SAMPLE EDR CONTRACT CLAUSE

1. In any dispute between the parties, before commencing [lawsuit or arbitration] pursuant to § [ ], representatives of each party with the authority to resolve the dispute shall meet in good faith to try to resolve the matter as early as possible, but no later than 14 days after one party gives the other notice of the dispute.

2. If the parties do not resolve the dispute within the 14 days, then before commencing arbitration, the parties shall engage in good faith in a 30-day early dispute resolution (“EDR”) process as described below. Either party may terminate the process by serving a termination notice (the “Termination Notice”) on the other party, which shall terminate the process as of ten days following service of the notice, as follows:

a. Within three business days of the end of the 14-day period (the “Trigger Date”), with both parties’ consent, the parties shall select a neutral skilled by training or experience in the EDR process. The parties shall share equally the costs of the neutral.

b. Within six business days of the Trigger Date, the parties shall each determine in good faith the documents and information, if any, that are in the other party’s possession and that each party deems essential to evaluating the case. Both parties shall in good faith limit the requests to the information and documents necessary to obtain sufficient knowledge to understand the merits of each side’s position and leverage, and to make an informed judgment as to the value of each side’s case. By the end of the sixth business day, each party shall serve its request, if any, on the other side for information and documents.

c. Within the following seven business days, each side shall provide the other the requested documents and information. If either side believes the other side’s request seeks more than essential information or documents, the parties shall in good faith discuss limiting the request, and shall involve the neutral if they cannot resolve the issue themselves. Neither party may be compelled to produce information or documents; the process is a good-faith exchange that may be terminated at any time. If parties do produce information and documents, each party’s counsel shall provide a declaration that the party reasonably searched and produced the reasonably responsive information and documents in response to the other party’s requests. If either party does not want to produce certain responsive documents or information, the party shall terminate the EDR process.

d. Within the following three business days, the parties shall each prepare an EDR case analysis to exchange with the other side and, if appropriate, the neutral. Each EDR case analysis shall discuss, among other things, the party’s position on the key issues and damages and equitable relief, and shall estimate the party’s expected attorneys’ fees.

e. Within the following six business days, the parties shall meet in good faith in a mutually-convenient location to negotiate or mediate to try to resolve the dispute. If the parties do not resolve the dispute within this time, the process shall terminate unless both parties choose to continue.

3. In carrying out EDR, the parties agree to adopt the then-current Early Dispute Resolution Practice Protocols of the Early Dispute Resolution Institute, [www.EDRinstitute.org](http://www.EDRinstitute.org).

4. Every claim of each party is tolled from the date of initial notice of the dispute until 10 business days following service of a Termination Notice or termination of the EDR process.

5. During the EDR process, nothing in this section prevents either party from seeking preliminary or emergency injunctive relief in court [or with the arbitration administrator. Apart from seeking emergency relief, neither party may commence [a lawsuit or arbitration] until the EDR process concludes.