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Minneapolis, MN 55426

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www.adrforum.com

**CODE OF PROCEDURE
FOR RESOLVING
BUSINESS-TO-BUSINESS
DISPUTES**

November 1, 2015

FORUM Submission to Business-to-Business Arbitration Form
FORUM does not accept consumer arbitration claims.

Please complete this form and submit it to the FORUM with the appropriate filing fee.

1. Claimant/Plaintiff's Name and Address:

Claimant/Plaintiff's Attorney (if one):

Please provide contact information you would like FORUM to use (Claimant or Rep.):

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City: State: Zip:

Telephone: Fax:

Email: CC Email:

2. Respondent/Defendant's Name and Address:

Respondent/Defendant's Attorney (if one):

Please provide contact information you would like FORUM to use (Respondent or Rep.):

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City: State: Zip:

Telephone: Fax:

Email: CC Email:

3. If a legal action pending, please forward a copy of the Scheduling Order.

4. Brief description of the dispute and relief being sought, including a.) dollar amount and b.) other relief sought:

5. Preferred Locale of the Arbitration: **Locale specified in Contract?**

6. For Smaller Claims (under \$75,000), please select:

Document Hearing **Participatory Hearing**

7. Is there an agreement between the parties related to ADR services?

Yes **No**

If yes, please attach a copy of the agreement.

8. Sign and date this form. *By signing you request Arbitration services be provided by the FORUM in accordance with the FORUM'S Code of Procedure.*

Your Signature:

Today's Date: [Click here to enter a date.](#)

[Click here to enter text.](#)

Please Print Your Name: [Click here to enter text.](#)

Your Role in this Matter: [Click here to enter text.](#)

9. Submit Form, Arbitration Clause (if one), Scheduling Order (if one) and appropriate filing fee to: FORUM, 6465 Wayzata Blvd, Suite 470, Minneapolis, MN 55426

10. Deliver a copy of this Request to the other parties.

11. Keep a copy for your records.

The Arbitration Team at FORUM is available to answer your questions by phone at 800-474-2371 ext. 6460 or 952-516-6460, or by fax at 866-743-4517 or 952-345-1160 or by email at info@adrforum.com. For more information, please visit www.adrforum.com.

FORUM Request for Business-to-Business Mediation

Please complete this form and submit it to the Forum with your non-refundable filing fee of \$100.

1. Identify the Claimant/Plaintiff:

Claimant/Plaintiff's Name:

Claimant/Plaintiff's Attorney (if one):

Please provide contact information you would like FORUM to use (Claimant or Rep.):

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City:

State:

Zip:

Telephone:

Fax:

Email:

CC Email:

2. Identify the Respondent/Defendant:

Respondent/Defendant's Name:

Respondent/Defendant's Attorney (if one):

Please provide contact information you would like FORUM to use (Respondent or Rep.):

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City:

State:

Zip:

Telephone:

Fax:

Email:

CC Email:

3. Is a legal action pending? If so, please forward a copy of the Scheduling Order.

4. Brief description of the dispute and relief being sought:

5. Preferred location of the mediation:

6. Is there an agreement between the parties related to ADR services?

Yes No

If yes, please attach a copy of the agreement and/or name of any Mediator agreed upon by parties.

7. Sign and date this form. *By signing you request mediation services be provided by the FORUM in accordance with the FORUM's Mediation Procedures.*

Your Signature:

Today's Date:

Please Print Your Name:

Your Role in this Matter:

8. Submit Request, Scheduling Order and \$100 non-refundable filing fee to:
FORUM, 6465 Wayzata Blvd, Suite 470, Minneapolis, MN 55426

9. Deliver a copy of this Request to the other parties.

10. Keep a copy for your records.

A Mediation Coordinator is available to answer your questions by phone at 800-474-2371 ext. 6460 or 952-516-6460, or by email at info@adrforum.com. For more information, please visit our website at www.adrforum.com.

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INTRODUCTION

BUSINESS-TO-BUSINESS transactions are not usually subject to disputes among the parties, however, disputes can and do occur. These disputes are often resolved through out-of-court resolution processes, including Mediation and Arbitration.

FORUM administers Mediation and Arbitration procedures using its sophisticated technology, knowledgeable case management teams, and skilled and neutral Mediators and Arbitrators.

The result is a predictable, efficient, and affordable proceeding that allows business people to focus on building and maintaining successful business relationships.

The rules in this Code of Procedure for Resolving Business-to-Business Disputes govern all cases filed after November 1, 2015 unless the Parties' agreement specifies a different set of rules. Employment cases will be administered under 2008 Code of Procedure.

Business-to-Business disputes governed by an arbitration agreement naming FORUM or its Code, or those naming any other provider or rules and accompanied by a FORUM Submission to Arbitration form, may be filed for immediate processing.

To include FORUM and this Code of Procedure in agreements, you may insert one of the clauses below or may customize using the FORUM Clause Guide or FORUM's Clause Generator (www.adrforum.com/ClauseGenerator).

Standard Mediation Clause

The parties agree that any claim or dispute relating to this agreement, or any other matters, disputes, or claims between us, shall be subject to non-binding mediation within 30 days of you or us making a request to the other by letter or through FORUM. Any such mediation shall be conducted according to the mediation rules of the FORUM.

Standard Arbitration Clause

We agree that any claim or dispute between us shall be resolved by arbitration administered by the FORUM under the Code of Procedure for Resolving Business-to-Business Disputes in effect when the claim is filed. Any award by the arbitrator(s) may be entered as a judgment in any court having jurisdiction.

FORUM SUBMISSION TO ARBITRATION

Parties may agree to modify an existing arbitration or mediation agreement that names an administrator other than the FORUM to instead call for the arbitration or mediation to be administered by FORUM and/or conducted in accordance with the FORUM rules.

Please complete and submit this form along with the appropriate filing fee to:

FORUM CODE OF PROCEDURES Case Coordinator

6465 Wayzata Blvd., Suite 470

Minneapolis, MN 55426

Phone: 800-474-2371

Fax: 952-345-1160

info@adrforum.com

MEDIATION PROCEDURES

FORUM encourages disputing parties to use mediation to resolve their differences. Mediation is a consensual process, whereby a neutral third party helps disputing parties resolve their disputes by working toward and achieving a mutually satisfactory solution. The neutral party, known as a Mediator, assists the parties with settlement negotiations but does not have authority to impose a decision on the parties.

Part I – Initiation of a Mediation Proceeding

A. Mediation Agreement

FORUM Mediation Rules may be adopted by agreement of the parties before or after a dispute has arisen. Where parties have not agreed to mediate, a party or parties may request the FORUM invite another party or parties involved in the dispute to mediate. FORUM will contact the other party or parties and attempt to facilitate a mediation agreement.

B. Request for Mediation

1. A party or parties may request mediation by contacting the FORUM by telephone, facsimile (fax), or mail including electronic mail. The requesting party shall at the same time notify the other party or parties of the request. Parties may use the FORUM Request for Mediation form, or simply provide a written request for mediation that contains the information listed below.
2. The request for mediation shall include:
 - a. the names, addresses and telephone, fax, e-mail or other contact information for the parties to the dispute and their authorized representatives;
 - b. a copy of the mediation agreement or, if none, a statement that the party seeks to mediate a dispute with another party or parties;
 - c. a brief statement of the nature of the dispute; and
 - d. the Mediation Filing Fee of \$100.
3. Submissions to the FORUM may be made through the FORUM's website at www.adrforum.com, or by mail, telephone, or e-mail to:

FORUM
6465 Wayzata Blvd.
Suite 470
Minneapolis, MN 55426

Attention: Mediation Coordinator
Telephone: 800-474.2371; Fax: 952.345.1160
info@adrforum.com

4. FORUM will notify the parties of the acceptance of the mediation request. FORUM reserves the right to decline a mediation request.

C. Selection of the Mediator

1. The parties may agree on a Mediator from the appropriate panel of FORUM Mediators who have experience mediating the present type of dispute. The FORUM will provide the names, resumes, and compensation rates of FORUM Mediators after the parties submit a Request for Mediation and the appropriate fee. If one of these Mediators is used by the parties, the parties agree that the FORUM will administer the mediation, and the parties will not privately use any Mediator listed by the FORUM.
2. The parties may also select a Mediator who is not listed as a FORUM Mediator, and request that the FORUM administer that mediation. The FORUM will contact that Mediator and determine if that Mediator is available and whether the FORUM can appoint that person as Mediator.
3. If the parties are unable to agree upon a Mediator or the FORUM is unable to appoint the Mediator proposed by the parties, a Mediator shall be appointed by the FORUM as follows:
 - a. *Two-party mediation.* In cases where there are two parties in interest, the FORUM will submit a list of three potential candidates. Within five business days, each party will provide the FORUM with its preference, striking not more than one of the Mediators and ranking the other Mediators in order of preference (with number one being the most preferred). The remaining Mediator, or the Mediator with the lowest combined score, will be appointed by the FORUM. If more than one Mediator has the same score, the FORUM will appoint one of those Mediators. If a party fails to timely submit its strike and rank list, the FORUM will deem all the listed candidates as equally acceptable to that party.
 - b. *Multiple-party mediation.* In cases where there are three or more parties in interest, the FORUM may submit a list of three or more potential candidates, depending upon the number of parties, their common interests, the damages or remedies at stake, the factual and legal issues in dispute, and related matters. The FORUM will inform the parties of the available candidates and how they are to be selected, including how Mediators may be ranked, stricken, or accepted, by the parties.

- c. *Parties in Interest.* FORUM shall determine how many parties in interest may appear in a mediation in relation to Mediators appointed.

D. Impartiality, Efficiency and Fairness

1. By accepting an appointment, the Mediator agrees to remain impartial and asserts that there is no known conflict of interest or circumstance that would cause the Mediator to be unfair or biased. The Mediator and the FORUM shall comply with all disclosure requirements pursuant to applicable laws. Any party who knows or should know of any conflict of interest or material circumstance that would cause the Mediator to be unfair, biased, or prejudiced shall disclose the information immediately on its discovery to the Mediator, the parties, and the FORUM. A party who fails to immediately disclose this information waives any claim to assert the Mediator had a conflict or was unfair, biased, or prejudiced. The FORUM may appoint another qualified Mediator if the initially appointed Mediator is unwilling or unable to serve.
2. The Mediator also agrees to make sufficient time available to conduct the mediation efficiently and fairly.
3. In the event that parties to a mediation administered by the FORUM also enter into arbitration before the FORUM, and absent agreement of the parties to the contrary, FORUM will appoint a different individual to serve as the arbitrator than the individual(s) who served as Mediator.

Part II – Conduct of the Mediation

A. Authority and Representation

Each party shall have, or be represented at mediation sessions by individuals with, full authority to settle the dispute. The parties may be represented by legal counsel at any stage of the mediation.

B. Cooperation

Each party is expected to cooperate in good faith with the Mediator to advance the mediation efficiently and fairly and shall spend as much time as necessary until the case is settled or until an impasse is declared or the parties elect to pursue alternative resolution procedures. Mediation is a voluntary process and any party may withdraw at any time, either by notifying the Mediator and other parties in writing or by leaving the mediation hearing. Perseverance and steadfastness often contribute to success in mediation, and the Mediator shall continue with a mediation until it is clear that no settlement can be reached. The Mediator is authorized to end the mediation session whenever, in the judgment of the Mediator, the parties have reached impasse in their attempts to forge a resolution. A party who wishes to withdraw from a mediation may do so by requesting that the Mediator declare an impasse or may notify the Mediator

and other parties in writing, or by informing the Mediator and leaving the mediation hearing.

C. Impasse

An impasse may occur if a party withdraws from mediation, the parties fail to arrive at a settlement, or a Mediator declares an impasse. An impasse may affect the parties' rights and remedies and may trigger the provisions of other agreements between the parties. If the parties to mediation are also parties to an agreement to arbitrate before the FORUM, an impasse may allow a party to immediately pursue arbitration before the FORUM.

