

## **RESOLUTIONS, LLC's GUIDE TO DISPUTE RESOLUTION**

### **Comprehensive Arbitration Rules and Procedures**

#### **1. Scope of Rules**

The RESOLUTIONS, LLC Comprehensive Arbitration Rules and Procedures ("Rules") govern binding Arbitrations of disputes or claims that are administered by RESOLUTIONS, LLC and in which any disputed claim or counterclaim exceeds \$250,000, not including interest.

#### **2. Party-Agreed Procedures**

The Parties may agree on any procedures not specified herein that are consistent with the applicable law. The Parties will promptly notify the RESOLUTIONS, LLC Case Administrator of any Party-agreed procedures and will confirm these procedures in writing. The Party-agreed procedures will be enforceable as if contained in these Rules. These Rules will control any matters not changed by the Party-agreed procedures.

#### **3. Amendment of Rules**

RESOLUTIONS, LLC may amend these Rules. The Rules in effect on the date of the commencement of an Arbitration (as defined in Rule 5) will apply to that Arbitration, unless the Parties have specified that another version of the Rules applies.

#### **4. Conflict with Law**

If any of these Rules, or a modification of these Rules agreed on by the Parties, is discovered to be in conflict with a mandatory provision of applicable law, the provision of law will govern, and no other Rule will be affected.

#### **5. Commencing an Arbitration**

A RESOLUTIONS, LLC Comprehensive Arbitration is commenced by either:

(A) the submission to RESOLUTIONS, LLC by all Parties of a fully-executed J.A.M.S/ ENDISPUTE Arbitration Agreement;

(B) the submission To RESOLUTIONS, LLC of a pre-dispute written contractual provision requiring the Parties to arbitrate the dispute or claim, along with either written evidence of the intent of all Parties to comply with the requirement or a written demand by one Party that the other Party(ies) comply with the requirement; or

(C) the oral agreement of all Parties to participate in an Arbitration conducted pursuant to these Rules.

The Arbitration process is considered commenced when RESOLUTIONS, LLC confirms in writing the receipt of the documents described above and the agreement of all Parties to participate in the Arbitration and to be bound by its results. The date of commencement of the Arbitration is the date of RESOLUTIONS, LLC 's confirmation letter.

In the event of an oral agreement to participate in an Arbitration, even if the Arbitration is commenced with the issuance of a RESOLUTIONS, LLC confirmation letter, the Arbitration Hearing will not take place until all Parties have executed A RESOLUTIONS, LLC Arbitration Agreement.

If a Party that is a signatory to a pre-dispute written contractual provision fails to respond to a demand for Arbitration or fails to agree to participate in the Arbitration process, RESOLUTIONS, LLC will confirm in writing the failure to respond or participate and, pursuant to Rule 20, will schedule, and provide appropriate notice of, a Hearing or other opportunity for the Party demanding the Arbitration to demonstrate its entitlement to relief.

#### 6. Preliminary and Other Administrative Conferences Optional Appeal Procedure

(A) The Case Administrator will conduct a Preliminary Conference with the Parties, by telephone, within seven (7) calendar days after the date of commencement of the Arbitration. The Case Administrator will answer any questions regarding these rules and will discuss procedural matters such as the pleading or notice of claim sequence, Arbitrator selection, a schedule for discovery, if any, and the location and scheduling of the Arbitration Hearing, including the expectations of the Parties as to the length of time the Arbitration Hearing is likely to require.

(B) At any subsequent time, the Case Administrator may convene, or the Parties may request, additional conferences to discuss administrative or procedural matters.

(C) At either the Preliminary Conference or at subsequent conferences, the Parties and the Case Administrator may identify any substantive, evidentiary, procedural or discovery-related disputes that should be considered in a conference with the Arbitrator(s). In addition, at either the Preliminary Conference or at subsequent conferences, the Case Administrator may offer the assistance of RESOLUTIONS, LLC in exploring settlement through mediation or other non-binding alternative dispute resolution processes.

(D) During the Preliminary Conference, the Case Administrator will ask the Parties if they agree to the Optional Appeal Procedure set forth in Rule 23. All Parties must agree in writing for the Optional Appeal Procedure to be effective. Once a Party has agreed to the Optional Appeal Procedure, it cannot unilaterally withdraw from it, unless it

withdraws, pursuant to Rule 12, from the Arbitration. The Parties may subsequently agree to the Optional Appeal Procedure at any time prior to the Arbitration Award becoming final pursuant to Rule 22.

