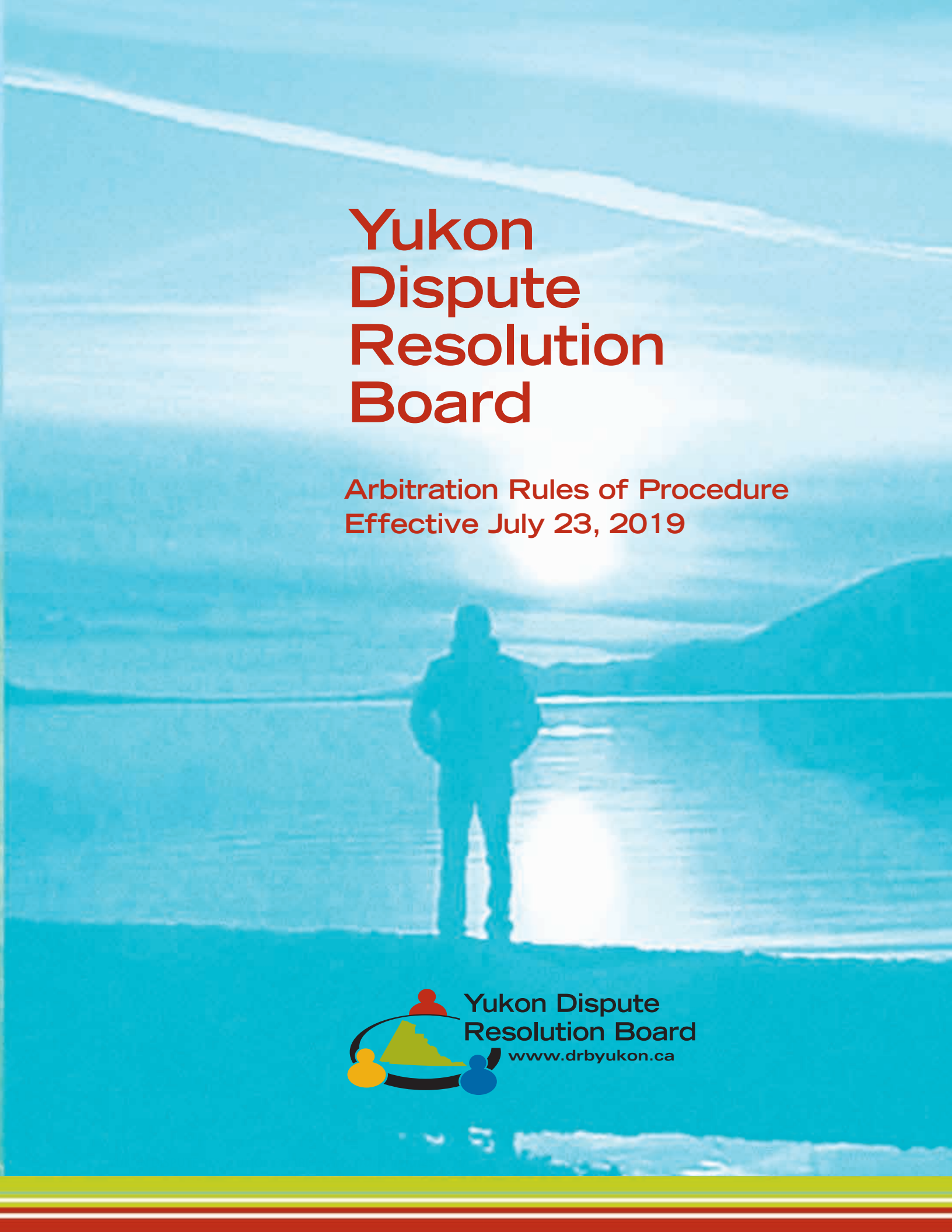
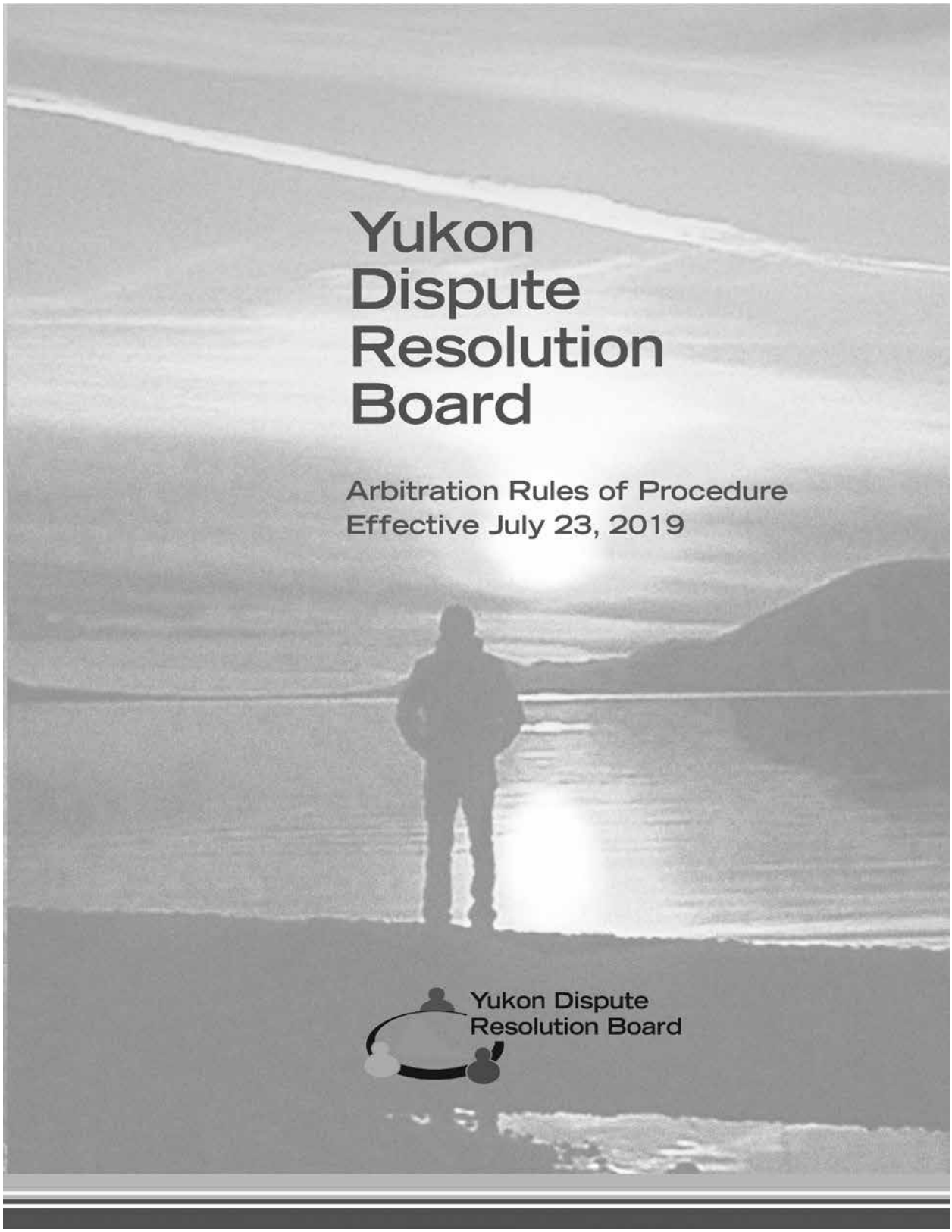


Yukon Dispute Resolution Board

Arbitration Rules of Procedure
Effective July 23, 2019

Yukon Dispute Resolution Board
www.drbyukon.ca


Yukon
Dispute
Resolution
Board
Arbitration Rules of Procedure
Effective July 23, 2019
Yukon Dispute
Resolution Board

PREAMBLE

Background

The Yukon Dispute Resolution Board (DRB) developed the following arbitration rules of procedure under the authority of Chapter 26 of the Umbrella Final Agreement (UFA) and of the corresponding Final Agreements (FAs) of the eleven Yukon First Nation signatories. The stated objectives of Chapter 26 are:

> *26.1.1.1 to establish a comprehensive dispute resolution process for resolving disputes which arise out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation; and*
>
> *26.1.1.2 to facilitate the out-of-court resolution of disputes under 26.1.1, in a non-adversarial and informal atmosphere*.

Under article 26.5.4.6, it is the responsibility of the DRB, after consulting with the parties to the UFA, to establish rules and procedures governing mediation and arbitration. In accordance with that responsibility, the Board selected and modified an established set of arbitration rules and began its consultation process with the UFA and FA signatories in late 2017.

Mediation and Arbitration

Chapter 26 offers two means by which disputing parties may attempt to resolve issues in dispute: mediation under articles 26.3.0 and 26.4.0, as well as arbitration under 26.7.0.

Mediation is a negotiation process moderated by an independent and impartial facilitator, the mediator. Parties to a dispute participate in mediation by mutual consent, and they are encouraged to agree among themselves on a suitable mediator. Under article 26.6.2 of Chapter 26, if the parties cannot agree on a mediator, the Board shall appoint a mediator from the Panel roster established under article 26.5.3 within 15 days of the dispute being referred to mediation. A dispute referred to mediation under article 26.3.1 which is not resolved by the mediation may be referred to arbitration by any party to the dispute.

Arbitration is an adjudication process presided over by an independent and impartial arbitrator whose role is very similar to that of a judge in a court. Unlike the public courts, however, arbitrations are generally not open to the public, unless the parties and the arbitrator decide otherwise. Under article 26.7.3, arbitrators are specifically granted procedural authority similar to that of a judge and may refer any question of law to a judge of the Supreme Court of Yukon. Article 26.7.5 provides that a decision or order of an arbitrator shall be final and binding on the parties to the arbitration, subject to limited exceptions under article 26.8.1.

