Appendix M

DISPUTE RESOLUTION

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APPENDIX M - 1

COLLABORATIVE NEGOTIATIONS

1. In this Appendix:
   a. **"Chapter"** means the Dispute Resolution Chapter;
   b. **"party"** means a participating Party to collaborative negotiations under this Appendix; and
   c. **"section"** means a section in this Appendix.

GENERAL

2. Collaborative negotiations commence:
   a. on the date of delivery of a written notice requiring the commencement of collaborative negotiations; or
   b. in the case of negotiations in the circumstances described in subparagraph 7(c) of the Chapter, on the date of the first negotiation meeting.

NOTICE

3. A notice under paragraph 15 of the Chapter requiring the commencement of collaborative negotiations will include the following:
   a. the names of the parties directly engaged in the disagreement;
   b. a brief summary of the particulars of the disagreement;
   c. a description of the efforts made to date to resolve the disagreement;
   d. the names of the individuals involved in those efforts; and
   e. any other information that will help the parties.

REPRESENTATION

4. A party may attend collaborative negotiations with or without legal counsel.
5. At the commencement of the first negotiation meeting, each party will advise the other parties of any limitations on the authority of its representatives.

NEGOTIATION PROCESS

6. The parties will convene their first negotiation meeting in collaborative negotiations, other than those described in subparagraph 7(c) of the Chapter, within 21 days after the commencement of the collaborative negotiations.
7. Before the first scheduled negotiation meeting, the parties will discuss and attempt to reach agreement on any procedural issues that will facilitate the collaborative negotiations, including the requirements of paragraph 26 of the Chapter.
8. For purposes of subparagraph 26(a) of the Chapter, "timely disclosure" means disclosure made within 15 days after a request for disclosure by a party.

9. The parties will make a serious attempt to resolve the disagreement by

- **a.** identifying underlying interests;
- **b.** isolating points of agreement and disagreement;
- **c.** exploring alternative solutions;
- **d.** considering compromises or accommodations; and
- **e.** taking any other measures that will assist in resolution of the disagreement.

10. No transcript or recording will be kept of collaborative negotiations, but this does not prevent a person from keeping notes of the negotiations.

CONFIDENTIALITY

11. In order to assist in the resolution of a disagreement, collaborative negotiations will not be open to the public.

12. The parties, and all persons, will keep confidential:

- **a.** all oral and written information disclosed in the collaborative negotiations; and
- **b.** the fact that this information has been disclosed.

13. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the collaborative negotiations, any oral or written information disclosed in or arising from the collaborative negotiations, including:

- **a.** any documents of other parties produced in the course of the collaborative negotiations that are not otherwise produced or producible in that proceeding;
- **b.** any views expressed, or suggestions made, by any party in respect of a possible settlement of the disagreement;
- **c.** any admissions made by any party in the course of the collaborative negotiations, unless otherwise stipulated by the admitting party; and
- **d.** the fact that any party has indicated a willingness to make or accept a proposal for settlement.

14. Sections 12 and 13 do not apply:

- **a.** in any proceeding for the enforcement or setting aside of an agreement resolving the disagreement that was the subject of the collaborative negotiation;
- **b.** if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
- **c.** if the oral or written information referred to in these sections is in the public forum.

RIGHT TO WITHDRAW

15. A party may withdraw from collaborative negotiations at any time.

Termination of Collaborative Negotiations

16. Collaborative negotiations are terminated when any of the following occurs:

a. the expiration of:

i. 30 days, or

ii. in the case of collaborative negotiations in the circumstances described in subparagraph 7(c) of the Chapter, 120 days

after the first scheduled negotiation meeting, or any longer period agreed to by the parties in writing;

b. a party directly engaged in the disagreement withdraws from the collaborative negotiations under section 15;

c. the parties agree in writing to terminate the collaborative negotiations; or

d. the parties directly engaged in the disagreement sign a written agreement resolving the disagreement.

APPENDIX M - 2

MEDIATION

DEFINITIONS

1. In this Appendix:
   a. **"Chapter"** means the Dispute Resolution Chapter of the Agreement;
   b. **"party"** means a participating Party to a mediation under this Appendix; and
   c. **"section"** means a section in this Appendix.

GENERAL

2. A mediation commences on the date the Parties directly engaged in the disagreement have agreed in writing to use mediation, or are deemed to have agreed to use mediation, under paragraph 24 of the Chapter.

APPOINTMENT OF MEDIATOR

3. A mediation will be conducted by one mediator jointly appointed by the parties.
4. A mediator will be:
   a. an experienced and skilled mediator, preferably with unique qualities or specialized knowledge that would be of assistance in the circumstances of the disagreement; and
   b. independent and impartial.
5. If the parties fail to agree on a mediator within 15 days after commencement of a mediation, the appointment will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.
6. Subject to any limitations agreed to by the parties, a mediator may employ reasonable and necessary administrative or other support services.

REQUIREMENT TO WITHDRAW

7. At any time a party may give the mediator and the other parties a written notice, with or without reasons, requiring the mediator to withdraw from the mediation on the grounds that the party has justifiable doubts as to the mediator's independence or impartiality.
8. On receipt of a written notice under section 7, the mediator must immediately withdraw from the mediation.
9. A person who is a Nisga'a citizen, or related to a Nisga'a citizen, must not be required to withdraw under section 7 solely on the grounds of that citizenship or relationship.

END OF APPOINTMENT

10. A mediator's appointment terminates if:

- **a.** the mediator is required to withdraw under section 8;
- **b.** the mediator withdraws from office for any reason; or
- **c.** the parties agree to the termination.

11. If a mediator's appointment terminates, a replacement mediator will be appointed using the procedure in sections 3 to 5 and the required time period commences from the date of termination of the appointment.

REPRESENTATION

12. A party may attend a mediation with or without legal counsel.

13. If a mediator is a lawyer, the mediator must not act as legal counsel for any party.

14. At the commencement of the first meeting of a mediation, each party will advise the mediator and the other parties of any limitations on the authority of its representatives.

CONDUCT OF MEDIATION

15. The parties will:

- **a.** make a serious attempt to resolve the disagreement by:
  - **i.** identifying underlying interests,
  - **ii.** isolating points of agreement and disagreement,
  - **iii.** exploring alternative solutions, and
  - **iv.** considering compromises or accommodations; and
- **b.** cooperate fully with the mediator and give prompt attention to, and respond to, all communications from the mediator.

16. A mediator may conduct a mediation in any manner the mediator considers necessary and appropriate to assist the parties to resolve the disagreement in a fair, efficient, and cost-effective manner.

17. Within seven days of appointment of a mediator, each party will deliver a brief written summary to the mediator of the relevant facts, the issues in the disagreement, and its viewpoint in respect of them and the mediator will deliver copies of the summaries to each party at the end of the seven day period.

18. A mediator may conduct a mediation in joint meetings or private caucus convened at locations the mediator designates after consulting the parties.

19. Disclosures made by any party to a mediator in private caucus must not be disclosed by the mediator to any other party without the consent of the disclosing party.

20. No transcript or recording will be kept of a mediation meeting but this does not prevent a person from keeping notes of the negotiations.

MEDIATION continued...

CONFIDENTIALITY

21. In order to assist in the resolution of a disagreement, a mediation will not be open to the public.

22. The parties, and all persons, will keep confidential:

- **a.** all oral and written information disclosed in the mediation; and
- **b.** the fact that this information has been disclosed.

23. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the mediation, any oral or written information disclosed in or arising from the mediation, including:

- **a.** any documents of other parties produced in the course of the mediation that are not otherwise produced or producible in that proceeding;
- **b.** any views expressed, or suggestions, or proposals made in respect of a possible settlement of the disagreement;
- **c.** any admissions made by any party in the course of the mediation, unless otherwise stipulated by the admitting party;
- **d.** any recommendations for settlement made by the mediator; and
- **e.** the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement.

24. Sections 22 and 23 do not apply:

- **a.** in any proceeding for the enforcement or setting aside of an agreement resolving the disagreement that was the subject of a mediation;
- **b.** if the adjudicator in any proceeding determines that the interests of public or the administration of justice outweigh the need for confidentiality; or
- **c.** if the oral or written information referred to in those sections is in the public forum.

25. A mediator, or anyone retained or employed by the mediator, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the mediation, and all parties will oppose any effort to have that person or that information subpoenaed.

26. A mediator, or anyone retained or employed by the mediator, is disqualified as a consultant or expert in any proceeding relating to the disagreement, including any proceeding that involves persons not a party to the mediation.

REFERRAL OF ISSUES TO OTHER PROCESSES

27. During a mediation the parties may agree to refer particular issues in the disagreement to independent fact-finders, expert panels or other processes for opinions or findings that may assist them in the resolution of the disagreement, and in that event, the parties must specify:

- **a.** the terms of reference for the process;
- **b.** the time within which the process must be concluded; and
- **c.** how the costs of the process are to be allocated to the parties.

28. The time specified for concluding a mediation will be extended for 15 days following receipt of the findings or opinions rendered in a process described under section 27.

Right to Withdraw

29. A party may withdraw from a mediation at any time by giving written notice of its intent to the mediator.

30. Before a withdrawal is effective, the withdrawing party will:

- **a.** speak with the mediator;
- **b.** disclose its reasons for withdrawing; and
- **c.** give the mediator the opportunity to discuss the consequences of withdrawal.

Termination of Mediation

31. A mediation is terminated when any of the following occurs:

- **a.** subject to section 28, the expiration of 30 days after the appointment of the mediator, or any longer period agreed by the parties in writing;
- **b.** the parties have agreed in writing to terminate the mediation or not to appoint a replacement mediator under section 11;
- **c.** a party directly engaged in the disagreement withdraws from the mediation under section 29; or
- **d.** the parties directly engaged in the disagreement sign a written agreement resolving the disagreement.

Mediator Recommendation

32. If a mediation is terminated without the parties reaching agreement, the parties may agree to request the mediator to give a written non-binding recommendation for settlement, but the mediator may decline the request without reasons.

33. Within 15 days after delivery of a mediator's recommendation under section 32, the parties will meet with the mediator to attempt to resolve the disagreement.

Costs

34. A party withdrawing from a mediation under section 29 is not responsible for any costs of the mediation that are incurred after the date that party's withdrawal takes effect.

APPENDIX M - 3

TECHNICAL ADVISORY PANEL

DEFINITIONS

1. In this Appendix:
   a. **"Chapter"** means the Dispute Resolution Chapter;
   b. **"member"** means a member of the panel;
   c. **"panel"** means a technical advisory panel appointed under this Appendix;
   d. **"party"** means a participating Party to a reference under this Appendix;
   e. **"reference"** means a reference of a disagreement to the panel; and
   f. **"section"** means a section in this Appendix.

GENERAL

2. A question of law may not be referred to a panel.
3. A reference commences on the date the Parties directly engaged in the disagreement have agreed in writing to use a technical advisory panel under paragraph 24 of the Chapter.

APPOINTMENT OF PANEL MEMBERS

4. A panel will have three members unless the parties agree on a panel of five members.
5. A member will be skilled and knowledgeable in the technical or scientific subject matter or issues of the disagreement.
6. If there are two parties and the panel will have:
   a. three members, each party will appoint one member and the two appointed members will jointly appoint the third member; or
   b. five members, each party will appoint two members and the four appointed members will jointly appoint the fifth member.
7. If there are three parties and the panel will have:
   a. three members, each party will appoint one member; or
   b. five members, each party will appoint one member and the three appointed members will jointly appoint the fourth and fifth members.
8. In the appointment procedures under sections 6 and 7, if:
   a. a party fails to appoint the required number of members within 30 days after commencement of the reference; or
   b. the appointing members fail to appoint the required number of additional members within 15 days after the last appointing member was appointed

   the required appointments will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.

END OF APPOINTMENT

9. The appointment of a member who is jointly appointed by the parties, by the appointing members, or by the neutral appointing authority, terminates if:

a. the member withdraws from office for any reason; or

b. the parties agree to the termination.

10. The appointment of a member appointed by one party, or by the neutral appointing authority in place of the party, terminates if:

a. the member withdraws from office for any reason; or

b. the appointing party terminates the appointment.

11. If the appointment of a member jointly appointed by the parties, by the appointing members, or by the neutral appointing authority in place of the parties or members, terminates, a replacement member will be appointed under section 6 or 7, as applicable, within the required time commencing from the termination of the former member's appointment.

12. Subject to section 13, if the appointment of a member appointed by one party or by the neutral appointing authority in place of the party terminates, a replacement member will be appointed under section 6 or 7, as applicable, within the required time commencing from the termination of the former member's appointment.

13. A party may elect not to replace a member it had appointed but the party may not withdraw from the reference except as permitted under sections 31 to 35.

TERMS OF REFERENCE

14. Not more than 15 days after the appointment of the last member of a panel, the parties must provide the panel with written terms of reference that set out at least the following:

a. the parties to the disagreement;

b. the subject matter or issues of the disagreement;

c. the kind of assistance that the parties request from the panel, including giving advice, making determinations, finding facts, conducting, evaluating and reporting on studies and making recommendations;

d. the time period within which the parties request the assistance to be provided;

e. the time periods or stages of the reference at the conclusion of which the panel must provide the parties with written interim reports on the panel's progress on the referral and on expenditures under the budget described in section 16 as they relate to that progress;

f. the time within which the panel must provide the parties with the budget described in section 16; and

g. any limitations on the application of sections 36 to 42 to the reference.

15. The parties may discuss the proposed terms of reference with the panel before they are finally settled.

16. Within the time referred to in section 14(f), the panel will provide the parties with a budget for the costs of conducting the reference, including:

a. fees to be paid to the members who have been jointly appointed by the parties, or by appointing members;

b. costs of required travel, food and accommodation of members who have been jointly appointed by the parties, or by appointing members;

c. costs of any required administrative assistance; and

d. costs of any studies.

17. The parties will consider the budget submitted by the panel and approve that budget with any amendments agreed by the parties before the panel undertakes any activities under the reference.

18. The parties are not responsible for any costs incurred by the panel that are in excess of those approved under section 17, and the panel is not authorized to incur any costs beyond that amount without obtaining prior written approval from all the parties.

19. The parties may amend the written terms of reference or the budget from time to time as they consider necessary, or on recommendation of the panel.

Conduct of Reference to Panel

20. The parties will:

a. cooperate fully with the panel;

b. comply with any requests made by the panel as permitted or required under this Appendix; and

c. give prompt attention to and respond to all communications from the panel.

21. Subject to any limitations or requirements in the terms of reference given and the limits of the budget approved under sections 17 to 19, the panel may conduct its reference using any procedure it considers necessary or appropriate, including holding a hearing.

22. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the panel specifies, after consultation with the parties.

