3. A non-disputant person who wishes to make submissions in a proceeding may deliver a written request to do so to the administrator within 15 days of delivery of the panel request to the administrator under Article 26(2). Participation in a proceeding by a non-disputant person is at the discretion of the panel, and in all cases shall be limited to written submissions. Government entities may not submit requests to participate under this paragraph.
4. Within seven days of the panel being established under Article 26(6) or 26(7), the complainant, if a person, will deliver to the administrator a copy of the notice, if any, issued under Article 25(3).
5. Subject to the requirements of this Part IV(A), the panel shall convene a pre-hearing conference to consult with the participants on the manner in which it intends to proceed and, through the administrator, shall notify the participants.
6. Without prejudice to a panel's authority to address other objections as preliminary questions, a panel shall address and decide as a preliminary question any objection relating to its jurisdiction or any objection by the responding Party that the matter under dispute is not within the scope of the Agreement.
7. The complainant shall deliver a written submission to the administrator within 15 days after the panel has been established under Article 26(6) or 26(7). If the complainant fails to deliver its submission in accordance with this paragraph, the dispute shall be automatically terminated.

8. The written submissions of the other participants and non-disputant persons shall be delivered to the administrator within 30 days of the delivery of the complainant's submission by the administrator. If any other participant or non-disputant person fails to deliver its submission in accordance with this paragraph, the proceeding shall continue and that participant or non-disputant person is thereafter barred from any further participation in the proceeding unless authorized by the panel.
9. Subject to Article 7(4) and any concerns relating to confidential information, panel hearings shall be open to the public, and the panel shall determine, in consultation with the participants, the appropriate logistical arrangements therefor.
10. The oral hearing of the matter shall take place no sooner than 21 days following the delivery deadline provided under paragraph 8 and shall take place at a location within the territory of the responding Party, as determined by the panel.
11. No later than 15 days prior to the oral hearing each disputant shall communicate to the administrator the names and roles of the persons in their delegation who will attend the hearing.
12. In establishing time allocations for the oral hearing, the panel shall ensure the participants are each provided with sufficient opportunity to adequately present their case.
13. No further evidence shall be introduced at the oral hearing without the panel's consent. Where a panel grants such consent, the panel shall permit other participants adequate opportunity to consider and respond to such new evidence.
14. On agreement of the disputants, the panel process may be suspended or terminated at any time prior to the issuance of the panel's final report. Where proceedings have been suspended by such agreement, any disputant may subsequently apply to have the panel end the suspension and determine the manner in which the panel intends to proceed. The disputants shall deliver written notice of any such agreement or subsequent application to end the suspension to the administrator.
15. The panel shall, within 45 days of the oral hearing, issue a report to the participants that contains:
  - (a) findings of fact;
  - (b) rulings on any applicable interpretations and whether the measure at issue is or would be inconsistent with this Agreement;
  - (c) any findings as to the possible economic effect of the measure;
  - (d) recommendations, if any, to resolve the dispute;

- (e) specification of a reasonable period of time for implementation of the panel's recommendations, which shall be no longer than one year from the issuance of the report; and
  - (f) determination as to the amount and apportionment of costs as provided for under Article 32.
16. Within ten days of the delivery of the panel report to the participants, any disputant may request in writing to the administrator that the panel clarify or reconsider any part of the panel report. If no such request is received by the administrator within that ten day period, the panel's report will be considered to be final.
  17. Within five days of delivery of a request to the administrator under paragraph 16, the other participants may provide a response thereto to the administrator. The panel shall, within 15 days of delivery of the initial request to the administrator, provide the requested clarification or rule on the requested reconsideration. Thereafter, the panel's report, including any clarification or reconsideration thereof issued by the panel, will be considered to be final.
  18. Subject to Article 31, the final panel report is binding on the disputants. Subject to Article 7(4) and any concerns relating to confidential information, the final report shall be made public.

#### **Article 28: Implementation of Final Report**

1. The disputants shall, within 30 days of delivery of the final panel report, agree on the resolution of the dispute. Absent any other agreement between the disputants, resolution of the dispute will require compliance with the determinations and recommendations of the panel.

#### **Article 29: Non-Implementation**

1. If a complainant believes the final panel report or the agreement reached between the disputants under Article 28 has not been complied with, the complainant may request that a panel be convened to determine whether there has been compliance. Such request shall be made in writing to the administrator.
2. The panel established to determine if there has been compliance shall be composed of the original panellists unless otherwise agreed to by the disputants. Any original panellist unwilling or unable to participate, shall be replaced using the panel selection process established under Article 26.
3. The panel shall convene within 30 days after the date of delivery of the request to the administrator under paragraph 1. The panel shall determine the manner in which it intends to proceed and, through the administrator, shall so notify the disputants.

4. Any participant shall be permitted to make oral and written submissions to the panel regarding compliance with the final panel report.
5. Subject to Article 7(4) and any concerns relating to confidential information, the panel hearing shall be open to the public and the panel shall determine, in consultation with the disputants, the appropriate logistical arrangements therefor.
6. The panel shall, within 30 days of being convened, determine whether the final panel report or the agreement reached between the disputants has been complied with and issue a compliance report.
7. If the panel determines that there has not been compliance, it shall:
  - (a) if all disputants are Parties, issue a monetary award determined in accordance with Article 30 or authorize retaliatory measures of equivalent economic effect, or both; or
  - (b) if any complainant is a person, issue a monetary award determined in accordance with Article 30.
8. Subject to any judicial review initiated under Article 31, any remedy determined under paragraph 7 shall be effective at a time of the panel's discretion.
9. Subject to Article 31, the compliance report is binding on the disputants and, subject to Article 7(4) and any concerns relating to confidential information, shall be made public.

### **Article 30: Determination of Monetary Awards**

1. In determining the amount and allocation among individual complainants of any monetary award under Article 29(7), the panel shall take into account:
  - (a) the efforts made by the responding Party to conform with the recommendations of the panel in the final panel report or the agreement between the disputants under Article 28;
  - (b) the nature and extent to which the measure has caused economic injury to the complainant and the extent to which that injury would continue should the responding Party continue to be non-compliant; and
  - (c) any other factor the panel considers relevant in the circumstances.
2. In no circumstances shall a monetary award exceed \$5 million with respect to any one matter under consideration.

### **Article 31: Judicial Review**

1. A disputant may request judicial review of a final panel report within 15 days of it being considered final pursuant to Article 27(17), or of a compliance report within 15 days of it being issued pursuant to Article 29(6) under:
  - (a) section 30 of the *Arbitration Act* (RSBC 1996 c. 55) if the responding Party is British Columbia;
  - (b) subsection 45(1)(c) and (f) through (i), and subsection 45(8) of the *Arbitration Act* (RSA 2000, c. A-43) if the responding Party is Alberta;
  - (c) clauses 46(1)(c) and (f) through (i) and subsection 46(8) of *The Arbitration Act, 1992* (SS 1992, c. A-24.1) if the responding Party is Saskatchewan; and
  - (d) clauses 45(1)(c) and (f) through (i) of *The Arbitration Act* (C.C.S.M. c. A120) if the responding Party is Manitoba;

and solely for the purpose of this Article, the Parties agree that this Part IV(A) constitutes an “arbitration agreement” and any final report and compliance report constitutes an “award” as those terms are defined in the applicable statute.

2. The effective time of any award as determined by the panel under Article 29(8) shall be suspended during the period of any judicial review under this Article.

### **Article 32: Costs and Remuneration**

1. The costs of a proceeding shall in principle be borne by the unsuccessful participant(s). However, the panel may apportion costs at its discretion if it determines that some other apportionment is reasonable taking into account the circumstances of the case. In no case shall intervenors be collectively responsible for more than one-third of the costs.
2. For greater certainty, if the panel proceedings are terminated prior to the issuance of the final panel report, the panel retains the power to apportion any costs incurred up to such termination.
3. After the final panel report has been issued, the administrator shall render an accounting to the disputants of the financial deposits received and shall return any unexpended balance to the complaining person.
4. Each Party shall provide under its laws that any monetary award issued under Article 29(7), or any award of costs under this Article, shall be enforceable in the same manner as an order issued by that Party’s superior court.
5. Schedule 5 sets out the maximum amounts of remuneration and expenses that are to be paid to the administrator and panellists, as well as other costs that may be awarded



by the panel. No other costs may be assessed by a panel against the participants. Schedule 5 shall be updated by the Parties at least every five years.

