



Industry  
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CPC-2-0-18  
Issue 2  
March 2013

Spectrum Management and Telecommunications

Client Procedures Circular

# Industry Canada's Arbitration Rules and Procedures

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## 1. Interpretation

1.1 In these Rules, the following terms shall have the following meanings:

- (a) "Ancillary equipment and services" means all equipment and services that are necessary for the normal operation of a radio station and include, without limiting the scope of this term, access to a utility shed, rack, electricity, and back-up power.
- (b) "ADR Chambers" means the ADR services division of ADR Chambers Inc.
- (c) "Antenna Site" is the physical site or premises of an existing antenna (which site is the subject of a request to enter into a Site-Sharing Agreement) and includes rooftops, supporting structures and access to ancillary equipment and services.
- (d) "Appointing Committee" means the Committee established under these Rules to exercise the powers of an appointing authority.
- (e) "Arbitral Tribunal" means a sole arbitrator or a tribunal of arbitrators.
- (f) "Arbitration Agreement" means an agreement between or among two or more Parties to submit to arbitration any dispute and includes agreements between the parties related to the procedures applicable to an arbitration under these Rules.
- (g) "Arbitration Panel" means the roster of individual arbitrators who may be appointed to an Arbitral Tribunal established under these Rules.
- (h) "Business Day" means a day between Monday and Friday inclusive, excluding weekends and statutory or official holidays in the place of arbitration.
- (i) "Conditions of Licence" are conditions contained in the relevant authorizations issued by Industry Canada under the *Radiocommunication Act* as may be amended from time to time.
- (j) "Coordinator" means the person or persons at ADR Chambers responsible for administration of arbitrations.
- (k) "Final Term Sheet" refers to the Term Sheet that is presented for consideration by each Party prior to the delivery of final oral or written submissions in accordance with Rule 10.4.
- (l) "Industry Canada" means the Department of Industry and, where applicable, refers to the Minister of Industry and to successor Departments and Ministers that administer the *Radiocommunication Act*.
- (m) "Law of the Arbitration" means the law the Parties have agreed to apply to the arbitration proceedings or, in the absence of such *agreement*, the law of the Province of Ontario applicable to arbitrations.

- (n) "Licensee" refers to a telecommunications common carrier as defined in the *Telecommunications Act* and authorized by Industry Canada. It also includes a Party who is a provisional licence winner in accordance with a licensing process.
  - (o) "Notice of Arbitration" means the notice referred to in Rule 8.1.
  - (p) "Party" or "Parties" means a Licensee or Licensees with a dispute to settle between themselves related to Antenna Site Sharing or Roaming.
  - (q) "Representative" includes legal counsel for or an authorized representative of a Party.
  - (r) "Response" means the response from the other Party or Parties to the Notice of Arbitration.
  - (s) "Roaming" means the provision of automatic digital roaming services by way of Roaming Agreements on cellular, Personal Communications Services (PCS), Advanced Wireless Services (AWS), Mobile Broadband Services (MBS) and Broadband Radio Services (BRS) networks in accordance with a Roaming Agreement between licensees.
  - (t) "Roaming Agreement" is an agreement between two Parties governing the terms and conditions upon which one Party will provide Roaming to a Requesting Operator.
  - (u) "Rules" refers to the version of these Rules in force at the time that the arbitration is commenced.
  - (v) "Site-Sharing Agreement" is an agreement between two Parties governing terms and conditions upon which one Party will allow the Requesting Party to use a portion of its antenna site and to have access to the site and use of ancillary equipment and services.
  - (w) "Term Sheet" refers to a document outlining the specific and detailed terms and conditions upon which a Party would be willing to enter into a Roaming Agreement or Site-Sharing Agreement.
- 1.2 Where appropriate in these Rules, words importing the singular shall include the plural and words importing the masculine gender shall include the feminine gender and vice versa.
- 1.3 Where reference is made to the *Radiocommunication Act*, that reference shall include reference to any applicable provisions of the *Radiocommunication Regulations* and to any future applicable amendments of the *Radiocommunication Act* or to successor legislation.
- 1.4 In calculating time under the Rules:
- (a) any period of time that is specified in these Rules that is or is under ten (10) days is deemed to be business days and any period of time that is over ten (10) days is deemed to be calendar days;
  - (b) the first day of an event shall be excluded and the last day shall be included;

- (c) the time for doing an act on a particular day shall expire at the close of business for that day, which shall be 5:00 p.m. local time of the place where the arbitration is held; and
- (d) where the time calculated for an event falls on a holiday or weekend, the time is extended to the next Business Day.

