

# Professional Arbitration and Mediation LLC & Procedures Effective September 18, 2021\*

Professional Arbitration and Mediation, LLC

\*Subject to periodic update without notice.

# About Professional Arbitration and Mediation LLC

Professional Arbitration and Mediation LLC (“PAMS”) is an online-only alternative dispute resolution forum.

## Standard Arbitration Clauses

If you would like to include a Professional Arbitration and Mediation LLC arbitration clause in your contract, please visit our website [www.pamsadr.org](http://www.pamsadr.org) for sample language.

## Administrative Fee Schedule

Arbitration and Mediation LLC charges the initiating party (“Claimant”) a filing fee based on the nature of the dispute and its complexity. Unless otherwise stated, a filing fee shall compensate PAMS for its administrative expenses but not compensate arbitrators for their time. The standard filing fee and administrative charge (“Standard Fee”) for a claimant is pegged to the filing fee and administrative charge for a new case in the Federal District Court for the Southern District of New York. As of July 16, 2021 this amount is \$402. If no other administrative fee applies, the Standard Fee shall apply to any claimant or counterclaimant.

### **Legal Fees Claims**

We offer discounted fees to New York State attorneys and law firms with both disputed and undisputed and unpaid legal bills. For undisputed and unpaid legal bills the fee is \$100 (“Presumptive Undisputed Legal Bill Claim Fee”). In order to qualify for the Presumptive Undisputed Legal Bill Claim Fee, a lawyer or firm must submit to PAMS at a minimum: a) an executed written engagement agreement with the client(s); b) all invoices sent to the client(s) with issue dates; c) a declaration under penalty of perjury from an attorney admitted to practice in New York State that each invoice was sent to the client(s) and retained without objection for a period of 60 days. 60 days is the time period after which PAMS administratively presumes that a

responding party (“Respondent”) will not raise any good-faith complex defenses requiring a significant additional investment of arbitrator and administrator time. It is not intended as a statement of substantive law, an indication of the sufficiency of a claim, or a guarantee that an arbitrator will grant an award in the Claimant’s favor over the objections of a Respondent.

All other legal bill and legal fee claims for shall be considered disputed and subject to a claim fee of \$250 (“Presumptive Disputed Legal Bill Claim Fee”).

If, in the sole discretion of PAMS, a Claimant in bad faith submits one or more declarations attesting to the undisputed nature of sent and retained invoices which are subsequently proven to be materially false in the arbitration, that Claimant shall no longer be eligible for the reduced Presumptive Undisputed Legal Bill Claim Fee and must in the future pay the Presumptive Disputed Legal Bill Claim Fee for all legal bill claims.

If the engagement agreement provides for an award of interest, PAMS will calculate this interest for an additional \$100 fee. This fee can be reduced to \$25 upon the submission of interest calculations in Microsoft Excel format with all formulas visible.

In the event there is no written response from a Respondent within the time period allowed by PAMS Arbitration Rules, all fees in this section shall also serve as compensation for the arbitrator.

### **Attorney Malpractice Claims**

For malpractice disputes between New York State attorneys or law firms and their clients, the following fees shall apply to claims and counterclaims of malpractice brought under this Agreement. The fee shall be paid by the party making the claim.

- If the claim or counterclaim is less than \$75,000 ..... \$750
- If the claim or counterclaim is less than \$150,000 ..... \$1,500
- If the claim or counterclaim is less than \$300,000 ..... \$2,500
- If the claim or counterclaim is less than \$500,000 ..... \$4,000

- If the claim or counterclaim is less than \$750,000 ..... \$5,000
- If the claim or counterclaim is less than \$1,000,000 ..... \$6,000
- If the claim or counterclaim is \$1,000,000 or more.....Contact PAMS for pricing

### **Client Defamation Claims**

For defamation claims between New York State attorneys or law firms and their clients, the administrative fee payable by the Claimant shall be \$100. This fee shall not serve as compensation for the arbitrator.

### **Arbitrator Appeals**

Any interlocutory decision or final award may be appealed to the Chief Arbitrator by right. The filing fee for an Arbitrator Appeal (“Appeal Fee”) is pegged to the filing fee for the Federal Second Circuit Court of Appeals Petition for Review. As of July 16, 2021 this amount is \$500. A party requesting the appeal of an interlocutory decision must first request the arbitrator to reduce it to writing. Parties intending to use this procedure must ensure the use of specific language in their agreements allowing for such intra-arbitration forum appeals.

### **Renewal**

A party may renew any Complaint previously dismissed by an arbitrator with leave to renew for 25% of the original administrative filing fee.

### **Arbitrator Fee Schedule**

Movant fee for pre-discovery dispositive motion or cross-motion (presumptive undisputed legal fees):

- Included. The initial submission shall be treated as a Motion for Summary Judgment in Lieu of a Claim.

Movant fee for pre-discovery dispositive motion or cross-motion

(presumptive disputed legal fees, malpractice, and defamation):

- Flat fee of \$1,000

Movant fee for pre-discovery dispositive motion or cross-motion (other)

- Flat fee of \$2,500

Fee for discovery conference and order or discovery motion:

- Flat fee of \$250 for the requesting party or movant.

Per-party arbitrator fee for one arbitrator in live-hearing arbitration

- For disputes where no claim or counterclaim exceeds \$250,000:  
Flat fee of \$1,500 for up to 1 day of hearings, plus \$100 per hour for each extra hour of hearings beyond 1 day
- For disputes where a claim or counterclaim exceeds \$250,000 but where no claim or counterclaim exceeds \$500,000:  
Flat fee of \$2,500 for up to 1.5 days of hearings , plus \$125 per hour for each extra hour of hearings beyond 1.5 days
- For disputes where a claim or counterclaim exceeds \$500,000 but where no claim or counterclaim exceeds \$1,000,000:  
Flat fee of \$3,500 for up to 2 days of hearings, plus \$150/hour for each extra hour of hearings beyond 2 days.
- For disputes exceeding \$1,000,000: Contact Professional Arbitration and Mediation LLC for pricing
- The arbitrator, in consultation with the parties, will determine if more hearing time is required beyond hearing time included in flat rate pricing. If one party objects to extra hearing time but the other party does not, the non-objecting party will be required to pay both parties' hourly fees for additional hearing time. If both parties object, the arbitrator will not require payment for any additional hearing time.

