

## **New Era ADR**

### **Rules and Procedures**

*Last Updated: August 21, 2023*

*(please refer to the end of this document for the latest Release Notes and Fee Schedule)*

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- 1. Types of Proceedings and Pricing**
  - a. Mediation**
    - i. In General
      - 1. Currently, New Era ADR offers two types of Mediation products: Standard Mediations, and Mediations with a Binding Resolution. All Mediation products are conducted virtually on the New Era ADR platform.
      - 2. The parties will mutually agree on the type of mediation to be used for their case, and New Era ADR will conduct the mediation in accordance with the procedures

corresponding to the parties' mutually agreed upon selection.

ii. Standard

1. Standard, non-binding mediation processes are conducted entirely on New Era ADR's platform.
2. Expected completion of process = 30 – 60 Days from assignment of a neutral.

iii. With Binding Decision

1. If all the parties agree at the outset, and the mediation fails to achieve a resolution, final arguments will be presented and a binding decision will be issued by the neutral.
2. Expected completion of process = 30 – 60 days from assignment of a neutral.

**b. Arbitration**

i. In General

1. Currently, New Era ADR offers two types of Arbitration products: Standard Arbitrations and Expedited/Mass Arbitrations. All Arbitration products are conducted virtually on the New Era ADR platform.
2. The parties will mutually agree on the type of arbitration to be used for their case, and New Era ADR will conduct the arbitration in accordance with the procedures

corresponding to the parties' mutually agreed upon selection.

3. In the absence of agreement by the parties as to which type of New Era ADR Arbitration product applies to a particular case, the forum shall be New Era ADR's Expedited Arbitration product.

#### ii. Standard Arbitrations

1. Generally sought after for complex and/or more evidence-intensive disputes. This product is the most similar to a traditional arbitration, but still wholly virtual and with limited discovery.
2. Expected duration = < 100 days from assignment/selection of a neutral.

#### iii. Expedited/Mass Arbitrations

1. Generally sought after for disputes that would benefit from an even more streamlined process. For example, consumer, employment, or certain commercial disputes. Focused evidence submission and arguments are an essential part of this process.
2. Expected duration = 45 – 60 days from assignment/selection of a neutral.
3. Mass Arbitrations

- a. A specific type of Virtual Expedited Arbitration filed on the New Era Platform involving claims that:  
(a) number five (5) or more and are against common respondent(s), (b) arise out of Common Issues of Law and Fact, as that term is defined in Section 2(x) below, and (c) are brought by the same law firm or group of law firms acting in coordination.
- b. All mass arbitrations follow the Virtual Expedited Arbitration Rules with a few exceptions (as more fully described in Section 6(b)), such as neutral selection, Precedent (defined herein), a mandatory non-binding settlement conference, and reasoned decisions.
- c. Expected duration = 45-60 days from assignment/selection of a neutral for each Bellwether case.

**c. Moot Arguments**

- i. Partial - Moot portions of your case (e.g. opening/closing statements) or just test arguments and theories, all with one of New Era ADR's experienced neutrals.
- ii. Whole - Moot your entire case.

**d. Additional Services**

i. Reasoned Decision

1. The default for any adversarial proceeding on the New Era ADR platform, outside of Mass Arbitration bellwether cases and employment disputes, is the issuance of a standard decision.
2. Any party can request a reasoned decision for an additional fee. A reasoned decision provides limited explanation or elaboration for the decision along with a summary of the same. A standard decision provides the decision without further explanation.
3. A reasoned decision will not be a full judicial opinion, but will provide the neutral's reasoning and application of the law to the facts of the case. A reasoned decision *may* include findings of fact and conclusions of law, as required by law, at additional expense (and likely with the requirement that the parties submit proposed findings of fact and conclusions of law, with record citations) but this is not the default for reasoned decisions.

ii. Transcription Services (Coming Soon)

1. A transcript of any hearing can be requested by any party.
2. New Era ADR will use a proprietary license for transcription software to transcribe the hearing in real time.

3. New Era ADR will endeavor to provide the transcript within 24 hours of the completion of the hearing.

## 2. General Rules and Procedures

### a. Applicability

- i. All proceedings on the New Era ADR platform, found at <http://app.neweraadr.com> (the “**Platform**”), are subject to the Terms of Use, the Privacy Policy, and these Rules.
- ii. Each proceeding also has its own set of specific rules applicable directly to that particular proceeding. Each appears later in this outline and separately on New Era ADR’s website (together, the “**Proceeding-Specific Rules and Procedures**” and collectively with these General Rules and Procedures, the “**Rules**”).
- iii. In the event an agreement does not include an arbitral statute, the Federal Arbitration Act (FAA) shall govern, subject to the discretion of the presiding arbitrator and/or mediator (a “**Neutral**”).

### b. Terms of Use

- i. By using the Platform, or based upon a previous contract agreeing to use the Platform, you have agreed to be bound by the New Era ADR Terms of Use, the Privacy Policy, these Rules and any applicable Proceeding-Specific Rules and Procedures.
- ii. You represent that you have read these New Era ADR Rules, you agree that New Era ADR provides you a fundamentally fair



dispute resolution process, and you agree to be bound by any decision(s) rendered.

- iii. For more information, please refer directly to the New Era ADR Terms of Use and the Proceeding-Specific Rules and Procedures.

**c. Confidentiality**

- i. New Era ADR shall maintain the confidentiality of all proceedings except where disclosure is required by law or as New Era ADR deems necessary for a judicial challenge to the result. The Neutral may issue additional orders to protect the confidentiality of any portion of the proceeding or evidence and documents submitted.
- ii. The Parties agree that all communications and evidence will remain confidential and neither party will take any action that would reasonably be expected to lead to unwanted or unfavorable publicity to any other party. This provision does not apply to facts or information gathered outside of the proceeding.
- iii. As noted in the Terms of Use, the services provided herein are governed by Illinois law, and the Location of Proceeding/Choice of Law provisions below indicate that “All New Era ADR proceedings are deemed to take place in the location of the neutral,” which may implicate the Neutral’s forum state’s ADR

confidentiality laws. Accordingly, in connection mediation services provided through New Era ADR, all communications between New Era ADR or the Neutral on the one hand, and any mediation party, counsel, or other person or allowed to participate in the mediation, whether made during such a mediation or made prior to such a mediation but in furtherance thereof, shall constitute confidential and privileged mediation communications under the Illinois Uniform Mediation Act (710 ILCS 35/1 – 35/16, as amended from time to time) or the Neutral’s forum state’s confidentiality/privilege law.

**d. Decorum/Sanctions**

- i. All Parties are expected to maintain professional and respectful behavior during the duration of any proceeding(s). Should any Party violate this provision, the Neutral(s) may sanction any Party, witness, or participant to the full extent permitted by law; and such sanctions include, but are not limited to, monetary sanctions if allowed in the arbitration agreement amongst the Parties, issue preclusion, adverse findings, and awards of attorneys’ fees and/or costs if allowed in the arbitration agreement amongst the Parties. No refunds will be granted as a result of proceedings shortened as a result of a violation of this provision.

**e. Location of Proceeding/Choice of Law**

i. Except as stated above regarding Mediation Confidentiality, all New Era ADR proceedings are conducted virtually and are deemed to take place in the venue determined by the Neutral regardless of the physical locations of the Parties, participants and/or evidence and witnesses. This does not impact choice of law provisions or other contractually chosen law which will be applied by the New Era ADR Neutral. In determining the merits of the dispute, the Neutral shall apply the choice of law previously agreed to by the Parties. In the absence of such agreement, the Neutral shall apply the choice of law that he/she/they deem(s) to be most applicable, in their sole discretion. If there is a dispute over the choice of law, arguments should be made by the Parties using messaging on the New Era ADR platform and in accordance with Sections 2(r)(iii) and 2(z)(ii) of these Rules. The Neutral may grant any remedy or relief that is just and equitable and within the scope of the Parties' agreement or applicable law.

**f. Independent Neutrals/Ultimate Authority/Customized Provisions**

i. Neutrals must be independent, impartial, and comply with all applicable rules of professional conduct and canons of legal ethics. Neutrals must take all reasonable steps to achieve fundamentally fair, efficient, and economical proceedings.

- ii. New Era ADR affiliated Neutrals are the ultimate arbiters of all proceedings on the Platform with full authority and discretion to manage proceedings under these Rules.
- iii. Subject to Section 2(k), the Parties waive any objection to the Neutral's authority.
- iv. The Neutral has the authority to resolve disputes among counsel where there is more than one attorney or law firm representing the claimants or respondents, including the authority to appoint lead counsel for a Party, or group of Parties with aligned interests, to achieve a fundamentally fair, efficient, and economical proceeding.
- v. New Era ADR affiliated Neutrals are independent contractors. They are not employees of New Era ADR and are not compensated by New Era ADR other than at their contractually agreed upon rates.
- vi. By written agreement, Parties may provide for alternative dispute resolution provisions tailored to their needs. New Era ADR will make reasonable efforts to honor customized alternative dispute resolution provisions. But, unless New Era ADR has given prior written approval to customized alternative dispute resolution provisions, New Era ADR reserves the right to decline any case calling for alternative dispute resolution provisions that contradict the letter or the spirit of these Rules.

