

# JUDICATE WEST COMMERCIAL ARBITRATION RULES

EFFECTIVE JANUARY 2024



*Results Beyond Dispute<sup>SM</sup>*

# JW COMMERCIAL ARBITRATION RULES

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## ***RULE 1 INTENT AND OVERVIEW***

The Judicate West (“JW”) Commercial Arbitration Rules (the “Rules”), revised in January 2024, are designed to promote a just, speedy, economical, and enforceable resolution of disputes through arbitration. Parties, counsel, and all other participants are expected to cooperate fully with the arbitrator and with each other so that the arbitral proceedings are conducted with civility and efficiency.

## ***RULE 2 NUMBER OF ARBITRATORS***

Arbitrator, as used in these Rules, refers to a single arbitrator or a panel of arbitrators depending on the context. Each arbitrator will be independent and impartial and will be bound by these Rules. If the arbitration agreement does not specify the number of arbitrators, the dispute will be determined by one arbitrator. However, all parties may agree before the appointment of a single arbitrator to a panel of three arbitrators. Absent an agreement to the contrary between the parties, the three arbitrators will select one of their number to serve as Chairperson. The Chairperson will conduct status hearings, determine all non-dispositive motions and procedural disputes, and rule on evidentiary matters and other motions during the arbitration hearing. Deliberations regarding the Award and any potentially dispositive motions will be conducted by the entire panel.

## ***RULE 3 JURISDICTION***

### **Rule 3.1 General**

#### **Rule 3.1.1 Application of These Rules**

These Rules, with any written modifications agreed to by the parties and approved by the arbitrator, apply in the following circumstances:

1. When a commercial contract states that the JW Commercial Arbitration Rules will be used to resolve disputes;
2. When a commercial contract provides for disputes to be resolved through arbitration by JW without specifying the rules to be used;
3. When a commercial contract does not state how disputes will be resolved and the parties agree to arbitration by JW, and so agreeing the parties effectively modify their agreement to provide for arbitration by JW;
4. When two or more parties to a commercial dispute do not have a written contract between them but agree to submit their dispute for resolution through arbitration by JW; and
5. When two or more parties to any dispute, including a consumer or employment dispute, agree the JW Commercial Arbitration Rules will be used to resolve their dispute, and so agreeing the parties effectively modify their agreement to provide for arbitration under the JW Commercial

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Arbitration Rules, including any modifications to the Rules agreed by the parties and arbitrator under Rule 3.1.3.

Unless otherwise agreed by the parties or specified by their arbitration agreement, the arbitral proceedings will be conducted under the version of these Rules in effect at the time the arbitration commences (see Rule 5.3.3).

## **Rule 3.1.2 Arbitration Under Other Rules or Laws**

When a contract specifies that a dispute between the parties will be resolved under rules or laws other than these JW Commercial Arbitration Rules, or the parties agree to an arbitration process following rules or laws other than these Rules, JW will administer the arbitration under the rules or laws designated in the contract or selected by the parties. The parties may at any time before or during the initial Case Management Conference (see Rule 8.1) jointly elect to have these Rules apply.

## **Rule 3.1.3 Modification of Rules and Resolution of Conflicts**

The parties, with the approval of the arbitrator, may establish their own arbitration rules or modify in writing any aspect of the governing rules. Such rules will govern the conduct of the arbitral proceedings. However, if any of the rules conflicts with a mandatory provision of applicable law, that provision of law will prevail. If these Rules or any other rules specified or agreed to by the parties fail to address any issue arising during any phase of the arbitral proceedings, the arbitrator will determine the procedure to resolve the issue quickly and efficiently.

## **Rule 3.1.4 Interpretation and Application of the Rules**

The arbitrator will resolve disputes about the interpretation and applicability of these Rules, including those related to the arbitrator's powers and duties. The resolution of issues by the arbitrator will be final.

## **Rule 3.2. Delegation and Challenges to Jurisdiction**

### **Rule 3.2.1 Delegation of Powers and Responsibilities**

Under these Rules, the parties delegate to JW and the arbitrator the power and responsibility to resolve all administrative issues, disputes, and related matters relevant to the subject matter of their agreement. The parties agree to arbitrate all disputes related to the subject matter of their agreement to the fullest extent permitted by applicable law, except as otherwise agreed by the parties in writing and submitted to JW at the beginning of the arbitration proceeding.

### **Rule 3.2.2 Disputes about Arbitrator Jurisdiction and Arbitrability**

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To the fullest extent permitted under applicable law, disputes about the jurisdiction of the arbitrator and arbitrability of any issue, including disputes regarding the existence, scope, or validity of the agreement forming the basis for the arbitration, will be heard and determined by the arbitrator.

## **Rule 3.2.3 Time for Challenging Arbitrator Jurisdiction**

Except for challenges based on the award, a notice of any intent to challenge the jurisdiction of the arbitrator must be served on the arbitrator and all other parties by the date the Response by Respondent is due, or, if the challenge relates to a counterclaim, the date the Reply to the Counterclaim is due. However, if a Claim or Counterclaim is added or amended later under Rule 5.4.2, any jurisdictional challenge must be based on new matters raised by that amendment, and a notice of intent to challenge must be served by the date the Response to the amended Claim or the Reply to the amended Counterclaim is due. After notice of a jurisdictional challenge has been timely served, the challenging party must promptly follow the requirements of Rule 8.2 to bring the challenge to the attention of all interested parties and the arbitrator.

