



ARIAS•U.S. NEUTRAL PANEL RULES FOR THE RESOLUTION OF U.S. INSURANCE AND REINSURANCE DISPUTES

INSTRUCTIONS FOR ADOPTION AND APPLICATION

Consistent with its objectives, ARIAS•U.S. has promulgated these Neutral Panel procedural rules for use in insurance and reinsurance arbitrations. ARIAS•U.S. recognizes that arbitration exists by agreement of the parties. Parties can agree to arbitrate when they enter into the operative insurance or reinsurance agreement or at a subsequent time. A simple arbitration clause in which the parties agree to proceed under these rules provides as follows:

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes.

As addressed in the Introduction, the parties may choose to proceed under these rules, but may alter or vary some of the terms under which they will arbitrate. Among other things, the parties may include an honorable engagement provision in their contract. A simple arbitration clause in which the parties agree to proceed under these rules and to include an honorable engagement provision in their contract provides as follows:

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendment. Section 13.3 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes shall provide:

The Panel shall interpret this contract as an honorable engagement, and shall not be obligated to follow the strict rules of law or evidence. In making their Decision, the Panel shall apply the custom and practice of the insurance and reinsurance industry, with a view to effecting the general purpose of this contract.

The parties may elect to remove employment as a former officer or executive of an insurer or reinsurer as a qualification for selection as a neutral arbitrator. To do so the parties may add a provision to their agreement as follows:

In lieu of the language of Rule 6.2 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes, the parties agree the arbitrators

shall be on the list of ARIAS•U.S. Certified Arbitrators as of their respective dates of appointment.

The parties may also select the location for the arbitration hearing. A simple provision addressing location follows:

The arbitration shall be held in... or such other place as the parties may mutually agree.

These rules require that the arbitration panel issue a reasoned decision. Nevertheless, the parties may choose not to have a reasoned decision and may expressly agree that a reasoned decision supporting the final award is not required. A simple provision excluding the requirement for a reasoned decision follows:

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendments. Section 10.6 is amended to add sub-section (f) (x) —whether the Parties prefer a reasoned decision supporting the final award." Section 14.4 is amended as follows:

The final award shall consist of a written statement signed by a majority of the Panel setting forth the disposition of the claims and the relief, if any, awarded.

These rules also require that the arbitrators selected comply with the ARIAS•U.S. Neutral Arbitration Panel Criteria ("Neutral Criteria") set forth in Section 6.3. The Neutral Criteria were developed to enhance the fairness of the arbitration process. Nevertheless, the parties may choose to: (a) make the Neutral Criteria more stringent by: (i) prohibiting any candidate from serving regardless of the relevant percentages or (ii) by decreasing the percentages; (b) make the Neutral Criteria less stringent by allowing for greater percentages; (c) select the arbitration panel solely from the ARIAS•U.S. Certified Neutral Arbitrator List who meet the Neutral Criteria with respect to the dispute at issue; or (d) use these rules without application of the Neutral Criteria. Simple provisions reflecting these possible alterations follow:

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendment. Section 6.3 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes shall provide that an arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served in any of the capacities set forth in Sections 6.3(a) — (d).

or

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendment. Section 6.3 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes shall provide that an arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served in any of the capacities set forth in Sections 6.3(a) – (d) in more than the percentages specified, but the percentages specified in those Sections shall be as follows (a)_% , (b) _%, (c)_% and (d)_%.

or

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendment. The arbitrator candidates shall be selected solely from the ARIAS•U.S. Certified Neutral Arbitrator List who meet the Neutral Criteria with respect to the dispute at issue.

For those parties that wish to use the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes, but without application of the Neutral Criteria, the following provision may be used (which combine Sections 6.1 and 6.2):

Any dispute or claim arising out of or relating to this Agreement, including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes subject to the following amendment. Article 6 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes shall provide:

6.1 The Panel shall consist of three Neutral arbitrators who will be persons who are current or former officers or executives of an insurer or reinsurer, and will be ARIAS•U.S. Certified Arbitrators in good standing and on the ARIAS•U.S. List of Certified Arbitrators or on the ARIAS•U.S. Certified Neutral Arbitrator List as of the date of their appointment.

