

Arbitration Rules, Procedures & Protocols  
of Dispute Prevention & Resolution, Inc.

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Table of Contents

INTRODUCTION

THE SERVICES OF DISPUTE PREVENTION & RESOLUTION, INC.

DPR'S MISSION STATEMENT

ARBITRATION RULES, PROCEDURES & PROTOCOLS OF  
DISPUTE PREVENTION & RESOLUTION, INC.

- I. DPR FEES & COSTS
- II. ADVANCE DEPOSITS & REFUNDS
- III. EXEMPTION FROM LIABILITY
- IV. DPR ARBITRATION PROCEDURAL RULES
  - 1. Jurisdiction of DPR
  - 2. DPR's Administrative Duties and Responsibilities
  - 3. Submission of Matters to DPR
  - 4. Representation in Arbitration
  - 5. Validity of Agreement to Arbitrate
  - 6. Consolidation
  - 7. Establishing the Venue of the Arbitration Proceedings
  - 8. Composition of Arbitration Panel
  - 9. Selection and Appointment of Neutral Arbitrator(s)
  - 10. Selection and Appointment of Party-Appointed Arbitrators
  - 11. Vacancy in the Office of Arbitrator
  - 12. Communication with the Arbitrator(s)
  - 13. Prehearing Conference and Preliminary Hearing
  - 14. Notice of Arbitration Hearings
  - 15. Attendance at Arbitration Proceedings
  - 16. Continuances
  - 17. Demands, Claims, Counterclaims, Crossclaims & Answering Statements
  - 18. Conduct of the Arbitration Proceedings
  - 19. Subpoenas
  - 20. Depositions, Discovery and Protective Orders
  - 21. Communication with the Arbitrator(s)
  - 22. Ex Parte Arbitration Proceedings
  - 23. Site Inspection
  - 24. Provisional and Interim Remedies
  - 25. Post-Hearing Submissions
  - 26. Close of Arbitration Hearings
  - 27. Reopening of Arbitration Hearings
  - 28. Deadline for Issuance of Award of Arbitrator(s)
  - 29. Form and Service of the Award of Arbitrator
  - 30. Scope of Award of Arbitrator(s)
  - 31. Change of Award by the Arbitrator(s)
  - 32. Record of the Arbitration Proceeding
  - 33. Proper Service of Notice
  - 34. Extensions of Time
  - 35. Application of DPR Rules
- V. OPTIONAL PROCEDURAL PROVISIONS

- A. [Deadline-Driven Arbitration Procedures](#)
- B. [Reasonable and Managed Discovery](#)
- C. [Prehearing and Dispositive Motions](#)

## Introduction

The Arbitration Rules, Procedures and Protocols (Rules) of Dispute Prevention & Resolution, Inc. (DPR) are designed to provide a flexible, streamlined and effective set of procedures to govern the arbitration process. The Rules govern all arbitration proceedings which are administered under the auspices of DPR, except those cases in which the parties have provided for another set of Rules or created their own customized arbitration rules and procedures. Unless the parties agree in writing to some other governing law (e.g., The United States Arbitration Act), these Rules are to be interpreted and applied pursuant to and in conjunction with **Hawaii Revised Statutes Section §658A<sup>1</sup>**. Parties to an existing controversy or dispute may submit the dispute to DPR for resolution by creating their own submission agreement or by utilizing the following submission language:

***The parties in this matter have agreed and hereby submit this dispute to binding arbitration before one/three Arbitrator(s) in accordance with the Arbitration Rules, Procedures, and Protocols of Dispute Prevention & Resolution, Inc. (Rules) now in effect. We agree that all matters in controversy between the parties are subject to this agreement and to HRS §658A. We further agree that any award rendered in this proceeding is binding upon the parties and that a judgment of any court of competent jurisdiction may be entered on the award.***

Parties to a written agreement or contract may provide for arbitration as the dispute resolution mechanism for any and all future disputes by adopting the following clause in their agreement:

***Any and all claims, controversies, or disputes arising out of or relating to this contract/agreement, or the breach thereof, shall be fully and finally resolved by arbitration in accordance with the Arbitration Rules, Procedures, and Protocols of Dispute Prevention & Resolution, Inc., then in effect and to HRS §658A. In the event arbitration is invoked, the parties agree that one/three Arbitrator(s) shall be appointed to hear and resolve the case. The parties further agree that the Award of the Arbitrator is binding upon the parties and that judgment on the Award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.***

Parties to a written agreement or contract may provide for mediation/arbitration as the dispute resolution mechanisms for any and all future disputes by adopting the following clause in their agreement:

***Any and all claims, controversies or disputes arising from or relating to this contract/agreement, or the breach thereof, which remain unresolved after direct negotiations between the parties, shall first be submitted to confidential mediation in accordance with the Mediation Rules, Procedures, and Protocols of Dispute Prevention & Resolution, Inc., then in effect. If any issues, claims or disputes remain unresolved after mediation concludes, the parties agree to submit any such issues to binding arbitration before one/three Arbitrators in accordance with the Arbitration Rules, Procedures and Protocols of Dispute Prevention & Resolution, Inc., then in effect and to HRS §658A. The parties further agree that judgment on the Award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.***

## REVISED UNIFORM ARBITRATION ACT (RUAA) OVERVIEW

On August 3, 2000, the National Conference of Commissioners on Uniform State Laws passed major revisions to the Uniform Arbitration Act ("UAA"), the statute that forms the basis for arbitration law

nationwide. These revisions are the first significant changes to the UAA in 45 years and gave rise to the new, revised statute called the Revised Uniform Arbitration Act ("RUAA").

