Justice Marie L. Garibaldi Inn of Court
December 10, 2020

Materials & Resources List
For
Agreements to Arbitrate Program

Materials & Resources List
For
Agreements to Arbitrate Discussion Program

Justice Marie L. Garibaldi Inn of Court
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MATERIALS

INTRODUCTION

The materials compiled in this handout for the Justice Marie L. Garibaldi American Inn of Court for Alternative Dispute Resolution are current as of November, 2020. The collection is intended to make the basic statutes and rules which govern alternative dispute resolution in New Jersey, particularly arbitration, available to the members. Reading and understanding the statutes and rules which govern ADR processes is the first step for engaging in those processes.

Over time, the statutes and rules may (probably will) be amended so checking for amendments is recommended.

The list of issues to be considered when drafting an arbitration contract or clause is a starting point. Consideration of each issue is likely to raise multiple additional issues. Make the list your list and update as you get experience and learn more.

The sample arbitration clauses with more explanation are available on the providers' websites. Some of the providers offer "clause builder" apps to assist users to customize their arbitration agreements.

Consider printing these materials and putting them in a binder to create a "desk book" for arbitration or creating an arbitration desk book using one of the apps such as Evernote, One Note, Notability, Good Notes or the like. You can then annotate the notes as new cases are decided, statutes and rules are amended, you have more experience with arbitration and as ADR grows. There are links to some articles which would be worth downloading and printing for your book.

FEDERAL ARBITRATION ACT
UNITED STATES ARBITRATION ACT

9 U.S.C. Sections 1 to 16

Sec. 1. "Maritime transactions" and "commerce" defined; exceptions to operation of title

"**Maritime transactions**", as herein defined, means charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce which, if the subject of controversy, would be embraced within admiralty jurisdiction; "**commerce**", as herein defined, means commerce among the several States or with foreign nations, or in any Territory of the United States or in the District of Columbia, or between any such Territory and another, or between any such Territory and any State or foreign nation, or between the District of Columbia and any State or Territory or foreign nation, but nothing herein contained shall apply to contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 670.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 1, 43 Stat. 883.

Sec. 2. Validity, irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 670.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 2, 43 Stat. 883.

Sec. 3. **Stay of proceedings where issue therein referable to arbitration**

If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 670.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 3, 43 Stat. 883.

Sec. 4. **Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination**

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 671; Sept. 3, 1954, ch. 1263, Sec. 19, 68 Stat. 1233.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 4, 43 Stat. 883.
-REFTEXT-
REFERENCES IN TEXT
Federal Rules of Civil Procedure, referred to in text, are set out in Appendix to Title 28, Judiciary and Judicial Procedure.
-MISC2-
AMENDMENTS
1954 - Act Sept. 3, 1954, brought section into conformity with present terms and practice.

Sec. 5. **Appointment of arbitrators or umpire**

If in the agreement provision be made for a method of naming or appointing an arbitrator or arbitrators or an umpire, such method shall be followed; but if no method be provided therein, or if a method be provided and any party thereto shall fail to avail himself of such method, or if for any other reason there shall be a lapse in the naming of an arbitrator or arbitrators or umpire, or in filling a vacancy, then upon the application of either party to the controversy the court shall designate and appoint an arbitrator or arbitrators or umpire, as the case may require, who shall act under the said agreement with the same force and effect as if he or they had been specifically named therein; and unless otherwise provided in the agreement the arbitration shall be by a single arbitrator.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 671.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 5, 43 Stat. 884.

Sec. 6. **Application heard as motion**

Any application to the court hereunder shall be made and heard in the manner provided by law for the making and hearing of motions, except as otherwise herein expressly provided.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 671.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 6, 43 Stat. 884.

Sec. 7. Witnesses before arbitrators; fees; compelling attendance

The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 672; Oct. 31, 1951, ch. 655, Sec. 14, 65 Stat. 715.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 7, 43 Stat. 884.
AMENDMENTS
1951 - Act Oct. 31, 1951, substituted "United States district court for" for "United States court in and for", and "by law for" for "on February 12, 1925, for".

Sec. 8. Proceedings begun by libel in admiralty and seizure of vessel or property

If the basis of jurisdiction be a cause of action otherwise justiciable in admiralty, then, notwithstanding anything herein to the contrary, the party claiming to be aggrieved may begin his proceeding hereunder by libel and seizure of the vessel or other property of the other party according to the usual course of admiralty proceedings, and the court shall then have jurisdiction to direct the parties to proceed with the arbitration and shall retain jurisdiction to enter its decree upon the award.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 672.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 8, 43 Stat 884.

Sec. 9. **Award of arbitrators; confirmation; jurisdiction; procedure**

If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made. Notice of the application shall be served upon the adverse party, and thereupon the court shall have jurisdiction of such party as though he had appeared generally in the proceeding. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident, then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 672.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 9, 43 Stat. 885.

Sec. 10. **Same; vacation; grounds; rehearing**

(a) In any of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the arbitration -

(1) where the award was procured by corruption, fraud, or undue means;

(2) where there was evident partiality or corruption in the arbitrators, or either of them;

(3) where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or

(4) where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(b) If an award is vacated and the time within which the agreement required the award to be made has not expired, the court may, in its discretion, direct a rehearing by the arbitrators.

(c) The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 672; Pub. L. 101-552, Sec. 5, Nov. 15, 1990, 104 Stat. 2745; Pub. L. 102-354, Sec. 5(b)(4), Aug. 26, 1992, 106 Stat. 946; Pub. L. 107-169, Sec. 1, May 7, 2002, 116 Stat. 132.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 10, 43 Stat. 885.
AMENDMENTS
2002 - Subsec. (a)(1) to (4). Pub. L. 107-169, Sec. 1(1)-(3), substituted "where" for "Where" and realigned margins in pars. (1) to (4), and substituted a semicolon for period at end in pars. (1) and (2) and "; or" for the period at end in par. (3). Subsec. (a)(5). Pub. L. 107-169, Sec. 1(5), substituted "If an award" for "Where an award", inserted a comma after "expired", and redesignated par. (5) as subsec. (b). Subsec. (b). Pub. L. 107-169, Sec. 1(4), (5), redesignated subsec. (a)(5) as (b). Former subsec. (b) redesignated (c). Subsec. (c). Pub. L. 107-169, Sec. 1(4), redesignated subsec. (b) as (c).
1992 - Subsec. (b). Pub. L. 102-354 substituted "section 580" for "section 590" and "section 572" for "section 582".
1990 - Pub. L. 101-552 designated existing provisions as subsec. (a), in introductory provisions substituted "In any" for "In either", redesignated former subsecs. (a) to (e) as pars. (1) to (5), respectively, and added subsec. (b) which read as follows: "The United States district court for the district wherein an award was made that was issued pursuant to section 580 of title 5 may make an order vacating the award upon the application of a person, other than a party to the arbitration, who is adversely affected or aggrieved by the award, if the use of arbitration or the award is clearly inconsistent with the factors set forth in section 572 of title 5."

Sec. 11. **Same; modification or correction; grounds; order**

In either of the following cases the United States court in and for the district wherein the award was made may make an order modifying or correcting the award upon the application of any party to the arbitration -

(a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted.

(c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 673.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 11, 43 Stat. 885.

Sec. 12. **Notice of motions to vacate or modify; service; stay of proceedings**

Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered. If the adverse party is a resident of the district within which the award was made, such service shall be made upon the adverse party or his attorney as prescribed by law for service of notice of motion in an action in the same court. If the adverse party shall be a nonresident then the notice of the application shall be served by the marshal of any district within which the adverse party may be found in like manner as other process of the court. For the purposes of the motion any judge who might make an order to stay the proceedings in an action brought in the same court may make an order, to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 673.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 12, 43 Stat. 885.

Sec. 13. **Papers filed with order on motions; judgment; docketing; force and effect; enforcement**

The party moving for an order confirming, modifying, or correcting an award shall, at the time such order is filed with the clerk for the entry of judgment thereon, also file the following papers with the clerk:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award.

(b) The award.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award, and a copy of each order of the court upon such an application.

The judgment shall be docketed as if it was rendered in an action.

The judgment so entered shall have the same force and effect, in all respects, as, and be subject to all the provisions of law relating to, a judgment in an action; and it may be enforced as if it had been rendered in an action in the court in which it is entered.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 673.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 13, 43 Stat. 886.

Sec. 14. **Contracts not affected**

This title shall not apply to contracts made prior to January 1, 1926.

-SOURCE-
(July 30, 1947, ch. 392, 61 Stat. 674.)
-MISC1-
DERIVATION
Act Feb. 12, 1925, ch. 213, Sec. 15, 43 Stat. 886.
PRIOR PROVISIONS
Act Feb. 12, 1925, ch. 213, Sec. 14, 43 Stat. 886, former provisions of section 14 of this title relating to "short title" is not now covered.

Sec. 15. **Inapplicability of the Act of State doctrine**

Enforcement of arbitral agreements, confirmation of arbitral awards, and execution upon judgments based on orders confirming such awards shall not be refused on the basis of the Act of State doctrine.

-SOURCE-
(Added Pub. L. 100-669, Sec. 1, Nov. 16, 1988, 102 Stat. 3969.)
-COD-
CODIFICATION
Another section 15 of this title was renumbered section 16 of this title.

Sec. 16. **Appeals**

(a) An appeal may be taken from -

(1) an order -
(A) refusing a stay of any action under section 3 of this title,
(B) denying a petition under section 4 of this title to order arbitration to proceed,
(C) denying an application under section 206 of this title to compel arbitration,
(D) confirming or denying confirmation of an award or partial award, or
(E) modifying, correcting, or vacating an award;

(2) an interlocutory order granting, continuing, or modifying an injunction against an arbitration that is subject to this title; or

(3) a final decision with respect to an arbitration that is subject to this title.

(b) Except as otherwise provided in section 1292(b) of title 28, an appeal may not be taken from an interlocutory order -

(1) granting a stay of any action under section 3 of this title;
(2) directing arbitration to proceed under section 4 of this title;
(3) compelling arbitration under section 206 of this title; or
(4) refusing to enjoin an arbitration that is subject to this title.

-SOURCE-
(Added Pub. L. 100-702, title X, Sec. 1019(a), Nov. 19, 1988, 102 Stat. 4670, Sec. 15; renumbered Sec. 16, Pub. L. 101-650, title III, Sec. 325(a)(1), Dec. 1, 1990, 104 Stat. 5120.)
-MISC1-
AMENDMENTS
1990 - Pub. L. 101-650 renumbered the second section 15 of this title as this section.

LexisNexis (TM) New Jersey Annotated Statutes

*** THIS DOCUMENT IS CURRENT THROUGH P.L. 2004 CHAPTER 13 ***
*** ANNOTATIONS CURRENT THROUGH JUNE 7, 2004 ***

TITLE 2A. ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE
SUBTITLE 6. CIVIL ACTIONS
CHAPTER 23B. ARBITRATION AND ARBITRATION PROCEEDINGS

N.J. Stat. § 2A:23B-1 (2004)

§ 2A:23B-1. **Definitions**

For the purposes of this act:

"**Arbitration organization**" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

"**Arbitrator**" means an individual appointed either as a neutral arbitrator or as a party arbitrator to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

"**Court**" means the Superior Court of New Jersey.

"**Court rules**" means the Rules Governing the Courts of the State of New Jersey.

"**Knowledge**" means actual knowledge.

"**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

"**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

HISTORY: L. 2003, c. 95, § 1.

N.J. Stat. § 2A:23B-2 (2004)

§ 2A:23B-2. **Notice**

a. Except as otherwise provided in this act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

b. A person has notice if the person has knowledge of the notice or has received notice.

c. A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of such a notice.

HISTORY: L. 2003, c. 95, § 2.

N.J. Stat. § 2A:23B-3 (2004)

§ 2A:23B-3. **Applicability**

a. This act governs all agreements to arbitrate made on or after January 1, 2003 with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

b. This act governs an agreement to arbitrate made before January 1, 2003 if all the parties to the agreement or to the arbitration proceeding so agree in a record with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

c. On or after January 1, 2005, this act governs an agreement to arbitrate whenever made with the exception of an arbitration between an employer and a duly elected representative of employees under a collective bargaining agreement or collectively negotiated agreement.

d. This act shall not apply to agreements to arbitrate made before July 4, 1923.

HISTORY: L. 2003, c. 95, § 3.

N.J. Stat. § 2A:23B-4 (2004)

§ 2A:23B-4. **Effect of agreement to arbitrate; nonwaivable provisions**

a. Except as otherwise provided in subsections b. and c. of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or, the parties may vary the effect of, the requirements of this act to the extent permitted by law.

b. Before a controversy that is subject to an agreement to arbitrate arises, a party to the agreement may not:

(1) waive or agree to vary the effect of the requirements of section 5a., 6a., 8, 17a., 17b., 26, or 28 of this act;

(2) agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding pursuant to section 9 of this act;

(3) agree to unreasonably restrict the right to disclosure of any facts by an arbitrator pursuant to section 12 of this act; or

(4) waive the right of a party to an agreement to arbitrate to be represented by a lawyer pursuant to section 16 of this act at any proceeding or hearing pursuant to this act.

c. A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or section 3a., 3c., 7, 14, 18, 20d., 20e., 22, 23, 24, 25a., 25b., 29, 30, 34 or 35. Provided however, that nothing in this act shall preclude the parties from expanding the scope of judicial review of an award by expressly providing for such expansion in a record.

HISTORY: L. 2003, c. 95, § 4.

N.J. Stat. § 2A:23B-5 (2004)

§ 2A:23B-5. **Application for judicial relief**

a. Except as otherwise provided in section 28 of this act, an application for judicial relief pursuant to this act shall be made upon commencement of a summary action with the court and heard in the manner provided for in such matters by the applicable court rules.

b. Unless a civil action involving the agreement to arbitrate is pending, notice of commencement of a summary action pursuant to this act shall be served in the manner provided by the court rules for serving process in summary actions.

HISTORY: L. 2003, c. 95, § 5.

N.J. Stat. § 2A:23B-6 (2004)

§ 2A:23B-6. **Validity of agreement to arbitrate**

a. An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid,

enforceable, and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

b. The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

c. An arbitrator shall decide whether a condition precedent to arbitrability has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

d. If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

HISTORY: L. 2003, c. 95, § 6.

N.J. Stat. § 2A:23B-7 (2004)

§ 2A:23B-7. **Application to compel or stay arbitration**

a. On filing a summary action with the court by a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) if the refusing party does not appear or does not oppose the summary action, the court shall order the parties to arbitrate; and

(2) if the refusing party opposes the summary action, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

b. On filing a summary action with the court by a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

c. If the court finds that there is no enforceable agreement, it may not, pursuant to subsection a. or b. of this section, order the parties to arbitrate.

d. The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

e. If a proceeding involving a claim referable to arbitration pursuant to an alleged agreement to arbitrate is pending in court, an application pursuant to this section shall be made in that court. Otherwise, an application pursuant to this section may be made in any court as provided in section 27 of this act.

f. If a party commences a summary action to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision pursuant to this section.

g. If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

HISTORY: L. 2003, c. 95, § 7.

LexisNexis (TM) Notes:

CASE NOTES

1. Arbitrator was not authorized by the American Arbitration Association rules, N.J. 2A:23B-7, or precedent to appoint a receiver to administer a law firm. Neither the parties' arbitration agreement nor the arbitration rules could be fairly read to empower the arbitrator to appoint a receiver. *Ravin v. Sandler, 365 N.J. Super. 241, 839 A.2d 52, 2003 N.J. Super. LEXIS 390 (N.J. Super. Ct. App. Div. 2003).*

2. Arbitrator was not authorized by the American Arbitration Association rules, N.J. 2A:23B-7, or precedent to appoint a receiver to administer a law firm. Neither the parties' arbitration agreement nor the arbitration rules could be fairly read to empower the arbitrator to appoint a receiver. *Ravin v. Sandler, 365 N.J. Super. 241, 839 A.2d 52, 2003 N.J. Super. LEXIS 390 (N.J. Super. Ct. App. Div. 2003).*

N.J. Stat. § 2A:23B-8 (2004)

§ 2A:23B-8. **Provisional remedies**

a. Before an arbitrator is appointed and is authorized and able to act, the court, in such summary action upon application of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and pursuant to the same conditions as if the controversy were the subject of a civil action.

b. After an arbitrator is appointed and is authorized and able to act:

(1) the arbitrator may issue orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and pursuant to the same conditions as if the controversy were the subject of a civil action; and

(2) a party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

c. A party does not waive a right of arbitration by making an application pursuant to subsection a. or b. of this section.

HISTORY: L. 2003, c. 95, § 8.

N.J. Stat. § 2A:23B-9 (2004)

§ 2A:23B-9. **Initiation of arbitration**

a. A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the manner agreed between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice shall describe the nature of the controversy and the remedy sought.

b. Unless a person objects for lack or insufficiency of notice pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing, the person, by appearing at the hearing, waives any objection to the lack or insufficiency of notice.

HISTORY: L. 2003, c. 95, § 9.

N.J. Stat. § 2A:23B-10 (2004)

§ 2A:23B-10. **Consolidation of separate arbitration proceedings**

a. Except as otherwise provided in subsection c. of this section, upon application of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) there are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) the claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) the existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

b. The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

c. The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

HISTORY: L. 2003, c. 95, § 10.

N.J. Stat. § 2A:23B-11 (2004)

§ 2A:23B-11. **Appointment of arbitrator; service as a neutral arbitrator**

a. If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on application of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

b. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

c. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party may not serve as a party arbitrator if such information has not been disclosed pursuant to section 12 of this act.

d. An individual appointed as a party arbitrator may be predisposed toward the appointing party. From and after the commencement of an arbitration, an arbitrator shall act in good faith and exercise the arbitrator's responsibilities in a manner consistent with the authority placed in the arbitrator by the courts of this State and this act.

HISTORY: L. 2003, c. 95, § 11.

