

### MEDIATION & ARBITRATION RULES

**Notice/Commencement of Mediation/Arbitration.** Any party having a Claim (“Claimant”) against any other party (“Respondent”) (collectively, the “Parties”) shall notify each Respondent in writing (the “Demand”) and provide a copy to the Arbitration & Mediation Center of Arizona (“AMCA”), stating plainly and concisely:

- (1) the nature of the Claim, including the date, time, location, persons involved and Respondent’s role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises); and,
- (3) Claimant’s proposed remedy.

The Claimant shall submit a non-refundable administrative fee to AMCA in the amount of \$300.00 concurrent with its filing of the Demand.

#### **Mediation.**

- (1) The Mediator shall be the Arbitration & Mediation Center of Arizona (“AMCA”), 8700 E. Pinnacle Peak Road, Suite 221, Scottsdale, Arizona 85255 (Facsimile No. 480-585-8585). The Parties shall be notified of the mediator assigned to the matter within five (5) business days from AMCA’s receipt of the demand for arbitration. Alternatively, AMCA may provide the Parties with a list of available mediators from which to select, along with selection instructions, within the same five (5) business period. All communications to and from AMCA shall be via e-mail, and a copy may also be sent via regular mail.
- (2) Within five (5) business days after the date of AMCA’s notice pertaining to the appointment or manner of selecting the mediator, the Respondent(s) shall respond to the Demand in writing, by filing a written answer with AMCA, with copies to the Claimant and other Respondents, if any. Each Respondent shall submit a non-refundable administrative fee to AMCA in the amount of \$300.00 concurrent with the filing of its Response.
- (3) Within five (5) business days following the filing of Respondents’ Response, the parties shall jointly submit a list of available dates for a mediation conference. Absent compelling circumstances, such conference shall be commenced on an expedited basis. Within five (5) business days following AMCA’s receipt of

available dates, AMCA shall notify the parties of the date selected for the mediation conference and the location thereof.

- (4) To the extent any pre-mediation discovery is required by the parties, the parties are advised to submit a Joint Pre-Mediation Memorandum addressing such issues concurrent with their submittal of notice of available mediation conference dates. Within five (5) business days following receipt of a Joint Pre-Mediation Memorandum, AMCA shall issue such orders as are deemed appropriate by AMCA with regard to the conduct of discovery and the conference.
- (5) AMCA shall attempt to facilitate a resolution of the matter through mediation. The mediation shall be conducted at AMCA's offices, or at such other location chosen by AMCA. All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be enforced in a court of law. Each of the Parties to a Claim will bear its own costs incurred prior to and during the negotiation and mediation proceeding described herein, including the fees of its attorney or other representative. AMCA may require an advance deposit of one or more full day's fees (10 hours) prior to the commencement of the mediation, such amount to be shared equally by the parties.
- (6) If, at any time during the course of the mediation, either AMCA or either of the Parties believe that a stalemate has been reached, the mediation conference will cease and the parties may then proceed with either arbitration or court proceeding, as applicable.
- (7) The mediation costs and expenses shall be shared by the Parties.
- (8) All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be enforced in a court of law.
- (9) If the Parties agree to a resolution of any Claim through mediation in accordance with these Rules and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file a demand for arbitration with AMCA without the need to again comply with the mediation procedures set forth above. In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, reasonable attorneys' fees, costs and expenses.

