

SAMPLE ARBITRATION ORDER ON ONLINE HEARING PROCEDURES

ORDER ON HEARING PROCEDURES

At the Management Conference Call, which was conducted online via Zoom, the parties reviewed the status of the case and the procedure for the hearing. The Arbitrator distributed, in advance, the AAA-ICDR Model Order and Procedures for a Virtual Hearing via Videoconference (“Model Order”). Both parties submitted e-mails on their positions and have accepted the Model Order with the modifications set forth below. Accordingly, this is the process to be followed at the hearing:

The start time of the first day of hearing will be 9:30 am to ensure the technology is working for all participants. The AAA will send a Notice of Hearing.

1. Agreement to Online Hearing:

A. The parties and the Arbitrator agree that all aspects of the hearing will be conducted via the Zoom Platform. This confirms that the hearing will be deemed to have taken place in Connecticut.

B. The parties acknowledge that they have made their own investigation as to the suitability and adequacy of the Zoom Platform for its proposed use for the hearing and of any risks of using the Zoom Platform, including any risks regarding its security, privacy or confidentiality. The parties acknowledge that the Arbitrator has reviewed the features of the Zoom Platform with counsel during the Management Conference Call. The parties indicated that they understood, and would explain, such features to any witnesses or other participants in the hearing. The parties agree to use the Zoom Platform and will not make the use of the Zoom Platform, or the online nature of the hearing, a subject of an appeal, motion to vacate or to oppose enforcement, or any similar objection in any further proceeding.

2. Hearing Record and Recording:

A. The parties and the Arbitrator agree that the hearing will be transcribed by a court reporter from the _____ service. The court reporter’s transcript will be the official record of the hearing. _____ will provide its electronic exhibit sharing service. The court reporter may interrupt attorneys, witnesses, or the Arbitrator as needed to clarify items for the record. The Arbitrator will control when the hearing is on and off the record.

B. The parties and the Arbitrator agree that the hearing will **not** be recorded through the Zoom Platform.

C. The parties agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it, except as is provided for in this Order. The parties and counsel will ensure that each attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording.

3. Technical Aspects:

A. The Arbitrator will invite attendees via email to join the Zoom Platform hearing. The invitation will contain an online link as well as a backup telephone connection. The invitations will be sent for each day of the hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Counsel can forward the link to witnesses on their witness lists; however, participants otherwise should not forward or share the hearing link or password. Counsel for each party will be responsible for identifying any participant they bring to the hearing.

When witnesses and counsel join the meeting, they will be placed in a “Waiting Room” until the Arbitrator grants them access. The Arbitrator will be notified of their presence and will grant access at the appropriate time. While in the Waiting Room, the witnesses will not have video or audio access to anyone. Once the day’s attendees have joined the meeting, it will be locked to prevent others from joining until access is granted by the Arbitrator. Because of the locked feature, participants should stay logged into the meeting for the entire time they are attending the hearing; they should not leave the Zoom platform during breaks.

In order to facilitate e-mail invitations for the hearing, the parties shall send to the Arbitrator, a list of each attendee’s name, e-mail address, and cell phone number (where they will be reachable on the day(s) they attend the hearing).

B. Advance Testing of System:

At the Management Conference Call, counsel and the Arbitrator tested the Zoom Platform to ensure counsel’s familiarity with the system and that the video and audio systems worked. Each party will be responsible for testing the online systems of their witnesses, including any third-party witnesses that party has called or subpoenaed. Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied. The transmission shall be of sufficient quality so as to allow for clear video and audio of all participants. Participants should test their equipment to determine the best audio connection – whether by phone, through their computer speakers/microphone, with or without a headset. If participants cannot connect online or lose Internet connection, they should use the phone number on the invitation.

C. Hearing Participants:

- i. The parties agree that no one will attend, participate or be allowed to listen in on the hearing without the prior consent of all parties and the Arbitrator.
- ii. Each attendee shall disclose at the start of each hearing session all people in the room with the attendee. If an individual joins an attendee after the hearing has begun, that individual should be identified to counsel and the Arbitrator at the earliest opportunity.
- iii. During the hearing, the participants should always be in view of the camera. If two or more people are attending the hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of the room.
- iv. Participants should make their best efforts to ensure that there will be clear video and audio transmission during the hearing. To the extent possible, participants should: eliminate any background noise; connect via desktop or laptop rather than by smartphone or tablet; ensure devices are adequately charged and that power cables or back-up batteries are available as necessary; and not join the hearing from a public setting or use unsecured, public wifi to ensure the privacy and security of the hearing.

D. All counsel should endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question or to alert other participants of technical difficulties.

