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2021 Model FIPA

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AGREEMENT BETWEEN CANADA AND

FOR THE PROMOTION AND PROTECTION OF INVESTMENTS

Canada and _____ (the “Parties”),

Recognizing that the promotion and the protection of investments of investors of one Party in the territory of the other Party will be conducive to the stimulation of mutually beneficial business activity, to the development of economic co-operation between them, and to the promotion of sustainable development,

Reaffirming the importance of encouraging investment promotion activities and to make these activities more accessible to underrepresented groups, including by encouraging investments by women, Indigenous peoples, and micro, small, or medium-sized enterprises,

Reaffirming the importance of promoting responsible business conduct, cultural identity and diversity, environmental protection and conservation, gender equality, the rights of Indigenous peoples, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving the Party's right to regulate in the public interest;

Have agreed as follows:

Section A: Definitions

Article 1: Definitions

For the purpose of this Agreement:

“algorithm” means a defined sequence of steps, taken to solve a problem or obtain a result;

“authorization” means the granting of permission by a competent authority to a person with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in the territory of a Party;

“authorization procedures” means administrative or procedural rules that must be adhered to in order to obtain, amend or renew an authorization;

“central level of government” means:

(a) for Canada, the Government of Canada; and

(b) for _____, the government of ___;

“claimant” means an investor of a Party that makes a claim under Article 27 (Submission of a Claim to Arbitration);

“competent authority” means any government of a Party, or non-governmental body in the exercise of powers delegated by any government of a Party, that grants an authorization;

“confidential information” means confidential business information or information that is privileged or otherwise protected from disclosure under the law of a Party;

“covered investment” means, with respect to a Party, an investment:

(a) in its territory;

(b) made in accordance with the applicable domestic law of the Party at the time the investment is made;

(c) directly or indirectly owned or controlled by an investor of the other Party; and

(d) existing on the date of entry into force of this Agreement, or made or acquired thereafter;

“disputing parties” means the claimant and the respondent Party;

“disputing party” means either the claimant or the respondent Party;

“enterprise” means an entity constituted or organized under applicable law, whether or not for profit, whether privately owned or governmentally owned, including a corporation, trust, partnership, sole proprietorship, joint venture or other association and a branch of any such entity;

“existing” means in effect on the date of entry into force of this Agreement;

“financial institution” means a financial intermediary or other enterprise that is authorized to do business and regulated or supervised as a financial institution under the law of the Party in whose territory it is located;

“financial service” means a service of a financial nature, including insurance, and a service incidental or auxiliary to a service of a financial nature;

“ICSID” means the International Centre for Settlement of Investment Disputes established by the ICSID Convention;

“ICSID Additional Facility Rules” means the *Rules Governing the Additional Facility for the Administration of Proceedings by the Secretariat of the International Center for Settlement of Investment Disputes*, in their most recent form;

“ICSID Convention” means the *Convention on the Settlement of Investment Disputes between States and Nationals of other States* done at Washington, D.C. on March 18, 1965;

“intellectual property rights” means copyright and related rights, trademark rights, rights in geographical indications, rights in industrial designs, patent rights, rights in layout designs of integrated circuits, rights in relation to protection of undisclosed information, and plant breeders’ rights;

“Inter-American Convention” means *Inter-American Convention on International Commercial Arbitration* done at Panama on January 30, 1975;

“investment” means:

(a) any of the following:

(i) an enterprise,

(ii) a share, stock or other form of equity participation in an enterprise,

(iii) a bond, debenture or other debt instrument of an enterprise,

(iv) a loan to an enterprise,

(v) an interest in an enterprise that entitles the owner to share in income or profits of the enterprise,

(vi) an interest in an enterprise that entitles the owner to share in the assets of that enterprise on dissolution,

(vii) an interest arising from the commitment of capital or other resources in the territory of a Party to economic activity in that territory, such as under:

(A) a contract involving the presence of an investor's property in the territory of the Party, including a turnkey or construction contract, or a concession, or

(B) a contract under which remuneration depends substantially on the production, revenues or profits of an enterprise;

(viii) intellectual property rights, and

(ix) any other tangible or intangible, moveable or immovable, property and related property rights acquired in the expectation of or used for the purpose of economic benefit or other business purpose;

(b) in each case shall involve the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk; and

(c) for the purpose of this definition, "**investment**" does not mean:

(i) a claim to money that arises solely from:

(A) commercial contract for the sale of a good or service by a national or enterprise in the territory of a Party to an enterprise in the territory of the other Party, or

(B) the extension of credit in connection with a commercial transaction, such as trade financing;

- (ii) an order or judgment in a judicial or administrative action, or
- (iii) any other claim to money, that does not involve the kinds of interests set out in subparagraphs (a)(i) to (ix);

“investor of a Party” means a Party, or a national or an enterprise of a Party, that seeks to make, is making or has made an investment. For the purpose of this definition, **“enterprise of a Party”** means:

(a) an enterprise that is constituted or organized under the law of that Party and that has substantial business activities in the territory of that Party. A determination of whether an enterprise has substantial business activities in the territory of a Party requires a case-by-case, fact-based inquiry; or

(b) an enterprise that is constituted or organised under the law of that Party, and is directly or indirectly owned or controlled by a national of that Party or by an enterprise mentioned under subparagraph (a);

“measure” includes a law, regulation, procedure, requirement or practice;

“national” means:

(a) for Canada, a natural person who is a citizen or permanent resident of Canada; and

(b) for _____,

except that:

(c) a natural person who is a dual citizen of Canada and _____ shall be deemed to be exclusively a national of the Party of his or her dominant and effective nationality; and

(d) a natural person who is a citizen of one Party and a permanent resident of the other Party shall be deemed to be exclusively a national of the Party of his or her citizenship;

“New York Convention” means the United Nations *Convention on the Recognition and Enforcement of Foreign Arbitral Awards*, done at New York on June 10, 1958;

“person” means a natural person or an enterprise;

“respondent Party” means a Party against which a claim is made under Article 27 (Submission of a Claim to Arbitration);

“regional level of government” means:

(a) for Canada, a provincial or territorial government; and

(b) for _____, _____;

“tax convention” means a convention for the avoidance of double taxation or other international taxation agreement or arrangement;

“territory” means:

(a) for Canada:

(i) the land territory, air space, internal waters, and territorial sea of Canada,

(ii) the exclusive economic zone of Canada, and

(iii) the continental shelf of Canada, as determined by its domestic law and consistent with international law; and

(b) for _____: _____;

“third party funding” means any funding or other equivalent support provided by a person who is not a disputing party in order to finance part or all of the cost of the proceedings including through a donation or grant, or in return for remuneration dependent on the outcome of the dispute;

“Tribunal” means an arbitration tribunal established under Section E (Investor-State Dispute Settlement) or Section F (Expedited Arbitration);

“TRIPS Agreement” means the *Agreement on Trade-Related Aspects of Intellectual Property Rights*, Annex 1C of the WTO Agreement;

“UNCITRAL Arbitration Rules” means the arbitration rules of the United Nations Commission on International Trade Law, in their most recent form;

“UNCITRAL Transparency Rules” means the *UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration*, in their most recent form;

“Vienna Convention on the Law of Treaties” means the *Vienna Convention on the Law of Treaties* done at Vienna on May 23, 1969; and

“WTO Agreement” means the *Marrakesh Agreement Establishing the World Trade Organization*, done at Marrakesh on April 15, 1994.

Section B: Investment Protections

Article 2: Scope

1. This Agreement applies to measures adopted or maintained by a Party relating to:
 - (a) an investor of the other Party;
 - (b) a covered investment; and
 - (c) with respect to Article 4 (Non-Derogation), Article 12 (Performance Requirements), and Article 16 (Responsible Business Conduct), an investment in its territory.
2. A Party’s obligations under this Agreement applies to measures adopted or maintained by:
 - (a) the central, regional or other governments of that Party; and
 - (b) any person, including a state enterprise or any other body, when it exercises any governmental authority delegated to it by

central, regional or other governments of that Party.

3. This Agreement does not bind a Party in relation to an act or fact that took place or a situation that ceased to exist before the date of entry into force of this Agreement for that Party.

Article 3: Right to Regulate

The Parties reaffirm the right of each Party to regulate within its territory to achieve legitimate policy objectives, such as with respect to the protection of the environment and addressing climate change; social or consumer protection; or the promotion and protection of health, safety, rights of Indigenous peoples, gender equality, and cultural diversity.

Article 4: Non-Derogation

The Parties recognize that it is not appropriate to encourage investment by relaxing domestic measures relating to health, safety, the environment, other regulatory objectives, or the rights of Indigenous peoples. Accordingly, no Party shall relax, waive or otherwise derogate from, or offer to relax, waive or otherwise derogate from, such measures in order to encourage the establishment, acquisition, expansion or management of the investment of an investor in its territory. If a Party considers that the other Party has offered such an encouragement, it may request consultations with the other Party and the two Parties shall consult with a view to avoiding the encouragement.

Article 5: National Treatment

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to its own investors with respect to the establishment, acquisition,

expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to investments of its own investors with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.
3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to investors, and to investments of investors, of the Party of which it forms a part.
4. Whether treatment is accorded in like circumstances depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives.
5. Paragraphs 1 and 2 prohibit discrimination based on nationality. A difference in treatment accorded to an investor or covered investment and a Party's own investors or investments of its own investors does not, in and of itself, establish discrimination based on nationality.

Article 6: Most-Favoured-Nation Treatment

1. Each Party shall accord to an investor of the other Party treatment no less favourable than that it accords, in like circumstances, to investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.
2. Each Party shall accord to a covered investment treatment no less favourable than that it accords, in like circumstances, to

investments of investors of a non-Party with respect to the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in its territory.

3. The treatment accorded by a Party under paragraphs 1 and 2 means, with respect to a government other than at the central level, treatment accorded, in like circumstances, by that government to investors, and to investments of investors, of a non-Party.
4. Whether treatment is accorded in like circumstances depends on the totality of the circumstances, including whether the relevant treatment distinguishes between investors or investments on the basis of legitimate public policy objectives.
5. Paragraphs 1 and 2 prohibit discrimination based on nationality. A difference in treatment accorded to an investor or covered investment and a non-Party's investors or investments of a non-Party's investors does not, in and of itself, establish discrimination based on nationality.
6. The "treatment" referred to in paragraphs 1 and 2 does not include procedures for the resolution of investment disputes between investors and States provided for in other international investment treaties and other trade agreements.
7. Substantive obligations in other international investment treaties and other trade agreements do not in themselves constitute "treatment", and thus cannot give rise to a breach of this Article, absent measures adopted or maintained by a Party pursuant to those obligations.

Article 7: Treatment in Case of Armed Conflict, Civil Strife or Natural Disaster

1. Notwithstanding Article 21(6)(b) (Non-Conforming Measures), each Party shall accord to an investor of the other Party and to a covered investment treatment no less favourable than it accords to its own investors or investments, or to the investors or investments of a non-Party, whichever is more favourable to the investors or investments concerned, with respect to measures it adopts or maintains relating to restitution, indemnification, compensation or other settlement for losses incurred by investments in its territory as a result of armed conflict, civil strife, or a natural disaster.
2. Notwithstanding paragraph 1, if an investor of a Party, in a situation referred to in paragraph 1, suffers a loss in the territory of the other Party resulting from:
 - (a) requisitioning of its covered investment or part thereof by the latter's forces or authorities; or
 - (b) destruction of its covered investment or part thereof by the latter's forces or authorities, which was not required by the necessity of the situation;the latter Party shall provide the investor restitution, compensation or both, as appropriate, for that loss.
3. Paragraph 1 shall not apply to an existing subsidy or grant provided by a Party, including a government supported loan, a guarantee, or insurance that would be inconsistent with Article 5 (National Treatment) but for Article 21(6)(b) (Non-Conforming Measures).

