

ADR CHAMBERS ARBITRATION RULES*

1. INTERPRETATION

1.1 Definitions

In these Rules, the following terms shall have the following meanings:

- (a) “ADR Chambers” means the ADR services division of ADR Chambers Inc.
- (b) “Appointing Committee” means the Committee established by ADR Chambers to exercise the powers of an appointing authority.
- (c) “Arbitral Tribunal” means a sole arbitrator or a tribunal of arbitrators.
- (d) “Arbitration Agreement” means an agreement between or among two or more Parties to submit to arbitration any dispute, controversy or claim and unless expressly limited, shall be deemed to include any question regarding the existence, interpretation, validity, breach or termination of a contract.
- (e) “Business Day” means a day between Monday and Friday inclusive, excluding statutory or official holidays in the place of arbitration.
- (f) “Co-ordinator” means the person or persons at ADR Chambers responsible for administration of arbitrations.
- (g) “Law of the Arbitration” means the law the Parties have chosen to apply to the arbitration proceedings or, in the absence of such a choice, the arbitration law of the place where the arbitration is held.
- (h) “Notice of Arbitration” means the notice referred to in Rule 4.1.
- (i) “Party” or “Parties” means a party or parties to an Arbitration Agreement.
- (j) “Representative” means legal counsel for or an authorized representative of a Party.
- (k) “Rules” means the ADR Chambers Arbitration Rules in force at the time of the commencement of the arbitration.

* These Rules are in effect for arbitrations commencing on or after September 7, 2007 and replace all prior rules of arbitration promulgated by ADR Chambers. Copies of ADR Chambers rules which were in effect prior to the date of these current rules, may be obtained from the Co-ordinator. These Rules are subject to change at the discretion of ADR Chambers: See Rule 2.5.

1.2 Where appropriate in these Rules, words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa.

2. AGREEMENT OF PARTIES AND APPLICATION OF THE RULES

2.1 These Rules shall, subject to such modification as the Parties may agree upon, be deemed to have been made a part of any Arbitration Agreement which provides for arbitration to be administered by ADR Chambers, under these Rules or under the rules of ADR Chambers, or any similar expression,.

2.2 The arbitration shall be conducted under the Law of the Arbitration. In the event that any provision of these Rules or the agreement of the Parties with respect to the conduct of the arbitration is in conflict with any provisions of the Law of the Arbitration from which the Parties cannot derogate, the provisions of the Law of the Arbitration shall prevail.

2.3 The Rules and any procedures set out in the Arbitration Agreement shall be interpreted liberally with the object that (a) all disputes that could be covered by the Arbitration Agreement are subject to arbitration; and (b) the arbitration will be as inexpensive and expeditious as reasonably possible, consistent with a process that is fair and suitable to the circumstances of the particular case. Any procedural question or controversy on which the Parties are not agreed may be resolved by the application of the discretion of the Arbitral Tribunal in conducting the arbitration, or of the Appointing Committee in the exercise of its functions.

2.4 Where an Arbitral Tribunal consists of more than one arbitrator, the Parties may agree or the Arbitral Tribunal may decide, after hearing the submissions of the parties, to delegate the determination of some or all pre-hearing procedural matters to one member of the Arbitral Tribunal.

2.5 These Rules may be amended by ADR Chambers in its sole discretion. Amendments become effective when they are posted to the ADR Chambers website.

3. APPOINTING COMMITTEE

3.1 The Appointing Committee shall be established by ADR Chambers and shall have the authority and functions specified in these Rules or incidental thereto. The functions of the Appointing Committee may be delegated by the Appointing Committee to one or more of its members.

3.2 The current members of the Appointing Committee shall be listed on the website of ADR Chambers.

3.3 Members of the Appointing Committee are not eligible for appointment as arbitrators by the Appointing Committee but are eligible to be appointed as arbitrators by a Party or Parties or by any other method contemplated by the agreement of the parties or by these Rules.

3.4 A member of the Appointing Committee shall not be involved in the determination of any issue relating to an arbitration in which he or she has, may have or has had any personal interest or involvement.

