

HENNING MEDIATION & ARBITRATION SERVICE, INC.

RULES FOR ARBITRATION

Henning Mediation & Arbitration Service, Inc., (HMA) has developed these Rules for Arbitration (the “Rules”).

HMA’s responsibilities are limited to acting as the appointing authority.

A. GENERAL AND INTRODUCTORY RULES

Rule 1. Scope of Application

- 1.1 Where the parties have applied for arbitration under the Rules, they shall be deemed to have made these Rules a part of their arbitration agreement, except to the extent that they have agreed in writing, or on the record during the course of the arbitral proceeding to modify these Rules. These Rules and any amendment thereof, shall apply in the form obtaining at the time the arbitration demand is filed.
- 1.2 These Rules shall govern the arbitration except that where any of these Rules are in conflict with a mandatory provision of applicable law, that provision of law shall prevail.

Rule 2. Notices

- 2.1 Notices shall be given in writing at the address specified in writing by the recipient or, if no address has been specified, to the then business or residence address of the recipient. Notices may be given by mail, telex, facsimile or e-mail transmission. Notices shall be deemed to have been received on the date of delivery.
- 2.2 Time periods specified by these Rules or established by the Arbitrator(s) shall start to run on the day that a notice is delivered, unless the Arbitrator(s) specifically provide otherwise.

Rule 3. Commencement of Arbitration

- 3.1 The parties shall first request and agree in writing to arbitration through HMA and sign the HMA standard Agreement to Arbitrate.
- 3.2 A Complaint shall be prepared by the claimant and filed with HMA within fifteen (15) days of the date of the HMA Agreement to Arbitrate. HMA shall immediately send a copy of the Complaint to the respondent, or respondent’s attorney.

3.3 The Complaint shall include:

- (a) The full names and addresses of the parties;
- (b) A statement of the general nature of the claimant's claim;
- (c) The relief or remedy sought.

3.4 Within twenty-one days of receipt of the complaint, the Respondent shall deliver to the Claimant and HMA the Statement of Defense. Failure to deliver a Statement of Defense shall not delay the arbitration; in the event of such failure, all claims set forth in the Complaint shall be deemed denied.

3.5 The Statement of Defense shall include:

- (a) Any comment on items (a), (b) and (c) of the Complaint that the Respondent may deem appropriate;
- (b) A statement of the general nature of the Respondent's defense.
- (c) The relief or remedy sought.

3.6 The Respondent may include in the Statement of Defense any counterclaim. If the Respondent does so, the counterclaim in the Statement of Defense shall include items (a), (b) and (c) of Rule 3.3.

3.7 If a counterclaim is asserted, the Claimant shall deliver to the Respondent, within twenty (20) days after delivery of the Statement of Defense, a reply to counterclaim, which may be a general denial or may have the same elements as provided in Rule 3.5 for the Statement of Defense. Failure to respond shall be deemed as general denial of the counterclaim.

3.8 Claims or counterclaims may be freely added and amended up to the date the Arbitrator(s) are appointed and thereafter only with the consent of the Arbitrator(s). Replies to amended claims or counterclaims are not mandatory.

3.9 A copy of all such pleadings shall also be filed simultaneously with HMA, the Arbitrator(s) and all other parties to the case.

Rule 4. Representation

4.1 The parties may be represented or assisted by persons of their choice.

4.2 Each party shall communicate the name, address and function of such persons in writing to the other party and to HMA, who will forward the same on to the

Arbitrator(s) at least ten (10) days prior to the hearing unless otherwise approved by the Arbitrator(s) or agreed to by all parties.

B. RULES WITH RESPECT TO THE ARBITRATION HEARING

Rule 5. Initial selection of Arbitrator(s)

- 5.1 The Tribunal will consist of one or more arbitrators appointed by the parties, or to one or more arbitrator(s) appointed by HMA. "The Tribunal" as used herein shall mean one or more arbitrators.
- 5.2 Upon request, after signing the Agreement to Arbitrate and filing same with HMA, the parties shall designate the number of arbitrator(s) to serve on the Tribunal. If the parties do not agree, then HMA may designate the number of arbitrator(s).