N.J. Stat. § 2A:23B-12 (2004)

§ 2A:23B-12. **Disclosure by arbitrator**

a. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) a financial or personal interest in the outcome of the arbitration proceeding; and

(2) an existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or other arbitrators.

b. An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

c. If an arbitrator discloses a fact required by subsection a. or b. of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, subject to the provisions of section 11d. of this act, the objection may be a ground pursuant to paragraph (2) of subsection a. of section 23 of this act for vacating an award made by the arbitrator.

d. If the arbitrator did not disclose a fact as required by subsection a. or b. of this section, upon timely objection by a party, the court pursuant to paragraph (2) of subsection a. of section 23 may vacate an award.

e. An individual appointed as an neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing, and substantial relationship with a party is presumed to act with evident partiality pursuant to paragraph (2) of subsection a. of section 23 of this act.

f. An individual appointed as a party arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding is presumed to act with evident partiality pursuant to paragraph (2) of subsection a. of section 23 of this act.

g. If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a summary action to vacate an award on that ground pursuant to paragraph (2) of subsection a. of section 23 of this act.

h. Should an individual designated as an arbitrator make full disclosure as required by this section and a party fails to object within a reasonable time, the party receiving

such information shall be held to have waived any right to object to the designation of the arbitrator on the grounds so revealed.

HISTORY: L. 2003, c. 95, § 12.

N.J. Stat. § 2A:23B-13 (2004)

§ 2A:23B-13. **Action by majority**

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing pursuant to subsection c. of section 15 of this act.

HISTORY: L. 2003, c. 95, § 13.

N.J. Stat. § 2A:23B-14 (2004)

§ 2A:23B-14. **Immunity of arbitrator; competency to testify; attorney's fees and costs**

a. An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this State acting in a judicial capacity.

b. The immunity afforded by this section supplements any immunity pursuant to other law.

c. The failure of an arbitrator to make a disclosure required by section 12 of this act does not cause any loss of immunity pursuant to this section.

d. In a judicial, administrative, or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this State acting in a judicial capacity. This subsection does not apply:

(1) to the extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) to a hearing in a summary action to vacate an award pursuant to paragraph (1) or (2) of subsection a. of section 23 of this act if the movant establishes prima facie that a ground for vacating the award exists.

e. If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection d. of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorney's fees and other reasonable expenses of litigation.

HISTORY: L. 2003, c. 95, § 14.

N.J. Stat. § 2A:23B-15 (2004)

§ 2A:23B-15. **Arbitration process**

a. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality, and weight of any evidence.

b. An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) if all interested parties agree; or

(2) upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

c. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection due to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

d. At a hearing pursuant to subsection c. of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

e. an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed in accordance with section 11 of this act to continue the proceeding and to resolve the controversy.

HISTORY: L. 2003, c. 95, § 15.

N.J. Stat. § 2A:23B-16 (2004)

§ 2A:23B-16. **Representation by lawyer**

A party to an arbitration proceeding may be represented by a lawyer.

HISTORY: L. 2003, c. 95, § 16.

N.J. Stat. § 2A:23B-17 (2004)

§ 2A:23B-17. **Witnesses; subpoenas; depositions; discovery**

a. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action, and upon filing a summary action with the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in any civil action.

b. In order to make the proceedings fair, expeditious, and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions pursuant to which the deposition is taken.

c. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.

d. If an arbitrator permits discovery pursuant to subsection c. of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this State.

e. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this State.

f. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this State.

g. The court may enforce a subpoena or discovery-related order for the attendance of a witness within this State and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another State upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious, and cost effective. A subpoena or discovery-related order issued by an arbitrator in another State shall be served in the manner provided by law for service of subpoenas in a civil action in this State and, upon filing a summary action with the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in any civil action in this State.

HISTORY: L. 2003, c. 95, § 17.

N.J. Stat. § 2A:23B-18 (2004)

§ 2A:23B-18. **Judicial enforcement of preaward ruling by arbitrator**

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award pursuant to section 19 of this act. A prevailing party may file a summary action with the court for an expedited order to confirm the award pursuant to section 22 of this act, in which case the court shall summarily decide the application. The court shall issue an order to confirm the award unless the court vacates, modifies, or corrects the award pursuant to section 23 or 24 of this act.

HISTORY: L. 2003, c. 95, § 18.

N.J. Stat. § 2A:23B-19 (2004)

§ 2A:23B-19. **Award**

a. An arbitrator shall make a record of an award. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

b. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

HISTORY: L. 2003, c. 95, § 19.

N.J. Stat. § 2A:23B-20 (2004)

§ 2A:23B-20. **Change of award by arbitration**

a. On application to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) upon a ground stated in paragraph (1) or (3) of subsection a. of section 24 of this act;

(2) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

b. An application pursuant to subsection a. of this section shall be made and notice given to all parties within 20 days after the aggrieved party receives notice of the award.

c. A party to the arbitration proceeding shall give notice of any objection to the application within 10 days after receipt of the notice.

d. If a summary action with the court is pending pursuant to section 22, 23, or 24 of this act, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) upon a ground stated in paragraph (1) or (3) of subsection a. of section 24 of this act.

(2) if the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) to clarify the award.

e. An award modified or corrected pursuant to this section is subject to sections 19a., 22, 23, and 24 of this act.

HISTORY: L. 2003, c. 95, § 20.

N.J. Stat. § 2A:23B-21 (2004)

§ 2A:23B-21. **Remedies; fees and expenses of arbitration proceeding**

a. An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award in accordance with the legal standards otherwise applicable to the claim.

b. An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

c. As to all remedies other than those authorized by subsections a. and b. of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award pursuant to section 22 of this act or for vacating an award pursuant to section 23 of this act.

d. An arbitrator's expenses and fees, together with other expenses, shall be paid as provided in the award.

e. If an arbitrator awards punitive damages or other exemplary relief pursuant to subsection a. of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

HISTORY: L. 2003, c. 95, § 21.

N.J. Stat. § 2A:23B-22 (2004)

§ 2A:23B-22. **Confirmation of award**

After a party to an arbitration proceeding receives notice of an award, the party may file a summary action with the court for an order confirming the award, at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section 20 or 24 of this act or is vacated pursuant to section 23 of this act.

HISTORY: L. 2003, c. 95, § 22.

N.J. Stat. § 2A:23B-23 (2004)

§ 2A:23B-23. **Vacating award**

a. Upon the filing of a summary action with the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) the award was procured by corruption, fraud, or other undue means;

(2) the court finds evident partiality by an arbitrator; corruption by an arbitrator; or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) an arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to section 15 of this act, so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) an arbitrator exceeded the arbitrator's powers;

(5) there was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection pursuant to subsection c. of section 15 of this act not later than the beginning of the arbitration hearing; or

(6) the arbitration was conducted without proper notice of the initiation of an arbitration as required in section 9 of this act so as to substantially prejudice the rights of a party to the arbitration proceeding.

b. A summary action pursuant to this section shall be filed within 120 days after the aggrieved party receives notice of the award pursuant to section 19 of this act or within 120 days after the aggrieved party receives notice of a modified or corrected award pursuant to section 20 of this act, unless the aggrieved party alleges that the award was procured by corruption, fraud, or other undue means, in which case the summary action shall be commenced within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party.

c. If the court vacates an award on a ground other than that set forth in paragraph (5) of subsection a. of this section, it may order a rehearing. If the award is vacated on a ground stated in paragraph (1) or (2) of subsection a. of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in paragraph (3), (4), or (6) of subsection a. of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in subsection b. of section 19 of this act for an award.

d. If the court denies an application to vacate an award, it shall confirm the award unless an application to modify or correct the award is pending.

HISTORY: L. 2003, c. 95, § 23.

N.J. Stat. § 2A:23B-24 (2004)

§ 2A:23B-24. **Modification or correction of award**

a. Upon filing a summary action within 120 days after the party receives notice of the award pursuant to section 19 of this act or within 120 days after the party receives notice of a modified or corrected award pursuant to section 20 of this act, the court shall modify or correct the award if:

(1) there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

b. If an application made pursuant to subsection a. of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless an application to vacate is pending, the court shall confirm the award.

c. An application to modify or correct an award pursuant to this section may be joined with an application to vacate the award.

HISTORY: L. 2003, c. 95, § 24.

N.J. Stat. § 2A:23B-25 (2004)

§ 2A:23B-25. **Judgment on award; attorney's fees and litigation expenses**

a. Upon granting an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the court shall enter a judgment in conformity with the arbitrator's award. The judgment may be recorded, docketed, and enforced as any other judgment in a civil action.

b. A court may allow reasonable costs of the summary action and subsequent judicial proceedings.

c. On application of a prevailing party to a contested judicial proceeding pursuant to section 22, 23, or 24 of this act, the court may add reasonable attorney's fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, or substantially modifying or correcting an award.

HISTORY: L. 2003, c. 95, § 25.

N.J. Stat. § 2A:23B-26 (2004)

§ 2A:23B-26. **Jurisdiction**

a. A court of this State having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

b. An agreement to arbitrate providing for arbitration in this State confers exclusive jurisdiction on the court to enter judgment on an award pursuant to this act.

c. Wherever reference is made to any procedural matter stated in this act, the New Jersey Supreme Court rules governing summary actions, or such other rules as may be adopted by the Supreme Court of New Jersey shall apply.

HISTORY: L. 2003, c. 95, § 26.

N.J. Stat. § 2A:23B-27 (2004)

§ 2A:23B-27. **Venue**

A summary action pursuant to section 5 of this act shall be commenced in the court of the county that would have venue if the matter were subject to Superior Court rules in civil actions, or to a court in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court of the county in which it was held.

HISTORY: L. 2003, c. 95, § 27.

N.J. Stat. § 2A:23B-28 (2004)

§ 2A:23B-28. **Appeals**

a. An appeal may be taken from:

(1) an order denying a summary action to compel arbitration;
(2) an order granting a summary action to stay arbitration;

(3) an order confirming or denying confirmation of an award;
(4) an order modifying or correcting an award;
(5) an order vacating an award without directing a rehearing; or
(6) a final judgment entered pursuant to this act.

b. An appeal pursuant to this section shall be taken as from an order or a judgment in a civil action.

HISTORY: L. 2003, c. 95, § 28.

N.J. Stat. § 2A:23B-29 (2004)

§ 2A:23B-29. **Uniformity of application and construction**

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: L. 2003, c. 95, § 29.

N.J. Stat. § 2A:23B-30 (2004)

§ 2A:23B-30. **Relationship to Electronic Signatures in Global and National Commerce Act**

The provisions of this act governing the legal effect, validity, and enforceability of electronic records or electronic signatures, and of contracts performed with the use of such records or signatures conform to the requirements of the "Electronic Signatures in Global and National Commerce Act," *15 U.S.C. § 7002.*

HISTORY: L. 2003, c. 95, § 30.

N.J. Stat. § 2A:23B-31 (2004)

§ 2A:23B-31. **Prior action or proceeding**

This act does not affect an action or proceeding commenced or right accrued before this act takes effect. Subject to section 3 of this act, an arbitration agreement made before the effective date of this act is governed by *N.J.S. 2A:24-1* et seq. and P.L. 1987, c. 54 (C. 2A:23A-1 et seq.).

HISTORY: L. 2003, c. 95, § 31.

N.J. Stat. § 2A:23B-32 (2004)

§ 2A:23B-32. **Statutes and procedures not affected**

This act shall not apply to the substance and procedure of "The New Jersey Alternative Procedure for Dispute Resolution Act, " P.L. 1987, c. 54 (C. 2A:23A-1 et seq.), nor shall this act apply to arbitrations governed by P.L. 1987, c. 329 (C. 2A:23A-20 et seq.), P.L. 1983, c. 358 (C. 39:6A-24 et seq.) or section 24 of P.L. 1998, c. 21 (C. 39:6A-5.1);and, unless otherwise agreed by the parties, any other non-binding court annexed arbitration procedures authorized under court rules or where under existing statutes the application of *N.J.S. 2A:24-1* through *2A:24-11* is expressly excluded.

HISTORY: L. 2003, c. 95, § 32.

RULE 4:21A. ARBITRATION OF CERTAIN CIVIL ACTIONS

4:21A-1. Actions Subject to Arbitration; Notice and Scheduling of Arbitration

(a) Mandatory Arbitration. Arbitration pursuant to this rule is mandatory for applicable cases on Tracks I, II, and III, as set forth in paragraphs (1), (2), and (3) below, and only as required by the managing judge for cases on Track IV, except that cases having undergone a prior, unsuccessful court-ordered mediation shall not be scheduled for arbitration unless the court finds good cause for the matter to be arbitrated or unless all parties request arbitration.

(1) Automobile Negligence Actions. All tort actions arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(2) Other Personal Injury Actions. Except for professional malpractice and products liability actions, all actions for personal injury not arising out of the operation, ownership, maintenance or use of an automobile shall be submitted to arbitration in accordance with these rules.

(3) Other Non-Personal Injury Actions. All actions on a book account or instrument of obligation, all personal injury protection claims against plaintiff's insurer, and all other contract and commercial actions that have been screened and identified as appropriate for arbitration shall be submitted to arbitration in accordance with these rules.

(b) Voluntary Arbitration. Any action not subject to mandatory arbitration pursuant to subsections (1), (2), or (3) of paragraph (a) of this rule may be submitted to arbitration on written stipulation of all parties filed with the civil division manager.

(c) Removal From Arbitration. An action assigned to arbitration may be removed therefrom as follows:

(1) Prior to the notice of the scheduling of the case for arbitration or within 15 days thereafter, the case may be removed from arbitration upon submission to the arbitration administrator of a certification stating with specificity that the controversy involves novel legal or unusually complex factual issues or is otherwise ineligible for arbitration pursuant to paragraph (a). A copy of this certification must be provided to all other parties. A party who objects to removal shall so notify the arbitration administrator within ten days after the receipt of the certification, and the matter will then be referred to a judge for determination. The arbitration administrator shall, however, remove the case from arbitration if no objection is made and the reasons for removal certified to are sufficient.

(2) If either party seeks to remove a case from arbitration subsequent to 15 days after the notice of hearing, a formal motion must be made to the Civil Presiding Judge or designee.

(d) Notice of Arbitration; Scheduling; Adjournment. The notice to the parties that the action has been assigned to arbitration shall also specify the time and place of the arbitration hearing and its date, which shall not be earlier than 45 days following the date of the notice. Unless the parties otherwise consent in writing, the hearing shall not be scheduled for a date prior to the end of the applicable discovery period, including any extension thereof. The hearing shall take place, however, no later than 60 days following the expiration of that period, including any extension. Adjournments of the scheduled date shall be permitted only as provided by R. 4:36-3(b).

(e) Pretrial Discovery. The assignment of an action for arbitration shall not affect a party's opportunity to engage in pretrial discovery nor an attorney's professional obligation to do so.

(f) Arbitration in Family Part Matters. Arbitration in Family Part matters shall be governed by R. 5:1-5.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; caption amended and former paragraph (a) redesignated paragraph (a)(1) and new paragraph (a)(2) adopted, paragraphs (b) and (c)(1) and (2) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a)(1) and (2) and (c)(1) and (2) amended July 14, 1992 to be effective September 1, 1992; paragraphs (a)(2) and (c)(1) amended July 13, 1994 to be effective September 1, 1994; paragraphs (b) and (d) amended July 10, 1998 to be effective September 1, 1998; new text added to paragraph (a), paragraphs (a)(1) and (2) amended, new paragraph (a)(3) adopted, and paragraphs (c) and (d) amended July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (d) adopted October 10, 2000 to be effective immediately; caption to R. 4:21A amended, and text of paragraph (a) of R. 4:21A-1 amended July 12, 2002 to be effective September 3, 2002; paragraphs (a) and (c)(1) amended July 28, 2004 to be effective September 1, 2004; subparagraph (a)(2) amended July 27, 2006 to be effective September 1, 2006; new paragraph (f) caption and text adopted July 27, 2015 to be effective September 1, 2015.

4:21A-2. Qualification, Selection, Assignment and Compensation of Arbitrators

(a) Inclusion on Roster

(1) Qualifications. An applicant for inclusion on a roster of arbitrators maintained by the Administrative Office of the Courts shall be either: (1) a retired judge of any court of this State who is not on recall; or (2) an attorney admitted to practice in this State having at least ten years of consistent and extensive experience in New Jersey in any of the substantive areas of law subject to arbitration under these rules.

(2) Arbitrator Training Requirements. To be listed on the approved roster of arbitrators, the applicant must have completed the initial training and continuing education required by R. 1:40-12(c).

(3) Certified Civil Trial Attorneys. A Certified Civil Trial Attorney with the requisite experience, who has also completed the training and continuing education required by R. 1:40-12(c), will be entitled to automatic inclusion on the roster.

(4) Local Arbitrator Selection Committee

(A) Generally. The arbitrator selection committee, which shall meet at least once annually, shall be appointed by the county bar association and shall consist of at least: one attorney regularly representing plaintiffs in each of the substantive areas of law subject to arbitration under these rules, one attorney regularly representing defendants in each of the substantive areas of law subject to arbitration under these rules, and one member of the bar who does not regularly represent either plaintiff or defendant in each of the substantive areas of law subject to arbitration under these rules. The members of the arbitrator selection committee shall be eligible for inclusion in the roster of arbitrators.

(B) Screening Process. The local arbitrator selection committee will submit recommendations for the roster to the Assignment Judge or designee for final approval. The committee shall review the roster of arbitrators annually and, when appropriate, shall make recommendations to the Assignment Judge to remove arbitrators from the roster.

(b) Assignment by Stipulation. All parties to the action may stipulate in writing to the number and names of the arbitrators. The stipulation shall be filed with the civil division manager within 14 days after the date of the notice of arbitration. The stipulated arbitrators shall be subject to the approval of the Assignment Judge or designee and may be approved whether or not they met the requirements of paragraph (a) of this rule if the Assignment Judge or designee is satisfied that they are otherwise qualified and that their service would not prejudice the interest of any of the parties.

(c) Assignment from Roster. If the parties fail to stipulate to the arbitrators pursuant to paragraph (a) of this rule, the arbitrator shall be designated by the civil division manager from the roster of arbitrators maintained by the Assignment Judge. The Assignment Judge shall file the roster with the Administrative Director of the Courts. A motion to disqualify an assigned arbitrator shall be made to the Assignment Judge or designee on the date of the hearing.

(d) Number of Arbitrators. All arbitration proceedings in each vicinage in which the number and names of the arbitrators are not stipulated by the parties pursuant to paragraph (a) of this rule shall be conducted by either a single arbitrator or by a two arbitrator panel, as determined by the Assignment Judge or designee.

