



## **GUIDELINES AND GROUND RULES FOR ONLINE (VIDEO) ARBITRATIONS**

With reference to the upcoming arbitration, this document highlights the **Technology** we will be using, reviews **Confidentiality and Privacy** associated with arbitration, discusses the **ZOOM Hearing Procedures**, and provides a final section on **Best Practices**.

### **Technology**

1. **ZOOM Online Platform.** The arbitrator uses the online secure platform provided by Zoom.us to conduct video arbitrations. ZOOM allows the arbitrator to have all participants start in a single “room” together; and then, if necessary, break into separate “rooms” for individual/private meetings with each side.
  - **Equipment Requirements:** All participants in a video arbitration must have access to an electronic device with a camera and microphone: most newer laptops, mobile phones, and tablets have these built in. Accessories such as a USB plug-in camera and/or microphone are typically used with desk top computers.
  - **Free Software/App Requirements:** All participants agree, well in advance of the meeting, to download and install either the free Personal Use software or App from Zoom.us (as required based on the equipment you intend to use) necessary to participate in the arbitration session. Once downloaded, please familiarize yourself with the operation of Zoom.us, to enable you to operate the system and participate in the meeting. Tutorials are available at <https://support.zoom.us>.
  - **Secure WiFi or Ethernet Connection:** All participants need a secure WiFi or Ethernet (hard-wired) connection for your computer or electronic device. Do NOT use a public access WiFi connection, such as those available in public spaces or businesses, as they are not secure and your information may be at risk in that situation.
  - **No Warranty of Communication Security:** Like all online videoconferencing platforms, Zoom has some weaknesses. While Zoom itself works on increasing its end-to-end security, there are already several things in place that we can – and we do – use to maximize the security of any Zoom VideoADR meeting we host.
    - First, we require a password to join the meeting (according to several articles, most “Zoombombers” randomly input 10-digit Zoom Meeting IDs until they find a meeting they are able to join. With the password required, such random-input folks cannot get in).

- Second, we use the “Waiting Room” feature, so that, whenever someone first joins the meeting, s/he is kept isolated until we specifically let the person in. Note: this requires a specific, intentional act by the arbitrator, rather than just happening automatically. That intention adds another layer of security; if the Neutral does not recognize the person, that person is not let in.
  - Third, after all expected attendees have been admitted to the meeting, the arbitrator (as host) can lock the meeting, preventing anyone else from joining without an invitation from the arbitrator.
  - Fourth, we disable the in-meeting Chat feature; if you wish to have a private conversation with someone, call them on your phone or ask to be put into your private conference room.
  - Fifth, screen-sharing is initially controlled by the arbitrator, so that only intentional screen sharing, by the arbitrator or counsel, is allowed.
- Even with taking these steps, ***there is no warranty, guaranty, or representation that can be given (nor is one made here) of absolute communication security. Thus, use of the Zoom platform is at your risk.*** Accordingly, if you would prefer to use another VideoADR platform, which you believe would be more secure, just let us know; we are happy to accommodate upon agreement of all the parties.

### **Confidentiality and Privacy**

2. Attendees. Per the Parties’ agreement (if applicable), who may attend these proceedings is limited to the named parties, their attorneys (if any), counsel’s support staff (if any), required insurance professionals (if any), identified witnesses (if any), a court reporter (if any), and the arbitrator (and his staff); these are the ONLY persons allowed to attend the arbitration without the express consent of all the parties. Thus, the arbitrator and ALL sides must pre-approve attendance of any other persons.
3. Privacy and Confidentiality. All participants will be expected to review this Guidelines and Ground Rules document in full and advise of any questions before the arbitration, as we will abide by these Guidelines and Ground Rules during the arbitration.
4. Absolute Prohibition on Recording. The Zoom recording feature has been disabled, and the only recording allowed is, if there is a Court Reporter present, the Court Reporter may do so as part of his/her professional services. Neither you nor anyone on your behalf may audio or video record any arbitration session or portion thereof without the express consent of that person. In the event you learn of an audio or video recording of any session, you will take immediate measures to destroy the recording and will not disseminate the recording to any third parties. You further agree that you will not transmit a live or deferred video or audio relay of the online arbitration

session(s) to third parties.<sup>1</sup> ***In this regard, please take note the arbitrator is based in Florida and that is where he is conducting the hearing. Florida is a dual-consent state. Section 934.03, Florida Statutes, makes it a felony to, among other things, record a person's oral communications without their consent (or other situations that likely won't apply in arbitration) and the commission of a crime during an arbitration (such as recording a person's voice without the person's consent or a Court Order) is neither privileged nor confidential and may be reported to relevant law enforcement.*** PLEASE GOVERN YOURSELVES ACCORDINGLY.

