



Code of Procedure for Resolving

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# Intellectual Property Disputes

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# Introduction

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Transactions involving intellectual property issues are usually completed successfully, however, disputes can and do occur. These disputes are often resolved through out-of-court resolution processes, including Arbitration.

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

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

The Rules in this Code of Procedure for Resolving Intellectual Property Disputes (“IP Code” or “IP Code of Procedure”) will be applied to all cases primarily involving intellectual property claims filed after April 15, 2019 unless the agreement specifies a different set of Rules.

Present Intellectual Property disputes naming FORUM or its Code, or those naming any other provider or rules and accompanied by a submission form, may be filed for immediate resolution.

To include FORUM and this IP Code of Procedure in contracts, you may insert one of the clauses below or may customize a clause using the FORUM Clause Guide.

## Introduction *(continued)*

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### 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 Intellectual Property Disputes in effect when the claim is filed. Any award by the Arbitrator(s) may be entered as a judgment in any court of competent jurisdiction.*

### INTELLECTUAL PROPERTY-SPECIFIC ARBITRATION CLAUSE

We agree that any claim or dispute between us including, but not limited to: disputes over patent infringement and patent validity, as well as any necessary claim construction, trade secret theft; trademark infringement; or copyright infringement shall be resolved by arbitration administered by the FORUM under the Code of Procedure for Resolving Intellectual Property Disputes in effect when the claim is filed. Any award by the Arbitrator(s) may be entered as a judgment in any court of competent jurisdiction.

In modifying an arbitration clause to fit your contract, you may wish to address any required expertise the Arbitrator(s) should have (or name an Arbitrator), provide for locale (place of arbitration) and choice of law to be applied, expressly include or exclude certain types of disputes (e.g. patent infringement but not trademark infringement) or remedies, allocate who pays the fees in the event of a dispute, or pre-negotiate discovery rules.

## Introduction *(continued)*

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### FORUM SUBMISSION TO ARBITRATION

To submit a dispute to FORUM, please complete and transmit the attached FORUM Submission to Intellectual Property Arbitration Form online, by email or mail with the appropriate filing fee:

**ONLINE:** [WWW.ADRFORUM.COM](http://WWW.ADRFORUM.COM)

**EMAIL:** [INFO@ADRFORUM.COM](mailto:INFO@ADRFORUM.COM)

**MAIL:** FORUM CODE OF PROCEDURES CASE COORDINATOR

6465 WAYZATA BLVD., SUITE 470

MINNEAPOLIS, MN 55426

PHONE: 800-474-2371

### AGREEMENT TO ARBITRATE

If Parties have an existing agreement for Arbitration that does not name an administrator or names an administrator other than FORUM, Parties may agree to modify the agreement to specify that the Arbitration shall be administered by FORUM.

# Summary of Procedures

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- A. Agreement.** 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 effects Service on the Respondent in accord with Rule 2.2.
- 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. If there is no timely Response, the Arbitration proceeds in accord with Rule 4.9.
- C. After a Response.** The arbitration proceeds in accord with a Scheduling Notice issued by FORUM or by action of the Parties.
- D. Hearing.** A Party may select either a Document Hearing or a Participatory Hearing under Rule 1.7 and pay the fee listed in the Fee Schedule. Parties have the right to present relevant and reliable direct and cross examination testimony, documents, exhibits, evidence, and arguments. A record may be made of Participatory Hearings.
- 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.
- F. Arbitrator Qualifications.** A neutral Arbitrator shall not serve if circumstances exist that create a potential conflict of interest or cause the Arbitrator to be unfair or biased under Rules 3.3 and 3.4. An Arbitrator may be removed from a case using procedures similar to the methods in which a judge or juror may be stricken.
- 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 2.13, 3.1, 4.9, 5.1, and 5.2.
- H. Discovery.** Before a Hearing is held, Parties shall cooperate in the discovery



## Summary of Procedures *(continued)*

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process and may exchange and obtain discovery in accord with Rule 4.3.

- I. **Requests.** Parties may seek appropriate relief or remedies in accord with Rule 2.13.
- J. **Fee Schedules.** The Fee Schedules appear in Rule 6.2. The FORUM Fee Schedules are a model of fair cost and fee allocation. The Smaller Claim Fee Schedule governs cases involving amounts under \$75,000, and the Larger Claim Fee Schedule governs cases involving amounts \$75,000 and greater.
- K. **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.
- L. **Award or Order.** After a Hearing, an Arbitrator shall promptly issue an Award or Order in accord with Rules 5.1 or 5.2. Reasons, findings of fact, and conclusions of law shall be in accord with Rules 5.1 or 5.2.
- M. **Enforcement.** An Award may be enforced in any court of competent jurisdiction, as provided by applicable law.
- N. **Public Information.** Arbitration information may be made public only in accord with Rule 1.4, as required by Court Order, or applicable law.
- O. **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.

# Definitions

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The definitions of capitalized terms are set forth in Appendix A following these Rules.