D. Role of Mediator

The role of the Mediator is to promote and facilitate the voluntary resolution of the issues in dispute, such that:

1. The Mediator has no authority to impose a settlement on the parties.
2. The Mediator does not provide legal representation to any of the parties.
3. The Mediator has no responsibility concerning the fairness or legality of the resolution.
4. Mediators are independent contractors and not employees or agents of FORUM.
5. The Mediator will determine the procedural aspects of the mediation hearing including the timing and occurrence of separate caucus sessions.
6. At no time shall the Mediator reveal confidential information without the specific consent of the parties.
7. The Mediator is authorized to end the mediation session whenever, in the judgment of the Mediator, the parties have reached impasse in their attempts to forge a resolution.

E. Exchange of Information

1. Information may be exchanged through written and confidential submissions, telephone conference calls, meetings prior to the mediation, or a combination of these methods. The Mediator may establish the methods to be used and their timing, and parties may offer suggestions to the Mediator.
2. At least ten (10) business days prior to the first scheduled mediation session, each party shall provide the Mediator with a written Mediation Statement not to exceed five pages summarizing the background and present status of the dispute, including any previous settlement efforts.

Parties may also submit copies of documents and other written submissions that will assist the Mediator in understanding the dispute and their positions. The Mediator may at any time during the mediation request that a party provide such additional information or materials as the Mediator deems useful. The Mediator shall not, without authorization of the party submitting the Statement or disclosing information, disclose such information to other parties or non-parties.

3. Any party may at any time submit to the Mediator, for consideration by the Mediator only, written information or materials that it considers to be confidential and is labeled as such. The Mediator shall not, without the authorization of that party, disclose such information or materials to other parties or non-parties.
4. The parties may have entered into agreements including the applicability of supplemental rules and/or procedures, or the exchange of information, that relates to the mediation but are external to these rules. The parties are directed to meet the terms of such agreements.

F. Mediation Sessions

1. Unless otherwise agreed to by the parties, the mediation session will be held at a time and place established by the FORUM in consultation with the Mediator and the parties.
2. Requests for changes of the scheduling of such a mediation session must be handled through the FORUM, with copies to all parties.
3. Requests to reschedule a session may result in the assessment of a rescheduling fee by the FORUM and a cancellation fee charged by the Mediator.
4. FORUM may assess fees against any party who fails to attend a mediation session.

G. Settlement

1. If a settlement is reached prior to the initial mediation session, the parties shall immediately notify the FORUM. FORUM will assess additional fees, if any, based on the FORUM expenses and any fees due the Mediator. Unless otherwise agreed by the parties, these expenses will be borne equally by the parties.
2. If a settlement is reached during the mediation, the parties or their representatives, in conjunction with the Mediator and prior to the conclusion of the mediation, may complete a document listing the points agreed upon by the parties. The Mediator will inform the FORUM that a settlement has been reached, without revealing details of the settlement.

H. Confidentiality

1. The Mediator shall not, without the authorization of the disclosing party, disclose privileged or confidential information or materials to other parties or non-parties.
2. The following provisions shall apply to all mediations, and the Mediator may ask the parties to sign a confidentiality agreement prior to the commencement of mediation.
 - a. No evidence of the mediation session or any fact concerning the mediation may be admitted in a subsequent arbitration, hearing, or trial or any other subsequent proceeding involving any of the issues or parties to the mediation.
 - b. Statements made and documents produced during mediation, which are not otherwise discoverable, are not subject to discovery or other disclosure and are not admissible as evidence for any purpose at trial, including impeachment.
 - c. Notes, records, and recollections of the Mediator and the FORUM are confidential and shall not be disclosed to anyone, including the parties and the public.
 - d. All copies of materials produced during the mediation will be destroyed or returned to the originator upon request at the termination of the mediation.
 - e. All individuals involved in the mediation, including the Mediator, the parties and their representatives, and any other persons present during the mediation, shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the Mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation.

Part III – Mediation Fees

All fees described in this section shall be based on the fees in effect on the date the mediation is accepted by the FORUM. The parties' fees for mediation include a filing fee and the rate set by the Mediator for compensation and expenses. Unless otherwise agreed by the parties, the FORUM will divide the fees equally among the parties.

A. Filing Fee

A non-refundable Mediation Filing Fee of \$100 shall be submitted at the same time as the Request for Mediation by the requesting party. The Mediation Filing Fee covers the administrative costs associated with preparing a case for mediation.

B. Mediator Compensation Rates

The Mediator sets his or her own rate of compensation and that compensation rate will be communicated to the parties prior to appointment of the Mediator.

C. Deposits

1. FORUM may require that parties deposit estimated amounts as an advance on the costs of the mediation in consultation with the Mediator prior to commencement of the mediation session. Additional sessions or other work performed by the Mediator may require additional deposits. Unless agreed otherwise by the parties, the parties will contribute in equal shares. All deposits will be accounted for and credited to a party in the amount that party paid. In the event that deposits are not used, the remaining balances will be refunded.
2. FORUM will maintain an ongoing accounting of expenses and, if the incurred expenses sufficiently deplete the deposited funds, additional contributions may be required of the parties.
3. Failure by a party to make a required deposit may result in termination or suspension of the mediation. Mediation Fees are based on the total time spent by the Mediator to prepare for and conduct the mediation. Preparation time shall be reasonable, taking into account the nature and complexity of the case. The parties and Mediator will discuss any special circumstance that calls for more extensive preparation time.
4. Upon termination of the mediation, the FORUM will provide to the parties a statement of expenses and fees. Unless otherwise agreed, any amount remaining of the initial or subsequent deposits will be returned to the parties according to the ratio contributed by the parties. Any balance due or additional fees and expenses will be billed to the parties on the same basis.

D. Additional Fees

FORUM may assess additional fees to parties that have agreed to supplemental rules and/or procedures, or the exchange of information, that relate to the mediation but are external to these rules.

E. Expenses

All expenses not covered by the fees above, including, but not limited to, Mediator travel expenses, conference calls, facility charges and session expenses will be shared equally by the parties unless otherwise agreed. Parties shall be individually responsible for their own costs.

F. Collection and Disbursement of Fees and Expenses

Parties and parties' counsel are jointly and severally liable for all fees and expenses, and responsible for the prompt payment of such fees and expenses. FORUM has the sole responsibility for collecting and disbursing payment to the Mediator, and retains a portion of the Mediation Fees for its services. Parties agree to pay FORUM within thirty (30) days of their receipt of a final fee and expense invoice. FORUM may assess, and the parties and their counsel agree to pay, additional fees and costs for late payments and for expenses, including its legal expenses and reasonable attorney fees to arbitrate or litigate a case to collect payment.

G. Cancellation Fees

Parties are strongly encouraged to meet and confer at least fifteen (15) days before the scheduled mediation session to ensure readiness for the matter and to request postponement or cancellation of any scheduled mediation session. Due to demands on the calendar and the reality of turning away other matters because dates are reserved, parties who fail to appear at a mediation session, or cancel a mediation session or reschedule at party request less than ten (10) days prior to the scheduled mediation session, may be assessed a cancellation fee of an amount no greater than the time reserved for that mediation session.

Part IV – Limitations for Mediation

A. Exclusion of Liability

Neither the FORUM nor the Mediator shall be liable to any party for any act or omission in connection with any mediation administered under these rules. Neither FORUM nor any Mediator is a necessary party in any judicial proceeding related to the mediation. The Mediator, FORUM and its employees are incompetent to testify as witnesses in any proceeding relating to the mediation or the subject matter of the dispute. The parties release and agree to indemnify FORUM and the Mediator jointly and severally against all claims the parties may have arising out of or in any way referable to any act or omission in the performance of any obligation under this agreement, including all expenses, costs, and attorney fees incurred by the Mediator and FORUM.

B. Defamation

No statements or comments, whether written or oral, made or used by the parties, their representatives, or the Mediator either in preparation for or in the course of the mediation shall be relied upon to found or maintain any action for defamation, libel, slander, or any related complaint.

C. Claims

Any claim or dispute between the FORUM and any party or between the FORUM and any Mediator arising out of or related to these rules or related to any mediation administered by the FORUM shall be resolved by binding arbitration. Any award of the arbitrator(s) may be entered in any Court of competent jurisdiction. This arbitration provision shall be governed by and interpreted under the United States Federal Arbitration Act, 9 U.S.C. Sections 1-16.

ARBITRATION RULES

PART 1

DEFINITIONS AND SCOPE

RULE 1.1. Definitions.

For purposes of the rules contained in this Code of Procedure, the following definitions apply. Italics here indicate a defined term; within the remainder of the Code the defined terms are shown with the first letter capitalized.

- A. *Adjournment*: A continuance or delay for a specific period of time requested after the appointment of an *Arbitrator*. See *Time Extension*.
- B. *Affidavit*: A *Written* statement of a person who asserts the statement to be true under penalty of perjury or who makes the statement under oath before a notary public or other authorized individual.
- C. *Amendment*: A change made to a *Claim* after it has been served on the *Respondent* and any change made to a *Response* after it has been filed and *Delivered* to all *Parties*.
- D. *Appearance*: Any filing by a *Party* or *Party's Representative* under Rules 2.7, 2.8, 2.14A, or 5.5A.
- E. *Arbitration Agreement*: Any *Written* provision in any agreement between or among the *Parties* to submit any dispute, controversy, or *Claim* to the FORUM for arbitration under this Code.
- F. *Arbitrator*: An individual selected in accord with the *Code* or an *Arbitration Agreement* to render *Orders* and *Awards*, including a sole *Arbitrator* and all *Arbitrators* of an arbitration panel. No *Arbitrator* may be a director or officer of FORUM. A *Party Arbitrator* is an *Arbitrator* selected by a *Party* to serve as a member of a panel of *Arbitrators* in accord with the agreement of the *Parties*.

- G. *Award*: Any *Award* establishing the final rights and obligations of the *Parties* or as otherwise provided by this *Code* or by law. *Written Awards* are Summary *Award* unless the *Parties Request* in *Writing* a *Reasoned Award* or *Fully Reasoned Award* containing findings of fact and conclusions of law, which will usually incur additional fees.
- H. *Claim*: Any *Claim* submitted by any *Party* including an initial *Claim*, *Cross-claim*, *Counterclaim*, and *Third-Party Claim*.
- I. *Claimant*: Any individual or *Entity* making any *Claim* under this *Code*.
- J. *Claim Amount*: The total value of all relief sought. A *Claimant* seeking non-monetary relief will pay the fee associated with a *Claim* of \$74,999.00. A *Claim* containing both monetary and non-monetary relief will be charged the monetary fee.
- K. *Delivery*: *Delivery* to the address of a *Party*, the *FORUM* or an *Arbitrator* by the postal service of the United States or any country, or by a reliable private service, or by facsimile (fax), e-mail, electronic or computer transmission.
- L. *Director*: The *Arbitration Director* and the *FORUM* staff administer arbitrations under this *Code* or under other rules agreed to by the *Parties*.
- M. *Document*: Any *Writing* or data compilation containing information in any form, including an agreement, record, correspondence, summary, electronically stored information, tape, e-mail, video, audio, disk, computer file, electronic attachment, notice, memorandum or other *Writings* or data compilations.
- N. *Emergency Hearing for Immediate Relief*: An *Emergency Hearing* to obtain Emergency relief in an *Order* or *Award*, including a temporary restraining *Order* or a preliminary injunction available before an *Award* becomes final.
- O. *Entity*: Any association, business, company, cooperative, corporation, country, governmental unit, group, institution, organization, partnership, sole proprietorship, union or other establishment.
- P. *Fee Schedule*: The *Fee Schedule* appears in the last section of this *Code*.
- Q. *FORUM*: The National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, arbitraiton-forum.com, and adrforum.com constitute the administrative organizations conducting arbitrations under this *Code*. *FORUM* or an entity or individual providing administrative services by agreement with the *FORUM* administers arbitrations in accord with this *Code*.

