

# DISPUTE SOLUTIONS, INC.

## ARBITRATION RULES

### 1. NOTIFICATION OF USE OF DSI

Any company intending to incorporate these rules or to refer to the alternative dispute resolution (ADR) services of Dispute Solutions, Inc. (DSI) in an ADR plan shall, at least 30 days prior to the planned effective date of the program:

- (a) notify DSI of its intention to do so and,
- (b) provide DSI with a copy of the alternative dispute resolution plan.

DSI may decline its administrative services to any company that does not comply with this requirement.

### 2. APPLICABLE RULES OF ARBITRATION

These rules, as amended from time to time by DSI, shall apply in the form in effect at the time the Demand for arbitration or joint submission is received by DSI.

### 3. DSI AS ADMINISTRATOR OF THE ARBITRATION

When parties agree to arbitrate under these rules, or when they provide for arbitration by DSI and an arbitration is initiated under these rules, they thereby authorize DSI to administer the arbitration. The authority and duties of DSI are described in these rules and may be carried out as DSI's representatives may direct.

### 4. INITIATION OF ARBITRATION

Arbitration shall be initiated in the following manner.

- (a) The parties may make a joint submission for arbitration.
- (b) In the absence of a joint submission for arbitration:
  - (i) The initiating party (hereinafter "Claimant[s]") shall:
    - (1) File with DSI two (2) copies of a written notice (hereinafter "Demand") of its intention to arbitrate, within the time limit established by the applicable statute of limitations. Neither filing nor serving a lawsuit complies with this requirement. Any dispute over the timeliness of the demand shall be referred to the arbitrator. The Claimant shall include with the Demand a copy of the applicable arbitration agreement. The Demand shall set forth the names, addresses, and telephone numbers of the parties; a brief statement of the nature of the dispute; the amount in controversy, if any; the remedy sought; and the requested hearing location.
    - (2) Simultaneously serve a copy of the Demand on the other party (hereinafter "Respondent[s]").
    - (3) Include with its Demand the applicable filing fee, unless the parties agree to some other method of fee advancement.
  - (ii) The Respondent(s) shall file an Answer with DSI within 15 days after service of the Demand. The Answer shall provide the Respondent's brief response to the Demand. The Respondent(s) shall file the Answer with DSI and serve a copy on the Claimant. If no Answer is filed within the stated time, Respondent will be deemed to deny the Demand. Failure to file an Answer shall not delay the arbitration.
  - (iii) The Respondent(s):
    - (1) May file with DSI two (2) copies of a Counterclaim within 15 days after the service of the Demand. Any Counterclaim shall set forth the nature of the claim, the amount in controversy, if any, and the remedy sought.
    - (2) Simultaneously serve a copy of any Counterclaim on the Claimant.
    - (3) Shall include with its filing the applicable filing fee provided for by these rules.
  - (iv) The Claimant may file with DSI two (2) copies of an Answer to the Counterclaim within 15 days after service of the counterclaim. The Answer shall provide Claimant's brief response to the Counterclaim. The Claimant shall file the Answer with DSI and serve a copy on the Respondent. If no Answer is filed within the stated time, Claimant will be deemed to deny the Counterclaim. Failure to file an Answer shall not delay the arbitration.

## 5. JURISDICTION

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract that includes an arbitration clause. 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 invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of its Answer to the Demand or Counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

## 6. ARBITRATION MANAGEMENT CONFERENCE

As soon as practicable, an arbitration management conference shall be held among the parties and/or their attorneys or other representatives and the arbitrator(s). Unless the parties agree otherwise, the Arbitration Management Conference will be conducted by telephone conference call. At the Arbitration Management Conference the matters to be considered shall include, without limitation:

- (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 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;
- (k) any other issues relating to the subject or conduct of the arbitration;
- (l) the allocation of attorney's fees and costs;
- (m) the specification of undisclosed claims;
- (n) the extent to which documentary evidence may be submitted at the hearing;
- (o) the extent to which testimony may be admitted at the hearing telephonically, over the internet, by written or video-taped deposition, by affidavit, or by any other means.

