

Bid Dispute Policy

Dispute Resolution

Any disagreement or dispute (a “**Dispute**”) between the parties arising out of or relating to the Contract shall be resolved as detailed in this section, provided that the foregoing shall not prevent either party from seeking an injunction or other equitable relief from a court in order to protect its Intellectual Property rights or its confidential information or Personal Information or Personal Health Information.

- a. **Internal Resolution.** The parties will in good faith attempt to resolve any Dispute promptly and in an amicable manner by referring the Dispute to their respective relationship managers. If the parties’ relationship managers are unable to resolve the Dispute within ten (10) days, either one of them may require the Dispute to be referred to the parties’ senior officers.
- b. **Referral to Senior Officers.** If a Dispute is not resolved by the senior officers within ten (10) days, either party may require that the Dispute be referred to the Chief Financial Officer of Ontario Shores and Chief Executive Officer of Supplier.
- c. **Arbitration Demand.** If the Chief Executive Officer of Supplier and the Chief Financial Officer of Ontario Shores are unable to resolve a Dispute within fourteen (14) days after the referral to them pursuant to Section 9.03(c), either party may, on written notice to the other party, demand that the Dispute be submitted to binding arbitration in conformity with the Arbitration Procedures set out in Schedule 3.

Schedule 3 - Arbitration Procedures

1. Definitions and Interpretation

(a) **Definitions**

Unless otherwise defined in this Schedule, all terms defined in the Agreement which are used in this Schedule have the same meaning as provided for those terms in the Agreement. Where used in this Schedule, unless the context or subject matter otherwise requires, the following words and phrases will have the meaning set forth below:

“Approved Arbitrator” means a retired judge of the Supreme Court of Canada, Ontario Superior Court or Court of Appeal or a senior qualified lawyer who is impartial and independent of the parties;

“Arbitrator” means the arbitrator appointed pursuant to Section 2 of this Schedule;

“Dispute” means any matter which a party, in accordance with the terms of the Agreement, submits to arbitration in accordance with the terms of this Schedule;

“Procedures” means the arbitration procedures described in this Schedule;

“Schedule” means this schedule of arbitration procedures.

(b) **Governing Law and Jurisdiction**

The seat of the arbitration shall be Ontario and all Disputes referred to arbitration (including the scope of the agreement to arbitrate, the law relating to the enforcement of the agreement to arbitrate, any relevant limitation periods, the law governing the procedure of the arbitration, the law relating to available remedies, set-off claims,

conflict of laws rules and claims to costs and interest) shall be governed by the laws of the Province of Ontario.

(c) **Time**

In the computation of time under the Procedures or an order or direction given by the Arbitrator pursuant to this Schedule, except where a contrary intention appears or the parties otherwise agree:

- (i) where there is a reference to a number of days between two events, those days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, even if they are described as clear days or the words "at least" are used;
- (ii) where the time for doing any act under this Schedule or any order or direction given by the Arbitrator expires on a day which is not a Business Day, the act may be done on the next day that is not a Business Day; and
- (iii) delivery of a document or notice provided for in this Schedule or any order or direction given by the Arbitrator made after 5:00 p.m. (Toronto time) or at any time on a day which is not a Business Day, shall be deemed to have been made on the next Business Day.

2. **Commencement of Arbitration**

Any party (the "Claimant") may commence arbitration for a Dispute by delivering a written notice (a "Notice of Arbitration") to the party against whom the Claimant seeks a remedy (the "Respondent"). In the Notice of Arbitration, the Claimant shall describe the substance of the Dispute and name three individuals whom the Claimant is prepared to appoint as arbitrator, each of such individuals to be an Approved Arbitrator. Within 10 days of the receipt of the Notice of Arbitration, the Respondent shall by Notice to the Claimant agree to the appointment of one of the three individuals named by the Claimant or provide the Claimant with a list of three other individuals who are Approved Arbitrators. Within 10 days of receipt of the Respondent's list, by Notice to the Respondent, the Claimant shall agree to the appointment of one of such individuals, or provide a further list of three Approved Arbitrators. The parties shall continue to exchange lists of three Approved Arbitrators in this fashion until the Arbitrator is appointed. If the Arbitrator is not appointed within 30 days of the initial receipt by the Respondent of the Notice of Arbitration, either party may provide copies of the exchanged lists to **[ADR Chambers/Ontario Superior Court]** which shall appoint the Arbitrator.