23. If a hearing is held, the panel must give the parties reasonable written notice of the hearing date, which notice must, in any event, be not less than seven days.

24. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.

25. The legal rules of evidence do not apply to a hearing before the panel.

26. The panel will give the parties the interim and final written reports specified in its terms of reference within the required times.

27. A report of the panel is not binding on the parties.

Panel Business

28. A panel will appoint one of its members to act as chair of the panel.

29. The chair of a panel is responsible for all communications between the panel, the parties and any other person to whom the panel wishes to communicate, but this does not preclude a member from communicating informally with a party.

30. A panel will make every reasonable effort to conduct its business, and fulfill its obligations under its terms of reference, by consensus, but:

a. if consensus is not possible, by actions approved by a majority of its members; or

b. if a majority is not possible, by actions approved by the chair of the panel.

RIGHT TO WITHDRAW

31. If one of two parties to a reference, or two of three parties to a reference, are not satisfied with the progress of the reference:

a. after receipt of an interim report; or

b. as a result of the panel's failure to submit an interim report within the required time

the dissatisfied party or parties, as the case may be, may give written notice to the panel and the other party that the party or parties are withdrawing from the reference and that the reference is terminated.

32. If one of three parties to a reference is not satisfied with the progress of the reference:

a. after receipt of an interim report; or

b. as a result of the panel's failure to submit an interim report within the required time

the dissatisfied party may give written notice to the panel and the other parties that it is withdrawing from the reference.

33. Two parties who receive a notice under section 32 will advise the panel in writing that they have agreed:

a. to terminate the reference; or

b. to continue the reference.

34. If no party gives a notice under sections 31 or 32 within 10 days after:

a. receipt of an interim report; or

b. the time required to submit an interim report

all parties will be deemed to be satisfied with the progress of the reference until submission of the next required interim report.

35. No party may withdraw from a reference except as permitted under sections 31 to 34.

CONFIDENTIALITY

36. The parties may, by agreement recorded in the terms of reference of the panel in section 14, limit the application of all or any part of sections 37 to 42 in a reference.

37. In order to assist in the resolution of the disagreement, a reference will not be open to the public.

38. The parties, and all persons, will keep confidential:

a. all oral and written information disclosed in the reference; and

b. the fact that this information has been disclosed.

39. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the reference, any oral or written information disclosed in or arising from the reference, including:

a. any documents of other parties produced in the course of the reference that are not otherwise produced or producible in that proceeding;

b. any views expressed, or suggestions made, in respect of a possible settlement of the disagreement;

c. any admissions made by any party in the course of the reference, unless otherwise stipulated by the admitting party;

TECHNICAL ADVISORY PANEL continued...

d. the fact that any party has indicated a willingness to make or accept a proposal or recommendation for settlement; and

e. any reports of the panel.

40. Sections 38 and 39 do not apply:

a. in any proceeding for the enforcement or setting aside of an agreement resolving the disagreement that was the subject of the reference;

b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or

c. if the oral or written information referred to in those sections is in the public forum.

41. A member, or anyone retained or employed by the member, is not compellable in any proceeding to give evidence about any oral or written information acquired or opinion formed by that person as a result of the reference, and all parties will oppose any effort to have that person or that information subpoenaed.

42. A member, or anyone retained or employed by the member, is disqualified as a consultant or expert in any proceeding relating to the disagreement, including any proceeding that involves persons not a party to the reference.

Attempt to Resolve After Report

43. Within 21 days after receipt of the final written report of a panel, the parties will meet and make an effort to resolve the disagreement taking into account the report of the panel or any other considerations.

44. If the parties and the panel agree, the members of a panel may attend the meeting under section 43, and provide any necessary assistance to the parties.

Termination of Reference to Panel

45. A reference is terminated when any of the following occurs:

a. the reference has been terminated as permitted under section 31 or 33;

b. the expiration of 30 days after receipt of the final report of the panel, or any longer period agreed by the parties in writing; or

c. the parties directly engaged in the disagreement sign a written agreement resolving the disagreement.

Costs

46. A party is not responsible for sharing any costs of the reference that were incurred after the date that party notified the other parties, under section 32, of its withdrawal from the reference.

APPENDIX M - 4

NEUTRAL EVALUATION

DEFINITION

1. In this Appendix:
   a. **"Chapter"** means the Dispute Resolution Chapter;
   b. **"party"** means a participating Party to a neutral evaluation under this Appendix; and
   c. **"section"** means a section in this Appendix.

GENERAL

2. A neutral evaluation commences on the date that the Parties directly engaged in the disagreement have agreed in writing to use neutral evaluation under paragraph 24 of the Chapter.

APPOINTMENT OF NEUTRAL EVALUATOR

3. A neutral evaluation will be conducted by one person jointly appointed by the parties.
4. A neutral evaluator will be:
   a. experienced or skilled in the subject matter or issues of the disagreement; and
   b. independent and impartial.
5. If the parties fail to agree on a neutral evaluator within 21 days after commencement of a neutral evaluation, the appointment will be made by the neutral appointing authority on the written request of a party that is copied to the other parties.
6. Subject to any limitations agreed to by the parties, a neutral evaluator may employ reasonable and necessary administrative or other support services.

REQUIREMENT TO WITHDRAW

7. At any time a party may give a neutral evaluator and the other parties a written notice, with or without reasons, requiring the neutral evaluator to withdraw from the neutral evaluation on the grounds that the party has justifiable doubts as to the neutral evaluator's independence or impartiality.
8. On receipt of a written notice under section 7, the neutral evaluator must immediately withdraw from the neutral evaluation.
9. A person who is a Nisga'a citizen, or related to a Nisga'a citizen, must not be required to withdraw under section 7 solely on the grounds of that citizenship or relationship.

END OF APPOINTMENT

10. A neutral evaluator's appointment terminates if:

- **a.** the neutral evaluator is required to withdraw under section 8;
- **b.** the neutral evaluator withdraws from office for any reason; or
- **c.** the parties agree to the termination.

11. Unless the parties agree otherwise, if a neutral evaluator's appointment terminates, a replacement will be appointed under section 5 within the required time commencing from the date of the termination of the appointment.

COMMUNICATIONS

12. Except with respect to administrative details or a meeting under section 31, the parties will not communicate with the neutral evaluator:

- **a.** orally except in the presence of all parties; or
- **b.** in writing without immediately sending a copy of that communication to all parties.

13. Section 12 also applies to any communication by a neutral evaluator to the parties.

CONDUCT OF NEUTRAL EVALUATION

14. The parties will:

- **a.** cooperate fully with the neutral evaluator;
- **b.** comply with any requests made by the neutral evaluator as permitted or required under this Appendix; and
- **c.** give prompt attention to and respond to all communications from the neutral evaluator.

15. A neutral evaluation will be conducted only on the basis of documents submitted by the parties under section 20 unless the parties agree to, or the neutral evaluator requires, additional submissions or other forms of evidence.

16. If a hearing is held, the hearing must be conducted as efficiently as possible and in the manner the neutral evaluator specifies, after consultation with the parties.

17. If a hearing is held, the panel must give the parties reasonable written notice of the hearing date, which notice must, in any event, be not less than seven days.

18. No transcript or recording will be kept of a hearing, but this does not prevent a person attending the hearing from keeping notes of the hearing.

19. The legal rules of evidence do not apply to a neutral evaluation.

20. Within 15 days after the appointment of a neutral evaluator, each party must deliver to the other parties and to the neutral evaluator a written submission respecting the disagreement, including facts upon which the parties agree or disagree, and copies of any documents, affidavits and exhibits on which the party relies.