### **ZOOM Hearing Procedures**

Appearance over ZOOM necessitates the arbitrator's addressing certain other issues designed to protect the integrity of the Arbitration Hearing process. Thus, it is also hereby ordered:

5. Arbitrator Determination of Attendance. The arbitrator shall have sole, final authority to decide whom to allow to attend the Video Arbitration Hearing.
  - a. 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.
  - b. Further, 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 designating 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). **Not later than seven calendar days before the first evidentiary hearing, Counsel shall submit the names of all non-witnesses they anticipate shall attend the hearing (e.g., court reporter, counsel, law clerks, paralegals, assistants, clients, etc.)**
  - c. 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, before the Arbitration Hearing, 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 Arbitration Hearing, by, among other things: employing a high-speed, hard-wired internet connection if practicable; using a computer or

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<sup>1</sup> Except as required for accommodation of a participant's known disability. In the event such accommodation is required, the person requiring the accommodation shall advise counsel and the arbitrator in advance of the hearings, to allow for timely coordination of such accommodation.

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, to ensure the privacy and security of the Video Arbitration Hearing, not joining the Video Arbitration Hearing from a public setting nor using unsecured, public WiFi.

- iii. 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 Arbitration Hearing.

#### 6. Hearing Schedule and Logistics.

- a. Upon joining the ZOOM Arbitration Hearing, participants will be admitted to a virtual Waiting Room. The arbitrator (or his co-host) will admit the participant at the appropriate times. To avoid delay and difficulty reconnecting, ZOOM attendees should not disconnect from the ZOOM 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.
  - i. The arbitrator shall disable the private "chat" function in ZOOM. 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).
  - ii. Each ZOOM attendee of the Arbitration Hearing shall disclose at the start of each Arbitration Hearing session all people who are in the room with the attendee. Should an individual join the attendee after the Arbitration Hearing session has begun, that individual should be identified to counsel and the arbitrator at the earliest opportunity.
  - iii. During the videoconference, any ZOOM testifying witness shall always be in view of the camera. 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.
  - iv. The arbitrator and his video Arbitration Hearing co-host also will have the ability to mute and unmute any participant if needed.
  - v. 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 ZOOM call-in information and may, with the arbitrator's authorization, participate by phone.

7. Technical Failure.

- i. If a ZOOM participant should become disconnected from the videoconference (or experience some other technical failure) and connection cannot be re-established within a 5-minute interval, 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 or arbitrator's office. Unless agreed otherwise, Brenda Evans ([shulmanadrlaw@gmail.com](mailto:shulmanadrlaw@gmail.com) or [brenda@shulmanadrlaw.com](mailto:brenda@shulmanadrlaw.com)) is the designated person and email address to contact in the event that a person should lose connection with the ZOOM Arbitration Hearing.
- ii. If the videoconferencing system fails to work such that the witness' testimony 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 Arbitration Hearing via videoconference), the arbitrator may reschedule that portion of the Arbitration Hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.

**Best Practices**

8. Interruption Free Zone. All participants are to take reasonable measures to ensure you are not interrupted during the arbitration. This includes arranging for appropriate child or elder care (if applicable), notifying family, friends, and colleagues of your unavailability, and making other appropriate scheduling choices.
9. Technology Hiatus. Except for the computer or mobile device upon which you are conducting your online arbitration session, you agree to turn off or silence any phones, tablets, or computers and disable any alert announcements and/or texts for the duration of your online arbitration session(s). Further, you agree to refrain from the use of social media, or the unnecessary use of email and/or internet search engines, during your online arbitration session(s).
10. Early Log On. Please sign-in to the scheduled arbitration session at least 5 minutes in advance of the scheduled start time, so that any technology issues can be resolved and the arbitration can start on time.
11. Respectful Online Communication. Due to the nature of the online forum, it is especially important to allow each participant to finish their comment or statement before responding. In addition, the online format can amplify and exaggerate sound so maintaining a regular speaking voice is important. Finally, please remember that the camera does not always transmit hand gestures or non-verbal cues, so it is important to verbalize all communication during an online arbitration session.