

SCHEDULE 24

Dispute Resolution Procedure

Part 1 – Works Disputes and Services Disputes

1. **Procedures applicable to different categories of dispute**

The procedure set out in Part 2 shall apply to Works Disputes. The procedure set out in Part 3 shall apply to Services Disputes.

2. **Works Disputes and Services Disputes defined**

- 2.1 A “**Dispute**” means any dispute, controversy or claim of whatever nature between HPTE and the Concessionaire arising under, out of or in connection with the Contract (including any question of the breach, interpretation, validity, effect, performance or termination of the Contract and any claims for set off or counterclaim and including any matter for which the Contract expressly permits to be referred to the Dispute Resolution Procedure).
- 2.2 A “**Works Dispute**” means a Dispute arising out of or connected with the performance of the Phase 2 Work.
- 2.3 A “**Services Dispute**” means any Dispute which is not a Works Dispute.
- 2.4 If the Parties cannot agree whether a Dispute is a Works Dispute or a Services Dispute it shall be treated as a Services Dispute.

3. **Parties’ Obligations**

The parties shall continue to comply with, observe and perform all their obligations under this Contract regardless of the nature of any Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule and shall give effect forthwith to every decision of the Independent Expert, the arbitrators and the court delivered under this Schedule.

SCHEDULE 24

Dispute Resolution Procedure

Part 2 – Works Disputes

INTRODUCTION, GENERAL PROVISIONS AND DEFINITIONS

1. **General and definitions**

- 1.1 This Part 2 describes the process through which the parties (HPTE and the Concessionaire) agree to resolve any issue that may result in a Works Dispute. The intent of the process is to resolve issues early, efficiently, and as close to the project level as possible. Appendix C outlines the process. Specified time frames may be extended by agreement of HPTE's Representative and the Concessionaire.
- 1.2 The term "merit" refers to the right of a party to recover on a claim or Works Dispute, irrespective of quantum, based on the substance, elements, and grounds of that claim or Works Dispute. The term "quantum" refers to the quantity or amount of compensation or time deserved when a claim or Works Dispute is found to have merit.
- 1.3 If HPTE does not respond within the specified timelines, the Concessionaire may advance the Works Dispute to the next level.
- 1.4 The procedures set out in paragraphs 2 – 23 of this Part shall be exhausted in their entirety prior to initiation of arbitration except for applications for urgently required injunctive relief. Failure to comply with the requirements set out in this paragraph shall bar either party from any further administrative, equitable, or legal remedy. If a deadline is missed that does not prejudice either party, further relief shall be allowed.
- 1.5 All Works Disputes and claims shall be submitted within 30 days of the date of submission by the Concessionaire of the Affidavit of Phase 2 Work Completion. Failure to submit a Works Dispute or claim within this time period releases HPTE from all Works Disputes and claims for which notice has not already been submitted in accordance with the Contract.

2. **Document Retention.**

- 2.1 The Concessionaire shall keep full and complete records of the costs and additional time incurred for each Works Dispute for a period of at least three years after date of Phase 2 Works Completion or until any outstanding Works Dispute is resolved, whichever is more. The Concessionaire and Sub-Contractors shall provide adequate facilities, acceptable to HPTE's Representative, for an audit during normal business hours. The Concessionaire shall permit HPTE's Representative or HPTE auditor to examine and copy those records and all other records required by HPTE's Representative to determine the facts or contentions involved in the Works Dispute. The Concessionaire shall identify and segregate any documents or information that the Concessionaire considers particularly sensitive, such as confidential or proprietary information.
- 2.2 Throughout the Works Dispute, the Concessionaire and HPTE shall keep complete daily records of extra costs and time incurred, in accordance with the following procedures:
- (a) Daily records shall identify each operation affected, the specific locations where work is affected, and the potential effect to the project's schedule. Such records shall also reflect all labor, material, and equipment applicable to the affected operations.
 - (b) On the first work day of each week following the date of the written notice of Works Dispute, the Concessionaire shall provide HPTE with the daily records for the preceding week. If the Concessionaire's records indicate costs greater than

those kept by HPTE, HPTE's Representative will meet with the Concessionaire and present his records to the Concessionaire at the meeting. The Concessionaire shall notify HPTE's Representative in writing within three work days of any inaccuracies noted in, or disagreements with, HPTE's records.

INITIAL DISPUTE RESOLUTION PROCESS

3. Initial Works Dispute Resolution Process.

To initiate the Works Dispute resolution process the either party shall provide a written notice of Works Dispute to the other upon the failure of the Parties to resolve the issue through negotiation.

4. Supplementary Notice

4.1 The Concessionaire shall supplement the written notice of Works Dispute within 15 days with a written Request for Works Dispute Resolution (RWDR) providing the following (as applicable):

- (a) The date of the Works Dispute
- (b) The nature of the Relevant Event which caused the Works Dispute
- (c) A statement explaining in detail the specific provisions of the Contract and any basis, legal or factual, which support the resolution which the Concessionaire seeks to achieve.
- (d) If any, the estimated Change in Costs, caused by the Relevant Event with supporting documentation
- (e) An analysis of the progress schedule showing the schedule change or disruption if the Concessionaire is asserting a schedule change or disruption.

4.2 The Concessionaire shall submit as much information on the quantum and impacts to the Contract time as is reasonably available with the RWDR and then supplement the RWDR as additional information becomes available. If the Works Dispute escalates to the DRB process the DRB shall not hear any issue or consider any information that was not contained in the RWDR and fully submitted to HPTE's Representative pursuant to this Part of this Schedule.

5. HPTE's Representative Review.

5.1 Within 15 days after receipt of the RWDR, HPTE's Representative will meet with the Concessionaire to discuss the merits of the Works Dispute. Within seven days after this meeting, HPTE's Representative will issue a written decision on the merits of the Works Dispute.

5.2 HPTE's Representative will either deny the merits of the Works Dispute or notify the Concessionaire that the Works Dispute has merit. This determination will include a summary of the relevant facts, Contract provisions supporting the determination, and an evaluation of all scheduling issues that may be involved.

5.3 If the Works Dispute is determined to have merit, the Concessionaire and HPTE's Representative will determine:

- (a) in the case of a Compensation Event, the compensation to be paid (and the timing for such payment);
- (b) in the case of a Compensation Event, a Relief Event and a Force Majeure Event:

- (i) the extension of time for any event under this Contract (including the Planned Full Services Commencement Date and the Full Services Commencement Longstop Date); and
 - (ii) the relief which the Concessionaire is entitled to from the performance of any obligation under this Contract;
- (c) in the case of any Change, any matter which falls to be determined pursuant to Schedule 21; and
- (d) any other matter in dispute between the Parties not described in (a), (b) or (c) above

in each case within 30 days.

5.4 If the Concessionaire accepts HPTE's Representative's denial of the merits of the Works Dispute, the Works Dispute is resolved and no further action will be taken. If the Concessionaire does not respond in seven days, it will be assumed it has accepted the denial. If the Concessionaire rejects HPTE's Representative's denial of the merits of the Works Dispute or a satisfactory resolution of the matters set out in paragraph 5.3 cannot be agreed upon within 30 days, the Concessionaire may further pursue resolution of the Works Dispute by providing written notice to HPTE's Senior Representative⁷ within seven days.

6. **HPTE's Senior Representative Review.**

- 6.1 Within seven days after receipt of the Concessionaire's written notice to HPTE's Senior Representative of unsatisfactory resolution of the Works Dispute, HPTE's Representative and HPTE's Senior Representative will meet with the Concessionaire to discuss the Works Dispute. Meetings shall continue weekly for a period of up to 30 days and shall include a senior member of the Concessionaire's management team with authority to decide on the matters which are the subject of the Works Dispute.
- 6.2 If these meetings result in resolution of the Works Dispute, the resolution will be implemented and the Works Dispute is resolved.
- 6.3 If these meetings do not result in a resolution or the participants agree that they have reached an impasse, the Works Dispute shall be presented to the Dispute Review Board in accordance with this Schedule.