E. All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions. The Arbitrator also will have the ability to mute and unmute any participant if needed.

F. Each participant in the hearing shall have access to a computer or other device with email in order to access documents.

G. Each party will be assigned a separate breakout room at the beginning of each day's proceedings. The parties will be able to caucus privately but will be expected to observe the usual rules about not coaching a witness during his/her testimony. If necessary additional breakout rooms can be created.

4. Witnesses:

A. The parties each will have one client representative who will attend the entire hearing along with counsel. All other witnesses will be sequestered.

B. The parties have agreed to give 24 hours' notice of the witnesses to be called during the next day of hearing. The witness and the Arbitrator will be advised of the approximate time when the witness is anticipated to testify so that the witness is not in the Waiting Room for an extended period.

C. The parties have agreed that witnesses who appear on both parties' witness lists will be questioned only once; rebuttal witnesses will be permitted.

D. Witnesses should follow these practices:

- i. A witness should give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video. There should be no other people in the room who have not been identified to the Arbitrator.
- ii. The witness should not communicate with anyone, electronically or otherwise, during his or her testimony.
- iii. The witness should not reference or rely on documents or notes that are not identified or visible on the screen.
- iv. The witness should not record the proceedings in any manner.
- v. To the extent possible, the webcam should be positioned at face level, relatively close to the witness (e.g., by positioning a laptop on a stack of books).
- vi. Witnesses may not use a "virtual background." Instead, the room where they are testifying must be visible.
- vii. Witnesses should speak directly to the camera while testifying.
- viii. All non-party or expert witnesses shall sign-off from the Zoom Platform at the conclusion of their testimony.

The Arbitrator will incorporate the relevant points above into the oath each witness will be asked to swear.

E. At any time, the Arbitrator may ask a witness to orient his or her webcam to provide a 360-degree view of the room to confirm that no unauthorized persons are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness' testimony.

F. The Arbitrator will instruct each witness about what to do in the event of a disconnection or other technical failure.

5. Exhibits:

A. The parties will provide the Arbitrator a hard copy binder with the exhibits. If certain exhibits are voluminous (such as large spreadsheets that are not easily printed) or duplicative because they include exhibits from another document, the entire exhibit does not need to be produced in hard copy as long as the exhibit binder is marked and cross referenced for easy access to the exhibit during the hearing. The binder(s) with the exhibits should be sent to the Arbitrator's New Haven office address.

B. The expert report can be introduced during the expert witness' testimony as long as any documents relied upon by the expert have been identified and produced on the exhibit list.

C. Deposition transcripts do not need to be identified as exhibits, but any designated portions of such transcripts to be submitted must be included.

D. Filings on the AAA electronic docket do not need to be identified as exhibits. However, the Arbitrator requests the key pleadings be entered on the record. If the parties do not identify them as exhibits, the Arbitrator will admit them as Arbitrator exhibits.

E. At any time, the Arbitrator may ask a witness to display the exhibits and to verify that they do not bear any annotations. Witnesses shall not be aided by any notes, unless permitted by the Arbitrator upon motion for good cause.

F. The parties will use the _____ exhibit sharing platform. If possible, a separate display screen/window (other than the screen/window used to display the video transmission) should be used to show and display the relevant documents to the witness during the course of questioning. The Arbitrator will use two screens.

6. Hearing Schedule and Logistics:

A. The parties have agreed to brief Opening Statements at the beginning of their direct cases. The statements will not exceed 10 minutes.

B. There will be no pre-hearing briefs. The Arbitrator will decide whether post hearing briefs will be required at the conclusion of the testimony.

C. The Arbitrator will schedule breaks as appropriate. During recesses, the parties will use their assigned breakout room. All participants should log onto the Zoom Platform early and plan to remain logged in for the entire day.

D. The hearing schedule, and the daily schedule, may need to be adjusted if there are technical problems that cause delays.

E. The Arbitrator will disable the private “chat” function in the Zoom Platform. Counsel and witnesses should not communicate by any electronic means during the witness’ testimony, or during breaks from such testimony, except as approved by the Arbitrator. (e.g., overnight or an extended break.) The Arbitrator may use a separate breakout room to confer privately with counsel.

7. Technical Difficulties:

If a participant is disconnected from the hearing or experiences some other technical failure and connection cannot be re-established within a 5-minute interval, the Arbitrator may take steps to “pause” the hearing, which may include moving participants into their separate break-out rooms. The participant should try to reestablish the connection, including by phone as necessary. If the hearing cannot proceed as scheduled, the Arbitrator will reschedule or take other appropriate steps as necessary to ensure the fairness and integrity of the proceedings.

8. Costs:

There will be no additional cost for the use of the Zoom Platform.
