



# ARBITRATION RULES

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*As an Administrator, ADR Services, Inc.'s role is to manage the administrative aspects of arbitrations and other dispute resolution matters, including facilitating the appointment of an Arbitrator or other dispute resolution Neutral, scheduling hearings, and handling the invoicing and payment of fees. ADR Services, Inc. does not decide the merits of a case or make substantive rulings on any of the issues presented. Because the Administrator's role is solely organizational and administrative, ADR Services, Inc. has no power or jurisdiction to provide legal advice, reconsider, overrule, change, or dictate any Neutral's decisions or rulings.*

## 1. Applicability of these Rules

A) Agreement of the Parties. The parties shall be deemed to have made these rules a part of their arbitration agreement whenever their arbitration contract provides for arbitration with a Neutral on ADR Services, Inc.'s panel and/or administration of the arbitration by ADR Services, Inc. (hereafter "ADR Services"), or whenever the parties have otherwise agreed to the applicability of these rules. Any dispute between the parties regarding the applicability or interpretation of these Rules shall be reserved for and resolved by binding decision of the arbitrator.

B) Effective Version. The Rules, and any amendment thereof, which shall apply to the arbitration will be those in effect at the time the demand for arbitration, submission agreement or court order is received by ADR Services.

C) The governing law shall default to the California Arbitration Act and Code of Civil Procedure where: (1) the parties' arbitration agreement is silent as to the designated arbitration provider and/or applicable rules, (2) the parties have not otherwise mutually agreed to the applicable rules, and/or (3) these rules are silent as to any process or procedure.

## 2. Procedural Modifications

The arbitral authority of ADR Services is as set forth in the agreement of the parties and in these rules, and may be carried out through ADR Services' representatives as it may direct. The parties may agree on any procedures not specified in these rules that are consistent with the applicable law and ADR Services policies. The parties shall promptly notify the ADR Services Case Manager of any such party-agreed procedures and shall confirm such procedures in writing. The party-agreed procedures shall be enforceable as if contained in these rules.

## 3. Amendment of Rules

ADR Services may amend these rules without notice. If the parties have agreed to use these rules by contract or stipulation, the rules in effect on the date of the commencement (see Rule 5 below) of an arbitration shall apply to that arbitration, unless the parties have specified another earlier version of the rules. The current and archived versions of the rules are available on ADR Services' website at [www.adrservices.com/arbitration-rules](http://www.adrservices.com/arbitration-rules).



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### 4. Conflict with Law and Severability

If any of these rules, or a modification of these rules as agreed upon by the parties, is determined by the arbitrator to be in conflict with applicable law, the provision of law will govern, and no other rule will be affected.

### 5. Commencing an Arbitration

There are three ways to commence an arbitration with ADR Services: By Demand; By Stipulation; and By Court Order.

#### A) By Demand:

An arbitration may be commenced by submitting the "Demand for Arbitration" form. A demand occurs when a party to a contract with an arbitration clause that names ADR Services or these rules serves a written Demand for Arbitration concurrently on ADR Services and the opposing party(ies). This form is available on ADR Services' website at [www.adrservices.com/services/forms](http://www.adrservices.com/services/forms).

1. The initiating party (the "claimant") shall, within the time period, if any, specified in the contract(s), give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, the claims and remedies sought, and the hearing locale requested. Where the respondent is already represented by counsel, notice of the demand provided to such counsel shall be deemed notice to the respondent.

There are several methods for submission of the demand to ADR Services, including mailing a hard copy of the demand to any office of ADR Services, submitting the demand electronically through ADR Services, Inc.'s website (<https://www.adrservices.com/services-2/demand-for-arbitration/>), submitting the demand by email to [demands@adrservices.com](mailto:demands@adrservices.com), and uploading the demand to ADR Services, Inc.'s Case Management System ("AMS") at <https://ams.adrservices.com/inquiries/create/demand/>. The demand shall be submitted together with a copy of the applicable arbitration provision(s) of the contract, a copy of any complaint previously filed with the court, and a proof of service of the demand on the respondent(s) or respondent(s)' counsel.

2. ADR Services will confirm receipt of the demand by issuing a Commencement Letter to the parties outlining the procedure for continuing with initiation of the arbitration. The date of commencement of the arbitration is the date of the Commencement Letter for the procedures set forth in these rules only. It is not intended to supersede any legal requirements such as the statute of limitations, any contractual limitations period or claims notice requirements.

3. Within fifteen (15) calendar days after service of the Commencement Letter, a respondent may submit to ADR Services and serve on all other parties an answering statement and, if applicable, a statement of any affirmative defenses and/or counterclaims. The respondent shall, at the same time as any such filing, send a copy of the answering statement, a statement of affirmative defenses or a counterclaim to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedies sought. Within fifteen (15) calendar days of service of a counterclaim, a claimant may submit to ADR Services and serve on other parties a response to such counterclaim. If no answering statement is filed within the stated time, respondent will be deemed to deny the claim or counterclaim and consent to arbitration. ADR Services reserves the right to extend the deadline for the filing of an answering statement or a counterclaim upon



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written request. Failure to file an answering statement shall not operate to delay the arbitration, which shall proceed after fifteen (15) calendar days (or any granted extension) regardless of whether an answering statement has been submitted.

### B) By Stipulation:

An arbitration may be jointly commenced via submission (stipulation) in the following manner:

1. The submission to ADR Services of a post-dispute arbitration agreement fully executed by all parties that specifies ADR Services administration or use of any ADR Services rules; or

2. The oral agreement of all parties to participate in an arbitration administered by ADR Services or conducted pursuant to any ADR Services rules, confirmed in writing by all parties; or

3. By filing at any office of ADR Services a copy of a written submission to arbitrate under these rules, signed by all parties. It shall contain a statement of the nature of the dispute, the names and addresses of all parties, any claims and counterclaims, the amount involved, if any, the remedy sought, and the hearing locale requested. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party.

