



# COAM DISPUTE RESOLUTION RULES AND PROCEDURES

**NAM (National Arbitration & Mediation)**

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#### **RULE NO. 1: APPLICATION OF RULES**

All rules set forth herein are National Arbitration & Mediation's ("NAM") Dispute Resolution Rules and Procedures relating to the arbitration process for the resolution of disputes pursuant to O.C.G.A. Section 50-27-102 (d)- Coin Operated Amusement Machines (hereinafter "COAM") ("Rules"). NAM has been designated by the Georgia Lottery Corporation ("GLC") as an approved administrator for the Arbitration of COAM Disputes. These Rules shall govern binding arbitrations of COAM disputes in accordance with Rule 13.2 of the GLC's rules for Coin Operated Amusement Machines.

#### **RULE NO. 2: PRIVACY**

All documents and materials submitted to or filed with NAM shall remain private and are not subject to public scrutiny. All communications, whether oral or written, and all testimony at an arbitration shall remain confidential and inadmissible in any other judicial or alternative dispute resolution proceeding. However, if the parties elect to forward a copy of the arbitration decision to the GLC, such decisions may become subject to the open records law and would be available upon request.

#### **RULE NO. 3: EXCLUSION OF LIABILITY**

- A. Neither NAM, nor its Officers, Directors, employees, representatives, or Arbitrators/Neutrals shall be liable for any act or omission in connection with any Arbitration conducted under these Rules or any other rules and procedures mutually agreed upon by the parties.
- B. Neither NAM, nor its Officers, Directors, employees, representatives, Arbitrators/Neutrals is a necessary party in any further alternative dispute resolution or judicial proceeding and may not be called to testify at any subsequent proceeding.
- C. The parties agree not to make any claims against NAM for damage, loss or injury and hereby waive any cause of action or other remedy against NAM, its Officers, Directors, employees, Arbitrators/Neutrals, agents, or representatives.

#### **RULE NO. 4: REPRESENTATION**

Parties may act on their own behalf or may be represented by a person with authorization to act on their behalf. The name, address and contact information of such persons shall be communicated to NAM and all other parties at least thirty (30) calendar days prior to the scheduled hearing or conference.

#### **RULE NO. 5: ADJOURNMENTS**

The Arbitrator(s) may, in his/her discretion, grant a party's request for postponement of a scheduled In-Person/Oral Arbitration Hearing, or the date fixed for the receipt of documentary evidence for an Arbitration based on Written Submissions.

#### **RULE NO. 6: FEES**

The parties shall pay those fees as are more fully set forth in the then current NAM COAM Arbitration Fee Schedule (“Fee Schedule”) in effect at the time of the filing of the claim which is incorporated by reference herein and made part of these Rules. In the event that the administration of a matter extends beyond a one-year period, NAM may, in its sole discretion, charge the most current fees set forth in the most recent Fee Schedule for additional time expended on the matter.

Failure of either party to pay its required fees may result in: (a) the granting of a default judgment on liability against the non-paying party by the Arbitrator(s); (b) termination of the arbitration; and/or (c) an award of costs against the non-paying party.

#### **RULE NO. 7: MODIFICATION OF RULES**

NAM reserves the right to modify these Rules at any time without prior written notice to the parties. The version of the Rules in effect at the time the claim is filed with NAM will govern the Arbitration. The NAM Administrator may, in its sole discretion, determine the applicable version of the Rules to be applied to a particular matter.

#### **RULE NO. 8: ENFORCEABILITY OF RULES**

If the provisions of these Rules are held invalid or unenforceable by a court of law, the parties have not waived any of their rights, privileges or remedies to submit their claims, counter-claims and cross-claims to the applicable court of law or to avail themselves of any other legal rights, privileges or remedies.

#### **RULE NO. 9: INITIATION OF ARBITRATION**

- A. To initiate an Arbitration, the party initiating the arbitration (hereinafter “the Claimant”) must file a written notice of its intention to arbitrate (hereinafter “COAM Demand”) by forwarding a copy of the completed and fully executed COAM Demand to the Respondent and filing the original COAM Demand with NAM.
- B. The COAM Demand shall set forth the names, addresses, e-mail, telephone/fax numbers of each party to the case, name, firm and contact information for any attorney/law firm that will be representing/appearing on behalf of the Claimant, COAM License Number, a brief description of the nature of the claim, the amount in controversy and the remedy sought.
- C. The COAM Demand must be served and filed with NAM within fourteen calendar (14) days of the date on the Arbitration Referral from the Georgia Lottery Corporation (the “Arbitration Referral”).
- D. A copy of the Arbitration Referral shall be attached to the COAM Demand and filed with NAM.
- E. The COAM Demand may be submitted to NAM via email, mail or fax as follows:

National Arbitration and Mediation (NAM)  
Attention: COAM Disputes  
990 Stewart Avenue 1st Floor

Garden City, New York, 11530  
Fax: 516-874-7533  
E-Mail:COAM@NAMADR.COM

- F. Proof of Service of the COAM Demand on Respondent(s) must be provided to NAM upon filing the COAM Demand.
- G. The Claimant shall remit payment to NAM of the initial administrative fees when the COAM Demand is filed, as set forth in NAM's Fee Schedule which is incorporated herein by reference.
- H. Upon proper filing of a COAM Demand and payment of the arbitration administration fee, a NAM case manager will send an acknowledgement letter to the parties confirming the initiation of the arbitration. Notification of the commencement of the arbitration will also be sent by NAM to GLC.

**RULE NO. 10: RESPONSE**

- A. The party against whom a claim is made (hereinafter the "Respondent") shall file a Response to the COAM Demand (hereinafter "COAM Response") at NAM's headquarters within 14 calendar days of service of the COAM Demand by the Claimant. The COAM Response shall include a brief statement of the basis for Respondent's defenses to the claim.
- B. The Respondent shall remit payment to NAM of the initial administrative fees when the COAM Response is filed, as set forth in NAM's Fee Schedule which is incorporated herein by reference.
- C. Respondent shall also serve its COAM Response upon the Claimant within 14 calendar days of service of the COAM Demand.
- D. Proof of Service of the COAM Response to Claimant must be provided to NAM upon filing of the COAM Response with NAM.
- E. If the Respondent fails to remit payment of the required fees to participate in the arbitration proceeding within 14 calendar days of being served with the COAM Demand, the Claimant may cover such costs. To proceed with the arbitration, the Claimant must remit payment to NAM within five (5) calendar days in accordance with GLC's Rule 13.2.10.(5)(c).
- F. Amendments or additions to claims and counter/cross claims, if applicable, must be made upon mutual agreement of the parties or application to the Arbitrator(s), upon notice to the other party and will be permitted only upon a showing of good cause and no prejudice to the other party. The other party shall have an opportunity to oppose the application for such amendment or addition. However, the Arbitrator(s) shall make the final decision regarding amendments or additions to claims and counter and cross claims.

**RULE NO. 11: SERVICE OF DOCUMENTS; TIME LIMITS**

- A. At least ten (10) calendar days before the hearing date, the parties shall submit a pre-hearing memorandum including the following elements: (a) a statement of facts; (b) a statement of each claim being asserted (including relevant statutes and case law) and (c) a statement of the evidence to be presented, including live witness testimony (and the amount of time anticipated for such testimony). At least ten (10) calendar days before the hearing date, together with the pre-hearing memorandum,

each party shall send a list of documents to be submitted and witnesses to be presented at the time of the hearing, together with a copy of any listed document. Any document not sent in accordance with this Rule No. 11 or any witness not so identified, except those required in rebuttal to any claim or defense, may be excluded at the time of the hearing. Each party shall send the pre-hearing memorandum and all documents and lists of documents, etc., to all other parties and to the NAM Administrator. However, the NAM Administrator may elect to have the parties send such information directly to the Arbitrator(s) (in lieu of having the information sent to the NAM Administrator) by notifying the parties accordingly.

- B. At least five calendar (5) days prior to the hearing, any party may deliver to the party proposing the report, record or document, a written demand that a witness or custodian be produced in person to testify at the hearing concerning such item and be subject to cross-examination. If there is an objection to such demand, the Arbitrator(s) shall resolve the matter as he/she sees fit under the circumstances.
- C. Service of documents may be completed by any one of the following methods: delivery by messenger service, overnight delivery service by a nationally recognized courier company or by certified mail. The party must obtain a record of the sending thereof. Service by any of the aforementioned means is considered effective upon the date of deposit of the document. Documents shall be served to the last known address of the party or its representative for whom same are intended.
- D. In addition to the methods of service provided for in Rule No. 11(C), the NAM Administrator and the Arbitrator(s) may also communicate with the parties and/or each other, and/or serve any document, by electronic fax transmission (fax), electronic mail (email) and U.S. mail.
- E. The time periods fixed under NAM's Rules shall begin to run on the next day after service is effected by one of the methods described in Rule No. 11(C). Official holidays and non-business days are included in the calculation of the time period. However, if the last day of a time period is a holiday or non-business day in the country where the responding party is located, the time period shall expire on the next business day.
- F. The Arbitrator(s) may require the parties to provide proof of service of the COAM Demand and/or the COAM Response and/or proof of prior notice of any claim, remedy, counter or cross claim or affirmative defenses prior to or at the Arbitration. The Arbitrator(s) may, in the absence of proof of service and/or prior notice to the other parties, preclude any party from asserting any claim, remedy, counter or cross claim or affirmative defenses at the Arbitration. The parties may agree, however, that the Arbitrator(s) should consider such claim, remedy, counter or cross claim or affirmative defenses despite the lack of proof of service or lack of prior notice.

