Zoom Arbitration Hearing Order-Working Draft for discussion

**1.** **Agreement to Videoconference**:

**A.** The parties and the Arbitrator agree that the hearing in this case will be conducted as a videoconference using the American Arbitration Associations (AAA) Zoom Meeting Platform (Zoom). This confirms that the hearing will be deemed to have taken place in Chicago, Illinois which will be the seat of the arbitration and Illinois law will apply.

**B.** The parties acknowledge that they have made their own investigation as to the suitability and adequacy of the Zoom Platform for its proposed use for the video conferenced hearing and have evaluated any risks of using Zoom including any risks regarding security, privacy or confidentiality. The parties agree to use Zoom for the hearing.

i. The Arbitrator and Parties shall determine whether the Parties will retain a third-party service provider to support and troubleshoot the videoconferencing system during the course of the hearing or rely on the Parties to perform those functions.

ii. If the Parties do not retain a third-party service provider, the Arbitrator shall designate representatives of the Parties to perform the hearing support functions. In either event, a capable trouble-shooting resource should be available on short notice during the conduct of the proceeding to assist in any technical difficulties.

**C**. The hearing shall commence on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_with morning, lunch, and afternoon recesses at such times as the Arbitrator determines are appropriate. Hearing days will run until\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ . Evidentiary hearing procedures will generally follow the customary order of proof and presentation typically observed for bench trials. **This is a firm setting and will not be continued absent exceptional circumstances, upon a showing of good cause.**

It is recommended that all participants access the virtual hearing room early each day of hearing and test its functionality. The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays. The Arbitrator may take additional recesses and adjust the hearing schedule to facilitate a smooth and efficient hearing**.**

2.**Prehearing Exchange of Information**

1. Not later than \_\_\_\_\_\_\_\_\_\_\_ the parties shall exchange a list of witnesses to be called at the hearing, separated between fact and expert witnesses. For each witness, a short paragraph outlining the witness' role in the case will be provided. If deposition testimony is contemplated page/line designations by party opponent of depositions to be introduced into direct examination at the hearing shall be exchanged. Counter-designations by party opponent of deposition portions to be introduced for cross-examination shall be exchanged no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

1. Not later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_ the parties shall prepare and file with AAA (with hard copies provided directly to the Arbitrator) a written pre-hearing brief, not to exceed \_\_\_\_\_pages in length, exclusive of exhibits which summarizes the disputed factual issues and controlling legal principles in the case. The brief should explain the purpose and conclusion to be drawn from each of the exhibits. The brief also may include highlighted copies of controlling cases and statutes, relevant treatises, or similar secondary legal authorities, or other documents which are likely to be the central focus of a party's arguments regarding disputed issues of fact or law.
2. The parties shall jointly prepare and file with AAA (with copies provided directly to the Arbitrator), a joint statement of uncontested or stipulated facts. In addition, the parties shall also provide an agreed joint exhibit list with exhibits numbered sequentially with all duplicate documents removed. Exhibits will be organized in a threehole binder and tabbed. Pre-admissions of all exhibits will generally be one of the first orders of business at the arbitration hearing. Exhibits regarding which there is a bona-fide question as to authenticity should be specifically identified so that those disputed evidentiary issues can be considered first. Other exhibit-related objections will generally go to the weight to be given the exhibit, rather than its admissibility. Counsel are expected to fully confer prior to the final hearing in a good-faith effort to resolve any evidentiary disputes.

.

2. **Hearing Record and Recording**:

1. The parties and Arbitrator agree that the hearing will be transcribed by a court reporter. The parties will select a court reporting service familiar with transcribing testimony taken via a video platform such as Zoom. One copy of the transcript must be promptly furnished to the Arbitrator without charge. The parties and Arbitrator agree that the court reporter’s transcript will be the official record of the hearing. The court reporter may interrupt attorneys, witnesses, or the arbitrator as needed to clarify items for the record
2. The parties and counsel agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it. However, with the agreement of the Arbitrator, screenshots may be used for cross examination purposes. The parties and counsel will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording.

**3. Technical Aspects of the Video Conference**

**A. Invitations to Access Hearing**: The AAA case manager will invite attendees via email to join the Zoom hearing. Witnesses who are not parties will be invited for the days and sessions (morning or afternoon) on which they are expected to give testimony. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.

B. In order to facilitate e-mail invitations for the hearing, no later than the parties shall circulate to the AAA a list of each attendee’s name, the day or days they are expected to attend the hearing, e-mail address and a phone number where they can be reached on the day(s) they are expected to attend the hearing.

**4. Advance Testing of System**:

1. **The** Arbitrator, counsel and one witness for each party and the AAA case manager will test the Zoom system to ensure that the arbitrator, counsel and witnesses can connect and that their video and audio systems work and noting camera settings, lighting and any related technical issues. The test run will be scheduled approximately one week prior to the hearing. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.
2. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually (as opposed to in counsel’s offices). Each party is responsible for ensuring that all logistical requirements of this Order are satisfied for the parties, their counsel and any witness to be called by a party

.

1. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

D. The parties and the Arbitrator and the AAA shall establish an optional dial-in conference call number in case one or more participants has poor quality computer audio.