**g. Agreement to Refer Disputes**

- i. By referring disputes to the New Era ADR platform or by naming New Era ADR, in a pre-dispute agreement, as the dispute resolution provider to be used in the event of a dispute, you either have a binding agreement that requires dispute resolution through the New Era ADR platform or both/all parties have consented to resolve their disputes on the New Era ADR platform. The claimant(s) may initiate a case on the platform based on either scenario, but the basis for consent (i.e. the contract, terms of use or other agreement) must be identified and a copy provided to New Era ADR.

**h. Fees**

- i. Prior to the commencement of any New Era ADR proceeding, the Parties must pay the applicable platform fees in accordance with the New Era ADR Fee Schedule, which include neutral fees. Financial Hardship Affidavits are available for Parties whose financial position does not allow for payment. No New Era ADR proceeding will commence without payment of all fees owed or agreeable payment terms being reached.

**i. Electronic Service**

- i. The Parties consent to electronic service of process with service to be made to the email address provided contractually. Parties using New Era ADR should provide applicable email

address(es) for service in their Terms of Use or contracts.

Unless a Party objects for lack of sufficiency of service, any Party appearing in a proceeding waives any objection to service of process.

**j. Assignment of Neutrals**

**i. Rank/Strike Panel**

1. For every proceeding, unless otherwise provided for herein or in the Proceeding Specific Rules and Procedures, New Era ADR will select a panel of a minimum of 3 and up to 8 available Neutrals (the “**Rank/Strike Panel**”). Neutrals will be considered for the Rank/Strike Panel based upon one or more of the following criteria: (A) requisite experience to preside over the dispute at issue, (B) geographic location, (C) diversity of their background and experience, and (D) any other qualities New Era ADR deems relevant for the particular dispute at issue, in each case.
2. The Rank/Strike Panel shall consist first of Neutrals from the New Era ADR bench, to the extent possible, and shall be supplemented by any other Neutrals who agree on an ad hoc basis to be a part of the Rank/Strike Panel (and, potentially, preside over a proceeding on the Platform).

3. Once the Parties receive the Rank/Strike Panel, the Parties will participate in New Era ADR's Standard Rank/Strike Process, in accordance with Section 2(j)(ii), below, unless:
    - a. Both Parties agree to have New Era ADR appoint a Neutral from the Rank/Strike Panel; or
    - b. Both Parties agree to a different process for Neutral selection pursuant to Section 2(f)(vi).
- ii. New Era ADR's Standard Rank/Strike Process
1. After they receive the Rank/Strike Panel, the Parties will have five (5) days to:
    - a. strike one Neutral each if six or fewer Neutrals are proposed as a part of the Rank/Strike Panel; or
    - b. strike two Neutrals each if seven or more Neutrals are proposed as a part of the Rank/Strike Panel.
  2. After exercising their strikes, the Parties will have two more days to numerically rank the remaining Neutrals, with #1 being a Party's top choice and the quantitatively highest number being the least preferable.
    - a. If one Neutral has the best score (in this instance, the lowest score), then that Neutral will be appointed and the proceeding will move forward.





New Era ADR will, in its discretion, designate one of the Party(ies)'s attorneys to act for the Party(ies) in the Rank/Strike Process.

- v. If a different process for the Neutral's selection is required under applicable law, New Era ADR will make reasonable efforts to comply with such law. New Era ADR reserves the right, in its sole discretion, to decline any case where the neutral selection process required under applicable law conflicts with the letter or spirit of these Rules, would unreasonably burden New Era ADR, or would require New Era ADR to incur expenses larger than those associated with the Rank/Strike Process.
- vi. A Neutral's selection is always subject to the Neutral's availability and clearance for conflicts.
- vii. The timelines and deadlines outlined in this Section 2(j) may be extended at the discretion of New Era ADR to ensure an efficient and fundamentally fair process.

**k. Conflicts/Disqualification and Replacement of Neutrals**

- i. As soon as reasonably practicable following a Neutral's appointment through the Rank/Strike Process, New Era ADR will provide the Neutral with the names of all Parties and attorneys associated with the proceeding to permit the Neutral to check for actual or potential conflicts of interest.

- ii. The appointed Neutral must, as soon as reasonably practicable after their receipt of the names of all Parties and attorneys associated with the proceeding, check for any actual or potential conflicts of interest:
  1. If the Neutral has an actual conflict of interest, the Neutral must decline the appointment (or withdraw if already appointed) unless such conflict of interest is duly disclosed and waived by all parties to the dispute; and
  2. If there is an irreconcilable conflict, New Era ADR will appoint the next highest ranked Neutral from the Rank/Strike process until a Neutral is selected that does not have any existing conflict, subject to scheduling availability.
- iii. Immediately after completing their conflict check, and in no event more than five (5) days after their appointment, the Neutral must disclose to New Era ADR any information that could cause a person aware of the disclosure to entertain doubts concerning the Neutral's independence or impartiality. Among other matters that the Neutral must disclose are: (A) any financial interest in the proceeding or a Party to it; (B) a past or present relationship with a Party or Party's counsel; (C) any prior or current appointments as a Neutral in a case involving a Party; and (D) any other matter the Neutral is required to

disclose under applicable law or under any applicable ethics rules. New Era ADR will distribute the Neutral's disclosure to all parties and counsel via the Platform.

- iv. If a Party has any information that could cause a person aware of such information to entertain doubts concerning the Neutral's independence or impartiality, the Party must make a detailed written disclosure of such information to New Era ADR. Any disclosure required under this provision must be made no more than 10 days after the Neutral's appointment and sent to New Era ADR, without copying the Neutral, at [support@neweraadr.com](mailto:support@neweraadr.com).
- v. A Party's consent to a Neutral's service (or continued service) following a disclosure by the Neutral is indicated by either:
  1. Informing New Era ADR (and not the Neutral) via the Platform of such express consent; or
  2. Failing to inform New Era ADR (and not the Neutral) of any objection to the Neutral within fifteen (15) days after the Neutral's disclosure is made available via the Platform.
- vi. A Party may object to the Neutral's service (or continued service) in a writing, not copied to any other Party or the Neutral, sent to New Era ADR at [support@neweraadr.com](mailto:support@neweraadr.com). The objection should particularize the grounds on which it is based,

including any laws or rules the Party believes are applicable. New Era ADR will, in its sole discretion except as otherwise dictated by applicable law, determine whether or not the objection to a Neutral's service has merit and calls for the Neutral's disqualification.

- vii. If New Era ADR determines that the Neutral must be disqualified, New Era ADR will replace the Neutral with the next-ranked Neutral from the Rank/Strike Panel, subject to availability, at no additional charge and will provide notification to all Parties about the change and a general explanation of why it was necessary.
- viii. The Neutral's and the Parties' disclosure obligations under this Section 2(k) are continuing in nature, and require disclosure, as soon as reasonably practicable, at any stage of the proceedings, of any interests or relationships that might constitute a conflict or that might call the Neutral's continued service into question.

#### **I. Commencement of Proceedings**

- i. All New Era ADR proceedings are commenced on the Platform. The system will require contact information for the Parties, the attorneys, the nature of the claim(s), the type of damages or relief requested, any counterclaims, and payment by credit card.

The application will guide the Parties through the additional steps needed in the process.

**m. Timelines and Deadlines**

- i. Throughout these Rules, any reference to a number of days will be computed so that the last day of the period referenced will be included, unless it is a Saturday, a Sunday, or a US Federal legal holiday, in which event the period runs until the end of the next day which is not one of the aforementioned exceptions.
- ii. Once a proceeding is commenced, the Neutral will provide dates for hearings, meetings and deadlines for document and evidence submissions if different from the defaults outlined in these Rules.
- iii. All proceedings at New Era ADR are time limited with the following as expected timelines as set forth above:
  1. Mediation = 30 – 60 days from appointment/selection of a neutral
  2. Mediation with a Binding Decision = 30 – 60 days from appointment/selection of a neutral
  3. Expedited arbitration = 45 – 60 days from appointment/selection of a neutral
  4. Standard arbitration = Under 100 days from appointment/selection of a neutral

- iv. You are expected to operate within these general time parameters and be prepared to meet expedited deadlines. Exceptions may be granted as necessary to ensure a fundamentally fair process, as determined in the discretion of the Neutral.
- v. Failure to adhere to any deadlines set by these Rules or the assigned Neutral may result in sanctions which include, but are not limited to, issue preclusion, exclusion of documents/evidence, adverse findings, advancement of the case to the next stage, or a default decision being issued against you, in each case as determined in the discretion of the Neutral.
- vi. Neutrals are also expected to maintain these timeframes.

