

APPENDIX E

AGREEMENT TO ARBITRATE

The undersigned parties hereby agree to have arbitration services provided by ADR, Inc. for their dispute, entitled:

In accordance with the following terms:

Type of Arbitration or Hybrid Arbitration Process:

\_\_\_\_\_ Standard Arbitration; \_\_\_\_\_ Nonbinding Arbitration;  
\_\_\_\_\_ High-low Arbitration; \_\_\_\_\_ Baseball Arbitration;  
\_\_\_\_\_ Mini-trial; \_\_\_\_\_ Other (Please describe)

Arbitrator: The parties agree that \_\_\_\_\_ will be the arbitrator.

Location, Date and Time of Arbitration: The parties agree to conduct the arbitration at \_\_\_\_\_, on \_\_\_\_\_, beginning at \_\_\_\_\_.

Arbitration Procedures: The arbitrator will administer the arbitration in accordance with ADR, Inc.'s Arbitration Rules and Procedures (the "Rules"), as modified by agreement of the parties prior to the commencement of the arbitration.

Terms of Payment are as follows:

There will be a **\$300 administrative fee**. In addition, ADR, Inc.'s hourly rate for arbitration services is **\$125.00 per hour/per party** (subject to adjustment for multiple parties). ADR, Inc. will bill the parties prior to the commencement of the arbitration and upon the completion of the arbitration services for any additional arbitration time over the initial estimation. All expenses incurred and disbursement made in connection with the arbitration, such as photocopying, filing and recording fees, telecopying charges, postage, express mail and messenger charges, depositions, and other charges, will also be billed to the parties. All bills must be paid within thirty (30) days if work is to continue.

Consulting with Attorneys: Before signing this agreement and during or between arbitration sessions, participants are encouraged to consult with attorneys regarding their legal rights and obligations. The parties acknowledge that neither the arbitrator nor ADR, Inc. is giving legal advice or counsel.

Confidential: The parties recognize that the award of a standard arbitration is binding upon the parties, and that parties agreeing to arbitrate waive their right to a trial *de novo*. The parties agree that they shall not subpoena or otherwise require the arbitrator to testify or produce records, notes or work product in any future proceedings.

\_\_\_\_\_  
Signature of Plaintiff

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Plaintiff Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Defendant

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Defense Attorney

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

The **Agreement to Arbitrate** must include an indication of the specific type of arbitration or arbitration/ADR hybrid that the parties are agreeing to use. At least one of the following processes must be indicated:

- (1) Standard binding arbitration: a process in which one or more arbitrators render a binding decision after hearing arguments and reviewing evidence regarding a matter in dispute.
- (2) Standard nonbinding arbitration: a process in which one or more arbitrators render a nonbinding decision after hearing arguments and reviewing evidence regarding a matter in dispute. The nonbinding decision can then be used as a basis for negotiating or mediating a settlement of the dispute.
- (3) High-low arbitration: a process in which the parties negotiate or mediate to impasse, and then proceed to arbitration. Plaintiff's last settlement demand and defendant's last offer establish a bracket defining the limits of the arbitrator's award in the case. The arbitrator conducts the arbitration without knowledge of the endpoints of the bracket. The parties are free to make any evidence-based arguments they wish regarding damages, and assuming that the arbitrator determines the defendant to be liable, he or she makes a decision on damages as if it were ordinary arbitration. When the arbitrator renders an award, neither party will be liable for or entitled to a figure outside the agreed-to bracket.
- (4) Baseball arbitration: a process that is a type of "last best offer" arbitration in which the disputing parties agree in writing to negotiate to only one position . their last and best offer . and then submit the dispute to arbitration. In baseball arbitration, the arbitrator must choose the last best offer of one of the parties and may not find a different result in any circumstance.
- (5) Arb-med: a process in which the parties first proceed to arbitration before an arbitrator who will render a binding decision. When the decision is made, it is not shown to the parties. Rather the arbitrator places it in a sealed envelope. Thereafter, the parties can negotiate a resolution on their own, or they can involve the arbitrator as a mediator to help mediate a resolution. The arbitrator's decision, having already been made, will not be influenced by any confidential information of the parties. If the negotiations or mediation are unsuccessful, the parties open the sealed envelope and are bound by the award.
- (6) Med-arb: med-arb combines mediation and arbitration, beginning with mediation. The parties determine a definite time limit for mediation. If they are unable to reach an agreement in the time allowed, the mediator/arbitrator holds an arbitration-like hearing and issues a binding decision, as in a standard binding arbitration. If either party objects to the mediator serving as arbitrator, a different person will be selected to serve as arbitrator.
- (7) Mini-trial: an abbreviated trial-like process is most appropriately used in complex cases. When limited discovery is complete, the parties to the mini-trial exchange brief position summaries, which include document and witness lists to be used at the hearing. The number of witnesses and trial exhibits designated in the summaries is kept to a minimum. The mini-trial panel normally consists of three people: a business executive from each side, and a third party neutral. After an abbreviated trial-like hearing, negotiation between the business executives commences, assisted by the third-party neutral, as necessary.