

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

This Document Relates To:

All Actions

Lead Action Case No.: 1:25-cv-10734-BEM

Consolidated with Case Nos.:

1:25-CV-11092-BEM

1:25-CV-11167-BEM

1:25-CV-11537-BEM

**Leave to File Granted on October 6, 2025
(Dkt. 138)**

**Leave to File Under Seal Granted on
October 20, 2025 (Dkt. 152)**

**REPLY IN SUPPORT OF DEFENDANT ELEVANCE HEALTH, INC.'S
MOTION TO COMPEL ARBITRATION OF PLAINTIFF
DANNY BACHOUA CHIROPRACTIC, APC'S CLAIMS AND STAY ACTION**

INTRODUCTION

Plaintiff Danny Bachoua Chiropractic, APC (“Plaintiff”) agreed to arbitrate the claims asserted in this action against Defendant Elevance Health, Inc. (“Elevance Health”) when Plaintiff contracted with American Specialty Health (“ASH”), an Elevance Health vendor. To avoid that arbitration agreement, Plaintiff primarily argues that its initial contract with ASH ended in 2013 and does not apply to Dr. Bachoua’s current corporate form. *See* Opp. at 1, 3–4. But as Plaintiff must know, Dr. Bachoua’s contracts with ASH ran through 2022, expressly reference Dr. Bachoua’s current corporate form (Plaintiff), and all contain the same agreement to arbitrate disputes with payors, including Elevance Health’s subsidiary. That is clear from documents that ASH recently provided to Elevance Health, in response to Plaintiff’s Opposition. *See* Supp. Hicks Decl. ¶¶ 6-13, Exs. A-H. As a result, Plaintiff’s attempt to cut short its arbitration agreement fails.

Plaintiff’s remaining arguments are reserved for the arbitrator to decide, not this Court. Contrary to Plaintiff’s attempt to introduce ambiguity, Opp. at 14, the arbitration provisions at issue clearly incorporate arbitration rules that empower the arbitrator to decide the gateway questions of arbitrability. That is sufficiently clear and unmistakable evidence of an intent to delegate these questions to the arbitrator. *See, e.g., Bossé v. N.Y. Life Ins. Co.*, 992 F.3d 20, 28 (1st Cir. 2021). Accordingly, this Court should not reach Plaintiff’s arguments regarding the scope of the arbitration agreement, whether a condition precedent applies, or whether the agreements are unconscionable. *See* Opp. 15–19. Each of those arguments fails in any event.

ARGUMENT

I. Plaintiff is Bound By a Valid Agreement to Arbitrate.

Plaintiff agreed to arbitrate claims not only in the signed 2010 PSAs, but again in PSAs signed in 2015 and 2016, the terms of which continued until Dr. Bachoua terminated his

participation in ASH’s network in 2022. Supp. Hicks Decl. ¶ 10, Ex. E. [REDACTED]

[REDACTED] Hicks Decl ¶ 8, Ex. 3 (“2010 Signature Pages”); Supp. Hicks Decl. ¶¶ 12, 13, Exs. G, H (“2010 PSAs”); ¶¶ 6, 8, Exs. A, C (“2015-16 PSAs”); ¶¶ 7, 9, Exs. B, D (“2015-16 PSA Signature Pages”). [REDACTED]

[REDACTED] 2010 PSA Signature Pages; 2015-16 PSA Signature Pages. [REDACTED]

[REDACTED] Supp. Hicks Decl. ¶ 11, Ex. F.

Therefore, Plaintiff’s arguments that it is not bound by an arbitration agreement, or that an arbitration agreement does not cover the time period pertaining to its antitrust claims, are unfounded. *See* Opp. at 9–11, 17.¹

Elevance Health did not waive its right to arbitrate under the 2015 or 2016 PSAs, because it only became aware of the 2015 and 2016 PSAs after receiving Plaintiff’s Opposition. *See McCabe v. Ford Motor Co.*, 774 F.Supp.3d 332, 343–44 (D. Mass. 2025) (waiver of right to arbitrate requires evidence of “*intentional* relinquishment or abandonment of a *known* right” (quoting *Morgan v. Sundance*, 596 U.S. 411, 417 (2022)) (emphasis in original)). Nor is this a

¹ Even if the Court were to find a genuine dispute about the extent of Plaintiff contracts with ASH, the appropriate next step would be a hearing or trial to resolve that factual dispute, not denial of Elevance Health’s motion. *See* 9 U.S.C. § 4 (allowing trial of genuine disputes about the making of an arbitration agreement).

case of forfeiture on appeal by failing to raise an argument in a lower court, as in the single case that Plaintiff cites. *See Coinbase, Inc. v. Suski*, 602 U.S. 143, 149 (2024).²

Further, Plaintiff is wrong that Dr. Bachoua’s change in corporate form terminates any arbitration obligations under the 2010 PSAs. Arbitration can be enforced against a non-signatory entity under principles of successor liability. Plaintiff does not dispute that Dr. Bachoua signed the 2010 PSAs as the “Contracted Chiropractor,” listing “Bachoua Chiropractic” as part of his mailing address. *See* 2010 Signature Pages; Opp. at 10 (“Dr. Danny Bachoua signed the 2010 ASH PSAs on behalf of . . . Bachoua Chiropractic.”).³ The fact that Dr. Bachoua later changed his corporate entity is immaterial: Under California law, the new entity would be a “mere continuation” of the prior entity and is subject to the same arbitration agreement. *See McClellan v. Nortridge Park Townhome Owners Ass’n, Inc.*, 89 Cal. App. 4th 746, 755 (Cal. Ct. App. 2001) (finding substantial evidence that successor homeowners association was a mere continuation of prior homeowner’s association); *see also Ribadeneira v. New Balance Athletics, Inc.*, 65 F.4th 1, 23 (1st Cir. 2023) (holding that non-signatory entity “created to take over” the prior entity’s function was bound to an arbitration agreement based on “the continuity of operations”). As in *McClellan*, Dr. Bachoua appears to have been the only officer of both corporate entities. The entities maintained the same registered agents—Dr. Bachoua.⁴ [REDACTED]

² Further, Plaintiff has an opportunity to address the 2015 and 2016 contracts in a sur-reply. *See* ECF No. 138.

³ When Elevance Health requested that ASH again search for contracts with Plaintiff, in light of Plaintiff’s Opposition, [REDACTED]

[REDACTED] *See* 2010 PSAs. They are the same in substance as cited in Elevance’s MTCA but slightly different in form.

⁴ The older cases cited by Plaintiff, Opp. at 9-10, do not analyze successor liability and address materially different non-signatory relationships. *See InterGen N.V. v. Grina*, 344 F.3d 134,142–43 (1st Cir. 2003) (involving “an elaborate web of affiliates” loosely related to the parties); *Air-*

██████████. See 2010 PSA Signature Pages; 2015-16 PSA Signature Pages. And the entities had the same business purpose—the provision of chiropractic services. Therefore, Dr. Bachoua may not simply abandon the terms assented to in the 2010 PSAs because he decided to change the name of his entity in 2013. Nor does the arbitration provision in the 2010 PSAs cease to govern disputes related to Dr. Bachoua’s 2010 PSA, even if the 2010 PSA expired in 2013.⁵ See 2010 PSAs § 5.09 (██████████
██████████.”).

Finally, Plaintiff argues that Elevance Health cannot enforce the arbitration provisions against Plaintiff. See Opp. at 9, fn.4. That is wrong. ██████████
██████████ See, e.g., 2010 PSAs § 18.01.2 (██████████
██████████). Elevance Health’s subsidiary, Anthem Blue Cross of California (“BCCA”), is one such payor, who contracted with ASH. Hicks Decl. ¶ 9, Ex. 4. And Elevance Health can enforce the arbitration agreement covering disputes with BCCA under common-law principles of equitable estoppel. See, e.g., *Arthur Andersen LLP v. Carlisle*, 555 U.S. 624, 630 (2009); *Molecular Analytical Systems v. Cuphergen Biosystems, Inc.*, 186 Cal. App. 4th 696, 706 (Cal. Ct. App. 2010). Equitable estoppel applies where a party has signed an arbitration agreement “but attempts to avoid arbitration by suing non-signatory defendants for

Con, Inc., 21 F.4th, 168, 174 (1st Cir. 2021) (movant failed to show a parent controlled the activities of the subsidiary); *People v. Maplebear Inc.*, 81 Cal. App. 5th 923, 931 (Cal. Ct. App. 2022) (extending arbitration provisions between customers and Instacart to a city’s lawsuit); *Gopal v. Kaiser Found. Health Plan, Inc.*, 248 Cal. App. 4th 425, 431–32 (Cal. Ct. App. 2016), *as modified* (June 23, 2016) (involving three enterprises sued as a joint enterprise).

⁵ P ██████████
██████████ See, e.g., Supp. Hicks Decl. Exs. E, F; *cf. Craig v. Brown & Root, Inc.*, 84 Cal. App. 4th 416, 420 (Cal. Ct. App. 2000) (finding implied acceptance of arbitration agreement based on continued employment).

claims that are based on the same facts and are inherently inseparable from arbitrable claims against signatory defendants,” including where the party sues a non-signatory with a close corporate relationship to the signatory. *Metalclad Corp. v. Ventana Enviro. Org. Partnership*, 109 Cal. App. 4th 1705, 1713, 1716–18 (Cal. Ct. App. 2003) (internal quotation marks omitted); *Rowe v. Exline*, 153 Cal. App. 4th 1276, 1287–90 (Cal. Ct. App. 2007). That is exactly the case here. To the extent Plaintiff can state any claim against Elevance Health, that claim fundamentally seeks higher levels of reimbursement for chiropractic services that Dr. Bachoua provided. And such reimbursement is exactly the subject matter addressed in Dr. Bachoua’s contract with ASH and the corresponding agreement between ASH and Elevance Health’s subsidiary, BCCA. Moreover, Plaintiff makes numerous allegations relating to in-network rates, which are also the subject the ASH contract. *See, e.g.*, Compl. ¶¶ 3, 46, 94-96, 133-136, 298-303. Had Dr. Bachoua sued BCCA directly, the arbitration agreement (including the delegation provision therein) would plainly apply. It would be inequitable to allow Plaintiff to circumvent its arbitration agreements simply by naming a different corporate affiliate of BCCA.

II. All Other Issues Are Reserved for Arbitration.

To the extent Plaintiff contends that its claims against Elevance Health do not fall within the scope of the arbitration provision, that a condition precedent bars arbitration, or that the agreement is not enforceable, those questions are reserved for the arbitrator.

a. Plaintiff Agreed to Delegate Issues of Arbitrability to the Arbitrator.

Plaintiff argues that the PSAs do not include a standalone delegation provision within the contracts, *see Opp.* at 14, but that is not required. Both the First Circuit and the Supreme Court have ruled that the incorporation of arbitration rules, which themselves empower arbitrators to decide gateway issues, is sufficiently “clear and unmistakable evidence” of the parties’ intent to

delegate issues of arbitrability to the arbitrator. *See* MTCA at 8. Here, all of the relevant arbitration agreements incorporate arbitration rules that call for the arbitrator to decide gateway issues. T

2010 PSAs § 18.01.3. Plaintiff complains that Elevance Health’s opening brief cites more recent versions of the NAF rules, but versions of the NAF rules operative since 2010 include the same language.⁶

⁷ *see* 2015–16 PSAs § 20.01.3, which the Supreme Court and First Circuit courts have likewise found sufficient to delegate gateway issues of arbitrability. *See* MTCA at 8 (collecting cases). Accordingly, this Court should not reach Plaintiff’s arguments regarding the scope of the arbitration agreement, whether a condition precedent bars arbitration, or whether the agreements are unconscionable. *See* Opp. 15–19.

b. Plaintiff’s Claims Fall Within the Scope of the Arbitration Provisions.

Even if Plaintiff had not agreed to delegate questions regarding the scope of the arbitration agreement to the arbitrator, Plaintiff’s antitrust claims here are plainly within the scope of that agreement.

See MTCA at 11; *see also* 2015–16 PSAs § 4.14, and 2010 PSAs § 2.03.7 (

See Opp. at 17.

⁶ National Arbitration Forum: ADR Rules & Forms from the FORUM, Rule 20F (2008), Durant Decl. ¶ 2 Ex. I.

⁷ AAA Commercial Arbitration Rules and Mediation Procedures, R-7 (2013), Durant Decl. ¶ 3, Ex. J.

(citation omitted). [REDACTED]

[REDACTED]

[REDACTED] See, e.g., 2010 PSAs § 18.01.1 ([REDACTED]

[REDACTED]) (emphasis added); 2015–

16 PSAs § 20.01.1 (same). [REDACTED] Id. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See 2010 PSAs at § 18.01.1 (“[REDACTED]

[REDACTED]

[REDACTED]”). Plaintiff points to no evidence that it ever notified ASH of its dispute with Elevance Health before filing this lawsuit or declining to arbitrate its claims, much less that ASH requested that Plaintiff engage in internal appeals. Plaintiff cannot escape its arbitration agreement by failing to meet its own obligation to initiate internal appeals relating to its dispute with Elevance Health. See, e.g., *City of Hollister v. Monterey Ins. Co.*, 165 Cal. App. 4th 455, 490 (Cal. Ct. App. 2008) (“[W]here one contracting party prevents the other’s performance of a condition precedent, the party burdened by the condition is excused from performing it[.]”).

[REDACTED]

[REDACTED] See 2010 PSAs § 18.01.2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Estate of Jones*, 82 Cal. App. 5th at 953.

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Counsel for Defendants Elevance Health, Inc.

CERTIFICATE OF SERVICE

I, Olga Fleysh attorney for the Defendants listed below, certify that, on October 17, 2025, I caused a copy of the foregoing motion and memorandum and exhibits in support thereof to be served, via ECF, on all counsel of record.

/s/ Olga Fleysh
Olga Fleysh

Counsel for Defendant Elevance Health, Inc.

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SUPPLEMENTAL DECLARATION OF SCOTT HICKS

I, Scott Hicks, declare:

1. I am a legal specialist at Elevance Health, Inc. f/k/a Anthem, Inc. I have worked for Elevance Health for over twenty years, performing roles in customer service, data processing, claims research, and other tasks. In the regular course of performing my work responsibilities, I have access to certain Elevance Health business records, including contracts with health care providers.