- R. *Hearing: Hearings* include:
- (1) *Document Hearing*: A proceeding in which an *Arbitrator* reviews documents or property to render an *Order* or *Award* and the *Parties* do not attend.
 - (2) *Participatory Hearing*: Any proceeding in which an *Arbitrator* receives testimony or arguments and reviews documents or property to render an *Order* or *Award*. The types of *Participatory Hearings* include:
 - (a) *In-person Hearing* – A *Hearing* at which the participants may appear before the *Arbitrator* in person;
 - (b) *Telephone Hearing* – A *Hearing* at which the participants may appear before the *Arbitrator* by telephone; and,
 - (c) *On-line Hearing* – A *Hearing* at which the participants may appear before the *Arbitrator* on-line, by video, e-mail or by other electronic or computer communication.
- S. *Initiation Letter*: A Letter of Initiation commences an Arbitration and is sent by FORUM to all *Parties* as set forth in the *Proof of Service* and issued upon receipt of such Proof.
- T. *Interim Order*: Any *Order* providing temporary or preliminary relief pending a final *Award*.
- U. *Larger Claim*: A *Claim Amount* of \$75,000 or more.
- V. *Locale*: The place where the Arbitration or Mediation happens or is set, that may have particular events associated with it.
- W. *Order*: Any *Order* establishing specific rights and obligations of the *Parties*.
 - (1) A *Dispositive Order* results in a final *Award* or dismissal of any *Claim* or *Response*.
 - (2) All other *Orders* are non-dispositive.
- X. *Partial Final Award*: An *Award* that is final on one or more but not all of the issues before an *Arbitrator(s)*, which after issued limits the *Arbitrator(s)* authority to the remaining issues.
- Y. *Party*: Any individual or *Entity* who makes a *Claim* or against whom a *Claim* is made including *Claimants*, *Respondents*, *Cross-Claimants*, and *Third-Parties*.
- Z. *Party Witness*: Any person who is an individual *Party* or who is an employee of an entity *Party* at the time of the service of the subpoena.

- AA. *Proof of Service*: An *Affidavit* stating how and where service was made.
- BB. *Receive* or *Receipt*: The *Delivery* or other effective notice to the *FORUM*, or to a *Party* at the address of the *Party* or *Party Representative*.
- CC. *Representative*: Any individual, including an attorney, who makes an appearance on behalf of a *Party*.
- DD. *Request*: Any *Request* by a *Party* directed to an *Arbitrator* or the *FORUM* for an *Order* or other relief, including any motion, petition or other type of *Request*.
- EE. *Respondent*: Any *Party* against whom a *Claim* is made.
- FF. *Response*: Any *Written Response* by a *Party* or *Representative* to any *Claim*.
- GG. *Sanctions*: *Sanctions* include dismissal of the arbitration or the *Claims* or *Responses*; preclusion of evidence; admission of facts; payment of costs; payment of fees including reasonable attorney fees, *Arbitrator* fees, and arbitration fees; the rendering of an *Order* or *Award*; and other *Sanctions* deemed appropriate. *Sanctions* may be imposed against a *Party*, a *Representative* or both.
- HH. *Signature* or *Signed*: Any mark, symbol or device intended as an attestation, produced by any reliable means, including an electronic transcription intended as a *Signature*.
- II. *Smaller Claim*: A *Claim Amount* less than \$75,000.
- JJ. *Stay*: A delay for an indefinite period of time by a court order before an *Arbitrator* is appointed. Also see *Time Extension* and *Adjournment*.
- KK. *Time Extension*: A continuance or delay for a specific period of time requested before the appointment of an *Arbitrator*. See *Adjournment* and *Stay*.
- LL. *With Prejudice*: The case may not be brought again. The *Claimant* may not subsequently bring the same *Claim* against the same *Respondent*.
- MM. *Without Prejudice*: The case may be brought again. The *Claimant* may subsequently file the same *Claim* against the same *Respondent*.
- NN. *Writing* or *Written*: Any form intended to record information, including symbols on paper or other substance, recording tape, computer disk, electronic recording, and video recording and all other forms.

RULE 1.2. Arbitration Agreement.

- A. Parties who contract for or agree to arbitration provided by the FORUM or this Code agree that this Code governs their arbitration proceedings, unless the

Parties agree to other procedures. This Code shall be deemed incorporated by reference in every Arbitration Agreement, which refers to the National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, adrforum.com, FORUM or this Code, unless the Parties agree otherwise. This Code shall be administered only by the National Arbitration Forum or by any entity or individual providing administrative services by agreement with the National Arbitration Forum.

- B. Parties may agree to submit any matter, including any Claim for legal or equitable relief, to arbitration unless prohibited by applicable law. FORUM and its panel of arbitrators are competent to conduct arbitrations under any set of rules agreed to by the parties, unless the rules violate law or public policy.
- C. Business-to-Business Arbitrations will be conducted in accord with the applicable Code for Resolving Business-to-Business Disputes in effect at the time the Claim is filed, unless the law or the agreement of the Parties provides otherwise. A case that has been Stayed, extended or Adjourned for more than one hundred eighty (180) days may be subject to the Code of Procedure and Fee Schedule in effect at the time the case proceeds.
- D. Parties may modify or supplement these rules as permitted by law.

RULE 1.3. Representation.

- A. Parties may act on their own behalf or may be represented by an attorney or by a person who makes an appearance on behalf of a Party.
- B. Parties, their Representatives, and all participants shall act respectfully toward FORUM staff, the Arbitrator, other Parties, Representatives, witnesses, and participants in the arbitration.

RULE 1.4. Confidentiality.

Arbitration proceedings are confidential unless all Parties agree or the law requires arbitration information to be made public. Arbitration Orders and Awards are not confidential and may be disclosed by a Party. The Arbitrator and FORUM may disclose case filings, case dispositions, and other case information filed with FORUM as required by a Court Order or the applicable law.

RULE 1.5. Form and Parties.

- A. Every Claim, Response, Amendment, and Request shall be in Writing and Signed by a Party or Representative. Statements in Claims, Responses, Amendments, and Requests may be made in separate or numbered sentences, paragraphs or

sections, and may refer to exhibits attached to Claims, Responses, Requests or Documents.

- B. Parties and Representatives shall provide the FORUM and all Parties with their names, current address, an address where service will be accepted, telephone numbers, available facsimile numbers, and e-mail addresses.
- C. English is the language used in FORUM proceedings unless the Parties agree to use another language. FORUM or Arbitrator may Order the Parties to provide translations at their own cost unless the FORUM has agreed in advance to the use of another language.
- D. A Party may be:
 - (1) An executor, administrator, guardian, bailee, trustee; or,
 - (2) An assignee, a successor in interest, a recipient of a transfer of interest; or,
 - (3) A guardian, conservator, fiduciary, or other legal Representative for an infant or incompetent person.

PART 2

**COMMENCEMENT OF
ARBITRATION**

RULE 2.1. Filing.

- A. A Party who serves a Claim or Response shall timely file these and all other Documents and Proof of Service with the FORUM. The filing of Proof of Service constitutes a certification that the service conforms to Rule 2.2. A Party who files paper Documents with the FORUM shall file two (2) copies. A Party who files Documents online need only file one set of Documents.
- B. Parties may file by Delivery as defined in Rule 1.1L, in person, or by other methods of filing authorized by the FORUM at:

6465 Wayzata Blvd., Suite 470
Minneapolis, Minnesota USA 55426

or

www.adrforum.com

or

info@adrforum.com

or

Fax: 952-345-1160

- C. FORUM may distribute copies of Documents filed with the FORUM to the Arbitrator(s), and Parties or their Representatives who have entered an Appearance with the FORUM.
- D. Filing is complete upon Receipt by the FORUM of all required Documents and fees. Claims, Responses, Requests, Notices, and all other Documents Received by FORUM are not considered filed until all required Documents are Received together with all applicable fees.
- E. The effective date of filing is the business day the FORUM Receives all required Documents and fees. A submission is due before midnight, United States Central Time, on its due date. If the due date falls on a weekend or federal holiday as defined in 5 U.S.C. §6103, the due date is the next business day.

RULE 2.2. Service of Claims, Responses, Requests, and Documents.

- A. The Claimant shall promptly effect service on each Respondent one (1) copy of the Initial Claim Documents, including all documents submitted to the FORUM and, if available, the FORUM file number, and including notice that the Respondent may obtain a copy of the Code of Procedure, without cost, from the Claimant or the FORUM.
- B. Service of Initial Claims and Third Party Claims shall be effective if done by any of these:
- (1) United States Postal Service Certified Mail Signed Return Receipt or equivalent service by the national postal service of the country where the Respondent resides or does business;
 - (2) Delivery by a private service with the Delivery receipt Signed by a person of suitable age and discretion who Received the Documents;
 - (3) Delivery with a Written acknowledgment of Delivery by the Respondent or a Representative;
 - (4) In accord with the Federal Rules of Civil Procedure of the United States or the rules of civil procedure of the jurisdiction where the Respondent entered into the Arbitration Agreement;
 - (5) In accord with any agreement of the Party served;
 - (6) Delivery to the e-mail address of the Party served; or
 - (7) Service is complete upon Receipt by the Party served or the filing of a Response with FORUM by a Respondent.
- C. Service of Responses, Counterclaims, Cross-claims, Requests, notices, and Documents shall be by Delivery, as defined in Rule 1.1L, to the address of all Parties or their Representatives at their addresses of record with the FORUM, or by using service methods for an Initial Claim in Rule 2.2B. Amended Claims shall be served or Delivered as provided in Rule 2.12D.
- D. An initiating letter will be sent to the addresses provided in Rule 2.2.
- E. The Party serving or Delivering a Claim, Response, Request, notice or Document shall timely Deliver copies to any Parties not required to be served.
- F. Parties and Representatives shall immediately notify FORUM and all other Parties of their mail, facsimile and e-mail address and any changes in their addresses. If they fail to do so, Parties and their Representatives agree to receive service at the previous address provided to the FORUM.

RULE 2.3. Locale

The Locale of the arbitration will be the Locale designated in the parties' underlying contract or by agreement of the parties. If there is no agreement by the parties, the Locale will be determined by FORUM based on factors including the location of the circumstances of the dispute, the convenience of parties and the financial burden on the respective parties. The decision of FORUM is final.

RULE 2.4. Notices and Conferences.

- A. FORUM may notify and communicate with a Party or Parties by Writing, facsimile (fax), e-mail, telex, telegram, telephone, in person or by other means of communication.
- B. FORUM or Arbitrator may conduct a conference with a Party or Parties to discuss procedural matters on the initiative of the FORUM or at the Request of a Party or Arbitrator.
- C. FORUM may issue a Scheduling Notice regarding the Hearing process, including preliminary Hearings.

RULE 2.5. Time Periods, Time Extensions, Adjournments, and Stays.

- A. Time Periods. In computing any period of time under this Code, the day of the act or event from which the designated period of time begins to run shall not be included.
- B. Holidays. Saturdays, Sundays, and federal holidays of the United States are not included in the computation of time. Any event that falls due on a weekend day or federal holiday as defined in 5 USC 6103, is due the following business day.
- C. Enforcement. The time periods established in this Code are to be strictly enforced and a Party's untimely Claim, Response, Request, Notice, Document or submission may be denied solely because it is untimely.
- D. Time Extensions. FORUM may extend time periods in this Code at the request of a Party, by the Arbitrator, or at FORUM's own discretion for good cause shown. A Request for a Time Extension must be filed with FORUM and delivered on all other Parties at least seven (7) days before the time period ends or no later than a deadline established by a Scheduling Notice, whichever is earlier. A Request submitted after the time period has ended will not be considered unless extraordinary circumstances exist.
- E. Adjournments. An Arbitrator may Adjourn the arbitration process or a Hearing to a later date. A Rule 2.13 Request for an Adjournment must be filed with FORUM

and served on the other Parties at least seven (7) days before the scheduled event. A Request submitted after the time period has ended will not be considered unless extraordinary circumstances exist.