1.5 The failure to comply with the Rules is an irregularity and does not nullify an arbitration, step, document or award.

## **2. Scope of the Rules**

- 2.1 The Rules apply to disputes (other than disputes regarding technical feasibility) between Parties preventing them from agreeing upon the final terms and conditions of a Site-Sharing Agreement or Roaming Agreement. At the discretion of the Arbitral Tribunal, disputes relating to more than one Site-Sharing Agreement or Roaming Agreement may be heard together.
- 2.2 The Rules and any procedures set out in an Arbitration Agreement shall be interpreted liberally with the object that the Parties enter into a Roaming Agreement or Site-Sharing Agreement in a manner that is as inexpensive and expeditious as reasonably possible, consistent with a process that is fair and suitable to the circumstances of the particular case. Any procedural question or controversy on which the Parties are not agreed may be resolved by the application of the discretion of the Arbitral Tribunal in conducting the arbitration, or of the Appointing Committee in the exercise of its functions.
- 2.3 If there is a discrepancy between the Rules and the Conditions of Licence, the Conditions of Licence shall take precedence.
- 2.4 In applying the Rules, the Arbitral Tribunal shall have regard to market information and relevant economic data in Canada and in other countries.
- 2.5 Any procedures or time period under these rules may be modified by the written consent of both Parties or by the Arbitral Tribunal or Appointing Committee in their respective sole discretion.
- 2.6 The Law of the Arbitration shall apply to arbitration procedures conducted under these Rules. In the event that any provision of these Rules or the agreement of the Parties with respect to the conduct of the arbitration is in conflict with any provisions of the Law of the Arbitration from which the Parties cannot derogate, the provisions of the Law of the Arbitration shall prevail.
- 2.7 Where an Arbitral Tribunal consists of more than one arbitrator, the Parties may agree or the Arbitral Tribunal may decide, after hearing the submissions of the Parties, to delegate the determination of some or all pre-hearing procedural matters to one member of the Arbitral Tribunal.
- 2.8 These Rules may be amended by Industry Canada from time to time.

### **3. Independence and Impartiality**

- 3.1 Unless otherwise agreed by the Parties, an arbitrator shall be and remain at all times wholly independent.
- 3.2 An arbitrator shall be and remain wholly impartial and shall not act as an advocate for any Party to the arbitration.
- 3.3 The Parties shall, prior to the appointment of any arbitrator, disclose to ADR Chambers and to the proposed arbitrators the names of all Parties and, to the extent known, all material witnesses who will be or are reasonably likely to be involved in the arbitration.
- 3.4 Every arbitrator shall, before accepting an appointment, sign and deliver to the Parties and the Coordinator a statement declaring that he or she knows of no circumstances likely to give rise to a reasonable apprehension of bias and that he or she will avoid and, if necessary, disclose to the Parties any such circumstances arising after that time and before the arbitration is concluded. No arbitrator shall be disqualified or subject to challenge by reason of the arbitrator or any Representative of a Party being a member, officer or director of ADR Chambers.
- 3.5 The Appointing Committee shall decide any challenge or dispute with respect to the qualifications, independence or impartiality of an arbitrator. At the request of any Party, the Appointing Committee may appoint a person not associated with ADR Chambers for the purpose of making any determination that the Appointing Committee is authorized to make under this Rule.
- 3.6 Any arbitrator who is unable to serve or continue to serve due to disqualification, death or disability shall be replaced in the same manner as his or her original appointment, failing which the replacement arbitrator shall be appointed by the Appointing Committee.

### **4. Notification to the Parties**

Any notification or communication from ADR Chambers or the Arbitral Tribunal to a Party or its Representative may be delivered to its last known address by delivery, registered mail, courier, facsimile transmission, e-mail, or any other means of telecommunication that provides a record of the sending thereof. Such notification or communication shall be deemed to have been delivered on the date of receipt or the date that delivery is confirmed.