21. Within 21 days after the appointment of a neutral evaluator, a party may submit a reply to the submission of any other party and, in that event, will provide copies of the reply to the party and the neutral evaluator.

CONFIDENTIALITY

22. In order to assist in the resolution of the disagreement, a neutral evaluation will not be open to the public.

23. The parties, and all persons, will keep confidential:

- **a.** all oral and written information disclosed in the neutral evaluation; and
- **b.** the fact that this information has been disclosed.

24. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the neutral evaluation, any oral or written information disclosed in or arising from the neutral evaluation, including:

- **a.** any documents of other parties produced in the course of the neutral evaluation which are not otherwise produced or producible in that proceeding;
- **b.** any views expressed, or suggestions made, in respect of a possible settlement of the disagreement;
- **c.** any admissions made by any party in the course of the neutral evaluation, unless otherwise stipulated by the admitting party;
- **d.** the fact that any party has indicated a willingness to make or accept a proposal for settlement; and
- **e.** subject to section 28, the opinion of the neutral evaluator.

25. Sections 23 and 24 do not apply:

- **a.** in any proceedings for the enforcement or setting aside of an agreement resolving the disagreement that was the subject of a neutral evaluation;
- **b.** if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or
- **c.** if the oral or written information is in the public forum.

26. A neutral evaluator, or anyone retained or employed by the neutral evaluator, is not compellable in any proceedings to give evidence about any oral and written information acquired or opinion formed by that person as a result of a neutral evaluation under this Appendix, and all parties will oppose any effort to have that person or that information subpoenaed.

27. A neutral evaluator and anyone retained or employed by the neutral evaluator is disqualified as a consultant or expert in any proceeding relating to the disagreement, including any proceeding that involves persons not a party to the neutral evaluation.

28. Despite sections 23 to 26, after an arbitral tribunal has delivered its final arbitral award, or a court has referred its decision, in respect of a disagreement, a party, for the purpose only of making a submission on the allocation of costs of that arbitral or judicial proceeding, may give to the arbitral tribunal or the court a copy of:

- **a.** the neutral evaluator's opinion respecting that agreement; or
- **b.** the neutral evaluator's notice of termination under section 7.

NEUTRAL EVALUATION continued...

NON-BINDING OPINION

29. Within 21 days after the later of:

a. delivery of the last submission required or permitted in a neutral evaluation under this Appendix; or

b. completion of a hearing,

the neutral evaluator will deliver to the parties a written opinion with reasons in respect of the probable disposition of the disagreement should it be submitted to arbitral or judicial proceedings, as the case may be, under the Chapter.

30. An opinion under section 29 is not binding on the parties.

ATTEMPT TO RESOLVE AFTER OPINION

31. Within 21 days after delivery of an opinion under section 29, the parties will meet and make an effort to resolve the disagreement, taking into account the opinion of the neutral evaluator or any other considerations.

32. If the parties and the neutral evaluator agree, the neutral evaluator may attend a meeting under section 31, and provide any necessary assistance to the parties.

FAILURE TO COMPLY

33. If a party fails to participate in the neutral evaluation as contemplated in sections 14 to 21, the neutral evaluator may:

a. provide an opinion based solely upon the information and submissions they have obtained; or

b. give a written notice of termination of the neutral evaluation

and, in either event, the neutral evaluator must record that party's failure.

TERMINATION OF NEUTRAL EVALUATION

34. A neutral evaluation is terminated when any of the following occurs:

a. the neutral evaluator gives a notice of termination under section 33(b);

b. the expiration of 30 days after receipt of an opinion under section 29 or 33, as the case may be, or any longer period agreed by the parties;

c. all the parties directly engaged in the disagreement agree in writing to terminate evaluation; or

d. all the parties directly engaged in the disagreement sign a written agreement resolving the disagreement.

COSTS

35. A party that has failed to participate in a neutral evaluation as contemplated in sections 14 to 21 is responsible for its share of the costs of the neutral evaluation, despite its failure to participate.

APPENDIX M - 5

ELDERS ADVISORY COUNCIL

DEFINITION

1. In this Appendix:
   a. **"Chapter"** means the Dispute Resolution Chapter;
   b. **"council"** means the elders advisory council appointed under this Appendix;
   c. **"elder"** means a member of a council;
   d. **"party"** means a participating Party to the reference under this Appendix;
   e. **"reference"** means a reference of a disagreement to the council; and
   f. **"section"** means a section in this Appendix.

GENERAL

2. A reference commences on the date the Parties directly engaged in the disagreement have agreed in writing to use an elders advisory council under paragraph 24 of the Chapter.

APPOINTMENT OF ELDERS

3. Within 30 days after a reference has commenced, each party will appoint at least one, but not more than three, elders to the council.
4. Preferably, the elders will be individuals who:
   a. are recognized in their respective communities as wise, tolerant, personable and articulate, and who:
      i. are often sought out for counsel or advice, or
      ii. have a record of distinguished public service; and
   b. are available to devote the time and energy as required to provide the assistance described in this Appendix.

END OF APPOINTMENT

5. Unless an elder:
   a. has requested to be relieved of their appointment due to a conflict of interest or otherwise; or
   b. is not able to fulfill their duties, due to incapacity or otherwise

   the elder's appointment to the council may not be terminated until termination of the reference in which the elder is involved.
6. If an elder's appointment is terminated in the circumstances described in section 5(a) or (b) and that elder was the only elder of the council appointed by a party to the reference, that party must replace the elder within seven days.

7. If an elder's appointment is terminated in the circumstances described in section 5(a) or (b) and that elder was not the only elder of the council appointed by a party to the reference, that party may replace the elder but the replacement must be made within seven days.

CONDUCT OF REFERENCE

8. In a reference, the parties will cooperate fully with the council, and give prompt attention to, and respond, to all communications from the council.
9. Notwithstanding section 8, a party is not required to disclose to the council or provide it with any information that the party would not be required to disclose in any arbitral or judicial proceedings in respect of the disagreement.
10. The council is expected to conduct itself informally in order that the parties may take full advantage of the council's good offices to resolve the disagreement.
11. The council may establish its own process to suit the particular circumstances of a reference including meeting with the parties together or separately, conducting informal interviews or inquiries and facilitating settlement negotiations.
12. The council will give the parties its final advice or recommendations on a disagreement referred to it within 120 days after the commencement of the reference.
13. The council may, at its option, provide its advice to the parties:
    a. orally on the same occasion; or
    b. in writing.
14. The council may, by unanimous decision, extend the time for giving advice or recommendations under section 12, on one occasion only, to a maximum of 60 additional days.
15. The advice or recommendations of the council are not binding on the parties.
16. Subject to any limitations agreed to by the parties, the council may employ reasonable and necessary administrative or other support services.

RIGHT TO WITHDRAW

17. A party may not withdraw from a reference until its conclusion unless all the parties agree in writing.

CONFIDENTIALITY

18. In order to assist in the resolution of the disagreement, a reference will not be open to the public.
19. The parties, and all persons, will keep confidential:
    a. all oral and written information disclosed in the reference; and
    b. the fact that this information has been disclosed.
20. The parties will not rely on or introduce as evidence in any proceeding, whether or not that proceeding relates to the subject matter of the reference, any oral or written information disclosed in or arising from the reference, including:
    a. any documents of other parties produced in the course of the reference that are not otherwise produced or producible in that proceeding;

b. any views expressed, or suggestions made, in respect of a possible settlement of the disagreement;

c. any admissions made by any party in the course of the reference, unless otherwise stipulated by the admitting party;

d. any advice or recommendations made by an elder or the council; and

e. the fact that any party has indicated a willingness to make or accept any advice or recommendation for settlement.