#### **RULE NO. 12: COMMUNICATION BETWEEN PARTIES AND ARBITRATOR(S)**

No party shall communicate directly with the Arbitrator(s) regarding any issue related to the Arbitration, until such time as the NAM Administrator or the Arbitrator(s) permits such direct communication. Until that time, all communications with the Arbitrator(s) must be directed to the NAM Administrator at NAM's headquarters at 990 Stewart Avenue, First Floor, Garden City, NY 11021; telephone # 1-800-358-2550/Ext. 2626 (COAM); 516-941-3262. Any necessary communication should be in plain written language, including but not limited to, a request for a conference, objection to a discovery request or question regarding the Arbitration hearing itself. The NAM Administrator will contact the Arbitrator(s) as soon as practicable and inform the Arbitrator(s) about the party's request to communicate. The Arbitrator(s) shall have the authority and discretion to take any action the Arbitrator(s) deems appropriate under the circumstances.

### **RULE NO. 13: LOCATION OF ARBITRATION**

The Arbitrator(s) or the NAM Administrator [if such decision is needed prior to the appointment of the Arbitrator(s)] shall determine the actual location of the hearing. The Arbitrator(s) may travel to any place necessary in order to conduct hearings, receive witness testimony, and inspect goods, property or documents. The out-of-pocket cost for such travel shall be borne by the parties.

### **RULE NO. 14: LANGUAGE OF THE ARBITRATION PROCESS**

- A. The Arbitration shall be conducted in English. If a party requests a language other than English and the other party objects to such a request, the Arbitrator(s) shall decide the language(s) of the Arbitration. In the event any translation, interpreting or other services are requested as a result of a hearing which is to be held in a language other than English, expenses for such services will be borne by the party which requests them.
- B. In cases where there is a non-participating or defaulting party, the Arbitration proceeding shall be conducted in the language as determined by the Arbitrator(s) or the NAM Administrator (if the Arbitrator(s) has yet to be appointed). The non-participating or defaulting party shall have no cause for complaint if communications to and from NAM and the Arbitration proceedings are conducted in a language approved by the Arbitrator(s) or the NAM Administrator.
- D. If any document is presented in a language other than the language(s) agreed to by the parties or directed by the Arbitrator(s) and no translation of such document is submitted by the party relying upon the document, the Arbitrator(s) or NAM (if the Arbitrator(s) has not been appointed) may order that party to submit a translation in a language to be determined by the Arbitrator (s)or NAM.
- E. A party to the Arbitration proceeding may request translation of documents or interpreters at any stage of the process. The requesting party shall bear the costs of the translation or interpreters.

### **RULE NO. 15: APPLICABLE RULES OF LAW**

The Arbitrator(s) shall have broad discretion to rule upon all arbitrable issues under the applicable substantive law. In all cases, the Arbitrator(s) shall consider the provisions of the underlying contract/agreement, if applicable.

### **RULE NO. 16: DISCOVERY PROCEDURE**

- A. The parties shall conduct discovery on a voluntary basis, the procedure of which shall be agreed to by the parties. Failing such agreement, the Arbitrator(s) shall have the power to order such discovery, by way of document production, interrogatory, deposition, or otherwise, as the Arbitrator(s) considers necessary for a full and fair exploration of the issues in dispute.
- B. When deciding upon the nature and extent of discovery, the Arbitrator(s) shall take into account the following factors:
  - i. The nature of the claim and counter-claim, if applicable;
  - ii. The expedited nature of the Arbitration process

- iii. Relevancy of the discovery sought by a party and
- iv. The cost of discovery must be commensurate with the amount of the claim and the request must not be unduly burdensome and expensive on the parties.