The primary purpose is to modernize and clarify existing provisions, and to codify important developments in case law. In addition, since arbitration is a consensual process, the autonomy of the contracting parties, a fundamental concept of arbitration, is upheld and reinforced by the RUAA.

Specifically, pursuant to Section 4, certain provisions in the RUAA are waivable while others are non-waivable. It is the responsibility of the party(s) to decide which provisions they choose to "waive or agree to vary the effect of," if any, and agree accordingly among themselves. So, while the RUAA may be argued to make arbitration start to look more legal-like than the founders of arbitration may have originally foreseen, the RUAA does allow the parties to deselect or vary certain provisions of the RUAA. This places the burden on the user of arbitration to be even more astute regarding the appropriateness of various RUAA provisions in a given agreement at the contract negotiation stage.

## RUAA ADOPTION IN HAWAII

In Hawaii, the effective date of the Revised Uniform Arbitration Act ("RUAA") is July 1, 2002. Pursuant to Section 3(a) of the RUAA, all arbitration agreements made on or after July 1, 2002 are governed by the RUAA. Pursuant to Section 3(b), the RUAA also governs all arbitration agreements made before July 1, 2002, if all parties to the arbitration proceeding agree that they follow the RUAA even though they were entered into before the RUAA's effective date. Finally, pursuant to Section 3(c), after June 30, 2004, the RUAA governs all arbitration agreements whenever they were entered into.

[Special attention has been taken to ensure the DPR Rules conform to the new RUAA revisions. Nevertheless, since it is outside of our role as the ADR firm to dispense legal advice, be sure to secure competent legal counsel to review the RUAA as it pertains to your specific needs. To assist you in accessing the RUAA, simply click on "Show HRS 658A" on the any page of the [DPR website www.dprhawaii.com](http://www.dprhawaii.com) and you will be immediately taken to the verbatim text of the RUAA.]

## HIGHLIGHTS OF THE RUAA

The following are some highlights from the RUAA.

Now that electronic transmissions are fast becoming the norm in business and law, the RUAA recognizes e-documents as a viable means of creating and transmitting arbitration agreements and related documentation. For example, the term "record" is referenced throughout the RUAA and is defined in Section 1 as "information inscribed on a tangible medium or stored in an electronic or other medium and is retrievable in perceivable form." Thus, "record" includes the usual written letter format we have been used to for decades, as well as the more recent phenomenon of electronic documents.

Under Section 9(a), notice to all signatories of an arbitration agreement is required - not just to the party you are filing against. Therefore, in a construction arbitration, for example, all subcontractors would need to be given notice even if a contractor is filing against only one subcontractor.

Consolidation is allowed in Section 10, unless expressly prohibited in the contract, if certain conditions are met. The parties would file a motion with a court to order consolidation.

Provisional remedies are covered in Section 8. Among other issues, a mechanism for enforcement of them in distant states is addressed.

Summary dispositions are allowed in Section 15(b).

Subpoenas, depositions and discovery are addressed in Section 17 specifying Arbitrator(s) authority to issue and order these evidentiary tools. Important mechanisms now are in place

through the RUA simplifying the enforcement of subpoenas, for example, so advocates will not be required to jump through multiple hoops to enforce them in other states.

Section 21 allows but places special limits on the Arbitrator(s)'s powers regarding attorneys' fees and punitive damages. Section 21 is a waivable provision so parties can agree in the pre-arbitration contract negotiation stage to tailor or eliminate the attorneys' fees and punitive damages provision as they see fit. However, note that such waiver of this section on attorneys' fees and punitive damages is not available in arbitration cases involving statutory rights, such as those involving anti-discrimination laws.

