



Henning Mediation & Arbitration Service, Inc.

RULES FOR ARBITRATION

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HENNING MEDIATION & ARBITRATION SERVICE, INC.

RULES FOR ARBITRATION

Rule 1. Scope And Application Of The Rules

- 1.1 These Henning Mediation & Arbitration Service, Inc. (“HMA”) Rules for Arbitration (“Rules”) apply to arbitrations of disputes administered by HMA (an “Arbitration”). The Rules supersede all arbitration rules previously by HMA and shall apply in the form published as of the date a Demand for Arbitration is filed with HMA.
- 1.2 These Rules may be modified by the arbitration agreement of the Parties (the “Arbitration Agreement”) or any court order for arbitration upon Acceptance by HMA of a Demand For Arbitration provided, however, that the adoption of an agreement to arbitrate pursuant to procedural rules other than those established herein shall not modify or affect the process for appointment of a Tribunal by HMA as provided herein or the obligations of the parties relating to HMA fees charged for the arbitration. The parties by written agreement may modify the procedures set forth in these Rules after the appointment of an Arbitrator only with the consent of the Arbitrator. If any of these Rules, or authorized modifications thereof, is in conflict with a mandatory provision of applicable law, the provision of law shall prevail, and no other Rule shall be affected.
- 1.3 HMA may amend these Rules without notice.
- 1.4 Capitalized terms shall have the meaning stated in the Rules.
- 1.5 Once appointed, the Tribunal shall interpret and apply these Rules insofar as they relate to the Tribunal’s powers and duties, and the Tribunal shall resolve disputes regarding the interpretation and applicability of these Rules and conduct of the arbitration hearing. The resolution of the issue by the Arbitrator shall be final.
- 1.6 The Tribunal may, upon a showing of good cause or upon its own initiative, when necessary to facilitate the arbitration, extend any deadlines established in these Rules.
- 1.7 Upon the failure of a Party to comply with these Rules or any order of the Tribunal issued pursuant to these Rules, the Tribunal may, after notice and hearing, impose a time for compliance, sanction or other remedy it deems just and appropriate, including, but not limited to, assessment of costs of the Arbitration and reasonable attorneys’ fees; exclusion of evidence and other remedies.
- 1.8 A party to an Arbitration may proceed *pro se* or may be represented by counsel who is in good standing in the state of admission (a “Representative”).
- 1.9 Any party or Representative who becomes aware of a violation of or failure to comply with any provision of these Rules, and fails to promptly object in writing, may be deemed by the Tribunal to have waived the right to object thereto.

Rule 2. Commencement Of The Arbitration

- 2.1 An arbitration pursuant to the Rules (an “Arbitration”) shall be initiated by a party (“Claimant”) filing a notice of arbitration (“Notice Of Arbitration”) with HMA, with a copy sent to each party or their Representative as to which relief or an award is sought (each a “Respondent”). of
- (a) a copy of the agreement or court order to arbitrate that Claimant contends vests HMA with arbitral jurisdiction of the Arbitration (the “Arbitration Agreement”), and
 - (b) the names and addresses and email addresses of all parties and their Representatives, if any, and
 - (c) a description of general nature of the dispute, the claims asserted and the relief or remedy sought, and
 - (d) the HMA Initial Case Deposit in effect on the Commencement Date of the Arbitration.
- 2.2 The Arbitration shall be deemed commenced (“Commencement Date”) on the date that HMA provides Notice to the Respondent that it has received and accepted a Notice Of Arbitration and agreed to administer the Arbitration (“Acceptance”).
- 2.3 Within twenty days of Notice of Acceptance a Respondent:
- (a) may file a response to the to the Notice Of Arbitration provided, however, that if no response is filed all allegations and claims in the Notice Of Arbitration shall be deemed to have been denied by the Respondent, and
 - (b) shall tender to HMA the HMA Initial Case Deposit in effect on the Commencement Date of the Arbitration, and
 - (c) shall serve a statement of any affirmative defenses and counterclaims, and
 - (d) shall serve notice of joinder of any additional party authorized under the Arbitration Agreement provided such notice shall comply, as to such additional party, with the requirements of paragraph 2.1 of the Rules, and
 - (d) shall serve any challenge to jurisdiction of HMA to administer the Arbitration pursuant to the Rules, stating the basis for the challenge to jurisdiction and supporting authority and, with regard to counterclaims, the general nature of the counterclaim and the relief or remedy sought.
- 2.4 Any additional party sought to be joined by a Respondent shall be deemed to be a Respondent and shall comply with the requirements of a Respondent under paragraph 2.3 of the Rules.

