



BAY Mediation & Arbitration Services, LLC

Rules of Arbitration

Party-Agreed Procedures

The Parties may agree on any procedures not specified herein or, in lieu of these Rules, that are consistent with the applicable law and BAY policies. The Parties shall promptly notify BAY of any such Party-agreed procedures and shall confirm such procedures in writing. The Party-agreed procedures shall be enforceable as if contained in these Rules. If any of these Rules, or a modification of these Rules agreed on by the Parties, is determined to be in conflict with a provision of applicable law, the provision of law will govern.

Commencing an Arbitration

(a) The Arbitration is deemed commenced when both parties confirm their participation in the arbitration and BAY acknowledges the selection of a neutral to adjudicate the proceedings or the receipt by BAY of a court order compelling arbitration at BAY.

Preliminary and Administrative Matters

(a) BAY may convene, or the Parties may request, administrative conferences to discuss any procedural matter relating to the administration of the arbitration.

(b) BAY may determine the location of the hearing. In determining the location of the hearing such factors as the subject matter of the dispute, requests of the parties, the convenience of the parties and witnesses and the relative resources of the parties shall be considered. Hearings may be conducted in more than one location if determined appropriate by the arbitrator.

(c) If, at any time, any party has failed to pay fees or expenses in full, BAY may order the suspension or termination of the proceedings. BAY may so inform the parties in order that one of them may advance the required payment.

Number of Arbitrators and Appointment of Chairperson

(a) The arbitration shall be conducted by one neutral arbitrator unless all parties agree otherwise. In these Rules, the term "arbitrator" shall mean, as the context requires, the Arbitrator or the panel of arbitrators.

(b) In cases involving more than one arbitrator, in the absence of the express designation of the parties, the panel of arbitrators shall designate the chairperson of the arbitration panel. The chairperson may, acting alone, decide discovery and procedural matters.

(c) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named shall be neutral and independent of the appointing party unless the parties have agreed that they shall be non-neutral. Decisions of an arbitral panel shall be rendered by a simple majority vote of the panel members.

Notice of Claims

(a) If a matter has been submitted for Arbitration after litigation has been commenced in court regarding the same claim or dispute, the pleadings in the court case, including the complaint and answer (with affirmative defenses and counterclaims), may be filed with BAY within seven (7) calendar days of the date of commencement and will be considered part of the record of the arbitration. It will be assumed that the existence of such pleadings constitutes appropriate notice to the Parties of such claims, remedies sought, counterclaims and affirmative defenses.

(b) If a matter has been submitted to BAY prior to or in lieu of the filing of a case in court or prior to the filing of an answer, the parties shall give each other notice of their respective claims, remedies sought, counterclaims and affirmative defenses (including jurisdictional challenges). Such notice may be served upon the other parties and filed with BAY, in the form of a Demand for Arbitration, response or answer to Demand for Arbitration, counterclaim or answer or response to counterclaim. Any pleading shall include a short statement of its factual basis. Pleadings shall contain, at a minimum, a short, plain statement of the underlying facts, the relief requested and the legal authority for such relief. The arbitrator, on his own accord or at a request of any party, may require a more detailed statement of any claim or defense. Counterclaims and affirmative defenses shall be served and filed with BAY within fourteen (14) calendar days of the date of commencement of the Arbitration, or by such other date as the parties may agree.

Changes of Claims

After the arbitrator is appointed, no new or different claim may be submitted except with the arbitrator's approval. A party may request a hearing on this issue.

Interpretation of Rules and Jurisdictional Challenges

(a) Once appointed, the Arbitrator shall resolve disputes about the interpretation and applicability of these Rules and conduct of the arbitration hearing. The resolution of the issue by the arbitrator shall be final.

(b) The arbitrator may upon a showing of good cause or *sua sponte*, when necessary to facilitate the arbitration, extend any deadlines established in these Rules, provided that the time for rendering the Award may only be altered by agreement of the parties.

Ex Parte Communications

No party may have any *ex parte* communication with a neutral arbitrator regarding any issue related to the arbitration. Any necessary *ex parte* communication with a neutral arbitrator, whether before, during or after the hearing, shall be conducted through BAY.

Arbitrator Replacement

If, for any reason, the arbitrator who is selected is unable to fulfill the arbitrator's duties, a successor arbitrator shall be chosen in accordance with this Rule. If a member of a panel of Arbitrators becomes unable to fulfill his or her duties after the beginning of a hearing but before the issuance of an Award, a new arbitrator will be chosen in accordance with this Rule unless the Parties agree otherwise. BAY will make the final determination as to whether an arbitrator is unable to fulfill his or her duties, and that decision shall be final.