Arbitration processes offer greater flexibility than those of the public courts, allowing disputing parties to specifically tailor the arbitration processes to meet their needs. The parties can agree, in consultation with the arbitrator, to modify the Rules to address specific interests and objectives of the parties, provided these would not conflict with the UFA/FA mandatory directions.

Where the parties to a dispute consider that an arbitration may require more than a single arbitrator, they may agree to having a panel of three arbitrators, as provided in the Rules. While Chapter 26 contemplates appointing a single arbitrator, it does not prevent the parties from agreeing to proceed with a panel of three.

Developing Arbitration Rules

Chapter 26 of the UFA is the primary source of the DRB's authority, and any exercise of that authority must be consistent with the UFA, any applicable FA, as well as any applicable Self-Government Agreement. Thus, in developing a set of rules for arbitration procedures, the DRB has recognized the overarching authority of the UFA and other constitutionally protected agreements and has developed the arbitration rules to ensure consistency with them.

In addition, several other factors and principles have informed development of the Rules that follow. These include:

- Similarity with other established and well-utilized procedures used in arbitrations elsewhere, both in Canada and internationally.
- Cost-effectiveness, timeliness, informality and efficiency in resolving disputes.
- Granting to arbitrators the discretion, following consultation with the arbitral parties, to modify procedures in a given case to accommodate the needs and interests of the parties under diverse circumstances.
- Demonstrating respect for the indigenous traditions and values of First Nation parties participating in an arbitration. While adopting a set of conventional core procedural rules will provide relative familiarity and predictability in arbitrations, building in flexibility and discretion for the arbitrator will enable modifications to respect the traditions and values of First Nation participants.

As a starting point, the DRB considered that selecting and adapting a proven body of standard procedural rules would be most appropriate at this time. To create a custom-designed body of procedural rules would have been a costly and time-consuming process, and the end result would not be expected to differ greatly from well-established procedural rules based on fairness, respect, and the opportunity to be heard.

The DRB found that the arbitration rules established and developed by the ADR Institute of Canada (ADRIC) would serve as a good framework which the DRB could modify to suit the particular needs of disputants accessing the services the DRB offers.

Consultation Results

The DRB received consultation input from the self-governing First Nation governments and the three government signatories to the UFA, following the consultation process mandated by article 26.5.4.6 of Chapter 26. The principal themes voiced in the stakeholders' responses were to ensure the arbitration rules would be consistent with Chapter 26 and to have the DRB Arbitration Rules of Procedure within a single document.

Based on the feedback received, the DRB modified the ADRIC Rules to ensure consistency with the UFA/FAs, resulting in arbitral parties not having to refer to any document beyond the DRB's Arbitration Rules of Procedure in relation to DRB-facilitated arbitrations. These DRB Arbitration Rules of Procedure thus represent a single, self-contained document to guide and govern DRB-administered arbitrations. Also incorporated into the Rules is a flexible and open mechanism to include in arbitration proceedings the Indigenous traditions and values important to First Nation parties involved in arbitrations.

Simplified Arbitration Procedure

An important component of these Rules is the Simplified Arbitration Procedure set out in Rule 6.2. Some arbitrations, due to simplicity of issues or the need for expedience, may not require the full array of rules and procedures set out in the full body of these Rules. The Simplified Arbitration Procedure streamlines many processes of the full Rules, resulting in a speedier and less costly process. Parties to an arbitration may tailor their arbitration process further by agreement and in consultation with the arbitrator.

ACKNOWLEDGEMENT

The DRB wishes to acknowledge, with considerable thanks, the valuable contribution of the ADR Institute of Canada (ADRIC) in developing the core substance of the arbitration rules that follow. After conducting cross-Canada research for a set of arbitration rules that would be adaptable and workable in the Yukon context, the DRB settled on the arbitration rules developed by ADRIC. Having evolved over more than 15 years, the ADRIC Arbitration Rules (the "ADRIC Rules") have gained broad recognition and acceptance in the Canadian arbitration community.

The ADRIC Rules are generic in nature and were developed to apply to a wide range of dispute resolution circumstances, both commercial and non-commercial. The DRB found the ADRIC Rules to be particularly adaptable to the DRB's role as the facilitator of arbitrations under Chapter 26 of the Umbrella Final Agreement. As the ADRIC Rules offer an option whereby ADRIC may serve a facilitative/administrative role in arranging arbitrations, the DRB considered those rules to be readily adaptable to its own role as the facilitator of arbitrations occurring in the Yukon UFA context.

To be workable within the context of the DRB's mandate, the DRB has adapted the ADRIC Rules to ensure they are consistent with UFA Chapter 26, making them more appropriate for the government-to-government dispute resolution processes under the UFA and individual First Nations' Final Agreements. If the DRB did not have the opportunity to build on ADRIC's years of work in developing its arbitration rules, designing a body of rules from the ground up would have been a far more costly and time-consuming process. Accordingly, the DRB wishes to ensure that ADRIC receives the recognition it justly deserves in connection with this project.

Disclaimer: The DRB developed these Rules on the platform of the 2016 version of the ADRIC Arbitration Rules and takes full responsibility for any departures from the ADRIC Rules. Any subsequent amendments to the ADRIC Rules shall not affect the DRB Rules.

TABLE OF CONTENTS

TABLE OF CONTENTS

1. INTRODUCTION

1.1 PURPOSE OF THE RULES

1.1.1 The purpose of these Rules is to provide parties involved in disputes arising out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation with the means for an out-of-court arbitration process in a non-adversarial and informal atmosphere, including the objective of reaching a just, speedy, and cost-effective determination of the dispute, taking into account the values that distinguish arbitration from litigation.

1.1.2 These Rules are intended to give effect to the Board's obligation to create arbitration rules of procedure under article 26.5.4.6 of the Umbrella Final Agreement.

1.2 INTERPRETATION

1.2.1 In these Rules:

Arbitration Costs means the costs and expenses of the arbitration, including the Tribunal's fees and expenses.

Arbitrator means a person appointed under article 26.7.0 of an applicable Settlement Agreement and these Rules to serve as an arbitrator of a dispute, including a substitute Arbitrator appointed under Rule 3.5 and an Interim Arbitrator appointed under Rule 3.7.

Board means the Yukon Dispute Resolution Board.

Chair means the person elected or appointed to chair a Tribunal.

Chapter 26 means Chapter 26 of the Umbrella Final Agreement or of an applicable Settlement Agreement.

Commencement Date means the date on which either a Notice of Request to Arbitrate or a Notice of Submission to Arbitration is delivered to a respondent.

Confidential Information includes the existence of an arbitration and the meetings, communications, Documents, evidence, awards, rulings, orders, and decisions of the Tribunal in respect of the arbitration.

Counterclaim means the Counterclaim referred to in Rule 4.10.

Delivery means delivery as provided in Rule 4.4.

Document has an extended meaning and includes a photograph, film, sound recording, permanent or semi-permanent record, and information recorded or stored by any device, including electronic data.

Interim Arbitrator means an Arbitrator appointed under Rule 3.7.

Notice of Request to Arbitrate means the Notice of Request to Arbitrate delivered under Rule 2.1.

Notice of Submission to Arbitration means the Notice of Submission to Arbitration delivered under Rule 2.2.

Request to Produce means a written request referred to in Rule 4.13 by one party that another party produce Documents.

Rules means these Rules, as amended by the Board from time to time according to article 26.5.4.6 of the Umbrella Final Agreement and any applicable Settlement Agreement.

Settlement Agreement means a Yukon First Nation Final Agreement or a Transboundary Agreement, as defined in the Umbrella Final Agreement.

Statement of Claim means the Statement of Claim referred to in Rule 4.10.

Statement of Defence means the Statement of Defence referred to in Rule 4.10.

Statement of Defence to Counterclaim means the Statement of Defence to Counterclaim referred to in Rule 4.10.

Tribunal means either a sole Arbitrator or a panel of Arbitrators, as the case may be, appointed under the Rules to serve as arbitrator or arbitrators.

Umbrella Final Agreement means the agreement, dated May 29, 1993, between Canada, the Government of Yukon, and Yukon First Nations, as then represented by the Council for Yukon Indians.

Urgent Interim Measures means interim or conservatory measures sought under Rule 3.7.

1.2.2 In addition to the foregoing definitions, terms in these Rules designated by an uppercase letter shall have the same meaning as the definitions stated in Chapter 1 of the Umbrella Final Agreement or any applicable Settlement Agreement.

1.3 WHEN THE RULES APPLY

1.3.1 The Rules apply to all arbitrations carried out under the authority of Chapter 26 of any applicable Settlement Agreement and shall be interpreted in a manner consistent with that chapter, including any definitions stated in the Settlement Agreement.

1.3.2 The Board may amend the Rules from time to time in accordance with article 26.5.4.6 of the Umbrella Final Agreement.

1.3.3 If there is a conflict between the Rules, any applicable Settlement Agreement, Self-Government Agreement or any legislation applicable in respect of an arbitration, the Rules apply except to the extent they conflict with the Settlement Agreement, Self-Government Agreement or applicable legislation and cannot be varied or excluded by agreement.

1.3.4 The parties may agree in writing to waive, vary or exclude any of the Rules except:

(a) 1.3 (When the Rules apply);
(b) 2.3 (Commencement date);
(c) 2.4 (Irregularities and waiver of right to object);
(d) 3.3 (Arbitrator independence and impartiality);
(e) 4.7 (Conduct of the arbitration); and
(f) 6.1 (Immunity).

1.4 TIME

1.4.1 If the Rules require a party to act on or by a date that is a statutory holiday, the date is extended to the next day that is not a statutory holiday.

1.4.2 If the Rules require a party to act, but no time limit is set, the party must act:

(a) within the time the parties agree to; or
(b) if there is no agreed time, within the time the Tribunal sets.