**RULE NO. 17: INTERIM ORDER**

At the request of either party, the Arbitrator(s) may issue an Interim Order regarding the subject matter of the dispute. The Arbitrator(s) may exercise his/her discretionary powers and order the apportionment of costs associated with applications for Interim Orders.

**RULE NO. 18: NUMBER OF ARBITRATOR(S)**

Unless mutually agreed upon by all parties, one Arbitrator shall resolve all matters. In the event of any dispute regarding the number of Arbitrators, the NAM Administrator shall have the sole discretion to determine whether a matter should be heard by one (1) or three (3) Arbitrator(s).

**RULE NO. 19: PAYMENTS/DEPOSITS AS TO COSTS**

- A. In accordance with the NAM'S Fee Schedule and GLC Rule 13.2.10 (5), administrative fees are due and payable by Claimant to NAM when a COAM Demand is filed. Such filing and fees must be submitted to NAM within 14 calendar days of the date on the Arbitration Referral. If the Claimant fails to pay its required fees within 14 calendar days of the Arbitration Referral date, such failure to proceed shall be considered a confirmation that a dispute no longer exists.
- B. In accordance with the NAM's Fee Schedule and GLC Rule 13.2.10 (5), administrative fees are due and payable by the Respondent to NAM when a COAM Response is submitted. Such filing and fees must be submitted to NAM within 14 calendar days of service by Claimant. If the Respondent fails to pay its required fees within 14 calendar days of being served, the Claimant may cover such costs by remitting payment to NAM for the Respondent's fees within 5 calendar days.
- C. Hourly fees for Arbitrator time are to be paid within 10 calendar days of receipt of NAM's bill.
- D. Additional fees for adjournments, cancellations and/or settlement may apply. See NAM's Fee Schedule.
- E. In accordance with GLC Rule 13.2.10(5), after appointment of the Arbitrator(s), if any party fails to timely pay the hourly fees for Arbitrator(s) time within 10 calendar days of notice of fees, the Arbitrator(s) shall grant a default judgement on liability against the non-paying party.
- F. To the extent that additional Arbitrator(s) time is required beyond that which was originally anticipated or if other circumstances arise whereby additional fees are incurred, NAM may direct the parties to make one or several advance, interim or final payments for the costs associated with the Arbitration process. Such deposits shall be made to NAM. The Arbitrator(s) shall not proceed with the Arbitration until receiving confirmation that all outstanding payments have been made to NAM by the parties.

- G. In the event that a party fails or refuses to provide any deposit as directed by NAM, NAM may direct the other party or parties to effect a substitute payment to allow the Arbitration to proceed (subject to any Award for costs). In such circumstances, the party paying the substitute payment may be entitled to recover that amount from the defaulting party.
- H. Each party is responsible to pay the fees billed to them by NAM directly to NAM. If, as part of the award, the Arbitrator(s) awards the total cost of the Arbitration to one party or apportions such costs between the parties, such reimbursement is to be made between/among the parties after NAM has been paid in full and without the involvement of NAM.

**RULE NO. 20: ARBITRATOR SELECTION AND APPOINTMENT PROCESS**

- A. The parties shall jointly decide on the appointment of the Arbitrator(s) from NAM's panel.
- B. In the event the parties cannot agree, and unless NAM determines in its discretion that another method for the selection of the Arbitrator(s) is appropriate, NAM will provide the parties with a list of potential Arbitrators. After receipt of this list, each party may strike one (1) name from the list. The parties shall number the remaining names on the list in the order of their preference and return the list to the NAM Administrator within 10 calendar days of service of the document. The NAM Administrator shall appoint the Arbitrator(s) from among the names remaining on the list and in accordance with the order of preference indicated by the parties
- C. NAM has emphasized the importance of neutrality and impartiality in the Arbitration process to its Arbitrators. NAM may, in its sole discretion, disqualify an Arbitrator if circumstances exist that create a conflict of interest or cause the Arbitrator to be unfair or biased, unless the parties agree to permit the Arbitrator to preside over the matter. Examples of such circumstances include:
  - i. the Arbitrator has a personal bias or prejudice concerning a party or has personal knowledge of disputed facts;
  - ii. the Arbitrator has served as an attorney to any party;
  - iii. the Arbitrator is a material witness regarding the dispute or the Arbitrator or a member of the Arbitrator's family has a direct financial interest in the outcome of the case;
  - iv. the Arbitrator or a member of the Arbitrator's family is a party to the case or is appearing as a representative for one of the parties to the case.
- D. An Arbitrator shall disclose immediately to NAM circumstances that create a conflict of interest or that may cause the Arbitrator to be biased or unfair. If the Arbitrator is disqualified, the parties shall select a new Arbitrator in the manner described herein.