Existing Sections 6.1 and 6.3 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes shall not apply to any disputes or claim under this Agreement. The remaining sections of Article 6, excluding Section 6.2, which has been combined with new Section 6.1 (Sections 6.4 – 6.19) shall apply to disputes or claims under

this Agreement, but references to the ARIAS•U.S. Neutral Arbitration Panel Criteria shall not apply and references to the ARIAS•U.S. Neutral Arbitrator Questionnaire shall be replaced by reference to the current ARIAS•U.S. Umpire Questionnaire.

Other ways in which parties may alter the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes include, but are not limited to, adding provisions on choice-of-law, consolidation, or survival of the arbitration agreement.

1. INTRODUCTION

- 1.1 These procedures shall be known as the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes (—Rules). When an agreement, submission or reference provides for or otherwise refers to arbitration under the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes, the Parties agree that the arbitration shall be conducted in accordance with these Rules.
- 1.2 These Rules are not intended to supersede any express contractual agreement between the Parties. The Parties may agree on any rules or procedures not specified in these Rules, or may alter these Rules by written agreement. These Rules shall control any matters not altered by the Party-agreed rules or procedures.
- 1.3 Certain provisions are accompanied by explanatory notes. If any explanatory note conflicts in any way with the Rules, the Rules shall prevail.
- 1.4 Any dispute concerning the interpretation of these Rules shall be determined by the Panel.
- 1.5 The Panel shall have all powers and authority not inconsistent with these Rules, the agreement of the Parties, or applicable law.
- 1.6 The object of these Rules is to obtain the fair resolution of disputes by an independent and impartial arbitration panel free of any bias or predisposition. The arbitration panel selected under these Rules is assigned the mandatory duty to act fairly and impartially as between the Parties.

2. DEFINITIONS

- 2.1 Arbitration Agreement – an agreement to submit present or future disputes to arbitration, whether contained in a reinsurance contract or other written document reflecting the agreement of the Parties.

- 22 Certified Neutral Arbitrator – an ARIAS•U.S. Certified Arbitrator in good standing and who is on the ARIAS•U.S. Certified Neutral Arbitrator List. Service as an umpire under a non-neutral arbitral process does not disqualify an arbitrator from the ARIAS•U.S. Certified Neutral Arbitrator List.
- 23 Certified Neutral Arbitrator List – a list maintained by ARIAS•U.S. of arbitrators who agree to serve only in a neutral capacity and who meet the ARIAS•U.S. Neutral Panel Arbitration Criteria found at Section 6.3 below with respect to the proceeding for which the Arbitrator is asked to serve.
- 24 Decision — any determination by the Panel, including any interim or final award or ruling.
- 25 Disinterested — means that no member of the Panel shall be under the control of either Party, nor shall any member of the Panel have a financial interest in the outcome of the arbitration.
- 26 Neutral — means an arbitrator: (i) is disinterested, unbiased, impartial; (ii) meets the standards set forth in these Rules, including, non-exclusively, the Neutral Criteria set forth in Sections 6.3(a), 6.3(b), 6.3(c) and 6.3(d); and (iii) does not act as advocate for any of the party(ies) during the arbitration proceeding(s). The term —neutral does not mean that the arbitrator has no previous knowledge of or experience concerning issues involved in the dispute.
- 27 Notice of Arbitration — the notice sent by the Petitioner in accordance with Section 4.1.
- 28 Panel – the body charged with determining the dispute as defined by Section 6.1.
- 29 Party or Parties – see Section 6.3(g).
- 210 Petitioner – the Party who commences arbitration.
- 211 Rules – as defined by Article 1.
- 212 Respondent – a Party against whom arbitration is commenced.
- 213 Response – the Response to the Notice of Arbitration sent by the Respondent in accordance with Section 5.1.

3. NOTICE AND TIME PERIODS

3.1 Notices under these Rules are deemed to be given if delivered, in accordance with Section 3.2, to:

- (a) the entity and address designated by the receiving Party in the insurance or reinsurance contract or other applicable written agreement; or
- (b) if no such entity and address was designated,
 - (i) if the receiving Party is a corporation, to either the corporate address on file with the Secretary of the State or other Registrar of Corporations in its jurisdiction of incorporation, or to the corporate address on file with the insurance or reinsurance regulatory authority in the corporation's domiciliary jurisdiction; or
 - (ii) if the receiving party is a natural person, to his or her home or place of employment.