## Arbitration Agreement

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- A. Parties who contract for or agree to arbitration provided by 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 primarily involving intellectual property-related matters, which refers to the National Arbitration Forum, the International Arbitration Forum, the Arbitration Forum, [www.adrforum.com](http://www.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 or FORUM.
- B. Parties may agree to submit any intellectual property dispute, 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. Intellectual Property arbitrations will be conducted in accord with the applicable Code 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 and Fee Schedule in effect at the time the case proceeds.
- D. Parties may modify or supplement these Rules as permitted by law.
- E. Claims may be submitted using the FORUM Submission to Arbitration Form attached at the end of these Rules or another document, provided the document incorporates all of the information requested on the Form.

# Representation

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Parties may act on their own behalf or may be represented by counsel or other authorized representative as may be permitted by law.

## Confidentiality

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

See Rule 4.10 for specific rules relating to information categorized as a Trade Secret.

## Form of Submissions and Parties

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- 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. English is the language used in FORUM proceedings unless the Parties agree to use another language. FORUM or the Arbitrator may Order the Parties to provide translators and translations at their own cost unless FORUM has agreed in advance to the use of another language.
- C. Parties and Representatives shall provide FORUM and all Parties with their names, current address, an address where Service will be accepted, telephone numbers, email addresses, and, if useful for communication, facsimile numbers.
- 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 conservator, fiduciary, or other legal representative for an infant or incompetent person.

## Arbitration Decorum

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Parties, their Representatives, and all participants shall act respectfully toward FORUM staff, the Arbitrator, other Parties, Representatives, witnesses, and other participants in the arbitration. Photographs, video, audio or other recordings shall not be taken or made during the proceedings unless expressly permitted by the Arbitrator.

## Selection of Hearing Type

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- A. A Document Hearing shall be utilized in Smaller Claim cases unless a Claimant or Respondent selects a Participatory Hearing.
  - 1. If Parties agree on the Hearing type, the Arbitrator's fees for the Hearing will be apportioned equally, the Arbitration Agreement and the applicable law.
  - 2. If the Parties do not agree on the Hearing type, the Party selecting a Participatory Hearing shall pay the difference between the Document Hearing and the Participatory Hearing.
- B. A Participatory Hearing shall be utilized in Larger Claim cases unless the Parties agree on a Document Hearing at the Initial Hearing and prior to the selection of an Arbitrator. If the Parties do not agree, the arbitration will proceed to a Participatory Hearing. If either Party Requests 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, if the other Party wishes to proceed and advances the funds to pay for both Parties' costs, the paying Party may Request and the Arbitrator may order a Document Hearing, regardless of the size of the Claim.
- D. For sufficient reason, FORUM or the Arbitrator may postpone a Document Hearing at the Request of a Party or on the initiative of the Arbitrator or FORUM.



## Procedures for Selection of Hearing Type

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- A. A Party may select a Participatory Hearing when filing a Demand for Arbitration, or in a Response, and should designate the type of Participatory Hearing requested: in-person, or, if agreed by the Parties, 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 must be filed in accordance with Rule 2.13. 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 Smaller Claims and notify all Parties of the Hearing at least thirty (30) days before the beginning of the Participatory Hearing.
  - 3. If it is determined that the Participatory Hearing requires additional sessions, FORUM or the 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. Parties to a Participatory Hearing shall provide within fifteen (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; and
  - 3. The estimated number and description of exhibits to be offered at the Hearing.
- D. For sufficient reason, FORUM or the Arbitrator may postpone a Participatory Hearing at the Request of a Party or on the initiative of the Arbitrator or FORUM.

## Request for an Emergency Hearing for Immediate Relief

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- 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 Immediate Relief, reference to the applicable law and the fee as provided in the Rule 6.2 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 (1) 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 upon the Respondent and any other Parties the following:
  - 1. An Initial Claim in accord with Rule 2.7, or a Counterclaim in accord with Rule 2.9, or Third-Party Claim in accord with Rule 2.11;
  - 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, including 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

## Request for an Emergency Hearing for Immediate Relief *(continued)*

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6. The fee as provided in the Rule 6.2 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 responding 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 which have been made to give the notice or the reasons supporting the claims that notice should not be required.
- G. A temporary restraining order granted without notice shall be immediately Served on all Parties by the Requesting Party.
- H. Notice is required to all Parties upon the issuance of a preliminary injunction.
- I. An Emergency Telephone, Document, or In-person Hearing shall be scheduled as soon as possible by 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.
- J. An Arbitrator will conduct the Hearing and issue an Order promptly.
- K. Every Order granting relief shall state the time and date of issuance, the reasons for 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 the Order was issued without notice.

## Request for an Emergency Hearing for Immediate Relief *(continued)*

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- L. 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.
- M. 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.
- N. 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.
- O. 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.
- P. 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 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.