Rule 6. Selection of Arbitrator(s)

- 6.1 When parties have been unable to agree on the selection of the arbitrator(s), HMA shall then submit to the parties a list of three (3) candidates, if one (1) arbitrator is to be selected, and a list of five (5) candidates if three (3) arbitrators are to be selected. Each party shall strike one candidate from the list, with the Claimant having the first strike. Any party failing, without good cause, to return the candidate list so marked within seven (7) days after the receipt shall be deemed to have assented to all candidates listed thereon. HMA shall designate as arbitrator(s) a candidate(s) who was not struck. A party may note, to HMA and the opposing party, any objection for cause they may have to any candidate. HMA may designate a substitute candidate, if HMA, in its sole discretion, determines a conflict of interest or other valid reason exists to replace a candidate.
- 6.2 If this overall selection procedure for any reason should fail to result in designation of the required number of arbitrator(s), HMA shall appoint a person or persons whom it deems qualified to fill any remaining vacancy.

Rule 7. Qualifications, Challenges and Replacement of Arbitrators

- 7.1 Each arbitrator shall be independent and impartial.
- 7.2 By accepting appointment, each arbitrator shall be deemed to be bound by these Rules and any modification agreed to by the parties.

- 7.3 Each arbitrator shall promptly disclose in writing to the Tribunal and the parties any circumstances that are likely to cause doubt regarding the arbitrator's independence or impartiality. Such circumstances include bias, interest in the result of the arbitration and past or present relations with a party or its counsel or any other conflict of interest, either actual or apparent.
- 7.4 A party may challenge any arbitrator if circumstances exist or arise that give cause to justifiably doubt an arbitrator's independence or impartiality.
- 7.5 A party may challenge an arbitrator by a notice in writing to HMA, with copy to the other parties and to the Tribunal, given no later than ten (10) days after the parties have been notified that the arbitrator(s) have been constituted. The notice shall state the reasons for the challenge with specificity.
- 7.6 When a party has challenged an arbitrator, the other party may respond to the challenge within ten (10) days. The Tribunal will accept or reject the challenge.
- 7.7 In the event of death, resignation or successful challenge of an arbitrator, a substitute arbitrator May be designated by HMA in its sole discretion.
- 7.8 In the event that an arbitrator fails to act, or in the event the Tribunal determines that an arbitrator is de jure or de facto prevented from duly performing the functions of an arbitrator, the procedures provided in Rule 7.8 shall apply to the selection of a replacement.
- 7.9 If the arbitrator is replaced, the successor shall decide the extent to which any hearings held previously shall be repeated. If there are no successors, the hearing shall not be repeated.

Rule 8. Challenges to the Jurisdiction of the Tribunal

- 8.1 The Tribunal shall have the power to hear and determine challenges to its jurisdiction at any time.
- 8.2 HMA shall not have the obligation to administer any case for arbitration until all parties provide HMA with either (1) a written consent to arbitrate executed by all parties or (2) a final court order directing all parties to arbitrate the matter through HMA.

C. RULES WITH RESPECT TO THE CONDUCT OF THE ARBITRAL PROCEEDINGS

Rule 9. General Provisions.

- 9.1 Subject to these Rules, the Tribunal may conduct the arbitration in such manner as it shall deem appropriate. The chairman shall be responsible for the organization of arbitral conferences and hearings and arrangements with respect to the functioning of the Tribunal.
- 9.2 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.
- 9.3 Except as otherwise provided in these Rules or permitted by the Tribunal, no party or anyone acting on its behalf shall have an ex parte communication with any arbitrator with respect to any matter of substance relating to the proceeding.
- 9.4 As promptly as possible after the selection of the Tribunal, the Tribunal may conduct an initial pre-hearing conference for the planning and scheduling of the proceeding or any party may request such conference. The objective of this conference shall be to discuss all elements of the arbitration with a view to planning for its future conduct. Matters to be considered in the initial pre-hearing conference may include, inter alia, the following:
- (a) Procedural matters, such as the timing and manner of any required discovery; the desirability of bifurcation or other separation of the issues in the arbitration; the scheduling of conferences and hearings; the scheduling of pre-hearing memoranda; the need for and type of record of conferences and hearings, including the need for electronic; the amount of time allotted to each party for presentation of its case and for rebuttal; the mode, manner and order for presenting proof; the need for expert witnesses and how expert testimony should be presented; and the necessity for any on-site inspection by the Tribunal;
 - (b) The early identification and narrowing of the issues in the arbitration;
 - (c) The possibility of stipulations of fact and admissions by the parties solely for purposes of the arbitration, as well as simplification of document authentication; and
 - (d) The possibility of the parties engaging in settlement negotiations, with the assistance of a mediator.

