



# REVIEW AND APPEAL PANEL

## RULES OF PROCEDURE

Approved on AUGUST 4, 2017.

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Chair [SIGNATURE]

BROOKE BROWNING  
Chair [NAME]

DEPOSITED IN THE TLA'AMIN  
REGISTRY

ON 15 / 04 / 20  
(day/month/year)

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Signature of Law Clerk

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## PART 1 - RULES

### *Division 1 - Introductory Provisions*

#### **Rule 1 - Purpose**

1. (1) These Rules are to be read together with the *Review and Appeal Law* and are intended to satisfy the requirements under:
  - (a) section 28 of the *Review and Appeal Law*, which requires the Panel to establish rules of procedure to facilitate the just and timely resolution of matters before it; and
  - (b) section 5 of the *Review and Appeal Panel Rules of Procedure Regulation*, which describes the required areas for rules of procedure.
- (2) The purpose of these Rules is to ensure:
  - (a) the fair and just resolution of matters brought before the Panel;
  - (b) that the conduct of a hearing is proportional to the complexity of the matter before the Panel;
  - (c) flexibility in the conduct of matters before the Panel; and
  - (d) that matters before the Panel are resolved in a timely manner.

#### **Rule 2 - Definitions**

2. Unless the context indicates the contrary, in these Rules,
  - “adjournment” means the postponement of a scheduled hearing date as set out in Rule 17 – Adjournments;
  - “alternate panel member” means an individual appointed under section 10(1)(b) of the *Law* as an alternate member of the Panel;
  - “applicant” means an individual who has submitted a review or appeal request for a review or appeal under the *Law*;
  - “CAO” means the chief administrative officer of the Tla’amin Nation;
  - “chair” means the chairperson of the Panel;
  - “clerk” means the clerk appointed by the Panel under the *Law*;
  - “committee” includes the Finance Committee, the Economic Development Committee, the Citizenship Committee and any other Tla’amin committee;

"document" has an extended meaning and includes a book, map, drawing, chart, letter, paper, photograph, film, recording of sound, and any other thing on which information is recorded or stored by graphic, electronic, mechanical or other means;

"Economic Development Agreement" has the meaning given to that term in the *Economic Development Law*;

"final decision" means a final decision of the Panel, which includes a panel order or a panel recommendation;

"hearing" means a hearing of the Panel held orally, with or without written submissions or a written hearing;

"intervener" means a person the Panel allows to participate in a review or appeal hearing;

"Law" means the Review and Appeal Law;

"notice of response" means a response to a review or appeal request under Rule 4 – Notice of Response to Review or Appeal Request or a response to a request for dispute resolution made under Rule 5 – Dispute Resolution Among Tla'amin Entities;

"oath of office" means the oath of office for panel members set out as Schedule A to the Law;

"Panel" means the Review and Appeal Panel;

"panel counsel" means legal counsel that may be engaged by the Panel;

"panel member" means a member of the Panel, and includes standing panel members and alternate panel members as set out in section 10 of the Law;

"panel order" means an order of the Panel made under sections 16 to 23 of the Law;

"panel recommendation" means a recommendation of the Panel made under section 19(4) of the Law;

"participant" means an applicant or respondent in a review or appeal;

"person" includes a corporation, partnership or party, and the personal or other legal representatives of a person to whom the context can apply according to law;

"procedural direction" means a direction given by the Panel respecting procedural matters before it;

"respondent" means an individual or Tla'amin Institution whose decision is the subject of a review or appeal or a person identified as a respondent in a review or appeal request for dispute resolution under Rule 5 – Dispute Resolution Among Tla'amin Entities;

"review or appeal" means a hearing conducted by the Panel in response to a review or appeal request filed under Rule 3 – Review or Appeal Request and includes the dispute resolution process under Rule 5 – Dispute Resolution Among Tla'amin Entities;

"review or appeal request" means a request for a review or appeal of a decision made under Rule 3 – Review or Appeal Request or a request for dispute resolution made under Rule 5 – Dispute Resolution Among Tla'amin Entities;

"standing panel member" means an individual appointed under section 10(1)(a) of the Law as a standing member of the Panel;

"stay" means temporarily suspending the implementation of a decision that is the subject of the review or appeal request as set out in Rule 13 - Stays;

"Tla'amin individual" means a Tla'amin Citizen or an individual who is entitled to be enrolled as a Tla'amin Citizen but is not enrolled;

"written submissions" means written submissions prepared by a participant, or a participant's representative, for the purposes of a hearing and does not include written correspondence with the Panel; and

"wrongdoing" has the meaning given to that term in the *Administration and Finance Law*.

### ***Division 2 - Initiating and Responding to a Review or Appeal Request***

#### **Rule 3 – Review or Appeal Request**

3. (1) Unless otherwise stated in the applicable Tla'amin law, a Form RAP-1 – Review or Appeal Request must be received by the Panel no later than 40 business days after:
  - (a) the decision to be reviewed or appealed was made;
  - (b) the notice of a dispute regarding removal of a board member from the Operating Board was provided to the Chair of the Holdings Board under section 9.3 of the Economic Development Agreement; or
  - (c) the elected official or member of a committee should have reasonably become aware of facts requiring a determination regarding whether or not he or she has a conflict of interest or an apparent conflict of interest.
- (2) To initiate a review or appeal, the applicant must complete and deliver to the Panel a Form RAP-1 – Review or Appeal Request, as attached to these Rules, and required by the *Review and Appeal Panel Forms Regulation*.
- (3) Nothing may be attached to Form RAP-1 – Review or Appeal Request except:
  - (a) one or more additional information pages in Form RAP-2 - Additional Information;

- (b) a schedule of relevant documents with attachments in Form RAP-3 - Schedule;  
and
  - (c) one or more declarations substantially in the form of RAP-4 - Declaration.
- (4) Every form and attachment must be executed and completed in compliance with the Law, the *Review and Appeal Panel Forms Regulation* and the instructions on each form.
- (5) Upon receipt of a complete Form RAP-1 – Review or Appeal Request, and subject to the service requirements under Rule 10 - Service, the Panel may:
- (a) dismiss the review or appeal request pursuant to Rule 16 - Dismissal of a Review or Appeal Request;
  - (b) convene a review or appeal management conference in accordance with Rule 11 – Review or Appeal Management Conference;
  - (c) engage the participants in a settlement conference as set out in Rule 12 – Settlement Conference; or
  - (d) set the review or appeal request for a hearing pursuant to Rule 24 - Hearing a Review or Appeal.
- (6) If a Form RAP-1 – Review or Appeal Request appears to be deficient, the Panel will immediately notify the applicant and allow up to three business days for the applicant to correct the deficiency, before serving the complete Form RAP-1 – Review or Appeal Request on the necessary recipients.