**Article 33: Abridgement or Extension of Time Periods**

1. Consulting parties or disputants may, by agreement, abridge or extend any time period specified in this Part IV(A).
2. The panel may extend the time limits established in this Part IV(A) if it is fair and equitable to do so and after having afforded the participants the opportunity to provide comments.

**Article 34: Other Provisions**

1. Parties may only be represented by the officials of the Ministers responsible for the Agreement and their designates.
2. The administrator, the panel and all participants shall take all necessary steps to protect any information identified by a participant as being confidential.
3. Except as otherwise provided, in the course of a proceeding under this Part IV(A), when a document is delivered to the administrator, the administrator will immediately thereafter deliver a copy of the document to the panel, all Parties and the participants.
4. Where, in any proceeding, a question of procedure arises to which this Part IV(A) does not provide an answer, or the answer provided is incomplete, the question shall be disposed of by the panel in such a matter as the panel decides is reasonable in the circumstances and consistent with the principles of fairness.

## **B. BID PROTEST MECHANISM**

### **Article 35: Application**

1. This Part IV(B) applies to the avoidance and resolution of disputes between suppliers and government entities relating to a specific procurement covered by Article 14(1).
2. Where a supplier believes that a specific procurement is inconsistent with this Agreement and any other trade agreement, that supplier must choose which agreement's dispute resolution process to use and, once chosen, will have no recourse to the other process regarding that same specific procurement.

### **Article 36: Consultations**

1. The supplier may deliver a written request for consultations to the government entity with a copy to the administrator within ten days after the day on which the supplier first knew, or reasonably should have known, of the alleged inconsistency with the applicable obligations. The request shall provide a summary of the supplier's complaint. If the supplier fails to request consultations within the specified time period, the supplier shall be unable to proceed with further consideration of the matter under this Part IV(B).
2. In the written request under paragraph 1, the supplier may request that the government entity postpone, or the government entity may decide to postpone, the award of a contract in order to facilitate resolution of the matter. Taking into consideration the merits of the complaint, the government entity may refuse any such request.
3. The government entity and the supplier shall make every effort to arrive at a mutually satisfactory resolution of the matter through consultations and, to that end, shall exchange information sufficient to enable a full examination of the matter.
4. The government entity and the supplier shall conclude consultations within 20 days following delivery of the request for consultations under paragraph 1.
5. The supplier and the government entity may engage in any other informal efforts to attempt to resolve the matter and may, by mutual consent, extend the deadline for concluding consultations.
6. Consultations shall be without prejudice to the rights of the disputants in any further proceedings.

### **Article 37: Selection of Arbitrator and Initiation of Proceedings**

1. The Parties shall establish a roster of arbitrators and each Party shall nominate at least five persons to that roster that meet the criteria set out in Schedule 3. The Parties shall list on the Agreement's website the names of the arbitrators, their biographical information and the Party which appointed the arbitrator to the roster.
2. All arbitrators selected must be independent and impartial in the matter under dispute and otherwise comply with the code of conduct. Any alleged violations of the code of conduct shall be dealt with in accordance with the procedures provided in the code of conduct.
3. If the dispute is not resolved through consultations under Article 36, the supplier may, within 14 days following the conclusion of consultations, deliver a written request to the administrator, with a copy to the government entity, for the appointment of an arbitrator to rule on whether the procurement at issue has been or is being conducted in conformity with the Agreement.
4. The request under paragraph 3 shall contain the following:
  - (a) a list of five candidates to serve as the arbitrator selected from the roster established under paragraph 1, no more than two of whom may be selected from one Party's list of nominees;
  - (b) the identity of the supplier, and the address and contact person or counsel of record to which all further communications respecting the bid protest can be sent;
  - (c) if applicable, the title and tender reference number of the procurement;
  - (d) the name of the government entity;
  - (e) clear and detailed information concerning the factual grounds of the supplier's protest;
  - (f) detailed information concerning the alleged violation of the applicable obligations of the Agreement;
  - (g) copies of all correspondence between the supplier and the government entity relating to the specific procurement at issue;
  - (h) the remedies being requested, including supporting documentation on the actual cost of preparing and submitting the bid for the specific procurement at issue and its costs for legal representation relating to the bid protest; and
  - (i) a signed consent and a financial deposit, in accordance with Schedule 7.

5. An arbiter may order the supplier to provide further financial deposits to the administrator at the times and in the amounts considered appropriate, at the arbiter's discretion. In considering whether to order such further financial deposits the arbiter will take in account:
  - (a) the supplier's financial situation;
  - (b) the supplier's location or principal place of business;
  - (c) the complexity of the proceeding and the likely costs to be incurred as a result;
  - (d) the services to be provided by the administrator; and
  - (e) any other factor that is likely to affect the overall costs of the proceeding or the ability of the government entity to collect on a cost award issued against the supplier.

Any failure by a supplier to provide the financial deposits required under paragraph 4 or by subsequent order of the arbiter under this paragraph shall result in automatic termination of the proceeding.

6. Within seven days of the delivery under paragraph 3, the administrator shall determine the availability of the supplier's nominees and advise the government entity as to which nominees are available.
7. The government entity shall, within seven days of delivery of the list of available nominees under paragraph 6, select one of the nominees to act as the arbiter. If the government entity fails to select an arbiter within seven days, the administrator will choose the arbiter by lot from the list of available nominees.
8. If none of the nominees identified under paragraph 4(a) are available to serve, the administrator will choose the arbiter by lot from the roster.
9. If the supplier fails to:
  - (a) submit the request for the appointment of an arbiter in accordance with paragraph 3; or
  - (b) meet the requirements of paragraph 4;

the matter shall be deemed to be resolved, and the supplier shall be unable to proceed with further consideration of the matter under this Part IV(B).

10. Any dispute under this Part IV(B) shall be deemed to take place in the territory of the Party of the government entity at issue.

### **Article 38: Bid Protest Proceedings**

1. Within 14 days of delivery of the request under Article 37(3), the government entity shall deliver a written reply to the administrator, with a copy to the supplier. The reply shall address each of the supplier's allegations as set out in its request under Article 37(3). The reply shall also provide information and documentation concerning the government entity's costs for legal representation relating to the bid protest.
2. If the government entity fails to meet the information or time requirements under paragraph 1, it forfeits the right to present any further material in the proceeding unless specifically requested or authorised by the arbiter.
3. Within seven days of delivery of the government entity's reply under Article 38(1), the supplier may deliver a written counter-reply to the administrator, with a copy to the government entity.
4. The arbiter may request additional written submissions from the disputants.
5. The arbiter shall consider the matter in light of the applicable obligations of the Agreement and shall issue a final report to the disputants no later than ten days after delivery of the last submission under paragraph 3, or when exercised, paragraph 4. The arbiter may extend this period, with reasons for doing so, by no more than ten days. In reaching a decision, the arbiter shall consider only the written material that has been submitted to the administrator in accordance with this Part IV(B).
6. The arbiter's final report shall contain:
  - (a) findings of fact;
  - (b) a determination as to whether the specific procurement at issue is consistent with the Agreement;
  - (c) if applicable, recommendations as to how the government entity may bring itself into compliance with the Agreement; and
  - (d) the amount of any cost award and, if the government entity has acted inconsistently with the Agreement, any recoupment award, determined in accordance with Article 39.
7. If, at any time prior to the issuance of the arbiter's final report, one or more additional requests under Article 37 are delivered to the administrator relating to the same specific procurement, the bid protests shall thereafter be consolidated into one proceeding and the following modified procedures shall apply to that proceeding:
  - (a) within three days of receiving the additional request, the administrator shall notify the existing arbiter and each of the disputants that a consolidation of the suppliers' bid protests is required; and

- (b) if the arbiter considers that additional submissions are then required, the arbiter shall immediately thereafter inform the disputants and fix the time periods for delivery.
- 8. In the event of a consolidation of two or more requests under paragraph 7, the arbiter may extend the time period for delivery of the final report by no more than 40 days from the date the arbiter and the disputants are notified of the consolidation by the administrator.
- 9. If the disputants agree to terminate a bid protest prior to the issuance of the arbiter's final report, the arbiter may issue a cost award, allocating costs at the arbiter's discretion, unless a specific allocation is otherwise agreed to between the disputants.
- 10. Subject to Article 41, the arbiter's final report is binding on the disputants and, subject to Article 7(4) and any ruling relating to confidentiality made by the arbiter under Article 42 and the arbiter's final report shall thereafter be made public.