**n. Witnesses**

- i. If a Party believes witness testimony would be relevant to the dispute, the Party may present that testimony to the Neutral in one of three ways: by requesting that the witness attend a hearing before the Neutral, by providing a transcript of the witness' deposition testimony, or by submitting an affidavit from the witness. (Please note that some Neutrals may not accept or may not find persuasive testimony adduced solely by affidavit, as the opposing party will not have had a chance to subject the affiant to cross-examination or the like.)

- ii. If a witness refuses to attend, to the extent allowable under applicable law, a Party may request that the Neutral issue a subpoena which the requesting Party must serve on the witness (and, if necessary, seek enforcement in a court of competent jurisdiction) in accordance with applicable law. The Neutral retains discretion on whether or not a subpoena should be issued and the scope of the subpoena.
- iii. The Party must allow sufficient time to procure the witness(es)'s attendance prior to any document submission or hearing deadline. There will be no delays as a result of a Party's failure to properly secure witness attendance.
- iv. The Parties are allowed a maximum of two (2) witnesses at a hearing unless the Neutral specifically allows additional witnesses, on good cause shown.
- v. Live testimony shall be given under oath which shall be administered by the Neutral, or as otherwise required or permitted by the Neutral's forum state law.

**o. Discovery**

**i. In General**

- 1. Parties have a right to discovery seeking non-privileged documents and information in an opposing Party's possession that are relevant to the claims or defenses at issue and material to the Neutral's resolution of the

dispute. The presiding Neutral will implement discovery procedures that strike a fair balance between the Parties' right to discovery and an efficient and economical resolution of the dispute.

2. The Neutral will have the authority to issue a discovery schedule and set discovery-related deadlines, as appropriate, taking into account the dispute's complexity and whether the dispute falls under New Era's Standard or Expedited Arbitration Procedures.
3. The Parties must timely comply with their discovery obligations, including any discovery deadlines set by the Neutral. The Neutral is authorized to decide all discovery-related objections, on which the Neutral's decision is final.
4. The Parties may assert the attorney-client privilege, work product doctrine, or any other applicable protection from disclosure as grounds to withhold the production of documents and information. The Neutral is authorized to implement procedures governing the assertion of privilege claims and, as necessary, to decide the validity of a Party's privilege assertions. The Neutral's decision on privilege disputes will be final.



5. If a Party fails to timely comply with its discovery obligations, the Neutral may impose appropriate sanctions against the noncompliant Party including, without limitation, excluding evidence, drawing an adverse inference, or ordering the noncompliant Party to pay costs.
  6. The Parties may agree in writing to a scope of discovery and discovery-related procedures in addition to or different than the discovery provided for under these rules. The Neutral will honor the Parties' agreement except that any agreement reached by the Parties after the Neutral's appointment is subject to the Neutral's approval. New Era ADR reserves the right to charge additional fees when the Parties' agreement concerning discovery causes New Era ADR or the Neutral to devote additional time beyond the scope of what is already contemplated by these Rules to administering the case.
- ii. Virtual Standard Arbitrations
    1. The discovery process applicable to Virtual Standard Arbitration proceedings is set forth in Section 5(a)(ix) below.
  - iii. Virtual Expedited Arbitrations

1. Discovery is available in Virtual Expedited Arbitration proceedings as set forth in this Rule 2(o)(iii). The Neutral may order discovery in addition to that provided for under this Rule 2(o)(iii) if the Neutral determines that additional discovery is required to achieve a fair proceeding.
2. A Party to a Virtual Expedited Arbitration proceeding may request that the Neutral order an opposing Party to produce specifically-identified documents or information that is relevant to the claims or defenses at issue and material to the Neutral's resolution of the dispute (a "**Specific Discovery Request**"). The Neutral will order the production of documents or information responsive to a Specific Discovery Request unless the Neutral finds that the Specific Discovery Request seeks irrelevant, immaterial, redundant, or otherwise unnecessary documents or information.
3. The Parties to a Virtual Expedited Arbitration process may, by agreement in writing, elect to follow the discovery process applicable to Virtual Standard Arbitration proceedings. If the Parties so agree, the Neutral will make appropriate modifications to the case schedule to accommodate the Standard Arbitration's

discovery process' longer timeline. New Era ADR's normal fees for its Standard Arbitration process shall thereafter apply.

**p. Evidence/Hearings**

- i. All evidence must be uploaded to New Era ADR's secure online platform.
- ii. Subject to the rights to discovery in Section 2(o) of these Rules, at the beginning of and throughout the case, the Neutral will determine the appropriate limits on the amount of evidence, briefing, and argumentation to be submitted based on the complexity of the issues involved, number of parties, and any other material factors in their discretion.
- iii. The Neutral, in their discretion, may allow non-cumulative evidence in excess of the stated limits if necessary for the Parties to present all reasonably relevant and material evidence.
- iv. The Neutral shall be the final arbiter of, and has sole discretion regarding, what evidence shall be considered, what weight should be applied to the evidence, and whether evidence should be excluded from consideration, based on fairness, equity, or the law (including, by way of nonexclusive example, on the basis of forum-state recognized evidentiary privileges).

- v. Except as required by law, the Parties agree not to save, record, or distribute evidence in any way, other than through the New Era ADR system and then only for the purpose of the proceeding.
- vi. The Neutral may request additional evidence which the Parties shall provide, if available.
- vii. The Neutral may request post-hearing, supplementary evidence or argument at the Neutral's sole discretion.
- viii. Unless the Parties agree to the contrary, hearings shall be held in Standard Arbitrations and Bellwether cases in Mass Arbitrations. In all other Expedited Arbitrations, the Neutral may rule solely on the documentary evidence without any virtual hearing. Discretion lies solely with the Neutral in making a determination of whether a hearing is necessary in all non-standard or non-Bellwether cases.

**q. Recognition of "Opt Out" Rights**

- i. New Era ADR will recognize a Party's exercise of any opt out right provided for under the Parties' agreement. If a Party has exercised its right to opt out of arbitration under the Parties' agreement, New Era ADR will decline to administer and will discontinue any arbitration proceeding, in whole or in part as appropriate, that concerns the opt out Party.

- ii. A Party that exercised an opt out right under the Parties' agreement may obtain New Era ADR's recognition of the same by providing written notice, addressed to New Era ADR at support@neweraadr.com, which notice must detail the Party's exercise of its opt out rights and include evidence substantiating the Party's opt out.

**r. Civil Procedure/Rules of Evidence/Motion Practice**

- i. The Parties may offer relevant and material facts and evidence as necessary to facilitate the Neutral's understanding of the dispute, but formal Federal and State Rules of Evidence and Rules of Civil Procedure do not apply.
- ii. The Neutral has sole discretion in determining the cadence and progression of the proceeding as well as the admissibility, weight, veracity, authenticity, relevance and importance of any evidence or arguments submitted.
- iii. For Standard Arbitrations, formal motion practice is not allowed unless specific exceptions are made by the Neutral, in their sole discretion, or the Parties have agreed to New Era ADR's excess fee structure for additional stages in Standard Arbitrations. For Expedited Arbitrations, formal motion practice is not allowed other than for Bellwether cases in Mass Arbitrations, where formal motion practice is generally not allowed unless specific exceptions are made by the Neutral, in

their sole discretion. Otherwise, all Requests for consideration of preliminary or dispositive issues may be raised with the Neutral and made on the Platform at any time during the proceedings via initial pleadings, the messaging function, and/or final argumentation for all proceedings. The following further illustrates these Rules with respect to specific types of motions:

1. Preliminary and Dispositive Motions: Formal motion practice for preliminary or dispositive issues are not allowed on the New Era ADR platform under these Rules. However, if there is a threshold issue that dictates the case should not continue, that issue should be raised with the Neutral at any time during the proceedings through submissions as a part of initial pleadings, the messaging function on the New Era ADR platform, and/or final argumentation.
2. Discovery Motions: Issues related to discovery should be raised with the Neutral through the messaging function on the New Era ADR platform during the discovery process. If necessary, such issues may also be included in briefing and raised at the inception of the hearing as threshold issues so the Neutral may rule accordingly, in accordance with Section 2(z)(ii) of these Rules. Such issues must be raised at the inception of a hearing in

order to be considered and may be revisited, if necessary, in the final briefing.

3. All Other Motions: In any scenario where the Neutral has allowed for motions for specific exceptions, such motions must be made at the hearing and at the inception of such hearing for Neutral consideration, in accordance with Section 2(z)(ii) of these Rules and Procedures. Any motions not raised in this manner will not be considered. Hearings shall then proceed after the Neutral makes their determination with respect to such motions, unless in their sole discretion the hearing must be paused and reconvened later.
- iv. The burden of proof for any employment dispute (where one Party is or was the employee of the other Party) shall be that which is required in the court of the governing jurisdiction of the dispute, as determined by the Neutral.
- v. No appeal is permitted from the decision(s) granted under these Rules unless otherwise specified in the contractual agreement between the Parties.

