

FAST TRACK MEDIATION AND ARBITRATION RULES OF PROCEDURE

FAST TRACK MEDIATION RULES

1. Initiation of Mediation

a. The Fast Track Mediation Rules may be adopted by agreement of the parties, with or without modification, before or after a dispute has arisen, either through a pre-dispute clause in a contract, or by entering into a dispute submission agreement.

2. Mediator Appointment

a. The mediator may be mutually selected by the parties or, in the event the parties cannot agree, appointed by CPR. At the request of either party, CPR will act expeditiously to appoint a mediator.

b. If the mediator determines that additional independent expertise is needed, the mediator shall make a recommendation to the parties for the selection of an independent expert to assist in the mediation.

3. Mediation Locale

a. The mutual agreement of the parties on the locale for mediation will control.

b. In absence of an agreement, the mediator shall determine the locale and the mediator's decision shall be final and binding.

4. Initial Conferences

a. No later than two business days after appointment, the mediator will contact the parties for the purpose of conducting a conference to establish the time and place for the mediation, required attendees, and the submittal of additional materials to assist the mediation.

b. The mediator may confer directly with either party prior to the mediation so long as both parties are afforded an equal opportunity to be heard.

5. Mediation Initial Submissions

a. Each party's submission shall be divided into the following parts:

i. A non-confidential submission, which shall include a short statement of facts and issues to be resolved as separate agenda items with an identification of the stakeholders within the party's organization that control the resolution of each agenda item.

ii. A confidential submission, which, for each agenda item, shall state the party's goals. The confidential submission shall be provided to the mediator directly and not exchanged with the other side.

b. Each party's submission shall identify on the first page of the submission what, if any, particular expertise is needed.

6. Mediation Session Submissions

Two days prior to the hearing each party may submit a short additional mediation statement. Absent further direction from the mediator or agreement of the parties, the additional mediation statement shall have three parts:

a. First part: joint statement of prior efforts to resolve the dispute listing points of resolution, points of division and last offers, together with a statement if such offers are outstanding or withdrawn;

b. Second part: each party's short statement of position on every open agenda item;

c. Third part: a confidential submission to the mediator listing the economic costs and business issues for each party with respect to each agenda item, or any other information a party deems important for the arbitrator to know.

7. Mediation Sessions

a. To the extent feasible, mediation will occur on consecutive days.

b. Sessions shall be confidential. Confidentiality shall cover all oral communications with or in the presence of the mediator and all written communications. The submission to mediation under these rules shall be deemed an agreement by each submitting party to treat the mediation session and all reasonably connected communications as settlement negotiations entitled to protection of Fed. R. Civ. P. 408 and any similar state rule. No statement may ever be used in any other proceeding for any purpose whatsoever except as the parties may jointly decide to waive confidentiality.

c. The mediator's role shall be to facilitate resolution of agenda items and the mediator shall have no power to impose a resolution.

d. The mediator shall have complete discretion and control over each mediation session, including the time period for each session and suspension of any session.

8. Termination of Mediation

a. The mediation will be terminated if the parties achieve a resolution or, alternatively, if either the mediator or one of the parties determines that, in its view, the mediation is not productive.

b. If the dispute was not completely resolved, upon termination, the mediator may recommend alternative methods for resolving all or part of the dispute to the parties. Such methods may include:

- i. mediator arbitration of all or a part of the unresolved agenda items;
- ii. baseball arbitration of all or a part of the unresolved agenda items;
- iii. expert or other evaluation of all or a part of the unresolved agenda items;
- iv. non-binding arbitration;
- v. the investigation and development of additional data to assist the parties in

resolving the dispute;

vi. fast track arbitration; or

vii. such other methods as the mediator deems appropriate in light of the nature of the parties' unresolved agenda items. Such recommendations may include separation of agenda items for purposes of mediation, arbitration or other dispute recommendation suggestions and ordering of the process by which each agenda item shall be resolved.

c. The mediator's recommendations shall be non-binding on the parties. With respect to any such recommendations, no party shall be required to respond directly to the mediator. The parties shall confer to determine if any such recommendation is acceptable and jointly inform the mediator of their decision. If the parties accept the mediator's recommendation and if the recommendation involves the sharing of information or positions developed during the mediation process, then the parties shall be deemed to waive confidentiality but only to the extent necessary to implement the recommendation.

d. Upon termination, at the request of the parties, the mediator may also recommend changes in the parties' present procedures for determining, isolating, addressing and resolving

potential areas of disagreement in the parties' ongoing contractual arrangements.

MEDIATION/ARBITRATION OPTION

1. Mediation/arbitration option

At any point during the mediation, the parties may mutually consent to submit any matter or portion thereof to arbitration before the same neutral acting as the mediator.* The mediator shall not be disqualified to serve as an arbitrator. By consenting to mediation/arbitration before the same neutral, the parties will be deemed to waive any objection to such a procedure and accept such a procedure as a tool to break impasses on critical agenda items that may assist in the resolution of the overall disagreements between the parties. Any such consent shall be in writing.

2. Selection of Rules

At the time of any such consent, the parties shall agree upon the rules that will govern the arbitration. The parties may agree upon any rules that they deem appropriate including use of some or all of the Fast Track Arbitration Rules set forth below, the Non-Administered Rules or any other Rules that are mutually agreeable. Such agreement shall be in writing and made a part of the consent. The parties may also permit the arbitrator to select the appropriate rules and procedure that will govern the arbitration.

3. Congruent Tracks

The parties may also select mediation/arbitration with different people serving as the mediator and the arbitrator.