Preliminary Conference

At the request of any party or at the direction of the arbitrator, a preliminary conference shall be conducted with the parties. The preliminary conference may address any or all of the following subjects:

- (a) The exchange of information prior to hearing;
- (b) The schedule for discovery as permitted by the Rules, as agreed by the parties or as required or authorized by applicable law;
- (c) The pleadings of the parties and any agreement to clarify or narrow the issues or structure the hearing;
- (d) The scheduling of the hearing and any pre-hearing exchanges of information, exhibits, motions or briefs;
- (e) The attendance of witnesses;
- (f) The scheduling of any dispositive motion;
- (g) The premarking of exhibits; preparation of joint exhibit lists and the resolution of the admissibility of exhibits;
- (h) The form of the Award; and
- (i) Such other matters as may be suggested by the parties or the arbitrator.

The preliminary conference may be conducted telephonically and may be resumed from time to time as warranted.

Exchange of Information

(a) The parties shall cooperate in good faith in the voluntary and informal exchange of all non-privileged documents and other information relevant to the dispute or claim immediately after commencement of the arbitration. They shall complete an initial exchange of all relevant, non-privileged documents, including, without limitation, copies of all documents in their possession or control on which they rely in support of their positions, names of individuals whom they may call as witnesses at the hearing, and names of all experts who may be called to testify at the hearing, together with each expert's report that may be introduced at the hearing, within twenty-one (21) calendar days after all pleadings or notice of claims have been received. The arbitrator may modify these obligations at the preliminary conference.

(b) Each party may take one deposition of an opposing party or of one individual under the control of the opposing party. The parties shall attempt to agree on the time, location and duration of the deposition, and if the parties do not agree these issues shall be determined by the arbitrator. The necessity of additional depositions shall be determined by the arbitrator based upon the reasonable need for the requested information, the availability of other discovery options and the burdensomeness of the request on the opposing parties and the witness.

(c) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties continue to be obligated to provide relevant, non-privileged documents, to supplement their identification of witnesses and experts and to honor any informal agreements or understandings between the Parties regarding documents or information to be exchanged. Documents that were not previously exchanged, or witnesses and experts that were not previously identified, may not be considered by the Arbitrator at the Hearing, unless agreed by the Parties or upon a showing of good cause.

(d) The parties shall promptly notify BAY when a dispute exists regarding discovery issues. The arbitrator, either by telephone or in person, shall decide the dispute.

Summary Disposition of a Claim or Issue

(a) The arbitrator may permit any party to file a motion for summary disposition of a particular claim or issue, either by agreement of all interested parties or at the request of one party, provided other interested parties have reasonable notice to respond to the request.

(b) BAY shall facilitate the parties' agreement on a briefing schedule and record for the motion. If no agreement is reached, the arbitrator shall set the briefing and hearing schedule and contents of the record.

Scheduling and Location of Hearing

The arbitrator, after consulting with the parties that have appeared, shall determine the date, time and location of the hearing. The arbitrator and the parties shall attempt to schedule consecutive hearing days if more than one day is necessary.

Pre-Hearing Submissions

(a) Subject to any schedule adopted in the preliminary conference, at least fourteen (14) calendar days before the arbitration hearing, the parties shall exchange a list of the witnesses they intend to call, including any experts, a short description of the anticipated testimony of each such witness, an estimate of the length of the witness's direct testimony, and a list of exhibits. In addition, at least fourteen (14) calendar days before the arbitration hearing, the parties shall identify all exhibits intended to be used at the hearing and exchange copies of such exhibits to the extent that any such exhibit has not been previously exchanged. The parties should pre-mark exhibits and shall attempt to resolve any disputes regarding the admissibility of exhibits prior to the hearing. The list of witnesses, with the description and estimate of the length of their testimony and the copies of all exhibits that the parties intend to use at the hearing, in pre-marked form, should also be provided to the arbitrator, whether or not the parties have stipulated to the admissibility of all such exhibits at least five (5) days prior to the hearing.

(b) The arbitrator may require that each party submit concise written statements of position, including summaries of the facts and evidence a party intends to present, discussion of the applicable law and the basis for the requested Award or denial of relief sought. The statements, which may be in the form of a letter, shall be filed with BAY and, if designated by the arbitrator, served upon the other parties, at least five (5) calendar days before the hearing date. Other pre-hearing written submissions may be permitted or required at the discretion of the arbitrator.