(e) Compensation of Arbitrators.

(1) Assigned Arbitrators. Except as provided by subparagraph (2) hereof, a single arbitrator designated by the civil division manager, including a retired

judge not on recall, shall be paid a per diem fee of $350. Two-arbitrator panels shall be paid a total per diem fee of $450, to be divided evenly between the panel members.

(2) Stipulated Arbitrators. Arbitrators stipulated to by the parties pursuant to R. 4:21A-2(a) shall be compensated at the rate of $ 70 per hour but not exceeding a maximum of $ 350 per day. If more than one stipulated arbitrator hears the matter, the fee shall be $ 70 per hour but not exceeding $ 450 per day, to be divided equally between or among them. The parties may, however, stipulate in writing to the payment of additional fees, such stipulation to specify the amount of the additional fees and the party or parties paying the additional fees.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a) and (b) amended July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (c) amended, and new paragraph (d) adopted July 5, 2000 to be effective September 5, 2000; paragraphs (b) and (d)(1) amended, and former paragraph (d)(3) deleted July 12, 2002 to be effective September 3, 2002; paragraphs (b), (c), (d)(1), and (d)(2) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; paragraph (b) amended July 28, 2017 to be effective September 1, 2017; paragraph (b) amended July 27, 2018 to be effective September 1, 2018; new paragraph (a) adopted, former paragraph (a) amended caption and text redesignated as paragraph (b), former paragraph (b) caption and text amended and redesignated as paragraph (c), former paragraph (c) caption and text amended and redesignated as paragraph (d), former paragraph (d) amended and redesignated as paragraph (e), and subparagraph (e)(1) caption amended July 31, 2020 to be effective September 1, 2020.

4:21A-3. Settlements; Offer of Judgment

If an action is settled prior to the arbitration hearing, the attorneys shall so report to the civil division manager and an order dismissing the action shall be entered. The provisions of R. 4:58 shall not apply to arbitration proceedings.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 10, 1998 to be effective September 1, 1998; amended July 28, 2004 to be effective September 1, 2004.

4:21A-4. Conduct of Hearing

(a) Prehearing Submissions. At least 10 days prior to the scheduled hearing each party shall exchange a concise statement of the factual and legal issues, in the form set forth in Appendix XXII-A or XXII-B to these rules, and may exchange relevant documentary evidence. A copy of all documents exchanged shall be submitted to the arbitrator for review on the day of the hearing.

(b) Powers of Arbitrator. The arbitrator shall have the power to issue subpoenas to compel the appearance of witnesses before the panel, to compel production of relevant documentary evidence, to administer oaths and affirmations, to

determine the law and facts of the case, and generally to exercise the powers of a court in the management and conduct of the hearing.

(c) Evidence. The arbitrator shall admit all relevant evidence and shall not be bound by the rules of evidence. In lieu of oral testimony, the arbitrator may accept affidavits of witnesses; interrogatories or deposition transcripts; and bills and reports of hospitals, treating medical personnel and other experts provided the party offering the documents shall have made them available to all other parties at least one week prior to the hearing. In the discretion of the arbitrator, police reports, weather reports, wage loss certifications and other documents of generally accepted reliability may be accepted without formal proof.

(d) General Provisions for Hearing. Arbitration hearings shall be conducted in court facilities and no verbatim record shall be made thereof. Witness fees shall be paid as provided for trials in the Superior Court.

(e) Subsequent Use of Proceedings. The arbitrator's findings of fact and conclusions of law shall not be evidential in any subsequent trial de novo, nor shall any testimony given at the arbitration hearing be used for any purpose at such subsequent trial. Nor may the arbitrator be called as a witness in any such subsequent trial

(f) Failure to Appear. An appearance on behalf of each party is required at the arbitration hearing. If the party claiming damages does not appear, that party's pleading shall be dismissed. If a party defending against a claim of damages does not appear, that party's pleading shall be stricken, the arbitration shall proceed and the nonappearing party shall be deemed to have waived the right to demand a trial de novo. A party obtaining the arbitration award against the non-appearing party shall serve a copy of the arbitration award within 10 days of receipt of the arbitration award from the court pursuant to R. 4:21A-5. Service shall be upon counsel of record, or, if not represented, upon such non-appearing party. Service shall be made as set forth in R. 4:21A- 9(c). Relief from any order entered pursuant to this rule shall be granted only on motion showing good cause, which motion shall be filed within 20 days of the date of service on the non-appearing party by the appearing party. Relief shall be on such terms as the court may deem appropriate, including litigation expenses and attorney's fees incurred for services directly related to the non-appearance.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended July 10, 1998 to be effective September 1, 1998; paragraphs (a) and (b) amended, and new paragraph (f) adopted July 5, 2000 to be effective September 5, 2000; paragraph (f) amended July 23, 2010 to be effective September 1, 2010; paragraph (f) amended August 1, 2016 to be effective September 1, 2016.

4:21A-5. Arbitration Award

No later than ten days after the completion of the arbitration hearing, the arbitrator shall file the written award with the civil division manager. The court shall provide a copy

thereof to the parties who appear at the hearing. The award shall include a notice of the right to request a trial de novo and the consequences of such a request as provided by R. 4:21A-6.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (a) and (b) amended November 7, 1988 to be effective January 2, 1989; paragraph (a) amended July 13, 1994 to be effective September 1, 1994; paragraphs (a) and (c)(1) amended July 10, 1998 to be effective September 1, 1998; paragraph (a) caption deleted and text amended, and paragraphs (b) and (c) deleted July 5, 2000 to be effective September 5, 2000; amended August 1, 2016 to be effective September 1, 2016.

4:21A-6. Entry of Judgment; Trial De Novo

(a) Appealability. The decision and award of the arbitrator shall not be subject to appeal.

(b) Dismissal. An order shall be entered dismissing the action following the filing of the arbitrator's award unless:

(1) within 30 days after filing of the arbitration award, a party thereto files with the civil division manager and serves on all other parties a notice of rejection of the award and demand for a trial de novo and pays a trial de novo fee as set forth in paragraph (c) of this rule; or

(2) within 50 days after the filing of the arbitration award, the parties submit a consent order to the court detailing the terms of settlement and providing for dismissal of the action or for entry of judgment; or

(3) within 50 days after the filing of the arbitration award, any party moves for confirmation of the arbitration award and entry of judgment thereon. The judgment of confirmation shall include prejudgment interest pursuant to R. 4:42-11(b).

(c) Trial De Novo. An action in which a timely trial de novo has been demanded by any party shall be returned, as to all parties, to the trial calendar for disposition. A trial de novo shall be scheduled to occur within 90 days after the filing and service of the request therefor. A party demanding a trial de novo must submit with the trial de novo request a fee in the amount of $200 towards the arbitrator's fee and may be liable to pay the reasonable costs, including attorney's fees, incurred after rejection of the award by those parties not demanding a trial de novo. Reasonable costs shall be awarded on motion supported by detailed certifications subject to the following limitations:

(1) If a monetary award has been rejected, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict at least 20 percent more favorable than the award.

(2) If the rejected arbitration award denied money damages, no costs shall be awarded if the party demanding the trial de novo has obtained a verdict of at least $250.

(3) The award of attorney's fees shall not exceed $750 in total nor $250 per day.

(4) Compensation for witness costs, including expert witnesses, shall not exceed $500.

(5) If the court in its discretion is satisfied that an award of reasonable costs will result in substantial economic hardship, it may deny an application for costs or award reduced costs.

(d) Attorney Fees. In all actions where by statute or otherwise an award of attorney fees is allowed, all such issues are reserved for court resolution unless the parties otherwise agree to submit a fee demand to the arbitrator. In all cases in which attorney fees are sought, the party seeking attorney fees must comply with the provisions of R. 4:42-9(b).

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (c) amended November 5, 1986 to be effective January 1, 1987; paragraphs (b)(1) and (c) amended November 2, 1987 to be effective January 1, 1988; paragraph (c)(5) amended November 7, 1988 to be effective January 2, 1989; paragraphs (b)(1) and (c) amended July 14, 1992 to be effective September 1, 1992; paragraph (c) amended May 3, 1994 to be effective July 1, 1994; paragraph (b)(1) amended July 10, 1998 to be effective September 1, 1998; paragraphs (b) and (c) amended July 5, 2000 to be effective September 5, 2000; paragraph (c) amended June 7, 2005 to be effective immediately; new paragraph (d) adopted July 19, 2012 to be effective September 4, 2012; paragraph (c) amended May 30, 2017 to be effective immediately.

4:21A-7. Arbitration of Minor's and Mentally Incapacitated Person's Claims

If all parties to the action accept the arbitration award disposing of the claim of a minor or mentally incapacitated person, the attorney for the guardian ad litem shall forthwith so report to the Assignment Judge and a proceeding for judicial approval of the award pursuant to R. 4:44 shall be held as expeditiously as possible.

Note: Adopted November 1, 1985 to be effective January 2, 1986; amended July 13, 1994 to be effective September 1, 1994; caption and text amended July 12, 2002 to be effective September 3, 2002.

4:21A-8. Administration

(a) Assignment Judge. The Assignment Judge or other judge designated by order of the Supreme Court shall be responsible for the supervision of the arbitration programs in the vicinage, including the resolution of all issues arising therefrom. The

Assignment Judge may delegate all or any of those powers to any Superior Court judge in the vicinage.

(b) Administrative Director of the Courts. The Administrative Director of the Courts shall promulgate such guidelines and forms as required for the implementation of the programs.

(c) Civil Division Manager. The civil division manager or designee for the vicinage shall perform all of the functions specified by these rules and shall serve as arbitration administrator to perform all required non-judicial functions implementing the arbitration program.

Note: Adopted November 1, 1985 to be effective January 2, 1986; paragraph (a) amended November 7, 1988 to be effective January 2, 1989; paragraphs (a), (b) and (c) amended June 29, 1990 to be effective September 4, 1990; paragraph (c) amended July 10, 1998 to be effective September 1, 1998; paragraph (c) amended July 5, 2000 to be effective September 5, 2000.

4:21A-9. Parties in Default

(a) If a party against whom an arbitration award is sought in a multiple party action (1) has had default entered against such party pursuant to R. 4:43-1 and the said default was entered less than six months prior to the date of the arbitration hearing, or (2) has had default judgment on liability pursuant to R. 4:43-2(b) entered against such party, the arbitration shall proceed against such party provided that the notice of hearing and proof of mailing as set forth in paragraph (b) of this rule has been complied with.

(b) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it as set forth in paragraph (a), notice of the arbitration proceeding shall be provided to that party in the form set forth in Appendix XXIX to these Rules no later than 30 days prior to the arbitration hearing by ordinary mail addressed to the same address at which that party was served with process if the process was originally served personally or by certified or ordinary mail, unless the party providing the notice has actual knowledge of a different current address of the defaulting defendant, in which case the notice shall be sent to that address. Proof of service of the notice of arbitration hearing herein shall be filed with the clerk prior to the arbitration hearing and shall certify that the party serving the notice has no actual knowledge that the defaulting party's address has changed subsequent to service of original process, or, if the party has such knowledge, the proof shall certify the underlying facts. A copy of the filed proof of service of the notice provided to the defaulting party shall be provided to the arbitrator at the time of the arbitration hearing and the arbitrator shall indicate same in the arbitration award. In the event the arbitration hearing is adjourned or cancelled, the party providing such notice shall promptly notify the defaulting party of the underlying facts and the new hearing date, if applicable.

(c) If a party against whom an arbitration award is sought has had default or default judgment on liability entered against it and did not appear at the arbitration hearing after notice has been provided in accordance with paragraph (b) of this rule, the party obtaining the arbitration award against such defaulting party shall serve a copy of the arbitration award upon such defaulting party within 10 days of the date of receipt of the arbitration award. Service shall be made by ordinary mail addressed to the same address at which that party was served with service of process if the process was originally served personally or by certified or ordinary mail unless the party serving the arbitration award has actual knowledge of a different current address of the party against whom the award was entered, in which case the copy of the award shall be sent to that address.

(d) If a party who has obtained an arbitration award against the defaulting party moves for confirmation of the arbitration award and entry of judgment pursuant to R. 4:21A-6(b)(3), that party shall comply with the provisions of R. 4:43-2 and R. 1:5-7 and shall provide sufficient proof of compliance to the court.

Note: Prior rule adopted July 5, 2000 to be effective September 5, 2000; rule deleted July 27, 2006 to be effective September 1, 2006. New rule adopted July 19, 2012 to be effective September 4, 2012; paragraph (b) amended July 22, 2014 to be effective September 1, 2014.

New Jersey Alternate Procedure for Dispute Resolution Laws of 1987, Chapter 54

2A :23A-1 . Short title

This act shall be known and may be cited as "The New Jersey Alternative Procedure for Dispute Resolution Act."

L. 1987, c. 54, s. 1.

2A :23A-2. Contracts to submit; enforcement of submission; waiver of appeal

a. Any provision in a written contract whereby the parties agree to settle by means of alternative resolution, as provided in this act,
(1) any controversy that may arise from the contract or from a refusal to perform the contract or
(2) any written agreement whereby the parties to an existing controversy agree to use alternative resolution as provided in this act,
whether the controversy arose out of a contract or otherwise, is valid, enforceable and irrevocable, except upon such grounds as exist at law or in equity for the revocation of a contract.

In order for the provisions of this act to be applicable, it shall be sufficient that the parties signify their intention to resolve their dispute by reference in the agreement to "The New Jersey Alternative Procedure for Dispute Resolution Act" (P.L. 1987, c. 54; C. 2A :23A-1 et seq.).

b. Any contract provision or agreement described in subsection a. of this section shall be construed as an implied consent by the parties to the jurisdiction of the Superior Court to enforce that provision or agreement pursuant to the provisions set forth in this act and to enter judgment thereon. The contract provision or agreement shall constitute a waiver by the parties of the right to trial by jury and to appeal or review, except as specifically provided for in this act.

L. 1987, c. 54, s. 2.

2A :23A-3. Coordinated alternative dispute resolution, court proceedings

a. When parties have agreed to alternative resolution proceedings under separate agreements under this act, and the claims to be resolved may involve evidence, witnesses and testimony reasonably necessary to resolve issues and facts arising out of a related project or series of agreements, then

these proceedings may be held in a consolidated alternative resolution proceeding. Whenever reasonably possible, the same umpire shall be designated to hear and determine these claims.

b. Whenever the claims to be resolved in an alternative resolution proceeding may involve evidence, witnesses and testimony reasonably necessary to resolve issues and facts arising out of a related project or series of agreements, which are the subject of litigation in any court of this State, the court may authorize consolidation of the alternative resolution proceeding and the court proceedings to advance expeditious use of court time; provided, however, that consolidation shall not be permitted to unduly delay the expeditious resolution of the alternative resolution proceedings provided for by this act.

c. The provisions of subsections a. and b. of this section shall be liberally construed to effectuate the remedial purpose of this act to provide for the expeditious resolution of disputes arising out of a related project or series of agreements.

L. 1987, c. 54, s. 3.

2A :23A-4. **Demand for alternative resolution; action for order for alternative resolution**

a. Any party to an agreement which provides for alternative resolution under this act shall institute a proceeding pursuant to that agreement by:

(1) Giving written notice to all other parties of the party's demand for resolution, which notice shall set forth concisely the claims, and where appropriate the defenses, in dispute between the parties and the relief sought, including the amount of liquidated damages demanded, if any; and

(2) Initiating the procedure for selecting the umpire or, if no procedure is provided in the agreement, by initiating a summary action as provided in this act to have an umpire appointed.

b. When a party is aggrieved by the failure, neglect or refusal of another to perform under a written agreement providing for alternative resolution that party may apply to the Superior Court for an order directing that alternative resolution proceed in the manner provided for in the agreement. The court shall proceed in a summary action to determine whether there has been an agreement in writing for alternative resolution or whether there has been a failure to comply with a demand for alternative resolution.

L. 1987, c. 54, s. 4.

2A :23A-5. **Complete authority of umpire; appeals**

a. Whenever an alternative resolution is properly demanded, the umpire designated therein shall have full jurisdiction to provide all relief and to determine all claims and disputes arising thereunder, including whether the particular issue or dispute is covered by the agreement for alternative resolution, and whether there was fraud in the inducement of the entire agreement which provides for alternative resolution; however, the umpire shall not have jurisdiction with regard to a claim that an alternative resolution clause was procured by fraud. Whenever possible, all requests for relief ancillary to the claims and disputes covered by the agreement for alternative resolution shall first be addressed to the umpire for determination.

b. There shall be no review of any intermediate ruling or determination made by the umpire during the course of alternative resolution proceedings, except as provided in this act. An appeal from a final award decision by the umpire may be obtained only as provided in section 13 of this act.

L. 1987, c. 54, s. 5.

2A :23A-6. **Provisional remedies**

a. Whenever an umpire acts upon an application for relief in the nature of a civil provisional remedy under any applicable law, including the civil remedies of attachment, replevin, sequestration, and other corresponding or equivalent remedies, however designated and regardless of whether the remedy is ancillary to an action or must be obtained by an independent action, the umpire shall have full authority to act thereon. Whenever any of these remedies are applied for during an alternative resolution proceeding, the umpire shall promptly rule on that application. Any determination reached before a final award shall be considered an intermediate ruling as provided for in subsection b. of section 5 of this act. Any party may apply at any time to the Superior Court or any other court of competent jurisdiction for an order enforcing the determination of the umpire directing relief in the nature of any of the provisional remedies provided for in this section. Whenever enforcement of an order is sought pursuant to this subsection, review of the validity of the order may be had by way of defense to enforcement.

b. Where reasonably required by the circumstances, a party may apply to the Superior Court or any other court of competent jurisdiction for an order granting any of the provisional remedies or other relief set forth in this

section, before the umpire provided for in the agreement, or designated by the court, is authorized or able to act on the request for relief.