7. Number of Arbitrators and Appointment of Chairperson

(A) RESOLUTIONS, LLC Comprehensive Arbitrations will be conducted by one neutral Arbitrator, unless all Parties agree otherwise.

(B) In cases involving more than one Arbitrator, the Parties will agree on, or in the absence of agreement the Case Administrator will designate, a Chairperson of the Arbitration Panel. The Chairperson will have the authority to act as a single Arbitrator for the purposes of ruling on all discovery and procedural matters, including pleading issues, but not with respect to dispositive, jurisdictional and sanction issues. All references to the Arbitrator in these Rules will apply to the Chairperson of the Arbitration Panel where appropriate.

8. Service

Service under these Rules will be made by providing one copy of the document to each Party and two copies to the Case Administrator. If a three member Arbitrator panel is used, four copies of all documents will be provided to the Case Administrator. Service may be made by hand-delivery, Federal Express or other similar services, facsimile transmission or by U.S. mail. Service is considered effective upon the date of receipt of the document.

9. Notice of Claims

(A) If a matter has been submitted for A RESOLUTIONS, LLC Comprehensive Arbitration after a 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 counter or cross claims), will be served on RESOLUTIONS, LLC within fourteen (14) 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 the claims, counter or cross claims and affirmative defenses that each has. If necessary, such notice may be supplemented pursuant to Rule 9 (B).

(B) If a matter has been submitted prior to or in lieu of the filing of the case in court or prior to the filing of an Answer, the Parties must give each other notice of all claims, counter or cross claims and affirmative defenses (including jurisdictional challenges) that each has. Such notice may be provided by the service upon the other Party(ies) and upon RESOLUTIONS, LLC, of either an appropriate pleading (in the form of either a Complaint or Answer) or a letter. The letter should include a short statement of

the factual basis for the claims, counter or cross claims and affirmative defenses (including the basis of any jurisdictional challenge).

Notice of claims, counter or cross claims and affirmative defenses may be exchanged simultaneously, in which case they should be served on RESOLUTIONS, LLC within fourteen (14) calendar days of the date of commencement of the Arbitration, or by such other date as the Parties may agree. The responding Party(ies) may, however, in its sole discretion, wait to receive the notice of claim before serving its response, including counter or cross claims or affirmative defenses. In this case, the response, including counter or cross claims and affirmative defenses, should be served on the other Party(ies) and upon RESOLUTIONS, LLC within fourteen (14) calendar days of having received the notice of claim. Any Party that is a recipient of a counter or cross claim may reply to such counter or cross claim, including asserting jurisdictional challenges. In this case, the reply should be served on the other Party(ies) and RESOLUTIONS, LLC within fourteen (14) calendar days of having received the notice of counter or cross claim.

No claim, counter or cross claim or affirmative defense will be considered by the Arbitrator in the absence of prior notice to the other Party(ies), unless all Parties agree that such consideration is appropriate notwithstanding the lack of prior notice.

If any Party fails to respond to a claim or fails to reply to a counter or cross claim, that Party will be deemed to have denied the claims, counter or cross claims made against it but to have waived the right to assert other claims or challenges to jurisdiction.

(C) Amendments or additions to claims and counter or cross claims may be made only on application to the Arbitrator, who may allow such changes upon a showing of good cause and no prejudice to the opposing Party(ies).

## 10. Interpretation of Rules and Jurisdictional Challenges

(A) Once appointed, the Arbitrator will resolve disputes about the interpretation and applicability of these Rules, including disputes relating to the duties of the Arbitrator and the conduct of the Arbitration Hearing, except that in cases involving more than one Arbitrator all such issues that may be dispositive with respect to a claim will be ruled on by the Arbitration Panel. The resolution of the issue by the Arbitrator or Panel is final.

Jurisdictional disputes, including disputes over the existence, validity, interpretation or scope of the agreement under which Arbitration is sought, will be submitted to and ruled on by the Arbitrator(s).

(B) Disputes arising before the appointment of the Arbitrator will be resolved by the Case Administrator, but only those disputes relating to jurisdiction and the conduct of the Hearing are subject to subsequent review by the Arbitrator.