2. I have personal knowledge of the facts stated in this declaration and would, if called as a witness, competently testify to those facts. I am submitting this supplemental declaration in further support of Elevance Health Inc.'s Motion to Compel Arbitration and Stay Proceedings (the "Motion"). I previously submitted a Declaration in support of the Motion dated August 11, 2025.

3. Prior to the filing of Elevance Health's Motion, Elevance Health requested from American Specialty Health Plans of California, Inc. ("ASH") any contracts between ASH and Dr. Danny Bachoua. In response, ASH provided a copy of two 2010 contracts between ASH and Dr. Danny Bachoua and a January 24, 2022 letter accepting Dr. Bachoua's termination of his participation in the ASH network. When Elevance Health's Motion was filed, I was not aware of,

and had no reason to believe, that subsequent versions of the contract between ASH and Dr. Danny Bachoua existed.

4. After receiving Plaintiff's Opposition to Elevance Health's Motion on September 22, 2025, Elevance Health, through counsel, inquired whether ASH had additional contracts with Dr. Danny Bachoua.

5. In response, on October 1 and 8, 2025, ASH provided copies of 2015 and 2016 signed PSA contracts, signed by Dr. Bachoua as Danny Bachoua Chiropractic, APC, along with an IRS Form W-9 for Danny Bachoua Chiropractic APC. ASH also provided substitute copies of the 2010 contracts between ASH and Dr. Bachoua.

6. Attached hereto as **Exhibit A** is a true and correct copy of the 2015 Chiropractic Practitioner Services Agreement ("PSA") between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 8, 2025.

7. Attached hereto as **Exhibit B** is a true and correct copy of the signature page to the 2015 Chiropractic PSA between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 1, 2015.

8. Attached hereto as **Exhibit C** is a true and correct copy of the 2016 Chiropractic PSA between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 8, 2025.

9. Attached hereto as **Exhibit D** is a true and correct copy of the signature page to the 2016 Chiropractic PSA between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 1, 2015.

10. Attached hereto as **Exhibit E** is a true and correct copy of the ASH "Acceptance of Resignation" letter sent to Danny Bachoua Chiropractic, APC by ASH on January 24, 2022.

11. Attached hereto as **Exhibit F** is a true and correct copy of Dr. Danny Bachoua Chiropractic, APC's W-9, dated November 5, 2013 and received from ASH on October 1, 2025. **Exhibit F** contains Plaintiff's Tax Identification Number, which is considered private and sensitive information and has been redacted.

12. Attached hereto as **Exhibit G** is a true and correct copy of the 2010 Networks Chiropractic PSA between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 8, 2025.

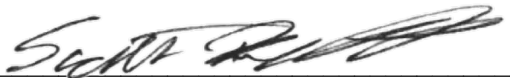
13. Attached hereto as **Exhibit H** is a true and correct copy of the 2010 Plans Chiropractic PSA between American Specialty Health Plans of California, Inc. and ASH received from ASH on October 8, 2025.

14. The April 15, 2013 vendor agreement between Anthem and ASH that was attached to my prior declaration, as Exhibit 4, was a base contract that the parties extended by amendment through at least 2022, according to Elevance Health business records that I have reviewed.

15. **Exhibits A-E**, and **G-H** contain third-party ASH's competitively sensitive information. If the contents of these contracts were made public, including to competitors and other providers with whom ASH negotiates, ASH may suffer substantial harm to their competitive position.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Woodland Hills, California, on October 20, 2025.



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**DECLARATION OF MARIA R. DURANT IN SUPPORT OF ELEVANCE HEALTH,
INC.'S REPLY IN SUPPORT OF ITS MOTION TO COMPEL ARBITRATION OF
PLAINTIFF DANNY BACHOUA CHIROPRACTIC, APC**

I, Maria Durant, state under oath, as follows:

1. I am a partner of the law firm Hogan Lovells US LLP (“Hogan Lovells”). Hogan Lovells is counsel for Defendant Elevance Health, Inc. (“Elevance Health”) in this action. I have full knowledge of the matters stated herein and could and would testify thereto.

2. Attached hereto as **Exhibit I** is a true and correct copy of the 2008 Code of Procedure for the National Arbitration Forum derived from web archives located at the following web address: <https://web.archive.org/web/20101224195254/http://www.adrforum.com/users/naf/resources/CodeofProcedure2008-print2.pdf>.

3. Attached hereto as **Exhibit J** is a true and correct copy of the American Arbitration Association Commercial Arbitration Rules and Mediation Procedures amended and effective October 1, 2013. derived from web archives located at the following web address: https://www.adr.org/media/maxdiho4/commercialrules_web-2013.pdf.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 20th day of October, 2025

/s/ Maria R. Durant

Maria R. Durant

EXHIBIT I



CODE OF PROCEDURE



P.O. Box 50191
Minneapolis, MN 55405
800-474-2371
www.adrforum.com

August 1, 2008

Code of Procedure

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Part I—Scope

RULE 1. ARBITRATION AGREEMENT.

A. Parties who contract for or agree to arbitration provided by the Forum or this Code of Procedure agree that this Code governs their arbitration proceedings, unless the Parties agree to other procedures. This Code shall be deemed incorporated by reference in every Arbitration Agreement, which refers to the National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, adrforum.com, Forum or this Code of Procedure, unless the Parties agree otherwise. This Code shall be administered only by the National Arbitration Forum or by any entity or individual providing administrative services by agreement with the National Arbitration Forum.

B. Parties may agree to submit any matter, including any Claim for legal or equitable relief, to arbitration unless prohibited by applicable law.

C. Arbitrations will be conducted in accord with the applicable Code of Procedure in effect at the time the Claim is filed, unless the law or the agreement of the Parties provides otherwise. A case that has been Stayed, extended or Adjourned for more than one hundred-eighty (180) days may be subject to the Code of Procedure and Fee Schedule in effect at the time the case proceeds.

D. Parties may modify or supplement these rules as permitted by law. Provisions of this Code govern arbitrations involving an

appeal or a review de novo of an arbitration by other Arbitrators.

RULE 2. DEFINITIONS.

For purposes of this Code, the following definitions apply:

A. Affidavit: A Written statement of a person who asserts the statement to be true under penalty of perjury or who makes the statement under oath before a notary public or other authorized individual.

B. Adjournment: A continuance or delay for a specific period of time requested after the appointment of an Arbitrator. See Time Extension and Stay.

C. Amendment: A change made to a Claim after it has been served on the Respondent and any change made to a Response after it has been filed and Delivered to all Parties.

D. Appearance: Any filing by a Party or Party's Representative under Rules 12, 13, 19B, 41A or 44H.

E. Arbitration Agreement: Any Written provision in any agreement between or among the Parties to submit any dispute, controversy or Claim to the Forum or to arbitration under this Code.

F. Arbitrator: An individual selected in accord with the Code or an Arbitration Agreement to render Orders and Awards, including a sole Arbitrator and all Arbitrators of an arbitration panel. No Arbitrator may be a director or officer of the Forum. A Party Arbitrator is an Arbitrator selected by a Party to serve as a member of a panel of Arbitrators in accord with the agreement of the Parties.

G. Award: Any Award establishing the final rights and obligations of the Parties or as otherwise provided by this Code or by law.

H. Claim: Any Claim submitted by any Party including an Initial Claim, Cross-claim, Counter Claim, and Third Party Claim.

I. Claimant: Any individual or Entity making any Claim under this Code.

J. Claim Amount: The total value of all relief sought. A Claimant seeking non-monetary relief states a monetary value for this relief for purposes of establishing the Claim Amount.

K. Common Claim: A Claim Amount less than \$75,000.

L. Consumer: An individual, who is not a business or other Entity, whose Claim or Response against a business or other Entity arises:

- (1) From a transaction or event entered into primarily for personal, family or household purposes;
- (2) From an existing, past or prospective employment relationship with an employer Party; or
- (3) From a transaction or event involving any aspect of health care.

M. Delivery: Delivery to the address of a Party, the Forum or an Arbitrator by the postal service of the United States or any country, or by a reliable private service, or by facsimile, e-mail, electronic or computer transmission.

N. Director: The Director of Arbitration and the Forum staff administer arbitrations under

this Code or under other rules agreed to by the Parties.

O. Document: Any Writing or data compilation containing information in any form, including an agreement, record, correspondence, summary, electronically stored information, tape, e-mail, video, audio, disk, computer file, electronic attachment, notice, memorandum or other Writings or data compilations.

P. E-commerce Transaction: All contracts and agreements entered into, in whole or in part, by electronic or computer communication and all transactions consummated through electronic or computer communication.

Q. Entity: Any association, business, company, cooperative, corporation, country, governmental unit, group, institution, organization, partnership, sole proprietorship, union or other establishment.

R. Fee Schedule: The Fee Schedule appears in a supplement to this Code.

S. Forum: The National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, arbitration-forum.com, and adrforum.com constitute the administrative organizations conducting arbitrations under this Code. The Forum or an entity or individual providing administrative services by agreement with the Forum administers arbitrations in accord with this Code.

T. Hearing: Hearings include:

- (1) Document Hearing: A proceeding in which an Arbitrator reviews documents or property to render an Order or Award and the Parties do not attend.

(2) Participatory Hearing: Any proceeding in which an Arbitrator receives testimony or arguments and reviews documents or property to render an Order or Award. The types of Participatory Hearings include:

- a. In-person Hearing – A Hearing at which the participants may appear before the Arbitrator in person;
- b. Telephone Hearing – A Hearing at which the participants may appear before the Arbitrator by telephone; and,
- c. On-line Hearing – A Hearing at which the participants may appear before the Arbitrator on-line, by e-mail or by other electronic or computer communication.

U. Interim Order: Any Order providing temporary or preliminary relief pending a final Award.

V. Large Claim: A Claim Amount of \$75,000 or more.

W. Order: Any Order establishing specific rights and obligations of the Parties.

(1) A Dispositive Order results in a final Award or dismissal of any Claim or Response.

(2) All other Orders are Non-dispositive.

X. Party: Any individual or Entity who makes a Claim or against whom a Claim is made including Claimants, Respondents, Cross-claimants, and Third Parties.

Y. Party Witness: Any person who is an individual Party or who is an employee of an entity Party at the time of the service of the subpoena.

Z. Proof of Service: An Affidavit stating how and where service was made.

AA. Receive or Receipt: The Delivery or other effective notice to the Forum, or to a Party at the address of the Party or Party Representative.

BB. Representative: Any individual, including an attorney, who makes an appearance on behalf of a Party.

CC. Request: Any Request by a Party directed to an Arbitrator or the Forum for an Order or other relief, including any motion, petition or other type of Request.

DD. Respondent: Any Party against whom a Claim is made.

EE. Response: Any Written Response by a Party or Representative to any Claim.

FF. Sanctions: Sanctions include dismissal of the arbitration or the Claims or Responses; preclusion of evidence; admission of facts; payment of costs; payment of fees including reasonable attorney fees, Arbitrator fees, and arbitration fees; the rendering of an Order or Award; and other Sanctions deemed appropriate. Sanctions may be imposed against a Party, a Representative or both.

GG. Signature or Signed: Any mark, symbol or device intended as an attestation, produced by any reliable means, including an electronic transcription intended as a Signature.

HH. Stay: A delay for an indefinite period of time requested by a Claimant before an Arbitrator is appointed. See Time Extension and Adjournment.

II. Time Extension: A continuance or delay for a specific period of time requested before the appointment of an Arbitrator. See Adjournment and Stay.

JJ. With Prejudice: The case cannot be brought again. The Claimant cannot subsequently bring the same Claim against the Respondent.

KK. Without Prejudice: The case may be brought again. The Claimant can subsequently file the same Claim against the same Respondent.

LL. Writing or Written: Any form intended to record information, including symbols on paper or other substance, recording tape, computer disk, electronic recording, and video recording and all other forms.

RULE 3. REPRESENTATION.

A. Parties may act on their own behalf or may be represented by an attorney or by a person who makes an appearance on behalf of a Party.

B. Parties, their Representatives, and all participants shall act respectfully toward the Forum staff, the Arbitrator, other Parties, Representatives, witnesses, and participants in the arbitration.

RULE 4. CONFIDENTIALITY.

Arbitration proceedings are confidential unless all Parties agree or the law requires arbitration information to be made public. Arbitration Orders and Awards are not confidential and may be disclosed by a Party. The Arbitrator and Forum may disclose case filings, case dispositions, and other case information filed with the Forum as required by a Court Order or the applicable law.

Part II—Commencement of Arbitration

RULE 5. SUMMARY OF PROCEDURES.

A. Claim. A Party begins an arbitration by filing with the Forum a properly completed copy of the Initial Claim described in Rule 12, accompanied by the appropriate filing fee which appears in the Fee Schedule. The Forum reviews the Claim, opens a file, assigns a file number, and notifies the Claimant, who then serves the Respondent in accord with Rule 6.

B. Response. A Respondent may file a Response as explained in Rule 13 or respond otherwise as explained in these rules and the Notices of Arbitration, which appear in Appendices A and B. If there is no timely Response, the arbitration proceeds in accord with Rule 36.

C. After a Response. The arbitration proceeds in accord with a Scheduling Notice issued by the Forum or by action by the Parties.

D. Hearing. A Party may select a Document Hearing under Rule 25 or a Participatory Hearing under Rule 26 and pay the fee, if any, listed in the Fee Schedule. Parties have a full and equal right to present relevant and reliable direct and cross examination testimony, documents, exhibits, evidence, and arguments. A record may be made of Participatory Hearings.

E. Arbitrator. The Parties select an Arbitrator(s) by mutual agreement in accord with Rules 21, 22, and 23. Forum arbitrators are neutral, independent, experienced, and knowledgeable about the applicable law.

F. Arbitrator Qualifications. A neutral Arbitrator shall not serve if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased in accord with Rules 21 and 23. A Forum Arbitrator may also be removed similar to the ways a judge or juror may be stricken.

G. Arbitrator Powers. An Arbitrator decides issues in a case including questions of fact and law. An Arbitrator follows the applicable substantive law and may grant any remedy or relief provided by law or equity, including monetary and injunctive relief, in accord with Rules 20, 27, 37, and 38.

