


# EMPLOYMENT RULES AND PROCEDURES

THESE RULES SHALL APPLY TO ALL MATTERS REFERRED TO NAM AS A RESULT OF A **PRE-DISPUTE** ARBITRATION/MEDIATION CONTRACT PROVISION ENTERED INTO BY MUTUAL AGREEMENT BETWEEN THE PARTIES

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## RULE NO. 1: PURPOSE

National Arbitration and Mediation (hereinafter "NAM") has established this set of employment dispute resolution rules and procedures to provide a fair, private, expeditious and final means for resolving legal disputes arising out of or relating to employment disputes, without the need for litigation in federal, state, or local courts. These Employment Dispute Resolution Rules and Procedures (hereinafter "Rules") shall govern binding Arbitrations and non-binding Mediations held pursuant to NAM's Rules, whether brought by an Employee or by the Employer. The term "Employee" includes applicants, employees, and former employees. These Rules are written to guide an Employee through the Arbitration or Mediation process; however, they apply with full force and effect to both Employee and Employer.

These Rules are to be used when employment-related dispute resolution provisions/programs have been established whereby both the Employers and the Employees have agreed to utilize Arbitration and/or Mediation to resolve employment-related disputes (as more fully described in Rule No. 2 below). When such a provision/program exists, there may be instances in which the Rules and Procedures of the provision/program as written and as agreed upon by the Employer and the Employees differ from some of the Rules and Procedures as contained therein. In these instances, NAM's Rules and Procedures contained herein may be modified to conform to that of the program as established and mutually agreed upon by the Employer and the Employees. Such modifications would be subject to NAM's review and acceptance.

## RULE NO. 2: CLAIMS SUBJECT TO ARBITRATION/MEDIATION

Except as otherwise limited herein, any and all employment-related legal disputes, controversies, or claims arising out of or relating to an Employee's application or candidacy for employment, employment, or cessation of employment with an Employer or one of its affiliates shall be settled exclusively by final and binding Arbitration through NAM before a neutral, third-party Arbitrator selected in accordance with these Rules. Arbitration shall apply to any and all such disputes, controversies, or claims whether asserted against the Employer and/or against any employee, officer, alleged agent, director, or affiliated company. However, if the Employee and Employer mutually agree, the Parties may first elect to mediate their dispute through NAM before a neutral, third-party Mediator selected in accordance with these Rules. If such Mediation does not result in settlement, the Parties are then to proceed to Arbitration as outlined above.

All previously unasserted claims arising under federal, state, or local statutory or common law shall be subject to Arbitration (or possibly Mediation first if the Parties mutually agree). Merely by way of example, these claims include, but are not limited to, claims arising under the Age Discrimination in Employment Act (ADEA): Title VII of the Civil Rights Act of 1964, as amended, including the amendments of the Civil Rights Act of 1991, the Americans with Disabilities Act (ADA), the Fair Labor Standards Act (FLSA), 42 U.S.C. §1981, as amended, including the amendments of the Civil Rights Act of 1991, state discrimination statutes, state statutes and/or common law regulating employment termination, the law of contract, or the law of tort, including, but not limited to, claims for malicious prosecution, wrongful discharge, wrongful arrest/wrongful imprisonment, intentional/negligent infliction of emotional distress, negligent hiring, negligent retention, or defamation. Statutory or common-law claims alleging that the Employer retaliated or discriminated against an Employee shall be subject to Arbitration (or possibly Mediation first if the Parties mutually agree).

Claims for state employment insurance (e.g. unemployment compensation, worker's compensation, or disability compensation) or brought under the National Labor Relations Act shall not be subject to Arbitration or Mediation.

## RULE NO. 3: DISMISSAL/STAY OF COURT PROCEEDINGS

By signing his/her Employer's Dispute Resolution Agreement to Arbitrate a dispute involving an Employee's employment with Employer, an Employee agrees to resolve through Arbitration all claims described in or contemplated by Rule 2. If an Employee files a lawsuit in court to resolve claims subject to Arbitration, the Employee agrees that the court shall stay the lawsuit and require the Employee to arbitrate the dispute.