### C) By Court Order:

An arbitration may also be commenced via submission of a Court Order compelling arbitration. The Court Order shall be submitted to ADR Services together with a copy of the parties' arbitration agreement as well as any Complaint, Answer, Cross-Complaint, or other pleading filed with the Court, which shall be presumed to be the operative pleadings for the arbitration unless otherwise specified by the parties or set forth in the Court Order.

### D) Procedure Following Submission Via Stipulation or Court Order:

When arbitration has been commenced by stipulation or court order, ADR Services will send:

(1) a Commencement Letter if no arbitrator has been agreed upon or appointed and the procedures set forth in ¶5(a)(3) above will apply; or

(2) an Initiation of Arbitration Letter/Package setting forth the next steps to move forward with administration of the matter where an arbitrator has been pre-selected. Any pleadings (Complaint, Statement of Claims, Answer, Cross-Complaint, or Counterclaims) not previously filed with the Court or submitted to ADR Services shall be provided within a reasonable time or as determined by the Arbitrator during the initial arbitration management conference.

## 6. Notice of Claims, Counterclaims and Affirmative Defenses

Each party shall provide reasonable and timely notice to the arbitrator and other parties of all claims, remedies/relief sought, counterclaims and affirmative defenses that will be asserted in the matter. Notice may be provided: (a) in the Demand for Arbitration, answering statement and/or counterclaim; (b) by attaching a copy of any previously filed Complaint, Answer or Cross-Complaint; or (c) by attaching a separate Statement of Claims or Counterclaims. The notice shall include a brief description of the factual basis for each claim, affirmative defense, and/or counterclaim. No claim, remedy, counterclaim, or affirmative defense will be considered by the arbitrator in the absence of such prior notice, which is to be provided no later than ninety (90) calendar days before the initial date for arbitration, unless the arbitrator



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determines that no unfair prejudice has occurred or all parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

### 7. Changes of Claim

After filing a claim and where no arbitrator has been appointed, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with ADR Services. The party asserting such a new or different claim or counterclaim shall provide a copy to the other party, who shall have fifteen (15) calendar days from the date of such transmission within which to file an answering statement with ADR Services. If no answering statement is filed, the respondent will be deemed to have denied the claim.

Once an arbitrator has been appointed, no new or different claim may be submitted absent the arbitrator's consent.

### 8. Jurisdiction

Unless the issue of arbitrability has been previously determined by the court, 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. In addition, 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 balance of the contract is void shall not for that reason alone render invalid the arbitration clause. 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.

### 9. Administrative Conference (ADR Services)

ADR Services may, at its discretion or at the request of the parties, contact the parties by telephone or email to discuss procedural matters such as the pleadings or notice of claim sequence, arbitrator selection, locale and the needs and expectations of the parties in conjunction with the arbitration process. This includes, but is not limited to, procedural matters related to mass arbitration filings such as batching and the potential appointment of a Threshold Arbitrator. ADR Services or the parties may request additional telephonic conferences as necessary.

### 10. Mass Arbitrations

#### A) Definition of Mass Arbitration

The designation of "mass arbitration" shall apply when twenty (20)\* or more arbitration claims are filed which involve the same or similar parties; are based on the same or similar claims which arise from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact; and involve the same or coordinated counsel for the parties. If a dispute arises regarding whether the cases satisfy this criteria, ADR Services reserves the right to make a final determination. (\*Or as otherwise defined in the parties' arbitration agreement.)



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### B) Request for Threshold Arbitrator

To promote the timely resolution of threshold issues and/or disputes between the parties, ADR Services will appoint a Threshold Arbitrator upon receipt of a written request of either party following the administrative conference (Rule 9) and/or prior to the selection and appointment of the “merits” arbitrator(s). Such threshold issues and disputes include, but are not limited to: (i) whether the arbitration demands qualify for designation as “mass arbitrations” for which ADR Services has not made a determination; (ii) disputes regarding the payment of filing or administrative fees; (iii) compliance with any mandatory informal resolution procedures or other applicable preconditions; (iv) whether the dispute qualifies as a “threshold issue” for appropriate determination by the Threshold Arbitrator; (v) which demands qualify for inclusion in the “mass arbitration” designation, including later filed demands; and (vi) any other non-merits administrative issue agreed upon by parties in writing to be presented to the Threshold Arbitrator. (The parties may also, after appointment of the merits arbitrator(s), mutually agree to have the Threshold Arbitrator or other Neutral hear and resolve any discovery disputes common to all claims.)

The Threshold Arbitrator’s decision(s) shall be final and binding upon the parties and the merits arbitrator(s) unless otherwise designated by the Threshold Arbitrator.

Once a request is made to ADR Services for appointment of a Threshold Arbitrator, ADR Services may suspend further processing of the mass arbitration demands, including the further payment of administrative costs deemed due with respect to those demands for which a dispute has been raised, until the issues have been resolved and/or the Threshold Arbitrator has issued a final determination.

The requesting party shall be responsible for the administrative fees and Threshold Arbitrator fees associated with these initial proceedings. If requests are received from both sides, the fees shall be shared by the parties 50/50.

### C) Selection and Appointment of Threshold Arbitrator

Upon receipt of a party’s request for appointment of a Threshold Arbitrator, ADR Services shall send simultaneously to each party a list of five (5) candidates from the panel of neutrals. The parties are encouraged to agree to a Threshold Arbitrator from the list and to advise ADR Services of their agreement. If the parties have agreed upon, or their agreement provides, specific criteria for the list (e.g., retired judges only, or a combination of retired judges and attorneys, from a particular panel), the requesting party shall include that information in the written request.

If the parties are unable to agree upon an arbitrator, each side shall have five (5) business days from the transmittal date of the list of candidates in which to strike up to two (2) names objected to, number the remaining names in order of preference, and return the list to ADR Services. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable and ADR Services shall appoint the Threshold Arbitrator identified as most acceptable by the party who returned the list. If the parties fail to agree on any of the persons named, ADR Services shall appoint the Threshold Arbitrator that was most acceptable to the parties as indicated by their preferences. If the ranking of the parties’ preferences results in a “tie” between two or more selected arbitrators, ADR Services shall make the appointment from amongst those preferred candidates. If the most preferred candidate is unable to act, or if for any other reason the appointment cannot be made, the next most acceptable candidate as indicated by the parties’ preferences shall be selected without the provision or submission of additional lists.