## ***RULE 4 COMMUNICATIONS***

### **Rule 4.1 Notices and Communications**

All notices and communications under these Rules must be in writing but may be stated by any means that provides a written record. Except for service of a Notice of Intent to Arbitrate under Rule 5.3.1, service of notices and communications by email will be deemed sufficient unless otherwise agreed by the parties or their counsel. The parties or their counsel are responsible for maintaining and monitoring a valid, usable, and live email address for receipt of notices and communications, and for notifying all other parties, counsel, and JW of any changes to their email address. The burden is on the sending party to ensure that the arbitrator, the JW arbitration administrative team, and all parties receive the notice or communication.

### **Rule 4.2 Date of Receipt of Communications**

Communications will be deemed received and time periods start to run as follows: DATE OF TRANSMISSION in the venue of the arbitration hearing for communications transmitted by email, facsimile transmission, or by hand-delivery; DATE OF DELIVERY for overnight delivery; THREE (3) DAYS AFTER MAILING for communications sent via the United States Postal Service. If the date a communication will be deemed received falls on a weekend or court holiday in the place the communication is received, then the date of receipt will be on the next business day. Proof of transmission is prima facie evidence of proof of service or receipt of any notice or communication sent under these Rules.

### **Rule 4.3 Filing Papers with the Arbitrator**

Unless otherwise requested by the arbitrator or agreed by the parties and arbitrator, all motions, briefs and other papers filed with the arbitrator shall be submitted by email attachment directly to

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the arbitrator, with copies to the case manager and [briefs@judicategwest.com](mailto:briefs@judicategwest.com) and service provided to all other parties as required by Rule 4.2. For any discovery or dispositive motions, the parties shall file and serve separate statements and responses regarding the specific issues to be decided, unless otherwise excused by the arbitrator. For all other submissions, letter briefs that sufficiently inform the arbitrator of the issues to be decided may be submitted, unless otherwise requested by the arbitrator.

## **Rule 4.4 No Ex Parte Communications with the Arbitrator**

All parties, or anyone on behalf of a party, are prohibited from engaging in ex parte and/or unsolicited communication with the arbitrator concerning any matter relating to the arbitration, except as provided in Rule 8.2.2. Should any party violate this rule, after notice and an opportunity to be heard, the arbitrator may impose sanctions or take other action the arbitrator deems appropriate. Administrative communications with JW staff do not violate this rule.

## **Rule 4.5 Return or Destruction of Documents**

Before the arbitral proceedings have concluded, a party may request return of that party's documents in accordance with JW's then-existing document retention policy, and JW will arrange for return of said documents after the conclusion of the proceedings. If no request is timely received, the parties will be deemed to have agreed to JW and the arbitrator's destruction of all submitted documents as stated in JW's policies.

## ***RULE 5 COMMENCING THE ARBITRATION PROCESS***

### **Rule 5.1 Representation by Counsel**

The parties should be represented by licensed attorneys of their choice. Promptly and in writing, each party shall provide contact information, including the name, address, telephone number, and email address for its counsel, to the other parties, the arbitrator, and JW. Upon any change, addition, replacement, or substitution, the party involved shall update that information immediately. JW reserves the right to decline administration of any matter in which one or more parties are not represented by counsel. If any party to the arbitration ceases to be represented by counsel, the arbitrator may not suspend or terminate the arbitration unless they determine, in their sole discretion, that doing so would not prejudice a party and would not be inconsistent with the interests of justice and equity. Attorneys and self-represented litigants are equally bound to comply with all applicable rules of procedure.

### **Rule 5.2 Agreed Submission of Dispute**

Parties to any existing dispute may elect to arbitrate some or all the issues in the dispute using these Rules by submitting to JW a written agreement to arbitrate containing the following information:

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1. The names and addresses of all parties and their attorneys;
2. A statement of election to proceed under these Rules;
3. A statement of the general nature of the claim(s), counterclaim(s), issue(s), and dispute(s);
4. Any relief or remedy sought;
5. The hearing location requested and whether any hearings conducted in whole or in part via videoconference are anticipated; and
6. The signatures of all parties.

## **Rule 5.3 Initiating Arbitral Proceedings**

### **Rule 5.3.1 Notice of Intent to Arbitrate**

When one party unilaterally commences arbitration (“Claimant”), that party shall serve a written Notice of Intent to Arbitrate (“NIA”) on the other party(ies) (“Respondent(s)”) with the following information:

1. The full names and addresses of all parties and, to the extent known, their attorneys;
2. A statement describing the general nature of the claim or dispute, including its factual basis, and a list of the full names, addresses, and brief descriptions of all known potential witnesses;
3. A demand that the dispute be arbitrated;
4. An attached copy of the arbitration agreement;
5. The relief or remedy(ies) sought; and
6. Proof of service/receipt of the NIA.

### **Rule 5.3.2 Commencing the Proceeding with JW**

To begin the process with JW, the Claimant must send the NIA to all named Respondent(s) by email if known and must serve by certified mail to the address(es) specified in writing by the Respondent(s) or, if no address has been specified, to the last known business or residence address(es) of the Respondent(s). The Claimant must also file a copy of the NIA with JW sent to the attention of the Arbitration Administrator together with payment of the applicable JW administrative and case management fees.

### **Rule 5.3.3 Date Arbitration Commences**

The arbitration is commenced as to any Respondent the date the NIA is filed with JW and received by the Respondent(s) under Rule 4.2, whichever is later.

### **Rule 5.3.4 Amending a Claim**

Claims within the scope of the arbitration clause may be added, amended, or withdrawn before the arbitrator is appointed and thereafter only with the consent of all other parties or after obtaining the approval of the arbitrator.

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## **Rule 5.4 Responding to a Claim or Counterclaim**

### **Rule 5.4.1 Time for Filing a Response or a Reply**

Within thirty (30) days after receipt of the NIA or twenty (20) days after receipt of a Counterclaim, a Response or Reply may be served that sets forth the general and specific defenses asserted. If no Response or Reply is served within these time frames, all claims in the NIA or Counterclaim will be deemed denied. Failure to serve a Response or Reply will not delay the arbitral proceedings. The Response to a Claim or the Reply to a Counterclaim will include the information required in Rule 5.3.1, be served on all parties, and submitted to JW to the attention of the case manager and the arbitrator, if already selected. The Respondent or Counterclaim Respondent may include in its Response or Reply any counterclaim within the scope of the arbitration clause.

