

ADR CODE OF PROCEDURE

Rules & Procedures for Arbitration

RULE 1: SCOPE OF RULES

A. The arbitration Rules and Procedures ("Rules") govern binding arbitration of disputes or claims that are administered by Associates in Dispute Resolution, LLC (ADR), and in which the parties have previously agreed to use these Rules.

B. The parties shall be deemed to have made these Rules a part of their arbitration agreement whenever they have provided for arbitration through the use of services of ADR and its rules.

C. The term "party" as used in these Rules includes the parties to the arbitration, as well as their counsel and/or representative.

RULE 2: PARTY AGREED PROCEDURES

A. The parties may agree to submit any matter to arbitration unless prohibited by applicable law.

B. The parties may agree on any procedures not specified herein or in lieu of these Rules that are consistent with applicable law. The parties shall promptly notify ADR of any such party agreed procedures and shall confirm such procedures in writing. The party agreed procedures shall be enforceable as if contained in these Rules.

RULE 3: AMENDMENT OF RULES

These Rules may be amended without notice. The Rules in effect on the date of the commencement of an arbitration shall apply to that arbitration unless the parties have specified another version of these Rules.

RULE 4: CONFLICT WITH LAW

If any of these Rules or a modification of the Rules agreed on by the parties is determined to be in conflict with a provision of applicable law (either statutory, case law or Supreme Court Rule), the provision of substantive law will govern, and no other Rule will be affected.

RULE 5: COMMENCING AN ARBITRATION

A. The arbitration is deemed commenced when ADR confirms in a letter one of the following:

(i) The submission to ADR of notice of a dispute based on a written contractual provision requiring the parties to arbitrate that dispute or claim and which specifies ADR as the Arbitrator.

(ii) The oral agreement of all parties to participate in an arbitration administered by ADR or conducted pursuant to its rules, confirmed in writing by the parties; or

(iii) A court order compelling arbitration.

B. If a party who has signed a predispute written contractual provision specifying these Rules or ADR as Arbitrator fails to agree to participate in the arbitration process, ADR shall confirm in writing that party's failure to respond or participate and, pursuant to Rule 23 the Arbitrator shall schedule and provide appropriate notice of a hearing or other opportunity for the party, demanding the arbitration to demonstrate its entitlement to relief.

C. The definition of "commencement" in these Rules is not intended to be applicable to any legal requirement, such as a statute of limitations or other contractual limitations period unless actually specified as such by that requirement.

RULE 6: PRELIMINARY CONFERENCE

ADR or its Arbitrator may conduct a preliminary conference with the parties by telephone. As soon as possible after the appointment of the Arbitrator, but not later than fourteen (14) calendar days after the commencement of the arbitration, the Arbitrator shall conduct a preliminary conference with the parties and/or their representatives. The purpose of the preliminary conference is to explore and resolve matters that will expedite the arbitration proceedings. The Arbitrator will answer any questions regarding these Rules and may discuss other procedural matters. At this conference, the parties may discuss the nature of the dispute. The Arbitrator and the parties may also discuss the date, time, place and estimated duration of the hearing. In the absence of an agreement, the hearing date and location will be established by the Arbitrator at the preliminary conference or during the pre-hearing conference. In determining the location of the hearing, such factors as the subject matter, convenience of the parties and witnesses, and related resources of the parties will be considered.

RULE 7: SERVICE

A. Service under these Rules is effected by providing one copy of the document with original signatures to the Arbitrator with copies to each party. Service may be made by hand delivery, U.S. Mail, or overnight delivery service. E-mail service is authorized under these rules only pursuant to the express agreement of each party. Service is considered effective upon the date of deposit of the document. Facsimile service is considered effective upon transmission, but only if followed within one week of delivery by service of the originals as set forth above.

B. Time, computation and extension. The following provisions shall govern the computation and extension of time:

(i) *Computation; legal holiday defined.* In computing any period of time prescribed or allowed by these rules, by the ruling of the Arbitrator or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday or a legal holiday. When the period of time prescribed or allowed is less than 11 days,

intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. "Legal holiday" includes any day designated as a holiday by the congress of the United States, or by the appropriate state legislature.