## THE SERVICES OF DISPUTE PREVENTION & RESOLUTION, INC.

DPR is a full service ADR firm which designs and implements dispute prevention and resolution processes and provides complete administrative, financial and case management services for a broad range of dispute avoidance and adjudication processes, including: Partnering, Neutral Evaluation, Mediation, Non-Binding Arbitration, Binding Arbitration (standard arbitration, baseball arbitration, high/low, etc.) and ADR Trial Procedures (Binding Arbitration with managed discovery). DPR offers clients the unique opportunity to obtain the full range of dispute prevention and resolution services through one ADR firm and provides the following benefits:

**CHOICES** among many ADR processes and from a panel of highly skilled neutrals;

**CONFIDENTIALITY** is strictly maintained in all matters;

**ECONOMY** is realized through predictable and cost-effective fees;

**EXPERIENCED** and efficient case management from a service-minded staff;

**EXPERTISE** is assured through the DPR Distinguished Panel of Neutrals;

**FACILITIES** are centrally located, spacious, comfortable and private;

**FLEXIBILITY** to help identify and utilize the most appropriate ADR process;

**FULL SERVICE** organization from prevention to final resolution of disputes;

**INTEGRITY** through an unwavering pledge to impartial and ethical conduct.

**DPR'S MISSION STATEMENT** DPR maintains a steadfast commitment to excellence, integrity, and impartiality through the delivery of quality service, highly skilled and professional neutrals, and user-friendly procedures. DPR's professional staff and Distinguished Panel of Neutrals bring a high degree of professionalism and decades of ADR experience to the service of DPR's clients.

## ARBITRATION RULES, PROCEDURES & PROTOCOLS OF DISPUTE PREVENTION & RESOLUTION, INC.

### I. DPR FEES & COSTS

Dispute Resolution Fees-Arbitration DPR and the appointed DPR neutral charge a single hourly rate or daily fee on each case. In order to assure the highest degree of objectivity and independence, DPR negotiates and administers all arrangements for compensation between the parties and the appointed DPR neutral (except in those cases in which one or more of the panel members is party-appointed and prior arrangements have been made between the party(s) and their appointed panel member). The hourly or daily fee covers (a) the compensation of the appointed neutral, (b) the administrative costs of DPR, (c) the hearing room charges, and (d) other expenses normally associated with an ADR proceeding (e. g., phone and fax charges, copying, etc.). In keeping with its mission, DPR strives to provide parties with ADR forums which are both cost-effective and economically predictable.

Any out-of pocket expenses incurred by the DPR appointed neutral (e. g., air fare, lodging, meals) in conjunction with a DPR proceeding are to be borne equally by the parties and shall be paid to the appointed neutral from funds deposited by the parties with DPR for that purpose.

DPR will assess the normal Hawaii General Excise Tax for all professional services rendered by DPR and DPR appointed neutrals.

## II. ADVANCE DEPOSITS & REFUNDS

DPR policy requires that each party submit advance deposits toward the anticipated fees and expenses of the DPR appointed neutral on an equal or pro rata basis. DPR may require the parties to submit additional deposits during the pendency of the arbitration proceeding based on the expected duration of the matter. DPR and the DPR appointed neutral reserve the right to suspend their services for non-payment by any party. In the event of inadequate or non-payment of requested deposits by a party, DPR may request that the other party(s) involved in the proceeding submit additional deposits to assure that an adequate sum is available to compensate the DPR neutral.

Any unexpended funds remaining at the conclusion of the arbitration shall be promptly refunded to the parties.

## III. EXEMPTION FROM LIABILITY

Neither DPR nor the DPR appointed neutral are necessary parties to any arbitral, judicial or administrative proceeding which arises from or relates to any DPR arbitration proceeding or the parties thereto. By agreeing to these Rules, the parties acknowledge that neither DPR nor the DPR appointed neutral is or shall be liable for any act or omission that occurs in relation to the administration and/or conduct of any arbitration proceeding commenced pursuant to these Rules.

## IV. DPR ARBITRATION PROCEDURAL RULES

### 1. *Jurisdiction of DPR*

The Arbitration Rules, Procedures and Protocols (Rules) of Dispute Prevention & Resolution, Inc. (DPR) shall govern all arbitration matters which are administered by DPR unless the parties agree to adopt and utilize another set of arbitration rules and procedures. The parties may modify these Rules, by written agreement, provided that such modifications are consistent with the parties' agreement to arbitrate and with the laws of the State of Hawaii. The Rules in effect at the time a matter is filed with DPR shall govern the proceeding.

### 2. *DPR's Administrative Duties and Responsibilities*

As a full service ADR firm, DPR shall provide complete administrative services to the parties who agree to arbitrate their disputes in accordance with the DPR Rules. DPR shall serve in an impartial capacity and shall undertake to manage the administrative, logistical, and financial aspects of all arbitration matters under its jurisdiction. DPR may designate members of its administrative staff to carry out the duties of the administrator.

### 3. *Submission of Matters to DPR*

The arbitration process may be initiated as follows:

- a. In those matters in which the disputants wish to submit an existing dispute to arbitration under the auspices of DPR they may do so by filing a fully executed

DPR Submission to ADR form with the DPR office. The disputants may also submit an existing dispute by way of a jointly signed submission letter or a customized ADR submission agreement.

