ADR Systems
Commercial Arbitration Rules
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Commercial Arbitration Rules

Introduction

Parties who select arbitration instead of litigation in cases within the United States choose it primarily because it offers the opportunity for a proceeding that is fast, efficient, relatively inexpensive and final. Unfortunately, in recent years arbitration has been broadly criticized due to many arbitrations becoming almost indistinguishable from court litigation with time-consuming motion practice, extensive discovery and court involvement in arbitration proceedings. ADR Systems of America, LLC (ADR Systems) is taking the lead in the dispute resolution field by adopting new Commercial Arbitration Rules (Rules), which implement many of the ideas advocated by business and academic commentators to reverse these negative trends. These Rules, which contain well-defined limits on discovery, time periods and court intervention, have been specifically designed to limit the delays, uncertainty and expense that have become associated with arbitration and to return arbitration to its historic role as a faster and simpler dispute resolution mechanism. The goal of these Rules is to empower arbitrators, parties and advocates avoiding delay and expense while still providing the benefits of choice and flexibility essential to the arbitration process.

ADR Systems Model Clause Language – Pre-Dispute Agreement to Arbitrate

Parties to a contract who decide to provide a dispute resolution clause in the contract, and want to have any future disputes referred to arbitration or mediation administered by ADR Systems may use the Model Clause Language found on the ADR Systems website.

Parties are encouraged to consider our “step” clauses which allow for negotiation, then mediation, and if no resolution is reached, then arbitration.

How to Submit an Existing Dispute to ADR Systems

Parties to an existing dispute who wish to refer the dispute to arbitration administered by ADR Systems may use the following language:

We agree to submit to arbitration in accordance with the current ADR Systems Commercial Arbitration Rules the following dispute: [specific description of dispute]

The arbitration shall be governed by [Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.][applicable state arbitration statute] and judgment upon the award may be entered

by any court having jurisdiction thereof. The place of arbitration shall be [Chicago, Illinois].[1]

Parties may also use the Stipulation to Arbitrate found on the ADR Systems website.

Settlement and Mediation

The parties are encouraged to engage in good faith settlement negotiations and mediation. ADR Systems maintains a panel of neutral mediators experienced in commercial disputes and, upon a party's request, ADR Systems will assist the parties in mediating the matter. If a party would like assistance in determining whether mediation might be appropriate, a commercial case manager is available to discuss the parties' options. If the parties settle the dispute at any time during the arbitration or mediation process, they should immediately notify the ADR Systems case manager.

For further questions, contact an ADR Systems commercial case manager at 312.960.2260.

[1] **Notice:** These clauses are not intended and should not be considered as providing legal advice or opinion. Although ADR Systems goes to great lengths to make sure this information is accurate, we recommend that you consult an attorney with regard to the specific use and interpretation of these clauses.

GENERAL RULES

1. Scope

1.1. Where the parties to a contract have provided for arbitration by ADR Systems or for arbitration under the ADR Systems Commercial Arbitration Rules, or have otherwise agreed to arbitrate with or provided for arbitration with reference to "ADR Systems of America," "ADR Systems" or any other name that may reasonably be construed to be intended to refer to ADR Systems of America, LLC, they shall be deemed to have made these Rules part of their arbitration agreement and such disputes shall be administered in accordance with these Rules, including all limits on discovery and court intervention as set forth as default procedures under these Rules.

1.2. These Rules shall govern the arbitration except that where any of these Rules conflicts with a provision of mandatory arbitration law, that provision of law shall control, or if the language of the pre-dispute clause differs, that clause language shall control. If ADR Systems amends these Rules, the Rules in effect at the time the arbitration commences shall govern.

1.3. The parties may agree in writing to modify the procedures found in these Rules to the extent such modification does not conflict with a provision of mandatory arbitration law and does not modify the applicable arbitration fees. A copy of such agreement shall be provided to ADR Systems prior to the arbitration hearing.