**s. Transcription**

- i. The Parties may request that a hearing be transcribed. This is done with New Era ADR's proprietary license of transcription software.

- ii. New Era ADR will endeavor to deliver the transcript within 24 hours of the completion of the hearing.

**t. Settlement**

- i. Parties may settle their dispute before, during or after the New Era ADR proceeding, whether facilitated by a New Era ADR Neutral or not.
- ii. *Since all New Era ADR fees (inclusive of neutral fees) accrue at the time of filing, no rebates or refunds of any paid fees shall be given (although New Era ADR will consider and may abide by the Parties' agreement to shift some or all of the New Era ADR fees from or to any particular Party).*

**u. Decision/Award**

- i. Neutrals have the authority to issue awards that provide for the same relief that would be available to a Party in the court of the governing jurisdiction of the dispute, as determined by the Neutral and in their discretion.
- ii. In the arbitration context, a decision/award will typically be issued within 7 days after the Neutral closes the record (i.e., after all the evidence and post-hearing submissions have been received or the deadline for their submission has passed, whichever is sooner). The decision will be non-reasoned unless required by law or otherwise set forth herein.



- iii. If a Party, or the Parties, wish(es) to have a reasoned decision, the reasoned decision will typically be issued within 14 days after closing of the record.
- iv. A reasoned decision will include the application of the law to the facts of the case as well as the ultimate decision and award, but is not equivalent to a full judicial opinion.
- v. If the Parties request findings of fact and conclusions of law, or such findings and conclusions are required by law, additional charges may apply and the issuance of the decision will require additional time beyond the 14 day period set forth above for a reasoned decision.
- vi. Reasoned decisions are the default standard for employment cases and Bellwether cases in Mass Arbitrations.

**v. Enforcement of Decision/Award**

- i. The Parties acknowledge and agree that any decision and/or award is enforceable without further action and waive any objection to the enforceability of the decision or award subject to any rights contained in the Federal Arbitration Act (FAA) or applicable state law.
- ii. The Parties agree that judgment on the Neutral's award may be entered in any state or federal court of competent jurisdiction.
- iii. In cases where there is a statutory or contractual right to reasonable attorneys' fees and costs for the prevailing party,

the Neutral has authority to award such fees and costs as if the matter were being heard by a court of competent jurisdiction. In such an instance, the Parties should submit a statement of attorneys' fees and costs along with supporting information with their final briefs. This additional information will not count against any applicable page or size limits. The Neutral shall identify in the decision/award which Party has prevailed on the claim that carries with it prevailing party attorney's fees as an item of relief, and award such fees and costs as they deem reasonable. .

**w. Execution of Award/Decision**

- i. If the award/decision requires the payment of monetary damages, the debtor Party must pay the amount owed on or before the 14th day after the award was served on the Parties unless otherwise noted in the award or decision. Payment must be made via electronic payment, or certified check/money order sent via a trackable method of shipping.
- ii. If the award/decision requires non-monetary relief, the required action or non-action must be taken on or before the 14th calendar day after the award was served on the Parties unless otherwise noted in the award or decision.

- iii. The Neutral has the authority to award pre-award interest, impose post-award interest and/or may order sanctions for non-compliance.
- iv. The Neutral also has the authority to award costs and sanctions for frivolous filings, at their sole discretion (however, the Neutral shall consider applicable law that may limit or prohibit such sanctions in certain types of cases).

**x. Common Issues of Law and Fact**

- i. “Common Issues of Law and Fact” means when cases or proceedings present the same, or similar, evidence; present the same, or similar, witnesses; and/or rely on determination of the same, or similar, facts and issues of law.
- ii. Determination of whether case(s) involve Common Issues of Law and Fact rests solely in the hands of the Neutral handling the proceeding or a New Era ADR Neutral tasked with making such a determination.

**y. Precedent**

- i. Decisions in Mass Arbitration Bellwether cases that make significant factual findings and legal determinations are called “Lead Decisions.”
- ii. New Era ADR will maintain a library of anonymized Lead Decisions associated with each Mass Arbitration proceeding,

which may be accessed via the Platform by any Party or counsel in that Mass Arbitration.

- iii. Any Party to a Mass Arbitration proceeding is entitled to argue that the Neutral should apply a Lead Decision as “Precedent” in deciding other cases in the same Mass Arbitration proceeding. Any other Party may argue against the Neutral’s application of a Lead decision as Precedent, as provided for under Section 6(b)(iii)(5).
- iv. Lead Decisions may only be applied as Precedent in deciding cases associated with the specific Mass Arbitration proceeding from which the Lead Decision originates and only as provided for under Section 6(b)(iii)(5) and Section 6(b)(iii)(6).
- v. Lead Decisions may not be applied as Precedent in a Virtual Standard Arbitration or a Virtual Expedited Arbitration that is not a Mass Arbitration.

**z. Arbitrability/Neutral Discretion**

- i. Unless otherwise agreed to by the Parties in writing, any question or matter of arbitrability of a dispute shall be determined solely by the Neutral(s) provided by New Era ADR Inc. and not in a court of law or other judicial forum. *In such cases, the Parties agree and acknowledge that they are waiving their right to seek a determination of arbitrability in a court of law or other judicial forum.*

- ii. Any issues that are subject to Neutral discretion and arguments from the Parties related thereto, arbitrability, governing law, jurisdiction, or otherwise, shall be argued and decided at the regularly-scheduled hearings on the merits of the case, or via the Platform messaging function, and not through any preliminary hearings or motion practice (subject to Section 2(r)(iii) of these Rules and Procedures and the discretion of the Neutral).

**aa. Injunctive Relief**

- i. New Era ADR Inc. and its associated neutral(s) have the power and authority to issue injunctive relief including, but not limited to, temporary restraining orders, preliminary injunctions and permanent injunctions depending on the facts and the circumstances of the case. A Party seeking injunctive relief must demonstrate that the legal standard under applicable law has been met and no condition contained herein waives the obligation to make such a demonstration. *In the event a Party is seeking temporary, interim, or emergency injunctive relief, each Party agrees that New Era ADR will appoint the Neutral.*

**bb. Document Retention**

- i. Documents uploaded to the New Era ADR platform will be retained for sixty (60) days from the termination of the proceeding or the issuance of a decision/term sheet, whichever

is later (the “Deletion Deadline”). The Parties will be able to download documents for their case file up to the Deletion Deadline at which point all documents from the proceeding will be permanently deleted and inaccessible. New Era ADR does not maintain backup tapes or other redundant storage mechanisms post-deletion. You agree to protect, defend, indemnify and hold New Era ADR, its Neutrals and their respective organizations, assigns, employees, officers and directors harmless from and against all losses, costs, liabilities, claims, damages and expenses of every kind and character, as incurred, resulting from, relating to or arising out of any deletion of documents after the Deletion Deadline.

**cc. Liability Exclusion and Arbitration-Related Court Proceedings**

- i. The Parties agree that New Era ADR, its employees, the Neutral, and the Neutral’s organization and employees will not be liable to any Party for any alleged act or omission related to the use of the New Era ADR platform, arbitration under these Rules, or both. The Parties also agree that nothing in these Rules affects any immunity or other legal protections to which New Era ADR, its employees, the Neutral, or the Neutral’s organization and employees may otherwise be entitled to under applicable law.

- ii. The Parties agree that New Era ADR, its employees, the Neutral, and the Neutral's organization and employees are not indispensable or appropriate parties to any lawsuit or other legal proceeding concerning a dispute submitted for resolution on the New Era ADR platform or otherwise arbitrated or to be arbitrated under these Rules. Accordingly, no Party will subpoena or otherwise seek testimony or other evidence from New Era ADR, its employees, the Neutral, or the Neutral's organization and employees in any such lawsuit or legal proceeding.

#### **dd.Changes and Amendments to Rules**

- i. New Era ADR reserves the right to make changes and amendments to these Rules at its discretion. New Era ADR will endeavor, however, to make changes only once per calendar quarter and provide additional notice of any changes that substantively affect proceedings on its website.
- ii. If the Parties have entered into an arbitration or mediation agreement, the version of the Rules in effect at the time a claim is filed with New Era ADR will govern the arbitration or mediation, unless the Parties mutually agree to another version.
- iii. If the Parties have not entered into an arbitration or mediation agreement, the version of the Rules in effect at the time the first Party files with New Era ADR will govern the proceedings.

- iv. In the event of a Mass Arbitration, the version of the Rules in effect at the time the first case of the Mass Arbitration was filed will govern the proceedings.
- v. Any dispute concerning the version of these Rules that is applicable to a particular dispute will be decided by New Era ADR.

#### **ee. Educational and Legal Disclaimer**

- i. New Era ADR content and resources are not intended to be legal advice, and the Parties shall not rely on the content or services as legal advice or representations regarding outcomes, negotiation, settlement or insight into another Party's behavior or practices.