**Article 39: Cost and Recoupment Awards**

- 1. A cost award shall in principle be issued against the unsuccessful disputant. However, the arbiter may apportion a cost award between the disputants if the arbiter determines that apportionment is reasonable, taking into account the circumstances of the bid protest.
- 2. In determining the amount of any recoupment award to be issued against the government entity, the arbiter shall take into account:
  - (a) the complexity of the specific procurement at issue;
  - (b) the dollar value of the specific procurement at issue;
  - (c) the complexity of the bid prepared and submitted by the supplier;
  - (d) the complexity of the bid protest proceeding;
  - (e) the efforts made by the government entity and the supplier to arrive at a mutually satisfactory resolution to the dispute under Article 36; and
  - (f) any other factor considered relevant by the arbiter.
- 3. In no event shall the amount of any cost award and, if applicable, any recoupment award issued against a disputant in any one proceeding under this Part IV(B) exceed \$50,000 each.
- 4. For greater certainty, an arbiter cannot issue a recoupment award against a supplier.

## **Article 40: Enforcement of Awards**

1. In the event that the arbiter orders any cost award or recoupment award under Article 38(6)(d) and Article 39, the arbiter shall specify in the final report:
  - (a) with respect to any cost award, a breakdown between the fees and expenses of the arbiter and the costs for legal representation that comprise the cost award; and
  - (b) subject to paragraph 2, a reasonable period of time within which the award(s) shall be paid by the disputant against which the order has been made.
2. The financial deposit provided by the supplier under Article 37(4)(i) shall be dealt with as follows:
  - (a) if no cost award has been issued against the supplier, the administrator shall return the entire amount of the financial deposits to the supplier;
  - (b) if a cost award of less than the amount of the financial deposits has been issued against the supplier, the administrator shall pay the amount of the cost award over to the arbiter and government entity out of the financial deposit, pursuant to the allocation in the final report, and shall return any funds remaining to the supplier; and
  - (c) if a cost award in excess of the financial deposits is issued against the supplier, the administrator shall first pay the amount of the arbiter's fees and expenses, as indicated in the final report, to the arbiter. The administrator shall then pay the remaining funds, if any, to the government entity. The supplier shall then pay the amount of any difference between the financial deposits and the total cost award to the government entity within the time period specified in the final report.
3. Each Party shall provide under its laws that any cost awards and recoupment awards issued by an arbiter under Article 38(6)(d) and Article 39 shall be enforceable in the same manner as an order issued by that Party's superior court.

## **Article 41: Judicial Review**

1. A disputant may request judicial review of an arbiter's final report within 15 days of it being issued under Article 38(5) under:
  - (a) section 30 of the *Arbitration Act* (RSBC 1996 c.55) if the government entity is from British Columbia;
  - (b) subsection 45(1)(c) and (f) through (i), and subsection 45(8) of the *Arbitration Act* (RSA 2000, c. A-43) if the government entity is from Alberta;

- (c) clauses 46(1)(c) and (f) through (i) and subsection 46(8) of *The Arbitration Act, 1992* (SS 1992, c. A-24.1) if the government entity is from Saskatchewan; and
- (d) clauses 45(1)(c) and (f) through (i) of *The Arbitration Act* (C.C.S.M. c. A120) if the responding Party is Manitoba;

and solely for purposes of this Article, the Parties agree that this Part IV(B) constitutes an “arbitration agreement” and any arbiter’s final report issued under Article 38(5) constitutes an “award” as those terms are defined in the applicable statute.

- 2. The time for payment of any cost award or recoupment award as determined by the arbiter under Article 40(1) shall be suspended during the period of any judicial review under this Article.

#### **Article 42: Protection of Confidential Information**

- 1. Further to Article 7(4), the arbiter shall determine any issues relating to the protection of confidential information and the logistical arrangements therefor.

#### **Article 43: Other Provisions**

- 1. The Parties shall publish the contact details for the administrator on the electronic tendering websites provided by the Parties and on the Agreement’s website.
- 2. Each Party shall take such measures as are necessary to implement this Part IV(B), and, in doing so, may assume responsibility for some or all of its government entities for some or all aspects of the bid protest mechanism. If a Party does assume such responsibility, it shall notify the administrator.
- 3. The administrator shall copy the Party responsible for the government entity on all communications received from or delivered to the government entity. Each Party shall designate a contact point for receiving such communications and shall notify the administrator thereof.
- 4. In the event that an arbiter is dismissed, resigns or becomes otherwise unavailable, a replacement arbiter will be selected in accordance with the procedures in paragraphs 5 through 8 of Article 37.
- 5. Paragraphs 3 through 5 of Schedule 5 shall apply to the remuneration of arbiters, with such changes as may be required in the circumstances.
- 6. Where, in any proceeding, a question of procedure arises to which this Part IV(B) does not provide an answer, or the answer provided is incomplete, the question shall be disposed of by the arbiter in such a matter as the arbiter decides is reasonable in the circumstances and consistent with the principles of fairness.



7. The provisions of this Part IV(B) shall enter into force on July 1, 2015.

**PART V:  
EXCEPTIONS**

**ALL PARTIES**

**A. GENERAL EXCEPTIONS**

1. Measures adopted or maintained relating to:
  - (a) Aboriginal peoples;
  - (b) Water, and services and investments pertaining to water;
  - (c) Subject to Article 12, taxation and associated compliance mechanisms;
  - (d) Subject to Articles 4 and 12, other revenue generation, including royalties and mark-ups, and associated compliance mechanisms;
  - (e) Regulated rates established for the public good or public interest;
  - (f) Social policy, including labour standards and codes, minimum wages, employment insurance, social assistance benefits and worker's compensation;  
or
  - (g) Subject to Article 4, land use.

**B. BUSINESS SUBSIDIES**

1. Measures adopted or maintained to provide:
  - (a) Compensation to persons for losses resulting from calamities such as diseases or disasters;
  - (b) Assistance for book and magazine publishers, sound recordings, and film development, production and distribution;
  - (c) Assistance for recreation;
  - (d) Assistance for academic research; or
  - (e) Assistance to non-profit organizations.

### **C. GOVERNMENT PROCUREMENT**

1. Articles 3, 4 and 14 do not apply in the circumstances listed below in paragraph 2 provided that procurement procedures are not used by the procuring Party to avoid competition, discriminate between suppliers, or protect its suppliers.
2. Procurements:
  - (a) from philanthropic institutions, prison labour or persons with disabilities;
  - (b) from a public body or a non-profit organization;
  - (c) of goods purchased for representational or promotional purposes, and services or construction purchased for representational or promotional purposes outside the territory of a Party;
  - (d) of health services and social services;
  - (e) on behalf of an entity not covered by Article 14;
  - (f) by entities which operate sporting or convention facilities, in order to respect a commercial agreement containing provisions incompatible with Article 3, 4 or 14;
  - (g) where it can be demonstrated that only one supplier is able to meet the requirements of a procurement;
  - (h) where an unforeseeable situation of urgency exists and the goods, services or construction could not be obtained in time by means of open procurement procedures;
  - (i) when the acquisition is of a confidential or privileged nature and disclosure through an open bidding process could reasonably be expected to compromise government confidentiality, cause economic disruption or be contrary to the public interest;
  - (j) of services provided by lawyers and notaries;
  - (k) of goods intended for resale to the public; or
  - (l) in the absence of a receipt of any bids in response to a call for tenders.
3. Articles 3, 4 and 14 do not apply to any procurement undertaken by non-governmental bodies that exercise authority delegated by law.
4. Articles 3, 4 and 14 do not apply to any procurement of treasury services.

#### **D. ENERGY AND MINERALS**

1. Subject to Article 4, measures adopted or maintained relating to:
  - (a) the licensing, certification, registration, leasing or other disposition of rights to energy or mineral resources;
  - (b) exploration and development of energy or mineral resources; or
  - (c) management or conservation of energy or mineral resources.
2. Measures adopted or maintained to promote renewable and alternative energy.

#### **E. TRANSPORTATION**

1. Measures relating to the licensing of a motor vehicle operated by or on behalf of a person who may charge or collect compensation for the transportation of passengers in that vehicle.

#### **F. REGIONAL ECONOMIC DEVELOPMENT**

1. Regional economic development measures, provided that such measures:
  - (a) are only adopted or maintained under exceptional circumstances;
  - (b) are not more trade restrictive than necessary to achieve their specific objective;
  - (c) do not operate to unduly harm the economic interests of persons, goods, services or investments of the other Party;
  - (d) minimize the discriminatory effects and impacts on trade, investment and labour mobility; and
  - (e) are consistent with Article 12(1).