2. Notice and Time

2.1. For the purposes of these Rules, any notice, including a notification, communication or proposal, is deemed to have been received if it is physically delivered to the addressee or if it is delivered at his/her habitual residence, place of business or mailing address, or, if none of these can be found after making reasonable inquiry, then at the addressee's last known residence or place of business. Such service or notice shall be deemed to have been received on the day it is so delivered. Notices or documents other than the Notice of Arbitration and Statement of Claim may be delivered to a party or its representative by hand-delivery, overnight courier delivery, U.S. Mail, electronic mail (email) or facsimile transmission. If by email or facsimile transmission, service shall be deemed to be made upon transmission, but only if followed no later than the business day following transmission with service by hand-delivery, overnight courier delivery or U.S. Mail. If the document is served only by U.S. Mail, it shall be deemed delivered

three business days after it is deposited into the mail. An award made pursuant to these rules shall not be made invalid by failure to abide by Rule 2.1 so long as a party was given a full opportunity to present its case.

2.2. For the purposes of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice, communication or proposal is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

3. Commencement of Arbitration

3.1. Arbitration may be commenced by:

a. The parties may submit (a) a written ADR Systems Stipulation to Arbitrate form; (b) a completed Demand for Arbitration form; (c) and the $300 administrative fee per party, or

b. The party commencing arbitration (Claimant) may submit (a) a completed Demand for Arbitration form; (b) the pre-dispute arbitration agreement; (c) and the $300 administrative fee per party.

3.2. If the arbitration is not pursuant to a submission agreement, the Claimant shall serve the Demand for Arbitration to the other party (Respondent) and shall deliver a copy to ADR Systems. The Claimant shall deliver proof of service on the Respondent to ADR Systems.

3.3. The arbitration shall be deemed “commenced” as to any Respondent on the date on which the Demand for Arbitration, proof of service, and the $300 administrative fee per party is received by ADR Systems. Each party may submit its own administrative fee. To expedite the commencement of the proceedings, one party may elect to submit all administrative fees. In lengthier, more complex cases, additional fees may be assessed.

3.4. The Demand for Arbitration shall include in the text or in attachments thereto:

a. The full names, firm or business name, addresses and email addresses of the parties and the name, address, phone, email and fax of counsel;

b. A demand that the dispute be referred to arbitration pursuant to these Rules;

c. The text of the applicable arbitration clause or submission agreement;

d. A copy of the contract containing the applicable arbitration clause, or the ADR Systems Stipulation to Arbitrate form found on ADR Systems website.

3.5. In the Demand for Arbitration, the Statement of Claim shall include[2]:

a. A detailed statement of the Claimant's claim including all facts to be proved;

b. The remedy sought, including any claimed damages.

3.6. The Statement of Claim may also include:

a. A proposal as to the location of arbitration hearings, if the parties have not previously agreed to a place;

b. A proposal as to the language(s) of the arbitration, if the parties have not previously agreed to a language;

c. The legal authorities relied upon by Claimant;

d. Copies of all documents that the Claimant intends to rely upon in the arbitration;

e. The names of the witnesses Claimant intends to present together with a summary of the proposed testimony of each; and

f. A description of the nature of the expert testimony Claimant intends to present.

3.7. Upon receipt of the Demand for Arbitration and the $300 administrative fee per party, a case manager from ADR Systems shall communicate in writing to the parties that arbitration has commenced. The arbitration is commenced only when ADR Systems has received the administrative fee from all parties.

3.8. Within 14 days of receipt of the commencement of the arbitration, the case manager will set up and conduct an administrative telephone conference to review administrative aspects of the arbitration and answer questions the parties

[2] The level of detail suggested but not required in the Statement of Claim and required in the preliminary conference is a departure from many industry arbitration rules and is designed to streamline the arbitration process as suggested by numerous business, legal and academic commentators, while recognizing the need to protect a Claimant from initial expense so burdensome it discourages legitimate claims.

may have regarding procedure. The case manager will be available throughout the arbitration to answer any questions.

3.9. Within 21 days after the commencement of the arbitration, the Respondent shall serve upon the Claimant a response in form and substance to all elements of the Statement of Claim and shall deliver a copy to ADR Systems. Where Respondent has good cause for its inability to abide by the 21 day period for service of its response, Respondent may file a motion, within the same 21 day period, to establish a later deadline and the arbitrator shall set the time for serving the response. If the arbitrator has not yet been selected or appointed, the ADR Systems case manager will appoint an arbitrator to hear the motion, unless all parties agree in unity to extend the response deadline. That arbitrator may not be considered to serve as the arbitrator of record for the hearing. The party filing the motion shall pay for the arbitrator's time. Failure to serve either a Statement of Defense or a motion to establish a later deadline shall not delay the arbitration; in the event of such failure, all claims set forth in the Statement of Claim shall be deemed denied.

