



## **Appendix C: Agreement for Expedited Arbitration**

*The parties hereby agree that any dispute arising out of or related to any aspect of the performance of this contract shall be resolved through an ADR process under the Federal Arbitration (“FedArb”) Rules for Arbitration and Mediation (as may be amended from time to time, unless the parties otherwise agree to use the rules effective at the time of their agreement), and in particular Rule 16 (Expedited Disposition), with administration by FedArb; provided, however, that such rules shall be modified as follows:*

### **Informal Discussion**

The parties agree to attempt to resolve their disputes in good faith through informal discussions.

### **Video Hearing**

Unless required by law or unless exceptional circumstances present themselves, any hearing, including oral arguments, may be conducted through video conferencing.

### **Mediation**

Mediation is not a prerequisite to initiating arbitration. However, any party to a dispute may request mediation at any time. The parties will engage in mediation as promptly as possible after a written request, based on an exchange of all relevant information necessary to evaluate the issues and to determine a reasonable value for the claims advanced. The parties agree to resolve as many aspects of their disputes as possible by mediation, leaving to more formal procedures only those that cannot be resolved through discussion and mediation. They agree also to utilize mediation during the arbitration process to narrow their differences.

### **Arbitration**

Any party to a dispute may commence arbitration after attempting to settle the dispute through informal discussion and/or mediation. The parties agree on the following terms:

- **Tribunal.** The tribunal shall consist of one arbitrator appointed by FedArb from its panel of Expedited Arbitration Experts, unless the parties jointly notify FedArb that they have agreed to the appointment of an arbitrator from that panel.
- **Arbitrator Disclosures and Objections.** Within seven days after appointment, the arbitrator shall submit disclosures consistent with applicable ethical standards and

FedArb policies. Any objection to the arbitrator's service must be submitted in writing within five (5) business days of the disclosures and must demonstrate good cause. FedArb shall determine whether the objection warrants replacement of the arbitrator.

- **Minors.** Except as may be otherwise allowed by governing law, a claimant who is a minor may not bring a claim unless a parent or guardian submits an affidavit consenting to the minor's decision to pursue arbitration and to participate in any related pre-arbitration procedures through final award. The submission of a notice of arbitration will be rejected if such an affidavit is not received within 10 calendar days.
- **Deadlines.** No party may ask the tribunal, and no arbitrator may ask the parties, for an adjournment of any deadline; adjournments may only be implemented as agreed by all parties, or for good cause as determined by the FedArb administrator.
- **Place of Arbitration.** Arbitrations shall be held at a venue that minimizes costs; telephonic or video hearings will be utilized whenever possible.
- **Applicable Law.** Unless otherwise provided by the arbitration agreement, all disputes shall be resolved in accordance with the law of the State of [California], without regard to its rules regarding conflicts of law.
- **Procedural Order and Timetable.** As soon as practicable, and no later than 30 days after Respondent's Answer is filed, the tribunal shall confer with the parties and issue a procedural order and timetable that reserves agreed dates for the hearing on the merits and such preliminary deadlines as may be appropriate. There are to be no motions to enforce discovery requests, to dismiss, for summary judgment, or for any other form of relief except (1) by agreement of all parties, or (2) upon a determination by the tribunal that the motion is necessary and likely to enhance efficiency.
- **Reply to Counterclaim.** If the Respondent's Answer includes a counterclaim, the Claimant shall have ten (10) calendar days from the date of service of the Answer to file an optional Reply limited to the counterclaim. If no reply is filed, all counterclaims shall be deemed denied by Claimant. No other replies shall be permitted unless authorized by the tribunal for good cause.
- **Documentary Discovery.** All parties shall provide full discovery of all documents discoverable under federal discovery standards within 30 calendar days of the final pleading; only documents produced in discovery shall be permitted to be introduced into evidence absent a showing that the document was unavailable for earlier production.

- **Requests for Admissions Prohibited.** The parties shall submit an Agreed Statement of Facts at least thirty days before the hearing.
- **Depositions.** No depositions shall be held except by agreement of the parties, or unless authorized by the tribunal upon a showing that the interests of justice require the pre-hearing testimony of a particular witness.
- **Expert Testimony.** Experts shall be used only on issues requiring expert testimony, and only upon agreement or as allowed by the tribunal; expert testimony shall be provided in writing at least 30 days in advance of the hearing, and any oral testimony shall be limited to the scope of the expert's written testimony.
- **Pre-hearing Briefs.** The parties shall file pre-hearing briefs only if they agree such briefs are necessary and with the tribunal's approval subject to such conditions as to scope and length as the tribunal considers appropriate.
- **Exhibits.** The parties shall file a single set of all the exhibits they agree should be admitted into evidence. All other exhibits shall be party-designated. Paper copies shall be filed only as required by the tribunal, which shall be provided with digital versions of all papers and exhibits in a convenient format.
- **Final Hearing.** Unless the parties' arbitration agreement expressly requires an in-person hearing, any final hearing shall be conducted by videoconference or on the papers, as agreed upon by the parties. In the absence of agreement, the matter will shall be determined by the paper submissions, unless the tribunal determines that a hearing by either video conference or in-person is necessary to ensure fairness. If the hearing is in-person, it shall be held at a venue that minimizes costs.
- **Post-hearing Briefs.** Post-hearing briefs may be filed only on agreement by the parties and with the tribunal's consent; they shall generally be considered unnecessary where the parties have filed pre-hearing briefs.
- **Award.** The parties shall agree on the form of award no later than the completion of the hearing. An Award may be **formal** (including findings of fact and conclusions of law), **reasoned** (setting out the tribunal's reasoning in a logical but informal manner, or **conclusory** (setting out the tribunal's conclusions without reasoning). In the absence of agreement, the Award shall be reasoned. The tribunal may issue partial final awards where necessary.
- **Finality.** The parties agree that the Award (or awards) shall be final, except as provided in the Federal Arbitration Act and other governing authorities, and that they waive any right to a trial by jury.