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The selected Threshold Arbitrator shall disclose any ground likely to affect his or her impartiality based on the facts disclosed in the demands. (Please note that ADR Services must be in receipt of the mandatory Mass Arbitration Excel Spreadsheet (Claimants) and Arbitration Registration Form (Claimants and Respondent(s)) in order to prepare and issue disclosures.) Any challenge to the appointed Threshold Arbitrator must be received by ADR Services within five (5) business day of the notice of the appointment and disclosures.

ADR Services may extend the time periods provided in this section for selection and appointment of a Threshold Arbitrator upon written request from the parties.

### D) Preliminary Hearing with Threshold Arbitrator

Once appointed, the Threshold Arbitrator will schedule as soon as practicable a preliminary hearing or initial conference with the parties' representatives to clarify the issues to be addressed, set any briefing and hearing schedule, and discuss any other preliminary matters unrelated to the merits of the claims. The preliminary hearing may be conducted by telephone or through a remote appearance platform (such as Zoom) at the Threshold Arbitrator's discretion.

### E) Appointment of "Merits" Arbitrator(s) and Proceeding with Arbitrations

Once all issues submitted to the Threshold Arbitrator have been resolved and/or decided, the process for selection of the arbitrators to hear the matters on the merits shall proceed as set forth below in Rule 12. ADR Services or the parties may request an additional Administrative Conference to discuss a mutually optimal procedure for the efficient appointment of the arbitrators to hear and determine the matters.

## 11. Fixing of Locale

The parties should mutually agree on the locale where the arbitration is to be held. If any party requests or has demanded that the hearing be held in a specific locale, the other party may object at any time by contacting ADR Services and providing notice to the other party. If no objection is received within fifteen (15) calendar days after notice that a demand or request has been submitted to ADR Services, the locale shall be the one requested. The 15-day period is not tolled pending issuance a Commencement Letter from ADR Services. If a party promptly objects to the locale requested by the other party and no arbitrator has been appointed, ADR Services shall have the power to determine the locale, and its decision shall be final and binding.

## 12. Arbitrator Selection and Appointment

Arbitrations shall be conducted by one neutral arbitrator unless all Parties agree otherwise. In cases involving more than one arbitrator (i.e., a panel arbitration), the Parties shall each select their own neutral or non-neutral party arbitrator and may also agree on the third neutral arbitrator to serve as the chairperson for the panel. In the absence of an agreement by the Parties, their respective party arbitrators shall select and designate the neutral arbitrator to act as chairperson for the arbitration panel. If the parties and the arbitrators agree, the chairperson may, acting alone, resolve discovery disputes and rule on other procedural matters.

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 ADR Services by the appointing party. If the agreement specifies a time-period





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within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the appointment shall be made by ADR Services pursuant to the strike and rank process set forth below. If no time-period is specified in the agreement, ADR Services shall notify the parties to make the appointment. If within fifteen (15) calendar days after such notice has been sent, an arbitrator has not been appointed by a party, ADR Services shall make the appointment in accordance with the strike and rank process below.

Unless the Arbitrator has been previously selected by agreement of the parties, ADR Services may attempt to facilitate agreement among the parties regarding selection of the arbitrator. 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) Following the filing of the submission to arbitration or the answering statement or the expiration of the time within which the answering statement is to be filed, ADR Services shall send simultaneously to each party to the dispute an identical list of names of persons chosen from the panel. The list shall contain a minimum of seven (7) names. The parties are encouraged to agree to an arbitrator from the submitted list and to advise ADR Services of their agreement. If the parties have agreed upon, or their agreement provides, specific criteria for the list (e.g., retired judges only, or a combination of retired judges and attorneys, from a particular panel), the parties shall notify ADR Services either in the demand for arbitration or within ten (10) calendar days after ADR Services sends the Commencement Letter.

B) If the parties are unable to agree upon an arbitrator, each party to the dispute shall have fifteen (15) business days from the transmittal date of the list of arbitrators in which to strike up to three (3) names objected to, number the remaining names in order of preference, and return the list to ADR Services. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable and ADR Services shall appoint the arbitrator identified as most acceptable by the party who returned the list. If the parties fail to agree on any of the persons named, ADR Services shall appoint the arbitrator that was most acceptable to the parties as indicated by their preferences. If the ranking of the parties' preferences results in a "tie" between two or more selected arbitrators, ADR Services shall make the appointment from amongst those preferred arbitrators. If the most preferred arbitrator(s) are unable to act, or if for any other reason the appointment cannot be made, the next most acceptable arbitrator(s) as indicated by the parties' preferences shall be selected without the provision or submission of additional lists.

C) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single party for purposes of the arbitrator selection process. ADR Services shall determine whether the interests between entities are adverse for purposes of arbitrator selection, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the arbitration.

D) Any disclosures required by law to be made by a selected arbitrator shall be served by electronic mail to the counsel of record for each represented party within ten (10) calendar days from the notice of the proposed nomination or appointment. The parties have fifteen (15) calendar days after the service of the proposed arbitrator's disclosure statement to object to the appointment of the arbitrator based upon the disclosures made. If no written objection is received by ADR Services within that time frame, it is considered waived.

E) At any time before the conclusion of the arbitration proceeding, a party may challenge the continued service of an arbitrator on any of the "judicial-type" grounds listed in Code of Civil Procedure Section 170.1. The challenge must be based upon information that was not available to the parties at the



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time the arbitrator was selected. A challenge for cause must be in writing and exchanged with opposing parties, who may respond within seven (7) days of service of the challenge. The challenge will be ruled upon by the Arbitrator, which shall be conclusive. This provision does not apply to information contained in and/or acquired through the arbitrator's disclosures in the matter.