The arbitrator shall issue oral or written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

## 7. DISCOVERY

The arbitrator shall have the authority to order such discovery, by way of disclosures, deposition, interrogatory, document production, request for admission, request for inspection, or otherwise, as the arbitrator deems necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration.

If a discovery dispute arises, the parties should notify DSI so that it may be presented to the arbitrator for determination. See Arbitration Rule 12.

## 8. FIXING OF LOCALE (DATE, TIME, AND PLACE OF HEARING)

If the parties have not agreed and cannot agree to a location for the arbitration, the arbitrator(s) shall decide. The arbitrator(s) shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, cooperate in scheduling the earliest practicable date, and adhere to the established hearing schedule.

## 9. NUMBER, QUALIFICATIONS, AND APPOINTMENT OF ARBITRATORS

- (a) If the arbitration agreement does not specify the number of arbitrators or the parties do not agree otherwise, the dispute shall be heard and determined by one arbitrator.

- (b) Qualifications
  - (i) Arbitrators serving under these rules shall be experienced in the field of law at issue.
  - (ii) Arbitrators serving under these rules shall have no personal or financial interest in the results of the proceeding in which they are appointed and shall have no relation to the underlying dispute or to the parties or their counsel that may create an appearance of bias.
- (c) If the parties have not appointed an arbitrator and have not provided any method of appointment, the arbitrator shall be appointed in the following manner:
  - (i) Shortly after it receives the Demand, DSI shall send simultaneously to each party a letter containing an identical list of names of proposed arbitrators. The parties are encouraged to agree to an arbitrator from the submitted list and to advise DSI of their agreement.
  - (ii) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 15 days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to DSI. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable.
  - (iii) From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, DSI shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted list, DSI shall have the power to make the appointment from among other arbitrators without the submission of additional lists.

## 10. DISCLOSURE

- (a) Any person appointed or to be appointed as an arbitrator shall disclose to DSI any circumstance likely to give rise to justifiable doubt as to the arbitrator's 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. Such obligation shall remain in effect throughout the arbitration.
- (b) Upon receipt of such information from the arbitrator or another source, DSI shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Rule 10 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

## 11. DISQUALIFICATION OF ARBITRATOR

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
  - (i) partiality or lack of independence,
  - (ii) inability or refusal to perform his or her duties with diligence and in good faith, and
  - (iii) any grounds for disqualification provided by applicable law.
- (b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, DSI shall determine whether the arbitrator should be disqualified under the grounds set out above and shall inform the parties of its decision, which decision shall be conclusive.

## 12. COMMUNICATION WITH ARBITRATOR

No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

## 13. VACANCIES

- (a) If for any reason an arbitrator is unable to perform the duties of the office, DSI may, on proof satisfactory to it, declare the office vacant. Rule 9's procedures will apply for the selection of a substitute arbitrator.
- (b) In the event of a vacancy in a panel of arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

#### 14. REPRESENTATION

Any party may be represented by counsel licensed in the state where the arbitration hearing will occur or by authorized non-lawyer representatives. A party who intends to be represented shall notify the other party and DSI of the name and address of the representative at least 10 days before the hearing or conference at which the representative is first to appear.

#### 15. STENOGRAPHIC RECORD

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator. If a party shows that it is unable to afford the cost of a stenographic record, the arbitrator may order the other party to provide one.

#### 16. INTERPRETERS

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service. If a party shows that it is unable to afford the cost of a necessary interpreter, the arbitrator may order the other party to provide one.

#### 17. ATTENDANCE AT HEARINGS

The arbitrator shall have the authority to exclude witnesses, other than a party, from the hearing during the testimony of any other witness. The arbitrator also shall have the authority to decide whether any person who is not a witness may attend the hearing.

#### 18. CONFIDENTIALITY

The arbitrator shall maintain the confidentiality of the arbitration and shall have the authority to make appropriate rulings to safeguard that confidentiality, unless the parties agree otherwise or the law provides to the contrary.

#### 19. POSTPONEMENTS

The arbitrator: (1) may postpone any hearing upon the request of a party for good cause shown; (2) must postpone any hearing upon the mutual agreement of the parties; and (3) may postpone any hearing on his or her own initiative.