**RULE NO. 21: CHALLENGE OF ARBITRATOR**

- A. A party may challenge the nomination of an Arbitrator if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence. Such a challenge shall be made by written submission to the NAM Administrator, specifying the facts and circumstances on which the challenge is based.



- B. As set forth herein, the Arbitrator has a duty to disclose immediately to NAM circumstances that create a conflict of interest or that may cause an Arbitrator to be unfair or biased. Notwithstanding the foregoing, the parties and their Representatives have a duty to perform conflict checks upon the nominated Arbitrator and to communicate any potential conflicts of interest between the parties and/or their Representatives and the Arbitrator to the NAM Administrator as soon as they are discovered. The parties and their Representatives are requested to make inquiries of their officers, directors, agents, trustees, witnesses, immediate and extended families and the attorneys in their respective practices/firms to ascertain any potential conflicts or associations concerning the Arbitrator(s) and to disclose any such information as soon as it is discovered. The parties and their Representatives and the Arbitrator understand and agree that NAM shall make no efforts to investigate potential conflicts of interest until such conflicts are disclosed by the parties, their Representatives or the Arbitrator to NAM. The burden is upon the parties and their Representatives to notify the NAM Administrator of any potential conflict or association or potential for same, that will or may affect the Arbitrator's ability to be impartial in the case.
- C. A party who intends to challenge an Arbitrator shall send notice of the challenge to NAM and the other parties within 10 days after the appointment of the challenged Arbitrator or from the date the alleged circumstances giving rise to the challenge first becomes known to that party, whichever is first.
- D. If one party has challenged an Arbitrator, the other parties may agree to the challenge. The Arbitrator may also agree to withdraw from the case. In neither case does this imply acceptance of the validity of the grounds for the challenge. In all cases the procedure for the replacement of the Arbitrator set forth in Rule No. 22 shall be followed.
- E. If the other parties do not agree to the challenge and the challenged Arbitrator does not withdraw, then NAM shall decide on the admissibility and merits of the challenge. NAM shall provide an opportunity for the Arbitrator concerned, the other party or parties and any of the other Arbitrator(s) to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the Arbitrator(s). Absent fraud or misrepresentation by the Arbitrator, the parties shall be responsible to pay any fees or expenses incurred by NAM and/or the Arbitrator prior to the challenge.

#### **RULE NO. 22: REPLACEMENT OF ARBITRATOR**

- A. An Arbitrator shall be replaced under the following circumstances:
  - i. his/her death;
  - ii. the acceptance by the NAM Administrator of the Arbitrator's resignation;
  - iii. the acceptance by the NAM Administrator of a challenge by one of the parties, or
  - iv. upon the request of all the parties.
- B. The NAM Administrator may, in his/her sole discretion, replace an Arbitrator by his/her own initiative if he/she decides that the Arbitrator is prevented de jure or de facto from fulfilling his or her functions, or that the Arbitrator is not fulfilling his or her functions in accordance with NAM's Rules or within the prescribed time limits.
- C. If an Arbitrator is to be replaced, the NAM Administrator, in his/her sole discretion, can decide whether or not to follow the original nominating process in naming the new Arbitrator. Once the

nomination process is complete, the Arbitrator(s) shall determine if and to what extent prior proceedings shall be repeated before the new Arbitrator(s).

- D. Prior to the closing of the proceedings, instead of replacing an Arbitrator who has died or has been removed by NAM pursuant to these Rules, NAM may decide that the remaining Arbitrator(s) (if there was a Three-Arbitrator panel deciding the case) shall continue the Arbitration. In making its determination, NAM shall consider the views of the remaining Arbitrator(s) and of the parties and such other matters that it considers appropriate.

#### **RULE NO. 23: PRESIDING CHAIRPERSON FOR A THREE-ARBITRATOR PANEL**

If the parties request a Three-Arbitrator panel, one of the panel members shall be elected to chair the Arbitration. The Arbitrator(s) shall elect a presiding Chairperson within five (5) calendar days after the panel has been notified of their appointment. If the appointed Arbitrators are unable to agree on such a choice within the time frame allowed, the NAM Administrator shall make such selection. Additional administrative and hourly arbitrator fees will apply in the event a Three-Arbitrator panel is requested.