**Rule 4 – Notice of Response to Review or Appeal Request**

4. (1) Where a Form RAP-1 – Review or Appeal Request is served on a respondent, the respondent must deliver a notice of response in Form RAP-5 – Notice of Response to Review or Appeal Request within seven business days of service of the review or appeal request.
- (2) Nothing may be attached to Form RAP-5 – Notice of Response to Review or Appeal Request except:
- (a) one or more additional information pages in Form RAP-2 - Additional Information;
  - (b) a schedule of relevant documents with attachments in Form RAP-3 - Schedule;  
and
  - (c) one or more declarations substantially in the form of RAP-4 – Declaration.
- (3) The clerk must deliver Form RAP- 5 – Notice of Response to Review or Appeal Request to the applicant within seven business days after the Panel receives the notice of response from the respondent.

- (4) In the event that the respondent fails to file a notice of response, the Panel may proceed to consider the review or appeal request and render a final decision without further notice to the respondent.

**Rule 5 – Dispute Resolution Among Tla’amin Entities**

5. (1) Under section 23 of the Law, a Tla’amin Entity may submit an application for dispute resolution to the Panel in relation to disputes between the Tla’amin Nation, the Holdings Board and other Tla’amin Businesses.
- (2) If a dispute among Tla’amin Entities has not been resolved within the 15-day period as contemplated in section 9.1 of the Economic Development Agreement and a party gives notice to the Chair of the Holdings Board to that effect, then under section 9.2 of the Economic Development Agreement, that party may refer the dispute to the Panel.
- (3) To initiate the dispute resolution process, the party that gives notice to the Chair of the Holdings Board must complete and deliver to the Panel a Form RAP-7 – Application for Dispute Resolution no later than 40 business days after giving such notice.
- (4) The application for dispute resolution must include the following information:
  - (a) a brief summary of the nature of the dispute;
  - (b) a specific question for the Panel that may be answered in the affirmative or negative; and
  - (c) the name(s) of the other respondent(s) to the dispute.
- (5) Each respondent must file a notice of response in Form RAP-8 – Notice of Response to Application for Dispute Resolution within seven business days of being served with the Form RAP-7 – Application for Dispute Resolution.
- (6) Nothing may be attached to Form RAP-7 – Application for Dispute Resolution or Form RAP-8 – Notice of Response to Application for Dispute Resolution except:
  - (a) one or more additional information pages in Form RAP-2 – Additional Information;
  - (b) a schedule of relevant documents with attachments in Form RAP-3 – Schedule; and
  - (c) one or more declarations substantially in the form of RAP-4 – Declaration.
- (7) Every form and attachment must be executed and completed in compliance with the Law, the *Review and Appeal Panel Forms Regulation* and the instructions on each form.
- (8) If a Form RAP-7 – Application for Dispute Resolution appears to be deficient, the Panel will immediately notify the applicant and allow up to three business days for the

applicant to correct the deficiency, before serving the complete Form RAP-7 – Application for Dispute Resolution on the necessary recipients.

- (9) In the event that a respondent does not agree with the specific question provided to the Panel by the applicant, the respondent may rephrase the question as he or she sees fit in Form RAP-2 – Additional Information.
- (10) Once complete and delivered to the Panel, the Form RAP-7 – Application for Dispute Resolution and the Form RAP-8(s) – Notice of Response to Application for Dispute Resolution of each respondent will together form an application for dispute resolution among Tla'amin Entities.
- (11) The clerk must deliver Form RAP- 8(s) – Notice of Response to Application for Dispute Resolution to the applicant within seven business days after the Panel receives the notice of response from the respondent(s).
- (12) Rule 3 – Review or Appeal Request and Rule 24 – The Hearing apply, as applicable, to Dispute Resolution Among Tla'amin Entities.

### ***Division 3 - Submitting and Exchanging Evidence***

#### **Rule 6 – Delivery of Forms and Communications with the Panel**

6. (1) Unless the Panel directs otherwise, all delivery of forms and communications with the Panel must be made through the clerk at the following Panel address:

#### **Review and Appeal Panel**

Attn: Clerk

c/o: Frances Ladret  
1469 Sorenson Road  
Box 147  
Lund, British Columbia  
V0N 2G0

Phone: 604-483-4592

Mobile: 604-223-4671

E-mail: rapclerk@gmail.com

- (2) Forms and documents may be delivered to the Panel by hand, mail, courier or e-mail.
- (3) Notices from the Panel will be delivered by the chair, or the clerk at the direction of the chair, by hand, mail, courier or e-mail to the contact information provided by the participants, unless otherwise stated in these Rules.
- (4) A document that is delivered after 4:30 pm is deemed delivered on the next day that is not a Saturday, Sunday or public holiday.

- (5) A document that is sent by mail is deemed delivered on the fifth day after it is mailed, excluding a Saturday, Sunday or public holiday, unless there is evidence to the contrary.

**Rule 7 – Exchange of Documents and Information**

7. (1) The Panel will deliver a copy of each document submitted to the Panel by a participant to each other participant in the review or appeal in accordance with this Rule, unless otherwise expressly provided in these Rules.
- (2) The Panel may exclude all or part of a document or evidence in accordance with Rule 30(1)(b) – Access to Documents and Evidence.
- (3) A document may be delivered to a person:
- (a) by leaving a copy of it with the person;
  - (b) if the person is a participant, by providing a copy of it in accordance with their contact information; or
  - (c) by any other means permitted by the Panel that allows for proof of receipt.
- (4) If it is impractical to deliver a document by leaving a copy with the person, or by providing it in accordance with the person's contact information if they are a participant, the Panel may use an alternate method of delivery, including notice by advertisement where necessary.
- (5) A participant must provide the Panel with contact information consisting of:
- (a) full name;
  - (b) current postal address;
  - (c) telephone number;
  - (d) e-mail address (if any); and
  - (e) contact information for the participant's lawyer or other agent (if any).
- (6) A participant must notify the Panel of any change in their contact information as soon as practicable.