- F. FORUM shall Stay a case if ordered by a court of competent jurisdiction.
- G. Abeyance and Abeyance Fee. A case Adjourned for more than 365 consecutive calendar days will be placed into Abeyance by FORUM. If a case is placed in abeyance by consent of all Parties, FORUM shall keep the case in abeyance without charge for up to 365 calendar days. If the Parties consent to keeping a case in abeyance for any additional time, the Claimant shall pay to the FORUM an administrative fee of \$200 for each additional period of up to 365 calendar days. If the Claimant fails to pay the required fee, FORUM has the right to administratively dismiss the case after providing notice to all Parties.
- H. International. For arbitration Hearings to be held outside of the United States, an additional thirty (30) days shall be added to the time periods in Rule 2.8 of this Code. Additional time for other proceedings will be made available at the determination of FORUM, or at the Request of a Party.

RULE 2.6. Time Limitations.

- A. No Claim may be brought after the passage of time which would preclude a Claim regarding the same or similar subject matter being brought in court. This time limitation shall be suspended for the period of time a court of competent jurisdiction exercises authority over the Claim or dispute. This rule shall not extend nor shorten statutes of limitation or time limits agreed to by the Parties, nor shall this rule apply to any case that is directed to arbitration by a court of competent jurisdiction.
- B. Respondent shall raise this as an affirmative defense in its response.
- C. An Arbitrator may decide this issue as a threshold issue in the arbitration.

RULE 2.7. Initial Claim.

- A. An Initial Claim, which begins an arbitration in accord with Rule 2.1 of this Code, shall include:
 - (1) A statement in plain language of the dispute or controversy, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the specific value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 2.7B, and other relevant and reliable information supporting the Claim; and

- (2) A copy of the Arbitration Agreement; and
 - (3) A selection of Document Hearing as described in Rule 4.2 or Participatory Hearing as described in Rule 4.3; and
 - (4) The appropriate Filing Fee as provided in the Fee Schedule.
- B. A Claimant who seeks costs and attorney fees must include this statement in the Claim and may either:
- (1) State the specific amount sought in the Claim; or
 - (2) State the estimated Claim and amend the Claim to state the specific amount sought:
 - a. For Document Hearings no later than ten (10) days from the date of the Notice of the Selection of an Arbitrator; or
 - b. For Participatory Hearings no later than seven (7) days from the close of the Hearing; or
 - c. For prevailing Parties, by Order of the Arbitrator.
- C. After service of the Initial Claim on the Respondent, the Claimant shall promptly file with FORUM Proof of Service of the Initial Claim on the Respondent. A Claim shall not proceed to arbitration until FORUM has received a copy of the Proof of Service of the Initial Claim or a Response has been filed with FORUM.
- D. An arbitration shall commence on the date the Respondent is served with the Initial Claim Documents or the date a Response is filed with FORUM, whichever is earlier.
- E. FORUM will send a Letter of Initiation commencing the case upon receipt of Proof of Service according to Rule 2.2.
- F. An Arbitrator may reject, in whole or in part, an Initial Claim that does not substantially conform to this rule.
- G. A Claimant may seek any remedy or relief allowed by applicable substantive law.

RULE 2.8. Response.

- A. Upon service of an Initial Claim, Counterclaim, Cross-claim, or Third Party Claim on a Respondent, the Respondent may Deliver to the Claimant and file with FORUM, within thirty (30) days from Receipt of service; a Response which can include:
- (1) An objection to the arbitration of the Claim, if the Respondent so objects, or an objection to FORUM jurisdiction in the administration of the matter.
 - (2) A statement of any affirmative defenses asserted by Respondents including but not limited to the timely filing of the Claim in accordance with Rule 2.6; and a copy of available Documents that support those defenses;
 - (3) Any Counterclaim the Respondent has against the Claimant in accord with Rule 2.9 of this Code, including the Counterclaim filing fee;
 - (4) Proof of Delivery of any Counterclaims to all other Parties; and
 - (5) Any fees as provided in the Fee Schedule or as required by the agreement of the Parties.
- B. Claims and Counterclaims may be denied by Respondent, however, Claims and Counterclaims for which no denial is received will be presumptively deemed to have been denied.
- C. An objection to the jurisdiction of the Arbitrator, FORUM, or to the arbitrability of a Claim or Counterclaim must be received no later than the filing of the Response.

RULE 2.9. Counterclaim.

- A. A Respondent may assert a Counterclaim against a Claimant by Delivering to the Claimant, as part of the Response in accord with Rule 2.8, Counterclaim Documents which include:
- (1) A Counterclaim stating in plain language the dispute or controversy, the facts and the law (if known) supporting the Counterclaim, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 2.7B, and other relevant and reliable information supporting the Counterclaim.
- B. The Respondent shall also pay the filing fee for a Counterclaim as provided in the Fee Schedule at the time of filing the Counterclaim with FORUM.

- C. An Arbitrator may reject, in whole or in part, Counterclaim Documents that do not substantially conform to this rule.

RULE 2.10. Cross-claim.

- A. A Party may assert a Claim against a co-Party arising out of the same or related transaction or occurrence of the dispute or controversy by Delivering to the co-Party the Cross-claim Documents which include:
 - (1) A Cross-claim setting forth in plain language the dispute or controversy, the facts and the law (if known) supporting the Cross-claim, the specific relief requested and the reasons supporting the relief, the specific amount and computation of any money or damages, the non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 2.7B, and other relevant and reliable information supporting the Cross-claim;
- B. A Party shall Deliver a Cross-claim on all Parties and shall file copies with FORUM within fifteen (15) days of the date of service of a Response.
- C. The Cross-claimant shall file with FORUM, promptly after Delivery of the Cross-claim, the proof of Delivery of the Cross-claim on all Parties, with the fee for filing a Cross-claim, if any, and the fee for a Hearing, if selected, as provided in the Fee Schedule.
- D. An Arbitrator may reject, in whole or in part, Cross-claim Documents that do not substantially conform to this rule.

RULE 2.11. Third Party Claim.

- A. If a Respondent asserts that a non-Party, who has entered into an Arbitration Agreement but was not served by the Claimant, is responsible for the Award demanded, the Respondent may serve a Third Party Claim on this Party, which shall include:
 - (1) All information required in an Initial Claim in Rule 2.7 of this Code, including a copy of the Claim Documents that gave rise to the Third Party Claim; and
 - (2) A copy of the Arbitration Agreement; and
 - (3) The appropriate Filing Fee as provided in the Fee Schedule.
- B. The Third Party Claim shall be Delivered to all other Parties and a copy shall be filed with FORUM within thirty (30) days of the date of service of the Initial Claim, as required by Rule 2.11A.

- C. The Third Party Claimant shall file with FORUM, promptly after service of the Third Party Claim the Proof of Service of the Third Party Claim on Third Party Respondent and proof of Delivery on all other Parties, with the fee for a Third Party Claim, and the fee for a Hearing, if selected, as provided in the Fee Schedule.
- D. An Arbitrator may reject, in whole or in part, Third Party Claim Documents that do not substantially conform to this rule.

RULE 2.12. Amendment.

- A. A Claim, Counterclaim or Response may be Amended:
 - (1) By agreement of the Parties at any time;
 - (2) By filing a Request according to Rule 2.13 with FORUM prior to the appointment of the Arbitrator; or
 - (3) By Request and approval of the Arbitrator by filing a Request in accordance with Rule 2.13.
- B. An amended Claim which increases the Claim Amount shall also be accompanied by any appropriate additional filing fee in the Fee Schedule.
- C. An Amendment of a Claim or Response, or a Request for an Amendment, shall be designated as such and promptly served on all Parties and filed with FORUM.
- D. A Respondent may respond to an amended Claim within the time remaining for a Response to the Initial Claim or within fifteen (15) days after service of the amended Claim, whichever time is longer, unless the Parties agree or an Arbitrator orders otherwise.
- E. After service of the Initial Claim, an Amendment of a Claim that increases the monetary amount of the value of relief sought in the Initial Claim must be served in accord with Rule 2.2B. All other Amendments may be Delivered in accord with Rule 1.1L.
- F. Any change to the Claim before service is made on Respondent is not an Amendment. After service, a reduction of the Claim Amount, a change of address of a Party, and the substitution of a successor in interest are not Amendments.
- G. An Amendment of a Claim shall relate back to the time the Initial Claim was commenced unless otherwise provided by applicable law.

RULE 2.13. Request to Arbitrator or FORUM.

- A. A Party may Request an Order or other relief from an Arbitrator or FORUM, if the Arbitrator has not been appointed, by filing with FORUM:
 - (1) A Document stating in plain language:
 - a. The Request;
 - b. The specific rule, if any, relied on for an Order or other relief;
 - c. The specific relief or Order sought;
 - d. The facts and law supporting the Request; and
 - e. Any other relevant and reliable information.
 - (2) All Documents that support the Request, Order or relief; and
 - (3) Proof of Delivery of the Request Documents on all Parties.
- B. The Party shall Deliver the Rule 2.13A (1) and (2) Documents to all Parties at the time of filing.
- C. Any other Party may object to a Request by filing with FORUM and Delivering to all Parties Written objection(s) within ten (10) days of Delivery of the Request, unless another time is provided by rule or is necessary based on the relief requested.
- D. Requests directed to FORUM are decided by FORUM as permitted by the Code. Requests directed to an Arbitrator are decided by an Arbitrator. Prior to the appointment of an Arbitrator, Requests may be granted or denied by the FORUM as permitted by this Code.
- E. All Requests or motions made by a Party are Rule 2.13 Requests.

RULE 2.14. Joinder, Intervention, Consolidation, and Separation.

- A. Any individual or Entity may, as agreed to by the Parties or as required by applicable law, join any dispute, controversy, Claim or Response in an arbitration by filing a Claim Document stating the grounds. If there is no agreement by the Parties concerning the addition of Parties, then the issue will be decided by the Arbitrator when appointed, or an Emergency Arbitrator if Requested.
- B. Arbitrator has no authority to issue an Order or Award binding any individual or Entity who is not a Party, unless that individual or Entity agrees or as required by applicable law. FORUM may require a Party to pay a fee.

- C. Separate arbitrations involving the same named Parties and a common question of fact or law arising from the same or related transaction or occurrence shall be consolidated at the Request of a Party or at the determination of the FORUM if the consolidation promotes fairness, efficiency or economy. A Party may challenge this consolidation by filing a Rule 2.13 Request to sever, and an Arbitrator shall promptly decide this Request by determining whether consolidation or severance promotes fairness, efficiency or economy. FORUM may require a Party to pay a fee.
- D. An arbitration involving multiple Claims or Responses or Parties may be separated into individual Hearings if such proceedings promote fairness, efficiency or economy. FORUM may require the Party or Parties to pay additional fees for separate Hearings.
- E. A Request by an individual or Entity to join or a Request by a Party for separation must be filed in accord with Rule 2.13.
- F. An Arbitrator shall promptly decide Requests for joinder, intervention, severance or separation. Any decision by an arbitrator joining, consolidating or aggregating parties or claims is a partial final Award enforceable under 9 U.S.C. § 9.

PART 3

ARBITRATORS

RULE 3.1. Authority of Arbitrators.