Securing Witnesses and Documents for the Arbitration Hearing

At the written request of a party, all other parties shall produce for the arbitration hearing all specified witnesses in their employ or under their control without need of subpoena. The arbitrator may issue subpoenas for the attendance of witnesses or the production of documents either prior to or at the hearing. Pre-issued subpoenas may be used in jurisdictions that permit them. In the event a party or a subpoenaed person objects to the production of a witness or other evidence, the party or subpoenaed person may file an objection with the arbitrator, who will promptly rule on the objection, weighing both the burden on the producing party and witness and the need of the proponent for the witness or other evidence. The arbitrator, in order to hear a third party witness, or for the convenience of the parties or the witnesses, may conduct the hearing at any location unless the arbitration agreement specifies a mandatory hearing location.

The Arbitration Hearing

(a) The arbitrator will ordinarily conduct the arbitration hearing and any preliminary matters in the manner set forth in these Rules. The arbitrator may vary these procedures if it is determined reasonable and appropriate to do so.

(b) The arbitrator shall determine the order of proof, which will generally be similar to that of a court trial.

(c) The arbitrator shall require witnesses to testify under oath if requested by any party, or otherwise in the discretion of the arbitrator.

(d) Strict conformity to the rules of evidence is not required, except that the arbitrator shall apply applicable law relating to privileges and work product. The arbitrator shall consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as is appropriate. The arbitrator may be guided in that determination by principles contained in the Federal Rules of Evidence or any other applicable rules of evidence. The arbitrator may limit testimony to exclude evidence that would be immaterial or unduly repetitive, provided that all parties are afforded the opportunity to present material and relevant evidence. All remedies that would be available under the applicable law in a court proceeding, including attorneys fees and exemplary damages, shall remain available in the arbitration.

(e) The arbitrator shall receive and consider relevant deposition testimony recorded by transcript or videotape, provided that the other parties have had the opportunity to attend and cross-examine. The arbitrator may in his or her discretion consider witness affidavits or other recorded testimony even if the other parties have not had the opportunity to cross-examine, but will give that evidence only such weight as the arbitrator deems appropriate.

(f) The parties will not offer as evidence, and the arbitrator shall neither admit into the record nor consider, prior settlement offers by the parties or statements or recommendations made by a mediator or other person in connection with efforts to resolve the dispute being arbitrated, except to the extent that applicable law permits the admission of such evidence.

(g) The hearing or any portion thereof may be conducted telephonically with the agreement of the parties or in the discretion of the arbitrator.

(h) When the arbitrator determines that all relevant and material evidence and arguments have been presented, the arbitrator shall declare the hearing closed. The arbitrator may delay the closing of the hearing until a date agreed upon by the parties, to permit the parties to submit post-hearing briefs, which may be in the form of a letter, and/or to make closing arguments, as determined by the arbitrator. If post-hearing briefs are to be submitted, or closing arguments are to be made, the hearing shall be deemed closed upon receipt by the arbitrator of such briefs or at the conclusion of such closing arguments.

(i) At any time before the Award is rendered, the arbitrator may, *sua sponte* or on application of a party for good cause shown, re-open the hearing. Such re-opening will toll the time limits for the rendering of the Award until the reopened hearing is declared closed by the Arbitrator.

(j) Any party may arrange for a stenographic or other record to be made of the hearing and shall inform the other parties in advance of the hearing. The requesting party shall bear the cost of such stenographic record. If all other parties agree to share the cost of the stenographic record, it shall be made available to the arbitrator and may be used in the proceeding. If there is no agreement to share the cost of the stenographic record, it may not be provided to the arbitrator and may not be used in the proceeding unless the party arranging for the stenographic record either agrees to provide access to the stenographic record at no charge or on terms that are acceptable to the parties and the reporting service. The parties may agree that the cost of the stenographic record shall or shall not be allocated by the arbitrator in the Award.

Waiver of Hearing

The parties may agree to waive the oral hearing and submit the dispute to the arbitrator for an Award based on written submissions and other evidence as the parties may agree.

Awards

(a) Unless otherwise agreed by the parties and the arbitrator, the Arbitrator shall render a Final Award or a Partial Final Award within thirty (30) calendar days after the date of the close of the hearing or, if a hearing has been waived, within thirty (30) calendar days after the receipt by the arbitrator of all materials specified by the parties, except (i) by the agreement of the parties or (ii) upon good cause for an extension of time to render the Award. The arbitrator shall provide the Final Award or the Partial Final Award to BAY for issuance to the parties.

