

*To Be Adapted to the Particular Case
(Each order is customized; the following sets forth
some possible draft language to be considered)*

Charles J. Moxley, Jr.

----- X

_____, : Case No. _____

Claimant, :

- and - :

_____, :

Respondents. :

-----X

**REPORT OF PRELIMINARY HEARING
AND SCHEDULING ORDER**

Pursuant to the _____ Rules of the _____ (the “_____”), a preliminary hearing was held in the above matter by telephonic conference call on _____, before Arbitrators _____, _____, and _____ (the “Arbitrators”). Appearing at the hearing were _____, of _____, attorneys for Claimant _____ (“Claimant”), and _____ of _____, attorneys for Respondent _____ and _____ (“Respondents”) (collectively, the “Parties”).

Following are the matters agreed to by the Parties and/or directed by the Arbitrators.

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Acceptance of Panel

1. All Arbitrators have made disclosures. The Parties acknowledge receipt of same and consent to proceed with the Panel as presently constituted.

Ex Parte Communications

2. There will be no *ex parte* communications between the appointing parties and the party-nominated arbitrators going forward, with the following exception: The party-nominated Arbitrators may submit their statements for arbitration services to their appointing parties, as previously agreed; provided, however, that such statements will be general in nature so as not to disclose the thinking or decision-making processes of the Arbitrators.

Applicable Rules

3. This arbitration will be conducted pursuant to the _____ of the _____, as amended and in effect _____, for individually negotiated contracts (the “_____”).

Schedule

4. The Parties confirm that they waive the provisions of Section ___ of the _____ relating to the time period within which the Arbitrators must render their award in this proceeding.

Number of Arbitrators

5. The arbitration provision of the Parties’ License Agreement (the “Agreement”) applicable to this dispute provides for 3 arbitrators. The Parties confirmed that they have agreed to have this dispute heard by one arbitrator, the Arbitrator.

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**Contract Provision Requiring Hearing to Commence
 Within Days of Selection of the Third Arbitrator**

6. The arbitration clause in this matter provides for the hearing to commence within ___ days of the appointment of the third arbitrator, unless the Parties agree otherwise. The Parties have agreed as follows in this regard: _____.

Possible Status Quo Order

7. The Parties will promptly meet and confer in an effort to agree to a status quo order with respect to this matter. In advance of such discussions, Claimant will provide Respondent with a proposed form of such order. Any status quo order agreed to by the Parties will be submitted to the Arbitrator to be “so ordered.”

8. A follow-up conference call with the Arbitrator with respect to a possible status quo order will be held at _____.m. on _____, in a conference call to be arranged by the _____, provided, however, that, if the Parties resolve the matter, they will so advise the _____ and the call will be cancelled.

Respondent’s Motion to Stay or Limit the Scope of this Arbitration

9. The Parties will meet and confer concerning Respondent’s request for a stay of this arbitration or a limitation on its scope.

10. If the Parties are unable to agree on the matter, Respondent may, by _____, serve and file its motion seeking to stay this arbitration or limit its scope. Absent good cause shown or agreement by the Parties, such motion papers, not counting exhibits, will be limited to ten (10) pages.

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11. By _____, Claimant will respond to Respondent's said motion. Absent good cause shown or agreement by the Parties, such response, not counting exhibits, will be limited to ten (10) pages.

12. Oral argument on the motion will be held with the Arbitrators on _____ at _____ .m., in a conference call to be arranged by the _____.

Acceptance of Arbitrator

13. The Parties agreed that they have accepted Arbitrator _____ as the Arbitrator in this arbitration, notwithstanding that Mr. _____ is not an active or retired official of an insurance or reinsurance company.

Respondent's Motion as to Arbitrability

14. Respondent asserts that, with respect to this matter, Claimant, by _____, waived its right to have this dispute arbitrated and hence that this arbitration should be dismissed. Claimant disputes that any such waiver took place. Respondent intends to make a motion to dismiss on the ground that the Parties' instant dispute is not arbitrable as a result of the alleged waiver.

15. The following schedule will apply with respect to said motion:

- Respondent will interpose its motion and supporting papers by _____;
- Claimant will interpose its opposing papers by _____;
- Respondent will interpose its reply papers, if any, by _____; and
- Oral argument will be heard on the motion on _____ at _____ .m. New York time, in a conference call to be arranged by the _____.

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Conditional Scheduling Order for the Case Going Forward

16. The contemplated motion as to arbitrability raises the question as to whether this arbitration will proceed.

17. Accordingly, the following schedule is set forth provisionally, subject to the Arbitrator's ruling on said motion.

Arbitrability

18. The Parties agree that all claims presently asserted in this arbitration are arbitrable.

Further Pleadings

19. Claimant will serve and file its Amended Demand for Arbitration by _____, setting forth in detail the factual and legal bases of Claimant's claims in this arbitration and attaching the documents upon which Claimant relies for said claims.

20. Respondents will serve and file their Answer to Claimant's Amended Demand for Arbitration by _____, setting forth in detail the factual and legal bases of Respondents' defenses in this arbitration and attaching the documents upon which Respondents rely for said defenses.

Respondents' Answer

21. By _____, Respondents will serve and file their Answer in this arbitration. The Answer will respond with specificity to the particularized allegations of Claimant's Notice of Arbitration and Statement of Claim (the "Statement of Claim"), as well as setting forth Respondents' own allegations as to the matters at issue in this arbitration.

