



## **ADDENDUM A ARBITRATION RULES**

### **1. Definition of Arbitration**

Arbitration is a process by which a third party neutral (Arbitrator) decides the outcome of a case based on the facts presented and the governing law. It is by its nature more informal and less expensive than a court process. Decisions by the Arbitrator will take these principles into account.

### **2. Initiation of Claim**

An Arbitration under these Rules may be initiated in one of two ways: 1) Pre-Dispute Arbitration can be initiated pursuant to an agreement executed before the dispute arises. In such a situation, a claim is initiated when one party gives notice in writing (“Notice”) to **The Mediation Group of Tennessee, LLC** (“The Group”) with a copy to all other parties that would be involved. The Notice shall include as an attachment a true copy of the agreement reflecting the consent of all such parties: A) to submit their dispute to Arbitration, and B) to utilize The Group (whether agreed to before or after the dispute). The Notice shall state the noticing party’s intention to initiate an Arbitration. 2) Post-Dispute – The parties may execute an Agreement to Arbitrate after a dispute arises in which case the claim is initiated upon complete execution of the Agreement to Arbitrate.

### **3. Case Management**

Once an Arbitration has been initiated, a Case Manager of The Group will handle all administrative matters in processing the dispute. Payment for the services of **The Mediation Group of Tennessee, LLC** must be secured before the claim can be processed. Each party shall provide a retainer in an amount deemed appropriate by **The Mediation Group of Tennessee, LLC**; alternatively, if any such party is represented by counsel, then a guarantee provided by such counsel will be sufficient.

### **4. Governing Law**

In the absence of any references to another state or federal law as governing this procedure, the laws of the State of Tennessee shall be the “governing law”. This case will also be governed by the Tennessee Uniform Act T.C.A. 295-3-1 et seq. in the underlying agreement requiring arbitration, unless the agreement specifies the Federal Arbitration Act.

### **5. Determination of Geographic Locale**

The parties may by agreement select a geographic locale for the hearing of the arbitration. Absent such agreement, the Case Manager will determine a geographic locale based on the convenience to all involved.

**6. Selection of Arbitrator**

The parties may by agreement select any of the available Members of The Group to serve as the Arbitrator. Information about the Members of The Group available to serve as Arbitrators will be provided by the Case Manager. If the parties are unable to agree on an Arbitrator, The Group will provide several potential arbitrators and the parties in alternating sequence will strike candidates until only one remains. This person will serve as the Arbitrator for the dispute (the order of striking will be the claimant and then each listed respondent). The number of potential Arbitrators included in the selection process will be determined by The Group, unless there is an agreement to the contrary. They will be selected by The Group based on subject matter expertise, proximity and availability.

**7. Determination of Date, Time and Place**

The parties may by agreement determine the date, time and place (specific office) for the Arbitration hearing, subject to the availability of the Arbitrator. Absent agreement, the Case Manager will determine these matters or refer these issues to the Arbitrator for resolution.

**8. Fees**

The amount of and the responsibility for paying the fees for the services of the Arbitrator will be determined by the Group's fee schedule applying at the time of the initiation of the Arbitration. The administration fee will be determined by the Group. The Group may require a retainer. The fees will be allocated equally among the parties in the dispute unless the parties otherwise agree. For this arbitration, the fee will be \_\_\_\_\_ per hour. The arbitration is expected to last \_\_\_\_\_ hours. The parties are to bring with them or send to The Mediation Group of Tennessee at 2809 Wimbledon Road, Nashville, Tenn. 37215, the sum of \_\_\_\_\_ per party. In the event that the time exceeds expectations, the parties will be billed for the additional amount. If one or the other party is represented by an attorney, the Group expects payment from that attorney promptly upon billing.

**9. Pre-hearing phone conference**

A pre-hearing phone conference will be scheduled as soon as is reasonable. The Arbitrator will preside. The participants will include the attorneys representing the respective parties. A party may participate even if a representing attorney is involved, and the party shall participate if there is no representing attorney. It will be necessary that the Agreement to Arbitrate be fully executed and in the possession of the Case Manager prior to the pre-hearing phone conference. The agenda for this phone conference may include the following:

1. Scheduling of any matters involved in the Arbitration including the hearing.
2. Addressing any logistical matters.
3. Review of the substantive issues generally.
4. Review of the order to be followed in the hearing.
5. . Any other matters requested. outstanding.

All matters addressed in this phone conference will be resolved by agreement of the parties or their counsel; and if not, then by the discretion of the Arbitrator.

**6. Discovery**

The parties shall cooperate in good faith in the voluntary exchange of all relevant documents and other

information immediately after commencing the arbitration process. They shall complete an initial exchange of all relevant documents to include copies of all documents in their possession or control on which they rely to support their positions. In addition they will name all individuals they plan to call as witnesses with their addresses and phone numbers, including all experts and any expert report. The materials and witness lists and reports shall be in the hands of the other party within 21 days following the scheduling of the arbitration. The Arbitrator may modify this time limit at the Preliminary Conference Call.

Each party may take one deposition of the other party. The Arbitrator will determine the need for any other depositions or discovery. No other discovery will be allowed except by leave of the Arbitrator. If any expert deposition has not been taken, the party proffering that expert shall provide a summary of the testimony.

If there is a dispute regarding documents or depositions, the parties shall notify The Mediation Group of Tennessee who shall arrange a conference call with the arbitrator.

