

SAMPLE FORM OF FINAL ARBITRATION AGREEMENT

Attorney Submitting and Utah State Bar Number

Attorney for [Plaintiff/Defendant]

Address

Telephone

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

	:	
	:	
	:	FINAL ARBITRATION
	:	AGREEMENT
	:	
Plaintiff,	:	
vs.	:	
	:	Civil Case No.
	:	
	:	
Defendant.	:	

The parties hereto agree that this matter will be arbitrated in accordance with the provisions of the ADR Plan, Rule 16-2 of the District of Utah Civil Rules of Practice, and applicable federal statutes.

The parties further agree:

1. That the following arbitrator(s) will oversee the arbitration process:

List each arbitrator by name.

2. The arbitrator(s), while acting in the official capacity of court-appointed arbitrator in this matter, shall have the same immunity from liability accorded to United States district judges while acting in their official capacity.

3. *Select Alternative (A) or (B):*

(A) Pursuant to ADR Plan Section 5(n), any party may file a demand for trial de novo within thirty (30) days after the filing of the arbitration award. *Where timely demand has been made, the clerk of court will vacate the award, and the case will be returned to the regular trial calendar. Where no timely trial de novo demand is made, the clerk will enter judgment on the award in accordance with Fed. R. Civ. P. 58, unless the award involves equitable or other relief, in which case the award will be submitted to the court for the entry of the judgment.*

(B) The parties agree that the arbitration award will be final and binding. The parties hereby agree to waive the right, under ADR Plan Section 5(n), to file a demand for trial de novo.

4. The factual and legal issues on which the parties agree are: *The parties and their counsel, under the guidance of the arbitrator(s), should agree on as many facts and/or issues as possible in order to focus and maximize the value of the arbitration hearing.*

5. The factual and legal issues that remain to be decided are: *List clearly and concisely. Because the arbitrator(s) may determine only the facts and decide only the issues set forth in this agreement as stated in the ADR Plan Section 5(i), due care should be taken to frame them properly. Where, during the proceedings, other issues not set forth*

in this agreement emerge that must be decided in order for the arbitrator(s) to render an award, the arbitrator(s) must seek the parties' agreement before proceeding. If the parties cannot agree, the arbitration may be terminated without result.

6. The parties' respective positions on the factual and legal issues that remain to be decided are: *List clearly and concisely by party.*

7. The scope of discovery conducted by the parties is limited to: *Parties should minimize discovery (i) pursuant to DUCivR 16-2(f), and (ii) because arbitration hearings must be conducted within one-hundred-twenty (120) days of the date of the pre-hearing conference. Protective orders, if any are to be imposed, should be described in this section.*

8. The names of the witnesses will be exchanged between the parties no later than: *Live testimony in ADR proceedings should be limited to resolution of factual disputes and witness credibility issues. Parties should use stipulations, affidavits, proffers of testimony, written submission of expert opinions, and other time-saving evidentiary procedures. Parties may utilize the subpoena process under Fed. R. Civ. P. 45 to compel the presence of witnesses or the production of documents or other evidence at the arbitration hearing.*

9. Each party will designate its expert witnesses no later than: *All such designations should be served on all counsel or pro se parties and the arbitrator(s). Counsel should bear in mind the court's recommendation that expert opinion should be submitted in writing unless the arbitrator(s) determine that live testimony is required to resolve conflicts in expert opinion through direct- and cross-examination.*

10. The parties will exchange hearing exhibits no later than: *Must be served at least twenty (20) days prior to the scheduled arbitration hearing date.* Objections to such exhibits will be served no later than: *Must be served at least seven (7) days prior to the scheduled arbitration hearing date.* Pursuant to ADR Plan Section 5(e), objections based upon any issue of evidentiary foundation, authentication, or hearsay that are not served by this date will be deemed to be waived. All original exhibits and copies must be pre-marked before the arbitration hearing as required in DUCivR 83-5. At the arbitration hearing, the party must retain the original exhibit, and the arbitrator (or each panel member) and each opposing party shall be furnished a marked copy.

11. The arbitration hearing has been scheduled for the _____ day of _____, 199__ at _____ .m. in Room _____ of _____ .
Must be within 120 days of the pre-hearing conference. Each side will have _____ hours in which to present its evidence and make its argument, unless the time is enlarged by the arbitrator(s) with the agreement of all parties. *Absent unusual circumstances, the hearing should be completed in one day.*

12. This agreement and all proceedings thereunder shall be subject to the provisions of ADR Plan Section 5(o). No stipulation or admission made in this agreement or in the course of the arbitration proceeding will be admissible in any trial de novo in this case unless (i) the evidence is independently admissible pursuant to the Federal Rules of Evidence, or (ii) the parties otherwise stipulate.

13. Until a judgment has been entered or an award or a demand for trial de novo has been filed, neither a party nor counsel may reveal any information about or related to the arbitration proceedings.

14. Any party desiring to record the hearing by stenographic or electronic means must arrange to do so prior to the hearing at its expense. Any such record shall be subject to ADR Plan Section 5(o). Video recording shall not be permitted. *All other parties to the matter will have the option of ordering copies at reasonable expense. Copies of transcripts, if any are ordered, shall be provided to the panel members at the arranging party's expense.*

15. This agreement may be signed in counterparts by the parties hereto with the same effect as though each had executed the same document.

DATED this ____ day of _____, 199__.

Plaintiff

Attorney for Plaintiff

Defendant

Attorney for Defendant

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