### **Rule 5.4.2 Adding, Amending, Withdrawing a Counterclaim**

Counterclaims within the scope of the arbitration clause may be added, amended, or withdrawn before the arbitrator is appointed and thereafter only with the consent of all other parties or after obtaining the approval of the arbitrator.

## ***RULE 6 SELECTING AND CHALLENGING AN ARBITRATOR***

### **Rule 6.1 Process for Selecting an Arbitrator**

#### **Rule 6.1.1 Party Agreement to an Arbitrator**

If the parties have agreed on the arbitrator to be appointed, that arbitrator will be notified and follow the procedures in Rule 6.2.

#### **Rule 6.1.2 Parties with Aligned Interests**

When two or more Claimants in a case have aligned interests in the outcome of the claims in dispute, they will be treated as a single party for purposes of the arbitrator selection process. A Claimant with a divergent interest to the other Claimant(s) will be treated as a separate party. The same applies to cases with more than one Respondent. Respondents with aligned interests in the outcome of the claims in dispute will be treated as a single party for purposes of the arbitrator selection process. Any dispute as to the number of parties and/or the alignment of their interests will be resolved by JW.

#### **Rule 6.1.3 Selection in Single Arbitrator Cases**

1. In single-arbitrator cases involving two parties as defined in Rule 6.1.2, JW will provide the parties with a list of five prospective arbitrators it deems qualified. In matters where there are three or more parties, JW will provide a list of prospective arbitrators that exceeds by one the maximum number of possible strikes permitted per Rule 6.1.3(2), below.
2. Within fourteen (14) calendar days of receiving the list of prospective arbitrators, each party independently shall strike up to two of those prospective arbitrators and rank those remaining

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on the list by order of preference (with “1” denoting a party’s first choice, “2” denoting a party’s second choice, etc.).

3. JW will then select the arbitrator to be appointed based on a review of the comparative rankings of the prospective arbitrators not struck by either party, with the highest ranked (the lowest combined numbers) being the preferred arbitrator for appointment.

### **Rule 6.1.4 Selection in Three Arbitrator Panel Cases**

1. Unless the parties otherwise agree or the contract otherwise states, in two-party cases (as defined in Rule 6.1.2) using a three-arbitrator panel, JW will follow the procedures stated in Rule 6.1.3 but will provide a list of seven prospective arbitrators, with each party striking up to two and ranking those remaining. In matters in which there are three or more parties, JW will provide a list of prospective arbitrators that exceeds by three the maximum possible number of strikes permitted by the above rule.
2. The three prospective arbitrators ranked highest (the lowest combined numbers) will be selected.
3. The three arbitrators selected will decide which arbitrator will serve as the Chairperson unless one or more arbitrators request that JW make that determination, in which case JW will do so.
4. As an alternative selection process in cases using a three-arbitrator panel, in which the contract so provides or when the parties otherwise agree, the parties may each appoint one arbitrator and either jointly select the third or ask the two initially appointed arbitrators to select the third arbitrator. It is strongly recommended that the arbitrators not know which party appointed each of them unless the contract provides otherwise. In any case, all arbitrators are neutral and are not advocates for the appointing party.

### **Rule 6.1.5 Additional Selection Procedures**

If a party fails to participate in these selection procedures, or if for any other reason the selection procedures fail to result in the selection of the appropriate number of arbitrators, JW reserves the right to appoint the arbitrator or arbitrators it deems qualified to serve or to take any other action regarding arbitrator selection it deems necessary.

## **Rule 6.2 Acceptance by the Arbitrator**

### **Rule 6.2.1 Notice of Acceptance and Arbitrator’s Initial Disclosures**

JW will promptly notify the arbitrator of the selection and will provide the arbitrator with copies of any information the parties have provided to JW regarding the case, including the identities of the parties, their attorneys, and any known witnesses. Within ten (10) calendar days of being advised of the selection, the arbitrator will notify JW in writing of acceptance of the appointment and provide all disclosures required by law. JW will promptly forward the disclosures to the parties and notify them of the appointment.

### **Rule 6.2.2 Continuing Disclosure Obligations of Arbitrator and Parties**

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In addition to the parties and counsel providing initial information pursuant to Rules 5.3 and 5.4, all parties and counsel shall as soon as practicable disclose any supplemental information that they subsequently become aware of that may be relevant to the arbitrator's disclosures pursuant to applicable law, including but not limited to any past or present relationship between the arbitrator and any party, counsel, and/or witness. The arbitrator will also provide any supplemental disclosures required by law throughout the course of the arbitration proceeding.

## **Rule 6.3 Challenging an Arbitrator**

### **Rule 6.3.1 When an Arbitrator May Be Challenged**

Any arbitrator may be challenged if a legitimate question exists regarding that arbitrator's independence or impartiality under the requirements of the California Arbitration Act and related rules and provisions applicable to arbitrations in California. Challenges made after an arbitrator has made a ruling on a substantive or contested matter are disfavored.

