

**BEFORE AN ARBITRATOR
APPOINTED PER THE AGREEMENT OF THE PARTIES**

[CLAIMANT NAME],

Claimant,

and

[RESPONDENT NAME],

Respondent.

_____ /

**ARBITRATION MANAGEMENT CONFERENCE
CASE MANAGEMENT AND SCHEDULING ORDER**

THIS MATTER CAME ON for an initial telephonic Arbitration Management Conference at [Time and Date of Conference], pursuant to notice by the office of the undersigned arbitrator. The following persons took part:

Arbitrator: Christopher M. Shulman¹

On behalf of Claimant: **[Claimant's Counsel]**

On behalf of Respondent: **[Defense Counsel]**

At said conference (and as agreed upon by the Parties in subsequent communications between them), the following matters were taken up and, by stipulation of the Parties or otherwise, the arbitrator hereby orders the Parties as follows concerning the conduct of this matter:

1. Dates of the Video Arbitration Hearing: **[ENTER date(s)]**
2. Video Arbitration Hearing Platform: The Parties have agreed to have the final arbitration hearings conducted online via videoconference using **[Platform Name]**.
 - a. This confirms that the hearing will be deemed to have taken place in **[locale/place of arbitration]**.
 - b. Further, the Parties acknowledge that they have made their own investigation as to the suitability, audiovisual quality, and adequacy of **[Platform Name]** for its proposed use for the videoconference hearing and of any risks of using **[Platform Name]**, including any risks regarding its security, privacy or confidentiality, and they agree to use **[Platform Name]** for the hearing.

¹ Parts of this Order are taken from a modified version of the American Arbitration Association's Model Order and Procedures for a Virtual Hearing via Videoconference, available at www.adr.org (Document AAA270).

- c. Additionally, if the Parties determine that any accommodations for disabled persons or interpreters are needed, they shall confer with one another and the arbitrator, promptly, so suitable arrangements may be made.
3. Hours of the Video Arbitration Hearing: **9:00 AM – 5:30 PM**, with one-hour lunch break.
4. Issues submitted for arbitration: [Enter language describing the substance of the dispute and whether attorney's fees entitlement and amount are submitted to the arbitrator to decide.]
5. Sharing of documents during case: Not later than **[INSERT DATE, usually two weeks after the initial arbitration management call]**, the Parties **[or the arbitrator]** shall make arrangements for a secure, online shared folder for use in connection with this matter. The documents that shall be stored in this shared folder shall be those in the nature of pleadings and motions (although not typical discovery papers), orders, the Parties' Prehearing Stipulation (discussed below) and documents related thereto, and the Parties' Final Exhibits for hearing.
6. Discovery: The Parties shall comply with the following Discovery Schedule:
 - a. *Initial Witness Disclosures*. Both Parties shall make their initial witness disclosures to one another not later than **[INSERT DATE]**.
 - b. *Written Discovery*. Each Party may propound up to **[insert #]** interrogatories, **[insert #]** requests for production, and **[insert #]** requests for admission upon the other Party. **Such requests shall be served not later than _____, 202_**. Responses to such written discovery shall be due not later than 30 calendar days after service of the discovery request. Any further written discovery shall only be allowed by subsequent agreement of the Parties or by arbitrator order, after motion and on good cause shown.
 - c. *Depositions*: Each Party may take up to **[insert #]** depositions. Further depositions are allowed only by subsequent agreement of the Parties or by arbitrator order, after motion made and on good cause shown. No depositions shall last more than seven hours. Depositions may be taken by electronic means (e.g., through the use of a videoconferencing platform).
 - d. *Discovery Cut-Off*. All depositions shall be taken on or before, and all other discovery shall be propounded such that the due date for a timely response thereto will not be later than, the agreed discovery cut-off date: **_____, 202_ [usually 30 days before the Dispositive Motion filing deadline]**.
 - e. *Discovery not to be filed*. Absent a discovery dispute, discovery documents are NOT to be filed with the arbitrator.
 - f. *Subpoenae*. Pursuant to the Revised Florida Arbitration Code, especially Fla. Stat. § 682.08, the arbitrator has authority to issue discovery subpoenae to nonparties in connection with this matter. To have the arbitrator issue such a subpoena, a Party shall

submit the proposed subpoena to the arbitrator as a pdf, cc'ing the opposing Party; if the opposing Party does not timely object to issuance of the subpoena, the arbitrator may issue the subpoena (assuming the subpoena is proper) and return it electronically to the Party who requested it, for service.