- b. In those matters in which the parties have provided for arbitration in a contract or agreement in written or electronic form, which designates DPR Rules and/or DPR administration, the initiating party shall give written notice to all other signatories to the agreement of its intention to arbitrate. Such arbitration action shall be commenced by the filing of a Demand for Arbitration or a detailed letter pleading which sets forth: the nature of the dispute; the preferred number of Arbitrators to be appointed (if not stated in the agreement); the remedy or relief sought; and the requested venue of the arbitration proceedings. One original copy of the Demand for Arbitration (or detailed letter pleading) shall be filed, via first class mail, with the named Respondent(s) and four copies of the Demand for Arbitration together with four copies of the parties' contract or agreement containing the arbitration provision should be filed with DPR. c) Thereafter, DPR will provide written notice of the arbitration proceeding to all parties, and assign a case number to the arbitration proceeding. The respondent(s) shall have 14 calendar days from the date that DPR gives written notice of the arbitration proceeding within which to file an answering statement and/or assert a counterclaim, if any. If a counterclaim is filed, it should be filed in a manner which is consistent with subsection 3(b) above. If the respondent(s) elect not to submit an answering statement or counterclaim, it will be deemed as a denial of the claim(s) asserted in the Demand for Arbitration.

#### 4. *Representation in Arbitration*

Every party in an arbitration proceeding has the right to be represented by legal counsel or by another authorized representative. Any legal or other authorized representative who will be participating in an arbitration proceeding must enter an appearance in writing with DPR and the other party(s) at least 10 days before the commencement of the arbitration hearing. Any person who substitutes as counsel/authorized representative during the pendency of an arbitration proceeding must notify DPR and the other party(s) in writing before making an appearance at any proceeding relating to the arbitration.

#### 5. *Validity of Agreement to Arbitrate*

Issues of arbitrability such as whether a valid agreement to arbitrate exists, whether a contract containing a valid agreement to arbitrate is enforceable, and other related issues shall be handled pursuant to the RUAA, Section 6.

#### 6. *Consolidation*

Under the RUAA, Section 10, a partial description of which is set forth below, unless the agreement to arbitrate prohibits consolidation, a party may file a motion with the court to order consolidation of separate arbitration proceedings. Consolidation of separate arbitration proceedings may occur if:

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1. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a

- separate agreement to arbitrate or a separate arbitration proceeding with a third person;
2. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;
  3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and
  4. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.
- b. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.
  - c. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

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### *7. Establishing the Venue of the Arbitration Proceedings*

If the written agreement to arbitrate names a site to conduct the arbitration, such site shall be the venue for the arbitration, unless all parties agree otherwise. Any objection to a requested venue must be received in writing by DPR within 10 days of the date of the initiation of the arbitration proceeding by DPR. Thereafter, the venue shall be the one requested by the initiating party. In those instances in which a timely objection to a requested venue is lodged with DPR, such disputes shall be resolved as follows:

1. If each of the venues requested by the parties is within the State of Hawaii, the duly-appointed DPR Arbitrator(s) shall review the parties' contentions and issue a binding venue determination.
2. If one or more of the venues requested by a party or parties is outside of the State of Hawaii, the DPR case management staff shall review the parties' contentions and issue a binding venue determination.

### *8. Composition of Arbitration Panel*

Unless the agreement to arbitrate provides for the appointment of three Arbitrators or the parties mutually agree to the appointment of a panel of three Arbitrators, DPR shall appoint one Arbitrator to hear and determine the dispute.

### *9. Selection and Appointment of Neutral Arbitrator(s)*

If the written agreement provides for a particular Arbitrator(s) selection procedure, that procedure shall be followed by DPR and the parties. If the written agreement is silent or provides no Arbitrator(s) selection procedure methodology, the Arbitrator(s) shall be appointed as follows: DPR shall provide the parties with a list of proposed Arbitrators and the parties shall have seven calendar days within which to attempt to agree to the appointment of one of the proposed Arbitrators. If the parties fail to stipulate to the appointment of an Arbitrator within the time specified, DPR will arrange an administrative conference with the parties (either in person or by teleconference) during which time the Arbitrator shall be selected via the alternative strike-off procedure. This procedure requires the parties to strike nominees from the list of proposed Arbitrators on an alternating basis until a single name remains or, in the case of a panel, until three names remain. The DPR case management staff shall determine the order in which the parties

strike names from the list. In the event the duly-selected Arbitrator is unable or unwilling to serve, DPR will appoint as the Arbitrator the individual stricken last from the list. Any party who, after notice from DPR, fails to participate in the alternative strike-off procedure is deemed to have waived its right to participate in the alternative strike-off procedure and DPR shall proceed to appoint an Arbitrator in accordance with these Rules. All Arbitrators appointed pursuant to this section shall file a signed acceptance of appointment with DPR before the arbitration proceedings commence. Neutral Arbitrators appointed pursuant to these Rules shall disclose in writing any circumstance, situation, or event which is likely to affect their ability to be impartial. Arbitrators must disclose (and under the RUAA, Section 12(b), have a continuing obligation to disclose) any past, present, or possible future relationship with the parties, their witnesses, their counsel or another arbitrator including any bias or any financial or personal interest in the result of the arbitration. DPR shall immediately provide the parties with any disclosure given by an Arbitrator under these Rules and shall afford the parties an opportunity to comment in writing. Should any party object to the continued service of any neutral Arbitrator, DPR shall, after reviewing the parties' contentions, issue a binding determination as to whether the Arbitrator is to be disqualified or reaffirmed.

