

**WORKERS'  
COMPENSATION  
Alternative Dispute  
Resolution  
("ADR") Agreement**

This Agreement is between the Sheet Metal Workers International Association Local Unions (hereinafter "UNIONS") and the Chapters of California Association of Sheet Metal and Air Conditioning Contractors, National Association (hereinafter "CHAPTERS") executing the applicable Attachment A through F. As to each executing Chapter and Union the Agreement shall be effective on the date of execution of the applicable Agreement. The term "parties" as used herein shall refer to the CHAPTERS and UNIONS. This Agreement has been collectively bargained between the CHAPTERS and the UNIONS.

**ARTICLE I: - PURPOSE**

1.1 It is the intent of this Agreement to provide employees who claim compensation for personal injuries and occupational diseases (hereinafter referred to as "injury" or "injuries") under the California Workers' Compensation Law (hereinafter the "Law") with improved access to high quality medical care, and to reduce the number and severity of disputes and provide an efficient and effective method of dealing with disputes resulting from such injuries by utilizing the provisions of Section 3201.5 of the California Labor Code to establish a system of medical care delivery and dispute prevention and resolution that may be used by any employer that is a member of a Chapter of the California Association of Sheet Metal and Air Conditioning Contractors National Association, and that is signatory to a collective bargaining agreement with the Sheet Metal Workers International Association Local.

**ARTICLE II: - SCOPE OF AGREEMENT**

- 2.1 This negotiated Agreement shall apply only to those members of the CHAPTERS that sign a Memorandum of Understanding (hereinafter "MOU"), agreeing to be bound by the terms and conditions of this Agreement. The term "Employer" as used herein, shall refer to any such a firm. As to each signing member of a Chapter this Agreement shall become effective on the date of execution of the MOU. (The MOU's are included as *Attachments F through M*)
- 2.2 This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by this Agreement during their employment by a signatory Employer covered by this Agreement on or after the effective date of the MOU and during the term of this Agreement.
- 2.3 The parties to this Agreement shall establish a joint Labor-Management Safety and Oversight Committee (hereinafter referred to as "the LMSOC") as provided in ARTICLE VI hereof.
- 2.4 This Agreement shall remain in effect for a period of one year from the date of its execution by the parties. It shall continue in effect from year to year thereafter unless terminated by either party to the Agreement in the manner provided herein.
- (A) A party desiring to terminate this Agreement must notify the other bargaining parties to this Agreement and the LMSOC in writing, at least ninety (90) days prior to June 30 of the year of

termination. Any Employer wishing to withdraw from this Agreement must notify the parties to this Agreement in writing prior to the anniversary date of the Employer's workers' compensation insurance policy.

- (B) Upon termination of the Agreement, or withdrawal from the program, any case involving an injury that occurred during the term of the Agreement, or during the term this Agreement was applicable to the withdrawing Employer, shall continue and be resolved subject to the terms of this Agreement. All other cases shall proceed in accordance with the provisions of the Law.
- 2.5 This Agreement supersedes all oral negotiations and prior and other writings with respect to its subject matter, and is intended by the parties to be the complete and final expression of the Agreement with respect to the terms and conditions set forth herein and as the complete and exclusive statement of the terms agreed to by the parties. If there is any conflict between the terms, conditions and provisions of the Agreement and those of any other agreement or instrument, the terms, conditions and provisions of this Agreement shall prevail.
- 2.6 In case of a disagreement within the LMSOC, the matter in dispute shall be referred to the ADR program's arbitrator for expedited adjudication. The arbitrator's decision shall be final and binding upon the parties.