**Rule 8 – Disclosure of Documents**

8. (1) The Panel may require that each participant submit a Form RAP-3 – Schedule listing every document or thing that he or she will refer to at the hearing at least 10 business days before the day of the hearing or as otherwise ordered by the Panel.

- (2) The Panel may require each participant to deliver to the clerk, who will then deliver to all other participants, copies of all documents that the participant will produce or enter as evidence at the hearing at least 10 business days before the day of the hearing or as otherwise ordered by the Panel. If a document is not filed prior to the hearing, the Panel will only allow filing with the consent of all participants.
- (3) The Panel may at any stage of the review or appeal order a participant to disclose to the clerk of the Panel, who will then disclose to all other participants, the existence of all documents and things that the participant will refer to or enter as evidence at the hearing.
- (4) If a participant fails to comply with any of the requirements of this Rule, or Rule 31 – Panel May Request Further Information, the participant may not refer to a document or thing which the participant has failed to disclose or introduce it into evidence at the hearing without the consent of the Panel, which may be granted on such terms and conditions as the Panel decides.
- (5) No additional evidence may be submitted after the hearing, except as directed by the Panel. In providing the direction, the Panel will:
  - (a) specify the date by which the evidence must be submitted to the Panel, and upon receipt, the Panel will deliver the evidence to the other participants; and
  - (b) provide an opportunity for the other participant(s) to respond to the additional evidence if required.

#### **Rule 9 – Time Requirements**

9. (1) In calculating time under these Rules or in a panel order, panel recommendation or procedural direction of the Panel:
  - (a) the number of days between two events is counted by excluding the days on which those events happen; and
  - (b) if the last day of a time period for delivering a document or doing any other thing falls on a Saturday, Sunday or public holiday, the time ends on the next day that is not a Saturday, Sunday or public holiday.
- (2) Subject to Tla'amin Law, the Panel may also extend or reduce any time limit in these Rules, whether or not the time limit has already expired, as the Panel considers fair and appropriate in the circumstances.
- (3) To apply to extend or reduce a time limit, a participant must explain to the Panel:
  - (a) the reason(s) the extension or reduction of the time limit is required;
  - (b) whether the other participant(s) agree to the extension or reduction of the time limit (if known); and

- (c) whether an injustice would result if the extension or reduction of the time limit is not granted.
- (4) Before granting the extension or reduction of a time limit, the Panel will give other participant(s) notice and an opportunity of response, which must be received within three business days after receipt of the notice.

**Rule 10 – Service**

- 10. (1) Upon receipt of a complete review or appeal request, the clerk will deliver a copy of the review or appeal request to the Executive Council by leaving a copy with the CAO.
- (2) The clerk must serve the review or appeal request on the respondent(s) within seven business days of receiving the review or appeal request.
- (3) The Panel will not further consider a review or appeal request until service has been effected in accordance with this Rule.
- (4) Where a review or appeal request is brought pursuant to the *Election Law*, the clerk is responsible for service of the complete Form RAP-1 – Review or Appeal Request on all persons he or she deems to have a direct interest in the review or appeal who have not been otherwise served.
- (5) Proof of service or delivery may be established by:
  - (a) acknowledgment in writing by the person served; or
  - (b) a solemn declaration of the person serving or delivering the document in Form RAP-6 – Proof of Service.

***Division 4 - Conferences***

**Rule 11 – Review or Appeal Management Conference**

- 11. (1) At any time, whether or not requested by a participant, the Panel may convene a review or appeal management conference and will notify the participants of the time and place of the conference.
- (2) The Panel may direct that the review or appeal management conference be held by telephone conference or other electronic means.
- (3) The participants are obligated to attend a review or appeal management conference convened by the Panel.
- (4) If an applicant fails to attend a review or appeal management conference without reasonable excuse, the Panel may dismiss the review or appeal.

- (5) If a respondent fails to attend a review or appeal management conference without reasonable excuse, the Panel may proceed to render a final decision on the review or appeal and grant the relief sought by the applicant in whole or in part.
- (6) An appeal management conference will be closed to the public unless the Panel directs otherwise.
- (7) The Panel may make procedural directions at, or following, a review or appeal management conference in respect of the following:
  - (a) procedure at hearings, including, without limitation:
    - (i) the order of presentation of evidence and argument,
    - (ii) the estimated duration of the hearing,
    - (iii) the exclusion of witnesses from hearings,
    - (iv) setting time limits for a hearing or submissions,
    - (v) the filing of written submissions by the participants, and
    - (vi) transcribing or tape-recording of hearings;
  - (b) evidentiary matters;
  - (c) the exchange of documents and other records by the participants;
  - (d) the exchange of witness lists;
  - (e) directions to require a participant to provide further information;
  - (f) the addition of a participant to a hearing;
  - (g) the attendance of witnesses at any hearing; and
  - (h) any other matters which may assist in the just and expeditious disposition of the review or appeal.

#### **Rule 12 – Settlement Conference**

12. (1) With the agreement of the participants, the Panel may hold a settlement conference, to be presided at by the chair and one other panel member.
- (2) If the matter is not resolved through the settlement conference, the panel member, who is not the chair, and who has participated in the settlement conference, may not, without the consent of the participants, take part in a subsequent hearing.

***Division 5 - Before the Hearing***

**Rule 13 – Stays**

13. (1) The filing of a review or appeal request does not operate as a stay of the decision that is the subject of the review or appeal request.
- (2) An applicant may apply for an order staying the decision that is the subject of the review or appeal request by delivering a written request to the Panel.
- (3) Upon receiving an application for a stay and after giving the respondent(s) notice and an opportunity to be heard by way of written response, which must be received within three business days after receipt of the notice, the Panel may order a stay of the decision if the chair decides that the applicant:
  - (a) has an arguable case for requesting a review or appeal of the decision; and
  - (b) would suffer irreparable harm if the decision was not stayed.
- (4) In an order for a stay, the chair may:
  - (a) specify the period of time that the decision is stayed; and
  - (b) impose any conditions that the chair considers appropriate in the circumstances.