3.5 The Parties may, in the discretion of the Appointing Committee, be charged for services provided by the Appointing Committee. Charges shall be based on the time spent on the matter

by a single member of the Appointing Committee. No charge shall be made for any time spent by additional members of the Appointing Committee, unless the Parties by agreement specifically request their participation.

4. NOTICE OF ARBITRATION

4.1 The Party commencing arbitration shall deliver a Notice of Arbitration to the opposing Party and shall at the same time deliver a copy of the Notice to ADR Chambers. The Notice of Arbitration shall contain a statement of the nature of the dispute, the material facts being relied on and the issues being raised, the names and addresses of all Parties and the relief that is claimed. Arbitration proceedings shall be deemed to commence on the day on which ADR Chambers receives the Notice of Arbitration and the appropriate filing fee.

4.2 A non-refundable filing fee of \$500 plus applicable taxes is payable by the claimant upon delivery to the Co-ordinator of the Notice of Arbitration.

4.3 For the purpose of facilitating the commencement of the arbitration or the establishment of the Arbitral Tribunal, the Co-ordinator or a member of the Appointing Committee may hold a telephone conference with the Parties or their Representatives to discuss the selection of arbitrators, whether any issues require action by the Appointing Committee, the timing of the proceedings, the desire to proceed with mediation, fees of the arbitrator or arbitrators to be appointed and any other matter of a preliminary or administrative nature.

5. APPOINTMENT OF ARBITRAL TRIBUNAL

5.1 The Parties shall be at liberty to select any qualified arbitrator or tribunal in accordance with the appointing provisions in or applicable to the arbitration agreement. In the event that one or more of the Parties fails to appoint an arbitrator or arbitrators within the times specified or within a reasonable period of time if no time is specified, the Appointing Committee shall appoint an arbitrator or arbitrators for them.

5.2 Where a sole arbitrator is to be appointed and the Parties have not, within three business days of the receipt of the notice of arbitration and the filing fee by ADR Chambers, agreed upon the arbitrator, ADR Chambers shall provide the Parties with a list of three potential arbitrators. If the Parties are unable to agree on an arbitrator within 7 days of receipt of the list, each side to the arbitration may within a further two Business Days delete one name from the list and the Appointing Committee shall choose the arbitrator from the remaining names. In the discretion of the Appointing Committee, the list of potential arbitrators may include more than three names, for example if more than two parties are involved in the dispute.

5.3 Where the Arbitration Agreement provides that each Party is to appoint an arbitrator to a three-person tribunal, the Appointing Committee shall, where the Parties are unable to agree, appoint the presiding arbitrator in consultation with the Party appointed arbitrators. The Appointing Committee shall follow the same procedure as set out in Rule 5.2 above.

5.4 Where the Arbitration Agreement provides for a three-person tribunal to be appointed by ADR Chambers, a list-procedure will be followed. The Appointing Committee will provide the Parties with a list of arbitrators who in the opinion of the Appointing Committee are particularly

qualified for appointment to the tribunal. After the Parties have been consulted about the names on the list, the Appointing Committee will make the appointments that it considers to be appropriate.

5.5 Where the Arbitration Agreement provides for arbitration among more than two Parties and each Party has not agreed in writing to the appointment of at least one of the nominees to a three-person tribunal, the Appointing Committee shall appoint all members of the Arbitral Tribunal without regard to any Party's nomination and shall follow the procedure set out in Rule 5.2.

5.6 The Parties and the Appointing Committee may appoint any or all of the arbitrators on the Arbitral Tribunal from current ADR Chambers panel members, but are not required to do so.

6. INDEPENDENCE AND IMPARTIALITY

- (a) Unless otherwise agreed by the Parties, an arbitrator shall be and remain at all times wholly independent.
- (b) An arbitrator shall be and remain wholly impartial and shall not act as an advocate for any Party to the arbitration.
- (c) The Parties shall, prior to the appointment of any arbitrator, disclose to ADR Chambers and to the proposed arbitrators the names of all Parties and, to the extent known, all material witnesses who will be or are reasonably likely to be involved in the arbitration.
- (d) Every arbitrator shall, before accepting an appointment, sign and deliver to the Parties and the Co-ordinator a statement declaring that he or she knows of no circumstances likely to give rise to a reasonable apprehension of bias and that he or she will avoid and, if necessary disclose to the Parties any such circumstances arising after that time and before the arbitration is concluded. No arbitrator shall be disqualified or subject to challenge by reason of the arbitrator or any Representative of a Party being a member, officer or director of ADR Chambers.
- (e) The Appointing Committee shall decide any challenge or dispute with respect to the qualifications, independence or impartiality of an arbitrator. At the request of any Party, the Appointing Committee shall appoint a person not associated with ADR Chambers to make any determination that the Appointing Committee is authorized to make respecting one or more members of ADR Chambers.
- (f) Any arbitrator who is unable to serve or continue to serve due to disqualification, death or disability shall be replaced in the same manner as his or her original appointment, failing which the replacement arbitrator shall be appointed by the Appointing Committee.