1.4.3 When calculating time under the Rules, the first day is excluded and the last day is included.

1.4.4 The parties may agree to modify any period of time the Rules prescribe.

2. HOW TO COMMENCE AN ARBITRATION

2.1 ARBITRATION UNDER AGREEMENT

2.1.1 A party to a dispute described in article 26.3.5 of an applicable Settlement Agreement may submit that dispute to arbitration by:

(a) delivering a written Notice of Request to Arbitrate to each respondent at:

(i) the address specified by that respondent under the agreement; or

(ii) if no address was specified, the last known mailing address or place of business of that respondent; and

(b) delivering a copy of the Notice of Request to Arbitrate to the Board.

2.1.2 A Notice of Request to Arbitrate must contain:

(a) the name, place of business (if any), and mailing address, telephone number, fax number, and email address of each party to the dispute if known;

(b) an address, fax number (if any), and email address (if any) for delivery of Documents to the claimant;

(c) a brief description of the matters in dispute or a Statement of Claim;

(d) a request to arbitrate the dispute;

(e) where compensation is claimed, an estimate of the amount claimed or the value of the issue in dispute; and where the value cannot be estimated, the claimant must explain the reason;

(f) a statement of what remedy the claimant is seeking;

(g) a statement of whether the parties have agreed to the Tribunal being comprised of one or more Arbitrators;

(h) the name of any agreed Arbitrator;

(i) any agreed qualifications of the Arbitrator(s);

(j) a statement of any variations or exclusions of the Rules to which the parties have agreed in writing.

2.1.3 A Notice of Request to Arbitrate must append:

(a) a statement of the specific provision of a Settlement Agreement or Settlement Legislation under which the dispute is referred to arbitration;

(b) a copy of any agreement between the parties to refer a dispute to arbitration; and

(c) a copy of any contract related to the dispute.

2.2 ARBITRATION BY SUBMISSION

2.2.1 Parties to a dispute described in article 26.4.3 may agree to submit the dispute to arbitration by delivering a Notice of Submission to Arbitration to the Board.

2.2.2 Parties to the dispute must sign the Notice of Submission to Arbitration. The notice must contain the information listed in Rule 2.1.2 and append a copy of any agreement related to the dispute.

2.3 COMMENCEMENT DATE

2.3.1 An arbitration is commenced against a respondent on the date (the "Commencement Date") that either the Notice of Request to Arbitrate or the Notice of Submission to Arbitration is delivered to that respondent. Where there is more than one respondent to an arbitration, the commencement date shall be the date on which the Notice of Request to Arbitrate or a Notice of Submission to Arbitration is delivered to the last respondent to whom it must be delivered.

2.3.2 Despite Rule 2.3.1, where legislation or an agreement stipulates a date or time by which an arbitration must be commenced, the date on which either the Notice of Request to Arbitrate or the Notice of Submission to Arbitration is first delivered to the respondent shall be the Commencement Date, regardless of the number of respondents to the arbitration.

2.4 IRREGULARITIES AND WAIVER OF RIGHT TO OBJECT

2.4.1 A failure to comply with the Rules is an irregularity and does not nullify an arbitration or a step, Document, award, ruling, order, or decision in the arbitration.

2.4.2 Subject to Rule 3.4, a party knowing that a provision or requirement under the Rules was not followed, but does not object promptly, waives its right to object, unless the Tribunal orders otherwise.

3. ARBITRAL TRIBUNAL

3.1 APPOINTMENT OF ARBITRATOR(S) BY PARTIES

3.1.1 A dispute shall be determined by a Tribunal comprised of a single Arbitrator, unless the parties agree otherwise within 15 days after the Commencement Date.

3.1.2 The parties to a dispute referred to arbitration shall attempt to choose an Arbitrator within 15 days of the Commencement Date. If the parties do not agree on an arbitrator within that time, the Board, on application of a party to the dispute, shall appoint an Arbitrator from the Dispute Resolution Panel described in article 26.5.3 and in accordance with article 26.7.2 of Chapter 26.

3.1.3 When appointing an Arbitrator, a substitute Arbitrator under Rule 3.5, or an interim Arbitrator under Rule 3.7, the Board shall, where practicable, give consideration to arbitrators having an understanding of Yukon indigenous traditions, values and history, and an understanding of, and experience with, the Umbrella Final Agreement, an applicable Final Agreement, applicable Settlement Legislation, or a Self-Government Agreement, as may be relevant to the issues in the arbitration.

3.1.4 If the parties have agreed to appoint a Tribunal made up of three Arbitrators:

(a) if there are only two parties to the dispute:

(i) each party appoints one Arbitrator; and

(ii) the first two Arbitrators jointly appoint the third Arbitrator, who acts as Chair;

(b) if there are more than two parties to the dispute:

(i) the parties may agree on the first and second Arbitrators; and

(ii) the first and second Arbitrators jointly appoint the third Arbitrator, who acts as Chair;

(c) a party may ask the Board to appoint one or more Arbitrators:

(i) if the parties have not appointed an Arbitrator or Arbitrators under Rule 3.1.4 within the time the parties agree to or, if there is no agreed time, within 15 days after delivery of the Notice of Request to Arbitrate or a Notice of Submission to Arbitration to the last respondent to whom it must be delivered; or

(ii) if the parties or the Arbitrators cannot agree on a third Arbitrator within the time the parties agree to or, if there is no agreed time, within 15 days after the appointment of the second Arbitrator.

3.2 APPOINTMENT OF ARBITRATOR(S) BY THE BOARD

3.2.1 If the Board is asked to appoint an Arbitrator under article 26.7.2, the following procedure applies:

(a) the Board must deliver identical lists of names to the parties;

(b) the list must contain at least three names, unless the parties agree otherwise, or the Board determines otherwise;

(c) within 10 days following delivery of the list, each party must deliver it back to the Board after:

(i) deleting any name(s) to which the party objects; and

(ii) numbering the remaining names on the list in descending order of preference, where 1 is the party's first choice;

(d) if a party does not tell the Board that it objects to any of the listed names within 10 days, the party is deemed not to object to those names;

(e) after all lists are delivered back or else after 10 days, the Board must appoint an Arbitrator from among the names that remain on all lists delivered back to it; and

(f) the Board may deliver to the parties one more list of names, and the procedure described in subparagraphs (a) to (e) of this section applies to that new list.

3.2.2 In appointing an Arbitrator, the Board must consider:
(a) the parties' orders of preference;
(b) the parties' requested qualifications;
(c) the nature and circumstances of the dispute;
(d) the criteria mentioned in 3.1.3; and
(e) anything else the Board considers relevant to appointing a qualified, independent, and impartial Arbitrator.

3.2.3 If no names remain on all lists delivered back to the Board after two lists of names have been delivered, the Board must appoint an Arbitrator to whom none of the parties has objected.

3.3 ARBITRATOR INDEPENDENCE AND IMPARTIALITY

3.3.1 Unless the parties agree otherwise, an Arbitrator must be and remain wholly independent.

3.3.2 An Arbitrator must be and remain wholly impartial and must not act as an advocate for any party to the arbitration.

3.3.3 Before accepting an appointment as Arbitrator, each proposed Arbitrator must sign and deliver to the parties a statement declaring that he or she:
(a) knows of no circumstances likely to give rise to justifiable doubts as to their independence or impartiality; and;
(b) will disclose to the parties any such circumstance that arises after accepting the appointment and before the arbitration concludes under Rule 5.5.1.

3.4 NO WAIVER OF RIGHT TO OBJECT

3.4.1 A party's involvement in appointing an Arbitrator does not prevent it from raising a jurisdictional issue.

3.5 SUBSTITUTING AN ARBITRATOR

3.5.1 The Board may declare an Arbitrator's office vacant if it has satisfactory evidence that an Arbitrator:
(a) refuses to act;
(b) is incapable of acting;
(c) withdraws;
(d) is removed by court order;
(e) is successfully challenged under Rule 3.6; or
(f) has died.

3.5.2 A substitute Arbitrator must be appointed if an Arbitrator's office is declared vacant under Rule 3.5.1. The substitute must be appointed under the same Rules or parties' agreement that applied to the appointment of the Arbitrator being replaced.

3.5.3 Unless the parties agree otherwise:
(a) if a single Arbitrator or the Chair of the Tribunal is substituted, hearings previously held must be repeated; and
(b) if any other Arbitrator is substituted, hearings previously held may be repeated at the discretion of the Arbitrators after giving the parties an opportunity to be heard.

3.6 CHALLENGING AN ARBITRATOR

3.6.1 A party may challenge an Arbitrator if:
(a) circumstances give rise to justifiable doubts about the Arbitrator's independence or impartiality; or
(b) the Arbitrator does not have the agreed qualifications.

3.6.2 A party may not challenge an Arbitrator more than seven days after becoming aware of the appointment or of any grounds referred to in Rule 3.6.1. To challenge an Arbitrator, a party must deliver a written statement of the challenge and the reasons for the challenge to the Tribunal, if it has been fully constituted, and to the Board.

3.6.3 If a challenged Arbitrator does not withdraw and all other parties do not agree to the challenge:
(a) in the case of a single Arbitrator, the Arbitrator decides the challenge;
(b) in the case of a Tribunal made up of more than one Arbitrator and the Chair is not challenged, the

Chair decides the challenge (or, if no Chair has been elected or appointed, an Interim Arbitrator appointed under Rule 3.7 decides the challenge); and

(c) in the case of a Tribunal made up of more than one Arbitrator and the Chair is challenged, all of the Arbitrators (including the Chair) decide the challenge (or, if the Tribunal is not fully constituted, an Interim Arbitrator appointed under Rule 3.7 decides the challenge).

3.6.4 The office of a challenged Arbitrator becomes vacant if:

(a) the Arbitrator withdraws;

(b) all other parties agree to the challenge; or

(c) the challenge is decided and upheld.