### **3. Virtual Mediation Rules and Procedures**

#### **a. Process and Rules at Each Stage**

- i. Claimant Sign-Up
  1. Claimant signs up using New Era ADR's simple and secure sign-up process located at [app.neweraadr.com](http://app.neweraadr.com).
- ii. Claimant Pays Fees
  1. Claimant pays its share of the fees according to the New Era ADR Fee Schedule.
- iii. Respondent Sign-Up
  1. Respondent signs up using New Era ADR's simple and secure sign-up process at [app.neweraadr.com](http://app.neweraadr.com).



iv. Respondent Pays Fees

1. Respondent pays its share of the fees according to the New Era ADR Fee Schedule.

v. Neutral Chosen

1. A Neutral shall be chosen in accordance with Section 2(j) of these Rules and New Era ADR's Standard Rank/Strike Process outlined in Section 2(j)(ii), unless another process is elected by the Parties pursuant to Section 2(f)(vi) or is required under Section 2(j)(v).

vi. Pre-Mediation Conferences are Scheduled and Held

1. The Neutral schedules and holds 30 minute pre-mediation conferences with both Parties using New Era ADR's scheduling software.
2. ***Please note these conferences are optional and can be declined when scheduling.***

vii. Mediation Scheduled

1. The Neutral schedules the mediation using New Era ADR's scheduling software, based on input from the Parties.

viii. Documents Are Uploaded

1. Both Parties upload their relevant documents and mediation statements. These are not visible to any other Party, only the Neutral.

ix. Mediation is Held

1. The mediation is held via the preferred video conferencing software with Zoom as the default.

x. Term Sheet

1. If a settlement is reached, the mediated settlement term sheet is drafted by the Neutral with input from the {Parties and their attorneys, and executed on the New Era ADR platform via e-signature by the Parties before the mediation is closed.

#### **4. Virtual Mediation with Binding Resolution Rules and Procedures**

##### **a. Process and Rules at Each Stage**

- i. Parties must agree to this process prior to commencement of the mediation along with consent to the mediator converting to an arbitrator in the event the mediation fails.
- ii. Claimant Sign-Up
  1. Claimant signs up using New Era ADR's simple and secure sign-up process located at [app.neweraadr.com](http://app.neweraadr.com).
- iii. Claimant Pays Fees
  1. Claimant pays its share of the fees according to the New Era ADR Fee Schedule.
- iv. Respondent Sign-Up
  1. Respondent signs up using New Era ADR's simple and secure sign-up process at [app.neweraadr.com](http://app.neweraadr.com).

v. Respondent Pays Fees

1. Respondent pays its share of the fees according to the New Era ADR Fee Schedule.

vi. Neutral Chosen

1. A Neutral shall be chosen in accordance with Section 2(j) of these Rules and New Era ADR's Official Rank/Strike Process outlined in Section 2(j)(ii), unless another process is elected by the Parties pursuant to Section 2(f)(vi) or is required under Section 2(j)(v).

vii. Pre-Mediation Conferences are Scheduled and Held

1. The Neutral schedules and holds 30 minute pre-mediation conferences with both Parties using New Era ADR's scheduling software.
2. ***Please note these conferences are optional and can be declined when scheduling.***

viii. Mediation Scheduled

1. The Neutral schedules the mediation using New Era ADR's scheduling software, based on input from the Parties.

ix. Documents Are Uploaded

1. Both Parties upload their relevant documents and mediation statements. These are not visible to any other

Party, only the Neutral. *Non-placeholder documents must be submitted in this process.*

x. Mediation is Held

1. The mediation is held via the preferred video conferencing software with Zoom as the default.

xi. Term Sheet

1. If a settlement is reached, the mediated settlement term sheet is drafted by the Neutral with input from the Parties and their attorneys, and executed on the New Era ADR platform via e-signature by the Parties before the mediation is closed.

xii. No Settlement

1. If no settlement is reached, the mediation moves into the “binding resolution” portion of the proceeding.

xiii. Exchange of Documents

1. Once the Neutral has advanced the case into the “binding resolution” portion of the proceeding, the documents that were submitted at the beginning of the mediation will be exchanged between the Parties.
2. *The mediation statements remain confidential and will not be exchanged.*

xiv. Final Arguments

1. The Parties will have no more than fourteen (14) days to review the submitted documents and provide final argument briefs to the Neutral.
2. Final argument brief page limits shall be set by the Neutral.

xv. Decision is Rendered

1. The Neutral will render a non-reasoned decision within 7 days of receipt of final arguments.
2. A reasoned decision can be requested and will be provided within 14 days of receipt of final arguments.

## 5. Virtual Standard Arbitration Rules and Procedures

### a. Process and Rules at Each Stage

- i. Standard Arbitration typically applies to standard commercial disputes that involve typical document volumes and discovery. ***The Parties may contractually determine whether certain proceedings fit under Virtual Expedited or Virtual Standard arbitrations, and New Era ADR will respect those contractual agreements.*** See Section 1(b) of these Rules and Procedures for more detail.
- ii. Claimant Sign-Up and Complaint
  1. Claimant signs up on the platform using New Era ADR's simple and secure sign-up process and submits a Complaint located at [app.neweraadr.com](https://app.neweraadr.com).

- a. Complaints, whether or not using New Era ADR's form, must contain each of the following:
    1. The nature of the dispute, including applicable dates and times, parties involved, **as well as the facts specific to the Claimant(s) that gave rise to the dispute.** **New Era ADR is not a notice pleading platform.** Generalized or generic facts are not sufficient to satisfy this requirement.
    2. The legal basis upon which the Claimant is seeking such relief, whether state law, federal law, or otherwise.
    3. The relief sought, whether monetary, non-monetary, or both, and the basis for such relief.
  - b. No additional exhibits, documents, or evidence is necessary to be attached to the Complaint.
  - c. No prefatory or jurisdictional material is required in Complaints unless necessary to any claims or defenses.
2. Not abiding by these requirements for Complaints may subject Claimant to the Decorum/Sanction rules outlined in Section 2(d) of these Rules and Procedures.

iii. Claimant Pays Fees

1. Claimant pays its share of the fees according to the New Era ADR Fee Schedule.

iv. Sign-Up and Answer

1. Respondent (a) receives email service of Complaint; (b) signs up on the platform; and (c) responds to the claims and asserts any counterclaims. Claimant will receive Respondent's answer via email once submitted.
2. Respondent has 21 days to respond or a default judgment may be issued against them. After 14 days with no response, New Era ADR will appoint a Neutral and Claimant will be able to access the dispute in order to submit documentation pursuant to Section 5(a)(vii). No default decision shall be made by the Neutral without considering the evidence submitted by Claimant.
3. Answers must follow the same substantive rules as those laid out for Complaints in Section 5(a)(ii)(1) of these Rules and Procedures or Respondent risks facing the same consequences identified therein. Answers on the New Era ADR platform should not follow the traditional method of admitting or denying the paragraph claims, but must provide substantive information and facts surrounding the responses and defenses to the claims.

v. Respondent Pays Fees.

1. Respondent pays its share of the fees according to the New Era ADR Fee Schedule.

vi. Neutral is Chosen

1. A Neutral shall be chosen in accordance with Section 2(j) of these Rules and New Era ADR's Official Rank/Strike Process outlined in Section 2(j)(ii), unless another process is elected by the Parties pursuant to Section 2(f)(vi) or is required under Section 2(j)(v).

vii. Parties Upload Their Documents

1. Both Claimant(s) and Respondent(s) upload the relevant documents and their initial arguments.
2. Both Parties must upload their documents within 14 days of the appointment of the Neutral.
3. The Neutral has discretion to allow evidence in excess of the stated limits as necessary to ensure a fundamentally fair process.

viii. Documents Are Exchanged

1. Once all documents are submitted, they are digitally exchanged between the Parties.

ix. Discovery Process

1. Following document exchange, the Parties may make a request to the Neutral for formalized discovery. The



request must be made within seven (7) days of the exchange of documents.

2. Each side must submit no more than ten (10) requests for production (“RFPs”) that are narrowly tailored to discover only information relevant to the arbitration as well as no more than twenty (20) search terms (the “Search Terms”) they want run against the opposing Party’s documents through the New Era ADR discovery portal. These RFPs and Search Terms must be submitted within four (4) days of service of the order granting discovery. Parties should also submit additional search terms necessary for an initial privilege and redaction review. The Neutral has discretion to allow submissions in excess of the stated limits as necessary to ensure a fundamentally fair process.
3. Each Party shall have the opportunity to raise a written objection to the other Party’s submission of RFPs and Search Terms using the New Era ADR platform’s messaging function. If no such objection is raised after four (4) days from the submission of the RFPs and Search Terms, the RFPs and Search Terms shall be deemed accepted and final. The Neutral will endeavor to review any such objections made and issue a decision with

respect thereto within four (4) days of the raised objection.