(ii) *Enlargement.* When an act is required or allowed to be done at or within a specified time, the Arbitrator for cause shown may at any time his or her discretion with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(iii) *For motions--affidavits.* A written motion, and notice of the hearing thereof shall be served not later than five days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the Arbitrator. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the Arbitrator permits them to be served at the time of hearing.

(iv) *Additional time after service by mail.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon such party and the notice or paper is served upon such party by mail, three days shall be added to the prescribed period.

RULE 8: NOTICE OF CLAIMS

A. If the matter has been submitted for arbitration after litigation has been commenced in court regarding the same claim or dispute, the pleadings in the court case, including the complaint and answer, along with defenses and counterclaims, should be filed with ADR within 30 calendar days of the date of commencement, and if so filed will be considered part of the record of the arbitration. It will be assumed that the existence of such pleadings constitutes appropriate notice to the parties of such claims, remedies, counterclaims, and affirmative defenses. If necessary, such notice may be supplemented pursuant to these rules.

B. If the matter has been submitted to ADR prior to or in lieu of filing the case in court or prior to the filing of an answer, the parties shall give each other notice of their respective claims, remedies, counterclaims, affirmative defenses, and jurisdictional challenges. Such notice shall be served upon the other parties and filed with ADR in the form of a demand for arbitration, response or answer to demand for arbitration, counterclaim or answer or response to counterclaim. Any pleadings shall include a short statement of its factual basis.

C. Notice of claims, remedies sought, counterclaims, and affirmative defenses may be served simultaneously, in which case they should be filed with ADR within 14 days after the date of the commencement of the arbitration or by such other date as the parties may agree. Responding parties may, in their sole discretion, wait to receive the notice of claim before serving any response, including counterclaims or affirmative defenses. In this case, these pleadings shall be served on the other parties and filed with ADR within 14 calendar days after the notice of claim. If the notice of claim has been served on the responding parties prior to the date of commencement, the response, including counterclaims and affirmative defenses, shall be served within 14 calendar days from the date of commencement.

D. Any party who receives a counterclaim may reply to such counterclaim, including the assertion of jurisdictional challenges. The reply must be served on the other parties and filed with ADR within 14 calendar days of having received the notice of said counterclaim. No claim remedy, counterclaim, or affirmative defense will be considered by the Arbitrator in the absence of prior notice to other parties, unless all parties agree that such consideration is appropriate, notwithstanding the lack of prior notice.

RULE 9: AMENDMENT OF CLAIMS

After the filing of a claim, and before the Arbitrator is appointed, any party may make a new or different claim. Such claims shall be made in writing, filed with ADR, and served on the other parties. Any response to the new claim shall be made within 14 calendar days after service. After the Arbitrator is appointed, no new or different claims may be submitted, except with the Arbitrator's approval. A party may request a hearing on this issue. Each party has the right to respond to any new claim in accordance with these rules.

RULE 10: INTERPRETATION OF Rules AND JURISDICTIONAL CHALLENGES

A. Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the arbitration hearing. The resolution of the issues by the Arbitrator shall be final.

B. Jurisdiction and arbitrability disputes, including disputes over the existence, validity, interpretation, or scope of the agreement under which arbitration is sought and who are proper parties to the arbitration, shall be submitted to and ruled on by the Arbitrator. The Arbitrator has full authority to determine jurisdiction and arbitrability issues as a preliminary matter.

C. Disputes concerning the appointment of the Arbitrator and the venue of the arbitration, if that determination is relevant to the selection of the Arbitrator, shall be resolved by ADR.

D. The Arbitrator, upon a showing of good cause or sua sponte, may, when necessary to facilitate the arbitration, extend any deadlines established in these rules, provided that the time for rendering the award may only be altered in accordance with these Rules.

RULE 11: REPRESENTATION

The parties may be represented by counsel or any other person of the parties' choice, including the party. Each party shall give prompt written notice to ADR and the other parties of the name, address, and telephone and fax numbers of its representative. The representative of a party may act on the party representatives' behalf in complying with these rules.

