



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

INSTRUCTIONS FOR ADOPTION AND APPLICATION

Consistent with its objectives, ARIAS•U.S. has promulgated these procedural rules for use in insurance policyholder and contract arbitrations. ARIAS•U.S. recognizes that arbitration exists by agreement of the parties. Subject to the law of each particular state, parties can agree to arbitrate when they enter into the operative insurance policy or contract 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 Policy (or contract), including its formation and validity, shall be referred to arbitration. The arbitration shall be conducted in accordance with the current version of the ARIAS•U.S. Panel Rules for the Resolution of U.S. Insurance and Contract Disputes.

As addressed in the Introduction, the parties may choose to proceed under these rules, but may agree to alter or vary some of the terms. In addition, the parties may agree to add provisions, such as choice-of-law, consolidation, or survival of the arbitration agreement.

The administrative fee for proceeding under these Rules is \$1,000, half of which is to be paid by the Petitioner(s) and half to be paid by the Respondent(s). Each Party shall pay their individual sum of \$500 directly to ARIAS•U.S. to the attention of the Executive Director on or before the date by which they submit their umpire candidates in connection with Section 6.4 below.

1. INTRODUCTION

- 1.1 These procedures shall be known as the ARIAS•U.S. Panel Rules for the Resolution of U.S. Insurance and Contract Disputes (“Rules”). When an agreement, submission or reference provides for or otherwise refers to arbitration under the ARIAS•U.S. Panel Rules for the Resolution of U.S. Insurance and Contract 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. As stated in above, the Parties may alter these Rules by written agreement and may agree on any rules and procedures not specified in these

Rules, but these Rules shall control any matters not altered by the Party-agreed rules or procedures.

- 1.3 Any dispute concerning the interpretation of these Rules shall be determined by the Panel.
- 1.4 The Panel shall have all powers and authority not inconsistent with these Rules, any agreement of the Parties, or applicable law.
- 1.5 The object of these Rules is to obtain the fair resolution of disputes by a disinterested arbitration panel free of any bias. 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 an insurance policy, contract or other written document reflecting the agreement of the Parties.
- 2.2 Certified Arbitrator – an ARIAS•U.S. Certified Arbitrator in good standing and who is on the ARIAS•U.S. Certified Arbitrator List.
- 2.3 Certified Neutral Arbitrator – an ARIAS•U.S. Certified Neutral Arbitrator in good standing and who is on the ARIAS•U.S. Certified Neutral Arbitrator List.
- 2.4 Qualified Mediator – a mediator who is on the ARIAS•U.S. Qualified Mediator List.
- 2.5 Decision — any determination by the Panel, including any interim or final award or ruling.
- 2.6 Disinterested — means that the arbitrator or umpire shall not be under the control of either Party, nor shall the arbitrator or umpire have a financial interest in the outcome of the arbitration.
- 2.7 Notice of Arbitration — the notice sent by the Petitioner(s) in accordance with Section 4.1.
- 2.8 Party or Parties – see Section 6.3(g).
- 2.9 Organizational Meeting—see Section 10.
- 2.10 Panel—the arbitration tribunal selected to resolve the dispute under these rules.

2.11 Petitioner(s) – the Party(ies) who commences arbitration.

2.12 Respondent(s) – Party(ies) against whom arbitration is commenced.

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.

Notices of Arbitration, Responses to Notices of Arbitration and Appointment of Arbitrators should, where possible, be sent 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 (1) the petitioner(s) and the name of the contact person(s) to whom all communications are to be addressed (including telephone and e-mail information), (2) the respondent(s) against whom arbitration is sought, and (3) the contracts at issue and also provides 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 Organizational Meeting. After 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(ies), and any other appropriate factor(s).

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

5. RESPONSE BY RESPONDENT(S)

- 5.1 Parties who receive a demand for arbitration will respond to the demand, in writing, within thirty (30) days, unless a different time period is specified in the contract or in any written agreement between the parties, 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(s') statement of the nature of its claims and/or issues; and (3) a short and plain statement of any claims of the Respondent(s).

A Response made under this Section may be amended as of right until the Organizational Meeting. After the Organizational Meeting, and assuming there has been no amendment to the arbitration demand, 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, one appointed by the Petitioner(s), one appointed by the Respondent(s), and an umpire appointed in accordance with Section 6 of the ARIAS•U.S. Neutral Panel Rules for the Resolution of U.S. Insurance and Reinsurance Disputes as modified below. Each party-appointed arbitrator must be an

ARIAS•U.S. Certified Arbitrator on the Certified Arbitrator List. The umpire must (i) qualify under the criteria set forth in Section 6.3 below and (ii) must be an ARIAS•U.S. Certified Neutral Arbitrator.

6.2 The parties shall appoint and identify their party-appointed arbitrators in writing within thirty (30) days of the response to the demand for arbitration, unless a different time period is specified in the contract or in any written agreement between the parties.