3.10. The Respondent may include in its response detailed affirmative defenses and any counterclaim within the scope of the arbitration agreement. Any counterclaim shall comply with Rule 3.4. A party that fails to file affirmative defenses will be precluded from raising any affirmative matter at the hearing without leave of the arbitrator. No reply to any affirmative defense is required.

3.11. If a Counterclaim is asserted, the Claimant shall have 14 days to serve upon the Respondent a Reply to Counterclaim responsive in form and substance to all elements of the Counterclaim. Failure to serve a Reply to Counterclaim shall not delay the arbitration. In the event of such failure, all Counterclaims shall be deemed denied.

3.12. Claims or Counterclaims within the scope of the arbitration agreement may be added by amendment prior to the appointment of the arbitrator, and thereafter with the consent of the arbitrator. Unless otherwise determined by the arbitrator, parties shall have 14 days to respond to Amended Claims, Amended Counterclaims or Amended Responses.

3.13. Once the arbitrator is appointed, the case manager will contact the parties to set up the Preliminary Conference (Preliminary Conference) with the arbitrator. (See 7.3 below.)

3.14. If, at anytime, any party has failed to pay fees or expenses in full, ADR Systems reserves the right to suspend or terminate the proceedings. ADR Systems will inform the parties in order that one of them may advance the required payment on

behalf of the other. If one party advances the payment owed by a non-paying party, the arbitration shall proceed and the arbitrator may allocate the non-paying party's share of the costs, in accordance with Rules 13.9, 16.3 and 16.4.

4. Representation

4.1. A party may be represented by counsel of the party's choice. Each party shall give prompt written notice to ADR Systems and the other party of the name, address, telephone, fax number, and email address of its representative.

5. Appointment of Arbitrators

5.1. Number of arbitrators. The arbitration shall be conducted by one arbitrator unless:

a. The parties have agreed to three arbitrators prior to the commencement of the arbitration; or

b. The parties agree to three arbitrators prior to the Preliminary Conference.

5.2. If the parties have not already agreed to an arbitrator, ADR Systems shall appoint the arbitrator using a strike list procedure as follows:

a. Within 14 days of the administrative telephone conference, a case manager from ADR Systems shall send the parties a list of five names of proposed arbitrators and a brief description of the background and experience of each person on the list;

b. Within seven days after the receipt of the list, each party shall strike two names, number the remaining names in order of preference, and return the list to ADR Systems. If a group of Claimants or Respondents is affiliated and represented by the same representative, they shall not each have a separate right to delete names. A party is not required to serve its arbitrator preference list on the other party. ADR Systems shall then promptly appoint the sole arbitrator from among the remaining names on the returned lists in accordance with the order of preference indicated by the parties;

c. If a party fails to respond to the proposed list of arbitrators within seven days, that party shall be deemed to have accepted the appointment of any of the proposed arbitrators;

d. If for any reason the appointment cannot be made according to this procedure, ADR Systems may exercise its discretion in appointing the arbitrator.

e. Subject to the agreement of the parties as to the use of non-neutral party appointed arbitrators, if three arbitrators are to be appointed, all three arbitrators shall be neutral arbitrators. ADR Systems shall use the strike list procedure referred to above to appoint the arbitrators; except that it will submit 10 proposed arbitrators and the parties may each delete three names from the list.

f. Once appointed, the arbitrator shall have 10 days in which to disclose to the parties justifiable doubts as to his or her impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. In order to encourage full disclosure by arbitrators, disclosure of information under this Rule is not to be construed as an indication that the arbitrator considers that the disclosed information is likely to affect impartiality or independence. The arbitrator shall make such disclosures in advance of the Preliminary Conference. The arbitrator's duty of disclosure continues throughout the case. Parties shall have two weeks to reply to and agree to waive or challenge any arbitrator disclosures.

g. At any time subsequent to the commencement of arbitration, a party may make a written challenge to the continued service of an arbitrator for cause, including partiality or lack of independence, inability or refusal to perform duties with diligence, and any grounds for disqualification provided by applicable law. Such a challenge must be based upon information that was not known by or reasonably available to the parties at the time the arbitrator was selected. The other party may make a response to such challenge within seven days. ADR Systems shall appoint a neutral to review the materiality of the facts alleged and prejudice to the parties and make a final, binding decision as to whether to replace the arbitrator. Cost of said neutral shall be paid by the party making the challenge.

h. If any arbitrator becomes unable to continue to serve, ADR Systems may use its discretion in appointing any successor arbitrator. The decision of ADR Systems regarding whether an arbitrator is unable to serve shall be final.