FAST TRACK ARBITRATION RULES

1. The Rules of the International Institute for Conflict Prevention and Resolution for Non-Administered Arbitration ("Non-Administered Rules") shall apply to Fast Track Arbitration except as modified herein.

2. Initiation of Arbitration and Notice of Defense

- a. Arbitration shall be initiated pursuant to the Non-Administered Rules.
- b. The Respondent shall have ten days to serve its notice of defense to the claim.
- c. As part of any notice of claim or defense, a party shall provide:

- i. adequate notice of all claims or defenses as applicable;
 - ii. a separate section identifying the parties' relationship;
 - iii. a separate section identifying the significance of the dispute to that relationship;
 - iv. a separate section articulating the desired result or claim for relief;
 - v. a separate section listing names and addresses of all reasonably potential witnesses;
 - vi. a separate section identifying the location and the categories of all documents in the party's possession, custody or control that may be relevant to the dispute;
 - vii. a statement of any subject matter expertise the party believes is needed for a just resolution.
- d. Any notice required hereunder may be provided by email or fax.
 - e. Any counterclaim shall be asserted with the notice of defense. The counterclaim and notice of defense to the counterclaim shall follow the procedures set forth above.

3. Selection of Arbitrator

- a. By selecting these rules of procedure, the parties are agreeing that one arbitrator shall hear and decide the dispute.
- b. No later than five days after the issues have been joined through service of the last due notice of defense, the parties shall exchange lists of proposed arbitrators. The parties shall at the same time serve on CPR all notices of claims and defenses together with proposed lists of arbitrators.
- c. No later than ten days after the issues have been joined, the parties will notify CPR whether they have resolved the selection of an arbitrator by mutual agreement. In the absence of mutual agreement, both parties will be deemed to have requested CPR to select the single arbitrator. CPR shall follow the procedures set forth in Rules 6.4 and 6.5 of the Non-Administered Rules and select the arbitrator to hear the dispute who shall be neutral and independent.
- d. The arbitrator shall commit to hold hearings and render an award within the time periods established by these Rules.

4. Arbitration Locale

a. The parties shall mutually agree on the locale for arbitration no later than five days after the issues have been joined through service of the last due notice of defense.

b. In absence of agreement, the arbitrator shall determine the appropriate locale as provided for in Rule 9 of the Non-Administered Rules and the arbitrator's decision shall be final and binding.

5. Pre-hearing Conference

Within 5 business days of appointment, the arbitrator shall hold a pre-hearing conference as contemplated by Rule 9 of the Non-Administered Rules to address all issues set forth in Rule 9 and any other matter which the arbitrator or parties believe is relevant. The arbitrator may hold one or more conferences in the arbitrator's discretion.

6. Limited Discovery

a. Except as otherwise ordered by the arbitrator, discovery shall be limited to the exchange of documents.

b. Upon date(s) established by the arbitrator, both parties will serve on the other:

i. all non-privileged hardcopy and electronic documents that they reasonably believe are relevant to any issue to be resolved in the arbitration;

ii. a privilege log with a sufficient description so that the assertion of privilege can be appropriately evaluated by the non-producing party and the arbitrator;

iii. in addition, each party may serve a list of particular categories of documents needed with respect to the dispute, which list shall attempt to be as specific as reasonably practicable, and each party shall then serve in response a statement of whether the initial production included the requested documents and, if not, whether the production will be supplemented or whether there is an objection thereto;

iv. any documents not produced two weeks prior to the arbitration hearing may not be used by the producing party at the hearing, except for rebuttal documents, which may be admitted in the discretion of the arbitrator.

7. Neutral Expert

a. If the arbitrator deems it appropriate, the arbitrator may appoint an independent neutral expert to assist the arbitrator in gathering facts necessary to a full resolution by direct interviews with party representatives prior to the hearings.

b. The neutral expert shall render his report in writing with copies to each party.

c. The cost for the neutral expert shall be shared by the parties.

8. Hearings

a. Hearings may be held or witnesses presented by video conference or such other manner as the arbitrator deems appropriate.

b. The arbitrator may impose a timed hearing with equal time for either party to present its evidence. In any timed hearing, a party may present a witness on direct examination through an affidavit. The arbitrator may also limit the number of experts to be presented by the parties.

c. The arbitrator shall determine the appropriate procedures for the arbitration bearing in mind that the parties selected fast track arbitration to achieve a fast, equitable solution without the formalities required by judicial processes.

d. The parties shall produce such evidence as the arbitrator deems necessary to understand and to determine the matters in dispute. The arbitrator shall have the power to subpoena witness or documents upon request of either party or as deemed necessary by the arbitrator.

e. Unless the parties have otherwise jointly consented, hearings will commence within sixty days of case commencement and will be closed within thirty days thereafter. The arbitrator will make every effort to schedule each side's presentation of evidence on consecutive days.

f. If the parties have related agenda items pending in mediation, at the request of either party, the mediator (if separate from the arbitrator) may attend any of the arbitration sessions.

9. Award

a. The arbitrator may refer any portion of the dispute to mediation before rendering an award. Mediation will be conducted in accordance with CPR's fast track mediation procedures.

b. The award will be rendered within fourteen days of the close of hearings.

c. The arbitrator will render a written reasoned award.

d. If the award is rendered before the expiration of the fourteen day period, CPR shall notify the parties two business days before publication of the award in order to afford the parties time to resolve any dispute directly.

10. Costs

All costs shall be borne equally by the parties but the arbitrator may divide costs as the arbitrator deems appropriate as part of the award.