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22. The Answer, when interposed, will be deemed confidential, for use in this arbitration only; provided, however, that within ___ days of the discovery master's so ordering a confidentiality order in this matter (discussed below), Respondents will specifically designate the portions of their Answer they deem confidential pursuant to said order.

Amended Pleadings

23. By _____, Claimants will serve and file their Demand for Arbitration and Second Amended Statement of Claim ("Second Amended Statement of Claim"), setting forth their claims with particularity, including their claims as to _____, attaching to said amended pleading the documents upon which Claimants rely for the allegations set forth therein. Except as otherwise provided, the compliance time as to all deadlines set forth herein is _____ on the specified date.

24. By _____, Respondent will serve and file its Written Statement of Defense ("Answer to Claims"), including its counterclaims, if any, setting forth with particularity its response to the allegations set forth in Claimants' Second Amended Statement of Claim and the factual and legal bases for its counterclaims, if any, attaching to said pleading the documents upon which Claimants rely for the allegations set forth therein.

25. By _____, Claimants will serve and file their Written Statement of Defense to any counterclaims asserted by Respondent in this matter, setting forth with particularity their response to the allegations set forth in Respondent's Answer to Claims, attaching to said pleading the documents upon which Respondent relies for the allegations set forth therein.

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Pleadings

26. The Parties agreed that the pleadings are closed in this matter. No amendments or further pleadings are contemplated.

Potential Dispositive Motions

27. In the event a Party wishes to make a possible dispositive motion, that Party will, by _____, serve and file a letter of no more than three pages summarizing the contemplated bases for such a motion and explaining why, in that Party's view, the making of the motion would foster the efficient administration and resolution of this case.

28. The other side will thereafter have until _____ to respond to the foregoing letter with its own letter of no more than three pages.

29. Counsel for the Parties will thereafter confer by _____ as to whether, in their respective views, the contemplated motion would contribute to the efficient administration and resolution of the case.

30. If, after the Parties so confer, either side still wants to make such a motion, the side seeking to make the motion will so advise the Arbitrator and a conference call will be held with the Arbitrator on _____ at _____.m. to discuss the proposed motion.

31. No dispositive motion may be made after _____.

Substantive Motions

32. No substantive motions are contemplated in this arbitration.

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Respondent's Motion for a Stay

33. With respect to Respondent's motion to stay this arbitration based on developments in parallel litigation between the Parties and others in Supreme Court, New York County, the Arbitrators denied said motion, subject to leave to renew, should the applicable facts and circumstances change.

Claimant's Motion for Summary Disposition

34. With respect to Claimant's motion for summary disposition dated _____, Respondents will, by _____, interpose their papers in opposition to said motion.

35. Because of the Arbitrators' familiarity with the case and the issues raised, Respondents' opposing memorandum may consist largely of bullet points without extensive elaboration. Respondents advise that they expect to be able to limit the memorandum to ___ pages, double-spaced.

36. By _____, Claimant will submit its reply papers, if any, with such papers being limited to ___ pages, double-spaced.

37. Oral argument on this motion will be held before the Arbitrators on _____ at _____ p.m., in a conference call to be arranged by the _____.

Motion to Strike

38. Respondents assert that certain allegations contained in Claimant's Statement of Claim should be stricken. Claimant opposes the striking of any portion of his Statement of Claim.

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39. By _____, Respondents will serve and file their papers in support of their motion to strike in this regard, with such papers being limited to __ pages, double-spaced.

40. By _____, Claimant will serve and file his opposing papers on this motion, with such papers to be limited to __ pages, double-spaced.

41. By _____, Respondents will interpose their reply papers, if any, on this motion, with such papers to be limited to __ pages, single-spaced.

42. This motion will be heard by the Arbitrators in a conference call on _____ at _____.m., with __ minutes being allotted to the call. The call will be arranged by the _____.

Respondents' Possible Motion to Disqualify Claimant's Counsel

43. Respondents advised that they are considering a motion to disqualify Claimant's counsel in this arbitration. The Arbitrators reminded Counsel that there is case authority in New York to the effect that a motion to disqualify adversary counsel in an arbitration is for the courts, not arbitrators, to decide.

44. By April _____, Respondents will advise the Arbitrators what, if anything, they intend to do with respect to this possible motion.

45. The Arbitrators have determined that, if the Parties, based on conformed consent, agree to have the Arbitrators hear such a motion, the Arbitrators will hear it.

Confidentiality

46. The Parties have been working on a draft order as to confidentiality. The Parties will continue this effort and will, by _____, submit to the discovery master (discussed below) either a stipulated order or their respective arguments as to their disagreement as to same.

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47. Any dispute between the Parties as to the form of a confidentiality order in the case will be addressed in a conference call with the discovery master, to be scheduled as necessary.

Confidentiality

48. The Parties will consult with each other with respect to entering into a stipulation of confidentiality as to documents in the case and as to this proceeding as a whole.

49. Assuming the Parties decide to enter into such a stipulation, they will, by _____, submit said stipulation to the Tribunal to be so ordered; provided, however, that, if the Parties want to enter into a stipulation along these lines but are unable to agree to the language thereof, they may present the matter to the Arbitrator for conferencing.

Interview of Claimant's Chief Actuary

50. Claimant has advised that Claimant's chief actuary has knowledge as to the calculation of the amount of Claimant's claims in this arbitration. To expedite this arbitration and hopefully lessen the scope of discovery, Claimant has agreed to make its chief actuary available for interview by Respondents in a conference call to be arranged and participated in by Counsel for the Parties in this arbitration.