If an Employee files a lawsuit in court involving claims that are, and other claims that are not, subject to Arbitration, the Employee agrees that the court shall stay litigation of the non-arbitrable claims and require that Arbitration take place with respect to those claims subject to Arbitration. The Employee further agrees that the Arbitrator's decision on the arbitrable claims, including any determinations as to disputed factual or legal issues, shall be entitled to full force and effect in any subsequent proceeding or any non-arbitrable claims.

The parties shall not be deemed to have waived their rights to arbitrate or mediate in the event a party commences a judicial proceeding relating to the subject matter of the arbitration or mediation. For instance, a request by a party to a court/judicial body for a temporary restraining order or other interim measure until the arbitration or mediation can commence shall not be deemed to contradict an agreement to arbitrate or mediate or be deemed a waiver of the right to arbitrate or mediate.

## RULE NO. 4: EXCLUSION OF LIABILITY

A. Neither NAM, nor its Officers, Directors, employees, representatives, Arbitrators or Mediators shall be liable for any act or omission in connection with any Arbitration or Mediation 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 or Mediators 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 employees, Arbitrators/Mediators, agents, etc.

D. NAM will provide a secure method for the submission and exchange of case-related documents and materials. Parties and/or Counsel are responsible for using those specified methods for the transmission of case-related documents. Documents transmitted through any other means including, but not limited to, direct e-mail transmission to neutrals or NAM personnel, are at the sender's sole risk. NAM shall not be liable for any loss, delay, unauthorized disclosure, breach of confidentiality, or any other damage resulting from the use of non-specified transmission methods. Please contact a NAM Case Manager/Account Executive/IT Department to obtain information regarding NAM's available secure submission methods.

**RULE NO. 5: COSTS AND FEES**

A. **Costs Other than Attorney's Fees**

The Employer shall pay NAM's Administrative fees and NAM's hourly fees for the total time spent by the Arbitrator/Mediator and shall advance all other costs due NAM related to the costs of the Arbitration/Mediation. The Employee shall pay NAM the Filing fee, which shall be sent to NAM with the Arbitration/Mediation Request Form. Each Party shall advance its own incidental costs, such as photocopying, costs of hearing transcripts, subpoenas, or costs of producing witnesses or other evidence.

NAM's Fees and Costs for Employment Disputes are incorporated in these Rules and Procedures. NAM may elect not to commence or continue administration of a claim or not to allow the hearing/conference to proceed until all outstanding fees are paid.

B. **Attorney's Fees**

Each Party shall be liable for its own attorney's fees, unless
- if a Mediation, the settlement agreement provides for a different apportionment or
- if an Arbitration, an award is made of such under Rule 16.

## COMMENCEMENT OF CLAIM

To initiate an Arbitration, please refer to Rule No. 6 through Rule No. 21.

To initiate a Mediation, please refer to Rule No. 22 through Rule No. 34.

# ARBITRATIONS

## RULE NO. 6: COMMENCEMENT OF ARBITRATION

### A. Procedure

An Arbitration shall be commenced by filing the NAM Arbitration Request Form along with a Filing Fee to NAM, Attention: Employment Arbitration Department, 990 Stewart Avenue, Garden City, New York 11530. The Arbitration Request Form may be downloaded from NAM's website (www.namadr.com) under the Employment section, or by requesting a copy of the Arbitration Request Form from NAM by telephone at 800-358-2550 Att: Employment Arbitration Department. NAM shall send the form when completed by the Employee to the Employer for their response.

Alternatively, if the Pre-Dispute Arbitration Provision states another method, an Arbitration may be commenced by filing the Employer's Arbitration Request Form along with a Filing Fee to the Employer's Arbitration Coordinator.

### B. Time Limits

i. **Filing of Request for Arbitration**
The Arbitration Request Form shall be submitted within the same time limits as if a claim was to be filed in the applicable court of law. A Party's failure to initiate an Arbitration within such time limit shall constitute a waiver with respect to that dispute.

ii. **Response**
Within twenty-one (21) calendar days of receipt of the Arbitration Request Form, the opposing Party shall send a Response to the claiming Party and to NAM via first-class mail, postage prepaid, overnight mail or via hand delivery. The Response shall describe the opposing Party's position regarding the allegations in the Arbitration Request Form.

iii. **Forwarding of completed forms to NAM**
The Arbitration Request Form filled out by the Employee, the filing fee and the Employer's Response should be forwarded to NAM in a timely manner in order that NAM may commence administration of the case.