6. Jurisdiction

6.1. The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, validity or scope of the arbitration agreement.

6.2. The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render the arbitration clause invalid.

6.3. An argument that the arbitrator does not have jurisdiction shall be raised not later than the filing of the Statement of Defense, or, with respect to a Counterclaim, in the filing of the Reply to the Counterclaim.

6.4. The arbitrator shall have jurisdiction to determine who is a proper party.

6.5. Typically, the arbitrator will rule on an argument concerning his/her jurisdiction as a preliminary question. However, the arbitrator may proceed with the arbitration and rule on such an argument in the final award.

7. Arbitration Procedure and the Preliminary Conference

7.1. Subject to these Rules, the arbitrator may conduct the arbitration in such manner as he or she considers appropriate, provided the parties are treated with equality and each party is given a full opportunity to present its case.

7.2. No party or representative shall have any *ex parte* communication with the arbitrator. Parties shall submit any correspondence or documents intended for the arbitrator to the ADR Systems case manager and ADR Systems shall forward those materials to the arbitrator. Any applicable disclosures or discovery shall be communicated directly between the parties.

7.3. The arbitrator shall conduct the Preliminary Conference as soon as practicable after appointment, but in no case more than 60 days after the commencement of the arbitration. The parties shall participate in the Preliminary Conference.[3] The

[3] This rule is designed to honor the parties' intent to limit discovery by selecting arbitration as a dispute resolution mechanism and to avoid the common practice of counsel agreeing to a broad litigation-style discovery plan (and the arbitrator acquiescing) without specific and meaningful party participation in the decision.

Preliminary Conference shall be conducted by telephone conference, unless the arbitrator decides in his or her discretion to conduct it in person. The arbitrator may also conduct it electronically, if no *ex parte* communication will result. During the Preliminary Conference, the following should be addressed:

a. The scope of the arbitration and list of all claims and issues to be resolved;

b. Any agreement the parties have made in the arbitration clause or submission agreement regarding the Mode of Disclosure, Mode of Disclosure of Electronic Information and Mode of Presenting Witnesses (Rule 8.0) applicable to the case;

c. The selection and details of the applicable Mode of Disclosure, Mode of Disclosure of Electronic Information (including preservation of Electronically Stored Information) and Mode of Presenting Witnesses;

d. Any bifurcation (such as liability or damages) or consolidation of arbitration proceedings;

e. Narrowing of the issues and claims to be determined, including the need for additional or more specific Statements of Claim or Defense, and time for Claimant to reply to any Counterclaim. (Dispositive motions such as a summary judgment procedure in court litigation are not encouraged, but the arbitrator may provide for pre-hearing briefs setting forth law and fact to be submitted to educate the arbitrator and narrow the issues for the hearing. The parties may agree, in the arbitrator's discretion, to have the arbitrator decide the case entirely on written submissions or under Mode A of Rule 8.5.);

f. The designation of the place of arbitration. Subject to the agreement of the parties, the arbitrator may set a place other than Chicago, Illinois, as the place of arbitration based upon the claims of the parties and the circumstances of the arbitration. The final award shall be deemed made at such place. The hearing shall take place at ADR Systems offices located in Chicago, Illinois, unless the parties agree otherwise or the arbitrator determines to hold all or part of the hearing in another location;

g. The law, standards, rules of evidence (if any), and burdens of proof applicable to the proceeding;

h. The date(s) and time for the hearings including time allotted to each party for presentation of its case and for rebuttal and the mode, manner and order of

arguments and proof. (Consecutive hearing dates should be set if at all possible);

i. The names of witnesses, including expert witnesses, and the scope of their testimony;

j. The method of presenting expert testimony, including the possibility of appointment of a neutral expert by the arbitrator;

k. Stipulations of fact or to exhibits, and admissions by the parties solely for purposes of the arbitration, as well as simplification of document authentication;

l. Whether there will be stenographic or other record;

m. Any necessary protective orders;

n. Allocation of attorneys' fees and costs;

o. Type of final award;

p. Use of available technology to streamline the proceedings;

q. Possibility of settlement or mediation;

r. Any other preliminary matters.