### 13. Notice of Appointment and Disclosures

Notice of the appointment of the neutral arbitrator, whether the appointment has been made by contract, mutually by the parties or by ADR Services, shall be sent to the arbitrator by ADR Services prior to the opening of the first hearing.

When engaging the services of ADR Services, the Parties are asked to provide information regarding the dispute at issue, as well as a list of all persons or entities involved and their counsel or representatives in the mandatory Arbitration Registration Form. This information is relied upon by ADR Services in preparing and issuing the necessary disclosures. ADR Services does not investigate, research, or question the validity or accuracy of this information.

In light of the arbitrator's ongoing obligation to provide disclosure information throughout the matter, it is the responsibility of Counsel to ensure that ADR Services is provided on an ongoing basis with the most complete, accurate, and current information relating to their matter. This includes identifying any and all parties, entities and attorneys who will be involved throughout the process, and providing separate written notice to ADR Services of any change in parties or counsel.

Based upon the information provided by counsel/parties and pursuant to the relevant code sections in force at the time of the appointment of the arbitrator, including the Ethics Standards for Neutral Arbitrators in Contractual Arbitration as adopted by the Judicial Council pursuant to Section 1281.85 of the Code of Civil Procedure, any person appointed as a neutral arbitrator shall disclose to ADR Services facts, information or circumstances that may constitute a conflict of interest or cause a person aware of the facts to reasonably entertain a doubt that the arbitrator would be able to be impartial. Upon receipt of such information from the arbitrator or another source, ADR Services shall communicate the information to the parties in accordance with the applicable standards.

### 14. Service

Any notices or documents necessary for the initiation or continuation of the arbitration under these rules is accomplished by providing one copy of the document to each party and one copy to the case manager on behalf of the arbitrator. Service may be made by hand-delivery, overnight delivery service or U.S. mail. Service by facsimile or electronic mail will be deemed sufficient if agreed upon by the parties or their counsel and notice of the agreement is provided to ADR Services and/or the arbitrator.

Service by hand-delivery, overnight delivery service or U.S. mail shall be considered effective upon the date of deposit of the document. When the method of service is by the U.S. Mail only, three (3) calendar days shall be added to the prescribed period for service within California and five (5) calendar days for mail outside of California. Service by facsimile or electronic mail is considered effective upon transmission.

Service will be deemed sufficient if the documents are sent to the last known mailing address or email address given on any document presented by a self-represented party or a party's attorney. It is the party's or attorney's duty to submit and serve a notice of change of address or email address to ADR Services and



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all other parties or counsel while the matter is pending. ADR Services relies upon the contact information provided by the parties and is not responsible for a challenge to the Award based on lack of proper notice.

ADR Services shall serve all arbitrator disclosures to the counsel of record for represented parties by electronic mail.

The Award shall be served by certified mail.

Unless otherwise instructed by ADR Services or by the arbitrator, any documents submitted by any party to ADR Services or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

### 15. Service by Publication

Where a thorough, systematic search and inquiry for the whereabouts of the respondent or other party has been conducted and unsuccessful attempts to serve by another approved method have failed, the serving party may seek a court order allowing the demand for arbitration and other related documents to be served by publication in accordance with Code of Civil Procedure Section 415.50. The court order along with proof of publication shall be submitted to ADR Services.

### 16. Electronic Submission and Transmission

ADR Services sends and receives documents via electronic mail. All documents sent by electronic mail will be deemed submitted to ADR Services if transmitted no later than **11:59 p.m., Pacific Standard Time**. Proof of transmission is sufficient to raise a rebuttable presumption that service was accomplished in the ordinary course.

When a document to be submitted requires a signature of an attorney or a self-represented party, not under penalty of perjury, the document shall be deemed to have been signed by that attorney or self-represented party if submitted electronically. The signature block shall set forth the typed name, address and telephone number of a signing attorney or self-represented party.

When a document to be submitted must be signed under penalty of perjury of any person: (1) the party submitting the document must obtain the signatures of all parties on a printed form of the document either prior to or the same day as the date of submission; (2) the party filing the document must maintain the original, signed document and must make it available for inspection and copying; and (3) by electronically submitting the document, the submitting party indicates that all necessary persons or parties have signed the document and that the submitting party has the document bearing the original signature in his or her possession. (See Code of Civil Procedure Section 1010.6.)

Documents electronically transmitted by the arbitrator to the parties and/or their counsel shall be deemed signed by the arbitrator. (Civil Code Section 1633.7(a); California Rules of Court rule 2.257(e).)

### 17. Representation

Where a party to the arbitration is a natural person, he or she may be represented by counsel of that party's choosing or may represent themselves *in propria persona*. However, ADR Services reserves the right to decline to administer an arbitration in the event a party opts to proceed *in propria persona*. Where a party to the arbitration is a legal entity such as a corporation, limited liability company (LLC) or partnership, that entity party must be represented by counsel.



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Each Party shall give prompt written notice to the case manager and the other parties of the name, address, telephone number, fax number and email address of its counsel. Where a party is self-represented, he or she must provide ADR Services and all other parties with a valid mailing address (other than a post-office box) and a valid, regularly monitored email address for the receipt of any and all documents exchanged by the parties or sent by ADR Services throughout the duration of the arbitration.

Any change in representation must be accomplished through either submission of a completed Substitution of Attorney form (Judicial Council Form MC-050) or by noticed motion to be relieved as counsel (California Rules of Court rule 3.1362). If there is a change in representation, the party shall give prompt written notice to the case manager and all other parties, including the name, address, telephone number, fax number and email address of the new attorney. The notice shall indicate that written consent of the former attorney, if any, as well as the new attorney was obtained for the substitution and shall state the effective date of the new representation.

### 18. Attendance at Hearings

The arbitrator and ADR Services shall maintain the privacy of the hearings unless the law provides to the contrary. Any party or representative 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 other than a party and his/her/its representatives.

