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# NASSAU COUNTY BAR ASSOCIATION

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## ALTERNATE DISPUTE RESOLUTION TRIBUNAL

### ARBITRATION RULES

#### 1. Definitions:

- a. **Alternative Dispute Resolution Tribunal.** The Nassau County Bar Association ("Association") has established an Alternative Dispute Resolution Tribunal ("Tribunal") composed of highly skilled and qualified members of the Association who are available to State, Federal, and local courts, litigants, parties to contracts, and the general public. The Tribunal will, upon request, provide an Arbitrator or Arbitrators (hereafter referred to collectively as the "Arbitrator") for the resolution of disputes from a list of attorneys who have been admitted to practice law in the State of New York for a minimum of ten (10) years, and who have been selected as qualified by the Judiciary Committee of the Association to serve as an Arbitrator on the Tribunal's panel (the "Panel"). Applications for appointment to the Panel, and requests for Arbitrations to the Tribunal, shall be by form(s) provided by the Association
- b. **Arbitration.** Arbitration is a voluntary, private process that affords parties an expeditious, time-saving and cost effective means to resolve disputes which might otherwise be litigated in the courts. The Parties submit their dispute to one or more neutral, impartial, third part(ies) (the Arbitrator), who hears the evidence and arguments presented, and issues a final and binding written decision, known as an "Award", which resolves the dispute. Parties agree by contract, or submission, to be bound by the decision of the Arbitrator.
- c. **Arbitrator.** The Arbitrator is neutral and impartial. Notwithstanding the fact that the person assigned as an arbitrator may be a member of the Association and a practicing attorney, no attorney/client privilege attaches to the communications between the parties and the Arbitrator. The Arbitrator will not be serving as an attorney or advocate for any party.
- d. **Arbitration Program.** The Arbitration Program, the ("Program") will be supervised by the Tribunal Administrator.
- e. **Tribunal Administrator.** The Program will be supervised by a Tribunal Administrator ("Administrator"), selected by the Association to manage and direct all matters brought before the Tribunal, including maintaining a current list of Arbitrators, notifying parties (and their counsel) as to the date, time and place of the first scheduled pre-arbitration conference or Arbitration hearing session, and performing such other duties and functions as may be necessary or appropriate to execute the Administrator's duties.

f. **Arbitration Fees.** In addition to any costs associated with the arbitration, all arbitration fees, as established by the Association, shall be paid by the parties participating in the Program.

2. **Matters for Submission:**

Arbitration may be used for any matters that are justiciable, or capable of being decided by a court or in arbitration. The scope of matters, cases, disputes and claims is broad. Matters may include, but are not limited to: (a) matters in litigation in any court; (b) matters required by statute to be determined by arbitration; (c) matters required by written contract or agreement to be determined by arbitration or submitted to arbitration; or (d) matters voluntarily submitted by the parties.

3. **Request For Arbitration; Voluntary Submission:**

The parties may submit a dispute for arbitration by forwarding a Notice of Intention to Arbitrate to the Administrator.

- (a) An initiating party, or the parties jointly, shall serve the Notice of Intention to Arbitrate on the Administrator and, if not a joint notice, on the other party involved, which Notice shall contain a statement setting forth the nature of the dispute, the amount involved and the remedy sought. The Notice shall be in triplicate with the copies of the provisions of any governing agreement, if arbitration is pursuant to a written agreement between the parties. Where litigation is involved, a complete set of the pleadings, any Bill of Particulars and any Interrogatories and Answers thereto, shall be provided.
- (b) Where there is no joint submission, the responding party shall file an Answer within ten (10) days and any failure to file such Answer shall be deemed a denial of the claim in the Notice. A reply to an Answer, or an answer containing a counter-claim, may be filed after service on the other party within ten (10) days from the receipt thereof, and a copy shall be filed with the Administrator.

4. **Selection of Arbitrator:**

Upon receipt of a Notice of Intention to Arbitrate, the Administrator shall provide the parties with a list of five (5) names<sup>1</sup> from which to choose the Arbitrator. Proposed Arbitrators shall be taken in rotation from a list of Arbitrators maintained by the Administrator.