DISPUTE REVIEW BOARD

7. **Dispute Review Board**

7.1 A Dispute Review Board (DRB) is an independent third party that will provide specialized expertise in technical areas and administration of construction contracts. The DRB will assist in and facilitate the timely and equitable resolution of Works Disputes between HPTE and the Concessionaire in an effort to avoid animosity and construction delays, and to resolve Works Disputes as close to the project level as possible. The DRB shall be established and operate as provided herein and shall serve as an independent and impartial board.

8. **Initiation of Dispute Review Board Review.**

8.1 When a Works Dispute has not been resolved in accordance with the preceding paragraphs of this Part 2 either Party may initiate the DRB review process within 5 days after the period described in paragraph 6.3.

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Identity to be confirmed: a person senior to the day to day person on site, but below Director level.

9. Formation of Dispute Review Board.

9.1 DRBs will be established in accordance with the following procedures:

- (a) DRB members shall be comprised Independent Experts, as determined by the process of Section 4 of Part 3 of this Schedule.
- (b) The DRB shall have three members (composed of three Independent Experts). Once the third member is approved the three members will nominate one of them to be the Chairperson.
- (c) The Parties shall execute the agreement in the form set out in Appendix A within 30 days of initiating the DRB process.
- (d) DRB members shall not have been involved in the administration of the Project. DRB candidates shall disclose to the parties the following relationships:
 - (i) Prior employment with either party
 - (ii) Prior or current financial interests or ties to either party
 - (iii) Prior or current professional relationships with either party
 - (iv) Anything else that might bring into question the impartiality or independence of the DRB member
- (e) If either party objects to the selection of a potential DRB member based on the disclosures of the potential member, that potential member shall not be placed on the Board.

9.2 There shall be no ex parte communications with the DRB at any time.

9.3 The service of a Board member may be terminated only by written agreement of both parties.

9.4 If a Board member resigns, is unable to serve, or is terminated, a new Board member shall be selected within four weeks in the same manner as the Board member who was removed was originally selected.

9.5 The Board shall promptly meet at a mutually agreeable location to:

- (a) Obtain copies of all relevant documents and schedules for each of the DRB members.
- (b) Agree on the location of future meetings, which shall be reasonably close to the Site.
- (c) Establish an address and telephone number for each DRB member for the purposes of DRB business.

10. Advisory Opinions.

10.1 Advisory opinions are typically used soon after the parties find they have a potential Works Dispute and have conducted preliminary negotiations but before expenditure of additional resources and hardening their positions. Advisory opinions provide quick insight into the DRB's likely assessment of the Works Dispute. This process is quick and may be entirely oral and does not prejudice the opportunity for a DRB hearing.

10.2 Both parties must agree to seek an advisory opinion and so notify the chairperson. The procedure for requesting and issuing advisory opinions should be discussed with the DRB at the first meeting with the parties.

10.3 The DRB may or may not issue a written opinion, but if a written advisory opinion is issued, it must be at the specific request of both parties.

10.4 The opinion is only advisory and does not require an acceptance or rejection by either party. If the Works Dispute is not resolved and a hearing is held, the oral presentations and advisory opinion are completely disregarded and the DRB hearing procedure is followed.

10.5 Advisory opinions should be limited to merit issues only.

11. Arranging a Dispute Review Board Hearing.

11.1 When the DRB review process has been initiated, HPTE's Representative will:

- (a) Contact the Concessionaire and the DRB to coordinate an acceptable hearing date and time. The hearing shall be held at HPTE's Senior Representative's office unless an alternative location is agreed to by both parties. Unless otherwise agreed to by both parties the DRB hearing will be held within 30 days after the DRB agreement is signed by HPTE's Director.
- (b) Ensure DRB members have copies of all documents previously prepared by the Concessionaire and HPTE pertaining to the Works Dispute, the DRB request, the Contract documents, and the special provisions at least two weeks before the hearing.

12. Pre-Hearing Submittal:

12.1 At least fifteen days prior to the hearing, HPTE and the Concessionaire shall submit by e-mail to the DRB Chairperson their pre-hearing position paper. The DRB Chairperson shall simultaneously distribute by e-mail the pre-hearing position papers to all parties and other DRB members. At the same time, each party shall submit a copy of all its supporting documents to be used at the hearing to all DRB Members and the other party unless the parties have agreed to a common set of documents as discussed in 1.1(a) below. In this case, HPTE shall submit the common set of documents to the Board and the Concessionaire. The pre-hearing position paper shall contain the following:

- (a) A joint statement of the Works Dispute, and the scope of the desired decision. The joint statement shall summarize in a few sentences the nature of the Works Dispute. If the parties are unable to agree on the wording of the joint statement, each party's position paper shall contain both statements, and identify the party authoring each statement. The parties shall agree upon a joint statement at least 20 days prior to the hearing and submit it to the DRB or each party's independent statement shall be submitted to the DRB and the other party at least 20 days prior to the hearing.
- (b) The basis and justification for the party's position, with reference to specific contract language and other supporting documents for each element of the Works Dispute. To minimize duplication and repetitiveness, the parties may identify a common set of documents that will be referred to by both parties and submit them in a separate package to the DRB. HPTE will provide a hard copy of the project plans and this Contract, if necessary, to the DRB. Other standard documents such as Standard Specifications and M&S Standards are available on HPTE website.
- (c) When the scope of the hearing includes quantum, the requesting party's position paper shall include full details of the Change in Costs alleged to have been caused by the Relevant Event, calculated in accordance with this Contract. The Scope of the hearing will not include quantum if HPTE has ordered an audit and that audit has not been completed.

- (d) A list of proposed attendees at the hearing. In the event of any disagreement, the DRB shall make the final determination as to who attends the hearing.
- (e) A list of any intended experts including their qualifications and a summary of what their presentation will include and an estimate of the length of the presentation.

The number of copies, distribution requirements, and time for submittal shall be established by the DRB and communicated to the parties by the Chairperson.

- 12.2 A pre-hearing phone conference with all DRB members and the parties shall be conducted as soon as a hearing date is established but no later than 10 days prior to the hearing. The DRB Chairperson shall explain the specifics of how the hearing will be conducted including how the two parties will present their information to the DRB (Ex: Each party makes a full presentation of their position or presentations will be made on a "point by point" basis with each party making a presentation only on an individual Works Dispute issue before moving onto to the next issue). If the pre-hearing position papers and documents have been received by the Board prior to the conference call, the DRB Chairperson shall at this conference discuss the estimated hours of review and research activities for this Works Dispute (such as time spent evaluating and preparing recommendations on specific issues presented to the DRB). If the pre-hearing position papers and documents have not been received by the Board prior to the conference call, another conference call will be scheduled during the initial conference call to discuss the estimated hours of review. Compensation for time agreed to in advance by the parties will be made at an agreed rate of \$125 per hour in accordance with this Agreement. Compensation for the phone conference time will also be made at an agreed to rate of \$125 per hour. HPTE's Representative shall coordinate the phone conference.

13. Dispute Review Board Hearing.

- 13.1 The DRB shall preside over a hearing. The chairperson shall control the hearing and conduct it as follows:
- (a) A representative of HPTE presents a brief description of the project and the status of the project.
 - (b) The party that requested the DRB presents the Works Dispute in detail as supported by previously submitted information and documentation in the pre-hearing position paper. No new information or Works Disputes will be heard or addressed by the DRB.
 - (c) The other party presents its position in detail as supported by previously submitted information and documentation in the pre-hearing position paper. No new information or Works Disputes will be heard or addressed by the DRB.
 - (d) Representatives of each party are responsible for leading presentations at the DRB hearing.
 - (e) Attorneys shall not participate in the hearing unless the DRB specifically addresses an issue to them or unless agreed to by both parties. Attorneys representing the parties are permitted to attend the hearing, provided their presence has been noted in the pre-hearing submittal.
 - (f) Either party may use experts. A party intending to offer an outside expert's analysis at the hearing shall disclose such intention in the pre-hearing position paper. The expert's name and a general statement of the area of the Works Dispute that will be covered by his presentation shall be included in the disclosure. The other party may present an outside expert to address or respond to those issues that may be raised by the disclosing party's outside expert.