3. **Arbitration Procedures**

- (a) The following procedures shall apply to the arbitration of any Dispute, except as the parties may otherwise agree or as the Arbitrator otherwise directs:
- (b) Within 20 days of the appointment of the Arbitrator, the Claimant shall deliver to the Respondent and the Arbitrator a written statement (the "Complaint") concerning the Dispute setting forth, with particularity, the full names, descriptions and addresses of the parties, the nature of the Complaint, the allegations of fact supporting the Dispute submitted for arbitration and the relief or remedy sought.
- (c) Within 30 days after the delivery of the Complaint, the Respondent shall deliver to the Claimant and the Arbitrator a written response (the "Answer") to the Complaint setting forth, with particularity, its position on the Dispute and the allegations of fact supporting the Answer.

- (d) If the Respondent fails to deliver an Answer within the time limit referred to in Section 3(b), the Respondent shall, subject to Section 3(f), be deemed to have admitted the allegations of fact alleged in the Complaint and have accepted the Claimant's entitlement to the relief and remedy set out in the Complaint.
- (e) Within 10 days after the delivery of any Answer, the Claimant may deliver to the Respondent and the Arbitrator a written reply to that Answer, setting forth, with particularity, its response, if any, to the Answer.
- (f) If the Respondent wants to submit any other Dispute to the Arbitrator it may, within the time provided for the delivery of the Answer to the Complaint, also deliver to the Claimant and the Arbitrator a counter-complaint (the "Countercomplaint") setting forth, with particularity, the nature of the Countercomplaint, the allegations of fact supporting the Countercomplaint and the relief or remedy sought, for the Arbitrator to decide. Within 20 days of the delivery of a Countercomplaint, the Claimant shall deliver to the Respondent making a Countercomplaint and the Arbitrator a written response to such Countercomplaint (the "Response to Countercomplaint") setting forth, with particularity, its position on the Countercomplaint and the allegations of fact supporting the Response to Countercomplaint. If the Claimant fails to deliver a Response to Countercomplaint within such 20 day period, the Claimant will be deemed, subject to Section 3(f), to have admitted the allegations of fact alleged in the Countercomplaint, and have accepted the Respondent's entitlement to the relief and remedy set out in the Countercomplaint. Within 10 days after the delivery of a Response to Countercomplaint, the Respondent may deliver to the Claimant and the Arbitrator a written reply to such Response to Countercomplaint setting forth, with particularity, its response to such Response to Countercomplaint. Any Dispute submitted to arbitration in accordance with this Section 3(e) shall be governed by, and dealt with as if it were the subject of a Notice of Arbitration, that shall be determined by the same Arbitrator as part of the same arbitration proceeding as the Notice of Arbitration.
- (g) The time limits set for the delivery of the documents referred to in Sections 3(a) to (e) inclusive of this Schedule may be extended by agreement of the parties or by the Arbitrator for such period, on such terms, and for such reasons as the Arbitrator may determine upon application made to the Arbitrator in writing by either the Claimant or the Respondent on Notice to the other, with such application being made either before the expiry of the time limit in issue or within two days after such expiry, and the Arbitrator may relieve the applying party of the consequences of its failure to comply with the time limit in issue, provided, however, that the other party shall be given an opportunity to make submissions on the application.
- (h) Within 20 days following the completion of the steps set out in Sections 3(a) to (e) of this Schedule, a party may, upon Notice to the other party and to the Arbitrator, request the Arbitrator to give directions and make any order which is, in the discretion of the Arbitrator, reasonable regarding any procedural matters which properly should be resolved before the arbitration proceeds further, including the amendment of any pleadings, the provision of particulars, the production of documents and the need for examinations for discovery in connection with the arbitration, either by way of oral examination or written interrogatories, and a determination as to the manner in which