3.2 Notices required to be given under these Rules are deemed to be given:

- (a) if sent by electronic mail, on the date transmitted;
- (b) if sent by mail, upon delivery; or
- (c) if sent by certified, registered mail or another service that produces a receipt, as indicated on the receipt.

Note to Section 3.2 - Notices of Arbitration, Responses to Notices of Arbitration and Appointment of Arbitrators should, where possible, be given in a manner that produces proof of receipt (*e.g.*, registered or certified mail or courier). After the arbitration has been commenced, notices and correspondence should, where possible, be given by instantaneous (*e.g.*, e-mail) or other expedited manner of communication.

3.3 When calculating any time period under these Rules, the period shall start to run from the day immediately after that upon which notice is given. Time will then run continuously (including non-business days). If a time period expires at the end of a non-business day in the domiciliary jurisdiction of the recipient, the time period will be deemed extended until the end of the first following business day.

4. COMMENCEMENT OF ARBITRATION PROCEEDINGS

- 4.1 An arbitration should be initiated by a demand, in writing, that identifies the (1) Petitioner and the name of the contact person to whom all communications are to be addressed (including telephone and e-mail information); (2) Respondent against whom arbitration is sought; (3) contracts at issue; and (4) a short and plain statement of the nature of the claims and/or issues.

An arbitration demand made under this Section may be amended as of right until the opening of the Organizational Meeting. After the opening of the Organizational Meeting, an arbitration demand made under this Section may be amended only by leave of the Panel. In ruling on requests for leave to amend an arbitration demand, the Panel will consider the effect of the amendment on the efficiency of the proceedings, the potential for prejudice to the opposing Party, and any other appropriate factor(s).

- 4.2 The arbitration is commenced under these Rules on the date the Respondent, or its designated representative, receives the Notice of Arbitration.

5. RESPONSE BY RESPONDENT

- 5.1 Parties who receive a demand for arbitration will respond to the demand, in writing, within thirty (30) days, and the Response should contain the (1) identification of the entities on whose behalf the Response is sent and the name of the contact person to whom all communications are to be addressed (including telephone and e-mail information); (2) a short and plain response to the Petitioner's statement of the nature of its claims and/or issues; and (3) a short and plain statement of any claims of the Respondent.

A Response made under this Section may be amended as of right until the opening of the Organizational Meeting. After the opening of the Organizational Meeting, a Response made under this Section may be amended only by leave of the Panel. In ruling on requests for leave to amend a Response, the Panel shall consider the effect of the amendment on the efficiency of the proceedings, the potential for prejudice to the opposing party, and any other appropriate factor(s).

6. APPOINTMENT AND COMPOSITION OF THE PANEL

- 6.1 The Panel shall consist of three arbitrators who (i) qualify under the ARIAS•U.S. Neutral Arbitration Panel Criteria (the "Neutral Criteria") set forth in Section 6.3 below and (ii) who are ARIAS•U.S. Certified Arbitrators and/or are Certified Neutral Arbitrators.

62 The arbitrators shall be persons who are current or former officers or executives of an insurer or reinsurer.

63 The arbitrators shall meet the following Neutral Criteria as of the date of their nomination as an arbitrator candidate for this Panel:

(a) Prior Service as Party-Appointed Arbitrator – An arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served: (i) more than one (1) time as a party-appointed arbitrator for one of the Parties of counsel representing one of the Parties; and (ii) either as a party-appointed arbitrator for one of the Parties in more than 10% of the candidate’s total appointments as a party-appointed arbitrator during that period or for one of the lawyers and/or law firms representing one of the Parties (including the in-house legal or claims department of a Party if no law firm was used) in more than 10% of the candidate’s total appointments as a party-appointed arbitrator during that period.

(b) Prior Service as an Umpire or Neutral Arbitrator – An arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served: (i) more than one (1) time as an umpire or neutral arbitrator in an arbitration involving one of the Parties or counsel representing one of the Parties; and (ii) either as an umpire or neutral arbitrator in arbitrations involving one of the Parties in more than 20% of the candidate’s total appointments as umpire or neutral arbitrator during that period or if he/she has served either as an umpire or neutral arbitrator in arbitrations involving one of the lawyers and/or law firms representing one of the Parties (including the in-house legal or claims department of a Party if no law firm was used) in more than 20% of the candidate’s total appointments as an umpire or neutral arbitrator during that period.