### **Mediation/Arbitration.**

- (1) The Mediator/Arbitrator shall be the Arbitration & Mediation Center of Arizona (“AMCA”), 8700 E. Pinnacle Peak Road, Suite 221, Scottsdale, Arizona 85255 (Facsimile No. 480-585-8585). The Parties shall be notified of the mediator/arbitrator assigned to the matter within five (5) business days from AMCA’s receipt of the demand for arbitration. Alternatively, AMCA may provide the Parties with a list of available mediators/arbitrators from which to select, along with selection instructions, within the same five (5) business period. All communications to and from AMCA shall be via e-mail, and a copy may also be sent via regular mail.
- (2) Within five (5) business days after the date of AMCA’s notice pertaining to the appointment or manner of selecting the mediator/arbitrator, the Respondent(s) shall respond to the Demand in writing, by filing a written answer with AMCA, with copies to the Claimant and other Respondents, if any. Each Respondent shall submit a non-refundable administrative fee to AMCA in the amount of \$300.00 concurrent with the filing of its Response.
- (3) If any Respondent fails to timely submit its administrative fee and Response to the Demand, AMCA reserves the right to declare the entry of a default against the Respondent(s) with notice thereof provided to the parties via e-mail. If Respondent(s) then fails to submit its Response and administrative fee within five (5) business days following the notice of default, a default order shall be issued in favor of the Claimant. Notwithstanding the foregoing, AMCA reserves the right to conduct a hearing prior to the entry final default order in order to permit Claimant to present evidence supporting its claim(s).
- (4) Within five (5) business days following the filing of Respondents’ Response, the parties shall jointly submit a list of available dates for a mediation conference. Absent compelling circumstances, such conference shall be commenced on an expedited basis. Within five (5) business days following AMCA’s receipt of available dates, AMCA shall notify the parties of the date selected for the mediation conference and the location thereof.
- (5) To the extent any pre-mediation discovery is required by the parties, the parties are advised to submit a Joint Pre-Mediation Memorandum addressing such issues concurrent with their submittal of notice of available mediation conference dates. Within five (5) business days following receipt of a Joint Pre-Mediation Memorandum, AMCA shall issue such orders as are deemed appropriate by AMCA with regard to the conduct of discovery and the conference.
- (6) AMCA shall initially attempt to facilitate a resolution of the matter through mediation. The mediation shall be conducted at AMCA’s offices, or at such other location chosen by AMCA. All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be

enforced in a court of law. Each of the Parties to a Claim will bear its own costs incurred prior to and during the negotiation and mediation proceeding described herein, including the fees of its attorney or other representative. AMCA may require an advance deposit of one or more full day's fees (10 hours) prior to the commencement of the mediation, such amount to be shared equally by the parties.

- (7) If, at any time during the course of the mediation, either AMCA or either of the Parties believe that a stalemate has been reached, AMCA shall schedule a single-hearing arbitration hearing, without any Party being entitled to pre-hearing discovery (other than a demand for, and exchange of, all relevant documents and correspondence), unless otherwise agreed by the Parties and AMCA.
- (8) To the extent any pre-arbitration discovery is required by the parties, the parties are advised to submit a Joint Pre-Arbitration Memorandum addressing such issues within five (5) business days following the conclusion of the mediation conference. Within five (5) business days following receipt of a Joint Pre-Arbitration Memorandum, AMCA shall issue such orders as are deemed appropriate by AMCA with regard to the conduct of discovery and the arbitration hearing.
- (9) The arbitration hearing shall be held at AMCA's offices, or at such other location as chosen by AMCA, on five (5) days' notice to the Parties. If AMCA declines, for any reason, to arbitrate the matter, then the matter will be arbitrated by a mutually agreeable party to be identified within five (5) business days following AMCA's decline notice. If the Parties are unable to agree to an arbitrator, AMCA shall select the arbitrator to be used or, alternatively, submit the matter to the American Arbitration Association.
- (10) Pre-arbitration discovery may be permitted by the arbitrator, in accordance with a Joint Pre-Arbitration Memorandum to be timely submitted to the arbitrator for review and approval. The parties shall attempt to resolve any discovery disputes prior to submission of the joint pre-hearing memorandum. Any unresolved discovery disputes will be conclusively resolved by the arbitrator.
- (11) The mediation costs and expenses shall be shared by the Parties and, if and to the extent required, each Party will pay its respective share of the costs in advance of the mediation as a condition to its continuation of the prosecution or defense of the Claim. The arbitration costs and expenses of each party shall be borne by the non-prevailing Party. Advance fees may also be required prior to the commencement of any arbitration hearing. Such fees shall also be shared equally by the parties, but arbitration fees incurred by the prevailing party shall be subject to reimbursement from the non-prevailing party.
- (12) These AMCA Arbitration Rules, then in effect, shall be utilized in the arbitration hearing and the law of the evidence of the State of Arizona shall govern the presentation of evidence at such hearing. Notwithstanding the foregoing, affidavits and declarations of witnesses are permitted and shall be given the same

weight as testimony in person. However, any such affidavits or declaration shall be disclosed by the submitting party in a timely manner so as to provide the opposing party with the opportunity to submit controverting affidavits or declarations, or otherwise conduct reasonable discovery with regard thereto.