RULE 12: VOLUNTARY OR INVOLUNTARY DISMISSAL

No party may terminate or withdraw from an arbitration after the issuance of the commencement letter except by written agreement of all parties to the arbitration. However, any party who asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice

on the other parties and on the Arbitrator. The opposing parties have 14 calendar days from the date of service of notice of withdrawal to request that the Arbitrator order the withdrawal be made with prejudice.

RULE 13: *EX PARTE* COMMUNICATIONS

No party may have any *ex parte* communications with the neutral Arbitrator regarding any issue relating to the arbitration. Any necessary *ex parte* communication, whether before, during, or after the arbitration hearing, shall be conducted through the management staff at ADR.

RULE 14: AUTHORITY OF ARBITRATORS

A. Arbitrators have the powers provided by this Code, the agreement of the parties, and the applicable substantive law.

B. Arbitrators selected in accordance with Rule 16 shall take an Oath prescribed by ADR and shall be neutral and independent.

C. Arbitrators shall decide all arbitral issues submitted by the parties and do not have the power to decide matters not properly submitted under this Code.

D. An Arbitrator shall follow the applicable substantive law and may grant any remedy or relief provided by law in deciding a claim, response or request properly submitted by a party under this Code. Claims, responses, remedies or other relief cannot be unlawfully restricted.

RULE 15: DISQUALIFICATION OF ARBITRATOR

A. An Arbitrator shall be disqualified if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased, including, but not limited to, the following:

- (i) The Arbitrator has a personal bias or prejudice concerning the party, or personal knowledge of disputed evidentiary facts;
- (ii) The Arbitrator has served as an attorney to any party, the Arbitrator has been associated with an attorney who has represented a party during that association, or the Arbitrator or an associated attorney is a material witness concerning the matter before the Arbitrator;
- (iii) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in the matter before the Arbitrator;
- (iv) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in a party;
- (v) The Arbitrator has previously served as a judge and sat on a case involving parties or parties' interests.
- (vi) The Arbitrator or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a significant personal relationship with any party or a lawyer for a party; or
- (vii) The Arbitrator or the Arbitrator's spouse:

- a. Is a party to the proceeding or an officer, director, or trustee of a party; or
- b. Is acting as a lawyer or representative in the proceeding.

B An Arbitrator shall disclose to ADR circumstances that create a conflict of interest or cause the Arbitrator to be fair or biased. ADR shall disqualify an Arbitrator or shall inform the parties of information disclosed by the Arbitrator if the Arbitrator is not disqualified.

C A party making an appearance may disqualify an Arbitrator by filing with ADR a written request stating the circumstances and specify reasons for the disqualification.

D A request to disqualify an Arbitrator must be filed with ADR within ten (10) days from the date of the notice of Arbitrator selection unless the cause for disqualification could not have been reasonably determined within the applicable time period. ADR shall promptly review the request and shall disqualify the Arbitrator if there exists circumstances requiring disqualification in accordance with Rule 15(a) or other circumstances creating bias or the appearance of bias.

E If an Arbitrator is disqualified or becomes unable to arbitrate before the issuance of an award, the ADR shall designate a new Arbitrator or panel or reschedule the hearing unless the parties agree otherwise.

RULE 16: ARBITRATOR SELECTION AND REPLACEMENT

A. Parties selection of an Arbitrator(s):

- (i) By selecting an Arbitrator on mutually agreeable terms; or
- (ii) By each party selecting an Arbitrator and those Arbitrators selecting another Arbitrator for a panel of Arbitrators or
- (iii) In the absence of an election of Rule 16(a)(1) or (2), by using the selection process set out in Rule 16 (b)(c)(d)(e)(f)(g) and (h).

B. Unless the Arbitrator has been previously selected by agreement of the parties, the management of ADR may and will attempt to facilitate agreement among the parties regarding selection of the Arbitrator at the initial administrative conference.

C. If the parties do not agree on an Arbitrator, ADR management will send the parties a list of at least three Arbitrator candidates including their background and experience.