L. 1987, c. 54, s. 6.

2A :23A-7. **Limited intermediate review**

a. In exceptional circumstances, to prevent a manifest denial of justice, or when it clearly appears that a party will suffer irreparable harm or that damages may not be reasonably calculated or, if capable of calculation, that they will not be collectible, a party who is aggrieved by any intermediate ruling, except intermediate rulings made pursuant to section 6 of this act, or the failure to rule by an umpire may move before the Superior Court for an expedited summary review under procedures adopted by the Supreme Court. The alternative resolution proceeding shall not be abated, stayed or delayed by the application for an intermediate review unless the umpire or the court, in exceptional cases or circumstances, so rules. The ruling on a summary intermediate review application by the court shall thereafter govern the parties in the alternative resolution proceeding, provided, however, that this ruling may be later modified or vacated by the umpire or the court where specific facts are thereafter determined that would make the continuance of the court ruling manifestly unfair, unjust or grossly inequitable. When it appears that resort to the court to review an intermediate ruling has been abused by any party, the court may award reasonable counsel fees without regard to the ultimate outcome of the alternative resolution proceeding.

b. The signature of an attorney or party to an intermediate appeal, or in opposition thereto, constitutes a certification by him:

(1) That he has read the pleadings and all supporting papers relating to the intermediate appeal;

(2) That to the best of his knowledge, information and belief, formed after reasonable inquiry, the appeal or opposition is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and

(3) That it is not interposed for any improper purpose, such as to cause unnecessary delay or a needless increase in the cost of litigation.

If such a pleading, application or other paper is filed in violation of this subsection, the court by summary review, upon motion by one of the parties or upon its own initiative, may impose upon the party causing the summary review, reasonable expenses, including a reasonable attorney's fee, incurred because of the filing of the pleading, application or other paper.

L. 1987, c. 54, s. 7.

2A :23A-8. **Stay of court action for proceeding subject to alternative resolution**

In an action brought in any court upon an issue arising out of an agreement providing for alternative resolution under this act, the court, when satisfied that the issue involved is referable to alternative resolution, shall stay the action until the alternative resolution proceeding has been conducted in accordance with the terms of the agreement, unless the party seeking the stay is already in default.

L. 1987, c. 54, s. 8.

2A :23A-9. **Umpires**

a. An alternative resolution proceeding shall be conducted by a single umpire unless otherwise expressly provided for in the agreement. If the agreement designates a person or persons, the person or persons named shall conduct the proceeding. If a method is provided in the agreement for appointing one or more umpires to conduct the alternative resolution proceeding, it shall be followed; but, if no method is provided, or if a method is provided and a party fails to avail himself of that method, or if for other reasons there is a lapse in the naming of an umpire or in filling a vacancy, the Superior Court shall in a summary action appoint the umpire. Any umpire so appointed shall serve with the same powers as if specifically designated.

b. Unless otherwise provided for in the agreement, or set by the parties at the commencement of the proceeding, the court shall set the umpire's hourly fee.

c. An umpire is not competent to testify in any subsequent proceeding arising out of or related to an alternative resolution proceeding in which the umpire served, except for an action brought against the umpire pursuant to subsection d. of this section.

d. An umpire shall be immune from any claim for damages arising out of a proceeding in which the umpire served unless the award is overturned for the reasons set forth in paragraph (1) of subsection c. of section 13 of this act and there is a finding that the umpire participated in such wrongful conduct. Upon such a finding, a separate civil action or proceeding may be instituted against an umpire.

e. A finding that an umpire participated in wrongful conduct proscribed in paragraph (1) of subsection c. of section 13 of this act which results in the award being overturned, shall not be admissible as evidence in any subsequent action against the umpire, nor shall it establish any fact as a claim of res judicata. The wrongful conduct shall be proved de novo in any subsequent action or proceeding where the issue arises.

L. 1987, c. 54, s. 9.

2A :23A-10. **Discovery**

a. Each party shall be entitled to discovery by way of oral deposition, including videotape deposition, inspection and copying of all relevant documents within the care, custody or control of a party or witness, and interrogatories when authorized by leave of the umpire. Except as provided herein, the rules of the Supreme Court governing discovery shall be applicable.

b. All discovery shall be completed within 60 days following receipt of the demand for alternative resolution or the entry of a final order compelling alternative resolution. The umpire shall have the authority to extend the time for completion of permitted discovery or to limit or terminate any permitted discovery upon application which can be heard in any suitable way, including telephone conference or on submitted papers. The decision of the umpire shall be subject to modification upon review by the Superior Court in a summary review as provided for by rules of the New Jersey Supreme Court when the umpire is shown to have improperly exceeded his discretion.

c. Reasonable production of documents at any oral deposition upon notice in lieu of subpoena given to a party may be required.

d. A notice for inspection and copying of documents provided for in this act may require that the same shall be produced no sooner than 15 days after receipt of service. The cost of copying shall be paid by the party demanding the inspection.

L. 1987, c. 54, s. 10.

2A :23A-11 **Hearing by umpire; witnesses; subpoena; factual, legal contentions**.

11. a. When more than one umpire is agreed upon, all the umpires shall sit at the hearing of the case, unless by written consent, all parties agree to a lesser number.

b. The umpire conducting an alternative resolution proceeding may require the attendance of any person as a witness and the production of any book or written instrument. The fees for the attendance shall be those allowed witnesses in a civil action.

c. Subpoenas shall issue in the name of and be signed by the umpire, or if there is more than one umpire, by a majority of them, and shall be directed to the person therein named and served in the same manner as a subpoena to testify before a court of record. If a person subpoenaed to testify refuses or neglects to obey a subpoena, the Superior Court, upon application, may compel his attendance before the umpire or hold the person in contempt as if the person had failed to respond to a subpoena issued by the court.

d. In alternative resolution proceedings held under this act, parties shall not be bound by the statutory and common law rules of evidence, except as provided for conduct of contested cases under the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.); provided, however, that all statutes and common law rules relating to privilege shall remain in effect. In any case when no rule, procedure or practice applies to the offer of evidence or procedure to be adopted, the umpire shall proceed so that the informality of the proceedings is assured.

e. Each party to an alternative resolution proceeding shall submit to the umpire and his adversary a statement of the party's factual and legal position with respect to the issues to be resolved, at a date fixed by the umpire to permit proper preparation for all hearings. The submitted statement shall govern, control and limit the facts and legal issues to be determined in the alternative resolution proceeding. Amended or supplemental legal and factual statements may be filed as permitted by the umpire where the same will not unduly prejudice the other party to the proceeding.

f. In an alternative resolution proceeding when the umpire is of the opinion that evidence by impartial experts would be of assistance, the umpire may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the umpire.

g. Unless otherwise provided by the agreement for alternative resolution:

(1) The umpire shall appoint a time and place for the hearing and cause notification to the parties by personal service or by certified mail, with return receipt requested, not less than five days before the hearing. Appearance at the hearing waives the notice requirement. The umpire may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The umpire may determine the controversy upon the evidence produced, notwithstanding the failure of a party duly notified to appear. The Superior Court, on application in any pending summary proceeding, may direct the umpire to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all the umpires, but a majority may determine any question and render a final award. If, during the course of the hearing, an umpire for any reason ceases to act, the remaining umpires appointed to act may continue with the hearing and determination of the controversy.

L.1987,c.54,s.11; amended 2003, c.95, s.33.

2A :23A-12. **Determination in writing; application for modification of award by umpire; confirmations**

a. The award in an alternative resolution proceeding shall be in writing and acknowledged or proved in the same manner as a deed for the conveyance of real estate and delivered personally or by certified mail, return receipt requested, or as provided in the agreement to each party or his attorney who has appeared in the proceeding. The award shall state findings of all relevant material facts, and make all applicable determinations of law.

b. An award shall be made within the time fixed by the agreement for alternative resolution or, if not fixed, within such time as the Superior Court orders on application of a party. The parties or the Superior Court upon application and for good cause shown may extend the time for making the award either before or after the expiration of that time. A party waives the right to object that an award was not made within the time required unless the party notifies the umpire of the party's objection prior to the delivery of the award.

c. The power of the umpires may be exercised by a majority of them unless otherwise provided by the agreement for alternative resolution or by this act.

d. On written application of a party to the umpire within 20 days after delivery of the award to the applicant, the umpire may modify the award upon the grounds stated in subsection e. of section 13 of this act. Written notice of the application shall be given to other parties to the proceeding. Written objection to modification must be served on the umpire and other parties to the proceeding within 10 days of receipt of the notice. The umpire shall dispose of any application made under this section in writing, signed and acknowledged by him, within 30 days after either written objection to modification has been served or the time for serving an objection has expired, whichever is earlier. The parties may in writing extend the time for the disposition either before or after its expiration.

e. The umpire shall make the award on all issues submitted for alternative resolution in accordance with applicable principles of substantive law.

f. The court shall confirm an award upon application of a party made within one year after its delivery to him, unless the award is vacated or modified upon a ground specified in section 13 of this act.

L. 1987, c. 54, s. 12.

2A :23A-13. **Application to court for review of award**

a. A party to an alternative resolution proceeding shall commence a summary application in the Superior Court for its vacation, modification or correction within 45 days after the award is delivered to the applicant, or within 30 days after receipt of an award

modified pursuant to subsection d. of section 12 of this act, unless the parties shall extend the time in writing. The award of the umpire shall become final unless the action is commenced as required by this subsection.

b. In considering an application for vacation, modification or correction, a decision of the umpire on the facts shall be final if there is substantial evidence to support that decision; provided, however, that when the application to the court is to vacate the award pursuant to paragraph (1), (2), (3), or (4) of subsection c., the court shall make an independent determination of any facts relevant thereto de novo, upon such record as may exist or as it may determine in a summary expedited proceeding as provided for by rules adopted by the Supreme Court for the purpose of acting on such applications.

c. The award shall be vacated on the application of a party who either participated in the alternative resolution proceeding or was served with a notice of intention to have alternative resolution if the court finds that the rights of that party were prejudiced by:

(1) Corruption, fraud or misconduct in procuring the award;

(2) Partiality of an umpire appointed as a neutral;

(3) In making the award, the umpire's exceeding their power or so imperfectly executing that power that a final and definite award was not made;

(4) Failure to follow the procedures set forth in this act, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or

(5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution.

d. The award shall be vacated on the application of a party who neither participated in the proceeding nor was served with a notice of intention to have alternative resolution if the court finds that:

(1) The rights of that party were prejudiced by one of the grounds specified in subsection c. of this section; or

(2) A valid agreement to have alternative resolution was not made; or

(3) The agreement to have alternative resolution had not been complied with; or

(4) The claim was barred by any provision of this act.

e. The court shall modify the award if:

(1) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) The umpire has made an award based on a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted;

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy; or

(4) The rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

f. Whenever it appears to the court to which application is made, pursuant to this section, either to vacate or modify the award because the umpire committed prejudicial error in applying applicable law to the issues and facts presented for alternative resolution, the court shall, after vacating or modifying the erroneous determination of the umpire, appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire. The court shall then confirm the award as modified.

L. 1987, c. 54, s. 13.

2A :23A-14. **Rehearing, confirmation**

Upon vacating an award pursuant to section 13, except for the reasons stated in paragraph (5) of subsection c. of section 13, the court may order a rehearing and determination of all or any of the issues, either before the same umpire, having due regard for whether the award was vacated by reason of the actions of the umpire which were violative of paragraph (1), (2), (3), or (4) of subsection c. of section 13 or before a new umpire appointed in accordance with the alternative resolution agreement of this act. Time, in any provision limiting the time for a rehearing or an award, shall be measured from the date of the order or rehearing, whichever is appropriate, or from a time as may be specified by the court. Upon denial of a motion to vacate or modify, the court to which the application for that relief is directed shall confirm the award.

L. 1987, c. 54, s. 14.

2A :23A-15. **Death, incompetency of party**

When a party dies after making a written agreement to submit a controversy to alternative resolution, the proceedings may be initiated or continued upon the application

of, or upon notice to, the party's executor or administrator or, when it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. When a custodian of the property or a guardian of the person of a party to an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the custodian or guardian. Upon the death or incompetency of a party, the court may extend the time within which an application to confirm, vacate or modify the award or to stay alternative resolution must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as when a party dies after a verdict.

L. 1987, c. 54, s. 15.

2A :23A-16. **Limitation of time**

If, at the time a demand for alternative resolution was made or served, the claims sought to be resolved would have been barred by a limitation of time had it been asserted in a court of this State, a party may assert the limitation as a bar to the alternative resolution to a court to which application has been made to compel alternative resolution under this act. A party may also assert such bar before the umpire, who shall promptly rule upon that issue in a separate determination.

L. 1987, c. 54, s. 16.

2A :23A-17. **Fees, expenses**

Unless otherwise provided in the agreement for alternative resolution, the expenses and fees of the umpire with other expenses, including, but not limited to, costs for the place where the hearings are held, deposition or hearing transcripts, expert fees, and copying of documents, incurred in the conduct of the proceeding, shall be paid as provided in the award. When the agreement for alternative resolution expressly provides, the umpire may provide for payment of attorney's fees.

L. 1987, c. 54, s. 17.

2A :23A-18. **Judgment on award**

a. Whenever a court shall vacate, modify or correct an award as provided for in this act and thereupon enter an award based on that determination, the court, upon application, shall in a summary proceeding as provided for herein determine all costs and expenses permitted by section 17 of this act. The court may thereupon include the costs and expenses in the final judgment entered confirming the award.

b. Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered by the court in conformity therewith and be enforced as any other judgment or decree. There shall be no further appeal or review of the judgment or decree.

L. 1987, c. 54, s. 18.

2A :23A-19 **Superior Court jurisdiction of proceedings**.

19. Whenever a party to an agreement for alternative resolution has the right to apply to the Superior Court under this act, those proceedings shall be heard in accordance with any rules adopted by the New Jersey Supreme Court. These proceedings shall be summary in nature and expedited. This act shall be liberally construed to effectuate its remedial purpose of allowing parties by agreement to have resolution of factual and legal issues in accordance with informal proceedings and limited judicial review in an expedited manner.

L.1987,c.54,s.19; amended L. 2005, c.338.

PERSONAL INJURY ARBITRATION
CASES LESS THAN $20,000
Laws of 1987, Chapter 329

2A :23A-20. **Arbitration**

a. Any civil action brought for personal injury, except for actions brought pursuant to the provisions of P.L.1972, c. 70 (C. 39:6A-1 et seq.), shall be submitted, except as hereinafter provided, to arbitration by the assignment judge of the court in which the action is filed, if the court determines that the amount in controversy is $20,000.00 or less, exclusive of costs.

b. Notwithstanding that the amount in controversy is in excess of $20,000.00, the court may refer the matter to arbitration, if all of the parties to the action consent in writing to arbitration and the court determines that the controversy does not involve novel legal or unduly complex factual issues.

c. The provisions of this section shall not apply to any controversy on which an arbitration decision was rendered prior to the filing of the action. The provisions of this section shall apply to any cause of action, subject to this section, filed prior to the operative date of this act, if a pretrial conference has not been concluded thereon.

L. 1987,c.329, s.1.

2A :23A-21. **Filing**

Submission of a controversy to arbitration shall toll the statute of limitations for filing an action until the filing of the arbitration decision in accordance with section 6 of this act.

L. 1987,c.329, s.2.

2A :23A-22. **Arbitrators**

a. The number or selection of arbitrators may be stipulated by mutual consent of all of the parties to the action, which stipulation shall be made in writing prior to or at the time notice is given that the controversy is to be submitted to arbitration. The assignment judge shall approve the arbitrators agreed to by the parties, whether or not the designated arbitrators satisfy the requirements of subsection b. of this section, upon a finding that the designees are qualified and their serving would not prejudice the interest of any of the parties.

b. If the parties fail to stipulate the number or names of the arbitrators, the arbitrators shall be selected, in accordance with rules of court adopted by the Supreme Court of New Jersey, from a list of arbitrators compiled by the assignment judge, to be comprised of retired judges and qualified attorneys in this State with at least seven years' negligence experience and recommended by the county or State bar association.

L. 1987,c.329, s.3.

2A :23A-23. **Compensation for arbitrators**

Compensation for arbitrators shall be set by the rules adopted by the Supreme Court of New Jersey. The Supreme Court may also establish a schedule of fees for attorneys representing the parties to the dispute and for witnesses in arbitration proceedings subject to the provisions of N.J.S. 59:9-5. Attorney's fees may exceed these limits upon application made to the assignment judge in accordance with the Rules Governing The Courts of the State of New Jersey for the purpose of determining a reasonable fee in light of all the circumstances.

The Supreme Court may adopt rules governing offers of judgment by the claimant or defendant prior to the start of arbitration, including the assessment of the costs of arbitration proceedings and attorney's fees, where an offer is made but refused by the other party to the controversy.

L. 1987,c.329,s 4.

2A :23A-24. **Subpenas**

The arbitrators may, at their initiative or at the request of any party to the arbitrators, issue subpenas for the attendance of witnesses and the production of books, records, documents and other evidence. Subpenas shall be served and shall be enforceable in the manner provided by law.

L. 1987,c.329, s.5.

2A :23A-25. **Arbitration award over $20,000**

Notwithstanding that a controversy was submitted pursuant to subsection a. of section 1 of this act, the arbitration award may exceed $20,000.00. The arbitration decision shall be in writing, and shall set forth the issues in controversy, and the arbitrators' findings and conclusions of law and fact.

L. 1987,c.329, s.6.

2A :23A-26. **Confirmation**

The court shall, upon motion of any of the parties, confirm the arbitration decision, and the action of the court shall have the same effect and be enforceable as a judgment in any other action; unless one of the parties petitions the court within 30 days of the filing of the arbitration decision for a trial de novo or for modification or vacation of the arbitration decision for any of the reasons set forth in chapter 24 of Title **2A** of the New Jersey Statutes, or an error of law or factual inconsistencies in the arbitration findings.

L. 1987,c.329, s.7.

2A :23A-27. **Payment of fees**

8. Except in the case of an arbitration decision vacated by the court or offers of judgment made pursuant to court rules, the party petitioning the court for a trial de novo shall pay to the court a trial de novo fee in an amount established pursuant to the Rules of Court, which shall be utilized by the judiciary to pay the costs of arbitration including the fees of the arbitrators.

L.1987,c.329,s.8; amended 1993,c.88,s.2.

2A :23A-28. **Trial de novo**

No statements, admissions or testimony made at the arbitration proceedings, nor the arbitration decision, as confirmed or modified by the court, shall be used or referred to at the trial de novo by any of the parties, except that the court may consider any of those matters in determining the amount of any reduction in assessments made pursuant to section 10 of this act.