3.7 INTERIM ARBITRATOR

3.7.1 A party may apply to the Board for Urgent Interim Measures:

(a) before the Tribunal's appointment; or

(b) if there is a challenge to an Arbitrator

even if the party already delivered its Notice of Request to Arbitrate or the Notice of Submission to Arbitration.

3.7.2 An Urgent Interim Measures application must contain:

(a) the full name, address or site description, and other contact details of each party;

(b) the full name, address, and other contact details of anyone representing the applicant;

(c) a description of:

(i) the circumstances that led to the Urgent Interim Measures application; and

(ii) the underlying dispute;

(d) a statement of the Urgent Interim Measures the party seeks;

(e) a statement of the reasons the applicant needs Urgent Interim Measures that cannot wait for the constitution of the Tribunal;

(f) a copy of any relevant agreement(s) and, in particular, the arbitration agreement;

(g) any agreement about the location(s) of the arbitration hearings and meetings, or the rules of law that apply; and

(h) copies of any Notice of Request to Arbitrate, Notice of Submission to Arbitration, and any other submissions related to the dispute that have been delivered to the Board by any of the parties before the Urgent Interim Measures application.

3.7.3 An Urgent Interim Measures application may be made without notice, in which case the application must also:

(a) set out why the applicant has applied without notice; and

(b) contain a full and frank disclosure of all relevant facts.

3.7.4 The Board must appoint an Interim Arbitrator to hear the Urgent Interim Measures application as soon as possible, normally within two days of receiving the application.

3.7.5 An Interim Arbitrator may be appointed even if the Tribunal's jurisdiction is disputed.

3.7.6 A challenge to the Interim Arbitrator's appointment must be made within 24 hours of:

(a) the Board communicating the identity of the Interim Arbitrator; or

(b) delivery of the Interim Arbitrator's statement under Rule 3.3.3, whichever is later.

3.7.7 After the Board appoints the Interim Arbitrator:

(a) the Board must notify the parties and deliver the Urgent Interim Measures application to the Interim Arbitrator;

(b) the parties must deliver all written communications directly to the Interim Arbitrator, with a copy to all other parties and the Board; and

(c) the Interim Arbitrator must deliver a copy to the Board of any written communication they deliver to the parties.

3.7.8 The Interim Arbitrator must establish a procedure for the Urgent Interim Measures application as soon as possible, normally within two days after receiving the application.

3.7.9 The Interim Arbitrator must conduct the proceedings in a manner that they consider appropriate, taking into account Rule 1.1 and the nature and urgency of the application.

3.7.10 The Interim Arbitrator has full discretion to grant the interim relief they consider appropriate and may consider (without limitation):
(a) the need for the Urgent Interim Measures;
(b) the urgency of the matter; and
(c) the parties' situations if the Urgent Interim Measures are or are not granted.

3.7.11 The Interim Arbitrator may grant interim relief until a decision on the Urgent Interim Measures application is made.

3.7.12 The Interim Arbitrator's decision on an Urgent Interim Measures application must:
(a) be in the form of an order;
(b) be in writing;
(c) state the reasons on which it is based;
(d) be dated and signed by the Interim Arbitrator; and
(e) be made within 15 days from the date the file was received by the Interim Arbitrator, unless the parties agree otherwise or the Interim Arbitrator orders otherwise.

3.7.13 The Board must end the Interim Arbitrator proceedings if the Board does not receive a Notice of Request to Arbitrate or a Notice of Submission to Arbitration from the applicant within 10 days of the Board receiving the Urgent Interim Measures application, unless the Interim Arbitrator determines that more time is necessary.

3.7.14 The parties must comply with any order the Interim Arbitrator makes.

3.7.15 If the Urgent Interim Measures application was made without notice, the Interim Arbitrator may:
(a) grant relief on a without notice basis, in which case:
(i) the Interim Arbitrator must give all other parties an opportunity to be heard as soon as practicable; and
(ii) the order made without notice remains valid only until the Interim Arbitrator renders a decision on notice to all parties; or
(b) without giving reasons, may refuse to grant relief on a without notice basis.

3.7.16 An Interim Arbitrator's order does not bind the Tribunal with respect to the question, issue, or dispute determined in the order.

3.7.17 The Interim Arbitrator or the Tribunal may modify, terminate, or annul an order, or any modification of it, made by the Interim Arbitrator.

3.7.18 The Tribunal must decide on any party's requests or claims related to the Urgent Interim Measures application, including reallocating the costs of an application and claims related to compliance or non-compliance with an order.

3.7.19 This Rule applies only to parties who are signatories to the arbitration agreement and their successors.

3.7.20 This Rule does not apply if the parties to the arbitration agreement have agreed to another procedure that provides for conservatory, interim or similar measures.

3.7.21 Nothing in this Rule prevents a party from seeking interim measures from a court before or after applying for Urgent Interim Measures. A party applying to court for interim measures must notify the Board without delay of the application and of any court order arising from it.

4. PROCEEDINGS BEFORE ARBITRAL TRIBUNAL

4.1 LOCATION OF ARBITRAL HEARINGS AND MEETINGS

4.1.1 Unless the parties agree otherwise in writing, the arbitration hearings and meetings may be held at any location(s) the Tribunal considers convenient or necessary.

4.1.2 Part or all of the arbitration hearings may be conducted by telephone, email, the Internet, videoconferencing, or other communication methods, if the parties agree or the Tribunal directs.

4.2 LANGUAGE OF ARBITRATION

4.2.1 The language of the arbitration shall be English, unless the parties and the Tribunal agree otherwise.

4.3 ADDING PARTIES TO AN ARBITRATION

4.3.1 A party may be added to an arbitration, even if the Tribunal has been appointed, if the existing parties and the new party all consent.

4.3.2 A party added under Rule 4.3.1 is bound by the arbitration agreement or submission and all of the Tribunal's awards, rulings, orders, and decisions.

4.4 DELIVERY OF DOCUMENTS

4.4.1 Documents required by the Rules and communications relating to the arbitration may be delivered:

(a) to a party by:

(i) personal delivery;

(ii) a method of delivery that provides proof of delivery; or

(iii) any email address or fax number given in that party's address for delivery; and

(b) to The Board by:

(i) a method of delivery that provides proof of delivery to the address of the Board's office; or

(ii) by e-mail to: **drb.ufa@northwestel.net**

4.4.2 Delivery of Documents occurs as follows:

DELIVERY METHOD	TIME OF DELIVERY
Personal delivery	When the party receives the Documents.
Method of delivery that provides proof of delivery	When the Documents arrive at the party's address for delivery.
Email	• When the email with the Document enters an information system outside the sender's control; or • If the sender and intended recipient use the same information system, when it is possible for the intended recipient to retrieve and process the email with the Documents, • unless the intended recipient proves the Documents were not delivered.
Fax	When the Documents are faxed, unless the intended recipient proves the Documents were not delivered.

4.4.3 Received documents that cannot be opened or read are deemed not to have been delivered. Recipients are deemed to be able to open and read received Documents unless the recipient notifies the sender otherwise within three days of receipt, unless the Tribunal orders otherwise.

4.5 COMMUNICATIONS WITH THE TRIBUNAL

4.5.1 Except as Rule 3.6 allows, no party and no representative of a party may communicate with the Tribunal in the absence of any other party concerning the substance of the dispute or any contentious matter relating to the proceeding.

4.5.2 A copy of any communication between the Tribunal and the parties or their representatives must be delivered to the Board.

4.6 PRELIMINARY MEETING

4.6.1 Within 14 days of its appointment, the Tribunal must schedule a preliminary meeting with the parties as soon as practicable.

4.6.2 At the preliminary meeting the parties may:

(a) identify the issues in dispute;

(b) set the procedure for the arbitration; and
(c) set time periods for taking steps to deal with matters that assist the parties either to:
(i) settle their differences; or
(ii) enable the arbitration to proceed efficiently and quickly.

4.6.3 The Tribunal must record any agreements or orders made at the preliminary meeting and must, within 7 days of that meeting, deliver a written record of these agreements or orders to each of the parties and the Board.

4.7 CONDUCT OF THE ARBITRATION

4.7.1 Subject to the Rules, the Tribunal may conduct the arbitration in the manner it considers appropriate.

4.7.2 Before starting an arbitration, the Tribunal shall consult with all parties about how parties may wish to incorporate or express particular indigenous traditions and values in the arbitration. Following such consultation, the Tribunal may determine the extent to which the Rules may be altered, waived, added to, or modified to accommodate indigenous traditions and values. The Tribunal's determination shall be informed by the principles of respect, reconciliation and the values inherent in the arbitration process.

4.7.3 In addition to any specific indigenous traditions and values adopted following consultation with a First Nation party to an arbitration, arbitrations generally shall be conducted according to the following traditions and values common among Yukon First Nations:
(a) Respect;
(b) Honour;
(c) Honesty and integrity;
(d) Accountability, transparency and fairness; and
(e) Community harmony and balance.

4.7.4 The Tribunal must treat each party fairly and give each party a fair opportunity to present its case.

4.7.5 The Tribunal must strive to achieve a just, speedy, and cost-effective determination of every proceeding on its merits, taking into account Rule 1.1.

4.7.6 Arbitration proceedings must not be transcribed by a court reporter or recorded in any manner by a party unless the party complies with Rule 4.7.7.

4.7.7 A party may arrange for arbitration proceedings to be transcribed by a court reporter or recorded if the party:
(a) pays for the cost of transcription or recording; and
(b) notifies all other parties and the Tribunal at least five days before commencement of the hearing or meeting.

4.7.8 If a party arranges for a transcription or recording under this Rule, every other party and the Tribunal is entitled to obtain a copy of the transcript or recording upon payment of the costs of the copy.

4.8 JURISDICTION

4.8.1 The Tribunal may rule on its own jurisdiction, including ruling on any objections about the existence or validity of the arbitration agreement, and for that purpose: an arbitration clause that forms part of a contract must be treated as an agreement independent of the other terms of the contract; and
(a) a Tribunal's decision that the contract containing the arbitration clause is null and void does not invalidate the arbitration clause unless the Tribunal specifically finds that it does.