D. Within seven (7) calendar days of service upon the parties of a list of arbitrator candidates, each party may strike one name and shall rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking will be appointed.

E. If a party fails to respond to the list of Arbitrator candidates within seven calendar days of service on the parties of this list, the administrative staff of ADR shall deem that party to have accepted all of the Arbitrator candidates.

F. Parties whose interests are not adverse with respect to the issues in dispute shall be treated as a single party for purposes of the arbitration selection process. Such factors as common legal representation, joint or separate positions, and unity of interests will be considered by ADR in making the assessment.

G. If an Arbitrator, once selected, is unable to fulfill the arbitrator's duties, a successor Arbitrator will be chosen in the same manner as set forth above. The determination concerning the Arbitrator's capacity to fulfill his or her duties shall be in the sole discretion of the staff of ADR, and that decision is final.

H. During the arbitration process, a party may at any time challenge the Arbitrator for cause. The challenge must be based on newly obtained information that was not evidence prior to discovery, and the challenge must be in writing with notice to the opposing parties. Opposing parties have seven days to respond to service of the challenge. The administrative staff of ADR will make the final determination on such challenge considering the materiality of the facts and any prejudice to the parties. ADR's decision will be final.

RULE 17: PRE-HEARING CONFERENCE

At the request of any party or at the direction of the Arbitrator, a pre-hearing conference shall be conducted with the parties or their counsel or representatives, in person or by telephone. The pre-hearing conference shall not be held later than sixty (60) days following the commencement of action. The conference may address any or all of the following subjects:

- A. The issues to be arbitrated;
- B. The date, time, place and estimated duration of the hearing;
- C. The resolution of outstanding discovery issues and establishment of discovery parameters;
- D. The law, standards, rules of evidence and burdens of proof that are to apply to the proceeding;
- E. The exchange of admissions, stipulations and declarations regarding facts, exhibits, witnesses and other issues;
- F. The names of witnesses (including expert witnesses), the scope of witness testimony, and witness exclusion;
- G. The value of bifurcating the arbitration into a liability phase and damages phase;
- H. The need for a stenographic record;
- I. Whether the parties will summarize their arguments orally or in writing;
- J. The form of the award:
 - (i) Standard
 - (ii) Reasoned
 - (iii) Findings of Fact and Conclusions of Law
- K. Conduct of evidentiary hearing;
- L. Closing arguments and/or proposed findings of fact and conclusions of law;

- M. Date hearing is considered closed.
- N. The allocation of attorney's fees and costs
- O. Any other issues relating to the subject or conduct of the arbitration;

The Arbitrator may issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional pre-hearing conferences or status conferences should the need arise.

RULE 18: EXCHANGE OF INFORMATION

A. The parties shall cooperate in good faith in the voluntary and prompt informal exchange of all non-privileged documents and other information relevant to the dispute or claim immediately after commencement of the arbitration.

B. The parties shall complete an initial exchange of all relevant, non-privileged documents, including without limitation, copies of all documents in their possession or control on which they rely in support of their positions, names of individuals who they may call as witnesses at the hearing, and the names of all experts who may be called to testify at the arbitration hearing, together with each expert's report that may be introduced at the arbitration hearing, within twenty-one (21) calendar days after all pleadings and notice of claims have been received. The Arbitrator may modify these obligations at the pre-hearing conference or the parties, subject to Arbitrator approval, may make such modifications.

C. At the request of a party, the Arbitrator(s) shall have the discretion to order examination by deposition of witnesses to the extent the Arbitrator deems such additional discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per party and shall be held within 30 days of the making of a request. Additional depositions may be scheduled only with the permission of the Arbitrator(s), and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration. Deposition costs will be assessed to the party taking the deposition, unless otherwise agreed or determined. All objections are reserved for the Arbitration hearing except for objections based on privileged and proprietary or confidential information.

D. As the parties become aware of new documents or information, including experts who may be called upon to testify, all parties continue to be obligated to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts, and honor any informal agreements or understanding between the parties regarding documents or information to be exchanged. Documents that have not been previously exchanged or witnesses and experts not previously identified may not be considered by the Arbitrator at the hearing unless the parties have otherwise agreed or upon a showing of good cause.