H. Discovery. Before a Hearing is held, Parties shall cooperate in the discovery process and may exchange and obtain discovery in accord with Rule 29.

I. Requests. Parties may seek appropriate relief or remedies in accord with Rule 18.

J. Fee Schedules. The Fee Schedules appear in a supplement to this Code. The Forum Fee Schedules are a model of fair cost and fee allocation. The Common Claim Fee Schedule governs amounts under \$75,000, and the Large Claim Fee Schedule governs all other Claim Amounts.

K. Consumers. See Rule 2L. Consumers include Consumers, employees, and patients. Consumers pay only reasonable arbitration fees as explained in these Rules and the Fee Schedule, and as required by the applicable law. Other Parties may have to pay fees for Consumers.

L. Indigent Parties. In accord with Rule 45, Consumers who meet the United States Federal poverty standards need not pay arbitration fees.

M. Substantive Law and Remedies. All types of legal and equitable remedies and relief available in court are available in arbitration. Claims, Responses, remedies or relief cannot be unlawfully restricted, and Parties may effectively pursue any remedy or relief in arbitration including statutory, common law, injunctive, equitable, and all other lawful remedies and relief.

N. Award or Order. After a Hearing, an Arbitrator shall promptly issue an Award or Order in accord with Rule 37 or 38. Reasons, findings of fact, and conclusions of law shall be in accord with Rule 37 or 38.

O. Review and Enforcement. An Award may be enforced in any court of competent jurisdiction, as provided by applicable law. An Award or Order may be reviewed by a court with jurisdiction to determine whether the Arbitrator properly applied the applicable substantive law and whether the arbitration complied with applicable arbitration laws.

P. Public Information. Arbitration information may be made public in accord with Rule 4 or as required by Court Order.

Q. Access to Justice. This Code shall be interpreted to provide all Parties with a fair and impartial arbitration and with reasonable access to civil justice. Arbitrations under the Code are governed by the Federal Arbitration Act in accord with Rule 48B.

RULE 6. SERVICE OF CLAIMS, RESPONSES, REQUESTS, AND DOCUMENTS.

A. After being notified by the Forum that a Claim has been accepted for filing in accord with Rules 7 and 12, and a file number has been provided, the Claimant shall promptly serve on each Respondent one (1) copy of the Initial Claim Documents, containing the Forum file number, together with a Notice of Arbitration substantially conforming to Appendix A of this Code, including notice that the Respondent may obtain a copy of the Code, without cost, from the Claimant or the Forum.

B. Service of Initial Claims and Third Party Claims shall be effective if done by:

(1) United States Postal Service Certified Mail Signed return receipt or equivalent service by the national postal service of the country where the Respondent resides or does business;

(2) Delivery by a private service with the Delivery receipt Signed by a person of suitable age and discretion who Received the Documents;

(3) Delivery with a Written acknowledgment of Delivery by the Respondent or a Representative;

(4) In accord with the Federal Rules of Civil Procedure of the United States or the rules of civil procedure of the jurisdiction where the Respondent entered into the Arbitration Agreement;

(5) In accord with any agreement of the Party served;

(6) For Claims related to or arising from an E-commerce Transaction, Delivery to the e-mail address of the Party served, Receipt confirmed; or

(7) Service is complete upon Receipt by the Party served or the filing of a Response with the Forum by a Respondent.

C. Service of Responses, Counter Claims, Cross-claims, Requests, notices, and Documents shall be by Delivery, as defined in Rule 2M, to the address of all Parties or their Representatives at their addresses of record with the Forum, or by using service methods for an Initial Claim in Rule 6B. Amended Claims shall be served or Delivered as provided in Rule 17D.

D. The Party serving or Delivering a Claim, Response, Request, notice or Document shall timely Deliver copies to all Parties not required to be served. This rule does not apply to a Rule 45 Request.

E. Parties and Representatives shall immediately notify the Forum and all other Parties of their mail, facsimile and e-mail address and any changes in their addresses. If they fail to do so, Parties and their Representatives agree to Receive service at the previous address provided to the Forum.

RULE 7. FILING.

A. A Party who serves a Claim or Response shall timely file these and all other Documents and Proof of Service with the Forum. The filing of Proof of Service constitutes a certification that the service conforms to Rule 6. A Party who files paper Documents with the Forum shall file two (2) copies. A Party who files Documents online need only file one set of Documents.

B. Parties may file by Delivery as defined in Rule 2M, in person, or by other methods of filing authorized by the Forum at:

P.O. Box 50191
Minneapolis, Minnesota USA 55405-0191
or
www.adrforum.com
or
file@adrforum.com
or
Fax: 952-345-1160

C. Upon Proof of Service of an Initial Claim, where no Response has been filed, the Forum shall mail to Respondent the Second Notice of Arbitration, substantially conforming to Appendix B of this Code.

D. The Forum may distribute copies of Documents filed with the Forum to Parties or their Representatives who have entered an Appearance with the Forum.

E. Filing is complete upon Receipt by the Forum of all required Documents and fees. Claims, Responses, Requests, Notices, and all other Documents Received by the Forum are not considered filed until all required Documents are Received together with all applicable fees.

F. The effective date of filing is the business day the Forum Receives all required Documents and fees. A submission is due before Midnight, United States Central time, on its due date.

RULE 8. NOTICES AND CONFERENCES.

A. The Forum may notify and communicate with a Party or Parties by Writing, facsimile, e-mail, telex, telegram, telephone, in person or by other means of communication.

B. The Forum or Arbitrator may conduct a conference with a Party or Parties to discuss procedural matters on the initiative of the Forum or at the Request of a Party or Arbitrator.

C. The Forum may issue a Scheduling Notice regarding the Hearing process, including preliminary Hearings.

RULE 9. TIME PERIODS, TIME EXTENSIONS, ADJOURNMENTS, AND STAYS.

A. Time Periods. In computing any period of time under this Code, the day of the act or event from which the designated period of time begins to run shall not be included.

B. Holidays. Saturdays, Sundays, and federal holidays of the United States are included in the computation of time, except when they fall on the last day of a period.

C. Enforcement. The time periods established in this Code are to be strictly enforced and a Party's untimely Claim, Response, Request, Notice, Document or submission may be denied solely because it is untimely.

D. Time Extensions. The Forum may extend time periods in this Code. A Request for a Time Extension must be filed with the Forum and delivered on all other Parties at least five (5) days before the time period ends or no later than a deadline established by a Scheduling Notice, whichever is earlier, and must be accompanied by a fee, if any, as provided in the Fee Schedule. A Request submitted after the time period has ended will not be considered unless extraordinary circumstances exist.

E. Adjournments. An Arbitrator may Adjourn the arbitration process or a Hearing to a later date. A Rule 18 Request for an Adjournment must be filed with the Forum and served on the other Parties at least seven (7) days before the scheduled event and must be accompanied by a fee, if any, as provided in the Fee Schedule. A Request

submitted after the time period has ended will not be considered unless extraordinary circumstances exist. Any other Party may object to a Request by filing with the Forum and serving on all other Parties an objection within three (3) days of the Request being filed with the Forum.

F. Stays.

(1) A Claimant may obtain a Stay of a case for an indefinite period of time by filing with the Forum and serving on all other Parties a Stay Notice prior to the appointment of an Arbitrator. An opposing Party may end a Stay by filing with the Forum and serving on all Parties an objection which ends the Stay. Claimant may file only one (1) Stay Notice and may seek a subsequent Stay by submitting a Rule 18 Request. A Stay suspends the time when proceedings and hearings occur and when Documents and Fees are due.

(2) By submitting a Notice at any time, Parties may mutually agree to Stay a matter based on a settlement agreement. Upon receipt of the Notice, the Forum shall stay the matter for the duration of the settlement agreement. Any Party may end such a Stay by filing with the Forum and serving on all Parties an objection seeking to end the Stay.

(3) The Forum shall Stay a case if ordered by a court of competent jurisdiction, and may Stay a case when reasonably necessary.

G. International. For arbitration Hearings to be held outside of the United States, an additional thirty (30) days shall be added to the time periods in Rule 13 of this Code. Additional time for other proceedings will be made available at the determination of

the Forum or at the Request of a Party.

RULE 10. TIME LIMITATIONS.

A. No Claim may be brought after the passage of time which would preclude a Claim regarding the same or similar subject matter being commenced in court. This time limitation shall be suspended for the period of time a court of competent jurisdiction exercises authority over the Claim or dispute. This rule shall not extend nor shorten statutes of limitation or time limits agreed to by the Parties, nor shall this rule apply to any case that is directed to arbitration by a court of competent jurisdiction.

B. An arbitration shall commence on the date the Respondent is served with the Initial Claim Documents or the date a Response is filed with the Forum, whichever is earlier.

Part III–Documents

RULE 11. FORM AND PARTIES.

A. Every Claim, Response, Amendment, and Request shall be in Writing and Signed by a Party or Representative.

B. Parties and Representatives shall provide the Forum and all Parties with their names, current address, an address where service will be accepted, telephone numbers, and available facsimile numbers and e-mail addresses. Respondents shall provide the Forum with the address of their residence or business for determination of the proper location of the Hearing in accord with Rule 32.

C. Statements in Claims, Responses, Amendments, and Requests may be made in separate or numbered sentences, paragraphs or sections, and may refer to exhibits attached to Claims, Responses, Requests or Documents.

D. English is the language used in Forum proceedings unless the Parties agree to use another language. The Forum or Arbitrator may Order the Parties to provide translations at their own cost unless the Forum has agreed in advance to the use of another language.

E. A Party may be:

(1) An executor, administrator, guardian, bailee, trustee, or

(2) An assignee, a successor in interest, a recipient of a transfer of interest, or

(3) A guardian, conservator, fiduciary, or other legal Representative for an infant or incompetent person.

Proof of the status of a Party under this rule must be made by an Affidavit filed with the Forum. A Party who contests the status of another Party may file a Rule 18 Request for relief with the fee, if any, as provided in the Fee Schedule.

RULE 12. INITIAL CLAIM.

A. An Initial Claim, which begins an arbitration in accord with Rule 6 of this Code, shall include:

(1) A statement in plain language of the dispute or controversy, the facts and the law (if known) supporting the Claim, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the specific value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 12B, and other relevant and reliable information supporting the Claim;

(2) A copy of the Arbitration Agreement, or, if not in the possession of the Claimant, notice of the location of a copy of the Arbitration Agreement;

(3) A copy of available Documents that support the Claim;

(4) An Affidavit asserting that the information in the Claim is accurate; and

(5) The appropriate Filing Fee as provided in the Fee Schedule.

B. A Claimant who seeks costs and attorney fees must include this statement in the Claim and may either:

(1) State the specific amount sought in the Claim; or

(2) Amend the Claim to state the specific amount sought:

a. For Document Hearings no later than ten (10) days from the date of the Notice of the Selection of an Arbitrator; or

b. For Participatory Hearings no later than seven (7) days from the close of the Hearing; or

c. For prevailing Parties, by Order of the Arbitrator.

C. After service of the Initial Claim on the Respondent, the Claimant shall promptly file with the Forum Proof of Service of the Initial Claim on the Respondent. A Claim shall not proceed to arbitration until the Forum has received a copy of the Proof of Service of the Initial Claim or a Response has been filed with the Forum.

D. An Arbitrator may reject, in whole or in part, an Initial Claim that does not substantially conform to this rule.

E. A Claimant may seek any remedy or relief allowed by applicable substantive law.

RULE 13. RESPONSE.

A. Upon service of an Initial Claim, Counter Claim, Cross-claim, or Third Party Claim on a Respondent, the Respondent shall Deliver to the Claimant and file with the Forum, within thirty (30) days from Receipt of service or fourteen (14) days from the date of the Second Notice of Arbitration, whichever is later, a Response which shall include:

(1) A Written Document stating in plain language a Response to the Claim or stating the Respondent has insufficient information to affirm or deny a statement. A Response shall also include any defenses to each Claim made, the facts and the law (if known) supporting the defenses, including affirmative defenses and set offs;

(2) An objection to the arbitration of the Claim, if the Respondent so objects. A Response that does not assert this objection is an agreement to the arbitration of the Claim and a waiver of this objection which cannot be asserted in an Amendment;

(3) A copy of available Documents that support the Response;

(4) Any Counter Claim the Respondent has against the Claimant in accord with Rule 14 of this Code, including the Counter Claim filing fee;

(5) Proof of Delivery of the Response to all other Parties; and

(6) Any fees as provided in the Fee Schedule or as required by the agreement of the Parties.

B. A Party may obtain ten (10) additional days to respond to an Initial Claim by filing with the Forum and Delivering to all other Parties an extension Notice before the Response is due. Only one (1) extension by Notice is available.

C. A Respondent who responds but does not state available replies, defenses or Claims may be barred by the Arbitrator from presenting such replies, defenses or Claims at the Hearing. The failure of a Respondent to deny a statement in a Claim may be

considered by the Arbitrator as an admission of that statement.

D. An Arbitrator may reject, in whole or in part, a Response that does not substantially conform to this rule.

RULE 14. COUNTER CLAIM.

A. A Respondent may assert a Counter Claim against a Claimant by Delivering to the Claimant, as part of the Response in accord with Rule 13, Counter Claim Documents which include:

(1) A Counter Claim stating in plain language the dispute or controversy, the facts and the law (if known) supporting the Counter Claim, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the specific value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 12B, and other relevant and reliable information supporting the Counter Claim;

(2) A copy of available Documents that support the Counter Claim; and

(3) An Affidavit asserting that the information in the Counter Claim is accurate.

B. The Respondent shall also pay the filing fee for a Counter Claim as provided in the Fee Schedule at the time of filing the Counter Claim with the Forum.

C. An Arbitrator may reject, in whole or in part, Counter Claim Documents that do not substantially conform to this rule.

RULE 15. CROSS-CLAIM.

A. A Party may assert a Claim against a co-Party arising out of the same or related transaction or occurrence of the dispute or controversy by Delivering to the co-Party the Cross-claim Documents which include:

(1) A Cross-claim setting forth in plain language the dispute or controversy, the facts and the law (if known) supporting the Cross-claim, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the specific value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 12B, and other relevant and reliable information supporting the Cross-claim;

(2) A copy of available Documents that support the Cross-claim; and

(3) An Affidavit asserting that the information in the Cross-claim is accurate.

