

Arbitration Rules

The Douglas Law Firm, LLC

Donald C. Douglas, Jr., Arbitrator

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The following rules shall govern all arbitrations in which Donald C. Douglas, Jr., is appointed as the Arbitrator:

Powers and Conduct

1. **POWERS AND DUTIES.** The Arbitrator has the power to:
 - a. determine his powers and duties under an arbitration clause;
 - b. interpret the Rules to the extent that they relate to his powers or duties;
 - c. sanction parties for failing to comply with any orders of the Arbitrator or any obligations under the Rules;
 - d. stay or dismiss proceedings for good cause, which may include agreement of the parties; and
 - e. take any actions and make any decisions that are necessary and proper to conducting a fair and efficient arbitration under the Rules.

2. **SETTLEMENT AND MEDIATION.** The Arbitrator shall encourage parties to discuss settlement on their own or with the assistance of a mediator. The Arbitrator should not pressure parties to settle, express a point of view on settlement, or participate in settlement discussions. The Arbitrator may mediate only with the written consent of all parties.

3. **EX PARTE COMMUNICATION.** Except as set out herein, once the Arbitrator is appointed he may not communicate with a party unless all other parties participate in the conversation or exchange of written messages. However, if, after receiving notice, a party fails to participate in a teleconference or video conference or fails to appear at a hearing, the Arbitrator may communicate with the participating parties despite that party's absence.

4. **DISCLOSURES OF POTENTIAL CONFLICTS.** The Arbitrator shall make every effort to disclose any known potential conflicts of interests, including any familial or business relationship with any party or witness. The parties shall also identify any potential conflicts or relationships with the Arbitrator immediately upon discovery of same. The Arbitrator shall determine whether any such potential conflict or relationship with any party or witness mandates disqualification of the Arbitrator.

Case Management

5. **DEFAULT TIMEFRAME.** Except as provided herein, the Arbitrator shall use reasonable efforts to issue a Final Award within six (6) months after being appointed. The Arbitrator shall schedule pre-hearing proceedings and hearings accordingly.
6. **EXPEDITED REVIEW.** If the parties jointly request expedited review, the Arbitrator shall make best efforts to issue a final award within ninety (90) days after being appointed.
7. **EXCEPTIONAL CASES.** If the Arbitrator determines that a case is unusually complex, or that a delay is necessary for other reasons, the Arbitrator may allow more time for either pre-hearing proceedings or a hearing within his discretion.
8. **TIMEFRAMES.** The Arbitrator may extend any timeframe for good cause but should do so sparingly. Failure of the arbitration to adhere to any timeframe specified herein shall not result in loss of jurisdiction or invalidate an arbitration award.
9. **INTERIM AND FINAL ORDERS.** The Arbitrator shall enter all such interim and final orders as he may determine necessary to implement, effect, and advance the arbitration.
10. **ARBITRABILITY.** Once appointed, the Arbitrator may issue a preliminary award that addresses whether the arbitration clause is valid, and whether it applies to the claims or counterclaims raised by the parties.

Conducting the Arbitration

11. **STATUS CONFERENCE.** Once appointed, an Arbitrator will schedule a status conference with the parties as quickly as possible. This conference may be held in person, by telephone, or by video conference. During the conference the Arbitrator will discuss:
 - challenges to the Arbitrator's jurisdiction;
 - discovery and motions;
 - the date, time, and place of the hearing;
 - witnesses and exhibits;
 - the treatment of confidential information and documents;
 - the scope and form of the Final Award;
 - any other matters the Arbitrator deems appropriate to consider; and
 - ability to conduct part or all of the arbitration via videoconference.

The Arbitrator will issue an interim scheduling order within five (5) days after the status conference.

12. **DISCOVERY.** To promote speed and efficiency, the Arbitrator, in his discretion, shall permit such discovery that is relevant to the claims and defenses at issue and is necessary for the fair resolution of a claim. The Arbitrator shall determine the limits of written discovery, depositions, and document production within his discretion. Expert discovery shall be specifically addressed and the disclosure of expert witnesses shall be sequenced in a fashion that will allow

fair discovery to proceed.

13. **MOTIONS.** The Arbitrator may allow motions, including motions for summary judgment, motions in limine, and other motions, which the Arbitrator, in his sole discretion, determines will add to the fair and efficient resolution of the case.

14. **DATE, TIME, AND LOCATION OF THE HEARING.** Unless the parties agree otherwise, the Arbitrator will convene an in-person hearing. The parties may authorize the Arbitrator to:

- conduct the hearing by telephone or videoconference;
- render an award based solely upon a written record; or
- convene an in-person hearing in which sworn statements are submitted in lieu of live testimony.