After the initial conference, further pre-hearing or other conferences may be held, as the Tribunal deems appropriate.

- 9.5 In order to define the issues to be heard and determined, the Tribunal may inter alia make pre-hearing orders for the arbitration and may instruct the parties to file more detailed statements of claim and of defense and pre-hearing memoranda.
- 9.6 Unless the parties have agreed upon the place of arbitration, HMA shall fix the place of arbitration and notify the parties of the date, time and place of the initial hearing. The award shall be deemed made at such place. Hearings may be held and the Tribunal may schedule meetings, including electronic meetings, wherever it deems appropriate.
- 9.7 Once the Tribunal sets a hearing date, no continuance shall be granted, except for good cause, as determined in the sole discretion of the Tribunal.
- 9.8 All deposits of fees and costs due and billed by HMA shall be paid in full prior to the hearing, subject to Rule 11.6 herein.

Rule 10. Discovery

The Tribunal may permit and facilitate such discovery as it shall determine is appropriate in the circumstances, taking into account the needs of the parties and the desirability of making discovery expeditious and cost-effective. The Tribunal may issue orders to protect the confidentiality of proprietary information, trade secrets and other sensitive information disclosed in discovery.

Rule 11. Evidence and Hearings

- 11.1 The Tribunal shall determine the manner in which the parties shall present their cases. The presentation of a party's case may include the submission of a pre-hearing memorandum.
- 11.2 The Tribunal is not required to apply the rules of evidence used in judicial proceedings, provided, however, the Tribunal shall apply the lawyer-client privilege and the work product immunity. The Tribunal shall determine the applicability of any privilege or immunity and the admissibility, relevance, materiality and weight of the evidence offered. Evidence may be presented in written or oral form as the Tribunal may determine is appropriate.
- 11.3 The Tribunal, in its discretion, may require the parties to produce evidence in addition to that initially offered.

- 11.4 The Tribunal shall determine the manner in which witnesses are to be examined. The Tribunal shall have the right to exclude witnesses from hearings during the testimony of other witnesses.
- 11.5 The Tribunal, HMA or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.
- 11.6 At the hearing, the Tribunal may restrict or prohibit the presentation of evidence by any party that has failed to pay any outstanding and billed amounts due to HMA.

Rule 12. Interim Measures of Protection

- 12.1 At the request of a party, the Tribunal may take such interim measures, as it deems necessary in respect of the subject matter of the dispute, including measures for the preservation of assets, the conservation of goods or the sale of perishable goods. The Tribunal may require security for the costs of such measures.

Rule 13. The Award

- 13.1 The Tribunal may make final, interim, interlocutory and partial awards. An award may grant any remedy or relief which the Tribunal deems just and equitable and within the scope of the agreement of the parties, including but not limited to specific performance of a contract. With respect to any interim, interlocutory or partial award, the Tribunal may state in its award whether or not it views the award as final, for purposes of any judicial proceedings in connection therewith.
- 13.2 All awards shall be in writing and may or may not state the reasoning on which the award rests, as decided in the discretion of the Tribunal. When there are three arbitrators, the award shall be made and signed by at least a majority of the arbitrators.
- 13.3 A member of the Tribunal who does not join in an award may so indicate by not signing the award or by writing under the award the words, "I dissent" and signing the same.
- 13.4 Executed copies of the awards shall be immediately filed by the Tribunal with HMA. The award will be published to all parties after HMA has received full payment for all invoices resulting from this case.
- 13.5 The Tribunal may only change an award as allowed by Georgia law.
- 13.6 Awards shall be final and binding on the parties on that date an award is entered, and the parties may undertake to carry out awards without delay.

13.7 The final award should, in most circumstances, be rendered within one month after the conclusion of the hearing. The arbitrator(s) shall use their best efforts to comply with this schedule.