B. A Party shall Deliver a Cross-claim on all Parties and shall file copies with the Forum within fifteen (15) days of the date of service of a Response.

C. The Cross-claimant shall file with the Forum, promptly after Delivery of the Cross-claim, the proof of Delivery of the Cross-claim on all Parties, with the fee for filing a Cross-claim, if any, and the fee for a Hearing, if selected, as provided in the Fee Schedule.

D. An Arbitrator may reject, in whole or in part, Cross-claim Documents that do not substantially conform to this Rule.

RULE 16. THIRD PARTY CLAIM.

A. If a Respondent asserts that a non-Party, who has entered into an Arbitration Agreement but was not served by the Claimant, is responsible for the Award demanded, the Respondent may serve a Third Party Claim on this Party, which shall include:

(1) All information required in an Initial Claim in Rule 12 of this Code, including a copy of the Claim Documents that gave rise to the Third Party Claim; and

(2) A copy of the Arbitration Agreement, or notice of the location of a copy of the Arbitration Agreement.

B. The Third Party Claim shall be Delivered to all other Parties and a copy shall be filed with the Forum within thirty (30) days of the date of service of the Initial Claim, as required by Rule 16A.

C. The Third Party Claimant shall file with the Forum, promptly after service of the Third Party Claim the Proof of Service of the Third Party Claim on Third Party Respondent and proof of Delivery on all other Parties, with the fee for a Third Party Claim, and the fee for a Hearing, if selected, as provided in the Fee Schedule.

D. An Arbitrator may reject, in whole or in part, Third Party Claim Documents that do not substantially conform to this rule.

RULE 17. AMENDMENT.

A. A Claim or Response may be Amended:

(1) By agreement of the Parties at any time;

(2) By Request, not later than the Scheduling Notice deadline or ten (10)

days from the date of the Notice of Selection of an Arbitrator for a Document Hearing or thirty (30) days before the earliest date set for a Participatory Hearing, if the Amendment does not delay the arbitration and promotes fairness, efficiency, or economy, which Request shall be promptly decided by an Arbitrator; or

(3) By Request during or within three (3) days following a Document or Participatory Hearing, if the Arbitrator finds the Amendment conforms to the evidence received.

B. An Amendment of a Claim or Response, or a Request for an Amendment, shall be designated as such and promptly served on all Parties and filed with the Forum. Any Party may object to the Amendment Request by filing with the Forum and Delivering to all Parties a Written objection(s) within ten (10) days of Delivery of the Request. An amended Claim which increases the Claim Amount shall also be accompanied by the additional filing fee in the Fee Schedule. An amended Claim, excluding Amendments agreed to by all Parties, shall also be accompanied by the Amendment Request Fee as provided in the Fee Schedule.

C. A Respondent shall respond to an amended Claim within the time remaining for a Response to the Initial Claim or within fifteen (15) days after service of the amended Claim, whichever time is longer, unless the Parties agree or an Arbitrator orders otherwise.

D. After service of the Initial Claim, an Amendment of a Claim that increases the monetary amount of the value of relief sought in the Initial Claim must be served in accord with Rule 6B. All other Amendments may be Delivered in accord with Rule 2M.

E. Any change to the Claim before service is made on Respondent is not an Amendment. After service, a reduction of the Claim Amount, a change of address of a Party, and the substitution of a successor in interest are not Amendments.

F. An Amendment of a Claim shall relate back to the time the Initial Claim was commenced unless otherwise provided by applicable law.

RULE 18. REQUEST TO ARBITRATOR OR FORUM.

A. A Party may Request an Order or other relief from an Arbitrator or the Forum by filing with the Forum:

(1) A Document stating in plain language:

- a. The Request;
- b. The specific rule, if any, relied on for an Order or other relief;
- c. The specific relief or Order sought;
- d. The facts and law supporting the Request; and
- e. Any other relevant and reliable information.

(2) All Documents that support the Request, Order or relief;

(3) Proof of Delivery of the Request Documents on all Parties; and

(4) The fee, as provided in the Fee Schedule.

B. The Party shall Deliver the Rule 18A(1) and (2) Documents to all Parties at the time of filing.

C. Any other Party may object to a Request by filing with the Forum and Delivering to all Parties a Written objection(s) within ten

(10) days of Delivery of the Request, unless another time is provided by rule or is necessary based on the relief requested.

D. Requests directed to the Forum are decided by the Forum as permitted by the Code. Requests directed to an Arbitrator are decided by an Arbitrator. Prior to the appointment of an Arbitrator, Requests may be granted by the Forum as permitted by this Code.

E. All Requests or motions made by a Party are Rule 18 Requests. A Party filing a Request or objection must pay the fee, if any, as provided in the Fee Schedule. A Request or motion to reconsider is usually not granted, unless the controlling law has changed. The Fee Schedule lists fees that may accompany Rule 18 Requests, objections, procedures, and proceedings.

F. No Request may be filed later than the Scheduling Notice deadline or fifteen (15) days before a Participatory Hearing or for Document Hearings later than ten (10) days from the date of the Notice of the Selection of an Arbitrator, unless another time is provided by rule or is necessary based on the relief requested.

RULE 19. JOINDER, INTERVENTION, CONSOLIDATION, AND SEPARATION.

A. Any individual or Entity may, as agreed to by the Parties or as required by applicable law, join any dispute, controversy, Claim or Response in an arbitration by filing a Claim Document stating the grounds. An Arbitrator has no authority to issue an Order or Award binding any individual or Entity not a Party, unless that individual or Entity agrees or as required by applicable law. The Forum may require a Party to pay a fee.

B. Any individual or Entity that entered into the Arbitration Agreement between Claimant and Respondent may intervene in an arbitration if a common question of fact or law arising from the same or related transaction or occurrence exists and such a proceeding promotes fairness, efficiency or economy. The Forum may require a Party to pay a fee.

C. Separate arbitrations involving the same named Parties and a common question of fact or law arising from the same or related transaction or occurrence shall be consolidated at the Request of a Party or at the determination of the Forum if the consolidation promotes fairness, efficiency or economy. A Party may challenge this consolidation by filing a Rule 18 Request for severance, and an Arbitrator shall promptly decide this Request by determining whether consolidation or severance promotes fairness, efficiency or economy. The Forum may require a Party to pay a fee.

D. An arbitration involving multiple Claims or Responses or Parties may be separated into individual Hearings if such proceedings promote fairness, efficiency or economy. The Forum may require the Party or Parties to pay Hearing fees for separate Hearings.

E. A Request by an individual or Entity to join or intervene or a Request by a Party for separation must be filed in accord with Rule 18.

F. An Arbitrator shall promptly decide Requests for joinder, intervention, severance or separation. Any decision by an arbitrator joining, consolidating or aggregating parties or claims is an Award under 9 U.S.C. Section 9.

Part IV—Arbitrators

RULE 20. AUTHORITY OF ARBITRATORS.

A. Arbitrators have the powers provided by this Code, the agreement of the Parties, and the applicable law.

B. Arbitrators selected in accord with Rule 21A(3) shall take an oath prescribed by the Director and shall be neutral and independent.

C. Arbitrators shall decide all factual, legal, and other arbitrable issues submitted by the Parties and do not have the power to decide matters not properly submitted under this Code.

D. An Arbitrator shall follow the applicable substantive law and may grant any legal, equitable or other remedy or relief provided by law in deciding a Claim, Response or Request properly submitted by a Party under this Code. Claims, Responses, remedies or relief cannot be unlawfully restricted.

E. An Arbitrator shall have the power to rule on all issues, Claims, defenses, questions of arbitrability, and objections relating to the existence, scope, and validity of the contract, transaction, or relationship of the Parties.

F. An Arbitrator shall have the power to rule on all issues, Claims, Responses, questions of arbitrability, and objections regarding the existence, scope, and validity of the Arbitration Agreement including all objections relating to jurisdiction, unconscionability, contract law, and enforceability of the Arbitration Agreement.

RULE 21. SELECTION OF ARBITRATORS.

A. Parties select an Arbitrator(s):

(1) By selecting an Arbitrator or a panel of Arbitrators on mutually agreeable terms; or

(2) By each Party selecting an Arbitrator and those Arbitrators selecting another Arbitrator for a panel of Arbitrators; or

(3) In the absence of an election of Rule 21A(1) or (2), by using the selection process in Rules 21B through 23 of this Code.

Parties must notify the Forum of their election of Rule 21A(1) or (2), or other agreement for Arbitrator selection, no later than thirty (30) days after the filing of a Response with the Forum.

B. For Large Claim Hearings, the Forum shall provide to each Party making an Appearance a list of Arbitrator candidates equal in number to the number of Parties plus the number of Arbitrators required under Rule 22. Each Party making an Appearance may strike one of the candidates and may Request disqualification of any candidate in accord with Rule 23C by notifying the Forum in Writing, within ten (10) days of the date of the strike list.

C. For Common Claim Hearings, the Forum shall submit one Arbitrator candidate to all Parties making an Appearance. A Party making an Appearance may remove one Arbitrator candidate by filing a notice of removal with the Forum within ten (10) days from the date of the notice of Arbitrator selection. A Party making an Appearance may request disqualification of any subsequent Arbitrator in accord with Rule 23.

D. Upon Request for an Expedited Hearing or if the need for an Arbitrator arises before an Arbitrator is designated in accord with Rule 21A, the Forum shall promptly designate an Arbitrator and the issues to be decided.

E. A Party is prohibited from striking or removing an Arbitrator or an Arbitrator candidate based on race, gender, nationality, ethnicity, religion, age, disability, marital status, family status, or sexual orientation. A party may only strike or remove an arbitrator in good faith and not for the purpose of delay or to gain an unfair advantage.

F. A Party may request Receipt of the Notice of Arbitrator selection by notifying the Forum, in Writing, within ten (10) days from the date Claimant files Proof of Service of the Initial Claim. Notices related to Arbitrator selection need not be provided to a Party who has failed to respond to a Claim or otherwise appear or defend or pay fees as provided by this Code.

RULE 22. NUMBER OF ARBITRATORS.

Unless the Parties agree otherwise, for all Hearings, one (1) Arbitrator shall conduct the Hearing and issue an Award. Where the Parties have agreed to more than one (1) Arbitrator, that number of Arbitrators will serve and the Forum shall designate the chair of the panel, unless the Parties agree otherwise.

RULE 23. DISQUALIFICATION OF ARBITRATOR.

A. An Arbitrator shall be disqualified if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased, including but not limited to the following:

- (1) The Arbitrator has a personal bias or prejudice concerning a Party, or personal knowledge of disputed evidentiary facts;
- (2) The Arbitrator has served as an attorney to any Party or Representative, the Arbitrator has been associated with an attorney who has represented a Party during that association, or the Arbitrator or an associated attorney is a material witness concerning the matter before the Arbitrator;
- (3) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in a matter before the Arbitrator;
- (4) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in a Party;
- (5) The Arbitrator or the Arbitrator's spouse or minor child residing in the Arbitrator's household has a significant personal relationship with any Party or a Representative for a Party; or
- (6) The Arbitrator or the Arbitrator's spouse:
 - a. Is a Party to the proceeding, or an officer, director, or trustee of a Party; or,

b. Is acting as a Representative in the proceeding.

B. An Arbitrator shall provide the Forum with a complete and accurate resume, a copy of which the Forum shall provide the Parties at the time of the selection process. An Arbitrator shall disclose to the Forum circumstances that create a conflict of interest or cause an Arbitrator to be unfair or biased. The Forum shall disqualify an Arbitrator or shall inform the Parties of information disclosed by the Arbitrator if the Arbitrator is not disqualified.

C. A Party making an Appearance may request that an Arbitrator be disqualified by filing with the Forum a Written Request stating the circumstances and specific material reasons for the disqualification. A Party who knows or has reason to know of circumstances that may disqualify an Arbitrator must immediately disclose those circumstances to the Arbitrator, the Forum, and all other Parties. A Party who fails to timely and properly disclose disqualifying circumstances agrees to accept the Arbitrator and waives any subsequent objection to the Arbitrator in the pending arbitration or any other legal proceeding.

D. A Request to disqualify an Arbitrator must be filed with the Forum within ten (10) days from the date of the Notice of Arbitrator selection. The Forum shall promptly review the Request and shall disqualify the Arbitrator if there exist circumstances requiring disqualification in accord with Rule 23A or other material circumstances creating bias or the appearance of bias.

E. If an Arbitrator is disqualified or becomes unable to arbitrate before the issuance of an Award, the Forum shall designate a new Arbitrator or panel or re-schedule the hearing, unless the Parties agree otherwise.

RULE 24. COMMUNICATIONS WITH ARBITRATORS.

A. No Party or Party Representative shall directly communicate with an Arbitrator except at a Participatory Hearing, by providing Documents in accord with this Code, or during a conference with the Arbitrator scheduled by the Forum.

B. No Party or Party Representative shall communicate with a Party Arbitrator after the complete panel of Arbitrators has been selected, except at a Participatory Hearing, by providing Documents in accord with this Code, or during a conference with the Arbitrator scheduled by the Forum.

Part V—Hearing

RULE 25. SELECTION OF A DOCUMENT HEARING.

A. In Common Claim cases, a Document Hearing shall be scheduled upon the filing of a Response and Receipt of the Administrative Fee.

B. In Large Claim cases, a Party may select a Document Hearing by filing a Written selection with the Forum, served on all other Parties by Delivery as defined in Rule 2M, and accompanied by a Written estimate of the number of hours or days required for the hearing and the fee for the Document Hearing provided in the Fee Schedule.

C. The Forum shall provide Written notice of a Document Hearing to all Parties not later than fifteen (15) days before the Document Hearing.

D. If another Party selects a Participatory Hearing, the Document Hearing shall be part of the Participatory Hearing.

E. For sufficient reason, the Forum or Arbitrator may postpone a Document Hearing at the Request of a Party or on the initiative of the Arbitrator or Forum.

RULE 26. SELECTION OF A PARTICIPATORY HEARING.