### **Rule 6.3.2 Process for Challenging an Arbitrator**

1. A party may challenge an arbitrator only by giving written notice to JW, with a copy to the arbitrator and all other parties, no later than fifteen (15) days after the challenging party (i) receives notification of the appointment of that arbitrator and any disclosures made by that arbitrator or (ii) becomes aware of circumstances that lead to a legitimate question regarding the arbitrator's independence or impartiality under the requirements of the California Arbitration Act and related rules and provisions applicable to arbitration in California.
2. Any challenge must state with specificity the circumstances and rationale that raise a legitimate question about the arbitrator's neutrality under applicable law. Absent advance approval from JW, the challenge may not exceed two thousand (2,000) words, excluding attachments. A dispute regarding the substance of any determination reached by the arbitrator is not considered to be a challenge regarding the arbitrator's independence or impartiality and is not within the scope of any review contemplated by this rule.
3. The arbitrator will be replaced if all other parties agree to the challenge or if the arbitrator voluntarily withdraws. A replacement arbitrator will be selected pursuant to the process specified in Rule 6.1.
4. If the parties do not agree to the challenge and the arbitrator does not voluntarily withdraw, JW will provide any non-challenging party and the arbitrator an opportunity to comment on the challenge in submissions of up to two thousand (2,000) words, excluding attachments, due seven (7) days after service of the challenge. The parties may then mutually select one Reviewing Neutral from JW's panel, not including the appointed arbitrator, to decide the challenge based on the merits and the interests of justice. If the parties are unable to mutually agree on the selection of a Reviewing Neutral within seven (7) days of the completion of all submissions, JW will select a Reviewing Neutral.
5. The costs of the Reviewing Neutral will be borne equally by the parties, except that the Reviewing Neutral will have the discretionary authority to reapportion the costs, including in cases in which a party submits a challenge or a response to a challenge in bad faith, and including in cases where costs should otherwise be borne by JW.

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6. The parties may mutually agree to have a challenge of the same or greater scope than permitted under these Rules reviewed by another Alternative Dispute Resolution provider or a court of competent jurisdiction at their own expense, prior to the selection of a JW Reviewing Neutral. If the parties do not agree, the Reviewing Neutral will decide the challenge based on the record presented, unless the Reviewing Neutral determines that more information is necessary to resolve the challenge. Replies or sur-replies will not be permitted absent prior approval of the Reviewing Neutral, and any request to submit additional briefing must be made in two hundred (200) words or fewer. All determinations reached by the Reviewing Neutral shall be final.
7. If a replacement of the arbitrator occurs when there is only one arbitrator, the existing arbitration will immediately terminate, and a new arbitration proceeding will be scheduled by the replacement arbitrator. In a three-arbitrator panel, the two other arbitrators will have the power, in their discretion, to continue the arbitration until a replacement arbitrator is appointed to join the continuing proceedings, unless the parties agree otherwise. If the two other arbitrators decide not to continue the arbitration without the participation of a third arbitrator, or the parties agree that a third arbitrator must participate, the arbitral proceedings will pause until selection of a replacement third arbitrator.

### **Rule 6.3.3 Arbitrator May Be Replaced for Failure to Perform**

If an arbitrator fails to enter a ruling, or for any reason is prevented from performing the functions of an arbitrator, such as death, incapacity, or resignation, a replacement arbitrator will be chosen using the selection process in Rule 6.1. Any unearned arbitrator fees on deposit will be applied to the replacement arbitrator. If the parties do not agree on whether the arbitrator has failed to act or is prevented from performing the functions of an arbitrator, any party may request, by a submission of up to two thousand (2,000) words, excluding attachments, that JW make that determination. JW will then assign a Reviewing Neutral from its panel to make that determination based on the merits and the interests of justice, without charge to the parties. If the Reviewing Neutral determines a replacement arbitrator is required, a replacement arbitrator will be selected under Rule 6.1. All determinations reached by the Reviewing Neutral shall be final.

### **Rule 6.3.4 Replacement of an Arbitrator**

If a sole arbitrator is to be replaced, the existing arbitration will immediately terminate, and a new arbitration proceeding will be scheduled by the replacement arbitrator. In a three-arbitrator panel, unless the parties agree otherwise, the two other arbitrators will have the power, in their discretion, to continue the arbitration until a replacement arbitrator is appointed to join the continuing proceedings. Until the third arbitrator can be replaced, the two arbitrators will conduct routine status hearings, hear and determine all motions and procedural disputes, and rule on evidentiary matters and other motions. However, any potentially dispositive motions will only be heard by the entire panel. If the parties agree that a third arbitrator must participate or the two remaining arbitrators otherwise decide not to continue the arbitration without the participation of a third arbitrator, the arbitral proceedings will pause until selection of a replacement third arbitrator.

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## *Rule 7 TERMINATION OF THE ARBITRATION BY ONE OR MORE PARTIES*

An arbitration may be terminated by one or more parties only upon the written agreement of all parties to the arbitration.

## *Rule 8 ARBITRATOR CASE MANAGEMENT*

### **Rule 8.1 Initial Case Management Conference**

The arbitrator will conduct as soon as practicable an initial Case Management Conference (“CMC”), either telephonically, via videoconference, or in person, for the planning and scheduling of the arbitral proceedings. Matters to be addressed during the initial CMC may include, among other topics, any of the following:

1. Confirming applicable rules;
2. Clarifying issues and claims (e.g., identification of all filed and/or anticipated pleadings);
3. Scheduling the informal exchange of documents (see Rule 9.2), e.g., within twenty-eight (28) days of the initial CMC;
4. Tailoring the scope of additional discovery to be permitted (see Rule 9.3) and all deadlines for the completion of same;
5. Setting procedures for allowing, scheduling, and exchanging motions (Rule 9);
6. Setting deadlines for submission of arbitration lay and expert witness lists;
7. Setting deadlines for submission of arbitration exhibits;
8. Setting deadlines for submission of pre-arbitration briefs;
9. Identifying whether any party seeks retention of a reporter, at the requesting party’s cost;
10. Scheduling the arbitration readiness conference before any cancellation or continuance fees may apply;
11. Scheduling the arbitration hearing date(s);
12. Determining the place of the arbitration, including whether some or all of it will be conducted via videoconference;
13. Identifying arbitrator’s preferred practices for the submission of briefs, exhibits, and other materials (Rule 4);
14. Identifying arbitrator’s preferred procedures relating to the presentation of evidence at the arbitration hearing; and
15. Ensuring that, with respect to the use of artificial intelligence-related technologies in the preparation or composition of documents presented to the arbitrator, counsel comply with the California Rules of Professional Conduct and applicable California law.