**5. Hearing Participants**:

1. Each party will inform the Arbitrator and all other parties and their counsel on or before \_\_\_\_\_\_\_\_\_\_ the names of all persons who will attend, the day or days they are expected to attend or participate in or use the Zoom platform, including any technicians assisting the party or counsel. The parties agree that no persons will attend, participate or be allowed to listen in on the hearing without the prior consent of all parties and the arbitrator.
2. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the Arbitrator at the earliest opportunity.
3. During the videoconference, the participants and/or any witness shall always be in view of the camera. If two or more people are attending the hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.
4. **Ensuring Good Audio/Video**: Hearing participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should:

**i.** establish a high-speed internet connection *(e.g.,* if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);

**ii.** use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);

**iii.** eliminate any background noise;

**iv.** consider camera positioning and lighting (e.g., avoid sitting near a window, if necessary, positioning a light in front of (instead of behind) the participant);

**v.** only access Zoom via desktop or laptop. Smartphone or tablet connections are not appropriate;

**vi.** ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and

**vii**. not join the hearing from a public setting or using unsecured, public WIFI to ensure the privacy and security of the hearing.

1. All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
2. All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions. The Arbitrator and the video hearing host will have the ability to mute and unmute any participant if needed.

**G.** For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual’s voice, as well as sufficient microphones to allow for the accurate transcription or recording of the participant’s testimony or statement as appropriate.

**H** . Each participant in the hearing shall have accessible a computer or other device with email [and a printer to which the device can print exhibits or other documents if needed].

**6. Witnesses**:

**A**. With the exception of the parties’ corporate representatives and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify.

**B.** Witnesses should follow these practices:

**i.** A witness shall give evidence sitting at an empty desk or table, and the witness’ face shall be clearly visible in the video.

**ii.** To the extent possible, the webcam should be positioned at face level, relatively close to the witness.

**iii.** Witnesses may not use a “virtual background.” Instead, the remote venue from which they are testifying must be visible.

**iv**. Witnesses should speak directly to the camera while testifying.

**v.** Witnesses should avoid making quick movements.

**vi.** All non-party or expert witnesses shall sign-off from the Zoom session at the conclusion of their testimony.

**C.** At any time, the Arbitrator may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorized persons are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness’ testimony.

**D.** In accordance with the provisions of this Order, the arbitrator shall instruct each witness about: (i) what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recordings of the hearing.

**7.** **Hearing exhibits**:

**A.** Before the hearing, counsel shall provide each witness with a clean, unannotated hard copy set of exhibits to be referred to during the witness’ evidence. At any time, the Arbitrator may ask a witness to display the set of exhibits and verify that they do not bear any annotations. Witnesses shall not be aided by any notes, unless permitted by the arbitrator upon motion for good cause.

**B**. The parties may agree on utilizing a shared virtual document repository *(i.e.,* document server) to be made available via computers at all participants’ locations, provided that the parties use best efforts to ensure the security of the documents *(i.e.,* from unlawful interception or retention by third parties). If available, a separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show and display the relevant documents to the witness during the course of questioning.

**C.** Upon joining the Zoom hearing, participants will be admitted to a virtual Waiting Room. The Arbitrator will admit all participants to the hearing at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the Zoom meeting during any recess. However, lines may be muted during this time, and the Arbitrator may move participants to “break-out” and/or the virtual Waiting Room.

**D.** The Arbitrator will disable the private “chat” function. The Arbitrator may also use virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the Arbitrator and witnesses).

**8. Technical Difficulties:**

**A.** Should one party’s or participant’s videoconferencing connection fail, the Arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications. Once the Arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.

**B.** If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 15-30-minute interval:

**i.** the Arbitrator may take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;

**ii.** participant shall monitor e-mail for any further instructions from the Arbitrator. The parties and participants shall use telephone communication or text messaging to indicate if any party, attorney, or witness has been dropped from the hearing due to a connection problem or other technical issue.

**C.** If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the Arbitrator determines that the videoconferencing system otherwise does not allow the parties to adequately present their case or that it would be unfair to any party to continue the hearing via videoconference, the Arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.

9. Form of Award: (subject to discussion )

10. Claims for Attorney's Fees: To the extent that attorney fees are recoverable element of damages under applicable law, or by agreement of the parties, the attorney fees issues will be presented through written post-hearing submissions, and will typically be decided by the Arbitrator solely on the basis of the papers and other supporting materials filed unless further documentation or oral argument is requested by the Arbitrator. Counsel are strongly encouraged to review applicable case law regarding the specific evidence and supporting documentation required for establishment of the reasonableness and necessity of claimed attorney's fees.

10. Communicating with the Arbitrators: The Arbitrator is available to the parties to assist with resolution of any other matters that are not addressed in this Order. Requests for a telephone conference with the Arbitrator may be arranged as needed by contacting the assigned AAA Case Manager as set forth above. Unsolicited ex parte contact with the Arbitrator should be avoided. All questions, inquiries, requests for hearings or conference, or other scheduling requests should be directed to the AAA Case Manager by e-mail, along with any necessary supporting documents. Such requests should be copied to the Arbitrators via email. Lengthy submissions or exhibits (e.g., more than 25 pages) will be delivered to the Arbitrator, in paper hard-copy as well as electronic form. These materials may be sent via overnight delivery by FedEx. Correspondence and documentary materials provided directly to the Arbitrator should be always simultaneously be provided to the AAA Case Manager and to opposing counsel. For delivery of materials directly to the Arbitrator the following contact information is provided:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_