Unless specified otherwise by the parties or the arbitration provision, all Arbitrators appointed by DPR shall be neutral Arbitrators.

#### *10. Selection and Appointment of Party-Appointed Arbitrators*

If the agreement of the parties provides for the direct appointment by the parties of one Arbitrator, the parties must make their appointment within the time specified in the agreement. If any party fails to make such an appointment within the time specified in the agreement or, if no time is specified, then within 14 calendar days from the date DPR initiates arbitration proceedings, DPR shall appoint the Arbitrator. The parties may request that DPR provide a list of proposed Arbitrators from which the party(s) may select a party-appointed Arbitrator. Each party shall notify the other party(s) and DPR in writing of the appointment of its party-appointed Arbitrator and shall provide the name, business affiliation, address, phone number, and facsimile number for their appointed Arbitrator.

The party-appointed Arbitrators may request a list of proposed Arbitrators from DPR from which the third Arbitrator may be appointed. If the agreement provides a period of time within which the third Arbitrator is to be appointed and the party-appointed Arbitrators fail to make the appointment within the time specified, DPR shall appoint the third Arbitrator. The third Arbitrator shall, in all cases, serve as the chairperson of the arbitration panel.

Unless the agreement provides otherwise, party-appointed Arbitrators shall disclose in writing any circumstance, situation, or event which is likely to affect their ability to be impartial. Party-appointed Arbitrators must disclose any past, present, or possible future relationship with the parties, their witnesses, and their counsel including any bias or any financial or personal interest in the result of the arbitration. DPR shall immediately provide the parties with any disclosure given by a party-appointed Arbitrator under these Rules and shall afford the parties an opportunity to comment in writing. Unless specifically authorized by the agreement or by stipulation of the parties, DPR shall not have the discretion nor the authority to remove a party-appointed Arbitrator for cause.

#### *11. Vacancy in the Office of Arbitrator*

If for any reason the duly-appointed Arbitrator(s) are unable to perform the functions and duties of the office of Arbitrator, DPR shall, in accordance with the agreement and these Rules, appoint a substitute Arbitrator(s). DPR shall have the authority to appoint a qualified Arbitrator from its Distinguished Panel of Neutrals or elsewhere. If the office of Arbitrator becomes vacant during the pendency of the arbitration proceeding, the parties may agree to proceed with the remaining Arbitrator(s) or may agree to reduce the panel (if there are three) from multiple Arbitrators to a single neutral Arbitrator.

#### *12. Communication with the Arbitrator(s)*

Except for prehearing conferences, preliminary hearings, and arbitration hearings, all written and oral communications relating to the arbitration proceeding shall be directed to the neutral Arbitrator through DPR, with copies sent simultaneously to the other party(s).

Unless the agreement provides otherwise and except for prehearing conferences, preliminary hearings, and arbitration hearings, the parties shall not have ex parte or unilateral communication with their party-appointed Arbitrators after they have been officially appointed under the terms of the agreement and/or these Rules. All written and oral communications relating to the arbitration proceeding shall be directed to the party-appointed Arbitrators through DPR, with copies sent simultaneously to the other party(s).

#### *13. Prehearing Conference and Preliminary Hearing*

At the request of any party or by direction of the Arbitrator(s), a prehearing conference may be scheduled with the parties and/or their representatives in order to: specify the issues; clarify the claim/counterclaim; stipulate to uncontested facts; identify witnesses; establish pre-hearing deadlines; and to schedule the hearings.

At the discretion of the Arbitrator(s) a preliminary hearing with the parties and/or their representatives may be scheduled prior to the commencement of the arbitration proceedings during which the Arbitrator(s) may: establish a pre-arbitration schedule; require the advance filing of exhibits; encourage and/or direct the parties to produce relevant documents and other information; direct the parties to identify any witnesses to be called; establish a pre-arbitration motion schedule; and establish a schedule for the arbitration hearings.

#### *14. Notice of Arbitration Hearings*

Unless the parties specifically agree otherwise (in the case of expedited proceedings), the Arbitrator shall set the date, time, and location for each arbitration hearing held in conjunction with the agreement and under these Rules. DPR shall provide written and/or facsimile notice to the parties at least seven calendar days in advance of the hearing date. Pursuant to the RUAA, Section 9(b), unless a party objects for lack or insufficiency of notice before the beginning of the hearing, by appearing at the hearing, the party waives any such objection.

#### *15. Attendance at Arbitration Proceedings*

Any party or representative who has a direct interest in the arbitration shall have the right to attend any and all arbitration proceedings. The duly-appointed Arbitrator(s) shall have the authority to exclude or sequester witnesses and other persons who are not a party to the arbitration proceeding.

