

# **CALIFORNIA DISPUTE SETTLEMENT PROGRAM**

## **HEARING PROCESS RULES**

### **1. AGREEMENT OF PARTIES**

These Rules shall apply whenever the parties have agreed to utilize the California Dispute Settlement Program (CDSP) administered by the National Center for Dispute Settlement (NCDS). The parties shall be deemed to have agreed to these rules in the form in effect when the request for arbitration is received by CDSP.

### **2. INITIATION OF PROCEEDINGS**

Arbitration is initiated by the filing of a request for arbitration with CDSP in accordance with the directions contained in the documents under which the dispute has arisen.

### **3. APPOINTMENT OF ARBITRATOR**

CDSP shall appoint a single arbitrator from its panel of qualified arbitrators.

### **4. QUALIFICATIONS OF AN ARBITRATOR**

A person appointed as arbitrator shall disclose to CDSP any circumstances likely to affect impartiality, including any bias, any financial or personal interest in the outcome of the proceeding, any past or present relationship with the parties or their counsel. Upon receipt of such information from the arbitrator or any other source, CDSP shall communicate the information to the parties and, if it deems appropriate, to the arbitrator. Upon objection of a party to the service of an arbitrator, CDSP shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

**5. VACANCY**

CDSP is authorized to appoint another arbitrator if a vacancy occurs or if an appointed arbitrator is unable to serve promptly. The arbitrator so appointed shall be subject to disqualification for the same reasons specified in Section 4.

**6. TIME AND PLACE OF HEARING**

The arbitrator shall fix the date and time of the hearing. Notice of date, time and location shall be given to the parties at least five (5) days in advance.

**7. REPRESENTATION**

Any party to the proceeding may attend the hearing or be represented at the hearing by another person. In the case of representation by an attorney, in the interest of fairness to all parties, the party retaining counsel or their attorney must advise CDSP and the other parties of the identity of their representative at least five (5) days prior to the date of the hearing. Failure to follow this rule with regard to notice may result in an adjournment of the scheduled hearing.

**8. ATTENDANCE AT HEARING**

All parties to the dispute, as well as their representatives and witnesses are entitled to attend the hearing. Meetings of the arbitrator or panel of arbitrators held to hear and decide disputes will be open to observers on reasonable and nondiscriminatory terms. The identity of the parties and products involved need not be disclosed at these meetings. As these meetings are open to the public, media personnel cannot video or audio record these proceedings. The parties may make appropriate notes of the proceedings but audio and video recordings are strictly prohibited. The arbitrator may request that a person(s) leave the hearing for conduct which interferes, in any manner, with the hearing process.

**9. POSTPONEMENTS**

Hearings shall be postponed by the arbitrator only for good cause.

**10. STENOGRAPHIC RECORD**

As an informal proceeding, there is no requirement that a stenographic record be taken of the hearing. Any party who wishes to, may make a provision for a certified court stenographer at that party's own expense. A copy of the transcript must be provided to the arbitrator. The parties may make appropriate notes of the proceedings, but audio or video recordings are strictly prohibited.

**11. PROCEEDINGS AND COMMUNICATION WITH THE ARBITRATOR**

The hearing shall be conducted by the arbitrator in any manner, which will permit full and expeditious presentations of the case by both parties. There shall be no direct communication between any party or representative of a party and the arbitrator other than at the hearing except when initiated by the arbitrator pursuant to Section 6 and limited to the time or place of the hearing. The parties or their representative may speak with any other party or that party's representative at any time.

**12. ARBITRATION IN THE ABSENCE OF A PARTY**

The arbitration hearing may proceed in the absence of any party or representative who has received notice of the hearing and fails to be present or fails to obtain an adjournment. A decision shall not be made solely on the default of a party. The arbitrator shall require any party who is present to submit such evidence as the arbitrator may require for the making of a decision.

**13. EVIDENCE**

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. The arbitrator shall be the sole judge of the relevance and materiality of the evidence offered. Conformity with the legal rules of evidence shall not be necessary. The expense of witnesses, expert witnesses, or reports submitted by any party shall be paid by the party producing such witnesses or reports. Any party may request a test drive. A test drive in such cases is a part of the proceeding and shall be conducted in a manner consistent with these rules.

**14. EVIDENCE BY FILING OF DOCUMENTS**

The arbitrator may receive and consider documentary evidence. Documents to be considered by the arbitrator and not produced at or before the hearing shall, in all cases, be submitted to CDSP as directed by the arbitrator.

**15. CLOSING OF HEARINGS**

The arbitrator shall ask whether the parties have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or when satisfied that the record is complete, the arbitrator shall declare the hearings closed.

**16. WAIVER OF RULES**

Any party who proceeds with Arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objections thereto in writing shall be deemed to have waived the right to object.

**17. TIME OF DECISION**

The decision shall be rendered promptly by the arbitrator and unless otherwise agreed by the parties, no later than ten (10) days from the date of the closing of the hearing.

**18. FORM OF DECISION**

The decision shall be in writing and shall be signed by the arbitrator.

**19. DELIVERY OF DECISION TO PARTIES**

Parties shall accept as legal delivery of the decision the placing of the decision or a true copy thereof in the mail addressed to the party or its legal representative at the last known address, by personal service of the decision, or by the filing of the decision or any other manner that may be permitted by law.

**20. APPLICATIONS TO COURT AND EXCLUSION OF LIABILITY**

By agreeing to these rules or proceeding in any manner under these rules, each party agrees:

- (a) Neither CDSP and NCDS, its officers, directors or employees nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration; and

- (b) Neither CDSP and NCDS, its officers, directors or employees nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

**21. INTERPRETATION AND APPLICATION OF RULES**

Except where the rules specifically state otherwise, the arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by the program administrator.

**22. CLARIFICATION**

Within twenty (20) days of the date of mailing of the Decision, any party may request clarification of the Decision. Application for clarification must be sent to CDSP for transmittal to the arbitrator and all other parties. A request for clarification must set forth the specific portion or portions of the Decision, which are subject to the request. The arbitrator is not empowered to redetermine the merits of any claim already decided, but may clarify the Decision if the arbitrator finds that the Decision is not within the scope of the warranty or its coverage or has improperly identified a party or made an error not otherwise affecting the merits of the case. Written objections to clarification must be delivered to CDSP for transmittal to the arbitrator and simultaneously sent to all parties within ten (10) days of the application. The arbitrator shall rule on the application for clarification within ten (10) days from receipt of an objection or the expiration of time to make objections, whichever is earlier.