L. 1987,c.329, s.9.

2A :23A-29. **Assessment of costs for trial de novo**

The party having filed for a trial de novo shall be assessed court costs and other reasonable costs of the other party to the judicial proceeding, including attorneys' fees, investigation expenses and expenses for expert or other testimony or evidence, which amount shall be, if the party assessed the costs is the one to whom the award is made, offset against any damages awarded to that party by the court, and only to that extent; except that if the judgment is more favorable to the party having filed for a trial de novo, the court may reduce or eliminate the amount of the assessment in accordance with the extent to which the decision of the court is more favorable to that party than the arbitration decision, and as best serves the interest of justice. The court may waive an assessment of

costs required by this section upon a finding that the imposition of costs would create a substantial economic hardship as not to be in the interest of justice.

L. 1987,c.329, s.10.

2A :23A-30. **Rules of court; report**

The Supreme Court of New Jersey shall adopt rules of court appropriate or necessary to effectuate the purpose of this act. The Administrative Office of the Courts shall not later than March 1 of each year file with the Governor and Legislature a report on the impact of the implementation of this act on insurance settlement practices and costs, and on court calendars and workload.

L. 1987,c.329, s.11.

APPENDIX XXIX

Attorney Name: _____
Address: _____
_____
Telephone: _____
Attorney for: _____

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, CIVIL PART
_____ COUNTY
DOCKET NO: _____

_____
Plaintiff,

v.

_____
Defendants.

CIVIL ACTION
NOTICE OF ARBITRATION HEARING

TO: _____

TAKE NOTICE that a ☐ default ☐ default judgment on liability was entered against you on _____ , 20 ____ , in the above matter. An arbitration hearing in this matter is scheduled for _____ ☐ a.m. ☐ p.m. on _____ , 20 ___ , at _____ .

(location)

You have the right to appear at the arbitration hearing and should take whatever action you deem appropriate with regard to the same.

At the conclusion of the arbitration hearing an award of monetary damages may be entered against you which may then result in a final judgment being entered against you by the court. If the arbitration date is rescheduled or cancelled, you will be notified by separate correspondence. If you have a new address, it is your responsibility to notify the undersigned immediately in writing of your new address.

_____
Attorney for

Note: Adopted July 22, 2014 to be effective September 1, 2014.

Appendix XXIX-A

Note: Adopted July 27, 2015 to be effective September 1, 2015.

The following questionnaire shall be reviewed and executed by each party to a Family Part matter prior to execution of an Agreement or Consent Order submitting their family law matter dispute to arbitration/alternate dispute resolution.

ARBITRATION/ALTERNATE DISPUTE RESOLUTION

QUESTIONNAIRE FORM

1. Have you read the arbitration/alternate dispute resolution agreement?	Yes ☐ No ☐
2. Do you understand all of the terms of the arbitration/alternate dispute resolution agreement?	Yes ☐ No ☐
3. Do you understand that you have the right to a trial in the Superior Court of New Jersey in which a judge would render a decision, and that by entering into the arbitration/alternate dispute resolution agreement, you are waiving your right to a trial?	Yes ☐ No ☐
4. Do you understand by agreeing to arbitration/alternate dispute resolution that you are also waiving your right to appeal to the Appellate Division except in limited circumstances?	Yes ☐ No ☐
5. Do you understand that decisions rendered by the arbitrator/umpire cannot be challenged, vacated, amended or changed except in limited circumstances as may be set forth in the arbitration/alternate dispute resolution agreement?	Yes ☐ No ☐
6. Have you had ample time to reflect upon and consider the implications of your decision to arbitrate/resolve this case, rather than presenting it to a judge of the Superior Court of New Jersey?	Yes ☐ No ☐
7. Have you entered into the arbitration/alternate dispute resolution agreement freely and voluntarily without coercion or duress being exercised upon you?	Yes ☐ No ☐
8. Are you under the influence of any substances, such as drugs, medication or alcohol that may affect your ability to understand or voluntarily consent to the arbitration/alternate dispute resolution agreement?	Yes ☐ No ☐
9. Have you had sufficient time to have all of your questions answered by your attorney (if you have one) and if you are not represented by an attorney are you waiving your right to have an	Yes ☐ No ☐

attorney answer any questions you may have regarding the arbitration/alternate dispute resolution agreement?	
10. Do you agree to be bound by the arbitration/alternate dispute resolution agreement?	Yes ☐ No ☐
Please answer the following questions only if child support, custody and/or parenting time is an issue:	
11. Do you understand that an award pertaining to child support, custody or parenting time can be vacated if either you or the other party can establish that it threatens or poses a risk of harm to the child(ren)?	Yes ☐ No ☐
12. Do you understand that you will not be able to challenge, vacate, modify, or amend the arbitrator/umpire's award solely because you think the best interests of your child(ren) are better served by a different decision or because you disagree with it?	Yes ☐ No ☐
13. Do you understand that all documentary evidence and a record of testimony presented during the arbitration/alternate dispute resolution proceeding pertaining to the custody and parenting time of your child(ren) must be maintained and kept?	Yes ☐ No ☐
14. Do you understand that you may need to hire a court stenographer, for which you and/or the other party will bear the cost, to transcribe the proceeding or that the arbitrator will have to create a detailed record for review through some other agreed upon methodology?	Yes ☐ No ☐

I certify that I have read each and every question in this questionnaire. I certify that the foregoing answers made by me are true. I understand that if the foregoing answers made by me are willfully false, I am subject to punishment.

_____
(name)

_____

Appendix XXIX-B [new]

Note: Adopted July 27, 2015 to be effective September 1, 2015.

Introductory Note:

The Supreme Court of New Jersey endorses the use of arbitration and other alternative dispute resolution processes for the resolution of disputes.

Parties and their counsel may use this form to develop an arbitration agreement or consent order for the arbitration of certain family law disputes under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq., (UAA) and R. 5:1-5(a) of the Rules of Court.

The parties may agree to arbitrate certain family law disputes even if there is no pending family law proceeding in the Superior Court of New Jersey, Family Part.

The provisions of this form are acceptable to establish an enforceable arbitration agreement under the UAA.

This form should not be used for proceedings under the Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 et seq., (APDRA) because that act has substantial procedural differences from the UAA. A sample APDRA agreement is in Appendix C.

Parties should understand that adding certain clauses may increase the time and cost of arbitration. For example, electing to strictly apply the Rules of Evidence, permitting full discovery under the Rules of Court, requiring a full verbatim transcript of the proceeding where not required by case law, or requiring full findings of fact and conclusions of law where not required by case law, can and likely will significantly increase the duration and costs of arbitration.

The explanatory notes in this form note that:

- Certain provisions are required to assure the enforceability of the arbitration agreement. (See paragraphs 1, 2, and 4.)

- Certain provisions are required in any arbitration agreement for family law disputes involving children, including custody, parenting time or child support issues. (See paragraphs 1, 14, 16 and 17.)

- Certain details of the arbitration process should be agreed upon to avoid later disputes. (See paragraphs 6, 7, 9, 11, 15, 18, 19, 20, 22, and 29)

The remaining provisions are offered for consideration by the parties and their counsel in planning the arbitration proceeding.

AGREEMENT TO ARBITRATE
PURSUANT TO THE UNIFORM ARBITRATION ACT, N.J.S.A. 2A: 23B-1 *et seq.*

WHEREAS, the parties, fully aware of their rights to have their case heard by the Superior Court of New Jersey, Family Part, or to have their issues in dispute resolved in arbitration, have agreed to arbitrate pursuant to the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 *et seq*., (UAA).

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, the parties agree as follows:

Knowing Waiver of Certain Rights, Consent to Arbitrate, Scope of Arbitration, Entry of Judgment on the Arbitration Award

1. The parties acknowledge and agree to the following:

(A) The parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;

(B) The parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;

(C) The parties have had sufficient time to consider the implications of their decision to arbitrate; and

(D) The parties have entered into this arbitration agreement freely and voluntarily, after due consideration of the consequences of doing so.

Explanatory Note:

Paragraph 1 contains the language required by Fawzy v. Fawzy, 199 N.J. 456 (2009). It assures that parties to an arbitration agreement involving family law disputes, including custody, parenting time or child support issues, freely and voluntarily agree to arbitrate those disputes.

2. The parties agree to arbitrate certain disputes as provided in this agreement as follows:

☐ (A) All issues that could be raised and adjudicated in the Superior Court of New Jersey, Family Part, including *pendente lite* issues, except those excluded from arbitration by R. 5:1-5(a) shall be subject to the jurisdiction of and determination by the arbitrator pursuant to the terms and procedures of this agreement.

☐ (B) The parties exclude from arbitration the following issues: (list issues or state "none") _____.

☐ (C) The parties elect to arbitrate the following issues: (list issues)

_____.

The arbitrator shall determine whether an issue or dispute is within the scope of the arbitrator's jurisdiction.

Explanatory Note:

The parties are required to state what issues they agree to arbitrate.

Paragraph 2(A) offers the parties the option of a broad scope of issues to be arbitrated.

Paragraph 2(B) is to be used if the parties desire to exclude certain specified issues from arbitration. For example, some issues may be addressed in a separate mediation process or by the court after the disposition of the arbitration.

Paragraph 2(C) may be used to designate specific issues that the parties agree to arbitrate. For example, some issues already may be settled and the arbitration will be limited to the remaining issues.

3. The parties agree that the provisions of this agreement govern the arbitration proceeding if there is a conflict between the UAA and this agreement but only if the conflicting provisions of the UAA may be waived.

Explanatory Note:

The parties may change some provisions of the UAA, and may not change others. See N.J.S.A. 2A: 23B-4(c). Paragraph 3 confirms the parties' intent to change only those provisions of the statute that may be changed.

4. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Explanatory Note:

Paragraph 4 is to assure that the arbitration award is enforceable.

5. Neither party shall have the right or power to expand, narrow, amend or revoke this agreement without the consent, in writing, of the other party.

Explanatory Note:

Paragraph 5 is to make clear to the parties the irrevocability of their agreement to arbitrate.

Appointment of Arbitrator; Location of the Arbitration

6. The parties appoint (names(s)) _____ as the arbitrator(s). If the parties appoint more than one arbitrator, the word "arbitrator" in this agreement shall refer to the panel. The arbitrator has made full disclosures as required by the UAA as detailed in Rider A to this agreement. The parties have made full disclosure of any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator. The parties waive any objections to the service of the arbitrator.

Explanatory Note:

Disclosures by both the arbitrator and the parties are necessary to assure there is no later objection to the arbitrator based on information known to anyone at the time the arbitrator is selected.

If the parties do not name an arbitrator, or a panel of arbitrators, or do not agree on a process for selecting an arbitrator, the court will need to be involved to appoint an arbitrator under the UAA, N.J.S.A. 2A: 23B-11. The appointment of a panel of arbitrators will increase the cost and likely extend the duration of the arbitration proceeding.

7. The arbitrator's compensation and other expenses of the arbitration proceeding shall be borne by the parties as follows:

☐ (A) Equally;

☐ (B) In the following proportion: (state percentages borne by each party)

_____.

8. In any interim or final award, the arbitrator ☐ (A) may ☐ (B) may not reallocate the parties' percentage contribution to the arbitrator's compensation and other expenses of the arbitration proceeding.

9. Unless otherwise agreed, ordered, or awarded, the parties shall be responsible for paying their own attorney's fees and expenses.

10. In any interim or final award, the arbitrator ☐ (A) may ☐ (B) may not award reasonable attorney's fees and other reasonable expenses of arbitration.

Explanatory Note:

Parties should agree on certain details of the arbitration process, such as the allocation of the responsibility for arbitrator compensation, including the source of payment, to avoid later disputes about those details.

Paragraphs 8 and 10 confirm what the statute provides (N.J.S.A. 2A: 23B-21(b) and (d)) and offer the parties the option to bar the arbitrator from reallocating arbitrator compensation and other expenses or from awarding attorney's fees and costs.

11. The arbitration shall be conducted at (designate place) _____, or such other location as the parties agree or as selected by the arbitrator.

Explanatory Note:

Parties should agree on certain details of the arbitration process to avoid later disputes about those details.

12. The parties confirm the following role or roles for the arbitrator:

☐ (A) The arbitrator has not served, and shall not serve, in another capacity in the matter being arbitrated. In particular, the arbitrator has not served, and shall not serve in the dual capacity as mediator, settlement facilitator, parenting coordinator, or *guardian ad litem*; or

☐ (B) The parties shall participate in a mediation process before or during the arbitration proceeding with an independent mediator who is not serving, and shall not serve, as arbitrator for the parties; or

☐ (C) The parties may jointly ask the arbitrator at any time during the course of the arbitration proceeding to serve also as a settlement facilitator, during which time the arbitrator shall meet with the parties and their representatives all together, at the same time, and discuss with them various options for resolution of their disputes.

☐ (D) The parties may jointly ask the arbitrator at any time during the course of the arbitration proceeding to serve also as a mediator, during which time the arbitrator may meet with the parties and their representatives all together, at the same time, or in caucus, or in any other manner that a mediator would employ, and discuss with them various options for resolution of their disputes. By electing this option, paragraph 12(D), the parties also incorporate by reference all of paragraph 13 below.

Explanatory Note:

Paragraphs 12(A), (B) and (C) define the role the parties expect of the arbitrator. Each of these paragraphs is intended to avoid the problem that arises if, during the course of the arbitration proceeding, the parties ask the arbitrator to assist in settlement discussions as mediator and the arbitrator conducts private meetings with one party and then the other. While that is permissible, it would not then be permissible for the arbitrator, after unsuccessfully mediating the disputes, to resume the role of arbitrator and to decide disputed issues unless the parties have elected paragraph 12 (D).

Otherwise, such dual roles may result in arbitration awards being vacated and the parties being required to start the arbitration process again before a new arbitrator.

Paragraph 13 is required if the parties elect paragraph 12(D) above where the arbitrator will serve in the dual roles of arbitrator and mediator at any time and in any order during the process. It makes clear the risks inherent in having an arbitrator assume the role of mediator and then resume the role of arbitrator. Failure to object to the mediator resuming the role of arbitrator is deemed a waiver of the right to object.

Further, the dual role of arbitrator and guardian ad litem is not permitted. Fawzy v. Fawzy, 199 N.J. 456 (2009).

13. The parties acknowledge that the law does not favor an arbitrator also serving in the role of mediator in the same proceeding unless the parties are advised of the benefits and risks and expressly agree in writing to such a process. The parties have been advised of the holding in Minkowitz v. Israeli, 433 N.J. Super. 111 (App. Div. 2013). That case addressed some of the issues that arise when one person acts in the dual capacities of arbitrator and

mediator and concluded that dual roles are to be avoided unless the parties consent in writing. Issues include:

(a) The mediator meets separately with the parties and their counsel and learns information that in mediation is both confidential and privileged and that the mediator is required under section 7 of the Uniform Mediation Act, N.J.S.A. 2A: 23C-7, (UMA) not to disclose to the other party without the consent of the disclosing party;

(b) If the arbitrator is required by the parties to disclose such confidential and privileged information to the other party, the willingness of the parties to engage in a meaningful exchange of private confidential information during the mediation process is likely to be compromised, thereby making the mediation process itself less likely to be effective in resolving the disputes because successful mediation depends on confidentiality;

(c) The party to whom the arbitrator is required to disclose such confidential and privileged information can never be completely sure that he/she received a complete and accurate report of the information conveyed between the other party and the arbitrator during the confidential mediation process;

(d) Such confidential and privileged information is inadmissible in another proceeding (see UMA, N.J.S.A. 2A: 23C-4(c) and 7(c)), including the proceeding before the arbitrator;

(e) Such inadmissible, confidential and privileged information is likely to influence the decision of the arbitrator if the mediation is unsuccessful and the arbitrator is then called on to decide the disputed issues;

(f) These issues can lead to grounds for vacating an arbitration award and would require the parties to engage in a second arbitration before a different arbitrator.

Notwithstanding these issues, the parties have been advised that they may consent in writing to the arbitrator acting as mediator and then resuming the role of arbitrator. The parties intend this agreement to constitute such consent in writing.

Therefore, each party hereby consents to the arbitrator acting as a mediator for any issues (or only for certain issues) identified in writing by the parties.

Each of the parties waives all claims of confidentiality and privilege under the UMA and the common law for all communications, including private *ex parte* and otherwise confidential and privileged communications that the parties may have with the arbitrator while the arbitrator is serving as mediator.

The parties instruct the arbitrator to waive the mediator privilege under the UMA. Upon beginning or resuming the arbitration, the parties consent to and instruct the arbitrator to disclose fully and completely to the other party all otherwise confidential and privileged communications that the parties had with the arbitrator while the arbitrator was serving as mediator.

The parties waive any objection to the arbitrator considering as admissible evidence any confidential or privileged information received from the other party. Upon beginning or resuming the arbitration, the parties shall require the arbitrator to put all confidential and privileged information on the record, insofar as the issues in the proceeding relate to custody and parenting time.

The arbitrator may also serve as mediator at any time during the proceeding in any order and may thereafter resume the role of arbitrator, free of any objection from either party.

The parties acknowledge that the arbitrator is not exceeding the arbitrator's authority by acting as mediator and then resuming the role of arbitrator.

If a party proceeds with the next arbitration hearing without an objection to the arbitrator resuming the role of arbitrator, the party will be held to have waived any right to object.

Explanatory Note:

Paragraph 13 is optional unless the parties selected paragraph 12(D), in which case paragraph 13 is required. It makes clear the risks inherent in having an arbitrator assume the role of mediator and then resume the role of arbitrator. Failure to object to the mediator resuming the role of arbitrator is deemed a waiver of the right to object.

Required Record Keeping

14. In any arbitration proceeding involving custody or parenting time issues, the parties shall have a record made of the arbitration proceeding as to those issues. Such record shall include: (i) a record of all documentary evidence; and (ii) all testimony shall be recorded verbatim. A record of testimony may be made by one of the following: (i) certified shorthand reporter; (ii) electronic recording; or (iii) audio or video recording. Absent agreement of the parties, the arbitrator shall decide the proper allocation of the costs of the record.