#### **G. FORESTS, FISH AND WILDLIFE**

1. Measures adopted or maintained relating to:
  - (a) the licensing, certification, registration, leasing or other disposition of rights to the harvesting of forest or fish resources;
  - (b) the management or conservation of forests, fish and wildlife; or

- (c) requirements that timber be used or manufactured within the territory of a Party.

## **H. ENVIRONMENT**

- 1. Measures adopted or maintained relating to the management and disposal of hazardous and waste materials.

## **ALBERTA**

### **I. INVESTMENT**

- 1. *Fair Trading Act Collections and Debt Repayment Regulation and Public Auctions Regulation*, requiring that funds be maintained in an Alberta- based account.
- 2. *Wildlife Act* requires residency for:
  - (a) Registered Fur Management;
  - (b) Registered Fur Management Partner; and
  - (c) Resident Fur Management.

### **J. ENERGY**

- 1. *Power Purchase Arrangements Regulation*, Section 3 that restricts access to and ownership of Power Purchase Arrangements.

### **K. AGRICULTURE**

- 1. Measures adopted or maintained relating to regulated marketing and supply management which restrict trade, or the right to invest in the production of, or to produce poultry, dairy and eggs.

## BRITISH COLUMBIA

### L. ENERGY

1. Measures adopted or maintained relating to the use of dams, reservoirs and generation facilities provided that such measures are not used for the purpose of preventing access to electricity transmission facilities.
2. Measures to ensure domestic load is served as provided for in the British Columbia Transmission Corporation's Open Access Transmission Tariff, where filed with, and approved by, the British Columbia Utilities Commission.
3. Provisions of the *BC Hydro Public Power Legacy and Heritage Contract Act*, S.B.C. 2003, c. 86, and any regulations or special directions pursuant thereto. Without limiting the foregoing, the Act prohibits BC Hydro from selling, or otherwise disposing of, protected (heritage) assets, and *Heritage Special Direction No. HC2 to the British Columbia Utilities Commission* that ensures domestic customers of BC Hydro receive the benefit of the utility's low-cost resources on an embedded cost basis for a minimum of ten years, beginning April 1, 2004.

### M. TRANSPORTATION

1. Measures to ensure adequate insurance coverage for commercial vehicles.

### N. AGRICULTURE

1. Existing regulatory measures adopted pursuant to the *Natural Products Marketing (BC) Act* which restrict trade or investment in agricultural products or production regulated thereunder.

## SASKATCHEWAN

### O. INVESTMENT

1. Residency requirements under *The Wildlife Act, 1998* and *The Wildlife Regulations, 1981* for fur conservation area licences and fur licences.
2. Residency requirements under *The Labour-Sponsored Venture Capital Corporations Act*.
3. Residency requirements under *The Outfitter and Guide Regulations, 2004*.

## **P. AGRICULTURE**

1. Measures adopted or maintained relating to regulated marketing and supply management which restrict trade, or the right to invest in the production of, or to produce poultry, dairy and eggs.

## **MANITOBA**

### **Q. Investment**

1. Residency requirements under *The Wild Rice Act* and for hunting and trapping under *The Wildlife Act*.

### **R. Energy**

1. Energy measures adopted or maintained relating to the use of dams, reservoirs and generation facilities provided that such measures are not used for the purpose of preventing access to electricity transmission facilities.
2. Provisions of *The Manitoba Hydro Act* that:
  - (a) ensure domestic customers of Manitoba Hydro receive the benefit of the utility's low cost resources through rates; and
  - (b) prohibit Manitoba Hydro from selling or otherwise disposing of, a major facility for generating, transmitting or distributing power.

### **S. Agriculture**

1. Existing regulatory measures adopted pursuant to *The Farm Products Marketing Act* which restrict trade or investment in agricultural products or production regulated thereunder.

## **PART VI: DEFINITIONS**

In this Agreement:

**administrator** means the secretariat, if established, or a third party contracted to provide secretarial and operational support as provided under Article 19;

**administrator agreement** means the agreement among the Parties under Article 19 concerning the appointment, funding, and operation of the administrator;

**arbiter** means the individual appointed under Article 37 or Article 43(4) to consider a bid protest under Part IV(B);

**bid protest** means a dispute initiated under Part IV(B);

**business subsidy** means a financial contribution by a Party, namely:

- (a) cash grants, loans, debt guarantees or an equity injection, made on preferential terms;
- (b) a reduction in taxation and other forms of revenue generation, including royalties and mark-ups, or government levies otherwise payable, but does not include a reduction resulting from a provision of general application of a tax law, royalties, or other forms of a Party's revenue generation; or
- (c) any form of income or price support that results directly or indirectly in a draw on the public purse

that confers a benefit on a specific non-government entity, whether organized as one legal entity or as a group of legal entities, but does not include generally available infrastructure, assistance to provide generally available infrastructure, or subsidies defined as non-actionable under Article 8 of the World Trade Organization *Agreement on Subsidies and Countervailing Measures*.

A business subsidy does not include a financial contribution made available to entities within a particular industry or group of industries where the measure pursuant to which the financial contribution is made available establishes objective criteria or conditions governing eligibility that are not structured, in law or in fact, so as to make the financial contribution uniquely available to one single entity, whether that entity is structured as one legal entity or a group of legal entities;

**buying group** means a group of two or more members which combines the purchasing requirements and activities of the members of the group into one joint procurement process. Buying groups include cooperative arrangements in which individual members administer the procurement function for specific contracts for the group, and more formal corporate arrangements in which the buying group administers procurement for group members.



Buying groups may involve a variety of entities, including public sector, private sector and not-for-profit organizations;

**carrier** means a person that seeks to provide or provides a motor vehicle transportation service;

**certified** means that a worker holds a certificate, license, registration or other form of official recognition used by a regulatory authority which attests to the worker being qualified and, where applicable, authorized to practice a particular occupation or to use a particular occupational title in the territory of that Party.

**code of conduct** means the code of conduct for panellists and arbiters set out in Schedule 6 to the Agreement;

**complainant** means one or more Parties or a person that has requested the establishment of a panel under Article 26(2);

**construction** means a construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement;

**cost award** means an award by an arbiter to reimburse a disputant for the demonstrable and reasonable costs incurred relating to the bid protest in respect of:

- (a) the fees and expenses of the arbiter;
- (b) services provided by the administrator; and
- (c) the costs for legal representation;

**days** means calendar days. For the purposes of calculating a period of time, such period shall begin to run on the day following the day when a specified event occurs. If the last day is an official holiday or a non-business day within any Party, the period is extended until the first business day which follows;

**disputant** means:

- (a) for the purposes of Part IV(A), the complainant or the responding Party; and
- (b) for the purposes of Part IV(B), the supplier making a bid protest or the responding government entity or the Party responsible for the responding government entity, as the case may be;

**enterprise** means an entity constituted, established, organized or registered under the applicable laws of a Party, whether privately owned or governmentally owned, including any corporation, trust, partnership, cooperative, sole proprietorship, joint-venture or other form of association, for the purpose of economic gain;

**existing** means existing as of the date of the entry into force of this Agreement. In the case of a Party that subsequently accedes to the Agreement “**existing**” means existing as of the date of that Party’s accession to the Agreement;

**good** means a good that is produced, manufactured, grown or obtained in, used for a commercial purpose in, or distributed from, the territory of a Party;

**government entity** means a Party’s:

- (a) departments, ministries, agencies, boards, councils, committees, commissions and similar agencies of government;
- (b) Crown corporations, government-owned commercial enterprises, and other entities that are owned or controlled by the Party through ownership interest;
- (c) regional, local, district or other forms of municipal government as well as any corporation or entity owned or controlled by any such form of municipal government;
- (d) school boards, publicly-funded academic, health and social service entities as well as any corporation or entity owned or controlled by one or more of the preceding entities; and
- (e) non-governmental bodies that exercise authority delegated by law;

**intervenor** means a non-disputing Party that has given notice under Article 27(1);

**investment** means:

- (a) an enterprise;
- (b) financial assets, including money, shares, bonds, debentures, partnership rights, receivables, inventories, capital assets, options and goodwill;
- (c) the acquisition of financial assets; or
- (d) the establishment, acquisition or expansion of an enterprise;