The parties, or their counsel, shall promptly confer, and each shall, within seven (7) business days, return to the Administrator their proposed list of Arbitrators, identifying, by ranking, their preference for Arbitrator. The Administrator shall compare the parties' submissions and select an agreed upon Arbitrator. If the Administrator is unable to identify a mutually agreed upon Arbitrator from the initial list of proposed Arbitrators, a second list of five (5) names (or eight (8) names) of Arbitrators shall be forwarded, whose names have not previously been submitted to the parties. The parties shall promptly meet and confer within seven (7) business days, and each shall return to the Administrator their proposed second list of Arbitrators, identifying, by ranking, their

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<sup>1</sup>The list will contain eight (8) names if the parties request a three (3) Arbitrator panel.

preference for an Arbitrator. If the Administrator is unable to identify a mutually agreed upon Arbitrator from the second list of proposed Arbitrators, then the Administrator shall select an Arbitrator, from the list of Arbitrators, whose name was not previously submitted to the parties.

If, after appointment to act, an Arbitrator is unable to perform his/her duties, the Administrator shall declare the office vacant, and unless the parties otherwise agree, appoint another Arbitrator. Where a vacancy occurs on a three person panel, the parties may stipulate that the remaining Arbitrators shall continue with the hearing and reach a determination of the dispute or, if the parties do not so stipulate within seven (7) days following the vacancy declaration, then the vacancy shall similarly be filled by the Administrator.

The Arbitrator shall take an oath to faithfully perform the duties of the Office of Arbitrator and render an Award based upon the evidence presented at the hearing.

**5. Challenge to Proposed Arbitrator:**

Any challenge or request for disqualification of an Arbitrator who has been assigned by the Administrator shall be served in writing addressed to the Administrator with notice to the other parties within five (5) business days of receipt of the Administrator's notice of appointment, or after the Arbitrator's disclosures pursuant to paragraph 6 below. Such challenge shall only be for cause. The Administrator's determination of the challenge shall be final and binding.

**6. Disclosure:**

Any person selected as an Arbitrator shall promptly disclose to the Administrator if he/she has any financial and/or personal interest in the matter to be submitted to arbitration, as well as any previous or current professional relationship(s) with the parties and/or their attorneys, other than prior arbitrations in which (s)he has served as arbitrator. Any party or counsel to the arbitration shall promptly disclose to the Administrator if he/she has any financial, or any previous or current personal or professional relationship(s) with the proposed Arbitrator, other than prior arbitrations.

**7. Waiver:**

Any party who proceeds with the arbitration after having knowledge that any provision or requirement set forth in the within rules has not been complied with, and who fails to state an objection in writing within seven (7) business days of the scheduled arbitration, shall be deemed to have waived the right to object. Furthermore, in requesting arbitration, the parties agree and acknowledge that the Arbitrator shall not be made a party or witness in any subsequent arbitration or judicial proceeding arising from, or related to, the dispute submitted for arbitration.

**8. Pre-Arbitration Conference:**

The Arbitrator(s) shall fix the date and time for the pre-arbitration conference to be not less than fifteen (15) business days, and not more than thirty (30) business days, after the Arbitrator(s) have received notice of the case assignment.

**9. Arbitration Hearing:**

- (a) The arbitration proceeding shall be held in Nassau County at a place designated by the Arbitrator(s).
- (b) The Arbitrator(s) shall fix a hearing date and time no less than fifteen (15) days or more than thirty (30) days from the date of the pre-arbitration conference, or as otherwise determined by the parties and their attorneys during said conference, and the Arbitrator(s) shall give written notice to the parties at least ten (10) days prior to the scheduled hearing date. The Arbitrator(s) may extend the time when such hearing shall be held on good cause shown. If the pre-arbitration conference or a hearing is cancelled, or an adjournment is requested, on less than three (3) business days notice, the parties shall pay a cancellation fee of Eighteen Hundred (\$1800.00) Dollars to the Arbitrator.
- (c) Evidence. The Arbitrator(s) shall not be bound by the Rules of Evidence, unless otherwise agreed by the parties.
- (d) The Arbitrator shall have the power to:
  - (i) subpoena witnesses, books, papers, documents, and other items;
  - (ii) administer oaths or affirmations;
  - (iii) determine admissibility of offers in evidence;
  - (iv) require the submission of briefs;
  - (v) determine questions of law and fact; and
  - (vi) take such other action as may be necessary to bring the proceedings to an expeditious and just conclusion.
- (e) Stenographic Records. No such record shall be required. A party ordering a record shall assume the cost thereof and provide a copy to the Arbitrator and to the other party.