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- (g) If both parties approve, the DRB may retain an outside expert. The DRB chairperson shall include the cost of the outside expert in the DRB's regular invoice. HPTE and the Concessionaire shall equally bear the cost of the services of the outside expert employed by the DRB.
- (h) Upon completion of their presentations and rebuttals, both parties and the DRB will be provided the opportunity to exchange questions and answers. All questions shall be directed to the chairperson first. Attendees may respond only when board members request a response.
- (i) The DRB shall hear only those Works Disputes identified in the written request for the DRB and the information contained in the pre-hearing submittals. The board shall not hear or address other Works Disputes. If either party attempts to discuss a Works Dispute other than those to be heard by the DRB or attempts to submit new information, the chairperson shall inform such party that the board shall not hear the issue and shall not accept any additional information. Other than as expressly set out in this Part, the DRB shall not hear any issue or consider any information that was not contained in the Request for Works Dispute Resolution.
- (j) If either party fails to timely deliver a position paper, the DRB may reschedule the hearing one time. On the final date and time established for the hearing, the DRB shall proceed with the hearing using the information that has been submitted.
- (k) If a party fails to appear at the hearing, the DRB shall proceed as if all parties were in attendance.

14. **Dispute Review Board Recommendation.**

14.1 The DRB shall issue a recommendation (the "Recommendation") in accordance with the following procedures:

- (a) The DRB shall not make a recommendation on the Works Dispute at the meeting. Prior to the closure of the hearing, the DRB members and the Concessionaire and HPTE together will discuss the time needed for analysis and review of the Works Dispute and the issuance of the DRB's recommendation. The maximum time shall be 30 days unless otherwise agreed to by both parties. At a minimum, the recommendation shall contain all the elements listed in Rule 35, Form of Award, of the Arbitration Regular Track Provisions listed at the end of Appendix B of Schedule 24.
- (b) After the meeting has been closed, the DRB shall prepare a written Recommendation signed by each member of the DRB. In the case of a three member DRB, where one member dissents that member shall prepare a written dissent and sign it.
- (c) The chairperson shall transmit the signed Recommendation and any supporting documents to both parties.

15. **Clarification and Reconsideration of Recommendation.**

15.1 Either party may request clarification or reconsideration of a decision within ten days following receipt of the Recommendation. Within ten days after receiving the request, the DRB shall provide written clarification or reconsideration to both parties unless otherwise agreed to by both parties.

15.2 Requests for clarification or reconsideration shall be submitted in writing simultaneously to the DRB and to the other party.

- 15.3 The Board shall not accept requests for reconsideration that amount to a renewal of a prior argument or additional argument based on facts available at the time of the hearing.
- 15.4 Only one request for clarification or reconsideration per Works Dispute from each party will be allowed.
16. **Acceptance or Rejection of Recommendation.**
- 16.1 HPTE and the Concessionaire shall submit their written acceptance or rejection of the Recommendation, in whole or in part, concurrently to the other party and to the DRB within 14 days after receipt of the Recommendation or following receipt of responses to requests for clarification or reconsideration.
- 16.2 If the parties accept the Recommendation or a discrete part thereof, it will be implemented in accordance with this Contract.
- 16.3 If either party rejects the Recommendation in whole or in part, it shall give written explanation to the other party within 14 days after receiving the Recommendation or receipt of formal responses to requests for clarification or reconsideration. When the Recommendation is rejected in whole or in part by either party, the other party may either abandon the Works Dispute or pursue a formal claim in accordance with Part 2.
17. **Admissibility of Recommendation.**
- 17.1 Recommendations of a DRB are admissible in subsequent proceedings but shall be prefaced with the following paragraph:
- "This Recommendation may be taken under consideration with the understanding that:*
1. *The DRB Recommendation was a proceeding based on presentations by the parties.*
 2. *No fact or expert witnesses presented sworn testimony or were subject to cross-examination.*
 3. *The parties to the DRB were not provided with the right to any discovery, such as production of documents or depositions.*
 4. *There is no record of the DRB hearing other than the Recommendation."*
18. **Cost and Payments.**
- 18.1 General Administrative Costs. The Concessionaire and HPTE shall equally share the entire cost of the following to support the Board's operation:
- (a) Copies of Contract and other relevant documentation
 - (b) Meeting space and facilities
 - (c) Secretarial Services
 - (d) Telephone
 - (e) Mail
 - (f) Reproduction
 - (g) Filing
- 18.2 HPTE and the Concessionaire shall bear the costs and expenses of the DRB equally. Each DRB board member shall be compensated at an agreed rate of \$1,200 per day if

time spent on-site per meeting is greater than four hours. Each DRB board member shall be compensated at an agreed rate of \$800 per day if time spent on-site per meeting is less than or equal to four hours. The time spent traveling to and from each meeting shall be reimbursed at \$50 per hour if the travel distance is more than 50 miles. The agreed daily and travel time rates shall be considered full compensation for on-site time, travel expenses, transportation, lodging, time for travel of more than 50 miles and incidentals for each day, or portion thereof that the DRB member is at an authorized DRB meeting. No additional compensation will be made for time spent by DRB members in review and research activities outside the official DRB meetings unless that time, (such as time spent evaluating and preparing recommendations on specific issues presented to the DRB), has been specifically agreed to in advance by HPTE and Concessionaire. Time away from the project that has been specifically agreed to in advance by the parties will be compensated at an agreed rate of \$125 per hour. The agreed amount of \$125 per hour shall include all incidentals. Members serving on more than one DRB, regardless of the number of meetings per day, shall not be paid more than the all-inclusive rate per day or rate per hour for an individual project.

- 18.3 Payments to Board Members and General Administrative Costs. Appendix A, Article III shall govern such payments. Each Board member shall submit an invoice to the Concessionaire for fees and applicable expenses incurred each month following a month in which the Board members participated in Board functions. Such invoices shall be in the format established by the Concessionaire and HPTE. The Concessionaire shall submit to HPTE copies of all invoices. No markups by the Concessionaire will be allowed on any DRB costs.

19. Claims for Unresolved Works Disputes.

- 19.1 The Concessionaire may file a claim only if the Works Disputes resolution process described in the previous paragraphs of this Part 2 has been exhausted without resolution of the Works Dispute. Other methods of nonbinding Works Dispute resolution, exclusive of arbitration, can be used if agreed to by both parties.
- 19.2 This paragraph applies to any unresolved Works Dispute or set of Works Disputes between HPTE and the Concessionaire with an aggregate value of more than \$15,000. Unresolved Works Disputes with an aggregate value of more than \$15,000 from subcontractors, materials suppliers or any other entity not a party to the Contract shall be submitted through the Concessionaire in accordance with this subparagraph as a pass-through claim. Review of a pass-through claim does not create privity of Contract between HPTE and any other entity.
- 19.3 This Part 2 provides both contractual alternative Works Dispute resolution processes and constitutes remedy-granting provisions pursuant to Colorado Revised Statutes which must be exhausted in their entirety.
- 19.4 The venue for all unresolved Works Disputes with an aggregate value \$15,000 or less shall be the County Court for the City and County of Denver.
- 19.5 Non-binding Forms of alternative Works Dispute resolution such as Mediation are available upon agreement of the parties for all claims submitted in accordance with this subparagraph.
- 19.6 The cost of the non-binding ADR process shall be shared equally by both parties with each party bearing its own preparation costs. The type of nonbinding ADR process shall be agreed upon by the parties and shall be conducted within the State of Colorado at a mutually acceptable location. Participation in a nonbinding ADR process does not in any way waive the requirement that merit-binding arbitration proceedings must commence within 180-calendar days of HPTE's Representative's decision, absent written agreement otherwise by both parties.