51. Claimant may, if it chooses, have a consultant or expert participate in the foregoing conference call with Claimant's chief actuary; provided, however, that the identify of any such consultant or expert should be disclosed to Claimant at least 24 hours in advance of the call.

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52. This conference call with Claimant's chief actuary will take place on _____, or such other date as the Parties may agree.

Charts or Diagrams Identifying Relevant Entities and Other Relationships and Events

53. By _____, the parties, either jointly or severally, depending on their ability to agree on the matter, will present charts or diagrams to the arbitrators setting forth the various ownership interests, contractual relationships, transfers, assignments, changes of name or identity, and the like as between the entities and other persons relevant to this matter.

Discovery Master

54. Issues as to discovery and routine administrative and scheduling matters will be heard by the chair, Arbitrator _____, as discovery master; provided, however, that, if any party or the discovery master wants the entire panel to hear any such matter, the entire panel will hear it. In the event of the chair's unavailability to hear any matter intended for the discovery master, the chair may designate either of the other Arbitrators to serve as discovery master. All Arbitrators and the _____ will be copied on communications between the Parties and the discovery master.

Discovery Master

55. By _____, the Parties will advise the Arbitrators whether they want issues as to discovery and routine administrative and scheduling matters to be heard by the chair as discovery master or by the entire Panel; provided, however, that, if the Parties desire generally to have such matters heard by the chair, they may, nonetheless, with respect to any particular matter

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or issue, thereafter request that said matter or issue be heard by the entire Panel, in which case the entire Panel will hear it.

Reliance Documents

56. By _____, each side will produce the documents upon which it relies in this arbitration for its claims, counterclaims or defenses, except that a side is not required to re-produce any such documents that it has previously produced in this arbitration.

57. It is not contemplated at this time that a separate schedule will be established for production of reliance documents. Rather, we will go through the normal processes of documents requests, objections, and the like, and of the pre-hearing designation of exhibits.

Document Production as to Documents other than Reliance Documents

58. The Parties will exchange document requests as to documents other than reliance documents by _____.

59. The Parties will exchange their responses and objections, if any, to such document requests by _____.

60. The Parties will meet and confer by _____ with respect to objections to document requests. In the interest of avoiding undue expense and delay in this arbitration, the Parties are encouraged to work out any discovery disputes they may have.

61. By _____, the Parties will submit letter briefs to the Arbitrator concerning any unresolved disputes as to document production.

62. Oral argument will be held with the Arbitrator on any open discovery issues on _____ at _____ .m., in a conference call to be arranged by the _____.

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63. The Parties will produce all unobjected to documents by _____.

Document Production

64. The parties will exchange document requests by _____.

65. Document requests should generally comply with the following:

- They should be limited to documents that are directly relevant to significant issues in the case or to the case's outcome;
- They should be restricted in terms of time frame, subject matter and persons or entities to which the requests pertain; and
- They ordinarily should not include broad phraseology such as "all documents directly or indirectly related to."

66. The Parties will serve and file their responses and objections, if any, to document requests by _____.

67. The parties will meet and confer by _____ with respect to any then-existing objections to document requests.

68. By _____, the Parties will submit letter briefs to the discovery master concerning any remaining disputes as to document production.

69. Oral argument will be held with the discovery master on any open discovery issues on _____ at _____.m., in a conference call to be arranged by the _____.

70. The Parties will make their document productions on a rolling basis, starting on _____, with document production to be completed by _____, it being expected that the Parties will produce significant blocks of documents as they become available during the period of rolling production.

71. By _____, the Parties will serve and file their privilege logs in this matter. It is anticipated that counsel will meet and confer by _____ as to the approach to be taken

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with respect to privilege logs in the case, including the use of categorical objections, in an effort to work out an agreed approach; provided, however, that, if the Parties are unable to agree in this respect, they may schedule a conference with the discovery master as to any such disagreement.

Electronic Discovery

72. E-discovery should generally be consistent with the following:

- There shall be production of electronic documents only from sources used in the ordinary course of business. Absent a showing of compelling need, electronic documents are not required to be produced from back-up servers, tapes or other media.
- Absent a showing of compelling need, the production of electronic documents shall normally be made on the basis of generally available technology in a searchable format which is usable by the party receiving the e-documents and convenient and economical for the producing party. Absent a showing of compelling need, the parties need not produce metadata, with the exception of header fields for email correspondence.
- Where the costs and burdens of e-discovery are disproportionate to the nature and/or gravity of the dispute or to the relevance of the materials requested, the Arbitrators will consider either denying such request or ordering disclosure on the condition that the requesting party advance the reasonable costs of production to the other side, subject to further allocation of costs in the final award.

73. By _____, the Parties will meet and confer as to the parameters of electronic discovery in this matter, addressing such issues as search terms and the possible testing thereof, time periods, custodians, hit counts, format in which documents will be produced, the possible use of predictive coding, metadata and other points relating to electronic discovery that may arise.

74. By _____, the Parties will submit letter briefs to the discovery master with respect to any disputes as to e-discovery.

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75. Oral argument will be heard on any such discovery disputes as to e-discovery with the discovery master on _____ at ____ p.m., in a conference call to be arranged by the _____. To the extent technical issues are expected to be raised, each side should have its technical experts available for this call.

76. The Parties will make their document productions as to electronic materials on a rolling basis, starting on _____, with document production of such materials to be completed by _____.

Witness Statements

77. It is not contemplated that the Parties will submit witness statements in this arbitration.

Witness Statements and Experts' Reports

78. The Parties agree that it would make sense in this case to have witnesses present their direct testimony by sworn witness statements, so as to provide disclosure by each side of the direct testimony it expects to present at the hearing.