## Filing

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- A. A Party who Serves a Claim or Response shall timely file these and all other Documents and Proof of Service with FORUM. The filing of Proof of Service constitutes a certification that the Service conforms to Rule 2.2.
- B. Parties shall file by Delivery as defined in Appendix A to the Code in person, or by other methods of filing authorized by FORUM at:

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

*or*

[www.adrforum.com](http://www.adrforum.com)

*or*

[file@adrforum.com](mailto:file@adrforum.com)

*or*

Fax: 952-345-1160

- C. FORUM shall distribute copies of Initial Claim Documents filed with FORUM to the Arbitrator(s), and Parties or their Representatives who have entered an Appearance with FORUM.
- D. Filing is complete upon Receipt by 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 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(a), the due date is the next business day.

## Service of Claims, Responses, Requests, and Documents

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- A. The Claimant shall promptly Serve each Respondent with one (1) copy of the Initial Claim Documents, including all documents submitted to FORUM and, if available, the FORUM file number.
- B. Service of Initial Claims and Third-Party Claims shall be effective if done by:
  - 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 Parties entered into the Arbitration Agreement;
  - 5. In accord with any agreement made by the Party Served; or
  - 6. Delivery to the email address of the Party Served, accompanied by an affidavit or acknowledgment of Service by email.
- C. Service is complete upon Receipt by the Party Served or the filing of a Response with FORUM by a Respondent.
- D. Service of Responses, Counterclaims, Cross-claims, Requests, notices, and Documents shall be by Delivery, as defined in Rule 1.1 to the address of all Parties or their Representatives at their addresses of record with 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 2.12C.
- E. FORUM shall deliver an Initiation Letter to the addresses provided in Rule 2.2A.
- F. The Party serving or Delivering a Claim, Response, Request, notice or Document shall timely Deliver copies to any Parties not required to be Served.

## Service of Claims, Responses, Requests, and Documents *(continued)*

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- G. Parties and Representatives shall immediately notify FORUM and all other Parties of their contact information and shall promptly update any changes to the addresses of record. If they fail to do so, Parties and their Representatives agree to receive Service and Delivery at the previous address provided to FORUM

## Locale

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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.



## Notices and Conferences

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- A. FORUM shall notify and communicate with a Party or Parties in writing, email, telephone, in person, or by other means of communication.
- B. FORUM or the Arbitrator shall conduct a conference with a Party or Parties to discuss procedural matters on the initiative of FORUM or at the Request of a Party or Arbitrator.
- C. The Arbitrator shall issue a scheduling notice regarding the Hearing process, including preliminary Hearings.

## Time Periods, Extensions, Adjournments, and Stays

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- 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. Calculation of Time.** Saturdays, Sundays and federal holidays of the United States are included in the computation of time. Any event that falls due on a weekend day or federal holiday as defined in 5 U.S.C. §6103(a), 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, the Arbitrator, or at FORUM's discretion for good cause shown. A Request for a Time Extension must be filed with FORUM and delivered to 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 applicable 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. Stay.** FORUM shall stay a case if ordered by a court of competent jurisdiction.
- G. Abeyance and Abeyance Fee.** A case Adjourned for more than three hundred sixty-five (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 three hundred sixty-five (365) calendar days.

## Time Limitations

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- 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 a court of competent jurisdiction. This time limitation shall be suspended for any 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 any issue relating to this Rule as an affirmative defense in its Response.
- C. An Arbitrator may decide time limitations as a threshold issue in the arbitration.

## Initial Claim

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- A. An Initial Claim, which begins an arbitration in accord with Rule 2.1, 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 estimated value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 2.7C, and other relevant and reliable information supporting the Claim; and
  2. A copy of the Arbitration Agreement; and
  3. A selection of Document Hearing or Participatory Hearing as described in Rules 1.7 and 1.8; and
  4. The appropriate filing fee as provided in the Fee Schedule Rule 6.2. The calculation of the filing fee is based only on the monetary claim and the estimated value of non-monetary or other relief, and not on the interest, costs, or attorney's fees claimed.
- B. A Claimant may seek any remedy or relief allowed by applicable substantive law.
- C. A Claimant who seeks costs and attorney fees must include this demand 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:
- D. For Document Hearings no later than ten (10) days from the date of the Notice of the Selection of an Arbitrator; or
- E. For Participatory Hearings no later than seven (7) days from the close of the Hearing.
- F. FORUM or an Arbitrator may reject, in whole or in part, an Initial Claim that does not substantially conform to this Rule.

## Initial Claim *(continued)*

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- G. 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 proceed to arbitration once FORUM has received a copy of the Proof of Service of the Initial Claim, or a Response has been filed with FORUM, whichever is earlier.
- H. FORUM shall send a Letter of Initiation confirming the date of commencement of the case upon receipt of Proof of Service according to Rule 2.2.