## *16. Continuances*

Any party who wishes to postpone any hearing must initially seek the agreement of the other party(s), and if the other party(s) do not join in the postponement request, the party seeking the continuance must petition the Arbitrator(s) in writing. The Arbitrator(s) may continue any hearing upon a showing of good cause by a party. The Arbitrator(s) may schedule a (telephonic or in person) prehearing conference for the purpose of hearing oral argument concerning the continuance request from the parties.

## *17. Demands, Claims, Counterclaims, Cross Claims & Answering Statements*

All demands, claims, counterclaims, crossclaims and answering statements shall be made in writing and shall be filed with DPR and the other party(s). The parties should not file demands, claims, counterclaims, crossclaims, or answering statements directly with the Arbitrator(s) unless specifically authorized by the Arbitrator(s) to do so. A party shall have 14 calendar days following receipt by DPR of a demand, claim, counterclaim, crossclaim, or answering statement within which to file a written response with DPR. Thereafter, the Arbitrator(s) shall establish a cut-off deadline after which no new or different claims may be asserted in the arbitration without the express permission of the Arbitrator(s).

## *18. Conduct of the Arbitration Proceedings*

The Arbitrator(s) may structure the format of the hearings in any fashion which affords all parties a complete and thorough opportunity to present all evidence, testimony, exhibits, argument and other material which are deemed to be relevant to the arbitration. To the greatest extent possible the order of the arbitration proceeding shall be discussed and agreed to during the prehearing conference. The Arbitrator(s) have the discretion to vary the order of the proceeding in the event of unforeseen scheduling problems.

Pursuant to the RUAA, Section 15(b), the Arbitrator(s) may decide a request for summary disposition of a claim or particular issue if the parties agree or if the requesting party gives adequate notice and the other party(s) has reasonable opportunity to respond.

The Arbitrator(s) shall determine the weight and relevance of all evidence offered by the parties. The Arbitrator(s) shall not be required to apply the Rules of Evidence in the arbitration, however, any party has the right to object to the introduction of evidence offered by another party. The Arbitrator(s) may, at the request of a party and upon a showing of good cause, enforce a privilege which is asserted by a party or a witness. The Arbitrator may on his/her own initiative or upon motion by a party establish an "in camera" procedure for reviewing certain documents upon or in regard to which a privilege or other protection is being asserted.

The Arbitrator(s) may receive evidence by affidavit and/or via telephone, video conference or other electronic means of communication, however, the Arbitrator(s) shall assign to such evidence the weight that the Arbitrator(s) deem appropriate after due consideration of any objection lodged by any other party.

The Arbitrator(s) shall require all witnesses to testify under oath administered by the Arbitrator(s) or by another duly-authorized person.

## *19. Subpoenas*

The Arbitrator(s) is empowered by law to subpoena witnesses or documents to the arbitration proceeding and may do so upon the request of any party or may do so on his/her own initiative. Any person, party, or entity who wishes to object to a subpoena must do so in writing with a copy of the written objection sent to DPR, and to the other party(s). Thereafter, the Arbitrator(s) shall issue a conclusive determination on the objection. Under the RUAA, Section 17(g), if the witness is in another state and if that state has adopted the RUAA, the party may take the subpoena from the Arbitrator(s) directly to the out-of-state court for enforcement.

#### *20. Depositions, Discovery and Protective Orders*

Under the RUAA, Section 17(b), the Arbitrator(s) may permit a deposition of a witness to be taken for use as evidence at a hearing. Under Section 17(c), the Arbitrator(s) may also permit such discovery as the Arbitrator(s) decides is appropriate in the circumstances. Under Section 17(e), the Arbitrator(s) may issue protective orders to prevent the disclosure of privileged or confidential information.

#### *21. Communication with the Arbitrator(s)*

Other than at prehearing conferences, preliminary hearings or oral hearings, direct communication between the parties and/or their representatives and the Arbitrator(s) is not permitted. All written or oral communication from the parties or their representatives shall be directed to DPR, with a copy to the other party(s). Thereafter, DPR will transmit all such communications to the Arbitrator(s).

#### *22. Ex Parte Arbitration Proceedings*

The Arbitrator(s) may proceed with any hearing in the absence of any party or representative who fails to appear and/or fails to request a continuance. Before proceeding the Arbitrator(s) shall investigate as to whether proper notice under these Rules has been provided and, if so, shall make an Award based upon the evidence, testimony, exhibits and argument offered by the party(s) who are present. If the Arbitrator(s) determine that the notice of the hearing was insufficient he/she shall continue the hearing to a new date and time and DPR shall issue written notice to all parties pursuant to these Rules.

#### *23. Site Inspection*

Any party may request and the Arbitrator(s) may direct that an inspection of the site, premise or project which is the subject of the arbitration is appropriate. The Arbitrator(s) shall set the date, time and place of the site inspection and DPR shall issue written notice to the parties. The Arbitrator(s) shall advise the parties in advance as to whether the site inspection is to be treated as an extension of the oral hearings during which testimony and other evidence will be considered or whether the site inspection is limited to a field inspection only. In either case, the parties and their representatives have the right to be present during the site inspection on the same basis as any other portion of the arbitration hearing.