Article 8: Minimum Standard of Treatment

1. Each Party shall accord in its territory to a covered investment of the other Party and to an investor with respect to their covered investment treatment in accordance with the customary

international law minimum standard of treatment of aliens. A Party breaches this obligation only if a measure constitutes:

- (a) denial of justice in criminal, civil or administrative proceedings;
- (b) fundamental breach of due process in judicial and administrative proceedings;
- (c) manifest arbitrariness;¹
- (d) targeted discrimination on manifestly wrongful grounds such as gender, race or religious beliefs;
- (e) abusive treatment of investors, such as physical coercion, duress and harassment; or
- (f) a failure to provide full protection and security².

2. A determination that there has been a breach of another provision of this Agreement, or of a separate international agreement, does not establish that there has been a breach of this Article.
3. The fact that a measure breaches domestic law does not establish a breach of this Article.

Article 9: Expropriation

1. No Party shall expropriate a covered investment either directly or indirectly, except:
 - (a) for a public purpose;³
 - (b) in accordance with due process of law;
 - (c) in a non-discriminatory manner; and
 - (d) on payment of compensation in accordance with paragraph 5.
2. A direct expropriation under paragraph 1 occurs only when a covered investment is taken by a Party through formal transfer of

title or outright seizure.

3. An indirect expropriation under paragraph 1 may occur when a measure or a series of measures of a Party has an effect equivalent to direct expropriation without formal transfer of title or outright seizure. A non-discriminatory measure of a Party that is adopted and maintained in good faith to protect legitimate public welfare objectives, such as health, safety and the environment, does not constitute indirect expropriation, even if it has an effect equivalent to direct expropriation. The determination of whether a measure or a series of measures of a Party has an effect equivalent to direct expropriation requires a case-by-case, fact-based inquiry that shall consider:

(a) the economic impact of the measure or the series of measures, although the sole fact that a measure or a series of measures of a Party has an adverse effect on the economic value of a covered investment does not establish that an indirect expropriation has occurred;

(b) the duration of the measure or series of measures of a Party;

(c) the extent to which the measure or the series of measures interferes with distinct, reasonable investment-backed expectations; and

(d) the character of the measure or the series of measures.

4. A measure of a Party cannot violate this Article unless it expropriates a covered investment that is a tangible or intangible property right under the domestic law of the Party in which the investment was made. This determination requires the consideration of relevant factors, such as the nature and scope of the tangible or intangible property right under the applicable domestic law of the Party in which the investment was made.

5. The compensation referred to in paragraph 1 shall:
 - (a) be paid without delay in a freely convertible currency;
 - (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place (date of expropriation). Appropriate valuation criteria includes going concern value, asset value including the declared tax value of tangible property, and other criteria, which may be appropriate or relevant under the circumstances, to determine fair market value;
 - (c) not reflect any change in value occurring because the intended expropriation had become known earlier;
 - (d) include interest at a commercially reasonable rate for that currency from the date of the expropriation until the date of payment; and
 - (e) be freely transferable.
6. A measure of a Party that would otherwise constitute an expropriation of an intellectual property right under this Article does not constitute a breach of this Article if it is consistent with the TRIPS Agreement and any waiver or amendment of that Agreement accepted by that Party.

Article 10: Transfer of Funds

1. Each Party shall permit all transfers of funds relating to a covered investment to be made freely, and without delay, into and out of its territory. Those transfers include:
 - (a) contributions to capital;
 - (b) profits, dividends, interest, capital gains, royalty payments, management fees, technical assistance and other fees;

(c) proceeds from the sale or liquidation of the whole or part of the covered investment;

(d) payments made under a contract entered into by the investor or the covered investment, including payments made pursuant to a loan agreement;

(e) payments made under Article 7 (Treatment in Case of Armed Conflict, Civil Strife or Natural Disaster) and Article 9 (Expropriation);

(f) earnings and other remuneration of foreign personnel working in connection with an investment; and

(g) payments arising out of a dispute.

2. Each Party shall permit transfers of funds relating to a covered investment to be made in a freely convertible currency at the market rate of exchange in effect at the time of transfer.
3. Each Party shall permit transfers of returns in kind relating to a covered investment to be made as authorized or specified in a written agreement between the Party and an investor of another Party or a covered investment.
4. No Party shall require its investors to transfer, or penalize one of its investors for failing to transfer, the income, earnings, profits or other amounts derived from, or attributable to, an investment in the territory of the other Party.
5. Notwithstanding paragraphs 1, 2, 3 and 4, a Party may prevent or limit a transfer through the equitable, non-discriminatory and good faith application of its domestic law relating to:
 - (a) bankruptcy, insolvency or the protection of the rights of a creditor;
 - (b) issuing, trading or dealing in securities;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers if necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with an order or judgment in judicial or administrative proceedings; or

(f) social security, public retirement or compulsory savings programmes.

6. Notwithstanding paragraphs 1, 2 and 4, and without limiting the applicability of paragraph 3, a Party may prevent or limit transfers by a financial institution to, or for the benefit of, an affiliate of or person related to that institution, through the equitable, non-discriminatory and good faith application of a measure relating to maintenance of the safety, soundness, integrity or financial responsibility of financial institutions.
7. Notwithstanding paragraph 3, a Party may restrict transfers of returns in kind in circumstances in which it could otherwise restrict those transfers under the WTO Agreement and as set out in paragraph 5.

Article 11: Taxation Measures

1. Except as set out in this Article, this Agreement does not apply to a taxation measure.
2. This Agreement does not affect the rights and obligations of a Party under a tax convention. In the event of any inconsistency between the provisions of this Agreement and any such convention, the provisions of that convention shall prevail to the extent of the inconsistency.

3. Subject to paragraph 2, the provisions of Article 5 (National Treatment) and Article 6 (Most-Favoured-Nation Treatment) apply to all taxation measures, other than those on income, capital gains or on the taxable capital of corporations, except that nothing in those Articles applies:
 - (a) to a non-conforming provision of an existing taxation measure;
 - (b) to the continuation or prompt renewal of a non-conforming provision of an existing taxation measure;
 - (c) to an amendment to a non-conforming provision of an existing taxation measure to the extent that the amendment does not decrease its conformity at the time of the amendment with those Articles; or
 - (d) to a new taxation measure that is aimed at ensuring the equitable and effective imposition or collection of taxes (including, for greater certainty, a measure that is taken by a Party to ensure compliance with the Party's taxation system or to prevent the avoidance or evasion of taxes) and that does not arbitrarily discriminate between persons, goods or services of the Parties.
4. Provided that the conditions in paragraph 5 are met:
 - (a) a claim by an investor that a taxation measure of a Party is in breach of an agreement between a central government authority of that Party and the investor concerning an investment shall be considered a claim for breach of this Agreement; and
 - (b) the provisions of Article 9 (Expropriation) apply to taxation measures.
5. An investor may not make a claim under paragraph 4 unless:

(a) the investor provides a copy of the notice of claim to the taxation authorities of each Party, in which case, the taxation authority of a Party may submit in writing a request to the taxation authority of the other Party for a joint determination that, in the case of paragraph 4(a), the measure does not contravene an agreement between a central government authority of that Party and the investor concerning an investment, or, in the case of paragraph 4(b), the measure in question is not an expropriation; and

(b) six months after receiving notification of the claim by the investor, the taxation authorities of the Parties fail to reach a joint determination that, in the case of paragraph 4(a), the measure does not contravene an agreement between a central government authority of that Party and the investor concerning an investment, or in the case of paragraph 4(b), the measure in question is not an expropriation.

6. If, in connection with a claim by an investor of a Party or a dispute between the Parties, an issue arises as to whether a measure of a Party is a taxation measure or whether an inconsistency exists between this Agreement and a tax convention, a Party may submit in writing to the taxation authorities of each Party a request for a joint determination. A Tribunal or arbitral panel seized of a claim or a dispute for which such a request has been made may not proceed with the claim until:

(a) it receives the decision of the taxation authorities within six months of the request for joint determination, in which case, the decision of the taxation authorities shall bind the Tribunal formed pursuant to Section E (Investor-State Dispute Settlement) or arbitral panel formed pursuant to Section G (State-to-State Dispute Settlement); or

(b) six months have passed following the request for joint determination and the taxation authorities have not decided the issue, in which case, the Tribunal or arbitral panel shall decide the issue before proceeding with the claim.

7. Each Party shall publish and notify the other Party by diplomatic note of the identity and contact information of the taxation authorities referred to in this Article.

Article 12: Performance Requirements

1. No Party shall, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory, impose or enforce a requirement, or enforce a commitment or undertaking:

(a) to export a given level or percentage of a good or service;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to a good produced or service provided in its territory, or to purchase a good or service from a person in its territory;

(d) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment;

(e) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings;

(f) to transfer technology, a production process, source code of software, or other proprietary knowledge to a person in its territory;

(g)

(i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of a person of the Party, ⁴ or

(ii) that prevents the purchase or use of, or the according of a preference to, in its territory, a technology;

(h) that prohibits or restricts the cross-border transfer of information by electronic means, if this transfer is related to the business of a covered investment or the business of an investor of a Party; or

(i) to supply exclusively from the territory of the Party a good that the investment produces or a service it provides to a specific regional market or to the world market.

2. No Party shall condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory, on compliance with a requirement:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to a good produced in its territory, or to purchase a good from a producer in its territory;

(c) to relate the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with that investment; or

(d) to restrict sales of a good or service in its territory that the investment produces or provides by relating those sales to the volume or value of its exports or foreign exchange earnings.

3. The provisions of:

(a) paragraph 2 do not prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with

any investments, on compliance with a requirement to locate production, provide a service, train or employ workers, construct or expand particular facilities, or carry out research and development in its territory;

(b) paragraphs 1(a), 1(b), 1(c), 2(a), and 2(b) do not apply to a qualification requirement for a good or service with respect to export promotion and foreign aid programs;

(c) paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 1(i), 2(a), and 2(b) do not apply to procurement by a Party;

(d) paragraphs 2(a) and 2(b) do not apply to a requirement imposed by an importing Party relating to the content of a good necessary to qualify for a preferential tariff or preferential quota;

(e) paragraphs 1(f) and 1(g) do not apply:

(i) if a Party authorizes use of an intellectual property right in accordance with Article 31⁵ of the TRIPS Agreement, or to a measure requiring the disclosure of proprietary information that falls within the scope of, and is consistent with, Article 39 of the TRIPS Agreement, or

(ii) if the requirement is imposed or the requirement, commitment, or undertaking is enforced by a court, administrative tribunal or competition authority to remedy an alleged violation of domestic competition law;

(f) paragraphs 1(b), 1(c), 1(f), 1(g), 1(h), 2(a) and 2(b) shall not prevent a Party from adopting or maintaining a measure to achieve a legitimate public policy objective, provided that the measure:

(i) is not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a

disguised restriction on trade, and

(ii) does not impose restrictions greater than are required to achieve the objective;

(g) paragraph 1(f) do not preclude a regulatory body or judicial authority of a Party from requiring a person of the other Party to preserve and make available the source code of software, or an algorithm expressed in that source code, to the regulatory body for a specific investigation, inspection, examination, enforcement action, or judicial proceeding, ⁶ subject to safeguards against unauthorized disclosure;

(h) paragraphs 1(g) and 1(h) do not apply to a measure that a Party adopts or maintains relating to a financial institution; and

(i) paragraph 1(h) do not apply to information held or processed by or on behalf of a Party, or a measure related to this information, including a measure related to its collection.