**10. Reopened Hearing:**

At any time before an Award is issued, a Hearing may be reconvened by the Arbitrator on the Arbitrator's own motion, or upon the application of a party, and the decision of the Arbitrator with regard thereto shall be final.

**11. Award:**

The Award of the Arbitrator shall be final and binding and may be confirmed as provided by law. The Award shall be signed by the Arbitrator and may, where appropriate, contain a dissent. The Award may include a provision awarding costs, Arbitrator's fees and/or expenses to a party or parties. The parties, and not the Association or the Arbitrator, are responsible for enforcing the Award. The Award shall be filed with the Administrator and copies served upon the parties within thirty (30) days after the close of the Arbitration Hearing.

- 12. Default:**  
Upon default of a party, an inquest may be taken and an Award shall be issued as may be deemed by the Arbitrator to be just and proper. Should all parties fail to appear at the Hearing, the Arbitrator may issue an Award dismissing the matter.
- 13. Parties' Obligations:**  
All parties shall cooperate with the Arbitrator, and with each other. The parties are prohibited from having *ex parte* communication with Arbitrator except for administrative matters.
- 14. Settlement:**  
If the parties resolve their dispute during the course of the arbitration, the Arbitrator may set forth the terms of such settlement in an Award.
- 15. Mediation:**
- (a) Wherever the parties to a dispute wish to engage in “mediation” as distinguished from “arbitration”, they may do so pursuant to the Mediation Rules of the Alternative Dispute Resolution Tribunal of the Association, where applicable.
  - (b) Such desire to engage in mediation shall be by written, unanimous consent of all parties, which consent shall be filed with the Tribunal Arbitrator. The parties may by written, unanimous consent elect to have the Arbitrator act as the Mediator.
  - (c) One who acts as a “mediator” shall not act as an “arbitrator” in a subsequent arbitration involving the same parties and the same issue, unless the parties thereto request that he or she do so, and sign a written waiver of any objection thereto, which shall be filed with the Tribunal Administrator prior to the commencement of any subsequent hearing.
- 16. Non-Liability:**  
Neither the Association, the Administrator, nor any Arbitrator shall be liable to any party or parties to the arbitration for any act, omission or conduct in connection with any arbitration.
- 17. Costs/Fees:**  
At the time the Notice of Intention to Arbitrate is submitted to the Association, the submitting party or parties shall pay: (i) the Association's administrative fee of Five Hundred (\$500.00) Dollars; and (ii) a deposit of One Thousand Eight Hundred (\$1,800) Dollars toward the Arbitrator's fee (“Arbitrator Deposit”). If the parties request a three (3) Arbitrator panel, the Arbitrator Deposit required will be tripled. The administrative fee is non-refundable.

All charges and expenses shall be borne equally by the parties, or as they otherwise agree, or as directed by the Arbitrator, and are payable upon receipt of invoice. The Arbitrator shall arrange for the collection of his/her/their additional fees and expenses directly from the parties. The Arbitrator's rate (for each Arbitrator) is Three Hundred (\$300.00) Dollars per hour, which rate shall apply to all time spent on the matter by the Arbitrator including, but not limited to, pre-arbitration conferences, study time, communication with parties and/or counsel, review of motions, writing an Award, etc. The Arbitrator Deposit shall be applied against the first six (6) hours expended by the Arbitrator and shall be credited to the account of the party or parties who submitted the payment. Unearned Arbitrator Deposits shall be refunded to said party or parties.

**18. Rules:**

Any questions, concerns or disputes raised by any arbitration participant, regarding the application or interpretation of these rules, and/or any amendments thereto, shall be resolved by the Administrator, whose decision shall be final and binding.

**REVISED 8/2012**