### **Rule 8.2 Additional Pre-Hearing Involvement of the Arbitrator**

#### **Rule 8.2.1 Requesting Additional Arbitrator Involvement**

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If at any time a party believes there is an issue or matter that requires involvement of the arbitrator, that party must first meaningfully meet and confer with all other parties to attempt to resolve the issue or matter. After doing so, the requesting party may seek the involvement of the arbitrator by email to the arbitrator with a copy to all other parties and the case manager. The requesting party shall attach to the email a letter brief of no more than one page setting forth the reasons for the request for involvement of the arbitrator and the positions of the involved parties. Upon receipt of the request, the arbitrator will take appropriate action, which may include any of the following: permitting a one-page responsive letter brief, requiring formal briefing by the parties, scheduling a hearing, or providing written resolution.

## **Rule 8.2.2 True Emergencies and Issues Involving Irreparable Harm**

In case of a true emergency or urgent problem involving irreparable harm, a party may directly contact the case manager by both email and telephone and seek an immediate hearing with the arbitrator and all other parties. Upon the scheduling of the emergency hearing, the party seeking relief must give telephonic and email notice to all other parties as soon as possible and no later than twenty-four (24) hours before the hearing. The arbitrator has the discretion to proceed ex parte or with fewer than all parties participating to address any issues involving a true emergency and/or irreparable harm.

## ***RULE 9 DISCOVERY***

### **Rule 9.1 Flexible Discovery Framework**

To avoid the unreasonable costs and delays often caused by excessive discovery, these Rules are intended to actively involve the arbitrator in shaping discovery to appropriately fit the circumstances of the case. At the initial CMC (Rule 8.1) the arbitrator will custom tailor the discovery process, including any procedures governing necessary discovery-related motions, and will limit or expand discovery to meet the needs of the case, recognizing that the complexity of the case will affect the types and scope of discovery. In general, the parties may conduct the discovery to which they agree, subject to the overriding discretion of the arbitrator. To aid the parties in preparing to discuss permissible discovery at the initial CMC, the following is a flexible framework for discovery that the arbitrator, after consultation with the parties, may reduce or expand.

### **Rule 9.2 Informal Exchange of Information**

#### **Rule 9.2.1 Mandatory Informal Exchange of Non-Privileged Information**

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Unless otherwise agreed by the parties or permitted by the arbitrator, within twenty-eight (28) days of the CMC (Rule 8.1), the parties, in good faith, shall exchange all non-privileged documents and other information (including electronically stored information) on which they intend to rely in support of their position in the dispute or claim, including copies of all such documents and other information in their possession, custody, or control, and names and brief descriptions of individuals whom they may call as witnesses at the arbitration hearing.

## **Rule 9.2.2 Continuing Obligation to Update Information**

As the parties become aware of new documents or information on which they intend to rely in support of their position, all parties shall continue to be under an obligation to supplement the exchange of documents and information described in Rule 9.2.1. Documents that were not previously exchanged, and evidence from fact and expert witnesses not previously identified, will not be received into evidence at the hearing unless agreed upon by the parties or upon a showing of good cause as determined by the arbitrator.

## **Rule 9.3 Additional Discovery**

### **Rule 9.3.1 Written Discovery**

The parties may propound twenty (20) interrogatories (without subparts) and twenty (20) requests for production of documents. Document requests will (1) be limited to documents that are directly relevant to the matter(s) in dispute or to its outcome; (2) not include broad phrases, such as “all related documents;” and (3) not be encumbered by extensive “definitions” or “instructions.” Any production of electronic documents will only be from sources used in the ordinary course of business, unless agreed by the parties or permitted by the arbitrator upon a showing of good cause. Unless otherwise agreed by the parties or permitted by the arbitrator, any responses to written discovery shall be due within twenty-eight (28) days of service of the written discovery request.

### **Rule 9.3.2 Depositions**

Each party may take one deposition of a lay person as a matter of right. The deposition will be completed in one day, absent unusual circumstances, and be limited to seven (7) hours of testimony. The parties shall agree on the date, time, and location of the deposition. If the parties are unable to agree, these issues will be determined by the arbitrator upon the request of any party (see Rule 9.4). The necessity of any additional depositions will be determined by the arbitrator based on all relevant circumstances, the availability of alternative discovery options, and whether the need for the information is sufficient to justify the time and expense associated with the requested additional deposition.

### **Rule 9.3.3 Requests for Admissions**

Unless otherwise permitted by the arbitrator, a party may propound twenty (20) Requests for Admission focused on establishing uncontroverted foundational facts. If the parties cannot reach

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agreement regarding a more streamlined method for doing so, a party may also propound unlimited Requests for Admission as to the authentication of documents.

## **Rule 9.3.4 Expert Discovery**

In matters in which the testimony of experts is anticipated, unless the arbitrator orders otherwise or the parties otherwise agree, any party may demand a mutual and simultaneous exchange of expert designations and/or expert reports within no less than twenty-one (21) days of the demand, such that the exchange will occur no less than forty-eight (48) days before the arbitration hearing. Parties may only designate supplemental expert witnesses with the agreement of all other parties or the approval of the arbitrator. Each party has the right to depose each expert witness designated to testify. Absent arbitrator approval, any deposition of an expert witness must be completed within seven (7) hours and at least twenty-one (21) days before the arbitration hearing. The parties shall agree on the date, time, and location of each expert's deposition.