20. **Notice of Intent to File a Claim.**

20.1 Within 30 days after rejection of the Dispute Resolution Board's Recommendation (after any clarification or reconsideration) in accordance with Part 2, the Concessionaire shall provide the Director of HPTE with a written notice of intent to file a claim. HPTE will acknowledge in writing receipt of Notice of Intent within 7 days.

21. **Claim Package Submission.**

21.1 Within 60 days after submitting the notice of intent to file a claim, the Concessionaire shall submit five copies of a complete claim package representing the final position the Concessionaire wishes to have considered. All claims shall be in writing and in sufficient detail to enable HPTE's Director to ascertain the basis and amount of claim. The claim package shall include all documents supporting the claim, regardless of whether such documents were provided previously to HPTE.

21.2 If requested by the Concessionaire the 60 day period may be extended by HPTE's Director in writing prior to final acceptance. As a minimum, the following information shall accompany each claim.

1. A claim certification containing the following language, as appropriate:

A. For a direct claim by the Concessionaire:

CONCESSIONAIRE'S CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of \$ _____ for extra compensation and ___ Days additional Time, made herein for work on this contract is true and to the best of my knowledge and belief and supported under the Contract between the parties.

This claim package contains all available documents that support the claims made herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated _____ /s/ _____

Subscribed and sworn before me this ___ day of _____.

NOTARY PUBLIC
My Commission Expires: _____

B. For a pass-through claim:

PASS-THROUGH CLAIM CERTIFICATION

Under penalty of law for perjury or falsification, the undersigned, (name) _____, (title) _____, of (company) _____, hereby certifies that the claim of \$ _____ for extra compensation and ___ Days additional Time, [add reference to any other relief or remedy if applicable] made herein for work on this contract is true and to the best of my knowledge and belief and supported under the Contract between the parties.

This claim package contains all available documents that support the claims made

herein and I understand that no additional information, other than for clarification and data supporting previously submitted documentation, may be presented by me.

Dated _____ /s/ _____

Subscribed and sworn before me this ____ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

The Concessionaire certifies that the claim being passed through to HPTE is passed through in good faith and is accurate and complete to the best of my knowledge and belief.

Dated _____ /s/ _____

Subscribed and sworn before me this ____ day of _____.

NOTARY PUBLIC

My Commission Expires: _____

2. A detailed factual statement of the claim for additional compensation, time, or both, providing all necessary dates, locations, and items of work affected by the claim. The Concessionaire's detailed factual statement shall expressly describe the basis of the claim and factual evidence supporting the claim. This requirement is not satisfied by simply incorporating into the claim package other documents that describe the basis of the claim and supporting factual evidence.
3. The date on which facts were discovered which gave rise to the claim.
4. The name, title, and activity of all known HPTE and other individuals who may be knowledgeable about facts giving rise to such claim.
5. The name, title, and activity of all known Concessionaire, subcontractor, supplier and other individuals who may be knowledgeable about facts giving rise to such claim.
6. The specific provisions of the Contract, which support the claim and a statement of the reasons why such provisions support the claim.
7. If the claim relates to a decision of HPTE's Representative, which the Contract leaves to HPTE's Representative's discretion, the Concessionaire shall set out in detail all facts supporting its position relating to the decision of HPTE's Representative.
8. The identification of any documents and the substance of all oral communications that support the claim.
9. Copies of all known documents that support the claim.
10. The Dispute Review Board Recommendation.
11. If an extension of contract time is sought, the documents required by the Contract.

22. **Audit.**

22.1 An audit may be performed by HPTE for any Works Dispute or claim, and is mandatory for all Works Disputes and claims with amounts greater than \$250,000. All audits will be complete within 60 days of receipt of the complete claim package, provided the Concessionaire allows the auditors reasonable and timely access to the Concessionaire's books and records. For all claims with amounts greater than \$250,000 the Concessionaire shall submit a copy of certified claim package directly to HPTE Audit Unit at the following address:

Division of Audit
4201 E. Arkansas Ave
Denver, Co. 80222

23. **HPTE's Director's Decision.**

23.1 When the Concessionaire properly files a claim, HPTE's Director will review the claim and render a written decision to the Concessionaire to either affirm or deny the claim, in whole or in part, in accordance with the following procedure.

23.2 HPTE's Director may consolidate all related claims on a project and issue one decision, provided that consolidation does not extend the time period within which HPTE's Director is to render a decision. Consolidation of unrelated claims will not be made.

23.3 HPTE's Director will render a written decision to the Concessionaire within 60 days after the receipt of the claim package or receipt of the audit whichever is later. In rendering the decision, HPTE's Director: (1) will review the information in the Concessionaire's claim; (2) will conduct a hearing if requested by either party; and (3) may consider any other information available in rendering a decision.

23.4 HPTE's Director will assemble and maintain a claim record comprised of all information physically submitted by the Concessionaire in support of the claim and all other discoverable information considered by HPTE's Director in reaching a decision. Once HPTE's Director assembles the claim record, the submission and consideration of additional information, other than for clarification and data supporting previously submitted documentation, at any subsequent level of review by anyone, will not be permitted.

23.5 HPTE's Director will provide a copy of the claim record and the written decision to the Concessionaire describing the information considered by HPTE's Director in reaching a decision and the basis for that decision. If HPTE's Director fails to render a written decision within the 60 day period, or within any extended time period as agreed to by both parties, the Concessionaire shall either: (1) accept this as a denial of the claim, or (2) commence arbitration, as described in this Part 2.

23.6 If the Concessionaire accepts HPTE's Director's decision, the provisions of the decision shall be implemented in accordance with this Contract and the claim is resolved.

23.7 For the convenience of the parties to the Contract it is agreed by the parties that any merit binding arbitration shall be brought within 180-calendar days from the date of HPTE Director's decision. The parties understand and agree that the Concessionaire's failure to commence proceedings within the time period provided, shall be a complete bar to any such claims or causes of action.

MERIT BINDING ARBITRATION

24. **Merit Binding Arbitration.**

24.1 If the Concessionaire disagrees with HPTE Director's decision, the Concessionaire may initiate merit binding arbitration to finally resolve the claim that the Concessionaire submitted to HPTE. Such arbitration shall be strictly limited to those claims that were

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previously submitted and decided in accordance with the previous paragraphs of this Part 2. This does not preclude the joining in arbitration of multiple claims from the same project provided that each claim has gone through the process set out in this Part 2. The parties may agree, in writing, at any time, to pursue some other form of alternative dispute resolution.

- 24.2 Any offer made by the Concessionaire or HPTE at any stage of the claims process, as set out in this Schedule, shall be deemed an offer of settlement pursuant to Colorado Rule of Evidence 408 and therefore inadmissible in any arbitration.
- 24.3 Arbitration shall be governed by the modified version of AAA's Construction Industry Arbitration Rules in force on the Commencement Date as modified in Appendix B.

SCHEDULE 24

Dispute Resolution Procedure

Part 3 –Services Disputes

1. Services Disputes

Services Disputes shall be resolved in accordance with this Part.

2. Consultation and Senior Management Meeting

2.1 If a Dispute arises in relation to any aspect of this Agreement, the Concessionaire and HPTE shall consult in good faith in an attempt to come to an agreement in relation to the disputed matter.

2.2 Before proceeding with Expert Determination (and as a condition precedent to the right to give a Notice of Expert Determination) a party must give a notice to the other party calling for the meeting referred to in paragraph 2.3 which notice must

- (a) refer to this paragraph
- (b) set out all material facts and matters which comprise the Dispute; and
- (c) setting out the nature of the relief, remedy or compensation which the party is seeking to resolve the Dispute.

2.3 Within 20 Business Days after receiving such notice the chief executive of the Concessionaire, and the director of HPTE shall meet to discuss and seek to resolve the Dispute.

2.4 If the Dispute has not been resolved within 40 Business Days (or such longer period as the parties may agree) after the notice calling for the meeting referred to in paragraph 2.3 then a party may give notice of Expert Determination.