7.4. The arbitrator shall enter a management order to confirm matters decided in the Preliminary Conference, including all agreed matters. The arbitrator may request that a party or party representative prepare a draft management order and present it to the arbitrator no later than 48 hours after the close of the Preliminary Conference. The parties shall abide by the terms of the management order and the arbitrator shall allow extensions of the deadlines set forth in the order only on a showing of good cause. The arbitrator may conduct additional conferences in his or her discretion.

8. Disclosure of Discovery and E-Discovery

8.1. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery.

8.2. In making rulings on disclosure or discovery of information, the arbitrator shall attempt to ascertain if any of the following modes of disclosure have been agreed to by the parties, or should be considered given the nature of the dispute. In the absence of agreement by the parties as to a particular mode, or absent extraordinary circumstances or the arbitrator's direction otherwise, Mode B of Rule 8.3, Mode B of Rule 8.4 and Mode C of Rule 8.5 shall be applied.[4]

8.3. Modes of Disclosure

a. Mode A**.** No disclosure of documents other than the disclosure, prior to the hearing, of documents that each side will present in support of its case.

b. Mode B**.** Disclosure provided for under Mode A together with pre-hearing disclosure of documents significant to a matter of import in the proceeding for which a party has demonstrated a substantial need.

c. Mode C**.** Disclosure provided for under Mode B together with disclosure, prior to the hearing, of documents relating to issues in the case that are in the possession of persons who are noticed as witnesses by the party requested to provide disclosure.

d. Mode D**.** Pre-hearing disclosure of documents regarding non-privileged matters that are relevant to any party's claim or defense, subject to limitations of reasonableness, duplication and undue burden.

8.4. Definitions[5]

a. Electronically Stored Information (ESI)

Email, web pages, word processing files, computer databases, or anything that can be stored on a computer.

b. Active Data

Active data is the information residing on the direct media of computer systems, which is readily visible to the operating systems and application software with

[4] These modes are designed to facilitate a process that is as inexpensive, efficient and thorough as possible, while still appropriate to the particular dispute. Appreciation and credit is given to the International Institute for Conflict Prevention and Resolution for creating the CPR Protocol on Disclosure of Documents and Presentation of Witnesses in Commercial Arbitration © 2009 to assist commercial arbitrators in organizing and managing arbitrations.

[5] Many of the definitions are courtesy of The Sedona Conference on e-discovery. www.thesedonaconference.org

which it was created and immediately accessible to users without restoration or reconstruction.

c. Backup Data

Backup data is an exact copy of the system data that serves as the source for recovery in the event of a systems problem or disaster. Backup data is generally stored separately from active data on portable media, for example, magnetic backup tapes, disks, or the cloud.

d. Data Filtering

Data Filtering is the process of identifying for extraction specific data based on specified parameters (e.g., by key word, file type, such as a name in the “to” field in an email).

e. Legacy Data

Legacy data is information that was created or stored by the use of software and/or hardware that has become obsolete or replaced (such as a particular computer operating system that is no longer used). While the data itself may be important, Legacy Data may be costly to restore or reconstruct when required for investigation, litigation analysis, or discovery.

f. Metadata

Metadata is information about a particular data set or document that describes how, when, and by whom it was collected, created, accessed, and modified and how it is formatted (such as the Properties features in Windows that describes when a document was created or modified). Metadata is generally not reproduced in full form when a document is printed. It can be altered intentionally or inadvertently. It also may be extracted when native files are converted to image. Some metadata such as file dates and sizes can be seen easily by users; other metadata can be hidden or embedded and unavailable to computer users who are not technically adept.

g. Native Format

Native Format is the associated file structure of an electronic document original creating application. (For example, a document may have been created in WordPerfect but later converted to another program such as Word.)

h. PDF (Portable Document Format)

A PDF captures formatting information from a variety of applications in such a way that it can be viewed and printed as intended in its original application by practically any computer, on multiple platforms, regardless of the specific application in which the original was created. PDF files may be text-searchable or image-only.

i. Sampling

Sampling refers to the process of testing a database for the existence or frequency of relevant information. It can be a useful technique in addressing a number of issues relating to litigation, including decisions about what repositories of data are appropriate to search in a particular litigation and determinations of the validity and effectiveness of searches or other data extraction procedures.

j. Slack Data

When a file name is deleted, the underlying ESI is not automatically erased from the hard drive. A partial overwrite of the file with new material leaves part of the original file intact, and forensically retrievable, as slack data.