evidence shall be presented to the Arbitrator (by way of agreed statement of facts, sworn evidence and transcripts of cross-examinations on such sworn evidence or *viva voce*, or some combination thereof). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. The Notice requesting any direction or order pursuant to this subsection shall state the direction or order sought and set out the reasons for seeking such direction or order. Nothing in this Section shall be taken to limit the jurisdiction of the Arbitrator to deal with procedural matters in accordance with the Act.

- (i) If no party has requested directions in accordance with Section 3(g), the Arbitrator shall give directions regarding the further procedural steps in the arbitration, including any production of documents, any examinations for discovery, and the nature of any hearing ("Hearing"). In making any order or giving any direction in respect of any procedural matter the Arbitrator may impose such terms as are reasonable in order to ensure the completion of the arbitration in a timely manner. Each of the parties shall have an opportunity to make oral submissions to the Arbitrator in respect of such procedural steps.
- (j) Unless the time for making an award is extended by agreement of the parties or by court order, the Arbitrator shall make an award within 60 days after completion of any Hearing or other final procedural step in which evidence or argument are provided to the Arbitrator. The award shall be in writing and shall state the reasons on which it is based. Executed copies of all awards shall be delivered by the Arbitrator to each party as soon as is reasonably possible.

4. **Agreement to be Bound**

No individual shall be appointed as Arbitrator unless he or she agrees in writing to be bound by all provisions of this Schedule.

5. **Arbitrator Discretion**

Subject to the Act, the Agreement and this Schedule, the Arbitrator may conduct the arbitration in such manner as the Arbitrator considers appropriate.

6. **Interim Relief**

At the request of any party, the Arbitrator may take such interim measures as the Arbitrator considers necessary in respect of the Dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Arbitrator may require security for the costs of such measures.

(a) **Remedies**

The Arbitrator may make final, interim, interlocutory and partial awards. An award may grant any remedy or relief which the Arbitrator considers just and equitable. The Arbitrator shall state in the award whether or not the Arbitrator views the award as final or interim, for purposes of any judicial proceedings in connection with such award.

- (b) **Experts**

The Arbitrator shall not, without the written consent of the parties to the arbitration, appoint any expert or other consultant or retain any counsel to advise him or her.
- (c) **Appeal**

The decision of the Arbitrator shall be final and binding upon the parties hereto as to any matter or matters so submitted to arbitration. Despite the foregoing, any such decision may be appealed to a court of competent jurisdiction based on an error of law.
- (d) **Costs of Arbitration and Offers to Settle**

The fees and expenses of the Arbitrator and costs of the arbitration facilities shall be periodically billed to and paid in equal proportions by the parties to the arbitration and appeal as the arbitration or appeal proceeds. The Arbitrator shall have the power to award costs, including the fees and expenses of the Arbitrator and costs of the arbitration facilities, in whole or in part, upon hearing submissions by any party requesting same, and any responding submissions from the other party. Unless otherwise specifically ordered by the Arbitrator, any costs awarded shall be on a full indemnity basis, as such term or equivalent amended term is used in the Ontario Superior Court of Justice.
- (e) **Interest**

The Arbitrator may award pre- and post-judgment interest in accordance with the *Courts of Justice Act*.
- (f) **Notices**

All Notices and all other documents required or permitted by this Schedule to be given by any party to the arbitration to the other shall be given in accordance with Section 1.08 of the Agreement. All Notices and all other documents required or permitted by this Schedule to be given by any party to the arbitration to the Arbitrator shall be given in accordance with the Arbitrator's instructions.
- (g) **Confidentiality**

The existence of this arbitration and any element of the arbitration (including an appeal) shall be confidential and shall be subject to Article 5 - Confidentiality, Privacy and Security of the Agreement.