#### **RULE NO. 24: CONSOLIDATION**

- A. **Claims.** The Arbitrator(s) shall have the power to hear as many claims as the Parties may have against one another consistent with these Rules. The Arbitrator(s) may hear additional claims that were not mentioned in the COAM Demand, provided the Party adding claims notifies the other Party at least thirty (30) calendar days prior to a scheduled Arbitration, the additional claims are timely as of the date on which they were added, and the other Party is not prejudiced in its defense by such addition.
- B. **Parties.** The Arbitrator(s) shall not consolidate claims of different Parties into one proceeding unless NAM allows such consolidation in accordance with Rule 24 (C) immediately following.
- C. **Class Actions.** A class action involves an Arbitration or lawsuit where representative members of a large group (or “class”) claim to share a common interest and seek relief on behalf of the group (or “class”). It is NAM’s policy to administer class action Arbitrations if the underlying Arbitration agreement allows for the submission of class actions to Arbitration. If the Arbitration agreement is silent with respect to class actions, consolidation or joinder of claims, NAM will **not** administrate the case as such, unless the parties agree to same and authorize NAM, in writing, to do so. NAM will **not** administer a class action Arbitration if prohibited by: (1) the underlying Arbitration agreement, (2) court order or (3) applicable law, **unless** a court orders the matter to Arbitration as a class action.

#### **RULE NO. 25: ARBITRATION BASED ON WRITTEN SUBMISSIONS**

Subject to the provisions of the underlying contract/agreement, if applicable, or if agreed upon in writing by the parties or if requested by a party and the other party (ies) does (do) not respond within the time frame specified by NAM’s Rules for submitting a reply, and the underlying contract/agreement is silent on this issue, the Arbitrator(s) may decide the dispute based on the written submissions of the parties. In such a case, the Arbitrator(s) shall not entertain oral testimony or arguments. The written submissions shall include, but not be limited to, the legal memorandum, position papers, case law, deposition transcripts, witness statements, expert reports, photographs, bills, receipts, invoices, records or any other relevant written documentary evidence. All written submissions and documentary evidence must be filed with the NAM Administrator and served upon

all parties prior to the Arbitration on a date fixed by the NAM Administrator or the Arbitrator(s). Any such submission not received within the specified time frame may be excluded by the Arbitrator(s). To the extent a date is not fixed by the NAM Administrator or the Arbitrator(s), such date for receipt of documents by the parties and to the NAM Administrator is to be no less than ten (10) calendar days before the submission date. However, the NAM Administrator may elect to have the parties send such information directly to the Arbitrator(s) (in lieu of having the information sent to the NAM Administrator) by notifying the parties accordingly.

#### **RULE NO. 26: IN-PERSON/ORAL ARBITRATION HEARING**

Subject to the provisions of the underlying contract/agreement, if applicable, or if agreed upon in writing by the parties, the Arbitrator(s) may decide the dispute at an In-Person/Oral Arbitration Hearing.

The Arbitrator shall conduct the Arbitration Hearings as follows:

- A. The NAM Administrator or the Arbitrator(s) shall fix the date, time and physical location of any meetings, conferences or hearings and shall give the parties reasonable notice thereof.
- B. Arbitrations are binding upon the parties (with limited exception per Rule No. 34). Parties have an opportunity to present their case in a manner similar to a non-jury trial in the public court system. The Arbitrator(s) will conduct the Arbitration hearing in the manner set forth in these rules. However, an Arbitrator(s) has the discretion to vary these procedures if it is reasonable and appropriate to do so.
- C. The Arbitrator(s) will rule upon the admissibility of evidence and will be guided by the Federal Rules of Evidence. However, strict conformity to the Federal Rules of Evidence is not required. The Arbitrator(s) will consider evidence that the Arbitrator(s) deems relevant and material to the dispute and will accord such weight to the evidence as the Arbitrator(s) deems appropriate.
- D. The Arbitrator(s) shall have the authority to make rulings on motions.
- E. If any of the parties, although duly summoned, fails to appear without valid excuse, the Arbitrator(s) shall have the power to proceed with the hearing despite that party's absence.
- F. The Arbitrator(s) may require witnesses in a party's employ or control to testify under oath if requested to do so by the other party. The Arbitrator(s) may limit testimony or exclude witnesses or evidence that the Arbitrator(s) considers immaterial or unduly repetitive.
- G. The Arbitrator(s) may issue subpoenas for the attendance of witnesses or the production of documents and the parties agree to abide by such.
- H. The Arbitrator(s) will accept and consider witnesses' deposition testimony provided that the other party(ies) had the opportunity to attend the deposition and cross-examine the witness. In the event the other party(ies) does(do) not have the opportunity to attend the deposition(s) and cross-examine the witness(es), the Arbitrator(s) may exclude such witnesses' deposition testimony. The Arbitrator(s) may consider witness affidavits, but will give that evidence only such weight as the Arbitrator(s) deems appropriate.
- I. The In-Person/Oral Arbitration Hearing will conclude only after all parties have had an opportunity to present all relevant and material evidence and witness testimony to the Arbitrator(s).
- J. All meetings and hearings shall be in private unless the parties agree otherwise in writing or if the Arbitrator(s) directs otherwise.