Administrative Fee for Emergency Measures (to be paid by applicant seeking emergency measures):

- Flat fee of \$500

Arbitrator Fee for Emergency Measures (to be paid by applicant seeking emergency measures):

- Flat fee of \$1,000

Arbitrator Fee for Renewal of Rejected Complaint:

- Flat fee of 25% of the original arbitrator fee.

## Rules & Procedures

### *Introductory Rules*

#### Rule 1. Scope and Applicability of Rules

1.1 Professional Arbitration & Mediation, LLC Rules & Procedures (“Rules”) shall govern arbitration proceedings administered by Professional Arbitration & Mediation, LLC.

1.2 The parties shall be deemed to have made these Rules a part of their arbitration agreement.

1.3 Where a term is not defined in these Rules, it shall have the meaning commonly ascribed to it in US Federal or New York State civil procedure.

#### Rule 2. Amendment and Modification of Rules

2.1 Professional Arbitration & Mediation, LLC may amend these Rules at any time. The version of these Rules in effect at the time a party initiates arbitration, as provided in Rules 8 and 9, shall govern.

2.2 The arbitrator has discretion to vary these rules to ensure a fair, efficient proceeding. The arbitrator will give preference to US Federal and New York State civil procedure when the arbitrator believes the Rules must be supplemented in the interests of procedural justice.

#### Rule 3. Place of Arbitration

All Professional Arbitration & Mediation, LLC arbitrations are deemed to take place in New York, New York.

#### Rule 4. Independence, Neutrality, and Jurisdiction of Arbitrator

4.1 Professional Arbitration & Mediation, LLC-affiliated arbitrators are independent and neutral decision makers. They are not employees of Professional Arbitration & Mediation, LLC.

4.2 The arbitrator shall have the power to rule on his or her own jurisdiction, including objections regarding the existence, formation, enforceability, validity, or scope of an agreement to arbitrate; the arbitrability of any claim or counterclaim; or whether any conditions precedent have been satisfied or waived.

## **Rule 5. Electronic Service**

The parties agree to electronic service of process, with service to be made to the email address provided or otherwise referenced in their Professional Arbitration & Mediation, LLC arbitration clause, or the relevant agreement containing a Professional Arbitration & Mediation, LLC arbitration clause. If no email address is provided for in the agreement, the parties agree to electronic service at the last known email address one party had for the other party, as well as any publicly accessible email address. Service is complete upon sending the email, even if a party has not opened an email. The parties are responsible for maintaining and actively monitoring a valid email address. Professional Arbitration & Mediation, LLC or the arbitrator may also authorize service of process through reliable means other than email when warranted by the circumstances.

## **Rule 6. Computation of Time**

In computing any time period specified in these Rules, one must exclude the day of the event that triggers the period; count every day, including intermediate Saturdays, Sundays, and legal holidays; and include the last day of the period. If a deadline falls on a Saturday, Sunday, or a day on which the New York State Supreme Courts are closed due to observance of a public holiday, the deadline shall be extended to the next business day.

## **Rule 7. Professional Arbitration & Mediation, LLC' Authority to Administer Arbitrations**

7.1 When parties agree to arbitrate using Professional Arbitration & Mediation, LLC, the parties authorize Professional Arbitration & Mediation, LLC to administer the arbitration and to implement these Rules through any representative as Professional Arbitration & Mediation, LLC may direct.

7.2 At the request of a party, or upon Professional Arbitration & Mediation, LLC's own

initiative, Professional Arbitration & Mediation, LLC has discretion to convene administrative conferences with the parties at any time to address any procedural or administrative matter.

7.3 Professional Arbitration & Mediation, LLC, in its sole discretion and at anytime in the arbitration process, may decline to hear or temporarily pause any arbitration proceeding.

Furthermore, in the event of an emergency impacting Professional Arbitration & Mediation, LLC, the arbitrator, or the parties, such as a medical emergency for an individual or a widespread emergency such as a public health emergency, wildfire, hurricane, or earthquake, Professional Arbitration & Mediation, LLC, in its sole discretion, may modify these Rules or extend any deadline in these Rules in connection with an arbitration proceeding.

7.4 A party may contact Professional Arbitration & Mediation, LLC through email at [admin@pamsadr.org](mailto:admin@pamsadr.org) at any time.

## Initiating the Arbitration

The party who initiates the arbitration is called the claimant. The other party is called the respondent. There are 2 different ways, as outlined in Rules 8 and 9, for a claimant to initiate a Professional Arbitration & Mediation, LLC arbitration, depending on whether the parties already have a written agreement to arbitrate their disputes using Professional Arbitration & Mediation, LLC. It is the responsibility of the submitting party to ensure the accuracy of all information submitted. The submitting party assumes liability for any damages incurred by Professional Arbitration & Mediation, LLC, its agents, partners, or affiliates, resulting from the submission of knowingly false information. The parties agree that the parties to the arbitration shall be the legal entities with which business was done, if such legal entities exist, regardless of the names and contact information the parties submit to Professional Arbitration & Mediation, LLC while initiating the arbitration process.

### Rule 8. Invoking the Arbitration Clause

8.1 If the parties have a written agreement that contains a Professional Arbitration & Mediation, LLC arbitration clause, a party may initiate the arbitration process by filing a Demand for Arbitration (also known as a Claim), which sets forth the claims and remedies sought. An initiating party can email [admin@pamsadr.org](mailto:admin@pamsadr.org) to get started, along with a copy of the applicable arbitration clause. The Demand for Arbitration may include a supplemental statement of claims and should include all evidence necessary for an arbitrator to award a default judgment.