(c) Prior Expert or Consultant Service – An arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served as either an expert or consultant for one of the Parties in more than 50% of the candidate’s total appointments as an expert or consultant during that period or for one of the lawyers and/or law firms representing one of the Parties (including the in-house legal or claims department of a Party if no law firm was used) in more than 50% of the candidate’s total appointments as an expert or consultant during that period.

(d) Prior Service as Counsel for or Employment by One of the Parties – An arbitrator candidate is prohibited from serving on the Panel if during the past five (5) years he/she has served as counsel for one of the Parties in more than 10% of the candidate’s engagement as counsel during that period or if he/she was employed by one of the Parties at any time during the past five (5) years.

(e) An arbitrator candidate if chosen to serve on the Panel will refuse to accept appointments or engagements as an expert, consultant, counsel or non-neutral arbitrator for either of the Parties or their counsel prior to the final disposition of the arbitration.

(f) For purposes of these Neutral Criteria, service is defined as commencing at the time of retention.

(g) For purposes of these Neutral Criteria, a Party means the named Party and its parents, subsidiaries and affiliates whose insurance and reinsurance disputes, as applicable, are managed by the same group of individuals that manage the Party's insurance or reinsurance disputes, and a non-affiliated entity (including that entity's agent) that manages the named Party's claims at issue in the arbitration.

- 64 No later than thirty (30) days after the Response is received by Petitioner, each Party will nominate six (6) candidates to serve as arbitrators from the ARIAS•U.S. Certified Arbitrator List or the ARIAS•U.S. Certified Neutral Arbitrator List by providing its list of six (6) candidates to ARIAS•U.S. by e-mail or fax to the Executive Director and by service on the opposing Party.
- 65 ARIAS•U.S. will distribute the ARIAS•U.S. Neutral Arbitrator Questionnaire (which will include, non-exclusively, information requests on the Neutral Criteria set forth in Sections 6.3(a) – 6.3(d) above) to the twelve (12) nominated candidates within seven (7) days of receipt of both Party's lists. It is the duty and obligation of the nominated candidates to advise ARIAS•U.S. that they cannot serve in the arbitration proceeding and not to submit a response to the ARIAS•U.S. Neutral Arbitrator Questionnaire if, based on their own evaluation, they do not meet the Neutral Criteria for the proceeding at issue.
- 66 All nominated candidates that meet the Neutral Criteria and wish to serve will return their completed ARIAS•U.S. Neutral Arbitrator Questionnaire to ARIAS•U.S. within fourteen (14) days of receipt. ARIAS•U.S. shall immediately forward copies of the completed questionnaires to counsel for each of the parties.
- 67 If any of the twelve (12) nominated candidates are unable or unwilling to serve or do not complete an ARIAS•U.S. Neutral Arbitrator Questionnaire, ARIAS•U.S. will advise the Party or Parties who nominated that candidate(s) and either or both Parties (as applicable) will nominate alternate candidate(s) by providing their names to the opposing Party and ARIAS•U.S. so that each Party will have nominated six (6) candidates. ARIAS•U.S. will then distribute ARIAS•U.S. Neutral Arbitrator Questionnaires to the alternate candidate(s) within five (5) days of receipt of the alternate candidate names. The process will continue until each Party has nominated six (6) candidates who are willing and able to serve at which time ARIAS•U.S. will notify the Parties of the identities of the twelve (12) candidates who have been nominated.