6.3 The umpire shall meet the following Neutral Criteria as of the date of his or her nomination as an umpire candidate for this Panel:

(a) Prior Service as Party-Appointed Arbitrator – An umpire 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 or 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 umpire 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 umpire 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 umpire 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 25% of the

candidate's engagements 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 umpire 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.

- 6.4 No later than thirty (30) days after the parties have exchanged names of party-appointed arbitrators, each Party shall nominate three (3) candidates to serve as umpire; the candidates shall be selected from the ARIAS•U.S. Certified Neutral Arbitrator List. Each party shall send its list of three (3) umpire candidates to ARIAS•U.S. by e-mail or fax to the Executive Director and by service on the opposing Party.
- 6.5 ARIAS•U.S. will distribute the ARIAS•U.S. Neutral Arbitrator Questionnaire (which will include, non-exclusively, information requests on the criteria set forth in Sections 6.3(a) – 6.3(d) above) to the six (6) nominated candidates within seven (7) days of receipt of both Party' 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 criteria in Sections 6.3(a)-6.3(d).
- 6.6 All nominated candidates that meet the criteria in Sections 6.3(a)-6.3(d) and who 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.
- 6.7 If any of the six (6) 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 three (3) 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 three (3) candidates who are willing and able to serve at which time ARIAS•U.S. will notify the Parties of the identities of the six (6) candidates who have been nominated.

- 6.8 No later than seven (7) days after ARIAS•U.S. notifies the Parties of the identities of the six (6) candidates who have been nominated, each Party will rank the six (6) nominees from 1 to 6 in order of preference with 1 being the highest and 6 being the lowest and notify ARIAS•U.S. (but not the opposing Party) of their ranking.
- 6.9 Within seven (7) days of notice of the Parties' respective rankings of the six (6) candidates, ARIAS•U.S. will determine the highest ranked candidate by adding together each candidate's two rankings, with the lowest numerical scores being the highest ranked candidate. In the event there is a tie between two candidates, the tie will be resolved as follows: the umpire shall be determined using the closing number for the Dow Jones Industrial Average ("DJIA"). The candidate whose last name comes first alphabetically is assigned odd numbers and the remaining candidate is assigned even numbers. The first number to the right of the decimal point of the DJIA, as of the closing of the Dow on the next business day following the day the parties are informed of the tie, as reported in the Wall Street Journal the following day, will determine the umpire.
- 6.10 Upon selection of the umpire, 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 umpire for service or what ranking the Parties gave the umpire.
- 6.11 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(s), the non-defaulting Party will nominate three (3) arbitrator candidates for the defaulting Party.
- 6.12 Unilateral contact between a Party or its representative(s), on the one hand, and a candidate for appointment as umpire, on the other hand, about the arbitration shall not be permitted at any time.
- 6.13 Ex parte communications shall be permitted between a Party or its representatives and its party-appointed arbitrator prior to, but not after, the umpire is selected.
- 6.14 If after appointment the umpire is unable or unwilling to serve, the Parties shall appoint a replacement umpire in accordance with the procedures set forth above provided that each Party will nominate three (3) candidates to serve as replacement umpire and that the Parties will rank the six (6) candidates.

- 6.16 Unless otherwise ordered by the Panel, each Party shall bear its own costs with respect to the party-appointed arbitrator and share equally the cost of the umpire.
- 6.17 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.
- 6.18 The Parties may, in a writing signed by representatives of both Parties, agree to waive some or all of the criteria set forth in Section 6.3 for the umpire candidate.
- 6.19 After the umpire is chosen, either Party may challenge the selection of the umpire as set forth below:
- (a) A Party that intends to challenge the umpire shall send notice of its challenge within fifteen (15) days after it has been notified of the appointment of the umpire, or within fifteen (15) days after the grounds upon which it intends to challenge have become known to that Party, but no later than 90 days after the Organizational Meeting;
 - (b) The notice of challenge shall be communicated to all Parties, to the umpire who is challenged and to the arbitrators. The notice of challenge shall state the reasons for the challenge. The arbitration shall not be stayed during the pendency of a challenge unless agreed to by both Parties or ordered by the Sub-Committee described below.
 - (c) When an umpire has been challenged by a Party, all Parties may agree to the challenge and request that the umpire withdraw. The umpire may also, after the challenge, withdraw. In neither case does this imply acceptance of the validity of the grounds for the challenge.
 - (d) If, within fifteen (15) days from the date of the notice of challenge, all Parties do not agree to the challenge or the challenged umpire does not withdraw, the Party making the challenge may elect to pursue it if the challenge is based on: (1) the failure of the umpire to meet the requirements for umpire set forth in the relevant contract(s); (2) the failure of the umpire to meet the Neutral Criteria listed in 6.3(a) – 6.3(d) above; (3) a violation of the standards set forth in Comment 3 to Canon 1 of the ARIAS•U.S. Code of Conduct; or (4) the alleged failure to make adequate disclosures as required by Canon IV of the ARIAS•U.S. Code of Conduct. In that case, within fifteen (15) days of the notice of challenge, the Party making the challenge shall seek a decision on the challenge from a neutral three-member sub-committee made up exclusively of members of the ARIAS Ethics Committee and the Board of Directors (the “Sub-Committee”). The Party seeking such a decision shall do so by notifying the Executive Director,

in writing, of its intention to seek a decision on the challenge from the Sub-Committee.

