



**American Arbitration Association**

**Preliminary Hearing and Scheduling Order# \_\_\_\_\_**

AAA Case Number: \_\_\_\_\_

**PARTY NAME(S)**, Claimant(s)

-vs-

**PARTY NAME(S)**, Respondent(s)

*The commentary for the various sections of the Preliminary Hearing form is provided as guidance and does not supersede legal norms, provisions of the rules, codes of ethics, parties' arbitration agreements or arbitrator's authority. To protect the personal privacy and other legitimate interests, parties and their attorneys must not include, or must redact where inclusion is necessary from all pleadings, personal identifiable information such as social security numbers and financial account numbers. If account numbers are required, only the last four digits of a number may be used. Circumstances may prompt arbitrator to make decisions or take actions different from those illustrated.*

Pursuant to the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association (AAA) effective October 1, 2013, a preliminary hearing was held on \_\_\_\_\_ before Arbitrator(s) \_\_\_\_\_.

**Preliminary Hearing Attendees:**

For Claimant: \_\_\_\_\_

For Respondent: \_\_\_\_\_

For the Association: \_\_\_\_\_

**By agreement of the Parties and Order of the Arbitrator(s), the following is now in effect:**

**1. Applicable Law:** The \_\_\_\_\_ (State or Federal) arbitration statute/act will apply in the Arbitration and \_\_\_\_\_ (State) law will be applied substantively to the arbitration.

**2. Parties:** All the necessary or appropriate parties are included in the arbitration.

**3. Claim/Counterclaim:** Pursuant to the direction of the Arbitrator(s), all parties shall amend/specify claims and/or counterclaims by \_\_\_\_\_. Responses, if any, are due by \_\_\_\_\_.

**4. Additional Preliminary Matters:** Any other preliminary matters not otherwise provided for herein shall be raised by the parties by \_\_\_\_\_.

**5. Dispositive Motions:** (**Optional Paragraph**) One of the Parties has indicated its desire to file a dispositive

motion. In the event that either Party desires to file a dispositive motion, it may file and serve an opening letter on or before \_\_\_\_\_, not to exceed \_\_\_\_ pages in length stating the reasons it believes that a dispositive motion should be allowed by the Arbitrator(s). The opposing Party may file and serve its letter in opposition, not to exceed \_\_\_\_ pages in length, on or before \_\_\_\_\_. The Arbitrator will rule on the Parties' letter submissions on or before \_\_\_\_\_. If allowed, dispositive motions will be due \_\_\_\_ days after the Arbitrator's ruling allowing them, with responses due \_\_\_\_ days after the filing of the dispositive motion.

**6. Motions: (Optional Paragraph)** Pursuant to the Commercial Rules, motions may not be filed without the permission of the Arbitrator. Application to file motions shall be filed with the AAA and the Arbitrator(s), by letter or email not to exceed \_\_\_\_ pages; describing 1) the motion the Party wishes to file, 2) the factual and legal basis for the motion, and 3) the reasons why the motion needs to be filed and how it will expedite resolution of the case or otherwise benefit the Parties.

The submission shall contain a certification that the requesting Party has in good faith conferred with the opposing Party about the proposed motion prior to any Party requesting that a Motion be filed. The certification shall state whether the relief sought by the motion has been agreed to by the Parties or will be opposed. If no conference has occurred, the reason why must be stated. An opposing party may submit a responsive letter, not to exceed \_\_\_\_ pages; within \_\_\_\_ days of its receipt of a letter requesting a motion. Parties are advised that it is unlikely that dispositive motions which require resolution of disputed facts, without a hearing, will be granted. All other applications or requests for advice or direction from the Arbitrator(s) may be made informally by email or joint telephone conference. Formal motion procedure is not required, although it is allowed if the parties wish. Any request for permission to file a dispositive motion shall be made no later than \_\_\_\_\_.

**7. Hearing:** A Final Hearing in this matter will commence before the Arbitrator(s) at \_\_\_\_\_ on \_\_\_\_\_ at \_\_\_\_\_ am/pm. The parties estimate that this case will require \_\_\_\_ day(s) of hearing time, inclusive of arguments. Approximate number of attendees at the hearing: \_\_\_\_\_. This is a firm setting, and will not be changed or continued absent exceptional circumstances, upon a showing of good cause.

**8. Additional Pre-hearing/Status Conference:** An additional pre-hearing or status conference call is scheduled

for \_\_\_\_\_ at \_\_\_\_\_ am/pm before the Arbitrator(s). The parties shall confer regarding a proposed agenda and shall submit a proposed agenda for the call no later than \_\_\_\_\_. If no agenda is provided, the call will be cancelled. This call may also be cancelled upon the mutual agreement of the parties.

**9. Exchange of Information/Discovery:**

a. Written Discovery:

- i. Requests shall be exchanged by \_\_\_\_\_. Each Party may serve no more than \_\_\_\_ requests for production of documents and no more than \_\_\_\_ interrogatories.
- ii. Answers to discovery requests are due within \_\_\_\_ days of receipt of the requests.

b. Depositions to be completed by\_\_\_\_\_.

