



New England Dispute Resolution Arbitration Rules

1. General Application

Except as otherwise provided by law or agreed in writing:

- (i) these Rules (“Rules”), in the form in effect at the time of a case submission, shall be deemed part of the parties’ Arbitration Agreement, and shall govern all Arbitrations and ancillary case administration with New England Dispute Resolution; and
- (ii) the law of the jurisdiction shall govern all substantive legal issues in dispute.

2. Case Referral Guidelines

Case referral with New England Dispute Resolution is fast & simple. A referral can be made at any point in the legal process. Simply submitting party names or basic case information will initiate the procedure. This can be accomplished by e-mail, phone, or fax. A New England Dispute Resolution case manager will follow up with you, to acknowledge receipt, assess your particular needs, and proceed accordingly. A case submission shall be deemed to occur when all parties involved have agreed to use the services of New England Dispute Resolution.

3. Case Administration

Following a case referral, New England Dispute Resolution shall confer with the parties to:

- (i) ascertain the issues and disputes, the authorized scope of award (declaratory, injunctive and/or monetary parameters), and any procedural specifications;
- (ii) schedule a time and place for the Arbitration hearing (“Hearing”); and
- (iii) appoint an arbitrator from New England Dispute Resolutions Neutral Panel (“Neutral”).

New England Dispute Resolution shall furnish the parties with a list of neutrals. The parties shall have the right to disqualify any named Neutral for any reason. New England Dispute Resolution shall appoint from those not disqualified. If all named Neutrals are disqualified or subsequently unavailable, New England Dispute Resolution shall repeat the forgoing procedure with the names of other Neutrals. Parties have discretion to utilize an alternative method of neutral selection if they so wish.

4. Case Fees; Expenses

- (a) **Case Fee.** Each party shall pay a Case Fee in the amount set forth in New England Dispute Resolutions applicable Fee Schedule in effect at the time of a case submission which shall be due and payable no later than two weeks before the scheduled hearing.

In addition to New England Dispute Resolutions case administration services, the Case Fee shall entitle the parties to *two hours* of Neutral Case time. Any additional Neutral case time or travel time in excess of *one hour* shall increase the Case Fee at the overtime rates set forth in the Fee Schedule. The Fee Schedule also shall establish the conditions for partially refunding the Administration and Case Fees.

- (b) **Other Expenses.** All additional expenses incurred by New England Dispute Resolution including those for stenographers, video equipment, interpreters, witnesses and documentary evidence, shall be paid by the party ordering or producing the same. Off site conference facility rental fees may be assessed to the parties on an equal basis.

5. Case Summaries: Evidence

At least *two weeks* before the scheduled Hearing, each party shall deliver to New England Dispute Resolution, for delivery to the Neutral, a Case Summary outlining the party's arguments and proofs supporting its positions on the issues in disputes.

In addition, each party shall deliver to the other parties (i) in person in hand, (ii) by overnight carrier, or (iii) by certified or registered mail, return receipt requested, a list of all witnesses and copies of all documents to be presented. Documents or witness lists exchanged less than two weeks before the scheduled Hearing may only be introduced at the Hearing by agreement of the parties, or at the discretion of the Neutral.

6. Postponements; cancellations; Penalties

Hearings may be:

- (I) *postponed* at the request of any party for any reason, or upon New England Dispute Resolutions initiative for good cause; and
- (iii) *cancelled* by agreement of all parties for any reason.

The party or parties requesting or causing the postponement or cancellation, however, shall be liable for any applicable postponement or cancellation penalty set forth in the Fee Schedule.

7. Representation

Parties are free to exchange legal counsel, interpreters and other authorized representatives, and shall notify one another and New England Dispute Resolution of such engagements for the purpose of future notices and other correspondence hereunder.

8. Privacy; Stenographic Record

Subject to New England Dispute Resolution's right to observe, hearings shall be private and attended only by the parties, their designated representatives and other individuals permitted by all the parties or the Neutral. The Neutral may sequester any non-party witness during the testimony of other witnesses.

