

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 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)