

## **CREATIVE DISPUTE RESOLUTIONS, LLC**

### **ARBITRATION RULES**

#### 1. Definition of Arbitration

Arbitration is a process by which a neutral third party or a panel of third-party neutrals decides the outcome of a case/dispute based on the facts presented and the governing law.

#### 2. Commencement of the Arbitration Process

The arbitration process with Creative Dispute Resolutions, LLC can be commenced in one of the following ways:

##### (a) Post-Dispute:

After a dispute arises, and in the absence of any pre-existing contractual agreement between the parties, the parties can initiate the arbitration process voluntarily by completing and signing an Agreement to Arbitrate form provided by Creative Dispute Resolutions. The parties will then be contacted by Creative Dispute Resolutions regarding scheduling of the hearing date, time, and location.

##### (b) Pre-Dispute Contractual Provision:

(i) If there is a written, pre-dispute contractual provision requiring the use of arbitration and naming Creative Dispute Resolutions as the provider, these rules shall be used (subject to possible modification by the parties). A party (“Claimant”) initiates the arbitration process by completing and serving on the other party or parties involved in the dispute (“Respondent(s)”) and on Creative Dispute Resolutions copies of the following documents: (1) an Arbitration Demand form (a template is attached hereto as Attachment A); and (2) the underlying contract between the parties requiring arbitration. To ensure proper receipt, these documents should be served on the other parties via certified mail. Adequate proof of service must be provided to Creative Dispute Resolutions. Respondent(s) will then have an opportunity to respond and to assert any counterclaims as set forth in Rule 4(a) below.

(ii) If there is a written, pre-dispute contractual provision requiring the use of arbitration, but not naming a specific arbitrator or ADR provider, Creative Dispute Resolutions may agree to administer the arbitration process

pursuant to these Rules or other rules already agreed to by the parties that are otherwise acceptable to Creative Dispute Resolutions. Notwithstanding which rules are utilized, the Claimant initiates the arbitration process by completing and serving on the other party or parties involved in the dispute and on Creative Dispute Resolutions copies of the following documents: (1) an Arbitration Demand form (a template is attached hereto as Attachment A); and (2) the underlying contract between the parties requiring arbitration. To ensure proper receipt, these documents should be served on the other parties via certified mail. Adequate proof of service must be provided to Creative Dispute Resolutions. Respondent(s) will then have an opportunity to object to the use of Creative Dispute Resolutions and/or to respond and to assert any counterclaims as set forth in Rule 4(b) below.

(c) Court Order:

- (i) If a party obtains a court order compelling arbitration and naming Creative Dispute Resolutions or one of the group's specific arbitrators as the provider, Creative Dispute Resolutions will administer the arbitration process pursuant to its Rules or other arbitration rules if already agreed to by the parties and otherwise acceptable to Creative Dispute Resolutions. The arbitration process may then be commenced by following the processes in either subsection (a) or subsection (b)(i) above.
- (ii) If a party obtains a court order compelling arbitration, but no specific arbitrator or ADR provider is named, Creative Dispute Resolutions may agree to administer the arbitration process pursuant to its Rules or other arbitration rules if already agreed to by the parties and otherwise acceptable to Creative Dispute Resolutions. Notwithstanding which rules are utilized, the arbitration process may be commenced by following the process set forth in subsection (b)(ii) above.

3. Arbitration Demand Confirmation Letter

If the arbitration process commences pursuant to Rule 2(b) or 2(c) above, Creative Dispute Resolutions will issue a demand confirmation letter to the Claimant and the Respondent(s) that confirms receipt of the Arbitration Demand and provides a copy of, or reference to, the applicable rules.

4. Response/Counterclaim

- (a) Should the arbitration process commence via a post-dispute, voluntary agreement as outlined in Rule 2(a) above, the Respondent(s) will provide its response and any counterclaim(s) in writing on the Agreement to Arbitrate form provided by Creative Dispute Resolutions.

- (b) If the arbitration process commences pursuant to Rule 2(b)(i) above, the Respondent(s) may file a response to the allegations and claims made in the Arbitration Demand and counterclaim(s), if any. The written response shall be made within 20 days after Respondent's receipt of the demand confirmation letter issued by Creative Dispute Resolutions. If a counterclaim is asserted, the Respondent(s) must set forth the nature of the counterclaim, the amount involved, and the remedy sought. The Respondent's response and counterclaim(s) must be forwarded in writing to the Claimant (or its representative) and a copy sent to Creative Dispute Resolutions. To ensure proper receipt, these documents should be served on the other parties via certified mail. Adequate proof of service must be provided to Creative Dispute Resolutions.
- (c) If the arbitration process commences pursuant to Rule 2(b)(ii) above, the Respondent(s) has the opportunity to object to the use of Creative Dispute Resolutions as the arbitration provider. The objection shall be made in writing and be served on the Claimant and Creative Dispute Resolutions within 20 days of the Respondent's receipt of the demand confirmation letter issued by Creative Dispute Resolutions. If no written objection is made within that time period, the arbitration process will continue pursuant to the applicable rules, and the Respondent may file a response to the allegations and claims made in the Arbitration Demand and counterclaim(s), if any, within 30 days of its receipt of the demand confirmation letter. If a counterclaim is asserted, the Respondent(s) must set forth the nature of the counterclaim, the amount involved, and the remedy sought. The Respondent's response and counterclaim(s) must be forwarded in writing to the Claimant and a copy sent to Creative Dispute Resolutions. To ensure proper receipt, these documents should be served on the other parties via certified mail. Adequate proof of service must be provided to Creative Dispute Resolutions.
- (d) If no written response is served, the Respondent(s) will be deemed to have denied the allegations and claims asserted.