### C. Notice/Other Filings

All communications, notices, or filings, including discovery requests and responses, shall be in writing and shall be deemed to have been given if (i) delivered by messenger (ii) overnight mail or (iii) first-class mail, postage prepaid;

*To NAM at:* NAM
Att: Employment Arbitration Department
990 Stewart Avenue, First Floor
Garden City, New York, 11530

*If to the Employer:* to the Arbitration Coordinator or General Counsel Or Senior Management at the Employer's Address

OR

to the Employer's attorney as designated by the Employer

*If to the Employee:* to the Employee's address of record as it appears on the Arbitration Request Form

OR

to the Employee's attorney as designated in the Arbitration Request Form or later designated in writing by the Employee

The NAM Administrator and the Arbitrator 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.

## RULE NO. 7: SELECTION OF AN ARBITRATOR

The Employer and the Employee shall participate equally in the selection of an Arbitrator to decide the Arbitration. Within twenty-one (21) calendar days after Employer has responded to the Employee's Arbitration Request Form, NAM shall provide a panel of seven (7) neutral Arbitrators with experience in employment disputes. The Employer and the Employee then shall have the opportunity to review the background of the Arbitrators by examining the materials provided by NAM. Within seven (7) calendar days after the panel composition is received, the Employee and the Employer each may strike up to three (3) Arbitrators they find unacceptable for deciding the dispute. Each Party shall then list the remaining 4 or more Arbitrators in order of preference. NAM will appoint an Arbitrator from among the named individuals the Parties found acceptable. In the event that NAM is unable to appoint an arbitrator from the remaining Arbitrators deemed acceptable by the parties, within fourteen (14) days, NAM shall furnish an additional panel of five (5) Arbitrators from which each Party may strike one (1) Arbitrator. NAM will then appoint an Arbitrator from the remaining individuals. In the event that NAM is unable to appoint an Arbitrator from the list of acceptable Arbitrators from the second panel, NAM may furnish a third panel. The number of Arbitrators and the selection process pertaining to the third panel will be at the discretion of the NAM Administrator. At any time during the administration of the case, NAM shall have the authority, in its sole discretion, to remove and/or replace an Arbitrator upon a determination that a conflict exists that might compromise the neutrality of the Arbitrator. In such instances, NAM shall replace the Arbitrator with one of the remaining Arbitrators previously found acceptable by the Parties.

## RULE NO. 8: PRE-HEARING CONFERENCE

Within ten (10) days after the appointment of the Arbitrator, the Arbitrator may conduct a pre-hearing conference (via telephone or in-person) at which the Parties and the Arbitrator may address some or all of the following: (i) the claims asserted by the Parties; (ii) setting a date for the Arbitration and (iii) the scheduling and procedures of the Arbitration.

## RULE NO. 9: TIME AND PLACE OF ARBITRATION

The Arbitration hearing shall be held at the offices of, or location selected by, NAM in the city nearest the location where the Employee was or sought to be employed by the Employer, unless the Parties agree otherwise. If NAM does not select an Arbitration location within fifty (50) miles of the city of the Employee's last employment with the Employer, the Employee and the Employer shall designate a mutually amenable location at which to hold the Arbitration.

The Parties and the Arbitrator shall make every effort to see that the Arbitration is completed, and an award rendered, as soon as possible. There shall be no extensions of time or delay of an Arbitration hearing except in cases where both Parties consent to the extension or delay, or where the Arbitrator finds such a delay or extension necessary to resolve a discovery dispute or other matter relevant to the Arbitration.

## RULE NO. 10: REPRESENTATION

Both the Employee and the Employer shall have the right to be represented by counsel.

## RULE NO. 11: NON-PARTICIPATING OR DEFAULTING PARTIES

A. If the Respondent fails to file a Response to the Demand/Request for Arbitration with NAM, or if any party fails to file and serve written submissions by the date fixed by the Arbitrator 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, then the Arbitrator(s) has broad discretion to grant a continuance or conduct the Arbitration in that party's absence, subject to NAM's confirmation regarding the payment fees for the matter.

B. The Arbitrator(s) shall not render a decision based solely on the failure of the defaulting party to comply in the above circumstances. The Arbitrator(s) shall require the submitting or appearing party to present such evidence as the Arbitrator(s) deems necessary for the making of the Award, including evidence that the non-participating or defaulting party was served with notice of the arbitration proceeding.