**Rule 14 – Amending a Review or Appeal Request or Notice of Response**

14. (1) A participant may apply to amend a filed Form RAP-1 – Review or Appeal Request or a filed Form RAP-5 – Notice of Response to Review or Appeal Request by delivering a written request to the Panel.
- (2) The application for amendment must be received as soon as possible and with enough time to allow the clerk to serve the amended Form RAP-1 – Review or Appeal Request or Form RAP-5 – Notice of Response to Review or Appeal Request.
- (3) In any event, the other participant must receive the amended form and any supporting evidence not less than 10 business days before the hearing.
- (4) On receipt of an application for amendment, the Panel may:
  - (a) allow the amendment;
  - (b) allow the amendment on such terms as the Panel may determine; or
  - (c) dismiss the application for amendment.

**Rule 15 – Withdrawing a Review or Appeal Request**

15. (1) To withdraw all or part of a review or appeal request, the applicant must deliver written notice of withdrawal to the Panel.

- (2) The applicant may withdraw all or part of a review or appeal request at any time before the Panel has made its final decision disposing of the review or appeal.
- (3) After receiving a written notice of withdrawal, the Panel will order that the review or appeal request, or part of it, is dismissed.

**Rule 16 – Dismissal of a Review or Appeal**

16. (1) At any time after a review or appeal is initiated, the Panel may dismiss all, or part of it, if the Panel determines:
  - (a) the Form RAP-1 – Review or Appeal Request is incomplete or otherwise defective;
  - (b) the Form RAP-1 – Review or Appeal Request was not filed within the applicable time limit;
  - (c) the subject matter of the review or appeal is not within the jurisdiction of the Panel;
  - (d) the review or appeal is frivolous, vexatious or trivial, made in bad faith or filed for an improper purpose or motive;
  - (e) the applicant has failed to diligently pursue the review or appeal, failed to comply with a panel order, panel recommendation or procedural direction;
  - (f) the applicant has failed to attend a review or appeal management conference, settlement conference or a hearing;
  - (g) there is no reasonable prospect that the review or appeal will succeed; or
  - (h) the substance of the review or appeal has been appropriately dealt with in another proceeding.
- (2) Before dismissing all or part of a review or appeal under Rule 16(1) above, the Panel must give the applicant notice of the dismissal and an opportunity to provide a written response or otherwise be heard within five business days after receipt of the notice.
- (3) If the Panel dismisses all or part of a review or appeal under Rule 16(1) above, the Panel must inform the participants of its decision in writing and give reasons for that decision.

**Rule 17 – Adjournments**

17. (1) A participant may apply to adjourn a scheduled hearing date. The application must be made at the earliest opportunity and may be made:
  - (a) by delivering a written request to the Panel that explains the reason(s) an adjournment is required and whether the other participant(s) agree to it (if known);  
or

- (b) if an oral hearing is underway, by a verbal request to the panel members that explains the reason(s) an adjournment is required and whether the other participant(s) agree to it (if known).
- (2) Except in extenuating circumstances, the Panel will give the other participants, notice and an opportunity to be heard by way of written response, received within a reasonable time, as specified in the notice, before granting an application to adjourn a scheduled hearing date.
- (3) In considering whether to grant an application to adjourn a scheduled hearing date, the Panel will have regard generally to the following factors:
  - (a) the reason(s) an adjournment is required;
  - (b) whether an adjournment will help resolve all or part of the review or appeal;
  - (c) whether, and the extent to which, prejudice will result if an adjournment is granted or refused;
  - (d) whether the other participants agree to an adjournment;
  - (e) the impact that an adjournment would have on the progress of the review or appeal;
  - (f) the number, length and causes of any previous delays in the progress of the review or appeal;
  - (g) whether an adjournment is necessary to ensure a fair hearing; and
  - (h) the public interest in the efficient and speedy conduct of reviews and appeals.

**Rule 18 – Calling and Excluding Witnesses**

- 18. (1) At the request of a participant, the Panel may request a witness to attend to give evidence at the hearing or to produce a document or other thing that is in the witness's possession or control.
- (2) The participant requesting a witness must provide the following information, about that witness, to the Panel:
  - (a) full name;
  - (b) current postal address;
  - (c) telephone number;
  - (d) e-mail address (if any);
  - (e) the documents or evidence to be produced by that witness; and

- (f) the estimated cost of the witness' travelling expenses.
- (3) Upon receipt of the information in Rule 18(2) above, the Panel will complete and issue the request in the form prescribed by the Panel.
- (4) At the time the request is delivered, the participant requesting the witness must offer the witness reasonable estimated travelling expenses in advance of the required attendance.
- (5) The Panel will deliver the request to the witness at least 10 business days before the date on which the person is to appear.
- (6) The Panel reserves the right to reject the request of a participant to request the attendance of a witness under this Rule.

#### **Rule 19 – Calling and Excluding Technical Experts**

- 19. (1) At the request of a participant, the Panel may request the attendance of an expert to give evidence or advice at the hearing or to provide an expert report.
- (2) The participant requesting an expert's attendance, or report, must provide the following information, about that expert, to the Panel:
  - (a) full name;
  - (b) current postal address;
  - (c) telephone number;
  - (d) e-mail address (if any);
  - (e) the qualifications of the expert;
  - (f) the reasons why the applicant or respondent believes the expert is required at the hearing, or why the expert report is necessary; and
  - (g) the estimated cost of the expert's travelling expenses.
- (3) Upon receipt of the information in Rule 19(2) above, the Panel will complete and issue the request in the form prescribed by the Panel.
- (4) At the time the request is delivered, the participant requesting the expert must offer the expert reasonable estimated travelling expenses in advance of the required attendance.
- (5) The Panel, at its discretion, may request the attendance or services of an expert to submit evidence or advice at a hearing.