Article 13: Senior Management, Boards of Directors and Entry of Personnel

1. No Party shall require that an enterprise of that Party that is a covered investment appoint to a senior management position an individual of any particular nationality.
2. A Party may require that up to a majority of the board of directors, or a committee thereof, of an enterprise of that Party that is a covered investment be of a particular nationality or resident in the territory of the Party, provided that the requirement does not materially impair the ability of the investor to exercise control over its investment.
3. A Party should encourage enterprises to consider greater diversity in senior management positions or on board of directors, which may include a requirement to nominate women.

4. Subject to its domestic law relating to the entry of foreign nationals, each Party shall grant temporary entry to nationals employed by an investor of the other Party who seek to render managerial or executive services, or services that require specialized knowledge, to a covered investment of that investor.

Article 14: Subrogation

If a Party or an agency of a Party makes a payment to one of its investors under a guarantee or a contract of insurance, or other form of indemnity it has entered into in respect of a covered investment:

- (a) the other Party in whose territory the covered investment was made shall recognize the validity of the subrogation or transfer of any rights the investor would have possessed with respect to the covered investment but for the subrogation or transfer; and
- (b) the investor shall be precluded from pursuing these rights to the extent of the subrogation or transfer, unless a Party or an agency of a Party authorizes the investor to act on its behalf.

Article 15: Transparency

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application respecting a matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and the other Party to become acquainted with them.
2. To the extent possible, each Party shall:
 - (a) publish in advance any measure referred to in paragraph 1 that it proposes to adopt;
 - (b) provide interested persons and the other Party a reasonable opportunity to comment on that proposed measure; and

(c) allow reasonable time between publication of the measure referred to in paragraph 1 and the date on which investors of a Party must comply with the measure.

3. Each Party shall ensure that its laws, regulations, procedures and administrative rulings with regards to the rights of Indigenous peoples, including any applicable consultation process, are made available in such a manner as to enable an interested person to duly comply with the Party's domestic laws.
4. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from interested persons regarding the measures referred to in paragraphs 1 and 3.
5. On request by a Party, the other Party shall promptly provide information and respond to questions pertaining to a proposed or actual measure that the requesting Party considers affects or may affect an investment. A Party may convey a request or provide information under this Article to the other Party through its contact point.
6. Each Party shall designate a contact point to facilitate communications between the Parties on any matter covered by this Agreement. Each Party shall notify the other Party in writing of its designated contact point no later than 60 days after the date of entry into force of this Agreement. Each Party shall promptly notify the other Party in the event of any change to its contact point.

Article 16: Responsible Business Conduct

1. The Parties reaffirm that investors and their investments shall comply with domestic laws and regulations of the host State, including laws and regulations on human rights, the rights of Indigenous peoples, gender equality, environmental protection and labour.

2. Each Party reaffirms the importance of internationally recognized standards, guidelines and principles of responsible business conduct that have been endorsed or are supported by that Party, including the OECD Guidelines for Multinational Enterprises and the United Nations Guiding Principles on Business and Human Rights, and shall encourage investors and enterprises operating within its territory or subject to its jurisdiction to voluntarily incorporate these standards, guidelines and principles into their business practices and internal policies. These standards, guidelines and principles address areas such as labour, environment, gender equality, human rights, community relations and anti-corruption.
3. Each Party should encourage investors or enterprises operating within its territory to undertake and maintain meaningful engagement and dialogue, in accordance with international responsible business conduct standards, guidelines and principles that have been endorsed or are supported by that Party, with Indigenous peoples and local communities.
4. The Parties shall cooperate on and facilitate joint initiatives to promote responsible business conduct.

Article 17: Denial of Benefits

A Party may, within a reasonable time and no later than its principal submission on the merits, such as the counter-memorial, in an arbitration under this Agreement, deny the benefits of this Agreement to an investor of the other Party that is an enterprise of that Party and to investments of that investor if:

- (a) an investor of a non-Party owns or controls the enterprise; and
- (b) the denying Party adopts or maintains a measure with respect to the non-Party or investors of the non-Party that:

(i) relates to the maintenance of international peace and security,
and

(ii) prohibits transactions with the enterprise or would be violated or circumvented if the benefits of this Agreement were accorded to the enterprise or to its investment.

Section C: Investment Promotion and Facilitation

Article 18: Promotion of Investment

Each Party shall encourage the creation of favourable conditions for investment in its territory by investors of the other Party and shall admit those investments in accordance with this Agreement.

Article 19: Processing of Applications for an Authorization

1. Each Party shall ensure that authorization procedures it adopts or maintains do not unduly complicate or delay the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in the territory of a Party.
2. A Party's competent authority should:
 - (a) accept applications for an authorization in electronic format under similar conditions of authenticity as paper submissions;
and
 - (b) accept authenticated copies, if considered appropriate, in place of original documents.
3. At the request of an investor of a Party, a Party's competent authority shall provide, without undue delay, information concerning the status of the application for an authorization.

4. If a Party's competent authority considers an application for an authorization to be incomplete, the competent authority shall, within a reasonable period of time, inform the applicant for an authorization, identify the additional information required to complete the application for an authorization, and provide the applicant for an authorization an opportunity to correct deficiencies.
5. Each Party shall ensure that the processing of an application for an authorization, including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application for an authorization.
6. Each Party shall ensure that an authorization, once granted, enters into effect without undue delay, in accordance with the terms and conditions specified therein.
7. If a Party's competent authority rejects an application for an authorization, the Party shall ensure that its competent authority:
 - (a) informs the applicant in writing and without undue delay;
 - (b) upon request of the applicant, informs the investor of the reasons the application for an authorization was rejected and of the timeframe for an appeal or review against the decision; and
 - (c) permits the applicant to resubmit an application for an authorization.

Article 20: Fees and Charges

1. A fee that an investor of a Party may incur in relation to its application for an authorization shall be reasonable and commensurate with the costs incurred to process the application, and shall not in itself restrict the establishment, acquisition, expansion, management, conduct, operation and sale or other disposition of an investment in the territory of a Party.

2. Authorization fees do not include payments for auction, the use of natural resources, royalties, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to provide a universal service.
3. This Article does not apply to a measure a Party adopts or maintains relating to a financial institution.

Section D: Reservations, Exceptions, Exclusions

Article 21: Non-Conforming Measures

1. Article 5 (National Treatment), Article 6 (Most-Favoured-Nation Treatment), Article 12 (Performance Requirements), Article 13 (Senior Management, Boards of Directors and Entry of Personnel) and Section C (Investment Promotion and Facilitation) shall not apply to:
 - (a) any existing non-conforming measure, maintained in the territory of a Party;
 - (b) any measure adopted or maintained after the date of entry into force of this Agreement that, at the time of sale or other disposition of a government's equity interests in, or the assets of, an existing state enterprise or an existing governmental entity:
 - (i) prohibits or imposes limitations on the ownership or control of equity interests or assets, or
 - (ii) imposes nationality requirements relating to senior management or members of the board of directors;
 - (c) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a) or (b); or

(d) an amendment to any non-conforming measure referred to in subparagraph (a) or (b) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Article 5 (National Treatment), Article 6 (Most-Favoured-Nation Treatment), Article 12 (Performance Requirements), Article 13 (Senior Management, Boards of Directors and Entry of Personnel) and Section C (Investment Promotion and Facilitation).

2. Article 5 (National Treatment), Article 6 (Most-Favoured-Nation Treatment), Article 12 (Performance Requirements), Article 13 (Senior Management, Board of Directors and Entry of Personnel) and Section C (Investment Promotion and Facilitation) shall not apply to a measure that a Party adopts or maintains with respect to sectors, subsectors or activities, as set out in its schedule to Annex I.
3. No Party shall, under any measure adopted after the date of entry into force of this Agreement and covered by its Schedule to Annex I, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Article 6 (Most-Favoured-Nation Treatment) shall not apply to treatment accorded by a Party pursuant to agreements set out in its schedule to Annex II.
5. In respect of intellectual property rights, a Party may derogate from Article 5 (National Treatment), Article 6 (Most-Favoured-Nation Treatment) and Article 12 (Performance Requirements) in a manner that is consistent with:
 - (a) the TRIPS Agreement;
 - (b) an amendment to the TRIPS Agreement in force for both Parties; and

(c) a waiver to the TRIPS Agreement granted pursuant to Article IX of the WTO Agreement.

6. Article 5 (National Treatment), Article 6 (Most-Favoured-Nation Treatment) and Article 13 (Senior Management, and Board of Directors and Entry of Personnel) do not apply to:

(a) procurement by a Party; or

(b) a subsidy or grant provided by a Party, including a government-supported loan, a guarantee or insurance.

Article 22: General Exceptions

1. This Agreement does not prevent Canada from adopting or maintaining a measure necessary to fulfill Aboriginal or treaty rights as recognized and affirmed by section 35 of the *Constitution Act, 1982*, including land claims agreements, and those rights set out in self-government agreements between the central government or a regional level of government and Aboriginal peoples.
2. Notwithstanding the other provisions of this Agreement, a Party is not prevented from adopting or maintaining a measure for prudential reasons,⁷ including for the protection of investors, depositors, policy holders, or persons to whom a fiduciary duty is owed by a financial institution, or to ensure the integrity and stability of the financial system. If the measure does not conform with the provisions of this Agreement to which this exception applies, the measure must not be used as a means of avoiding the Party's commitments or obligations under those provisions.
3. This Agreement does not apply to non-discriminatory measures of general application taken by a central bank or monetary authority of a Party, or a financial institution that is owned or controlled by a Party, in pursuit of monetary and related credit or exchange rate

policies. This paragraph shall not affect a Party's obligations under Article 10 (Transfers of Funds) or Article 12 (Performance Requirements).

4. This Agreement does not:

(a) require a Party to furnish or allow access to information if that Party determines that the disclosure of this information would be contrary to its essential security interests;

(b) prevent a Party from taking an action that it considers necessary to protect its essential security interests:

(i) relating to the traffic in arms, ammunition and implements of war and to such traffic and transactions in other goods, materials, services and technology undertaken directly or indirectly for the purpose of supplying a military or other security establishment,

(ii) taken in time of war or other emergency in international relations, or

(iii) relating to the implementation of national policies or international agreements respecting the non-proliferation of nuclear weapons or other nuclear explosive devices; or

(c) prevent a Party from fulfilling its obligations under the *United Nations Charter* for the maintenance of international peace and security.

5. This Agreement does not require a Party to furnish or allow access to information, the disclosure of which would be contrary to its law or would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice the legitimate commercial interests of particular enterprises, public or private.

6. This Agreement does not apply to a measure adopted or maintained by a Party with respect to a person engaged in a

cultural industry. "Person engaged in a cultural industry" means a person engaged in the following activities:

- (a) the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine-readable form, except when printing or typesetting any of the foregoing is the only activity;
- (b) the production, distribution, sale or exhibition of film or video recordings;
- (c) the production, distribution, sale or exhibition of audio or video music recordings;
- (d) the publication, distribution or sale of music in print or machine-readable form; or
- (e) radio communications in which the transmissions are intended for direct reception by the general public, and all radio, television or cable broadcasting undertakings and all satellite programming and broadcast network services.

7. If a right or obligation in this Agreement duplicates one under the WTO Agreement, the Parties agree that a measure adopted or maintained by a Party in conformity with a waiver decision granted by the WTO pursuant to Article IX of the WTO Agreement is deemed to be also in conformity with the present Agreement. Such conforming measure of either Party may not give rise to a claim by an investor of one Party against the other under Section E (Investor-State Dispute Settlement).

Article 23: Exclusions

Section E (Investor-State Dispute Settlement), Section F (Expedited Arbitration) and Section G (State-to-State Dispute Settlement) do not apply to the matters set out in Annex III (Exclusions from Dispute Settlement).