A. A Party may select a Participatory Hearing of any type by:

- (1) Filing a Written selection for a Participatory Hearing containing the information required in Rule 26B;
- (2) Designating the type of Participatory Hearing requested: In-person, Telephone, or On-line; and
- (3) Serving by Delivery, as defined by Rule 2M, the selection on all other Parties.
- (4) For Common Claim cases, a selection of a Participatory Hearing must be filed with the Forum not later than fifteen (15) days after the Delivery of a Response. A Request for a Participatory Hearing made after this time may be filed in accord with Rule 18.
- (5) The failure to timely select a Participatory Hearing is a waiver of the right to a Participatory Hearing.

B. Parties to a Participatory Hearing shall provide:

- (1) The Party's estimate of the number of hours or days required, taking into account the rights of all Parties under Rules 34B and 35A;
- (2) The names of witnesses proposed to offer evidence at the Hearing;
- (3) The number of exhibits to be offered at the Hearing and their description;
- (4) Any Request or requirement for a Written Award accompanied by the appropriate fee; and

(5) The fee for the Hearing as provided in the Fee Schedule.

No selection for a Participatory Hearing session is effective without payment of the appropriate fee, unless a waiver under Rule 45 has been granted.

C. The Forum shall set the date, time, place, and length of the Participatory Hearing and notify all Parties of the Hearing at least thirty (30) days before the beginning of the Participatory Hearing.

D. Before or after the beginning of a Participatory Hearing, if it is determined that the Participatory Hearing requires additional sessions, the Forum or Arbitrator shall require that the responsible Party pay for additional sessions in accord with Rule 44, or may suspend the Hearing until the additional sessions are properly scheduled.

E. For sufficient reason, the Forum or Arbitrator may postpone a Participatory Hearing at the Request of a Party or on the initiative of the Arbitrator or Forum.

RULE 27. REQUEST FOR AN EXPEDITED HEARING.

A. A Party may Request an Expedited Hearing to obtain expedited relief in an Order or Award. A Request for an Expedited Hearing may be brought when the Respondent is served with Claim Documents or at any time before an Award becomes final and shall be accompanied by an explanation of the reasons for the expedited relief and the applicable law and by the fee as provided in the Fee Schedule.

B. An Arbitrator shall promptly decide the Request.

C. The requesting Party shall serve Notice of the Expedited Hearing on all Parties not less than forty-eight (48) hours before the time set for the Expedited Hearing. Proof of Service of this Notice shall be filed with the Forum before the Expedited Document Hearing or shall be presented at the Expedited Participatory Hearing.

D. A Party may seek a temporary restraining Order or a preliminary injunction to prevent irreparable injury by requesting an Expedited Hearing and filing with the Forum and serving on the Respondent and any other Parties the following:

- (1) An Initial Claim in accord with Rule 12 or a Counter Claim or Third Party Claim;
- (2) A Request that explains the irreparable injury and the specific reasons and Documents supporting the Request;
- (3) An Affidavit from a person with personal knowledge describing the irreparable injury and specific facts;
- (4) The proposed security for the relief sought;
- (5) A proposed Order stating the specific relief sought, including a Hearing for a preliminary injunction if a temporary restraining Order is sought; and
- (6) The fee as provided in the Fee Schedule.

E. Any Party may immediately file with the Forum and Deliver to all Parties an objection to the Request and a fee as provided in the Fee Schedule.

F. A temporary restraining Order may be granted without Written or oral notice to the Respondent or that Party's Representative only if:

- (1) It clearly appears from specific facts shown by Affidavit that immediate and irreparable injury, loss or damage will result to the Requesting Party before the Respondent or that Party's Representative can be heard in opposition; and
- (2) The Requesting Party or Representative of the Requesting Party certifies in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claims that notice should not be required.
- (3) A temporary restraining Order granted without notice shall be immediately served on all Parties by the Requesting Party.

G. A preliminary injunction shall only be issued upon notice to all Parties.

H. An Expedited Telephone, Document or In-person Hearing shall be scheduled as soon as possible by the Forum. A Hearing for a temporary restraining Order shall be scheduled no later than forty-eight (48) hours from the time of filing or notice, whichever is later. If a temporary restraining Order is issued without notice, a Party may request that a Hearing with notice be held within forty-eight (48) hours of the issuance of the temporary restraining Order.

I. An Arbitrator will conduct the Hearing and issue an Order promptly, and the Forum will enter the Order promptly.

J. Every Order granting relief shall state the time and date of issuance, the reasons for the issuance including the irreparable injury, the specific conduct to be restrained, the duration of the Order, the security required, and, if applicable, the reason why it was issued without notice.

K. A temporary restraining Order shall expire within the time fixed in the Order, not to exceed ten (10) days, unless the Parties agree to a longer period of time or an Arbitrator issues a preliminary injunction.

L. If a Party who receives a temporary restraining Order fails to timely proceed with the Hearing for a preliminary injunction, the Arbitrator shall dissolve the temporary restraining Order.

M. A Hearing on a Request for a preliminary injunction may be consolidated by the Arbitrator with the final Hearing in the case upon a Request by a Party.

N. No temporary restraining Order or preliminary injunction shall be issued unless the Requesting Party provides security as deemed proper by the Arbitrator for the payment of costs and damages as may be incurred or suffered by a Party wrongfully restrained or enjoined.

O. Where security is given in the form of a bond, stipulation or other undertaking with a surety or sureties, each surety agrees to submit to the jurisdiction of the Forum and the arbitration and agrees to be bound by all Orders issued by the Arbitrator in the case including Orders affecting the liability of each surety on the bond, stipulation or undertaking.

RULE 28. DOCUMENT HEARING.

A. A Party may submit any Document or property for consideration by the Arbitrator in a Document Hearing by filing with the Forum two (2) copies of the Document or property description and Delivering to all other Parties copies of the Document and property description.

B. Documents and property offered for consideration at a Document Hearing must be Received by the Forum and Delivered to all other Parties no later than ten (10) days from the date of the Notice of Selection of an Arbitrator as provided in Rule 21. Documents or property submitted after that date will be considered by Request of the submitting Party and granted by the Arbitrator for sufficient reason.

C. The Arbitrator shall determine the admissibility and weight of evidence and shall not be bound by rules of evidence.

D. During a Document Hearing, the Arbitrator may Request that the Parties submit additional information or Documents, including legal memoranda. Documents submitted in response to an Arbitrator's Request shall be filed with the Forum and Delivered to all other Parties no later than thirty (30) days after the date of the Request. A Party may obtain forty-five (45) additional days to respond to an Arbitrator's Request by filing with the Forum and Delivering to all other Parties an extension notice before the initial thirty (30) day time period expires. Only one (1) extension by notice is available.

E. The Arbitrator may visit a site to examine a matter relating to the arbitration.

F. The close of a Document Hearing occurs when the Arbitrator completes reviewing the Documents or property.

G. The presence or involvement of a Party in a Hearing results in the waiver of any objections to the notice of the Hearing.

RULE 29. DISCOVERY.

A. Cooperative Discovery. After a Response is filed, Parties shall cooperate in the exchange of Documents and information. A Party seeking discovery shall contact other Parties and discuss discovery information and any objections and arrange for the exchange of Documents and information.

B. Seeking Discovery.

(1) If the Parties are unable to resolve discovery matters under Rule 29A, a Party may seek the disclosure of Documents, sworn answers to not more than twenty-five (25) Written questions, and one or more depositions before a Hearing where:

- a. The information sought is relevant to a Claim or Response, reliable, and informative to the Arbitrator; and
- b. The production of the information sought is reasonable and not unduly burdensome and expensive.

(2) The Party seeking discovery shall Deliver to all other Parties a Notice identifying the Documents to be produced, Written questions to be answered, or the Notice of deposition identifying the deponent, the proposed length of time for the deposition, and the scope of the deposition, no later than thirty (30) days before the date of a Participatory Hearing or for a Document

Hearing ten (10) days from the date of the Notice of the Selection of an Arbitrator.

(3) A Party may seek other discovery, including Requests for admissions and Requests for physical or mental examinations, before a Hearing, where:

- a. The information sought is relevant to a Claim or Response, reliable, and essential to a fair hearing of the matter; and
- b. The production of the information is reasonable and not unduly burdensome or expensive.

(4) The Party seeking discovery shall Deliver to all other Parties a copy of the Notice identifying the discovery sought no later than thirty (30) days before the date of a Participatory Hearing or for a Document Hearing ten (10) days from the date of the Notice of Selection of an Arbitrator.

C. Responding to Discovery. A Party Receiving a Notice shall Deliver to the Requesting Party:

(1) Within five (5) days after Receipt of the Notice of a deposition, a Written reply agreeing to the deposition or objecting to the deposition, including an explanation of the objections.

(2) Within twenty (20) days of the Receipt of the Notice for other discovery, a copy of the Documents Requested or a statement permitting an examination of the original Documents or property at a convenient time and place, sworn answers to the Written questions, or a Written agreement to provide other Requested discovery, or a Written objection explaining why all or some of

the Documents, property or other discovery has not been provided.

D. Request for Discovery. If a Party objects in accord with this Rule, the Requesting Party may file with the Forum and Deliver to all Parties, no later than the Scheduling Notice deadline or ten (10) days after Receiving the objection:

- (1) A Rule 18 Request for a Discovery Order;
- (2) A copy of the Written objections; and
- (3) A Written statement of reasons why the Requesting Party needs the discovery.

E. Decision. An Arbitrator shall promptly determine whether sufficient reason exists for the discovery and issue an Order.

F. Consequences. An Arbitrator may draw an unfavorable, adverse inference or presumption from the failure of a Party to provide discovery. An Arbitrator may impose Sanctions and costs and fees related to seeking or resisting discovery under Rule 29, including reasonable attorney fees, Arbitrator fees, and administrative fees against the non-prevailing Party.

RULE 30. SUBPOENA FOR IN-PERSON PARTICIPATORY HEARING.

A. A Party may obtain a subpoena from an Arbitrator for a Participatory Hearing ordering a non-Party witness or other person permitted by law to produce Documents or property at the Hearing or ordering a witness to testify at the Hearing by filing with the Forum and serving on all other Parties a Rule 18 Request.

B. The Request shall state reasons for the relevancy and reliability of the Documents, property or testimony and shall identify the witness and describe the Documents or property.

C. A Request for a Rule 30 subpoena must be Received by the Forum no later than twenty (20) days before the In-person Participatory Hearing, unless the Scheduling Notice provides otherwise.

D. The subpoena shall be issued by an Arbitrator if the Request conforms to Rules 30A, 30B, and 30C and demonstrates the relevancy and reliability of the Documents, property or testimony. No Party, lawyer or Representative of a Party may issue a subpoena.

E. The subpoena shall be served:

- (1) By a person who is not a Party and is not less than eighteen (18) years of age if served upon a non-Party witness, or
- (2) By Delivery or personal service if served upon a Party witness or the Party. The subpoena must be Received by the person subpoenaed no later than five (5) days before the Hearing, unless the Arbitrator Orders otherwise.

F. A subpoena may be served on a non-Party witness at any place allowed by applicable law.

G. A subpoena served on a non-Party witness shall be accompanied by a witness fee of twenty-five dollars (\$25) and reasonable travel reimbursement to and from the Hearing location and the residence or place of business of the non-Party. A subpoena for the production of Documents or property served on a non-Party witness shall also be accompanied by payment of the reasonable costs of producing the Documents and property.

H. Within five (5) days after being served with the subpoena or before the time specified in the subpoena to appear at the Hearing, if less than five (5) days, the witness or a Party may Request an Order that the subpoena be dismissed or modified. The Request shall conform to Rule 18 and shall state why the subpoena should be dismissed or modified.

I. If a witness or Party makes a Request under Rule 30H, an Arbitrator shall promptly determine whether sufficient reason exists for the Order, or enforce the subpoena.

J. The Party having the subpoena served shall provide the Arbitrator with the Proof of Service of the subpoena if the witness fails to appear at the Hearing.

K. Subpoenas issued under this Code may be enforced in accord with the applicable law. A subpoena not issued by an Arbitrator under this Rule is unenforceable.

L. An Arbitrator may draw an unfavorable, adverse inference or presumption from the failure of a Party to produce a Party witness, in addition to imposing any other Sanction.

RULE 31. EXCHANGE OF INFORMATION BEFORE A PARTICIPATORY HEARING.

A. Before all Participatory Hearings, each Party shall Deliver to all other Parties and file with the Forum two (2) copies of:

- (1) A list of all witnesses expected to testify and a summary of their testimony;
- (2) A list and description of all exhibits to be introduced;
- (3) A copy of all Documents and a detailed description of any property to be introduced at the Hearing;
- (4) An Affidavit establishing the authenticity of any Document proposed to be introduced at the Hearing; and
- (5) Any Request for additional Participatory Hearing sessions, accompanied by the fee as provided in the Fee Schedule.

B. All Parties and the Forum shall Receive the lists, Documents, and Affidavits provided for in Rule 31A no later than ten (10) days before the Participatory Hearing, unless a Notice from the Forum or Arbitrator provides otherwise. Lists, Documents, and Affidavits may be submitted after that date only by Request of the submitting Party. Such Requests may be granted by the Arbitrator for sufficient reason.

C. The Arbitrator may exclude witnesses, testimony or Documents sought to be introduced by a Party who fails to comply with Rules 31A and 31B.

RULE 32. LOCATION OF AN IN-PERSON PARTICIPATORY HEARING.

A. An In-person Participatory Hearing shall be held where the Arbitration Agreement designates or where the Parties agree or, in the absence of an agreement and for all Consumer cases, at a reasonably convenient location within the United States federal judicial district or other national judicial district where the Respondent to the Initial Claim resides or does business. A Respondent Entity does business where it has minimum contacts with a Consumer.

B. Unless the Parties agree otherwise, if there is more than one Respondent to an Initial Claim, an In-person Participatory Hearing shall be held in the United States federal judicial district or other national judicial district where the majority of the Respondents to the Initial Claim resides or does business. If there is no United States federal judicial district or other national judicial district where a majority of Respondents resides or does business, the Forum shall select a reasonably convenient location for the In-person Participatory Hearing.

RULE 33. PARTICIPATORY HEARING.

A. A Participatory Hearing may include:

- (1) An introduction by the Arbitrator.
- (2) Opening statements by each of the Parties. The Respondent and other Parties have the option of reserving the opening statement until the presentation of their evidence.
- (3) Claimant's case. The Claimant may introduce evidence, examine witnesses, and submit exhibits. The Respondent and other Parties may also examine the witnesses and submit exhibits.

