

## ARTICLE IX

### NON-INJURY GRIEVANCE

#### **Section 1. Jurisdiction & Scope of Authority.**

(a) Except as otherwise expressly provided in this Agreement, the System Arbitrator shall have exclusive jurisdiction to enforce the terms of this Agreement, and to determine all disputes that arise from, relate to, or involve interpretation of the Agreement, and shall, where appropriate, hold hearings on alleged violations thereof. Notwithstanding the foregoing, the System Arbitrator may delegate arbitration proceedings to one or more additional grievance arbitrators jointly selected by the AFLPA and the AFL, which additional arbitrators shall have the same authority to decide disputes as the System Arbitrator.

(b) The System Arbitrator shall make findings of fact and award appropriate relief, which may include, without limitation, damages, interest, and specific performance.

(c) The System Arbitrator shall not have jurisdiction or authority to add to, detract from, or alter in any way the provisions of this Agreement or any AFL Player Contract (except to the extent such AFL Player Contract is inconsistent with the terms of this Agreement).

#### **Section 2. Pre-Hearing Procedures:**

(a) Unless otherwise provided in this Agreement, a grievance may be commenced by written notice served upon the party against whom the enforcement proceeding is brought and filed with the System Arbitrator. All such notices and all orders and notices issued and directed by the System Arbitrator shall be served upon the AFL and the AFLPA, in addition to any counsel appearing for individual AFL players or individual AFL Teams. Beginning in the 2004 League Year, a non-injury grievance must be initiated within fifty-five (55) days from the date on which the party initiating the grievance knew or reasonably should have known the facts upon which the grievance is based. Any non-injury grievance based upon facts occurring prior to the 2004 League Year must be initiated within fifty-five (55) days of the execution date of this Agreement, or within fifty-five (55) days of when the player should have known the facts upon which the grievance is based, whichever is later. The AFL and the AFLPA shall have the right to participate in all enforcement proceedings.

(b) The party to whom a non-injury grievance has been presented will answer in writing by certified mail or fax within twenty-one (21) days of receipt of the grievance. The answer will set forth admissions or denials as to the facts alleged in the grievance. If the answer denies the grievance, the specific grounds for denial will be set forth. The answering party will provide a copy of the answer to the player(s) or Team(s) involved and the AFLPA or the AFL as may be applicable.

(c) In the event a grievance is filed challenging the imposition of Team or League discipline upon a player, the discipline shall be stayed during the pendency of such grievance.

### **Section 3. Discovery.**

(a) In any of the disputes over which the System Arbitrator has authority, the parties shall have a right to prompt and reasonable discovery. In the absence of an order to the contrary from the System Arbitrator, such discovery may include the production of documents and the taking of depositions. Without limiting the foregoing, in each grievance, no later than ten (10) days prior to the hearing, each party will submit to the other a copy of all documents, reports, and records relevant to the dispute. Failure to submit such documents, reports and records no later than ten (10) days prior to the hearing will preclude the non-complying party from submitting such documents, reports and records into evidence at the hearing, but the other party will have the opportunity to examine such documents, reports and records at the hearing and to introduce those it desires into evidence, except that relevant documents submitted to the opposing party less than ten (10) days before the hearing will be admissible provided that the proffering party and the custodian(s) of the documents made a good faith effort to obtain (or discover the existence of) said documents or that the documents' relevance in good faith was not discovered until reasonably prior to such production. In the case of an expedited grievance in which the hearing is to be held less than twenty (20) days after the commencement of the grievance, such documentary evidence shall be exchanged on or before two (2) days prior to the hearing unless the System Arbitrator determines otherwise.

(b) Subject to rules to be agreed to by the parties, in any proceeding to review any alleged violation of Article XIX (Salary Cap, Minimum Team Salary & Guaranteed League-Wide Player Compensation) of this Agreement regarding any DGR issue, the System Arbitrator shall have the authority, upon good cause shown, to direct any Team to produce any tax materials disclosing any income figures for such Team or Team Affiliate (non-income figures may be redacted) which in his or her judgment relate to any such alleged violation, including but not limited to portions of any tax returns or other documents submitted to the Internal Revenue Service. Subject to rules to be agreed to by the parties, in any proceeding to review any alleged violation of Article XIX (Salary Cap, Minimum Team Salary & Guaranteed League-Wide Player Compensation) or Article XX (Enforcement of Salary Cap) of this Agreement regarding any Player Compensation paid to any player(s), the System Arbitrator shall have the authority, upon good cause shown, to direct any such player(s) to produce any tax materials disclosing any income figures for any such player or Player Affiliate (non-income figures may be redacted) which in his or her judgment relate to any such alleged violation, including but not limited to portions of any tax returns or other documents submitted to the Internal Revenue Service. In each case, the System Arbitrator shall not release such tax materials to the general public, and any such tax materials shall be treated as strictly confidential under an appropriate protective order.

#### **Section 4. Hearing.**

(a) All grievances concerning Articles I, IV, VII-VII-A, XII, XIV-XVII, XIX-XXII, XXVI, XXX, XXXIV, XLII-XLV, or the AFL Player Contract (Exhibit A hereto); all grievances concerning whether a player has been placed on the wrong list or in the wrong category of player classification (e.g., “Left Squad”); and any other grievance so designated by agreement of the parties or by the System Arbitrator, shall be heard and determined in an expedited manner, with briefing and answer dates as agreed upon by the parties or, in the absence of such agreement, as ordered by the System Arbitrator.