The arbitrator may proceed with any hearing despite the absence of a party so long as that party received proper notice as set forth in Rules 14 or 15 above and thereafter fails to respond or attend. However, the arbitrator may not grant relief or issue an Award based solely on the default or absence of the party. The party seeking relief bears the initial burden of establishing a right to such relief based upon a proper evidentiary showing.

The Notice of Hearing shall specify if it will be conducted in person, through a remote appearance platform such as Zoom, or telephonically. Pre-arbitration hearings are typically conducted telephonically or through a remote performance platform such as Zoom. Absent mutual agreement of the parties, the Arbitrator shall determine, at his or her discretion, the optimal manner by which the arbitration hearing shall proceed.

### 19. Withdrawal from Arbitration

No party may terminate or withdraw from an arbitration after the appointment of the arbitrator except by written agreement of all parties to the arbitration. A party that asserts a claim or counterclaim may unilaterally withdraw that claim or counterclaim without prejudice by serving written notice on the other parties and on the arbitrator. However, the opposing parties may, within fifteen (15) calendar days of service of notice of the withdrawal of the claim or counterclaim, request that the Arbitrator order that the withdrawal be with prejudice.

### 20. Communication with the Arbitrator

A) Ex Parte Communication: No party and no one acting on behalf of any party shall communicate unilaterally (*ex parte*) concerning the arbitration with a neutral arbitrator or a candidate for neutral arbitrator. Any necessary *ex parte* communication with ADR Services, whether before, during or



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after the arbitration hearing, shall be conducted through the case manager. If a communication is received by a case manager for review by the arbitrator, it must generally (and with limited exception) be copied to all counsel or parties before it can be forwarded to the arbitrator.

If any *ex parte* communication occurs, the arbitrator will promptly inform the other parties of the communication and provide the other parties an opportunity to respond before making any final determination concerning the matter discussed. (Ethics Standards, std. 14(b).)

B) Ex Parte Application for Relief: An *ex parte* application is used by one party to ask the arbitrator for an order, such as an order changing a hearing date or deadline, without the full notice required for a noticed motion. It is used when exigent or emergency circumstances arise that require the arbitrator's early intervention to prevent prejudice to the requesting party.

Counsel for the requesting party must submit the *ex parte* application to the arbitrator's case management team (not directly to the arbitrator) no later than 10:00 a.m. at least one (1) business day before any hearing can be held. Notice of the *ex parte* application must be provided by the requesting party to all sides in the case. Any written opposition may be submitted in advance of the hearing; otherwise, oral argument will be considered by the arbitrator absent written opposition. The arbitrator's case manager will provide the arbitrator's earliest availability and send a notice of the hearing date and time selected.

### 21. Preliminary Hearing (Initial Arbitration Management Conference)

At the request of any party or at the discretion of the arbitrator or ADR Services, the arbitrator may schedule as soon as practicable a preliminary hearing or initial arbitration management conference with the parties and/or their representatives. The preliminary hearing may be conducted by telephone or through a remote appearance platform (such as Zoom) at the arbitrator's discretion. During the preliminary hearing, the parties and the arbitrator should discuss such issues as the future conduct of the case, including clarification of the issues, document exchange, a schedule for the hearings, discovery, the form of the Award, the length of the arbitration, and any other preliminary matters.

### 22. Discovery

A) Initial Exchange. Mindful of the goal of completing arbitration promptly and economically, the parties shall cooperate in good faith to voluntarily, promptly, and informally exchange all nonprivileged documents and other reasonably available information relevant to the dispute or claim, including electronically stored information ("ESI"). (See Code of Civil Procedure Section 2016.090.) Where privileged documents have been withheld, the withholding party shall provide a privilege log with sufficient specificity to allow a determination of whether each withheld document is or is not (in) fact privileged. Documents that have not been previously exchanged, or witnesses and experts not previously identified, may not, at the arbitrator's discretion, be considered at the hearing, unless agreed by the parties or upon a showing of good cause.

After the appointment of the arbitrator or arbitrators, the parties to the arbitration shall have the right to obtain discovery and to use and exercise the same rights, remedies, and procedures, and be subject to the same duties, liabilities, and obligations in the arbitration as if the subject matter of the arbitration were pending before a superior court of California, other than a limited civil case.

Depositions for discovery shall not be taken unless leave to do so is first granted by the arbitrator(s) as deemed necessary to a full and fair exploration of the issues in dispute and consistent with the expedited



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nature of arbitration. The parties shall attempt to agree on the time, location, and duration of any deposition(s), and if the parties do not agree these issues shall be determined by the arbitrator.

B) Discovery Subpoenas. The Arbitrator may issue subpoenas for the attendance of witnesses and/or the production of documents pursuant to Code of Civil Procedure Section 1282.6. In the event a party or a subpoenaed person objects to the subpoena, that party or person may file an objection with the arbitrator which will initiate the discovery dispute procedure below.

C) Discovery Disputes. The parties shall promptly notify the case manager when an unresolved dispute exists regarding discovery issues. At the arbitrator's discretion, the case manager will arrange an informal discovery conference ("IDC") with counsel and/or the parties, either by telephone, remote appearance platform, or in person, and the arbitrator shall provide his or her recommendations for resolution of the dispute. If the dispute is not resolved by this informal procedure or further meet and confer efforts, the matter may proceed by noticed motion and the arbitrator will issue a binding decision.

### 23. Pre-Arbitration "Pleading" Motions

As in court proceedings, the arbitrator(s) may allow the parties to file and serve dispositive pleading motions such as demurrers, motions to strike and motions for judgment on the pleadings. In order to be considered, the motion must be "dispositive." A written request for leave to present the motion must first be submitted to the Arbitrator by concise letter brief, copied to all sides, demonstrating that the motion is likely to succeed and dispose of or narrow the issues in the case. The party opposing the request may submit a concise responsive letter brief indicating why the motion should not be considered. The arbitrator may grant or deny the request based upon the parties' letter briefs alone or may schedule a telephonic or remote conference, at his or her discretion.