## Response

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- A. Upon Service of an Initial Claim, Counterclaim, Cross-claim, or Third-Party Claim on a Respondent, the Respondent shall Deliver to the Claimant and file with FORUM, within fifteen (15) days from Receipt of Service, a Response which, if applicable, must consist of:
  - 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 Respondent 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 wishes to assert against the Claimant in accord with Rule 2.9, 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 affirmatively denied by Respondent, however, Claims and Counterclaims for which no denial is received will be presumptively deemed 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.
- D. International Proceedings. 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 2.8A. Additional time for other proceedings may be made available at the determination of FORUM or at the Request of a Party.

## Counterclaim

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- 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 setting forth in plain language the dispute or controversy, the facts and the law (if known) supporting the Counterclaim;
  - 2. The specific relief requested and the reasons supporting the relief;
  - 3. The specific amount and computation of any money or damages or other relief;
  - 4. The specific amount and computation of any interest, costs, and attorney fees under Rule 2.7C; and
  - 5. 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 applicable at the time of filing the Counterclaim with FORUM.
- C. FORUM or an Arbitrator may reject, in whole or in part, Counterclaim Documents that do not substantially conform to this Rule.

## Cross-claim

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- 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;
  - 2. The specific relief requested and the reasons supporting the relief;
  - 3. The specific amount and computation of any money or damages;
  - 4. The specific value of non-monetary or other relief, the specific amount and computation of any interest, costs, and attorney fees under Rule 2.7C; and
  - 5. 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, 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 applicable, as provided in the Fee Schedule.
- D. FORUM or an Arbitrator may reject, in whole or in part, Cross-claim Documents that do not substantially conform to this Rule.



## Third-Party Claim

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- A. If a Respondent asserts that a non-Party, who is bound by 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 per Rule 2.7, including a copy of the Claim Documents that gave rise to the Third-Party Claim; and
  - 2. A copy of the Arbitration Agreement.
- 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 2.11B.
- 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. FORUM or an Arbitrator may reject, in whole or in part, Third-Party Claim Documents that do not substantially conform to this Rule.

## Amendment

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- A. A Claim, Counterclaim, or Response may be Amended:
  - 1. By agreement of the Parties at any time;
  - 2. If prior to the appointment of the Arbitrator, by filing a Request pursuant to Rule 2.13 with FORUM to be decided upon appointment of an Arbitrator; or
  - 3. If an Arbitrator has been appointed, by filing a Request with the Arbitrator pursuant to Rule 2.13.
- B. An Amended Claim which increases the Claim Amount shall also be accompanied by any appropriate additional incremental filing fee in the Rule 6.2 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. 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.
- F. An Amendment of a Claim shall relate back to the time the Initial Claim was commenced unless otherwise provided by applicable law.

## Request to Arbitrator or FORUM

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- A. A Party may Request an Order or other relief from an Arbitrator or FORUM, if the Arbitrator has not yet 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; 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 FORUM as permitted by this Code.
- E. All Requests or motions made by a Party are subject to this Rule 2.13.
- F. Each Party has the right to file one (1) Request for a Dispositive Order to be decided by the Arbitrator. A Party may file an additional Request for a Dispositive Order only if the Arbitrator determines that the requesting Party has demonstrated that the Request has a substantial likelihood of success and that the Request, if granted, has the potential to substantially increase the overall efficiency and speed of the arbitration process. Any request for a Dispositive Order will follow the procedure set forth in sections (A) through (C) above.

## Joinder, Intervention, Consolidation, and Separation

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- 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 not 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. An Arbitrator has no authority to issue an Order or Award binding any individual or Entity not a Party, unless that individual or Entity agrees or as required by applicable law. The 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 for severance, and an Arbitrator shall promptly decide this Request by determining whether consolidation or severance promotes fairness, efficiency or economy. The 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. The 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 as defined in Appendix A and per 9 U.S.C. § 9.

## Authority of Arbitrators

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- 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 under 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 but 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.
- F. An Arbitrator shall have the power to Sanction a Party or representative for breach of decorum under Rule 1.6 or as otherwise necessary.

## Number of Arbitrators Selection of the Chair

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- 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.

## Selection of Arbitrators

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- 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 another selection method.
- B. Parties must notify FORUM of their election of the process of this Code or other agreed method 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 (9) Arbitrator candidates, unless FORUM determines a different number to be indicated by relevant circumstances. Each Party making an Appearance may strike up to three (3) candidates and shall rank the remaining candidates in numerical order of preference with the number one (1) being the most preferred. A Party may Request disqualification of any candidate in accord with Rule 3.4C by notifying FORUM in Writing, within ten (10) days of the date of issuance of the strike and rank list.
- D. For Smaller Claim Hearings, FORUM shall provide a list of up to three (3) Arbitrator candidates, unless FORUM determines another number to be indicated by relevant circumstances. Each Party making an Appearance may strike one (1) candidate and shall rank the remaining candidates in numerical order of preference with the number one (1) being the most preferred. A participating Party may request disqualification of any subsequent Arbitrator in accord with Rule 3.4C by notifying FORUM in Writing, within ten (10) days of the date of issuance of the strike and rank list per Rule 3.4D.
- E. Upon Request for an Emergency Hearing or if the need for an Arbitrator

## Selection of Arbitrators *(continued)*

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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 shall 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



## Disqualification of Arbitrator

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- 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 an attorney 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, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, individually or as a fiduciary, has a direct financial interest in a matter before the Arbitrator;
  - 4. The Arbitrator, or the Arbitrator's spouse or minor child residing in the Arbitrator's household, individually or as a fiduciary, 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 Deliver to 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.