- 68 No later than seven (7) days after ARIAS•U.S. notifies the Parties of the identities of the twelve (12) candidates who have been nominated, each Party will rank the twelve (12) nominees from 1 to 12 in order of preference with 1 being the highest and 12 being the lowest and notify ARIAS•U.S. (but not the opposing Party) of their ranking.
- 69 Within seven (7) days of notice of the Parties' respective rankings of the twelve (12) candidates, ARIAS•U.S. will determine the highest ranked three (3) candidates by adding together each candidate's two rankings with the lowest numerical scores being the highest ranked candidates. In the event there is a tie for first place, both candidates tied for first place will be selected as arbitrators and the second place candidate will be chosen as the third arbitrator. In the event there is a tie for first place and second place, both candidates tied for first place will be selected as arbitrators, ARIAS•U.S. will notify the Parties of the candidates tied for second place and the third arbitrator will be selected by lot from the two tied second place candidates. In the event there is a tie for third place, ARIAS•U.S. will notify the Parties of the candidates tied for third place and the third arbitrator will be selected by lot from those tied.
- 6.10 Upon selection of the Panel, ARIAS•U.S. will notify the Parties and the Panel. Under no circumstances will the Parties or ARIAS•U.S. disclose to the Panel who nominated the arbitrators for service or what ranking the Parties gave the arbitrators.
- 6.11 Following the selection of the Panel, the three arbitrators will select one of the arbitrators to be the chairperson of the Panel.
- 6.12 In the event that either Party fails to provide its arbitrator nominees to ARIAS•U.S. within thirty (30) days of receipt of the Response by the Petitioner, the non-defaulting Party will nominate six (6) arbitrator candidates for the defaulting Party.
- 6.13 Unilateral contact between a Party or its representative(s), on the one hand, and an individual considered for appointment as an arbitrator, on the other hand, about the arbitration shall not be permitted at any time.
- 6.14 No ex parte communications shall be permitted between a Party or its representatives and any potential arbitrator either prior to or after the appointment of the arbitrator.
- 6.15 The arbitrators selected for the Panel shall act as Neutral arbitrators and shall not act as advocates on behalf of any of the Parties.
- 6.16 If after appointment an arbitrator is unable or unwilling to serve the Parties shall appoint a replacement arbitrator in accordance with the procedures set forth above, provided that each Party will nominate three (3) candidates to serve as replacement arbitrator and that the Parties will rank the six (6) candidates.

- 6.17 Unless otherwise awarded by the Panel pursuant to Article 8 or Section 14.3, each Party will shall share equally the cost of the three arbitrators.
- 6.18 Unless otherwise agreed to in advance by all the members of the Panel, all members of the Panel shall consult with each other on each and every Decision presented to the Panel or to be made by the Panel and each and every Decision shall be made by casting of at least two of three possible votes.
- 6.19 The Parties may, in a writing signed by representatives of both Parties, agree to waive the Neutral Criteria set forth in Section 6.3 for any or all candidates.

7. CONFIDENTIALITY

- 7.1 Unless otherwise agreed by the Parties, or ordered by the Panel upon the motion of a Party and a showing of good cause, all meetings and hearings of the Panel are private and confidential to the Parties. Only the Panel, the Parties, the duly authorized representatives of the Parties and others participating in the proceedings may be admitted to meetings and hearings. If the Parties agree that any meeting or hearing is to be non-confidential, they shall inform the Panel of their agreement as soon as reasonably practical after reaching agreement.
- 7.2 Unless otherwise agreed by the Parties, or ordered by the Panel upon the motion of a Party and a showing of good cause, the Panel and the Parties shall use their best efforts to maintain the confidential nature of the arbitration proceedings and any Decision, including the hearing and any written explanation of any Decision, except (a) as necessary in connection with a judicial proceeding relating to the arbitration or any Decision; (b) as otherwise required by law, regulation, independent accounting audit or judicial decision; (c) if the arbitration proceedings relate to a direct insurance dispute, then to support the insurer's reinsurance recoveries; (d) if the arbitration proceedings relate to a reinsurance dispute, then to support the reinsurer's retrocessional recoveries; or (e) as otherwise agreed by the Parties. The Parties shall use their best efforts to maintain this confidentiality when pursuing any of the exceptions set forth in this Section, including the filing of pleadings under seal when permitted.

8. INTERIM DECISIONS

- 8.1 A Panel may issue Decisions for interim relief.
- 8.2 The Panel shall have the power to impose sanctions for failure to comply with an interim Decision by the Panel or for discovery-related abuse. Possible sanctions shall include, but are not limited to: striking a claim or defense; excluding evidence on an issue;

drawing an adverse inference against a Party; and imposing costs, including attorneys' fees.