### 24. Interim Measures and Motions for Summary Judgment/Adjudication of a Claim or Issue

(A) Interim Measures: 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. Such interim measures may take the form of an Interim Award, and the arbitrator may require security for the cost of such measures. If any bond, undertaking, or security requirement is imposed, the parties must make any necessary arrangements with a third-party surety company or other entity to hold and/or maintain the funds. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or constitute a waiver of the right to arbitrate.

(B) Summary Judgment/Adjudication Motions: A party or representative of a party may make a motion for summary judgment or summary adjudication of a particular claim or issue to be decided by the arbitrator. The moving party shall, after meeting and conferring with the other party as to a desired hearing date, contact the case manager to determine the arbitrator's availability. If the parties are unable to agree to a hearing date, one will be selected by the arbitrator. Unless otherwise specified by the arbitrator, the applicable requirements and briefing schedule shall be in accordance with Code of Civil Procedure Section 437c.



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### 25. Emergency Provisional Relief

Where a party seeks emergency provisional relief, such as a temporary restraining order, but an arbitrator or arbitration panel has not yet been appointed, the party shall promptly notify ADR Services and all other parties in writing that such relief will be sought.

Notice may be given by facsimile, electronic mail, or other reliable means. The written notice for an emergency order shall include the nature and basis of the relief sought and why the matter is appropriately handled on an emergency basis – i.e., a factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief.

The notice must also be accompanied by a completed sworn declaration that includes one of the following: (a) that notice was given, including the date, time, manner, and name of the party informed, the relief sought, any response, and whether opposition is expected; (b) that the applicant in good faith attempted to inform the opposing party but was unable to do so, specifying the efforts made to inform the opposing party; or (c) that, for reasons specified, the applicant should not be required to inform the opposing party.

ADR Services shall, within two (2) business days of receipt of notice as provided above, appoint a single emergency arbitrator to rule on the emergency application. The emergency arbitrator shall immediately disclose any ground likely to affect his or her impartiality based on the facts disclosed in the application. Any challenge to appointed emergency arbitrator must be made within one (1) business day of ADR Services' notice of the appointment and disclosure.

The emergency arbitrator shall notify the parties, no later than two (2) business days following the appointment, of the schedule and manner in which the emergency application will be considered. The proceeding may occur telephonically or in any other manner calculated to provide all parties with a reasonable opportunity to be heard. The emergency arbitrator shall have the authority to determine jurisdiction (see Rule 8, *infra*) and shall resolve any disputes regarding the applicability of this rule.

If the emergency arbitrator is satisfied that the party seeking emergency relief has made a factual showing of irreparable harm, immediate danger, or any other statutory basis for granting relief, he or she may enter an interim order granting the relief and stating the grounds therefor. As a condition of the relief granted, the emergency arbitrator may require the party seeking emergency relief to post a bond or other security.

The emergency arbitrator shall retain the power to modify or reconsider the interim order until the appointment of an arbitrator or arbitration panel for consideration of the entire matter. The emergency arbitrator shall apportion the costs associated with the application, which may later be adjusted by the arbitrator or arbitration panel in issuing the final award.

This rule is not intended to supplant or supersede the power of a judicial authority to issue such emergency relief. Where a party seeks emergency relief from the court, it shall not be in conflict with these rules or otherwise affect the right to arbitrate the dispute.

### 26. Mediation

At any stage of the proceedings, the parties may agree to engage in mediation in order to facilitate settlement. Generally, the mediator should not be the arbitrator appointed to decide the case. Should the parties agree to mediate the matter with the appointed arbitrator, they may do so following execution of the necessary written stipulation available through ADR Services.



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### [27. Date, Time, and Place of the Arbitration Hearing](#)

After consulting with the parties, the arbitrator shall determine the date, time, and place of the arbitration hearing. Absent mutual agreement of the parties, the Arbitrator shall determine, at his or her discretion, the optimal manner by which the arbitration hearing shall proceed (i.e., telephonically, through a remote appearance platform, or in person). The arbitrator and the parties shall attempt to schedule consecutive hearing days if more than one day is necessary.

If a party has failed to appear or participate in the proceedings and the arbitrator reasonably believes that the party will not participate in the hearing, the arbitrator may set the hearing without consulting with that party. The non-participating party shall be served with a Notice of Hearing at least thirty (30) calendar days prior to the scheduled date.

### [28. Stenographic Record](#)

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least five (5) business days in advance of the hearing. The requesting party or parties shall pay the cost of the record, except as otherwise required by law. If the transcript 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.

When any hearing or other proceeding in the arbitration is conducted via Zoom or other video conference platform, all recording is prohibited unless otherwise stipulated to by all parties, counsel, and the Arbitrator. (See Penal Code Section 632.) If the parties wish to have a session recorded, they must stipulate to hire their own court reporter or other service to record the proceedings. The hiring and payment of the court reporter's fees is the responsibility of the requesting party unless otherwise provided by law.

### [29. Interpreter](#)

If a party desires or requires the services of an interpreter for any hearing or other part of the process, that party must make arrangements directly with the interpreter and shall pay for the costs of the interpreter's service.

### [30. Postponement of Hearings](#)

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.

### [31. Arbitration in the Absence of a Party or Representative](#)

Unless the law provides to the contrary, if a party fails or refuses to appear or participate in the arbitration, or in any portion of the arbitration, after having been given notice and opportunity to participate by: (a) failing to participate in arbitrator selection, or (b) failing to pay arbitration costs or fees, or (c) failing to respond to the arbitration demand, or (d) failing to appear at hearings, the arbitration may proceed and the arbitrator may render a final Award on the basis of the evidence presented by the participating party. The arbitrator may not grant relief or issue an Award based solely on the default or absence of the party. The party seeking relief bears the initial burden of establishing a right to such relief based upon a proper evidentiary showing. An award rendered under such circumstances is valid and enforceable as if all parties had participated fully.