2.5 The Tribunal shall rule upon all challenges to joinder of parties.

Rule 3. Number, Qualification And Appointment Of The Tribunal

3.1 HMA shall maintain a panel of qualified neutrals (the “HMA Panel”).

3.2 The Arbitration shall be conducted by the number of arbitrators specified in the Arbitration Agreement or other subsequent stipulation of all parties (the “Tribunal” or the “Arbitrator,” which terms may be used interchangeably in the Rules).

3.3 Each Arbitrator shall be independent and impartial. By accepting appointment, each Arbitrator shall be deemed to be bound by these Rules and shall perform his or her duties with diligence and in good faith. Prior to appointment as an Arbitrator, HMA shall provide to an Arbitrator candidate the demand for arbitration and any response filed by a Respondent or such other summary including the identity of the parties and nature of the dispute to permit the candidate to determine whether the candidate has a conflict of interest or other circumstance likely to cause justifiable doubt regarding the candidate’s independence or impartiality. Such circumstances include bias, interest in the result of the arbitration, past or present relationships with a party or its Representative(s), and any other matter, either actual or apparent, that would disqualify a candidate from impartial service as an Arbitrator in the dispute. This disclosure obligation shall remain in effect throughout the arbitration process.

3.4 The Tribunal shall be selected in the manner specified in the Arbitration Agreement or other subsequent stipulation of all parties provided that an arbitrator selected who is not on the HMA Panel shall, as a condition of serving as an Arbitrator, meet the qualifications provided for herein. If the Arbitration Agreement does not specify a method for the selection of the Tribunal and the parties have not otherwise agreed, HMA shall send simultaneously to each party an identical list of not less than three (3) names from the HMA Panel if one (1) arbitrator is to be appointed, and five (5) names from the HMA Panel if three (3) arbitrators are to be appointed. Each party shall have the right to strike one name from the list provided. The failure of a party to strike a name from the list or provide notice of conflict of interest or other disqualification shall be deemed to be the consent of a party to permit HMA to appoint the Tribunal from any of the names on the list provided. Parties may, and are encouraged to, consult and agree on Tribunal to be appointed from the names provided. A party shall promptly notify HMA if has reasonable cause to challenge more than the strike permitted based on conflict of interest or other for cause for disqualification. HMA may substitute a candidate from the HMA Panel for any proposed member of the Tribunal who is disqualified by conflict of interest or other cause for disqualification. If the parties have not stipulated the member or members of the Tribunal, HMA shall appoint the Tribunal from HMA Panel members not stricken by parties as provided for herein.

3.5 Where the Arbitration Agreement provides that each party is to appoint one arbitrator but there are two or more Claimants or Respondents, HMA may appoint all the Arbitrators from the HMA Panel, unless the parties agree otherwise. Parties 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. HMA shall determine whether the interests between

parties are adverse for purposes of arbitrator selection, considering such factors as whether the parties are represented by the same attorney and whether the parties will be presenting joint or separate positions at the Arbitration.

- 3.6 In an Arbitration conducted by a Tribunal of more than one Arbitrator, a Chairperson of the Tribunal shall be selected in the manner specified in the Arbitration Agreement or other subsequent stipulation of the parties. If the Arbitration Agreement does not specify a method for selecting the Chairperson and the parties have not otherwise agreed, the Chairperson shall be selected by HMA.
- 3.7 In the event that an Arbitrator becomes unable to serve and to conduct the Arbitration in according to the Rules for any reason, HMA may appoint a qualified neutral from the HMA Panel to fill the vacancy pursuant to the procedure by which the Arbitrator being replaced was appointed. If the sole Arbitrator or the Chairperson is replaced, the replacement Arbitrator shall decide the extent to which any previously held hearings shall be repeated. If any other Arbitrator is replaced, the Tribunal shall decide the extent to which any previously held hearings shall be repeated.
- 3.8 No party or Representative shall have any *ex parte* communications concerning any matter relating to the Arbitration proceeding with any Arbitrator or arbitrator candidate, except that a party may advise a candidate for appointment as its party-appointed arbitrator of the general nature of the dispute and discuss the candidate's qualifications, availability, and independence and impartiality with respect to the parties.