7. NOTIFICATION TO THE PARTIES

Any notification or communication from ADR Chambers or the Arbitral Tribunal to a Party or its Representative may be delivered to its last known address by delivery, registered mail, courier, facsimile transmission, e-mail, or any other means of telecommunication that provides a record of the sending thereof. Such notification or communication shall be deemed to have been delivered on the date sent.

8. COMMUNICATIONS WITH THE ARBITRAL TRIBUNAL

No Party or person acting on behalf of a Party may communicate *ex parte* with the Arbitral Tribunal.

9. PROCEDURAL HEARINGS

9.1 The Arbitral Tribunal may convene a procedural hearing at any time it considers appropriate to resolve procedural issues and establish a timetable. A procedural hearing agenda may include points for discussion leading to identification and clarification of the issues in dispute. The questions may include:

- (a) Are there any issues concerning the jurisdiction, appointment or qualifications of the Arbitral Tribunal?
- (b) To what extent and pursuant to what procedure will there be any disclosure and production of facts and documents or examinations for discovery?
- (c) Should time be scheduled for hearing of any questions with respect to pre-hearing disclosure?
- (d) Is an oral hearing necessary? If so, how much time will be required? Where will the hearing be held?
- (e) Should witnesses be identified and statements be delivered before the hearing?
- (f) Should the Parties jointly prepare any pleadings briefs, documents, legal authorities or other briefs for use in the arbitration?
- (g) What should be the procedure and likely length of the hearing?
- (h) Will expert evidence be required? Are any special rules required?
- (i) Is a transcript of the evidence at the hearing desirable?
- (j) Are interpreters necessary?
- (k) Should there be a timetable for delivery of written argument if required?
- (l) Is there any agreement as to the form of the award?
- (m) Will the arbitrator be required to deliver reasons?

- (n) Will there be any limit on the time for delivery of the award or completion of the arbitration?

9.2 Any procedural hearing may take place by conference telephone call.

9.3 The Arbitral Tribunal shall record any agreement or orders made at any procedural hearing and shall promptly send a copy of such record to each of the Parties.

9.4 The Arbitral Tribunal may dispense with an oral hearing if it determines, after hearing the submissions of the Parties, that oral evidence is not necessary given the issues in dispute or not warranted given the amount in dispute.

10. INTERIM MEASURES OF PROTECTION

10.1 At the request of any Party and on notice to all the other Parties the Arbitral Tribunal may order whatever interim measures it deems necessary, including injunctive relief, measures for the protection or conservation of property and security for costs.

10.2 Such interim measures may take the form of an interim award.

10.3 A request for interim measures addressed by a Party to a court shall not be deemed incompatible with the Agreement to Arbitrate or a waiver of the right to arbitrate.

10.4 The Tribunal may in its discretion apportion costs associated with the applications for interim relief in any interim award or in the final award.

11. PRIVACY AND CONFIDENTIALITY OF ARBITRATION

11.1 Subject to Rule 11.2, all arbitrations held under these Rules are private and confidential. The Parties and their Representatives may attend at the arbitration. Other persons may only attend with the consent of the Parties or the Arbitral Tribunal.

11.2 No information concerning the existence of the arbitration or anything which occurs or is disclosed within the arbitration shall be disclosed or used outside of the arbitration proceedings or for any other purpose by a Party except:

- a) For the purpose of conducting the arbitration itself including, where necessary and appropriate, interviewing and preparing witnesses, obtaining document and other support services and the administration of the arbitration;
- b) In connection with an application to a court for interim relief or to set aside, recognize or enforce an award; or
- c) Where a Party is required to do so by law or by a court or competent regulatory body.