F. The parties shall promptly notify ADR staff when an unresolved dispute exists regarding discovery issues. ADR staff will arrange a conference with the Arbitrator, either by telephone or in person, and the Arbitrator shall decide the dispute.

RULE 19: SUMMARY JUDGMENT OR DISPOSITION

The Arbitrator shall decide a motion for summary disposition of any claim or issue either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request. If the parties have not agreed on a briefing schedule, the Arbitrator shall establish both a briefing schedule and a hearing date for the motion.

RULE 20: SCHEDULING HEARINGS

A. The Arbitrator after consulting with the parties that have appeared shall determine the date and time of the hearing. The Arbitrator and the parties shall attempt to schedule consecutive hearing days if possible.

B. If a party has failed to answer a claim and the Arbitrator reasonably believes that the party will not participate in the proceeding and/or hearing, the Arbitrator may set the hearing without the consent of that party. The non-participating party shall be served with a notice of hearing at least 30 calendar days prior to the scheduled hearing date.

RULE 21: PREHEARING SUBMISSIONS

A. Subject to any schedule adopted at the prehearing conference (Rule ___) at least 30 calendar days before the hearing, the parties shall exchange a list of witnesses that they intend to call at trial including any experts, a short description of the anticipated testimony of each such witness, an estimate of the length of the witness' direct testimony, and a list of exhibits. In addition, at least 30 days before the arbitration hearing, the parties shall identify all exhibits intended to be used at the hearing and exchange copies of such exhibits to the extent that any such exhibit has not been previously exchanged. The parties should pre-mark their exhibits and shall attempt to resolve among themselves any disputes regarding admissibility prior to the hearing. The list of witnesses, with descriptions and length of their testimony, along with copies of all exhibits that the parties intend to use at the hearing shall be provided to the Arbitrator whether or not the parties have stipulated to the admissibility of such exhibits.

B. The Arbitrator may require that each party submit a concise written statement of positions, including summaries of the facts in evidence the party intends to present, discussion of the applicable law, and the basis for the requested award or denial of the relief sought. The statements, which may be in the form of a letter, should be filed with ADR and served upon the other party at least seven calendar days before the hearing date. Rebuttal statements or other prehearing written submissions may be permitted or required at the discretion of the Arbitrator.

RULE 22: SECURING WITNESSES AND DOCUMENTS FOR THE ARBITRATION HEARING

At the written request of any party, all other parties shall produce for the arbitration hearing all specified witnesses in their employ or under their control without need of a subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. Pre-issued subpoenas may be used. In the event a party or a subpoenaed person object to the production of a witness or other evidence, the party may file an objection with the Arbitrator who will promptly rule on the objection, laying both the burden on the producing party and the need of a proponent for the witness or other evidence.

RULE 23: HEARINGS

A. The Arbitrator will ordinarily conduct the arbitration hearing in the manner set forth within these Rules. The Arbitrator may vary these procedures if it is determined reasonable and appropriate to do so. The Arbitrator shall determine the order of proof which shall generally be similar to that at court trial.

B. The Arbitrator shall require witnesses to testify under oath.

C. Subject to the discretion of the Arbitrator or agreement of the parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The Arbitrator may exclude any non-party from any part of the hearing.

D. Strict conformity to the Rules of Evidence is not required except that the Arbitrator will apply applicable law relating to privileges and work product. The Arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The Arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all parties are afforded the opportunity to present material and relevant evidence.

E. The Arbitrator may be guided in his determination about admissibility of evidence, privileges and other relevant concepts by the Federal Rules of Evidence. Expert witness testimony will be admissible using the applicable state law standard and cases construing it.

F. The Arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape provided that the other parties have had the opportunity to attend and cross-examine. The Arbitrator may in his or her discretion consider witness affidavits or other recorded testimony, even if the other parties have not had the opportunity to cross-examine, but will give that evidence only such weight as the Arbitrator deems appropriate.