- A. An Arbitrator shall follow the applicable substantive law and may grant any legal, equitable or other remedy or relief provided by law in deciding a Claim, Response or Request properly submitted by a Party under this Code. Claims, Responses, remedies or relief cannot be unlawfully restricted.
- B. Arbitrators have the powers provided by this Code, the agreement of the Parties, and the applicable law.
- C. Arbitrators selected in accord with the selection process of this Code (Rule 3.3A(3)) shall take an oath prescribed by the Arbitration Director and shall be neutral and independent.
- D. Arbitrators shall decide all factual, legal, and other arbitrable issues submitted by the Parties and do not have the power to decide matters not properly submitted under this Code.
- E. An Arbitrator shall have the power to rule on all issues, Claims, Responses, questions of arbitrability, and objections regarding the existence, scope, and validity of the Arbitration Agreement including all objections relating to jurisdiction, unconscionability, contract law, and enforceability of the Arbitration Agreement. The Arbitrator may rule on objections to jurisdiction of the Arbitrator, FORUM, or to the arbitrability of a claim or counterclaim as a preliminary matter where appropriate.

RULE 3.2. Number of Arbitrators. Selection of the Chair.

- A. Unless the Parties agree otherwise, one (1) Arbitrator shall conduct the Hearing and issue an Award.
- B. Where the Parties have agreed to more than one (1) Arbitrator, that number of Arbitrators will serve and FORUM shall designate the chair of the panel, unless the Parties agree otherwise.

RULE 3.3. Selection of Arbitrators.

- A. Parties select an Arbitrator(s):
 - (1) By selecting an Arbitrator or a panel of Arbitrators on mutually agreeable terms; or
 - (2) By each Party selecting an Arbitrator and those Arbitrators selecting another Arbitrator for a panel of Arbitrators; or
 - (3) By using the selection process of this Code, if there is no agreement on an Arbitrator or a panel of Arbitrators or a selection method.
- B. Parties must notify FORUM of their election of the process of this Code or other agreement for Arbitrator selection, no later than thirty (30) days after the filing of a Response with FORUM.
- C. For Larger Claim Hearings, FORUM shall provide a list of up to nine Arbitrator candidates, unless the FORUM determines another number to be indicated. Each Party making an Appearance may strike up to three candidates and shall rank the remaining candidates in numerical order of preference with the number one being the most preferred. A party may Request disqualification of any candidate in accord with Rule 3.4C by notifying the FORUM in Writing, within ten (10) days of the date of issuance of the strike and rank list.
- D. For Smaller Claim Hearings, the Claimant will select either a Participatory Hearing or a Document Hearing at the time of Filing and the Respondent may select a different type of Hearing in the Response.
 - (1) The Party selecting the Participatory Hearing will bear the increased cost of the Arbitrator's fee by paying the difference between the Document Hearing and the Participatory Hearing.
 - (2) FORUM shall provide a list of up to three Arbitrator candidates, unless the FORUM determines another number to be indicated. Each Party making an Appearance may strike one candidate and shall rank the remaining candidates in numerical order of preference with the number one being the most preferred. A participating Party may request disqualification of any subsequent Arbitrator in accord with Rule 3.4C.
- E. Upon Request for an Emergency Hearing or if the need for an Arbitrator arises before an Arbitrator is designated, FORUM shall promptly designate an Arbitrator and the issues to be decided. Fees charged for Emergency Hearings will include the FORUM fee and the fees for the Arbitrator's compensation.
- F. A Party is prohibited from striking or removing an Arbitrator or an Arbitrator candidate based on race, gender, nationality, ethnicity, religion, age, disability, marital status, family status, or sexual orientation. A Party may only strike or

remove an Arbitrator in good faith and not for the purpose of delay or to gain an unfair advantage.

- G. FORUM will notify participating Parties upon the appointment of an Arbitrator(s). Notice of Arbitrator(s) selection need not be provided to a Party who has failed to respond to a Claim or otherwise appear or defend or pay fees as provided by this Code.

RULE 3.4. Disqualification of Arbitrator.

- A. An Arbitrator shall be disqualified if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased, including but not limited to the following:
- (1) The Arbitrator has a personal bias or prejudice concerning a Party, or personal knowledge of disputed evidentiary facts;
 - (2) The Arbitrator has served as an attorney to any Party or Representative, the Arbitrator has been associated with a company, firm, or similar entity, who has represented a Party during that association, or the Arbitrator or an associated attorney is a material witness concerning the matter before the Arbitrator;
 - (3) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in a matter before the Arbitrator;
 - (4) The Arbitrator, individually or as a fiduciary, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, has a direct financial interest in a Party;
 - (5) The Arbitrator or the Arbitrator's spouse or minor child residing in the Arbitrator's household has a significant personal relationship with any Party or a Representative for a Party; or
 - (6) The Arbitrator or the Arbitrator's spouse:
 - a. Is a Party to the proceeding, or an officer, director, or trustee of a Party; or,
 - b. Is acting as a Representative in the proceeding.
- B. Before an Arbitrator is appointed:
- (1) An Arbitrator shall provide FORUM with a complete and accurate resume, a copy of which FORUM shall provide the Parties at the time of the selection process.

- (2) An Arbitrator shall disclose to FORUM circumstances that create a conflict of interest or cause an Arbitrator to be unfair or biased or which will cause delay in the process.
 - (3) FORUM's Arbitration Director shall review the Arbitrator's submissions and, if necessary, disqualify the Arbitrator and shall inform the Parties if the Arbitrator is disqualified.
- C. A Party making an Appearance may request that an Arbitrator be disqualified by filing with FORUM a Written Request stating the circumstances and specific material reasons for the disqualification. A Party who knows or has reason to know of circumstances that may disqualify an Arbitrator must immediately disclose those circumstances to the Arbitrator, the FORUM, and all other Parties. A Party who fails to timely and properly disclose disqualifying circumstances agrees to accept the Arbitrator and waives any subsequent objection to the Arbitrator in the pending arbitration or any other legal proceeding.
- D. A Request to disqualify an Arbitrator must be filed with FORUM within ten (10) days from the date of the Notice of Arbitrator selection. FORUM shall promptly review the Request and shall disqualify the Arbitrator if circumstances exist that require disqualification in accord with Rule 3.4A or other material circumstances creating bias or the appearance of bias.
- E. If an Arbitrator is disqualified or becomes unable to arbitrate before the issuance of an Award, FORUM shall designate a new Arbitrator or panel or re-schedule the hearing, unless the Parties agree otherwise.

RULE 3.5. Communications with Arbitrators.

- A. No Party or Party Representative shall directly communicate with an Arbitrator except at a Participatory Hearing, by providing Documents in accord with this Code, or during a conference with the Arbitrator scheduled by the FORUM.
- B. No Party or Party Representative shall communicate with a Party Arbitrator after the complete panel of Arbitrators has been selected, except at a Participatory Hearing, by providing Documents in accord with this Code, or during a conference with the Arbitrator scheduled by the FORUM.

PART 4

HEARING

RULE 4.1 Preliminary Scheduling Hearing.

- A. In cases with Claims over \$75,000, the Arbitrator may, as soon as practicable within 30 (thirty) days from appointment, except in exceptional circumstances, conduct a preliminary hearing for the purpose of scheduling, resolving differences between the parties as to submissions, and making decisions on preliminary matters such as those set out below if the Arbitrator such a Hearing will promote efficiency. For cases with Claims less than \$75,000, a preliminary hearing may be scheduled at the request of either party.
- B. The preliminary hearing is a Participatory Hearing for the purpose of fee calculation and shall be conducted via telephone, but may be conducted online, via email, or in person, if the parties agree.
- C. Matters that may be considered at the preliminary hearing, without limitation, include:
- (1) Whether or not temporary injunctive relief is appropriate, or the dates by which this matter should be briefed;
 - (2) The forms of alternative dispute resolution to be used including whether or not the parties wish to participate in mediation;
 - (3) the nature of discovery requested and timelines for discovery, including deadlines for direct testimony, deadlines for identification and availability of witnesses and nature of their expected testimony, when and what sort of expert reports will be permitted;
 - (4) whether or not any preliminary or motion hearings will be needed or permitted, and if so, the timelines and discovery preceding that hearing;
 - (5) whether or not a special master or other expert neutral will be appointed for the purpose of classifying information as a trade or business secret;
 - (6) designation of substantive law;

- (7) procedure for submitting evidence and material obtained in discovery;
- (8) procedure for obtaining subpoenas;
- (9) scheduling of hearings, including any expedited timelines; and
- (10) whether there will be a reasoned Award.

D. Statements that may be requested or required may include:

- (1) a joint pre-hearing statement;
- (2) witnesses, including experts, biographies.

RULE 4.2. Selection of a Document Hearing.

- A. In cases with Claims less than \$75,000, Parties may select a Document Hearing upon election by the Claimant at filing, unless the Respondent selects a Participatory Hearing in the Response.
 - (1) If Parties agree on the Hearing type, the Arbitrator's fees for the Hearing will be apportioned equally, unless the Arbitration Agreement or the law provides otherwise.
 - (2) If Claimant selects a Participatory Hearing and Respondent selects a Documents Hearing, or Respondent selects a Participatory Hearing where Claimant has selected a Documents Hearing, the Party selecting the Participatory Hearing shall bear the difference in the cost of the Arbitrator's fees;
- B. In cases with Claims over \$75,000, a Party may select a Document Hearing prior to the selection of an Arbitrator by submitting a Request in accordance with Rule 2.13 indicating an agreement to select Document Hearing, however, if no agreement has been reached, the non-requesting Party may object in writing within ten (10) days and the Arbitration will proceed to a Participatory Hearing. If Parties Request a Document Hearing after the appointment of an Arbitrator, the Arbitrator shall decide the type of Hearing.
- C. Should either Party fail to pay its share of the deposits and or fees and the other Party wishes to proceed and advances the funds to pay for both sides' costs, the paying party may Request and the Arbitrator may Order a Document Hearing, regardless of the size of the Claim.
- D. FORUM shall provide Written notice of a Document Hearing to all Parties not later than fifteen (15) days before the Document Hearing.

- E. For sufficient reason, FORUM or Arbitrator may postpone a Document Hearing at the Request of a Party or on the initiative of the Arbitrator or the FORUM.

RULE 4.3. Selection of a Participatory Hearing.

- A. A Party may select a Participatory Hearing of any type by making the selection of a Participatory Hearing when filing a Demand for Arbitration and designating the type of Participatory Hearing requested: In-person, or if agreed to by the Parties then by telephone, by video-conference, or via the internet.
- B. For Smaller Claims cases:
 - (1) A selection of a Participatory Hearing must be filed with FORUM not later than fourteen (14) days after the Delivery of a Response. A Request for a Participatory Hearing made after this time may be filed in accord with Rule 2.13. The failure to timely select a Participatory Hearing is a waiver of the right to a Participatory Hearing.
 - (2) FORUM shall set the date, time, place, and length of the Participatory Hearing for cases with Claims less than \$75,000 and notify all Parties of the Hearing at least thirty (30) days before the beginning of the Participatory Hearing.
 - (3) Before or after the beginning of a Participatory Hearing, if it is determined that the Participatory Hearing requires additional sessions, the FORUM or Arbitrator shall require that the responsible Party pay for additional sessions in accord with Rule 6.1, or may suspend the Hearing until the additional sessions are properly scheduled.
- C. Whichever Party elects a Participatory Hearing rather than a Document Hearing for a Smaller Claims case shall bear the difference in the cost of the Arbitrator's compensation; should the Parties agree to a Participatory Hearing, the costs will be allocated equally.
- D. Parties to a Participatory Hearing shall provide within 15 days of the election of Hearing type or Response as appropriate:
 - (1) Each Party's estimate of the number of hours or days required;
 - (2) The names of witnesses proposed to offer evidence at the Hearing;
 - (3) The estimated number of exhibits to be offered at the Hearing and their description; and
 - (4) Any Request or requirement for a Written Award, Written Reasoned Award or Written Findings of Fact and Conclusions of Law Reasoned Award accompanied by the appropriate fee.

- E. For sufficient reason, FORUM or Arbitrator may postpone a Participatory Hearing at the Request of a Party or on the initiative of the Arbitrator or FORUM.