## Disqualification of Arbitrator *(continued)*

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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 participating Party 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, 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.

## Communications with Arbitrators

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- 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 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 FORUM.

## Preliminary Scheduling Hearing

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- A. For Larger Claim cases, the Arbitrator shall, as soon as practicable within thirty (30) 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 deems such a Hearing will promote efficiency. For Smaller Claim cases, a preliminary Hearing may be scheduled at the Request of either Party, which may involve additional fees.
- B. The preliminary Hearing is a Participatory Hearing for the purpose of fee calculation and usually 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 scheduling Hearing, without limitation, include:
  - 1. The appropriateness of temporary injunctive relief, or the dates by which this matter should be briefed;
  - 2. The forms of alternative dispute resolution to be used, including mediation, high-low arbitration, or other form;
  - 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, and permissibility and types of expert reports;
  - 4. The nature and type of preliminary, dispositive or other motion Hearings permitted, and the timelines and discovery preceding any such Hearings;
  - 5. The need for a special master or other expert neutral;
  - 6. Designation of substantive law, if not provided for in the Parties' agreement;
  - 7. Procedure for submitting and exchanging documents and material obtained in discovery and measures that may be taken to increase

## Preliminary Scheduling Hearing *(continued)*

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- the speed and efficiency of the discovery process;
- 8. Procedure for obtaining subpoenas;
- 9. Scheduling of Hearings, including any expedited timelines; and
- 10. The form of the Award.

## Document Hearing

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- 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 3.3G. Documents and/or property submitted after that date shall 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 any rules of evidence outside of this Code.
- D. During a Document Hearing, the Arbitrator may Request that the Parties submit additional information or Documents.
- E. The close of a Document Hearing occurs when the Arbitrator completes reviewing the Documents or property.
- F. The presence or involvement of a Party in a Hearing results in the waiver of any objections to the notice of the Hearing.

## Discovery

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- A. Initial Cooperative Discovery.** As soon as practicable, but in no event later than fourteen (14) days after a Response is filed, Parties shall cooperate in the exchange of non-privileged Documents and information (including electronically stored information (“ESI”)) relevant to the dispute or claim. The Parties may agree prior to the preliminary Hearing on the scope of discovery beyond the initial discovery. The Parties are required to supplement discovery if new documents or information is discovered prior to the Hearing. An Arbitrator may not consider Documents and information that have not been disclosed prior to the Hearing.
- B. Additional Discovery.** Additional Discovery is permitted under these Rules if:
1. The information sought is relevant to a Claim or Response, reliable, and informative to the Arbitrator; and
  2. The production of the information sought is reasonable and not unduly burdensome and expensive.
- C. Additional Discovery Scope and Timing.** Additional Discovery may include interrogatories, additional document requests and depositions and must be completed thirty (30) days prior to the Hearing and are limited in scope as follows:
1. **Interrogatories.** Each Party may seek sworn answers to not more than twenty-five (25) written questions (including subparts).
  2. **Document Requests.** Each Party may request at most thirty (30) documents.
  3. **Depositions.** Each Party may take one (1) deposition of the opposing Party or an individual under the control of the other Party. The Party taking the deposition is responsible for all costs associated with the deposition, including transcripts for all parties and the Arbitrator. The Parties should attempt to agree on date, location and duration of each deposition. If the Parties agree that additional depositions

## Discovery *(continued)*

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are necessary, they will jointly inform FORUM or the Arbitrator if appointed.

**D. Discovery Disputes.** The Arbitrator will decide all discovery disputes, including any request to increase the scope of additional discovery. A Party may file with FORUM and Deliver to all Parties, no later than the deadline set in the Scheduling Order:

1. A Rule 2.13 Request for a Discovery Order; and;
2. A Written statement of reasons why the Requesting Party needs the discovery.



## Subpoena for In-Person Participatory Hearing

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- 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 4.4 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 4.4A, 4.4B, and 4.4C 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 4.4.G, an Arbitrator shall promptly determine whether sufficient reason exists for the Order, or

## Subpoena for In-Person Participatory Hearing *(continued)*

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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.

## Exchange of Information Before a Participatory Hearing

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- A. Before all Participatory Hearings, unless the Arbitration Director directs otherwise, each Party shall Deliver to all other Parties and file with FORUM:
  - 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;
  - 4. Any Request for additional Participatory Hearing sessions, accompanied by the fee as provided in the Fee Schedule; and
  - 5. Any items required by the Arbitrator or agreed to by the Parties in the Preliminary Hearing.
- B. All Parties and the Arbitrator shall Receive the Documents and witness and exhibits lists, no later than ten (10) days before the Hearing, unless a Notice from 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 Rule 4.5A and 4.5B.

