

JAMS Optional Arbitration Appeal Procedure

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The parties hereby agree to the following Optional Appeal Procedures:

(A) The Appeal Panel will consist of three neutral members, unless the Parties agree that there will be one neutral member. Upon the filing of an Appeal in accordance with (B)(i) below, the Case Manager will recommend to the Parties an Appeal Panel and will make any disclosures that are mandated by applicable law regarding the candidates for the Panel. The Case Manager will seek the agreement of the Parties as to the selection of the Appeal Panel members. If the Parties do not agree on the composition of the Appeal Panel within seven (7) calendar days of having received the Case Manager recommendation for the Appeal Panel, the Case Manager will appoint an Appeal Panel.

(B) The Procedure for filing and arguing an Appeal is as follows:

(i) If all Parties have agreed to the Optional Appeal Procedure, any party may Appeal an Arbitration Award that has been rendered pursuant to the applicable JAMS Arbitration Rules and has become final. The Appeal must be served, in writing, to the Case Manager and on the opposing Party(ies) within fourteen (14) calendar days after the Award has become final. The letter or other writing evidencing the Appeal must specify those elements of the Award that are being Appealed and must contain a brief statement of the basis for the Appeal.

(ii) Within seven (7) calendar days of the service of the Appeal, the opposing Party(ies) may serve on the Case Manager and on the opposing Party(ies) a Cross-Appeal with respect to any element of the Award. The letter or other writing evidencing the Cross-Appeal must specify those elements of the Award that are being Appealed and must contain a brief statement of the basis for the Cross-Appeal.

(iii) The record on Appeal will consist of the stenographic or other record of the Arbitration Hearing and all exhibits, deposition transcripts and affidavits that had been accepted into the record of the Arbitration Hearing by the Arbitrator(s). The Parties will cooperate with the Case Manager in compiling the record on Appeal, and the Case Manager will provide the record to the Appeal Panel. No evidence not previously accepted by the Arbitrator(s) will be considered by the Appeal Panel, unless the basis of the Appeal is non-acceptance by the Arbitrator of certain evidence or unless the Appeal Panel determines that there is good cause to re-open the record pursuant to the applicable JAMS Arbitration Rules.

(iv) The Parties may elect to rely on the memoranda or briefs previously submitted to the Arbitrator(s). In the absence of such election, the Case Manager will obtain the agreement of the Parties on a briefing schedule.

If no agreement is reached, the Case Manager will set the briefing schedule. Ordinarily, only opening briefs (of no more than 25 double-spaced pages) will be allowed. The briefs may be in the form of a letter.

(v) The Appeal Panel will conduct an oral argument if all Parties request such argument or may conduct oral argument, in complex cases or unusual circumstances, on its own initiative.

If there is to be oral arguments, the Case Manager will obtain the agreement of the Parties on both the date of such argument and the duration, including the allocation of time. In the absence of agreement, the Appeal Panel will set the date and duration of the oral argument, including the allocation of time.

(vi) All fees for the original arbitration must be paid in full before an appeal will be scheduled.

(C) Once an Appeal has been timely filed, the Arbitration Award is no longer considered final for purposes of seeking judicial enforcement, modification or vacating pursuant to the applicable JAMS Arbitration Rules.

(D) The Appeal Panel will apply the same standard of review that the first-level appellate court in the jurisdiction would apply to an appeal from the trial court decision. The Appeal Panel will respect the evidentiary stan-

dard set forth in Rule 22(d) of the JAMS Comprehensive Arbitration Rules. The Panel may affirm, reverse or modify an Award.

The Panel may not remand to the original Arbitrator(s), but may re-open the record in order to review evidence that had been improperly excluded by the Arbitrator(s) or evidence that is now necessary in light of the Panel's interpretation of the relevant substantive law. A three-member Appeal Panel will make its decision by majority vote and, absent good cause for an extension, will issue the decision within twenty-one (21) calendar days of the date of either oral argument, the receipt of the new evidence or receipt of the record and of all briefs, whichever is applicable or later. The Panel's decision will consist of a concise written explanation, unless all Parties agree otherwise.

(E) If a Party refuses to participate in the Optional Appeal Procedure after having agreed to do so, the Appeal Panel will maintain jurisdiction over the Appeal and will consider the Appeal as if all Parties were participating, including retaining the authority to modify any Award or element of an Award that had previously been entered in favor of the non-participating Party, assuming it believes that the record, after application of the appropriate standard of Appeal, justifies such action.

(F) After the Appeal Panel has rendered a decision and provided the Parties have paid all JAMS fees in full, JAMS will issue the decision by serving copies on the Parties. Service will be deemed effective five (5) calendar days after deposit in the US Mail. Upon service of the Appeal Panel decision, the Award will be final for purposes of judicial review.

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