11.3 Where a Party makes disclosure as permitted by Rule 11.2 it shall only do so:

- (a) by disclosing no more than what is legally required,
- (b) by obtaining, where possible, an undertaking or order of confidentiality consistent with the Rules; and
- (c) by furnishing to the Arbitral Tribunal and to the other Party, if the disclosure takes place during the arbitration, or to the other Party alone, if the disclosure takes place after the termination of the arbitration, details of the disclosure and an explanation of the reason for it.

12. THE AWARD

12.1 The Arbitral Tribunal will render its award within 45 days of the close of the proceedings, provided that the Arbitral Tribunal, for good reason, may extend that time after consultation with the Parties.

12.2 The award shall not be released to the Parties until all outstanding charges of ADR Chambers for fees and disbursements relating to the arbitration and all arbitrator's fees and expenses have been paid.

12.3 The Arbitral Tribunal may issue an award based on the consent of the parties.

12.4 The award shall set out: the nature of the claim; the decision; the relief awarded, and unless the Parties have agreed otherwise reasons including such review of the issues, the facts and the law as the Arbitral Tribunal deems necessary to explain its award.

12.5 An award or interim award made under the provisions of these Rules shall be treated as a final award for the purposes of recognition and enforcement by a judicial authority and shall not be subject to any appeal to the courts or otherwise unless the Parties have otherwise agreed.

13. AMENDMENTS AND CORRECTIONS TO THE AWARD

Within 30 days of an award being released, on the application of a Party or on its own initiative, the Arbitral Tribunal may amend an award to correct:

- (a) a clerical or typographical error,
- (b) an accidental error, slip, omission or similar mistake,
- (c) an arithmetical error made in a computation, or
- (d) a claim on which the Arbitral Tribunal failed to adjudicate.

14. INTEREST

The Arbitral Tribunal may order the payment of simple or compound interest, including pre-award and post-award interest.

15. THE COSTS OF THE ARBITRATION

The costs of the arbitration including legal fees and disbursements shall be fixed by the Arbitral Tribunal and allocated among the Parties in its award on the merits of the dispute or in a separate award after receiving further submissions from the Parties. The fees of the Arbitral Tribunal shall be stated separately for each arbitrator.

16. ARBITRATION FEES AND DEPOSITS FOR ARBITRATION

16.1 If an arbitrator has been appointed by the Appointing Committee the fees for the services of that arbitrator will be fixed on the scale of fees that accords with the agreement as to fees that was made between ADR Chambers and the arbitrator in advance of the arbitration. If an arbitrator was appointed by one or more of the Parties, the fees for the services of that arbitrator will be fixed by the Tribunal on a scale that takes into account any agreement that was made with the arbitrator prior to the appointment of the arbitrator.

16.2 All accounts of all the members of an Arbitral Tribunal shall be submitted to the Co-ordinator and shall detail the time spent and the rate charged together with any disbursements. The Co-ordinator will then divide the total amount equally between or among the Parties, subject to such order or direction that the Arbitral Tribunal may make and shall render accounts to the Parties accordingly.

16.3 The Parties shall be jointly and severally responsible for the payment of all accounts rendered by ADR Chambers unless the Parties and ADR Chambers have otherwise agreed and have confirmed those arrangements in writing with ADR Chambers.

16.4 The fees and expenses of an arbitrator are subject to deduction of an administrative charge payable to ADR Chambers and agreed upon at the time of the appointment.

16.5 When the Arbitral Tribunal or the Co-ordinator requests a deposit of costs that deposit when received shall be paid to ADR Chambers. After the award has been made, ADR Chambers shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.

16.6 A deposit on account of fees, ADR Chambers' administrative fees, and applicable taxes will be required for each day reserved for the arbitration and the time estimated by the Arbitral Tribunal for preparation for the hearing and the writing of the award. The amount and timing of deposits will be communicated to the Parties by the Co-ordinator. The Appointing Committee shall determine any disputes regarding the amount or timing of deposits.

16.7 Arbitration hearing days are booked as full days with a minimum charge of eight hours per day plus preparation time.