8.2 If a party to the agreement initiates litigation instead of filing a Demand for Arbitration with Professional Arbitration & Mediation, LLC, then the other party may ask the court to send the dispute to Professional Arbitration & Mediation, LLC instead.

8.3 Simultaneously with the filing of the Demand for Arbitration with Professional Arbitration & Mediation, LLC, the party initiating the arbitration process (the “Claimant”) shall serve the Demand for Arbitration on the other party (the “Respondent”) via e-mail along with a copy of section 8.4 of these Rules verbatim and the following statement: “For a complete copy of the rules of this arbitration, visit [www.pamsadr.org](http://www.pamsadr.org)”.

8.4 Respondent shall have exactly 7 days from the timestamp of the e-mail to which a Demand for Arbitration is attached to submit a Preliminary Response to [admin@pamsadr.org](mailto:admin@pamsadr.org). The Preliminary Response need not address every individual allegation or raise all affirmative defenses, nor must it be as formal as a pleading in court. However, it must raise sufficient doubt as to an issue of fact or law so as to indicate that a bona fide dispute exists and that Respondent intends to contest the Claim. In the absence of a Preliminary Response or a request for an extension of time, which shall be granted by the arbitrator only for good cause shown, on the next business day the arbitrator shall review the Demand for Arbitration for sufficiency to grant an award. If the arbitrator finds it insufficient, the arbitrator shall reject it with leave to renew, specifying the reasons for such rejection. If the arbitrator finds the Demand for Arbitration sufficient to sustain a conclusion of liability on the part of the Respondent, and if no Preliminary Response has been filed or if the arbitrator deems the Preliminary Response to be clearly frivolous, filed in bad faith, or wholly non-responsive to the claims, the arbitrator shall either issue a default award or issue a default as to liability only and schedule an inquest on damages. Otherwise PAMS shall notify the parties that the Respondent shall have an additional 7 days to enter a more formal Final Response to the claims. Extensions to this deadline shall be granted for good cause shown only.

8.5 The Final Response may include responses, affirmative defenses and counterclaims along with the remedies sought, and may include a supplemental statement of responses, affirmative defenses and counterclaims. It should respond to every allegation in the Complaint. Any allegation not responded to shall be deemed admitted. Simultaneously with the filing of the Answer with Professional Arbitration & Mediation, LLC, Respondent shall serve the Answer on Claimant via electronic service. If Respondent fails to file and serve a Final Response within the

stated time, Respondent shall be deemed to have admitted all claims.

8.6 If Respondent's Answer contains a counterclaim, the Claimant / Counterclaim Respondent need not issue a Preliminary Response and will be presumed to have denied the Counterclaim in good faith, but all other deadlines and Rules in 8.4 and 8.5 (including, but not limited to, an arbitrator's determination of a Counterclaim's sufficiency) shall apply.

8.7 Arbitrators shall consider the expedited procedures in Rules 8.4 and 8.5 to be a core component of the value that PAMS offers to parties agreeing to arbitrate under these Rules. On the one hand, Preliminary Responses shall be construed liberally to afford procedural due process to Respondents. On the other, Respondents who choose not to participate in the procedure or neglect to do so should be afforded little leniency.

8.8 An arbitrator's independent initial determination of a claim or counterclaim's sufficiency shall in no way prohibit a party's procedural right to bring and fully brief a motion to dismiss. The arbitrator shall review any such motion on its own merits.

## **Rule 9. Post-Dispute Agreement to Arbitrate**

9.1 If the parties do not have a written agreement that contains a Professional Arbitration & Mediation, LLC arbitration clause, then a potential claimant may invite a potential respondent to resolve an existing dispute using Professional Arbitration & Mediation, LLC. A potential claimant can email [admin@pamsadr.org](mailto:admin@pamsadr.org) to get started.

9.2 Once the parties have agreed to use Professional Arbitration & Mediation, LLC under a post-dispute arbitration agreement, that agreement is binding on the parties, and the arbitration shall be considered to have been initiated. Professional Arbitration & Mediation, LLC shall then direct the parties to continue with the arbitration process by complying the procedures and deadlines in Rule 8, except that no Preliminary Response shall be required and Respondent shall be presumed to have denied the claim in good faith.

## **Rule 10. Objections to Arbitrability**

Objections to arbitrability of a dispute in whole or in part are considered waived if not raised in the Final Response to Claim or Response to Counterclaim.

## **Rule 11. Payment of Administrative and Arbitrator Fees**

11.1 After Claimant initiates the arbitration pursuant to Rule 8, or after Respondent agrees to arbitrate pursuant to Rule 9, Professional Arbitration & Mediation, LLC will ask the parties to

pay the requisite administrative, arbitrator and other fees as provided in the Fee Schedule. Further fee payment may be due throughout the arbitration process, as applicable.

11.2 The Rules are designed for each party to be solely responsible for its own administrative and arbitrator fees for both the procedural and substantive relief requested from PAMS arbitrators. Rules governing the apportionment of costs should be governed by contract. In the absence of a contractual provision apportioning costs, each side is responsible for its own costs.

11.3 If, at any time, any party has failed to pay the requisite administrative, arbitrator and other fees in full, Professional Arbitration & Mediation, LLC may pause or refuse to hear the arbitration. Under special circumstances, Professional Arbitration & Mediation, LLC may also temporarily pause or waive the collection of requisite fees. For more information about fees, please read the Fee Schedule section in these Rules.

## **Rule 12. Amendments and Notice of Claims, Counterclaims, Remedies, and Defenses**

12.1 Amendments shall occur only with the arbitrator's permission, which shall be liberally granted in the interests of justice. The arbitrator need not require full repleading for minor amendments or corrections and need not afford a full 14 days response time if justice can be served more efficiently.

12.2 Each party shall provide reasonable and timely notice to the other parties of the claims, counterclaims, remedies sought, and defenses, as provided in these Rules. The arbitrator may not consider any claims, counterclaims, remedies sought, or defenses in the absence of such notice, unless the arbitrator determines that the lack of notice has not caused undue prejudice.