Section E: Investor-State Dispute Settlement

Article 24: Scope and Purpose

1. Without prejudice to the rights and obligations of the Parties under Section G (State-to-State Dispute Settlement), the Parties establish in this Section a mechanism for the settlement of investment disputes.
2. Under this Section, an investor of a Party may submit a claim that the other Party has breached an obligation under Section B (Investment Protections), other than Article 4 (Non-Derogation), Article 12 (Performance Requirements), Article 13(3) and (4) (Senior Management, Boards of Directors and Entry of Personnel), Article 15 (Transparency), or Article 16 (Responsible Business Conduct).

Article 25: Request for Consultations

1. In the event of an investment dispute under this Agreement, an investor of a Party shall seek to resolve the dispute through consultations, which may include the use of non-binding, third party procedures, such as good offices, conciliation or mediation.
2. An investor of a Party shall deliver to the other Party a written request for consultations, which shall specify:
 - (a) whether the investor intends to claim under Article 27(1) or (2) (Submission of a Claim to Arbitration);
 - (b) the name and address of the investor and evidence to establish that the investor is an investor of the other Party;
 - (c) the investment at issue and evidence to establish that the investor owns or controls the investment, including, if the investment is an enterprise, the name, address, and place of incorporation of the enterprise;

(d) for each claim:

(i) the provision of this Agreement alleged to have been breached, and

(ii) the factual basis for the alleged breach, including the measure at issue; and

(e) the relief sought and the approximate amount of damages claimed.

3. An investor of a Party may, when submitting a request for consultations, propose to hold the consultations by videoconference, telephone or similar means of communication as appropriate. The other Party should give sympathetic consideration to that request, in particular if the investor is a micro, small, or medium-sized enterprise.

4. The request for consultations shall be submitted to the other Party under this Article no later than:

(a) three years from the date on which the investor or, as applicable, the enterprise referred to in Article 27(2) (Submission of a Claim to Arbitration), first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor or, as applicable, the enterprise, has incurred loss or damage by reason of, or arising out of, that breach; or

(b) if the investor or, as applicable, the enterprise, has initiated a claim or proceeding before an administrative tribunal or court under the law of a Party with respect to the measure at issue in the investor's request for consultations delivered pursuant to paragraph 2, two years after:

(i) the investor or, as applicable, the enterprise, ceases to pursue that claim, or

(ii) when that proceeding has otherwise ended;

provided that it is no later than seven years after the date on which the investor or, as applicable, the enterprise, first acquired or should have first acquired knowledge of the alleged breach and knowledge that the investor or, as applicable, the enterprise, has incurred loss or damage by reason of, or arising out of, that breach.

Neither a continuing breach nor the occurrence of similar or related acts or omissions may renew or interrupt the periods set out in subparagraphs (a) and (b).

5. Unless otherwise agreed, consultations shall be held within 90 days of the delivery of the request for consultations pursuant to paragraph 2.
6. Unless otherwise agreed, the place of consultations shall be the capital city of the other Party.
7. If the investor has not submitted a claim under Article 27 (Submission of a Claim to Arbitration) within one year of the delivery of the request for consultations, the investor is deemed to have withdrawn its request for consultations and shall not submit a claim under this Section with respect to the same measure. This period may be extended by agreement between the investor of a Party and the other Party.

Article 26: Mediation

The disputing parties may at any time agree to have recourse to mediation. Recourse to mediation is without prejudice to the legal position or rights of the disputing parties under this Section and is governed by the rules agreed to by the disputing parties, including the appointment of the mediator. If the disputing parties agree to have recourse to mediation, Article 25(4) and (7) (Request for Consultations)

and all timelines pursuant to an arbitration under this section are suspended from the date on which the disputing parties agreed to have recourse to mediation, and shall resume on the date on which either disputing party decides to terminate the mediation. A decision by a disputing party to terminate the mediation shall be transmitted by way of letter to the mediator and the other disputing party.

Article 27: Submission of a Claim to Arbitration

1. An investor of a Party may make a claim that the other Party has breached an obligation in accordance with Article 24 (Scope and Purpose), and that the investor has incurred loss or damage by reason of, or arising out of, that breach, only if:
 - (a) the investor has fulfilled the requirements of Article 25 (Request for Consultations);
 - (b) 180 days have elapsed since the receipt by the other Party of a request for consultations under Article 25 (Request for Consultations);
 - (c) the claim relates to measures identified in the investor's request for consultations under Article 25 (Request for Consultations);
 - (d) the investor consents to dispute settlement in accordance with the procedures set out in this Agreement; and
 - (e) the investor and, if the claim is for loss or damage to an interest in an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, the enterprise, waives its right to initiate or continue before any administrative tribunal or court under the law of any Party, or other dispute settlement procedure, any proceeding with respect to the measure of the other Party that is alleged to be a breach referred to in Article 25(2) (Request for Consultations),

except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the other Party.

2. An investor of a Party, on behalf of an enterprise of the other Party that is a juridical person that the investor owns or controls directly or indirectly, may make a claim that the other Party has breached an obligation in accordance with Article 24 (Scope and Purpose), and that the enterprise has incurred loss or damage by reason of, or arising out of, that breach, only if:

(a) the investor has fulfilled the requirements of Article 25 (Request for Consultations);

(b) 180 days have elapsed since the receipt by the other Party of a request for consultations under Article 25 (Request for Consultations);

(c) the claim relates to measures identified in the investor's request for consultations under Article 25 (Request for Consultations);

(d) the investor consents to dispute settlement in accordance with the procedures set out in this Agreement; and

(e) both the investor and the enterprise waive their right to initiate or continue before an administrative tribunal or court under the law of any Party, or other dispute settlement procedure, any proceeding with respect to the measure of the other Party that is alleged to be a breach referred to in Article 25(2) (Request for Consultations), except for a proceeding for injunctive, declaratory or other extraordinary relief, not involving the payment of damages, before an administrative tribunal or court under the law of the other Party.

3. A consent and waiver required by this Article shall be in writing, shall be delivered to the respondent Party, and shall be included in the submission of a claim to arbitration.
4. Notwithstanding paragraph 3, a waiver from the enterprise under paragraph 1(e) or 2(e) is not required if the other Party has deprived the investor of control of the enterprise.
5. If an investor of a Party makes a claim under paragraph 2 and the investor or a non-controlling investor in the enterprise makes a claim under paragraph 1 arising out of the same events or circumstances, and two or more of the claims are submitted to dispute settlement under this Article, the claims should be heard together by a Tribunal constituted under Article 34 (Consolidation), unless the Tribunal finds that the interests of a disputing party would be prejudiced thereby.
6. An investor of a Party may submit a claim to dispute settlement under:
 - (a) the ICSID Convention, provided that both Parties are parties to the ICSID Convention;
 - (b) the ICSID Additional Facility Rules, if only one Party is a party to the ICSID Convention;
 - (c) the UNCITRAL Arbitration Rules; or
 - (d) any other rules on agreement of the disputing parties.
7. Except to the extent modified by this Agreement, the arbitration shall be governed by the most recent version of the arbitration rules applicable under paragraph 6 that are in effect on the date that the claim is submitted to dispute settlement under this Article.
8. If the claimant proposes rules pursuant to paragraph 6(d), the respondent Party shall reply to the claimant's proposal within 45 days of receipt of the proposal. If the disputing parties have not

agreed on those rules within 60 days of receipt, the claimant may submit a claim under the rules provided for in paragraph 6(a), 6(b), or 6(c).

9. An investor of a Party may, when submitting a claim under this Article, propose that a sole member of a Tribunal should hear the claim. The respondent Party may give sympathetic consideration to that request, in particular if the investor is a micro, small, or medium-sized enterprise or the compensation or damages claimed are relatively low.
10. A claim is submitted to arbitration under this Article when:
 - (a) the request for arbitration under Article 36(1) of the ICSID Convention is received by the Secretary-General of ICSID;
 - (b) the request for arbitration under Article 2 of Schedule C of the ICSID Additional Facility Rules is received by the Secretariat of ICSID; or
 - (c) the notice of arbitration under Article 3 of the UNCITRAL Arbitration Rules is received by the respondent Party.

Article 28: Consent to Arbitration

1. Each Party consents to the submission of a claim to arbitration under this Section in accordance with the provisions of this Agreement, including the requirements of Article 25 (Request for Consultations) and Article 27 (Submission of a Claim to Arbitration).
2. The consent under paragraph 1 and the submission of a claim to arbitration under Article 27 (Submission of a Claim to Arbitration) shall satisfy the requirement of:
 - (a) Chapter II of the ICSID Convention (Jurisdiction of the Centre) and the ICSID Additional Facility Rules for written consent of the parties to the dispute;

(b) Article II of the New York Convention for an “agreement in writing”; and

(c) Article I of the Inter-American Convention for an “agreement”.

Article 29: Discontinuance

If the claimant fails to take a step in the proceeding within 180 days of the submission of a claim to arbitration under Article 27 (Submission of a Claim to Arbitration), or such other time period as agreed to by the disputing parties, the claimant is deemed to have withdrawn its claim and to have discontinued the proceeding. The Tribunal, if constituted, shall, at the request of the respondent Party, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered the authority of the Tribunal shall cease.

Article 30: Arbitrators

1. Except in respect of a Tribunal established under Article 34 (Consolidation), and unless the disputing parties agree otherwise, the Tribunal shall be composed of three arbitrators. Each disputing party shall appoint one arbitrator, and the third arbitrator, who will be the presiding arbitrator, shall be appointed by agreement of, or pursuant to an appointment process agreed to by, the disputing parties. The disputing parties are encouraged to consider greater diversity in arbitrator appointments, including through the appointment of women.
2. Arbitrators should have expertise or experience in public international law, international investment law or international trade law, or dispute resolution arising under international investment or international trade agreements.
3. Arbitrators shall be independent of, and not be affiliated with or take instructions from, a Party or the disputing investor.

4. If the disputing parties do not agree on the remuneration of the arbitrators before the Tribunal is constituted, the prevailing ICSID rate for arbitrators shall apply.
5. If a Tribunal, other than a Tribunal established under Article 34 (Consolidation), has not been constituted within 90 days of the submission of a claim to arbitration, a disputing party may ask the Secretary-General of ICSID to appoint the arbitrator or arbitrators not yet appointed. In accordance with this Article, the Secretary-General of ICSID shall make the appointment at his or her own discretion and, to the extent practicable, shall make this appointment in consultation with the disputing parties. The Secretary-General of ICSID shall not appoint as presiding arbitrator a national of a Party.
6. Arbitrators shall abide by the Code of Conduct (Arbitrator Code of Conduct for Dispute Settlement).

Article 31: Agreement to Appointment of Arbitrators by ICSID

For the purposes of Article 39 of the ICSID Convention and Article 7 of Schedule C to the ICSID Additional Facility Rules, and without prejudice to an objection to an arbitrator based on a ground other than nationality:

- (a) the respondent Party agrees to the appointment of each individual member of a Tribunal established under the ICSID Convention or the ICSID Additional Facility Rules;
- (b) an investor of a Party referred to in Article 27(1) (Submission of a Claim to Arbitration) may submit a claim to arbitration or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only if the investor agrees in writing to the appointment of each member of the Tribunal; and

(c) an investor of a Party referred to in Article 27(2) (Submission of a Claim to Arbitration) may submit a claim to arbitration or continue a claim under the ICSID Convention or the ICSID Additional Facility Rules only if the investor and the enterprise agree in writing to the appointment of each member of the Tribunal.