## RULE NO. 12: DISCOVERY

### A. Initial Disclosure

Within fourteen (14) calendar days following the appointment of an Arbitrator, the Parties shall provide each other with copies of all documents (except for privileged documents that are protected from disclosure because they involve attorney-client, doctor-patient, or other legally privileged or protected communications or materials) upon which they rely in support of their claims or defenses. Throughout the discovery phase, each Party is under a continuing obligation to supplement its disclosure.

B. **Other Discovery**

i. **Interrogatories/Document Requests**
Each Party may propound up to twenty (20) interrogatories (including subparts) to the opposing Party. Interrogatories are written questions asked by one Party to the other, which must be answered under oath. The Parties may also make requests for up to 30 documents upon which the responding Party relies in support of its answers to the interrogatories. Answers to interrogatories must be served within twenty-one (21) calendar days of receipt of the interrogatories.

ii. **Depositions**
A deposition is a statement under oath that is given by one Party in response to specific questions from the other Party, and it is usually recorded or transcribed by a court reporter. Each Party shall be entitled to take the deposition of up to three (3) individuals of the Party's choosing. The Party taking the deposition shall be responsible for all costs associated therewith, such as the cost of a court reporter and the cost of a transcript.

iii. **Additional Discovery**
Upon the request of any Party and a showing of substantial need, the Arbitrator may permit additional discovery, but only if the Arbitrator finds that such additional discovery is not overly burdensome and will not unduly delay conclusion of the Arbitration.

C. **Discovery Disputes**

The Arbitrator shall decide all disputes related to discovery. Such decisions shall be final and binding on the Parties. In ruling on discovery disputes, the Arbitrator shall be guided by the discovery rules contained in the Federal Rules of Civil Procedure.

D. **Time for Completion of Discovery**

All discovery must be completed within ninety (90) calendar days after the selection of the Arbitrator except for good cause shown. To expedite the Arbitration, the Parties may initiate discovery prior to the appointment of the Arbitrator.

## RULE NO. 13: HEARING PROCEDURE

A. **Witnesses**

Witnesses shall testify under oath, and the Arbitrator shall afford each Party a sufficient opportunity to examine its own witnesses and cross-examine the other Party's witnesses. Either Party may issue subpoenas compelling the attendance of any other person necessary for the issuing Party to prove its case.

i. **Subpoenas**
A subpoena is a command to an individual to appear at a certain place and time and give testimony. A subpoena also may require that the individual bring documents when he or she

gives testimony. The Arbitrator shall have the authority to enforce and/or cancel such subpoenas provided that such subpoenas are issued no less than ten (10) calendar days prior to the commencement of an Arbitration hearing or deposition. The Party issuing the subpoena shall be responsible for the fees and expenses associated with the issuance and enforcement of the subpoena and with the attendance of the subpoenaed witness at the Arbitration hearing.

ii. **Sequestration**
The Arbitrator shall ensure that all witnesses who will testify at the Arbitration are not influenced by the testimony of other witnesses. Accordingly, the Arbitrator may sequester all witnesses who will testify at the Arbitration, provided that the Arbitrator shall permit the Employee bringing the Arbitration and the Employee's designated representative to remain throughout the Arbitration, regardless of whether they testify at the hearing.

B. **Evidence**

The Parties may offer evidence that is relevant and material to the dispute and shall produce any and all non-privileged evidence that the Arbitrator deems necessary to a determination of the dispute. The Arbitrator need not specifically follow the Federal Rules of Evidence, although the Arbitrator may consult them to resolve questions regarding the admissibility of particular matters.

C. **Burden of Proof**

Each Party bears the burden of proving its claim or claims by a preponderance of the evidence. To prevail, the Party must prove a violation of applicable substantive law.

D. **Briefing**

Each Party shall have the opportunity to submit one pre-hearing brief and one post-hearing brief in support of its position. Briefs, which are written statements of facts and law, shall be typed and shall be limited in length to twenty (20) double-spaced pages.

E. **Transcription**

The Parties may arrange for transcription of the Arbitration by a certified reporter. The Employer is responsible for the costs of the reporter and of the transcript for the Arbitrator, if any. Each Party shall pay for its own copy of the transcript, if any.