79. The Parties further agree that expert witnesses in the case will present sworn experts' reports and that such reports will serve as the direct testimony of the experts.

80. Except as otherwise agreed by the Parties, the witness statements and experts' reports will have attached to them the documents to which the witnesses make reference in their witness statements or reports.

81. No witness statement or expert's report will be taken into consideration by the Arbitrators unless the witness is presented for cross-examination at the hearing.

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82. Each side will be permitted a warm-up period of approximately ___ minutes for the witnesses it presents.

83. Respondents advise that they contemplate presenting expert testimony by an expert in the auditing of legal bills (“Respondents’ Auditing Expert”).

84. By _____, Claimant will serve and file a witness statement setting forth, with respect to the different phases of the case in the Underlying Litigation, Claimant’s testimony as to what it contends to be the need for and reasonableness of the legal services for which it billed Respondents for such phases of the Underlying Litigation.

85. By _____, Respondents will serve and file the report of Respondents’ Auditing Expert.

86. By _____, Respondents will also serve and file the witness statement of any other expert witness they intend to offer on the subject of Claimant’s bills to Respondents in the Underlying Litigation.

87. By _____, Respondents will also serve and file the witness statement of _____ (“_____”).

88. By _____, Claimant will interpose its opposing witness statements or experts’ reports, if any.

89. It is contemplated that the above-referenced witness statements and experts’ reports will be no more than ___ pages, single-spaced, although the Parties may exceed that length if they regard it as necessary to present their claims or defenses.

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Expert Witnesses

90. The Parties have not yet decided whether they will want to present expert testimony in the case. To the extent that either side decides that it wants to do so, the following procedures will apply.

91. By _____, each side will serve and file a letter identifying any expert witnesses it expects to call at the hearing in this matter.

92. By _____, each side will serve and file its experts' reports, if any.

93. By _____, each side will serve and file its opposing experts' reports, if any.

94. The reports of the expert witnesses will serve as the direct testimony of the witnesses; provided, however, that the Parties may present their expert witnesses for a "warm up" period of direct testimony lasting approximately __ minutes.

95. The Arbitrators reserve the option of "hot-tubbing" expert witnesses from both sides on particular topics, so the Arbitrators may pose questions to such witnesses at the same time, to the extent it seems helpful. The Parties will arrange the timing of the testimony of their respective expert witnesses accordingly.

96. It is not contemplated that there will be depositions of expert witnesses in the case.

Proceeding on Documents

97. Based on the request of Claimant, this case will proceed based on the submission of documents; provided, however, that, should Respondents request a hearing, whether in person

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or by telephone, or a preliminary hearing (by telephone), that request will be taken into consideration by the Arbitrators.

98. Specifically, notwithstanding Respondents' failure to appear in this matter to date, Respondents are invited to appear and defend this arbitration going forward, as the Arbitrators would prefer to hear this matter based on hearing both sides' contentions and proofs.

99. So that this matter may proceed expeditiously, Respondents are directed to advise the ____ within five days of the date of this order if they intend to appear and defend the case. If Respondents advise that they intend to appear and defend the case, a further preliminary hearing will be held promptly to discuss how the case will be administered. If Respondents do not appear and defend the case, the case, as set forth herein, will be heard based on documents and a follow-up conference call of the Arbitrators with the Parties.

100. Regardless of whether they appear and defend the case, Respondents are to be served with copies of all papers filed with the ____ in the case simultaneously with such filing.

Documentary Submissions

101. Subject to the above, the following schedule shall apply to this case:

- Claimant shall have until _____, to interpose its documentary case;
- Respondents shall have until _____, to interpose their documentary case;
- Claimant shall have until _____, to interpose its reply documentary case, if any; and
- A conference call will be held with the Parties and the Arbitrators on _____ at _____.m. for the Parties to submit any final arguments or proof to the Arbitrators with respect to their claims or defenses in the case before the record is closed and the Arbitrators decide it.

102. This schedule is established pursuant to the timeframe dictated by the Parties' arbitration agreement.

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Unproduced Documents

103. Any exhibit offered at the hearing that was responsive to a discovery request served upon the offering party, but which was not produced in response thereto on or before the date set for such production, will not be received in evidence at the hearing, absent good cause shown.

Privilege Issue as to _____

104. At their meet and confer with respect to discovery issues on _____, the Parties will discuss the practical criteria for defining what documents associated with _____ will be treated as privileged for purposes of this arbitration.

105. If the Parties are unable to agree on the parameters of such privilege insofar as concerns documents associated with _____, the matter may be raised in the conference call with the discovery master scheduled for _____ at _____.m.

Proportionality

106. The Arbitrators are concerned that the amount of time and expense that go into this matter be reasonably proportionate to what is at issue in the case, so the Parties may receive the arbitral advantages of expedition and economy.

107. The Parties are expected to maintain such proportionality in the discovery and other phases of this case.

108. To the extent a party demands discovery beyond that which is proportionate the Arbitrators will, upon request, consider cost-shifting.

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Depositions

109. Claimant wants to conduct five or more depositions in this arbitration.

Respondents argue that this is too many depositions and that their number and duration should be limited.

110. It is anticipated that the Parties may have a better idea of what depositions are necessary and their appropriate scope after document production has been conducted.

111. The Arbitrators have provisionally ruled that each side may take ___ hours of depositions, limited to ___ witnesses per side; provided, however, that these parameters are subject to revisiting as document production proceeds in the case.