- g. *Discovery-related Motions.* In the unlikely event a Party believes the arbitrator must resolve a discovery dispute between Parties, that Party shall address the concern by letter brief.
- i. Any such letter brief – which shall not exceed five pages, excluding exhibits – shall be accompanied by a certification by that moving Party's counsel that:
 1. s/he brought the discovery dispute to the attention of opposing counsel in writing; and
 2. thereafter, s/he conferred personally with the opposing counsel in an effort to resolve the discovery dispute, or made at least two attempts, spaced more than one business day apart, to have such a discussion.
 - ii. Any response to a discovery letter brief shall be filed **within 7 calendar days after service**, in the form of a responsive letter brief, which shall not exceed five pages, excluding exhibits.
 - iii. The arbitrator will either rule on the papers or have the Association schedule a telephonic hearing thereon.
7. Dispositive Motions: The Parties may file dispositive motions (i.e., motions for summary judgment). The Parties and the arbitrator have agreed to the following schedule:
- a. A Party wishing to make such a Motion shall file it no later than _____, 202_ [usually at least 60 days before the hearing].
 - b. The opposing Party shall file her/its Response in Opposition, if any, within 21 calendar days after service of the Motion and, in any event, not later than _____, 202_.
 - c. Motions and Oppositions shall not exceed 20 pages, excluding any attached exhibits; Replies are not allowed.
8. Prehearing Stipulation: The Parties shall meet and confer (by telephonic or electronic means if they wish), to develop a Prehearing Stipulation as to undisputed facts and as to witnesses and exhibits. The Parties shall file the Stipulation in the Shared Folder (described above), **on or before _____, 202_ [usually 10 – 14 days before the hearing]** (the "Prehearing Exchange Date"). In preparing their Stipulation, the Parties shall also take the following actions:

- a. *Stipulations of Uncontested Facts.* The Parties are encouraged to stipulate to as many uncontested facts as possible and shall identify all such stipulated facts in their Prehearing Stipulation.
 - b. *Identification and Exchange of Witnesses.* The Parties shall include in the Prehearing Stipulation the identity of their respective witnesses and a short summary of the witnesses' expected testimony. **Absent good cause, only those persons listed in the Prehearing Stipulation will be allowed to testify in this matter.** Parties shall identify any objections to any witness the other Party lists. Such objections will be ruled on by the arbitrator either during the Final Prehearing Conference or at the beginning of the first scheduled day of the Video Arbitration Hearing.
 - c. *Identification and Exchange of Exhibits.* The Parties shall identify in the Prehearing Stipulation their proposed exhibits, exchanging them with one another. **Absent good cause, only those exhibits identified in the Prehearing Stipulation and exchanged with the other Part may be offered as evidence in this matter.** Parties shall identify any objections to any exhibit the other Party lists. Objections may either be ruled on by the arbitrator Prehearing or taken under advisement and ruled on at the time the exhibit is specifically offered by a Party into evidence. *Absent a timely objection, the arbitrator will admit all identified exhibits into evidence at the beginning of the first scheduled hearing.* The Parties shall bring 4 copies of their Exhibits to the hearing (one for each side, one for the arbitrator, and one for the witnesses), with each proposed exhibit pre-marked for identification/admission.
9. Final Prehearing Conference: The Parties and the arbitrator shall have a Final Prehearing Conference using the selected videoconferencing platform, to discuss the agreed/ordered protocols for witness appearance and presentation of exhibits to witnesses. **The Final Prehearing Conference is scheduled for [INSERT DATE AND TIME].** Additionally, during the conference, counsel and the panel/arbitrator will test the videoconferencing system to ensure that all arbitrators and counsel can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).
10. Responsibilities regarding use of Videoconferencing Technology: To maximize the likelihood of a smooth Video Arbitration Hearing, counsel and the arbitrator shall have the following responsibilities:
- a. Counsel shall, as part of the Prehearing Stipulation, provide a list of the names, email addresses, and best phone numbers for all persons each counsel expects to attend the Video Arbitration Hearing, including, but not limited to, counsel, counsel's staff or technician, the Parties (or Party representatives), and other witnesses, [as well as the court reporter, if any]. Counsel shall also indicate whether such persons will require an invitation to the Video Arbitration Hearing or will be physically present with counsel at the time of their participation.