## **Rule 13. Arbitrator Appointment, Disclosures, and Disqualification**

13.1 The arbitration shall be conducted by 1 arbitrator. The term "arbitrator" in these Rules shall mean the arbitrator hearing a dispute.

13.2 If the parties have not appointed an arbitrator, Professional Arbitration & Mediation, LLC shall assign an arbitrator from its pool of eligible arbitrators according solely to its administrative convenience.

13.3 Any person appointed to serve as an arbitrator, the parties, and their representatives must provide information to Professional Arbitration & Mediation, LLC concerning any circumstances likely to raise justifiable doubt as to whether the arbitrator can remain impartial or

independent or properly hear your case. Such disclosures shall be made within 7 days of the appointment of the arbitrator, and such disclosures would include any potential bias, financial, or personal interest in the result of the arbitration, or any past or present relationship with the parties or their representatives, or any other disclosures required by applicable law. The obligation to make disclosures continues throughout the arbitration process. Professional Arbitration & Mediation, LLC will communicate the disclosures to the parties and, if appropriate, to the arbitrator.

13.4 Professional Arbitration & Mediation, LLC's appointment of an arbitrator is final and conclusive barring any conflict of interest or other ethical consideration which may impact the arbitrator's ability to remain impartial or independent or properly hear your case. Should you have a concern with your assigned arbitrator, you must immediately bring that concern to Professional Arbitration & Mediation, LLC's attention. Professional Arbitration & Mediation, LLC shall then decide whether the arbitrator should be disqualified and whether to appoint a new arbitrator, and Professional Arbitration & Mediation, LLC's decision shall be final and conclusive. Notwithstanding the foregoing, Professional Arbitration & Mediation, LLC may re-assign your arbitrator at Professional Arbitration & Mediation, LLC's discretion any time prior to a hearing or award at no additional charge and will, in such cases, provide notice to the parties. The failure of a party to timely object to the appointment or continued service of an arbitrator shall result in the waiver of the right to object to an arbitrator in accordance with Rule 28.

#### **Rule 14. Ex Parte Communications**

No party shall engage in any ex parte communication with the arbitrator during the arbitration process, and no party shall engage in any communication with the arbitrator after the arbitration process. All communications related to the arbitration process (other than service of process on another party, which is covered by Rule 5) shall be made to and from Professional Arbitration & Mediation, LLC directly, and no other communications will be considered valid either for the arbitration or any subsequent disputes.

#### **Rule 15. Emergency Measures**

15.1 Any party may request emergency measures against any other party by an emergency arbitrator appointed solely for that purpose.

15.2 The applicant for emergency measures must file a written request with Professional

Arbitration & Mediation, LLC via [admin@pamsadr.org](mailto:admin@pamsadr.org), accompanied by the applicable fees for emergency measures, and the request should include the specific emergency measures sought, the grounds for such relief, as well as evidence and law supporting the request. Simultaneously with the filing of the written request, the applicant shall serve the request on all parties via electronic service. If electronic service is not possible, the applicant must attempt other reliable methods of service on all parties and explain such attempts in the written request filed with Professional Arbitration & Mediation, LLC.

15.3 If the parties have not appointed an emergency arbitrator, Professional Arbitration & Mediation, LLC shall promptly appoint an emergency arbitrator from its roster and notify the parties of the arbitrator assigned to their dispute. This arbitrator may or may not be the ultimate arbitrator for the remainder of the dispute. Professional Arbitration & Mediation, LLC shall make reasonable efforts to appoint the emergency arbitrator within 1 business day of the applicant's filing of the written request for emergency measures and payment of requisite fees.

15.4 The emergency arbitrator shall promptly disclose any circumstance, based on the facts disclosed on the applicant's written request, likely to raise justifiable doubt as to whether the arbitrator can remain impartial or independent or properly hear the request for emergency relief. Should a party have a concern with the assigned emergency arbitrator, the party must immediately bring that concern to Professional Arbitration & Mediation, LLC's attention within 1 business day. Professional Arbitration & Mediation, LLC shall then decide whether the arbitrator should be disqualified and whether to appoint a new arbitrator, and Professional Arbitration & Mediation, LLC's decision shall be final and conclusive.

15.5 The emergency arbitrator shall determine the procedures to be followed and immediately issue an emergency scheduling order regarding consideration of the request for emergency relief. Through the scheduling order, the emergency arbitrator shall provide an opportunity for hearing via video or telephone conference for all affected parties. The emergency arbitrator shall have the powers vested in an arbitrator tribunal under these Rules, including the power to rule on the arbitrator's own jurisdiction and on the applicability of this Rule 15.

15.6 The emergency arbitrator may grant emergency measures by issuing an Emergency Award if the applicant is entitled to such relief.

15.7 The Emergency Award shall remain in effect until modified or vacated by the emergency arbitrator or by the arbitrator appointed pursuant to Rule 13. The emergency arbitrator may also

modify or vacate the Emergency Award for good cause. If an arbitrator is appointed pursuant to Rule 13 before the emergency arbitrator has issued an Emergency Award, the emergency arbitrator shall retain jurisdiction to issue such award unless the arbitrator appointed pursuant to Rule 13 directs otherwise. After an arbitrator has been appointed pursuant to Rule 13, such arbitrator may modify or vacate the Emergency Award.

## *Preparing for the Arbitration Proceeding*

### Rule 16. Preliminary Conference

16.1 The parties must jointly provide the arbitrator with the following information in writing at least 7 days after the filing of the Final Response or Response to Counterclaim, whichever is later:

- a) A statement that the parties have no objections to the appointment of the arbitrator;
- b) A plan for the limited exchange of information pursuant to Rule 17, including deadlines for the exchange of information;
- c) Procedures and deadlines for the issuance of subpoenas;
- d) Whether the parties agree to waive a live hearing and have a document-only arbitration; and
- e) Whether a live-hearing arbitration will be conducted through video or telephone conference.