The Parties stipulate and agree that by proceeding under these Rules that:

- (a) neither HMA, any Arbitrator appointed to the Tribunal, nor any employee or agent of HMA is a necessary or proper party in any litigation or other proceeding relating to the Arbitration or the subject matter of the arbitration; and
- (b) neither HMA, any Arbitrator, or any employee or agent of HMA, shall be liable to any party for any act or omission in connection with any arbitration conducted under these Rules, and
- (c) all parties to an Arbitration administered pursuant to these Rules shall hold HMA, the Arbitrators and HMA's employees and agents harmless from, and shall fully indemnify them against, any and all damages, claims, judgments, costs and expenses, including attorneys' fees, incurred by any of them as a result of any subsequent claim, demand or cause of action arising directly or indirectly from or out of the arbitration, and
- (d) the parties to an Arbitration shall defend and/or pay the cost (including reasonable attorneys' fees) of defending HMA, any Arbitrator, and any HMA employee or agent from any subpoenas relating to the Arbitration from third parties.

Rule 4. Conduct of The Arbitration Proceedings

A. Challenges To Jurisdiction Or Arbitrability

4.1 The Tribunal shall have the power to rule on challenges to the jurisdiction of HMA to administer the arbitration and the Tribunal to issue interim and final awards in the Arbitration including any objections with respect to the existence, validity, interpretation or scope of the Arbitration Agreement. The resolution of the issue by the Arbitrator shall be final. The Tribunal may rule on such objections to jurisdiction or arbitrability of a claim as a preliminary matter or, where evidence is necessary for such determination, as part of a final award.

B. General Provisions

4.2 Subject to these Rules, the Tribunal may conduct the Arbitration in such manner as it shall deem appropriate. The Chairperson of a Tribunal shall be responsible for the organization of conferences and hearings, and for arrangements with respect to the functioning of the Tribunal.

4.3 The proceedings shall be conducted in an expeditious manner. The Tribunal is empowered to impose time limits it considers reasonable on each phase of the proceeding, including, without limitation, the time allotted to each party for presentation of its case and for rebuttal.

4.4 A party who has failed to participate in the Arbitration by appearance or payment of any required Case Deposit shall be served with notice of all conferences, orders and hearings in the manner provided for in the Arbitration Agreement.

4.5 HMA and the Tribunal shall treat the Arbitration proceedings, any related discovery and the decisions of the Tribunal, as confidential, except as necessary in connection with a judicial challenge to, or enforcement of, an award, or unless otherwise required by applicable law

C. Case Management Conference

4.6 The Tribunal shall conduct an initial Case Management Conference to consider and schedule procedures and deadlines for the following:

- (a) the issues, claims and counterclaims to be arbitrated;
- (b) challenges to the jurisdiction or arbitrability of any claims or counterclaims;
- (c) challenges to the joinder of a party,
- (d) requests for interlocutory relief,
- (e) pre-hearing discovery,
- (f) pre-hearing dates to resolve case management or discovery issues,
- (g) the disclosure of witnesses who may testify at hearings,

- (h) pre-hearing disclosures, exchanges of exhibits and briefing,
- (i) hearing dates,
- (j) the form of the award to be issued by the Tribunal,
- (k) the method of service of pleadings, discovery, awards and other papers in the Arbitration,
- (k) other matters which in the discretion of the Tribunal may assist in the administration and adjudication of the Arbitration.