## **Rule 9.3.5 Witness Subpoenas**

At any time during the proceedings, at the request of a party or on the arbitrator's own determination, the arbitrator may issue subpoenas for the attendance of witnesses or the production of documents or other evidence by any person or entity, pursuant to any applicable statutory provision. Any party requesting issuance of a subpoena shall at the time of the request send a copy of the completed subpoena request to all other parties.

## **Rule 9.3.6 Third Parties**

Consistent with applicable law, the arbitrator will have the authority to make any determinations regarding a third party's request to participate, or a party's request, in an arbitration governed by these Rules, for issuance of a subpoena to a third party to attend a deposition or an arbitration or to produce documents.

## **Rule 9.4 Arbitrator Will Resolve All Discovery Disputes**

The arbitrator will resolve any disputes regarding discovery on an expedited basis, pursuant to the procedures specified in Rules 8.2 and, if necessary, Rule 10. The arbitrator has the discretion and power, if good cause is shown, to order all applicable discovery. The arbitrator may issue sanctions or shift costs among the parties as a condition of permitting requested discovery. Where there is a panel of three arbitrators, absent an agreement to the contrary between the parties, the Chairperson is authorized to hear and determine all discovery disputes.

## **Rule 9.5 Confidentiality**

The arbitrator may issue orders to protect the confidentiality of proprietary information, trade secrets, and other sensitive information conveyed by exchange of information or through discovery. Unless the parties agree otherwise, the parties, the arbitrator, and JW will treat the

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arbitral proceedings, any related disclosures and/or discovery, and the decisions of the arbitrator as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, or unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues relating to confidentiality should be raised with and resolved by the arbitrator.

## ***RULE 10 MOTIONS***

### **Rule 10.1 Meet and Confer**

No motion may be served until the moving party has meaningfully met and conferred with all other parties regarding the motion.

### **Rule 10.2 Motion Briefing Schedule**

The motion schedule for any motion will be set by the arbitrator and may include formal briefing by the parties and a hearing on the motion. Although strict compliance will normally be expected, the parties will also be expected to cooperate reasonably regarding short extensions under appropriate circumstances. The arbitrator need not be consulted regarding such extensions but must be advised by email to the arbitrator and case manager.

### **Rule 10.3 Motion Hearing**

Unless a hearing has already been set, the arbitrator will inform the parties if a hearing would be helpful in ruling on the motion and will arrange a hearing date and time at the earliest convenience. The arbitrator will conduct a hearing by telephone, videoconference, or in person, at the election of the arbitrator. The parties shall not postpone the hearing absent arbitrator approval.

### **Rule 10.4 Arbitrator's Decision**

The arbitrator will rule on the motion after the hearing or last submission if there is no hearing. In appropriate cases the arbitrator may apportion the arbitrator's fee in connection with the motion proceeding in accordance with the interests of justice. In addition, sanctions may be awarded based upon the statutory provisions governing sanctions or as permitted by these Rules. No apportionment or sanctions will be made or awarded without a hearing or tentative ruling in which that issue is addressed.

## ***RULE 11 MEDIATION OR SETTLEMENT DISCUSSIONS***

Any party may propose, or agree to, settlement discussions or formal mediation at any time. The arbitrator may suggest that the parties explore settlement at appropriate times.

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## **Rule 11.1 Settlement Discussions**

The parties may ask the arbitrator to recommend another neutral to assist them in reaching settlement. The arbitrator assigned to the case will not act as the mediator or aid the parties in settlement discussions without express written waivers and consent of all parties.

## **Rule 11.2 Consent Award**

At any stage of the arbitral proceedings, if all parties agree on settlement of any aspect of the dispute, upon request the arbitrator may memorialize the agreement in a Consent Award in consultation with the parties' counsel.

## ***RULE 12 ARBITRATION READINESS CONFERENCE***

The Arbitration Readiness Conference will occur on the date designated at the initial CMC, unless modified by the arbitrator, or at the request of a party upon a showing of good cause. Matters to be addressed may include, among other topics, the following:

1. Status of any outstanding discovery;
2. Confirmation of procedures for preparation, exchange, and submission of arbitration exhibits and any demonstratives;
3. Identification of all witnesses who may testify at the arbitration and whether any subpoenas need to be issued for their appearance;
4. Review of any pre-arbitration matters affecting the presentation of evidence or other evidentiary matters affecting the arbitration hearing;
5. Consideration of any necessary adjustments to the estimated number of days for the arbitration hearing;
6. Confirmation of whether one or more parties has retained a court reporter, at the cost of the requesting party(ies), unless otherwise required by law;
7. Discussion of any requested presentation of testimony by affidavit or declaration;
8. Confirmation regarding whether some or all participants to the arbitration hearing will join by videoconference or telephone appearance, with the arbitrator's approval;
9. Any other special needs or requirements the parties anticipate;
10. Whether any party anticipates the possibility of seeking attorneys' fees or costs in connection with the proceedings after the arbitrator has ruled on the merits of the parties' dispute.

## ***RULE 13 ARBITRATION HEARING***

The parties and the arbitrator will use their best efforts to ensure that, absent unusual circumstances, the dispute will be submitted to the arbitrator for decision within nine (9) months after the initial CMC. The arbitration hearing will be conducted in an expeditious manner and as economically as practicable.

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## **Rule 13.1 Order of Proof**

The order of proof generally will be similar to that of a court trial, provided that the arbitrator may bifurcate issues or modify the order of proof to facilitate a swift and economical resolution or for the convenience of non-party witnesses.