- (6) The Panel will deliver the request to the expert at least 10 business days before the date on which the person is to appear.
- (7) Unless the Panel authorizes otherwise, a participant who wishes to submit the evidence of an expert at a hearing must deliver to the Panel, and then the clerk will deliver to the other participants, a report stating the evidence of the expert:
  - (a) at least 10 business days before the scheduled hearing date; or
  - (b) in the case of evidence of an expert submitted in response to an expert report, at least five business days before the scheduled hearing date.
- (8) Unless the Panel authorizes, or the participants agree otherwise, a participant who submits the evidence of an expert must make the expert available for cross-examination at the hearing.
- (9) The Panel reserves the right to reject the request of a participant to request the attendance of an expert or the submission of evidence by an expert under this Rule.

**Rule 20 – Witness Statements**

20. (1) The Panel may require a participant to provide the Panel with a signed witness statement for each witness the participant intends to call at the hearing, or if a witness statement is not available for a witness, the participant's written summary of the evidence to be given by the witness at the hearing at least five business days before the hearing, or such other time as the Panel may direct.
- (2) The Panel will deliver any witness statements or written summaries to the other participants.
- (3) A witness statement or written summary of the evidence that a witness will give at a hearing must contain:
  - (a) the substance of the evidence of the witness;
  - (b) a list of documents and things, if any, that the witness will refer to in his or her evidence; and
  - (c) the witness's name and contact information.
- (4) If a participant fails to provide a witness statement or a written summary of the evidence a witness will give at the hearing, the participant may not call the person as a witness without the consent of the Panel, which consent may be subject to such terms and conditions as the Panel considers just.
- (5) A participant may not call a witness to testify to matters not disclosed in the person's witness statement without the consent of the Panel.

**Rule 21 – Adding, Removing or Substituting a Participant**

21. (1) Where the circumstances set out in Rule 21(2) below apply, the Panel may, on its own initiative or on the application of a participant, remove, add or substitute a person as a participant to a review or appeal.
- (2) An application to remove, add or substitute a participant to a review or appeal may be made by delivering a written request to the Panel that demonstrates the following:
- (a) the person to be removed as a participant is not, or has ceased to be, a proper or necessary participant to the review or appeal; or
  - (b) the person to be substituted or added as a participant is a proper or necessary participant to the review or appeal to ensure that all matters in the review or appeal are effectually adjudicated.
- (3) The Panel will give the participants notice and an opportunity to be heard by way of written response, which must be received within three business days after receipt of the notice, before removing, adding or substituting a person as a participant to a review or appeal.
- (4) The Panel will not add or substitute a person as an applicant without that person's consent.

**Rule 22 – Interveners**

22. (1) A person may apply to participate as an intervener in a review or appeal hearing by delivering a written request to the Panel, which must be received 10 business days before the hearing, that demonstrates the following:
- (a) the person can bring a valuable contribution or bring a different perspective to the review or appeal;
  - (b) the potential benefits of the intervention outweigh any prejudice it may cause to the participants; and
  - (c) that the person has a direct interest in the outcome of the review or appeal.
- (2) The Panel will give the participants notice and an opportunity to be heard by way of written response, which must be received within three business days after receipt of the notice, before granting an application to intervene in a review or appeal hearing.
- (3) The Panel may limit or impose terms and conditions on the participation of an intervener in a review or appeal hearing and, unless specifically authorized by the Panel, an intervener may not submit evidence in a review or appeal hearing.

### **Rule 23 – Official Transcript**

23. (1) A participant requesting an official transcript by an accredited court reporter must make a written request stating the reasons for the request to the Panel not less than 15 business days before the hearing. The Panel will determine whether to grant the request and will provide written reasons. If permission is granted, the participant making the request must:
- (a) prior to the hearing, provide the Panel with proof of the court reporter's accreditation;
  - (b) make all necessary arrangements for attendance by the court reporter;
  - (c) pay the cost of the court reporter's attendance at the hearing;
  - (d) pay the cost of the court reporter's services and the cost of transcripts;
  - (e) provide all participants and the Panel with official copies of the transcript; and
  - (f) acknowledge that the transcripts may not be used for any purpose other than the hearing, a review or any court proceeding.

### ***Division 6 - The Hearing***

### **Rule 24 – The Hearing**

24. (1) Subject to Tla'amin law, a hearing must be held within 60 business days after a Form RAP-1 – Review or Appeal Request, or a Form RAP-7 – Application for Dispute Resolution, has been received by the Panel, unless the participants consent to a later date in accordance with Rule 9 – Time Requirements.
- (2) The hearing will be held orally in person, unless otherwise ordered by the Panel in its discretion, and with the agreement of the participants, to hold a written hearing in accordance with Rule 32 – Written Hearing.
  - (3) In addition to presenting oral evidence at a hearing, participants may also provide written submissions to help the Panel understand the participant's case.
  - (4) Once all respondents have filed a notice of response or once the time for filing a notice of response has expired, the Panel must determine:
    - (a) the time, date and location of the hearing; and
    - (b) the deadline for receipt of written submissions.
  - (5) The Panel must give the participants notice of not less than 15 business days of:
    - (a) the time, date and location of the hearing; and

- (b) the deadline for receipt of written submissions.
- (6) If the Panel is satisfied that special circumstances warrant an extension of a time limit to start a hearing, it may grant an extension of time whether or not the time limit has already expired.
- (7) At a hearing, the Panel will sit as a panel of three, except in exceptional circumstances.
- (8) The chair or vice-chair will preside at a hearing and may make procedural directions respecting the procedure at a hearing.
- (9) Before and during the hearing, the Panel will manage the hearing process to ensure the just and timely resolution of the matters before it, including making procedural directions about any one or more of the following:
  - (a) the identification and summary of facts and issues;
  - (b) the timely disclosure of documents, witness lists and the anticipated evidence of witnesses;
  - (c) the form and delivery of documents or other evidence, admissions, agreed facts and submissions;
  - (d) determining whether preliminary or interim matters or the hearing of a review or appeal will be conducted by any combination of written or oral submissions;
  - (e) time estimates and scheduling matters; and
  - (f) procedural matters raised by the Panel or the participants.
- (10) Where timely notice of the hearing is given and a participant fails to attend at the hearing, the Panel may proceed with the hearing and disposition of the review or appeal, without further notice to the participant.
- (11) The Panel may, at any time, direct a participant to file with the Panel any written submissions, documents or evidence relating to a hearing, subject to Rule 24(5) above.

