

SCHEDULE 11

TECHNICAL DISPUTE PROCEDURE

1. Technical Disputes Procedure

This Schedule 11 shall be read in conjunction with Section 19.4(b) of the Agreement and comprises certain additional procedures and requirements to apply to a Technical Dispute between the Parties which is unresolved after the Negotiation Period and is referred for Expert Technical Determination. This Schedule 11 shall apply except to the extent that the Parties and the Independent Expert(s) agree on alternative procedures for the relevant Expert Technical Determination.

2. Expert Technical Determination Procedure

2.1 A Party wishing to refer a Technical Dispute to Expert Technical Determination under Section 19.4(a) of the Agreement shall serve a notice on the other Party and the Parties (i) shall constitute the Panel of Independent Experts (the "Panel") or, (ii) by agreement of the Parties, may use one single Independent Expert (collectively referred herein as "Independent Expert(s)"), all in accordance with Section 19.4(b). This Schedule 11 applies equally to both instances (i) and (ii).

2.2 The procedure set forth in this Schedule 11 shall apply if the Parties have not agreed on a specific procedure to undertake the Expert Technical Determination within ten (10) Business Days from the appointment of the Independent Expert(s). In such event, within five (5) Business Days after the expiration of such ten (10) Business Days period, the Independent Expert(s) will fix and notify a date for hearing the representations of facts and/or law and/or the arguments of the Parties and any inspection, if necessary. This hearing and/or inspection shall be held within twenty (20) to thirty-five (35) Business Days from the date of the notification of the hearing.

2.3 In the case of a Panel, the chairperson, or otherwise the single Independent Expert shall be responsible for the proper and expeditious conduct of the Expert Technical Determination including securing the availability of members of the Panel to ensure that any Panel so constituted will discharge its duties. All communications from either of the Parties shall be addressed to the chairperson, in the case of a Panel, or otherwise to the single Independent Expert, copying all Parties in accordance with Section 19.4(b)(ii). In all instances, the Independent Expert(s) shall also copy all Parties.

2.4 Each Party must submit written briefs to the Independent Expert(s), with copies to the other Party, no later than seven (7) Business Days prior to the date fixed for the hearing, provided that, in the case of responding to any request of the Independent Expert(s), such time

- period for response shall be as specified by the Independent Expert(s) in such request.
- 2.5 The hearing shall not last more than ten (10) Business Days, unless authorized and agreed by all Parties.
- 2.6 Within five (5) Business Days after the hearing, the Independent Expert(s) shall deliver to both Parties its determination on the Technical Dispute. The Independent Expert(s) shall also give written reasons for its determination (including making findings as to liability, quantum and costs in relation to the Technical Dispute), but these may be delivered up to ten (10) Business Days after the hearing. If requested by the Independent Expert(s) and subject to the agreement of the Parties, the time for delivery of the Independent Expert(s)' determination, as well as the written reasons for the determination, may be extended by up to fifteen (15) Business Days.
- 2.7 The Independent Expert(s)' determination shall be final and binding on both Parties who shall forthwith give effect to the determination, unless a challenge to enforceability is proper in accordance with Section 19.4(b)(iv). In the event the Independent Expert(s) render the determination and the reasons for the determination separately, any term to challenge the enforceability of the determination shall run from the date of the delivery of the latter.
- 2.8 After referral of the Technical Dispute to Expert Technical Determination, the Parties may agree to such longer periods for submitting written briefs or other statements of fact or law or arguments in writing, hearing the representations of the Parties and/ or for the delivery of the Independent Expert(s)' determination as they see fit.
- 2.9 The Independent Expert(s) shall act impartially and may take the initiative in ascertaining the facts and the Law. The Independent Expert(s) shall have the power, other than with respect to negotiation communications referred to in Section 19.3(a) of the Agreement (the "Negotiation Communications"), to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under the Agreement.
- 2.10 The Independent Expert(s) shall proceed within as short a time as possible after the conclusion of the hearings or, if no hearings were held, after submittal of written briefs by the Parties, to establish the facts of the case.
- 2.11 The Independent Expert(s), after consultation with the Parties, may appoint one or more experts to report in writing to the Independent Expert(s) and the Parties on specific issues in the Expert Technical Determination, as identified by the Independent Expert(s). Any such expert shall be and remain impartial and independent of the Parties. The



Independent Expert(s) may require any Party at any time to give to such expert any relevant information or to provide access to any relevant documents, goods, samples, property, site or thing for inspection under that Party's control on such terms as the Independent Expert(s) think appropriate in the circumstances. If any Party so requests or the Independent Expert(s) consider it necessary, the Independent Expert(s) may order the expert, after delivery of the expert's written report, to participate in a hearing at which the Parties shall have a reasonable opportunity to question the expert on the report and to present witnesses in order to testify on relevant issues arising from the report. The fees and expenses of any expert appointed by the Independent Expert(s) shall form part of the Expert Technical Determination costs.