15. In any arbitration proceeding that does not involve custody or parenting time issues, the parties:

☐ (A) Shall not require a record to be kept of the arbitration proceeding; or

☐ (B) Shall require a record to be kept of the arbitration proceeding relating to certain issues as follows: (list issues) _____; or

☐ (C) Shall require a record to be kept of the entire arbitration proceeding.

Explanatory Note:

The parties may choose whether or not to have a record made of the arbitration proceeding as noted in the optional parts (A), (B) and (C) of paragraph 15. The parties may consider having a verbatim record made in all child support cases in which a deviation from the guidelines is sought to assure that the court may properly review the arbitrator's award. Requiring

a formal record to be kept, depending on the nature of the record, may increase the cost of the arbitration.

16. All documentary evidence introduced at the hearing shall be maintained by the arbitrator until the issuance of the award and the parties shall either keep a copy of all such evidence or obtain the evidence from the arbitrator after issuance of the award and retain it until the expiration of the time for the filing of any appeal from an order or judgment confirming, vacating or modifying the award, or from the expiration of the time to apply for an order or judgment to vacate or modify the award.

Explanatory Note:

Paragraphs 14 and 16 are required in any arbitration agreement involving custody or parenting time issues. This assures that the court may properly review any resulting arbitration award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

Required Findings; Form of Award

17. In any proceeding involving custody, parenting time or child support issues, the parties shall require the arbitrator to make findings of fact and conclusions of law with respect to child-custody, parenting-time, or child support issues. As to those issues, the arbitrator shall state in writing or otherwise record findings of fact and conclusions of law with a focus on the best-interests standard.

Explanatory Note:

Paragraph 17 is required in any arbitration agreement in which issues involving children, including custody, parenting time or child support issues, will be addressed. This assures that the court may properly review any resulting arbitration award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

18. In any arbitration proceeding that does not involve custody, parenting time or child support issues, the parties:

☐ (A) Shall require the arbitrator to prepare an award stating no reasons; or

☐ (B) Shall require the arbitrator to prepare an award briefly stating the reasons for the decision of the arbitrator; or

☐ (C) Shall require the arbitrator to prepare an award stating findings of fact and conclusions of law.

Explanatory Note:

Absent agreement of the parties or requirements under the law, the arbitrator will decide the form of the award. If the parties desire an explanation of the award because of the particular issues involved, they may select option (B). If the parties want to expand the scope of judicial review under N.J.S.A. 2A: 23B – 4(c), they should consider selecting option (C). However, if the parties decide to ask the arbitrator to state the reasons for the award or to make findings of fact and conclusions of law, it may increase the cost of the arbitration.

Law to Be Applied

19. This agreement shall be interpreted according to the laws of the State of New Jersey.

Explanatory Note:

Paragraph 19 gives guidance to the arbitrator about what rules of construction are to be used in interpreting the agreement (i.e., New Jersey law).

20. In all cases involving custody, parenting time, or child support issues, the arbitrator shall be bound to apply the substantive laws and remedies of the State of New Jersey. All other issues in this arbitration shall be determined by:

☐ (A) The substantive laws and remedies of the State of New Jersey or the State of (identify governing law) _____ which the arbitrator shall be bound to apply; or

☐ (B) The substantive law of the State of New Jersey or the State of (identify governing law) _____, but the arbitrator may award such remedies as the arbitrator considers just and appropriate under the circumstances. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award or for vacating an award.

Explanatory Note:

Paragraph 20 gives guidance as to which law to apply to the particular issues in dispute. The parties may require the arbitrator to be bound to apply the substantive law and remedies as stated in Paragraph 20(A). Alternatively, Paragraph 20 (B) allows the parties to select the substantive law and grant the arbitrator broad discretion in fashioning remedies that may be outside of the remedies available under the substantive law. For example, the parties may ask the arbitrator to award a lump sum of alimony.

See also paragraph 10, offering the parties the option to limit the arbitrator's authority to reallocate or award attorney's fees and expenses.

21. The arbitration shall be conducted pursuant to rules of procedure as determined in the discretion of the arbitrator, consistent with this agreement and the applicable statute.

Explanatory Note:

Paragraph 21 confirms what the statute provides under N.J.S.A. 2A: 23B-15. The parties remain free to choose another set of procedural rules to govern the arbitration process.

Confidentiality

22. Except as may be required by law, the parties and the arbitrator shall keep the existence, content (including all testimony and documentary evidence presented) and the results of the arbitration proceeding confidential. Neither the parties nor the arbitrator may disclose the existence, content, or results of any arbitration under this agreement without the prior written consent of the parties.

Explanatory Note:

The arbitrator must keep confidential the arbitrator's knowledge of the arbitration proceeding. However, the parties are not required to keep anything about the arbitration proceeding confidential unless they agree to do so. An important reason some parties agree to arbitrate is to maintain certain information as confidential and this optional paragraph 22 provides that.

Discovery and Rules of Evidence

23. The parties agree that the following discovery procedures shall apply to the arbitration proceeding:

☐ (A) Such discovery as the arbitrator determines appropriate under the UAA; or

☐ (B) Discovery conducted in accordance with the New Jersey Rules of Court; or

☐ (C) Limited discovery as follows: (specify the agreed discovery) _____; or

☐ (D) No discovery.

Explanatory Note:

The parties have various options ranging from full discovery under the Rules of Court to no discovery at all.

The parties may choose paragraph 23(A), which confirms that the scope of discovery is left to the discretion of the arbitrator as provided under N.J.S.A. 2A: 23B-17.

The parties may also choose to do expansive discovery such as that under the New Jersey Rules of Court as provided in paragraph 23(B). However, one of the advantages of arbitration is the limited and expedited scope of discovery. Choosing paragraph 23(B) will substantially increase the cost of the arbitration proceeding, and may not be necessary to a full and fair presentation of the issues to the arbitrator.

The parties may choose paragraph 23(C) to specify what discovery is needed (e.g., disclosure of closely-held business records).

The parties may choose paragraph 23(D) for no discovery if the issue to be arbitrated is one where no discovery is necessary and all information to be presented to the arbitrator is already in the hands of the parties or if the parties choose to save legal costs of formal discovery requests and responses by agreeing to work cooperatively to exchange necessary information.

24. The parties agree that the following shall govern the admissibility of evidence in the arbitration proceeding:

☐ (A) Such evidence shall be admitted in the discretion of the arbitrator pursuant to the UAA; or

☐ (B) The New Jersey Rules of Evidence shall apply; or

☐ (C) The (specify source of other rules) _____ Rules of Evidence shall apply.

Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

Explanatory Note:

The parties may choose paragraph 24(A), which confirms that absent agreement of the parties, the admissibility of evidence is left to the discretion of the arbitrator, who is not bound to apply any rules of evidence. N.J.S.A. 2A: 23B-15(a).

The parties may choose paragraphs (B) or (C) to designate particular rules of evidence. However, applying any rules of evidence may require the services of a lawyer as the arbitrator, whereas an accountant or social services professional may be the more suitable selection as arbitrator, depending on the issues to be arbitrated. Also, applying rules of evidence in the arbitration hearing may increase the time and expense of the arbitration hearing.

Arbitration Proceedings and Witnesses/Experts

25. The arbitrator may hold conferences with the parties. The arbitrator may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action. Subpoenas shall issue in the name of and be signed by the arbitrator, and shall be directed to the person therein named and served in accordance with R. 1:9-3 of the Rules of Court. Parties may enforce subpoenas as provided by the UAA.

Explanatory Note:

Paragraph 25 confirms what the statute provides. N.J.S.A. 2A: 23B-15(a) and 17(g).

26. If the arbitrator is of the opinion that evidence by impartial expert(s) would be of assistance, the arbitrator may direct that expert evidence be obtained. The fees and expenses of

expert witnesses shall be paid by the parties as directed by the arbitrator. The parties remain free to retain their own experts to challenge the report(s) of the impartial expert(s) and to cross-examine the impartial expert(s).

Explanatory Note:

Paragraph 26 assures that the arbitrator may direct that expert evidence be obtained and confirms the right of the parties to retain their own expert(s) and to cross-examine the impartial expert(s).

***Pendente Lite* (Interim) Relief**

27. Any determination reached before a final award shall be considered *pendente lite (*interim*)* relief.

28. Any party may seek *pendente lite* (interim) relief from the arbitrator, to the same extent as such relief could be requested in the Superior Court of New Jersey, Family Part. Any party may request that the ruling be incorporated into an award. Any party may then ask the court to confirm, enforce, modify, correct, or vacate the award in accordance with R. 5:3-8(a) or (b).

29. The arbitration proceeding shall not be abated, stayed or delayed by the court's review or enforcement of a *pendente lite* (interim) award unless the arbitrator or the court so determines.

Explanatory Note:

Paragraph 28 confirms what the statute provides. N.J.S.A. 2A: 23B-18.

Paragraph 29 provides that a motion/application to the court to address a pendente lite (interim) award does not affect the ongoing arbitration proceeding on other issues.

Final Determination

30. An award shall be made within (state number) ____ days following the close of evidence or submission of summations, whichever is later. The arbitrator, with the consent of the parties, may extend the time for making the award.

Explanatory Note:

Paragraph 30 is desirable to assure a timely completion of the award by the arbitrator. A 30-day time limit, or slightly longer, is typical.

Post-Award Review, Modification or Correction of the Arbitration Award by the Arbitrator

31. On application to the arbitrator by a party to the arbitration proceeding, the arbitrator may modify or correct the award:

(1) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted; or

(3) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(4) To clarify the award.

Explanatory Note:

Paragraph 31 confirms what the statute provides. N.J.S.A. 2A: 23B-20 and 24 (a)(1) and (3). The parties may include this paragraph in their agreement if the parties want to incorporate, for reference, the standards for when an arbitrator may be asked to review the award but they may not vary these four standards governing the arbitrator's review. N.J.S.A. 2A: 23B-4(c).

32. An application shall be made and notice given to all parties within 20 days after the aggrieved party receives notice of the award. Objection to the application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given to all parties within 7 days. The arbitrator shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

Explanatory Note:

Paragraph 32 confirms what the statute provides about the timing of an application to the arbitrator and the opposition. N.J.S.A. 2A: 23B-20. This paragraph further provides for the option of a reply.

33. There shall be no further jurisdiction of the arbitrator to consider any further applications of the parties, absent written consent of the parties to expand the scope of the arbitration.

Explanatory Note:

Paragraph 33 confirms that the arbitrator's authority ends completely upon the issuance of a final award and the expiration of the short time within which to seek modification or clarification of the award from the arbitrator. However, the parties, in writing, may expand the scope of the arbitrator's jurisdiction. Such expansion may include agreement that the arbitrator may continue to exercise jurisdiction over issues beyond those addressed in the final award.

34. The parties agree that the arbitrator has jurisdiction after the issuance of any award in order to be able to reconsider the award based upon mistake of fact or mistake of law or any factor set forth in R. 4:49-2 or R. 4:50-1 of the Rules of Court. Any reconsideration application under this paragraph shall be made and notice given to all parties within 20 days of receipt of the award. Objection to the reconsideration application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given

to all parties within 7 days. The arbitrator shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

Explanatory Note:

Paragraph 34 expands the arbitrator's jurisdiction beyond that in paragraph 31 and allows a short, 20-day continuation of the jurisdiction of the arbitrator in order to hear applications to change the award on various grounds beyond the limited grounds described in the statute. Continuing the jurisdiction of the arbitrator may increase the cost of the arbitration process.

Confirmation of the Arbitration Award

35. After a party to the arbitration proceeding receives notice of an award, the party may apply under R. 5:3-8 to the Superior Court or New Jersey, Family Part for an order confirming the award. The court shall issue a confirming order unless the arbitration award is modified, corrected or vacated.

Explanatory Note:

Paragraph 35 confirms what the statute provides. N.J.S.A. 2A: 23B-22. The procedure for confirming the award may not be changed by the parties. N.J.S.A. 2A: 23B-4(c).

Modification or Correction of the Arbitration Award by the Court

36. On motion/application to the court by a party to the arbitration proceeding within 120 days after the party receives notice of the award or of a modified or corrected award, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) The arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

If the motion/application is granted, the court shall modify or correct and confirm the award as modified or corrected, unless a motion/application to vacate the award is pending.

Explanatory Note:

Paragraph 36 confirms what the statute provides. N.J.S.A. 2A: 23B-24. The parties may include this paragraph in their agreement if the parties want to incorporate, for reference, the standards for when a court may be asked to modify or correct the award but they may not vary these three standards governing the court's review. N.J.S.A. 2A: 23B-4(c).

Vacating an Arbitration Award

37. A party to the arbitration proceeding may apply to the court to vacate the award within 120 days after receiving notice of the award or the modified or corrected award, unless the aggrieved party alleges that the award was procured by corruption, fraud or other undue means, in which case the application to the court shall be made within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party. Upon filing of such application, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud, or other undue means;

(2) The court finds evident partiality by an arbitrator, corruption by an arbitrator, or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) The arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing in a manner so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) The arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection not later than the beginning of the arbitration hearing;

(6) The arbitration was conducted without proper notice of the initiation of the arbitration so as to substantially prejudice the rights of a party to the arbitration proceeding;

(7) The award, pertaining to the issues of custody, parenting time or child support:

a. Does not contain detailed findings of fact and conclusions of law; or

b. Is not in compliance with the provisions of R. 5:1-5 of the Rules of Court; or

c. There is evidential support that establishes a *prima facie* claim of harm to the child.

Explanatory Note:

Paragraph 37 confirms what the statute provides. N.J.S.A. 2A: 23B-23.

Part 7 of Paragraph 37 includes the standards for the court to use to review an award involving issues affecting children, including custody, parenting time and child support. These provisions are consistent with provisions required in an arbitration agreement involving such issues (see paragraphs 14, 16, and 17 above.)

The parties may include this paragraph in their agreement if the parties want to reference the standards for when a court may be asked to vacate the award but they may not vary these standards. N.J.S.A. 2A: 23B-4(c).

However, the parties may expand the scope of judicial review under that section of the UAA. See sample paragraph 38 below.

Expanding the Scope of Judicial Review

38. The parties agree to expand the scope of review by the Superior Court of New Jersey, Family Part under the UAA to require the court to review any award on the following standards:

☐ (A) Errors of law; or

☐ (B) Substantial evidence; or

☐ (C) Abuse of discretion; or

☐ (D) Such other standard as the parties may agree: (state a standard of review)

_____.

Explanatory Note:

N.J.S.A. 2A: 23B-4(c) provides the parties the option of expanding the scope of judicial review of an arbitration award according to standards they define. Based on such an agreement, the court may modify, correct or vacate the award using the agreed standard. However, such review may require that a record be made of all testimony in order to permit such review by the court, and that may substantially increase the cost of the arbitration and adversely affect the finality of the arbitration award. Expanding the scope of judicial review can also adversely impact the confidentiality of the arbitration proceeding itself because of the need to file the record of the arbitration proceeding with the court. However, note that the parties may not confer jurisdiction on the Appellate Division to review errors of law or fact.

Other Review

39. The parties agree to permit an appeal of the final award to a panel of one or more private appellate arbitrators to be agreed upon by the parties or provided by a third party, such as the American Arbitration Association. Such appeal shall be filed within 30 days of receipt of the

final or corrected, modified award. The parties agree that the standard of review shall be as follows: (state a standard of review) _____. If an appeal is filed, the award shall not be deemed final for purposes of confirmation pending the appeal. The appellate panel may adopt the original award, modify the original award or substitute its own award. The decision of the appellate panel shall be final and binding and judgment may be entered by any court having jurisdiction thereof. The appellate panel shall consist of:

☐ (A) One arbitrator;

☐ (B) A panel of arbitrators; or

☐ (C) The following arbitrator(s): (name(s)) _____.

Explanatory Note:

Various third party arbitration provider organizations, including the American Arbitration Association, offer parties the option, under a set of appellate rules, to take an appeal to a panel of arbitrators of an arbitration award issued by another arbitrator. Parties may want to consider this option if they desire to have an appeal from an award rather than being limited to the statutory grounds for vacating an award but, for confidentiality reasons or otherwise, do not desire to provide for review by the court or expanded review by the court under paragraphs 37 and 38 above.

Attorney for Plaintiff	Plaintiff
Attorney for Defendant	Defendant
	Date

Appendix XXIX-C

Note: Adopted July 27, 2015 to be effective September 1, 2015.

Introductory Note:

The Supreme Court of New Jersey endorses the use of arbitration and other alternative dispute resolution processes for the resolution of disputes.

Parties and their counsel may use this form to develop an agreement or consent order for the resolution of certain family law disputes in a proceeding under the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 to 19, (APDRA) and R. 5:1-5(a) of the Rules of Court. (Please note that N.J.S.A. 2A:23A-20 to 30 do not apply.)

The parties may agree to an alternative procedure for the resolution of certain family law disputes even if there is no pending family law proceeding in the Superior Court of New Jersey, Family Part.

The provisions of this form are acceptable to establish an enforceable agreement under the APDRA.

This form should not be used for proceedings under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq., (UAA) because that act has substantial procedural differences from the APDRA. A sample UAA agreement is in Appendix B.

Parties should understand that adding certain clauses may increase the time and cost of the proceeding. For example, electing to strictly apply the Rules of Evidence, permitting full discovery under the Rules of Court, requiring a full verbatim transcript of the proceeding where not required by case law, can, and likely will, significantly increase the duration and costs of the proceeding.

The explanatory notes in this form note that:

- Certain provisions are required to assure the enforceability of the agreement. (See paragraphs 1, 2 and 4.)

- Certain provisions are required in any agreement for an alternate proceeding for the resolution of family law disputes involving children, including custody, parenting time or child support issues. (See paragraphs 1, 14, 16 and 17.)

- Certain details of the process should be agreed upon to avoid later disputes. (See paragraphs 6, 7, 9, 11, 15, 18, 19, 20, 22 and 29.)

The remaining provisions are offered for consideration by the parties and their counsel in planning the alternate dispute resolution proceeding.

AGREEMENT TO RESOLVE DISPUTES PURSUANT TO THE NEW JERSEY ALTERNATIVE PROCEDURE FOR DISPUTE RESOLUTION ACT, N.J.S.A. 2A: 23A-1 *et seq.*

WHEREAS, the parties, fully aware of their rights to have their case heard by the Superior Court of New Jersey, Family Part, or to have their issues in dispute resolved in an alternative procedure, have agreed to resolve their disputes pursuant to the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 *et seq*., (APDRA).