RULE 4.4. Request for an Emergency Hearing for Immediate Relief.

- A. A Party may Request an Emergency Hearing to obtain Immediate Relief in an Order or Award. A Request for an Emergency Hearing may be brought when the Respondent is served with Claim Documents or at any time before an Award becomes final and shall be accompanied by an explanation of the reasons for the Emergency relief and the applicable law and by the fee as provided in the Fee Schedule.
- B. The Arbitrator shall promptly decide the Request. If an Arbitrator has not been appointed to the case, the FORUM Arbitration Director will appoint a neutral Arbitrator who is free from conflicts to decide the matter within one business day.
- C. The requesting Party shall serve Notice of the Emergency Hearing on all Parties not less than forty-eight (48) hours before the time set for the Emergency Hearing. Proof of Service of this Notice shall be filed with FORUM before the Emergency Document Hearing or shall be presented at the Emergency Participatory Hearing.
- D. A Party may seek a temporary restraining Order or a preliminary injunction to prevent irreparable injury by requesting an Emergency Hearing and filing with FORUM and serving on the Respondent and any other Parties the following:
 - (1) An Initial Claim in accord with Rule 2.7 or a Counterclaim or Third Party Claim;
 - (2) A Request that explains the irreparable injury and the specific reasons and Documents supporting the Request;
 - (3) An Affidavit from a person with personal knowledge describing the irreparable injury and specific facts;
 - (4) The proposed security for the relief sought;
 - (5) A proposed Order stating the specific relief sought, including a Hearing for a preliminary injunction if a temporary restraining Order is sought; and
 - (6) The fee as provided in the Fee Schedule.
- E. Any Party may immediately file with FORUM and Deliver to all Parties an objection to the Request.
- F. A temporary restraining Order may be granted without Written or oral notice to the Respondent or that Party's Representative only if:

- (1) It clearly appears from specific facts shown by Affidavit that immediate and irreparable injury, loss or damage will result to the Requesting Party before the Respondent or that Party's Representative can be heard in opposition; and
 - (2) The Requesting Party or Representative of the Requesting Party certifies in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claims that notice should not be required.
 - (3) A temporary restraining Order granted without notice shall be immediately served on all Parties by the Requesting Party.
- G. A preliminary injunction shall be issued only upon notice to all Parties.
- H. An Emergency Telephone, Document, or In-person Hearing shall be scheduled as soon as possible by the FORUM. A Hearing for a temporary restraining Order shall be scheduled no later than forty-eight (48) hours from the time of filing or notice, whichever is later. If a temporary restraining Order is issued without notice, a Party may request that a Hearing with notice be held within forty-eight (48) hours of the issuance of the temporary restraining Order.
- I. An Arbitrator will conduct the Hearing and issue an Order promptly.
- J. Every Order granting relief shall state the time and date of issuance, the reasons for the issuance, including the irreparable injury, the specific conduct to be restrained, the duration of the Order, the security required, and, if applicable, the reason why it was issued without notice.
- K. A temporary restraining Order shall expire within the time fixed in the Order, not to exceed ten (10) days, unless the Parties agree to a longer period of time or an Arbitrator issues a preliminary injunction.
- L. If a Party who receives a temporary restraining Order fails to timely proceed with the Hearing for a preliminary injunction, the Arbitrator shall dissolve the temporary restraining Order.
- M. A Hearing on a Request for a preliminary injunction may be consolidated by the Arbitrator with the final Hearing in the case upon a Request by a Party.
- N. No temporary restraining Order or preliminary injunction shall be issued unless the Requesting Party provides security as deemed proper by the Arbitrator for the payment of costs and damages as may be incurred or suffered by a Party wrongfully restrained or enjoined.
- O. Where security is given in the form of a bond, stipulation or other undertaking with a surety or sureties, each surety shall agree in writing to submit to the jurisdiction of the FORUM and the arbitration and agree to be bound by all Orders

issued by the Arbitrator in the case including Orders affecting the liability of each surety on the bond, stipulation or undertaking.

RULE 4.5. Document Hearing.

- A. A Party may submit any Document or property for consideration by the Arbitrator in a Document Hearing by filing with FORUM two (2) copies of the Document or property description and Delivering to all other Parties copies of the Document and property description.
- B. Documents and/or property offered for consideration at a Document Hearing must be Received by FORUM and Delivered to all other Parties no later than ten (10) days after the date of the Notice of Selection of an Arbitrator as provided in Rule 3.3. Documents property submitted after that date will be considered by Request of the submitting Party and admission granted by the Arbitrator for sufficient reason.
- C. The Arbitrator shall determine the admissibility and weight of evidence and shall not be strictly bound by rules of evidence.
- D. During a Document Hearing, the Arbitrator may Request that the Parties submit additional information or Documents.
- F. The close of a Document Hearing occurs when the Arbitrator completes reviewing the Documents or property.
- G. The presence or involvement of a Party in a Hearing results in the waiver of any objections to the notice of the Hearing.

RULE 4.6. Discovery.

- A. Cooperative Discovery. After a Response is filed, Parties shall cooperate in the exchange of Documents and information. A Party seeking discovery shall contact other Parties and discuss discovery information and any objections and arrange for the exchange of Documents and information.
- B. Seeking Discovery.
 - (1) If the Parties are unable to resolve discovery matters under Rule 4.6A, a Party may seek the disclosure of Documents, sworn answers to not more than twenty-five (25) Written questions, and one or more depositions before a Hearing where:
 - a. The information sought is relevant to a Claim or Response, reliable, and informative to the Arbitrator; and

- b. The production of the information sought is reasonable and not unduly burdensome and expensive.
 - (2) The Party seeking discovery shall Deliver to all other Parties a Notice identifying the Documents to be produced, Written questions to be answered, or the Notice of deposition identifying the deponent, the proposed length of time for the deposition, and the scope of the deposition, no later than thirty (30) days before the date of a Hearing.
- C. Responding to Discovery. A Party Receiving a Notice shall Deliver to the Requesting Party:
 - (1) Within five (5) days after Receipt of the Notice of a deposition, a Written reply agreeing to the deposition or objecting to the deposition, including an explanation of the objections.
 - (2) Within twenty (20) days of the Receipt of the Notice for other discovery, a copy of the Documents Requested or a statement permitting an examination of the original Documents or property at a convenient time and place, sworn answers to the Written questions, or a Written agreement to provide other Requested discovery, or a Written objection explaining why all or some of the Documents, property or other discovery has not been provided.
- D. Request for Discovery. If a Party objects in accord with this rule, the Requesting Party may file with FORUM and Deliver to all Parties, no later than the Scheduling Notice deadline or ten (10) days after Receiving the objection:
 - (1) A Rule 2.13 Request for a Discovery Order;
 - (2) A copy of the Written objections; and
 - (3) A Written statement of reasons why the Requesting Party needs the discovery.
- E. Decision. An Arbitrator shall promptly determine whether sufficient reason exists for the discovery and issue an Order.
- F. Consequences. An Arbitrator may draw an unfavorable, adverse inference or presumption from the failure of a Party to provide discovery. An Arbitrator may impose Sanctions and costs and fees related to seeking or resisting discovery under Rule 4.5, including reasonable attorney fees, Arbitrator fees, and administrative fees against the non-prevailing Party.

RULE 4.7. Subpoena for In-person Participatory Hearing.

- A. A Party may obtain a subpoena from an Arbitrator for a Participatory Hearing ordering a non-Party witness or other person permitted by law to produce Documents or property at the Hearing or ordering a witness to testify at the Hearing by filing a Request with the Arbitrator.
- B. The Request shall state reasons for the relevancy and reliability of the Documents, property or testimony and shall identify the witness and describe the Documents or property.
- C. A Request for a Rule 4.7 subpoena must be Received by the Arbitrator no later than twenty-one (21) days before the Hearing, unless the Scheduling Notice provides otherwise.
- D. The subpoena may be issued by an Arbitrator if the Request conforms to Rules 4.6A, 4.6B, and 4.6C and demonstrates the relevancy and reliability of the Documents, property or testimony.
- E. The subpoena shall be served:
 - (1) By a person who is not a Party and is not less than eighteen (18) years of age if served upon a non-Party witness, or
 - (2) By Delivery or personal service if served upon a Party witness or the Party. The subpoena must be Received by the person subpoenaed no later than five (5) days before the Hearing, unless the Arbitrator Orders otherwise.
- F. A subpoena may be served on a non-Party witness at any place allowed by law.
- G. Within five (5) days after being served with the subpoena or before the time specified in the subpoena to appear at the Hearing if less than five (5) days, the witness or a Party may Request an Order by the Arbitrator dismissing or modifying the subpoena. The Request shall conform to Rule 2.13 and shall state why the subpoena should be dismissed or modified.
- H. If a witness or Party makes a Request under Rule 4.7, an Arbitrator shall promptly determine whether sufficient reason exists for the Order, or enforce the subpoena.
- I. If the witness fails to appear at the Hearing, the Party having served the subpoena shall provide the Arbitrator with the Proof of Service of the subpoena.
- J. Subpoenas issued under this Code may be enforced in accord with the applicable law.
- K. An Arbitrator may draw an unfavorable, adverse inference or presumption from the failure of a Party to produce a Party witness, in addition to imposing any other Sanction.

RULE 4.8. Exchange of Information Before a Participatory Hearing.

- A. Before all Participatory Hearings, each Party shall Deliver to all other Parties and file with FORUM, unless the Arbitration Director directs otherwise:
 - (1) A copy of all Documents and a detailed description of any property to be introduced at the Hearing;
 - (2) A list and description of all exhibits to be introduced;
 - (3) A list of all witnesses expected to testify and a summary of their testimony; and
 - (4) Any Request for additional Participatory Hearing sessions, accompanied by the fee as provided in the Fee Schedule.
- B. All Parties and the Arbitrator shall Receive the Documents witness and exhibits lists, no later than ten (10) days before the Hearing, unless a Notice from the FORUM or Arbitrator provides otherwise. Any Lists, Documents, and Affidavits may be submitted after that date only by Request of the submitting Party and approval of the Arbitrator. Such Requests may be granted by the Arbitrator for sufficient reason.
- C. The Arbitrator may exclude witnesses, testimony or Documents sought to be introduced by a Party who fails to comply with Rules 4.7A and 4.7B.

RULE 4.9. Participatory Hearing.

- A. A Participatory Hearing may include:
 - (1) An introduction by the Arbitrator.
 - (2) Opening statements by each of the Parties. The Respondent and other Parties have the option of reserving the opening statement until the presentation of their evidence.
 - (3) Claimant's case. The Claimant may introduce evidence, examine witnesses, and submit exhibits. The Respondent and other Parties may also examine the witnesses and submit exhibits.
 - (4) Respondent's case. The Respondent may introduce evidence, examine witnesses, and submit exhibits. The Claimant and other Parties may also examine the witnesses and submit exhibits.
 - (5) Additional cases. Other Parties may present their case.

- (6) Rebuttal. A Party may introduce additional evidence, examine witnesses, and submit exhibits to rebut an opposing Party's case if the submissions are not repetitive, cumulative or otherwise inadmissible.
 - (7) Summation. Each Party may present a closing statement.
 - (8) Concluding remarks by the Arbitrator.
- B. The close of a Participatory Hearing occurs when either the Arbitrator announces the Hearing closed or more than twenty (20) days elapse from the final session.

RULE 4.10. Participatory Hearing Proceedings.