5. Selection of the Arbitrator

The parties may agree to select any of the available arbitrators on the panel of Creative Dispute Resolutions, LLC. If the parties are unable to agree on an arbitrator, Creative Dispute Resolutions will provide the names of several potential arbitrators based on the subject matter of the dispute, location, and availability. Starting with the Claimant, the parties will strike candidates until only one remains and that individual will serve as the Arbitrator for the dispute. If an arbitration panel is to be used, the parties, starting with the Claimant, will strike candidates until the requisite number of panelists remains.

If a party fails to participate in the selection process, and proper and adequate notice of the process has been provided, Creative Dispute Resolutions will select the arbitrator based on several factors, including the preferences made by the other parties, the subject matter of the dispute, location, and availability.

6. Date, Time, and Location

The parties determine the date, time, and location for the arbitration hearing, subject to the availability of the Arbitrator. Absent agreement of the parties, the Arbitrator will make these determinations.

7. Communications With the Arbitrator

No private, *ex parte* communications with the Arbitrator are allowed. All written communications to the Arbitrator shall be sent contemporaneously and by the same means to all other parties and/or counsel involved. All other pre-hearing communications with the Arbitrator shall include all other parties and/or their counsel, as well.

8. Pre-Hearing Conference

The Arbitrator may schedule a pre-hearing conference (typically by telephone) to include all parties and/or their counsel. During this conference, the Arbitrator may review such things as scheduling issues, logistical concerns, preliminary motions, discovery requests, joint stipulation of facts, the format and procedures for the upcoming hearing, substantive issues relating to the dispute, post-hearing briefs, the form of the written award (*i.e.*, a succinct decision or a more detailed decision with findings of fact and conclusions of law), and any other matters relating to the arbitration. To the extent that disputes arise regarding these matters, and cannot be agreed to by the parties, the Arbitrator maintains the discretion and authority to resolve them.

9. Discovery

No formal discovery will be allowed except by agreement of the parties or as permitted by the Arbitrator for good cause, including the possibility that a deposition may be taken if the witness cannot be subpoenaed or cannot otherwise attend the hearing. The Arbitrator is authorized to resolve any disputes regarding the exchange of information and documents, to issue any necessary subpoenas, and to order production of any records or other documents in the possession or control of either of the parties.

10. Exchange of Exhibits

Except by separate agreement of the parties, at least five (5) business days prior to the scheduled hearing, the parties shall exchange with each other copies of all exhibits they intend to submit at the hearing.

11. Expert Testimony

Any party who seeks to introduce evidence from an expert witness who has not been deposed shall provide all other parties with a written summary of the proposed testimony signed by the expert reasonably in advance of the arbitration hearing.

12. Arbitration Hearing

A private arbitration hearing shall be conducted by the Arbitrator, and each party shall be afforded the opportunity to present material and relevant evidence. All relevant evidence shall be admissible subject to the discretion of the Arbitrator. Generally speaking, and subject to the discretion of the Arbitrator, the arbitration hearing will be conducted in a manner similar to the presentations typically made in court, including opening and closing remarks and direct and cross examinations, along with potential questioning by the Arbitrator. The Arbitrator has the right to proceed with the hearing if a party is absent without good cause and when proper notice of the hearing has been given and reasonable efforts have been made to secure the party's attendance. The Arbitrator, however, will not base his or her award solely on the default of a party, but rather on the evidence presented by the appearing party.

13. Rules of Evidence

Unless the parties agree otherwise, the technical and legal rules of evidence do not strictly apply, but may be used by the Arbitrator in determining the admissibility and/or the weight such evidence should be given. The Arbitrator will follow applicable law relating to privileges and work product protection.

14. Recording the Hearing

Any party may procure appropriate services to record the proceedings of the arbitration hearing at its own expense. Advance notice of a party's intention to record the proceedings, and the manner in which the recording will be done, shall be provided to the Arbitrator and all other parties and/or counsel. If a party requests a transcript, a complimentary copy shall be furnished to the Arbitrator. The opposing party can purchase its own copy from the transcription service.