21. Sections 19 and 20 do not apply:

a. in any proceedings for the enforcement or setting aside of an agreement resolving the disagreement that was the subject of the reference;

b. if the adjudicator in any proceeding determines that the interests of the public or the administration of justice outweigh the need for confidentiality; or

c. if the oral or written information referred to in those sections is in the public forum.

22. An elder, or anyone retained or employed by the council, is not compellable in any proceeding to give evidence about any oral and written information acquired or opinion formed by that person as a result of the reference and all parties will oppose any effort to have that person or that information subpoenaed.

23. An elder, or anyone retained or employed by the council, is disqualified as a consultant or expert in any proceeding relating to the disagreement, including any proceeding that involves persons not a party to the reference.

Decision-Making

24. The council must make its best efforts to reach consensus among the elders before taking any action or giving any advice under the reference.

25. The council may not take any action under section 12 unless at least one elder appointed by each party expressly agrees with the action taken.

Termination of Reference

26. A reference is terminated when any of the following occurs:

a. the council gives the parties its advice under section 12;

b. the expiration of the applicable time period in section 12 or 14; or

c. the parties directly engaged in the disagreement sign a written agreement resolving the disagreement.

APPENDIX M - 6

ARBITRATION

DEFINITIONS

1. In this Appendix:
   - a. **"applicant"** means:
     - i. in an arbitration commenced under paragraph 28 of the Chapter, the party that delivered the notice of arbitration, and
     - ii. in an arbitration commenced under paragraph 29 of the Chapter, the party that the parties have agreed will be the applicant in the agreement to arbitrate;
   - b. **"arbitral award"** means any decision of the arbitral tribunal on the substance of the disagreement submitted to it, and includes:
     - i. an interim arbitral award, including an interim award made for the preservation of property, and
     - ii. an award of interest or costs;
   - c. **"arbitral tribunal"** means a single arbitrator or a panel of arbitrators appointed under this Appendix;
   - d. **"arbitration agreement"** includes
     - i. the requirement to refer to arbitration disagreements described in paragraph 28 of the Chapter; and
     - ii. an agreement to arbitrate a disagreement as described in paragraph 29 of the Chapter;
   - e. **"Chapter"** means the Dispute Resolution Chapter of the Agreement;
   - f. **"party"** means a participating Party to arbitration under this Appendix;
   - g. **"respondent"** means a party other than the applicant;
   - h. **"section"** means a section of this Appendix;
   - i. **"Supreme Court"** means the Supreme Court of British Columbia.
2. A reference in this Appendix, other than in section 87 or 116(a), to a claim, applies to a counterclaim, and a reference in this Appendix to a defence, applies to a defence to a counterclaim.
3. Despite paragraph 4 of the Chapter, the parties may not vary section 53 or 97.

COMMUNICATIONS

4. Except in respect of administrative details, the parties will not communicate with the arbitral tribunal:
   - a. orally, except in the presence of all other parties; or
   - b. in writing, without immediately sending a copy of that communication to all other parties.
5. Section 4 also applies to any communication by the arbitral tribunal to the parties.

WAIVER OF RIGHT TO OBJECT

6. A party that knows that:

- **a.** any provision of this Appendix; or
- **b.** any requirement under the Agreement or arbitration agreement

has not been complied with, and yet proceeds with the arbitration without stating its objection to noncompliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, will be deemed to have waived its right to object.

7. In section 6(a) "any provision of this Appendix" means any provision of this Appendix in respect of which the parties may otherwise agree.

EXTENT OF JUDICIAL INTERVENTION

8. In matters governed by this Appendix:

- **a.** no court shall intervene except as provided in this Appendix; and
- **b.** no arbitral proceedings of an arbitral tribunal, or an order, ruling or arbitral award made by an arbitral tribunal shall be questioned, reviewed or restrained by a proceeding under any legislation or other law that permits judicial review except to the extent provided in this Appendix.

CONSTRUCTION OF APPENDIX

9. In construing a provision of this Appendix, a court or arbitral tribunal may refer to the documents of the United Nations Commission on International Trade Law and its working group respecting the preparation of the UNCITRAL Model Arbitration Law and must give those documents the weight that is appropriate in the circumstances.

STAY OF LEGAL PROCEEDINGS

10. If a Party commences legal proceedings in a court against another Party in respect of a matter required or agreed to be submitted to arbitration, a Party to the legal proceedings may, before or after entering an appearance, and before delivery of any pleadings or taking any other step in the proceedings, apply to that court to stay the proceedings.

11. In an application under section 10, the court must make an order staying the legal proceedings unless it determines that:

- **a.** the arbitration agreement is null and void, inoperative or incapable of being performed; or
- **b.** the legal proceedings are permitted under the Chapter.

12. An arbitration may be commenced or continued, and an arbitral award made, even if an application has been brought under section 10, and the issue is pending before the court.

INTERIM MEASURES BY COURT

13. It is not incompatible with an arbitration agreement for a Party to request from a court, before or during arbitral proceedings, an interim measure of protection as provided in paragraph 14 of the Chapter, and for a court to grant that measure.

ARBITRATION continued...

Commencement of Arbitral Proceedings

14. The arbitral proceedings in respect of a disagreement:

- **a.** required to be arbitrated as set out in paragraph 28 of the Chapter, commences on delivery of the notice of arbitration to the Parties; or
- **b.** agreed to be arbitrated as set out in paragraph 29 of the Chapter, commences on the date of the arbitration agreement.

Notice of Arbitration

15. A notice of arbitration under paragraph 28 of the Chapter must be in writing and contain the following information:

- **a.** a statement of the subject matter or issues of the disagreement;
- **b.** a requirement that the disagreement be referred to arbitration;
- **c.** the remedy sought;
- **d.** the suggested number of arbitrators; and
- **e.** any preferred qualifications of the arbitrators.

16. A notice of arbitration under section 15 may contain the names of any proposed arbitrators, including the information specified in section 17.

Arbitrators

17. In an arbitration:

- **a.** required to be arbitrated as set out in paragraph 28 of the Chapter, there will be three arbitrators; and
- **b.** agreed to be arbitrated as set out in paragraph 29 of the Chapter, there will be one arbitrator.

18. A person eligible for appointment as:

- **a.** a single arbitrator or as chair of an arbitral tribunal will be an experienced arbitrator or arbitration counsel or have had training in arbitral procedure; and
- **b.** as a single arbitrator or member of an arbitral panel:
  - **i.** will be independent and impartial, and
  - **ii.** preferably, will have knowledge of, or experience in, the subject matter or issues of the disagreement.

Appointment of Arbitrators

19. A party proposing the name of an arbitrator to another party under section 20 will also submit a copy of that person's resume and the statement that person is required to make under section 26.

20. In an arbitration with a single arbitrator, if the parties fail to agree on the arbitrator within 30 days after the commencement of the arbitration, the appointment will be made by the neutral appointing authority, on the written request of a party that is copied to the other parties.

21. In an arbitration with three arbitrators and two parties, each party will appoint one arbitrator, and the two appointed arbitrators will appoint the third arbitrator.