#### **7. Summary Judgments:**

If either party wishes to file a Motion for Summary Judgment of a particular claim or issue, either by agreement or at the request of one party, that party shall contact The Mediation Group to schedule a Conference Call. The Arbitrator can then determine with the help of the parties if such a motion is necessary or advisable, and if so the schedule of briefing and date of hearing.

#### **8. Interim Measures:**

The Arbitrator may take whatever interim measures deemed necessary, including injunctive relief and measures for the protection or conservation of property or suspension of business. Such interim measures may take the form of an Interim Award, and the Arbitrator may require security for the costs of such measures. Any recourse by a party to a court proceeding will be incompatible with the agreement to arbitrate.

#### **9. Hearing and Securing of Witnesses**

It is assumed that all witnesses under the control of a party will attend the hearing without the necessity of a subpoena upon request by the other party. If a subpoena is necessary, the Arbitrator will issue a subpoena for production of documents or for the attendance of a witness, so long as the subpoena is requested ten days in advance of the hearing and notice is given to the other party. Convenience to the witness will be taken into account by the Arbitrator in determining the method and place of the testimony.

The hearing shall be commenced and conducted by the Arbitrator. All relevant evidence shall be admissible subject to the discretion of the Arbitrator. The Rules of Evidence will not strictly apply, but are certainly a guide to the Arbitrator in giving the evidence such weight as is appropriate. However, the applicable law relating to privileges and work product will apply. The general order of these proceedings shall be similar to that used in courts, subject to the discretion of the Arbitrator. Hearings, as well as all other activities, will be convened privately. The Arbitrator may proceed with the hearing if a party is absent without good cause. The Arbitrator shall administer an oath to each witness to tell

the truth. Continuances may be granted by the Arbitrator only for good cause as determined by the discretion of the Arbitrator.

The Arbitrator may consider testimony by deposition, post-hearing briefs, closing arguments and requests to re-open a hearing if new relevant information appears.

10. **Recording the Hearing**

Any party may at its own expense procure appropriate services to record the proceedings of the hearing.

11. **Venue**

The actual or potential venue of the dispute will not be a factor in the Arbitrator's Award unless all parties, or their counsel, agree otherwise.

12. **The Award**

The Arbitrator shall send to the parties or their counsel by regular mail or facsimile a written Award promptly after the conclusion of the hearing. The award shall be based on the governing law as applied to the facts. The Award of the Arbitrator shall be binding upon the parties without any right of appeal except for any appeal allowed by governing law.

13. **Enforcement of the Award**

Judgment may be entered on the Award rendered in this case, and such judgment may be enforced pursuant to processes available under governing law. Unless there is a clause within the agreement to the contrary or by agreement of the parties, such proceeding will be enforced pursuant to the Tennessee Arbitration Act.

14. **Statute of Limitations**

All applicable statutes of limitations shall be tolled for the purposes of this Arbitration no later than the day that the claim is initiated.

15. **Role of Arbitrator**

The Arbitrator occupies the role of a neutral. The Arbitrator is an independent contractor of **The Mediation Group of Tennessee, LLC**. The Arbitrator and The Group, including its independent contractors, employees, officers and shareholders, shall not be liable to the parties for any act or omission relating to this arbitration. Nor shall the Arbitrator, The Group, including its independent contractors, employees, officers and shareholders, be subject to subpoena or other process in any proceedings relating to this arbitration.

16. **Communications with Arbitrator**

No private communications with the Arbitrator shall be allowed. All communications with the Arbitrator by any party or by a party's attorney shall be made at a hearing or in a conference call with all opposing parties or their attorneys having been given reasonable opportunity to participate. All such conference calls shall be arranged by the Case Manager of The Group. All written communications with the Arbitrator shall also be made through the Case Manager unless the Arbitrator or the Case Manager directs otherwise. Copies of all written communications shall be sent by a party or their counsel to all other parties, or their counsel, by the same means and at the same time as the original

communication is sent to The Group.

17. **“High – Low Agreements”**

The parties may agree that any Award rendered in the process shall not be enforceable beyond the limits established in a “high-low” agreement. Such an agreement may be provided to the Case Manager, but in no event will the existence of the “high-low” agreement nor the substance of the “high-low” agreement be revealed to the Arbitrator before the issuance of the award. (See sample “High-Low” Agreement Form, attached as Addendum B to Agreement to Arbitrate. )

18. **Modification of Rules**

The Rules may be modified by written agreement by all the parties to a dispute subject to the discretion of The Group. The Group may modify the Rules from time to time. The version of the Rules that is in existence at the time of the initiation of the claim shall govern.

19. **Interpretation of Rules**

The administrative office of The Group will make any administrative interpretation that is needed in applying the Rules. The Arbitrator will make any substantive interpretation that is needed in applying the Rules. The Arbitrator will determine what issues are administrative and what issues are substantive.

**ADDENDUM B**  
**"High-Low" Agreement**

CAPTION: \_\_\_\_\_

The parties wish to establish a "high-low" arrangement.

High = \_\_\_\_\_

Low = \_\_\_\_\_

Specifically, this means that if the Award is in an amount between or equal to the high and low stated above, then the Award shall be enforceable in the amount stated in the Award. **If** the Award exceeds the High, then the enforceability of the Award shall be limited to the amount stated as the High. If the Award is in an amount below the Low, including any Award wherein the Claimant is awarded nothing, then the Award shall be enforceable in the amount stated as the Low.

Claimant or Claimant's Counsel Signature \_\_\_\_\_

Respondent or Respondent's Counsel Signature \_\_\_\_\_

Respondent or Respondent's Counsel Signature \_\_\_\_\_

Respondent or Respondent's Counsel Signature \_\_\_\_\_