3. Expert Determination

Either party may give the other notice of its intention to refer the Dispute to Expert Determination (“the Notice of Expert Determination”). The Notice of Expert Determination shall include a brief statement of the issue to be referred and the redress sought. The party giving the Notice of Expert Determination (“the Referring Party”) shall on the same day and by the same means of communication send a copy of the Notice of Expert Determination to an expert selected in accordance with paragraph 4.

4. Identity of Independent Expert

The Independent Expert nominated to consider a Dispute referred to him shall be selected on a strictly rotational basis from the relevant panel of experts selected in accordance with the following:

- (a) there shall be a panel of experts. All the experts shall be wholly independent of the Concessionaire, HPTE, the any relevant Sub-Contractor and any of the major competitors of the Concessionaire or relevant Sub-Contractor;
- (b) the panel shall be comprised of three (3) experts who shall be selected jointly by the Concessionaire and HPTE. Such selection shall take place within twenty (20) Business Days of the Commencement Date;
- (c) if any member of the panel resigns during the Contract Period, a replacement expert shall be selected by the Concessionaire and HPTE as soon as practicable;

- (d) In the event that the nominated Independent Expert is unable or unwilling to confirm acceptance of his appointment as Independent Expert within two (2) Business Days of receipt of the Notice of Expert Determination, then the Referring Party shall invite the person next in line to act as the Independent Expert. In the event that the second panel member is unwilling or unable to confirm acceptance of his appointment as Independent Expert within two (2) days or if the parties disagree as to the relevant panel of experts to be used then the Referring Party may apply to the President for the time being of the American Arbitration Association who shall within 3 Business Days of any such application nominate an Independent Expert to determine the issue set out in the Notice of Expert Determination.
- (e) if HPTe and the Concessionaire are unable to agree on the identity of the experts to be selected to the panel, the President for the time being of the American Arbitration Association shall appoint such expert(s) within thirty (30) days of any application for such appointment by either party.

5. Referral of the Dispute

Within 7 days of the service of the Notice of Expert Determination, or as soon thereafter as the Independent Expert is appointed, the Referring Party shall serve its statement of case (“the Referral Notice”) on the Independent Expert and the other party (“the Responding Party”). The Referral Notice shall include a copy of this Contract, details of the circumstances giving rise to the Dispute as set out in the Notice of Expert Determination, the reasons why the Referring Party is entitled to the redress sought, and the evidence upon which it relies.

6. Response to the Referral

The Responding Party shall serve its statement of case (“the Response”) on the Independent Expert and the Referring Party within a period of time to be directed by the Independent Expert. The Response shall include any arguments in response to the Referral Notice of the Dispute set out in the Notice of Expert Determination and any additional evidence on which the Responding Party relies.

7. Procedure

Subject to paragraph 11, the Independent Expert shall have absolute discretion as to how to conduct the determination of the Dispute, including whether a meeting is necessary and whether he shall direct the parties to agree a joint statement of the facts and of the issues which he is to determine. He shall establish the procedure and timetable subject to any limitation within this Contract. The parties shall comply with any request or direction of the Independent Expert in relation to the expert determination.

8. Independent Expert’s Decision

In any event, the Independent Expert shall provide to both parties his written decision on the Dispute, within twenty eight (28) days after the date of receipt of the Referral Notice (or such other period as the parties may agree). The Independent Expert shall be entitled to extend the said period of twenty eight (28) days by up to fourteen (14) days with the consent of the Referring Party. The Independent Expert shall state any reasons for his decision. Unless and until revised, cancelled or varied by merit binding arbitration or by the courts, the Independent Expert’s decision shall be binding on both parties who shall forthwith give effect to the decision.

9. Independent Expert’s Costs

The Independent Expert’s costs of any referral shall be borne as the Independent Expert shall specify or, in default, equally by the parties. Each party shall bear its own costs arising out of the referral, including legal costs and the costs and expenses of any witnesses.

10. Independent Expert as Expert

The Independent Expert shall be deemed not to be an arbitrator but shall render his decision as an expert, and the provisions of any Law relating to arbitration shall not apply to the Independent Expert or his determination or the procedure by which he reached his determination.

11. Independent Expert's Powers

The Independent Expert shall act fairly and impartially and may take the initiative in ascertaining the facts and the law. The Independent Expert shall have the power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Contract.

12. Confidentiality

All information, data or documentation disclosed or delivered by a party to the Independent Expert in consequence of or in connection with his appointment as Independent Expert shall be treated as confidential. The Independent Expert shall not, save as permitted by clause 62 (Information and Confidentiality), disclose to any Person or company any such information, data or documentation and all such information, data or documentation shall remain the property of the party disclosing or delivering the same and all copies shall be returned to such party on completion of the Independent Expert's work.

13. Liability of Independent Expert

The Independent Expert is not liable for anything done or omitted in the discharge or purported discharge of his functions as Independent Expert unless the act or omission is in bad faith. Any employee or agent of the Independent Expert is similarly protected from liability.

14. Reference to the Merit Binding Arbitration

Either party may (within ninety (90) calendar days of receipt of the Independent Expert's decision or where the Independent Expert fails to give a decision pursuant to paragraph 8) give notice to the other party of its intention to refer the Dispute to merit binding arbitration. The arbitration shall be governed by the modified version of AAA's Construction Industry Arbitration Rules appearing at Appendix B of this Schedule (in which references to the decision of the HPTE Director shall be replaced by a reference to the decision of the Independent Expert. Pursuant to the modified arbitration rules (R35 through R39), the arbitrators shall issue a binding decision with regard to entitlement and a non-binding decision with regard to quantum. If either party disagrees with the decision on quantum, the disagreeing party may seek a trial de novo in Denver District Court with regard to quantum only. As part of the Denver District Court proceeding, neither party may subpoena all or part of the panel of experts to testify as to the reasoning behind merit.

APPENDIX A

Dispute Review Board Three Party Agreement

DISPUTE REVIEW BOARD
THREE PARTY AGREEMENT

THIS THREE PARTY AGREEMENT, made as of the date signed by HPTE's Representative below, by and between: HPTE, hereinafter called "HPTE"; and

_____ ,
hereinafter called the "Concessionaire"; and

and

_____ ,
hereinafter called the "Dispute Review Board" or "Board".

WHEREAS, HPTE has entered into a Concession Agreement ("the Contract") with the Concessionaire in respect of the US 36 Managed Lanes Concession Project

and

WHEREAS, the Contract provides for the establishment of a Board in accordance with [Part 2 or Part 3 of Schedule 24] to the Contract.

NOW, THEREFORE, it is hereby agreed:

ARTICLE I
DESCRIPTION OF WORK AND SERVICES

HPTE and the Concessionaire shall form a Board in accordance with this agreement and the provisions of [Part 2 or Part 3 of Schedule 24].

ARTICLE II
COMMITMENT ON PART OF THE PARTIES HERETO

The parties hereto shall faithfully fulfill the requirements of [Part 2 or Part 3 of Schedule 24] and the requirements of this agreement.

ARTICLE III
COMPENSATION

The parties shall share equally in the cost of the Board, including general administrative costs (meeting space and facilities, secretarial services, telephone, mail, reproduction, filing) and the member's individual fees. Reimbursement of the Concessionaire's share of the Board expenses for any reason is prohibited.

The Concessionaire shall make all payments in full to Board members. The Concessionaire will submit to HPTE an itemized statement for all such payments, and HPTE will split the cost by

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including 50 percent payment on the next progress payment. The Concessionaire and HPTE will agree to accept invoiced costs prior to payment by the Concessionaire.

Board members shall keep all fee records pertaining to this agreement available for inspection by representatives of HPTE and the Concessionaire for a period of three years after the termination of the Board members' services.

Payment to each Board member shall be at the fee rates established in [Part 2 or Part 3 of Schedule 24] and agreed to by each Board member, the Concessionaire, and HPTE. In addition, reimbursement will be made for applicable expenses.

Each Board member shall submit an invoice to the Concessionaire for fees incurred each month following a month in which the members participated in Board functions. Such invoices shall be in the format established by the Concessionaire and HPTE.