## Participatory Hearing

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- 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 cases.
  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.

## Participatory Hearing Proceedings

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- A. A Participatory Hearing may consist of one (1) 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.
- C. For Smaller Claims, 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 four (4) hours of Hearing time; this may include in-person Hearings, on-line Hearings, teleconferences and video-conferences.
  - 2. Cases with claims of \$10,000 or greater 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, Party or Representative to clarify evidence or arguments.
- G. An Arbitrator may Request Parties submit additional information or Documents, including legal memoranda, which FORUM, the Arbitrator, and the Parties shall Receive no later than thirty (30) days after the final Participatory Hearing session.

## Participatory Hearing Proceedings *(continued)*

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- H. A Party may Request permission to submit a post-Hearing memorandum, which may be granted by the Arbitrator.
- 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.

## Evidence in a Participatory Hearing

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- 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 rules of evidence outside of this Code.
- 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. The Parties or their Representatives may accompany the Arbitrator, if they so choose.
- F. Record.** No record of a Hearing shall be kept unless agreed to 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 FORUM at no cost to the Arbitrator or 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 FORUM.

## Arbitration Proceedings in Absence of a Party

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- 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 shall 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 may 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.



## Trade Secrets

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- A. A Party may request to have information required or desired to be submitted by it, characterized as a Trade Secret.
- B. Information that is classified as Trade Secret is subject to strict disclosure limitations and all persons to whom the information is disclosed are required to sign a confidentiality agreement.
- C. A Party may Request that an independent neutral advisor, or special master, be appointed for the purpose of deciding whether the information shall be classified as a Trade Secret. The Arbitrator may Request that the independent neutral advisor or special master communicate relevant information to the Arbitrator in lieu of the Arbitrator reviewing the confidential information.
- D. The Party Requesting to have certain information treated as a Trade Secret shall:
  - a. Describe the nature of the information to be classified as a Trade Secret, including why the information is deemed confidential; and
  - b. Notify the Arbitrator of any reason why the Arbitrator could or should not review the information for the purpose of its classification as a Trade Secret.
- E. The opposing Party may object to the treatment of information as Trade Secret and shall be given an opportunity to provide its reasons for the objection prior to the decision whether to classify the information.
- F. The Arbitrator, or independent neutral advisor or special master if appointed, shall review the information and determine whether or not it shall be treated as a Trade Secret and, if so, with whom and under what conditions the information should be shared.
- G. The Arbitrator shall oversee the confidentiality agreement to be signed by any person with whom the Trade Secret is shared.

## Awards

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- 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 applicable 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 the 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 (1) 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

## Awards *(continued)*

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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 of \$250-1,000, depending on the Claim size (see Rule 6.2 Fee Schedule) 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 (1) Party Requests Written findings of fact and conclusions of law or reasons for the Award, the requesting Party shall pay the fee.

## Orders

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- A. An Arbitrator or FORUM, where permitted by the Code, may issue an Order at the Request of a Party or on the initiative of the Arbitrator or FORUM.
- B. Interim Order. 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. Dismissal Order. 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.

## Entry and Service of Awards and Orders

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- 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 a 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 in Appendix A, at any address of the Party or Representative of record with 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 certified copy of an Award or Order or other filed Document, which may be subject to an additional fee as determined by FORUM.

## Voluntary Dismissal

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- 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.

## Involuntary Dismissal

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- 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.

## Involuntary Dismissal *(continued)*

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- 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.



## Correction

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

## Fees

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- 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 shall 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. A prevailing Party may seek to recover fees paid in the arbitration as a prevailing Party upon Request only as permitted under the applicable law.
  2. The Arbitrator may Award FORUM the amount of any unpaid fees.
- C. Non-Monetary Relief Fees.** The fees for any Claim involving injunctive or declaratory relief or any other non-monetary claim valued up to \$74,999 are the same as the fees for Claim Amounts valued at \$74,999. The fees for any Claim involving injunctive or declaratory relief or any other non-monetary claims valued above \$74,999 are the same as the fees for Claim Amounts valued at \$175,001.
- 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 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, 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 Rule 1.7.
- F. Arbitrators.** Fees for Arbitrators are deposited by the Parties with FORUM, which acts as administrator in the payment upon invoice for the Arbitrator's hourly compensation fees and expenses, or in the case

## Fees *(continued)*

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of Smaller Claims cases, as provided for in the FORUM Fee Schedule for Document or Participatory Arbitrator Hearing Fees.