If the agreement to arbitrate does not specify where or when the hearing will take place, and if the parties cannot agree on a date, time, or location for the hearing acceptable to the Arbitrator, the Arbitrator, in his sole discretion, will determine an appropriate date, time, and location.

15. **SUBPOENAS OR SUMMONSES.** To the extent authorized by law, the Arbitrator may issue subpoenas or summonses for the attendance of witnesses or the production of documents. Parties are expected to produce witnesses who are in their employ or otherwise under their control without a subpoena or summons.

A subpoenaed or summoned person may object to the issuance of a subpoena or summons. The Arbitrator will promptly rule on an objection by weighing the burden on the objector of complying with the subpoena or summons against the potential value of the witness or documents to ensuring a fair hearing.

16. **INSPECTION OR INVESTIGATION.** If all parties agree or the Arbitrator determines that an inspection or investigation of a physical site is necessary, the Arbitrator will provide the parties with twenty (20) days advance notice of the date, time, and location of the inspection or investigation. All parties and representatives have the right to attend. An inspection or investigation must comply with all applicable laws regarding privacy and confidentiality.

17. **EXCHANGE OF INFORMATION.** At least twenty (20) days prior to the hearing, the parties must exchange copies of all exhibits they intend to introduce at the hearing and furnish a list of all witnesses they intend to call. A complete copy shall also be delivered to the Arbitrator. The Arbitrator may permit additional time to furnish rebuttal exhibits or exhibits pertaining to unanticipated issues. An Arbitrator may exclude evidence that a party fails to exchange in a timely manner.

18. **TRANSCRIPT.** If a party wishes to obtain a record of the hearing, it must inform the Arbitrator and the other parties of its intention to hire a reporter no less than ten (10) days prior to the hearing.

The Arbitrator may designate a transcript as the official record of the hearing if:

- The parties agree to share the costs of producing a transcript, including a copy for the Arbitrator;
- The parties authorize the Arbitrator to allocate the costs of producing the transcript, including a copy for the Arbitrator, in the award; or
- One party agrees to bear the costs of producing the transcript, including copies for the Arbitrator and the other parties.

19. **ATTENDANCE.** Arbitrations are confidential, private matters, not public forums. Generally, only the parties, their authorized representatives, and the court reporter (if any) may attend a hearing. Subject to the Arbitrator's approval, the parties may agree to allow other participants, and the Arbitrator may permit others to attend if their presence would promote the fairness or integrity of the hearing.

If a party so requests, an Arbitrator may permit witnesses to attend only while testifying and may forbid them from discussing their testimony with other witnesses until the hearing is closed.

20. **OATHS.** The Arbitrator may require witnesses to testify under an oath administered by the Arbitrator or another person qualified to administer oaths.

21. **CONDUCT OF HEARINGS.** The Arbitrator will afford all parties an equal and adequate opportunity to present their case. Generally, the Claimant will present evidence to support its claims (and refute any counterclaims), and the Respondent (the party upon which the claim has been filed) will present evidence to refute these claims (and support any counterclaims).

Witnesses will be subject to both direct and cross examination and to questioning by the Arbitrator.

The Arbitrator may vary the manner in which the hearing is conducted in order to promote the fair and speedy resolution of the dispute.

22. **EVIDENCE.** The parties may offer whatever evidence the Arbitrator regards as relevant and material to the dispute. Deposition transcripts and affidavits may be submitted for consideration, subject to the Arbitrator giving whatever weight or probative value to such submissions as the Arbitrator deems appropriate.

The Arbitrator may order the parties to produce additional information he regards as necessary to understand the dispute and reach a full and fair resolution.

In determining what evidence to admit, the Arbitrator need not follow rules applicable in court proceedings, but should generally permit evidence to be introduced that is relevant, material, and will allow for a fair adjudication of the matter. Unless the parties agree otherwise, the Arbitrator should not allow them to introduce information that is determined to fall within an applicable evidentiary privilege.

23. **FAILURE TO APPEAR.** If a party or a party's authorized representative who has been notified of a hearing fails to appear, or fails to request and receive a postponement, the Arbitrator must take evidence from whichever parties and representatives are present.

Close of Hearing Record and Hearing

24. **GENERAL RULE.** When the parties indicate that they have no further evidence to present, or the Arbitrator determines that the record is complete, the Arbitrator will declare the hearing record is closed.

25. **POST-HEARING BRIEFS.** If the Arbitrator sets a schedule for the submission of post-hearing briefs or other documents, the Arbitrator will declare that the hearing is closed as of the final due date for such submissions. However, no party shall be entitled to introduce any additional evidence into the hearing record during such post-hearing briefing period, except upon consent of the parties or for good cause shown.

26. **DEADLINE.** The Arbitrator must issue an award within thirty (30) days after the hearing is closed unless the Arbitrator and all parties agree to extend this deadline. The Arbitrator may extend the time for issuing an award in unusual or extenuating circumstances.