112. The depositions in the case will be conducted in _____ and are to be completed by _____.

Depositions

113. The Parties will be limited to _____ depositions each, with the total depositions to be taken by each side not to exceed _____ hours.

Fact Discovery Cut-Off

114. All fact discovery in the case will be completed by _____.

Discovery or Testimony from Associated Non-Parties

115. The Arbitrators expect the Parties to cooperate in making reasonably necessary discovery or testimony available from entities or persons whose cooperation they are able to secure, based upon their relationship or influence with such entities or persons; provided, however, that the provision of such discovery or testimony by such entities or persons is

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understood to be subject to whatever objections such entities or persons might have to individual items of discovery that are sought in the case.

116. The Parties agreed, in this regard, to attempt to make former employees and associated persons available for discovery and testimony.

Related Entities

117. Claimant advised that it will make its affiliates available for testimony or disclosure in this arbitration, to the extent said affiliates may have documents or other information relevant to matters at issue in the arbitration.

Appearance of Messrs. _____ and _____ at the Hearing

118. By _____, Respondent will attempt to ascertain and report back to the arbitrators and to Claimant whether Messrs. _____ and _____ will agree to come to the hearing without the necessity of a subpoena and, assuming they will so appear, whether they will do so in person or by video conference or in some other way.

Discovery from the _____ Entities and _____

119. The Arbitrator advised that the Tribunal expects the Parties to cooperate in making discovery available from entities or persons whose cooperation they are able to secure based upon their relationship or influence with such entities or persons; provided, however, that the provision of such discovery by such entities or persons is understood to be subject to whatever objections such Parties might have to individual aspects of such production and to the rulings of the Tribunal thereon.

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120. In this connection, Respondent has agreed to make discovery available from the _____ entities, including _____, _____, and _____.

121. Both sides will request of _____ (“_____”) that it cooperate in making discovery available to the Parties in this arbitration and will report back to each other and to this Tribunal by _____ as to whether such cooperation from _____ will be forthcoming.

Subpoena, If Necessary, to _____

122. If neither side is able to arrange agreement by _____ to provide discovery in this arbitration without the necessity of a subpoena, either side may submit a subpoena to the Arbitrator seeking production of documents by _____, with such subpoena to be submitted to this Tribunal, on notice to the other side, on _____, when the Parties exchange their document requests.

123. The other side will thereafter have three (3) business days, following the submission of such a subpoena to the Arbitrator, to object thereto.

124. Any such subpoena will be submitted to the Arbitrator in Word format and will contain a provision to the effect that any issue or objection the recipient has as to the documents requested may be raised with the Arbitrator in this arbitration, in a conference call with the Arbitrator and counsel for the Parties.

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Other Subpoenas

125. If either side wants to subpoena any other entity or person, it will submit its proposed subpoena(s) to the Arbitrator by _____, if the subpoena is for discovery purposes, and by _____, if the subpoena is for the hearing.

126. The other side will thereafter have three (3) business days, following the submission of such a subpoena, to object thereto.

127. Any such subpoena will be submitted to the Arbitrator in Word format and will contain a provision to the effect that any issue or objection the recipient has as to the documents requested may be raised with the Arbitrator in this arbitration, in a conference call with the Arbitrator and counsel for the Parties.

Subpoenas

128. By _____, the Parties will meet and confer as to any non-party witnesses from whom documents or testimony is sought and will submit subpoenas to the discovery master with respect to any such documents or testimony that is not otherwise available.

129. Any requests for documents submitted by subpoena directed to non-parties should be narrowly drawn and should not request documents already in the possession, custody or control of the party seeking such production.

Status Conferences

130. Status conferences will be held with the discovery master on _____ at _____ .m. and on _____ at _____ .m., in conference calls to be arranged by the _____.

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Stipulated Facts

131. It is not contemplated that the Parties will agree to stipulated facts in this arbitration.

Possible Stipulated Facts

132. The Parties will confer by _____, as to whether they regard it as worthwhile to attempt to agree to stipulated facts, and, if so, will establish a schedule for working out such stipulated facts and will advise the Arbitrators as to said schedule by _____.

Witness Lists

133. By _____, the Parties will exchange lists of witnesses they expect to call at the hearing. As to any such witnesses who are not known to the other side, the side identifying such witness will set forth on the witness list the witnesses' names and current business affiliations and will describe the general areas of the witnesses' expected testimony.

Final Pre-Hearing Status Conference

134. A final pre-hearing status conference will be held with the Arbitrators on _____ at _____.m., in a conference call to be arranged by the _____.

Hearing Exhibits

135. By _____, the Parties will identify to one another the exhibits they expect to use at the hearing.

136. By _____, the Parties will meet and confer in an attempt to agree on joint exhibits to be submitted at the hearing. The Parties' stipulation to the inclusion of documents as joint exhibits does not signify agreement with the documents, but rather only that the admission

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of such documents into evidence at the hearing is not disputed. Such exhibits will be organized in binders with tabs.

137. By _____, the Parties will finally establish the binders of joint exhibits and provide to one another binders of any additional exhibits they intend to offer into evidence at the hearing. Subject to the Parties' agreeing on some other approach, as expedient, individual exhibits marked by Claimant will start with the number ___ and those marked by Respondents will start with the number ___.

138. The Parties are requested to organize the various exhibits in the tabbed binders in the way that seems most helpful, whether in chronological order or by issue or the like.

139. Except for good cause shown, documents that have not been identified as exhibits will not be admitted into evidence at the hearing. This applies to all documents except those to be used solely for impeachment.