## **Rule 13.2 Applicable Law**

The arbitrator will be guided but not necessarily bound by the substantive law agreed to by the parties in the written agreement that is the basis for the arbitration or agreed to by the parties at any time prior to the conclusion of the Arbitration Readiness Conference (see Rule 12). Absent such an agreement by the parties, the arbitrator will be guided by the substantive law the arbitrator determines to be appropriate.

## **Rule 13.3 Rules of Evidence**

The arbitrator may, but is not required to, conform strictly to the rules of evidence used in judicial proceedings.

### **Rule 13.3.1 Testimony of Witnesses**

The arbitrator is empowered to administer the oath to witnesses and will require witnesses to testify under penalty of perjury.

### **Rule 13.3.2 Attendance and the Exclusion of Witnesses**

The arbitrator has the discretion to determine the propriety of the attendance at the hearing of any person other than the parties and their representatives, including the discretion to exclude a witness during the testimony of any other witness or at any other time.

### **Rule 13.3.3 Use of Declarations, Affidavits, Telephone or Video Testimony**

Any party seeking permission to present evidence by declaration, affidavit, telephonic testimony, or video conferencing shall notify all other parties, the arbitrator, and the case manager as early as practicable to give ample time for objections to be considered and an appropriate order to be made by the arbitrator. Subject to Rule 13.3, an arbitrator will determine the admissibility of testimonial evidence consistent with California Rules of Court, Rule 3.823.

### **Rule 13.3.4 Privilege and Related Determinations**

The arbitrator will apply governing law in making determinations pertaining to attorney-client privilege, attorney work product privilege, and related privileges and protections.

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## **Rule 13.4 Time Limits**

The arbitrator has the power to impose time limits the arbitrator determines to be reasonable on each phase of the hearing, including without limitation the time allotted to each party for presentation of its case and for rebuttal. In setting time limits, the arbitrator will manage the proceedings appropriately to conclude the arbitral proceedings as expeditiously as practicable without compromising fairness.

## **Rule 13.5 Postponement of Hearings**

The arbitrator may postpone any hearing upon the request of any party for good cause shown or on the arbitrator's own initiative. The parties cannot unilaterally postpone any hearing. Postponement is discouraged, and any postponement or cancellation may affect any refund or credit of fees paid or due.

## **Rule 13.6 Failure of a Party to Appear at the Hearing**

The arbitrator has the discretion to have the arbitration hearings proceed in the absence of any party that fails to appear. An award will not be made based on the failure of a party to be present or based on any other default of an absent party. Rather, a party will be entitled to an award based on a claim or defense only if sufficient evidence is presented to the arbitrator in support of such an award. The arbitrator will require the parties to appear to present such evidence as the arbitrator may require for the making of an award.

## **Rule 13.7 Closing the Hearing**

When the arbitrator determines, after inquiry of the parties, that there are no further witnesses, evidence, or proof to be presented, the arbitrator will declare the hearing closed. However, if post-hearing briefs are to be filed, or if counsel are to make closing arguments, and unless the arbitrator determines otherwise, the hearing will be deemed closed as of the date of receipt of such briefs or at the conclusion of closing arguments, whichever is later. Any time limit for the arbitrator to make the Award will begin on the date the hearing is closed unless the parties agree otherwise.

## **Rule 13.8 Re-opening the Hearing**

At any time before the Award is made, on application of a party where good cause is shown or on the arbitrator's own initiative, the arbitrator may re-open the hearing, in which event the arbitrator will set a new date for the close of the hearing. The arbitrator will have the authority to shift costs among the parties in the interests of justice as a condition of permitting the re-opening of the hearing.

## ***RULE 14 INTERIM AND FINAL RULINGS***

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## **Rule 14.1 Remedies Before or During the Arbitral Proceedings**

At the request of a party, the arbitrator may order such interim measures the arbitrator deems necessary and appropriate, including injunctive relief and measures for the preservation of assets or records or for the conservation of goods or other property. The arbitrator may require appropriate security as a condition of ordering such measures. A request for interim measures by a party to a court will not be deemed incompatible with the agreement to arbitrate or to constitute a waiver of that agreement.

## **Rule 14.2 Interim and Other Awards**

In addition to the award, the arbitrator may make initial, preliminary, partial, interim, and supplemental awards.

## **Rule 14.3 The Award**

### **Rule 14.3.1 Issuance**

The Award, following the arbitration hearing, and all post-hearing determinations, will be made no later than thirty (30) days from the date of close of the hearing, unless the parties agree to a later date, or unless there is good cause for the arbitrator to extend the time for making the Award. Unless the parties agree otherwise, the Award will be in writing, will determine each claim and the relief, if any, as to each claim, and will state concisely the reasons on which the Award is based. In cases involving three arbitrators, the Award will be made by at least two of the arbitrators. Executed copies of the Award and of any dissenting opinion will be delivered by JW to the parties. JW has the right to withhold an award from all parties until all requisite fees and deposits owed by the parties have been paid in full. If JW withholds an award for this reason, the arbitrator will be deemed to have good cause and/or any other requisite basis under applicable law for extending the time to issue the award.

### **Rule 14.3.2 Any Appropriate Remedy or Relief Allowed**

The arbitrator may grant any remedy or relief determined to be appropriate, including but not limited to specific performance of a contract, injunctive relief, and/or an award of attorneys' fees and costs. Any party requesting any such remedy or relief must do so in writing, setting forth the bases for such recovery, before the close of the hearing. The arbitrator may also make an award of punitive damages if such an award is within the scope of the agreement of the parties and permissible under the law applicable to the dispute as determined by the arbitrator.

### **Rule 14.3.3 Interest**

The arbitrator may award pre-award and post-award interest as determined appropriate, taking into consideration the contract and applicable law.

