

## Schedule 8.5 - Rules of Procedure for Arbitration

The following rules and procedures shall apply with respect to any matter to be arbitrated by the Parties under the terms of the Agreement.

### 1. INITIATION OF ARBITRATION PROCEDURES

- (a) If a Party to this Agreement wishes to have any matter under this Agreement arbitrated in accordance with the provisions of this Agreement, it shall give notice to the other Party hereto specifying particulars of the matter or matters in dispute and proposing the name of the person it wishes to be the single arbitrator. Within 15 days after receipt of such notice, the other Party to this Agreement shall give notice to the first Party advising whether such Party accepts the arbitrator proposed by the first Party. If such notice is not given within such 15 day period, the other Party shall be deemed to have accepted the arbitrator proposed by the first Party. If the Parties do not agree upon a single arbitrator within such 15 day period, either Party may apply to a judge of the Ontario Court, General Division under the *Arbitration Act, 1991*, S.O. 1991, chap. 17, (the "Arbitration Act") for the appointment of a single arbitrator (the "Arbitrator").
- (b) The individual selected as Arbitrator shall be qualified by education and experience to decide the matter in dispute. The Arbitrator shall be at Arm's Length from both Parties and shall not be a member of the audit or legal firm or firms who advise either Party, nor shall the Arbitrator be an individual who is, or is a member of a firm, otherwise regularly retained by either of the Parties.

### 2. SUBMISSION OF WRITTEN STATEMENTS

- (a) Within 15 Business Days of the appointment of the Arbitrator, the Party initiating the arbitration (the "Claimant") shall send the other Party (the "Respondent") a Statement of Claim setting out in sufficient detail the facts and any contentions of law on which it relies, and the relief that it claims.
- (b) Within 15 Business Days of the receipt of the Statement of Claim, the Respondent shall send the Claimant a Statement of Defence stating in sufficient detail which of the facts and contentions of law in the Statement of Claim it admits or denies, on what grounds, and on what other facts and contentions of law he relies.
- (c) Within 15 Business Days of receipt of the Statement of Defence, the Claimant may send the Respondent a Statement of Reply.
- (d) All Statements of Claim, Defence and Reply shall be accompanied by copies (or, if they are especially voluminous, lists) of all essential documents on which the Party concerned relies and which have not previously been submitted by any Party, and (where practicable) by any relevant samples.

- (e) After submission of all the Statements, the Arbitrator will give directions of, for the further conduct of the arbitration.

### 3. MEETINGS AND HEARINGS

- (a) The arbitration shall take place in the City of Toronto, Ontario or in such other place as the Claimant and the Respondent shall agree upon in writing. The arbitration shall be conducted in English unless otherwise agreed by such Parties and the Arbitrator. Subject to any adjournments which the Arbitrator allows, the final hearing will be continued on successive working days until it is concluded.
- (b) All meetings and hearings will be in private unless the Parties otherwise agree.
- (c) Any Party may be represented at any meetings or hearings by legal counsel.
- (d) Each Party may examine, cross-examine and re-examine all witnesses at the arbitration.

### 4. THE DECISION

- (a) The Arbitrator will make a decision in writing and, unless the Parties otherwise agree, will set out reasons for decision in the decision.
- (b) The Arbitrator will send the decision to the Parties as soon as practicable after the conclusion of the final hearing, but in any event no later than 60 days thereafter, unless that time period is extended for a fixed period by the Arbitrator on written notice to each Party because of illness or other cause beyond the Arbitrator's control.
- (c) The provisions of this Agreement and this Schedule requiring the determination of certain disputes of arbitration shall not operate to prevent recourse to the court by any Party as permitted by the *Arbitration Act* (Ontario) with respect to injunctions, receiving orders and orders regarding the detention, preservation and inspection of property, or whenever enforcement of an award by the sole arbitrator reasonably requires access to any remedy which an arbitrator has no power to award or enforce. In all other respects an award by the sole arbitrator or arbitrators, as the case may be shall be final and binding upon the Parties and there shall be no appeal from the award of the arbitrator or arbitrators as the case may be on a questions of law or any other questions provided that the Arbitrator has followed the rules provided herein in good faith and has proceeded in accordance with the principles of natural justice.

## **5. JURISDICTION AND POWERS OF THE ARBITRATOR**

- (a) By submitting to arbitration under these Rules, the Parties shall be taken to have conferred on the Arbitrator the following jurisdiction and powers, to be exercised at the Arbitrator's discretion subject only to these Rules and the relevant law with the object of ensuring the just, expeditious, economical and final determination of the dispute referred to arbitration.
- (b) Without limiting the jurisdiction of the Arbitrator at law, the Parties agree that the Arbitrator shall have jurisdiction to:
  - (i) determine any question of law arising in the arbitration;
  - (ii) determine any question as to the Arbitrator's jurisdiction;
  - (iii) determine any question of good faith, dishonesty or fraud arising in the dispute;
  - (iv) order any Party to furnish further details of that Party's case, in fact or in law;
  - (v) proceed in the arbitration notwithstanding the failure or refusal of any Party to comply with these Rules or with the Arbitrator's orders or directions, or to attend any meeting or hearing, but only after giving that party written notice that the Arbitrator intends to do so;
  - (vi) receive and take into account such written or oral evidence tendered by the Parties as the Arbitrator determines is relevant, whether or not strictly admissible in law;
  - (vii) make one or more interim awards;
  - (viii) hold meetings and hearings, and make a decision (including a final decision) in Ontario or elsewhere with the concurrence of the Parties thereto;
  - (ix) order the Parties to produce to the Arbitrator, and to each other for inspection, and to supply copies of, any documents or classes of documents in their possession or power which the Arbitrator determines to be relevant;
  - (x) order the preservation, storage, sale or other disposal of any property or thing under the control of any of the Parties;
  - (xi) make interim orders to secure all or part of any amount in dispute in the arbitration;

- (xii) make any order as to the payment of costs of the arbitration, including legal fees on a solicitor and client basis; and
- (xiii) include, as part of any award, the payment of interest at the rate set out in this Agreement from an appropriate date as determined by the Arbitrator.

## 6. ARBITRATION ACT

The rules and procedures of the *Arbitration Act* (Ontario) shall apply to any arbitration conducted hereunder except to the extent that they are modified by the express provisions of these Rules of Arbitration.