Key Exhibits

140. By _____, each side will serve and file the five to ten exhibits that it believes to be most important in the case. The Parties are encouraged to highlight such exhibits, identifying the portions thereof believed to be of particular importance.

Demonstrative Exhibits

141. The Parties will serve and file their demonstrative exhibits, if any, including all schedules, summaries, diagrams, charts, PowerPoint presentations and the like that they propose to offer at the hearing at least three days in advance of such use, provided, however, that demonstrative exhibits that are prepared on a reactive basis during the hearing will be produced

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as much in advance as reasonably practicable. Notwithstanding the foregoing, the Parties are encouraged to serve and file such materials as much in advance of the hearing as possible to facilitate the Arbitrators' understanding of the matters displayed.

Memorials

142. By _____, Claimant will serve and file its pre-hearing memorial.

143. By _____, Respondent will serve and file its pre-hearing memorial.

144. Each of these memorials will be limited to __ pages, double-spaced, with 1" margins on each side.

Pre-Hearing Memoranda

145. By _____, the Parties will serve and file their pre-hearing memoranda, with such memoranda being limited to __ pages each, double-spaced.

146. By _____, each side may submit a reply pre-hearing memorandum limited to responding to legal issues raised by the other side in its earlier memorandum, with such reply memoranda to be limited to __ pages each, double-spaced.

Motions *In Limine* With Respect to Contested Exhibits or Testimony

147. By _____, the Parties will serve and file their letter briefs addressing any issues with respect to disputed exhibits or testimony.

148. Each side will thereafter have until _____ to serve and file its response to any such motion.

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Pre-Hearing Objections to Exhibits or Testimony

149. By _____, the Parties will serve and file their letter briefs addressing any issues with respect to disputed exhibits or testimony or the like. It is contemplated that such motions will generally be limited to issues such as privilege, authenticity, extreme prejudice or the like. Absent good cause, such motions should be no longer than two pages.

150. Each side will thereafter have until _____ to serve and file its response to any such motion made by the other side.

The Hearing

151. The hearing will be held on _____ at _____. Subject to the Parties' preferences, the hearing day will generally run from _____.m. to _____.m., subject to extending the day as necessary to complete witnesses or keep to schedule. It is anticipated that we will take a mid-morning and a mid-afternoon break of approximately __ minutes each and a midday luncheon break of approximately __ hour.

152. Each side will make opening statements of approximately __ minutes.

153. The Parties are requested to advise the Arbitrators promptly if their estimates as to the amount of time needed for the hearing in this matter change.

154. The Parties will make arrangements to schedule witnesses so that the hearing may proceed expeditiously.

155. The Party presenting evidence will, to the extent practicable, give notice of at least three days to the other Party with respect to the identities of upcoming witnesses and the anticipated order of testimony.

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Opening Statements

156. It is contemplated that each side will make opening statements of approximately ___ minutes.

Firmness of Hearing Dates

157. The hearing dates set forth herein are firm dates, which will not be rescheduled, absent agreement of the Parties or extraordinary circumstances unrelated to preparedness.

Evidentiary Status of Designated Hearing Exhibits

158. All previously designated hearing exhibits will be deemed admitted into evidence as of the opening of the hearing, except as to contested exhibits that are specifically so designated by the Parties by the opening of the hearing. The Arbitrators will hear argument as to such exhibits in the course of the hearing.

Closing Statements

159. Subject to discussion at the hearing, it is anticipated that the Parties will make closing statements to the Arbitrators on _____ at _____.m., at a place to be agreed by the Parties, it being contemplated that the closing statements will run approximately ___ hours, with each side to have approximately ___ hours.

Closing Statements

160. In lieu of post-hearing memoranda, it is anticipated that the Parties will make closing statements to the Arbitrator at a session to be held on _____ at _____.m., at a place to be agreed by the Parties, provided, however, that, if the Parties determine that they want

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to submit post-hearing memoranda or if the Arbitrator requests that issues be briefed, post-hearing memoranda may be submitted.

Summations

161. It is anticipated that, in lieu of post-hearing memorials, the Parties will make summations in a hearing to be held on _____ at _____.m., at a location to be agreed by the Parties.

Post-Hearing Memoranda

162. The Parties will decide at the close of the hearing, in consultation with the Arbitrators, what post-hearing briefing, if any, will be submitted.

Post-Hearing Memoranda

163. It is anticipated that the Parties will submit post-hearing memoranda on a simultaneous basis _____ weeks following the completion of the hearing.

Provision of Pre-Hearing Papers to the Arbitrators

164. The Parties will provide copies of motions papers, witness lists, experts' reports, pre-hearing memoranda, and key exhibits to the Arbitrators when served upon the other side. The other exhibits binders may be provided to the Arbitrators at the opening of the hearing.

165. Copies of all legal memoranda will be provided to the Arbitrators in Word as well as PDF format; provided, however, that the Parties need only exchange such materials in PDF format among themselves.

166. The Parties will provide the Arbitrators will copies of all cases and other authorities relied upon in their submissions to the Arbitrators.

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Materials to be Provided to the Arbitrators in Electronic Form Following the Hearing

167. Following the hearing, each side will transmit to the Arbitrators on a DVD, thumb drive, or the like, the following documents that it has previously interposed, submitting them in Word format to the extent convenient:

- pleadings;
- pre-hearing memoranda;
- post-hearing memoranda, if any;
- other significant memoranda;
- experts' reports;
- cases and other authorities referred to in the side's pre-hearing and post-hearing memoranda, assuming the party has made electronic copies of same; and
- exhibits referred to by the party in its post-hearing papers, to the extent the party has made electronic copies of such exhibits.