- G. International Cases.** FORUM may assess additional fees for arbitrations conducted outside the United States or involving Parties from more than one (1) country.
- H. United States Dollars.** FORUM Fee Schedule fees are listed in United States Dollars. Fees shall be paid to FORUM in United States Dollars, unless FORUM agrees to accept other currency based on the exchange rate in effect on the required date of the fee payment as determined by 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 the unused amounts.
- J. Emergency Hearing Fee.**
  - 1. For Smaller Claim cases (under \$75,000), there is a fee of \$500 for an Emergency Document Hearing and \$1,000 for an Emergency Participatory Hearing in addition to Arbitrator's compensation.
  - 2. For Claim Amounts of \$75,000 to \$999,999, there is a fee of \$850 for an Emergency Document Hearing and \$1,500 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, except for 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

## Fees *(continued)*

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who files a Request after the time period established in the Scheduling Notice shall pay the late Request Fee of \$50 per Request.

- L. Abeyance Fees.** If after the initial Abeyance period of three hundred sixty-five (365) days lapses, the Parties consent to keeping a case in abeyance for any additional time, each Party shall pay to FORUM an administrative fee of \$300 for each additional period of up to three hundred sixty-five (365) calendar days. If any Party fails to pay the required fee, FORUM has the right to administratively dismiss the case after providing notice to all Parties.
- M. Other Fees.** FORUM may establish reasonable fees for procedures 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 FORUM.

## Fee Schedules

FEES FOR SMALLER CLAIM CASES (LESS THAN \$75,000)						
	Filing Fee	Administrative Fee	Participatory Hearing Fee for Arbitrator*	Document Hearing Fee for Arbitrator**	Total w/Docs. Hearing	Total w/Part. Hearing
0-2,500	200	250	800	400	850	1,250
2,501-10,000	300	350	800	400	1,050	1,450
10,001-20,000	400	600	1000	400	1,400	2,000
20,001-74,999	500	700	1000	400	1,600	2,200

\* Includes up to one (1) day of Arbitrator's Hearing time

\*\* Includes up to a half (1/2) day of Arbitrator's Hearing time

## Fee Schedules *(continued)*

### FEES FOR LARGER CLAIM CASES (LESS THAN \$75,000)

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 - 500,000	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	15,000
15,000,001 - 20,000,000	6,500	10,500	17,000
Above 20,000,000	8,000	11,000	19,000

## Compliance with Rules

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- 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 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.

## Legal Proceedings

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- A. The Arbitrator, the Arbitration Director, FORUM, and any individual or Entity associated with 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, FORUM, or individual or Entity associated with 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, 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 FORUM shall be a witness in any legal proceeding arising out any arbitration conducted under this Code.
- 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 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 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 (1) Arbitrator; FORUM shall select a second Arbitrator; and these two (2) 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



## Legal Proceedings *(continued)*

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to the applicable 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.

## Interpretation and Application of Code

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- 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 may decline to accept for arbitration any dispute, controversy, Claim, Response or Request that is not a proper matter for arbitration or where the agreement of the Parties has substantially modified a material portion of the Code. If Parties are thereby denied the opportunity to arbitrate a dispute, controversy or Claim before 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. A 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.

# FORUM Submission to Arbitration Form

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

1. CLAIMANT/PLAINTIFF'S NAME:

CLAIMANT/PLAINTIFF'S ATTORNEY (IF ONE):

*Please provide contact information you would like FORUM to use:*

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:

RESPONDENT/DEFENDANT'S ATTORNEY (IF ONE):

Address 1: Company or Law Firm:

Address 2: Street Address, Building/Suite:

City:

State:

Zip:

Telephone:

Fax:

Email:

CC Email:

# FORUM Submission to Arbitration Form

3. IF A LEGAL ACTION IS PENDING, PLEASE FORWARD A COPY OF THE SCHEDULING ORDER.	
4. BRIEF DESCRIPTION OF THE DISPUTE AND RELIEF BEING REQUESTED:	
5. PREFERRED LOCATION OF THE ARBITRATION:	
6. FOR SMALLER CLAIMS (UNDER \$75,000), PLEASE SELECT: <input type="checkbox"/> Document Hearing <input type="checkbox"/> Participatory	
7. IS THERE AN AGREEMENT BETWEEN THE PARTIES RELATED TO ADR SERVICES? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please attach a copy of the agreement.	
8. SIGN AND DATE THIS FORM. <i>By signing you request Arbitration services be provided by FORUM in accordance with FORUM'S applicable Code of Procedure.</i>	
Your Signature: _____	Today's Date: _____
Please Print Your Name: _____	Your Role in this Matter: _____
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	
Will the respondent be advancing the filing fee? <input type="checkbox"/> Yes <input type="checkbox"/> No	

## FORUM Submission to Arbitration Form

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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 [www.adrforum.com](http://www.adrforum.com). For more information, please visit [www.adrforum.com](http://www.adrforum.com).*

## Definitions

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For purposes of the Rules contained in the Code of Procedure, the following definitions apply. Italics here indicate a defined term that are displayed in the Code with the first letter capitalized.

***Abeyance:*** A case Adjourned for more than three hundred sixty-five (365) consecutive calendar days will, under Rule 2.5G, be placed into Abeyance by FORUM.