- (13) If the parties have elected final and binding arbitration, an award rendered by the arbitrator appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceedings, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. To that end, the arbitrator shall have the right to render decisions with regard to all remedies that would otherwise be available at law or in equity to the Parties and the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (14) If the parties have elected an appealable arbitration, an award rendered by the arbitrator appointed under and pursuant to this Agreement shall be subject to appeal by either party to a three (3) arbitrator panel. Prior to the commencement of the initial arbitration, the parties shall irrevocably select whether any appeal will be de novo, or on the record. If the parties cannot agree, then all appeals shall be on the record, in which event a record of the arbitration proceedings shall be maintained at the expense of the parties. A notice of appeal must be submitted to AMCA within ten (10) business days following the rendering of the award by the arbitrator. Within five (5) business days thereafter, AMCA shall randomly select three (3) arbitrators to serve as the appellate panel. The appellate hearing shall be held as soon as reasonably practicable as dictated by the arbitrators' and parties' schedules. An appellate award rendered by the arbitrators appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceedings, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. To that end, the arbitrators shall have the right to render decisions with regard to all remedies that would otherwise be available at law or in equity to the Parties and the arbitrators shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (15) Should a dispute arise as to whether or not any dispute arising under the terms of this Agreement is subject to this arbitration provision, the matter shall be decided by arbitration in the same manner and with the same effect as all disputes arising out of this Agreement. If the dispute proceeds to arbitration, the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (16) All mediation discussions are privileged and confidential. Persons who are not Parties are not allowed to attend the mediation conference without the consent of the Parties. Any mediation resolution may be enforced in a court of law.
- (17) If the Parties agree to a resolution of any Claim through mediation in accordance with these Rules and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file a demand for arbitration with AMCA without the need to again comply with the mediation procedures set forth above.

In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, reasonable attorneys' fees, costs and expenses.

**Binding Arbitration.**

- (1) The Arbitrator shall be the Arbitration & Mediation Center of Arizona (“AMCA”), 8700 E. Pinnacle Peak Road, Suite 221, Scottsdale, Arizona 85255 (Facsimile No. 480-585-8585). The Parties shall be notified of the arbitrator assigned to the matter within five (5) business days from AMCA’s receipt of the demand for arbitration. Alternatively, AMCA may provide the Parties with a list of available arbitrators from which to select, along with selection instructions, within the same five (5) business period. All communications to and from AMCA shall be via e-mail, and a copy may also be sent via regular mail.
- (2) Within five (5) business days after the date of AMCA’s notice pertaining to the appointment or manner of selecting the arbitrator, the Respondent(s) shall respond to the Demand in writing, by filing a written answer with AMCA, with copies to the Claimant and other Respondents, if any. Each Respondent shall submit a non-refundable administrative fee to AMCA in the amount of \$300.00 concurrent with the filing of its Response.
- (3) If any Respondent fails to timely submit its administrative fee and Response to the Demand, AMCA reserves the right to declare the entry of a default against the Respondent(s) with notice thereof provided to the parties via e-mail. If Respondent(s) then fails to submit its Response and administrative fee within five (5) business days following the notice of default, a default order shall be issued in favor of the Claimant. Notwithstanding the foregoing, AMCA reserves the right to conduct a hearing prior to the entry final default order in order to permit Claimant to present evidence supporting its claim(s).
- (4) Within five (5) business days following the filing of Respondents’ Response, the parties shall jointly submit a list of available dates for the arbitration. Absent compelling circumstances, such arbitration proceedings shall be commenced on an expedited basis. Within five (5) business days following AMCA’s receipt of available dates, AMCA shall notify the parties of the date selected for the arbitration hearing(s) and the location thereof.
- (5) To the extent any pre-arbitration discovery is required by the parties, the parties are advised to submit a Joint Pre-Arbitration Memorandum addressing such issues within five (5) business days following notice to the parties of the arbitration hearing date(s). Within five (5) business days following receipt of a Joint Pre-Arbitration Memorandum, AMCA shall issue such orders as are deemed appropriate by AMCA with regard to the conduct of discovery and the arbitration hearing(s).