16.2 An arbitrator shall levy monetary sanctions upon any party failing to comply with Rule 16.1 in good faith. An opposing party must seek these sanctions by motion. For administrative and arbitrator fee purposes, this type of motion is considered a discovery motion. An arbitrator shall not award as sanctions arbitration costs, arbitrator fees, or attorney fees, but may consider the extent of a party's costs or attorney fees as one factor in setting the level of sanctions, which should be high enough to discourage procedural impropriety while proportionate to the offense and not overly punitive. The arbitrator shall then hold a discovery conference and issue orders as warranted for no additional fee.

16.3 Immediately after receiving the parties' joint submission pursuant to Rule 16.1, the arbitrator shall issue a procedural order governing the arbitration and setting forth deadlines, which may include the dates for exchange of information; deadlines regarding a document-only arbitration; and dates and times for a live-hearing arbitration and instructions on how to attend

the live hearing via video or telephone conference. In establishing deadlines, the arbitrator should consider the needs of the parties, the size and complexity of the dispute, the core purpose of these Rules to expedite the handling of disputes, and any other significant factors.

16.4 After the arbitrator issues a procedural order as provided in Rule 16.3, the dates and deadlines set forth in the order shall not be modified unless by the agreement of the parties and approved by the arbitrator; by a decision of the arbitrator if necessary under the circumstances; by a decision of Professional Arbitration & Mediation, LLC if necessary under the circumstances; or as otherwise set forth in these Rules. In no event shall the failure to issue an Award within a deadline impact the validity of the Award.

16.5 The arbitrator may convene additional conferences if necessary on the arbitrator's own initiative, for no additional fee, to address other matters, such as dispositive motions and disputes about the exchange of information.

## **Rule 17. Limited Exchange of Information**

17.1 Consistent with the goal of these Rules to provide fair proceedings and a final decision as quickly as possible while maintaining due process for all parties, the arbitrator shall manage any necessary exchange of information among the parties, including setting forth deadlines for exchanging information and resolving any disputes regarding such exchange. Any party may request such a discovery conference to discuss its own discovery needs and requests.

17.2 Each party must exchange (a) electronic copies of all hard copy documents and electronic documents that the party has in its possession, custody, or control which are relevant to the dispute, including any hard copy and electronic documents upon which the party may rely to support its own claims or defenses; and (b) the names of individuals whom the party may call as witnesses at a live-hearing arbitration or who may submit a witness statement for a document-only arbitration.

17.3 The parties shall exchange information covered by Rule 17.2 within 14 days of service of a Final Response (or if the Answer contains a counterclaim, within 14 days of service of a Reply to the Counterclaim.)

17.4 With the arbitrator's permission, a party may make reasonable requests concerning particular categories of documents that are relevant to the dispute.

17.5 Other than the exchange of information provided in Rule 17, there shall be no additional exchange of information or discovery unless both parties agree or unless the arbitrator

determines additional exchange of information or discovery should be permitted.

## Rule 18. Subpoenas

If a party believes that a non-party has evidence relevant to the dispute, the party may request the arbitrator to sign a subpoena in accordance with applicable law. A party making such a request from the arbitrator shall simultaneously provide a copy of the request to the other party. If the arbitrator issues a subpoena, the party requesting the subpoena must serve the subpoena on all parties and, if applicable, on any non-party addressed in the subpoena. Should the third-party fail to comply with the subpoena and, in the arbitrator's discretion, should no court with jurisdiction be likely to enforce compliance with such subpoena for discovery only, the arbitrator is authorized to issue a subpoena for the production of testimony and/or documents at an arbitration hearing.

## Rule 19. Motions

Dispositive motions are allowed. Arbitrators are encouraged to give active feedback to counsel at every stage of briefing and favor a higher number of shorter briefings on discrete issues over passively waiting until relatively large briefs have been filed without feedback from the arbitrator on a motion, opposition, and reply. Upon the filing and service of a dispositive motion, the arbitrator shall review it for sufficiency within 3 business days. If the arbitrator finds that the movant has failed to make a *prima facie* showing, the motion shall be denied with leave to renew, and the arbitrator shall specify the specific deficiencies. If the arbitrator finds that the movant has made a *prima facie* showing, the arbitrator shall convey a briefing schedule for an opposition. After reviewing the opposition, the arbitrator shall either find for the movant or direct a briefing schedule for a reply brief. The arbitrator may indicate particular issues for the movant to focus on in the reply brief and if the arbitrator does, the arbitrator shall either find for the respondent or direct a surreply. There is no predetermined limit to the number of briefings an arbitrator shall direct. However, whenever the arbitrator chooses to issue comments and direct subjects to be briefed further, the arbitrator may not cut off briefing after only one side has responded to those comments and directions, but shall allow the other party a reply.

# The Arbitral Proceeding

## Rule 20. Document-Only Arbitration

20.1 The parties may agree to waive a live-hearing and have a document-only arbitration to



resolve the entirety of the parties' dispute.

20.2 In a document-only arbitration, each party shall be afforded the opportunity to be heard through uploading evidence, providing witness statements, responding to the other side's evidence, and answering written questions asked by the arbitrator via a secure online platform provided by Professional Arbitration & Mediation, LLC. The deadlines for these items will be set out in notices provided to the parties. The parties will be able to review and respond to the other party's uploads and answers as outlined in notices provided to the parties. If necessary, the arbitrator may ask the parties for additional information. The rules of evidence need not be observed, and the arbitrator has discretion with regards to what evidence he or she will consider and in how to interpret and weigh such evidence. The arbitrator in the interests of justice may request additional submissions before rendering a final decision.

20.3 Following arbitrator review and questioning, the arbitrator shall issue an Award pursuant to Rule 23.

20.4 A witness submitting a witness statement should sign and date the witness statement and include the following certification at the end of the witness statement: "I certify under penalty of perjury under the laws of the State of New York that the foregoing is true and correct." Any error with regards to this requirement may be waived by the arbitrator or cured *nunc pro tunc* at the arbitrator's discretion.

