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For Discussion Purposes Only

## **CHAPTER DR: DISPUTE RESOLUTION**

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### **DR.1.0 GENERAL**

**DR.1.1** The Dispute Resolution chapter of the Dehcho Agreement applies to the following types of disputes:

- a) any matter which the Dehcho Agreement stipulates may be resolved in accordance with the Dispute Resolution chapter;
- b) any matter which the Dehcho Agreement stipulates must be resolved by binding arbitration as provided for in this chapter;
- c) a dispute between or among the Parties concerning the interpretation or application of the Dehcho Agreement; or
- d) any matter which an ancillary agreement between or among the Parties stipulates may be resolved in accordance with the Dispute Resolution chapter .

**DR.1.2** With respect to a dispute set out in **DR.1.1**, and subject to **DR.5.0**, a dispute will progress through the following sequential steps:

- a) informal discussions;
- b) mediation, if agreed to by the Disputants ;
- c) binding arbitration, if agreed to by the Disputants, or stipulated by the Dehcho Agreement.

**DR.1.3** The Disputants may at any time resolve a dispute under **DR.1.1** by an agreement in writing. Notification of any such agreement will be provided to all Parties.

**DR.1.4** During informal discussions pursuant to **DR.2.0** and mediation pursuant to **DR.3.0**, all communications concerning the dispute will be without prejudice.

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**DR.1.5** For the purposes of informal discussions under **DR.2.0** or mediation pursuant to **DR.3.0**, the Disputants to a dispute will treat documents or communications as confidential unless they agree otherwise. The report of a mediator will be confidential unless the Disputants agree otherwise.

**DR.1.6** Except as otherwise provided, the Disputants may agree to vary a procedural requirement set out in this chapter.

**DR.1.7** If a Dehcho Citizen has a right of action in relation to the Dehcho Agreement, the Dehcho Government may, with the consent of the Dehcho Citizen, represent the Dehcho Citizen in the processes set out in this chapter or bring a legal action under **DR.5.0**.

**DR.1.8** If the Disputants agree to mediate the dispute pursuant to **DR.3.0**, no other mediation process provided by law applies, and if the Disputants proceed to arbitration pursuant to **DR.4.0**, no other arbitration process provided by law applies.

**DR.1.9** Despite the commencement of a process of mediation, arbitration, or litigation, the Disputants may agree to suspend that process and commence or recommence a process of informal discussions, mediation or arbitration to facilitate a resolution of the dispute.

**DR.2.0** **INFORMAL DISCUSSIONS**

**DR.2.1** Upon notice of a dispute from a Party, the Disputants will have informal discussions in an attempt to resolve the dispute prior to proceeding to mediation, arbitration or to the commencement of legal proceedings.

**DR.2.2** Informal discussions are deemed to have been completed:

- a) upon the resolution of the dispute or by the agreement of the Disputants to terminate the informal discussions; or
- b) upon the matter being referred to mediation; or
- c) upon notice being given to proceed to arbitration; or
- d) upon the commencement of legal proceedings.

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**DR.3.0            MEDIATION**

**DR.3.1**            If an agreement has not been concluded pursuant to **DR.2.1**, the Disputants may agree to refer the dispute to mediation.

**DR.3.2**            The Disputants will select a mediator. In the event the Disputants are unable to agree upon the selection of a mediator, an application will be made to the Supreme Court of the Northwest Territories to appoint a mediator.

**DR.3.3**            The mediator will, without delay, confer with the Disputants to the dispute and arrange for the commencement of the mediation.

**DR.3.4**            Unless the Disputants to the dispute agree otherwise, the mediation will be held in the Northwest Territories.

**DR.3.5**            Costs of mediating a dispute, including the remuneration and expenses of the mediator, will be shared equally between or among the Disputants to the dispute, unless provided otherwise in the Dehcho Agreement or in the Implementation Plan. Each Disputant will bear its own costs to participate in the mediation.

**DR.3.6**            Upon termination of the mediation proceedings, the mediator will submit a mediation report to the Disputants stating that no agreement was reached on some or all of the outstanding issues and, if the Disputants request, providing proposals or recommendations for the resolution of the outstanding issues.