## 11. Representation

The Parties may be represented by counsel. Each Party will promptly notify the Case Administrator and the other Party(ies) of the name, address and telephone and fax numbers of its counsel. The attorney for a Party may act on the Party's behalf in complying with these Rules.

12. Withdrawal from Arbitration

No Party may terminate or withdraw from an Arbitration after it commences (as defined in Rule 5) except, by written agreement of all Parties to the Arbitration.

13. Ex Parte Communications

No Party will have any ex parte communication with the Arbitrator(s) regarding any issue related to the Arbitration. Any necessary ex parte communication with RESOLUTIONS, LLC, whether before or after the Arbitration Hearing, will be conducted through the Case Administrator.

14. Arbitrator Selection and Replacement

(A) Unless the Arbitrator(s) has been previously selected by agreement of the Parties, the Case Administrator at the Preliminary Conference will recommend appropriate Arbitrator candidates who have been pre-screened By RESOLUTIONS, LLC for potential conflicts of interest. Any disclosures that are mandated by applicable law regarding the Arbitrator candidates will be made at this time. The Case Administrator will attempt during the Preliminary Conference to reach agreement among the Parties regarding the selection of the Arbitrator. Any disclosures that are mandated by applicable law regarding the Arbitrator candidates will be made at this time.

(B) If the Parties do not agree on an Arbitrator within seven (7) calendar days of the Preliminary Conference, the Case Administrator will send the Parties a list of at least five (5) Arbitrator candidates who have been pre-screened by RESOLUTIONS, LLC for potential conflicts of interest. Any disclosures that are mandated by applicable law regarding the Arbitrator candidates will be made at this time, and RESOLUTIONS, LLC will also provide each Party with a brief description of the background and experience of each Arbitrator candidate.

Any Party may, within seven (7) calendar days of receipt of the list of names, challenge an Arbitrator candidate for cause and the Case Administrator will promptly rule on such challenges. If a challenge for cause is upheld, a replacement name will be sent to the Parties, along with the required disclosures and background information about said candidate.

Within seven (7) calendar days of the receipt by the Parties of the final list of names, each Party may strike two (2) names, and will rank the remaining Arbitrator candidates in order of preference. The remaining Arbitrator candidate with the highest composite ranking will become the Arbitrator.

If this process does not yield an Arbitrator, RESOLUTIONS, LLC will designate the Arbitrator.

(C) If a Party fails to respond in a timely manner to the list of Arbitrator candidates, the Case Administrator will deem that Party to have accepted all of the Arbitrator candidates.

(D) In cases involving more than two Parties or the selection of more than one Arbitrator, the Case Administrator's list will include a sufficient number of candidates to yield the specified number of Arbitrators, while allowing each Party up to two (2) strikes.

(E) Entities whose interests are not adverse with respect to the issues in dispute will be treated as a single Party for purposes of the Arbitrator selection process. RESOLUTIONS, LLC will determine whether the interests between entities are adverse for purposes of Arbitrator selection, 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.

(F) If for any reason the Arbitrator who is selected is unable to fulfill the Arbitrator's duties, a successor Arbitrator will 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 to proceed with the remaining two Arbitrators. The Case Administrator will make the final determination as to whether an Arbitrator is unable to fulfill his or her duties.

(G) All Arbitrators will execute an oath of office before being called on to make any determinations in the Arbitration proceeding and, in any event, before the taking of evidence in the Arbitration Hearing.

## 15. Exchange of Information

(A) The Parties will cooperate in good faith in the voluntary, prompt and informal exchange of all non-privileged documents and other information relevant to the dispute or claim.

(B) The Parties will exchange copies of all non-privileged documents relevant to the dispute or a claim, including copies of all documents in their possession or control on which they rely in support of their positions or which they intend to introduce as exhibits at the Arbitration Hearing. The Parties will serve the documents within twenty-one (21) calendar days after all pleadings or notice of claims have been received, unless otherwise agreed.

(C) The Parties will exchange the names of all individuals with knowledge of the dispute or a claim, including all individuals who they may call as witnesses at the

Arbitration Hearing. The Parties will serve the names of such witnesses within twenty-one (21) calendar days after all pleadings or notice of claims have been received, unless otherwise agreed.

(D) The Parties will exchange the names of all experts who may be called upon to testify or whose report may be introduced at the Arbitration Hearing. The Parties will serve the names of such experts within twenty-one (21) calendar days after all pleadings or notice of claims have been received, unless otherwise agreed.