(4) Respondent's case. The Respondent may introduce evidence, examine witnesses, and submit exhibits. The Claimant and other Parties may also examine the witnesses and submit exhibits.

(5) Additional cases. Other Parties may present their case.

(6) Rebuttal. A Party may introduce additional evidence, examine witnesses, and submit exhibits to rebut an opposing Party's case if the submissions are not repetitive, cumulative or otherwise inadmissible.

(7) Summation. Each Party may present a closing statement.

(8) Concluding remarks by the Arbitrator.

B. The close of a Participatory Hearing occurs when either the Arbitrator announces the Hearing closed or more than twenty (20) days elapse from the final session.

RULE 34. PARTICIPATORY HEARING PROCEEDINGS.

A. A Participatory Hearing may consist of one or more sessions. A Hearing may be conducted on any business day unless the Parties and Arbitrator agree otherwise.

B. Hearing Sessions: Parties shall select sufficient time and sessions for Participatory Hearings in accord with Rule 26B. For Common Claim cases, a Hearing session is scheduled for the following length of time, unless more time or sessions are selected and the fees are paid:

A one hundred eighty-minute (180) session is scheduled for cases in which the amount in controversy exceeds \$35,000.

A one hundred twenty-minute (120) session is scheduled for cases in which the amount in controversy is between \$13,001 and \$35,000.

A ninety-minute (90) session is scheduled for cases in which the amount in controversy is between \$3,501 and \$13,000.

A sixty-minute (60) session is scheduled for cases in which the amount in controversy is \$3,500 or less.

C. The Arbitrator shall conduct a Participatory Hearing in an orderly, efficient, and economic manner, and shall determine the order and presentation of evidence and oral arguments.

D. All Parties to the arbitration and their Representatives shall be entitled to attend or be involved in the Participatory Hearing. Other persons may not attend unless the Parties agree or the Arbitrator Orders otherwise. The Arbitrator may sequester witnesses.

E. The Arbitrator may request Documents and information from the Parties, and may question any witness or Party to clarify evidence or arguments.

F. An Arbitrator may Request Parties to submit additional information or Documents, including legal memoranda, which the Forum, the Arbitrator, and the Parties shall Receive no later than thirty (30) days after the final Participatory Hearing session.

G. A Party may Request permission to submit a post-hearing memorandum, which may be granted by the Arbitrator. The responsible Party shall pay the fee provided

by the Fee Schedule.

H. The presence or involvement of a Party in a Hearing results in the waiver of any objections to the Notice and scheduling of the Hearing.

RULE 35. EVIDENCE IN A PARTICIPATORY HEARING.

A. Presentation. Parties shall have a full and equal opportunity to present relevant and reliable evidence and oral and written arguments in support of their positions. Parties may present evidence and arguments in any reasonable form and by any means of communication.

B. Oath. The Arbitrator shall administer an oath or affirmation before a witness testifies.

C. Admissibility. The Arbitrator shall determine the admissibility and weight of evidence, and shall not be bound by rules of evidence.

D. Objections. A Party may object to the introduction of evidence by another Party or a Request or question by an Arbitrator, and the Arbitrator shall rule on the objection.

E. Site Examination. An Arbitrator may visit a site to examine a matter relating to the arbitration accompanied by the Parties or their Representatives, if they so choose.

F. Record. No record of a Hearing shall be kept unless agreed by all Parties or Ordered by the Arbitrator. The responsible Party or Parties Requesting a record shall arrange and pay for the record, and promptly provide a copy of the transcript or recording to the Arbitrator and the Forum at no cost to the Arbitrator or the Forum, and, if Requested by another Party, to that Party, at that Party's expense.

G. Interpreter. A Party who requires an interpreter shall arrange and pay for the interpreter. An Arbitrator may have an interpreter present, with a fee assessed to a Party or Parties as determined by the Forum.

RULE 36. ARBITRATION PROCEEDINGS IN ABSENCE OF A PARTY.

A. An Arbitrator may issue an Award or Order when any Party has failed to respond, appear, or proceed at a Hearing, or otherwise defend as provided in this Code.

B. If a Party does not respond to a Claim, an Arbitrator will timely review the merits of the Claim for purposes of issuing an Award or Order. The Claimant need not submit an additional Request for an Award.

C. An Arbitrator may require an Affidavit, information or Documents from Parties who have appeared or conduct a Hearing to Receive evidence necessary to issue an Award or Order. Documents submitted in Response to an Arbitrator's Request shall be filed with the Forum no later than thirty (30) days after the date of the Request. A Party may obtain forty-five (45) additional days to respond to an Arbitrator's Request by filing with the Forum and Delivering to all other Parties an extension notice before the initial thirty (30) day time period expires. Only one (1) extension by notice is available.

D. Each Party making an Appearance shall be provided notices relating to a Hearing.

E. No Award or Order shall be issued against a Party solely because that Party failed to respond, appear or defend.

Part VI—Awards and Orders

RULE 37. AWARDS.

A. An Award or Dispositive Order establishes the rights and obligations of all Parties named in the Award or Order and is final and binding, unless those Parties agree otherwise.

B. An Award shall not exceed the money or relief requested in a Claim or amended Claim and any amount awarded under Rule 37C.

C. An Award may include fees and costs awarded by an Arbitrator in favor of any Party only as permitted by law. A Party with a Claim for attorney fees or costs may seek to recover those expenses by bringing a timely Request in accord with Rules 18 and 12B. An opposing Party may object in accord with Rule 18. The Arbitrator may include attorney fees and costs in the final Award or in a separate Award.

D. An Award may include arbitration fees awarded by an Arbitrator or in favor of the Forum for fees due.

E. An Arbitrator shall endeavor to render an Award within twenty (20) days after the date of the close of the Hearing.

F. All Awards and Orders shall be in Writing, dated, and Signed by the Arbitrator or by a majority of the panel, and filed with the Forum.

G. An Award of an arbitration panel shall be by a majority of the Arbitrators. The chair of an arbitration panel may issue Orders, make rulings, and conduct proceedings.

H. An Award is a summary Award unless: (1) a Written notice is filed by a Party seeking reasons, findings of fact or conclusions of law, or (2) a prior Written agreement of the Parties requires reasons, findings of fact or conclusions of law and at least one Party files a Written notice requesting reasons, findings or conclusions. This Written agreement or notice must be filed with the Forum within ten (10) days of the date of the Notice of Selection of an Arbitrator and must be accompanied by a fee, if any, as provided in the Fee Schedule.

I. Awards shall be based upon a preponderance of the evidence presented, unless an agreement of the Parties or the applicable law provides otherwise.

J. An Arbitrator or the Forum may issue an Award or Order based upon a Written settlement Signed by the Parties.

RULE 38. ORDERS.

A. An Arbitrator or the Forum, where permitted by the Code, may issue an Order at the Request of a Party or on the initiative of the Arbitrator or the Forum.

B. At any time following the filing of a Claim, upon a Request by a Party and after a Hearing, the Arbitrator may issue an Interim Order and may require security as a condition of the Interim Order.

C. An Arbitrator who dismisses a Claim because there was no Arbitration Agreement or because the Arbitrator does not have the power to decide a Claim shall state the reason in the dismissal Order.

RULE 39. ENTRY AND SERVICE OF AWARDS AND ORDERS.

A. An Award or Order shall be entered in the state, country, or other jurisdiction provided for a Hearing in Rule 32, which shall appear on the Award or Order.

B. An Award or Order becomes final when entered. An Award or Order may not be entered if fees required by the Fee Schedule remain unpaid.

C. The Forum shall Deliver a copy of the Award or Order to all Parties or their Representatives or as directed by any Party.

D. Parties consent to service of the Award or Order and of all Documents, notices, and Orders necessary to confirm an Award or Order or to enter a judgment based on an Award or Order by Delivery, as defined by Rule 2M, at any address of the Party or Representative of record with the Forum.

E. An Award or Order may be confirmed, entered or enforced as a judgment in any court of competent jurisdiction. The Forum may disclose necessary Award information in connection with the confirmation, entering, enforcement or challenge of an Award or Order or otherwise as required by law.

F. Parties may request a duplicate original of an Award or Order or a copy of other filed Documents and pay the fee as determined by the Forum.

RULE 40. VOLUNTARY DISMISSAL.

A. A Claimant may dismiss a Claim after it is filed and before the Respondent is served with the Claim by filing with the Forum a notice of dismissal.

B. A Claimant may dismiss a Claim after it is served and before the Respondent Delivers a Response to Claimant by Delivering to all Parties and filing with the Forum a notice of dismissal.

C. A Claimant may dismiss a Claim after a Respondent Delivers a Response that contains no Counter Claim within forty-five (45) days of the date the Response has been delivered to the Claimant or no later than a deadline established by a Scheduling Notice, whichever is later, by delivering to all Parties and filing with the Forum a notice of dismissal.

D. Any other Claim may be dismissed at the Request of the Claimant in accord with Rule 18. Before the selection of an Arbitrator, the Forum may dismiss the Claim. After the selection of the Arbitrator, the Arbitrator may dismiss the Claim.

E. A Claim shall be dismissed upon agreement of the Parties filed with the Forum.

F. Unless stated otherwise, the first voluntary dismissal of a Claim is Without Prejudice, and the Claim may be brought again.

G. A Claim voluntarily dismissed more than once is dismissed With Prejudice, and cannot be brought again.

RULE 41. INVOLUNTARY DISMISSAL.

A. A Claim or Response may be dismissed by an Arbitrator at the Request of the Forum or a Party or on the initiative of the Arbitrator for one or more of the following reasons:

- (1) It is not supported by evidence.
- (2) It is not supported by existing law.

(3) It is frivolous.

(4) It has been presented or maintained for an improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of arbitration.

(5) It is brought by a Party who has been declared to be a vexatious litigant by a court or Arbitrator.

(6) A Party has violated any provision of the Code, or any Order or notice from an Arbitrator or the Forum.

B. A Claim or Response may be dismissed by an Arbitrator or the Forum at the Request of a Party in accord with Rule 18 or on the initiative of the Arbitrator or the Forum for one or more of the following reasons:

(1) A Party has failed to proceed with an arbitration or Claim.

(2) A Party has failed to pay fees as provided in the Fee Schedule.

(3) More than one hundred twenty (120) days have elapsed between the filing date of the Claim and the date the Forum receives a Response or Proof of Service of the Initial Claim.

(4) More than sixty (60) days have elapsed since a Hearing has been postponed or an arbitration case has been placed on inactive status.

(5) More than twelve (12) months have elapsed since a case has been stayed under Rule 9F1 and no notification has been received from the Claimant to extend the stay.

C. The Forum shall Deliver notice of an involuntary dismissal to all Parties who have

made an Appearance.

D. Unless stated otherwise, an involuntary dismissal by an Arbitrator is With Prejudice and the Claim may not be brought again.

E. An involuntary dismissal by the Forum is Without Prejudice and the Claim may be brought again.

F. If a Claimant again brings a Claim against a Respondent that was dismissed Without Prejudice, the Forum or Arbitrator may Order the costs incurred by the Respondent in the previous case to be paid to the Respondent, and may Stay the proceedings of the arbitration until the Claimant has complied with this Order.

G. If a Request for an Involuntary Dismissal is the only Request for a dispositive Order, that Request may be determined at the Document or Participatory Hearing.

RULE 42. CORRECTION.

The Forum or an Arbitrator may correct clerical or administrative mistakes or errors arising from oversight or omission in the administration of cases or in the issuance of an Order or Award.

RULE 43. REOPENING AND RECONSIDERATION.

A. An Arbitrator may reopen a Hearing or reconsider an Order or Award within a reasonable time from the date the Order or Award is entered if:

(1) Service of Process or Proof of Service of Process of a Claim was not complete as required by this Code;

(2) The Order or Award is ambiguous or contains evident material mistakes; or

(3) If all Parties agree.

B. An Arbitrator may reopen a Hearing or reconsider an Order or Award within forty-five (45) days from the date the Order or Award is entered if:

(1) The Arbitrator failed to timely disclose material circumstances or material reasons for disqualification in accord with Rule 23A; or

(2) The Arbitrator did not decide a submitted issue.

C. Otherwise, neither the Arbitrator nor the Forum has the power to vacate an Order or Award after the Order or Award becomes final, unless all Parties agree.

D. Requests that an Arbitrator reopen a Hearing or reconsider an Order or Award must be timely filed with the Forum in accord with Rule 18 and Delivered to all Parties. A Party cannot make a second Request.

E. An Order or Award is reviewable by a court of competent jurisdiction as provided by applicable law.

Part VII–Fees

RULE 44. FEES.

A. Fee Recovery. The prevailing Party may recover fees paid in the arbitration in accord with Rule 37C.

B. Prepaid Fees. All fees for the filing of a Claim, Response, Request, objection, and any other Document and Hearing fees must be paid at the time the Document is filed or the Hearing is selected. These fees include fees required by this Code, the Forum Fee Schedule, the Parties' contract, an Order of an Arbitrator, or as required by law.

C. Non-Monetary Relief Fees. A Respondent may file a Rule 18 Request to review the value of injunctive, declaratory or other non-monetary relief sought in a Claim. An Arbitrator shall promptly determine the value of the Claim, which determines the amount of the fees to be paid in accord with the Fee Schedule.

D. Hearing Fees. The Party selecting the type of Hearing prepays the Hearing fee unless the agreement of the Parties, this Code or the applicable law provides otherwise. The Forum may proceed with an arbitration in a case involving a Consumer Party who Requests that the case proceed even after another Party required to pay the Hearing fee fails to pay. The Arbitrator may Award the Forum the amount of the unpaid Hearing fees.

E. Advance Fees. During the course of any Participatory Hearing, the Forum or an Arbitrator may require any Party, who is not a Consumer in a Common Claim case, to pay in advance a fee for necessary Participatory Hearing sessions in addition to those requested under Rules 26 and 27.