- (6) The arbitration hearing(s) shall be held at AMCA's offices, or at such other location as chosen by AMCA, on five (5) days' notice to the Parties. If AMCA declines, for any reason, to arbitrate the matter, then the matter will be arbitrated by a mutually agreeable party to be identified within five (5) business days following AMCA's decline notice. If the Parties are unable to agree to an arbitrator, AMCA shall select the arbitrator to be used or, alternatively, submit the matter to the American Arbitration Association.
- (7) Pre-arbitration discovery may be permitted by the arbitrator, in accordance with a Joint Pre-Arbitration Memorandum to be timely submitted to the arbitrator for review and approval. The parties shall attempt to resolve any discovery disputes prior to submission of the joint pre-hearing memorandum. Any unresolved discovery disputes will be conclusively resolved by the arbitrator.
- (8) Unless otherwise agreed by the parties, the arbitration costs and expenses of each party shall be borne by the non-prevailing Party. Advance fees may be required prior to the commencement of any arbitration hearing. Such fees shall be shared equally by the parties, but arbitration fees incurred by the prevailing party shall be subject to reimbursement from the non-prevailing party.
- (9) These AMCA Arbitration Rules, then in effect, shall be utilized in the arbitration hearing and the law of the evidence of the State of Arizona shall govern the presentation of evidence at such hearing. Notwithstanding the foregoing, affidavits and declarations of witnesses are permitted and shall be given the same weight as testimony in person. However, any such affidavits or declaration shall be disclosed by the submitting party in a timely manner so as to provide the opposing party with the opportunity to submit controverting affidavits or declarations, or otherwise conduct reasonable discovery with regard thereto.
- (10) An award rendered by the arbitrator appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceedings, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. To that end, the arbitrator shall have the right to render decisions with regard to all remedies that would otherwise be available at law or in equity to the Parties and the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (11) Should a dispute arise as to whether or not any dispute arising under the terms of this Agreement is subject to this arbitration provision, the matter shall be decided by arbitration in the same manner and with the same effect as all disputes arising out of this Agreement. If the dispute proceeds to arbitration, the arbitrator shall have jurisdiction over all matters of fact and law necessary to render a decision.

### **Appealable Arbitration.**

- (1) The Arbitrator shall be the Arbitration & Mediation Center of Arizona (“AMCA”), 8700 E. Pinnacle Peak Road, Suite 221, Scottsdale, Arizona 85255 (Facsimile No. 480-585-8585). The Parties shall be notified of the arbitrator assigned to the matter within five (5) business days from AMCA’s receipt of the demand for arbitration. Alternatively, AMCA may provide the Parties with a list of available arbitrators from which to select, along with selection instructions, within the same five (5) business period. All communications to and from AMCA shall be via e-mail, and a copy may also be sent via regular mail.
- (2) Within five (5) business days after the date of AMCA’s notice pertaining to the appointment or manner of selecting the arbitrator, the Respondent(s) shall respond to the Demand in writing, by filing a written answer with AMCA, with copies to the Claimant and other Respondents, if any. Each Respondent shall submit a non-refundable administrative fee to AMCA in the amount of \$300.00 concurrent with the filing of its Response.
- (3) If any Respondent fails to timely submit its administrative fee and Response to the Demand, AMCA reserves the right to declare the entry of a default against the Respondent(s) with notice thereof provided to the parties via e-mail. If Respondent(s) then fails to submit its Response and administrative fee within five (5) business days following the notice of default, a default order shall be issued in favor of the Claimant. Notwithstanding the foregoing, AMCA reserves the right to conduct a hearing prior to the entry final default order in order to permit Claimant to present evidence supporting its claim(s).
- (4) Within five (5) business days following the filing of Respondents’ Response, the parties shall jointly submit a list of available dates for the arbitration. Absent compelling circumstances, such arbitration proceedings shall be commenced on an expedited basis. Within five (5) business days following AMCA’s receipt of available dates, AMCA shall notify the parties of the date selected for the arbitration hearing(s) and the location thereof.
- (5) To the extent any pre-arbitration discovery is required by the parties, the parties are advised to submit a Joint Pre-Arbitration Memorandum addressing such issues within five (5) business days following notice to the parties of the arbitration hearing date(s). Within five (5) business days following receipt of a Joint Pre-Arbitration Memorandum, AMCA shall issue such orders as are deemed appropriate by AMCA with regard to the conduct of discovery and the arbitration hearing(s).
- (6) The arbitration hearing(s) shall be held at AMCA’s offices, or at such other location as chosen by AMCA, on five (5) days' notice to the Parties. If AMCA declines, for any reason, to arbitrate the matter, then the matter will be arbitrated by a mutually agreeable party to be identified within five (5) business days following AMCA’s decline notice. If the Parties are unable to agree to an

arbitrator, AMCA shall select the arbitrator to be used or, alternatively, submit the matter to the American Arbitration Association.