(E) At any time after all pleadings or notice of claims have been received, but no later than fourteen (14) calendar days before the Arbitration Hearing, each Party may take one deposition of an opposing Party or of one individual under the control of the opposing Party. The Parties will attempt to agree on the time, location and duration of the deposition, and if the Parties do not agree these issues will be determined by the Arbitrator. Any Party may conduct depositions of its own witnesses which may be introduced as evidence at the Arbitration Hearing if the other Party(ies) was given fair opportunity to attend the deposition and cross-examine the witness.

(F) Upon the request of any Party, the Arbitrator will conduct a conference for the purpose of determining whether any additional information should be exchanged. Parties may request additional depositions. If the Arbitrator determines that the requesting Party has a reasonable need for the requested information, and that the request is not overly burdensome on the opposing Party(ies), the Arbitrator may order the additional information exchange. The producing Party(ies) will promptly comply with any directive of the Arbitrator by the date specified by the Arbitrator which, in no event, will be later than fourteen (14) calendar days before the Arbitration Hearing.

(G) As they become aware of new documents or information, including experts who may be called upon to testify, all Parties remain under a continuing obligation 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 which have not been previously exchanged, or witnesses and experts not previously identified, will not be considered by the Arbitrator(s) at the Hearing, unless agreed by the Parties.

(H) The Parties will promptly notify the Case Administrator when an unresolved dispute exists regarding discovery issues. The Case Administrator will attempt to facilitate an informal resolution of the dispute by the Parties themselves. If the dispute is not informally resolved, the Case Administrator will arrange a conference with the Arbitrator, either by telephone or in person, and the Arbitrator will decide the dispute.

16. Summary Disposition of a Claim or Issue

(A) Upon agreement of all Parties interested in a particular claim or substantive issue, the Arbitrator(s) may hear and determine a Motion for Summary Disposition of that claim or issue.

(B) The Case Administrator will obtain the agreement of the Parties on a briefing schedule and record for the Motion. If no agreement is reached, the Arbitrator(s) will set the briefing schedule and contents of the record. Ordinarily, only opening briefs (of no more than 20 double-spaced pages) and response briefs (of no more than 10 double-spaced pages) will be allowed in a sequence to be determined. The briefs may be in the form of a letter. Ordinarily, oral argument will not be allowed, unless all Parties or the Arbitrator(s) so request.

(C) The Arbitrator(s) will apply the same burdens as a court in the jurisdiction would apply under similar circumstances. With respect to substantive issues, the Arbitrator(s) will apply the same standard in deciding the Motion as would be applicable to the Arbitration Award.

17. Scheduling and Location of Hearing

Unless previously agreed to by the Parties, the Arbitrator, after consulting with the Parties, will determine the location, date and time of the Arbitration Hearing. In determining the location of the Hearing, the Arbitrator will take into account such factors as the convenience of the Parties and witnesses as well as the relative resources of the Parties. Absent unusual circumstances, the Arbitration Hearing will begin within ninety (90) calendar days of the commencement of the Arbitration. The Arbitrator and the Parties will attempt to schedule consecutive Hearing days if more than one day is necessary.

18. Pre-Hearing Submissions

(A) The Arbitrator may require a pre-Hearing conference for the purposes both of narrowing the focus of the Arbitration Hearing by stipulations of fact or joint statements of issues to be determined and of resolving any outstanding issues relating to the conduct of the Hearing. The pre-Hearing conference may be conducted by telephone.

(B) By at least seven (7) calendar days before the Arbitration Hearing, the Parties will serve upon each other a list of the witnesses they intend to call, including any experts, along with a short description of the anticipated testimony of the witness and an estimate of the length of the witness's direct testimony. In addition, by at least seven (7) calendar days before the Arbitration Hearing, the Parties will serve upon each other copies of all exhibits intended to be used at the Hearing.

The list of witnesses and the copies of all exhibits that the parties intend to use at the Hearing should also be served upon RESOLUTIONS, LLC for transmission to the

Arbitrator(s). The Parties should pre-mark exhibits and should attempt themselves to resolve any disputes regarding the admissibility of exhibits prior to the Hearing.

(C) The Arbitrator(s) 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, should not exceed twenty (20) double-spaced pages in length, and should be submitted to RESOLUTIONS, LLC, and served upon the other Party(ies), by at least seven (7) calendar days before the Hearing date. Rebuttal statements or other pre-Hearing written submissions may be permitted or required at the discretion of the Arbitrator(s).