4. The Parties will submit their universe of documents that are responsive to the RFPs and Search Terms to the New Era ADR discovery portal within fourteen (14) days of approval of the RFPs and Search Terms.
5. The Parties' universe of documents will be submitted to New Era ADR's third party document review provider who will utilize e-discovery tools to review and determine responsiveness based on the Search Terms. Within fourteen (14) days of the submission to the third party document review provider, a responsive document subset will be submitted back to the Parties (a Party's "**Responsive Documents**").
6. The Parties will have seven (7) days from receipt of the Responsive Documents from New Era ADR's third party document review provider to perform a privilege, relevance, redaction and confidentiality review. The Parties must then submit their final set of documents along with any privilege or relevance log to the New Era ADR portal (the "**Final Discovery Package**"). Any privilege and relevance log must contain sufficient information for the Neutral to determine whether the

document can be fairly excluded from the Final Discovery Package.

7. Each Party shall have the opportunity to raise a written objection to the other Party's submission of the Final Discovery Package using the New Era ADR platform's messaging function. If no such objection is raised after seven (7) days from the submission of the Final Discovery Package, the Final Discovery Package shall be deemed accepted and final. The Neutral will endeavor to review any such objections made and issue a decision with respect thereto within seven (7) days of the raised objection. The Neutral may also unilaterally review the Final Discovery Package for background information related to the arbitration.
8. The total discovery timeline is approximately fifty (50) days. During this fifty day time period, each Party may take up to three (3) depositions and submit up to three (3) affidavits to the discovery portal. Requests for depositions must be made on the New Era ADR discovery portal and provide adequate justification for their necessity. The Neutral has the discretion to grant any valid request and any opposing Party must comply with such a grant. If a Party believes a subpoena for testimony

is necessary, they may request a subpoena and the Neutral has the authority under these Rules and Procedures to issue such subpoena. The requesting Party shall be responsible for having the subpoena served on the deponent in the manner required by law.

x. Hearing is Scheduled and Held

1. The Neutral schedules the arbitration hearings using New Era ADR's scheduling software, based on input from the Parties.
2. The hearings are held via the Neutral's preferred video conferencing software, with Zoom as the default.

xi. Final Arguments Are Submitted

1. Within 14 days of the conclusion of the hearings, both Parties must submit final arguments based on the documents and initial arguments submitted earlier in the proceeding.
2. Final argument brief page limits shall be set by the Neutral.
3. No jurisdictional or prefatory material is necessary in the final arguments, just the caption and substantive arguments.

xii. Decision is Rendered

1. The Neutral will typically render a non-reasoned decision within 7 days of receipt of final arguments, or other date mutually agreed to by the Parties.
2. A reasoned decision can be requested and will typically be provided within 14 days of receipt of final arguments, or other date mutually agreed to by the Parties.
3. As stated above, if the Parties request findings of fact and conclusions of law, or such findings and conclusions are required by law, additional charges may apply and the issuance of the decision will require additional time beyond the 14 day period set forth above for a reasoned decision.

## 6. Virtual Expedited Arbitration Rules and Procedures

### a. Process and Rules at Each Stage

- i. Virtual Expedited Arbitration typically applies to consumer, employment and other commercial disputes that are not document or discovery intensive. ***The Parties may contractually determine whether certain proceedings fit under Virtual Expedited or Virtual Standard arbitrations, and New Era ADR will respect those contractual agreements.*** See Section 1(b) of these Rules and Procedures for more detail.
- ii. Claimant Sign-Up and Complaint

1. Claimant signs up on the platform using New Era ADR's simple and secure sign-up process and submits Complaint located at [app.neweraadr.com](https://app.neweraadr.com).
  - a. Complaints, whether using New Era ADR's form or not, must contain the following:
    1. The nature of the dispute, including applicable dates and times, parties involved, as well the facts specific to the Claimant(s) that gave rise to the dispute. New Era ADR is not a notice pleading platform. Generalized or generic facts are not sufficient to satisfy this requirement. You may assert claims as omnibus claims that are substantially identical across Complaints in a Mass Arbitration.
    2. The legal basis upon which the Claimant is seeking such relief, whether state law, federal law, or otherwise.
    3. The relief sought, whether monetary, non-monetary, or both and the basis for such relief.
  - b. No additional exhibits, documents, or evidence is necessary to be attached to the Complaint.

- c. No prefatory or jurisdictional material is required in Complaints unless necessary to any claims or defenses.
- d. Not abiding by these requirements for Complaints may subject Claimant to the Decorum/Sanction rules outlined in Section 2(d) of these Rules.

### iii. Claimant Pays Fees

1. Claimant pays its share of the fees according to the New Era ADR Fee Schedule.

### iv. Sign-Up and Answer

1. Respondent (a) receives email service of Complaint; (b) signs up on the platform; and (c) responds to the claims and asserts any counterclaims. Claimant will receive Respondent's answer via email once submitted.
2. Respondent has 21 days from the date notice of the Complaint was delivered to Respondent's email inbox to respond or a default award may be issued against them. After 14 days with no response, New Era ADR will appoint a Neutral and Claimant will be able to access the dispute in order to submit documentation pursuant to 6(a)(vii). No default decision shall be made by the Neutral without considering the evidence submitted by Claimant.

3. Answers must follow the same substantive rules as those laid out for Complaints in Section 6(a)(ii)(1) of these Rules or Respondent risks facing the same consequences identified therein. Answers on the New Era ADR platform should not follow the traditional method of admitting or denying the paragraph claims, but must provide substantive information and facts surrounding the responses and defenses to the claims. Answer(s) can be omnibus answers that apply to substantially identical claims in Mass Arbitrations.
- v. Respondent Pays Fees
    1. Respondent pays its share of the fees according to the New Era ADR Fee Schedule.
  - vi. Neutral is Appointed
    1. A Neutral shall be chosen in accordance with Section 2(j) of these Rules and New Era ADR's Official Rank/Strike Process outlined in Section 2(j)(ii), unless another process is elected by the Parties pursuant to Section 2(f)(vi) or is required under Section 2(j)(v).
  - vii. Parties Upload Their Documents
    1. Both Claimant(s) and Respondent(s) upload the relevant documents and their initial arguments.



2. Both Parties must upload their documents within 14 days of the appointment of the Neutral.
  3. The Neutral has discretion to allow evidence in excess of the stated limits as necessary to ensure a fundamentally fair process.
- viii. Documents Are Exchanged
1. Once all documents are submitted, they are digitally exchanged between the Parties.
  2. After the document exchange and fourteen (14) days prior to the hearing, the Parties may make Specific Discovery Requests to the Neutral in accordance with Section 2(o)(iii) of these Rules using the Platform. The Neutral is the ultimate authority on whether to award and enforce such requests pursuant to these Rules.
- ix. Hearing is Set and Held or Denied
1. The Neutral will, in their sole discretion, decide if a hearing is necessary based on the submissions.
  2. If the Neutral decides a hearing is necessary, it will be scheduled using the New Era ADR scheduling software.
  3. The Neutral has discretion to rule solely on the documents.
- x. Final Arguments Are Submitted

1. Within 14 days of the conclusion of the hearing, or the Neutral's ruling that no hearing is necessary, both Parties must submit final arguments based on the documents and initial arguments submitted earlier in the proceeding.
2. Final argument brief page limits shall be set by the Neutral.
3. No jurisdictional or prefatory material is necessary in the final arguments, just the caption and substantive arguments.

xi. Decision is Rendered

1. The Neutral will render a non-reasoned decision within 7 days of receipt of final arguments, or other date mutually agreed to by the Parties.
2. A reasoned decision can be requested and will be provided within 14 days of receipt of final arguments, or other date mutually agreed to by the Parties.

**b. Mass Arbitration Rules and Procedures**

i. Subset of Virtual Expedited Arbitration Rules and Procedures

1. These Mass Arbitration Rules and Procedures are a subset of the Virtual Expedited Arbitration Rules and Procedures and will apply to any Mass Arbitration, as defined in Section 1(b)(iii)(3), where the Parties have

selected the Virtual Expedited Arbitration process in their arbitration agreement.

2. In the case of any conflict between the Mass Arbitration Rules and Procedures and the Virtual Expedited Arbitration Rules and Procedures, the Virtual Expedited Arbitration Rules and Procedures will apply.

ii. General

1. At the request of a Party or on its own initiative when it identifies a group of similar cases that potentially constitute a Mass Arbitration, New Era ADR may group the cases together into a “Mass Arbitration Proceeding.” New Era ADR will thereafter administer the cases under the rules in this subpart unless otherwise directed by a Neutral.
2. Mass Arbitration Proceedings will be individually-named. New Era ADR will notify each Party (or the Party’s attorney, if applicable) that their case has been assigned to a Mass Arbitration Proceeding. Any Party with a case assigned to a Mass Arbitration Proceeding will be provided reasonable access to information concerning that Mass Arbitration Proceeding, including electronic notice of non-confidential, generally-applicable filings, correspondence, and other information.