Payments shall be made to each Board member within 60 days after the Concessionaire and HPTE have received all the applicable billing data and verified the data submitted by that member. The Concessionaire shall make payment to the Board member within seven calendar days of receipt of payment from HPTE.

ARTICLE IV ASSIGNMENT

Board members shall not assign any of the work to be performed by them under this agreement. Board members shall disclose any conflicts of interest including but not limited to any dealings with the either party in the previous five years other than serving as a Board member under other contracts.

ARTICLE V COMMENCEMENT AND TERMINATION OF SERVICES

The commencement of the services of the Board shall be in accordance with Schedule 24 of the Contract and shall continue until all assigned Works Disputes under the Contract which may require the Board's services have been heard and a Recommendation has been issued by the Board as specified in [Part 2 or Part 3 of Schedule 24]. If a Board member is unable to fulfill his responsibilities for reasons specified in Schedule 24, he shall be replaced as provided therein, and the Board shall fulfill its responsibilities as though there had been no change.

ARTICLE VI LEGAL RELATIONS

The parties hereto agree that each Board member in performance of his duties on the Board is acting as an independent Concessionaire and not as an employee of either HPTE or the Concessionaire. Board members will guard their independence and avoid any communication about the substance of the Works Dispute without both parties being present.

The Board members are absolved of any personal liability arising from the Recommendations of the Board. The parties agree that members of the Works Dispute review board panel are acting as mediators for purposes of C.R.S. § 13-22-302(4) and, as such, the liability of any Works Dispute review board member shall be limited to willful and wanton misconduct as provided for in C.R.S. § 13-22-305(6)

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IN WITNESS HEREOF, the parties hereto have caused this agreement to be executed the day and year first written above.

BOARD MEMBER: _____

BY: _____

BOARD MEMBER: _____

BY: _____

BOARD MEMBER: _____

BY: _____

CONTRACTOR: _____

BY: _____

TITLE: _____

COLORADO DEPARTMENT OF TRANSPORTATION

BY: _____ Date: _____

TITLE: CHIEF ENGINEER

APPENDIX B

AMERICAN ARBITRATION ASSOCIATION CONSTRUCTION INDUSTRY ARBITRATION
RULES MODIFIED FOR USE WITH HPTE SPECIFICATION SUBSECTION 105.24**REGULAR TRACK PROCEDURES****R-1. Agreement of Parties**

- (a) The parties shall be deemed to have made these rules a part of their Contract. These rules and any amendments shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration. The parties, by written agreement, may vary the procedures set out in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.
- (b) Unless the parties determine otherwise, the Fast Track Procedures shall apply in any case in which aggregate claims do not exceed \$75,000, exclusive of interest and arbitration fees and costs. Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties except for pass-through claims. The Fast Track Procedures shall be applied as described in Sections F-1 through F-13 of these rules, in addition to any other portion of these rules that is not in conflict with the Fast Track Procedures.
- (c) Unless the parties agree otherwise, the Procedures for Large, Complex Construction Works Disputes shall apply to all cases in which the disclosed aggregate claims of any party is at least \$500,000, exclusive of claimed interest, arbitration fees and costs. Parties may also agree to use these procedures in cases involving claims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Construction Works Disputes shall be applied as described in Sections L-1 through L-4 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Construction Works Disputes.
- (d) All other cases shall be administered in accordance with Sections R-1 through R-45 of these rules.

R-2. Independent Arbitration Provider and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by an independent third-party (Arbitration Provider) and an arbitration is initiated under these rules, they thereby authorize the Arbitration Provider to administer the arbitration. The authority and duties of the Arbitration Provider are prescribed in the parties' Contract and in these rules, and may be carried out through such of the Arbitration Provider's representatives as it may direct. The Arbitration Provider will assign the administration of an arbitration to its Denver office

R-3. Initiation of Arbitration

Arbitration shall be initiated in the following manner.

- (a) The Concessionaire shall, within 30 days after the Final Appeal Person (being the HPTE Director) issues a decision, submit to the Final Appeal Person written notice of its intention to arbitrate (the "demand"). The demand shall indicate the appropriate qualifications for the arbitrator(s) to be appointed to hear the arbitration.

- (b) HPTE may file an answering statement with the Concessionaire within 15 days after receiving the demand. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought.
- (c) The Final Appeal Person shall retain an Arbitration Provider, such as the American Arbitration Association, which will administer an arbitration pursuant to these Rules, except to the extent that such rules conflict with the specifications, in which case the specifications shall control.
- (d) The Arbitration Provider shall confirm its retention to the parties.

R-4. Consolidation or Joinder

If the parties' agreement or the law provides for consolidation or joinder of related arbitrations, all involved parties will endeavor to agree on a process to effectuate the consolidation or joinder.

If they are unable to agree, the Arbitration Provider shall directly appoint a single arbitrator for the limited purpose of deciding whether related arbitrations should be consolidated or joined and, if so, establishing a fair and appropriate process for consolidation or joinder. The Arbitration Provider may take reasonable administrative action to accomplish the consolidation or joinder as directed by the arbitrator.

R-5. Appointment of Arbitrator

An arbitrator shall be appointed in the following manner:

- (a) Immediately after the Arbitration Provider is retained, the Arbitration Provider shall send simultaneously to each party to the Works Dispute an identical list of 10 names of potential arbitrators. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement. Absent agreement of the parties, the arbitrator shall not have served as the mediator in the mediation phase of the instant proceeding.
- (b) If the parties cannot agree to arbitrator(s), each party to the Works Dispute shall have 15 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the Arbitration Provider. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the Arbitration Provider shall invite an arbitrator to serve.
- (c) Unless both parties agree otherwise one arbitrator shall be used for claims less than \$250,000 and three arbitrators shall be used for claims \$250,000 and greater. Within 15 calendar days from the date of the appointment of the last arbitrator, the Arbitration Provider shall appoint a chairperson.
- (d) The entire claim record will be made available to the arbitrators by the Final Appeal Person within 15 calendar days from the date of the appointment of the last arbitrator.

R-6. Changes of Claim

The arbitrator(s) will not consider any information that was not previously made a part of the claim record as transmitted by the Final Appeal Person, other than clarification and data supporting previously submitted documentation.

R-7. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator shall disclose to the Arbitration Provider any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any interest in the result of the arbitration or any relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration.
- (b) Upon receipt of such information from the arbitrator or another source, the Arbitration Provider shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-6 is not to be construed as an indication that the arbitrator considers that the disclosed circumstances are likely to affect impartiality or independence.
- (d) In no case shall an arbitrator be employed by, affiliated with, or have consultive or business connection with the claimant Concessionaire or HPTE. An arbitrator shall not have assisted either in the evaluation, preparation, or presentation of the claim case either for the Concessionaire or HPTE or have rendered an opinion on the merits of the claim for either party, and shall not do so during the proceedings of arbitration.

R-8. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for: (i) partiality or lack of independence, (ii) inability or refusal to perform his or her duties with diligence and in good faith; and/or (iii) any grounds for disqualification provided by applicable Law.
- (b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the Arbitration Provider shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-9. Communication with Arbitrator

No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration.

R-10. Vacancies

- (a) If for any reason an arbitrator is unable to perform the duties of the office, the Arbitration Provider may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-11. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than 15 days after the Arbitration Provider confirms its retention to the parties. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-12. Administrative Conference

At the request of any party or upon the Arbitration Provider's own initiative, the Arbitration Provider may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, potential exchange of information, a timetable for hearings and any other administrative matters.

R-13. Preliminary Hearing

- (a) At the request of any party or at the discretion of the arbitrator or the Arbitration Provider, the arbitrator may schedule as soon as practicable a preliminary hearing with the parties and/or their representatives. The preliminary hearing may be conducted by telephone at the arbitrator's discretion.
- (b) During the preliminary hearing, the parties and the arbitrator should discuss the future conduct of the case, including clarification of the issues and claims, a schedule for the hearings and any other preliminary matters.