#### 19. Securing Witnesses for the Arbitration Hearing

At the request of another Party, all other Parties will produce for the Arbitration Hearing all witnesses in their employ or under their control and without need of subpoena. The Arbitrator may issue subpoenas for the attendance of witnesses or the production of documents. In the event a Party or a subpoenaed person objects to the production of a witness or other evidence, the Party may file an objection with the Arbitrator, who will promptly rule on the objection, weighing both the burden on the producing Party and the need of the proponent for the witness.

#### 20. The Arbitration Hearing

(A) The Arbitrator(s) will ordinarily conduct the Arbitration Hearing in the manner set forth in these Rules. The Arbitrator(s) may vary these procedures if the Arbitrator(s) determines that it is reasonable and appropriate to do so.

(B) The Arbitrator(s) will determine the order of proof, which will generally be similar to that of a court trial.

(C) The Arbitrator(s) will require witnesses to testify under oath if requested by any Party.

(D) The Arbitrator(s) will consider evidence that he or she finds relevant and material to the dispute, giving the evidence such weight as he or she determines is appropriate. The Arbitrator(s) may be guided in that determination by the Federal Rules of Evidence or by any other applicable judicial rules of evidence; however, strict conformity to such rules of evidence is not required, except that the Arbitrator(s) will apply the Federal Rules of Civil Procedure.

(E) The Arbitrator(s) may receive and consider witnesses' deposition testimony recorded by transcript or videotape, provided that the other Parties have had the opportunity to attend and cross-examine. The Arbitrator(s) may in his or her discretion consider witness affidavits or other recorded testimony, but will give that evidence only such weight as the Arbitrator(s) deems appropriate.

(F) The Parties will not offer as evidence, and the Arbitrator(s) will 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.

(G) When the Arbitrator(s) determines that all relevant and material evidence and arguments have been presented, the Arbitrator will declare the Hearing closed. The Arbitrator(s) may defer the closing of the Hearing until a date agreed upon by the Arbitrator(s) and 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. If post-Hearing briefs are to be submitted, or closing arguments are to be made, the Hearing will be deemed closed upon receipt by the Arbitrator(s) of such briefs or the making of such closing arguments.

(H) At any time before the Award is rendered, the Arbitrator(s) may, on his or her own initiative or on application of a Party for good cause shown, re-open the Hearing. If the Hearing is re-opened and the re-opening prevents the rendering of the Award within the time limits specified by these Rules, the time limits will be extended for an appropriate period of time.

(I) The Arbitrator(s) may proceed with the Hearing in the absence of a Party who, after having executed the Arbitration Agreement and after having received reasonable notice of the Hearing, fails to attend. The Arbitrator(s) may not render an Award solely on the basis of the default or absence of the Party, but will require any Party(ies) who is present to submit such evidence as the Arbitrator(s) may require for the rendering of an Award. If RESOLUTIONS, LLC reasonably believes that a Party will not attend the Hearing, the Arbitrator may receive the evidence necessary to render an Award either by a telephone conference or by affidavit.

(J) Any Party may request that a stenographic or other record be made of the Hearing, provided that the requesting Party bear the cost of such stenographic record and that the original of the record be maintained by the reporting service so that the other Party(ies) has equal access to it.

If a stenographic or other record is made of the Hearing, the requesting Party(ies) will provide a copy to the Arbitrator. If the Parties agree to the Optional Appeal Procedure as set forth in Rule 23, they will ensure that a stenographic or other record is made of the Hearing and will share the cost.

## 21. Waiver of Hearing

The Parties may agree to waive the oral Hearing and submit the dispute to the Arbitrator(s) for an Award based on written submissions and other evidence upon which the Parties agree.

22. The Award

(A) Absent good cause for an extension, the Arbitrator will render the award within thirty (30) calendar days after the date of the closing of the Hearing or, if an Arbitration Hearing has been waived, within thirty (30) calendar days after the date that the Arbitrator(s) received all materials specified by the Parties.

(B) Where a panel of Arbitrators has heard the dispute, the decision and Award of a majority of the panel will constitute the Arbitration Award and will be binding on the Parties.