15. High-Low Agreement

The parties may agree in advance that any award rendered by the Arbitrator shall not be enforceable beyond the limits set forth in a High-Low Agreement. Such an agreement may be provided directly to the administrative staff of Creative Dispute Resolutions, LLC, or established separately between the parties, but neither the existence nor the terms of the High-Low Agreement will be made known to the Arbitrator prior to the issuance of the award.

16. Post-Hearing Briefs

At the conclusion of the hearing, or during the parties' pre-hearing conference, the parties may inform the Arbitrator that they intend on submitting post-hearing briefs for the Arbitrator's consideration, or that they wish to forego the filing of such briefs. If such briefs are to be submitted, the Arbitrator will establish a briefing schedule.

17. Award

The Arbitrator will provide a written award promptly following the conclusion of the hearing, or following the submission of any post-hearing briefs. Subject to the Arbitrator's discretion, the written award can be presented in a succinct bottom-line fashion or be more detailed and include findings of fact and conclusions of law. At the pre-hearing conference or the hearing itself, the parties may inform the Arbitrator of their preference regarding the form of the written award. To the extent that the parties desire an itemization of damages rather than a single monetary award, they must notify the Arbitrator in advance and provide a special verdict form by the hearing that has been approved by all parties. The award shall be based on the governing law as applied to the facts. The Arbitrator may grant any remedy or equitable or legal relief that a party could receive in a court action, that he or she deems just and equitable, and/or that falls within the scope of any arbitration agreement between the parties. The Arbitrator's award shall be binding upon the parties without any right of appeal, except as may be allowed by governing law.

18. Enforcement of the Award

Judgment may be entered on the award rendered by the Arbitrator, and such judgment may be enforced pursuant to post-judgment proceedings available under governing law.

19. Statute of Limitations

All applicable statutes of limitations shall be tolled for the purposes of this arbitration no later than the day that the fully executed Agreement to Arbitrate form or the initial Arbitration Demand is received by Creative Dispute Resolutions.

20. Fees

The parties agree to pay the hourly rate for the assigned Arbitrator, which will be published and confirmed by Creative Dispute Resolutions following the selection decision. The hourly rate shall apply to all time the Arbitrator spends preparing for the arbitration (including conducting pre-hearing conference calls); reviewing and preparing email and other correspondence; attending/conducting the arbitration hearing; conducting research; reviewing written submissions and documents; and fashioning an award. To the extent that the Arbitrator must travel more than 30 minutes one-way to the designated location of the arbitration, Creative Dispute Resolutions, LLC will charge for the round-trip travel time at half the hourly rate set forth above. To the extent that the arbitration hearing is cancelled, the parties agree to pay the Arbitrator's hourly rate for all time he or she may have spent in preparation and related travel, as well as any non-refundable charges for reserved conference space or pre-paid travel.

Unless otherwise agreed to by the parties either post-dispute or through a pre-dispute contractual provision, Creative Dispute Resolutions, LLC will divide the total arbitration fees and charges equally between the parties. Invoices will be sent directly to unrepresented parties or to the parties' legal counsel every 30 days, and payment shall be made within 20 days.

To the extent that one or more parties refuse to participate in the arbitration process, Creative Dispute Resolutions retains the right to require a reasonable retainer or an agreement from the participating parties that they will cover all arbitration fees and costs if need be. Should such an agreement become necessary, the paying party will not be deemed to have waived its right to seek recoupment of any additional pre-paid fees from the non-participating party.

21. Administrative Fees

If the parties sign an Agreement to Arbitrate form and commence the arbitration process voluntarily pursuant to Rule 2(a) above, Creative Dispute Resolutions, LLC charges a single, non-refundable administrative fee of \$50 per party. These administrative fees will normally be charged at the conclusion of the arbitration process in the same invoice issued for the Arbitrator's hourly fees.

If the Claimant initiates the arbitration process by serving an Arbitration Demand form pursuant to Rule 2(b), there is a single, non-refundable administrative fee of \$100 to be paid by the Claimant at the start of the process.

22. Role of the Arbitrator

The Arbitrator is an independent contractor of Creative Dispute Resolutions, LLC. The parties agree that the Arbitrator and Creative Dispute Resolutions, LLC, including its directors, employees, contractors, and members, shall not be liable to the parties for any act or omission relating to the arbitration, nor shall any of them be subject to subpoena or other process in any judicial or regulatory proceedings relating in any way to this arbitration.

23. Modification of Arbitration Rules

These Arbitration Rules may be modified by written agreement of the parties to the dispute, which is then subject to the approval of Creative Dispute Resolutions and/or the Arbitrator.

24. Interpretation of Arbitration Rules

The Arbitrator will make any necessary decisions regarding the interpretation of the parties' Arbitration Rules.