R-14. Exchange of Information

- (a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct: (i) the production of documents and other information; (ii) short depositions, particularly with regard to experts; and/or (iii) the identification of any witnesses to be called.
- (b) At least five business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
- (c) The arbitrator is authorized to resolve any Works Disputes concerning the exchange of information.
- (d) Additional discovery may be ordered by the arbitrator in extraordinary cases when the demands of justice require it.

R-15. Date, Time, and Place of Hearing

- (a) The arbitrator shall set the date, time, and place for each hearing and/or conference. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule.
- (b) The parties may agree on the locale where the arbitration is to be held. Absent such agreement, the arbitration shall be held in the City and County of Denver.

- (c) The Arbitration Provider shall send a notice of hearing to the parties at least ten calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-16. Attendance at Hearings

The arbitrator and the Arbitration Provider shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any person other than a party and its representative.

R-17. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and the Arbitration Provider of the name and address of the representative at least three calendar days prior to the date set for the hearing at which that person is first to appear.

R-18. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-19. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

R-20. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-21. Postponements

The arbitrator for good cause shown may postpone any hearing upon agreement of the parties, upon request of a party, or upon the arbitrator's own initiative.

R-22. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-23. Conduct of Proceedings

- (a) The Concessionaire shall present evidence to support its claim. HPTE shall then present evidence supporting its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this

procedure; provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

- (b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the Works Dispute and may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case. The arbitrator shall entertain motions, including motions that dispose of all or part of a claim or that may expedite the proceedings, and may also make preliminary rulings and enter interlocutory orders.
- (c) The parties may agree to waive oral hearings in any case.

R-24. Evidence

- (a) The arbitrators shall consider all written information available in the claim record and all oral presentations in support of that record by the Concessionaire and HPTE. Conformity to legal rules of evidence shall not be necessary.
- (b) The arbitrators shall not consider any written documents or arguments which have not previously been made a part of the claim record, other than clarification and data supporting previously submitted documentation. The arbitrators shall not consider an increase in the amount of the claim, or any new claims.
- (c) The arbitrator shall determine the admissibility, relevance, and materiality of any evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value compared to the time and expense involved. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where: (i) any of the parties is absent, in default, or has waived the right to be present, or (ii) the parties and the arbitrators agree otherwise.
- (d) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (e) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-25. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

- (a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.
- (b) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence, unless otherwise agreed by the parties and the arbitrator, shall be filed with the Arbitration Provider for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-26. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the Arbitration Provider to so advise the parties. The arbitrator shall set the date and time and the Arbitration Provider shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not

present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-27. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
- (b) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-28. Closing of Hearing

When satisfied that the presentation of the parties is complete, the arbitrator shall declare the hearing closed.

If documents or responses are to be filed as provided in Section R-24, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of documents, responses, or briefs. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties and the arbitrator, upon the closing of the hearing.

R-29. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 15 calendar days from the closing of the reopened hearing within which to make an award.

R-30. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

R-31. Extensions of Time

The parties may modify any period of time by agreement. The Arbitration Provider or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The Arbitration Provider shall notify the parties of any extension.

R-32. Serving of Notice

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard thereto has been granted to the party.
- (b) The Arbitration Provider, the arbitrator and the parties may also use overnight delivery, electronic facsimile transmission (fax), or electronic mail (email) to give the notices required by these rules.

- (c) Unless otherwise instructed by the Arbitration Provider or by the arbitrator, any documents submitted by any party to the Arbitration Provider or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-33. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions.

R-34. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the Arbitration Provider's transmittal of the final statements and proofs to the arbitrator.

R-35. Form of Award

After complete review of the facts associated with the claim, the arbitrators shall render a written explanation of their decision. When three arbitrators are used, and only two arbitrators agree then the award shall be signed by the two arbitrators. The arbitrator's decision shall include:

- (a) A summary of the issues and factual evidence presented by the Concessionaire and HPTE concerning the claim;
- (b) Decisions concerning the validity of the claim;
- (c) Decisions concerning the value of the claim as to cost impacts if the claim is determined to be valid;
- (d) The contractual and factual bases supporting the decisions made including an explanation as to why each and every position was accepted or rejected;
- (e) Detailed and supportable calculations which support any decisions.

R-36. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including equitable relief and specific performance of a contract.
- (b) In addition to the final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. (c) The award of the arbitrator may include interest at the statutory rate and from such date as the arbitrator may deem appropriate.

R-37. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at the last known address, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-38. Modification of Award

Within 10 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided.

If the modification request is made by a party, the other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 25 calendar days after transmittal by the Arbitration Provider to the arbitrator of the request.

If applicable Law provides a different procedural time frame, that procedure shall be followed.

R-39. Appeal of Award

Appeal of the arbitrators' decision concerning the merit of the claim is governed by the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-202 to -230. Either party may appeal the arbitrator's decision on the value of the claim to the Colorado State District Court in and for the City and County of Denver for trial de novo.

R-40. Release of Documents for Judicial Proceedings

The Arbitration Provider shall, upon the written request of a party, furnish to the party, at its expense, certified copies of any papers in the Arbitration Provider's possession that may be required in judicial proceedings relating to the arbitration.

R-41. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the Arbitration Provider nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the Arbitration Provider nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

R-42. Administrative Fees

The Arbitration Provider shall prescribe filing and other administrative fees and service charges to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. Such fees and charges shall be borne equally by the parties.

The Arbitration Provider may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-43. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, Arbitration Provider representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties.

R-44. Neutral Arbitrator's Compensation

Arbitrators shall be compensated a rate consistent with the arbitrator's stated rate of compensation.

If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Arbitration Provider and confirmed to the parties.

Such compensation shall be borne equally by the parties.

R-45. Deposits

The Arbitration Provider may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

R-46. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the Arbitration Provider for final decision. All other rules shall be interpreted and applied by the Arbitration Provider.

R-45. Suspension for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the Arbitration Provider may so inform the parties in order that the parties may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, the Arbitration Provider may suspend the proceedings.

FAST TRACK PROCEDURES

F-1. Limitations on Extensions

In the absence of extraordinary circumstances, the Arbitration Provider or the arbitrator may grant a party no more than one seven-day extension of the time in which to respond to the demand for arbitration or counterclaim as provided in Section R-3.

F-2. Changes of Claim

The arbitrator will not consider any information that was not previously made a part of the claim record as transmitted by the Final Appeal Person, other than clarification and data supporting previously submitted documentation

F-3. Serving of Notice

In addition to notice provided above, the parties shall also accept notice by telephone. Telephonic notices by the Arbitration Provider shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

F-4. Appointment and Qualification of Arbitrator

Immediately after the retention of the Arbitration Provider, the Arbitration Provider will simultaneously submit to each party a listing and biographical information from its panel of arbitrators knowledgeable in construction who are available for service in Fast Track cases. The parties are encouraged to agree to an arbitrator from this list, and to advise the Arbitration Provider of their agreement, or any factual objections to any of the listed arbitrators, within 7 calendar days of the transmission of the list. The Arbitration Provider will appoint the agreed-upon arbitrator, or in the event the parties cannot agree on an arbitrator, will designate the arbitrator from among those names not stricken for factual objections.

The parties will be given notice by the Arbitration Provider of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified above. Within the time period established by the Arbitration Provider, the parties shall notify the Arbitration Provider of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be for cause and shall be confirmed in writing to the Arbitration Provider with a copy to the other party or parties.

F-5. Preliminary Telephone Conference

Unless otherwise agreed by the parties and the arbitrator, as promptly as practicable after the appointment of the arbitrator, a preliminary telephone conference shall be held among the parties or their attorneys or representatives, and the arbitrator.

F-6. Exchange of Exhibits

At least 2 business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator is authorized to resolve any Works Disputes concerning the exchange of exhibits.

F-7. Discovery

There shall be no discovery, except as provided in Section F-4 or as ordered by the arbitrator in extraordinary cases when the demands of justice require it.