#### *24. Provisional and Interim Remedies*

If the Arbitrator(s) has not yet been appointed, and if a party to an arbitration proceeding files a motion with the court, upon sufficient cause shown by a party, a court may order injunctive relief pursuant to the RUAA, Section 8.

If the Arbitrator(s) has been appointed, the Arbitrator(s) may, upon sufficient cause shown by a party, order injunctive relief including interim awards to maintain the status quo or protect the property which is the subject of the arbitration until the Award of Arbitrator(s) is rendered or the controversy is otherwise resolved to the same extent and under the same conditions as if the controversy were the subject of a civil action. Any determination rendered by the Arbitrator(s) shall be without prejudice to the rights of the parties or to the final determination of the dispute. The Arbitrator(s) may issue an interim order or decision regarding the interim relief ordered and is/are authorized to require security for the costs of measures ordered pursuant to these Rules.

Otherwise, pursuant to the RUAA, Section 8(b)(2), a party to an arbitration proceeding in which the Arbitrator(s) has been appointed may request a provisional remedy only if the matter is urgent and the Arbitrator(s) is not able to act timely or cannot provide an adequate remedy.

#### *25. Post-Hearing Submissions*

Parties may be directed by the Arbitrator(s) to file post-hearing documents and other evidence with DPR for transmittal to the Arbitrator(s). Unless otherwise directed by the Arbitrator(s), all post-hearing submissions shall be sent directly to the other party(s).

#### *26. Close of Arbitration Hearings*

The Arbitrator(s) shall formally declare the hearings closed on (a) the final day of the arbitration proceeding after the party(s) have rested their respective cases or (b) on the date that the Arbitrator(s) set receipt of the final post-hearing submission. The Arbitrator(s) through DPR shall notify the parties in writing of the date upon which the arbitration hearings were closed.

#### *27. Reopening of Arbitration Hearings*

The Arbitrator(s) shall have the discretion to reopen the arbitration hearing on his/her own initiative, or upon petition by a party, at any time prior to the issuance of the Award of Arbitrator(s). If the Arbitrator(s) determines that reopening the hearings is appropriate, he/she shall have an additional 21 days from the re-closing of the hearings within which to issue the Award of Arbitrator(s).

The Arbitrator(s) may not reopen the hearings after the issuance of the Award of Arbitrator(s) unless specifically authorized to do so by the parties or unless directed to do so by an appropriate court.

#### *28. Deadline for Issuance of Award of Arbitrator(s)*

Unless all parties agree otherwise or unless the parties' agreement specifies otherwise, the Arbitrator(s) shall issue the Award of Arbitrator(s) no later than 21 days following the formal close of the arbitration hearings.

#### *29. Form and Service of the Award of Arbitrator*

The Arbitrator(s) shall make a record of the Award. The Award of Arbitrator(s) shall be in writing or in an electronic document signed or authenticated by the Arbitrator(s), and shall be acknowledged or proven in a like manner as a deed for the conveyance of real estate, and shall be delivered to the parties or the parties' attorneys personally or by registered or certified mail. The Arbitrator(s) may authenticate an Award by e-signature. If the Arbitrator(s) provides the parties with an oral determination, the terms of the oral decision shall be reduced to writing in accordance with these Rules.

If the Arbitrator(s) awards punitive damages or other exemplary relief, the Arbitrator(s) shall include in the Award of Arbitrator(s) the basis in fact justifying and the basis in law authorizing the Award and state separately the amount of the punitive damages or other exemplary relief, as specified in the RUAA, Section 21(e).

### *30. Scope of Award of Arbitrator(s)*

Unless the parties' agreement provides otherwise, the Arbitrator(s) must determine all issues submitted to arbitration by the parties and may grant any and all remedies that the Arbitrator(s) determine to be just and appropriate under the law. In the Award of Arbitrator(s) the Arbitrator(s) shall issue a determination on the issue of all arbitration-related fees and costs, including: Arbitrator(s)' compensation and expenses; DPR's fees and expenses; and, attorney's fees and costs, if provided for in the parties' agreement or the Submission to Arbitration, or authorized by law in a civil action involving the same claim.

The Arbitrator(s) may award punitive damages or other exemplary relief if the conditions of the RUAA, Section 21 are met.

The Arbitrator(s) shall have the authority, during the course of the arbitration proceeding, to issue Interim Rulings, Orders, and/or Partial Final Awards as necessary.

Any and all Interim Rulings, Orders, Partial Final Awards, and Award of Arbitrator(s) in matters in which three Arbitrator(s) have been appointed shall be by a majority of the arbitration panel.

In the event the parties enter into a settlement at any time before the Arbitrator issues the Award of Arbitrator(s), the parties may request that the Arbitrator enter a Stipulated Award of Arbitrator(s) which sets forth the terms of their settlement.

