

## **GUIDELINE FOR POST-DISPUTE ARBITRATION AGREEMENT**

For parties who do not have an existing arbitration agreement, this Guideline provides the parties suggested terms for an arbitration agreement that facilitate an efficient and fair hearing. The parties are encouraged to agree upon some or all the terms set forth below or to address such other issues that are unique to their situation. Two example form orders are attached for the parties' consideration and modification. The first example ("Version I") is likely best suited for cases that are not complex. The second example ("Version II") is designed for more complicated cases.

Below is a summary of the significant terms and considerations.

**(A) Selection of the Arbitrator(s) by Agreement of the Parties.** The example orders offer two methods for selecting arbitrators. Both contemplate the agreement of the parties, but authorize the court to appoint arbitrators if the parties cannot agree. Version II also sets forth the commonly used method for selecting arbitrators for a three-person panel: i.e., each party selects one arbitrator and the two arbitrators then select the third member of the panel.

**(B) Pre-Hearing Authority of Chairperson and Single Arbitrator.** In the event the parties agree to have more than one arbitrator, one of the arbitrators should be designated by the arbitrators as Chairperson of the panel. The Chairperson or signal arbitrator shall have the authority to:

- (1) conduct all pre-hearing conferences;
- (2) establish a schedule for the arbitration proceedings, including the hearing on the merits;
- (3) order discovery;
- (4) resolve discovery disputes and impose sanctions against a party that does not comply with the orders of the Chairperson or the single arbitrator; and
- (5) resolve all pre-hearing motions, except dispositive motions when there is more than one arbitrator.

**(C) Schedule for the Arbitration Proceeding.** The dates for the hearing on the merits should be decided by the arbitrators and the parties. The order, however, should contain a deadline for when the hearing must be completed. Moreover, the arbitrator's award should be issued within 14 days of the completion of the hearing.

**(D) Discovery.** In absence of an agreement of the parties, discovery shall be conducted only as ordered by the single arbitrator or Chairperson. The single arbitrator or Chairperson shall order discovery consistent with the efficient and expeditious

purposes of arbitration. The parties should consider what deposition practice, if any, should be permitted by right. In many cases, it is appropriated to not permit any deposition practice unless good cause can be shown pursuant to MCR 3.602(F)(2).

**(E) Rules of Evidence.** The arbitrators are not required to strictly follow the rules of evidence, but should consider following those evidentiary rules that enhance the integrity of the hearing.

**(F) Follow the Law.** The arbitrators shall follow the applicable substantive law to the best of their ability.

**(G) Authority of the Court.** The Circuit Court should enter appropriate orders to ensure compliance with the orders of the single arbitrator, Chairperson or full arbitration panel.

**(H) The Award.** Both example orders provide that the arbitrators not provide a reasoned award. A non-reasoned award is more efficiently rendered and less susceptible to challenge.

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