22. In the appointment procedure under section 21, if:

a. a party fails to appoint an arbitrator within 30 days after receipt of a request to do so from the other party; or

b. the two appointed arbitrators fail to agree on the third arbitrator within 30 days after the last of them was appointed

the appointment will be made by the neutral appointing authority, on the written request of a party that is copied to the other parties.

23. In an arbitration with three arbitrators and three parties, the three parties will jointly appoint the three arbitrators.

24. In the arbitration procedure under section 23, if the three parties fail to agree on the three arbitrators within 60 days after the commencement of the arbitration, the appointments will be made by the neutral appointing authority, on the written request of a party copied to the other parties.

25. The neutral appointing authority, in appointing an arbitrator, must have due regard to:

a. any qualifications required of the arbitrator as set out in section 18 or as otherwise agreed in writing by the parties; and

b. other considerations as are likely to secure the appointment of an independent and impartial arbitrator.

Grounds for Challenge

26. When a person is approached in connection with possible appointment as an arbitrator, that person must provide a written statement:

a. disclosing any circumstances likely to give rise to justifiable doubts as to their independence or impartiality; or

b. advising that the person is not aware of any circumstances of that nature and committing to disclose them if they arise or become known at a later date.

27. An arbitrator, from the time of appointment and throughout the arbitral proceedings, must, without delay, disclose to the parties any circumstances referred to in section 26 unless the parties have already been informed of them.

28. An arbitrator may be challenged only if:

a. circumstances exist that give rise to justifiable doubts as to the arbitrator's independence or impartiality; or

b. the arbitrator does not possess the qualifications set out in this Appendix or as otherwise agreed in writing by the parties.

29. A party may only challenge an arbitrator appointed by that party, or in whose appointment that party has participated, for reasons of which that party becomes aware after the appointment has been made.

30. A person who is a Nisga'a citizen, or related to a Nisga'a citizen, may not be challenged under section 28 solely on the grounds of that citizenship or relationship.

CHALLENGE PROCEDURE

31. A party who intends to challenge an arbitrator will send to the arbitral tribunal a written statement of the reasons for the challenge within 15 days after becoming aware of the constitution of the arbitral tribunal, or after becoming aware of any circumstances referred to in section 28.

32. Unless the arbitrator challenged under section 31 withdraws from office, or the other parties agree to the challenge, the arbitral tribunal must decide on the challenge.

33. If a challenge under any procedure agreed upon by the parties or under the procedure under section 31 is not successful, the challenging party, within 30 days after having received notice of the decision rejecting the challenge, may request the neutral appointing authority to decide on the challenge.

34. The decision of the neutral appointing authority under section 33 is final and is not subject to appeal.

35. While a request under section 33 is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an arbitral award unless:

- **a.** the costs occasioned by proceeding before the decision of the neutral appointing authority is made would unduly prejudice the parties; or
- **b.** the parties agree otherwise.

FAILURE OR IMPOSSIBILITY TO ACT

36. The mandate of an arbitrator terminates if the arbitrator becomes unable at law, or as a practical matter, to perform the arbitrator's functions, or for other reasons fails to act without undue delay.

37. If a controversy remains concerning any of the grounds referred to in section 36, a party may request the neutral appointing authority to decide on the termination of the mandate.

TERMINATION OF MANDATE AND SUBSTITUTION OF ARBITRATOR

38. In addition to the circumstances referred to under sections 31 to 33, and 36, the mandate of an arbitrator terminates:

- **a.** if the arbitrator withdraws from office for any reason; or
- **b.** by, or pursuant to, agreement of the parties.

39. If the mandate of an arbitrator terminates, a replacement arbitrator must be appointed under sections 19 to 25, as applicable.

40. If a single or chairing arbitrator is replaced, any hearings previously held must be repeated.

41. If an arbitrator other than a single or chairing arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

42. An order or ruling of the arbitral tribunal made before the replacement of an arbitrator under section 39 is not invalid solely because there has been a change in the composition of the tribunal.

COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

43. An arbitral tribunal may rule on its own jurisdiction.

44. A plea that an arbitral tribunal does not have jurisdiction must be raised not later than the submission of the statement of defence; but a party is not precluded from raising that plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator.

45. A plea that an arbitral tribunal is exceeding the scope of its authority must be made as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings.

46. An arbitral tribunal may, in either of the cases referred to in section 44 or 45, admit a later plea if it considers the delay justified.

47. An arbitral tribunal may rule on a plea referred to in section 44 or 45 either as a preliminary question or in the arbitral award.

48. If an arbitral tribunal rules as a preliminary question that it has jurisdiction, any party, within 15 days after having received notice of that ruling, may request the Supreme Court to decide the matter.

49. A decision of the Supreme Court under section 48 is final and is not subject to appeal.

50. While a request under section 48 is pending, an arbitral tribunal may continue the arbitral proceedings and make an arbitral award unless:

- **a.** the costs occasioned by proceeding before the decision of the Supreme Court is made would unduly prejudice the parties; or
- **b.** the parties agree otherwise.

INTERIM MEASURES ORDERED BY ARBITRAL TRIBUNAL

51. Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the disagreement.

52. The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under section 51.

EQUAL TREATMENT OF PARTIES

53. The parties must be treated with equality and each party must be given a full opportunity to present its case.

DETERMINATION OF RULES OF PROCEDURE

54. Subject to this Appendix, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

55. Failing any agreement under section 54, the arbitral tribunal, subject to this Appendix, may conduct the arbitration in the manner it considers appropriate.

56. The arbitral tribunal is not required to apply the legal rules of evidence, and may determine the admissibility, relevance, materiality and weight of any evidence.

57. The arbitral tribunal must make all reasonable efforts to conduct the arbitral proceedings in the most efficient, expeditious and cost effective manner as is appropriate in all the circumstances of the case.

58. The arbitral tribunal may extend or abridge a period of time:
    a. set in this Appendix, except the period specified in section 106; or
    b. established by the tribunal.

Pre-Hearing Meeting

59. Within 10 days after the arbitral tribunal is constituted, the tribunal must convene a pre-hearing meeting of the parties to reach agreement and to make any necessary orders on:
    a. any procedural issues arising under this Appendix;
    b. the procedure to be followed in the arbitration;
    c. the time periods for taking steps in the arbitration;
    d. the scheduling of hearings or meetings, if any;
    e. any preliminary applications or objections; and
    f. any other matter which will assist the arbitration to proceed in an efficient and expeditious manner.

60. The arbitral tribunal must prepare and distribute promptly to the parties a written record of all the business transacted, and decisions and orders made, at the pre-hearing meeting.

61. The pre-hearing meeting may be conducted by conference call.

Place of Arbitration

62. The arbitration will take place in the Province of British Columbia.

63. Despite section 62, an arbitral tribunal may meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other personal property, or for viewing physical locations.

Language

64. If the arbitral tribunal determines that it was necessary or reasonable for a party to incur the costs of translation of documents and oral presentations in the circumstances of a particular disagreement, the arbitral tribunal, on application of a party, may order that any of the costs of that translation be deemed to be costs of the arbitration under paragraph 44 of the Chapter.

Statements of Claim and Defence

65. Within 21 days after the arbitral tribunal is constituted, the applicant will deliver a written statement to all the Parties stating the facts supporting its claim or position, the points at issue and the relief or remedy sought.

66. Within 15 days after receipt of the applicant's statement, each respondent will deliver a written statement to all the Parties stating its defence or position in respect of those particulars.