### **ARTICLE III: - AUTHORIZED MEDICAL PROVIDERS**

- 3.1 All medical and hospital services required by employees subject to this Agreement as the result of a compensatory injury, shall be furnished by health care professionals and facilities (hereinafter "Authorized Providers") selected by the parties to this Agreement. A list of Authorized Providers (*Attachment A*) and a list of Authorized Prescription Medicine Providers (*Attachment B*) shall be made available to all employees subject to this Agreement. These lists can be changed at any time. Any health care professionals not listed on the approved list of Authorized Providers may be submitted to the LMSOC for review and inclusion. All Authorized Providers shall be board certified in their respective specialties, assuming that such is available in the geographic area.
- 3.2 In the case of an emergency when no Authorized Provider is available, the employee may seek treatment from a health care professional or facility not otherwise authorized by this Agreement, to provide treatment during the emergency. Responsibility for treatment shall be transferred by the insurance carrier to an Authorized Provider as soon as possible, consistent with sound medical practices.
- 3.3 After selecting an Authorized Provider to furnish medical care, an employee may change once to another Authorized Provider. When referred by the Authorized Provider to another provider in a particular specialty, the employee may also change once to another Authorized Provider in such specialty. Additional changes will be made only with agreement of the Employer.
- 3.4 Nothing in this Article III shall be construed to create a right for an employee to receive care at the Employer's expense that is not reasonably required to cure or relieve a work-related injury.
- 3.5 The list of Authorized Providers shall contain sufficient number of providers for each of the specialties which the parties to this Agreement believe are required to respond to the needs of employees subject to this Agreement. In the event that an Authorized Provider furnishing treatment to an employee determines that consultation or treatment is necessary from a specialty for which no Authorized Provider has been selected through this Agreement, or in the event that distance makes it impractical for treatment from the Authorized Providers, the Authorized Provider and injured employee shall mutually select the additional specialist or the additional provider who offers treatment at a distance not greater than 40 miles in one direction for the employee.

- 3.6 Both the employer and the employee may request a second opinion from an Authorized Provider regarding diagnosis, treatment and evaluation of related issue. Only one such second opinion shall be permitted by either party for any issue.
- 3.7 Both the employer and the employee shall be bound by the opinions and recommendations of the Authorized Provider selected in accordance with this Agreement. In the event of disagreement with an Authorized Provider's findings or opinions, the sole recourse shall be to obtain a second opinion from another Authorized Provider (in accordance with the provisions of paragraph 3.6 above) and to present a second opinion through the dispute prevention and resolution procedure established in this Agreement.
- 3.8 The parties in this Agreement agree that it is in their mutual best interests to establish a schedule limiting fees that the Authorized Providers may charge for medical treatments and for providing documents and narrative reports.
- A. All medical treatment fees and costs shall not exceed those authorized by the State of California Official Medical Fee Schedule or an amount agreed upon between the Authorized Provider and the insurance carrier.
- B. All costs and charges for medical-legal expenses as defined in Section 4620 of the California Labor Code shall not exceed those authorized by the State of California and set forth in the revised Fee Schedule for the Medical-Legal Expenses as adopted by the Administrative Director or an amount agreed upon as between the Authorized Provider and insurance carrier.
- C. The parties to this Agreement will work to establish a schedule with the Authorized Providers limiting the amount which may be charged for providing documents and narrative reports, and the furnishing copies, certified or otherwise, of related documents and writings.

#### **ARTICLE IV: - AUTHORIZED VOCATIONAL REHABILITATION SERVICE PROVIDERS**

- 4.1 All vocational rehabilitation services required by employees subject to this Agreement as the result of injury, shall be furnished by a vocational rehabilitation service provider selected by the Employee from an exclusive list (*Attachment C*) of vocational rehabilitation service providers selected by the parties to this Agreement (hereafter "Authorized Vocational Rehabilitation Providers").
- 4.2 A list of the Authorized Vocational Rehabilitation Providers shall be made available to all employees subject to this Agreement. The list can be changed at any time by the LMSOC.
- 4.3 All costs and charges for vocational rehabilitation services, as defined by section 4635(d) of the California Labor Code, shall not exceed those authorized by section 139.5 of the California Labor Code.

#### **ARTICLE V: - DISPUTE PREVENTION AND RESOLUTION**

- 5.1 The dispute prevention and resolution program shall consist of the following three components: Ombudsman; Mediation; and Arbitration
- 5.2 This program shall be used in place of all of the processes related to the filing of an Application for Adjudication with the California Workers' Compensation Appeals Board (hereinafter "WCAB"). Any claim subject to this Agreement filed with the WCAB for resolution will immediately be removed by the employee and placed within the program established by this Agreement. This is the sole means of dispute resolution and no dispute shall proceed to the WCAB until it has completed the Ombudsman, mediation and arbitration processes defined by this Agreement. This program shall replace all of those dispute

resolution processes, to the maximum extent permitted by law, including those authorized pursuant to California Labor Code section 3201.5.