3. New Era ADR will establish and manage Mass Arbitration Proceedings for the Parties' and Neutral's administrative convenience and to achieve an efficient and economical process. New Era ADR's establishment of a Mass Arbitration Procedure will not constitute a determination of any legal issue. Only the presiding Neutral, appointed as provided for under these Rules, may make determinations of fact or reach conclusions of law with respect to a Mass Arbitration Proceeding.
4. Ultimate authority to determine whether cases arise out of Common Issues of Law and Fact rests with the presiding Neutral. If the presiding Neutral determines that one or more cases assigned to a Mass Arbitration Proceeding do not arise out of Common Issues of Law and Fact, or otherwise do not meet the definition of a Mass Arbitration, each such case will be removed from the Mass Arbitration Proceeding and adjudicated under New Era ADR's Virtual Expedited Arbitration procedures outlined in Section 6(a).
5. Bellwether cases in each Mass Arbitration Proceeding will be subject to the timeframes set forth in the Virtual Expedited Arbitration Rules unless otherwise set forth in the Mass Arbitration Rules in this subpart.

### iii. Process and Rules at Each Stage

#### 1. Step 1: Filing and Neutral(s)

- a. All cases must be individually-filed on the New Era ADR Virtual Expedited Arbitration platform located at [app.neweraadr.com](http://app.neweraadr.com) in accordance with Section 6(a)(ii) of these Rules and Procedures.
- b. As soon as reasonably practicable after a Mass Arbitration Proceeding is established, a Neutral will be chosen to preside over the proceeding. The Neutral will be chosen as provided for in Section 2(j) of these Rules. Unless the Parties agree to a different process, or applicable law mandates otherwise, the Neutral will be selected using the New Era ADR's Official Rank/Strike Process outlined in Section 2(j)(ii) subject to the following:
  1. All Parties with a case assigned to a Mass Arbitration Proceeding are entitled to receive all communications, disclosures, documents, and information relevant to the Neutral's selection. New Era ADR will make reasonable efforts to distribute all such information under its control to each Party

(or their attorney, if applicable) via the Platform.

2. The Claimants and Respondents in the Mass Arbitration Proceeding will collectively participate in the Rank/Strike Process. Accordingly, the Claimants, jointly, and the Respondents, jointly, will strike proposed Neutrals and otherwise jointly act with respect to the process.
  3. If there is more than one attorney or law firm representing the Claimants or Respondents in a Mass Arbitration Proceeding, the attorneys for each side are responsible for reaching agreement concerning their clients' joint participation in the Neutral selection process. If the attorneys for one or both sides cannot reach agreement, New Era ADR will assign a Neutral.
- c. New Era ADR retains the right to provide more than one Neutral for a particular Mass Arbitration Proceeding.

- d. The Rank/Strike Process will not proceed until all fees are paid as set forth in Step 2.

## 2. Step 2: Fees Are Paid

- a. The default case fees follow New Era ADR's standard fees pursuant to the New Era ADR Fee Schedule, unless either Party has a subscription agreement in place with New Era ADR, in which case the subscription fees and filing fees will be determined pursuant to such agreement.
- b. Fees are allocated pursuant to the Parties' contractual agreement and paid at this time, or if the contract does not provide for an allocation, the default allocation set forth in Section 1(a)(iii) herein shall apply.
- c. Beyond the default division of case fee responsibility, there are no prohibitions or other New Era ADR Rules related to how fees need to be, or should be, allocated.

## 3. Step 3: Virtual Expedited Arbitration/Bellwether Cases

- a. The presiding Neutral will make a determination about whether Common Issues of Law and Fact exist in each case, and it is in their discretion as to how such a decision will be made.

b. Claimant(s), collectively on the one hand, and Respondent(s), collectively on the other hand, will each select one “Bellwether Case” from all the cases that were filed. If there are multiple attorneys for the Claimant(s) or Respondent(s) they are responsible for meeting and conferring to determine their selection of the Bellwether case (and if they cannot come to an agreement, the Neutral will appoint a lead decisionmaker from such group to make the selection). A third Bellwether Case will be selected through a process to be determined by the Neutral so that there are three initial Bellwether Cases.

1. The Neutral shall have the discretion to increase the number of Bellwether Cases, as necessary to allow for a fundamentally fair process, to ensure their full understanding of the case and any individualized issues and to ensure all Parties have been adequately represented and have notice.
2. In such a case, within 7 days of the final decision of the third Bellwether Case, the



Neutral will make a determination as to whether more are needed or not.

3. It is up to the Neutral's discretion how additional Bellwether Cases may be chosen.
4. Under all circumstances, each Party is entitled to choose an equal number of Bellwether Cases.
  - c. The Bellwether Cases must be selected within 14 days of selection of the Neutral(s).
  - d. Bellwether Cases will be decided by the same Neutral who was chosen from the Standard Rank/Strike process.
  - e. The Bellwether Cases will proceed individually, but parallel to the extent possible, through New Era ADR's Virtual Expedited Arbitration Process with the exception that document uploading must be done within 14 days of the selection of the Bellwether Cases.
4. Step 4: Lead Decision(s)/Settlement Conference
  - a. Following the Virtual Expedited Arbitration of the Bellwether Cases, the Neutral will issue a reasoned Lead Decision in each Bellwether Case.

- b. Following the issuance of the Lead Decisions, the Parties shall participate in a mandatory, non-binding settlement conference on the New Era ADR platform with the same Neutral who presided over the Bellwether Cases and issued the associated Lead Decisions.
- c. If there are multiple attorneys for the Claimant(s) or Respondent(s), respectively, the attorneys for each side will agree on a representative contingent of attorneys to represent their side. If the attorneys are unwilling or unable to reach agreement, participation in the settlement conference will be determined by the Neutral giving due consideration to ensuring that all interested Parties are represented at the settlement conference.
- d. No less than 10 days before the scheduled settlement conference, the attorneys for each side may submit, via the Platform, a confidential settlement statement and relevant supporting documents that will be made available only to the Neutral. The Neutral may permit more than one Claimant or Respondent to submit a confidential

settlement statement if it appears that individual Claimants or Respondents are uniquely situated in a material way.

- e. There need not be unanimity among the Parties to effectuate a settlement. Likewise, any Claimant or Respondent may opt out of the settlement conference or otherwise refuse to settle.
- f. Any case not resolved at the settlement conference will proceed toward resolution by the Neutral, who will individually consider and decide the claims raised in each case as provided for in Section 6(b)(iii)(5) and Section 6(b)(iii)(6).

#### 5. Step 5: Determining the Applicability of Precedent

- a. Subject to the procedure provided for in these Rules, a Neutral may consider the analysis and result reached in prior Lead Decisions in deciding disputes in the same Mass Arbitration proceeding that remain pending after the settlement conference and raise Common Issues of Law and Fact. Also subject to the procedure provided for in this Rule, a Neutral may likewise consider the analysis and result reached in prior Lead Decisions in deciding later-filed cases that are added to the

same Mass Arbitration proceeding and raise Common Issues of Law and Fact even where such cases are filed after the Lead Decision is issued.

- b.** In all events, however, the Neutral must individually decide each claim asserted by each party in a Mass Arbitration proceeding, giving due consideration to the facts and arguments advanced by the Parties in each case.
- c.** Prior to applying a Lead Decision as Precedent, however, the Neutral is required to determine whether individualized issues of law, fact, or both preclude reliance on the Lead Decision in whole or part.
- d.** No later than seven days after the settlement conference, the Parties in each remaining case may provide the Neutral with a statement, along with any supporting evidence, that discusses whether or not, and to what extent, the Lead Decisions should be applied as Precedent in that case. If a Party's statement argues against the application of the Lead Decision as Precedent, or that the Precedent is contrary to the law, the Party's statement should identify any issues of law and fact the Party

believes are unique to its case or cite the applicable law demonstrating that the Precedent is incorrect. Except as otherwise agreed between the Parties or permitted by the Neutral, a Party's statement is limited to 1,000 words.

- e. As soon as reasonably practicable, the Neutral will decide, in each case, whether and to what extent Precedent is applicable to the Common Issues of Law and Fact in each case. Among other factors, the Neutral should consider whether and to what extent the case involves Common Issues of Law and Fact with the Lead Decision, the extent to which the Party resisting the application of Precedent received notice of the Bellwether Proceedings, and the extent to which the interests of the resisting Party were represented in the Bellwether proceedings.
- f. If a Party's statement demonstrates that there are no Common Issues of Law and Fact, as defined in Section 2(x) of these Rules, the Neutral will order the case removed from the Mass Arbitration (a "**Removal Case**"). The Removal Case will start *de novo* as a stand-alone Virtual Expedited

Arbitration. The applicable case fee shall apply to the de novo proceeding.