Any party may arrange for an audio, visual or stenographic record of the Hearing. If all the parties agree, or the Neutral determines that the transcript constitutes the official record of the Hearing, it shall be furnished to the Neutral and other parties for review at a time and place determined by the Neutral.

9. Ex Parte Communications

All oral or written communications between the parties and the Neutral outside of Hearings shall be channeled through New England Dispute Resolution. Any direct contact between a party and the Neutral may result in the Neutral's disqualification by New England Dispute Resolution.

10. Delivery of Notice

Unless otherwise specified, any notice or other papers required to be given hereunder shall be sufficient if in writing and delivered by regular mail, facsimile, e-mail, or other written forms of electronic communication to the last known address of the intended party or its designated representative. Any such notice shall be deemed delivered: (i) if by hand or electronic communication, on the date of delivery; (ii) if by overnight carrier, on the day following its delivery to the overnight carrier; and (iii) if by regular or certified mail, on the second day following its mailing.

11. Exclusion of Liability

Neither New England Dispute Resolution (its directors, officers or employees) nor its Neutrals (all of whom are independent contractors) shall be liable to any party for any negligence, act or omission with regard to Arbitrations, case administration or other activities conducted under these Rules.

Moreover, neither New England Dispute Resolution nor an Neutral involved in a case under these Rules shall be a necessary party to any judicial proceedings relating to such case.

12. Waiver of Rules

Any party learning of any noncompliance with these Rules and failing to notify New England Dispute Resolution of their objection within a reasonable time shall be deemed to have waived the right to object.

13. Hearings

(a) Pre-Hearing Conference. If requested by the parties, the Neutral shall schedule a pre-Hearing conference to (i) identify and clarify the disputed issues; (ii) stipulate to uncontested facts; (iii) determine the extent of, and schedule for, production of documents; (iv) identify and limit expert and lay witnesses; and (v) perform other tasks conducive to a productive Hearing.

(b) General Order of Proceedings. At the commencement of the Hearing, the Neutral shall confirm the issues in dispute and the authorized scope of award. Each claimant or designated representative shall present its claims and supporting arguments and proofs, and each defendant or designated representative shall do likewise with respect to its defenses. Witnesses for each party shall submit to cross-examination by adverse parties. No party shall bear the burden of proof. Unless otherwise agreed by the parties, current negotiation offers and demands, “high-low” parameters, and policy limits shall not be disclosed to the Neutral, and any such disclosure may subject the Neutral to disqualification by New England Dispute Resolution. The Neutral shall ask the parties whether they have to present any additional proofs or witnesses. If the parties rest, the Neutral shall declare the Hearing closed. If the parties have agreed to file briefs or post-Hearing evidence with New England Dispute Resolution (again subject to a reasonable reciprocal right of review), the Neutral shall declare the Hearing closed as of the specified filing deadline. The time period for issuance of the award shall commence upon the closing date of the Hearing.

(c) Award. The Neutral’s award shall (i) be in writing; (ii) be delivered through New England Dispute Resolution who will make every effort to deliver the award by facsimile, regular mail, (or) both within two weeks of the closing date of the Hearing; (iii) provide relief within the authorized scope of award; and (iv) be conclusive, binding, and enforceable.

If the parties settle their dispute before the issuance of the award, the Neutral shall, upon their request, incorporate the terms of the settlement in a consent award.

The Neutral shall have the discretion to conduct a Hearing and issue an Award in the absence of any party or designated representative duly notified thereof; provided , however, that the Neutral may not issue an award based solely on the default of a party.

- (d) Neutral Authority.** The Neutral shall have the powers to (i) administer oaths to witnesses; (ii) issue subpoenas for the attendance of witnesses and production of documents; (iii) permit the deposition of unavailable witnesses; (iv) rule on the relevance and admissibility of evidence (without any obligation, however to adhere to legal rules of evidence); (v) visit and examine any sight or object relevant to the case; and (vi) perform any other functions authorized by applicable law.

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