

## **Alternative Dispute Resolution Procedure**

1. **Initiation.** To begin an ADR proceeding, a party must provide written notice to the other party of the issues to be resolved by ADR. Within 14 days after its receipt of such notice, the other party may, by written notice to the party initiating the ADR, add additional issues to be resolved within the same proceeding.
2. **Selection of Neutral.** Within 21 days following receipt of the original ADR notice, the parties will select a mutually acceptable neutral to preside in the resolution of any disputes in this ADR proceeding. If the parties are unable to agree, either party may request the President of the CPR Institute for Dispute Resolution ("CPR"), 366 Madison Avenue, 14th Floor, New York, New York 10017, to select a neutral pursuant to the following procedures:
  - (a) The CPR will submit to the parties a list of not less than five candidates within 14 days after receipt of the request, along with a Curriculum Vitae for each candidate. No candidate may be an employee, director, or shareholder of either party or any of their subsidiaries or Affiliates.
  - (b) Each party will number the candidates in order of preference (with the number one signifying the greatest preference) and will deliver the list to the CPR within seven days following receipt of the list of candidates, along with any written explanation of a perceived conflict with any of the candidates. Any party failing to return a list of preferences on time will be deemed to have no order of preference.
  - (c) If the parties collectively identify fewer than three candidates with conflicts, the CPR will designate as the neutral the candidate for whom the parties collectively indicate the greatest preference. If two candidates tie, the CPR may designate either candidate. If the parties collectively identify three or more candidates with conflicts, the CPR, in its sole discretion, may either (i) immediately designate as the neutral the candidate for whom the parties collectively indicate the greatest preference, or (ii) repeat the procedures in sections 2(a)-2(c).
3. **Hearing Location.** No earlier than 45 days or later than 90 days after selection, the neutral will hold a hearing to resolve each of the issues identified by the parties. The ADR proceeding will take place at a location agreed upon by the parties. If the parties cannot agree, the neutral will designate a location other than the principal place of business of either party or any of their subsidiaries or affiliates.
4. **Pre-Hearing Submissions.** At least 14 days prior to the hearing, each party will submit the following to the other party and the neutral:
  - (a) a copy of all exhibits on which such party intends to rely in any oral or written presentation to the neutral;
  - (b) a list of any witnesses such party intends to call at the hearing, and a short summary of the anticipated testimony of each witness;
  - (c) a proposed ruling on each issue to be resolved, together with a request for a specific damage award or other remedy for each issue. The proposed rulings and remedies must not contain any recitation of the facts or any legal arguments and must not exceed one page per issue.
  - (d) a brief in support of each party's proposed rulings and remedies, which must not exceed 30 pages regardless of the number of issues raised.

Except as expressly set forth in sections 4(a)-4(d), no discovery will be required or permitted by any means, including depositions, interrogatories, requests for admissions, or production of documents.

5. **Hearing Procedures.** The hearing will be conducted on consecutive days and will be governed by the following rules:

(a) Each party will be entitled to ten hours of hearing time to present its case. The neutral will determine whether each party has had the ten hours to which it is entitled.

(b) Each party may make an opening statement, present regular and rebuttal testimony, documents or other evidence, cross-examine witnesses, and make a closing argument. Cross-examination of witnesses will occur immediately after their direct testimony, and cross-examination time will be charged against the cross-examining party.

(c) The party initiating the ADR will begin the hearing and, if it chooses to make an opening statement, will address not only issues it raised but also any issues raised by the responding party. The responding party, if it chooses to make an opening statement, will also address all issues raised in the ADR. Thereafter, the presentation of regular and rebuttal testimony and documents, other evidence, and closing arguments will proceed in the same sequence.

(d) Unless testifying, witnesses will be excluded from the hearing until closing arguments.

(e) Settlement negotiations, including any statements made therein, will not be admissible under any circumstances. Affidavits prepared for purposes of the ADR hearing also will not be admissible. As to all other matters, the neutral will have sole discretion regarding the admissibility of any evidence.

6. **Post-Hearing Brief.** Within ten days following completion of the hearing, each party may submit to the other party and the neutral a post-hearing brief in support of its proposed rulings and remedies. The post-hearing brief must not contain or discuss any new evidence and must not exceed 30 pages regardless of the number of issues raised.

7. **Ruling.** The neutral will rule on each disputed issue within 21 days following completion of the hearing. Such ruling must adopt in its entirety the proposed ruling and remedy of one of the parties on each disputed issue but may adopt one party's proposed rulings and remedies on some issues and the other party's proposed rulings and remedies on other issues. The neutral will not issue any written opinion or otherwise explain the basis of the ruling. The neutral may not award punitive damages.

8. **Fees.** The neutral will be paid a reasonable fee plus expenses. These fees and expenses, along with the reasonable legal fees and expenses of the prevailing party (including all expert witness fees and expenses), the fees and expenses of a court reporter, and any expenses for a hearing room, will be paid as follows:

(a) If the neutral rules in favor of one party on all disputed issues in the ADR, the losing party will pay 100% of such fees and expenses.

(b) If the neutral rules in favor of one party on some issues and the other party on other issues, the neutral will issue with the rulings a written determination as to how such fees and expenses will be allocated between the parties. The neutral will allocate fees and expenses in a way that bears a reasonable relationship to the outcome of the ADR, with the party prevailing on more issues, or on issues of greater value or gravity, recovering a relatively larger share of its legal fees and expenses.