- K. The Arbitrator(s) shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Except with the approval of the Arbitrator(s) and the parties, persons not involved in the proceedings shall not be admitted.
- L. In all cases, the Arbitrator(s) shall act fairly and impartially and ensure that each party has a reasonable opportunity to present his/her case.
- M. At the conclusion of the Arbitration, the Arbitrator(s) may require the parties to submit post-hearing briefs, including legal memorandum, prior to issuing a decision regarding the case. The Arbitrator(s), with the assistance of the parties, will determine the schedule for the submission of post-hearing briefs.

#### **RULE NO. 27: PRE-HEARING CONFERENCE**

The Arbitrator(s) may conduct a telephone conference call twenty (20) calendar days after NAM has appointed the Arbitrator(s). The Arbitrator(s) may discuss some or all of the following matters with the parties at the Pre-Hearing Conference:

- A. the scheduling and completion of discovery;
- B. the laws, rules of evidence and burdens of proof that the Arbitrator(s) will apply at the hearing;
- C. the scheduling and procedure of the Arbitration;
- D. the approximate duration of the Arbitration;
- E. the physical location of the Arbitration;
- F. possible expenses of the Arbitrator(s) (such as travel costs, accommodations, etc.);
- G. the need for translators;
- H. the timing and filing of any documents the Arbitrator(s) considers necessary;
- I. the filing of pre-hearing briefs;
- J. the filing of stipulations of uncontested facts;
- K. the filing of witness lists;
- L. the identity of the Presiding Chairperson, if applicable;
- M. any other matters that the Arbitrator(s) considers necessary.

#### **RULE NO. 28: NON-PARTICIPATING OR DEFAULTING PARTIES**

- A. If the Respondent fails to file a COAM Response with NAM, and/or pay the fees pursuant to NAM's Fee Schedule, or if any party fails to file and serve written submissions by the date fixed by the Arbitrator(s) where the Arbitration is based on Written Submissions, or when a party fails to appear at an In-Person/Oral Arbitration Hearing after receiving due notice thereof, or timely pay its share of the arbitration fees, then the Arbitrator(s) may conduct the Arbitration in that party's absence.

- B. The Arbitrator(s) shall not base the Award solely on the failure of the defaulting party to comply in the above circumstances. The Arbitrator(s) shall require the submitting or attending party to present such evidence as the Arbitrator(s) deems necessary for the making of the Award.

**RULE NO. 29: WITNESSES AND EXPERT WITNESSES**

- A. For In-Person/Oral Arbitration Hearings, the NAM Administrator or the Arbitrator(s) shall give the parties adequate advance notice of the date, time and place thereof.
- B. For In-Person/Oral Arbitration Hearings, if witnesses are to testify, at least 10 calendar days before the hearing, each party shall communicate to the Arbitrator(s) and to the other party the names and addresses of the witnesses that will testify, the subject of the testimony and the languages in which such witnesses will testify.
- C. For In Person/Oral Arbitration Hearings, the parties shall make arrangements for the translation of oral testimony and for a transcription of the hearing if either is deemed necessary by the NAM Administrator, the Arbitrator(s) or if the parties have agreed thereto and have communicated such agreement to the NAM Administrator and the Arbitrator(s) at least 15 calendar days before the hearing date. If the parties are unable to agree upon the arrangement for the translation of oral testimony or the transcription of the hearing, or if the parties request, NAM or the Arbitrator(s) may assist the parties in arranging for the translation and transcription.
- D. For In-Person/Oral Arbitration Hearings, the Arbitrator(s) may determine the order and manner in which witnesses testify at the hearing. The Arbitrator(s) may permit a party to present the testimony of a witness in written form, either as a signed statement, sworn affidavit or properly notarized deposition transcript.
- E. For In-Person/Oral Arbitration Hearings, the Arbitrator(s) shall determine the admissibility, relevance, materiality and weight of the evidence offered. The Arbitrator(s) also shall determine the time, manner and form in which such materials should be exchanged between the parties and presented to the Arbitrator(s). The Arbitrator(s) may, in his/her discretion, allow, refuse, or limit the appearance of witnesses (whether fact witness or expert witness) or the submission of documentary evidence.