9. LOCATION OF PROCEEDINGS

- 9.1 The location of all proceedings shall be at a place specified in the Arbitration Agreement or as otherwise agreed to by the Parties. In the absence of a location specified in the Arbitration Agreement or agreement by the Parties, the Panel shall select the location of the proceedings, taking into account the convenience of the Panel; the convenience of the Parties; the availability of processes to compel attendance by (or the production of materials from) non-parties; the effect of the proceedings' location on confirmation or vacation proceedings; the avoidance of unnecessary expense or delay; and such other factors as the Panel may deem relevant.

10. PRE-HEARING PROCEDURE

- 10.1 Prior to the organizational meeting, the Parties shall confer and seek agreement on all issues that are expected to be considered at the organizational meeting, with a focus on those items identified in Section 10.6.

The Panel shall conduct an organizational meeting with the Parties and any authorized representatives for the purposes of clarifying the focus of the arbitration hearing, resolving any outstanding issues relating to the conduct of the hearing and establishing a schedule for the conduct of the proceedings. The organizational meeting may be conducted by telephone or video conference if agreed to by the Parties or, in the absence of agreement, as ordered by the Panel.

- 10.2 At the organizational meeting, all members of the Panel shall reveal on the record their past, present and any known future business and personal relationships with the Parties, the Parties' counsel, with other Panel members, and with potential witnesses if identified in documents provided to the Panel members. Once disclosures have been made by all Panel members, Parties may be asked by the Panel to accept the Panel as duly constituted. All Panel members shall have a continuing obligation to disclose such information to the Panel and the Parties.
- 10.3 The Panel may require that each Party submit concise written statements of position, including the issues that the Parties' anticipate will arise in the arbitration, summaries of the facts and evidence a Party intends to present, and the basis for the requested Decision or denial of relief sought. The statements, which may be in letter form, shall be provided to the other Party and the Panel at least seven (7) days prior to the organizational meeting.

- 104 A formal record or transcript of the organizational meeting shall be kept, unless waived by the Parties. The cost of the record or transcript shall be shared equally by the Parties. The Panel shall place on the record the disclosures required by Section 10.2.
- 105 The Panel may allow the Parties to present a brief overview of the matters set forth in Section 10.3, whether or not written submissions were requested or received by the Panel.
- 106 The Panel and the Parties shall address the following:
- (a) —Hold Harmless or indemnification agreement from the Parties flowing to the Panel;
 - (b) Confidentiality as provided in Article 7;
 - (c) Procedures for requests, if any, for interim Decisions as set forth in Article 8;
 - (d) The extent to which discovery, including depositions, interrogatories, document requests and third party discovery, will be allowed;
 - (e) The extent to which expert evidence will be allowed;
 - (f) The arbitration schedule, including:
 - (i) all discovery-related deadlines, including for the production of documents and any privilege logs;
 - (ii) any periodic status reports;
 - (iii) the deadline for resolution of any discovery issues and any related briefing schedule;
 - (iv) the deadlines related to expert discovery, if allowed;
 - (v) the deadline for dispositive motions and any related briefing schedule;
 - (vi) the deadline for disclosure of hearing witnesses (both fact and expert) and exhibit designations;

- (vii) the pre-hearing briefing schedule, including the number of briefs, whether briefs are to be sequential or simultaneous and any page limitation;
- (viii) the hearing length, dates and location;
- (ix) timeframes for any meet and confer requirements relating to this schedule

11. DISCOVERY

- 11.1 Prior to the organizational meeting, the Parties shall confer and seek to agree on an exchange of all documents relevant to the dispute and on the confidentiality to be afforded to the documents.
- 11.2 The Panel shall have the power to order the disclosure of such documents or class of documents relevant to the dispute as it considers necessary for the proper resolution of the dispute.
- 11.3 The Panel shall have the power to authorize the Parties to conduct depositions or other discovery as is reasonably necessary in light of the issues in dispute as well as the nature and size of the dispute.
- 11.4 The Panel will require each Party to provide a list of witnesses whom it intends to call at the hearing.
- 11.5 The Panel has the discretion to limit discovery on various grounds, including burdensomeness, expense, duplication, privilege, work product or lack of relevance. Nothing in these Rules may be construed as a waiver by any Party of its right to assert that information is protected from discovery by the attorney-client privilege, work product doctrine, or other applicable privilege or protection, or on grounds of burdensomeness, expense, duplication, or lack of relevance. Additionally, no Party waives any contention available to it under applicable law respecting the authority of the Panel to order the production of attorney-client privileged or work product information.