### **5. Communications with the Arbitral Tribunal**

- 5.1 Any notice to ADR Chambers, or to the Appointing Committee prior to the appointment of an Arbitral Tribunal, may be served by providing a copy of the notice to ADR Chambers (contact details available at [www.adrchambers.com](http://www.adrchambers.com)). After the Appointment of an Arbitral Tribunal, the Parties may also contact the Arbitral Tribunal as noted herein or by providing notices to a location or in manner as directed by the Arbitral Tribunal.

- 5.2 Other than when all Parties are present, communications with the Appointing Committee or the Arbitral Tribunal shall be through the ADR Chambers Coordinator.
- 5.3 No Party or person acting on behalf of a Party may communicate *ex parte* with the Arbitral Tribunal, except as directed by the Arbitral Tribunal in the context of a review of information under Rule 6.4.

## 6. Privacy and Confidentiality of Arbitration

- 6.1 Subject to Rule 6.2, all arbitrations held under these Rules are private and confidential. The Parties, witnesses and their Representatives may attend at the arbitration. Other persons may only attend with the consent of the Parties or the Arbitral Tribunal.
- 6.2 No information concerning the existence of the arbitration or anything which occurs or is disclosed within the arbitration shall be disclosed or used outside of the arbitration proceedings or for any other purpose by a Party except:
- (a) for the purpose of conducting the arbitration itself including, where necessary and appropriate, interviewing and preparing witnesses, obtaining document and other support services and the administration of the arbitration;
  - (b) in connection with an application to a court for interim relief or to set aside, recognize or enforce an award;
  - (c) to Industry Canada in relation to a proceeding to enforce Conditions of Licence under the *Radiocommunication Act*;
  - (d) where a Party is required to do so by law or by a court or competent regulatory body;
  - (e) to assist future Arbitral Tribunals as set out in Rule 6.5 below;
  - (f) to an independent expert for the sole purpose of assisting the tribunal in its understanding of the issues under its jurisdiction.
- 6.3 Where a Party makes disclosure as permitted by Rule 6.2, it shall only do so:
- (a) by disclosing no more than what is legally required;
  - (b) by obtaining, where possible, an undertaking or order of confidentiality consistent with the Rules; and
  - (c) by furnishing to the Arbitral Tribunal (if the disclosure takes place during the arbitration) and to the other Party details of the disclosure and an explanation of the reason for it.
- 6.4 The Arbitral Tribunal may at any time determine a procedure to rule upon a claim by any Party that certain information must be kept confidential and may rule upon how that information will be treated during the proceedings.



- 6.5 Summaries or extracts from final decisions will be recorded and retained by ADR Chambers to assist future Arbitral Tribunals. When information from past arbitrations is deemed relevant to another arbitration by an Arbitral Tribunal, it may be released to the Parties involved in the other arbitration, with commercially sensitive information removed, so that the Parties may review it and make submissions thereon.

## **7. Appointing Committee**

- 7.1 The Appointing Committee shall have the authority and functions specified in these Rules or incidental thereto. The functions of the Appointing Committee may be delegated by the Appointing Committee to one or more of its members.
- 7.2 The current members of the Appointing Committee and of the Arbitration Panel shall be listed on the website of ADR Chambers.
- 7.3 Members of the Appointing Committee are not eligible for appointment as arbitrators by the Appointing Committee but are eligible to be appointed as arbitrators by a Party or Parties or by any other method contemplated by the agreement of the Parties or by these Rules.
- 7.4 A member of the Appointing Committee shall not be involved in the determination of any issue relating to an arbitration in which he or she has, may have or has had any interest.
- 7.5 The Appointing Committee may, in its discretion, charge the Parties for services provided by it to the Parties. Charges shall be based on the time spent on the matter by a single member of the Appointing Committee. No charge shall be made for any time spent by additional members of the Appointing Committee, unless the Parties by agreement specifically request their participation.