(C) Unless the Parties specify a different standard, in determining the Award the Arbitrator(s) will be guided by principles of law and equity as applied to the facts found at the Arbitration Hearing, including those facts relating to custom and agreement between the Parties.

(D) The Arbitrator(s) is authorized to Award any remedy allowed by the applicable law, including multiple damages, pre or post judgment interest and attorneys' fees and expenses, and to grant final or interlocutory relief, including injunctive relief, unless the Parties have agreed to a narrower scope of permissible relief. Notwithstanding this authority, the Arbitrator may not Award punitive damages unless previously agreed by the Parties or unless punitive damages are required by law to be an available remedy in such cases. In the Award, the Arbitrator may also assess Arbitration fees and expenses in favor of either Party if provided by agreement of the Parties, or in favor of RESOLUTIONS, LLC in the event that the Arbitrator finds that fees or expenses are due RESOLUTIONS, LLC.

(E) The Award will consist of a written statement signed by the Arbitrator(s) regarding the disposition of each claim and the relief, if any, awarded as to each claim. Unless all Parties agree otherwise, the Arbitrator(s) will also provide a concise written statement of the reasons for the Award, but this statement will not become part of the Award nor be admissible in any judicial proceeding to enforce or vacate the Award.

(F) RESOLUTIONS, LLC will issue the Award by serving copies on the Parties.

(G) Within seven (7) calendar days after service of the Award, any Party, with written notice to all other Parties, may serve upon the other Party(ies) and RESOLUTIONS, LLC a request that the Arbitrator(s) correct any computational, typographical or similar error in an Award, or the Arbitrator(s) may correct such errors in the Award on his or her own initiative. The Arbitrator(s) will make any necessary and appropriate correction to the Award within seven (7) calendar days of receiving a request, provided that the other Party(ies) has a reasonable opportunity to respond. The corrected Award will be served upon the Parties.

(H) The Award is considered final, for purposes of either the Optional Appeal Procedure pursuant to Rule 23 or for purposes of a judicial proceeding to enforce, modify

or vacate the award pursuant to Rule 24, after seven (7) calendar days of service of the Award, if no request for a correction is made, or as of the date of service of a corrected Award.

### 23. Optional Appeal Procedure

(A) The Appeal Panel will consist of three neutral members, unless the Parties agree that there will be one neutral member. Upon receipt by the Case Administrator of the written agreement of the Parties to the Optional Appeal Procedure, the Case Administrator will recommend to the Parties an Appeal Panel and will make any disclosures that are mandated by applicable law regarding the candidates for the Panel. The Case Administrator will seek the agreement of the Parties as to the selection of Appeal Panel members. If the Parties do not agree on the composition of the Appeal Panel within seven (7) calendar days of having received the Case Administrator recommendation for the Appeal Panel, the Case Administrator will appoint an Appeal Panel.

(B) The procedure for filing and arguing an Appeal is as follows:

(i) If all Parties have agreed to the Optional Appeal Procedure, any party may Appeal an Arbitration Award that has been rendered pursuant to Rule 22 and has become final. The Appeal must be served, in writing, to the Case Administrator and on the opposing Party(ies) within fourteen (14) calendar days after the Award has become final. The letter or other writing evidencing the Appeal must specify those elements of the Award that are being Appealed and must contain a brief statement of the basis for the Appeal.

(ii) Within seven (7) calendar days of the service of the Appeal, the opposing Party(ies) may serve on the Case Administrator and on the opposing Party(ies) a Cross-Appeal with respect to any element of the Award. The letter or other writing evidencing the Cross-Appeal must specify those elements of the Award that are being Appealed and must contain a brief statement of the basis for the Cross-Appeal.

(iii) The record on Appeal will consist of the stenographic or other record of the Arbitration Hearing; and all exhibits, deposition transcripts and affidavits that had been accepted into the record of the Arbitration Hearing by the Arbitrator(s). The Parties will cooperate with the Case Administrator in compiling the record on Appeal, and the Case Administrator will provide the record to the Appeal Panel. No evidence not previously accepted by the Arbitrator(s) will be considered by the Appeal Panel, unless the basis of the Appeal is non-acceptance by the Arbitrator of certain evidence or unless the Appeal Panel determines that there is good cause to re-open the record pursuant to Rule 23 (d).

(iv) The Parties may elect to rely on the memoranda or briefs previously submitted to the Arbitrator(s). In the absence of such election, the Case Administrator will obtain the agreement of the Parties on a briefing schedule.