### *31. Change of Award by the Arbitrator(s)*

Parties may apply to the Arbitrator(s) to modify, correct or clarify an Award, pursuant to the procedures specified in the RUAA, Section 20.

### *32. Record of the Arbitration Proceeding*

Any party may retain the services of a court reporter to maintain a stenographic record of the arbitration proceeding. The party requesting a court reporter must notify the other parties in writing that such a request has been made and must pay the cost of the court reporter. The parties may agree to share the cost of the court reporter.

If the parties stipulate or if the Arbitrator(s) determine that the transcript is also the official record of the proceeding, a complete copy of the transcript must be made available to all

parties and to the Arbitrator(s). Under these circumstances the parties shall pay the cost of the record equally. The parties may tape record or video tape the arbitration proceeding only with the consent of the Arbitrator(s). Any audio recording or video tape of the proceeding is not considered to be the official record of the proceeding.

### *33. Proper Service of Notice*

Except for the Award of Arbitrator(s) which shall be served by hand-delivery, or registered/certified mail, DPR and the Arbitrator(s) shall serve notice to the parties by U. S. Mail to the last known address of the party or its designated representative. The Arbitrator(s) and/or DPR may also utilize personal delivery or facsimile transmission service to provide notice in accordance with these Rules.

### *34. Extensions of Time*

The Arbitrator or DPR may grant reasonable extensions of times and deadlines established by these Rules, however, the deadline for the issuance of the Award of Arbitrator(s) may be extended only with the consent of the parties.

### *35. Application of DPR Rules*

These Rules shall be interpreted and applied in conjunction and conformity with the applicable arbitration law. Unless specified otherwise, the duly-appointed Arbitrator(s) shall have the authority to interpret and apply the meaning and intent of these Rules.

## **V. OPTIONAL PROCEDURAL PROVISIONS**

In those cases where the parties agree that deadline-driven procedures and managed discovery are appropriate mechanisms for facilitating the preparation and presentation of the case, they may, at their mutual election or by previous contractual agreement, authorize the Arbitrator(s) to apply any one or combination of the following procedures:

### **A. Deadline-Driven Arbitration Procedures**

1. **Initial Prehearing Conference.** The Arbitrator or the arbitration panel shall convene and conduct a prehearing conference no later than 10 calendar days following the appointment of the single neutral Arbitrator or, in the case of a panel, of the third Arbitrator.
2. **Hearing Schedule.** The arbitration hearings must commence not later than 45 calendar days from the date of the appointment of the single neutral Arbitrator or, in the case of a panel, from the appointment of the third Arbitrator. The arbitration hearings must conclude within 30 calendar days from the commencement of the hearing portion of the proceedings unless both parties and the Arbitrator(s) agree otherwise. The Arbitrator(s) may, at their sole discretion, limit the time within which the parties make their case presentations. In order to achieve the objectives of this arbitration process, the Arbitrator(s) may limit discovery, expert testimony, direct testimony, cross-examination, argument, and closing memoranda. The Arbitrators, at their sole discretion, may permit or require the parties to submit closing memoranda within 10 calendar days following the close of the hearing portion of the arbitration proceeding.

3. Award Deadline. The Arbitrator(s) shall issue their Final Award no later than twenty one (21) calendar days from the formal close of the proceedings (the last day of testimony or the date set for receipt of the closing memoranda whichever is later).
4. Overall Arbitration Time Frame. In order to achieve prompt and cost-effective disposition of all disputes between the parties through binding arbitration, it is agreed that the overall maximum time frame to commence and conclude an arbitration proceeding pursuant to these procedures is approximately 120 calendar days.

#### B. Reasonable and Managed Discovery

The duly-appointed Arbitrator(s) is duly authorized to: order the prehearing exchange of information; order the production of documents; require the parties to exchange summaries of testimony of proposed witnesses; and may order examination by deposition of parties and witnesses. The Arbitrator(s) shall have the discretion to limit discovery in any manner which is consistent with the parties' intent to conduct the arbitration proceeding in an economical and efficient manner and which does not prejudice any party's ability to adequately prepare for the arbitration process. Unresolved discovery issues may be brought to and resolved by the Arbitrator(s) in an expedited fashion.

#### C. Prehearing and Dispositive Motions

The Arbitrator(s) may, at the mutual request of the parties or at their sole discretion, establish a procedure and schedule for taking evidence and ruling on prehearing motions in advance of the arbitration hearings. The Arbitrator(s) may issue a decision which is dispositive of a claim or a defense in advance of the arbitration hearings provided that they are satisfied that they have heard all evidence pertinent and material to the issue(s) raised. In no instance shall the establishment of a prehearing motion procedure serve to delay the conduct of any other aspect of the arbitration proceeding.

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<sup>1</sup>On July 1, 2002 the RUAA took effect in Hawaii. Certain provisions of the new law governing arbitration are waivable while others are Non-waivable. It is advisable to consult legal counsel before finalizing pre-dispute arbitration clauses/language.