**DR.3.7**            Upon receipt of the mediation report, the parties to the dispute may:

- a)        resolve the dispute in writing; or
- b)        upon notice being given, proceed to arbitration; or
- c)        commence legal proceedings.

**DR.4.0            ARBITRATION**

**DR.4.1**            If a dispute has not been resolved through informal discussions or mediation, any Disputant may give notice of its intention to proceed to arbitration.

**DR.4.2**            The written consent of all Disputants is required for the matter to proceed to arbitration.

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- DR.4.3** The Disputants will thereafter select an arbitrator. In the event the Disputants are unable to agree upon the selection of an arbitrator, an application will be made to the Supreme Court of the Northwest Territories to appoint an arbitrator.
- DR.4.4** Unless the Disputants otherwise agree, an individual who has acted as mediator in a dispute cannot act as an arbitrator for that dispute.
- DR.4.5** A Party that is not a Disputant is entitled to participate in an arbitration as a Disputant and is subject to the same rights, privileges and obligations as set out in this chapter.
- DR.4.6** An arbitrator may allow any Person that is not a Disputant, on application and on such terms as the arbitrator may order, to participate as an intervener in an arbitration if, in the opinion of the arbitrator, the interest of that Person may be directly affected by the arbitration.
- DR.4.7** Subject to provisions of the Dehcho Agreement, the arbitrator may, in relation to any matter before the arbitrator:
- a) determine all questions of procedure, including whether evidence will be presented orally or in writing;
  - b) determine all questions of fact and law and provide any remedy in law or equity;
  - c) make an award, including interim relief;
  - d) provide for the payment of interest and costs;
  - e) subpoena witnesses;
  - f) administer oaths or affirmations to witnesses; and
  - g) refer questions of law to the Supreme Court of the Northwest Territories.
- DR.4.8** With respect to a dispute arising out of an ancillary agreement under **DR.1.1c**), the arbitrator will consider any provisions set out in the ancillary agreement as well as the provisions set out in **DR.4.7** and in the Dehcho Agreement.
- DR.4.9** Nothing in this chapter prevents a Disputant from commencing judicial proceedings at any time:

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- a) to prevent the loss of a right to commence proceedings due to the expiration of a limitation period; or
- b) to obtain interlocutory or interim relief that is otherwise available pending resolution of the dispute under this chapter.

**DR.4.10** A decision of an arbitrator will be conclusive and binding on the Disputants and will not be challenged by appeal or review in any court except on the ground that the arbitrator has erred in law or exceeded his or her jurisdiction.

**DR.4.11** Each Disputant will bear its own costs and an equal share of the other costs of the arbitration including the remuneration and expenses of the arbitrator, except if the arbitrator decides to impose the responsibility for costs on just one or more of the Disputants or to distribute it among the Disputants in a different manner.

**DR.4.12** An intervener will bear its own costs.

**DR.4.13** A Disputant may, after the expiration of 14 days from the date of the release of an arbitration decision or order or from the date provided in the decision for compliance, whichever is later, file in the Registry of the Supreme Court of the Northwest Territories a copy of the decision or order which will be entered as if it were a decision or order of the Court, and on being entered will be deemed, for all purposes except for an appeal from it, to be an order of the Supreme Court of the Northwest Territories and enforceable as such.

**DR.4.14** If requested by a Disputant, any information provided by that Disputant will be kept confidential among the Disputants, the arbitrator and the Parties.

**DR.4.15** Arbitrations will not be open to the public.

**DR.5.0 LEGAL PROCEEDINGS**

**DR.5.1** A Disputant may commence legal proceedings in the Supreme Court of the Northwest Territories at any time in respect of a dispute provided that:

- a) the Disputants have concluded the informal discussions under **DR.2.0**;  
or
- b) the Disputants have agreed to refer the dispute to mediation under **DR.3.0**; or

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- c) the Disputants have not agreed in writing to submit the dispute to binding arbitration under **DR.4.0**.