- i. \_\_\_\_ hours of total deposition time or \_\_\_\_ number of depositions.
- ii. No deposition shall exceed \_\_\_\_ hours in length.
- iii. With respect to all depositions, there shall be no speaking objections, or interference with the ability of counsel to elicit testimony from a witness, subject to privilege objections and instructions.

c. Discovery cutoff is\_\_\_\_\_.

- i. Please be advised that late-filed motions to compel discovery or discovery disputes are insufficient to cause a postponement of the Final Hearing.

d. Electronic Discovery:

- i. Clawback agreements shall be in place for all parties to allow for the retrieval of inadvertently disclosed attorney-client privileged documents.
- ii. If the cost of collection of any of the electronically stored data presents an unreasonable cost for the producing party because the data is not readily accessible and the parties cannot reach an agreement on the handling of the cost, the arbitrator will decide if cost sharing or cost shifting is appropriate.
- iii. If any party has documents that are confidential, the arbitrator will issue a protective order upon the receipt of a stipulation from the parties for such an order. If the parties cannot agree

on the terms, they may request a sample Stipulation for Protective Order from the AAA.

iv. The parties' agreement regarding electronic discovery will then be memorialized in an ESI case management order to be submitted in draft to the Arbitrator(s) on or before \_\_\_\_\_.

If the parties cannot come to agreement regarding all salient issues concerning electronic discovery not covered by this order, they may raise the remaining issues to the Arbitrator(s) by motion, to be filed within \_\_\_\_ days of the meet and confer in accordance with the deadlines below.

**10. Confidentiality:** A party may make a request to the Arbitrator(s) for any measures required to protect confidential information.

**11. Subpoenas:**

a. Subpoenas to secure the appearance of non-party witnesses or documents will be issued by the Arbitrator(s). The Party requesting the subpoena shall disclose the subpoena to and shall confer with all other Parties prior to requesting its issuance and shall indicate if any Party opposes the issuance. If any Party objects to issuance of the subpoena or the content of any subpoena, such objection shall be presented to the Arbitrator(s) no more than \_\_\_\_ business days after issuance is requested, unless a shorter time is ordered by the Arbitrator(s). Subpoenas related to discovery shall be submitted to the Arbitrator(s) on or before \_\_\_\_\_. Subpoenas for the attendance of witnesses at the hearing shall be submitted no later than \_\_\_\_\_.

b. Pursuant to agreement of the parties, for cases involving an arbitration panel, the chair of the panel, and in his/her absence, any other panel member may issue subpoena(s) and rule on discovery.

**12. Witness Disclosures:**

a. Claimant shall file a disclosure of all witnesses reasonably expected to be called by Claimant(s) by \_\_\_\_\_.

b. Respondent shall file a disclosure of all witnesses reasonable expected to be called by Respondent(s) by \_\_\_\_\_.

c. On or before \_\_\_\_\_, the parties shall file and serve their initial expert witness reports. Expert reports shall set forth each expert's opinions and the reasons for them. The substance of

each expert's direct testimony must fairly and reasonably be addressed in the expert's report. There shall be no additional discovery of experts, except on good cause shown to the Arbitrator(s).

**13. Exhibits:** The parties shall exchange copies of all exhibits to be offered and all schedules, summaries, diagrams, and charts to be used at hearing not later than \_\_\_\_\_.

- a. The Association does not require a copy of the exhibits for our file.
- b. Each party shall bring sufficient copies to the hearing for opposing parties, the Arbitrator(s), and the witness.
- c. Each proposed exhibit shall be pre-marked for identification using the following designations:

Party	Exhibit #	To Exhibit #
Claimant	C1	C__
Respondent	R1	R__

d. The parties shall attempt to agree upon and submit a jointly prepared consolidated and comprehensive set of joint exhibits.

- i. Joint Exhibits shall be numbered sequentially with the prefix J (J-1, J-2, J-3, etc.).

**14. Arbitration Hold:** Counsel for the Parties are directed to inform their clients that the Arbitrator(s) has ordered an arbitration hold which applies to **[[describe scope of hold]]**, and that the clients should take steps to prevent the destruction of all documents, both paper and electronic. If any party has an automatic document deletion/destruction program in place that system should be overridden until the case is completed.

**15. Stipulation of Uncontested Facts:** The parties shall file a stipulation of uncontested facts by \_\_\_\_\_.

**16. Pre-Hearing Briefs:** On or before \_\_\_\_\_, each party may serve and file a pre-hearing brief on all significant disputed issues, setting forth briefly the party's position and the supporting arguments and authorities.

- a. Briefs may be in summary form, including the use of bullet points rather than extensive text.
- b. The Arbitrator(s) requests that briefs not exceed \_\_\_\_ double-spaced pages, excluding copies of any authorities that the parties may submit at the same time. The parties are invited to highlight any

authorities as they deem appropriate.

**17. Stenographic Record:** If both parties desire a stenographic record of the hearing, the parties will arrange between themselves of the presence of a court reporter. The cost of the court report will be divided evenly between the Parties. Pursuant to Rules, if the parties are not in agreement, the requesting party or parties shall pay the cost of the court reporter and record.