5.3 The Ombudsman, mediators and arbitrators will be selected pursuant to procedures set forth by the LMSOC and can be changed at any time by the LMSOC.

- (A) The Ombudsman, mediators and arbitrators subject to this Agreement shall have experience and be knowledgeable in the workers' compensation industry and dispute resolution process. As an additional requirement, each arbitrator must be qualified to become an arbitrator under California Labor Code Section 5270.5.
- (B) At the option of the parties to this Agreement, mediators and arbitrators may be assigned to geographical areas in order to better serve injured workers.
- (C) The list of mediators and arbitrators selected by the LMSOC shall be kept current and made available to parties seeking mediation and/or arbitration. The LMSOC shall establish procedures for the selection of mediators and arbitrators.

5.4 Procedure For Requesting Assistance From The Ombudsman:

- (A) The Ombudsman shall receive complaints and requests for information from employees who have filed claims for Workers' Compensation benefits subject to this Agreement and, upon an employee's request, assist the employee in attempting to resolve those disputes with the workers' compensation insurer of an Employer subject to this Agreement. The Ombudsman shall, upon an employee's request, assist the employee in filing a Request for Mediation and Arbitration related to alleged work-related injuries subject to this Agreement.
- (B) An employee covered by this Agreement who believes that he/she is not receiving workers' compensation benefits to which he/she is entitled, including medical and hospital services, shall notify the Ombudsman by telephone. If the issue cannot be resolved to the satisfaction of the employee within ten (10) working days, the employee may apply for mediation on the form attached hereto and marked as *Attachment D*. The employee and Employer may extend the ten (10) working day period by mutual agreement.
- (C) The response of the Ombudsman to the employee shall be explained in terms that are readily understandable by the employee. The Ombudsman shall maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response.
- (D) The Employer shall also be allowed to file disputes with the Ombudsman.

5.5 Mediation Procedure:

- (A) The Request for Mediation (attached hereto and marked as *Attachment D*) shall be filed not more than sixty (60) days after the Ombudsman has responded to the employee's or Employer's notification for request of mediation. No issue will proceed to mediation without first being presented to the Ombudsman.
- (B) Failure to mediate will bar any further right to adjudicate the issue. Any application for mediation shall be assigned to a mediator selected under this Agreement within three (3) working days of a receipt of a request. The mediator will contact the parties to the dispute, including the insurance carrier and take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion.

- (C) Mediation shall be completed in not more than fourteen (14) calendar days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process, or if both the employee and the Employer mutually agree to an extension.
- (D) Neither party is permitted to be represented by legal counsel at mediation. The fact that an employee or employer representative or its workers' compensation carrier's representative has had legal training shall not bar such person from participation in mediation unless he or she seeks to participate on the basis of a lawyer client relationship. All communications between the mediator and the parties shall be directly with the parties, and not through legal counsel. This provision is not intended to limit any party's right to obtain legal advice. Any party has a right to legal advice at such party's own expense. The participation of legal counsel during any proceedings under this program is limited to that of an observer and to arbitration, provided a written request for arbitration has been timely filed with the LMSOC.
- (E) No written or oral offer, finding, or recommendation made during the mediation process by any party or mediator shall be admissible in any subsequent arbitration proceeding except by mutual agreement of the parties.
- (F) The mediator may in his sole discretion appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier.