20.5 A party should submit a statement that the party's submitted evidence is what the evidence is claimed to be and that the party's descriptions of its own evidence, its responses to the other side's evidence, and its responses to the arbitrator's questions are all complete, true, and correct. The party must also sign and date this statement and include the following certification at the end of the statement: "I certify under penalty of perjury under the laws of the State of New York that the foregoing is true and correct." Any error with regards to this requirement may be waived by the arbitrator or cured *nunc pro tunc* at the arbitrator's discretion.

20.6 Each party shall have 1 opportunity to extend the deadlines for a document-only arbitration with a showing of a documented medical, family, or other serious emergency. A party's request to extend a deadline must be sent to [admin@pamsader.org](mailto:admin@pamsader.org) no fewer than 3 days before the deadline whenever possible. Subsequent requests, or requests received fewer than 3 days before the deadline, may not be honored. Professional Arbitration & Mediation, LLC, at its sole discretion, may extend the deadlines for a document-only arbitration for medical, family, or

other serious emergencies, or for its own administrative reasons. Any extensions, rescheduling, or other deadline modifications shall apply to both parties in a given dispute.

20.7 In the event a party does not timely submit evidence or respond to the arbitrator's questions, the arbitration shall be conducted in its absence.

20.8 A Professional Arbitration & Mediation, LLC administrator may view and copy any submissions made in connection with a document-only arbitration for quality control purposes, evidentiary purposes, research purposes, and/or to review any future potential concerns you may later have.

20.9 The parties shall not offer as evidence, and the arbitrator shall 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.

20.10 The arbitration is private and confidential between the parties of a dispute, and all communications, negotiations, or settlement discussions by and between the participants and/or arbitrator in the arbitration shall remain confidential. Evidence of anything said or any admissions made in the course of the arbitration shall not be admissible in evidence or subject to discovery, and disclosure of that evidence cannot be compelled in any civil action or proceeding in which testimony can be compelled to be given. A party's failure to maintain the confidentiality of the proceedings shall be considered a breach of contract and PAMS shall have jurisdiction over a claim for such breach.

## **Rule 21. Live-Hearing Arbitration**

### **21.1 Remote Live Hearings**

The live hearing may be conducted remotely via video or telephone conference by the agreement of the parties or at the arbitrator's discretion.

### **21.2 Rescheduling a Live Hearing**

Each party shall have 1 opportunity to reschedule the hearing only with a showing of a documented medical, family, or other serious emergency. A party's request for rescheduling must be sent to [admin@pamsadr.org](mailto:admin@pamsadr.org) no fewer than 3 days before the scheduled hearing time.

Subsequent requests, or requests received less than 3 days before the scheduled hearing start time, may not be honored. Professional Arbitration & Mediation, LLC, at its sole discretion, may reschedule hearings and/or extend other deadlines. Any extensions, rescheduling, or other

deadline modifications shall apply to both parties in a given dispute.

### 21.3 Documentary Evidence for the Arbitrator

If a party has documentary evidence that it would like the arbitrator to consider in connection with the live hearing, the party must electronically submit the evidence to PAMS via e-mail or another delivery method designated by PAMS. PAMS will set a deadline for the parties to submit all of their documentary evidence, and the parties will receive reasonable notice of that deadline via electronic mail after the arbitration process begins. After the evidence upload deadline has passed, Professional Arbitration & Mediation, LLC will give the arbitrator and both parties "view-only" access to all of the documentary evidence. Each party agrees not to take screenshots, save, or distribute in any way the other party's documentary evidence.

### 21.4 Witnesses

All witnesses must have direct, personal knowledge of the facts and situation in dispute, and each party shall have a maximum of 2 witnesses at their live hearing if no party's claims or counterclaims exceed \$250,000 (or a maximum of 4 witnesses if a party's claim or counterclaim exceeds \$250,000), unless the arbitrator or Professional Arbitration & Mediation, LLC allows for additional witnesses. If a party believes that a witness's testimony is relevant to the dispute, the party should ask that witness to attend the live hearing. It is the sole responsibility of the party producing a witness to ensure that witness is available promptly at the hearing time. If the witness would like to testify but is not available during the scheduled hearing time, the party may instead upload a video of the witness or submit a witness affidavit as documentary evidence. If the witness will not agree to attend the hearing or make a video, the party may request from the arbitrator a subpoena requiring the witness's attendance at the hearing in accordance with Rule 18.

### 21.5 Witness Fees

If a witness (who is not an agent, officer, or employee of a party) appears at the hearing pursuant to subpoena, the party who subpoenaed the witness may be required to pay the witness a fee. If the arbitrator subpoenas the witness and PAMS is liable for any fee, it will pay the witness and invoice each party for half of the fee.

### 21.6 Stenographic Record

After the hearing, PAMS shall provide each party with a video copy of the proceeding which, together with any exhibits, shall constitute the record for any appeal.

### 21.7 Parties' Rights During A Live Hearing

Each party shall be afforded the opportunity to be heard, but the rules of evidence need not be observed. The arbitrator has discretion with regards to the length of a hearing, time allotted to each party or witness to make statements during a hearing, what evidence the arbitrator will consider, and in how to interpret and weigh such evidence. The testimony of witnesses and parties shall be given under oath and penalty of perjury. The arbitrator has the power to administer oaths. The arbitrator shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. Any party desiring an interpreter for a live hearing shall make any necessary arrangements with the interpreter and shall pay the costs of the interpreter's service. An interpreter must be certified or registered to serve as a court interpreter in the state where the interpreter is located unless the arbitrator waives the certification or registration requirement. The parties shall not offer as evidence, and the arbitrator shall 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. All communications, negotiations, or settlement discussions by and between the participants and/or arbitrator in the arbitration shall remain confidential. Evidence of anything said or any admissions made in the course of the arbitration shall not be admissible in evidence or subject to discovery, and disclosure of that evidence cannot be compelled in any civil action or proceeding in which testimony can be compelled to be given.