4.9 GENERAL POWERS OF THE TRIBUNAL

4.9.1 Unless the parties agree otherwise, the Tribunal must adopt procedures it considers will best fulfil Rule 1.1. Such procedures may involve altering, waiving, adding to, or modifying the Rules as the Tribunal considers appropriate; and, without limiting the generality of the foregoing, the Tribunal may:
(a) order an adjournment of the proceedings from time to time;
(b) order disclosure and inspection of Documents, exhibits, or other property;
(c) order the recording or transcription (or both) of all or part of oral hearings;
(d) extend or abridge:
(i) a period of time that the Tribunal already fixed or determined; or

(ii) any period of time set out in the Rules, other than the 60-day period of time set out in Rule 5.1.3 for the Tribunal to make all final awards;

(e) empower a Tribunal member to hear motions and make procedural orders, including settling matters at the preliminary hearing, that do not deal with the substance of the dispute;

(f) request further statements clarifying issues in dispute;

(g) give direction on procedural matters; and

(h) request court assistance in taking evidence.

4.9.2 Pursuant to article 26.7.3 of Chapter 26, where a dispute is referred to arbitration, the Tribunal shall have the authority to resolve the dispute, including the authority:

(a) to determine all questions of procedure, including the method of giving evidence;

(b) to subpoena witnesses and documents;

(c) to administer oaths and solemn affirmations to the parties and witnesses;

(d) to order a party to cease and desist from activity contrary to the provisions of a Settlement Agreement;

(e) to order a party to comply with the terms and conditions of a Settlement Agreement;

(f) to make an order determining the monetary value of a loss or injury suffered by a party resulting from a contravention of a Settlement Agreement and directing a party to pay all or part of the amount of that monetary value;

(g) to declare the rights and obligations of the parties to a dispute;

(h) to make an order providing interim relief; and

(i) to refer any question of law to the Supreme Court of Yukon.

4.10 EXCHANGING STATEMENTS

4.10.1 Unless the Tribunal orders otherwise, within 14 days after delivery of the Commencement Date, the claimant must deliver:

(a) a Statement of Claim to that respondent, the Tribunal, and the Board; and

(b) a list and electronic copies of all Documents referred to in the Statement of Claim to that respondent and the Board.

4.10.2 If a Tribunal is not appointed within the 14 days set out in Rule 4.10.1, the claimant must deliver a copy of the Statement of Claim to the Tribunal as soon as it is appointed.

4.10.3 A Statement of Claim must set out:

(a) the material facts supporting the claim, but not including the evidence intended to support such facts;

(b) the grounds, including applicable law, that support the claim;

(c) the points in issue; and

(d) the relief or remedy the claimant is seeking.

4.10.4 Within 14 days after a respondent receives the Statement of Claim, that respondent must:

(a) deliver a Statement of Defence and any Counterclaim to the claimant, the Tribunal, and the Board; and

(b) deliver a list and electronic copies of all Documents referred to in the Statement of Defence and any Counterclaim to that claimant.

4.10.5 A Statement of Defence and any Counterclaim must set out:

(a) the material facts supporting the defence or counterclaim, but not the evidence intended to support such facts;

(b) the grounds, including applicable law, that support the defence or counterclaim;

(c) the points in issue;

(d) the relief or remedy the respondent is seeking; and

(e) the respondent's address, fax number (if any), and email address (if any) for delivery of Documents.

4.10.6 The claimant must deliver to the Tribunal and the Board its Statement of Defence to Counterclaim within 14 days after receiving the Counterclaim.

4.10.7 A Statement of Defence to Counterclaim must set out:

(a) the material facts supporting the defence, but not the evidence intended to support such facts;
(b) the grounds, including applicable law, that support the defence;
(c) the points in issue; and
(d) the relief or remedy the claimant is seeking.

4.10.8 If a respondent fails to deliver a Statement of Defence, or a claimant fails to deliver a Statement of Defence to Counterclaim, that party is deemed to deny the allegations in the Statement of Claim or Counterclaim.

4.11 CHANGING ADDRESS FOR DELIVERY

4.11.1 A party may change its address for delivery of Documents by delivering a notice to all other parties and the Board. The notice must provide the party's new address, fax number (if any), and email address (if any) for delivery of Documents.

4.12 AMENDING STATEMENTS

4.12.1 The Tribunal may allow a party to amend or supplement its Statement of Claim, Statement of Defence, Counterclaim, or Statement of Defence to Counterclaim during the arbitration, unless the Tribunal finds:

(a) the delay caused by amending or supplementing the claim is prejudicial to a party; or
(b) the amendment or supplement goes beyond the terms of the Notice of Request to Arbitrate or the Notice of Submission to Arbitration.

4.13 PRODUCING DOCUMENTS

4.13.1 Unless the Tribunal orders otherwise, within 14 days after delivery of the Statement of Defence or the Statement of Defence to Counterclaim (whichever is later), a party must deliver to the other parties a list of all Documents available to it on which it relies, including publicly available Documents.

4.13.2 On request, a party must deliver electronic copies of any Documents it lists under Rule 4.13.1.

4.13.3 A party may deliver to any other party a Request to Produce.

4.13.4 A Request to Produce must:

(a) contain a description:
  (i) identifying each requested Document; or
  (ii) giving sufficient detail (including subject matter) of a narrow and specific requested category of Documents that a party reasonably believes to exist. In the case of electronic Documents, the requesting party must identify specific files, search terms, individuals, or other means of searching for the Documents efficiently and economically;
(b) explain how the Documents are relevant to the case and material to its outcome;
(c) state that the Documents are not in the possession, custody, or control of the requesting party or state why it would be unreasonably burdensome for the requesting party to produce the Documents; and
(d) state why the requesting party assumes the Documents are in the possession, custody, or control of another party.

4.13.5 The party to whom a Request to Produce is delivered must produce all the requested Documents in its possession, custody, or control that it does not object to producing. The party must deliver the Documents to the other parties and, if the Tribunal orders, to the Tribunal.

4.13.6 If the party to whom the Request to Produce is delivered objects to producing some or all of the requested Documents, it must state its objection in writing to the Tribunal and the other parties. The following justifies non-production:

(a) lack of sufficient relevance to the case or materiality to its outcome;
(b) legal impediment or privilege under the legal or ethical rules the Tribunal determines apply;
(c) unreasonable burden to produce the requested Documents;
(d) loss or destruction of Document(s);
(e) commercial or technical confidentiality;
(f) special political or institutional sensitivity (including Documents that have been classified as secret by a government or a public international institution);
(g) considerations of procedural economy, proportionality, fairness, or equality of the parties; or
(h) not satisfying a requirement of Rule 4.13.4.

4.13.7 A party may ask the Tribunal to rule on an objection. The Tribunal must, in consultation with the parties, consider the Request to Produce and the objection. The Tribunal may order the party to whom the Request to Produce was delivered to produce Documents in its possession, custody, or control if the Tribunal determines:

(a) the issues the requesting party wants to prove are relevant to the case and material to its outcome;
(b) none of the reasons for objection under Rule 4.13.6 applies; and
(c) the Request to Produce satisfies the requirements of Rule 4.13.4.

Documents the Tribunal orders to be produced must be delivered to the other parties and to the Tribunal, if the Tribunal so orders.

4.13.8 If an objection can be determined only by reviewing a Document, in exceptional circumstances the Tribunal may decide that it should not review the Document. In that event, the Tribunal may, after consulting with the parties, appoint an independent and impartial expert, bound to confidentiality, to review the Document and report to the Tribunal on the objection. If the Tribunal upholds the objection, the expert must not disclose to the Tribunal and to the other parties the contents of the reviewed Document.

4.13.9 If a party wants to obtain Documents from a person or organization that is not a party to the arbitration and from whom the party cannot obtain the Documents on its own, the party may:

(a) ask the Tribunal to take whatever steps are legally available to obtain the requested Documents; or
(b) seek leave from the Tribunal to take the steps itself.

The party must deliver its request to the Tribunal and to the other parties in writing and must satisfy the applicable requirements of Rule 4.13.4.

The Tribunal must decide on the request and take, authorize the requesting party to take, or order another party to take steps the Tribunal considers appropriate if it determines that:

(a) the Documents are relevant to the case and material to its outcome;
(b) the applicable requirements of Rule 4.13.4 have been satisfied; and
(c) none of the reasons for objection set out in Rule 4.13.6 applies.

4.13.10 At any time before the arbitration concludes under Rule 5.5.1, the Tribunal may:

(a) require any party to produce Documents;
(b) request that any party use all reasonable efforts to take steps the Tribunal considers appropriate to obtain Documents from a person or organization; or
(c) on notice to the parties take steps itself that it considers appropriate to obtain Documents from a person or organization.

A party that is required to produce Documents under this rule may object for any of the reasons set out in Rule 4.13.6, and the applicable parts of Rules 4.13.5 to 4.13.8 apply.

4.13.11 The parties must deliver to all other parties additional Documents they intend to rely on or that they believe have become relevant to the case and material to its outcome.

4.13.12 When the parties produce Documents or introduce them into evidence, the following applies:

(a) copies of Documents must match the originals and, if the Tribunal requests, a party must present originals for inspection;
(b) electronic Documents must be produced or introduced in their most convenient or economical form; and
(c) a party need not deliver multiple copies of Documents that are essentially identical unless the Tribunal orders otherwise.

4.13.13 If the arbitration is organized into separate issues or phases, the Tribunal may, after consultation with the parties, require a separate Document production process for each issue or phase.