F. **Consolidation**

i. **Claims**
The Arbitrator shall have the power to hear as many claims as the Parties may have against one another consistent with Rule 2 of these Rules. The Arbitrator may hear additional claims that were not mentioned in the Arbitration Request Form, 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.

ii. **Parties**
The Arbitrator shall not consolidate claims of different Employees into one proceeding unless NAM allows such consolidation in accordance with Rule 12 (F) (iii) immediately following.

iii. **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.

G. **Confidentiality**

All aspects of an Arbitration pursuant to these Rules, including the hearing and record of the proceeding, shall be confidential and shall not be open to the public, except (i) to the extent both Parties agree otherwise in writing, (ii) as may be appropriate in any subsequent proceeding between the Parties, or (iii) as may otherwise be appropriate, in response to a governmental agency or legal process.

All settlement negotiations, Mediations, and the results thereof shall be confidential.

## RULE NO. 14: SUBSTANTIVE CHOICE OF LAW

The Arbitrator shall apply the substantive law of the state in which the Employee is, was, or sought to be predominantly employed. For claims arising under federal law, the Arbitrator shall follow the substantive law applicable to the United States District Court for the District in which the Employee is, was or sought to be predominantly employed.

## RULE NO. 15: ARBITRATOR AUTHORITY

The Arbitrator shall conduct the Arbitration and shall have the authority to render a decision in accordance with these Rules in a manner designed to promote rapid and fair resolution of disputes. To that end, seven (7) days prior to the scheduled Arbitration hearing, the Parties may participate in a telephone conference with the Arbitrator. Where a Party has challenged the legal sufficiency of an asserted claim or defense in a pre-hearing brief, each Party may be heard. A Party making such a challenge should file the pre-hearing brief as early as possible to permit due consideration of the issue. The Arbitrator shall strike any legally deficient claim and/or defense by a ruling communicated to the Parties at least five (5) days prior to the scheduled Arbitration hearing. The Arbitrator shall have the authority to rule on motions during the course of the Arbitration process, provided other interested Parties have reasonable notice to respond to the motion.

A. **Jurisdiction**

The Arbitrator's authority shall be limited to deciding the claims, counterclaims, and defenses submitted for Arbitration. Unless the Employee is subject to a contract providing for the employment of the Employee under specified terms or for a given duration, the Employee's employment remains alterable at the discretion of the Employer and/or terminable at any time, at the will of either the Employee or the Employer, with or without just cause. Accordingly, the Arbitrator shall have no authority to require that the Employer have "just cause" to discipline or discharge an Employee unless specifically required by federal, state, or local law, or as a remedy for a violation of applicable law by the Employer with respect to the Employee.

B. **Sanctions**

The Arbitrator shall have the power to award sanctions against a Party for the Party's failure to comply with these Rules or with an order of the Arbitrator. These sanctions may include an assessment of costs, prohibitions of evidence or, if justified by a Party's wanton or willful disregard of these Rules, an adverse ruling in the Arbitration against the Party who has failed to comply.

## RULE NO. 16: AWARDS

Within twenty-eight (28) calendar days after receipt of post-hearing briefs, if any, the Arbitrator shall mail a written award to NAM specifying appropriate remedies, if any. In the Arbitrator's discretion, the award may include findings of fact and conclusions of law. The Parties to the Arbitration shall be provided with a copy of the Arbitrator's award.

## RULE NO. 17: REMEDIES AND DAMAGES

If the Arbitrator finds for the Employee, the Arbitrator, in his or her discretion, may award appropriate relief, including costs, in accordance with applicable law.

If appropriate relief includes reinstatement, such reinstatement will be to the position of employment the Employee held or, if such reinstatement is impractical, to a comparable position at the location of the Employee's last employment. If reinstatement at the place of the Employee's last employment is not practical, reinstatement will be to a comparable position at the Employer in the same general geographic market area.

The Arbitrator may award an assessment of costs as a sanction under Rule 14(B).

The Arbitrator is authorized to award attorneys' fees in accordance with applicable law. Any award shall be reasonable in light of the amount and complexity of work involved in the Arbitration and in accordance with customary billing rates of attorneys in the geographic area in which the Arbitration is held.