F. Arbitrators. Fees for Arbitrators selected in accord with Rules 21A(1) and (2) are paid by the Parties to the Forum. Fees for Arbitrators selected in accord with Rule 21A(3) are paid to the Forum by the Parties as provided for in the Forum Fee Schedule. In cases where the Parties select a number of Arbitrators in addition to those provided by the Code or select Arbitrators with qualifications different than those required by the Forum, a fee for each Arbitrator will be determined by the Forum to be paid by the responsible Party or Parties.

G. Consumer Request. A Consumer Claimant or a Consumer Respondent in a Large Claim who asserts that arbitration fees prevent the Consumer Party from effectively vindicating the Consumer's case in arbitration may, at the time of filing of the Consumer's Initial Claim or Consumer's Response to a Large Claim and prior to paying any filing fee, file a Request that another Party or Parties pay all or part of the arbitration fees or that the arbitration provision be declared unenforceable, permitting the Consumer to litigate the case instead of arbitrating the case. This Request shall be processed without a fee and must be filed with the Forum and Delivered to all Parties together with the Initial Claim or Response and proof of Delivery.

(1) Within fifteen (15) days of the filing and Delivery of the Request, another Party may:

- a. Agree to pay all or part of the fees required of the Consumer, or
- b. Agree to litigate instead of arbitrate the case, or
- c. File an objection to the Request.

(2) If there is no agreement by the Parties, an Arbitrator shall promptly decide the Request and objection, if any, based on the applicable law.

(3) The arbitration is suspended during this process.

H. Respondent Request. In cases where a Consumer Claimant brings a Large Claim and a Respondent is obligated to pay the fees by agreement or by law, the Respondent may, before or reasonably after the time of filing a Response, file with the Forum and serve on all Parties a Rule 18 Request that an Arbitrator determine whether there is a prima facie Claim of \$75,000 or more. If the Arbitrator determines the Claim is a Common Claim, the Common Claim Fee Schedule shall apply. Otherwise, the Large Claim Fee Schedule shall apply.

I. International Cases. The Forum may assess additional fees for arbitrations conducted outside the United States or involving Parties from more than one country.

J. United States Dollars. Forum Fee Schedule fees are listed in United States Dollars. Fees shall be paid to the Forum in United States Dollars, unless the Forum agrees to accept other currency based on the exchange rate in effect on the required date of the fee payment as determined by the Forum.

K. Refunds. Fees are not refundable, except as otherwise provided by the Code or Fee Schedule.

L. Other Fees. The Forum may establish reasonable fees for proceedings not covered by the Fee Schedule and may assess appropriate, additional fees for Code proceedings as permitted by law or in accord with this Code. Parties may obtain the amount of a fee by contacting the Forum.

RULE 45. WAIVER OF FEES.

A. An indigent Consumer Party may Request a waiver of Common Claim filing fees, Request Fees, Hearing Fees, or security for any arbitration, by filing with the Forum a Written Request for a waiver at the time payment is due. The Request for a waiver shall be accompanied by an Affidavit including:

- (1) The Party's family size;
- (2) All of the Party's income and sources, property and assets, expenses and costs, liabilities and debts;
- (3) A statement that there is no agreement providing for any other person or Entity to either pay the costs or share in the proceeds of the Claim or a copy of the agreement and the financial information described in Rule 45A(2) for any person or Entity that has agreed to pay the costs or share in the proceeds of the Claim; and
- (4) All other relevant information, including releases for credit information, as requested by the Forum.

Neither the Request nor Affidavit need be sent to the other Parties.

B. The Forum shall promptly issue a full or partial waiver to a Consumer Party eligible under this Rule and under the United States federal poverty standards or the applicable law. The Forum may also Order another Party to pay all or part of the waived fees as permitted or required by law.

C. If another Party has agreed to pay fees, a Rule 45 Request is unnecessary and the fee paying Party is obligated to pay the fees.

D. The Consumer Party must file an amended Affidavit of Poverty within thirty (30) days of a material change in the financial condition or circumstances described in the Consumer Party's initial Affidavit of Poverty. A separate Request must be filed by the indigent Consumer Party for each subsequent fee waiver requested.

E. If the statements in the Rule 45 Affidavit are untrue or incomplete, or if the Consumer Party is later determined to be able to pay the fees, the Forum shall Order the Consumer Party to pay the fees waived.

Part VIII—Code Provisions

RULE 46. COMPLIANCE WITH RULES.

An Arbitrator may Sanction a Party or Representative, or both, for violating any Rule, notice, ruling or Order, or for asserting an unsupportable Claim or Response.

A Party may be Sanctioned on the initiative of the Arbitrator or at the Request of the Forum or a Party. An Arbitrator shall Sanction a Party who refuses to pay fees as required by agreement, these Rules, an Arbitrator Order, or the applicable law, unless the offending Party establishes reasonable neglect. A Sanction Order may require an offending Party to pay for fees and costs incurred by another Party, unpaid fees, and other appropriate monetary Sanctions, and may require payment to another Party or the Forum.

RULE 47. LEGAL PROCEEDINGS.

A. The Arbitrator, the Director, the Forum, and any individual or Entity associated with the Forum are immune from liability and shall not be liable to any Party for any act or omission in connection with any arbitration conducted under this Code.

B. No Party or prospective Party, before or during the arbitration of any matter eligible for submission under this Code, shall commence or pursue any lawsuit, administrative proceeding, or other action against any other Party, prospective Party, the Forum, or individual or Entity associated with the Forum relating to any of the matters subject to arbitration under this Code or the

agreement of the Parties. Any Party commencing or pursuing such a proceeding agrees to pay and indemnify all such Parties, the Forum, individuals, and Entities for all expenses and costs incurred, including attorney fees as permitted by applicable law.

C. No Arbitrator, Director or any individual associated with the Forum shall be a witness in any legal proceeding arising out of the arbitration.

D. Any Party commencing or pursuing any lawsuit, administrative proceeding, arbitration or other action against the Forum, an Arbitrator or individual or Entity associated with the Forum, after an Award is final, agrees to pay and indemnify the Forum, an Arbitrator, individuals and Entities for all expenses and costs incurred, including attorney fees.

E. Every Party to any arbitration administered by the Forum or to an Arbitration Agreement as described in Rules 1 or 2E and the Forum agree that any Claim or dispute of any nature against the Forum or any agent, officer, employee, or affiliate of the Forum or any Arbitrator shall be resolved by final, binding arbitration conducted by a panel of three (3) Arbitrators. The Party or Parties shall select one Arbitrator; the Forum shall select a second Arbitrator; and these two Arbitrators shall select a third Arbitrator who is neutral and independent and who shall be the chair of the panel. The Arbitrators shall conduct the arbitration pursuant to the Code of Procedure in effect at the time the arbitration is brought. The chair shall have the powers of the Forum and perform the responsibilities of the Director. All fees payable under the Fee Schedule shall be assessed by the chair and paid to the panel of Arbitrators. Neither the Forum, nor its Director, nor any employee or agent of the Forum shall administer the arbitration.

RULE 48. INTERPRETATION AND APPLICATION OF CODE.

A. This Code shall be interpreted in conformity with 9 U.S.C. §§ 1-16 and 9 U.S.C. §§ 201-208 in the United States or the applicable law of other countries in order to provide all participants in the arbitration with a fair and impartial proceeding and an enforceable Award or Order.

B. Unless the Parties agree otherwise, any Arbitration Agreement as described in Rules 1 and 2E and all arbitration proceedings, Hearings, Awards, and Orders are to be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

C. In the event a court of competent jurisdiction shall find any portion of this Code or Fee Schedule to be in violation of the law or otherwise unenforceable, that portion shall not be effective and the remainder of the Code shall remain effective.

D. The Director or Arbitrator may decline the use of arbitration for any dispute, controversy, Claim, Response or Request that is not a proper or legal subject matter for arbitration or where the agreement of the Parties has substantially modified a material portion of the Code. If Parties are denied the opportunity to arbitrate a dispute, controversy or Claim before the Forum, the Parties may seek legal and other remedies in accord with applicable law.

E. In the event of a cancellation of this Code, any Party may seek legal and other remedies regarding any matter upon which an Award or Order has not been entered.

F. The Forum Code Committee, appointed by the Board of Directors, shall have the power and authority to effectuate the purposes of this Code, including establishing appropriate rules and procedures governing arbitrations and altering, amending or modifying this Code in accord with the law.

Appendix A—Notice of Arbitration

Dear Respondent:

AN ARBITRATION CLAIM HAS BEEN FILED AGAINST YOU.

Enclosed and served upon you is the Initial Claim. You may obtain a copy of the Code of Procedure, without cost, from the Claimant or from the Forum at www.adrforum.com or 800-474-2371.

IF YOU DO NOT DELIVER TO THE CLAIMANT AND FILE WITH THE FORUM A WRITTEN RESPONSE, AN AWARD MAY BE ENTERED AGAINST YOU. AN ARBITRATION AWARD MAY BE ENFORCED IN COURT AS A CIVIL JUDGMENT.

YOU HAVE THIRTY (30) DAYS TO RESPOND FROM RECEIPT OF SERVICE.

You have a number of options at this time. You may:

1. Submit a written Response to the Claim, stating your reply and defenses to the Claim, together with documents supporting your position. Your Response must be delivered to the Claimant and filed with the Forum. See National Arbitration Forum [NAF] Code of Procedure Rules 13 and 6C.

Proof of delivery of the Response on the Claimant must also be filed with the Forum. See NAF Rules 2A, 2M, and 2Z. Proof of

delivery can be a statement: “Respondent, under penalty of perjury, states that the Response was delivered to Claimant by [explain how delivered, such as mail or other methods in NAF Rule 6C]”.

A Counter Claim, Cross-claim or Third Party Claim must also be delivered and filed with the Forum, and accompanied by the fee as provided in the Fee Schedule. See NAF Rules 14, 15, and 16. Forms for such Response and Claims may be obtained from the Forum.

If you fail to respond in writing to the Claim, an Award may be entered against you and in favor of the Claimant. See NAF Rule 36.

2. Select a Document Hearing or a Participatory Hearing. You may request a Hearing in your Response or in a separate writing. You may select a Document or Participatory Hearing, and you may also request a Hearing on-line or by telephone. If an In-person Participatory Hearing is selected, it will be held in the federal Judicial District where you reside or do business, unless you have agreed otherwise. Parties have a full and equal right to present relevant and reliable direct and cross examination testimony, documents, exhibits, evidence and arguments. Parties also have the right to subpoena witnesses. Your written Request for a Hearing must be filed with the Forum. You must also deliver a copy of your Request to the Claimant and any other Parties. See NAF Rules 5D, 25, 26, 29, 30, 31, and 33.

3. Have other options. You may seek the advice of an attorney or any person who may assist you regarding this arbitration. See NAF Rule 3. You should seek this advice promptly so that your Response can be delivered and filed within the time required by the Code of Procedure. Parties have the right to adjournment for good cause within the time period allowed in Rule 9E. See NAF Rule 5 for a Summary of Arbitration Procedures. If you have any questions about responding, you may contact the Forum.

The Forum is an independent and impartial arbitration organization, which does not give legal advice or represent parties. THIS SUMMARY IS NOT A SUBSTITUTE FOR READING AND UNDERSTANDING THE CODE OF PROCEDURE WHICH GOVERNS THIS ARBITRATION.

National Arbitration Forum
P.O. Box 50191
Minneapolis, MN USA 55405-0191
800-474-2371
info@adrforum.com
adrforum.com

Appendix B—Second Notice of Arbitration

Date

Name of Case

File Number

Dear Respondent,

We have received notice that you have been served with an Arbitration Claim in the above case. If you want to respond to the Claim, the Code of Procedure requires you to respond in writing.

If you have not yet responded, YOU MAY STILL SUBMIT A WRITTEN RESPONSE to the Claimant and the Forum. YOU HAVE THIRTY (30) DAYS FROM THE DATE OF SERVICE OR FOURTEEN (14) DAYS FROM THE DATE OF THIS NOTICE, whichever is later, to respond.

The First Notice of Arbitration you received with the Initial Claim documents stated that you could:

1. Submit a written Response to the Claim, stating your reply and defenses to the Claim, together with documents supporting your position. Proof of delivery of the Response on the Claimant must also be filed with the Forum. Proof of delivery can be a statement: “Respondent, under penalty of perjury, states that the Response was delivered to Claimant by [explain how delivered, such as by mail or other methods in NAF Rule 6C].”

2. Request a Document Hearing, an In-Person Participatory Hearing where you reside or do business, or an On-Line or Telephone Hearing as provided in the Forum Code of Procedure. Parties have a full and equal right to present relevant and reliable direct and cross examination testimony, documents, exhibits, evidence and arguments. Parties also have the right to subpoena witnesses. See NAF Rules 5, 25, 26, 29, 30, 31, and 33.

3. Seek the advice of an attorney or any person who may assist you regarding this arbitration. See NAF Rule 3. You should seek this advice immediately. Parties have the right to adjournment for good cause within the time period allowed in NAF Rule 9. *You should also read the National Arbitration Forum Code of Procedure which explains what you must and can do.* See NAF Rules 5, 6C, 13, 14, 15, 16, 24, and 25.

You still have these options. If you have any questions or need a copy of the Initial Claim Documents or the Forum Code of Procedure, or have any questions about responding, you may contact the National Arbitration Forum:

P.O. Box 50191
 Minneapolis, MN USA 55405-0191
 Telephone: (800) 474-2371
 Fax: (866) 743-4517
 info@adrforum.com
 www.adrforum.com

The Forum is an independent and impartial arbitration organization, which does not give legal advice or represent parties. Furthermore, any Arbitrator appointed to this proceeding is an independent and impartial Neutral who hears the matter and arrives at decisions. The Arbitrator does not represent

you and does not serve as your attorney, therefore no attorney-client privilege exists between you and the Arbitrator.

Notice of Proceeding

If you do not deliver to the Claimant and file with the Forum a written response, an Award may be entered against you in favor of the Claimant. An arbitration Award may be enforced in court as a civil judgment. NAF Rule 36B states in part: "If a Party does not respond to a Claim, an Arbitrator will timely review the merits of the Claim for purposes of issuing an Award or Order..." This Notice informs you that an Arbitrator will conduct a Rule 36 Proceeding after the time has passed for you to submit a written response. If you do not respond, you will not receive any additional notice about this hearing.