The arbitration is private and confidential between the parties of a dispute. As such, only parties, witnesses, interpreters, experts, and any other person having a direct interest in the arbitration may attend a live hearing unless all participating parties otherwise agree. Your arbitrator, in the arbitrator's discretion, shall determine whether a witness, interpreters, or any other person with a direct interest in the arbitration is permitted to attend a Professional Arbitration & Mediation, LLC hearing.

### 21.8 Post-Hearing Evidence

If requested by the arbitrator, the parties may submit evidence after the live hearing. Post-hearing evidence will be allowed only at the arbitrator's request and discretion and not as a matter of course.

### 21.9 Close of Live Hearing

When the arbitrator determines that all relevant and material evidence and arguments have been presented, including any post-hearing evidence, the arbitrator may at their discretion declare the live hearing to be closed.

## Rule 22. Settlement Prior to Service of Award

22.1 Parties may settle their dispute prior to the service of an Award, and the arbitrator may facilitate such a settlement if the parties agree for the arbitrator to become involved in facilitating a settlement. If the parties agree for the arbitrator to become involved in facilitating a settlement, the parties shall be deemed to have also agreed that (a) such assistance in settlement shall not disqualify the arbitrator from continuing to serve as arbitrator if a settlement is not reached; and (b) the arbitrator's assistance in settlement cannot be the basis for a court's vacating or modifying an Award.

22.2 If the parties agree to settle their matter prior to the arbitrator's service of an Award (whether that settlement is agreed upon via mediation, Professional Arbitration & Mediation, LLC's settlement tools such as Zoom, with the assistance of the arbitrator, or independently), the parties must submit that settlement, including all aspects and terms of the settlement, to Professional Arbitration & Mediation, LLC via e-mail and agree to be bound by that settlement prior to the arbitrator's service of an Award. Settlement offers made using Professional Arbitration & Mediation, LLC or any of its staff or arbitrators as intermediaries are binding and enforceable once accepted by the offeree. The arbitrator may issue an Award if a settlement reached by the parties is not formalized.

22.3 If a dispute arises between the parties on whether they made a valid settlement, the parties may ask the arbitrator to make a ruling on that point as part of the Award and may, in that instance, disclose related settlement details to the arbitrator. Disclosure of such settlement details shall not disqualify the arbitrator from continuing to serve as an arbitrator in the case, and such disclosures cannot be the basis for a court's vacating or modifying an Award.

22.4 If the parties request the arbitrator to embody a settlement in a Consent Award, the arbitrator may ask the parties for further information about the settlement, and it is within the arbitrator's discretion to comply with the parties' request.

22.5 Any settlement agreed to by the parties must be fulfilled within 30 days unless the parties agree otherwise.

22.6 The arbitrator retains jurisdiction over the parties' dispute unless and until the parties

fulfill the obligations of their settlement on time (whether such settlement is made during, before, or after a hearing), and the arbitrator may issue an Award at anytime which displaces the settlement unless and until such obligations are fulfilled, for up to 1 year from the date of entry or notification to Professional Arbitration & Mediation, LLC of the settlement.

22.7 Once the parties have initiated Professional Arbitration & Mediation, LLC arbitration (either by invoking an arbitration clause pursuant to Rule 8 or by entering into a post-dispute agreement to arbitrate pursuant to Rule 9), the parties may not terminate or withdraw from the arbitration unless both parties agree to such termination or withdrawal in writing and notify Professional Arbitration & Mediation, LLC at [admin@pamsadr.org](mailto:admin@pamsadr.org) prior to the arbitrator's service of the Award.

22.8 In the event of a termination, withdrawal, or a settlement prior to the arbitrator's service of the Award, the parties shall be responsible for the following fees if not already paid:

- Professional Arbitration & Mediation, LLC's administrative fee;
- The arbitrator's fees for any preliminary conferences already held;
- Any administrative fee and arbitrator fee for emergency measures or motions;
- Half or more of the arbitrator's fees for a document-only arbitration based on timeline;
- For a live-hearing arbitration, half or more of the arbitrator's fees based on timeline and the days of hearings that have already occurred.

## Rule 23. Service of the Award

23.1 The arbitrator's Award shall be in writing and state the arbitrator's reasoning. The Award shall be emailed to both parties within 3 days after the close of a document-only arbitration or a live-hearing arbitration if no party's claim or counterclaim exceeds more than \$250,000. If a party's claim or counterclaim exceeds \$250,000, the Award shall be emailed to both parties within 7 days after the close of arbitration. Professional Arbitration & Mediation, LLC retains discretion to extend these time limits if warranted by the circumstances.

23.2 The arbitrator will sign the e-mail serving the Award with his or her typed name.

23.3 In resolving the dispute, the arbitrator shall be guided by the rules of law agreed upon by the Parties. In the absence of such agreement, the arbitrator will be guided by the law or the rules of law that the arbitrator deems to be most appropriate. The arbitrator may grant any remedy or relief that is just and equitable and within the scope of the parties' agreement.

23.4 The arbitrator shall award pre- and post-award interest and/or other expenses and fees if

provided by the parties' agreement or permitted by applicable law.

23.5 Within 7 days after service of an Award, any party may serve upon Professional Arbitration & Mediation, LLC and the other party a request that the arbitrator correct any computational, typographical or other similar error(s) in an Award. Alternatively, the arbitrator or Professional Arbitration & Mediation, LLC may *sua sponte* propose to correct such errors in an Award within 14 days of service of an Award. In either case, if the Arbitrator determines that he or she might make a correction to any computational, typographical or other similar error(s) in an Award, a party opposing such correction shall have 7 days thereafter in which to file any response to the requested or proposed correction. If, on the other hand, the Arbitrator determines that he or she will not make such a correction, no further action by the opposing party is required. If applicable, after reviewing the opposing party's response to the requested or proposed correction, the arbitrator may then make or decline to make any necessary and appropriate corrections to the Award and, if applicable, issue a corrected Award within 7 days of receiving the response of the party opposing a correction. The arbitrator may extend the time within which to make corrections, and preference shall be given to ensuring the accuracy of the award and correction of clear errors whenever possible. The corrected Award shall be served upon the parties in the same manner as the Award.