## RULE NO. 18: SETTLEMENT

The Parties may settle their dispute at any time. Prior to closure of the Arbitration hearing, the Parties may settle the case without involvement of the Arbitrator. Once the hearing has closed, settlement may take

place only with approval of the Arbitrator. At any point prior to the Arbitrator's issuance of an award, the Parties may, by agreement, refer their dispute to Mediation before a Mediator provided by NAM.

### RULE NO. 19: ENFORCEABILITY

The award rendered by the Arbitrator shall be enforceable and subject to the Federal Arbitration Act, 9 U.S.C. §1 et seq, and the state law in which the Employer is located, regardless of the state in which the Arbitration is held or the substantive law applied in the Arbitration.

### RULE NO. 20: APPEAL RIGHTS

Unless otherwise provided by law, the award rendered by the Arbitrator shall be final and binding as to both the Employee and the Employer.

However, if the parties mutually agree in writing to provide for an appeal process with respect to the arbitration, such appeal would then be subject to NAM's Appellate Dispute Resolution Rules and Procedures (available at www.namadr.com). For more information, please contact NAM at 800-358-2550 Appeals Department.

### RULE NO. 21: SEVERABILITY/CONFLICT WITH LAW

In the event that any of these Rules agreed upon by the Parties is held to be in conflict with a mandatory provision of applicable law, the conflicting Rule or Procedure shall be modified automatically to comply with the mandatory provision of applicable law. In the event of an automatic modification with respect to a particular Rule or Procedure, the remainder of these Rules shall not be affected. An automatic modification of one of these Rules or Procedures shall be applicable only in the Jurisdiction in which it is in conflict with a mandatory provision of law. In all other jurisdictions, these Rules shall apply in full force and effect.

## MEDIATIONS

### RULE NO. 22: COMMENCEMENT OF MEDIATION PROCEEDINGS

In the case of Mediation, Parties shall initiate Mediation as follows:

A. The Party initiating the Mediation process may send the other Party, through NAM, a Request for Mediation, pursuant to these Rules. The request should briefly identify the subject of the dispute with the Parties' contact information, such as the Parties' and their representatives' names, addresses, telephone and fax numbers.

B. Mediation proceedings are deemed commenced when the other Party accepts the request to mediate. If the acceptance is given orally, the Parties must confirm the agreement to mediate in writing on the Request for Mediation form or another form supplied by NAM. Such written form shall be forwarded to NAM and the other Parties.

C. If the other Party rejects the request to mediate, there will be no Mediation proceedings.

D. If the initiating Party does not receive a response within such other period as specified in the request form, the initiating Party may elect to treat this lack of response as a rejection of the invitation and may inform the other Party accordingly.

**RULE NO. 23: APPOINTMENT OF MEDIATOR(S)**

A. Once the Parties agree to mediate, NAM shall forward a list of 5 suggested Mediators to the Parties' for their consideration. The Parties each shall strike up to 2 Mediators and NAM will appoint a Mediator from among the named individuals the Parties found acceptable. In the event that NAM determines that a conflict exists which might compromise the neutrality of the remaining Mediator(s), NAM shall submit a second panel of three (3) Mediators from which each Party may strike one (1) name.

B. The Parties may also request that the NAM Administrator directly appoint one or more Mediators.

**RULE NO. 24: SUBMISSION OF STATEMENTS TO MEDIATOR**

A. The submission of a brief written statement by each party describing the general nature of their dispute and the points at issue may be made (a) at the request of the Mediator or (b) by the parties of their own choice.

B. The Mediator may request each Party to submit a further written statement of the Party's position and the facts and legal arguments in support thereof. The Parties may supplement this statement with documents or other evidence that they deem appropriate to their position.

C. At any stage of the Mediation proceedings, the Mediator may request a Party to submit such additional information as the Mediator deems appropriate.

**RULE NO. 25: REPRESENTATION AND ASSISTANCE**

The Parties may be represented or assisted by persons of their choice. The Parties shall communicate the names and addresses of such persons to the Mediator and all other Parties, including the NAM Administrator. Such communications are made to specify whether the appointments are made for the purposes of representation or assistance.

**RULE NO. 26: ROLE OF THE MEDIATOR**

A. The Mediator's role is to assist the Parties to reach an amicable resolution to their dispute. The Mediator is to preside over the Mediation in an independent and impartial manner.