4.14 PRE-HEARING EXAMINATIONS AND WRITTEN QUESTIONS

4.14.1 A party has no right to pre-hearing oral examination unless:

(a) the party applies to the Tribunal for an order otherwise;
(b) the Tribunal considers the examination necessary for the party to have a fair opportunity to present its case; and
(c) the Tribunal orders a party or a representative of a party to be examined orally on issues the Tribunal orders, taking into account Rule 1.1.

4.14.2 The Tribunal may order a party or a representative of a party to respond to written questions on issues the Tribunal orders, taking into account Rule 1.1, by a written statement or declaration affirmed or sworn for its truth.

4.14.3 The Tribunal must, at the time of making an order under this rule, determine the use that may be made of the evidence taken on the examination or in response.

4.15 AGREED STATEMENT OF FACTS

4.15.1 Unless the Tribunal orders otherwise, the parties must identify facts they do not dispute and deliver an agreed statement of facts to the Tribunal.

4.16 REPRESENTATION

4.16.1 If a party intends to be represented at any hearing or meeting, that party must immediately notify, in writing, every other party and the Board. The party must give the representative's name, address, telephone number, fax number, and email address and indicate the representative's role.

4.16.2 If a party has given notice under Rule 4.16.1 and intends to change representation at any scheduled hearing or meeting, that party must immediately issue a further notice in accordance with Rule 4.16.1.

4.17 INTERIM HEARINGS

4.17.1 The Tribunal must set the dates for interim hearings or meetings, oral or otherwise. It must give at least four days' written notice of the dates to the parties and the Board, except in urgent cases.

4.18 PRIVACY AND CONFIDENTIALITY

4.18.1 Unless the parties agree otherwise, the arbitration proceedings must take place in private.

4.18.2 Unless the parties agree otherwise, the parties, any other person who attends any portion of the arbitral hearings or meetings, the Tribunal, and the Board must keep confidential all Confidential Information except where disclosure is:

(a) required by a court;
(b) necessary in connection with a judicial challenge to, or enforcement of, an award; or
(c) otherwise required by law.

4.18.3 The Tribunal must decide issues related to privacy or confidentiality (or both) under this rule.

4.18.4 Nothing in this rule precludes disclosure of Confidential Information to a party's insurer, auditor, lawyer, other advisor, or other person with a direct financial interest in the arbitration. Any such person to whom Confidential Information is disclosed must keep it confidential and use it solely for the arbitration and must not use or allow it to be used for any other purpose unless the parties agree otherwise, or the law requires otherwise.

4.19 EVIDENCE

4.19.1 The parties:

(a) may offer any evidence that is relevant and material to the outcome of the case; and
(b) must also produce any additional evidence that the Tribunal considers necessary to understand and determine the dispute.

4.19.2 The Tribunal may be guided by the rules of evidence that apply in a court proceeding, but is not required to conform with them.

4.19.3 Subject to Rule 3.7, all evidence must be given in the presence of the Tribunal and all of the parties, except if a party:

(a) is voluntarily absent;
(b) is in default; or
(c) has waived the right to be present.

4.19.4 The Tribunal must determine the admissibility, relevance, materiality, and weight of the evidence.

4.20 WITNESSES

4.20.1 Unless the Tribunal orders otherwise, the evidence in chief of a witness must be presented by a written statement or declaration affirmed or sworn for its truth.

4.20.2 Unless the Tribunal orders otherwise, a witness' evidence in chief consists of that witness' written statement and any oral evidence that the Tribunal may permit.

4.20.3 If evidence in chief is not delivered orally, the Tribunal may order that the witness be present at an oral hearing for cross-examination.

4.20.4 The Tribunal may exclude a witness from an oral hearing during the testimony of other witnesses, unless the witness is a party, or a person nominated as a party's representative in the arbitration.

4.21 TRIBUNAL EXPERTS

4.21.1 The Tribunal may:

(a) appoint one or more independent experts to report on specific issues that the Tribunal determines; and

(b) require a party to:

(i) give the expert relevant information; or

(ii) produce, or provide access to, relevant Documents or other property for the expert to inspect.

4.21.2 The Tribunal must communicate the expert's terms of reference to the parties. The parties must refer any dispute on the terms of reference, the relevance of the information, or production of it to the Tribunal to decide. The parties must be responsible for the cost of the expert on a basis the Tribunal determines.

4.21.3 Upon delivery of the expert's report in writing, the Tribunal must:

(a) deliver a copy of it to the parties; and

(b) give the parties an opportunity to challenge all or part of it in a manner the Tribunal determines.

4.21.4 At a party's request, the expert must:

(a) permit that party to examine the Documents or other property in the expert's possession that the expert used to prepare the report;

(b) provide that party with:

(i) a list of all Documents or other property not in the expert's possession, but that were used to prepare the report; and

(ii) the location of those Documents or other property.

4.21.5 After a report is delivered under this rule, the expert must attend a cross-examination on some or all of the contents of that report, unless the parties agree otherwise.

4.22 FORMAL SETTLEMENT OFFERS

4.22.1 A party may deliver to another party a written offer to settle one or more of the issues between it and that party, on the terms specified in the offer. A settlement offer that specifies a time within which the other party may accept it expires unless accepted within that time.

4.22.2 Parties must not inform the Tribunal of a settlement offer marked "without prejudice" until after all issues in the arbitration, other than costs, have been determined.

4.22.3 A settlement offer marked "with prejudice" may be put in evidence at any time.

4.23 DEPOSITS TOWARDS ARBITRATION COSTS

4.23.1 From time to time, the Tribunal may require the parties to deposit an advance for the anticipated Arbitration Costs in a form acceptable to the Tribunal.

4.23.2 Unless the Tribunal orders otherwise, the parties must pay any deposit required under Rule 4.23.1 in equal amounts.

4.23.3 If a deposit required under Rule 4.23.1 is not paid within 30 days, the Tribunal may suspend the arbitration until the full amount of the deposit is paid.

4.23.4 If a party does not participate in an arbitration, the Tribunal may continue without that party present and make an award based on the evidence before it, if the Tribunal is satisfied by evidence that appropriate notice of the arbitration proceedings was given to the non-participating party in accordance with the arbitration agreement.

4.24 DEFAULT OF A PARTY

4.24.1 If a party does not within 15 days pay a deposit required under Rule 4.23.1:

(a) the party is considered a defaulting party; and

(b) the Tribunal must inform the parties of the default. The non-defaulting party or parties may pay the unpaid deposit or fee, in which case the arbitration must continue and must not be deemed to have been abandoned or withdrawn.

4.24.2 If a deposit required under Rule 4.23.1 is not paid within 30 days, the Tribunal may suspend the arbitration until the full amount of the deposit is paid.

4.24.3 If a party does not participate in an arbitration, the Tribunal may continue without that party present and make an award based on the evidence before it, if the Tribunal is satisfied by evidence that appropriate notice of the arbitration proceedings was given to the non-participating party in accordance with the arbitration agreement.

4.25 PAYING OUT DEPOSITS

4.25.1 From time to time, the Tribunal may pay the Tribunal from deposits it holds any amount it considers reasonable and appropriate for fees invoiced or expenses incurred by the Tribunal.

4.25.2 When the arbitration concludes under Rule 5.5.1, the Tribunal must:

(a) apply deposits it holds to the costs of the arbitration, including unpaid Tribunal fees, expenses and administrative fees;

(b) account to the parties for the deposits received and applied; and

(c) return any balance to the parties in proportion to their contributions, or as the Tribunal may direct in a final award.

4.26 CLOSURE OF HEARINGS

4.26.1 The Tribunal may close the hearings if:

(a) the parties indicate they have no further evidence to give or submissions to make; or

(b) the Tribunal considers further hearings unnecessary or inappropriate.

4.26.2 In exceptional circumstances, the Tribunal (with or without an application by a party) may re-open hearings to receive evidence or submissions about a matter at any time before issuing a final award on that matter.

4.27 SETTLEMENT

4.27.1 The Tribunal may encourage settlement of the dispute and, with the written agreement of the parties, may order that the parties use mediation, conciliation, or other procedures at any time during the arbitration proceedings to encourage settlement.

5. TRIBUNAL AWARDS, RULINGS, ORDERS, AND DECISIONS

5.1 AWARDS, RULINGS, ORDERS, AND DECISIONS

5.1.1 The Tribunal may make one or more:

(a) rulings, orders, and decisions on matters of procedure;

(b) interim awards on matters of substance or procedure; and

(c) final awards on matters of substance.

5.1.2 The Tribunal may, in an award, ruling, order, or decision do any or all of the following:

(a) make provision for interim measures of protection, including payment of security for costs, posting of security for the amount claimed, or preservation of property that is the subject matter of the dispute;

(b) grant equitable relief, injunctions, or specific performance;

(c) grant any other relief the Rules allow.

5.1.3 The Tribunal must make all final awards within 60 days after:

(a) payment of all deposits required under Rule 4.23; or

(b) the hearings have been closed,

whichever is later, or in another time period the parties agree to in writing or a court directs.

5.1.4 Awards, rulings, orders, and decisions must be in writing. Unless the parties agree otherwise, awards must also state the reasons on which they are based.

5.1.5 Despite Rule 5.1.3, the Tribunal need not deliver copies of any award, ruling, order, or decision to the parties until all required fees and expenses are paid. On payment of all required fees and expenses, the Tribunal must deliver copies of the award, ruling, order, or decision to the parties. The Tribunal must deliver to the parties one originally signed copy of any award, ruling, order, or decision for each party.

5.1.6 If the Tribunal is made up of more than two Arbitrators, any award, ruling, order, or decision must be made by a majority of the Tribunal. If there is no majority decision, the decision of the Chair will be the award, ruling, order, or decision.

5.1.7 A decision or order of the Tribunal shall be final and binding on the parties to the arbitration. There is no appeal from an award, ruling, order, or decision of the Tribunal, except as provided in article 26.8.0 of Chapter 26.