6. Step 6: Individual Case Analysis and Rendering a Decision

- a. In cases that the Neutral decides are subject to the application of Precedent, the Neutral may be guided by the Lead Decisions analysis and conclusions on Common Issues of Law and Fact. In all events, however, the Neutral must individually decide each claim asserted by each Party in a Mass Arbitration proceeding, giving due consideration to the facts and arguments advanced by the Parties in each case.
- b. If the Neutral decides that a case is not subject to the full application of Precedent, the Neutral will decide the case on an expedited basis after affording the Parties the opportunity to submit evidence and argument. The procedure for hearing the Parties' evidence and arguments is left to the Neutral's discretion provided, however, that the Neutral must afford the Parties procedural safeguards and an opportunity to be heard consistent with those outlined in Section 6(a)(vii) through Section 6(a)(xi) of these Rules.



*Last Updated: August 21, 2023*

## **New Era ADR Rules and Procedures**

### ***Release Notes 08/21/2023***

*Below is a summary of the changes to we made in this latest update to our rules and procedures:*

- 1) We separated our Fee Schedule from the Rules so it's easier to find, and we also updated our Fees, which are available below.
  
- 2) We clarified the discovery provisions for our Virtual Expedited Arbitration procedure to make it clear that discovery has always existed as a right in Expedited Arbitration proceedings. Discovery in Expedited Arbitrations is simply a more informal and still arbitrator-driven process than discovery in Standard Arbitrations.
  
- 3) We clarified the Neutral selection procedure to ensure that the process will comply with applicable law when such laws require something different from the Rules.
  
- 4) We clarified the Mass Arbitration rules to make the following concepts more clear:
  - (a) All of the cases to a particular Mass Arbitration must be filed by the same or a coordinated group of law firms to be subject to the Mass Arbitration procedures in our Rules;
  - (b) Anonymized Lead Decisions from the Bellwether Cases will be available on the Platform for each Party and counsel to see the decision reached and the reasoning behind it;
  - (c) Neutrals individually review each case and any arguments proffered by either side thereto, to decide whether and to what extent the application of a Lead Decision as Precedent is appropriate in resolving each case; and
  - (d) Highlighted and clarified the multiple existing opportunities that Parties have to opt out of the Mass Arbitration procedure.



## New Era ADR Fee Schedule

### 1. In General

- a. New Era ADR charges up-front, flat fees, inclusive of Neutral fees, depending on the type of case, complexity involved, and the commitment of a Neutral to fully consider the law and facts of a case and render a fair decision.
- b. Each Party to a dispute is responsible for their share of the dispute fee according to the New Era ADR Rules and Procedures and this Fee Schedule. New Era ADR will respect any fee allocation agreement agreed to in advance by the parties. In the absence of such a fee allocation provision, the default allocations are provided below.
- c. New Era ADR retains the sole discretion in determining in which Tier (as defined below) a given dispute belongs, and thereafter each dispute will follow the respective process under New Era ADR's Proceeding-Specific Rules and Procedures depending on whether an arbitration or mediation is desired by the parties to the dispute, and all are subject to New Era ADR's General Rules and Procedures.
- d. For Tiers 1 and 2, mediations assume a half day of mediation or less (2 - 4 hours), and Tiers 3, 4, and 5 assume a full day of mediation (8 hours). Additional fees may apply in each case if the parties wish to add on additional days of mediation.

- e. New Era ADR reserves the right to make changes and amendments to this Fee Schedule at its discretion. New Era ADR will endeavor to provide notice of any such changes on its website.

## 2. Tier Definitions

### a. Tier 1 Disputes

- i. Defined as: disputes (1) from an agreement between an individual and a business for the purchase of standardized, consumable personal or household goods or services, and where the business has a standardized, systematic application of arbitration clauses that are generally non-negotiable; or (2) where the relief sought in the dispute (A) is an amount in damages of less than \$25,000 and (B) does not include a request for injunctive relief.
- ii. Tier 1 Dispute arbitrations are documents only/desk arbitrations (i.e., without a hearing). Any party may ask for a virtual hearing by making a request with the Neutral on the Platform, and if the Neutral determines a virtual hearing is necessary, the dispute becomes a Tier 2 Dispute.
- iii. Examples of Tier 1 Disputes may include, but are not limited to, eCommerce products, household appliance warranties, household furniture purchases, consumer internet services, and event admissions.

b. Tier 2 Disputes

- i. Defined as: (1) Transactional disputes where there is a clear contractual term that was violated by one party, and supporting documents and arguments can be uploaded digitally and are sufficient to render a written judgment or (2) Tier 1 Disputes that require a virtual hearing.
- ii. For Tier 2 Disputes, the facts are largely not in dispute, limited to no cross-party discovery is required, and the parties are highly motivated to receive a very quick resolution.
- iii. Examples of Tier 2 Disputes may include, but are not limited to, default contractual payments, simple breaches of contracts, simple employment contractual disputes (e.g., non-competes and non-solicits), and Tier 1 Disputes that require a virtual hearing.

c. Tier 3 Disputes

- i. Defined as: disputes that require a virtual hearing, a Neutral with relevant experience in the nuanced issues of law and fact, and New Era's Virtual Expedited Arbitration discovery process. All matters of fact and law may be in dispute.
- ii. Examples of Tier 3 Disputes may include, but are not limited to, breaches of contract, typical employment disputes, IP licensing disputes, insurance coverage, conflicts of interest, and injunctive relief/equitable claims.

d. Tier 4 Disputes

- i. Defined as: complex disputes that exceed the parameters of Tier 3 Disputes, requiring larger document submissions, New Era's Standard Arbitration discovery process, and potentially multiple hearings or days of mediations.
- ii. Examples of Tier 4 Disputes may include, but are not limited to, international disputes, complex employment disputes, and high-dollar IP infringement disputes.

e. Tier 5 Disputes

- i. Defined as: Tier 4 Disputes where the parties have agreed to a formal motion to dismiss or summary judgment stage.

### 3. Tier Pricing

a. Tier 1 Disputes

- i. Mediations - \$1500
- ii. Mediations with a Binding Resolution - \$3500
- iii. Expedited Arbitrations - \$3000
- iv. Standard Arbitrations - not applicable
- v. Allocation of fees amongst the parties
  1. Business to Business – Fees split 50%/50%, evenly amongst the parties.
  2. Business to Consumer/Employee – Fees split 95%/5% business to consumer/employee, respectively.

b. Tier 2 Disputes

- i. Mediations - \$4000
- ii. Mediations with a Binding Resolution - \$5000
- iii. Expedited Arbitrations - \$5000
- iv. Standard Arbitrations - not applicable
- v. Allocation of fees amongst the parties
  1. Business to Business – Fees split 50%/50%, evenly amongst the parties.
  2. Business to Consumer/Employee – Fees split 95%/5% business to consumer/employee, respectively.

c. Tier 3 Disputes

- i. Mediations - \$10,000
- ii. Mediations with a Binding Resolution - \$15,000
- iii. Expedited Arbitrations - \$10,000
- iv. Standard Arbitrations - not applicable
- v. Allocation of fees amongst the parties
  1. Business to Business – Fees split 50%/50%, evenly amongst the parties.
  2. Business to Consumer/Employee – Fees split 97.5%/2.5% business to consumer/employee, respectively.

d. Tier 4 Disputes

- i. Mediations - \$10,000
- ii. Mediations with a Binding Resolution - \$20,000

- iii. Expedited Arbitrations - not applicable
- iv. Standard Arbitrations - \$35,000
- v. Allocation of fees amongst the parties
  - 1. Business to Business – Fees split 50%/50%, evenly amongst the parties.
  - 2. Business to Consumer/Employee – Fees split 98.5%/1.5% business to consumer/employee, respectively.

e. Tier 5 Disputes

- i. Mediations - \$10,000
- ii. Mediations with a Binding Resolution - \$20,000
- iii. Expedited Arbitrations - not applicable
- iv. Standard Arbitrations - \$50,000
- v. Allocation of fees amongst the parties
  - 1. Business to Business – Fees split 50%/50%, evenly amongst the parties.
  - 2. Business to Consumer/Employee – Fees split 99%/1% business to consumer/employee, respectively.

#### 4. Subscriptions

- a. Reduced case filing fees, negotiated on an individual basis by contract depending on various factors, including prior litigation history, are available for parties desiring additional fee certainty.
- b. In the absence of subscription pricing, there is only one fee, titled a “case fee,” and the default pricing and allocation is set forth above.

- c. In subscription pricing, there are two components to the case fees:
  - i. A “subscription fee” paid on an annual basis. This fee is paid solely by the subscriber pursuant to contract and lowers the filing fees (as defined herein) for each individual the dispute; and
  - ii. Actual filing fees per case (“filing fees”), paid by each party to a dispute and which are discounted from the default per case pricing as a result of the subscription fee.
- d. Under all circumstances, ***all fees are paid up-front.***

## 5. Ancillary Services

- a. Transcriptions – Additional \$1500. Not available for mediation.
- b. Reasoned Decisions – Unless it is the default provision to have a reasoned decision, such as the Mass Arbitration Bellwether or employment dispute context, a reasoned decision will cost an additional \$3000.
- c. Moot Arguments - priced on a per-case basis

*Last Updated: August 21, 2023*