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### 32. Pre-Arbitration Hearing Exchange, Witness/Exhibit Lists and Briefs

A) Exchange Pursuant to Demand. Except as otherwise provided in the parties' agreement, and where the amount in controversy exceeds fifty thousand dollars (\$50,000), either party shall within fifteen (15) calendar days of receipt of notice of the arbitration hearing date, but no later than seventy (70) calendar days before arbitration, have the right to demand in writing that the other party provide a list of witnesses, including designation of expert witnesses, it intends to call and a list of documents it intends to introduce at the hearing provided that the demanding party provides such lists at the time of its demand. (See Code of Civil Procedure Section 1282.2.) A copy of such demand and the demanding party's lists shall be served on the arbitrator. The responding party's lists shall be served on the demanding party and the arbitrator in accordance with Rule 14 above fifteen (15) calendar days following the receipt of the demand. Where privileged documents have been withheld, the withholding party shall provide a privilege log. The arbitrator may modify these obligations at the preliminary conference.

B) Pre-Hearing Witness and Exhibit Lists. Pursuant to any schedule adopted at the preliminary conference, the parties shall exchange a list of the witnesses they intend to call, including any experts, and a list all exhibits intended to be used at the Hearing and exchange copies of such exhibits to the extent that any such exhibit has not been previously exchanged. The parties should pre-mark exhibits and shall make a good faith effort to resolve any disputes regarding the admissibility of exhibits prior to the hearing. All documents should also be provided to ADR Services for transmission to the arbitrator, whether or not the parties have stipulated to the admissibility of all such documents.

C) Arbitration Briefs. The arbitrator may require that each party simultaneously submit an arbitration brief, including summaries of the facts and evidence a party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The briefs, which may be in the form of a letter, shall be filed with ADR Services and served upon the other Parties, at least five (5) calendar days before the hearing date unless agreed or otherwise specified by the arbitrator at the preliminary hearing or initial arbitration management conference.

### 33. Securing Witnesses and Documents for the Arbitration Hearing

The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents at the arbitration hearing pursuant to Code of Civil Procedure Section 1282.6. In the event a party or a subpoenaed person objects to the production of a witness or other evidence, that party or person may file an objection with the arbitrator, who will promptly rule on the objection, weighing both the burden on the producing party and the need of the proponent for the witness or other evidence.

### 34. The Arbitration Hearing

a. The arbitrator shall conduct the hearing in accordance with these rules. The arbitrator may vary these procedures if it is determined reasonable and appropriate to do so.

b. The arbitrator shall determine the order of proof. Normally, the claimant shall present evidence to support his/her/its claim. The respondent shall then present evidence to support his/her/its defense. Witnesses for each party shall also submit to questions from 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 his/her/its case.



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c. The arbitrator shall, at his or her discretion, exercise all powers relating to the conduct of the arbitration hearing which shall be conducted in a manner that will promote the efficient and expeditious resolution of the dispute. Such powers include, but are not limited to, determinations regarding the means or process by which the hearing is to be held, the order of proof, bifurcation of the proceedings, directing the parties to focus their presentations on issues the decision of which could dispose of all or part of the case, and the calling and examination of witnesses.

d. With the mutual agreement of the parties, or by binding order of the arbitrator, the arbitration hearing and presentation of evidence (including the testimony of witnesses) may proceed by an in-person appearance, telephonic conference, or through a remote appearance platform such as Zoom, or a hybrid of such methods.

e. Strict conformity to the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privileges and work product. 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.

f. The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but shall give it only such weight as the arbitrator deems it is entitled to after consideration of any objection made to its admission.

g. The parties will not offer as evidence, and the arbitrator shall neither admit into the record nor consider, prior settlement offers by the parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

h. By mutual agreement only, the parties may agree to waive oral hearings in their entirety and proceed on document submission alone ("desk arbitration").

i. An arbitrator finding it necessary to make an inspection or investigation in connection with the issues presented in the arbitration shall direct ADR Services to so advise the parties. The arbitrator shall set the date and time for the inspection/investigation and ADR Services 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.

j. The arbitrator may proceed with the hearing in the absence of a party who is bound to arbitrate, and who, after receiving a Notice of the Hearing, fails to attend. The arbitrator may not render an Award solely on the basis of the default or absence of the party, but shall require any party seeking relief to submit such evidence as the arbitrator may require for the rendering of an Award.

k. The arbitrator shall declare the hearing closed upon the determination that all relevant material evidence and briefing has been presented. The closing of the hearing may be delayed until such time as post-hearing briefs are submitted or closing arguments presented.

l. At any time before the Award is rendered, the arbitrator may re-open the hearing upon his or her own initiative or upon the application of a party for good cause. Any applicable time limits for rendering the Award will be extended accordingly.



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### 35. The Award

a. The Award shall be made within a reasonable time by the arbitrator, or within the time agreed to by the parties, or specified by law. The arbitrator may choose to keep the hearings open to accept post hearing briefs, issue interim Awards, or for any other reason.

b. Where a panel of arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the arbitration Award and shall be binding on the parties.

c. The Arbitrator will render a written, reasoned Award enumerating the disposition of the relevant material claims and relief sought. The Award will be signed by the Arbitrator and served on the parties. Service will be made by certified mail.

d. 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. 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, at his or her discretion, assess and apportion the filing and/or administrative fees paid to ADR Services, allowable costs incurred during the arbitration, including the arbitrator's fees. A request for costs shall be made by noticed motion of the requesting party, not exclusively by submission of a memorandum of costs, or as otherwise instructed by the arbitrator.

e. Within ten (10) calendar days after service of a signed copy of the Award, any party may serve upon the other parties and on ADR Services a request that the arbitrator correct any computational, typographical, or other error in an Award. The Arbitrator may also initiate the process to correct errors in the Award. A party opposing such correction shall have ten (10) calendar days in which to file any objection. The Arbitrator may also consider a reply to the objection or other briefing at his or her discretion. The arbitrator is not empowered to reconsider the merits of any claim already decided. Any corrected Award shall be served upon the parties in the same manner as the Award. The Award is considered final, for purposes of a judicial proceeding to enforce, modify or vacate the Award, twenty (20) calendar days after service is deemed effective if no request for a correction is made, or as of the effective date of service of a corrected Award.

f. If the parties settle their dispute during the course of the arbitration, the parties may submit a joint request for entry of a "Consent Award," to be drafted and agreed upon by counsel, memorializing the terms of the parties' settlement.

g. ADR Services shall, upon the written request of a party, furnish to the party, at the party's expense, certified copies of an Award in ADR Services' possession that may be required in judicial proceedings relating to the arbitration. This includes seeking to enforce an arbitration award in a foreign tribunal.

h. Parties to an arbitration under these rules shall be deemed to have consented to the right to seek confirmation and entry of judgment upon the Arbitration Award in any federal or state court having jurisdiction thereof.