5.2 INTEREST

5.2.1 Where permitted by law, the Tribunal may order the parties to pay simple or compound interest for the time period and at the rate it considers just.

5.3 COSTS

5.3.1 The costs of the arbitration shall be borne equally among the parties to the dispute unless otherwise assigned by the Tribunal.

5.3.2 When exercising its discretion under Rule 5.3.1, the Tribunal may take into account the parties' respective degrees of compliance with Rule 1.1 and may give an enhanced level of costs recovery in view of:

(a) any formal without prejudice settlement offers under Rule 4.22.2; and

(b) any with prejudice settlement offers made under Rule 4.22.3.

5.3.3 The Tribunal may apportion costs between the parties and make separate awards for Arbitration Costs, the parties' reasonable legal fees and expenses, and the Board's fees, if any.

5.3.4 The Tribunal may, at any time, make an interim award for part of the Arbitration Costs, or part of the parties' reasonable legal fees and expenses (including, where appropriate, full indemnity fees) (or both) payable on the terms the Tribunal directs.

5.4 AMENDING AND CORRECTING AWARDS, RULINGS, ORDERS, AND DECISIONS

5.4.1 A Tribunal may, on application or its own initiative, amend or vary an award, ruling, order, or decision to correct:

(a) a clerical or typographical error;

(b) an error, slip, omission or other similar mistake; or

(c) an arithmetical error.

5.4.2 A party may apply to amend or vary an award, ruling, order, or decision only within 14 days after delivery of the award, ruling, order, or decision.

5.4.3 The Tribunal must not amend or vary an award, ruling, order, or decision more than 30 days after delivery of the award, ruling, order, or decision unless the parties agree otherwise.

5.4.4 A party may apply to the Tribunal for clarification of an award, ruling, order, or decision only within 14 days after delivery of the award, ruling, order, or decision. Any clarification the Tribunal issues becomes part of the award, ruling, order, or decision.

5.4.5 A party may apply to the Tribunal to make an additional award for claims presented in the proceedings but omitted from the award only within 30 days after delivery of an award.

5.5 CONCLUSION OF ARBITRATION

5.5.1 An arbitration concludes:

(a) when it settles;

(b) when it has been abandoned;

(c) 30 days after all final awards have been delivered to the parties; or

(d) when it has been otherwise finally disposed of, whichever occurs last.

5.5.2 If, during the arbitration proceedings, the parties settle the dispute:

(a) the Tribunal must, on receiving confirmation of the settlement or determining that there is a settlement, end the proceedings; and

(b) if requested by the parties, the Tribunal must record the settlement in the form of an award on agreed terms.

5.5.3 The Tribunal must notify the Board when the arbitration concludes.

6. OTHER PROVISIONS

6.1 IMMUNITY

6.1.1 Neither the Board nor the Tribunal is liable to any party for any act or omission in connection with any arbitration under the Rules.

6.1.2 The Tribunal and the Board have the same protections and immunity as a Judge of the superior courts of Canada.

6.2 SIMPLIFIED ARBITRATION PROCEDURE

6.2.1 If the parties agree in writing, the arbitration must be conducted under this simplified procedure rule.

6.2.2 For arbitrations conducted under this rule:

(a) the Tribunal is made up of a single Arbitrator appointed by the Board within 15 days after delivery of the Notice of Request to Arbitrate or the Notice of Submission to Arbitration;

(b) 14-day time periods set out in Rule 4.10 are abridged to 10 days;

(c) all pre-hearing and preliminary matters must be complete within 90 days from the date the arbitration commenced under Rule 2.3;

(d) unless otherwise agreed by the parties or ordered by the Tribunal, there must be no oral discovery;

(e) no transcript of the proceedings may be made;

(f) sworn statements of evidence must be filed at the hearing in lieu of examination in chief and are subject to cross-examination and re-examination only;

(g) the record of the arbitration consists of the Documents and exhibits the parties produce and enter into evidence; and

(h) the Tribunal must deliver all final awards and reasons within 14 days after the hearing closes under Rule 4.26.1.

6.2.3 The following rules do not apply to arbitrations conducted under this rule:

(a) 3.1 (Appointment of Arbitrator(s) by parties);

(b) 4.9.1 (e) (Empowering one Tribunal member to hear motions and make procedural orders); and

(c) 4.14 (Pre-hearing examinations and written questions).

APPENDIX 1 – Sample Forms

The Board may establish and change from time to time, as it considers appropriate, forms to fulfill the objectives of these Rules. Forms established by the Board may be shown as an appendix to these Rules, but the forms shall not be considered part of the Rules, nor subject to the Consultation requirements of Chapter 26. Forms are available upon request and from the website: **www.drbyukon.ca**

Notice of Request to Arbitrate

Dispute Resolution Board

Claimant filing the Notice of Request to Arbitrate:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Claimant's Counsel:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

This Form Constitutes the Official Request to Arbitration under the DRB Arbitration Rules

Respondent - 1:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Respondent's Counsel:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Respondent - 2 (if applicable):

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Respondent's Counsel:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Respondent - 3 (if applicable):

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

Respondent's Counsel:

Name:
Organization:
Mailing Address:
Physical Address if different:
Phone: Fax: Email:

If there are more Respondents, please attach the required information

1. **Provide a Brief Description of the Matters in Dispute or a Statement of Claim including the name of the Final Agreement(s) and the section(s):**

2. **Where compensation is claimed, provide an estimate of amount claimed or the value of the issue in dispute:**

3. **Where the value cannot be estimated provide an explanation of the reason:**

4. **Provide a statement of what remedy the claimant is seeking:**

5. **State whether the parties have agreed to the Tribunal being comprised of:**

_____one arbitrator: _____three arbitrators: _____ have not yet agreed

6. **Provide the name(s) of any agreed upon Arbitrator(s):**

7. **Provide the agreed upon qualifications of the Arbitrator(s):**

8. **Request for appointment of Arbitrator(s) by the Dispute Resolution Board:**

No: _____ Yes: _____ State number of requested tribunal arbitrators: _____one or _____three

9. **Provide a statement of any variations or exclusions of the Rules to which the parties have agreed to in writing:**

Please append the following:

a) A statement of the specific provision of a Settlement Agreement or Settlement Legislation under which the dispute is referred to arbitration
b) A copy of any agreement between the parties to refer a dispute to arbitration
c) A copy of any contract related to the dispute

Documents required by the DRB Arbitration Rules and communications relating to the arbitration must be delivered to the parties and the DRB by a method that provides proof of delivery.

Signature of Respondent or Authorized Representative **Print Signature Name**

Dated at _____ **this** _____ **day of** _____, 20_____.

Documents can be delivered to the Dispute Resolution Board by:

Email: drb.ufa@northwestel.net
Fax: 867-668-4474
Personal Delivery: 101-166 Titanium Way
Registered Mail: Box 31675, Whitehorse, YT, Y1A 7A4

Office Use Only - Dispute Resolution Board:

Date Received: _____

Delivery Method: _____

Dispute Resolution Board

Notice of Submission to Arbitration

Respondent's Notice of Submission to Arbitration:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

This Form Constitutes the Official Notice of Submission to Arbitration under the DRB Arbitration Rules

Respondent - 2 (if applicable):

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent - 3 (if applicable):

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

If there are more Respondents, please attach the required information.

Claimant who filed the: "Notice of Request to Arbitration":

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Claimant's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

1. **Provide a Brief Description of the Matters in Dispute or a Statement of Claim including the name of the Final Agreement(s) and the section(s):**

2. **Where compensation is claimed, provide an estimate of amount claimed or the value of the issue in dispute:**

3. **Where the value cannot be estimated provide an explanation of the reason:**

4. **Provide a statement of what remedy the claimant is seeking:**

5. **State whether the parties have agreed to the Tribunal being comprised of:**

_____one arbitrator; _____three arbitrators; _____have not yet agreed

6. **Provide the name(s) of any agreed upon Arbitrator(s):**

7. **Provide the agreed upon qualifications of the Arbitrator(s):**

8. **Request for appointment of Arbitrator(s) by the Dispute Resolution Board:**

No: _____ Yes: _____ State number of requested tribunal arbitrators: _____one or _____three

9. **Provide a statement of any variations or exclusions of the Rules to which the parties have agreed to in writing:**

Please append a copy of any agreement related to the dispute.

Documents required by the DRB Arbitration Rules and communications relating to the arbitration must be delivered to the parties and the DRB by a method that provides proof of delivery.

Signature of Respondent or Authorized Representative **Print Signature Name**

Dated at _____ **this** _____ **day of** _____, 20_____.

Documents can be delivered to the Dispute Resolution Board by:

Email:	drb.ufa@northwestel.net
Fax:	867-668-4474
Personal Delivery:	101-166 Titanium Way
Registered Mail:	Box 31675, Whitehorse, YT, Y1A 7A4

Office Use Only - Dispute Resolution Board:

Date Received: _____

Delivery Method: _____

Dispute Resolution Board

Urgent Interim Measures Application

Claimant Filing the Urgent Interim Measures Application:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Claimant's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

This Form Constitutes the Official Urgent Interim Measures Arbitration under the DRB Arbitration Rules

Respondent - 1:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent - 2 (if applicable):

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent - 3 (if applicable):

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

Respondent's Counsel:

Name: _____

Organization: _____

Mailing Address: _____

Physical Address if different: _____

Phone: _____ Fax: _____ Email: _____

If there are more Respondents, please attach the required information

1. Provide a Description of the circumstances that led to the Urgent Interim Measures application:

2. Provide a Description of the underlying dispute:

3. Provide a statement of the Urgent Interim Measures the party seeks:

4. Provide a statement of the reasons the applicant needs Urgent Interim Measures that cannot wait for the constitution of the Tribunal:

Please append the following:

a) A copy of the Arbitration Agreement and any relevant agreement(s);
b) Any agreement about the location(s) of the arbitration hearings and meetings, or the rules of law that apply and
c) Copies of any Notice of Request to Arbitrate, Notice of Submission to Arbitration, and any other submissions related to the dispute that have been delivered to the DRB by any of the parties before the Urgent Interim Measures application.