5.6 Arbitration Procedure:

- (A) Within thirty (30) calendar days after notice is served on the parties to the dispute by certified and regular US mail of the completion of the mediation process, any party not satisfied with the outcome shall file, with the LMSOC, a request that the matter be referred for arbitration (attached hereto and marked as *Attachment E*). Upon receipt of such request, the LMSOC shall immediately refer the matter for arbitration as provided for herein. The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel should they desire. Representation by legal counsel during arbitration proceedings is optional.
- (B) The arbitrator shall have experience and be knowledgeable in the workers' compensation dispute resolution process and shall have been, at one time, a California workers' compensation judge. The arbitrator shall be assigned by the LMSOC, or its designee for such purpose. In any case that has been regularly assigned to an arbitrator for hearing thereunder, the arbitrator shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented and to issue interim, interlocutory, and final orders, findings, decisions, and awards as may be necessary to the full adjudication of the case. The decision of the arbitrator is subject to review by the WCAB in the manner required by Labor Code Section 3201.5, and shall have the same force and effect as an award, order, or decision of a workers' compensation judge.
- (C) Arbitration will be conducted pursuant to the National Rules for the Resolution of Employment Disputes of the American Arbitration Association or other such rules established by the LMSOC, using the arbitrator assigned by the LMSOC. Unless the parties to the matter otherwise agree, arbitration proceeding shall be completed within thirty (30) days after referral, and an arbitration decision rendered within ten (10) working days of the completion of the proceedings. The arbitrator's decision shall be written in a form consistent with the WCAB practices.
- (D) The employee's attorney's fees, if any, shall be the reasonable fee as determined by the arbitrator or an amount not greater than 12% of the permanent disability award, whichever is the lesser. Said fee shall be paid in the same manner as provided in Section 4903 of the California Labor Code.

- (E) The arbitrator shall not add to, subtract from, change, or modify any provisions of this Agreement.
- 5.7 The arbitrator may, in his sole discretion, appoint an authorized health care professional to assist in the resolution of any medical issue, the cost to be paid by the insurance carrier.
- 5.8 The parties may submit a proposed settlement to the LMSOC at any time for assignment to an arbitrator for expeditious issuance of award and/or order. Any such settlement shall be in the form of a Compromise and Release Agreement or in the form of Stipulations with Request for Award. The settlement shall be filed on a pre-printed form approved by the LMSOC.
- 5.9 All Ombudsman, mediator and arbitrator fees and expenses, as well as all other administrative costs of this Alternative Dispute Resolution System, shall be paid for by the insurance carrier(s) out-of-gross premiums. In no event shall the LMSOC be liable for the expenses of the Employer, employee, or insurance company.
- 5.10 Nothing in this agreement shall limit the rights of the employee to seek benefits from other negligent parties outside of the workers' compensation system. The LMSOC is responsible for drafting and production of employee brochures incorporating plan information deemed appropriate, including third party liability. Each employer signed to this agreement has the responsibility to provide plan approved brochures to all covered employees of the employer.

#### **ARTICLE VI: - OPERATION BY THE LMSOC AND ESTABLISHMENT OF THE LABOR-MANAGEMENT SAFETY AND OVERSIGHT COMMITTEE**

- 6.1 The parties to this Agreement have established, through collective bargaining, the LMSOC to represent their respective interests in the administration of this program. The LMSOC shall establish rules and regulations for operation of the Alternate Dispute Resolution Program and approve the composition of the medical network under this Agreement. The LMSOC shall operate on a consensus basis. In the event the LMSOC deadlocks on any issue before it, such deadlock shall be submitted to the designated arbitrator under this agreement for final and binding resolution.
- (A) The LMSOC shall consist of one Management representative and one Union representative for each local Union area participating in the Agreement. Expenses for committee meetings, according to the Expense Reimbursement Policy (*Attachment N*), and promotion of this program will be paid by CAL SMACNA.
- 6.2 The LMSOC shall take all actions required to implement the letter and intent of this Agreement including, but not limited to, the selection of Ombudsman, mediators, arbitrators, Authorized Providers, and related services. The LMSOC shall receive reports, both in written and oral forms, from the insurer(s); shall receive complaints and investigate and respond as deemed appropriate; and shall receive and respond to requests whenever practicable. The LMSOC shall also be responsible for creating and overseeing the operation of the Formal Safety Program.