12. SUMMARY DISPOSITION AND EX PARTE HEARING

- 12.1 The Panel may hear and decide a motion for summary disposition of some or all of the claims or issues, either by agreement of all Parties or at the request of one Party, provided the other interested Party has reasonable notice and opportunity to respond to the request.

Note to Section 12.1: By authorizing the Panel to grant summary disposition, the Parties using these Rules do not intend to waive their rights under the Federal Arbitration Act or any other applicable law to contest the appropriateness of such an action, where their rights have been reserved.

- 122 If a Party has failed to participate in the pre-hearing proceedings and the Panel reasonably believes that the Party will not participate in the hearing, the Panel may proceed with the hearing on an ex parte basis or may dispose of some or all issues pursuant to Section 12.1. The non-participating Party shall be provided with notice thirty (30) days prior to the hearing or proposed disposition pursuant to Section 12.1.

13. ARBITRATION HEARING

- 131 Unless the Parties otherwise agree, there shall be a stenographic record kept of the proceedings.
- 132 The Panel may decide whether and to what extent there should be oral or written evidence or submissions.
- 133 The Panel shall not be obligated to follow the strict rules of law or evidence.
- 134 Subject to the control of the Panel, the Parties may question any witnesses who appear at the hearing. Panel members may also question such witnesses.
- 135 A Party may request that the other Party produce at the hearing all witnesses in their employ or under their control without need of a subpoena. The Panel may issue subpoenas for the attendance of witnesses and for the witnesses to produce documents that are relevant and in the witnesses' possession or control. A Party or subpoenaed person may file an objection to the subpoena with the Panel. The Panel will promptly rule on the objection, weighing both the burden on the Party or witness and the need of the proponent for the witness or other evidence.
- 136 The Panel shall require that witnesses testify under oath, unless waived by all Parties. The Panel shall have the discretion to permit testimony by telephone, affidavit, or recorded by transcript, videotape, or other means, and may rely upon such evidence as it deems appropriate. Where there has been no opportunity for cross examination by the other Party, such evidence may be permitted by the Panel only for good cause shown. The Panel may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all Parties are afforded the opportunity to present material and relevant evidence.

- 137 In the event that a representative of a Party is also a testifying witness, the Panel shall have discretion to determine whether such duly authorized representative may attend hearings or review hearing transcripts prior to giving testimony.
- 138 When the Panel decides that all relevant and material evidence and arguments have been presented, the Panel shall declare the evidentiary portion of the hearing closed.
- 139 At the conclusion of the evidentiary portion of the hearing, the Parties shall submit a proposed form of order to the Panel and to the other Party that precisely identifies the nature of the relief that the Parties seek from the Panel.
- 13.10 The Panel shall close the hearing following closing arguments and/or post hearing briefs, if any.

14. FINAL AWARD

- 141 Absent good cause for an extension as determined by the Panel, the Panel shall render the final award within thirty (30) days after the date of the closing of the hearing or, if an arbitration hearing has been waived or otherwise dispensed with, within thirty (30) days after the date that the Panel received all materials submitted by the Parties for disposition.
- 142 The final award of a majority of the Panel shall be final and binding on the Parties and may be enforced in any court of competent jurisdiction.
- 143 In the absence of explicit written agreement to the contrary, it is within the Panel's power to award any remedy allowed by applicable law, including, but not limited to: monetary damages; equitable and declaratory relief; rescission; pre- or post- award interest; costs of arbitration; attorney fees; and other final or interim relief.
- 144 The final award shall consist of a written reasoned decision signed by a majority of the Panel setting forth the disposition of the claims, the relief, if any, awarded and the rationale underlying the decision.
- 145 The prohibition on ex parte communications shall remain in effect until the Panel issues its final award. If the Panel issues a written rationale separately from its final award, the prohibition on ex parte communications shall remain in effect until the Panel has issued both. Neither the Parties nor their representatives, including counsel, should request that an arbitrator reveal the contents of the deliberations of the arbitrators.