## **8. Notice of Arbitration**

- 8.1 The Party commencing arbitration shall deliver a Notice of Arbitration to the opposing Party and shall at the same time deliver a copy of the Notice of Arbitration to ADR Chambers. The Notice of Arbitration shall contain a statement of the nature of the dispute, the material facts relating to the proposed Site-Sharing or Roaming Agreement, the positions being put forward, the issues being raised, any agreement or proposal with respect to the number and/or selection of arbitrators for the Arbitral Tribunal and the names, addresses and other contact information of the Parties and their respective legal counsel, if known. Arbitration proceedings shall be deemed to commence on the day on which ADR Chambers receives the Notice of Arbitration and the appropriate filing fee.
- 8.2 A non-refundable filing fee is payable by the Party commencing the arbitration upon delivery to the Coordinator of the Notice of Arbitration.

- 8.3 The other Party to the arbitration shall, within five (5) days of receipt of the Notice of Arbitration, deliver a Response to the Party commencing the arbitration and shall at the same time deliver a copy of the Response to ADR Chambers. The Response shall set out the responding Party's position with respect to each issue raised in the Notice of Arbitration and any additional issues that they intend to raise.
- 8.4 For the purpose of facilitating the commencement of the arbitration or the establishment of the Arbitral Tribunal, the Coordinator or a member of the Appointing Committee may hold a telephone conference with the Parties or their Representatives to discuss the number and selection of arbitrators, whether any issues require action by the Appointing Committee, the timing of the proceedings, the desire to proceed with mediation, the fees of the arbitrator or arbitrators to be appointed and any other matter of a preliminary or administrative nature.

## **9. Appointment of Arbitral Tribunal**

- 9.1 The Parties shall be at liberty to select any qualified arbitrator or tribunal from the Arbitration Panel. In the event that the Parties fail to agree on the appointment of an arbitrator or arbitrators within two (2) days of the receipt of the notice of arbitration and the filing fee by ADR Chambers, the Appointing Committee shall appoint an arbitrator or arbitrators for them in accordance with this section.
- 9.2 The Arbitral Tribunal shall consist of one arbitrator unless both Parties agree to a three-arbitrator tribunal or the Appointing Committee, at the request of one of the Parties and after hearing submissions from the Parties determines, in its discretion, that three arbitrators should be appointed as the Arbitral Tribunal.
- 9.3 If a sole arbitrator is to be appointed and the Parties have not agreed upon the arbitrator, ADR Chambers shall provide the Parties with a list of three potential arbitrators. If the Parties are unable to agree on an arbitrator within three (3) days of receipt of the list, each side to the arbitration must delete one name from the list (by the end of the three-day period) and the Appointing Committee shall choose the arbitrator from the remaining names. In the discretion of the Appointing Committee, the list of potential arbitrators may include more than three names.
- 9.4 Where a three-person tribunal is to be appointed, each Party may appoint one member of the Arbitral Tribunal from the Arbitration Panel. The Appointing Committee shall, where the Parties or the Party-appointed arbitrators are unable to agree upon a presiding arbitrator from the Arbitration Panel, appoint the presiding arbitrator in consultation with the Party-appointed arbitrators. The Appointing Committee shall follow the same procedure as set out in Rule 9.3 above.

## **10. Final Offer Arbitration and Exchange of Term Sheets**

- 10.1 Final offer arbitration, as described herein, shall be the method used by the Arbitral Tribunal to determine awards under these rules unless the Parties consent to another method of arbitration

or the Arbitral Tribunal, at the request of one of the Parties and after hearing submissions from the Parties, directs that the arbitration proceed other than by way of final offer arbitration.

- 10.2 Within five (5) days of the appointment of the Arbitral Tribunal, each Party shall submit a Term Sheet to the other Party and the Arbitral Tribunal as well as a document briefly setting out its position and rationale with respect to the issues in dispute.
- 10.3 Within five (5) days of the exchange of Term Sheets as provided for in Rule 10.2, each Party shall communicate in writing to the other Party and to the Arbitral Tribunal that they have reviewed the offer and either accept the other Party's offer, or are submitting a counter offer by way of a revised Term Sheet, or are confirming their original offer.
- 10.4 Prior to the delivery of final written or oral submissions, Parties shall submit a Final Term Sheet for consideration by the Arbitral Tribunal.
- 10.5 Where final offer arbitration is used, the Arbitral Tribunal may select either Party's Final Term Sheet in its entirety or may select terms and conditions from each of the Final Term Sheets in order to finalize a Site-Sharing Agreement or Roaming Agreement for the purposes of making an award.