- (7) Pre-arbitration discovery may be permitted by the arbitrator, in accordance with a Joint Pre-Arbitration Memorandum to be timely submitted to the arbitrator for review and approval. The parties shall attempt to resolve any discovery disputes prior to submission of the joint pre-hearing memorandum. Any unresolved discovery disputes will be conclusively resolved by the arbitrator.
- (8) Unless otherwise agreed by the parties, the arbitration costs and expenses of each party shall be borne by the non-prevailing Party. Advance fees may be required prior to the commencement of any arbitration hearing. Such fees shall be shared equally by the parties, but arbitration fees incurred by the prevailing party shall be subject to reimbursement from the non-prevailing party.
- (9) These AMCA Arbitration Rules, then in effect, shall be utilized in the arbitration hearing and the law of the evidence of the State of Arizona shall govern the presentation of evidence at such hearing. Notwithstanding the foregoing, affidavits and declarations of witnesses are permitted and shall be given the same weight as testimony in person. However, any such affidavits or declaration shall be disclosed by the submitting party in a timely manner so as to provide the opposing party with the opportunity to submit controverting affidavits or declarations, or otherwise conduct reasonable discovery with regard thereto.
- (10) An award rendered by the arbitrator appointed under and pursuant to this Agreement shall be subject to appeal by either party to a three (3) arbitrator panel. Prior to the commencement of the initial arbitration, the parties shall irrevocably select whether any appeal will be de novo, or on the record. If the parties cannot agree, then all appeals shall be on the record, in which event a record of the arbitration proceedings shall be maintained at the expense of the parties. A notice of appeal must be submitted to AMCA within ten (10) business days following the rendering of the award by the arbitrator. Within five (5) business days thereafter, AMCA shall randomly select three (3) arbitrators to serve as the appellate panel. The appellate hearing shall be held as soon as reasonably practicable as dictated by the arbitrators' and parties' schedules. An appellate award rendered by the arbitrators appointed under and pursuant to this Agreement shall be final and binding on all parties to the proceedings, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction. To that end, the arbitrators shall have the right to render decisions with regard to all remedies that would otherwise be available at law or in equity to the Parties and the arbitrators shall have jurisdiction over all matters of fact and law necessary to render a decision.
- (11) Should a dispute arise as to whether or not any dispute arising under the terms of this Agreement is subject to this arbitration provision, the matter shall be decided by arbitration in the same manner and with the same effect as all disputes arising out of this Agreement. If the dispute proceeds to arbitration, the arbitrator shall

have jurisdiction over all matters of fact and law necessary to render a decision.

**Conflicts of Interest.**

- (1) Under no circumstances shall any mediator or arbitrator having a conflict of interest pertaining to any party be involved in any AMCA proceeding as either a mediator, arbitrator, or appellate arbitrator.
- (2) When, and if, conflicts of interest exist, only those mediators and arbitrators without any such conflict will be subject to participation in AMCA proceedings and their appointment shall be undertaken in an unbiased manner, thereby assuring fairness to all parties.
- (3) The existence of any conflict of interest on the part of any AMCA mediator or arbitrator shall not be grounds for striking AMCA as the entity through which the mediation and/or arbitration is conducted. To that end, if any party believes that a conflict on the part of any AMCA mediator or arbitrator may lead to bias in the proceedings, mediators and arbitrators shall be selected as follows:
  - (A) A list of three (3) acceptable mediators/arbitrators shall be submitted to AMCA by the Claimant. Within five (5) business days after such submittal, the Respondent shall either choose a mediator/arbitrator from those provided in the list, or propose one (1) to three (3) alternative mediators/arbitrators. If within five (5) days thereafter the parties cannot decide upon a mediator/arbitrator, they each shall choose one (1) mediator/arbitrator who collectively shall choose a third mediator/arbitrator, and that chosen mediator/arbitrator shall preside, as applicable. This process shall be used for the selection of a mediator, mediator/arbitrator, and arbitrator.
  - (B) If the parties have elected to participate in an appealable arbitration, the two mediators/arbitrators initially selected by the parties shall select the first appellate arbitrator; thereafter, those three individuals shall, by majority vote, select the remaining two appellate arbitrators.
  - (C) If for any reason the process outlined in Paragraphs 3(A) and 3(B) above is unable to be completed within ten (10) business days, any party may request the presiding judge of Maricopa County Superior Court to appoint all three (3) appellate arbitrators; and, after such appointment, the appellate arbitration shall be conducted in accordance with these Rules.