- b. The arbitrator (or his office) shall invite all attendees via email to join the Video Arbitration Hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees shall not forward or share the hearing link or password.
- c. The arbitrator shall final authority to decide whom to allow to attend the Video Arbitration Hearing.
 - i. In this regard, at the arbitrator's request, unknown participants shall identify themselves by showing a piece of identification to the camera or by responding to the arbitrator's questions regarding their identity. Failure to cooperate with the arbitrator's inquiry will constitute grounds for the arbitrator to exclude such person from the Video Arbitration Hearing.
 - ii. Further, the Parties agree that no persons may attend, participate, or be allowed to listen in on the Video Arbitration Hearing without prior disclosure by the Party requesting that person's attendance, etc. AND final approval by the arbitrator. In this regard, the arbitrator hereby gives notice of his intent to designate his colleague, Brenda Evans of Shulman ADR Law, P.A., as a co-host for, and to have her attend, the Video Arbitration Hearing (as the arbitrator's assistant).
- d. Counsel shall be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually (as opposed to in counsel's offices). This includes discussing with such persons that:
 - i. they should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset;
 - ii. they shall make best efforts to ensure that there will be clear video and audio transmission during the hearing, by, among other things: employing a high-speed, hard-wired internet connection if practicable; using a computer or telephone headset; eliminating any background noise; considering camera positioning and lighting; accessing the videoconference platform via desktop or laptop rather than by smartphone or tablet; ensuring the electronic devices used to connect to the Video Arbitration Hearing are adequately charged and that power cables or back-up batteries are available as may be necessary; and not joining the Video Arbitration Hearing from a public setting or using unsecured, public WiFi to ensure the privacy and security of the Video Arbitration Hearing.
- e. Counsel shall make arrangements that all witnesses have the ability to receive and display emails and to receive telephone calls from counsel or the arbitrator's office during the hearing. Counsel are also responsible for ensuring that all logistical requirements of this Order are satisfied.

11. Conduct of the Video Arbitration Hearing:

a. Hearing Schedule and Logistics:

- i. The Video Arbitration Hearing shall commence at the date and time stated above, with morning, lunch, and afternoon recesses at such times as the arbitrator determines in its discretion are appropriate, and the hearing shall continue on as may be necessary. It is recommended that all participants access the virtual hearing room early each day of hearing. The arbitrator may take additional recesses and adjust the hearing schedule, in his discretion, to facilitate a smooth and efficient hearing. The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays.
- ii. Upon joining the [Platform Name] hearing, participants will be admitted to a virtual Waiting Room. The arbitrator (or his co-host) will admit all participants to the hearing at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the [Platform Name] meeting during any recess. However, lines may be muted during this time, and the arbitrator may move participants to one or more virtual “break-out” rooms.
- iii. The arbitrator will disable the private “chat” function in [Platform Name]. The arbitrator may use a virtual “break-out” room to confer privately. The arbitrator may also use virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the arbitrator and witnesses).
- iv. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the arbitrator at the earliest opportunity.
- v. During the videoconference, the participants (including any testifying witness) shall 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, if not the entire, room.
- vi. 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 video hearing host and co-host also will have the ability to mute and unmute any participant if needed.