### 36. Confidentiality and Privacy

The case management team, other essential ADR Services staff, and the arbitrator shall maintain the confidential nature of the arbitration proceeding and the Award unless otherwise required by law or judicial



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decision. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information. The arbitrator has the sole discretion to prevent certain non-parties to the arbitration from attending all or part of the hearings.

### 37. Waiver of Objections or Right to Arbitrate

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. If any party becomes aware of information that could be the basis of a challenge for cause to the continued service of the arbitrator, such challenge must be made promptly, in writing, to ADR Services. Failure to do so shall constitute a waiver of any objection to continued service by the arbitrator.

No judicial proceeding commenced by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

### 38. Exclusion of Liability/Competence to Testify

Neither ADR Services nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules. Should any party seek to hold ADR Services and/or the arbitrator civilly liable for conduct integrally related to the arbitral process, ADR Services and/or the arbitrator shall have the right to recover the reasonable attorneys' fees and other costs and expenses (including expert witness fees) incurred in defending against such action, including any appeal, in such amount as may be determined.

The parties may not call the arbitrator, the case manager or any other ADR Services employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the parties and relating to the dispute that is the subject of the arbitration. The arbitrator, case manager and other ADR Services employees and agents are also incompetent to testify as witnesses or experts in any such proceeding. (Evidence Code Section 703.5) The parties shall defend and/or pay the costs (including any attorneys' fees incurred) of defending the arbitrator, case manager and/or ADR Services from any subpoenas from outside parties arising from the arbitration.

### 39. Sanctions

The arbitrator may order appropriate sanctions for failure of a party to comply with his/her/its obligations under any of these rules. These sanctions may include, but are not limited to, the assessment of costs, exclusion of some or all evidence, ruling adversely on an issue submitted to arbitration against the party who has failed to comply or, in extreme cases, dismissing any or all claims or defenses asserted by the party who has willfully failed to comply.

### 40. Filing and Administrative Fees

ADR Services has a nonrefundable initial filing fee and/or administrative fee. Such fees shall be paid in accordance with ADR Services' Fee Schedules (<https://www.adrservices.com/rate-fee-schedule/>).

### 41. Other Expenses Incurred by the Parties

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, and the expense



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incurred for any witness, record, transcript, or document produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator, at his or her discretion, assesses such expenses or any part thereof against any specified party or parties as an allowable cost in the Award.

### 42. Neutral Arbitrator's Compensation

Arbitrators are compensated for all time spent working on the arbitration including, but not limited to, preparation and study, conducting the hearing, and deliberation and drafting of the Award. Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation. Any arrangement for the compensation of a neutral arbitrator shall be made through ADR Services and not directly between the parties and the arbitrator.

In the event of a protracted continuing arbitration, during which time the arbitrator has increased his or her stated rate of compensation in accordance with standard practice and procedure, the parties shall be given thirty (30) calendar days' notice and shall compensate the arbitrator at the increased rate, unless otherwise agreed upon by the arbitrator.

### 43. Payment of Arbitrator's Fees

Counsel will be held responsible for payment of all charges associated with the arbitrator's services in this matter. Counsel for each party, subject to apportionment by the arbitrator as set forth below, shall pay a pro rata share of the arbitrator's fees and expenses unless the parties' agreement or other applicable law requires a different allocation. The parties shall agree on the applicable fee split at the outset of the matter and, if unable to do so, initial fees will be assessed on a pro rata basis subject to reassessment by the arbitrator.

For purposes of apportioning fees, party entities whose interests are not adverse with respect to the issues in dispute may be treated as a single party. Where disputed, the arbitrator shall determine whether the interests between entities are adverse for purpose of apportioning the fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the arbitration.

Although ADR Services will make an estimate of the time necessary to be billed in the first statement, additional time may be billed as used. Payment accounts of the parties must be kept current, and ADR Services reserves the right to hold the Award until all fees due and owing have been paid.

ADR Services requires that counsel deposit the arbitrator's fees and any expenses for the arbitration at least sixty (60) calendar days in advance of the first evidentiary hearing. If arbitrator compensation has not been paid in full in advance, ADR Services may so inform the parties in order that one of them may advance the required payment. If such payments are not made, the arbitrator may order the suspension or termination of the proceedings. If a party has failed to deposit its pro-rata or agreed-upon share of the arbitrator's fees and expenses, that party cannot be excluded from the arbitration hearing, but will be precluded from offering evidence in support of any affirmative relief, claim or defense at the hearing.

The arbitrator may, in his or her discretion, assess such fees and expenses or any part thereof against any party in the Award. In the event that one party has not paid or appeared and the other party has paid the full amount of the fees, the arbitrator may, upon request, award the defaulting party's share of the fee



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obligation against it and in favor of the party that has paid. In addition, the arbitrator may award against any party any fees and/or expenses that the party owes with respect to the arbitration.

### 44. Declining or Discontinuing Arbitration

ADR Services may, in its sole discretion, decline a request to commence an arbitration filed with any of our offices.

ADR Services also reserves the right to discontinue the administration of an ongoing arbitration when a party or attorney engages in improper or unacceptable conduct. Such conduct includes, but is not limited to, the use of abusive language, threats or harassment towards any ADR Services staff, the arbitrator, or another party or that party's representative, or where a party or attorney makes it unreasonably difficult for ADR Services to administer the arbitration effectively.