(e) The three members of the Sub-Committee shall be chosen at random by the Executive Director exclusively from the members of the ARIAS Ethics Committee and the Board of Directors.

(f) For all challenges brought before the Sub-Committee, the following fee structure shall apply:

- (i) For a hearing on the papers, a flat rate of \$5,000; or
- (ii) For an in person hearing, a daily rate of \$2400 plus reasonable costs and expenses.

All fees for a Section 6.19(f) challenge, shall be paid to ARIAS•U.S. attention Executive Director on or before the deadline specified by the Sub-Committee and in the manner specified by the Sub-Committee.

(g) The Sub-Committee shall have the discretion to decide the challenge (i) on the papers requested from the Parties by the Sub-Committee; or (ii) following a hearing at which the Sub-Committee may hear evidence and argument. Absent extenuating circumstances, the Sub-Committee will limit written submissions to ten pages plus exhibits and will limit a hearing to three hearing days.

(h) The Parties shall jointly and severally protect, defend, indemnify and hold harmless each member of the Sub-Committee, ARIAS•U.S. and its Executive Director against all expenses, costs and fees of any kind incurred by the member(s), ARIAS•U.S. or its Executive Director concerning the challenge to the umpire and each Party agrees it shall not assert any claim, file any suit, or initiate any action against a member of the Sub-Committee, ARIAS•U.S. or its Executive Director concerning the challenge including, but not limited to, any claim, suit or action relating to any alleged conflict, bias or lack of disinterestedness.

(i) The Sub-Committee shall render a decision on the challenge in writing within thirty (30) days of the receiving the papers or completing a hearing on the merits. The Sub-Committee shall include in its decision an award of fees and costs to the successful Party.

(j) If the umpire withdraws after a challenge, is asked by the Parties to withdraw, or is ordered to withdraw by the Sub-Committee, the Executive Director will appoint the second highest ranked candidate as the replacement umpire.

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 Arbitration Information as defined in the standard ARIAS Confidentiality Agreement shall be confidential. 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 of arbitration specified in the operative insurance policy or contract or as otherwise agreed to by the Parties. In the absence of a location specified in the policy, or contract or upon 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 Also prior to the Organizational Meeting, all members of the Panel shall reveal in writing 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. Such disclosures shall be made part of the record at the organization meeting and thereafter the 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.

- 10.4 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.

- 10.5 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.

- 10.6 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) Resolution of any procedural issues including challenges to the panel's jurisdiction, and issues of multiparty procedure;
- (e) The extent to which discovery, including depositions, interrogatories, document requests and third party discovery, will be allowed;
- (f) The extent to which expert evidence will be allowed; and
- (g) 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; and
 - (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.

Automatic document discovery, which the parties should exchange without delay and prior to the organizational meeting, should include the policy or contract, the placement and underwriting files (if applicable), the claim files maintained by any Party (if applicable), and the correspondence between the parties specifically relating to the matter in dispute.

- 11.2 The Panel shall have the power to order the disclosure of such additional 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.

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.

- 12.2 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

- 13.1 Unless the Parties otherwise agree, there shall be a stenographic record kept of the proceedings.
- 13.2 The Panel may decide whether and to what extent there should be oral or written evidence or submissions.
- 13.3 The Panel is obligated to follow the strict rules of law, unless otherwise agreed.
- 13.4 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.
- 13.5 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.
- 13.6 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.
- 13.7 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.
- 13.8 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.
- 13.9 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

- 14.1 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.
- 14.2 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.
- 14.3 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.
- 14.4 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.
- 14.5 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.

15. OPTIONAL MEDIATION PROCEDURES

- 15.1 If at any point during the arbitration proceedings, the parties intend to mediate their dispute, the parties shall jointly inform the Panel in writing of their intentions (the "Intent to Mediate Letter") and the arbitration shall be stayed from the date of the Intent to Mediate Letter until thirty (30) days after the mediation is held. The mediation should take place before a Qualified Mediator, who is not a member of the Panel and shall be held within sixty (60) days of the submission of the Intent to Mediate Letter. Should the parties require additional time to negotiate their

differences with regard to the mediation, they must jointly request an extension of the automatic stay.