## **11. Procedural Matters**

- 11.1 The Arbitral Tribunal may convene a procedural hearing at any time it considers appropriate to resolve procedural issues and establish a timetable. A procedural hearing agenda may include points for discussion leading to identification and clarification of the issues in dispute. The questions may include:
- (a) Which elements of the Site-Sharing or Roaming Agreement are in dispute?
  - (b) Are there any issues of confidentiality that the Arbitral Tribunal should address?
  - (c) To what extent and pursuant to what procedure will there be any disclosure and production of facts and documents?
  - (d) Should time be scheduled for hearing of any questions with respect to pre-hearing disclosure?
  - (e) Is an oral hearing necessary? If so, how much time will be required? Where and when will the hearing be held?
  - (f) Should witnesses be identified and statements or Affidavits be delivered before the hearing?
  - (g) Should the Parties jointly prepare any issue briefs, documents, legal authorities or other briefs for use in the arbitration?

- (h) What should be the procedure and likely length of the hearing?
  - (i) Will expert evidence be required? Are any special rules required?
  - (j) Are interpreters necessary?
  - (k) Should there be a timetable for delivery of written argument if required?
- 11.2 The Arbitral Tribunal shall schedule the first procedural hearing to take place within fifteen (15) days of its appointment. At the first procedural hearing, the Arbitral Tribunal may make any orders to deal with the questions relating to Rule 11.1 and the Arbitral Tribunal shall set a deposit for both Parties to be applied as indicated in Rule 15 below. The deposit shall be payable within fifteen (15) days of the date of the first procedural hearing.
- 11.3 Procedural hearings will take place by conference telephone call unless otherwise agreed and Parties may agree that an oral hearing of the arbitration may take place by conference telephone call.
- 11.4 The Arbitral Tribunal shall record any agreement or orders made at any procedural hearing and shall promptly send a copy of such record to each of the Parties.
- 11.5 The Arbitral Tribunal may dispense with an oral hearing if it determines, after hearing the submissions of the Parties, that oral evidence is not necessary given the issues in dispute. In such case, the Arbitral Tribunal shall set timelines for the presentation of written evidence and submissions. The deadline for any final written evidence and submissions should be within twenty-five (25) days of the first procedural hearing.
- 11.6 If an oral hearing is required, then following the first procedural hearing, the Arbitral Tribunal shall determine if further procedural hearings are required and set the dates for those procedural hearings, the timelines for any other procedural matters and the date for an oral hearing for the arbitration, which date should be within forty-two (42) days of the first procedural hearing.
- 11.7 In the case where an oral hearing is required, then, unless the Arbitral Tribunal so directs or unless the Parties agree otherwise:
- (a) Sworn statements of evidence shall be filed in advance of the hearing in lieu of examination-in-chief and witnesses shall be subject only to cross-examination and re-examination in accordance with timelines to be set following the first procedural hearing;
  - (b) The oral hearing shall be completed within three (3) days; and
  - (c) No transcripts of the proceedings shall be required.

- 11.8 At any time during the arbitration process, the Arbitral Tribunal may require any Party to provide further evidence or submissions, including information on comparable terms and rates, in such a manner as it determines.
- 11.9 The Arbitral Tribunal may, at any time, seek independent advice on any matter in dispute from any person or review and take notice of facts and material related to relevant decisions made under these Rules provided that the Parties shall have the opportunity to review the content of the advice or decisions and make submissions thereon. At the request of a Party, the Arbitral Tribunal may require that the person providing such advice attend the hearing and answer questions posed by any Party or the Arbitral Tribunal.