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## **Rule 14.3.4 Determination of Prevailing Party**

In appropriate cases, an award will identify the prevailing party(ies), if any, for the purposes of allocating costs associated with the proceedings including the arbitrator's fees, dealing with any issues of punitive damages or attorneys' fees, or as otherwise deemed appropriate by the arbitrator. Such matters will typically be the subject of post-hearing proceedings (see Rule 14.3.5).

## **Rule 14.3.5 Further Proceedings**

If, in the discretion of the arbitrator, the nature of the proceeding requires post-hearing proceedings to consider punitive damages, attorneys' fees, costs including the arbitrator's fees, or other supplemental or additional elements to the final award, the arbitrator will so provide in the language of an interim award and may provide for such additional proceedings by personal appearance or telephone conference. After consultation with the parties, the arbitrator will order the scheduling of any additional briefing, testimony, or hearings that the arbitrator deems appropriate and necessary. Once the additional proceedings are concluded, the arbitrator will issue the award.

## **Rule 14.3.6 Correction of an Award**

1. Within ten (10) days after service of an award issued under Rule 14.2 or Rule 14.3, any party may give notice by email to all parties, the arbitrator, the case manager, and the JW arbitration administrator, and request that the arbitrator correct any clerical, typographical, or computational errors, or make an additional award as to specific Claim(s) or Counterclaim(s) presented in the arbitration but not determined in the award. The burden shall be on the requesting party to ensure that all parties, the arbitrator, the case manager, and the JW arbitration administrator receive notice of the request within the ten-day timeframe, and any failure to do so may constitute waiver of the request. The other parties will have ten (10) days to respond to the request.
2. Within ten (10) days after service of a corrected or additional award under this Rule, any party may give notice to all parties, the arbitrator, the case manager, and the JW arbitration administrator, and request that the arbitrator correct any clerical, typographical, or computational errors, or make an additional award as to specific Claim(s) or Counterclaim(s) presented in the arbitration but not determined in the corrected or additional award. The burden shall be on the requesting party to ensure that all parties, the arbitrator, the case manager, and the JW arbitration administrator receive notice of the request within the ten-day timeframe, and any failure to do so may constitute waiver of the request. The other parties will have ten (10) days to respond to the request.
3. The arbitrator will make any correction or additional award the arbitrator deems justified within thirty (30) days of initial service of the award. All corrections and additional awards will be in writing. Unless the arbitrator has issued a correction or additional award or previously notified the parties in writing that additional time would be required to consider a request for correction or additional award, any such request will be deemed denied thirty (30) days after initial service of the award.

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4. The arbitrator retains jurisdiction indefinitely to hear an application from any party to remove from any award information asserted to be confidential and not essential to the award.

## **Rule 14.3.7 Finality of Award**

The Award, including any corrections or additions, will be considered final and binding on the parties in accordance with the time provisions of Rule 14.3.1. The parties shall undertake promptly to carry out the Award without delay. The parties to the arbitration will be deemed to have consented that judgment on the Award may be entered in any federal or state court having jurisdiction.

## **Rule 14.3.8 Filing of Award**

The parties shall be responsible for filing the Award with a court of competent jurisdiction and any confirmation or enforcement proceedings.

## ***RULE 15 PENALTIES FOR FAILURE TO COMPLY WITH RULES***

### **Rule 15.1 Failure to Comply**

Whenever a party fails to comply with any provision in these Rules, as determined by the arbitrator at their discretion, or fails to comply with any order of the arbitrator pursuant to these Rules in a manner deemed material by the arbitrator, the arbitrator will:

1. Fix a reasonable period for compliance by written order;
2. If the party still fails to comply, set a hearing time by written notice to determine the matter and advise the parties whether any briefing or declarations are invited by the arbitrator in advance of the hearing;
3. If the party still fails to comply, the arbitrator may impose any remedy the arbitrator deems just, including payment of costs, exclusion of evidence, determination of an issue, or in the most extreme circumstances, an award on default; but
4. Before entering an award on default, the arbitrator will require non-defaulting parties to produce such evidence and legal argument in support of their contentions as the arbitrator may deem appropriate. The arbitrator may receive such evidence and argument without the defaulting party's presence or participation.

### **Rule 15.2 Waiver of Objections**

A party that knows of a failure to comply with any provision of these Rules, or of any requirement of the arbitration agreement, or any direction of the arbitrator, and neglects or fails to state its objection as soon as practicable, waives any such objection.

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## *Rule 16 DEPOSITS*

### **Rule 16.1 Requests for Advance Deposits**

JW may request each party to deposit an appropriate amount as an advance for the costs of the arbitral proceedings incurred by the parties, including hearing fees, expenses of the arbitrator for time spent for other than hearing time (“retainer”), and the administrative/case management fees of JW. Each party shall pay a pro rata share of JW and arbitrator fees and expenses unless the parties agree on a different allocation of fees and expenses, or another allocation is required by law or the parties’ agreement. During the proceedings, JW may request supplemental deposits from the parties as appropriate. Any such amounts will be held and disbursed in such a manner as is necessary and appropriate to compensate the arbitrator for fees and expenses, JW for its fees and expenses, and as otherwise directed by the arbitrator.

### **Rule 16.2 Failure to Make Sufficient Deposits**

If the deposits requested by JW are not paid in full by one or more parties by the date stated on the invoice, JW may inform the other parties that they may make the requested deposits. If the requested deposits are not made, JW or the arbitrator may suspend or terminate the arbitral proceedings. Irrespective of any contractual entitlement to fees and costs, and irrespective of any determination of who is the prevailing party, the arbitrator may award any fees or costs that a party has advanced to cover another party’s failure to pay.

### **Rule 16.3 Return of Unused Deposits**

After the arbitral proceedings have been concluded, JW will return to the parties any unexpended balance of the retainer deposits.