

NEGOTIATION—ARBITRATION

• In the event of any dispute, claim, question, or disagreement arising out of or relating to this Agreement or the breach thereof, the parties hereto shall use their best efforts to settle such disputes, claims, questions, or disagreement. To this effect, they shall consult and negotiate with each other, in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of [sixty (60) days], then upon notice by either party to the other, disputes, claims, questions, or differences shall be finally settled by arbitration before [name arbitrator or] a Fellow of the College of Commercial Arbitrators, in accordance with the Commercial Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction to do so.

[Comment by Ed Costello: Conspicuous by its absence is any mention of mediation. This clause is used mostly by organizations that not only have an ongoing relationship with one another, but also have a successful history of negotiating disputes between them. Their judgment is that if they cannot negotiate a resolution themselves, then mediation will not help or may take too long. If their own negotiations fail, the parties may need a swift resolution that arbitration can provide.]