The Case Management Conference may be conducted in person or telephonically in the discretion of the Tribunal. The Tribunal shall issue a Case Management Order following the hearing. Deadlines established during the Case Management Order shall be continued only by agreement of the parties or for good cause with concurrence of the Tribunal. Hearing dates established during the Case Management Conference shall only be continued for good cause upon approval of the Tribunal subject to the hearing cancellation policies of HMA.

D. Interim Relief And Interlocutory

- 4.7 The Tribunal may grant interim, interlocutory or injunctive relief including, without limitation, relief and measures for the protection or preservation of assets, the conservation of property, the sale of perishable goods or other relief deemed by the Tribunal appropriate under the circumstances of the Arbitration. Such interim measures may take the form of an interim award, and the Tribunal may require security for the costs of such measure.
- 4.8 Any recourse by a party to a court for interim or injunctive relief authorized by the Arbitration Agreement shall not be deemed to be a waiver of a party's right to arbitrate and seek a Final Award upon claims and issues in the Arbitration.

E. Discovery

- 4.9 Upon consultation with the Parties in the Case Management Conference, the Tribunal may, in its discretion, permit and establish a schedule for written and/or deposition discovery as the Tribunal deems appropriate taking into account the needs of the parties to prepare for hearing and the desirability of making discovery expeditious and cost-effective.
- 4.10 The Tribunal may direct, without or in addition to any other discovery sought by a party, the exchange of documents and electronically stored information and data, the identification of persons with knowledge of the claims and issues to be arbitrated and witnesses to be called by a party at any hearing in the Arbitration.
- 4.11 The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery or otherwise.

4.12 The parties shall promptly notify the Tribunal when a dispute exists regarding discovery issues. The Tribunal shall be authorized to resolve such disputes upon written submissions or telephonic or live hearing.

F. Pre-Hearing Submissions

4.13 No later than ten days before commencement of a final hearing in the Arbitration, the Parties shall submit to the Tribunal, with copies to all other Parties, the following:

- (a) a list of the witnesses a party may call with a short description of the anticipated testimony of each such witness; and
- (b) any written expert reports that a party may seek to introduce at the arbitration hearing; and
- (d) a copy of all exhibits a party may seek to introduce at the Arbitration hearing; and
- (e) a brief statement of statutes and/or case law which a party asserts has particular applicability to claims or defenses asserted in the Arbitration and any relief or award sought by a party.

G. Award On Written Submissions

4.14 If provided under the Arbitration Agreement or upon stipulation of the Parties, an award may be issued in the Arbitration based on written submissions and other evidence as the parties may agree.

H. Hearing

4.15 The Tribunal shall determine the order in which parties shall present their cases.

4.16 The Tribunal shall consider evidence the Tribunal finds relevant and material to the claims and controversies at issue in the Arbitration, giving the evidence such weight as it deems appropriate, including witness testimony, documents and exhibits, affidavits and written or recorded deposition testimony. The Tribunal shall determine the admissibility, relevance, materiality and weight to be afforded of the evidence tendered.

4.17 Evidence may be presented in written or oral form as the Tribunal may determine.

4.18 The Tribunal may request the presentation of evidence or testimony not tendered by a party.

4.19 The Tribunal shall apply applicable law relating to the attorney-client and other privilege relating to testimony and the work product doctrine. The Tribunal shall determine the applicability of any privilege or immunity.

- 4.20 The Tribunal may exclude from evidence documents that were not previously exchanged in accord with these Rules and witnesses not previously identified pursuant to these Rules.
- 4.21 The Tribunal may require sequestration of non-party testifying witnesses in the discretion of the Tribunal.
- 4.22 The Tribunal shall determine the manner in which witnesses are to be examined. Witnesses shall testify under oath or affirmation.
- 4.23 The hearing, or any portion thereof, may be conducted telephonically or videographically with the agreement of the parties or in the discretion of the Arbitrator.
- 4.24 At the written request of a party, all other parties to the Arbitration shall produce for the hearing all specified witnesses in their employ or under their control without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the hearing pursuant to these Rules. In the event a party or a subpoenaed person objects to the production of a witness or other evidence, the party or subpoenaed person may file an objection with the Tribunal, who shall promptly rule on the objection, weighing both the burden on the producing party and witness and the need of the proponent for the witness or other evidence.
- 4.25 The Tribunal shall advise the Parties of the date that hearings, argument and evidence are closed and that the Arbitration is submitted to the Tribunal for decision.