- vii. In the event a participant is technically unable to join the video portion of the Hearing or that participant has poor quality computer audio (after trying the audio connection through the computer with and without a headset), that participant will be provided the [Platform Name] call-in information and may, with the arbitrator's authorization, participate by phone.

b. Witnesses:

- i. With the exception of the Parties' representatives and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify. [If recording video – Witnesses shall be advised in advance by the party calling them that their testimony will be recorded.]
- ii. Witnesses should follow the below practices:
 - 1. a witness shall give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video.
 - 2. 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).
 - 3. Witnesses may not use a "virtual background." Instead, the remote venue from which they are testifying must be visible.
 - 4. Witnesses should speak directly to the camera while testifying.
 - 5. All non-party or expert witnesses shall sign-off from the [Platform Name] session at the conclusion of their testimony.
- iii. At any time, the arbitrator may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order 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.
- iv. In accordance with the provisions of this Order, the arbitrator shall instruct each witness about: what to do in the event of a disconnection or other technical failure; and the impermissibility of any unauthorized observers or recordings of the hearing.

c. Exhibits:

- i. At the commencement of the hearing, the arbitrator will accept into evidence all Joint Exhibits as well as all Party Exhibits to which no objection was stated by the opposing Party under ¶ 8c, above. As to all such Exhibits, no foundational or

predicate testimony will be required. The arbitrator will determine the admissibility of all other Party Exhibits when proffered in the ordinary course of the hearing.

ii. [Insert language concerning agreed/ordered methodology for showing exhibits to witnesses, whether by shared screen, email, or hard copy sent to the witness beforehand.]

d. Conduct of counsel. All counsel shall 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 asked or to alert other participants of technical difficulties.

12. Technical Failure:

a. Should one party's or participant's videoconferencing connection fail, the arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video – or the arbitrator as host may mute the remaining participants audio and video (or take other action the videoconferencing platform allows) – to avoid concerns regarding potential *ex parte* communications. Once the arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.

b. If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:

i. the arbitrator may take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms;

ii. such participant shall e-mail counsel, the arbitrator, and the arbitrator's cohost (at the addresses listed in the videoconferencing meeting invitation) to advise of the disconnection, and shall thereafter monitor e-mail for any further instructions from the arbitrator. Unless agreed otherwise, Brenda Evans (813.935.9922) is the designated person and number to contact in the event that parties, counsel, or witnesses are disconnected.

c. If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the arbitrator determines either that the videoconferencing system otherwise does not allow one or more of the Parties to present their case or that it would be unfair to any Party to continue the hearing via videoconference, the arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.

13. Video Arbitration Hearing Record and Recording Court Reporter/Transcript: The parties and counsel 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 additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording. Further,

[the Parties have agreed to have a reporter attend the hearing and prepare a transcript, which shall serve as the official record of the proceedings (the arbitrator shall be provided a copy of the transcript).]

[OR]

[the Parties agree that the hearing's audio and video will be recorded through [Platform Name], which shall serve as the official record of the hearing. The Parties agree that the recording will be made available to all counsel and panel members after the hearing concludes on request, and the Chair/host shall send a link to the recording as soon as is practicable after the hearing concludes. The arbitrator will control when the hearing is on and off the record.]

14. Posthearing Argument and Exhibits:

a. [The Parties shall make closing oral arguments at the conclusion of the hearing.]

[OR]

[The Parties shall submit posthearing briefs, on a schedule to be addressed at the hearing itself].

b. Immediately after the hearing, the Parties shall send the arbitrator and the opposing Party a pdf copy of all their respective **admitted** exhibits; the arbitrator shall not retain hard copies of any exhibits.

15. Communication with the arbitrator: The Parties have agreed to have direct communication with the arbitrator (contemporaneously serving the opposing Party):

a. Email to the arbitrator: chris@shulmanadrlaw.com (cc: brenda@shulmanadrlaw.com);

b. Email to Claimant: [Add emails, as needed]

c. Email to Respondent: [Add emails, as needed]

d. As used in this Order, to "file" a document or pleading means to post it to the secured, shared folder dedicated to this matter, with an email to the arbitrator and opposing Party at the addresses above, confirming the document has been posted (note, if the secured shared folder automatically sends an email whenever documents are posted, that will suffice to provide notice of filing. To "serve" a document or the like means simply to email it to the opposing Party at the addresses above; the arbitrator should not ordinarily be included in correspondence or discovery requests between the Parties.

This Order shall remain in effect unless amended by the arbitrator. Absent good cause shown, all deadlines stated herein shall be strictly enforced.

DATED today, April 24, 2020, at Tampa, in Hillsborough County, Florida.



Christopher M. Shulman, Arbitrator

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