

ARBITRATION—AD HOC ARBITRATION

Upon the request of either party, a dispute arising in connection with this Agreement shall be submitted to arbitration. The place of arbitration shall be [city, state, country] or such other place as may be agreed upon by the parties. Both parties shall attempt to agree upon one arbitrator, but if they are unable to agree, each shall appoint an arbitrator who is a Fellow of the College of Commercial Arbitrators and these two shall appoint a third arbitrator. Expenses of arbitration shall be divided equally between the parties. The prevailing party [shall] or [shall not] be entitled to reasonable attorney fees and costs not related to the administration of the arbitration.

In the event of arbitration, the arbitrator(s) shall pass finally upon all questions, both of law and fact, and his [or her or their] findings shall be conclusive. In the event of arbitration, pre-arbitration discovery shall be available to both parties and shall be governed by the Federal Rules of Civil Procedure. Information obtained by either party during the course of discovery shall be kept confidential, shall not be disclosed to any third party, and shall not be used except in connection with the arbitration proceeding. At the conclusion of the proceeding, all such information shall be returned to the other party. Both parties shall make their agents and employees available at reasonable times and places for pretrial depositions without the necessity of formal notices, subpoenas, or other court orders. Such discovery may be used as evidence in the arbitration proceeding to the same extent as if it were a court proceeding.

[Comment by Ed Costello: This clause does not choose an administration body, but tries to set the necessary ground rules for the arbitration itself. This way of going about arbitration is generally called *ad hoc*, which Latin phrase means "for the specific incident." In ADR parlance, however, *ad hoc* has come to mean without specific rules or without having appointed an administering agency.