Article 32: Applicable Law and Interpretation

1. A Tribunal constituted under this Section shall apply this Agreement as interpreted in accordance with the Vienna Convention on the Law of Treaties, and other rules and principles of international law applicable between the Parties.
2. If serious concerns arise as regards matters of interpretation, the Minister for International Trade of Canada and [_____] may agree to adopt an interpretation of this Agreement. An interpretation adopted by the Minister for International Trade of Canada and [_____] shall be binding on a Tribunal established under this Section.
3. A Tribunal has no jurisdiction to determine the legality of a measure, alleged to constitute a breach of this Agreement, under the domestic law of a Party. In determining the consistency of a measure with this Agreement, the Tribunal may consider, as appropriate, the domestic law of a Party as a matter of fact. In doing so, the Tribunal shall follow the prevailing interpretation given to the domestic law by the courts or authorities of that Party, and any meaning given to domestic law by the Tribunal is not binding on the courts or authorities of that Party.
4. If an investor of a Party submits a claim to arbitration under Article 27 (Submission of a Claim to Arbitration), including a claim that a Party breached Article 8 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claim,

consistent with the general principles of international law applicable to international arbitration.

Article 33: Preliminary Objections

1. Without prejudice to a Tribunal's authority to address other questions as a preliminary objection, a Tribunal shall address and decide as a preliminary question an objection by the respondent Party that, as a matter of law, a claim submitted is not a claim for which an award in favour of the investor may be made under this Agreement, including that a dispute is not within the competence of the Tribunal, or that a claim is manifestly without legal merit.
2. An objection under paragraph 1 shall be submitted to the Tribunal within 60 days of constitution of the Tribunal. The Tribunal shall suspend any proceeding on the merits and issue a decision or award on the objection, stating the grounds therefor, within 180 days of the objection. However, if a disputing party requests a hearing, the Tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a disputing party requests a hearing, a Tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.
3. When deciding an objection under paragraph 1, the Tribunal shall assume to be true the factual allegations in the claim to arbitration under Article 27 (Submission of a Claim to Arbitration), or any amendment to that claim. The Tribunal may also consider relevant facts not in dispute.
4. Whether or not a respondent Party raises an objection under paragraph 1 concerning the competence of the Tribunal, the respondent Party shall have the right to raise, and the Tribunal the authority to address and decide, a question pertaining to its competence in the course of the proceedings.

5. The provisions on costs in Article 40 (Final Award) shall apply to decisions or awards issued under this Article.

Article 34: Consolidation

1. If two or more claims have been submitted separately to arbitration under Article 27 (Submission of a Claim to Arbitration) and the claims have a question of law or fact in common and arise out of the same events or circumstances, a disputing party may seek a consolidation order in accordance with the agreement of all the disputing parties sought to be covered by the order or the terms of paragraphs 2 through 10.
2. A disputing party that seeks a consolidation order under this Article shall deliver, in writing, a request to the Secretary-General of ICSID to establish a Tribunal and shall specify in the request:
 - (a) the name of the respondent Party, or the investors, against which the order is sought;
 - (b) the nature of the order sought; and
 - (c) the grounds for the order sought.
3. The disputing party shall deliver a copy of the request to the respondent Party, or the investors, against which the order is sought.
4. Unless the disputing parties sought to be covered by the order agree to a different appointment process, the Secretary-General of ICSID shall, within 60 days of receiving the request, establish a Tribunal composed of three arbitrators. The Secretary-General of ICSID shall appoint one member who is a national of the respondent Party, one member who is a national of the Party of the investors that submitted the claims, and a presiding arbitrator who is not a national of a Party.

5. A Tribunal established under this Article shall be established under the UNCITRAL Arbitration Rules and shall conduct its proceedings in accordance with the UNCITRAL Arbitration Rules, except as modified by this Section.
6. If a Tribunal established under this Article is satisfied that the claims submitted to arbitration under Article 27 (Submission of a Claim to Arbitration) have a question of law or fact in common, the Tribunal may, in the interest of fair and efficient resolution of the claims and after hearing the disputing parties, by order:
 - (a) assume jurisdiction over, and hear and determine together, all or part of the claims; or
 - (b) assume jurisdiction over, and hear and determine one or more of the claims, the determination of which it believes would assist in resolving the other claims.
7. If a Tribunal has been established under this Article, an investor that has submitted a claim to arbitration under Article 27 (Submission of a Claim to Arbitration) and that has not been named in a request made under paragraph 2 may make a written request to the Tribunal that it be included in an order made under paragraph 4. The request shall specify:
 - (a) the name and address of the investor;
 - (b) the nature of the order sought; and
 - (c) the grounds on which the order is sought.
8. An investor referred to in paragraph 7 shall deliver a copy of its request to the disputing parties named in a request under paragraph 1.
9. A Tribunal established under Article 27 (Submission of a Claim to Arbitration) does not have jurisdiction to decide a claim, or a part

of a claim, over which a Tribunal established under this Article has assumed jurisdiction.

10. On application of a disputing party, a Tribunal established under this Article, pending its decision under paragraph 6, may order that the proceedings of a Tribunal established under Article 27 (Submission of a Claim to Arbitration) be stayed unless the latter Tribunal has already adjourned its proceedings.

Article 35: Seat of Arbitration

The disputing parties may agree on the seat of arbitration under the arbitration rules applicable under Article 27 (Submission of a Claim to Arbitration) or Article 34 (Consolidation). If the disputing parties fail to agree, the Tribunal shall determine the seat of arbitration in accordance with the applicable arbitration rules, provided that the seat of arbitration shall be in the territory of a State that is a party to the New York Convention.

Article 36: Transparency of Proceedings

1. The UNCITRAL Transparency Rules, as modified by this Agreement, shall apply in connection with proceedings under this Section.
2. The agreement to mediate, the notice of intent to challenge a member of the Tribunal, the decision on challenge to a member of the Tribunal, and the request for consolidation shall be included in the list of documents to be made available to the public under Article 3(1) of the UNCITRAL Transparency Rules.
3. Exhibits shall be included in the list of documents to be made available to the public under Article 3(2) of the UNCITRAL Transparency Rules.
4. Prior to the constitution of the Tribunal, the respondent Party shall make publicly available in a timely manner relevant documents

pursuant to paragraph 2, subject to the redaction of confidential or protected information. That documentation may be made publicly available by communication to the repository referred to in paragraph 9.

5. A disputing party may disclose to other persons in connection with the proceedings, including witnesses and experts, unredacted documents that it considers necessary to disclose in the course of proceedings under this Section. However, the disputing party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.
6. A Party may disclose to government officials and officials of a government other than at the federal level, if applicable, unredacted documents that it considers necessary to disclose in the course of proceedings under this Section. However, that Party shall ensure that those persons protect the confidential information in those documents as directed by the Tribunal.
7. Hearings shall be open to the public. The Tribunal shall determine, in consultation with the disputing parties, the appropriate logistical arrangements to facilitate public access to the hearings. If the Tribunal determines that there is a need to protect confidential or protected information, it shall make the appropriate arrangements to hold in private that part of the hearing requiring that protection.
8. Nothing in this Agreement requires a respondent Party to withhold from the public information required to be disclosed by the respondent Party's law. To the extent that a Tribunal's confidentiality order designates information as confidential and a Party's law on access to information requires public access to that information, the Party's law on access to information shall prevail. The respondent Party should apply those laws in a manner

sensitive to protecting from disclosure information that has been designated as confidential or protected information.

9. The administering authority to which a claim is submitted under this Section shall be the repository of information published pursuant to this Article.

Article 37: Participation of a Non-Disputing Party

1. The UNCITRAL Transparency Rules shall apply with respect to the participation of a non-disputing Party in proceedings under this Section, except as modified by this Agreement.
2. The respondent Party shall deliver to the non-disputing Party:
 - (a) a claim submitted pursuant to Article 27 (Submission of a Claim to Arbitration), a request for consolidation, and any document that is appended to such documents;
 - (b) on request:
 - (i) a request for consultations;
 - (ii) pleadings, memorials, briefs, requests, and other submissions made to the Tribunal by a disputing party;
 - (iii) written submissions made to the Tribunal pursuant to Article 4 of the UNCITRAL Transparency Rules;
 - (iv) minutes or transcripts of hearings of the Tribunal, if available;
 - (v) orders, awards, and decisions of the Tribunal; and
 - (c) on request and at the cost of the non-disputing Party, all or part of the evidence that has been tendered to the Tribunal, unless the requested evidence is publicly available.
3. The non-disputing Party receiving materials pursuant to paragraph 2 shall treat the information as if it were the respondent Party.

4. The Tribunal shall accept or, after consultation with the disputing parties, may invite, oral or written submissions from the non-disputing Party regarding the interpretation of this Agreement. The non-disputing Party may attend a hearing held under this Section.
5. The Tribunal shall not draw any inference from the absence of a submission pursuant to paragraph 4.
6. The Tribunal shall ensure that the disputing parties are given a reasonable opportunity to present their observations on a submission by the non-disputing Party.

Article 38: Expert Reports

Without prejudice to the appointment of other kinds of experts if authorized by the applicable arbitration rules, the Tribunal may, at the request of a disputing party or, unless the disputing parties disapprove, on its own initiative, appoint one or more experts to report to it in writing on any factual issue, including the rights of Indigenous peoples or scientific matters raised by a disputing party in a proceeding, subject to any terms and conditions agreed on by the disputing parties.

Article 39: Interim Measures of Protection

1. A Tribunal may order an interim measure of protection to preserve the rights of a disputing party or to ensure that the Tribunal's jurisdiction is made fully effective, including an order to preserve evidence in the possession or control of a disputing party or to protect the Tribunal's jurisdiction. A Tribunal shall not order attachment or enjoin the application of the measure alleged to constitute a breach referred to in Article 27 (Submission of a Claim to Arbitration). For the purposes of this paragraph, an order includes a recommendation.
2. At the request of a disputing party, the Tribunal may order the other disputing party to provide security for all or part of the costs,

if there are reasonable grounds to believe that there is a risk the disputing party may not be able to honour a potential costs award against it. In considering that request, the Tribunal may take into account evidence of third party funding. If the security for costs is not posted in full within 30 days of the Tribunal's order, or within any other time period set by the Tribunal, the Tribunal shall so inform the disputing parties and may order the suspension or termination of the proceedings.

Article 40: Final Award

1. If a Tribunal makes a final award against the respondent Party, in respect of its finding of liability, the Tribunal may award, separately or in combination, only:
 - (a) monetary damages and any applicable interest; and
 - (b) restitution of property, in which case the award shall provide that the respondent Party may pay monetary damages and any applicable interest in lieu of restitution.
2. Subject to paragraph 1, if a claim is made under Article 27(2) (Submission of a Claim to Arbitration):
 - (a) an award of monetary damages and any applicable interest shall provide that the sum be paid to the enterprise;
 - (b) an award of restitution of property shall provide that restitution be made to the enterprise;
 - (c) an award of costs in favour of the investor shall provide that the sum be paid to the investor; and
 - (d) the award shall provide that it is made without prejudice to a right that a person, other than a person which has provided a waiver pursuant to Article 27 (Submission of a Claim to

Arbitration), may have in monetary damages or property awarded under a Party's domestic law.

3. The Tribunal shall make an order with respect to the costs of the arbitration, which shall in principle be borne by the unsuccessful disputing party or parties. In determining the appropriate apportionment of costs, the Tribunal shall consider all relevant circumstances, including:
 - (a) the outcome of any part of the proceeding, including the number or extent of the successful parts of the claims or defenses;
 - (b) the disputing parties' conduct during the proceeding, including the extent to which they acted in an expeditious and cost-effective manner;
 - (c) the complexity of the issues; and
 - (d) the reasonableness of the costs claimed.
4. The Tribunal and the disputing parties shall make every effort to ensure the dispute settlement process is carried out in a timely manner. The Tribunal shall issue its final award within 12 months of the final date of the hearing on the merits. A Tribunal may, with good cause and notice to the disputing parties, delay issuing its final award by an additional brief period.
5. Monetary damages in an award:
 - (a) shall not be greater than the loss or damage incurred by the investor, or, as applicable, by the enterprise referred to in Article 27(2) (Submission of a Claim to Arbitration), as valued on the date of the breach⁸;
 - (b) shall only reflect loss or damage incurred by reason of, or arising out of, the breach; and

(c) shall be determined with reasonable certainty, and shall not be speculative or hypothetical.