#### **ARTICLE VII:- MISCELLANEOUS ISSUES**

- 7.1 All payments required to be made by the Employer pursuant to this Agreement, except those payments required by a finding of violation of Labor Code Sections 132a and 4553, shall, in accordance with California law, be made by its workers' compensation insurance carrier. Similarly, all actions required by law to be undertaken by the insurance carrier rather than the Employer shall be performed by the Employer's workers' compensation insurance carrier.

- 7.2 On projects where the owner, developer, or general contractor supplies a project wrap-up insurance program that includes workers' compensation insurance, the Employer, at his or her option, may suspend this Agreement for that specific project.
- 7.3 If any provision of this Agreement or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Agreement are declared to be severable.
- 7.4 The parties to this collective bargaining agreement recognize that signatory contractors may participate in the Workers' Compensation Alternative Dispute Resolution Agreement (ADR Agreement), which has been established between various locals affiliated with the Sheet Metal Workers International Association, and the Chapters of California Association of Sheet Metal and Air Conditioning Contractors National Association. The parties agree that any contractor signatory to this collective bargaining agreement may withdraw from the ADR Agreement upon satisfying the notice requirements of that ADR Agreement. Such withdrawal shall not constitute a violation of the collective bargaining agreement, and the provisions of Article X, Section 8 may not be utilized to require the continued participation of such contractor in the ADR Agreement.
- 7.5 Execution in Counterparts: This Agreement may be executed in counterpart copies, each of which shall be deemed an original, but all of which shall be construed as the same instrument.

IN WITNESS WHEREOF, this agreement has been executed by the parties hereto on the date set forth next to their respective signature.

Sheet Metal Workers  
Local Union #102

Orange Empire SMACNA, California Association of Sheet  
Metal and Air Conditioning Contractors, National  
Association

By \_\_\_\_\_  
Brad Plueger, Business Mgr.  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles D. Baxter, Executive Director  
Date: \_\_\_\_\_

Sheet Metal Workers  
Local Union #104

Bay Area Association of SMACNA Chapters, California  
Association of Sheet Metal and Air Conditioning Contractors,  
National Association

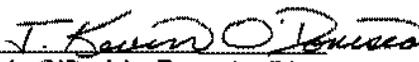
By \_\_\_\_\_  
Larry Whiteman, Business Mgr.  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Anthony Asher, General Counsel  
Date: \_\_\_\_\_

Sheet Metal Workers  
Local Union #108

SMACNA, Los Angeles, California Association of Sheet  
Metal and Air Conditioning Contractors, National  
Association

By   
Roy Ringwood, Business Mgr.  
Date: 3-12-99

By   
Kevin O'Dorisio, Executive Director  
Date: 3/12/99

Sheet Metal Workers  
Local Union #162

SMACNA, Sacramento Valley, Central Valley, and Northern  
San Joaquin Chapters, California Association of Sheet Metal  
and Air Conditioning Contractors, National Association

By \_\_\_\_\_  
Duane Turner, Business Mgr.  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Mark Bowers, Executive Vice President  
Date: \_\_\_\_\_

Sheet Metal Workers  
Local Union #206

SMACNA, San Diego, California Association of Sheet Metal  
and Air Conditioning Contractors, National Association

By \_\_\_\_\_  
Steve Chadwick, Business Mgr.  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles D. Baxter, Executive Director  
Date: \_\_\_\_\_

Sheet Metal Workers  
Local Union #273

Tri-Counties SMACNA, California Association of Sheet  
Metal and Air Conditioning Contractors, National  
Association

By \_\_\_\_\_  
Doug Hehnke, Business Mgr.  
Date: \_\_\_\_\_

By \_\_\_\_\_  
Dale P. Towne, Executive Vice President  
Date: \_\_\_\_\_

**ATTACHMENT "A"**

**AUTHORIZED LIST  
AUTHORIZED MEDICAL PROVIDERS**

The Authorized list of Medical Providers shall be those health care professionals included in SMWIA Southern California, Nevada, Arizona Health Trust Providers, SMWIA Northern California Health Trust Providers, and the Insurer's Provider Network Directories.