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, the parties agree as follows:

Knowing Waiver of Certain Rights, Consent to Alternative Procedure, Scope of the Proceeding, Entry of Judgment on the Award

1. The parties acknowledge and agree to the following:

(A) The parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;

(B) The parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;

(C) The parties have had sufficient time to consider the implications of their decision to agree to the alternative procedure; and

(D) The parties have entered into this agreement freely and voluntarily, after due consideration of the consequences of doing so.

Explanatory Note:

Paragraph 1 contains the language required by Fawzy v. Fawzy, 199 N.J. 456 (2009). It assures that parties to an agreement for an alternative procedure for dispute resolution involving family law disputes, including

custody, parenting time or child support issues, freely and voluntarily agree to the alternative procedure for resolving those disputes.

2. The parties agree to submit certain disputes for resolution in a proceeding by an umpire under the APDRA as follows:

☐ (A) All issues that could be raised and adjudicated in the Superior Court of New Jersey, Family Part, except those excluded from such a proceeding by R. 5:1-5(a), including *pendente lite* issues, shall be subject to the jurisdiction of and determination by the umpire pursuant to the terms and procedures of this agreement. The umpire shall determine whether an issue or dispute is within the scope of the umpire's jurisdiction.

☐ (B) The parties exclude from the proceeding the following issues: (list issues or state "none") _____.

☐ (C) The parties elect to submit the following issues to the umpire for resolution: (list issues) _____.

The umpire shall determine whether an issue or dispute is within the scope of the umpire's jurisdiction.

Explanatory Note:

The parties are required to state what issues they agree to submit to the proceeding.

Paragraph 2(A) offers the parties the option of a broad scope of issues to be submitted.

Paragraph 2(B) is to be used if the parties desire to exclude certain specified issues from the proceeding. For example, some issues may be addressed in a separate mediation process or by the court after the disposition of the arbitration.

Paragraph 2(C) may be used to designate specific issues that the parties agree to submit to the proceeding. For example, some issues already may be settled and the proceeding will be limited to the remaining issues.

3. The parties agree that the provisions of this agreement govern the proceeding if there is a conflict between the APDRA and this agreement but only if the conflicting provisions of the APDRA may be waived.

Explanatory Note:

The parties may change some provisions of the APDRA, and may not change others. Paragraph 3 confirms the parties' intent to change only those provisions of the statute that may be changed.

4. Judgment on the award rendered by the umpire may be entered in any court having jurisdiction thereof.

Explanatory Note:

Paragraph 4 is to assure that the award is enforceable.

5. Neither party shall have the right or power to expand, narrow, amend or revoke this agreement without the consent in writing of the other party.

Explanatory Note:

Paragraph 5 is to make clear to the parties the irrevocability of their agreement.

Appointment of Umpire; Location of the Proceeding

6. The parties appoint (name(s)) _____ as the umpire. If the parties appoint more than one umpire, the word "umpire" in this agreement shall refer to the panel. The umpire has made full disclosures as required by the APDRA as detailed within Rider A to this agreement. The parties have made full disclosure of any known facts that a reasonable person would consider likely to affect the impartiality of the umpire. The parties waive any objections to the service of the umpire.

Explanatory Note:

Disclosures by both the umpire and the parties are necessary to assure there is no later objection to the umpire based on information known to anyone at the time the umpire is selected.

If the parties do not name an umpire, or a panel of umpires, or do not agree on a process for selecting an umpire, the court will need to be involved to appoint an umpire under the APDRA, N.J.S.A. 2A: 23A-9(a). The appointment of a panel of umpires will increase the cost and likely extend the duration of the proceeding.

7. The umpire's compensation and other expenses of the proceeding shall be borne by the parties as follows:

☐ (A) Equally;

☐ (B) In the following proportion: (state percentages borne by each party)

_____.

8. In any interim or final award, the umpire ☐ (A) may ☐ (B) may not reallocate the parties' percentage contribution to the umpire's compensation and other expenses of the proceeding.

9. Unless otherwise agreed, ordered, or awarded, the parties shall be responsible for paying their own attorney's fees and expenses.

10. In any interim or final award, the umpire ☐ (A) may ☐ (B) may not award reasonable attorney's fees and other reasonable expenses of the proceeding.

Explanatory Note:

Parties should agree on certain details of the process, such as the allocation of the responsibility for umpire compensation, including the source of payment, to avoid later disputes about those details.

Paragraphs 8 and 10 confirm what the statute provides (N.J.S.A. 2A: 23A-17 and 23) and offers the parties the option to bar the umpire from reallocating umpire compensation and other expenses or from awarding attorney's fees and costs.

11. The proceeding shall be conducted at (designate place) _____, or such other location as the parties agree or as selected by the umpire.

Explanatory Note:

Parties should agree on certain details of the process to avoid later disputes about those details.

12. The parties confirm the following role or roles for the umpire:

☐ (A) The umpire has not served, and shall not serve, in another capacity in the proceeding, in particular, the umpire has not served, and shall not serve in the dual capacity as mediator, settlement facilitator, parenting coordinator, or *guardian ad litem*; or

☐ (B) The parties shall participate in a mediation process before or during the proceeding with an independent mediator who is not serving, and shall not serve, as umpire for the parties; or

☐ (C) The parties may jointly ask the umpire at any time during the course of the proceeding to serve also as a settlement facilitator, during which time the umpire shall meet with the parties and their representatives all together, at the same time, and discuss with them various options for resolution of their disputes.

☐ (D) The parties may jointly ask the umpire at any time during the course of the proceeding to serve also as a mediator, during which time the umpire may meet with the parties and their representatives all together, at the same time, or in caucus or in any other manner that a mediator would employ, and discuss with them various options for resolution of their disputes. By electing this option, paragraph 12(D), the parties also incorporate by reference all of paragraph 13 below.

Explanatory Note:

> ***Paragraphs 12(A), (B) and (C) define the role the parties expect of the umpire. It is intended to avoid the problem that arises if, during the course of the proceeding, the parties ask the umpire to assist in settlement discussions as mediator and the umpire conducts private meetings with one party and then the other. While that is permissible, it would not then be permissible for the umpire, after unsuccessfully mediating the disputes, to resume the role of umpire and to decide disputed issues unless the parties have elected paragraph 12 (D) .***
>
> ***Otherwise, such dual roles may result in awards being vacated and the parties being required to start the process again before a new neutral.***
>
> ***Paragraph 13 is required if the parties elect paragraph 12(D) above where the umpire will serve in the dual roles of umpire and mediator at any time and in any order during the process. It makes clear the risks inherent in having an umpire assume the role of mediator and then resume the role of umpire. Failure to object to the mediator resuming the role of umpire is deemed a waiver of the right to object.***
>
> ***Further, the dual role of umpire and guardian ad litem is not permitted. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).***

13. The parties acknowledge that the law does not favor an umpire also serving in the role of mediator in the same proceeding unless the parties are advised of the benefits and risks and expressly agree in writing to such a process. The parties have been advised of the holding in Minkowitz v. Israeli, 433 N.J. Super. 111 (App. Div. 2013). That case addressed some of the issues that arise when one person acts in the dual capacities of arbitrator (or umpire) and

mediator and concluded that dual roles are to be avoided unless the parties consent in writing. Issues include:

(a) The mediator meets separately with the parties and their counsel and learns information that in mediation is both confidential and privileged and that the mediator is required under section 7 of the Uniform Mediation Act, N.J.S.A. 2A: 23C-7, (UMA) not to disclose to the other party without the consent of the disclosing party;

(b) If the umpire is required by the parties to disclose such confidential and privileged information to the other party, the willingness of the parties to engage in a meaningful exchange of private confidential information during the mediation process is likely to be compromised, thereby making the mediation process itself less likely to be effective in resolving the disputes because successful mediation depends on confidentiality;

(c) The party to whom the umpire is required to disclose such confidential and privileged information can never be completely sure that they received a complete and accurate report of the information conveyed between the other party and the umpire during the confidential mediation process;

(d) Such confidential and privileged information is inadmissible in another proceeding (*see* UMA, N.J.S.A. 2A: 23C-4(c) and 7(c)), including the proceeding before the umpire;

(e) Such inadmissible, confidential and privileged information is likely to influence the decision of the umpire if the mediation is unsuccessful and the umpire is then called on to decide the disputed issues;

(f) These issues can lead to grounds for vacating an award and would require the parties to engage in a second proceeding before a different umpire.

Notwithstanding these issues, the parties have been advised that they may consent in writing to the umpire acting as mediator and then resuming the role of umpire. The parties intend this agreement to constitute such consent in writing.

Therefore, each party hereby consents to the umpire acting as a mediator for any issues (or only for certain issues) identified in writing by the parties.

Each of the parties waives all claims of confidentiality and privilege under the UMA and the common law for all communications, including private *ex parte* and otherwise confidential and privileged communications that the parties may have with the umpire while the umpire is serving as mediator.

The parties instruct the umpire to waive the mediator privilege under the UMA. Upon beginning or resuming the proceeding, the parties consent to and instruct the umpire to disclose fully and completely to the other party all otherwise confidential and privileged communications between the parties and the umpire while serving as mediator.

The parties waive any objection to the umpire considering as admissible evidence any confidential or privileged information received from the other party. Upon beginning or resuming the proceeding, the parties shall require the umpire to put all confidential and privileged information on the record, insofar as the issues in the proceeding relate to custody and parenting time.

The umpire may also serve as mediator at any time during the proceeding in any order and may thereafter resume the role of umpire, free of any objection from any party.

The parties acknowledge that the umpire is not exceeding the umpire's authority by acting as mediator and then resuming the role of umpire.

If a party proceeds with the next hearing in the proceeding without an objection to the umpire resuming the role of umpire, the party will be held to have waived any right to object.

Explanatory Note:

Paragraph 13 is optional unless the parties selected paragraph 12(D), in which case Paragraph 13 is required. It makes clear the risks inherent in having an umpire assume the role of mediator and then resume the role of umpire. Failure to object to the umpire resuming the role of umpire is deemed a waiver of the right to object.

Required Record Keeping

14. In any proceeding involving custody or parenting time issues, the parties shall have a record made of the proceeding as to those issues. Such record shall include: (i) a record of all documentary evidence; and (ii) all testimony shall be recorded verbatim. A record of testimony may be made by one of the following: (i) certified shorthand reporter; (ii) electronic recording; or (iii) audio or video recording. Absent agreement of the parties, the umpire shall decide the proper allocation of the costs of the record.

15. In any proceeding that does not involve custody or parenting time issues, the parties:

☐ (A) Shall not require a record to be kept of the proceeding; or

☐ (B) Shall require a record to be kept of the proceeding relating to certain issues as follows: (list issues) _____; or

☐ (C) Shall require a record to be kept of the entire proceeding.

Explanatory Note:

The parties may choose whether or not to have a record made of the proceeding as noted in the optional parts (A), (B) and (C) of paragraph 15. The parties may choose to have a verbatim record made in child support cases that deviate from the guidelines to assure that the court may properly review any resulting award if there is an appropriate objection to it.

Requiring a formal record to be kept, depending on the nature of the record, may increase the cost of the proceeding.

16. All documentary evidence introduced at the hearing shall be maintained by the umpire until the issuance of the award and the parties shall either keep a copy of all such evidence or obtain the evidence from the umpire after issuance of the award and retain it until the expiration of the time for the filing of any appeal from an order or judgment confirming, vacating or modifying the award, or from the expiration of the time to apply for an order or judgment to vacate or modify the award.

Explanatory Note:

Paragraphs 14 and 16 are required in any agreement in which issues involving children, including custody or parenting time, will be determined. This assures that the court may properly review any resulting award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

Required Findings; Form of Award

17. In any proceeding involving custody, parenting time or child support issues, the parties shall require the umpire to make findings of fact and conclusions of law with respect to child-custody, parenting-time or child support issues. As to those issues, the umpire shall state in writing or otherwise record findings of fact and conclusions of law with a focus on the best-interests standard.

Explanatory Note:

Paragraph 17 is required in any agreement in which issues involving children, including custody, parenting time or child support, will be addressed. This assures that the court may properly review any resulting award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

18. In any proceeding that does not involve custody, parenting time or child support issues, the parties shall require the umpire to prepare an award stating findings of fact and conclusions of law.

Explanatory Note:

Paragraph 18 confirms what the statute provides under N.J.S.A. 2A: 23A-12(a). It requires the umpire to make findings of fact and conclusions of law. A detailed award is needed under the APDRA since the APDRA permits a court to review an award for errors of fact or law committed by the umpire.

If the parties do not desire or need that level of review or that detailed an award, they should consider instead an agreement to arbitrate under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq. (UAA). Under the UAA there is more limited court review and the parties may opt for a simple award or an award with a brief explanation of the arbitrator's reasons. This may reduce the cost of the proceeding. See UAA Arbitration Agreement form at Appendix B.

Law to Be Applied

19. This agreement shall be interpreted according to the laws of the State of New Jersey.

Explanatory Note:

Paragraph 19 gives guidance to the umpire about what rules of construction are to be used in interpreting the agreement (i.e., New Jersey law).

20. The issues in this proceeding shall be determined in accordance with applicable principles of substantive law of the State of New Jersey.

Explanatory Note

Paragraph 20 confirms what the statute provides, N.J.S.A. 2A: 23A-12(e).

21. The proceeding shall be conducted pursuant to rules of procedure as determined in the discretion of the umpire, consistent with this agreement and the applicable statute(s).

Explanatory Note:

Paragraph 21 confirms what the statute provides. See generally N.J.S.A. 2A: 23A-11. Note that parties remain free in their agreement to provide for whether there is to be a hearing, and for specific aspects of the conduct of the hearing including when and where a hearing is held. N.J.S.A. 2A: 23A-11(g) (1), (2) and (3).

Confidentiality

22. Except as may be required by law, the parties and the umpire shall keep the existence, content (including all testimony and documentary evidence presented) and the results of the proceeding confidential. Neither the parties nor the umpire may disclose the existence, content, or results of any proceeding under this agreement without the prior written consent of the parties.

Explanatory Note:

The umpire must keep confidential the umpire's knowledge of the proceeding. However, the parties are not required to keep anything about the proceeding confidential unless they agree to do so. An important reason some parties agree to such a proceeding is to maintain certain information confidential and this optional paragraph 22 provides that.

Discovery and Rules of Evidence

23. The parties agree that the following discovery procedures shall apply to the proceeding:

☐ (A) Depositions, inspection and copying of documents and interrogatories when authorized by leave of the umpire in accordance with the New Jersey Rules of Court; or

☐ (B) Limited discovery as follows: (specify agreed upon discovery) _____; or

☐ (C) No discovery.

Explanatory Note:

The APDRA provides for relatively broad discovery subject to extension of time to complete it or termination of it by the umpire, and the decision of the umpire is subject to summary review by the Superior Court when the umpire is shown to have exceeded the umpire's discretion, under N.J.S.A. 2A: 23A-10(a) and (b).

The parties may choose paragraph 23(A), which confirms that the scope of discovery is as provided under the APDRA.

Choosing to do expansive discovery such as that provided under the APDRA may substantially increase the cost of the proceeding, and may not be necessary to a full and fair presentation of the issues to the umpire.

The parties may choose paragraph 23(B) to specify what discovery is needed (e.g., disclosure of closely held business records).

The parties may choose paragraph 23(C) for no discovery if the issue to be resolved is one where no discovery is necessary and all information to be presented to the umpire is already in the hands of the parties or if the parties choose to save legal costs of formal discovery requests and responses by agreeing to work cooperatively to exchange necessary information.

24. The parties agree that the following shall govern the admissibility of evidence in the proceeding:

☐ (A) Such evidence shall be admitted in the discretion of the umpire pursuant to the APDRA; or

☐ (B) The New Jersey Rules of Evidence shall apply; or

☐ (C) The (specify source of other rules) _____ Rules of Evidence shall apply.

Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

Explanatory Note:

The parties may choose paragraph 24(A), which confirms that the admissibility of evidence is left to the discretion of the umpire, who is not bound to the statutory and common law rules of evidence. N.J.S.A. 2A: 23A-11(d).

The parties may choose paragraphs (B) or (C) to designate particular rules of evidence. However, applying any rules of evidence may require the services of a lawyer as the umpire, whereas an accountant or social services professional may be the more suitable selection as umpire, depending on the issues to be resolved. Also, applying rules of evidence in the hearing may increase the time and expense of the hearing.

Proceedings at the Hearing and Witnesses/Experts

25. The umpire may hold conferences with the parties. The umpire may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action. Subpoenas shall issue in the name of and be signed by the umpire, and shall be directed to the person therein named and served in accordance with R. 1:9-3 of the Rules of Court. Parties may enforce subpoenas as provided by the APDRA.

Explanatory Note:

Paragraph 25 confirms what the statute provides. N.J.S.A. 2A: 23A-11(b) and (c) and 24.

26. If the umpire is of the opinion that evidence by impartial experts would be of assistance, the umpire may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the umpire. The parties remain free to retain their own experts to challenge the report of the impartial expert and to cross-examine the impartial expert.

Explanatory Note:

Paragraph 26 confirms what the statute provides. N.J.S.A. 2A: 23A-11(f). It also confirms the right of the parties to retain their own experts and to cross-examine the impartial experts.

***Pendente Lite* (Interim) Relief**

27. Any determination reached before a final award that is an intermediate ruling shall be considered *pendente lite* (interim) relief.

28. Any party may seek *pendente lite* (interim) relief from the umpire to the same extent as such relief could be requested in the Superior Court of New Jersey, Family Part. Any

party may then ask the court to confirm, enforce, modify, correct, or vacate the intermediate ruling in accordance with the APDRA, N.J.S.A. 2A: 23A-6(a) and R. 5:3-8(a) or (b).

29. The proceeding shall not be abated, stayed or delayed by the court's review or enforcement of a *pendente lite* (interim) award unless the umpire or the court so determines.

Explanatory Note:

Paragraph 28 confirms what the statute provides. N.J.S.A. 2A: 23A-6(a).

