

AMERICAN ARBITRATION ASSOCIATION

[Name],

Claimant,

and

AAA Case No. [Number]

[Name],

Respondent.

**ARBITRATION MANAGEMENT CONFERENCE
CASE MANAGEMENT AND SCHEDULING ORDER**

THIS MATTER CAME ON for an initial telephonic Arbitration Management Conference at [Time and Date], pursuant to notice by the Association. The following persons took part:

On behalf of the Association: [Name]

Arbitrator: Christopher M. Shulman

On behalf of Claimant: [Name]

On behalf of Respondent: [Name]

At said conference (and as agreed upon by the Parties in subsequent communications between them), the following matters were taken up and, by stipulation of the Parties or otherwise, the arbitrator hereby orders the Parties as follows concerning the conduct of this matter:

1. Dates of the arbitration hearing: [ENTER date(s)].¹
2. Place of the arbitration hearing: **At a suitable location within 100 miles of [location]; the Parties shall advise the AAA and the arbitrator of the hearing locale not later than the**

¹ Note: Per the Arbitrator's previously filed resume and Notice of Compensation Arrangements, *the Arbitrator has and enforces the following late cancellation/postponement policy:*

"Cancellation Policy: Notice of cancellation or postponement of a scheduled arbitration hearing must be RECEIVED at least 28 calendar days prior to the scheduled commencement of the arbitration hearing or mediation conference. Absent such timely notification, the parties will be billed their pro rata shares of the cancellation/postponement fee of \$3,400 per day reserved for the arbitration hearing plus pro rata share of travel time (fees for scheduled travel days that cannot be 'resold') plus expenses incurred, e.g., airline change fees or penalties (if applicable)."

The Parties should keep this expense in mind when determining the timing of cancellation or postponement, including cancellations due to settlement. Moreover, if the hearings do not last the full [# days] days reserved, then the subsequent unused days are nonetheless considered late cancellations for which fees shall accrue.

“Prehearing Stipulation Date,” defined below. If the Parties determine that any accommodations for disabled persons or interpreters are needed, they shall advise AAA immediately, so suitable arrangements may be made.

[OR]

2. Mode of Hearing: As agreed by the Parties, the Arbitration Hearing shall be conducted by ZOOM videoconference. The videoconference information is as follows:

<https://us02web.zoom.us/j/XXXXXXX>

Meeting ID: XXXXXX

Passcode: XXXX

The arbitrator hereby requires that counsel, the Parties, any other witness called by a Party, and all other persons who participate in the arbitration hearing shall abide by the arbitrator’s Guidelines and Ground Rules for Online (Video) Arbitrations document, attached hereto and incorporated by reference herein. It is *COUNSEL*’s responsibility to ensure that all participants and witnesses for their respective side of the case are provided and familiarized with a copy of the attached in advance of the arbitration hearing itself.

3. Hours of the arbitration hearing: **9:00 AM – 5:30 PM**, with one-hour lunch break.
4. Issues submitted for arbitration: Liability and damages under [Identify basis for claims]. These claims carry with it a prevailing-party attorney fee-shifting provision, **[CHOOSE ONE OF THE FOLLOWING (grey, green, or blue):]**

but the Parties have not yet agreed whether to submit the issues of entitlement and amount of attorney’s fees to the arbitrator for decision. Accordingly, **not later than [INSERT DATE]**, the Parties shall advise the Association and the arbitrator whether they have agreed to submit the issues of entitlement and amount of attorney’s fees to the arbitrator. In this regard:

- a. If the Parties agree to such submission, the hearing will be bifurcated into proceedings on the merits and subsequent proceedings as to attorney’s fees entitlement and amount, and the following procedure will apply:
- i. The arbitrator shall issue an interim award on the merits and identify the Prevailing Party therein.
 - ii. If there is no stipulation of the Parties as to entitlement and amount of fees and costs, the Prevailing Party shall, on or before 15 calendar days after receipt of the interim award, submit his/her/their/its fee petition, stating why s/he/they/it is entitled to an award of attorney’s fees and the amount and method of calculating the fees and costs requested.
 - iii. The non-Prevailing Party shall have 15 calendar days after receipt of the petition to submit responsive fee affidavits or argument, if any.