The Urgent Interim Measures details are outlined in section 3.7 of the DRB Arbitration Rules

Documents required by the DRB Arbitration Rules and communications relating to the arbitration must be delivered to the parties and the DRB by a method that provides proof of delivery.

Signature of Respondent or Authorized Representative **Print Signature Name**

Dated at _____ **this** _____ **day of** _____, 20_____.

Documents can be delivered to the Dispute Resolution Board by:

Email:	drb.ufa@northwestel.net
Fax:	867-668-4474
Personal Delivery:	101-166 Titanium Way
Registered Mail:	Box 31675, Whitehorse, YT, Y1A 7A4

Office Use Only - Dispute Resolution Board:

Date Received: _____

Delivery Method: _____

Chapter 26 - Dispute Resolution

26.1.0 Objectives

26.1.1 The objectives of this chapter are as follows:

26.1.1.1 to establish a comprehensive dispute resolution process for resolving disputes which arise out of the interpretation, administration or implementation of Settlement Agreements or Settlement Legislation; and

26.1.1.2 to facilitate the out-of-court resolution of disputes under 26.1.1, in a non-adversarial and informal atmosphere.

26.2.0 Definitions

In this chapter, the following definitions shall apply.

"Board" means the Dispute Resolution Board established pursuant to 26.5.1.

"Panel" means the Dispute Resolution Panel appointed pursuant to 26.5.3.

26.3.0 Specific Disputes

26.3.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:

26.3.1.1 any matter which the Umbrella Final Agreement refers to the dispute resolution process;

26.3.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to the dispute resolution process; and

26.3.1.3 any other matter which at any time all parties to a Settlement Agreement agree should be referred to the dispute resolution process whether or not related to a Settlement Agreement.

26.3.2 Each party to a Settlement Agreement has a right to be a party to a dispute described in 26.3.1 arising out of that Settlement Agreement.

26.3.3 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which may be referred to mediation under 26.3.1 except for an application for interim or interlocutory relief where the Board has failed to appoint a mediator under 26.6.2 or an arbitrator under 26.7.2 within 60 days of application by any party to the dispute.

26.3.4 Any Person whose interests, in the opinion of the mediator, will be adversely affected by a dispute referred to mediation under 26.3.1 has a right to participate in the mediation on such terms as the mediator may establish.

26.3.5 A dispute described in 26.3.1 which is not resolved by mediation under 26.6.0 may be referred to arbitration under 26.7.0 by any party to the dispute.

26.4.0 Other Disputes

26.4.1 A party to a Settlement Agreement may refer any of the following matters to mediation under 26.6.0:

26.4.1.1 any matter which the Umbrella Final Agreement refers to mediation under the dispute resolution process;

26.4.1.2 any matter which a Settlement Agreement, a Yukon First Nation self-government agreement or any other agreement between the parties to a Yukon First Nation Final Agreement refers to mediation under the dispute resolution process;

26.4.1.3 any matter which at any time all the parties to a Settlement Agreement agree should be referred to mediation under the dispute resolution process, whether or not related to a Settlement Agreement;

26.4.1.4 any matter which a board listed in 2.12.0 established pursuant to a Settlement Agreement, acting pursuant to its rules and procedures directs to mediation under the dispute resolution process; and

26.4.1.5 any matter arising out of the interpretation administration, or implementation of that Settlement Agreement, with the consent of all the other parties to that Settlement Agreement, whether the dispute is among the parties to the Settlement Agreement or not.

26.4.2 Each party to a Settlement Agreement has a right to be a party to any dispute referred to mediation under 26.6.0.

26.4.3 The parties to a dispute described in 26.4.1 which is not resolved by mediation under 26.6.0 may agree to refer the dispute to arbitration under 26.7.0.

26.4.4 Any Person whose interests, in the opinion of the arbitrator, will be adversely affected by a dispute referred to arbitration under 26.3.5 or 26.4.3 has a right to participate in the arbitration on such terms as the arbitrator may establish.

26.4.5 Subject to 26.8.0, no party to a Settlement Agreement may apply to any court for relief in respect of any dispute which has been referred to arbitration under 26.3.5 or 26.4.3, except for an application for interim or interlocutory relief where the Board has failed to appoint an arbitrator under 26.7.2 within 60 days of an application by any party to the dispute.

26.5.0 Dispute Resolution Board and Panel

26.5.1 A Dispute Resolution Board shall be established comprising three persons appointed jointly by the Council for Yukon Indians and Government in accordance with 26.5.2.

26.5.2 If, upon 30 days notice by a party to the Umbrella Final Agreement of its readiness to establish the Board, the parties to the Umbrella Final Agreement do not jointly agree on the membership of the Board:

26.5.2.1 the Council for Yukon Indians shall appoint one member;

26.5.2.2 Canada and the Yukon shall jointly appoint one member;

26.5.2.3 the members appointed pursuant to 26.5.2.1 and 26.5.2.2 shall select jointly the third member who shall be the chairperson of the Board; and

26.5.2.4 if a chairperson has not been selected pursuant to 26.5.2.3 within 60 days of the appointment of the members pursuant to 26.5.2.1 and 26.5.2.2, the Senior Judge of the Supreme Court of the Yukon, or another Judge designated by the Senior Judge, shall appoint the chairperson upon application by one of the parties to the Umbrella Final Agreement.

26.5.3 The Board may, if, in its opinion, circumstances warrant, appoint persons including its own members to form the Dispute Resolution Panel provided that the total number of persons on the Panel, including members of the Board, does not exceed 15.

26.5.4 The Board appointed under 26.5.1 shall have the following responsibilities:

26.5.4.1 to ensure Panel members have or receive training in mediation and arbitration principles and techniques;

26.5.4.2 to maintain a roster of mediators and a roster of arbitrators from those persons who are appointed members of the Panel;

26.5.4.3 to appoint mediators and arbitrators;

26.5.4.4 to set from time to time the fees to be charged for Panel members' services;

26.5.4.5 to prepare annual budgets for administrative costs of the Board and Panel and to submit such budgets to Government for approval; and

26.5.4.6 after Consultation with the parties to the Umbrella Final Agreement, to establish rules and procedures governing mediation and arbitration.

26.6.0 Mediation

26.6.1 The parties to a dispute referred to mediation shall attempt to choose a mediator within 15 days of the dispute being referred to mediation.

26.6.2 If a dispute cannot be settled informally by the parties and the parties cannot agree on a mediator, the Board shall appoint a mediator from the Panel.

26.6.3 A mediator agreed upon by the parties or appointed by the Board shall promptly meet with the parties to assist them in the resolution of the dispute.

26.6.4 The mediation shall not extend beyond four hours unless the parties to the dispute and the mediator agree.

26.6.5 The mediator, at his own option, may provide a brief non- binding written recommendation to the parties.

26.6.6 The mediator, at the request of the parties to the mediation, shall provide a brief non-binding written recommendation to the parties.

26.6.7 The mediation and any recommendations of the mediator shall be confidential to the parties to the dispute unless the parties otherwise agree.

26.6.8 The costs of the mediator for the first four hours shall be borne by the Board. Thereafter, the costs of the mediator shall be borne equally by the parties to the mediation.

26.6.9 Notwithstanding 26.6.8, the Board shall determine who shall pay the costs of mediation pursuant to 26.4.1.4.

26.7.0 Arbitration

26.7.1 The parties to a dispute referred to arbitration shall attempt to choose an arbitrator within 15 days of the dispute being referred to arbitration.

26.7.2 If the parties do not agree on an arbitrator under 26.7.1, the Board, on application of a party to the dispute, shall appoint an arbitrator from the Panel.

26.7.3 With respect to a dispute referred to arbitration under a Settlement Agreement, the arbitrator shall have the authority to resolve the dispute including the authority:

26.7.3.1 to determine all questions of procedure including the method of giving evidence;

26.7.3.2 to subpoena witnesses and documents;

26.7.3.3 to administer oaths and solemn affirmations to the parties and witnesses;

26.7.3.4 to order a party to cease and desist from activity contrary to the provisions of a Settlement Agreement;

26.7.3.5 to order a party to comply with the terms and conditions of a Settlement Agreement;

26.7.3.6 to make an order determining the monetary value of a loss or injury suffered by a party as a result of contravention of a Settlement Agreement and directing a party to pay all or part of the amount of that monetary value;

26.7.3.7 to declare the rights and obligations of the parties to a dispute;

26.7.3.8 to make an order providing interim relief; and

26.7.3.9 to refer any question of Law to the Supreme Court of the Yukon.

26.7.4 The cost of the arbitration shall be borne equally among the parties to the dispute unless otherwise assigned by the arbitrator.

26.7.5 Subject to 26.8.0, a decision or order of an arbitrator shall be final and binding on the parties to the arbitration.

26.7.6 A party affected by a decision or order of an arbitrator may, after the expiration of 14 days from the date of the release of the decision or order or the date provided in the decision for compliance, whichever is later, file in the Registry of the Supreme Court of the Yukon a copy of the decision and the decision or order shall be entered as if it were a decision or order of the Court, and on being entered shall be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Yukon and enforceable as such.

26.8.0 Judicial Review

26.8.1 The decision or order of an arbitrator under 26.7.5 is not subject to appeal or to judicial review in any court except on the ground that the arbitrator failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise jurisdiction.

26.8.2 The Supreme Court of the Yukon shall have jurisdiction in respect of an appeal or judicial review pursuant to 26.8.1.

26.9.0 Transitional

26.9.1 Until the Board is appointed, the Arbitration Act, R.S.Y. 1986, c. 7 shall apply to any arbitration under 26.7.0.

www.drbyukon.ca
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1-866-367-6551
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