67. Each party must attach to its statement a list of documents:
    a. upon which the party intends to rely; and
    b. which describes each document by kind, date, author, addressee and subject matter.
68. The parties may amend or supplement their statements, including the list of documents, and deliver counter-claims and defences to counter-claims during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow the amendment, supplement or additional pleadings having regard to:
    a. the delay in making it; and
    b. any prejudice suffered by the other parties.
69. The parties will deliver copies of all amended, supplemented or new documents delivered under section 68 to all the Parties.

DISCLOSURE

70. The arbitral tribunal may order a party to produce, within a specified time, any documents that:
    a. have not been listed under section 67;
    b. the party has in its care, custody or control; and
    c. the arbitral tribunal considers to be relevant.
71. Each party will allow the other party the necessary access at reasonable times to inspect and take copies of all documents that the former party has listed under section 67, or that the arbitral tribunal has ordered to be produced under section 70.
72. The parties will prepare and send to the arbitral tribunal an agreed statement of facts within the time specified by the arbitral tribunal.
73. Not later than 21 days before a hearing commences, each party will give the other party:
    a. the name and address of any witness and a written summary of the witness's evidence; and
    b. in the case of an expert witness, a written statement or report prepared by the expert witness.
74. Not later than 15 days before a hearing commences, each party will give to the other party and the arbitral tribunal an assembly of all documents to be introduced at the hearing.

HEARINGS AND WRITTEN PROCEEDINGS

75. The arbitral tribunal must decide whether to hold hearings for the presentation of evidence or for oral argument, or whether the proceedings will be conducted on the basis of documents and other materials.
76. Unless the parties have agreed that no hearings will be held, the arbitral tribunal must hold hearings at an appropriate stage of the proceedings, if so requested by a party.
77. The arbitral tribunal must give the parties sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purpose of inspection of documents, goods or other property or viewing any physical location.
78. All statements, documents or other information supplied to, or applications made to, the arbitral tribunal by one party will be communicated to the other party, and any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision must be communicated to the parties.

79. Unless ordered by the arbitral tribunal, all hearings and meetings in arbitral proceedings, other than meetings of the arbitral tribunal, are open to the public.

80. The arbitral tribunal must schedule hearings to be held on consecutive days until completion.

81. All oral evidence must be taken in the presence of the arbitral tribunal and all the parties unless a party is absent by default or has waived the right to be present.

82. The arbitral tribunal may order any individual to be examined by the arbitral tribunal under oath or on affirmation in relation to the disagreement and to produce before the arbitral tribunal all relevant documents within the individual's care, custody or control.

83. The document assemblies delivered under section 74 will be deemed to have been entered into evidence at the hearing without further proof and without being read out at the hearing, but a party may challenge the admissibility of any document so introduced.

84. If the arbitral tribunal considers it just and reasonable to do so, the arbitral tribunal may permit a document that was not previously listed under section 67, or produced as required under section 70 or 74, to be introduced at the hearing, but the arbitral tribunal may take that failure into account when fixing the costs to be awarded in the arbitration.

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

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

Default of a Party

87. If, without showing sufficient cause, the applicant fails to communicate its statement of claim in accordance with section 65, the arbitral tribunal may terminate the proceedings.

88. If, without showing sufficient cause, a respondent fails to communicate its statement of defence in accordance with section 66, the arbitral tribunal must continue the proceedings without treating that failure in itself as an admission of the applicant's allegations.

89. If, without showing sufficient cause, a party fails to appear at the hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

90. Before terminating the proceedings under section 87, the arbitral tribunal must give all respondents written notice providing an opportunity to file a statement of claim in respect of the disagreement within a specified period of time.

Expert Appointed by Arbitral Tribunal

91. After consulting the parties, the arbitral tribunal may:

a. appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal; and

b. for that purpose, require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other personal property or land for inspection or viewing.

92. The arbitral tribunal must give a copy of the expert's report to the parties who must have an opportunity to reply to it.

93. If a party so requests, or if the arbitral tribunal considers it necessary, the expert must, after delivery of a written or oral report, participate in a hearing where the parties must have the opportunity to cross examine the expert and to call any evidence in rebuttal.

94. The expert must, on the request of a party:

a. make available to that party for examination all documents, goods or other property in the expert's possession, and provided to the expert in order to prepare a report; and

b. provide that party with a list of all documents, goods or other personal property or land not in the expert's possession but which were provided to or given access to the expert, and a description of the location of those documents, goods or other personal property or lands.

LAW APPLICABLE TO SUBSTANCE OF DISPUTE

95. An arbitral tribunal must decide the disagreement in accordance with the law.

96. If the parties have expressly authorized it to do so, an arbitral tribunal may decide the disagreement based upon equitable considerations.

97. In all cases, an arbitral tribunal must make its decisions in accordance with the spirit and intent of the Agreement.

98. Before a final arbitral award is made, an arbitral tribunal or a party, with the agreement of the other parties, may refer a question of law to the Supreme Court for a ruling.

99. A party may appeal a decision in the Supreme Court under section 98 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal. If the British Columbia Court of Appeal:

a. refuses to grant leave to a party to appeal a ruling of the Supreme Court under section 98; or

b. hears an appeal from a ruling of the Supreme Court under section 98

the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.

100. While a request under section 98 is pending, the arbitral tribunal may continue the arbitral proceedings and make an arbitral award unless:

a. the costs occasioned by proceeding before the ruling of the Supreme Court is made would unduly prejudice the parties; or

b. the parties agree otherwise.

DECISION MAKING BY PANEL OF ARBITRATORS

101. In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal must be made by a majority of all its members.

102. If there is no majority decision on a matter to be decided, the decision of the chair of the tribunal is the decision of the tribunal.

103. Notwithstanding section 101, if authorized by the parties or all the members of the arbitral tribunal, questions of procedure may be decided by the chair of the tribunal.

ARBITRATION continued...

SETTLEMENT

104. If, during arbitral proceedings, the parties settle the disagreement, the arbitral tribunal must terminate the proceedings and, if requested by the parties, must record the settlement in the form of an arbitral award on agreed terms.

105. An arbitral award on agreed terms:

- **a.** must be made in accordance with sections 107 to 109;
- **b.** must state that it is an arbitral award; and
- **c.** has the same status and effect as any other arbitral award on the substance of the disagreement.

FORM AND CONTENT OF ARBITRAL AWARD

106. An arbitral tribunal must make its final award as soon as possible and, in any event, not later than 60 days after:

- **a.** the hearings have been closed; or
- **b.** the final submission has been made

whichever is the later date.

107. An arbitral award must be made in writing, and be signed by the members of the arbitral tribunal.

108. An arbitral award must state the reasons upon which it is based, unless:

- **a.** the parties have agreed that no reasons are to be given; or
- **b.** the award is an arbitral award on agreed terms under section 104 and 105.

109. A signed copy of an arbitral award must be delivered to all the Parties by the arbitral tribunal.

110. At any time during the arbitral proceedings, an arbitral tribunal may make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

111. An arbitral tribunal may award interest.

112. The costs of an arbitration are in the discretion of the arbitral tribunal which, in making an order for costs, may:

- **a.** include as costs:
  - **i.** the fees and expenses of the arbitrators and expert witnesses,
  - **ii.** legal fees and expenses of the parties,
  - **iii.** any administration fees of a neutral appointing authority, or
  - **iv.** any other expenses incurred in connection with the arbitral proceedings; and
- **b.** specify:
  - **i.** the party entitled to costs,
  - **ii.** the party who will pay the costs,
  - **iii.** subject to section 113, the amount of costs or method of determining that amount, and
  - **iv.** the manner in which the costs will be paid.