(b) Where a panel of arbitrators has heard the dispute, the decision and Award of a majority of the panel shall constitute the Arbitration Award.

(c) In determining the merits of the dispute the arbitrator shall be guided by the rules of law and equity agreed upon by the parties. In the absence of such agreement, the arbitrator shall be guided by the rules of law and equity that the arbitrator deems to be most appropriate. The arbitrator may grant any remedy or relief that is just and equitable and within the scope of the parties' agreement, including but not limited to specific performance of a contract.

(d) In addition to a Final Award or Partial Final Award, the arbitrator may make other decisions, including interim or partial rulings, orders and Awards. The arbitrator may take whatever interim measures are deemed necessary, including injunctive relief and measures for the protection or conservation of property and disposition of disposable goods. Such interim measures may take the form of an interim Award, and the arbitrator may require security for the costs of such measures. Any recourse by a party to a court

for interim or provisional relief shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

(e) The Award of the arbitrator may allocate arbitration fees and arbitrator compensation and expenses unless such an allocation is expressly prohibited by the parties' agreement. The Award of the Arbitrator may allocate attorneys' fees and expenses and interest (at such rate and from such date as the arbitrator may deem appropriate) if provided by the parties' agreement or allowed by applicable law.

(f) The Award will consist of a written statement signed by the arbitrator regarding the disposition of each claim and the relief, if any, as to each claim. Unless all parties agree otherwise, the award shall also contain a concise written statement of the reasons for the award.

(g) After the Award has been rendered, and provided the parties have complied with the payment of fees as described herein, the Award shall be issued by serving copies on the parties. Service may be made by electronic mail, facsimile or U.S. Mail, unless otherwise agreed upon by the parties.

(h) Within seven (7) calendar days after issuance of the Award, any party may serve upon the other parties and on BAY a request that the arbitrator correct any computational, typographical or other similar error in an Award, or the arbitrator may *sua sponte* propose to correct such errors in an Award. A party opposing such correction shall have seven (7) calendar days in which to file any objection. The arbitrator may make any necessary and appropriate correction to the Award within fourteen (14) calendar days of receiving a request or seven (7) calendar days after the arbitrator's proposal to do so. The corrected Award shall be served upon the parties in the same manner as the Award. The Award is considered final fourteen (14) calendar days after service is deemed effective if no request for a correction is made, or as of the effective date of service of a corrected Award.

Enforcement of the Award

Proceedings to enforce, confirm, modify or vacate an Award will be controlled by and conducted in conformity with the Federal Arbitration Act, 9 U.S.C. Sec 1 et seq. or applicable state law.

Confidentiality and Privacy

Arbitration proceedings before BAY are deemed confidential. BAY and the arbitrator shall maintain the confidential nature of the arbitration proceeding and the Award, including the hearing, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision. The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information. Subject to the discretion of the arbitrator or agreement of the Parties, any person having a direct interest in the arbitration may attend the arbitration hearing. The arbitrator may exclude any non-party from any part of a hearing or sequester witnesses as the arbitrator may deem necessary.

Waiver

If a party becomes aware of a violation of or failure to comply with these Rules and fails promptly to object in writing, the objection will be deemed waived, unless the arbitrator determines that waiver will cause substantial injustice or hardship. If any party becomes aware of information that could be the basis of a challenge for cause to the continued service of the arbitrator, such challenge must be made promptly, in writing, to the arbitrator and BAY. Failure to do so shall constitute a waiver of any objection to continued service of the Arbitrator.

Settlement

The Parties may agree, at any stage of the arbitration process, to submit the case to BAY for mediation. The BAY mediator assigned to the case may not be the arbitrator unless the Parties so agree. The parties may agree to seek the assistance of the arbitrator in reaching settlement. By their written agreement to submit the matter to the arbitrator for settlement assistance, the parties will be deemed to have expressly agreed that the assistance of the arbitrator in such settlement efforts will not disqualify the arbitrator from continuing to serve as arbitrator if settlement is not reached; nor shall such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

Sanctions

The arbitrator may order appropriate sanctions for failure of a party to comply with its obligations under any of these Rules. These sanctions may include, but are not limited to, assessment of costs, exclusion of certain evidence, or in extreme cases determining an issue or issues submitted to arbitration adversely to the party that has failed to comply.