Rule 5. Award

- 5.1 The Tribunal may make final, partials and awards upon requests for interim or interlocutory relief.
- 5.2 An award shall be in writing and shall be signed by members of the Tribunal joining in the Award. A dissenting member of a Tribunal shall sign the dissent issued as provided under the Rules.
- 5.2 When the Tribunal is comprised of more than one member, an award shall be made by the majority of the Tribunal. A member of the Tribunal who does not join in an award shall issue that member's dissent in the form of the award specified in the Case Management Order.
- 5.2 An award may grant such relief, including fees and costs of the arbitration and attorney's fees, as the Tribunal authorized under Arbitration Agreement, evidence presented to the Tribunal and applicable law as determined and interpreted by the Tribunal.
- 5.3 In determining substantive law applicable to the Arbitration, the Tribunal shall be guided by the choice of law specified in the Arbitration Agreement or by stipulation of the parties. In the absence of such agreement or stipulation, the Tribunal shall be guided by choice of law principles under Georgia law.

- 5.4 A final award shall generally be in one of the following forms as specified in the Case Management Order:
- (a) a simple award which will include only a statement of the relief awarded or denied and no reasoning;
 - (b) a reasoned award which will include a statement of the relief awarded or denied and a discussion of the Tribunal's basis for the award;
 - (c) findings of fact and conclusions of law which will include a statement of the relief awarded or denied and specific citations to evidence and law which the Tribunal considers a basis for the award.
- 5.5 Unless otherwise required by the Arbitration Agreement, the Tribunal shall render a final award within thirty (30) days after the close of the hearing as advised by the Tribunal under paragraph 4.25 or such other date jointly stipulated by the parties and the Tribunal provided that such deadline may be continued for good cause and further provided that no award or order shall be issued to any party prior to payment in full of all fees and costs due HMA by all parties for the Arbitration as provided under the Rules.
- 5.6 Parties shall be served by HMA with a copy of a final award in the manner of service specified in the Case Management Order.
- 5.7 Any request to correct, modify or reconsider an award shall be submitted to the Tribunal within ten days of service of the award as provided herein. The Tribunal shall set a briefing schedule for response to any motion to correct, modify or reconsider an award and shall be authorized to enter an award for costs and attorney's fees in connection with such request.
- 5.8 The parties to an Arbitration under the Rules shall be deemed to have consented to the entry of judgment upon an award in any federal or state court having jurisdiction thereof. Proceedings to enforce, confirm, modify or vacate an award shall be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.*
- 5.9 The Tribunal may enter an award upon the consent of the parties in the discretion of the Tribunal.

Rule 6. HMA Fees And Costs

- 6.1 HMA maintains a fee schedule setting the Initial Case Deposit required for arbitrations and shall advise parties of the billing rates, expense charges and cancellation policies of members of the HMA Panel. HMA shall determine the number of parties to an arbitration for purposes of assessing fees and costs of arbitration.
- 6.2 Following the Case Management Conference, HMA shall submit Case Deposit invoice to parties based on the estimated time and HMA costs to be charged by HMA and the Tribunal in connection with the Arbitration. Payment shall be due on terms stated in the Case Deposit invoice. HMA may submit additional Case Deposit invoices to the parties during the course of the arbitration in the discretion of HMA based on additional estimates of time

or costs. Case Deposits shall be disbursed by HMA to pay HMA fees and arbitrator billings for time and expenses. Any Case Deposits not required to pay HMA fees and arbitrator billings and expenses at the conclusion of a matter shall be reimbursed to the parties unless otherwise provided in an award.

- 6.3 Upon the failure of a party to pay an Initial Case Deposit or a Case Deposit when due as specified in an invoice, HMA may notify the parties that proceedings in the Arbitration shall be stayed until invoice is paid. The Tribunal may, *sua sponte*, issue an interim or final award in the amount of an Initial Case Deposit or a Case Deposit based upon the failure of a party to pay an Initial Case Deposit or a Case Deposit.