**ORDER NO.**

**PROCEDURAL ORDER REGARDING EVIDENTIARY HEARING VIA VIDEOCONFERENCE**

Given the current guidance for social distancing and other measures recommended to prevent the spread of the novel coronavirus disease (“COVID-19”), \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(collectively, the “Panel”) issue this Procedural Order Regarding Evidentiary Hearing Via Videoconference. This Order may be referred to as “PO2.”

1. **AGREEMENT TO VIDEOCONFERENCE**
	1. The parties and the Panel agree that the hearing in this case will be conducted via videoconference through LiveLitigation software, administered and hosted by Teleconferencing Inc (the “Videoconference Platform”). This confirms that the hearing will be deemed to have taken place in the State of New York, New York County, as required by the parties’ arbitration agreement.
	2. The parties acknowledge that they have made their own investigation as to the suitability and adequacy the Videoconference Platform, for its proposed use for the videoconferenced hearing and of any risks of using Videoconference Platform, including any risks

regarding its security, privacy, or confidentiality, and they agree to use Videoconference Platform for the hearing.

* 1. Not later than five business days prior to the first hearing day, Teleconference Inc shall designate two employees who will act as co-hosts for the videoconferenced hearing (the “Host”). The Host shall inform the parties and the Panel promptly in the event either of such individuals becomes unavailable and with such notice shall provide the identity and contact information of a substitute co-host.
	2. Not less than three business days prior to the first hearing day, the parties shall provide to the Host a complete list of participants substantially in the format set forth in the accompanying template, Participants. In the event of any changes to the list of participants, the parties shall promptly provide the Host with an updated list. The Host shall provide the Panel with the up-to-date list at the beginning of the first day of hearing.
	3. No participant in the remote hearing, other than Panel members and the Host, may use a “virtual background” without the Chair’s prior permission.
1. **HEARING RECORD AND RECORDING**
	1. The parties and Panel agree that the hearing will be transcribed by a court reporter. The parties and Panel agree that the court reporter’s transcript will be the official record of the hearing. Regardless of physical or remote attendance, the court reporter may interrupt attorneys, witnesses, or the Panel as needed to clarify items for the record.
	2. The parties and Panel agree that the hearing’s audio will be/not be recorded through the Videoconference Platform. There shall be no video recording made of the evidentiary hearing. The parties and Panel agree that the audio recording will be made available to all counsel

and to any Panel member who requests it. The Videoconference Platform will send a link to the audio recording to counsel as soon as is practicable after each hearing day concludes.

* 1. The Chair will control when the proceedings are on or off the record. All audio and stenographic recording shall cease at the commencement of off-the-record proceedings and will resume only when the Chair indicates that the proceedings are back on the record.
	2. The parties and counsel agree that they will not record or otherwise transmit, via audio, video, or screenshot, or permit any other person to record or otherwise transmit, via audio, video, or screenshot, the hearing or any part of it, except as is provided for in this Order. The parties and counsel will ensure that each additional participant at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording and transmission.
	3. If counsel participate from different locations, each side will designate up to two lead attorneys to appear on screen. Subject to any further instruction from the Chair, all other attorneys and all paralegals and support staff will remain with video off and audio muted.
1. **TECHNICAL ASPECTS**
	1. Invitations to Access Hearing. The Host will invite

participants by email to join the hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized participants only. Hearing participants should not forward or share the hearing link or password.

To facilitate e-mail invitations for the hearing, no later than three business days before the first hearing date, the parties shall provide to the Videoconference Platform a list of each participant’s name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).

For witnesses scheduled to appear for only a portion of the hearing, no later than the business day before the date that witness is expected to be called, the party calling the witness shall provide to the Videoconference Platform a list of each participant’s name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).

* 1. Advance Testing of System
		1. Before the first hearing date, at a date and time to be determined by the Chair, counsel and the Panel will test the videoconferencing system to ensure that all arbitrators and counsel can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).
		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 electronically (as opposed to in counsel’s offices). Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied.
		3. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants authorized to activate video or audio feed.
		4. Each participant in the hearing shall have equipment that is substantially in compliance with the specifications and recommendations set forth in the attached Remote Hearing Protocol . Technical Specifications/Recommendations.
	2. Hearing Participants
		1. In accordance with Section I.D., above, each party will inform the Panel and all other counsel three business days before the hearing the names of all persons who will attend, participate in, or will be able to hear any communications in the hearing using the Videoconference 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 Panel.
		2. If any arbitrator plans to have a technician present with them or available to assist them in person, they will communicate to counsel and the other panel members the technician’s name and affiliation at least three business days before the hearing.
		3. Each participant in the evidentiary hearing shall disclose at the start of each hearing session all people in the room with the participant. Should an individual join the participant after the hearing session has begun, that individual should be identified to counsel and the Panel at the earliest opportunity.
		4. During the videoconference, the participants or the 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.
		5. At an arbitrator’s request, participants shall identify themselves by showing a piece of identification to the camera or by responding to the Panel’s questions regarding their identity.
	3. 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:

* + 1. Consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
		2. Use a phone to dial into audio portion of the platform;
		3. Eliminate any background noise;
		4. Consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
		5. Access the Videoconference Platform via desktop or laptop rather than by smartphone or tablet;
		6. Ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
		7. Not join the hearing from a public setting or using unsecured, public Wi-Fi 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.
	3. 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 speech as appropriate.
1. **WITNESSES AND EXHIBITS**
	1. 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. Witnesses shall be advised in advance by the party calling them that their testimony will be recorded.
	2. Oaths may be administered to each witness on the record at the start of their testimony. This remote swearing-in shall have the same force and effect as if the oath had been administered in person and is deemed to be an ongoing and continuing obligation to provide testimony in a truthful and honest manner under the penalty of perjury.
	3. Witnesses should follow the below practices:
		1. A witness shall give evidence sitting at an empty desk or table, and the witness’ face shall be clearly visible in the video.
		2. The webcam shall be positioned at face level (e.g., by positioning a laptop on a stack of books) and shall be positioned to show clearly the witness and the witness’ immediate surrounds.
		3. Witnesses may not use a “virtual background.” Instead, the remote venue from which they are testifying must be visible.
		4. Witnesses should speak directly to the camera while testifying.
		5. Witnesses should avoid making quick movements.
		6. All non-party or expert witnesses shall sign off from the Videoconference Platform session at the conclusion of their testimony unless otherwise directed by the Chair.
		7. The attorney(s) asking questions of the witness also shall be visible during the questioning of the witness.
	4. Communication between the witness and any counsel is prohibited during the witness’s examination unless expressly and beforehand agreed by the parties or authorized by the Chair. For example, no chat messages or email communications may be exchanged between the witness and any counsel during examination. Once a witness is called at the hearing for examination, the witness is prohibited from substantive conversations concerning his or her testimony or the subject matter of the hearing until after the witness’s examination has been completed in its entirety.
	5. At any time, the Chair may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue to confirm that no unauthorized persons are present.
	6. In accordance with the provisions of this Order, the Host 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
		1. For each arbitrator, the parties will prepare exhibits in the manner set forth in paragraph of Order No. , the Procedural and Scheduling Order Following Preliminary Hearing, dated ----, except that deliveries shall be made to the following addresses: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
		2. For any witness, the Videoconference Platform shall provide an electronic document repository, which shall display exhibits to all participants.
2. **HEARING SCHEDULE AND LOGISTICS**
	1. The hearing shall commence on Monday, June 29, 2020, and it will be begin at 9:30 a.m. Eastern Daylight Time. To address screen fatigue, the hearing will proceed at the following approximate intervals: ------

At the Panel’s discretion, these intervals may be adjusted for more frequent or less frequent breaks or for longer or short break periods.

* 1. The hearing shall continue on the following days, as may be necessary:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. It is recommended that all participants access the electronic hearing room early each day of hearing. The Panel may take additional recesses and adjust the hearing schedule, in its discretion, to facilitate a smooth and efficient hearing.
	2. 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.
	3. To avoid delay and difficulty reconnecting, hearing participants should not disconnect from the Videoconference Platform meeting during any recess. During breaks, hearing participants should mute their audio connection and turn off their video feed.
	4. The AAA will provide the Panel with an electronic “break-out” room via Zoom or similar technology to confer privately. Counsel for each party may use electronic break- out rooms using their own technology.
1. **TECHNICAL FAILURE**
	1. Technical Support. In the event of a connection problem or other technical

issue, hearing participants may first contact **Teleconferencing Inc .** by telephone at **----** or by email For reference, the Videoconference Platform’s

technical support telephone number is and email is

* 1. Back-Up Conference-Call Dial-In Number. The AAA will provide a

standing separate back-up conference-call dial-in number via Zoom or similar technology for hearing participants to use, at the Panel’s direction, in the event of a technical failure. Should one party’s or participant’s videoconferencing connection fail, the Panel 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 Panel sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.

* 1. If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:
		1. The Panel may take steps to “pause” the hearing, which may include directing participants to join the Back-Up Conference-Call Dial-In Number or moving participants into one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;
1. In the event a hearing attendee has experienced a connection problem or other technical issue, the parties and participants shall use telephone communication to notify the other hearing participants. Unless agreed otherwise, the Host is the designated person and number to contact in the event that parties, counsel, or witnesses are disconnected. The Host shall keep counsel and the Panel currently informed of any such loss of connectivity via e-mail. The Chair, in consultation with the other Panel members, will determine whether to proceed via Zoom or back-up audio connection If the Videoconference Platform fails to work so that the hearing cannot take place as scheduled, or if the Chair determines that the Videoconference Platform 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 the Videoconference Platform, the Panel may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.
2. **COSTS OF VIDEOCONFERENCING**
	1. Consistent with Section II, Paragraph 6 of Order No. 1, the Procedural and Scheduling Order Following Preliminary Hearing, dated -------, the Parties agree to share the costs of the Videoconference Platform. This agreement is without prejudice to the apportionment permitted under the AAA Commercial Arbitration Rules.
3. **CONTINUED EFFECT OF ORDER**

This Order shall continue in effect unless and until expressly amended or superseded by any subsequent order of the Panel.