**investor** means:

- (a) a Party;
- (b) a person ordinarily resident in the territory of a Party; or

(c) an enterprise carrying on business in the territory of a Party

that seeks to make, is making, or has made an investment within a Party;

**legitimate objective** means any of the following objectives pursued within a Party:

- (a) public security and safety;
- (b) public order;
- (c) protection of human, animal or plant life or health;
- (d) protection of the environment;
- (e) conservation and prevention of waste of non-renewable or exhaustible resources;
- (f) consumer protection;
- (g) protection of the health, safety and well-being of workers;
- (h) provision of social services and health services within the territory of a Party;
- (i) affirmative action programs for disadvantaged groups; or
- (j) prevention or relief of critical shortages of goods essential to a Party

considering, among other things, where appropriate, fundamental climatic or other geographical factors, technological or infrastructural factors, or scientific justification;

“Legitimate objective” does not include protection or favouring of the production of an enterprise of a Party;

**measure** includes any legislation, regulation, standard, directive, requirement, guideline, program, policy, administrative practice or other procedure;

**non-governmental bodies that exercise authority delegated by law** means any organization, institution, corporation or association to whom regulatory or supervisory authority has been delegated by a Party;

**participant** means any disputant or intervenor and **participants** means all of them;

**Party** means any signatory to this Agreement;

**person** means a natural person or an enterprise of a Party;

**procurement** means the acquisition by any means, including by purchase, rental, lease or conditional sale, of goods, services or construction, but does not include:

- (a) any form of government assistance such as grants, loans, equity infusion, guarantees or fiscal incentives; or
- (b) provision by government organizations, including government entities, of goods and services to persons or other government organizations, including government entities;

**procurement value** means the estimated total financial commitment resulting from a procurement, not taking into account optional renewals when the compulsory part of the contract is of at least one year's duration;

**recoupment award** means an award by an arbiter to reimburse a supplier for the demonstrable and reasonable costs incurred by the supplier in preparing a response to a procurement opportunity;

**regulation** means a standard that has been adopted into law;

**regulatory authority** means a government entity with authority to certify or regulate an occupation;

**responding Party** means the Party whose measure is at issue in consultations under Article 25 or at issue in a complaint under Article 26;

**sanitary and phytosanitary measures** means a measure that a Party adopts or maintains to:

- (a) protect animal or plant life or health in its territory from risks arising from the introduction, establishment or spread of a pest or disease;
- (b) protect human or animal life or health in its territory from risks arising from the presence of an additive, contaminant, toxin or disease causing organism in a food, beverage or feedstuff;
- (c) protect human life or health in its territory from risks arising from a disease-causing organism or pest carried by an animal or plant, or a product thereof; or
- (d) prevent or limit other damage in its territory arising from the introduction, establishment or spread of a pest;

**service** means a service supplied or to be supplied, by a person of a Party;

**standard** means a specification, approved by a Party or by a recognized body, that sets out the rules, guidelines or characteristics for:

- (a) goods or related processes and production methods;
- (b) services and service providers or their related operating methods;

- (c) occupations and occupational qualifications; or
- (d) sanitary and phytosanitary measures;

**supplier** means a person that provides or could provide goods or services in the context of a procurement covered by this Agreement;

**treasury services** means services or financial products relating or ancillary to any of the following:

- (a) borrowing, lending, investing, managing or holding money, securities or other property; and
- (b) without limiting the generality of paragraph (a),
  - (i) managing debt, loan, asset or investment portfolios,
  - (ii) entering into commodity or other derivative transactions, or
  - (iii) acquiring, exchanging, disposing of or otherwise transacting in securities, foreign currencies or any property acquired as a result of borrowing, lending, managing or investing money or securities;

**water** means surface and ground water in liquid, gaseous, or solid state, but does not include water packaged in containers with a capacity of 20 litres or less.

**APPENDIX I  
TRANSITIONAL MEASURES**

**MANITOBA**

**A. Procurement**

1. Article 14(3) does not apply to ministries until January 1, 2018.
2. Article 14 does not apply to the procurement of engineering services by ministries until January, 2017.
3. Article 14 does not apply to Crown corporations; government-owned commercial enterprises; other entities that are owned or controlled by the Party through ownership interest; regional, local, district or other forms of municipal government; school divisions or publicly-funded academic, health and social service entities, as well as any corporation owned or controlled by one or more of the preceding entities until January 1, 2019.

**B. Investment**

1. Article 11 does not apply to *The Consumer Protection Act* and *The Prearranged Funeral Services Act* until January 1, 2018.
2. Article 11(1)(a) does not apply to measures relating to business registration and reporting requirements until January 1, 2020.
3. Measures adopted or maintained relating to regulated marketing under *The Fisheries Act* until January 1, 2018.
4. Measures relating to the leasing, permitting, granting or other disposition of rights to the haying, foraging, grazing or cropping on lands that are owned or managed by Manitoba until January 1, 2018.

**C. Transportation**

1. Article 16(2) and Article 16(3) do not apply until January 1, 2018.

**D. Standards and Regulations**

1. Existing standards and regulations not otherwise expressly addressed in this Agreement until January 1, 2019.

**E. Financial Services**

1. Measures related to financial services until January 1, 2020. For purposes of this provision “financial services” means any service or product of a financial nature that is subject to, or governed by, a measure adopted or maintained by Manitoba or by a

Manitoba public body that exercises regulatory or supervisory authority delegated by law and includes, but is not limited to:

- (a) deposit-taking;
- (b) loan and investment services;
- (c) insurance;
- (d) estate, trust and agency services;
- (e) securities; and
- (f) all forms of financial market intermediation including, but not limited to, the distribution of financial products.

## SCHEDULE 1

### FORM OF CONSULTATION REQUEST UNDER ARTICLE 25(2)

[Date]

[Alberta/British Columbia/Manitoba/Saskatchewan Contact Point]

**Re: Request for Consultations Under NWPTA Article 25(2) Concerning  
[Measure]**

Pursuant to Article 25(2) of the *New West Partnership Trade Agreement* (the “NWPTA”), I hereby request that [Alberta/British Columbia/Manitoba/Saskatchewan] enter into consultations with [Alberta/British Columbia/Manitoba/Saskatchewan] on my behalf concerning the following matter:

**(a) Factual basis for the matter at issue**

[Briefly describe the measure or matter at issue]

**(b) Applicable provisions of the NWPTA**

The provisions of the NWPTA which apply to the measure(s) at issue include the following:

[List all potentially applicable provisions]

**(c) Description of the alleged inconsistency**

[Provide a brief summary of how the measure(s) at issue violate the NWPTA]

**(d) Possible economic effect of the measure;**

[Provide a brief explanation of how the measure might cause economic injury]

**(e) Relief or remedy sought**

[Briefly describe what action is being sought to remedy the alleged inconsistency]

**(f) Address for service**

All further correspondence with me regarding this matter can be addressed as follows:

[NAME]

[ADDRESS FOR SERVICE]



Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Please contact me at the above address for service within the time period specified in NWPTA Article 25(3).

Yours truly,

\_\_\_\_\_

[PRINTED NAME]

cc: Administrator for the Agreement

## SCHEDULE 2

### FORM OF CONSULTATION REQUEST UNDER ARTICLE 25(1) and 25(4)

[Date]

[Alberta/British Columbia/Manitoba/Saskatchewan Contact Point]

**Re: Request for Consultations Under NWPTA Article 25([1/4]) Concerning [Measure]**

Pursuant to Article 25([1/4]) of the *New West Partnership Trade Agreement* (“the NWPTA”), we/I hereby request that [Alberta/British Columbia/Manitoba/Saskatchewan] enter into consultations with [person/Party requesting consultations] concerning the following matter:

**(a) Factual basis for the matter at issue**

[Briefly describe the measure or matter at issue]

**(b) Applicable provisions of the NWPTA**

The provisions of the NWPTA which apply to the measure(s) at issue include the following:

[List all potentially applicable provisions]

**(c) Description of the alleged inconsistency**

[Provide a brief summary of how the measure(s) at issue violate the NWPTA]

**(d) Possible economic effect of the measure;**

[Provide a brief explanation of how the measure might cause economic injury]

**(e) Relief or remedy sought**

[Briefly describe what action is being sought to remedy the alleged inconsistency]

**(f) Address for service**

All further correspondence with us regarding this matter can be addressed as follows:

[NAME]

[ADDRESS FOR SERVICE]

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Please contact us/me at the above address for service as soon as possible so that we may commence and conclude consultations on this matter within the time period specified in NWPTA Article 25(11).