- iv. Thereafter, the arbitrator shall either determine an evidentiary hearing is needed (unlikely) or shall render a final award, including determination(s) of entitlement, and, if any, the amounts of the fees and costs awarded.
- b. If the Parties do not agree to such submission, the arbitrator shall conduct the hearing on the merits, and issue a final award on the merits, identifying therein the Prevailing Party.
- c. The arbitrator has no preference whether the Parties submit the fee issues to him for decision.

and the Parties have agreed to submit the issues of entitlement and amount of attorney's fees to the arbitrator. Accordingly, the hearing shall be bifurcated into proceedings on the merits and subsequent proceedings as to attorney's fees entitlement and amount, and the following procedure will apply:

- a. The arbitrator shall issue an interim award as to liability and damages, identifying the Prevailing Party therein.
- b. If there is no stipulation of the Parties as to entitlement and amount of fees and costs, the Prevailing Party shall, on or before 15 calendar days after receipt of the interim award, submit his/her/their/its fee petition, stating why s/he/they/it is entitled to an award of attorney's fees and the amount and method of calculating the fees and costs requested.
- c. The non-Prevailing Party shall have 15 calendar days after receipt of the petition to submit responsive fee affidavits or argument, if any.
- d. Thereafter, the arbitrator shall render a final award, including determination of entitlement and amount, if any, of the fees and costs awarded, applying the relevant fee award standard.

but the Parties have not agreed to submit the issues of entitlement and amount of attorney's fees to the arbitrator for decision. Accordingly, the arbitrator shall conduct the hearing on the merits, and issue a final award on the merits, identifying therein the Prevailing Party.

5. Discovery: The Parties may choose to employ the appropriate AAA Employment Arbitration Discovery Protocol.² If they do so, the Parties shall make the disclosures called for therein on or before **[INSERT DATE]**. Further, the Parties shall comply with the following Discovery Schedule:
 - d. *Initial Witness Disclosures*. Both Parties shall make their initial witness disclosures to one another not later than **[INSERT DATE]**.

² www.adr.org/sites/default/files/document_repository/AAA249_Initial_Discovery_Protocols_April2013.pdf or https://www.adr.org/sites/default/files/document_repository/AAA248_Discovery_Protocols_FLSA.pdf

- e. *Written Discovery.* Each Party may propound up to [insert #] interrogatories, [insert #] requests for production, and [insert #] requests for admission upon the other Party. **Such requests shall be served not later than _____, 202_.** Responses to such written discovery shall be due not later than 30 calendar days after service of the discovery request. Any further written discovery shall only be allowed by subsequent agreement of the Parties or by arbitrator order, after motion and on good cause shown.
- f. *Depositions:* Each Party may take up to [insert #] depositions. Further depositions are allowed only by subsequent agreement of the Parties or by arbitrator order, after motion made and on good cause shown. No depositions shall last more than seven hours. Should the Parties agree, depositions may be taken by electronic means (e.g., videoconferencing platform).
- g. *Discovery Cut-Off.* All depositions shall be taken on or before, and all other discovery shall be propounded such that the due date for a timely response thereto will not be later than, the agreed discovery cut-off date: _____, 202_ **[usually 30 days before the Dispositive Motion filing deadline].**
- h. *Discovery not to be filed.* Absent a discovery dispute, discovery documents are NOT to be filed with AAA or the arbitrator.
- i. *Subpoenae.* If this action is subject to the Federal Arbitration Act, the arbitrator is without authority to issue discovery subpoenae to nonparties in connection with this matter. *Managed Care Advisory Group, LLC v. CIGNA Healthcare, Inc.*, 939 F.3d 1145, 1161 (11th Cir. 2019). If, however, this matter is brought pursuant to the Revised Florida Arbitration Code, especially Fla. Stat. § 682.08, the arbitrator has authority to issue discovery subpoenae to nonparties in connection with this matter. To have the arbitrator issue such a subpoena, a Party shall submit the proposed subpoena to the arbitrator as a pdf, cc'ing the opposing Party; if the opposing Party does not timely object to issuance of the subpoena, the arbitrator may issue the subpoena (assuming the subpoena is proper) and return it electronically to the Party who requested it, for service.
- j. *Discovery-related Motions.* In the unlikely event a Party believes the arbitrator must resolve a discovery dispute between Parties, that Party shall address the concern by letter brief.
- i. Any such letter brief – which shall not exceed five pages, excluding exhibits – shall be accompanied by a certification by that moving Party's counsel that:
1. s/he brought the discovery dispute to the attention of opposing counsel in writing; and