6. In making an award under paragraph 5, the Tribunal shall calculate monetary damages based only on the submissions of the disputing parties, and shall consider, as applicable:
 - (a) contributory fault, whether deliberate or negligent;
 - (b) failure to mitigate damages;
 - (c) prior damages or compensation received for the same loss;
or
 - (d) restitution of property, or repeal or modification of the measure.
7. The Tribunal may award monetary damages for lost future profits only insofar as such damages satisfy the requirements under paragraph 5. Such determination requires a case-by-case, fact-based inquiry that takes into consideration, among other factors, whether a covered investment has been in operation in the territory of the respondent Party for a sufficient period of time to establish a performance record of profitability.
8. The Tribunal may award pre-award and post-award interest at a reasonable rate of return compounded annually.
9. The Tribunal shall not award punitive damages.
10. The Tribunal shall not award monetary damages under Article 27(1) (Submission of a Claim to Arbitration) for loss or damage incurred by the investment.

Article 41: Finality and Enforcement of an Award

1. An award made by a Tribunal has no binding force except between the disputing parties and in respect of that particular case.

2. Subject to paragraph 3 and the applicable review procedure for an interim award, a disputing party shall abide by and comply with an award without delay.
3. A disputing party shall not seek enforcement of a final award until:
 - (a) in the case of a final award made under the ICSID Convention:
 - (i) 120 days have elapsed from the date the award was rendered provided that a disputing party has not requested the award be revised or annulled, or
 - (ii) revision or annulment proceedings have been completed; and
 - (b) in the case of a final award under the ICSID Additional Facility Rules or the UNCITRAL Arbitration Rules:
 - (i) 90 days have elapsed from the date the award was rendered and no disputing party has commenced a proceeding to revise, set aside, or annul the award, or
 - (ii) a court has dismissed or allowed an application to revise, set aside, or annul the award, and there is no further appeal.
4. Each Party shall provide for the enforcement of an award in its territory.
5. A claim submitted to arbitration under Article 27 (Submission of a Claim to Arbitration) shall be considered to arise out of a commercial relationship or transaction for the purposes of Article I of the New York Convention.

Article 42: Third Party Funding

1. A claimant benefiting from a third party funding arrangement shall disclose to the respondent Party and to the Tribunal the name and address of the third party funder.

2. The claimant shall make the disclosure under paragraph 1 at the time of the submission of a claim to arbitration under Article 27 (Submission of a Claim to Arbitration), or, if the third party funding is arranged after the submission of a claim, within ten days of the date on which the third party funding was arranged.
3. The claimant shall have a continuing obligation to disclose any changes to the information referred to in paragraph 1 occurring after its initial disclosure, including termination of the third party funding arrangement.

Article 43: Service of Documents

Each Party shall promptly make publicly available, and notify the other Party by diplomatic note, the location for delivery of notice and other documents, including any subsequent change to the location for delivery. Investors shall ensure that service of documents to a Party is made to the appropriate location.

Article 44: Receipts under Insurance or Guarantee Contracts

In an arbitration under this Section, a respondent Party may not assert as a defence, counterclaim, right of set-off, or otherwise, that the claimant has received or will receive, under an insurance or guarantee contract, indemnification or other compensation for all or part of its alleged damages.

Article 45: Special Rules Regarding Financial Services

1. With respect to a measure adopted or maintained by a Party relating to:
 - (a) a financial institution of the other Party; or
 - (b) an investor of the other Party, or a covered investment in a financial institution in the territory of the other Party,

this Section applies only in respect of a claim that the other Party has breached an obligation under Article 7 (Treatment in Case of Armed Conflict, Civil Strife or Natural Disaster), Article 9 (Expropriation), or Article 10 (Transfers of Funds).

2. If a disputing party claims that a dispute involves measures referred to in paragraph 1, the arbitrators shall be selected in accordance with Article 30 (Arbitrators) as modified in this Article, such that:
 - (a) the presiding arbitrator shall meet the qualifications set out in Article 30 (Arbitrators) and have expertise or experience in financial services law or practice, such as the regulation of financial institutions; and
 - (b) each of the other arbitrators of the Tribunal shall:
 - (i) meet the qualifications set out in Article 30 (Arbitrators); or
 - (ii) have expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meet the qualifications set out in paragraphs 1, 3, and 6 of Article 30 (Arbitrators).
3. If an investor of a Party submits a claim to arbitration under Article 27 (Submission of a Claim to Arbitration), and the respondent Party asserts a defence under Article 10 (Transfers of Funds), or Article 22(2) or (3) (General Exceptions), the respondent Party shall, no later than the date the Tribunal fixes for the respondent Party to submit its principal submission on the merits, such as the counter-memorial, submit to the financial authority of the other Party a written request for a joint determination by the financial authorities of the Parties on the issue of whether, and to what extent, the defence asserted is a valid defence to the claim. The respondent Party shall provide the Tribunal, if constituted, a copy

of its request. The Tribunal shall proceed to hear the claim only as provided in paragraphs 5, 6 or 7.

4. With respect to the joint determination by the financial authorities of the Parties referred to in paragraph 3:

(a) the financial authorities of the Parties shall have 60 days from the date of the receipt of the request to exchange positions;

(b) the financial authorities of the Parties shall have 60 days from the exchange of positions under subparagraph (a) to make a joint determination;

(c) if the financial authorities of the Parties have made a joint determination under subparagraph (b), the financial authority of either Party shall transmit their joint determination to the disputing parties and the Tribunal, if constituted; and

(d) if the financial authorities of the Parties have not made a joint determination under subparagraph (b), either Party may request, within 130 days of the receipt of the request for a joint determination, an arbitral panel to be established under Section G (State-to-State Dispute Settlement) to decide whether, and to what extent, the paragraph asserted is a valid defence to the claim. The arbitral panel shall transmit its decision to the disputing parties and to the Tribunal, if constituted.

5. If the financial authorities of the Parties in a joint determination referred to in paragraph 4(b), or the arbitral panel in a decision referred to in paragraph 4(d), decide that the paragraph asserted is a valid defence to all parts of the claim, the claimant is deemed to have withdrawn its claim and to have discontinued the proceeding, with prejudice. The Tribunal, if constituted, shall take note of the discontinuance of the claim in an order, after which the authority of the Tribunal shall cease.

6. If the financial authorities of the Parties in a joint determination referred to in paragraph 4(b), or the arbitral panel in a decision referred to in paragraph 4(d), decide that the paragraph asserted is only a valid defence to a part of the claim, the claimant is deemed to have withdrawn that part of the claim and to have discontinued that part of the proceeding, with prejudice. The Tribunal shall take note of the discontinuance of that part of the claim in an order, and shall not proceed with the part of the claim for which the paragraph asserted is determined to be a valid defence.
7. If the financial authorities of the Parties do not make a joint determination under paragraph 4(b), and neither Party has requested the establishment of an arbitral panel under paragraph 4(d), the Tribunal may decide the matter, provided that:
 - (a) in addition to the disputing parties, the Party of the investor may make oral or written submissions to the Tribunal regarding the issue of whether, and to what extent, the paragraph asserted is a valid defence to the claim prior to the Tribunal deciding this issue. Unless it makes such a submission, the Party of the investor shall be presumed, for the purposes of the arbitration, to take a position on the application of the paragraph asserted that is not inconsistent with the position of the respondent Party; and
 - (b) the Tribunal shall draw no inference regarding the application of the paragraph asserted from the fact that the financial authorities of the Parties have not made a joint determination referred to in paragraph 4(b).

Article 46: Establishment of a First Instance Investment Tribunal or an Appellate Mechanism for Investor-State Dispute Settlement

If an investor-State dispute settlement mechanism, consisting of a first instance investment tribunal or an appellate mechanism, is developed under other institutional arrangements and is open to the Parties for acceptance, the Parties shall consider whether, and to what extent, a dispute under this Section should be decided pursuant to that investor-State dispute settlement mechanism.

Section F: Expedited Arbitration

Article 47: Consent to Expedited Arbitration

1. The disputing parties to an arbitration under Section E (Investor-State Dispute Settlement) may consent to expedite the arbitration in accordance with this Section, when the damages claimed do not exceed CAD\$ 10 million, by following the procedure in paragraph 2.
2. The disputing parties shall jointly notify the ICSID Secretariat in writing of their consent to an expedited arbitration in accordance with this Section. The notice must be received within 20 days of the submission of a claim to arbitration under Article 27(6)(a) or (b) (Submission of a Claim to Arbitration).
3. Section E (Investor-State Dispute Settlement), as modified by this Section, applies to the investment dispute, except for Article 33 (Preliminary Objections), which does not apply.

Article 48: Mediation

1. The disputing parties may consent to have recourse to mediation in accordance with this Section. Recourse to mediation is without prejudice to the legal position or rights of a disputing party under this Section.
2. If the disputing parties jointly agree to have recourse to mediation, the disputing parties shall appoint a mediator to facilitate the

resolution of the dispute within 20 days of the notification provided under Article 47(2) (Consent to Expedited Arbitration).

3. If the disputing parties do not select a mediator within the time period provided for in paragraph 2, the Secretary-General of ICSID shall select the mediator within 20 days of the expiration of that time period.
4. The disputing parties may hold mediation sessions by videoconference, telephone, or similar means of communication as appropriate.
5. If the disputing parties fail to reach a resolution of the dispute within 60 days of the appointment of the mediator, the dispute shall proceed to arbitration in accordance with this Section.

Article 49: Constitution of the Tribunal

1. The Tribunal in an expedited arbitration shall consist of a sole arbitrator appointed pursuant to Article 50 (Method of Appointing the Sole Arbitrator).
2. An appointment under Article 50 (Method of Appointing the Sole Arbitrator) shall be deemed an appointment in accordance with a method agreed by the parties pursuant to Article 37(2)(a) of the ICSID Convention.

Article 50: Method of Appointing the Sole Arbitrator

1. The disputing parties shall jointly appoint the sole arbitrator within 30 days of the notification delivered under Article 47(2) (Consent to Expedited Arbitration).
2. If the disputing parties do not appoint the sole arbitrator within the time period under paragraph 1, the Secretary-General of ICSID shall appoint the sole arbitrator in the following manner:

(a) the Secretary-General shall transmit a list of five candidates for appointment as the sole arbitrator to the disputing parties within 30 days of the expiration of the time period under paragraph 1;

(b) each disputing party may strike one candidate from the list, and shall rank the remaining candidates in order of preference and transmit such ranking to the Secretary-General within 14 days of receipt of the list;

(c) the Secretary-General shall inform the disputing parties of the result of the rankings on the next business day after receipt of the rankings, and shall appoint the candidate with the best ranking. If two or more candidates share the best ranking, the Secretary-General shall select one of them;

(d) the Secretary-General shall immediately send the request for acceptance of the appointment to the selected candidate, and shall request a reply within 10 days of receipt; and

(e) if the selected candidate does not accept the appointment, the Secretary-General shall select the next highest-ranked candidate.

3. The sole arbitrator shall have expertise or experience as an arbitrator of investor-State disputes arising under international investment agreements. The sole arbitrator shall not have the nationality of either disputing party and shall otherwise be independent of, and not be affiliated with or take instructions from, either disputing party.
4. If the dispute involves a measure referred to in Article 45(1) (Special Rules Regarding Financial Services), the sole arbitrator shall also have expertise or experience in financial services law or practice, such as the regulation of financial institutions.

5. The sole arbitrator shall be prepared to meet the shorter timeframes provided for in this Section.
6. The sole arbitrator's fees shall be fixed according to the scales of administrative expenses and arbitrator's fees for the expedited procedure set out in Appendix III of the Arbitration Rules of the International Chamber of Commerce.
7. The sole arbitrator shall abide by the Code of Conduct (Arbitrator Code of Conduct for Dispute Settlement).