**Rule 25 – Participant’s Representative**

- 25. (1) A participant may, at the participant’s own expense, be represented by a lawyer or other agent.
- (2) A participant must provide the Panel with his or her agent’s contact information consisting of:
  - (a) full name;
  - (b) current postal address;

- (c) telephone number; and
- (d) e-mail address (if any).

**Rule 26 – Public Attendance**

26. (1) A hearing will be open to the public unless the Panel directs that all or part of the information be received to the exclusion of the public because in the opinion of the Panel:
- (a) the desirability of avoiding disclosure in the interests of any person or participant affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public; or
  - (b) it is not practicable to hold the hearing in a manner that is open to the public.

**Rule 27 – Audio and Video Recording**

27. (1) No person shall take or attempt to take a photograph, video or audio recording or other record capable of producing an audio or visual reproduction by electronic or other means at a hearing.
- (2) Persons are prohibited from recording hearings, except as allowed by Rule 23 – Official Transcript. Prohibited recording includes any audio, photographic, video or digital recording.

**Rule 28 – Participation via Video-Conferencing**

28. (1) Where a participant is unable to attend an oral hearing in person, he or she may deliver a written request to the Panel setting out the reasons for his or her request to attend the hearing by way of video-conference.
- (2) On receipt of such a request, the Panel may:
- (a) allow the request;
  - (b) allow the request on such terms as the Panel may determine; or
  - (c) dismiss the request.

**Rule 29 – Evidence at Hearings**

29. (1) The Panel may receive and accept as evidence information that it considers relevant, necessary and appropriate, whether or not that information would be admissible in a court of law, subject to Rule 29(3) below.
- (2) The standard of proof in respect of evidence at hearings will be on a balance of probabilities.

- (3) Nothing is admissible before the Panel that is inadmissible in a court of law because of privilege under the laws of evidence.
- (4) The Panel will generally require oral evidence of participants, witnesses and experts to be given under affirmation.
- (5) The Panel will generally require the applicant's case to be presented first, followed by the respondents' case(s). The applicant will then have the opportunity to reply.
- (6) Where authorized by the Panel, interveners will be given an opportunity to present oral evidence.
- (7) The Panel has the authority to determine the relevance, necessity and appropriateness of the evidence.

**Rule 30 – Access to Documents and Evidence**

- 30. (1)** A document or evidence submitted in a hearing will be accessible to the public and other participants unless:
- (a) the Panel directs that all or part of the document or evidence be received in confidence and not be made accessible to the public because, in the opinion of the Panel, the desirability of avoiding disclosure in the interests of any person or participant affected, or in the public interest, outweighs the desirability of adhering to the principle that hearings be open to the public; or
  - (b) the Panel directs that all or part of the document or evidence be received in confidence and not be made accessible to a participant or participants because, in the opinion of the Panel, its nature requires that direction to ensure the proper administration of justice.
- (2) A participant may, prior to or upon the filing of documents or evidence with the Panel, request that all or part of the document or evidence:
- (a) not be accessible to the public; or
  - (b) not be accessible to another participant.
- (3) Following a request under Rule 30(2) above, the Panel may make a direction under Rule 30(1) above.
- (4) The Panel may impose such conditions upon access to documents or evidence as it considers appropriate.
- (5) The Panel will not provide the public or a participant with access to the following:
- (a) personal notes, communications or draft decisions of a panel member; or

- (b) information received by the Panel at the hearing of a review or appeal from which the public or a participant was excluded.

**Rule 31 – Panel may Request Further Information**

- 31. (1) In accordance with section 33 of the Law, the Panel may, if the evidence before it is not adequate for determining the merits of the review or appeal, request such further information as it deems necessary from the participants, at any time before issuing its final decision.

**Rule 32 – Written Hearing**

- 32. (1) In accordance with Rule 24(2), the Panel may, in its discretion, and with the agreement of the participants, decide to hold a written hearing.
  - (2) In deciding whether to hold a written hearing, the Panel may consider any relevant factors, including:
    - (a) the suitability of the written hearing format to the subject matter of the hearing;
    - (b) whether the credibility of any of the participants or witnesses is in issue;
    - (c) the extent to which the facts of the matter are in dispute;
    - (d) the convenience of the participants;
    - (e) the cost, efficiency and timeliness of the hearing format;
    - (f) avoidance of unnecessary delay or a lengthy oral hearing;
    - (g) the need to provide a fair and understandable process;
    - (h) the desirability or necessity of public access to the Panel's process; and
    - (i) any other factors affecting the Panel's ability to facilitate the fair, just and timely resolution of matters before it.
  - (3) The Panel may change the format of a written hearing to an oral hearing when the Panel considers it appropriate to do so.
  - (4) Should the Panel change the format of a written hearing, it will notify the participants of its decision and may provide procedural directions as to the holding of that hearing.
  - (5) The Panel must provide notice of a written hearing, which will include the following details:
    - (a) the reason(s) for not holding an oral hearing;
    - (b) the authority under which the written hearing is held;

- (c) a statement that the Panel may, at any time, direct a participant to file with the Panel any written submissions, documents or evidence relating to the review or appeal, subject to Rule 24(5);
  - (d) a statement that the participants will be required to exchange documents with the other participants and will have the opportunity to ask questions about the documents in writing which the other participants will be obliged to answer; and
  - (e) a statement that where timely notice of the hearing is given and a participant fails to attend at the hearing, the Panel may proceed with the hearing and disposition of the review or appeal, without further notice to the participant, in accordance with Rule 24(10).
- (6) Subject to Rule 30(1)(a) – Access to Documents and Evidence all documents that are filed in respect of a hearing will be accessible to the public.
  - (7) Subject to Rule 30(1)(b) – Access to Documents and Evidence all participants are entitled to receive every document that the Panel receives in a hearing.

***Division 7 - After The Hearing***

**Rule 33 – Costs**

- 33. (1) After conducting a hearing, the Panel may make orders for payment of costs up to a maximum of \$2,000, requiring a participant to pay part or all of the costs of another participant in connection with the review or appeal.
- (2) In considering the amount of costs to award, the Panel will consider:
  - (a) the success of a participant on the matter before the Panel;
  - (b) the success of a participant on a significant issue before the Panel;
  - (c) conduct which has unduly increased the length or expense of the hearing;
  - (d) conduct which has been improper, vexatious, frivolous or abusive; and
  - (e) other factors which in the opinion of the Panel are relevant to the amount of costs.
- (3) When awarding costs, the Panel will provide reasons in writing respecting the decision to award costs and the amount.