B. The Mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the Parties, the usage's of the trade at issue, the circumstances surrounding the dispute, including any previous business practices between the Parties.

C. The Mediator may conduct the Mediation proceedings in any manner that he or she deems appropriate, taking into account the circumstances of the case, the requests of the Parties and the need for a speedy settlement of the dispute.

D. The Mediator may, at any stage of the Mediation proceedings, make proposals for the settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons for the proposal.

E. The Mediator must disclose any conflicts, potential or otherwise, including any financial or personal interest in the dispute or any event that may create a strong appearance of bias. The NAM Administrator immediately shall advise the Parties of a potential conflict of interest and the Parties shall have the opportunity to submit comments regarding whether the Mediator shall continue to serve. If the Parties are unable to agree on whether the Mediator shall continue service, the final decision as to the Mediator's continued service shall be made by the NAM Administrator.

F. The Parties have a duty to perform conflict checks upon the nominated Mediator and to communicate any potential conflicts of interest between the Parties and the Mediator as soon as they are discovered.

### RULE NO. 27: COMMUNICATION BETWEEN THE MEDIATOR AND PARTIES

A. The Mediator may invite the Parties to meet with the Mediator or may continue to communicate with them orally or in writing. The Mediator may meet or communicate with the Parties together or separately.

B. Unless the Parties have agreed upon the place where the meetings will be held, the Mediator or the NAM Administrator shall select the location of the meetings, taking into account the requests of the Parties.

### RULE NO. 28: DISCLOSURE OF INFORMATION

The Mediator may disclose any factual information received from one Party to the other Party, unless the Party providing the information requests that the Mediator keep the information confidential. The purpose of disclosing the factual information is to permit the other Party to respond and present explanations regarding the information submitted to the Mediator.

### RULE NO. 29: COOPERATION OF PARTIES WITH THE MEDIATOR

The Parties will cooperate in good faith and will endeavor to comply with the Mediator's requests to submit written materials, provide evidence and attend meetings.

## RULE NO. 30: SUGGESTIONS BY THE PARTIES FOR SETTLEMENT OF THE DISPUTE

Each Party may submit suggestions for the settlement of the dispute on its own initiative or at the request of the Mediator.

## RULE NO. 31: SETTLEMENT AGREEMENT

A. If a settlement appears likely, the Mediator may formulate the terms of a possible settlement agreement and submit the terms to the Parties for their consideration. If necessary, the Mediator may reformulate the terms of settlement based upon the Parties' recommendations and mutual agreement.

B. If the Parties reach an agreement on the settlement of the dispute, the Parties shall prepare a written settlement agreement setting forth the terms thereof. If requested by the Parties, the Mediator may draft or assist the Parties in drafting the settlement agreement.

C. By signing the settlement agreement, the Parties agree to be bound by the terms thereof and to conclude the dispute.

D. Fully executed copies of the settlement agreement shall be filed with the NAM Administrator and forwarded to all Parties.

## RULE NO. 32: TERMINATION OF MEDIATION PROCEEDINGS

The Mediation proceedings shall be terminated by one of the following:

A. A settlement agreement executed by the Parties;

B. A written declaration by the Mediator stating that, after consultation with the Parties, further efforts at Mediation are no longer justified;

C. A written declaration by all Parties addressed to the NAM Administrator stating that the Mediation proceedings are terminated.

D. A written declaration between the Parties and the Mediator, if appointed, stating that the Mediation is terminated.

## RULE NO. 33: ROLE OF THE MEDIATOR IN OTHER PROCEEDINGS

The Parties and the Mediator agree that the Mediator shall not act as an Arbitrator or as a Representative or counsel to a Party in any subsequent arbitral or judicial proceedings regarding the dispute that is the subject of the Mediation proceeding. The Parties also agree that they will not present the Mediator as a witness in any subsequent proceedings.

## RULE NO. 34: ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

The Parties agree not to rely upon or introduce as evidence in any subsequent arbitral or judicial proceeding, any of the following:

A. Views expressed or suggestions made by the other Party regarding the possible settlement of a dispute;

B. Admissions made by the other Party during the course of the Mediation;

C. Proposals made by the Mediator;

D. The fact that the other Party indicated a willingness to accept a proposal for settlement.