G. The parties will not offer as evidence and the Arbitrator will neither admit into the record nor consider prior settlement offers by the parties, statements or recommendations of a mediator or other person in connection with efforts to resolve the dispute or any other settlement negotiations, offers or demands.

H. The hearing or any portion thereof may be conducted telephonically at the discretion of the Arbitrator or by agreement of the parties.

I. When the Arbitrator determines that all relevant and material evidence and arguments have been presented, the Arbitrator shall declare the hearing closed. The Arbitrator may defer the closing of the hearing until a date agreed upon by the Arbitrator and the parties to permit the parties to submit post-hearing briefs, which may be in the form of a letter, and/or to make closing argument. If post-hearing briefs are to be submitted or closing arguments are to be made, the hearing shall be deemed closed upon receipt by the Arbitrator of such briefs or at the conclusion of such closing arguments.

J. At any time before the award is rendered the Arbitrator may, on his or her own initiative, or on application of the party for good cause shown, reopen the hearing. If the hearing is reopened and the reopening prevents the rendering of the award within the time limit specified by these Rules, the time limits will be extended for the appropriate period of time.

K. Default judgment.

L. A stenographic or other record may be made of the hearing. The parties shall share the cost of such stenographic record. It shall be made available to the Arbitrator and may be used in the proceeding. The parties may agree that the cost of the stenographic record shall or shall not be allocated by the Arbitrator of the award.

RULE 24: WAIVER OF HEARING

The parties may agree to waive the oral hearing and submit the dispute to the Arbitrator for an Award based on written submissions, affidavits and other evidence as the parties may agree.

RULE 25: THE AWARD

A. Absent cause for an extension and acceptance provided within these rules, the Arbitrator shall render the Award within thirty (30) calendar days from the date of the closing of the hearing as defined herein or, if the hearing has been waived, within thirty (30) calendar days after the receipt by the Arbitrator of all materials specified by the parties. The Arbitrator shall provide the Award to the parties in accordance with this rule.

B. Unless the parties specify a different standard in determining the Award, the Arbitrator shall be guided by principals of law and equity as applied to the facts found at the arbitration hearing. The Arbitrator may grant any remedy or relief that is just and equitable and within the scopes of the parties' agreement, including but not limited to specific components of the contract.

C. In addition to the final Award, the Arbitrator may make other decisions, including interim or partial rulings, orders and Awards.

D. In any Award, order or ruling, the Arbitrator may also assess arbitration fees, Arbitrator fees and expenses if provided by the agreement of the parties, allowed by applicable law or pursuant to the Rules herein.

E. The Award shall consist of a written statement signed by the Arbitrator regarding the disposition of each claim and the relief if any as to each of them. Unless all parties agree otherwise, the Award shall also contain a concise written statement of the reasons for the Award.

F. After the Award has been rendered and provided the parties have complied with the usual rules, the Award shall be issued by serving copies upon the parties. Service may be made by U.S. mail. It need not be sent certified or registered.

G. Within seven (7) calendar days after issuance of the Award, any party may serve upon the other parties and on ADR a request that the Arbitrator correct any computational, typographical or any other error in the Award including the reallocation of fees pursuant to these rules, or the Arbitrator may, sua sponte propose to correct such errors in an Award. A party opposing such correction shall have seven (7) calendar days in which to file any objection. The Arbitrator may make any necessary and appropriate correction of the Award within fourteen (14) calendar days of receiving a request for seven (7) calendar days after the Arbitrator's proposal to do so. The corrected Award shall be served upon the parties in the same manner as the Award.

H. The Award is considered final for purposes of judicial proceedings to enforce, modify or vacate that Award, fourteen (14) calendar days after service is deemed effective if no request for correction is made or as of the effective date of service of a corrected Award.

RULE 26: INTERIM MEASURES

The Arbitrator may take whatever interim measures are deemed necessary including injunctive relief and measures for the protection or conservation of property or disposition of disposable goods. Such interim measures may take the form of an interim Award and the Arbitrator may require security for the cost of such measures. Any recourse by a party to a court for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or waiver of the right to arbitrate.

RULE 27: ENFORCEMENT OF THE AWARD

Proceedings to confirm, enforce, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 USC § 1 et seq. or under applicable state law.