**Rule 34 – Final Decisions of the Panel**

- 34. (1) At the conclusion of a hearing, the Panel will issue a final decision in writing as soon as practicable and may give reasons for the decision.
- (2) Final decisions of the Panel must include a panel order or panel recommendation, in accordance with the Law.

- (3) The Panel must attempt to reach its final decision by consensus, but if consensus is not possible,
  - (a) a panel order or panel recommendation that is agreed to by two of the standing panel members is considered a final decision of the Panel;
  - (b) a standing panel member who does not agree with the other two standing panel members may prepare a dissenting determination with reasons; and
  - (c) if none of the standing panel members are in agreement, the matter will be remitted to the original decision maker and the three standing panel members may provide their views on the matter.
- (4) Final decisions of the Panel must be in writing and signed by the chair.
- (5) Copies of all final decisions made and any reasons given by the Panel must be delivered in accordance with Tla'amin law by the clerk to the Executive Council and the participants as soon as practicable.
- (6) Subject to Rule 34(7) below, the Panel is not required to give written reasons for a panel order or panel recommendation under the Law.
- (7) Notwithstanding Rule 34(6) above, a participant may, by written notice, require the Panel to give written reasons for its final decision.
- (8) Subject to Rule 34(9) below, a final decision is final and binding on the participants and is not subject to appeal.
- (9) An appeal from a final decision of the Panel under this Rule lies to the Supreme Court only on a question of law or jurisdiction.
- (10) The Panel may amend a final decision to correct any of the following:
  - (a) a clerical or typographical error;
  - (b) an accidental or inadvertent error, omission or other similar mistake; and
  - (c) an arithmetic error made in computation.

#### **Rule 35 – Appeal of Final Decisions of the Panel**

- 35. (1)** At In accordance with section 34 of the Law, and the *Administrative Tribunals Act*, an application for judicial review of a final decision taken by the Panel must be made within 60 days of the date the Panel issued the final decision.

#### **Rule 36 – Destruction of Exhibits**

- 36. (1)** At the conclusion of all proceedings related to the review or appeal, and provided no judicial review has been commenced, a participant who has filed a physical exhibit will

receive a letter from the Panel asking if they wish to have the physical exhibit returned to them at their expense or whether they wish to have the exhibit disposed of by the Panel.

### ***Division 8 - The Panel***

#### **Rule 37 – Clerk**

37. (1) The Panel may assign an alternate panel member to fulfill the duties of the clerk.
- (2) At the request of a participant, the clerk may assist that participant in completing the appropriate forms and explaining the Rules.

#### **Rule 38 – Replacing Standing Panel Members**

38. (1) In the event of a temporary absence of a standing panel member, the chair will appoint an alternate panel member to fill the vacancy until the standing panel member returns, unless the acting alternate panel member is engaged in a review or appeal, in which case the alternate panel member will continue to serve until the review or appeal is concluded.
- (2) In the event that a standing panel member has a conflict of interest or an apparent conflict of interest, in relation to a particular review or appeal, the chair will appoint an alternate panel member to fill the vacancy for that review or appeal.
- (3) In the event that the standing panel member who is a Tla'amin individual will be absent, they must provide notice of their expected absence. The chair will then appoint the alternate panel member that is a Tla'amin individual to fill the vacancy, subject to Rule 38(1) above. In this scenario, if the Tla'amin individual is not able to fill the vacancy, then the other alternate panel member may fill the vacancy.
- (4) In the event that the chair is absent, section 15 of the Law will govern the designation of a vice-chair

#### **Rule 39 – Panel Counsel**

39. (1) The Panel may, in consultation with the CAO, engage general legal counsel to the Panel and may determine the remuneration and other terms and conditions of that panel counsel's retainer.
- (2) Without limiting the terms and conditions of the retainer under Rule 39(1) above, the panel counsel may:
- (a) provide information to the public about Panel roles, responsibilities, powers and procedure;
- (b) advise the Panel of its roles, responsibilities, powers and procedure;

- (c) advise the Panel of technical or procedural deficiencies in the completion of any prescribed form; and
- (d) when directed to do so by the chair, act as panel counsel in any judicial review, or appeal of a decision of the Panel in accordance with the Law.

**Rule 40 – Other Panel Staff**

40. (1) In addition to a panel counsel under Rule 39 – Panel Counsel, the Panel may, in consultation with the CAO, appoint contractors to assist the Panel in exercising its powers and carrying out its duties and functions, including:
- (a) consultants, investigators, expert witnesses, accountants, or other persons necessary; and
  - (b) establish the remuneration and other terms and conditions of the retainers of persons engaged under paragraph (a) above.

**Rule 41 – Annual Report**

41. (1) The Panel must provide an annual report to the Executive Council and the Legislative Assembly on its activities and final decisions.

***Division 9 - Miscellaneous***

**Rule 42 – Conflict with the Law**

42. (1) Where the Law and its Regulations conflict with these Rules of Procedure, the Law and Regulations apply.

**Rule 43 – Effective Date**

43. (1) These Rules of Procedure take effect on August 4, 2017 and apply to review or appeal requests that are made to the Panel on or after August 4, 2017 and to the hearings that are commenced by those requests.