**ATTACHMENT "B"**

**AUTHORIZED LIST  
PRESCRIPTION MEDICINE PROVIDERS**

The authorized list of Prescription Medicine Providers shall be those Prescription Medicine Providers that contract with and set forth on the Prescription Provider list of SMWIA Southern California, Nevada, Arizona Health Trust Providers, SMWIA Northern California Health Trust Providers, and the Insurer.

**ATTACHMENT "C"**  
**EXCLUSIVE LIST**  
**VOCATIONAL REHABILITATION PROVIDERS**

The authorized list of vocational rehabilitation providers shall be those vocational rehabilitation providers that contract with and are set forth on the vocational rehabilitation list of the insurer(s).

**ATTACHMENT "D"**

**CAL SMACNA/SMWIA LMSOC WORKERS' COMPENSATION ALTERNATIVE DISPUTE RESOLUTION SYSTEM**

PURSUANT TO CALIFORNIA LABOR CODE SECTION 3201.5

American Ombudsman Enterprises

PO Box 127

Imperial Beach, CA 91933-0127

**REQUEST FOR MEDIATION**

(multiple issues, submit an application for each issue.)

1) **EMPLOYEE:** \_\_\_\_\_  
Address: \_\_\_\_\_  
Employee Telephone No.: \_\_\_\_\_

2) **EMPLOYER:** \_\_\_\_\_  
Address: \_\_\_\_\_

3) **INSURER:** \_\_\_\_\_  
Address: \_\_\_\_\_

Claims Adjuster: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_

4) Employee Social Security No.: \_\_\_\_\_

5) Date of Injury/Illness: \_\_\_\_\_

6) Body Part Affected: \_\_\_\_\_

7) Employee Birthdate: \_\_\_\_\_

8) Occupation: \_\_\_\_\_

9) Date Issue Presented to Ombudsman: \_\_\_\_\_

10) Date of Ombudsman Response: \_\_\_\_\_

11) Explain the issue/problem presented to the Ombudsman (Attach additional pages if necessary): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATED:** \_\_\_\_\_  
**Filing Party**

I hereby certify that the dispute or issue which is the subject of this Mediation request was presented to the Ombudsman for resolution but the Ombudsman was unable to resolve same and that this request for Mediation is filed timely.

**DATED:** \_\_\_\_\_  
**Ombudsman**

**60 DAY NOTICE FOR TIME FRAME FOR MEDIATION PROCESS**

**ATTACHMENT "E"**

**CAL SMACNA/SMWIA LMSOC WORKERS' COMPENSATION ALTERNATIVE  
DISPUTE RESOLUTION SYSTEM**

PURSUANT TO CALIFORNIA LABOR CODE SECTION 3201.5

American Ombudsman Enterprises

PO Box 127

Imperial Beach, CA 91933-0127

**REQUEST FOR ARBITRATION**

(multiple issues, submit an application for each issue.)

- 1) EMPLOYEE: \_\_\_\_\_  
Address: \_\_\_\_\_  
Employee Telephone No.: \_\_\_\_\_
- 2) EMPLOYER: \_\_\_\_\_  
Address: \_\_\_\_\_
- 3) INSURER: \_\_\_\_\_  
Address: \_\_\_\_\_  
  
Claims Adjuster: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_
- 4) Employee Social Security No.: \_\_\_\_\_
- 5) Date of Injury/Illness: \_\_\_\_\_
- 6) Body Part Affected: \_\_\_\_\_
- 7) Employee Birthdate: \_\_\_\_\_
- 8) Occupation: \_\_\_\_\_
- 9) Date Issue Presented to Mediator: \_\_\_\_\_
- 10) Date of Mediator Response: \_\_\_\_\_
- 11) Explain the issue/problem presented to the Mediator (Attach additional pages if necessary.): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED: \_\_\_\_\_

**Filing Party**

I hereby certify that the dispute or issue which is the subject of this Arbitration request was presented to a Mediator for resolution but the Mediator was unable to resolve same and that this request for Arbitration is filed timely.

DATED: \_\_\_\_\_

**Ombudsman**

**30 DAY NOTICE FOR TIME FRAME FOR ARBITRATION PROCESS**