## **12. The Award**

- 12.1 The Arbitral Tribunal will render its award within fifteen (15) days of the close of the oral hearing or presentation of final written submissions and evidence; however, the Arbitral Tribunal, for good reason, may extend that time after consultation with the Parties.
- 12.2 The award may not be released to the Parties until all outstanding charges of ADR Chambers for fees and disbursements relating to the arbitration and all arbitrator's fees and expenses have been paid.
- 12.3 The award shall set out the nature of the issues in dispute, the final decision regarding the Final Term Sheets relating to a Roaming or Site-Sharing Agreement that was under dispute, any order or further direction with respect to costs, and the facts and the law to the extent the Arbitral Tribunal deems necessary to explain its award.
- 12.4 An award or interim award made under the provisions of these Rules shall be treated as a final award for the purposes of recognition and enforcement by a judicial authority and shall not be subject to any appeal to the courts or otherwise unless the Parties have otherwise agreed.
- 12.5 While the Arbitral Tribunal may consider a previous award under Rule 6.5, an award does not create a binding precedent under these Rules.

## **13. Amendments and Corrections to the Award**

Within ten (10) days of an award being released, on the application of a Party or on its own initiative, the Arbitral Tribunal may amend an award to correct:

- (a) a clerical or typographical error,
- (b) an accidental error, slip, omission or similar mistake,
- (c) an arithmetical error made in a computation, or
- (d) an issue upon which the Arbitral Tribunal failed to adjudicate.

## **14. Costs of Arbitration**

- 14.1 The costs of the arbitration including legal fees, independent advisor fees and disbursements shall be fixed by the Arbitral Tribunal and allocated between the Parties in its award on the merits of the dispute or in a separate award after receiving further submissions from the Parties. The fees of the Arbitral Tribunal shall be stated separately for each arbitrator.
- 14.2 The Arbitral Tribunal shall apply the principle that the costs of the arbitration will typically be apportioned equally and that Parties shall each bear their own legal and other costs, but the Arbitral Tribunal may vary this allocation at its discretion taking into account the subject matter in dispute, the outcome and the conduct of the Parties prior to and during the arbitration.

## **15. Arbitration Fees and Deposits for Arbitration**

- 15.1 The Parties shall be jointly and severally responsible for the payment of all accounts rendered by ADR Chambers unless the Parties and ADR Chambers have otherwise agreed and have confirmed those arrangements in writing with ADR Chambers.
- 15.2 The fees and expenses of an arbitrator are subject to deduction of an administrative charge payable to ADR Chambers and agreed upon at the time of the arbitrator's appointment.
- 15.3 When the Arbitral Tribunal or the Coordinator requests a deposit of costs, that deposit shall be payable to ADR Chambers. After the award has been made, ADR Chambers shall render an accounting to the Parties of the deposits received and return any unexpended balance to the Parties.
- 15.4 A deposit on account of fees, ADR Chambers' administrative fees, and applicable taxes will be required for each day reserved for the arbitration and the time estimated by the Arbitral Tribunal for preparation for the hearing and the writing of the award. The amount and timing of deposits will be communicated to the Parties by the Coordinator. The Appointing Committee shall determine any disputes regarding the amount or timing of deposits.
- 15.5 Arbitration hearing days are booked as full days with a minimum charge of eight (8) hours per day plus preparation time.
- 15.6 The current applicable fees under the Rules are set out at [www.adrchambers.com](http://www.adrchambers.com). Information on fees and deposits may also be obtained by contacting the Coordinator.

## **16. Venue**

- 16.1 The Parties may agree to the nature of a hearing (i.e. written, by live oral hearing or a conference telephone call oral hearing) and may agree to any venue where an oral hearing is required. The venue may include the head office or other office of ADR Chambers or any other suitable location. Failing the agreement of the Parties to choose a venue, the Arbitral Tribunal shall decide upon a venue.

- 16.2 Arbitration hearings held at the Head Office of ADR Chambers in Toronto are subject to a minimum daily venue charge for the use of the facilities and that charge will increase according to the number of Parties and the size of the hearing room and necessary consulting rooms required. Faxes received during the hearing days and local telephone use and administrative assistance of ADR chambers are included. Outgoing faxes other than local and any courier costs will be charged at actual third party costs. If the arbitration is held at ADR Chambers in Toronto, there will be a catering charge for lunches or other meals and refreshments provided. If the arbitration is held at another venue, arranged for the Parties by ADR Chambers, then catering charges will be at actual third party costs. ADR Chambers may require an additional deposit from the Parties in the amount of anticipated venue, catering and other out-of-pocket costs.
- 16.3 If arbitrations are held at other than the Head Office of ADR Chambers in Toronto, the Parties may make their own arrangements and are responsible for any charges in connection therewith. If the Parties request that the Coordinator of ADR Chambers make such venue arrangements, then a separate administration fee will be charged. The Parties agree that the Coordinator is acting solely as an agent of the Parties who are jointly and severally liable to the third party venue provider for its charges. ADR Chambers will require a deposit in the appropriate amount to cover such venue arrangements. The final account of ADR Chambers will account for such deposit and may include additional charges of the third party venue provider.