8.5. Modes of Disclosure and ESI

a. Mode A. Disclosure by each party limited to copies of electronic information to be presented in support of that party's case, in print-out or another reasonably usable form.

b. Mode B. Disclosure as provided for in Mode A together with non-privileged ESI requested by another party which is shown to be significant to the matter or of import in the proceeding and for which a party has demonstrated a substantial need. Such disclosure is limited as follows, unless altered by agreement of the parties to the dispute:
    i. The ESI shall be produced in a manner reasonably accessible to the requesting party;
    ii. The ESI is in reasonably usable form (in that it would not cause undue burden and expense to retrieve) and can be retrieved using basic Sampling and Data Filtering;
    iii. The ESI was created between the date of the signing of the agreement that is the subject of the dispute and the date of the filing of the notice for arbitration;
    iv. The ESI was created by or prepared for a [specified number] of custodians;

v. The ESI is Active Data, is information purposely stored in a manner that anticipates future business use, and permits efficient searching retrieval;

vi. No disclosure of Backup Data, Legacy Data, Slack Data or information from back up servers, information from cell phones, PDAs, voicemails, tablets, text messages, etc.;

vii. The Metadata will be limited to these standard fields:

- BegDoc#
- EndDoc#
- BegAttach
- EndAttach
- Folder
- Filename
- PageAmt
- Doc Type
- Email_Subject
- From
- To
- CC
- BCC
- Attchmt
- DateSent
- DateRcvd
- Author
- DateCrtd
- DateLastMod
- DocTitle
- Custodian
- FullText

c. Mode C. Same as Mode B, but covering a wider time period [to be specified]. Upon a showing of special need and relevance, disclosure of Backup Data, Legacy Data, Slack Data, Metadata with additional fields [if specified], information from cell phones, PDAs, voicemails, tablets, and text messages.

d. Mode D. Same as Mode C but covering all non-privileged ESI relevant to any party's claim or defense, subject to limitations on availability of Active Data.

e. Parties selecting Modes B, C, or D agree to meet and confer, prior to an initial scheduling conference with the arbitrator, concerning the specific modalities and timetable for electronic information disclosure.

8.6. Modes of Presenting Witnesses

a. Mode A. Submission in advance of the hearing of a written statement from each witness on whose testimony a party relies, sufficient to serve as that

witness's entire evidence, supplemented, at the option of the party presenting the witness, by short oral testimony by the witness before being cross-examined on matters not outside the written statement. No depositions of witnesses who have submitted statements.

b. Mode B**.** No witness statements. Direct testimony presented orally at the hearing. Each requesting party is limited to taking two depositions and such depositions shall be of parties only.

c. Mode C**.** As in Mode B, except depositions as allowed by the arbitrator or as agreed by the parties, but in either event subject to such limitations as the arbitrator may deem appropriate. In most cases party depositions should be adequate and depositions should take no more than three hours.

8.7. No documents obtained through inadvertent disclosure of documents covered by the attorney-client privilege or attorney work-product privilege may be introduced in evidence and any documents so obtained must, upon request of the party holding the privilege or work product protection, be returned forthwith, unless such party expressly waives the privilege or work product protection. The arbitrator should apply the provisions of applicable law that afford the protection of attorney-client communications and work product documents.

8.8. The parties are urged to resolve any disputes concerning disclosure of documents or presentation of witnesses between themselves, but, if a resolution is not possible, the disagreement should be promptly presented in writing to the opposing party and the assigned ADR Systems case manager, who will forward it to the arbitrator for ruling. The arbitrator will decide whether further written explanation of the dispute is necessary and whether a hearing (either in person or by telephone) is required in order to decide the dispute. If the presentation of particular evidence to the arbitrator appears to be potentially objectionable, the case manager may, in his or her discretion, decide to withhold the actual evidence from submission to the arbitrator until such time as the other party shall have the chance to object and until the arbitrator instructs the case manager to forward the evidence.

9. Hearings

9.1. If either party so requests or the arbitrator so directs, a hearing shall be held for the presentation of evidence and oral argument.

9.2. The arbitrator, in his or her discretion, or upon written application by a party, may require the parties to produce evidence in addition to that initially offered. The arbitrator may also appoint neutral experts whose testimony shall be subject to

cross-examination and rebuttal. If the arbitrator deems it necessary to appoint a neutral expert, then the parties will share equally in the cost of the neutral expert, unless the arbitrator deems otherwise.