Yours truly,

\_\_\_\_\_

[PRINTED NAME]

cc: Administrator for the Agreement  
Contact Point for [Alberta/British Columbia/Manitoba/Saskatchewan]

## **SCHEDULE 3**

### **CRITERIA FOR THE APPOINTMENT OF POTENTIAL PANELLISTS AND ARBITERS**

#### **ARTICLES 26(1) AND 37(1)**

#### **General Criteria for All Appointments**

1. The Parties shall ensure that all of the individuals that they respectively appoint to their lists of potential panellists, as required under Article 26(1), and the roster of arbiters, as required under Article 37(1):

- a) has been selected for appointment on the basis of objectivity, reliability and sound judgment; and
- b) is independent of, and is not affiliated with or taking instructions from, any Party or any government entity of a Party.

#### **Additional Criteria for Appointments under Article 26(1)**

2. In addition to the general requirements of paragraph 1, the Parties shall ensure that each of the individuals that they appoint to their lists of potential panellists, as required under Article 26(1), has expertise or significant experience as counsel or as a decision-maker in administrative law or dispute settlement.

#### **Additional Criteria for Appointments under Article 37(1)**

3. In addition to the general requirements of paragraph 1, the Parties shall ensure that each of the individuals that they appoint to the roster of arbiters, as required under Article 37(1), has expertise or significant experience as counsel or as a decision maker in government procurement, administrative law, the rights and obligations of internal or international trade agreements applicable to government procurement, or government-procurement-related dispute settlement.

#### **Prior Consultation on Appointments**

4. With the object of ensuring panellists and arbiters of the highest possible quality in the circumstances, each Party will provide the other Parties with a reasonable opportunity to review and comment on any proposed appointment under Article 26(1) or Article 37(1) before such appointment is finalized.

## SCHEDULE 4

### FORM OF CONSENT TO ARBITRATION ARTICLE 26(4)

#### NEW WEST PARTNERSHIP TRADE AGREEMENT

##### Consent to Arbitrate by a Person

1. In this consent:

“**administrator**” means the administrator appointed pursuant to Article 19 of the Agreement;

“**Agreement**” means the *New West Partnership Trade Agreement* including any amendments, related documents, and any joint decisions issued by the Parties under Article 21, as the case may be;

“**complainant**” means the person wishing to access the panel process of the dispute settlement procedure provided for under Part IV(A) and providing this consent;

“**consent**” means this Consent to Arbitrate by a Person required under Article 26(4) from any person wishing to access the panel process of the dispute settlement procedure provided for under Part IV(A);

“**disputants**” means the complainant and responding party and “**disputant**” means either one of them, as the case may be; and

“**Parties**” means the Parties to the Agreement and “**Party**” means any one of them, as the case may be;

2. This consent is being provided by [name], of [address for service].

3. The complainant hereby acknowledges that under Article 26(4), any person wishing to access the panel process of the dispute settlement procedure provided for under Part IV(A) of the Agreement must first acknowledge in writing its consent to the process. This consent is in fulfillment of that requirement.

4. The complainant has a dispute with [Alberta, British Columbia, Manitoba or Saskatchewan] arising under the Agreement relating to [brief description of the matter or measure under dispute]. The complainant specifically consents to submitting this dispute for settlement by a panel under Part IV(A) of the Agreement, and agrees to do so wholly in accordance with this consent and the procedures specified in the Agreement.

5. In doing so, the complainant acknowledges and agrees that those procedures provide as follows:

(a) Use of the Agreement’s panel process precludes any subsequent recourse by

the complainant to the dispute settlement procedures of the *Agreement on Internal Trade* or any other trade agreement in respect of the same measure (see Article 24(6)) should such procedures also be available to the complainant in the circumstances;

- (b) Proceedings under Part IV(A) of the Agreement are governed by the Agreement. These procedures differ in many ways from those normally used by domestic courts.
- (c) Subject to limited protections for certain types of information in Article 7(4), the Agreement generally provides for an open and public process. Panel proceedings will be held in public and resulting panel reports will be publicly released (see Articles 27(9), 27(18), 29(5) and 29(9)). A panel may make an order it considers appropriate respecting the confidentiality of any part of a panel process or of any information, records or documents submitted during the panel process. In addition, any information and documentation provided to a Party as part of the panel process will thereafter become subject to that Party's freedom of information legislation which may require that Party to disclose such information and any records or documents that have been created by that Party based on such information or documentation, to third parties making appropriate requests under such legislation;
- (d) Subject to a limited right of judicial review, panel decisions are final and cannot be appealed (see Articles 27(18) and 29(9));
- (e) While panels have the ability to issue monetary awards in some circumstances, such awards are not intended to constitute damage awards and can only be issued where a Party has failed to comply with a final panel report (see Articles 29(7) and 30). As the Parties generally expect to comply with final panel reports, the issuance of a monetary award in favour of the complainant is unlikely to occur;
- (f) The disputants are solely responsible for all of the costs associated with a dispute settlement proceeding under Part IV(A) of the Agreement. Such costs will include the fees of the panel, costs incurred by the administrator and costs associated with legal representation. Such costs can be significant. In particular, see Schedule 5 of the Agreement which establishes the fees payable to panellists and certain other costs. A panel has the discretion to apportion all such costs between the disputants as it considers appropriate (see Article 32(1)). Moreover, Article 32(1) provides that costs shall in principle be borne by the unsuccessful disputant. This means that the panel may allocate all or a greater proportion of costs to one or the other of the disputants in many circumstances. Once a cost award is issued by a panel, it becomes enforceable against the named disputant as if it were a superior court order (see Article 32(4));
- (g) A person wishing to establish a panel must provide a financial deposit in the sum of \$5,000 with the administrator (see Article 26(4)). A panel may order the

provision of additional financial deposits at its discretion to cover estimated costs of the panel proceeding and can terminate the panel proceeding if the complainant fails to comply with any such deposit order.

- (h) Once the panel process commences, the complaint may only be withdrawn by mutual consent of the disputants (see Article 27(14)). Even if a complaint is withdrawn the complainant may, at the panel's discretion, still be responsible for some or all of the costs of the panel process incurred up to that date; and
- (i) The Parties may, at any time, issue a joint decision declaring an agreed interpretation of the Agreement. All such joint decisions are binding on panels and any panel decision or award must be consistent with all preceding joint decisions (see Article 21(3)). Any joint decision issued by the Parties at any time prior to the final panel report could therefore affect the outcome of the panel proceeding.

6. The complainant hereby consents to settlement of its complaint pursuant to the panel process specified in Part IV(A) of the Agreement and on the bases outlined above.

Signed by an authorized signatory of the complainant at \_\_\_\_\_  
\_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)

## SCHEDULE 5

### REMUNERATION AND COSTS UNDER ARTICLE 32(5)

#### **Permitted Remuneration and Costs Pursuant to Articles 32(5) of the *New West Partnership Trade Agreement***

##### ***Introduction***

1. This schedule provides the maximum amounts of remuneration and expenses to be paid to administrators and panellists.
2. In particular, when assessing the amount of the costs of any proceeding under Part IV for purposes of Article 32, panels must calculate all such costs on a basis consistent with the this schedule. No other costs may be assessed against the participants.

##### ***Panellist Remuneration***

3. Individuals sitting as panellists are entitled to charge up to a maximum of \$100 per hour, to a maximum of \$800 per day, for all work, not including travel time, required to be undertaken by them while carrying out their duties as panellists, commencing as of the time they are officially appointed to a dispute settlement panel constituted under Part IV.
4. Individuals sitting as panellists are entitled to charge up to a maximum of \$50 per hour, to a maximum of \$400 per day, for any travel that is required to be undertaken by them as part of their duties as panellists, commencing as of the time they are officially appointed to a dispute settlement panel constituted under Part IV.

##### ***Panellist Expenses***

5. Panellists are entitled to claim those expenses listed in Annex 1 hereto, to the applicable maximum amounts listed in that Annex, as reimbursable expenses if such expenses were necessarily incurred by them while carrying out their duties as panellists. Such expenses are claimable commencing as of the time the panellist is officially appointed to a dispute settlement panel constituted under Part IV. No other expenses may be claimed.