- A. A Participatory Hearing may consist of one or more sessions. A Hearing may be conducted on any business day unless the Parties and Arbitrator agree otherwise.
- B. Hearing Sessions: Parties shall select sufficient time and sessions for Participatory Hearings in accord with Rule 4.3B.
- C. For cases with Claims less than \$75,000, a Hearing session is included in the Participatory Hearing case fee and is scheduled for the following length of time, unless more time or sessions are selected and the fees are paid:
 - (1) Cases with Claims of less than \$10,000 are scheduled for up to 4 hours of Hearing time; this may include in-person Hearings, on-line Hearings, teleconferences and video-conferences.
 - (2) Cases with Claims of greater than \$10,000 but less than \$75,000 are scheduled for up to eight (8) hours of Hearing time; this may include in-person Hearings, on-line Hearings, teleconferences and video-conferences.
- D. The Arbitrator shall conduct a Participatory Hearing in an orderly, efficient, and economic manner, and shall determine the order and presentation of evidence and oral arguments.
- E. All Parties to the arbitration and their Representatives shall be entitled to attend or be involved in the Participatory Hearing. Other persons may not attend unless the Parties agree or the Arbitrator Orders otherwise. The Arbitrator may sequester witnesses.
- F. The Arbitrator may request Documents and information from the Parties, and may question any witness or Party to clarify evidence.
- G. An Arbitrator may Request Parties to submit additional information or Documents, including legal memoranda, which the FORUM, the Arbitrator, and the Parties shall Receive no later than thirty (30) days after the final Participatory Hearing session.

- H. A Party may Request permission to submit a post-hearing memorandum, which may be granted by the Arbitrator. The responsible Party shall pay the fee provided by the Fee Schedule.
- I. The presence or involvement of a Party in a Hearing results in the waiver of any objections to the Notice and scheduling of the Hearing.

RULE 4.11. Evidence in a Participatory Hearing.

- A. Presentation. Parties shall have a full and equal opportunity to present relevant and reliable evidence and oral and written arguments in support of their positions. Parties may present evidence and arguments in any reasonable form and by any means of communication.
- B. Oath. The Arbitrator shall administer an oath or affirmation before a witness testifies.
- C. Admissibility. The Arbitrator shall determine the admissibility and weight of evidence, and shall not be strictly bound by the rules of evidence.
- D. Objections. A Party may object to the introduction of evidence by another Party or a Request or question by an Arbitrator, and the Arbitrator shall rule on the objection.
- E. Site Examination. An Arbitrator may visit a site to examine a matter relating to the arbitration accompanied by the Parties or their Representatives, if they so choose.
- F. Record. No record of a Hearing shall be kept unless agreed by all Parties or Ordered by the Arbitrator. The responsible Party or Parties Requesting a record shall arrange and pay for the record, and promptly provide a copy of the transcript or recording to the Arbitrator and the FORUM at no cost to the Arbitrator or the FORUM, and, if Requested by another Party, to that Party, at that Party's expense.
- G. Interpreter. A Party who requires an interpreter shall arrange and pay for the interpreter. An Arbitrator may have an interpreter present, with a fee assessed to a Party or Parties as determined by the FORUM.

RULE 4.12. Arbitration Proceedings in Absence of a Party.

- A. An Arbitrator may issue an Award or Order when any Party has failed to respond, appear, or proceed at a Hearing, or otherwise defend as provided in this Code.

- B. If a Party does not respond to a Claim, an Arbitrator will timely review the merits of the Claim for purposes of issuing an Award or Order. The Claimant need not submit an additional Request for an Award.
- C. An Arbitrator may require an Affidavit, information or Documents from Parties who have appeared or conduct a Hearing to receive evidence necessary to issue an Award or Order. Documents submitted in Response to an Arbitrator's Request shall be filed with FORUM no later than thirty (30) days after the date of the Request. A Party may obtain forty-five (45) additional days to respond to an Arbitrator's Request by filing with FORUM and Delivering to all other Parties an extension notice before the initial thirty (30) day time period expires. Only one (1) extension by notice is available.
- D. Each Party making an Appearance shall be provided notices relating to a Hearing.
- E. No Award or Order shall be issued against a Party solely because that Party failed to respond, appear or defend.

PART 5

AWARDS AND ORDERS

RULE 5.1. Awards.

- A. An Award or Dispositive Order establishes the rights and obligations of all Parties named in the Award or Order and is final and binding, unless those Parties agree otherwise.
- B. An Award shall not exceed the money or relief requested in a Claim or amended Claim and any amount awarded under Rule 5.1C.
- C. An Award may include fees and costs awarded by an Arbitrator in favor of any Party only as permitted by law. The Arbitrator may include attorney fees and costs in the final Award or in a separate Award.
- D. An Award may include arbitration fees awarded by an Arbitrator or in favor of the FORUM for fees due.
- E. An Arbitrator shall endeavor to render an Award within thirty (30) days after the date of the close of the Hearing.
- F. All Awards and Orders shall be in Writing, dated, and Signed by the Arbitrator or by a majority of the panel, and filed with FORUM. Awards may be signed in counterparts by panels of Arbitrators.
- G. An Award of an arbitration panel shall be by a majority of the Arbitrators. The chair of an arbitration panel may issue Orders, make rulings, and conduct proceedings.
- H. Awards shall be based upon a preponderance of the evidence presented, unless an agreement of the Parties or the applicable law provides otherwise.
- I. An Arbitrator or the FORUM may issue an Award or Order based upon a Written settlement Signed by the Parties.
- J. An Award is a Summary Award unless: (1) a Written notice is filed by a Party seeking reasons, findings of fact or conclusions of law, or (2) a prior Written agreement of the Parties requires reasons, findings of fact or conclusions of law and at least one Party files a Written notice requesting reasons, findings or

conclusions. This Written agreement or notice must be filed with FORUM within ten (10) days of the date of the Notice of Selection of an Arbitrator and must be accompanied by a fee, if any, as provided in the Fee Schedule.

- K. Reasoned Awards and Findings and Conclusions. Parties Requesting a Reasoned Award, including a Request for full findings of fact and conclusions of law are charged an additional fee for \$250-1,000, depending on the claim size (see Fee Chart on page 58) for Smaller Claims and \$1,500 for Larger Claims in addition to the Arbitrator's hourly fee. Where an Arbitration Agreement requires written findings of fact, conclusions of law or reasons for the Award, the Parties shall equally split the fee for this work. Where one Party requests written findings of fact and conclusions of law or reasons for the Award, the requesting Party shall pay the fee.

RULE 5.2. Orders.

- A. An Arbitrator or the FORUM, where permitted by the Code, may issue an Order at the Request of a Party or on the initiative of the Arbitrator or the FORUM.
- B. At any time following the filing of a Claim, upon a Request by a Party and after a Hearing, the Arbitrator may issue an Interim Order and may require security as a condition of the Interim Order.
- C. An Arbitrator who dismisses a Claim because there was no Arbitration Agreement or because the Arbitrator does not have the power to decide a Claim shall state the reason in the dismissal Order.

RULE 5.3. Entry and Service of Awards and Orders.

- A. An Award or Order shall be entered in the state, country, or other jurisdiction provided as the Locale, which shall appear on the Award or Order.
- B. An Award may be a final Award or a Partial Final Award.
- C. An Award or Order becomes final when entered. An Award or Order may not be entered if fees required by the Fee Schedule remain unpaid.
- D. FORUM shall Deliver a copy of the Award or Order to all Parties or their Representatives or as directed by any Party.
- E. Parties consent to service of the Award or Order and of all Documents, notices, and Orders necessary to confirm an Award or Order or to enter a judgment based on an Award or Order by Delivery, as defined by Rule 1.11, at any address of the Party or Representative of record with the FORUM.

- F. An Award or Order may be confirmed, entered or enforced as a judgment in any court of competent jurisdiction. FORUM may disclose necessary Award information in connection with the confirmation, entering, enforcement or challenge of an Award or Order or otherwise as required by law.
- G. Parties may request a duplicate original of an Award or Order or a copy of other filed Documents and pay the fee as determined by the FORUM.

RULE 5.4 Voluntary Dismissal.

- A. A Claimant may request a dismissal of a Claim after it is filed and before the Respondent is served with the Claim by filing with FORUM a notice of dismissal.
- B. A Claimant may request a dismissal of a Claim after it is served and before the Respondent Delivers a Response to Claimant by Delivering to all Parties and filing with FORUM a notice of dismissal.
- C. A Claimant may request a dismissal of a Claim after a Respondent Delivers a Response that contains no Counterclaim within forty-five (45) days of the date the Response has been delivered to the Claimant or no later than a deadline established by a Scheduling Notice, whichever is later, by delivering to all Parties and filing with FORUM a notice of dismissal.
- D. Any other Claim may be dismissed at the Request of the Claimant in accord with Rule 2.13. Before the selection of an Arbitrator, FORUM may dismiss the Claim. After the selection of the Arbitrator, the Arbitrator may dismiss the Claim.
- E. A Claim shall be dismissed upon agreement of the Parties filed with FORUM, With or Without Prejudice, according to their agreement.
- F. Unless stated otherwise, the first voluntary dismissal of a Claim is Without Prejudice, and the Claim may be brought again.
- G. A Claim voluntarily dismissed more than once is dismissed With Prejudice, and cannot be brought again.

RULE 5.5. Involuntary Dismissal.

- A. A Claim or Response may be dismissed by an Arbitrator at the Request of a Party or on the initiative of the Arbitrator for one or more of the following reasons:
 - (1) It is not supported by evidence.
 - (2) It is not supported by existing law.
 - (3) It is frivolous.

- (4) It has been presented or maintained for an improper purpose, such as to harass, cause unnecessary delay or needlessly increase the cost of arbitration.
 - (5) It is brought by a Party who has been declared to be a vexatious litigant by a court or Arbitrator.
 - (6) A Party has violated any provision of the Code, or any Order or notice from an Arbitrator or the FORUM.
- B. A Claim or Response may be dismissed by an Arbitrator or the FORUM at the Request of a Party in accord with Rule 2.13 or on the initiative of the Arbitrator or the FORUM for one or more of the following reasons:
- (1) A Party has failed to proceed with an arbitration or Claim.
 - (2) A Party has failed to pay fees as provided in the Fee Schedule.
 - (3) More than one hundred twenty (120) days have elapsed between the filing date of the Claim and the date the FORUM receives a Response or Proof of Service of the Initial Claim.
 - (4) More than sixty (60) days have elapsed since a Hearing has been postponed or an arbitration case has been placed on inactive status.
- C. FORUM shall Deliver notice of an involuntary dismissal to all Parties who have made an Appearance.
- D. Unless stated otherwise, an involuntary dismissal by an Arbitrator is With Prejudice and the Claim may not be brought again.
- E. An involuntary dismissal by the FORUM is Without Prejudice and the Claim may be brought again.
- F. If a Request for an Involuntary Dismissal is the only Request for a dispositive Order, that Request may be determined at the Document or Participatory Hearing.

RULE 5.6. Correction.

FORUM or an Arbitrator may correct clerical or administrative mistakes or errors arising from oversight or omission in the administration of cases or in the issuance of an Order or Award.

PART 6

FEES

RULE 6.1. Fees.

- A. **Prepaid Fees.** All FORUM fees and the Arbitrator fees for Smaller Claim cases must be paid at the time the Hearing is scheduled. The Claimant will advance the Filing Fee and the Administrative fee and may request the Arbitrator Award some or all of the fees. These fees include fees required by this Code, the FORUM Fee Schedule, the Parties' contract, an Order of an Arbitrator, or as required by law.
- B. **Fee Recovery.**
1. The prevailing Party may recover fees paid in the arbitration in accord with Rule 5.1C.
 2. The Arbitrator may Award the FORUM the amount of any unpaid fees.
- C. **Non-Monetary Relief Fees.** A Claimant seeking non-monetary relief will pay the fees associated with a Claim of \$74,999.00. A Claim containing both monetary and non-monetary relief will be charged the higher of the two filing fees.
- D. **Hearing Arbitrator Fees.** For Smaller Claims, the Party selecting the type of Hearing prepays the Hearing Arbitrator Fee, or if the Parties agree on the type of Hearing the Parties will each pay half of the Hearing Arbitrator Fee, unless the agreement of the Parties, this Code or the applicable law provides otherwise.
- E. **Advance Fees.** During the course of any Participatory Hearing, the FORUM or an Arbitrator may require any Party to pay in advance a fee for necessary Participatory Hearing sessions in addition to those requested under Rules 4.2 and 4.3.
- F. **Arbitrators.** Fees for Arbitrators are deposited by the Parties with the FORUM, which acts as administrator in the payment upon invoice for the Arbitrators hourly compensation fees and expenses, or in the case of Smaller Claims cases, as provided for in the FORUM Fee Schedule for Document or Participatory Hearings.
- G. **International Cases.** FORUM may assess additional fees for arbitrations conducted outside the United States or involving Parties from more than one country.
- H. **United States Dollars.** FORUM Fee Schedule fees are listed in United States Dollars. Fees shall be paid to the FORUM in United States Dollars, unless the

FORUM agrees to accept other currency based on the exchange rate in effect on the required date of the fee payment as determined by the FORUM.