***Adjournment:*** A continuance or delay for a specific period of time requested after the appointment of an Arbitrator. See Time Extension.

***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.

***Amendment:*** A change made to a Claim after it has been Served on the Respondent or any change made to a Response after it has been filed and Delivered to all Parties.

***Appearance:*** Any filing by a Party or Party's Representative under Rules 2.7, 2.8, 2.14A, or 5.5A.

***Arbitration Agreement:*** Any Written provision in any agreement between or among the Parties to submit a dispute, controversy, or Claim to arbitration.

***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. Party Arbitrator is defined below. No Arbitrator may be a director or officer of FORUM.

## Definitions *(continued)*

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**Award:** Any Arbitrator decision establishing the final rights and obligations of the Parties or as otherwise provided by this Code or by law. A Written Award is a Summary Award only; a Written Reasoned Award contains the Arbitrator's reasoning for the Award, which will usually require the payment of additional fees.

**Claim:** Any claim submitted to FORUM by any Party including an Initial Claim, Cross-claim, Counterclaim, and Third-Party Claim.

**Claimant:** Any individual or Entity making any Claim under this Code.

**Claim Amount:** The total value of all relief sought. A Claimant seeking non-monetary relief states a monetary value for this relief for purposes of establishing the Claim Amount.

**Delivery:** Delivery to the address of a Party, 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), email, electronic, or computer transmission.

**Director:** The Arbitration Director and FORUM staff who administer arbitrations under this Code or under other rules agreed to by the Parties.

**Document:** Any Writing or data compilation containing information in any form, including an agreement, record, correspondence, summary, electronically stored information, tape, email, video, audio, disk, computer file, electronic attachment, notice, memorandum, or other Writings or data compilations.

**Emergency Hearing for Immediate Relief:** A Hearing to obtain relief in an

## Definitions *(continued)*

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Order or Award, including a temporary restraining order or a preliminary injunction available before an Award becomes final.

**Entity:** Any association, business, company, cooperative, corporation, country, governmental unit, group, institution, organization, partnership, sole proprietorship, union or other establishment.

**Fee Schedule:** The Fee Schedules as they appear in Rule 6.2.

**FORUM:** FORUM, the National Arbitration Forum and the International Arbitration Forum constitute the administrative organizations conducting arbitrations under this Code. FORUM, or an entity or individual providing administrative services by agreement with FORUM, administers arbitrations in accord with the Code.

**Hearing or 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 Parties 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, email, or by other electronic or computer communication.



## Definitions *(continued)*

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**Initial Claim:** See Rule 2.7.

**Initiation Letter:** A Letter of Initiation commences an arbitration and is Delivered by FORUM to all Parties upon receipt of Proof of Service.

**Interim Order:** Any Order providing temporary or preliminary relief pending a final Award.

**Larger Claim:** A Claim Amount of \$75,000 or more.

**Locale:** The place where the arbitration occurs or is set.

**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.

**Partial Final Award:** An Award that is final on one (1) or more but not all the issues before an Arbitrator, which upon issuance limits the Arbitrator's authority to rule only on the remaining issues.

**Party or Parties:** Any individual or Entity who makes a Claim or against whom a Claim is made, including Claimants, Respondents, Cross-Claimants, and Third-Parties.

**Party Arbitrator:** When a three-member panel is selected, the Parties may choose to each appoint an Arbitrator with whom they are permitted to communicate. In such instances, FORUM will appoint the panel chair.

## Definitions *(continued)*

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**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.

**Proof of Service:** An Affidavit stating how and where Service was made.

**Receive or Receipt:** The Delivery or other effective notice to FORUM, or to a Party at the address of the Party or Party Representative.

**Representative:** Any individual, including an attorney, who makes an appearance on behalf of a Party.

**Request:** Any Request by a Party directed to an Arbitrator or FORUM for an Order or other relief, including any motion, petition, or other type of Request.

**Respondent:** Any Party against whom a Claim is made.

**Response:** Any Written Response by a Party or Representative which may serve as an answer or rebuttal to any Claim.

**Sanctions:** Penalties imposed by an Arbitrator, including 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 as deemed appropriate. Sanctions may be imposed against a Party, a Representative, or both.

**Service or Served:** See Rule 2.2B.

## Definitions *(continued)*

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***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.

***Smaller Claim:*** A Claim Amount less than \$75,000.

***Stay:*** A delay for an indefinite period of time by a court Order before an Arbitrator is appointed. See Time Extension and Adjournment.

***Time Extension:*** A continuance or delay for a specific period of time requested before the appointment of an Arbitrator. See Adjournment and Stay.

***With Prejudice:*** The case may not be brought again. The Claimant may not subsequently bring the same Claim against the Respondent.

***Without Prejudice:*** The case may be brought again. The Claimant may subsequently file the same Claim against the same Respondent.

***Writing or Written:*** Any form intended to record information, including symbols on paper or other substance, recording tape, computer disk, electronic recording, video recording, and all other forms.