168. The Parties will also make arrangements, as among themselves, to submit the following materials to the Arbitrators electronically on such DVDs or the like:

- hearing transcripts in searchable format;
- a chart that shows, by witness, the hearing volume and pages at which each witness' testimony appears; and
- exhibits, to the extent the Parties have made electronic copies of them.

Language of Proceeding

169. The language of this proceeding is _____.

170. By _____, the Parties will confer in an effort to agree as to how the case will be administered with respect to documents, if any, which, in the original, are in a language other than _____, including with respect to questions as to responsibility for arranging translations, the identify of appropriate translators, the timing of making and providing translations, and the responsibility for the costs of such matters.

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171. The Parties will confer by _____ with respect to questions relating to any necessary arrangements for one or more interpreters of the testimony of witnesses, if any, unable to testify in _____.

172. The Parties will memorialize their agreement with respect to such matters by _____. Should the Parties be unable to reach agreement, in any respect, with respect to such matters, they will so advise the Arbitrator by said date, submitting letter briefs to the Arbitrator setting forth their respective positions and the reasons and the reasons therefor.

Form of Award

173. The Arbitrators will issue a reasoned award.

Court Reporter

174. It is understood that the Parties, at their election, intend to arrange for a court reporter to transcribe the hearing.

Accelerated Exchange Program

175. The Parties have agreed to use the Accelerated Exchange Program of the _____. Pursuant to the Accelerated Exchange Program, the Parties may transmit written materials directly to the Arbitrators, simultaneously providing copies of same to the other side. Direct written communications to the Arbitrators will be directed as follows:

_____ and _____

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176. The Parties are to submit such materials to the Arbitrators by e-mail and hard copy; provided, however, that there is no need to provide electronic copies of exhibits and other bulky materials to the Arbitrators or to provide the Arbitrators with hard copies of briefs or other memoranda shorter than ten pages.

177. The Parties will copy the _____ on all e-mails to the Arbitrators and will also send to the _____ copies of cover letters transmitting non-electronic materials to the Arbitrators, but do not need to send the _____ copies of such non-electronic materials.

178. Under no circumstances are oral communications, by telephone or otherwise, to be initiated with the Arbitrators, except as scheduled by the _____ or the Arbitrators on notice to both sides.

Mediation

179. By _____, the Parties will meet and confer as to whether they would like to attempt to resolve this matter through mediation.

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180. If the Parties would like to engage in such an effort, the ____ is available to provide the Parties with lists of potential mediators.

181. If there is any part of the case that the Parties would like the Arbitrators to address sooner rather than later to facilitate settlement, the Parties may request the Arbitrators to do so.

Control Date for the Parties' Deciding Whether to Mediate

182. By _____, the Parties will meet and confer as to whether they would like to attempt to resolve this matter through mediation.

183. If the Parties would like to engage in such an effort, the ____ will be glad to provide them with a list of potential mediators. If the Parties would like to have any issue decided sooner rather than later in the case to facilitate settlement, they may so advise the Arbitrator and the matter will be conferenced.

Disclosures as to Conflicts

184. The Parties are reminded to update their respective conflicts checklists as further information becomes available.

185. The duty to update such checklists continues through the duration of this arbitration.

186. The Parties have agreed that, if there is anything that becomes known to a party that is relevant in the context of arbitrator disclosure, the party will advise the case administrator as soon as it becomes known.

Attorneys' Fees

187. Claimant is seeking attorneys' fees under his Employment Agreements.

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188. The Parties have agreed on the following procedure with respect to Claimant's claim for attorneys' fees: Thirty days after the Arbitrators have issued their award as to the merits of the case, Claimant may submit a statement of costs and attorneys' fees and a supporting memorandum of law with respect to attorneys' fees. Respondents will then have ten days to respond to such papers submitted by Claimant. Claimant will thereafter have five days to reply, following which the matter will be submitted to the Arbitrators for decision.

189. It is contemplated that the Arbitrators will decide any issues as to attorneys' fees on the papers.

Attorneys' Fees

190. The Parties agreed that they are not seeking attorneys' fees in this arbitration and that any requests for attorneys' fees in their respective papers previously submitted in this arbitration are withdrawn.

191. The Arbitrators note that both sides seek to recover attorneys' fees. It will be addressed later in this proceeding how the Parties' applications for attorneys' fees will be administered.

Arranging Conference Calls with the Discovery Master or Arbitrators

192. Should disputes arise between the Parties as to discovery or other preliminary matters in the course of this arbitration, the Parties are urged to arrange a conference call with the discovery master or the Arbitrators promptly, so the matter may be addressed promptly, rather than have it remain unresolved and risk affecting the schedule.

_____ and _____

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Adjustment of Individual Dates by the Parties

193. The Parties may by stipulation adjust individual dates between themselves that do not affect the Arbitrators or the hearing, providing notice of such changes to the Arbitrators, but otherwise schedule changes are to be submitted to the Arbitrators.

Attachment A

194. Attached hereto as Attachment A is a chronology of the deadlines set forth in this scheduling order.

Revisions or Additions to this Order

195. If either side believes at this time that any of the deadlines or other matters set forth above need to be changed in any way or that anything needs to be added, it will advise the other side and the Arbitrators within seven days of the date of this Order.