Interim and Final Awards

27. **INTERIM RELIEF.** The Arbitrator may issue interim relief, including an injunction, to maintain the status quo in the dispute until a Final Award is issued. Interim relief will not prejudice the rights of the parties or affect the final determination of the dispute. An interim award may assess costs, fees, and interest associated with the relief awarded.

28. **BASIS OF FINAL AWARD.** The Final Award must be based on evidence presented at a hearing. If a party fails to attend the hearing its evidence need not be considered.

29. **CONSENT AWARD.** If the parties settle a case before a Final Award is issued, they may request the arbitrator to issue the terms of the agreement in the form of a Consent Award. The Consent Award must set forth how costs and fees associated with the arbitration will be paid, including but not limited to attorneys' fees and the Arbitrator's fees and expenses.

30. **FAILURE TO PROSECUTE.** If, prior to the close of the hearing, a party fails to pursue a claim or counterclaim, the Arbitrator may issue a Final Award dismissing all or part of a case either with or without prejudice

31. **SCOPE OF RELIEF.** The Arbitrator may award any relief authorized by contract or applicable law that appears to be fair under the circumstances, including specific performance of a contract.

32. **FORM.** An award must be in writing and signed by the Arbitrator, in compliance with applicable state and federal law.

33. **REASONING.** The Arbitrator should provide a concise statement of the reasons supporting his award unless the parties agree prior to the completion of the arbitration hearing that a reasoned award is not required.

34. **CORRECTIONS.** Within fifteen (15) days after receiving an award, a party may request the Arbitrator to correct clerical, typographical, or computational errors in the award. The other parties will have fifteen (15) days to respond to this request. The Arbitrator must respond within thirty (30) days after receiving the request. The Arbitrator may not reconsider the merits of an award after it has been issued. He may alter the award only to correct inadvertent mistakes.

35. **EFFECT AND USE.** A Final Award or a Consent Award fully and finally resolves all claims and counter-claims presented in arbitration. An award may be entered and enforced in any state or federal court with jurisdiction over a case. The Arbitrator shall maintain the confidential nature of the arbitration proceeding and any award, except as necessary in connection with a judicial challenge to or enforcement of an award, or unless as otherwise required by law.

Fees and Expenses

36. **BY AGREEMENT:** If the parties have agreed on the allocation of the Arbitrator's fees and expenses, and/or the parties' attorney fees, The Arbitrator must implement their agreement unless it is contrary to applicable law.

37. **STANDARD ALLOCATION:** if the parties have not specified how fees and expenses should be allocated, the arbitrator will:

- require the parties to pay their own attorney's fees and the expenses of the witnesses they produce; and
- split the costs of the arbitration process, including the Arbitrator's fees and expenses, evenly between the parties.

38. **MISBEHAVIOR:** The Arbitrator may require a party to pay the fees and expenses incurred by the Arbitrator and/or the attorney fees of other parties, or any portion thereof, as a result of the party's lack of cooperation or abuse of the process.

39. **DEPOSITS.** The Arbitrator may require the parties to deposit in advance sufficient funds to cover the costs of the anticipated costs of the arbitration, including the Arbitrator's fees and expenses. The Arbitrator may require the parties to provide additional funds whenever the amount on deposit appears to be insufficient to cover the costs of the arbitration, including the Arbitrator's fees and expenses.

If the Arbitrator does not receive the required amount, the Arbitrator may suspend proceedings pending receipt of these funds. The Arbitrator may also sanction a party for non-payment unless the party can prove to the Arbitrator's satisfaction that paying the deposit would cause financial hardship. A party may lift the suspension by depositing the amount due from another party, and may request the Arbitrator to take this additional payment into account in the award.

If the Arbitrator concludes that the parties are not going to provide the required deposit, he may terminate proceedings.

40. **FINAL ACCOUNTING.** After an award is issued and the Arbitrator provides a final invoice, the Arbitrator will provided an accounting to the parties of all deposits, costs, expenses, and fees.

Activities Subsequent to the Final Award

41. **ENFORCEMENT OF AWARD.** The Arbitrator shall not take any action to make any Final Award judicially enforceable. The prevailing party or parties are solely responsible for any enforcement of any Final Award.

42. **RELEASE OF DOCUMENTS.** The Arbitrator will not release documents from a case file, including an award, unless:

- he is required to do so by a valid court order or other valid legal process; or
- a party requests the Arbitrator to provide copies (certified or not) of documents in his possession and pays appropriate fees.

The Arbitrator shall not release his or her notes, drafts of awards, or any other such documents for any reason.

43. **JUDICIAL PROCEEDINGS.** The Arbitrator is not a necessary party to any judicial proceedings related to any arbitration conducted under these Rules.

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