**PART 2 - FORMS**

**RAP-1 – Review or Appeal Request**

**RAP-2 – Additional Information**

**RAP-3 – Schedule**

**RAP-4 – Declaration**

**RAP-5 – Notice of Response to Review or Appeal Request**

**RAP-6 – Proof of Service**

**RAP-7 – Application for Dispute Resolution**

**RAP-8 – Notice of Response to Application for Dispute Resolution**

<p>TLA'AMIN NATION</p> <p>Review and Appeal Law Form RAP-5</p> <p>NOTICE OF RESPONSE</p> <p>TO REVIEW OR APPEAL REQUEST</p>		<p>Date received: _____</p> <p>Request number: _____</p> <p>(for office use only)</p>
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**RAP-5 – Notice of Response to Review or Appeal Request**

**RESPONSE TO GROUNDS OF REVIEW OR APPEAL REQUEST:**

*[BRIEFLY PROVIDE YOUR POSITION REGARDING THE APPLICANT'S REASONS SET OUT IN THE REVIEW OR APPEAL REQUEST, INCLUDING ANY RELEVANT ADDITIONAL FACTS]*

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\_\_\_\_\_

**RESPONSE TO RELIEF SOUGHT:**

*[SET OUT YOUR POSITION ON THE RELIEF SOUGHT IN THE REVIEW OR APPEAL REQUEST]*

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\_\_\_\_\_

**RESPONDENT'S CONTACT INFORMATION:**

Full legal name:	
Phone No.:	
Mailing address:	
E-mail address:	

**RESPONDENT'S AGENT'S CONTACT INFORMATION (IF APPLICABLE):**

Full legal name:	
Phone No.:	
Mailing address:	
E-mail address:	

**ADDRESS FOR DELIVERY:**

*[THIS WILL BE USED TO DELIVER ANY NOTICES IN RELATION TO THE REVIEW OR APPEAL REQUEST. NOTE: THE PANEL'S PREFERRED MEANS OF COMMUNICATION IS THROUGH E-MAIL]*

- CHECK ONE:**  Respondent's mailing address       Respondent's e-mail address  
 Respondent's agent's mailing address       Respondent's agent's e-mail address

[Attachments must be in Forms: RAP-2 Additional Information, RAP-3 Schedule(s), RAP-4 Declaration(s)]

**SIGNATURE:** \_\_\_\_\_

*[THIS NOTICE OF RESPONSE MUST BE SIGNED BY THE RESPONDENT OR RESPONDENT'S AGENT]*

Full name of respondent or agent: \_\_\_\_\_

Date: \_\_\_\_\_

**RAP-6 – Proof of Service**

TLA'AMIN NATION Review and Appeal Law Form RAP-6 PROOF OF SERVICE		Date received: _____ Request number: _____ (for office use only)
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**SOLEMN DECLARATION**

I, \_\_\_\_\_, served  
FULL NAME

\_\_\_\_\_, with  
FULL NAME

\_\_\_\_\_, by:  
DESCRIBE DOCUMENT, INCLUDING REQUEST #

E-mailing it to \_\_\_\_\_, OR:  
E-MAIL ADDRESS

Personally delivering it to \_\_\_\_\_, at:  
NAME

\_\_\_\_\_, OR:  
ADDRESS

Mailing it to \_\_\_\_\_  
ADDRESS

on \_\_\_\_\_, at approximately \_\_\_\_\_  
DATE TIME

I solemnly declare that, to the best of my belief, the information set out in this form is correct, and I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same legal force and effect as if made under oath.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE

\_\_\_\_\_  
WITNESS FULL NAME (PLEASE PRINT)

\_\_\_\_\_  
WITNESS SIGNATURE

## RAP-7 – Application for Dispute Resolution

<p>TLA'AMIN NATION</p> <p>Review and Appeal Law Form RAP-7</p> <p>APPLICATION FOR DISPUTE RESOLUTION</p>		<p>Date received: _____</p> <p>Request number: _____</p> <p>(for office use only)</p>
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**NATURE OF DISPUTE:** *[Provide a brief summary of the nature of the dispute]*

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**QUESTION FOR THE PANEL:** *[which may be answered in the affirmative or negative]*

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**RESPONDENTS:** *[Provide the names of the other parties to the dispute]*

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**APPLICANT'S CONTACT INFORMATION:**

Full legal name:	
Citizenship No.:	
Phone No.:	
Mailing address:	
E-mail address:	

**APPLICANT'S AGENT'S CONTACT INFORMATION (if applicable):**

Full legal name:	
Phone No.:	
Mailing address:	
E-mail address:	

**Address for Delivery:** *[This will be used to deliver any notices]*

**CHECK ONE:**

- Applicant's mailing address*
                         
  *Applicant's e-mail address*  
 *Applicant's agent's mailing address*
                         
  *Applicant's agent's e-mail address*

[Attachments must be in Forms: RAP-2 Additional Information, RAP-3 Schedule(s), RAP-4 Declaration(s)] I acknowledge that this Application for Dispute Resolution is subject to the requirements of the *Review and Appeal Law* and regulations, and that receipt for filing is not an indication that the requirements have been met.

**AGREEMENT TO ACCEPT DECISION:**

In signing this form, I agree:

- to submit to the jurisdiction of the Panel, and
- to accept as binding a final decision made by the Panel.

Full name of applicant: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**RAP-8 – Notice of Response to Application for Dispute Resolution**

<p>TLA'AMIN NATION</p> <p>Review and Appeal Law Form RAP-8</p> <p>NOTICE OF RESPONSE TO APPLICATION FOR DISPUTE RESOLUT</p>		<p>Date received: _____</p> <p>Request number: _____</p> <p>(for office use only)</p>
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***[Each party other than the applicant must complete a response in Form RAP-8]***

**APPLICATION RESPONDED TO:** *[Provide name of applicant, date of application, and request number]*

\_\_\_\_\_

\_\_\_\_\_

**NATURE OF DISPUTE:** *[Provide a brief summary of the nature of the dispute]*

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\_\_\_\_\_

**RESPONDENT'S CONTACT INFORMATION:**

Full legal name:	
Citizenship No.:	
Phone No.:	
Mailing address:	
E-mail address:	

**RESPONDENT'S AGENT'S CONTACT INFORMATION (if applicable):**

Full legal name:	
Phone No.:	
Mailing address:	
E-mail address:	

**Address for Delivery:** *[This will be used to deliver any notices]*

**CHECK ONE:**

- Respondent's mailing address     Respondent's e-mail address
- Respondent's agent's mailing address     Respondent's agent's e-mail address

[Attachments must be in Forms: RAP-2 Additional Information, RAP-3 Schedule(s), RAP-4 Declaration(s)]

**AGREEMENT TO ACCEPT DECISION:**

In signing this form, I agree:

- to submit to the jurisdiction of the Panel, and
- to accept as binding a final decision made by the Panel.

Full name of applicant: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_