Dated: New York, New York

_____, Arbitrator

_____ and _____
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ATTACHMENT A
CHRONOLOGY OF DATES SET FORTH IN
REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER (“THE
ORDER”)

- _____: Respondents to serve and file their answer, pursuant to paragraph __ of the Order;
- _____: The Parties to submit a proposed order as to confidentiality or any dispute on the subject to the discovery master, pursuant to paragraph __ of the Order;
- _____:
 - Respondents to serve and file their papers in support of their motion to strike, pursuant to paragraph __ of the Order; and
 - The Parties to serve and file document requests, pursuant to paragraph __ of the Order;
- _____: The Parties to exchange their responses and objections to document requests, pursuant to paragraph __ of the Order;
- _____: Claimant to serve and file his papers in opposition to Respondents’ motion to strike, pursuant to paragraph __ of the Order;
- _____: Respondents to advise the Arbitrators what, if anything, they intend to do with respect to their possible motion to disqualify Claimant’s counsel, pursuant to paragraph __ of the Order;
- _____: Respondents to serve and file their reply papers on their motion to strike, pursuant to paragraph __ of the Order;
- _____ at _____ .m.: Oral argument before the Arbitrators on Respondents’ motion to strike, pursuant to paragraph __ of the Order;
- _____ at _____ .m.:
 - The Parties to meet and confer with respect to objections to document requests, pursuant to paragraph __ of the Order;
 - The Parties to meet and confer as to the parameters of electronic discovery, pursuant to paragraph __ of the Order; and
 - The Parties to discuss the practical criteria for defining what documents associated with _____ will be treated as privileged for purposes of this arbitration, pursuant to paragraph __ of the Order.
- _____:
 - The Parties to submit letter briefs to the discovery master concerning any disputes as to document production, pursuant to paragraph __ of the Order; and
 - The Parties to submit letter briefs to the discovery master concerning any disputes as to e-discovery, pursuant to paragraph __ of the Order;

_____ and _____

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- _____ at _____ .m.:
 - Oral argument with the discovery master as to any open discovery issues, pursuant to paragraph __ of the Order;
 - Oral argument with the discovery master as to any disputes as to e-discovery, pursuant to paragraph __ of the Order;
 - Oral argument with the discovery master with respect to any issues the Parties have identified as to the applicability of privilege to documents associated with _____, pursuant to paragraph __ of the Order;
 - The Parties to commence their document production on a rolling basis, pursuant to paragraph __ of the Order; and
 - The Parties to commence their production of electronic materials, pursuant to paragraph __ of the Order;
- _____: The Parties to meet and confer as to the approach to be taken with respect to privilege logs in the case, pursuant to paragraph __ of the Order;
- _____: The Parties to serve and file their privilege logs, pursuant to paragraph __ of the Order;
- _____ at _____ .m.: Status conference with the discovery master, pursuant to paragraph __ of the Order;
- _____:
 - Completion of document production, pursuant to paragraph __ of the Order; and
 - Completion of production of electronic materials, pursuant to paragraph __ of the Order;
- _____: The Parties to conduct the depositions in the case within this time period, pursuant to paragraph __ of the Order;
- _____ at _____ .m.: Status conference with the discovery master, pursuant to paragraph __ of the Order;
- _____: Each side to serve and file a letter identifying any expert witnesses it expects to call at the hearing in the matter, pursuant to paragraph __ of the Order;
- _____:
 - The Parties to complete all depositions in the case, pursuant to paragraph __ of the Order; and
 - The Parties to complete all fact discovery in the case, pursuant to paragraph __ of the Order;
- _____: The Parties to meet and confer with respect to non-party discovery and testimony, if any, and to submit subpoenas with respect to any such discovery or testimony that is not otherwise available, pursuant to paragraph __ of the Order;
- _____: Each side to serve and file its experts' reports, if any, pursuant to paragraph __ of the Order;
- _____:
 - The Parties to identify the exhibits they expect to use at the hearing, pursuant to paragraph __ of the Order;

_____ and _____

REPORT OF PRELIMINARY HEARING AND SCHEDULING ORDER

- _____:
 - The Parties to exchange lists of witnesses they expect to call at the hearing, pursuant to paragraph __ of the Order; and
 - The Parties to meet and confer in an effort to agree on joint exhibits to be submitted at the hearing, pursuant to paragraph __ of the Order;
- _____: The Parties to serve and file their opposing experts' reports, if any, pursuant to paragraph __ of the Order;
- _____:
 - The Parties to finally establish the binder of joint exhibits and provide to one another binders of any additional exhibits they intend to offer into evidence at the hearing, pursuant to paragraph __ of the Order;
 - Each side to serve and file the five to ten exhibits it believes to be most important in the case, pursuant to paragraph __ of the Order; and
 - The Parties to serve and file their pre-hearing memoranda, pursuant to paragraph __ of the Order;
- _____ at _____ .m.: Final pre-hearing status conference, pursuant to paragraph __ of the Order;
- _____: The Parties to serve and file their letter briefs on any issues with respect to disputed exhibits or testimony or the like, pursuant to paragraph __ of the Order;
- _____: Each side to submit a reply pre-hearing memoranda, pursuant to paragraph __ of the Order;
- _____: Each side to serve and file its response to any motion *in limine* made by the other side, pursuant to paragraph __ of the Order;
- _____: The hearing, pursuant to paragraph __ of the Order; and
- _____ at _____ .m.: Closing statements, pursuant to paragraph __ of the Order.

CJM DRAFT 5/15/2015 11:01 AM

MISCELLAENOUS SCHEDULING ORDER LANGUAGE OF LESS

GENERAL APPLICABILITY