17. VENUE EXPENSES

17.1 Arbitration hearings held at the Head Office of ADR Chambers in Toronto are subject to a minimum venue charge of \$450.00 (CDN) plus applicable taxes per day for the use of the facilities and that charge will increase according to the number of Parties and the size of the hearing room and necessary consulting rooms required. Faxes received during the hearing days and local telephone use and administrative assistance of ADR chambers are included. Outgoing

faxes other than local and any courier costs will be charged at actual third party cost. If the arbitration is held at ADR Chambers in Toronto, there will be a catering charge for lunches or other meals and refreshments provided. If the arbitration is held at another venue, arranged for the Parties by ADR Chambers, then catering charges will be at third party cost.

17.2 If arbitrations are held at other than the Head Office of ADR Chambers in Toronto, the Parties may make their own arrangements and are responsible for any charges in connection therewith. If the Parties request that the Co-ordinator of ADR Chambers make such venue arrangements, then a separate administration fee of \$ 150.00 will be charged. The Parties agree that the Co-ordinator is acting solely as an agent of the Parties who are jointly and severally liable to the third party venue provider for its charges. ADR Chambers will require a deposit in the appropriate amount to cover such venue arrangements. The final account of ADR Chambers will account for such deposit and may include additional charges of the third party venue provider.

18. ADJOURNMENT, CANCELLATION OR SETTLEMENT

18.1 If an arbitration is adjourned, cancelled, or settled more than thirty (30) days prior to the commencement of the arbitration, or any rescheduled date, the deposit shall be returned to the Party or Parties who made it, less the amount of any expenses that may have been incurred and less any fees owing to the arbitrator or arbitrators for time incurred.

18.2 If an arbitration is adjourned, cancelled or settled within thirty (30) days prior to the commencement of the arbitration, or any adjournment date, the deposit is subject to forfeiture in the discretion of ADR Chambers or the Arbitral Tribunal. A decision with respect to forfeiture shall not be made until the unused hearing dates have passed. The ability of ADR Chambers and members of the Arbitral Tribunal whose fees are secured by the deposit to rebook the dates will be a factor considered with respect to the forfeiture of some or all of the deposit.

18.3 Arbitrations with scheduled hearings longer than two weeks may be subject to special arrangements regarding deposits. Such arrangements will be made at the time the hearing dates are booked.

18.4 Notification of any cancellation, request for adjournment or settlement, shall be made by telephone and also confirmed in writing by fax or e-mail to the attention of the Co-ordinator.

19. IMMUNITY

Neither ADR Chambers nor any member of the Arbitral Tribunal shall be liable to any Party or any counsel, officer, director, employee or witness for any Party for any act or omission in connection with any arbitration. The Parties shall jointly and severally indemnify and hold harmless ADR Chambers in respect of all such claims. The members of the Arbitral Tribunal and ADR Chambers shall have the same protections and immunities as a judge of the superior court of the province, territory or state of the place where the arbitration is held.

20. MODEL DISPUTE RESOLUTION CLAUSE

The following model dispute resolution clause is recommended for arbitrations to be conducted under these Rules.

Any dispute, controversy or claim arising out of or relating to this contract including any question regarding its existence, interpretation, validity, breach or termination or the business relationship created by it shall be referred to and finally resolved by arbitration under the ADR Chambers Arbitration Rules. The place of the arbitration shall be _____.

The Parties may wish to consider adding one or all of the following options:

1. There shall be _____ arbitrators (1 or 3). [If 3, state whether each party may nominate an arbitrator and how the third arbitrator is to be selected.] (See Rule 5.4.)
2. The language of the arbitration shall be _____.
3. The Arbitral Tribunal must select its award from the final offers to settle made by each of the Parties.
4. The Arbitral Tribunal need not provide detailed reasons for its award. (See Rule 12.3.)
5. Whether an oral hearing must be held. (See Rule 9.4.)
6. Specifications as to what rules will apply with respect to pre-hearing disclosure of documents and examinations for discovery, especially where Parties from more than one country or province are involved.
7. Whether any rights of appeal to an appellate arbitration tribunal or to the courts will be allowed. (See Rule 12.4.)

THESE RULES ARE EFFECTIVE AS OF _____, 2007 AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.