#### 20. OATHS

An arbitrator shall take an oath of office. The oath shall be provided to the parties prior to the first hearing. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

#### 21. DISPOSITIVE MOTIONS

The arbitrator shall consider dispositive motions. Unless agreed otherwise, the arbitrator shall apply the provisions of the Federal Rules of Civil Procedure to such motions, especially Rule 56(d).

#### 22. ORDER OF PROCEEDINGS

A hearing may be opened by: (1) recording the date, time, and place of the hearing; (2) recording the presence of the arbitrator, the parties, and their representatives, if any; and (3) receiving into the record the Demand, Answer, and any Counterclaim. The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The parties shall bear the same burdens of proof and burdens of producing evidence as would apply if their claims and counterclaims had been brought in court.

Witnesses for each party shall submit to direct and cross examination.

With the exception of the rules regarding the allocation of the burdens of proof and going forward with the evidence, the arbitrator has the authority to set the rules for the conduct of the proceedings and shall exercise that authority to afford a full and equal opportunity to all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute.

The arbitrator, in exercising his or her discretion, shall conduct the proceedings with a view toward expediting the resolution of the dispute, may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

Documentary and other forms of physical evidence, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

### 23. REFUSAL TO ARBITRATE

If any party refuses to arbitrate under the terms of these Arbitration Rules or fails to attend the arbitration without good cause, the party agrees that an award denying the party any relief shall be entered against him by the decision of the arbitrator(s), provided that the refusing party received notice of the hearing or arbitration, was given reasonable opportunity to participate, a written decision denying any affirmative relief was rendered, and a notice of said decision is given to the party refusing to participate in arbitration or abide by these Arbitration Rules.

### 24. EVIDENCE

The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator deems necessary to an understanding and determination of the dispute.

An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any party is absent, in default, or has waived the right to be present.

Unless agreed otherwise, the arbitrators shall apply the provisions of the Federal Rules of Evidence and applicable law regarding privileges.

### 25. INTERIM MEASURES

At the request of any party, the arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court.

### 26. CLOSING AND REOPENING OF HEARING

Once the record is complete, the arbitrator shall declare the hearing closed.

If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon closing of the hearing.

The hearing may be reopened by the arbitrator upon the arbitrator's initiative, or upon application of a party for good cause shown, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have 30 days from the closing of the reopened hearing within which to make an award.

## 27. WAIVER OF ORAL HEARING

The parties may agree in writing to waive an oral hearing. If the parties are unable to agree as to the procedure, the arbitrator shall specify a fair and equitable procedure.

## 28. WAIVER OF OBJECTION/LACK OF COMPLIANCE WITH THESE RULES

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Arbitration Rules has not been complied with, and who fails to state objections thereto in writing or in a transcribed record, shall be deemed to have waived the right to object.

## 29. EXTENSIONS OF TIME

The parties may modify any period of time by mutual agreement. DSI or the arbitrator may for good cause extend any period of time established by these Rules, except the time for making the award. DSI shall notify the parties of any extension.

## 30. SERVING OF NOTICE

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party, or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) DSI, the arbitrator, and the parties may also use overnight delivery or electronic facsimile transmission (fax), to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by electronic mail (e-mail), or other methods of communication.
- (c) Unless otherwise instructed by DSI or by the arbitrator, any documents submitted by any party to DSI or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

## 31. THE AWARD

- (a) The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing of the hearing or, if oral hearings have been waived, from the date of DSI's transmittal of the final statements and proofs to the arbitrator. Three additional days are provided if briefs are to be filed or other documents are to be transmitted pursuant to Rule 30.
- (b) An award issued under these rules shall be publicly available, on a cost basis. The names of the parties and witnesses will not be publicly available, unless a party expressly agrees to have its name made public in the award.
- (c) The award shall be in writing and shall be signed by a majority of the arbitrators and shall provide the written reasons for the award unless the parties agree otherwise. It shall be executed in the manner required by law.
- (d) The arbitrator may grant any remedy or relief that would have been available to the parties had the matter been heard in court including awards of attorney's fees and costs, in accordance with applicable law. The arbitrator shall, in the award, assess arbitration fees, expenses, and compensation as provided in Rules 43, 44, and 45 in favor of any party and, in the event any administrative fees or expenses are due DSI, in favor of DSI, subject to the provisions contained in the Costs of Arbitration section.
- (e) If the parties settle their dispute during the course of the arbitration and mutually request, the arbitrator may set forth the terms of the settlement in a consent award.
- (f) The parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail, addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any manner that may be required by law.
- (g) The arbitrator's award shall be final and binding.