2. thereafter, s/he conferred personally with the opposing counsel in an effort to resolve the discovery dispute, or made at least two attempts, spaced more than one business day apart, to have such a discussion.
 - ii. Any response to a discovery letter brief shall be filed **within 7 calendar days after service**, in the form of a responsive letter brief, which shall not exceed five pages, excluding exhibits.
 - iii. The arbitrator will either rule on the papers or have the Association schedule a telephonic hearing thereon.
 - k. **[Statement about which rules, if any shall apply, e.g., “Federal Rules of Civil Procedure shall apply.** The Parties have agreed to use the discovery provisions of the Federal Rules of Civil Procedure in implementing their discovery in this action, and that the arbitrator shall use such rules and decide any discovery disputes as if this matter were pending in the United States District Court for the Middle District of Florida.”
 - l. *Cybersecurity and Privacy.* Having reviewed the AAA-ICDR Best Practices Guide for Maintaining Cybersecurity and Privacy and discussing what specific precautions might be required with regard to cybersecurity, privacy, and data protection in order to ensure an appropriate level of security for this case, the following measures shall be implemented:

None at this time, however, the Parties are required to advise of AAA any additional individuals to whom any documents on this case shall be forwarded. Likewise, the Parties may choose to submit stipulated protective orders for the arbitrator’s consideration regarding cybersecurity, privacy, and/or confidentiality.
 - m.
6. Dispositive Motions: The Parties may file dispositive motions (i.e., motions for summary judgment). The Parties and the arbitrator have agreed to the following schedule:
- a. A Party wishing to make such a Motion shall file it no later than _____, **202_**
[usually at least 60 days before the hearing].
 - b. The opposing Party shall file her/its Response in Opposition, if any, within 21 calendar days after service of the Motion and, in any event, not later than _____, **202_**.
 - c. Motions and Oppositions shall not exceed 20 pages, excluding any attached exhibits; Replies are not allowed.
 - d. **[Statement about which rules, if any shall apply, e.g., “The Parties have agreed to use the arbitrator shall apply the Federal Rules of Civil Procedure as the standard for ruling on dispositive motions and that the arbitrator shall use such rules and decide any disputes**

as if this matter were pending in the United States District Court for the Middle District of Florida.”]

7. **Prehearing Exchange:** On or before **[INSERT DATE, usually 14 days before the Prehearing Stipulation Date]**, Parties shall exchange their final witness lists and exhibits, in anticipation of preparing the Prehearing Stipulation.
8. **Prehearing Stipulation:** The Parties shall meet and confer (by telephonic or electronic means if they wish), to develop a Prehearing Stipulation as to undisputed facts and as to witnesses and exhibits. The Parties shall file the Stipulation with AAA **on or before _____, 202_ [usually 14 days before the hearing] (the “Prehearing Stipulation Date”)**. In preparing their Stipulation, the Parties shall also take the following actions:
 9.
 - n. *Stipulations of Uncontested Facts.* The Parties are encouraged to stipulate to as many uncontested facts as possible and shall identify all such stipulated facts in their Prehearing Stipulation.
 - o. *Identification and Exchange of Witnesses.* The Parties shall include in the Prehearing Stipulation the identity of their respective witnesses and a short summary of the witnesses’ expected testimony. **Absent good cause, only those persons listed in the Prehearing Stipulation will be allowed to testify in this matter.** Parties shall identify any objections to any witness the other Party lists. Such objections will be ruled on by the arbitrator either Prehearing or at the beginning of the first scheduled hearing.
 - p. *Identification and Exchange of Exhibits.* The Parties shall identify in the Prehearing Stipulation their proposed exhibits, exchanging them with one another. **Absent good cause, only those exhibits identified in the Prehearing Stipulation and exchanged with the other Part may be offered as evidence in this matter.** Parties shall identify any objections to any exhibit the other Party lists. Objections may either be ruled on by the arbitrator Prehearing or taken under advisement and ruled on at the time the exhibit is specifically offered by a Party into evidence. *Absent a timely objection, the arbitrator will admit all identified exhibits into evidence at the beginning of the first scheduled hearing.*
 - q. *Statement of Applicable Legal Principles.* Although not required, any Party believing it necessary to submit a statement of applicable legal principles shall file same **on or before the Prehearing Stipulation Date.**
 - r. *Supplementation of Witness or Exhibit Lists.* The Parties may only supplement their witness lists or exhibit lists by arbitrator order, on motion and good cause shown; the Parties should note that such motions are disfavored.
 - s. *Daubert Motions or Motions in Limine.* Such motion(s) shall be filed **on or before the Prehearing Stipulation Date**, with responses due not later than seven calendar days after service thereof and, in any event, not later than seven calendar days prior to the first

schedule arbitration hearing date. The arbitrator shall either rule based on the papers or after hearing oral argument thereon at the commencement of the arbitration hearing.