RULE 28: CONFIDENTIALITY AND PRIVACY

A. ADR and the Arbitrator shall maintain the confidential nature of the arbitration proceeding and the Award including the hearing, except as necessary in conjunction with the judicial challenge to or enforcement of an Award or unless otherwise required by law or judicial decision.

B. The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

RULE 29: WAIVER

A. If a party becomes aware of a violation or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the Arbitrator determines that waiver will cause a substantial injustice or hardship.

B. If any party becomes aware of information that could be the basis of a challenge for cause to the continued service of the Arbitrator, such challenge must be made promptly, in writing to the Arbitrator or to ADR. Failure to do so shall constitute a waiver of any objection to continued service by the Arbitrator.

RULE 30: SETTLEMENT AND CONSENT AWARD

A. The parties may agree at any stage of the arbitration process to submit the case to ADR for mediation. The ADR mediator assigned to the case may not be the Arbitrator unless the parties so agree.

B. The parties may agree to seek the assistance of the Arbitrator in reaching settlement. By their written agreement to submit the matter to the Arbitrator for settlement assistance, the parties will be deemed to have agreed that the assistance of the Arbitrator in such settlement efforts will not disqualify the Arbitrator from continuing to serve as Arbitrator if settlement is not reached nor shall such assistance be argued to reviewing court as the basis for vacating or modifying an Award.

C. If at any stage of the arbitration process, all parties agree upon a settlement of the issues in dispute and request the Arbitrator to embody the agreement in a Consent Award, the Arbitrator shall comply with such request unless the Arbitrator believes the terms of the agreement are illegal or undermine the integrity of the arbitration process. If the Arbitrator is concerned about the possible consequences of the proposed Consent Award, he or she shall inform the parties of that concern and may request specific additional information from the parties regarding the proposed Consent Award. The Arbitrator may refuse to enter the proposed Consent Award and may withdraw from the case.

RULE 31: SANCTIONS

The Arbitrator may order appropriate sanctions for the failure of a party to comply with its obligations under any of these rules. These sanctions may include but are not limited to assessment of cost, exclusion of certain evidence, or in extreme cases, ruling on an issue submitted to arbitration adversely to the party who has failed to comply. Any such party will be given notice and an opportunity to be heard prior to imposition of sanctions although this opportunity to be heard need not be in the form of an in-person hearing.

RULE 32: DISQUALIFICATION OF THE ARBITRATOR AS A WITNESS OR PARTY AND EXCLUSION OF LIABILITY

A. The parties may not call the Arbitrator or any other ADR employee or agent as a witness in any pending or subsequent litigation or other proceeding involving the parties and relating to the dispute that is the subject of the arbitration. The Arbitrator, ADR and other employees and agents are also incompetent to testify as witnesses in any such proceeding.

B. The parties shall defend and/or pay the costs (including any attorney's fees) of defending the Arbitrator, ADR or its employees from any subpoena from outside parties arising from the arbitration.

C. The parties agreed that neither the Arbitrator nor any employee of ADR is a necessary party in any litigation or other proceeding relating to the arbitration or the subject matter of the arbitration and neither the Arbitrator, the Arbitrator's employees or agents, or any employee of ADR shall be liable to any party for any act or omission in conjunction with any arbitration conducted under these rules, including but not limited to a recusal by the Arbitrator.

RULE 33: FEES

A. Each party united in interest shall pay its pro rata share of ADR fees and expenses for arbitration services to be provided at the time of the commencement of the arbitration unless the parties agree on a different allocation of fees and expenses. The agreement to render services is joint with the party and the attorney or the representative of the party in the arbitration.

B. Parties are required to deposit fees and expenses for the Arbitrator prior to the hearing and may preclude a party that has failed to deposit its pro rata or agreed upon share of the fees and expenses from offering evidence of any affirmative claim at the hearing. ADR may waive the deposit requirements upon a showing of good cause.

C. The parties are jointly and severally liable for the payment of fees and expenses of the Arbitrator. In the event that one party has paid more than its share of the fees, the Arbitrator may award against any other party any costs or fees that such party owes with respect to the arbitration.