**RULE NO. 30: SETTLEMENT OR OTHER REASONS FOR TERMINATION**

- A. If the parties agree on a settlement of the dispute before the Arbitrator(s) renders an award, the Arbitrator(s) shall either issue an order for the termination of the Arbitration proceedings or, if requested by both parties, indicate that a settlement has been reached. In the event of a settlement, the Arbitrator(s) may provide the parties with a settlement contract indicating the agreed upon terms. In the event of a settlement, the Arbitrator(s) is not obligated to give reasons for such a settlement.
- B. If, before the Arbitrator(s) renders an Award, the continuation of the Arbitration proceeding becomes unnecessary or impossible for any reason not mentioned in paragraph A, the Arbitrator(s) shall issue an order for the termination of the proceedings.
- C. Copies of the order for termination of the Arbitration proceedings or of the settlement contract on agreed-upon terms shall be signed by the Arbitrator(s) and forwarded to the NAM Administrator and to the parties.

### **RULE NO. 31: CLOSURE OF HEARING AND TIME LIMITS FOR THE AWARD**

The Arbitrator(s) will communicate with the NAM Administrator as to the status of the Arbitration. The Arbitrator(s) will attempt to render the final Award within thirty (30) calendar days from the date the Arbitration is declared closed by the Arbitrator(s). Upon request from the Arbitrator(s), the NAM Administrator may extend this time limit if it becomes necessary to do so.

### **RULE NO. 32: DRAFTING OF THE AWARD**

- A. The Award shall be made in writing and shall be final and binding on the parties (with limited exception per Rule No. 34). The parties undertake to carry out the Award without delay.
- B. The Arbitrator(s) may award the total costs of the Arbitration to one party or may apportion such costs between the parties if the Arbitrator(s) determines that apportionment is appropriate.
- C. The Arbitrator(s) may award the cost of legal representation to one party or may apportion such costs between the parties if the Arbitrator(s) determines that apportionment is appropriate.
- D. Any award of interest made by the Arbitrator(s) is to be governed by the laws of the applicable jurisdiction.
- E. The obligation of the party[ies] as stated in the Award shall be binding upon each such party, his/her heirs or its successors or those who are its assigns.
- F. The Arbitrator(s) shall sign an Award and it shall contain the date on which the Award was rendered. Where there are three Arbitrator(s) and one of them fails to sign, the Award shall state the reason for the absence of the signature.
- G. Copies of the Award signed by the Arbitrator(s) shall be forwarded to the NAM Administrator by the Arbitrator(s). The NAM Administrator shall forward copies of the decision to all parties once all outstanding fees are paid.
- H. As applicable, if the Arbitration law of the country where the Award is made requires the Arbitrator(s) to file or register the Award, the Arbitrator(s) shall comply with this requirement within the period of time required by law. In such event, a fee for such service will be determined by the NAM Administrator at his/her sole discretion at the time such services are requested.
- I. Parties to these Rules and Procedures shall be deemed to have consented that judgment upon the Arbitration award may be entered in any federal or state court or any other court having jurisdiction thereof.
- J. In addition to making a final Award, the Arbitrator(s) shall be entitled to render interim, interlocutory, or partial Awards.
- K. For Arbitration Hearings before a Tri-panel of Arbitrators, an Award must be made by a majority of the Arbitrator(s). If no majority exists or if the Arbitrator(s) so authorize, the Chairperson Arbitrator may decide an issue on his/her own.

### **RULE NO. 33: CORRECTION OF THE AWARD**

Within 15 days after the receipt of the Award, either party, with notice to the other party, may request the Arbitrator(s) to correct the Award regarding any clerical, typographical or mathematical error in the computation of the Award. The Arbitrator(s) may make such corrections on his/her own initiative within 30 days after rendering the Award. Such correction shall form part of the Award and shall be in writing. Arbitrator(s) may charge no additional fees for correction or completion of the Award.

**RULE NO. 34: APPEALS PROCESS**

Pursuant to GLC Rule 13.2.5, a party may appeal an Arbitration award by filing a Request for Reconsideration and/or a Motion for Review with the Chief Executive Officer of the GLC (or his or her designee). The party must follow the appeal procedure outlined in such rule.