F-8. Date, Time, and Place of Hearing

The arbitrator shall set the date and time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The Arbitration Provider will notify the parties in advance of the hearing date. All hearings shall be held within the City and County of Denver.

F-9. The Hearing

- (a) Generally, the hearing shall not exceed 1 day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule 1 additional hearing day within 7 business days after the initial day of hearing.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions above.

F-10. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of the Arbitration Provider's transmittal of the final statements and proofs to the arbitrator.

F-11. Time Standards

The arbitration shall be completed by settlement or award within 60 calendar days of confirmation of the arbitrator's appointment, unless all parties and the arbitrator agree otherwise or the arbitrator extends this time in extraordinary cases when the demands of justice require it.

F-12. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the Arbitration Provider regional office.

PROCEDURES FOR LARGE, COMPLEX CONSTRUCTION DISPUTES

L-1. Large, Complex Construction Works Disputes

The procedures for large, complex construction Works Disputes shall apply to any claim with a value exceeding \$500,000 or as agreed to by the parties.

L-2. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the Arbitration Provider shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference call will take place within 14 days after the retention of the Arbitration Provider. In the event the parties are unable to agree on an acceptable time for the conference, the Arbitration Provider may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the Arbitration Provider may deem appropriate:

- (a) To obtain additional information about the nature and magnitude of the Works Dispute and the anticipated length of hearing and scheduling;
- (b) To discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) To obtain conflicts statements from the parties; and
- (d) To consider, with the parties, whether mediation or other non-adjudicative methods of Works Dispute resolution might be appropriate.

L-3. Arbitrators

- (a) Large, Complex Construction Cases shall be heard and determined by three arbitrators.
- (b) The Arbitration Provider shall appoint arbitrator(s) in the manner provided in the Regular Construction Industry Arbitration Rules.

L-4. Preliminary Hearing

As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the preliminary hearing will be conducted by telephone conference call rather than in person.

At the preliminary hearing the matters to be considered shall include, without limitation:

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- (a) Service of a detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator(s);
- (b) Stipulations to uncontested facts;
- (c) The extent to which discovery shall be conducted;
- (d) Exchange and premarking of those documents which each party believes may be offered at the hearing;
- (e) The identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
- (f) Whether, and the extent to which, any sworn statements and/or depositions may be introduced;
- (g) The extent to which hearings will proceed on consecutive days;
- (h) Whether a stenographic or other official record of the proceedings shall be maintained;
- (i) The possibility of utilizing mediation or other non-adjudicative methods of Works Dispute resolution; and
- (j) The procedure for the issuance of subpoenas.

By agreement of the parties and/or order of the arbitrator(s), the pre-hearing activities and the hearing procedures that will govern the arbitration will be memorialized in a Scheduling and Procedure Order.

L-5. Management of Proceedings

- (a) Arbitrator(s) shall take such steps as they may deem necessary or desirable to avoid delay and to achieve a just, speedy and cost-effective resolution of Large, Complex Construction Cases.
- (b) Parties shall cooperate in the exchange of documents, exhibits and information within such party's control if the arbitrator(s) consider such production to be consistent with the goal of achieving a just, speedy and cost effective resolution of a Large, Complex Construction Case.
- (c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator(s) may place such limitations on the conduct of such discovery as the arbitrator(s) shall deem appropriate. If the parties cannot agree on production of document and other information, the arbitrator(s), consistent with the expedited nature of arbitration, may establish the extent of the discovery.
- (d) At the discretion of the arbitrator(s), upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator(s) may order depositions of, or the propounding of interrogatories to such persons who may possess information determined by the arbitrator(s) to be necessary to a determination of the matter.
- (e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 business days prior to the hearing unless the arbitrator(s) determine otherwise.

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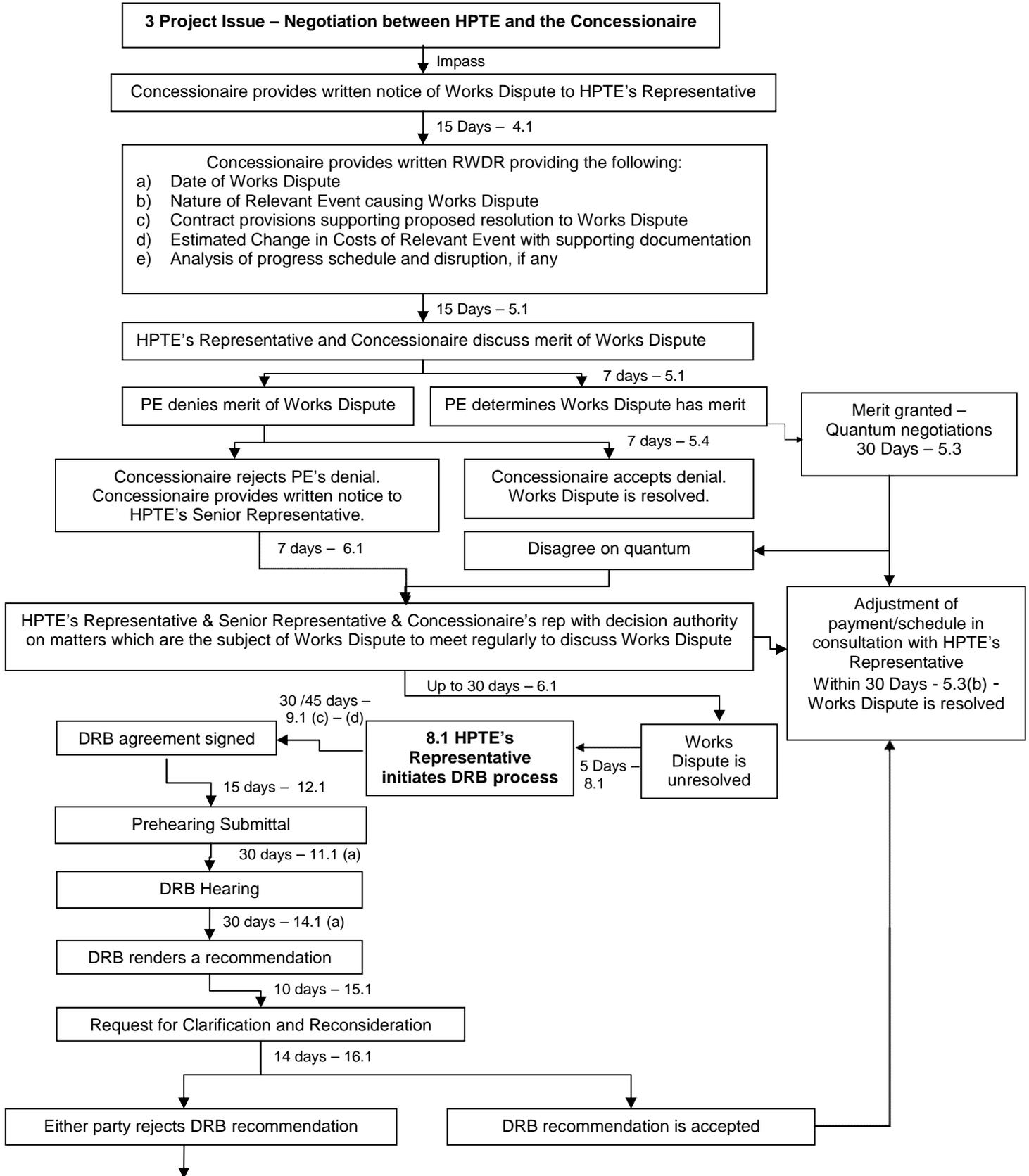
- (f) The exchange of information pursuant to this rule, as agreed by the parties and/or directed by the arbitrator(s), shall be included within the Scheduling and Procedure Order.
- (g) The arbitrator is authorized to resolve any Works Disputes concerning the exchange of information. (h) Generally hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

APPENDIX C

Flowchart summarizing Works Disputes Procedure

[see following page]

**Flowchart Summarizing Works Disputes Procedure
DISPUTES AND CLAIMS FLOW CHART**



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