### 32. MODIFICATION OF AWARD

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical, technical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 days to respond to the request. The arbitrator shall dispose of the request within 20 days after transmittal by DSI to the arbitrator of the request and any response thereto. If applicable law requires a different procedural time frame, that procedure shall be followed.

### 33. RELEASE OF DOCUMENTS FOR JUDICIAL PROCEEDINGS

DSI shall, upon the written request of a party, furnish to the party, at that party's expense, certified copies of any papers in DSI's case file that may be required in judicial proceedings relating to the arbitration.

### 34. APPLICATIONS TO COURT

- (a) No judicial proceeding by a party to enforce an arbitration agreement or to confirm, vacate or modify an arbitration award shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither DSI nor any arbitrator in a proceeding under these rules is or shall be considered a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to these procedures shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither DSI nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.

### 36. ADMINISTRATIVE FEES

DSI shall prescribe filing and other administrative fees to compensate it for the cost of providing administrative services. DSI's administrative fee schedule in effect at the time the demand for arbitration or submission agreement is received shall be applicable.

DSI's fees shall be paid in accordance with the Costs of Arbitration Section.

DSI may, in the event of extreme hardship on any party, defer or reduce the administrative fees.

### 37. ARBITRATOR'S COMPENSATION

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation. If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by DSI and confirmed to the parties.

Any arrangement for the compensation of an arbitrator shall be made through DSI and not directly between the parties and the arbitrator. Payment of the arbitrator's fees and expenses shall be made by DSI from the fees and moneys collected by DSI for this purpose.

Arbitrator compensation shall be borne in accordance with the Costs of Arbitration section.

### 38. EXPENSES

Unless otherwise agreed by the parties or as provided under applicable law, the expenses of witnesses for either side shall be borne by the party producing such witnesses.

All expenses of the arbitrator, including required travel and other expenses, and any DSI expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator shall be borne in accordance with the Costs of Arbitration section.

### 39. DEPOSITS

DSI may require deposits in advance of any hearings such sums of money as it deems necessary to cover the expenses of the arbitration, including the arbitrator's fee, if any, and shall render an accounting and return any unexpended balance at the conclusion of the case.

### 40. SUSPENSION FOR NON-PAYMENT

If arbitrator compensation or administrative charges have not been paid in full, DSI may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If no arbitrator has yet been appointed, DSI may suspend or terminate the proceedings.

### 41. INTERPRETATION AND APPLICATION OF RULES

The arbitrator shall interpret and apply these rules as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these Rules, it shall be resolved by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to DSI for final decision. All other procedures shall be interpreted and applied by DSI.

## Costs of Arbitration (including DSI Administrative Fees)

### 1. FILING FEES

In cases before a single arbitrator, a nonrefundable filing fee capped in the amount of \$350, is payable in full by the Claimant (other than a company) when a claim is filed, unless the ADR plan provides that the Claimant (other than a company) pay less. A nonrefundable fee in the amount of \$750 is payable in full by the Respondent (other than an individual), unless the ADR plan provides that the Respondent (other than an individual) pay more.

There shall be no filing fee charged for a counterclaim.

### 2. POSTPONEMENT/CANCELLATION FEES

A fee of \$250 is payable by a party causing a postponement of any hearing scheduled before a single arbitrator.

### 3. HEARING ROOM RENTAL

Hearing room rental fees will be borne by the Respondent (other than an individual).

### 4. ABEYANCE FEE

Parties on cases held in abeyance for one year will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be administratively closed.

### 5. EXPENSES

All expenses of the arbitrator, including required travel and other expenses, and any DSI expenses, as well as the costs relating to proof and witnesses produced at the direction of the arbitrator, shall be borne by the Respondent (other than an individual).