**18. Award:**

a. Form of Award:

- i. Standard/Reasoned or as required by the parties arbitration clause
- ii. Pursuant to the Rules, the award shall be made by the Arbitrator(s) no later than 30 days from the date of closing the hearing, or, if oral hearings have been waived, from the date of the AAA's transmittal of the final statement and proofs to the Arbitrator(s).
- iii. Confirm if the arbitration agreement provide for the awarding of attorney's fees.

**19. Mediation/Judicial Settlement Conference Services:**

a. Mediation and Judicial Settlement Conference Services are available from the AAA. There is no additional filing fee to initiate either service.

b. The parties shall mediate their dispute by \_\_\_\_\_ pursuant to AAA's Commercial Arbitration Rules, or as otherwise agreed upon by the parties, in accordance with the Rules.

**20. Communication:**

**OPTION 1** (All Communications to AAA for Transmittal to Arbitrator(s))

Any and all documents to be filed with or submitted to the Arbitrator(s) outside the hearing shall be provided to the AAA for transmittal to the Arbitrator(s). Copies of said documents shall also be sent to the opposing party(s). There shall be no direct oral or written communication between the parties and the Arbitrator(s), except at oral hearings.

**OPTION 2** (Direct Exchange)

The parties agree to participate in Direct Exchange. Provided there is no ex parte communication with the Arbitrator(s), the parties may communicate directly with the Arbitrator(s) by submitting documents to the Arbitrator(s) and also sending copies to the other party(s) and originals to the AAA (except for hearing

exhibits and discovery documents). Email submission of documents and email requests for action by the Arbitrator(s) are allowed, provided that the AAA and all parties also receive copies of all of these. For convenience of the parties, the following are the email addresses to be used:

i. (Email Addresses)

There shall be no direct oral or written communication between the parties and the Arbitrator(s) except as contemplated by this Order. Any communication to the Arbitrator(s) shall be copied to the AAA.

**21. Orders:** Upon agreement of the Arbitrator(s), orders of the Panel of Arbitrator(s) may be signed by the Panel Chair, \_\_\_\_\_, alone on behalf of the entire panel and shall be effective as if signed by all three panel members.

**22. Disclosures of the Arbitrator(s):** Each counsel and Party has a continuing obligation to protect the integrity of the arbitration proceeding by promptly providing the Arbitrator(s) the information necessary to allow him/her to comply with his/her ongoing duties of disclosure pursuant to the Code of Ethics for Arbitrators in Commercial Disputes and the American Arbitration Association. Counsel, for themselves and for each of their clients, acknowledge the continuing obligation to supplement the identification of potential fact and expert witnesses, consulting experts, counsel participation and representation in any capacity, and any other individual or entity interested in the outcome of the arbitration. Any issues concerning disqualification of the Arbitrator(s) shall be raised promptly with the AAA.

**23. File Destruction:** The Arbitrator(s) will destroy their files related to this matter \_\_\_\_ days after the filing of the Award unless otherwise notified by the parties.

**24. Deadline Enforcement:** All deadlines stated herein will be strictly enforced and adhered to in order to avoid unnecessary delay and to ensure an expedient and fair resolution of this matter. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator(s).

**Dated:** \_\_\_\_\_

Arbitrator(s) Signature: \_\_\_\_\_

Arbitrator(s) Signature: \_\_\_\_\_

Chair Signature on behalf of the Panel: \_\_\_\_\_

**Table of Deadlines**

#	Action	Deadline
1	Parties disclosures (paralleling Federal Rules of Civil Procedure 26(a)(1) initial disclosures if appropriate)	
2	Claimants Initial Request for Documents (if needed)	
3	Respondent's initial request for Documents (if needed)	
4	Claimant's initial disclosure of potential witnesses (not needed if using Rule 26(a)(a) form disclosures)	
5	Respondent's initial disclosure of potential witnesses (not needed if using Rule 26(a)(a) form disclosures)	
6	For Panel disclosure purposes, identification of any related parties, or witnesses	
7	Claimant's experts designations and reports	
8	Respondent's experts designations and reports	
9	Parties' rebuttal experts designations and reports	
10	Motions regarding any unresolved discovery disputes	
11	Claimant's list of witnesses reasonably intended to be called	
12	Respondent's list of witnesses reasonably intended to be called	
13	Completion of all discovery	
14	If permitted by the Panel, deadline for the filing of dispositive motions	
15	Parties' exchange of proposed exhibits	
16	Requests for the issuance of third-party subpoenas	
17	Requests for witness subpoenas for hearing	
18	Parties' completion of combined single set of exhibit books	
19	Parties exchange of demonstrative exhibits	
20	Filing of pre-hearing statements, any stipulations and core exhibits for prehearing Panel review	
21	Dates for pre-hearing status conference(s) (telephonic)	
22	Hearing dates / delivery of exhibits	
23	Filing of post-hearing briefs (if any)	
24	Estimated deadline for issuance of final award	