- I. Refunds. Fees are not refundable, except as otherwise provided by the Code or Fee Schedule. Unused deposits for Arbitrator compensation will be refunded to the party that paid them.
- J. Emergency Hearing Fee.
 - (1) For cases with Claims less than \$75,000, there is a Fee of \$500 for an Emergency Document Hearing and \$1,000 for an Emergency Participatory Hearing in addition to applicable Arbitrator's compensation fees.
 - (2) For Claim Amounts of \$75,000 to \$999,999, there is a fee of \$500 for an Emergency Document Hearing and \$1,000 for an Emergency Participatory Hearing in addition to applicable Arbitrator compensation fees.
 - (3) For Claim Amounts of \$1,000,000 and over, there is a fee of \$2,000 for an Emergency Document Hearing and \$4,000 for an Emergency Participatory Hearing in addition to applicable Arbitrator compensation fees.
- K. Request Fees. There are no fees for Requests that are timely filed within the time period established in the Scheduling Notice. Any Request, excluding a Request for Emergency Relief or for a Dispositive Order, made by any Party during the case within the time period established in the Scheduling Notice will be processed without the assessment of a Request Fee. A Party who files a Request after the time period established in the Scheduling Notice shall pay the late Request Fee of \$50 per Request.
- L. Reasoned Awards and Findings and Conclusions. Parties Requesting a Reasoned Award, including a Request for full findings of fact and conclusions of law are charged an additional fee for \$250-1,000, depending on the claim size (see Fee Chart on page 58) for Smaller Claims and \$1,500 for Larger Claims in addition to the Arbitrator's hourly fee. Where an Arbitration Agreement requires written findings of fact, conclusions of law or reasons for the Award, the Parties shall equally split the fee for this work. Where one Party requests written findings of fact and conclusions of law or reasons for the Award, the requesting Party shall pay the fee.
- M. Other Fees. FORUM may establish reasonable fees for proceedings not covered by the Fee Schedule and may assess appropriate, additional fees for Code proceedings as permitted by law or in accord with this Code. Parties may obtain the amount of a fee in advance of making a Request by contacting the FORUM.

RULE 6.2 Fee Charts.

FEEES FOR SMALLER CLAIM CASES (UNDER \$75,000)						
	Filing Fee	Administrative Fee	Participatory Hearing Arbitrator Fee **	Document Hearing Arbitrator Fee *	Total w/Docs. Hearing	Total w/Part. Hearing
0-2,500	200	250	800	400	850	1250
2,501-10,000	300	350	800	400	1050	1450
10,001-20,000	400	600	1000	400	1400	2000
20,001-74,999	500	700	1000	400	1600	2200
* Includes up to 1/2 day of hearing time ** Includes up to 1 day hearing time						

FEEES FOR LARGER CLAIM CASES (\$75,000 and ABOVE)			
Claim Amount	Filing Fee	Administrative Fee	Total FORUM Fee
75,000 – 175,000	800	1,200	2,000
175,001 – 250,000	1,000	2,200	3,200
250,001 – 5000,000	1,500	3,000	4,500
500,001 – 1,000,000	2,500	4,000	6,500
1,000,001 – 5,000,000	3,500	6,500	10,000
5,000,001 – 10,000,000	4,500	8,500	13,000
10,000,001 – 15,000,000	5,500	9,500	15,500
15,000,001 – 20,000,000	6,500	10,500	17,000
Above 20,000,000	8,000	11,000	19,000

PART 7

CODE PROVISIONS

RULE 7.1. Compliance with Rules.

- A. An Arbitrator may Sanction a Party or Representative, or both, for violating any rule, notice, ruling, or Order, or for asserting an unsupportable Claim or Response. A Party may be Sanctioned on the initiative of the Arbitrator or at the Request of the FORUM or a Party.
- B. An Arbitrator shall Sanction a Party who refuses to pay fees as required by agreement, these rules, an Arbitrator Order, or the applicable law, unless the offending Party establishes reasonable neglect. A Sanction Order may require an offending Party to pay for fees and costs incurred by another Party, unpaid fees, and other appropriate monetary Sanctions, and may require payment to another Party or FORUM.

RULE 7.2. Legal Proceedings.

- A. The Arbitrator, the Arbitration Director, FORUM, and any individual or Entity associated with the FORUM are immune from liability and shall not be liable to any Party for any act or omission in connection with any arbitration conducted under this Code.
- B. No Party or prospective Party, before or during the arbitration of any matter eligible for submission under this Code, shall commence or pursue any lawsuit, administrative proceeding, or other action against any other Party, prospective Party, the FORUM, or individual or Entity associated with the FORUM relating to any of the matters subject to arbitration under this Code or the agreement of the Parties. Any Party commencing or pursuing such a proceeding agrees to pay and indemnify all such Parties, the FORUM, individuals, and Entities for all expenses and costs incurred, including attorney fees as permitted by applicable law.
- C. No Arbitrator, Director or any individual associated with the FORUM shall be a witness in any legal proceeding arising out of the arbitration.
- D. Any Party commencing or pursuing any lawsuit, administrative proceeding, arbitration or other action against FORUM, an Arbitrator or individual or Entity associated with FORUM, after an Award is final, agrees to pay and indemnify the

FORUM, an Arbitrator, individuals and Entities for all expenses and costs incurred, including attorney fees.

- E. Every Party to any arbitration administered by FORUM and FORUM agree that any Claim or dispute of any nature against the FORUM or any agent, officer, employee, or affiliate of FORUM or any Arbitrator shall be resolved by final, binding arbitration conducted by a panel of three (3) Arbitrators. The Party or Parties shall select one Arbitrator; FORUM shall select a second Arbitrator; and these two Arbitrators shall select a third Arbitrator who is neutral and independent and who shall be the chair of the panel. The Arbitrators shall conduct the arbitration pursuant to the Code of Procedure in effect at the time the arbitration is brought. The chair shall have the powers of FORUM and perform the responsibilities of the Director. All fees payable under the Fee Schedule shall be assessed by the chair and paid to the panel of Arbitrators. Neither FORUM, nor its Director, nor any employee or agent of FORUM shall administer the arbitration.

RULE 7.3. Interpretation and Application of Code.

- A. This Code shall be interpreted in conformity with 9 U.S.C. §§ 1-16 and 9 U.S.C. §§ 201-208 in the United States or the applicable law of other countries in order to provide all participants in the arbitration with a fair and impartial proceeding and an enforceable Award or Order.
- B. Unless the Parties agree otherwise, any Arbitration Agreement described in these rules and all arbitration proceedings, Hearings, Awards, and Orders are to be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16.
- C. FORUM shall stay a case if a court with jurisdiction has issued an order staying arbitration.
- D. In the event a court of competent jurisdiction shall find any portion of this Code or Fee Schedule to be in violation of the law or otherwise unenforceable, that portion shall not be effective and the remainder of the Code shall remain effective.
- E. The Arbitration Director or staff counsel may decline the use of arbitration for any dispute, controversy, Claim, Response or Request that is not a proper or legal subject matter for arbitration or where the agreement of the Parties has substantially modified a material portion of the Code. If Parties are denied the opportunity to arbitrate a dispute, controversy or Claim before the FORUM, the Parties may seek legal and other remedies in accord with applicable law.
- F. In the event of a cancellation of this Code, any Party may seek legal and other remedies regarding any matter upon which an Award or Order has not been entered.

- G. The FORUM Code Committee shall have the power and authority to effectuate the purposes of this Code, including establishing appropriate rules and procedures governing arbitrations and altering, amending or modifying this Code in accord with the law.

APPENDIX A

SUMMARY OF PROCEDURES

Summary of Procedures.

<p>A. Claim. A Party begins an arbitration by filing with FORUM a properly completed copy of the Initial Claim described in Rule 2.7, accompanied by the appropriate filing fee which appears in the Fee Schedule. FORUM reviews the Claim, opens a file, assigns a file number, and notifies the Claimant, who then serves the Respondent in accord with Rule 2.2.</p>
<p>B. Response. A Respondent may file a Response as explained in Rule 2.8 or respond otherwise as explained in these rules and the Letter of Initiation-Notice of Arbitration, which appear in Appendix A. If there is no timely Response, the arbitration proceeds in accord with Rule 4.12.</p>
<p>C. After a Response. The arbitration proceeds in accord with a Scheduling Notice issued by the FORUM or by action by the Parties.</p>
<p>D. Hearing. A Party may select a Document Hearing under Rule 4.2 or a Participatory Hearing under Rule 4.3 and pay the fee listed in the Fee Schedule. Parties have a full and equal right to present relevant and reliable direct and cross examination testimony, documents, exhibits, evidence, and arguments. A record may be made of Participatory Hearings.</p>
<p>E. Arbitrator. The Parties select an Arbitrator(s) in accord with Rules 3.2, 3.3, and 3.4. FORUM arbitrators are neutral, independent, experienced, and knowledgeable about the applicable law.</p>
<p>F. Arbitrator Qualifications. A neutral Arbitrator shall not serve if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased in accord the Rules 3.3 and 3.4. A FORUM Arbitrator may also be removed similar to the ways a judge or juror may be stricken.</p>
<p>G. Arbitrator Powers. An Arbitrator decides issues in a case including questions of fact and law. An Arbitrator follows the applicable substantive law and may grant any remedy or relief provided by law or equity, including monetary and injunctive relief, in accord with Rules 3.1, 4.4, 5.1, and 5.2.</p>
<p>H. Discovery. Before a Hearing is held, Parties shall cooperate in the discovery process and may exchange and obtain discovery in accord with Rule 4.6.</p>
<p>I. Requests. Parties may seek appropriate relief or remedies in accord with Rule 2.13.</p>

J. Fee Schedules. The Fee Schedules appear in a supplement to this Code. The FORUM Fee Schedules are a model of fair cost and fee allocation. The Smaller Claim Fee Schedule governs amounts under \$75,000, and the Larger Claim Fee Schedule governs all other Claim Amounts.

M. Substantive Law and Remedies. All types of legal and equitable remedies and relief available in court are available in arbitration. Claims, Responses, remedies or relief cannot be unlawfully restricted, and Parties may effectively pursue any remedy or relief in arbitration including statutory, common law, injunctive, equitable, and all other lawful remedies and relief.

N. Award or Order. After a Hearing, an Arbitrator shall promptly issue an Award or order in accord with Rule 5.1 or 5.2. Reasons, findings of fact, and conclusions of law shall be in accord with Rule 5.1 or 5.2.

O. Enforcement. An Award may be enforced in any court of competent jurisdiction, as provided by applicable law

P. Public Information. Arbitration information may be made public in accord with Rule 1.4 or as required by Court Order.

Q. Access to Justice. This Code shall be interpreted to provide all Parties with a fair and impartial arbitration and with reasonable access to civil justice. Arbitrations under the Code are governed by the Federal Arbitration Act in accord with Rule 7.3B.