Article 51: First Session in Expedited Arbitration

1. The sole arbitrator shall hold a first session within 30 days of the constitution of the Tribunal under Article 49 (Constitution of the Tribunal).
2. The sole arbitrator shall hold the first session by videoconference, telephone, or similar means of communication, unless both disputing parties and the sole arbitrator agree it shall be held in person.

Article 52: Procedural Schedule for Expedited Arbitration

1. The following schedule for written submissions and the hearing shall apply in the expedited arbitration:
 - (a) the claimant shall file, within 90 days of the first session, a principal submission on the merits, such as a memorial, of no more than 150 pages;
 - (b) the respondent Party shall file, within 90 days of the claimant's filing of its principal submission on the merits pursuant to subparagraph (a), a principal submission on the merits, such as a counter-memorial, of no more than 150 pages;
 - (c) the claimant shall file, within 90 days of the respondent Party's filing of its principal submission on the merits pursuant

to subparagraph (b), a reply of no more than 100 pages;

(d) the respondent Party shall file, within 90 days of the claimant's filing of the reply pursuant to subparagraph (c), a rejoinder of no more than 100 pages;

(e) a non-disputing Party may file, within 60 days of the respondent Party's filing of the rejoinder pursuant to subparagraph (d), a written submission regarding the interpretation of this Agreement pursuant to Article 37 (Participation of a Non-Disputing Party);

(f) the sole arbitrator shall hold the hearing within 120 days of the respondent Party's filing of the rejoinder pursuant to subparagraph (d);

(g) each disputing party shall file a statement of costs within 30 days of the last day of the hearing referred to in subparagraph (f); and

(h) the sole arbitrator shall render the award as soon as possible, and in any event within 180 days of the last day of the hearing referred to in subparagraph (f).

2. The sole arbitrator may grant a claimant in default a grace period not exceeding 30 days, otherwise the claimant is deemed to have withdrawn its claim and to have discontinued the proceedings. The sole arbitrator, if appointed, shall, at the request of the respondent Party, and after notice to the disputing parties, in an order take note of the discontinuance. After the order has been rendered, the authority of the Tribunal shall cease.
3. The sole arbitrator may grant a respondent Party in default a grace period not exceeding 30 days, otherwise the claimant may request that the sole arbitrator address the questions submitted to it and render an award.

4. At the request of a disputing party, the sole arbitrator may grant limited requests for specifically identifiable documents that the requesting disputing party knows, or has good cause to believe, exist and are in the possession, custody or control of the other disputing party, and shall adjust the schedule under paragraph 1 as appropriate.
5. The sole arbitrator may, after consulting the disputing parties, limit the number, length, or scope of written submissions or written witness evidence (both fact witnesses and experts).
6. The sole arbitrator may, following a joint request by the disputing parties, decide the dispute solely on the basis of the documents submitted by the disputing parties, with no hearing and no or a limited examination of witnesses or experts. If the sole arbitrator holds a hearing under paragraph 1(f), the sole arbitrator may conduct the hearing by videoconference, telephone, or similar means of communication.
7. The sole arbitrator shall, following a joint request by the disputing parties, but no later than the date of filing of the respondent Party's principal submission on the merits referred to in paragraph 1(b), decide that this Section shall no longer apply to the case.
8. The sole arbitrator may, at the request of a disputing party, but no later than the date of filing of the respondent Party's principal submission on the merits referred to in paragraph 1(b), decide that this Section shall no longer apply to the case. The disputing party that has made the request shall bear the costs of the expedited arbitration.
9. If, pursuant to paragraph 7 or 8, the sole arbitrator decides that this Section no longer applies to the case, and unless the disputing parties agree otherwise, the sole arbitrator appointed pursuant to Article 49 (Constitution of the Tribunal) and Article 50 (Method of

Appointing the Sole Arbitrator) shall be appointed as presiding arbitrator of the Tribunal constituted under Section E (Investor-State Dispute Settlement).

10. In all matters concerning an expedited arbitration procedure not expressly provided for in this Agreement, the disputing parties shall endeavour to agree on the applicable procedural rules. If the disputing parties do not agree on the applicable procedural rules, the sole arbitrator, if appointed, may decide the matter.

Article 53: Consolidation

When two or more claims falling under Article 47 (Consent to Expedited Arbitration) have a question of law or fact in common and arise out of the same events or circumstances, Article 34 (Consolidation) applies.

Section G: State-to-State Dispute Settlement

Article 54: Disputes between the Parties

1. The Parties shall, whenever possible, settle amicably through consultations any dispute concerning the interpretation or application of this Agreement. A Party may request consultations on the interpretation or application of this Agreement by delivering a notice to the other Party. Unless the Parties agree to a longer period, the Parties shall, within 15 days of the notice, meet to consider the matter with a view to reaching a mutually satisfactory resolution. During those consultations, each Party shall endeavour to provide sufficient information to enable a full examination of the matter, while maintaining the confidentiality of the information provided by the other Party in the course of consultations.

2. If a dispute cannot be settled through consultations, a Party may submit the dispute to an arbitral panel for decision.
3. An arbitral panel shall be constituted for each dispute. Each Party shall appoint one member to the arbitral panel within 30 days of receipt through diplomatic channels of the request for arbitration. The two members shall then select a national of a non-Party who, on approval by the Parties, shall be appointed Chair of the arbitral panel. The Parties shall appoint the Chair within 60 days of the date of the last Party-appointed member of the arbitral panel. The Parties are encouraged to consider greater diversity in arbitrator appointments, including through the appointment of women.
4. If within the periods specified in paragraph 3 the necessary appointments have not been made, a Party may invite the President of the International Court of Justice to make the necessary appointment. If the President of the International Court of Justice is a national of a Party or is otherwise prevented from discharging this function, the Vice-President of the International Court of Justice shall be invited to make the necessary appointment. If the Vice-President of the International Court of Justice is a national of a Party or is otherwise prevented from discharging this function, the Member of the International Court of Justice next in seniority, who is not a national of a Party and not otherwise prevented from discharging this function, shall be invited to make the necessary appointment.
5. Members of the arbitral panel shall have expertise or experience in public international law, international trade law, or dispute resolution arising under international trade or international investment agreements.
6. The members of the arbitral panel shall comply with the Code of Conduct (Arbitrator Code of Conduct for Dispute Settlement).

7. If a Party claims that the dispute involves measures relating to a financial institution of the other Party, or to an investor of the other Party or a covered investment in a financial institution, or if a Party invokes Article 10 (Transfers of Funds), or Article 22(2) or (3) (General Exceptions), the Chair and members of the arbitral panel shall be appointed so that:
 - (a) the Chair has expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meets the qualifications set out in paragraphs 5 and 6; and
 - (b) each of the other members of the arbitral panel shall:
 - (i) meet the qualifications set out in paragraphs 5 and 6; or
 - (ii) have expertise or experience in financial services law or practice, such as the regulation of financial institutions, and meet the qualifications of paragraph 6.
8. The arbitral panel shall determine its own procedure. The arbitral panel shall reach its decision by a majority of votes. The decision is binding on both Parties. Unless the Parties agree otherwise, the arbitral panel shall render the decision within 180 days of the appointment of the Chair.
9. Each Party shall bear the costs of its own member of the arbitral panel and of the Party's representation in the arbitration proceedings. The Parties shall equally bear the costs related to the Chair and any remaining costs. The arbitral panel may, however, award that a Party shall bear a higher proportion of costs than the other Party, and this award is binding on the Parties.
10. Within 60 days of the decision of an arbitral panel, the Parties shall agree on the manner in which to resolve their dispute. The agreement must normally implement the decision of the arbitral panel.

Section H: Administration of the Agreement

Article 55: Consultations and other Actions

1. A Party may request in writing consultations with the other Party regarding an actual or proposed measure or any other matter that it considers might affect the operation of this Agreement.
2. The consultations under paragraph 1 may address, among others, matters relating to:
 - (a) the implementation of this Agreement; or
 - (b) the interpretation or application of this Agreement.
3. Further to consultations under this Article, the Parties may take action as they may agree, including making and adopting rules supplementing the applicable arbitration rules under Section E (Investor-State Dispute Settlement).

Article 56: Extent of Obligations

Each Party shall ensure that it takes all necessary measures to give effect to this Agreement, including its observance by its regional and other levels of government, except as otherwise provided in this Agreement.

Article 57: Application and Entry into Force

1. All Annexes are an integral part of this Agreement.
2. Each Party shall deliver to the other Party a written notice of the completion of the procedures required in its territory for the entry into force of this Agreement. This Agreement enters into force on the date of the later of these notifications.
3. The Parties may amend this Agreement by mutual written consent.

4. This Agreement shall remain in force unless a Party delivers to the other Party a written notice of its intention to terminate the Agreement. The termination of this Agreement will be effective one year after the written notice of termination has been received by the other Party. In respect of investments or commitments to invest made prior to the date of termination of this Agreement, Articles 1 through 56, as well as paragraphs 1 and 2 of this Article, shall remain in force for 15 years.

IN WITNESS WHEREOF, the undersigned, duly authorized, have signed this Agreement.

DONE in two originals at on this day of 20[___], in the English and French languages, each version being equally authentic.

FOR CANADA _____

FOR _____

Section I: Annexes

Annex I: Reservations for Future Measures

Schedule of Canada

Schedule of ____

Annex II: Exceptions from Most-Favoured-Nation-Treatment

Annex III: Exclusions from Dispute Settlement

Arbitrator Code of Conduct for Dispute Settlement

Article 1: Definitions

For the purposes of this Code of Conduct:

“arbitrator” means a member of a Tribunal constituted pursuant to Article 30 (Arbitrators);

“assistant” means a person who, under the terms of appointment of an arbitrator, conducts research or provides support for the arbitrator;

“candidate” means a person who is under consideration for selection as an arbitrator pursuant to Article 30 (Arbitrators), Article 50 (Method of Appointing the Sole Arbitrator), or Article 54 (Disputes between the Parties);

“expert” means a person appointed pursuant to Article 38 (Expert Reports) or applicable arbitration rules;

“family member” means the spouse or partner of an arbitrator or candidate; the parent, child, grandparent, grandchild, sister, brother, aunt, uncle, niece or nephew of the arbitrator or candidate or spouse or partner of the arbitrator or candidate (including whole and half-blood relatives and step relatives), or the spouse or partner of such a person; or a resident of the arbitrator’s or candidate’s household whom the arbitrator or candidate treats as a member of his or her family;

“Rules” means applicable rules pursuant to Article 27 (Submission of a Claim to Arbitration); and

“staff”, in respect of an arbitrator, means individuals under the direction and control of the arbitrator other than assistants.

Article 2: Responsibilities to the Dispute Settlement Process

Each candidate, arbitrator, and former arbitrator shall avoid impropriety and the appearance of impropriety, and shall observe high standards of conduct so that the integrity and impartiality of the dispute settlement process is preserved.

Article 3: Governing Principles

1. Each arbitrator shall be independent and impartial, and shall avoid direct or indirect conflicts of interest.
2. Each arbitrator and former arbitrator shall respect the confidentiality of Tribunal proceedings.
3. Each candidate or arbitrator shall disclose the existence of any interest, relationship, or matter that is likely to affect the candidate's or arbitrator's independence or impartiality, or that might reasonably create an appearance of impropriety or an apprehension of bias. An appearance of impropriety or an apprehension of bias is created when a reasonable person, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, would conclude that a candidate's or arbitrator's ability to carry out the duties with integrity, impartiality, and competence is impaired.
4. Upon appointment, an arbitrator shall refrain, for the duration of the proceeding, from acting as counsel or party-appointed expert or witness in any pending or new investment dispute under this Agreement or any other international investment treaty.
5. This Code of Conduct shall be interpreted in a manner consistent with other internationally recognized standards or guidelines regarding direct or indirect conflicts of interest, such as the International Bar Association *Guidelines on Conflicts of Interest in International Arbitration*.
6. In the event of an alleged breach of this Code of Conduct, the Rules governing the arbitration shall apply to any challenge, disqualification, or replacement of an arbitrator.