## **17. Translation and Other Services**

- 17.1 If other services or supplies are required at any venue (such as equipment rental or translation services), then the Parties will make their own arrangements or request the Coordinator of ADR Chambers to make arrangements for their provisions subject to an administration fee and on the same terms of payment as set out in the case of alternative venue charges in paragraph 16.3 above.

## **18. Adjournments, Cancellation or Settlement**

- 18.1 If an arbitration is adjourned, cancelled or settled more than thirty (30) days prior to the commencement of the arbitration, or any rescheduled date, the deposit shall be returned to the Party or Parties who made it, less the amount of any expenses that may have been incurred and any fees owing to the arbitrator or arbitrators for time incurred.
- 18.2 If an arbitration is adjourned, cancelled or settled within thirty (30) days prior to the commencement of the arbitration, or any adjournment date, the deposit is subject to forfeiture in the discretion of ADR Chambers or the Arbitral Tribunal. A decision with respect to forfeiture shall not be made until the unused hearing dates have passed. The ability of ADR Chambers and members of the Arbitral Tribunal, whose fees are secured by the deposit, to rebook the dates will be a factor considered with respect to the forfeiture of some or all of the deposit.

- 18.3 Notification of any cancellation, request for adjournment or settlement shall be made by telephone and shall also be confirmed in writing by fax or e-mail to the attention of the Coordinator. Notification by voice-mail is not acceptable.

## **19. Immunity**

Neither ADR Chambers nor any member of the Arbitral Tribunal shall be liable to any Party or any counsel, officer, director, employee or witness for any Party for any act or omission in connection with any arbitration. The Parties shall jointly and severally indemnify and hold harmless ADR Chambers in respect of all such claims. The members of the Arbitral Tribunal and ADR Chambers shall have the same protections and immunities as a judge of the superior court of the province, territory or state of the place where the arbitration is held.



**Annex A – Approximate Arbitration Timelines**

<b>1. Notice served to Party</b>		<b>Approximate Timelines</b>
<b>2. Appointment of tribunal where no agreement</b> <ul style="list-style-type: none"> <li>• Obtain list from ADR Chambers</li> <li>• Consider list</li> <li>• Select Arbitrator</li> <li>• Complete selection of Arbitral Tribunal</li> </ul>	2 days* 3 days* 1 day* 1 day*	Up to 10 calendar days
<b>3. Procedural hearing</b> <ul style="list-style-type: none"> <li>• Parties file Initial Term Sheets</li> <li>• Parties make counter offer or confirm Initial Term Sheet</li> <li>• First procedural hearing</li> <li>• Arbitral Tribunal to send copy of any agreement or orders made at first procedural hearing to each Party</li> <li>• Arbitral Tribunal to set deposit</li> <li>• Oral or written hearing set</li> </ul>	5 days* 5 days*	Up to 15 calendar days
<b>4.(a) In the case of an oral hearing:</b> <ul style="list-style-type: none"> <li>• Additional procedural hearings, procedural matters</li> <li>• Evidence filed in advance of the hearing</li> <li>• Oral Hearing and Exchange of Final Term Sheets</li> </ul>	3 days*	Up to 45 calendar days
<b>4.(b) In case of a written hearing:</b> <ul style="list-style-type: none"> <li>• Presentation of written evidence, submissions and Final Term Sheets</li> </ul>		Up to 25 calendar days
<b>5. Award rendered</b>		Up to 15 calendar days
<b>Approximate total time if oral hearing</b>		<b>Up to 85 calendar days</b>
<b>Approximate total time if written hearing</b>		<b>Up to 65 calendar days</b>

*Note: These timelines are all approximate; Parties may shorten some steps or not require others.*

*\* Denotes business days.*