113. For purposes of section 112, an arbitral tribunal may award up to 50% of the reasonable and necessary legal fees and expenses that were actually incurred by a party, and if the legal services were provided by an employee or employees of that party, the arbitral tribunal may fix an amount or determine an hourly rate to be used in the calculation of the cost of those employee legal fees.

Termination of Proceedings

114. An arbitral tribunal must close any hearings if:

a. the parties advise they have no further evidence to give or submissions to make; or

b. the tribunal considers further hearings to be unnecessary or inappropriate.

115. A final arbitral award, or an order of the arbitral tribunal under section 116, terminates arbitral proceedings.

116. An arbitral tribunal must issue an order for the termination of the arbitral proceedings if:

a. the applicant withdraws its claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest in obtaining a final settlement of the disagreement;

b. the parties agree on the termination of the proceedings; or

c. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

117. Subject to sections 118 to 123 and section 127, the mandate of an arbitral tribunal terminates with the termination of the arbitral proceedings.

Correction and Interpretation of Award; Additional Award

118. Within 30 days after receipt of an arbitral award:

a. a party may request the arbitral tribunal to correct in the tribunal award any computation errors, any clerical or typographical errors or any other errors of a similar nature; and

b. a party may, if agreed by all the parties, request the arbitral tribunal to give an interpretation of a specific point or part of the arbitral award.

119. If an arbitral tribunal considers a request made under section 118 to be justified, it must make the correction or give the interpretation within 30 days after receipt of the request and the interpretation will form part of the arbitral award.

120. An arbitral tribunal, on its own initiative, may correct any error of the type referred to in subsection 118(a) within 30 days after the date of the arbitral award.

121. A party may request, within 30 days after receipt of an arbitral award, the arbitral tribunal to make an additional arbitral award respecting claims presented in the arbitral proceedings but omitted from the arbitral award.

122. If the arbitral tribunal considers a request made under section 121 to be justified, it must make an additional arbitral award within 60 days.

123. Sections 107 to 109, and sections 111 to 113 apply to a correction or interpretation of an arbitral award made under section 119 or 120, or to an additional arbitral award made under section 122.

Application for Setting Aside Arbitral Award

124. Subject to sections 129 and 131, an arbitral award may be set aside by the Supreme Court, and no other court, only if a party making the application establishes that:

a. the party making the application:

i. was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings, or

   - **ii.** was otherwise unable to present its case or respond to the other party's case;
- **b.** the arbitral award:
   - **i.** deals with a disagreement not contemplated by or not falling within the terms of the submission to arbitration, or
   - **ii.** contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award that contains

  decisions on matters not submitted to arbitration may be set aside;
- **c.** the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless that agreement was in conflict with a provision of this Appendix from which the parties cannot derogate, or, failing any agreement, was not in accordance with this Appendix;
- **d.** the arbitral tribunal or a member of it has committed a corrupt or fraudulent act; or
- **e.** the award was obtained by fraud.

125. An application for setting aside may not be made more than three months:

- **a.** after the date on which the party making that application received the arbitral award; or
- **b.** if a request had been made under section 118 or 121, after the date on which that request was disposed of by the arbitral tribunal.

126. An application to set aside an award on the ground that the arbitral tribunal or a member of it has committed a corrupt or fraudulent act or that the award was obtained by fraud must be commenced:

- **a.** within the period referred to in section 125; or
- **b.** within 30 days after the applicant discovers or ought to have discovered the fraud or corrupt or fraudulent act

whichever is the longer period.

127. When asked to set aside an arbitral award, the Supreme Court may, where it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity:

- **a.** to resume the arbitral proceedings; or
- **b.** to take any other action that, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside the arbitral award.

128. A Party that was not a participating Party in an arbitration must be given notice of an application under section 124, and is entitled to be a party to, and make representation on, the application.

APPEAL ON QUESTION OF LAW

129. A party may appeal an arbitral award to the Supreme Court, with leave, on a question of law, which the Supreme Court must grant only if it is satisfied that:

- **a.** the importance of the result of the arbitration to the parties justifies the intervention of the court, and the determination of the point of law may prevent a miscarriage of justice; or
- **b.** the point of law is of general or public importance.

130. An application for leave may not be made more than three months:

- **a.** after the date on which the party making the application received the arbitral award; or
- **b.** if a request had been made under section 118 or 121, after the date on which that request was disposed of by the arbitral tribunal.

131. The Supreme Court may confirm, vary or set aside the arbitral award or may remit the award to the arbitral tribunal with directions, including the court's opinion on the question of law.

132. When asked to set aside an arbitral award the Supreme Court may, where it is appropriate and it is requested by a party, adjourn the proceedings to set aside the arbitral award for a period of time determined by it in order to give the arbitral tribunal an opportunity:

- **a.** to resume the arbitral proceedings; or
- **b.** to take any other action that, in the arbitral tribunal's opinion, will eliminate the grounds for setting aside the arbitral award.

133. A Party that was not a participating Party in an arbitration must be given notice of an application under section 129 and is entitled to be a party to, and make representation on the application.

134. A party may appeal a decision of the Supreme Court under section 131 to the British Columbia Court of Appeal with leave of the British Columbia Court of Appeal.

135. If the British Columbia Court of Appeal:

- **a.** refuses to grant leave to a party to appeal a ruling of the Supreme Court under section 131; or
- **b.** hears an appeal from a ruling of the Supreme Court under section 131,

the decision of the British Columbia Court of Appeal may not be appealed to the Supreme Court of Canada.

136. No application may be made under section 129 in respect of:

- **a.** an arbitral award based upon equitable considerations as permitted in section 96; or
- **b.** an arbitral award made in an arbitration commenced under paragraph 28 of the Chapter.

137. No application for leave may be brought under section 129 in respect of a ruling made by the Supreme Court under section 98 if the time for appealing that ruling has already expired.

Recognition and Enforcement

138. An arbitral award must be recognized as binding and, upon application to the Supreme Court, must be enforced subject to paragraph 136 and 137 of the Nisga'a Government Chapter.

139. Unless the Supreme Court orders otherwise, the party relying on an arbitral award or applying for its enforcement must supply the duly authenticated original arbitral award or a duly certified copy of it.

Grounds for Refusing Enforcement

140. Subject to sections 128 and 133, a Party that was not a participating Party in an arbitration must not bring an application under section 124 or 129 to set the award aside but may resist enforcement of the award against it by bringing an application under section 141.

ARBITRATION continued...

141. On the application of a Party that was not a participating Party in an arbitration, the Supreme Court may make an order refusing to enforce against that Party an arbitral award made under this Appendix if that Party establishes that:

a. it was not given copies of:

i. the notice of arbitration or agreement to arbitrate, or

ii. the pleadings or all amendments and supplements to the pleadings;

b. the arbitral tribunal refused to add the Party as a participating Party to the arbitration under paragraph 32 of the Chapter;

c. the arbitral award

i. deals with a disagreement not contemplated by or not falling within the terms of the submission to arbitration, or

ii. contains decisions on matters beyond the scope of the submission to arbitration

provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the arbitral award which contains decisions on matters submitted to arbitration may be recognized and enforced;

d. the arbitral award has not yet become binding on the parties or has been set aside or suspended by a court;

e. the arbitral tribunal or a member of it has committed a corrupt or fraudulent act; or

f. the award was obtained by fraud.