If no agreement is reached, the Case Administrator will set the briefing schedule. Ordinarily, only opening briefs (of no more than 25 double-spaced pages) and response briefs (of no more than 15 double-spaced pages) will be allowed. The briefs may be in the form of a letter.

(v) The Appeal Panel will conduct an oral argument if all Parties request such argument or may conduct oral argument, in complex cases or unusual circumstances, on its own initiative.

If there is to be oral argument, the Case Administrator will obtain the agreement of the Parties on both the date of such argument and the duration, including the allocation of time. In the absence of agreement, the Appeal Panel will set the date and duration of the oral argument, including the allocation of time.

(C) Once an Appeal has been timely filed, the Arbitration Award is no longer considered final for purposes of seeking judicial enforcement, modification or vacating pursuant to Rule 24.

(D) The Appeal Panel will apply the same standard of review as the first-level appellate court in the jurisdiction would apply under similar circumstances and will also apply the grounds for review under the applicable Arbitration review statute. The Appeal Panel will respect the evidentiary standard set forth in Rule 20 (d). The Panel may affirm, reverse or modify an Award.

It may not remand to the original Arbitrator, but may re-open the record in order to review evidence that had been improperly excluded by the Arbitrator or evidence that is now necessary in light of the Panel's interpretation of the relevant substantive law. A three-member Appeal Panel will make its decision by majority vote and, absent good cause for an extension, will issue the decision within twenty-one (21) calendar days of the date of either oral argument, the receipt of the new evidence or receipt of the record and of all briefs, whichever is applicable or later. Its decision will consist of a concise written explanation, unless all Parties agree otherwise.

(E) If a Party refuses to participate in the Optional Appeal Procedure after having agreed to do so, the Appeal Panel will maintain jurisdiction over the Appeal and will consider the Appeal as if all Parties were participating, including retaining the authority to modify any Award or element of an Award that had previously been entered in favor of the non-participating Party, assuming it believes that the record, after application of the appropriate standard of Appeal, justifies such action.

(F) RESOLUTIONS, LLC will serve the Appeal Panel decision on the Parties. Upon service of the Appeal Panel decision, the Award will be final for purposes of judicial review.

24. 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. The prevailing Party(ies) in any such proceeding will recover from the non-prevailing Party(ies) all reasonable costs, including attorneys' fees and expenses, incurred in connection with the judicial proceeding.

25. Confidentiality and Privacy

(A) The Parties, the Case Administrator, and the Arbitrator will maintain the confidential nature of the Arbitration proceeding and the Award, including the Hearing and the written explanation of the Award, except as necessary in connection with a judicial challenge to or enforcement of an Award, or unless otherwise required by law or judicial decision.

(B) The Arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets or other sensitive information.

(C) 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 will have the discretion to exclude any non-Party from any part of a Hearing.

26. Waiver Of Objection

If a Party becomes aware of a violation 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.

27. Settlement and Consent Award

(A) The Parties may agree, at any stage of the Arbitration process, to submit the case to RESOLUTIONS, LLC for mediation. The RESOLUTIONS, LLC mediator assigned to the case will not be an Arbitrator or a member of the Appeal Panel, unless the Parties so agree pursuant to Rule 27 (b).

(B) The Parties may also agree to seek the assistance of the Arbitrator(s) in reaching settlement. However, the assistance of the Arbitrator(s) in such settlement efforts will not disqualify the Arbitrator(s) from serving as Arbitrator(s) if settlement is not reached nor will such assistance be argued to a reviewing court as the basis for vacating or modifying an Award.

(C) If the Parties inform the Case Administrator in writing that they have reached a settlement, the Arbitration will be deemed terminated. If the Parties request, the Arbitrator(s) will set forth the terms of the agreed settlement in an Award which will be referred to as a Consent Award and will be binding on the Parties.

## 28. Sanctions

The Arbitrator(s) 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, prohibition of certain evidence, or in extreme cases ruling on an issue submitted to Arbitration adversely to the Party who has failed to comply.