23.6 The Award is considered final for purposes of a judicial proceeding to confirm, enforce, correct, modify, or vacate the Award pursuant to Rule 25, on the earlier of a) 7 days after service of the Award if no request or proposal for a correction is made within 7 days after service of the Award, or b) otherwise on the date that i) the arbitrator or Professional Arbitration & Mediation, LLC informs the parties that requested or proposed corrections will not be made, or ii) the arbitrator serves the corrected Award.

## **Rule 24. Payment Pursuant to the Award**

Payment on any Award is due in full for interest calculation purposes upon service of the Award.

## **Rule 25. Enforcement of the Award**

25.1 The parties shall be deemed to have consented that judgment upon the Award may be entered in New York County Supreme Court and/or federal court in the Southern District of New York.

25.2 Proceedings to confirm, enforce, correct, modify, or vacate an Award will be governed by the Federal Arbitration Act, 9 U.S. C. Sec 1, et seq., or applicable state law.

## *Miscellaneous*

### **Rule 26. Privacy and Confidentiality of Arbitration**

26.1 The arbitrator and Professional Arbitration & Mediation, LLC shall maintain the privacy and confidential nature of the arbitration, unless the law provides to the contrary.

26.2 The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, and other sensitive information exchanged or disclosed in connection with the arbitration.

26.3 The parties agree that all communications and evidence related to the dispute shall remain confidential, and no party shall take any action that may harm the reputation of the other party, or which would reasonably be expected to lead to unwanted or unfavorable publicity regarding the parties. These confidentiality provisions do not apply to facts, communications, documentation, or other information received or gathered outside of the Professional Arbitration & Mediation, LLC dispute resolution process.

26.4 Notwithstanding the foregoing, Professional Arbitration & Mediation, LLC may share all case details, including a copy of the Award, with a referring third party who pays for the parties' arbitration, and as required by law with a court or government agency with jurisdiction.

### **Rule 27. Violation of Rules and Procedures**

Should any party violate these PAMRules, fail to comply with an arbitrator's order during the course of the proceedings (such as orders regarding the exchange of information or orders regarding deadlines), and/or engage in offensive conduct or any other conduct not conducive to respectful and productive proceedings, the arbitrator may issue sanctions, and that party may, at the arbitrator's discretion or Professional Arbitration & Mediation, LLC's discretion, be disallowed from further participation in a live hearing. In such a case where a party is disallowed from participation in a live hearing, that party would still be given an opportunity to submit testimony via audio, video, or written statement within 3 days following the hearing, and may also be given an opportunity to answer arbitrator questions. However, the arbitrator has discretion on whether and how to consider such evidence.

### **Rule 28. Waiver**

28.1 If a party is aware that any of the PAMRules have not been complied with or have been violated, the party must immediately object in writing to [admin@pamsadr.org](mailto:admin@pamsadr.org) before continuing



with the arbitration, or the party is deemed to have waived its objection, unless the arbitrator determines such failure to object is justifiable.

28.2 If any party becomes aware of information that could be the basis of objecting to the appointment or continued service of an arbitrator, such objection must be made promptly to Professional Arbitration & Mediation, LLC. Failure to do so shall constitute a waiver of any objection to the arbitrator.

## **Rule 29. Disqualification of the Arbitrator and Professional Arbitration & Mediation, LLC a Witness or Party and Exclusion of Liability**

29.1 Arbitrators, mediators, or arbitration or alternative dispute resolution organizations acting in that capacity are immune from civil liability. As such, Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator are likewise immune.

29.2 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that immunity afforded by this section supplements any immunity under other law.

29.3 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that the failure of an arbitrator or mediator to make any required disclosures does not cause any loss of immunity.

29.4 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that in any pending or subsequent judicial, administrative, or similar proceeding, Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator are not competent to testify, and may not be required to produce records as to any statement, conduct, decision, ruling, or any other matter relating to a Professional Arbitration & Mediation, LLC arbitration or mediation proceeding. This Rule 29.4 does not apply to the extent necessary to determine any claims of Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator against a party (including its directors, employees, contractors, agents, partners, and affiliates) to a Professional Arbitration & Mediation, LLC arbitration or mediation proceeding.

29.5 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that in any pending or subsequent judicial,

administrative, or similar proceeding, including any actions for damages, injunctive, or declaratory relief, Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator are not liable to any party or witness for any act or omission in connection with the parties' arbitrations or meditations, including any decisions regarding the disqualification of an arbitrator.

29.6 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator are not a necessary or proper party in any litigation or other proceeding relating to the parties' arbitration or mediation.

29.7 The parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that if anyone commences a civil action against Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, or mediator arising from any of their services relating to the parties' arbitration or mediation, or if the parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties seek to compel Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, or mediator to testify or produce records in violation of Rule 29, and the court decides that there is immunity from civil liability or that Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator are not competent to testify or do not have to produce records, the court shall award reasonable attorney's fees and other reasonable expenses of litigation to Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, and mediator.

29.8 To the extent permitted by applicable law, the parties (including their directors, employees, contractors, agents, partners, and affiliates) and the witnesses of the parties agree that in no event shall Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, or mediator be liable to the parties or witnesses for any loss of profits, use, or data, or for any incidental, indirect, special, consequential, or exemplary damages, however arising, that result from (a) the use, disclosure, or display of information related to the parties, including a data breach; (b) the parties' use or

inability to use any Professional Arbitration & Mediation, LLC service; (c) any Professional Arbitration & Mediation, LLC service generally or the software or systems that make such service available; or (d) any other interactions with Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, mediator, or any of the other parties or witnesses to the arbitration or mediation, whether based on warranty, contract, tort (including negligence), or any other legal theory, and whether or not Professional Arbitration & Mediation, LLC (including its directors, employees, contractors, agents, partners, and affiliates), the arbitrator, or mediator have been informed of the possibility of such damage, and even if a remedy set forth herein is found to have failed of its essential purpose.