2.12 The Independent Expert(s) shall have the power, upon the request of any Party (or agreement of both Parties in the case of (viii) below), or upon its own initiative, but in either case only after consultation with the Parties and upon such terms (as to costs and otherwise) as the Independent Expert(s) may decide:

(i) to allow a Party to supplement, modify or amend any claim, defense, cross-claim, defense to cross-claim and reply or any other written statement, submitted by such Party;

(ii) to abridge or extend (even where the period of time has expired) any period of time prescribed under Section 19.4 of the Agreement or this Schedule 11 (notwithstanding any specific provision herein), or any order made by the Panel;

(iii) to order any Party to make any documents (other than Negotiation Communications), goods, samples, property, site or thing under its control available for inspection by the Independent Expert(s), any other Party, any expert to such Party and any expert to the Panel;

(iv) to hear witnesses or any other person, in the presence of the Parties, or in their absence provided they have been duly summoned;

(v) to order any Party to produce to the Independent Expert(s) and to other parties, documents or copies of documents in their possession, custody or power (other than Negotiation Communications) which the Independent Expert(s) decides to be relevant;

(vi) to decide whether or not to apply any strict rules of evidence (or any other rules) as to the admissibility, relevance or weight of any material tendered by a party on any issue of fact or expert opinion and to decide the time, manner and form in which such material should be exchanged between the Parties and presented to the Independent Expert(s);

(vii) to order compliance with any legal obligation, payment of compensation for breach of any legal obligation and specific performance of any agreement;

(viii) to allow one or more third persons to be joined in the Expert Technical Determination as a party provided any such third person and the Parties have consented to such joinder in writing, and thereafter to make a single final award, or separate awards, in respect of all parties so implicated in the Expert Technical Determination;

(ix) generally, decide any matter in relation to the procedures which would not be provided under this Schedule or Section 19.4 of the Agreement.

2.13 Independent Expert(s) shall not be liable for anything done or omitted in the discharge of his or her functions unless the act or omission is fraudulent or in bad faith.

2.14 The place of any hearings for the Expert Technical Determination shall be San Juan, Puerto Rico.

2.15 The Expert Technical Determination and all proceedings, documentation and determinations in relation to that procedure are to be in English; provided however that, if the Independent Expert(s) are fluent in English and Spanish, either language may be used as agreed by the Parties or as determined by the Independent Expert(s). Under such circumstances, (i) if the Expert Technical Determination is conducted in English, the Parties may rely on documents in Spanish without the need to provide an English language translation; and (ii) if a hearing is conducted, witnesses may testify in Spanish without the need to provide a simultaneous translation to English; provided that a Party may, at its own expense, provide for such simultaneous translation.

3. Additional requirements for Independent Experts and replacement of Independent Experts

3.1 No person who has been appointed to act as an Independent Expert for an Expert Technical Determination shall act as adviser to either Party following such appointment or take any other part in any proceedings between the Parties arising from or in connection with the Agreement, including as counsel to any such Party. The Parties may appoint counsel or other professional advisers to advise and represent them in relation to and at the Expert Technical Determination.

3.2 No Independent Expert may be a present or, within the past seven (7) years, an employee or agent of, or consultant or counsel to, either Party or any Affiliate of either Party or have any interest, personal or financial, in any matter relating to the Technical Dispute or the Parties themselves.



- 3.3 Any Independent Expert, including the chairperson of the Panel, may be removed by agreement of both Parties.
- 3.4 If an Independent Expert (other than the chairperson) dies, retires or is unable for any other reason to continue to act while a Technical Dispute is being considered by the Panel, a replacement Independent Expert shall be appointed by the Party who nominated the Independent Expert to be replaced not later than five (5) Business Days after the date of the death, the retirement or the date that such Independent Expert notifies the Parties that he or she is unable to continue to act (as applicable). If any replacement is made in accordance with this paragraph 3.4, then the Parties will be deemed to have agreed to extend for an additional period of ten (10) Business Days the remaining time limits for the relevant Technical Dispute to allow the replacement Independent Expert to study the docket and take over the duties of the replaced Independent Expert.
- 3.5 If the chairperson dies, retires or is unable for any other reason to continue to act while a Technical Dispute is being considered by the Panel, a replacement chairperson shall be appointed by application of either Party to the ICC International Centre for ADR (the “ICC”) in accordance with the ICC Rules for the Appointment of Experts and Neutrals. If any replacement is made in accordance with this paragraph 3.5, the Parties will be deemed to have agreed to extend the remaining time limits for the relevant Technical Dispute to allow the replacement chairperson ten (10) Business Days to study the docket and take over the duties of the replaced chairperson.