9.3. The arbitrator shall determine the manner in which witnesses are to be examined, subject to agreement of the parties as to a particular Mode of Presentation of Witnesses. In the absence of agreement by the parties as to a particular mode, or absent extraordinary circumstances, Mode B of Rule 8.5 shall be applied.

9.4. The arbitrator shall have the authority to exclude witnesses from hearings during the testimony of other witnesses.

9.5. The arbitrator may proceed with the hearing in the absence of a party where the party has received notice of the date and location of the hearing as provided in these Rules. Parties are required to attend unless excused by the arbitrator. The arbitrator shall not render an award based only upon the default or absence of a party, but shall require any party seeking relief to present evidence in support.

9.6. ADR Systems will not provide a stenographic reporter for any conference or hearing. A party may have a reporter present, but is responsible to pay for the cost of the reporter. If a court reporter is present for the proceedings, a copy of the transcript will be provided to the arbitrator by a date to be determined by the arbitrator.

9.7. The parties may agree that certain Rules of Evidence apply to the hearing, but Rules of Evidence are not required.

9.8. Continuance of hearing dates are discouraged and the arbitrator shall grant such a request only for good cause. A request for any continuance of any deadline, including a hearing date, shall be made in writing and shall set forth the basis for the request. Except as otherwise provided in these Rules, the ADR Systems case manager shall forward the request to the arbitrator for ruling. The arbitrator may determine in his or her discretion whether a hearing on the request, either in person or by telephone, is required, and whether a response to the request is necessary.

10. Interim Measures of Protection

10.1. At the request of either party, the arbitrator may take any interim measures he or she deems necessary in respect of the subject matter of the dispute, including

injunctive relief or other measures for the conservation of the property or goods forming the subject matter in dispute, such as ordering their deposit with a third person or selling perishable goods.

10.2. Such interim measures may be established in the form of an interim award. The arbitrator shall be entitled to require security for the costs of such measures.

10.3. A request for interim measures, such as injunctive relief, addressed by any party to a federal or state court shall not be deemed incompatible with the agreement to arbitrate, or as a waiver of that agreement. If such a request is made to a court, the arbitration may proceed on the merits.

11. Compelling Evidence and Subpoenas

11.1. The arbitrator may issue subpoenas for the attendance of witnesses or for the production of documents upon request of a party or upon his or her own initiative. The arbitrator shall rule on any objections to a subpoena, weighing the benefit to the requesting party against the burden to the witness. The subpoena shall be issued in accordance with the applicable law of the place of arbitration, without regard to conflicts rules, and shall be deemed issued under that law.

12. Post-Hearing Arbitration Procedure

12.1. The arbitrator may permit the parties to submit post-hearing briefs, and may limit the length of any such briefs in his or her discretion. The parties shall not submit any new evidence after the evidence portion of the hearing, unless granted leave by the arbitrator.

12.2. A hearing will be considered “closed” upon the closing argument or the arbitrator’s receipt of the last post-hearing brief, or as determined by the arbitrator within the arbitrator’s discretion.

13. The Final Award

13.1. Unless otherwise agreed in writing, the arbitrator shall issue a final award within 30 days of the closing of the hearing, or, if the arbitration is decided without a hearing, within 30 days of the date the arbitrator receives the last submission. The arbitrator shall deliver the award to the ADR Systems case manager and the ADR Systems case manager shall forward it to the parties within 30 days of the close of the hearing.

13.2. The award shall be in writing. The award shall state the place of arbitration and the date on which the award was made and shall be deemed to be made at the place of arbitration. If no place of arbitration is stated, or if the place of arbitration is ambiguous, the award shall be deemed to have been made in Chicago, Illinois. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.

13.3. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to specific performance of a contract. In ruling upon the various claims of the parties, the arbitrator shall apply the law agreed upon by the parties, or the law the arbitrator finds appropriate.

13.4. The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to the appointment of the arbitrator unless the arbitrator determines that a reasoned award is appropriate.

13.5. Within 14 days after receipt of the award, either party, with notice to the other party, may through ADR Systems, submit a request to the arbitrator to clarify the award; to correct any clerical typographical or computation errors, or any errors of a similar nature in the award; or to make an additional award as to claims or counterclaims presented in the arbitration but not determined in the award. The arbitrator shall make any clarification, correction or additional award requested by either party that he or she deems justified within 30 days after receipt of such request.