Article 4: Disclosure Obligations

1. Throughout the Tribunal proceeding, each candidate or arbitrator has a continuing obligation to disclose any interest, relationship, or matter that may bear on the integrity or impartiality of the dispute settlement process.
2. The disputing parties or the Secretary-General of ICSID, as the appointing authority for a Tribunal referred to in Article 30 (Arbitrators), shall provide a candidate a copy of this Code of Conduct and the Initial Disclosure Statement set out in the Appendix to this Code of Conduct.
3. A candidate shall submit the Initial Disclosure Statement set out in the Appendix to this Code of Conduct to the disputing parties or the Secretary-General of ICSID, as the appointing authority, as far as possible and no later than seven days of receipt of that Initial Disclosure Statement.
4. A candidate shall disclose any interest, relationship, or matter that is likely to affect his or her independence or impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias in the Tribunal proceeding. To this end, a candidate shall make all reasonable efforts to become aware of any such interest, relationship or matter. Therefore, a candidate shall disclose, at a minimum, the following interests, relationships and matters:
 - (a) any financial or personal interest of the candidate in:
 - (i) the Tribunal proceeding or its outcome; and
 - (ii) an administrative proceeding, a domestic judicial proceeding, or any other international dispute settlement proceeding that involves issues that may be decided in the Tribunal proceeding for which the candidate is under consideration;

(b) any financial interest of the candidate's employer, business partner, business associate, or family member in:

(i) the Tribunal proceeding or its outcome; and

(ii) an administrative proceeding, a domestic judicial proceeding, or any other international dispute settlement proceeding that involves issues that may be decided in the Tribunal proceeding for which the candidate is under consideration;

(c) any past or current financial, business, professional, family, or social relationship with any interested parties⁹ in the Tribunal proceeding or their counsel, or any such relationship involving a candidate's employer, business partner, business associate, or family member; and

(d) any public advocacy or legal or other representation concerning an issue in dispute in the Tribunal proceeding or involving the same investment.

5. Once appointed, an arbitrator shall continue to make all reasonable efforts to become aware of any interest, relationship, or matter referred to in paragraph 4, and shall disclose them. The obligation to disclose is a continuing duty that requires an arbitrator to disclose any such interest, relationship, or matter that may arise during any stage of the Tribunal proceeding.
6. In the event of any uncertainty regarding whether an interest, relationship, or matter must be disclosed under paragraph 4 or 5, a candidate or arbitrator should err in favour of disclosure. Disclosure of an interest, relationship or matter is without prejudice as to whether the interest, relationship or matter is covered by paragraph 4 or 5, or whether it warrants recusal, amelioration or disqualification.

7. The disclosure obligations set out in paragraphs 1 through 6 should not be interpreted so that the burden of detailed disclosure makes it impractical for individuals in the legal or business community to serve as arbitrators, thereby depriving the disputing parties of the services of those who might be best qualified to serve as arbitrators. Thus, a candidate or arbitrator should not be called upon to disclose an interest, relationship, or matter whose bearing on the candidate's or arbitrator's role in the Tribunal proceeding would be trivial.

Article 5: Performance of Duties by Candidates and Arbitrators

1. A candidate who accepts an appointment as an arbitrator shall be available to perform, and shall perform, once the arbitrator is appointed pursuant to Article 30 (Arbitrators), an arbitrator's duties thoroughly, fairly, diligently, and expeditiously throughout the course of the Tribunal proceeding.
2. An arbitrator shall ensure that he or she is contactable, at all reasonable times, by the Secretary-General of ICSID, disputing parties, arbitration institution in charge of the proceeding, and other arbitrators of the Tribunal in order to conduct Tribunal work.
3. An arbitrator shall comply with the provisions of Section E (Investor-State Dispute Settlement), Section F (Expedited Arbitration), and Section G (State-to-State Dispute Settlement), as applicable, and the Rules.
4. An arbitrator shall not deny other arbitrators the opportunity to participate in all aspects of the Tribunal proceeding.
5. An arbitrator shall consider only those issues raised in the Tribunal proceeding and necessary to make a decision, order, or award.
6. An arbitrator shall not delegate the duty to make a decision, order, or award to any other person.

7. An arbitrator shall take all reasonable steps to ensure that his or her assistants and staff comply with Article 2 (Responsibilities to the Dispute Settlement Process), paragraphs 1, 4, 5, 6 and 7 of Article 4 (Disclosure Obligations), paragraphs 3, 8 and 9 of this Article, and Article 8 (Maintenance of Confidentiality) of this Code of Conduct.
8. An arbitrator shall not engage in any *ex parte* contact concerning the Tribunal proceeding.
9. A candidate or arbitrator shall only communicate matters concerning actual or potential violations of this Code of Conduct, or if necessary to ascertain whether that candidate or arbitrator has violated or may violate this Code of Conduct, to the Secretary-General of ICSID, the disputing parties and arbitration institution in charge of the proceedings.
10. Each arbitrator shall keep a record and render a final account of the time devoted to the Tribunal proceeding and of his or her expenses, as well as the time and expenses of his or her staff and assistants.

Article 6: Independence and Impartiality of Arbitrators

1. An arbitrator shall be independent and impartial. An arbitrator shall act in a fair manner and shall not create an appearance of impropriety or an apprehension of bias.
2. An arbitrator shall not be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a disputing party or a non-disputing Party, or fear of criticism.
3. An arbitrator shall not, directly or indirectly, incur any obligation or accept any benefit that would in any way interfere, or appear to interfere, with the proper performance of his or her duties.

4. An arbitrator shall not use his or her position on the Tribunal to advance any personal or private interests. An arbitrator shall avoid actions that may create the impression that others are in a special position to influence the arbitrator. An arbitrator shall make every effort to prevent or discourage others from representing themselves as being in such a position.
5. An arbitrator shall not allow past or ongoing financial, business, professional, family, or social relationships or responsibilities to influence his or her conduct or judgment.
6. An arbitrator shall avoid entering into any relationship, or acquiring any financial interest, that is likely to affect his or her impartiality or that might reasonably create an appearance of impropriety or an apprehension of bias.
7. If an interest, relationship, or matter of a candidate or arbitrator is inconsistent with paragraphs 1 through 6, the candidate may accept appointment to a Tribunal, and an arbitrator may continue to serve on a Tribunal, if the disputing parties waive the violation or if, after the candidate or arbitrator has taken steps to ameliorate the violation, the disputing parties determine that the inconsistency has ceased.

Article 7: Duties of Former Arbitrators

A former arbitrator shall avoid actions that may create the appearance that the arbitrator was biased in carrying out his or her duties or would benefit from the decision, order or award of the Tribunal.

Article 8: Maintenance of Confidentiality

1. An arbitrator or former arbitrator shall not at any time disclose or use any non-public information concerning the Tribunal proceeding or acquired during the Tribunal proceeding, except for the purposes of the Tribunal proceeding and shall not, in any case,

disclose or use any such information to gain a personal advantage, or an advantage for another person, or to adversely affect the interest of another person.

2. An arbitrator shall not disclose a decision, order, or award, or a part thereof, prior to its publication in accordance with Section E (Investor-State Dispute Settlement).
3. An arbitrator or former arbitrator shall not at any time disclose the deliberations of the Tribunal, or any arbitrator's view. ¹⁰
4. An arbitrator shall not make a public statement regarding the merits of a pending Tribunal proceeding.

Article 9: Responsibilities of Experts, Assistants and Staff

Article 2 (Responsibilities to the Dispute Settlement Process), paragraphs 1, 4, 5, 6 and 7 of Article 4 (Disclosure Obligations), paragraphs 3, 8 and 9 of Article 5 (Performance of Duties by Candidates and Arbitrators), Article 7 (Duties of Former Arbitrators), and Article 8 (Maintenance of Confidentiality) of this Code of Conduct shall also apply to experts, assistants, and staff.

Article 10: Review

A Party may request to review and amend this Code of Conduct to take into account, as appropriate, relevant developments concerning investor-State dispute settlement.

Appendix to the Arbitrator Code of Conduct for Dispute Settlement: Initial Disclosure Statement Form

1. I acknowledge having received a copy of the Arbitrator Code of Conduct for Dispute Settlement (Code of Conduct).

2. I acknowledge having read and understood the Code of Conduct.
3. I understand that I have a continuing obligation, while participating in the Tribunal proceeding, to disclose an interest, relationship, or matter that may bear on the integrity or impartiality of the dispute settlement process. As a part of this continuing obligation, I am making the following initial disclosures:
 - (a) My financial interest in the Tribunal proceeding for which I am under consideration or in its outcome is as follows:
 - (b) My financial interest in any administrative proceeding, domestic judicial proceeding, or other international dispute settlement proceeding that involves issues that may be decided in the Tribunal proceeding is as follows:
 - (c) The financial interests that any employer, business partner, business associate, or family member of mine may have in the Tribunal proceeding or in its outcome are as follows:
 - (d) The financial interests that any employer, business partner, business associate, or family member of mine may have in any administrative proceeding, domestic judicial proceeding or other international dispute settlement proceeding that involves issues that may be decided in the Tribunal proceeding are as follows:
 - (e) My past or current financial, business, professional, family, and social relationships with any interested party in the Tribunal proceeding, or their counsel, are as follows:
 - (f) The past or current financial, business, professional, family, and social relationships with any interested party in the Tribunal proceeding, or their counsel, involving any employer, business partner, business associate, or family member of mine are as follows:

(g) My public advocacy or legal or other representation concerning an issue in dispute in the Tribunal proceeding or involving the same investment is as follows:

(h) My other interests, relationships and matters that may bear on the integrity or impartiality of the dispute settlement process and that are not disclosed in paragraphs 3(a) through (g) above are as follows:

Signed on this _____ day of _____, 20__.

By:

Signature_____

Name_____

Footnotes

- 1 A measure is manifestly arbitrary when it is evident that the measure is not rationally connected to a legitimate policy objective, such as when a measure is based on prejudice or bias rather than on reason or fact.
- 2 For greater certainty, full protection and security refers only to the physical security of an investor and their covered investment.
- 3 The Parties recognize that the meaning of “public purpose” may apply differently for the purposes of an Indigenous government.

- 4 For the purposes of this Article, the term “technology of the Party or of a person of the Party” includes technology that is owned by the Party or a person of the Party, and technology for which the Party or a person of the Party holds an exclusive license.
- 5 The reference to “Article 31” includes any waiver or amendment to the TRIPS Agreement implementing paragraph 6 of the *Doha Declaration on the TRIPS Agreement and Public Health* (WT/MIN(01)/DEC/2).
- 6 This disclosure shall not be construed to negatively affect the software source code’s status as a trade secret, if such status is claimed by the trade secret owner.
- 7 The Parties understand that the term “prudential reasons” includes the maintenance of the safety, soundness, integrity, or financial responsibility of individual financial institutions as well as the safety, and financial and operational integrity of payment and clearing systems.
- 8 In the case of a breach of Article 9 (Expropriation), the valuation of the loss or damage incurred by the investor, or, as applicable, by the enterprise referred to in Article 27(2) (Submission of a Claim to Arbitration), as valued on the date the breach, shall be made in accordance with Article 9(5).
- 9 For greater certainty, “interested parties” includes the home State of the investors.
- 10 For greater certainty, this paragraph does not apply to the arbitrator’s view in a decision, order, award, or opinion.

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