10. Conduct of the Hearing:

- t. Per AAA Employment Arbitration Rules 30 and 48, the arbitrator shall be the final arbiter of what evidence to consider in this matter.
 - u. The Parties shall bring at least **4** copies of their Exhibits to the hearing (one for each side, one for the arbitrator, and one for the witnesses), with each proposed exhibit pre-marked for identification/admission. The Parties are encouraged to list the Exhibits using a single numbering system (e.g., Claimant's Exhibits might be numbered 1 – 100, and Respondents' Exhibits might be numbered 101 – 200), to avoid confusion in the record as to references to exhibits, where the person speaking does not specifically state whether the exhibit referred to is Claimant's or Respondent's. The arbitrator's copy of the exhibits shall be submitted electronically, as individual pdfs named "Exhibit __.pdf" (where "__" is the number of the exhibit).
 - v. At the commencement of the hearing, the arbitrator will accept into evidence all Exhibits to which either no objection was timely stated by the opposing Party under ¶ 9c, above, or concerning which the arbitrator has overruled any objection raised in the Prehearing Stipulation. As to all such Exhibits, no foundational or predicate testimony will be required. The arbitrator will determine the admissibility of all other Exhibits when proffered in the ordinary course of the hearing.
11. Court Reporter/Transcript: **On or before the Prehearing Stipulation Date**, the Parties shall advise whether they have agreed to have a reporter attend the hearing and prepare a transcript, which shall serve as the official record of the proceedings (the arbitrator shall be provided a copy of the transcript).
12. Court Reporter/Transcript: On or before the **Prehearing Stipulation Date**, the Parties shall advise whether they have agreed to have a reporter attend the hearing and prepare a transcript, which shall serve as the official record of the proceedings (the arbitrator shall be provided a copy of the transcript at Respondent's expense – as agreed).

[OR]

The Parties have agreed to have a reporter attend the hearing and prepare a transcript, which shall serve as the official record of the proceedings (the arbitrator shall be provided a copy of the transcript at Respondent's expense – as agreed).

13. Posthearing Argument and Exhibits:

- w. The Parties shall make closing oral arguments at the conclusion of the hearing

[OR]

The Parties shall submit posthearing briefs, on a schedule to be addressed at the hearing itself].

- x. Immediately after the hearing, the Parties shall send the arbitrator and the opposing Party a pdf copy of all their respective **admitted** exhibits; the arbitrator shall not retain hard copies of any exhibits.

14. Advance deposits for arbitrator’s fees and expenses: Per AAA Case Administration.

15. Form of award: Reasoned Award per AAA Employment Arbitration Rule 39(c).


16. Communication with the arbitrator: The Parties have agreed to have direct communication with the arbitrator (contemporaneously serving the Association and the opposing Party):

- a. Email to the arbitrator: **[Add arbitrator emails]** (cc: **[AAA email]**);
- b. Email to Claimant: **[Add emails]**
- c. Email to Respondent: **[Add emails]**
- d. As used in this Order, to “file” a document or pleading means to email it to the arbitrator, the Association (AAA), and the opposing Party at the addresses above. To “serve” a document or the like means simply to email it to the opposing Party at the addresses above; AAA and the arbitrator should not ordinarily be included in correspondence or discovery requests between the Parties.

17. Prehearing Mediation attempt: The Parties may agree to submit this dispute to prehearing mediation and, if they do, the mediation conference shall occur no later than **[INSERT DATE]**.

This Order shall remain in effect unless amended by the arbitrator. Absent good cause shown, all deadlines stated herein shall be strictly enforced.

DATED today, March 16, 2023, at Tampa, in Hillsborough County, Florida.



Christopher M. Shulman, Arbitrator