13.6. The arbitrator may also make such corrections and additional awards on his or her own initiative within 14 days after delivery of the award to the parties or, if a party requests a clarification, correction or additional award, within 30 days after receipt of such request. All clarifications, corrections, and additional awards shall be in writing, and the provisions of this Rule shall apply to them.

13.7. Subject to any agreement between the parties, and subject to the arbitrator's discretion to award costs based upon a party's conduct, the arbitrator may apportion the costs of arbitration equally among the parties in the award. If a party has paid more than its share of costs, such costs may be included in the award. The costs of arbitration include:

a. Administrative fees of ADR Systems;

b. Fees and expenses of the arbitrator;

c. The cost of any expert advice sought by the arbitrator;

13.8. Unless applicable law or a party agreement provides otherwise, the parties shall bear their own costs for attorneys' fees, expert witness fees, interpreters, transcripts, and court reporters.

13.9. By agreeing to arbitration under these Rules, the parties shall be deemed to have agreed that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.

14. **Failure to Comply or Failure to Object**

14.1. If a party fails to comply with these Rules or any order of the arbitrator pursuant to these Rules, the arbitrator may set a reasonable date for compliance, and if the party does not comply, the arbitrator may impose a remedy in his or her discretion, including adverse factual findings, or a partial or full award.

14.2. Any failure to object to compliance with these Rules shall be deemed a waiver of such objection.

15. **Settlement Negotiations Conducted by Arbitrator and Consent Award**

15.1. If the parties agree to conduct settlement negotiations with the assistance of the arbitrator (rather than by directly negotiating, or seeking the assistance of a mediator), and upon written consent by the parties to such a procedure provided to ADR Systems, the arbitrator will, in his or her discretion, attempt to assist the parties in reaching settlement. An arbitrator shall not be disqualified from continuing to arbitrate the case if the arbitrator conducts such settlement negotiations.

15.2. If requested by the parties, and subject to the discretion of the arbitrator, the arbitrator shall issue a consent award based upon the terms of a settlement reached by the parties.

16. **Fees**

16.1. All administrative fees and arbitrator fees must be paid in full. After the Preliminary Conference, ADR Systems will communicate a good faith estimate of the fees that will be incurred through the final award. The parties shall pay the

deposit of those fees by the payment date. If additional hearing sessions are necessary, an additional deposit may be required.

16.2. ADR Systems may in its discretion stay the arbitration proceedings, including issuance of the award, until all requested fees have been paid. If, following the conclusion of the arbitration, any portion of the fee deposit remains, ADR Systems shall promptly refund the balance to the parties.

16.3. The arbitrator may preclude a party that has failed to deposit its portion of the fees and expenses from offering evidence of any affirmative claim at the arbitration hearing.

16.4. The parties are jointly and severally liable for the payment of ADR Systems arbitration fees and expenses per the ADR Systems Commercial Arbitration Agreement and the current ADR Systems fee schedule. In the event that one party has paid more than the agreed upon share of the fees and expenses, the arbitrator may award against any other party any such fees and expenses that such party owes with respect to the arbitration.

17. **Claims Against ADR Systems or Arbitrator**

17.1. Neither ADR Systems, its employees, principals, assignees nor any arbitrator shall be liable to any party, person or entity, for any act or omission in connection with any arbitration conducted under these Rules. Nor shall ADR Systems, its employees or principals, or any arbitrator be a party to any litigation relating to the provision of arbitration services or any matter related to the dispute that is the subject of the arbitration.

17.2. The parties agree, jointly and severally, to indemnify and hold harmless ADR Systems, its employees and principals and any arbitrator for any expenses incurred in defending any subpoena directed to ADR Systems or the arbitrator by a third party relating to the arbitration, including reasonable attorneys' fees.

17.3. By agreeing to arbitration administered through ADR Systems, the parties agree to be bound by these Rules in general and the provisions of this Rule 17 in particular.

18. **Confidentiality**

18.1. The parties shall not call ADR Systems, its employees or principal, or any arbitrator as a witness in any pending or subsequent litigation relating to the provision of arbitration services or any matter related to the dispute that is the subject of the arbitration other than to provide evidence of the existence of the arbitration award.

For further questions, contact an ADR Systems commercial case manager at 312.960.2260.