##### ***Travel and Other Expenses of Witnesses***

6. Each disputant will be responsible in the first instance for all travel and other expenses of witnesses, if any, that the disputant chooses to utilize as part of the presentation of its case to the panel. Such witness expenses incurred by the successful disputant will subsequently be deemed to be part of the costs for legal representation and assistance to be accounted for by the panel under section 7 of this Schedule.



### ***Costs of Legal Representation***

7. The panel shall include in its determination of costs the costs of legal representation and assistance incurred by the successful disputant, including the travel and other expenses of witnesses utilized by that disputant, provided that all such costs were claimed by that disputant during the proceedings and only to the extent the panel determines those costs are reasonable in the circumstances.

### ***Administrator-Related Expenses***

8. All administrator-related expenses that may be awarded against the participants are governed by agreements the Parties have entered into with the administrator. Upon being provided with an accounting from the administrator of all such costs relating to a particular proceeding, and upon being satisfied that the costs are appropriately chargeable to the participants under the applicable agreement and are reasonable in the circumstances, the panel shall include such administrator-related costs in its assessment and allocation of costs against the participants.

## **Annex 1 Claimable Expenses**

1. Panellists may claim the following expenses:
  - (a) Travel costs, provided such costs do not exceed the amounts set out below in paragraph 2;
  - (b) Taxi and vehicle rental charges;
  - (c) \$0.505 per kilometre for use of a personal motor vehicle;
  - (d) photocopies to a maximum of \$0.25 per page; and
  - (e) costs of couriers, long distance phone calls, and actual line charges incurred for facsimile transmissions.
  
2. If a panellist is required to travel, the panellist may claim only the following travel costs:
  - (a) with respect to air travel, the costs of an economy class travel only may be claimed. Reimbursement may only be claimed for the most economical category of economy class with appropriate consideration for the ability and expense to change arrangements if there is a likelihood that a flight change may be required;
  - (b) with respect to meals, actual and reasonable costs may be claimed; and
  - (c) with respect to accommodation, actual and reasonable costs may be claimed.
  
3. In no event will the panellists be permitted to claim any of the following expenses:
  - (a) fees and disbursements for any work performed by persons other than the panellist, such as researchers, articulated students, associates, colleagues, librarians, secretaries, administrative assistants, computer operators, bookkeepers, corporate and other records clerks or work processing operators;
  - (b) charges for opening, closing, maintaining or storing any file;
  - (c) disbursements for which no receipt is provided, except as permitted under paragraph 4;
  - (d) charges for alcoholic beverages; and

- (e) any other miscellaneous expense incurred in the course of travel which is not specifically provided for in paragraphs 1 and 2 above, such as gratuities, portage, laundry, in-room movies and personal phone calls.

4. Receipts respecting use of a personal vehicle, photocopying, long distance phone calls, and actual line charges incurred for facsimile transmissions need not be provided, but proper records of such expenses must be maintained and must be made available for inspection, upon request.

## SCHEDULE 6

### CODE OF CONDUCT FOR DISPUTE RESOLUTION PANELLISTS AND ARBITERS

#### ARTICLES 26(8) AND 37(2)

#### *NEW WEST PARTNERSHIP TRADE AGREEMENT*

##### **Part I - Preamble**

The Parties:

*Recalling* that in the Operating Principles of the Agreement they agreed to resolve disputes in an effective, inexpensive and timely manner;

*Recognizing* the prime importance of integrity and impartiality in all proceedings; and

*Affirming* that the operation of the proceedings would be strengthened by a code of conduct to maintain the integrity and impartiality of all proceedings, thereby enhancing confidence in them;

Hereby establish the following code of conduct.

##### **Part II - Interpretation**

In this code of conduct,

“**administrator**” means the administrator appointed pursuant Article 19 of the Agreement;

“**Agreement**” means the *New West Partnership Trade Agreement*;

“**candidate**” means any individual who is under consideration for an appointment as a member of a panel or as an arbiter pursuant to the Agreement;

“**disputants**” means a Party or person that has requested the establishment of a panel under the Agreement, and the responding Party;

“**member**” means a member of a panel constituted pursuant to the Agreement or an arbiter appointed pursuant to the Agreement;

“**Party**” means a party to the Agreement; and

“**proceeding**” means any proceeding under Part IV of the Agreement.

##### **Part III - General Responsibilities to the Process**

1. Every candidate, member and former member will avoid impropriety and the

appearance of impropriety and will observe high standards of conduct so that the integrity and impartiality of the dispute resolution process is preserved.

2. This code of conduct does not determine whether or under what circumstances the Parties will disqualify a candidate or member from being appointed to, or serving as, a member on the basis of disclosures made.
3. This code of conduct does not preclude the application of any other applicable rules, code or government policies related to conflict of interest.

#### **Part IV - Disclosure Obligations**

1. Candidates and members must disclose the existence of any interest, relationship or matter that is likely to affect their independence or impartiality or that might reasonably create an apprehension of bias or an appearance of impropriety. An apprehension of bias is created when a reasonable person, with knowledge of all of the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or member's ability to carry out the duties with integrity, impartiality and competence is impaired.
2. Throughout a proceeding, candidates and members have a continuing obligation to disclose interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process.
3. Further to the general obligations of sections 1 and 2:
  - (a) Each candidate requested to serve, at the time of the request, will receive from the administrator a copy of this code of conduct, which includes an illustrative list of examples of matters which are subject to disclosure. (The illustrative list is attached as Annex 1 to this code of conduct.);
  - (b) A candidate will make all reasonable efforts to become aware of, and will disclose, any interest, relationship or matter that is likely to affect his or her independence or impartiality, or that might create a reasonable apprehension of bias or appearance of impropriety in proceedings;
  - (c) Each candidate will provide an initial disclosure to the administrator by completing the Disclosure Statement and submitting it to the administrator. (The form of required Disclosure Statement is attached as Annex 2 to this code of conduct.); and
  - (d) After appointment as a member, the member will continue to make all reasonable efforts to become aware of any material interests, relationships or matters and will promptly disclose them. Any such subsequent disclosures will be communicated forthwith in writing to the administrator for consideration

by the disputants and the Parties.

## **Part V - The Performance of Duties by Candidates and Members**

1. A candidate who accepts an appointment as a member will be available to perform, and will perform, his or her duties thoroughly and expeditiously throughout the course of the proceeding.
2. A member will ensure that the administrator can, at all reasonable times, contact the member in order to conduct panel business.
3. A member will carry out all of his or her duties fairly and diligently.
4. A member will comply with all applicable provisions of the Agreement and the rules governing the proceeding.
5. A member will not deny other members the opportunity to participate fully in all aspects of the proceeding.
6. A member will consider only
  - (a) the issues raised; and
  - (b) the evidence presentedin the proceeding which is necessary to a decision and will not delegate the duty to decide to any other person except as permitted by the rules governing the proceeding.
7. A member will take all reasonable steps to ensure that the member's staff, if any, comply with Parts III, IV and VIII of this code of conduct.
8. A member will not engage in *ex parte* contacts concerning the proceeding.
9. Candidates and members will not communicate any matters concerning actual or potential violations of this code of conduct except with the administrator or as necessary to ascertain whether that candidate or member has violated or may violate the code of conduct.

## **Part VI - Independence and Impartiality of Members**

1. A member will be independent and impartial. A member will act in a fair manner and will avoid creating an appearance of impropriety or an apprehension of bias. A member will make an objective assessment of the matter before it, including an objective assessment of the facts presented.

2. A member will not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a Party or fear of criticism.
3. A member will not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.
4. A member will not use his or her position to advance any personal or private interests. A member will avoid actions that may create the impression that others are in a special position to influence the member. A member will make every effort to prevent or discourage others from representing themselves as being in such a position.
5. A member will not allow past or existing financial, business, professional, family or social relationships or responsibilities to influence his or her conduct or judgment.
6. A member will avoid entering into any relationship, or acquiring any financial interest, that is likely to affect the member's impartiality or that might reasonably create an apprehension of bias or an appearance of impropriety.

#### **Part VII - Post-Proceeding Conduct**

1. For a period of two years after the completion of any proceeding, a former Member will not personally advise or represent any disputant from the proceeding with respect to the same matter(s) that arose in the proceeding.
2. A former member will avoid any actions that may create the appearance that the member was biased in carrying out the member's duties or that the member benefitted from the decision of the panel.