THIS SUMMARY IS NOT A SUBSTITUTE FOR READING AND UNDERSTANDING THE FORUM CODE OF PROCEDURE WHICH GOVERNS THIS ARBITRATION.

Appendix C–Help Line

The Forum has a dedicated Help Line offering general assistance with the arbitration process or matters administered by the Forum under the Code. Forum staff cannot provide legal advice. Inquiries may be directed to the Help Line at:

Telephone: (800) 474-2371
ext. 4357 (H-E-L-P)

National Arbitration Forum
P. O. Box 50191
Minneapolis, MN USA 55405-0191
Attention - Help Line

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EXHIBIT J

COMMERCIAL

Commercial

Arbitration Rules and Mediation Procedures

Including Procedures for Large, Complex Commercial Disputes



AMERICAN ARBITRATION ASSOCIATION®

Available online at adr.org/commercial

Rules Amended and Effective October 1, 2013

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Commercial Arbitration Rules and Mediation Procedures

(Including Procedures for Large, Complex Commercial Disputes)



Important Notice

These rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the AAA[®]. To ensure that you have the most current information, see our web site at www.adr.org.

Introduction

Each year, many millions of business transactions take place. Occasionally, disagreements develop over these business transactions. Many of these disputes are resolved by arbitration, the voluntary submission of a dispute to an impartial person or persons for final and binding determination. Arbitration has proven to be an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association[®] (AAA), a not-for-profit, public service organization, offers a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on various forms of alternative dispute resolution.

Standard Arbitration Clause

The parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Arbitration of existing disputes may be accomplished by use of the following:

We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules the following Controversy: (describe briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s). We further agree that we will faithfully observe this agreement and the rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of any court having jurisdiction may be entered on the award.

The services of the AAA are generally concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

Administrative Fees

The AAA charges a filing fee based on the amount of the claim or counterclaim. This fee information, which is included with these rules, allows the parties to exercise control over their administrative fees. The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, reporting services, or any post-award charges incurred by the parties in enforcing the award.

Mediation

Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute upon the administration of the arbitration or at any time when the

arbitration is pending. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its Commercial Mediation Procedures. There is no additional filing fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

Although these rules include a mediation procedure that will apply to many cases, parties may still want to incorporate mediation into their contractual dispute settlement process. Parties can do so by inserting the following mediation clause into their contract in conjunction with a standard arbitration provision:

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission agreement:

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Large, Complex Cases

Unless the parties agree otherwise, the procedures for Large, Complex Commercial Disputes, which appear in this pamphlet, will be applied to all cases administered by the AAA under the Commercial Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$500,000 exclusive of claimed interest, arbitration fees and costs. The key features of these procedures include:

- > A highly qualified, trained Roster of Neutrals;
- > A mandatory preliminary hearing with the arbitrators, which may be conducted by teleconference;
- > Broad arbitrator authority to order and control the exchange of information, including depositions;
- > A presumption that hearings will proceed on a consecutive or block basis.

Commercial Arbitration Rules

R-1. Agreement of Parties*

- (a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.
- (b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.
- Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.
- (c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.
- (d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.
- (e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* Beginning October 1, 2017, AAA will apply the Employment Fee Schedule to any dispute between an individual employee or an independent contractor (working or performing as an individual and not incorporated) and a business or organization and the dispute involves work or work-related claims, including any statutory claims and including work-related claims under independent contractor agreements. A dispute arising out of an employment plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures. A dispute arising out of a consumer arbitration agreement will be administered under the AAA's Consumer Arbitration Rules.

* Beginning June 1, 2021, AAA will apply the Consumer Arbitration Fee Schedule to any dispute between an online marketplace or platform and an individual user or subscriber (using or subscribed to the service as an individual and not incorporated) and the dispute does not involve work or work-related claims.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules, and may be carried out through such of the AAA's representatives as it may direct. The AAA may, in its discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators ("National Roster") and shall appoint arbitrators as provided in these rules. The term "arbitrator" in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. Filing Requirements

- (a)** Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract which provides for arbitration.
- (b)** Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract which provides for arbitration.
 - i.** The filing party shall include a copy of the court order.
 - ii.** The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party to either make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
 - iii.** The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to R-32.
- (c)** It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

- (d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written submission agreement and the administrative filing fee. To the extent that the parties' submission agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.
- (e) Information to be included with any arbitration filing includes:
 - i. the name of each party;
 - ii. the address for each party, including telephone and fax numbers and e-mail addresses;
 - iii. if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
 - iv. a statement setting forth the nature of the claim including the relief sought and the amount involved; and
 - v. the locale requested if the arbitration agreement does not specify one.
- (f) The initiating party may file or submit a dispute to the AAA in the following manner:
 - i. through AAA WebFile, located at **www.adr.org**; or
 - ii. by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.
- (g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.
- (h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.
- (i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

R-5. Answers and Counterclaims

- (a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

- (b) A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in Rule R-6. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.
- (c) If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.
- (d) If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

R-6. Changes of Claim

- (a) A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.
- (b) Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b) The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c) A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

R-8. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

R-9. Mediation

In all cases where a claim or counterclaim exceeds \$75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of this rule upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

- (a) When the parties' arbitration agreement is silent with respect to locale, and if the parties disagree as to the locale, the AAA may initially determine the place of

arbitration, subject to the power of the arbitrator after appointment, to make a final determination on the locale.

- (b)** When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.
- (c)** If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

R-12. Appointment from National Roster

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a)** The AAA shall send simultaneously to each party to the dispute an identical list of 10 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.
- (b)** If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Roster without the submission of additional lists.
- (c)** Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

R-13. Direct Appointment by a Party

- (a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Roster from which the party may, if it so desires, make the appointment.
- (b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.
- (c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.
- (d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to Section R-13, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.
- (b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.
- (c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-15. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

R-16. Number of Arbitrators

- (a) If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.
- (b) Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the R-6 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

R-17. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives. Such obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with Rule R-41.
- (b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) Disclosure of information pursuant to this Section R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
 - i. partiality or lack of independence,
 - ii. inability or refusal to perform his or her duties with diligence and in good faith, and
 - iii. any grounds for disqualification provided by applicable law.
- (b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-13 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.
- (c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

R-19. Communication with Arbitrator

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to R-13 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.
- (b) Section R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.
- (d) As set forth in R-43, unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

R-20. Vacancies

- (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.
- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

R-21. Preliminary Hearing

- (a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.
- (b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

- (a) *Authority of arbitrator.* The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.
- (b) *Documents.* The arbitrator may, on application of a party or on the arbitrator's own initiative:
 - i. require the parties to exchange documents in their possession or custody on which they intend to rely;
 - ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
 - iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and

- iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.

R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 and to otherwise achieve a fair, efficient and economical resolution of the case, including, without limitation:

- (a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;
- (b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
- (c) allocating costs of producing documentation, including electronically stored documentation;
- (d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and
- (e) issuing any other enforcement orders which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

R-25. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

R-26. Representation

Any party may participate without representation (pro se), or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

R-27. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. Stenographic Record

- (a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.
- (b) No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.
- (c) If the transcript or any other recording is agreed by the parties or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- (d) The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

R-31. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. Conduct of Proceedings

- (a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (c) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means including video conferencing, internet communication, telephonic conferences and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.
- (d) The parties may agree to waive oral hearings in any case and may also agree to utilize the Procedures for Resolution of Disputes Through Document Submission, found in Rule E-6.

R-33. Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

R-34. Evidence

- (a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.
- (c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

- (a) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider to be just and reasonable.
- (b) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.
- (c) If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time and the AAA shall notify the parties. Any party who so desires may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

- (a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.
- (b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.
- (c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-38. Emergency Measures of Protection

- (a) Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after October 1, 2013.
- (b) A party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by facsimile or e-mail or other reliable means, but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
- (c) Within one business day of receipt of notice as provided in section (b), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (d) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.
- (e) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.
- (f) Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.
- (g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.
- (h) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in this rule and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.
- (i) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.

R-39. Closing of Hearing

- (a) The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrator shall declare the hearing closed.
- (b) If documents or responses are to be filed as provided in Rule R-35, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.

- (c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

R-40. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

R-41. Waiver of Rules

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

R-42. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any extension.

R-43. Serving of Notice and Communications

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) The AAA, the arbitrator and the parties may also use overnight delivery or electronic facsimile transmission (fax), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by e-mail or other methods of communication.

- (c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.
- (f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. Majority Decision

- (a) When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement or section (b) of this rule, a majority of the arbitrators must make all decisions.
- (b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

R-45. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

- (a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.
- (b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-47. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.
- (b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.
- (c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections R-53, R-54, and R-55. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.
- (d) The award of the arbitrator(s) may include:
 - i. interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
 - ii. an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-48. Award Upon Settlement—Consent Award

- (a) If the parties settle their dispute during the course of the arbitration and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award." A consent award must include an allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.
- (b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

R-49. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-50. Modification of Award

Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not

empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

R-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

R-52. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.
- (b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d) Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.
- (e) Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as a witness in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

R-53. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the arbitration, including required travel

and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

R-55. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.
- (b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.
- (c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

R-56. Deposits

- (a) The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.
- (b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

R-57. Remedies for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment.

- (a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.
- (b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue their claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.

- (c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.
- (d) In the event that the arbitrator grants any request for relief which limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.
- (e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.
- (f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

R-58. Sanctions

- (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to making of an award. The arbitrator may not enter a default award as a sanction.
- (b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanctions application.

Preliminary Hearing Procedures

P-1. General

- (a) In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case.
- (b) Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive and more expeditious.

P-2. Checklist

- (a) The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:
 - (i) the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;
 - (ii) whether all necessary or appropriate parties are included in the arbitration;
 - (iii) whether a party will seek a more detailed statement of claims, counterclaims or defenses;
 - (iv) whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;
 - (v) which
 - (a) arbitration rules;
 - (b) procedural law; and
 - (c) substantive law govern the arbitration;
 - (vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation,
 - (a) any preconditions that must be satisfied before proceeding with the arbitration;
 - (b) whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
 - (c) consolidation of the claims or counterclaims with another arbitration; or
 - (d) bifurcation of the proceeding.

- (vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;
 - (viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;
 - (ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;
 - (x) whether any measures are required to protect confidential information;
 - (xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;
 - (xii) whether, according to a schedule set by the arbitrator, the parties will
 - (a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;
 - (b) exchange and pre-mark documents that each party intends to submit; and
 - (c) exchange pre-hearing submissions, including exhibits;
 - (d) the date, time and place of the arbitration hearing;
 - (e) whether, at the arbitration hearing,
 - (xiii) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;
 - (xiv) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
 - (a) whether any procedure needs to be established for the issuance of subpoenas;
 - (b) the identification of any ongoing, related litigation or arbitration;
 - (xv) whether post-hearing submissions will be filed;
 - (xvi) the form of the arbitration award; and
 - (xvii) any other matter the arbitrator considers appropriate or a party wishes to raise.
- (b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in Section R-5.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-43, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

- (a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the panel without the submission of additional lists.
- (c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-18. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes Through Document Submission

Where no party's claim exceeds \$25,000, exclusive of interest, attorneys' fees and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

- (a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.
- (b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.
- (c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.
- (d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (e) Unless the parties have agreed to a form of award other than that set forth in rule R-46, when the parties have agreed to resolve their dispute by this rule, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (f) If the parties agree to a form of award other than that described in rule R-46, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (g) The award is subject to all other provisions of the Regular Track of these rules which pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

- (a) Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.
- (b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-28.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

E-10. Arbitrator's Compensation

Arbitrators will receive compensation at a rate to be suggested by the AAA regional office.

Procedures for Large, Complex Commercial Disputes

L-1. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference will take place within 14 calendar days after the commencement of the arbitration. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;
- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrators;
- (c) to obtain conflicts statements from the parties; and
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate.

L-2. Arbitrators

- (a) Large, complex commercial cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. With the exception in paragraph (b) below, if the parties are unable to agree upon the number of arbitrators and a claim or counterclaim involves at least \$1,000,000, then three arbitrator(s) shall hear and determine the case. If the parties are unable to agree on the number of arbitrators and each claim and counterclaim is less than \$1,000,000, then one arbitrator shall hear and determine the case.
- (b) In cases involving the financial hardship of a party or other circumstance, the AAA at its discretion may require that only one arbitrator hear and determine the case, irrespective of the size of the claim involved in the dispute.
- (c) The AAA shall appoint arbitrator(s) as agreed by the parties. If they are unable to agree on a method of appointment, the AAA shall appoint arbitrators from the Large, Complex Commercial Case Panel, in the manner provided in the regular Commercial Arbitration Rules. Absent agreement of the parties, the arbitrator(s) shall not have served as the mediator in the mediation phase of the instant proceeding.

L-3. Management of Proceedings

- (a) The arbitrator shall take such steps as deemed necessary or desirable to avoid delay and to achieve a fair, speedy and cost-effective resolution of a Large, Complex Commercial Dispute.
- (b) As promptly as practicable after the selection of the arbitrator(s), a preliminary hearing shall be scheduled in accordance with sections P-1 and P-2 of these rules.
- (c) The parties shall exchange copies of all exhibits they intend to submit at the hearing at least 10 calendar days prior to the hearing unless the arbitrator(s) determines otherwise.
- (d) The parties and the arbitrator(s) shall address issues pertaining to the pre-hearing exchange and production of information in accordance with rule R-22 of the AAA Commercial Rules, and the arbitrator's determinations on such issues shall be included within the Scheduling and Procedure Order.
- (e) The arbitrator, or any single member of the arbitration tribunal, shall be authorized to resolve any disputes concerning the pre-hearing exchange and production of documents and information by any reasonable means within his discretion, including, without limitation, the issuance of orders set forth in rules R-22 and R-23 of the AAA Commercial Rules.
- (f) In exceptional cases, at the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions to obtain the testimony of a person who may possess information determined by the arbitrator to be relevant and material to the outcome of the case. The arbitrator may allocate the cost of taking such a deposition.
- (g) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

Administrative Fee Schedules (Standard and Flexible Fees)

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT www.adr.org/feeschedule.

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail or fax. Requests for mediation may also be filed online via WebFile at **www.adr.org**.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
- (v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;
- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or
- (ii) By a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) By a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) When there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT www.adr.org/feeschedule.

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