Disqualification of the Arbitrator as a Witness or Party and Exclusion of Liability

(a) The Parties may not call the arbitrator or any other BAY employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the parties and relating to the dispute that is the subject of the arbitration. The arbitrator and other BAY employees and agents are also agreed by the parties to be incompetent to testify as witnesses or experts in any such proceeding.

(b) The party or parties seeking to utilize the testimony of the arbitrator or any BAY employee or agent as a witness or as an expert in any pending or subsequent litigation or other proceedings shall defend and/or pay the cost (including any attorneys' fees) of defending the arbitrator and/or BAY from any subpoenas from outside parties arising from the arbitration.

(c) The Parties agree that neither the arbitrator nor BAY is a necessary party in any litigation or other proceeding relating to the arbitration or the subject matter of the arbitration, and neither the arbitrator nor BAY, including its employees or agents, shall be liable to any party for any act or omission in connection with any arbitration

conducted under these Rules, including but not limited to any disqualification of or recusal by the arbitrator.

Fees

(a) Each party shall pay its *pro-rata* share of BAY's fees and expenses as set forth in the BAY fee schedule in effect at the time of the commencement of the arbitration, unless the parties agree on a different allocation of fees and expenses. BAY's agreement to render services is jointly with the party and the attorney or other representative of the party in the arbitration. The non-payment of fees may result in an administrative suspension of the case.

(b) BAY may require that the parties deposit the estimated fees and expenses for the arbitration prior to the hearing and the arbitrator may preclude a party that has failed to deposit its *pro-rata* or agreed-upon share of the fees and expenses from offering evidence of any affirmative claim at the hearing.

(c) The parties are jointly and severally liable for the payment of BAY's arbitration fees and arbitrator compensation and expenses. In the event that one Party has paid more than its share of such fees, compensation and expenses, the arbitrator may award against any other party any such fees, compensation and expenses that such party owes with respect to the arbitration.

(d) Entities whose interests are not adverse with respect to the issues in dispute shall be treated as a single party for purposes of BAY's assessment of fees. BAY shall determine whether the interests between entities are adverse for purpose of fees, considering such factors as whether the entities are represented by the same attorney and whether the entities are presenting joint or separate positions at the arbitration.

Limited Award Arbitration Options

(a) At any time before the issuance of the arbitration Award, the parties may agree, in writing, on minimum and maximum amounts of damages that may be awarded on each claim or on all claims in the aggregate. The parties shall promptly notify BAY and provide to BAY a copy of their written agreement setting forth the agreed-upon maximum and minimum amounts. BAY shall not inform the arbitrator of the agreement to proceed with this option or of the agreed-upon minimum and maximum levels without the consent of the parties. In the event that the Award of the arbitrator is between the agreed-upon minimum and maximum amounts, the Award shall become final as is. In the event that the Award is below the agreed-upon minimum amount, the final Award issued shall be corrected to reflect the agreed-upon minimum amount. In the event that the Award is above the agreed-upon maximum amount, the final Award issued shall be corrected to reflect the agreed-upon maximum amount.

(b)(i) Upon agreement of the parties, at least seven (7) calendar days before the arbitration hearing, the parties shall exchange and provide to BAY written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate. BAY shall promptly provide a copy of the parties' proposals to

the arbitrator, unless the parties agree that they should not be provided to the arbitrator. At any time prior to the close of the arbitration hearing, the parties may exchange revised written proposals or demands, which shall supersede all prior proposals. The revised written proposals shall be provided to BAY, which shall promptly provide them to the arbitrator, unless the parties agree otherwise.

(ii) If the arbitrator has been informed of the written proposals, in rendering the Award the arbitrator shall choose between the parties' last proposals, selecting the proposal that the arbitrator finds most reasonable and appropriate. No written statement of reasons shall accompany the Award.

(iii) If the Arbitrator has not been informed of the written proposals, the Arbitrator shall render the Award as if pursuant to Rule 24, except that the Award shall thereafter be corrected to conform to the closest of the last proposals, and the closest of the last proposals will become the Award.

Employee Access and Post-Arbitration Remedies in Employment Disputes

In cases involving disputes between employers and employees, post-arbitration remedies, if any, must remain available to an employee. An employee's access to arbitration must not be precluded by the employee's inability to pay any costs or by the location of the arbitration. The only fee that an employee may be required to pay is BAY's initial case initiation fee, which may be no more than the filing fee for the initiation of a complaint in the federal court with jurisdiction over the location of the dispute. Unless otherwise agreed upon by the parties or directed by a Court, all other costs must be borne by the employer, including any additional BAY administrative fee and all professional fees for the arbitrator's services.