(b) For all grievances not covered by Section 4(a) above, each League Year, the AFL and the AFLPA shall consult with the System Arbitrator and any additional arbitrators appointed by him or her to set aside reserved hearing dates for that League Year. The parties will notify each arbitrator reasonably in advance of which dates the following month are going to be used by the parties. At the hearing, the parties to the grievance and the AFLPA and the AFL will have the right to present, by testimony or otherwise, and subject to Section 3 above, any evidence relevant to the grievance. All hearings will be transcribed, unless otherwise agreed by the AFL and the AFLPA. If a grievance is set for hearing and the hearing date is then postponed by a party within ten (10) days of the hearing date, the postponement fee of the arbitrator will be borne by the postponing party unless the arbitrator determines that the postponement was for good cause. Should good cause be found, the parties will share any postponement costs equally. If a witness is unable to attend the hearing, the party offering the testimony shall inform the other party of the identity and unavailability of the witness to attend the hearing. The witness shall be heard within the next fourteen (14) days or, if the System Arbitrator is not available during such period, the next date the System Arbitrator can hear the witness. If a witness is unavailable during such dates, the issue shall be raised with and determined by the System Arbitrator. The record should be closed fourteen (14) days after the hearing date unless mutually extended notwithstanding any party’s failure to present post-hearing testimony within the above-mentioned time period. If a witness is unavailable to come to the hearing, the witness’ testimony may be taken by telephone conference call if the parties agree. In cases where the amount claimed is less than \$15,000, the parties may agree to hold the hearing by telephone conference call. If either party requests post-hearing briefs, the parties shall prepare and simultaneously submit briefs except in grievances involving non-suspension Team discipline where less than \$10,000 is at issue, in which cases the System Arbitrator will decide if briefs are necessary. Post-hearing briefs must be submitted to the arbitrator postmarked no later than thirty (30) days after receipt of the last transcript.

#### **Section 5. Award:**

(a) Unless otherwise provided in this Agreement, the System Arbitrator shall render an award as soon as practicable, and shall set forth the basis for such award in a written opinion that either accompanies the award or is issued within a reasonable time thereafter. In no event shall either the award or the written decision be issued more than thirty (30) days following the date upon which the record of the System Arbitrator is

closed (or, where applicable, the date designated by the System Arbitrator for the submission of post-hearing briefs).

(b) Rulings of the System Arbitrator shall upon their issuance constitute full, final and complete disposition of the dispute, shall be binding upon the parties to this Agreement and upon any player(s) or Team(s) involved, as well as the AFL itself and any Team or League personnel, and shall be followed by them unless the System Arbitrator has granted a stay of the execution of the award. The parties may request the System Arbitrator to reconsider any award, and the System Arbitrator shall have authority to reconsider any award, but the grant of any such reconsideration shall be fully within the discretion of the System Arbitrator. The parties may seek appropriate relief to effectuate and enforce any final arbitral award of the System Arbitrator.

**Section 6. Compensation and Costs:** With respect to the compensation and costs of the System Arbitrator: (a) fifty percent (50%) will be paid by the AFLPA; and (b) fifty percent (50%) will be paid by the applicable Team for any compensation or costs attributable to a particular grievance (e.g., arbitrator hourly fees, arbitrator travel and lodging expenses, etc.), with joint and several liability for such payment by the AFL. With respect to any compensation and costs of the System Arbitrator that are not attributable to any particular grievance, the AFL will be directly responsible for the 50% share. With respect to all other costs of the arbitration procedures (e.g., court reporters, etc.), fifty percent (50%) will be paid by the applicable Team (with joint and several liability for such payment by the AFL), and fifty percent (50%) will be paid by the AFLPA. The applicable Team and each of the other parties shall be responsible for its, or his, own travel costs in connection with a grievance, including travel costs for its witnesses. None of the costs incurred in connection with a grievance shall count against the Salary Cap.

**Section 7. Selection of System Arbitrator:** In the event that the AFL and the AFLPA cannot agree on the identity of the System Arbitrator, the parties shall submit the issue to the Center for Public Resources (or such other organization as the parties may agree upon) which shall submit to the parties a list of eleven (11) attorneys (none of whom shall have nor whose firm shall have represented within the past five (5) years players, player representatives, teams or owners in any professional sport). If the parties cannot within fifteen (15) days of receipt of such list agree to the identity of the System Arbitrator from among the names on such list, they shall alternately strike names from said list, until only one name remains, and that person shall be the System Arbitrator. The first strike shall be determined by a coin flip. Unless the parties agree otherwise, the System Arbitrator shall serve for an initial two-year term commencing on the date of his or her selection and thereafter shall continue to serve for successive two-year terms unless notice to the contrary is given either by the AFL or the AFLPA. Such notice shall be given to the other party and the System Arbitrator within the ninety (90) days preceding the end of any term, but no later than thirty (30) days prior to the end of such term. Following the giving of such notice, a new System Arbitrator shall be selected in accordance with the procedures set forth in this Section 7. The AFL and the AFLPA may dismiss the System Arbitrator at any time and for any reason upon their mutual consent. The System Arbitrator whose term has ended, and who has not been dismissed by mutual

agreement of the AFL and the AFLPA prior to the expiration of his or her term, shall continue to hear all disputes filed prior to the date of the appointment of a new System Arbitrator.