D. MISCELLANEOUS RULES

Rule 14a. Failure to comply with Rules

Whenever a party fails to comply with these Rules in a manner deemed material by the Tribunal, the Tribunal shall fix a reasonable period of time for compliance and, if the party does not comply within a said period, the Tribunal may impose a remedy it deems just, including an award on default. Prior to entering an award on default, the Tribunal may require the non-defaulting party to produce evidence and legal argument in support of its contentions, which the Tribunal may receive without the defaulting party's presence or participation, but the Tribunal shall make reasonable efforts to obtain a response from a defaulting party before making an Award.

Rule 14b. Retention of Documents

HMA shall not be required to maintain any official record of the matter and shall hold all original records for a period not to exceed 90 days after the Award is issued, during which time the parties shall re-claim their documents from HMA. After said 90 days, HMA may destroy said documents.

Rule 15. Costs

15.1 Each arbitrator may be compensated at an hourly rate or flat fee, as set by HMA and as agreed to by the parties at the time of appointment. Compensation shall be for time spent in connection with the arbitration proceeding, including time spent reviewing the record. Arbitrators shall also be reimbursed for any travel and other necessary expenses, if any, at a rate agreed to in advance

15.2 HMA shall establish the cost of arbitration which may include:

- (a) The fees and expenses of the arbitrators;
- (b) The administrative charges and expenses of HMA with respect to the arbitration;
- (c) The costs of copies and
- (d) The costs of meeting and hearing facilities.

Each party and the attorney for that party shall remain jointly and severally responsible for that party's share of the costs.

- 15.3 Subject to any agreement between the parties to the contrary, the Tribunal may apportion the costs of arbitration, including attorney fees and expenses of a successful party, against an unsuccessful party, in such a manner as it deems reasonable, taking into account the circumstances of the cases, the conduct of the parties during the proceeding, and the result of the arbitration.
- 15.4 HMA requires each party to deposit with HMA an equal amount as an advance for estimated costs; and during the course of the proceeding, HMA may request supplementary deposits from the parties. Any such funds shall be held and disbursed in such a manner as the Tribunal may deem appropriate.
- 15.5 If the required deposits are not paid in full within ten (10) days after receipt of the invoice, the Tribunal will suspend or terminate the proceedings or may elect to proceed and assess said amounts as part of the Award.
- 15.6 After the award has been rendered, HMA shall return any unexpended balance from deposits to the parties as may be appropriate, as directed by the Tribunal.
- 15.7 HMA, may, at its election, withhold the release or disclosure of any Award until all costs/fees have been paid in full by all parties.

Rule 16. Confidentiality

The parties and the arbitrators shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with a judicial challenge to, or enforcement of, an award, and unless otherwise required by law.

Rule 17. Settlement and Mediation

- 17.1 Either party may propose settlement negotiations at any time. The Tribunal may suggest that the parties explore settlement at such times as the Tribunal may deem appropriate. The Tribunal may give such assistance in settlement negotiations as the parties may request and the Tribunal may deem appropriate.
- 17.2 With the consent of the parties, the Tribunal at any stage of the proceeding may arrange for mediation of some or all of the claims asserted in the arbitration, by a Mediator acceptable to the parties. The Mediator shall be a person other than a member of the Tribunal, unless the parties request and the Tribunal agree that a member of the Tribunal designated by the parties may serve as Mediator. The Tribunal may provide the Mediator with whatever factual and legal material developed in the arbitration it deems appropriate and may permit the Mediator to attend conferences and hearings held in connection with the arbitration. Any such mediation shall be conducted under HMA's usual procedures and fees.

Rule 18. Waiver

A party knowing of a failure to comply with any provision of these Rules and neglecting to state its objections promptly waives any objection thereto.

Rule 19. Actions against HMA or Arbitrators

Neither HMA nor any arbitrator shall be liable in damages to any party for any act or omission in connection with any arbitration conducted under these Rules.

Rule 20. Hold Harmless and Indemnification

All parties shall agree to hold the arbitrator(s) and HMA harmless from any claim, litigation or dispute by any party arising from the arbitration directly or indirectly. Also, all parties shall agree to indemnify the arbitrator(s) and HMA against all costs and expense, including attorney fees, incurred as a result, directly or indirectly from any claim, litigation or dispute, by any party arising from the arbitration.

HENNING MEDIATION & ARBITRATION SERVICE, INC.

Effective August 1, 2009, these Rules supersede and nullify any prior published HMA Rules.

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