D. ADR at its discretion may defer issuance of an arbitration Award rendered by the Arbitrator if any or all of the outstanding invoices are not paid. If ADR declines to issue an arbitration Award in accordance with this rule, the parties shall receive written notification.

F. Parties united in interest are those entities whose interests are not adverse with respect to the issues in dispute. They shall be treated as a single party for the purposes of assessment of fees. The Arbitrator shall determine whether the interests between entities are adverse for purposes of fees, considering such factors as whether the entities are represented by the same attorney, and whether the entities are presenting joint and separate positions at the arbitration.

Rules & Procedures for Mediation

RULE 1: AGREEMENT OF PARTIES

Whenever, by provision of a private dispute resolution program, or by separate submission, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of Associates in Dispute Resolution, LLC (hereinafter "ADR") or under these Rules, they shall be deemed to have accepted these rules as amended and in effect as of the date of the submission of the dispute as part of their agreement.

RULE 2: INITIATION OF MEDIATION

Any party to a dispute may initiate mediation by filing with ADR a submission to mediation or a written request for mediation pursuant to these rules, together with the applicable administrative fee.

RULE 3: REQUEST FOR MEDIATION

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall simultaneously file a copy of the request with ADR and one copy with each other party to the dispute.

RULE 4: APPOINTMENT OF MEDIATOR

Upon receipt of a request for mediation, ADR will appoint a qualified mediator to serve. If the agreement of the parties names a mediator or the parties have agreed to a particular ADR mediator, that designation or method shall be followed.

RULE 5: QUALIFICATION OF MEDIATOR

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, ADR shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, ADR will appoint another mediator. ADR is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

RULE 6: VACANCIES

If any mediator shall become unwilling or unable to serve, ADR will appoint another mediator, unless the parties agree otherwise.

RULE 7: REPRESENTATION

Any party may be represented by a person of the party's choice. The names and addresses of such persons shall be promptly communicated in writing to all parties and to ADR.

RULE 8: DATE, TIME AND PLACE OF MEDIATION

The mediator shall fix the date and the time of each mediation session. The mediation shall be held at an office selected by ADR, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

RULE 9: IDENTIFICATION OF MATTERS IN DISPUTE

At least ten (10) days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented. The mediator may require any party to supplement such information.

RULE 10: AUTHORITY OF MEDIATOR

The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

RULE 11: PRIVACY

Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of all the parties and with the consent of the mediator.

RULE 12: CONFIDENTIALITY

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator without the consent of the source of the information. All records, reports, or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding

- (1) Views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- (2) Admissions made by another party in the course of the mediation proceedings;
- (3) Proposals made or views expressed by the mediator, or
- (4) The fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

RULE 13: NO STENOGRAPHIC RECORD

There shall be no electronic or digital record of the mediation process.

RULE 14: TERMINATION OF MEDIATION

The mediation shall be terminated:

- (1) By the execution of a settlement agreement by the parties;
- (2) By a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- (3) By a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

RULE 15: EXCLUSION OF LIABILITY

Neither ADR nor any mediator associated with or supplied by ADR is a necessary party in judicial proceedings relating to the mediation.

Neither ADR nor any mediator associated with or supplied by ADR shall be liable to any party for any act or omission in connection with any mediation conducted under these rules.

RULE 16: INTERPRETATION AND APPLICATION OF RULES

The mediator shall interpret and apply these rules insofar as they relate to the mediator's duties and responsibilities. All other rules shall be interpreted and applied by ADR.

RULE 17: EXPENSES

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of ADR, and the expenses of any witness and the cost of any proofs of expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

MEDIATION FEE SCHEDULE

The nonrefundable case setup fee is \$150.00 per party. In addition, the parties are responsible for promptly compensating the mediator at his or her published rate for pre-mediation, mediation, post-mediation and study time.

Subject to the provision of any private dispute resolution program, all mediation expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, ADR shall estimate anticipated total expenses. Each party shall promptly pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, ADR shall promptly render an accounting and return any unexpended balance to the parties.