#### **Part VIII - Maintenance of Confidentiality**

1. A member or former member will not at any time disclose or use any confidential information concerning the proceeding or acquired during the proceeding except for the purposes of the proceeding, nor will he or she disclose or use any such information to gain personal advantage or advantage for others or to affect adversely the interests of another.
2. A member will not disclose a panel report or panel decision prior to its release by the administrator. A member or former member will not at any time disclose the deliberations of a panel or any member's individual views, except as required by law.

## **Part IX - Responsibilities of the Administrator**

1. The administrator will take all steps necessary to protect the confidentiality of Disclosure Statements and any subsequent disclosures received by it from candidates and members.

## **Part X - Complaints Concerning Alleged Breaches of the Code of Conduct**

1. With respect to disputants, if, at any time prior to the issuance of a final report, a disputant believes that a member is in violation of this code of conduct it shall immediately advise the other disputant in writing, with a copy to the administrator and all other Parties. Unless otherwise requested by the advising disputant, the administrator must treat the communication in confidence and shall not disclose to the panel the content of the communication or its source. Within seven days of receiving notice of the alleged violation from a disputant, the Parties will conduct an investigation if they consider it necessary and will, by consensus, determine what action to take, if any, considering all of the circumstances, up to and including dismissal of the applicable member.
2. If a member is dismissed or voluntarily withdraws as a result of any investigation under this Part X, a replacement member will be appointed in accordance with the applicable appointment procedures provided for in the Agreement.



## ANNEX 1

### ILLUSTRATIVE LIST OF INFORMATION TO BE DISCLOSED

*This Annex contains examples of the type of information that candidates and members are required to disclose pursuant to the code of conduct.*

Each candidate and member has a continuing duty to disclose the type of information generally described in Part IV of the code of conduct, which may include the following:

- (a) financial interests (for example, investments, loans, shares, interests, other debts); business interests (for example, directorship or other contractual interests); and property interests relevant to the dispute in question;
- (b) professional interests (for example, a past or present relationship with governmental or private clients, or any interests the person may have in domestic or international proceedings, and their implications, where these involve issues similar to those addressed in the dispute in question);
- (c) other active interests (for example, active participation in public interest groups or other organizations which may have a declared agenda relevant to the dispute in question);
- (d) considered statements of personal opinion on issues relevant to the dispute in question (for example, publications, public statements); and
- (e) employment or family interests (for example, the possibility of any indirect advantage or any likelihood of pressure which could arise from their employer, partners, business associates or immediate family members).

**ANNEX 2**

**NEW WEST PARTNERSHIP TRADE AGREEMENT**

**IN THE MATTER OF:** \_\_\_\_\_ **(title of proceeding)** \_\_\_\_\_

**Administration File No:** \_\_\_\_\_

**INITIAL DISCLOSURE STATEMENT**

1. I have read the code of conduct established under the *New West Partnership Trade Agreement* (the "**NWPTA**") which governs the conduct of members of a panel constituted pursuant to Part IV(A) of the NWPTA and arbiters appointed pursuant to Part IV(B) of the NWPTA ("**members**") and individuals under consideration for an appointment as a member ("**candidates**").
2. (Check, as appropriate, and, if required, attach the disclosure list.)
  - There are no interests, relationships or matters that, as of the date hereof, I am required to disclose under the code of conduct; or
  - Attached is a list of all interests, relationships and matters that, as of the date hereof, I am required to disclose under the code of conduct.
3. I understand my continuing obligation while participating in the NWPTA dispute resolution process as a candidate or member to disclose to the administrator any interest, relationship or matter that is likely to affect my independence or impartiality, or that might create a reasonable apprehension of bias or an appearance of impropriety in the matter cited above, and I will make all required disclosures forthwith upon becoming aware of any such interest, relationship or matter.

\_\_\_\_\_  
**Signed**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Candidate's Name**

## SCHEDULE 7

### FORM OF CONSENT TO ARBITRATION ARTICLE 37(4)

#### NEW WEST PARTNERSHIP TRADE AGREEMENT

##### Consent to Arbitrate by a Person

1. In this consent:

“**administrator**” means the administrator appointed pursuant to Article 19 of the Agreement;

“**Agreement**” means the *New West Partnership Trade Agreement* including any amendments, related documents, and any joint decisions issued by the Parties under Article 21, as the case may be;

“**complainant**” means the person wishing to access the bid protest mechanism provided for under Part IV(B) and providing this consent;

“**consent**” means this Consent to Arbitrate by a Person required under Article 37(4) from any person wishing to access the bid protest mechanism provided for under Part IV(B);

“**disputants**” means the complainant and responding government entity or Party, and “**disputant**” means either one of them, as the case may be; and

“**Parties**” means the Parties to the Agreement and “**Party**” means any one of them, as the case may be.

2. This consent is being provided by [name], of [address for service].

3. The complainant hereby acknowledges that under Article 37(4), any person wishing to access the bid protest mechanism provided for under Part IV(B) of the Agreement must first acknowledge in writing its consent to the process. This consent is in fulfillment of that requirement.

4. The complainant has a dispute with [applicable government entity] arising under the Agreement relating to [brief description of the specific procurement at issue]. The complainant specifically consents to submitting this dispute to an arbiter under Part IV(B) of the Agreement, and agrees to do so wholly in accordance with this consent and the procedures specified in the Agreement.

5. In doing so, the complainant acknowledges and agrees that those procedures provide as follows:

- (a) Proceedings under Part IV(B) of the Agreement are governed by the Agreement. Those procedures differ in many ways from those normally used by domestic courts.

- (b) Subject to limited protections for certain types of information in Article 7(4) and any ruling relating to confidentiality made by the arbiter, the Agreement provides for public process. The arbiter's final report will be made public (see Article 38(10)). In addition, any information and documentation provided to a government entity or a Party as part of the proceeding will thereafter become subject to the Party's freedom of information legislation which may require that the government entity or Party disclose such information and any records or documents that have been created by that government entity or Party based on such information or documentation, to third parties making appropriate requests under such legislation;
- (c) Subject to a limited right of judicial review, the decision of the arbiter is final and cannot be appealed (see Articles 38(10) and 41));
- (d) The disputants are solely responsible for the costs associated with a proceeding under Part IV(B) of the Agreement. Such costs will include the fees of the arbiter, costs incurred by the administrator and certain costs associated with legal representation. Such costs can be significant. In particular, see Schedule 5 of the Agreement which establishes the fees payable to the arbiter and certain other permitted costs. Article 39(1) provides that, in principle, all such costs shall be borne by the unsuccessful disputant. However, an arbiter retains the discretion to apportion costs between the disputants as the arbiter considers reasonable. This means that the arbiter may allocate all or a greater proportion of costs to one or the other of the disputants in some circumstances. Once a cost award is issued by an arbiter, it becomes enforceable against the named disputant as if it were a superior court order (see Article 40(3));
- (e) A complainant wishing to initiate a proceeding under Part IV(B) of the Agreement must provide an initial financial deposit in the amount of \$2,500 with the administrator (see Article 37(4)). That initial deposit, in the form a certified cheque or bank draft made payable to the administrator, must be attached to this consent. An arbiter may subsequently order that a complainant provide one or more additional financial deposits, at the arbiter's discretion, in order to fully cover the estimated costs of the proceeding. The proceeding is automatically terminated if the complainant fails to provide the required financial deposits (see Article 37(5));
- (f) Once a proceeding commences it may only be terminated prior the issuance of arbiter's final report by mutual consent of the disputants (see Article 38(9)). Even if a proceeding is so terminated the complainant may still be responsible for some or all of the costs of the proceeding incurred up to that date, at the arbiter's discretion;
- (g) In the event that a complainant is successful in a proceeding, its remedies under Part IV(B) of the Agreement are strictly limited to a cost award, not to exceed \$50,000, and a recoupment award, not to exceed \$50,000 (see Article 39(3)).

These remedies may not fully compensate the complainant for the costs it has incurred in participating in applicable procurement process or in the proceeding; and

(h) The Parties may, at any time, issue a joint decision declaring an agreed interpretation of the Agreement. All such joint decisions are binding on arbiters and all arbiters' decisions must be consistent with all preceding joint decisions (see Article 21(3)). Any joint decision issued by the Parties at any time prior to the issuance of the arbiter's final report in this proceeding could therefore affect the outcome of the proceeding.

6. The complainant hereby consents to consideration of its dispute pursuant to the bid protest mechanism specified in Part IV(B) of the Agreement and on the bases outlined above.

Signed by an authorized signatory of the complainant at \_\_\_\_\_  
\_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Position)