## 29. Disqualification of the Arbitrator(s) and Exclusion of Liability

The Parties will not call the Arbitrator(s), the Case Administrator or any other RESOLUTIONS, LLC employee as a witness or as an expert in any pending or subsequent litigation or other proceeding involving the Parties and relating to the dispute which is the subject of the Arbitration. The Arbitrator(s), Case Administrator, and other RESOLUTIONS, LLC employees are also disqualified as witnesses or experts. The Parties will defend the Arbitrator(s), Case Administrator and RESOLUTIONS, LLC from any subpoenas from outside Parties arising from the Arbitration. Neither the Arbitrator(s), Case Administrator nor RESOLUTIONS, LLC 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(s), Case Administrator nor RESOLUTIONS, LLC, including its employees or agents, will be liable to any Party for any act or omission in connection with any Arbitration conducted under these Rules.

## 30. Fees

(A) Each Party will pay its pro-rata share of RESOLUTIONS, LLC 's fees and expenses as set forth in the RESOLUTIONS, LLC 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. The allocation of such fees and expenses will not be disclosed to the Arbitrator(s). RESOLUTIONS, LLC 's agreement to render services is not only with the Party, but also with the attorney or other representative of the Party in the Arbitration.

(B) RESOLUTIONS, LLC may require that the Parties deposit the fees and expenses for the Arbitration prior to the Hearing and may preclude a Party that has failed to deposit its pro-rata or agreed-upon share of the fees and expenses from offering evidence at the Hearing. RESOLUTIONS, LLC may waive the deposit requirement upon a showing of good cause.

(C) The Arbitrator may Award against any Party fees that are due to RESOLUTIONS, LLC. In the event that one Party has not appeared and the other Party from it has paid the full amount of the fees, the Arbitrator may Award the defaulting Party's share of the fee obligation against it and in favor of the Party that has paid.

## 31. Bracketed (or High-Low) Arbitration Option

(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 will promptly notify the Case

Administrator, and provide to the Case Administrator, a copy of their written agreement setting forth the agreed upon maximum and minimum amounts.

(B) The Case Administrator will not inform the Arbitrator(s) of the agreement to proceed with this option nor of the agreed upon minimum and maximum levels, unless all Parties agree that he or she should so inform the Arbitrator(s).

(C) The Arbitrator(s) will render the Award within twenty-one (21) calendar days after the date of the closing of the Hearing or, if an Arbitration Hearing has been waived, within twenty-one (21) calendar days after the date of the Arbitrator(s) receiving all materials specified by the Parties. In rendering the Award, the Arbitrator(s) will apply the standard set forth in Rule 22 (c). The form of the final Award will be governed by Rule 22 (e).

(D) In the event that the Award of the Arbitrator(s) is in between the agreed upon minimum and maximum amounts, the Award will become final as is. In the event that the Award of the Arbitrator(s) is below the agreed upon minimum amount, the final Award issued will be at the agreed upon minimum amount. In the event that the Award of the Arbitrator(s) is above the agreed upon maximum amount, the final Award issued will be the agreed upon maximum amount.

### 32. "Final Offer (or Baseball)" Arbitration Option

(A) At least seven (7) calendar days before the Arbitration Hearing, the Parties will exchange and provide to the Case Administrator written proposals for the amount of money damages they would offer or demand, as applicable, and that they believe to be appropriate based on the standard set forth in Rule 22 (c). The Case Administrator will promptly provide a copy of the Parties' proposals to the Arbitrator(s), unless the Parties agree that they should not be provided to the Arbitrator(s). Anytime prior to the close of the Arbitration Hearing, the Parties remain free to exchange revised written proposals of offers or demands, which will supersede all prior proposals. The revised written proposals will be provided to the Case Administrator who will promptly provide them to the Arbitrator(s), unless the Parties agree otherwise.

(B) If the Arbitrator(s) has been informed of the written proposals, in rendering the Award the Arbitrator(s) will select between the Parties' last proposals, choosing the proposal that the Arbitrator(s) finds most reasonable and appropriate in light of the standard set forth in Rule 22 (c).

(C) If the Arbitrator(s) has not been informed of the written proposals, the Arbitrator will render the Award as if pursuant to Rule 22, except that the Award will thereafter be adjusted to conform to the closest of the last proposals and the closest of the last proposals will become the Award.

(D) The Arbitrator will render the Award within twenty-one (21) calendar days after the date of the closing of the Hearing or, if an Arbitration Hearing has been waived, within twenty-one (21) calendar days after the date of the Arbitrator(s) receiving all materials specified by the Parties. The form of the final Award will be governed by Rule 22 (e).