Paragraph 29 confirms what the statute provides. N.J.S.A. 2A: 23A-7(a) provides that a motion/application to the court to address a pendente lite (interim) award does not affect the ongoing proceeding on other issues.

Final Determination

30. An award shall be made within (state number) ____ days following the close of evidence or submission of summations, whichever is later. The umpire, with the consent of the parties, may extend the time for making the award.

Explanatory Note:

Paragraph 30 is desirable to assure a timely completion of the award. A 30-day time limit, or slightly longer, is typical.

Post-Award Review, Modification or Correction of the Award by the Umpire

31. On application to the umpire by a party to the proceeding, the umpire may modify or correct the award:

(1) If there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) If the umpire has made an award based on a matter not submitted to the umpire and the award may be corrected without affecting the merits of the decision on the issues submitted;

(3) If the award is imperfect in a matter of form, not affecting the merits of the controversy; or

(4) If the rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

Explanatory Note:

Paragraph 31 confirms what the statute provides. N.J.S.A. 2A: 23A-12(d) and 13(e). The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when an umpire may be asked to review the award but they may not vary these four standards governing the umpire's review.

32. A written application to the umpire for modification or correction shall be made to the umpire and written notice given to all parties within 20 days after delivery of the award to the applicant. Written objection to modification must be served on the umpire and other parties to the proceeding within 10 days of receipt of the notice. Any reply shall be made and notice given to all parties within 7 days. The umpire shall dispose of any application, in writing, signed and acknowledged by the umpire, within 30 days after either the reply is made or the time for serving an objection or a reply has expired, whichever is earlier.

Explanatory Note:

Paragraph 32 confirms what the statute provides about the timing of an application to the umpire and the opposition. N.J.S.A. 2A: 23A-12(d). This paragraph further provides for the option of a reply.

33. There shall be no further jurisdiction of the umpire to consider any further applications of the parties, absent written consent of the parties to expand the scope of the proceeding.

Explanatory Note:

Paragraph 33 confirms that the umpire's authority ends completely upon the issuance of a final award and the expiration of the short time within which to seek modification or clarification of the award from the umpire. However, parties, in writing, may expand the scope of the umpire's jurisdiction. Such expansion may include agreement that the umpire may continue to exercise jurisdiction over issues beyond those addressed in the final award.

34. The parties agree that the umpire has jurisdiction after the issuance of any award in order to be able to reconsider the award based upon any factor set forth in R. 4:49-2 or R. 4:50-1 of the Rules of Court. Any reconsideration application under this paragraph shall be made and notice given to all parties within 20 days of receipt of the award. Objection to the reconsideration application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given to all parties within 7 days. The umpire shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

Explanatory Note:

Paragraph 34 expands the umpire's jurisdiction beyond that in paragraph 31 and allows a short, 20-day continuation of the jurisdiction of the umpire in order to hear applications to change the award on various grounds beyond the limited grounds described in the statute. Continuing the jurisdiction of the umpire may increase the cost of the process.

Confirmation of the Award

35. The court shall confirm an award upon application of a party made within one year after its delivery to the party, unless the award is vacated or modified as provided under the APDRA.

Explanatory Note:

Paragraph 35 confirms what the statute provides. N.J.S.A. 2A: 23A-12(f) and 14.

Modification of the Award by the Court

36. On motion/application to the court by a party to the proceeding within 45 days after the award is delivered to the applicant or within 30 days after receipt of an award modified by the umpire pursuant to paragraph 31 above and N.J.S.A. 2A: 23A-12(d) the court shall modify the award if:

(1) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) The umpire has made an award on a matter not submitted to the umpire and the award may be corrected without affecting the merits of the decision upon the issues submitted;

(3) The award is imperfect in a matter of form not affecting the merits of the controversy; or

(4) The rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

If the motion/application is granted, the court shall modify the award. A decision of the umpire on the facts shall be final if there is substantial evidence to support that decision. If it

appears to the court that the umpire committed prejudicial error in applying applicable law to the issues and facts presented, the court, after modifying the erroneous determination of the umpire, shall appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire and then confirm the award as modified.

Explanatory Note:

Paragraph 36 confirms what the statute provides. N.J.S.A. 2A: 23A-13(b) and (e). The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when a court may be asked to modify the award, but they may not vary these standards governing the court's review.

Vacating an Award

37. A party to the proceeding may apply to the court to vacate the award within 45 days after the award is delivered to the party or within 30 days after receipt of an award modified by the umpire as provided in paragraphs 31 and 32 above and the provisions of the APDRA, N.J.S.A. 2A: 23A-12. Upon the filing of such application, the court shall vacate an award if the rights of the party were prejudiced by:

(1) Corruption, fraud or misconduct in procuring the award;

(2) Partiality of an umpire appointed as a neutral;

(3) In making the award, the umpire's exceeding the umpire's power or so imperfectly executing that power that a final and definite award was not made;

(4) Failure to follow the procedures set forth in the APDRA, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or

(5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution;

(6) The award, pertaining to the issues of custody, parenting time or child support:

a. Does not contain detailed findings of fact and conclusions of law; or

b. Is not in compliance with the provisions of R. 5:1-5 of the Rules of Court; or

c. There is evidential support that establishes a *prima facie* claim of harm to the child.

A decision of the umpire on the facts shall be final if there is substantial evidence to support that decision. However, when the application to the court is to vacate the award pursuant to subparagraphs (1) through (4) above, the court shall make an independent determination of any relevant facts thereto *de novo*.

Explanatory Note:

Paragraph 37 confirms what the statute provides. N.J.S.A. 2A: 23A-13(b) and (c).

Part 6 of Paragraph 37 includes the standards for the court to use to review an award involving issues affecting children, including custody, parenting time and child support. These provisions are consistent with provisions required in an agreement involving such issues (see paragraphs 14, 16, and 17 above.)

The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when a court may be asked to vacate the award but they may not vary these standards.

Expanding the Scope of Judicial Review

38. The scope of judicial review is defined by the statute itself at N.J.S.A. 2A: 23A-5(b). The APDRA does not provide for expansion of the scope of judicial review.

Explanatory Note:

N.J.S.A. 2A:23A-5(b) provides that there shall be no review of any intermediate ruling or determination made by the umpire, except as

provided in the APDRA at N.J.S.A. 2A:23A-7. An appeal from a final award decision may be obtained only as provided in N.J.S.A. 2A:23A-13.

Other Review

39. The parties agree to permit an appeal of the final award to a panel of one or more private appellate umpires to be agreed upon by the parties or provided by a third party, such as the American Arbitration Association. Such appeal shall be filed within 30 days of receipt of the final or corrected, modified award. The parties agree that the standard of review shall be as follows: (state a standard of review) _____. If an appeal is filed, the award shall not be deemed final for purposes of confirmation pending the appeal. The appellate panel may adopt the original award, modify the original award or substitute its own award. The decision of the appellate panel shall be final and binding and judgment may be entered by any court having jurisdiction thereof. The appellate panel shall consist of:

☐ (A) One umpire (arbitrator);

☐ (B) A panel of umpires (arbitrators); or

☐ (C) The following umpires (arbitrator(s)): (name(s)) _____.

Explanatory Note:

Various third party alternate dispute resolution provider organizations, including the American Arbitration Association, offer parties the option under a set of appellate rules to take an appeal to a panel of arbitrators (umpires) of an award issued by another arbitrator (umpire.) Parties may want to consider this option if they desire to have an appeal from an award rather than being limited to the statutory grounds for vacating an award but, for confidentiality reasons or otherwise, do not desire to provide for review by the court under paragraph 37 above.

Attorney for Plaintiff	Plaintiff
Attorney for Defendant	Defendant

Date

Appendix XXIX-D

Note: Adopted July 27, 2015 to be effective September 1, 2015.

The following disclosure shall be reviewed and executed by the arbitrator/umpire prior to execution of an Agreement or Consent Order submitting a family law matter dispute to arbitration/alternate dispute resolution.

ARBITRATOR/UMPIRE DISCLOSURE FORM

_____ **v.** _____

It is important that the parties have complete confidence in the arbitrator/umpire's impartiality. Therefore, any past or present relationship with the parties, their counsel, or potential witnesses, direct or indirect, whether financial, professional, social, or of any other kind must be disclosed. Any doubts should be resolved in favor of disclosure.

1. Do you have any financial or personal interest in the outcome of this arbitration/alternate dispute resolution proceeding?	Yes ☐ No ☐
2. Do you or your law firm presently represent any person in a proceeding involving any party to the arbitration/alternate dispute resolution proceeding?	Yes ☐ No ☐
3. Do you have any existing or past financial, business, professional, family or social relationships which are likely to affect your impartiality in this arbitration/alternate dispute resolution proceeding or which might reasonably create an appearance of partiality or bias?	Yes ☐ No ☐
4. Does your spouse, minor child(ren) residing in your household, your current employer, partner(s) or business associate(s) have any existing or past financial, business, professional, family or social relationships which are likely to affect your impartiality in this arbitration/alternate dispute resolution proceeding or which might reasonably create an appearance of partiality or bias?	Yes ☐ No ☐
5. Have you or your law firm represented any person against any party to the arbitration/alternate dispute resolution proceeding?	Yes ☐ No ☐
6. Have you had any professional or social relationship with counsel for any party in this proceeding or the firms for which they work?	Yes ☐ No ☐
7. Have you had any professional or social relationship with any parties or witnesses identified to date in this proceeding or the entities for which they work?	Yes ☐ No ☐
8. Have you or your law firm had any professional or social relationship of which you are aware with any relative of any of the parties to this proceeding, or any relative of counsel to this proceeding, or any of the witnesses identified to date in the proceeding?	Yes ☐ No ☐

9. Have you ever served as an arbitrator/umpire in a proceeding in which any of the identified witnesses or named individual parties gave testimony?	Yes ☐ No ☐
10. Have you ever served as an expert witness or consultant to any party, attorney, witness or other arbitrator identified in this proceeding?	Yes ☐ No ☐
11. Have any of the party representatives, law firms or parties appeared before you in past arbitration/alternate dispute resolution proceedings?	Yes ☐ No ☐
12. Have you ever sued or been sued by either party or their representative?	Yes ☐ No ☐
13. Are there any connections, direct or indirect, with any of the case participants that have not been covered by the above questions?	Yes ☐ No ☐

Should the answer to any question be "Yes," or if you are aware of any other information that may lead to a justifiable doubt as to your impartiality or independence or create an appearance of partiality, then describe the nature of the potential conflict(s) on an attached page.

I understand that the duty to disclose is a continuing duty, which requires me to disclose at any stage of the arbitration, any such interests, or relationship that may arise, or which are recalled or discovered and my failure to do so may be grounds to vacate the award.

_____

(Arbitrator/Umpire)

Dated: _____

RULE 1:40. COMPLEMENTARY DISPUTE RESOLUTION PROGRAMS

1:40-1. Purpose, Goals

Complementary Dispute Resolution Programs (CDR) provided for by these rules are available in the Superior Court and Municipal Courts and constitute an integral part of the judicial process, intended to enhance its quality and efficacy. Attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them.

Note: Adopted July 14, 1992 to be effective September 1, 1992; amended July 5, 2000 to be effective September 5, 2000.

1:40-2. Modes and Definitions of Complementary Dispute Resolution

Complementary Dispute Resolution (CDR) Programs conducted under judicial supervision in accordance with these rules, as well as guidelines and directives of the Supreme Court, and the persons who provide the services to these programs are as follows:

(a) "Adjudicative Processes" means and includes the following:

(1) Arbitration: A process by which each party and/or its counsel presents its case to a neutral third party, who then renders a specific award. The parties may stipulate in advance of the arbitration that the award shall be binding. If not so stipulated, the provisions of Rule 4:21A-6 (Entry of Judgment; Trial De Novo) shall be applicable.

(2) Settlement Proceedings: A process by which the parties appear before a neutral third party or neutral panel, who assists them in attempting to resolve their dispute by voluntary agreement.

(3) Summary Jury Trial: A process by which the parties present summaries of their respective positions to a panel of jurors, which may then issue a non-binding advisory opinion as to liability, damages, or both.

(b) "Evaluative Processes" means and includes the following:

(1) Early Neutral Evaluation (ENE): A pre-discovery process by which the attorneys, in the presence of their respective clients, present their factual and legal contentions to a neutral evaluator, who then provides an assessment of the strengths and weaknesses of each position and, if settlement does not ensue, assists in narrowing the dispute and proposing discovery guidelines.

(2) Neutral Fact Finding: A process by which a neutral third party, agreed upon by the parties, investigates and analyzes a dispute involving complex or technical issues, and who then makes non-binding findings and recommendations.

(c) "Facilitative Process," which includes mediation, is a process by which a neutral third party facilitates communication between parties in an effort to promote settlement without imposition of the facilitator's own judgment regarding the issues in dispute.

(d) "Hybrid Process" means and includes:

(1)(A) Mediation-arbitration: A process by which, after an initial mediation, unresolved issues are then arbitrated.

(1)(B) Arbitration-mediation: A process by which, after initial arbitration proceedings, but before the award is delivered, the parties are jointly given the opportunity to mediate a resolution. If successful, the mediated settlement is executed by the parties and the arbitration award is disregarded. If unsuccessful, the arbitration award is delivered to the parties.

(2) Mini-trial: A process by which the parties present their legal and factual contentions to either a panel of representatives selected by each party, or a neutral third party, or both, in an effort to define the issues in dispute and to assist settlement negotiations. A neutral third party may issue an advisory opinion, which shall not, however, be binding, unless the parties have so stipulated in writing in advance.

(e) "Other CDR Programs" means and includes any other method or technique of complementary dispute resolution permitted by guideline or directive of the Supreme Court.

(f) "Neutral Third Party:" A "neutral third party" is an individual who provides a CDR process. Neutral third parties serving as mediators must comply with the requirements of R. 1:40-12. Neutral third parties serving as other than mediators, that is, who are conducting Arbitrations, Settlement Proceedings, Summary Jury Trials, Early Neutral Evaluations, or Neutral Fact-Finding processes, are not required to comply with the requirements of R. 1:40-12.

(g) Roster Mediator; Non-Roster Mediator: A roster mediator is an individual included on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. A non-roster mediator is an individual who provides mediation but is not listed on any roster of mediators maintained by the Administrative Office of the Courts or an Assignment Judge. The parties may agree to use a roster mediator or a non-roster mediator.

Note: Adopted July 14, 1992 to be effective September 1, 1992; caption and text amended, paragraphs (a) through (d) deleted, new paragraphs (a) through (f) adopted July 5, 2000 to be effective September 5, 2000; corrective amendment to paragraph (a)(3) adopted November 8, 2000 to be effective

immediately; subparagraphs (a)(2) and (b)(2) amended, paragraph (c) amended, subparagraph (d)(1) redesignated as subparagraph (d)(1)(A), new subparagraph (d)(1)(B) adopted, subparagraph (d)(2) amended, paragraph (f) amended and new paragraph (g) adopted July 27, 2015 to be effective September 1, 2015.

1:40-3. Organization and Management

(a) Vicinage Organization and Management. Pursuant to these rules and Supreme Court guidelines, the Assignment Judge of each vicinage shall have overall responsibility for CDR programs, including their development and oversight continuing relations with the Bar to secure the effectiveness of these programs, and mechanisms to educate judges, attorneys, staff, and the public on the benefits of CDR. The Assignment Judge shall appoint a CDR coordinator to assist in the oversight, coordination and management of the vicinage CDR programs. The Assignment Judge shall maintain, pursuant to these rules, all required rosters of neutral third parties except the roster of statewide civil, general equity, and probate action mediators, which shall be maintained by the Administrative Office of the Courts.

(b) Statewide Organization and Management. The Administrative Office of the Courts shall have the responsibility (1) to promote uniformity and quality of CDR programs in all vicinages, (2) to monitor and evaluate vicinage CDR programs and assist CDR Coordinators in implementing them; (3) to serve as a clearinghouse for ideas, issues, and new trends relating to CDR, both in New Jersey and in other jurisdictions; (4) to develop CDR pilot projects to meet new needs; (5) to monitor training and continuing education programs for neutrals; and (6) to institutionalize relationships relating to CDR with the bar, universities, the Marie L. Garibaldi ADR Inn of Court, and private providers of CDR services. The Administrative Office of the Courts shall maintain the statewide roster of civil, general equity, and probate action mediators.

Note: Adopted July 14, 1992 to be effective September 1, 1992; caption amended, text amended and designated as paragraph (a), and new paragraph (b) adopted July 5, 2000 to be effective September 5, 2000; paragraph (a) amended July 27, 2015 to be effective September 1, 2015.

1:40-4. Mediation – General Rules

(a) Referral to Mediation. Except as otherwise provided by these rules, a Superior Court or Municipal Court judge may require the parties to attend a mediation session at any time following the filing of a complaint.

(b) Compensation and Payment of Mediators Serving in the Civil and Family Economic Mediation Programs. The real parties in interest in Superior Court, except in the Special Civil Part, assigned to mediation pursuant to this rule shall equally share the fees and expenses of the mediator on an ongoing basis, subject to court review and allocation to create equity. Any fee or expense of the mediator shall be waived in cases,

as to those parties exempt, pursuant to R. 1:13-2(a). Subject to the provisions of Guidelines 2 and 15 in Appendix XXVI, Guidelines for the Compensation of Mediators, if the parties select a mediator from the court's rosters of civil and family mediators, the parties may opt out of the mediation process after the mediator has expended two hours of service, which shall be allocated equally between preparation and the first mediation session, and which shall be at no cost to the parties. As provided in Guideline 7 in Appendix XXVI, fees for roster mediators after the first two free hours shall be at the mediator's market rate as set forth on the court's mediation roster. As provided in Guideline 4 in Appendix XXVI, if the parties select a non-roster mediator, that mediator may negotiate a fee and need not provide the first two hours of service free. When a mediator's fee has not been paid, collection shall be in accordance with Guideline 16 of Appendix XXVI. Specifically, the remedy for a family mediator to compel payment is either by an application, motion or order to show cause in the Family Part or by a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). The remedy for a civil mediator to compel payment is a separate collection action in the Special Civil Part (or in the Civil Part if the amount exceeds the jurisdictional limit of the Special Civil Part). Any action to compel payment may be brought in the county in which the mediation order originated. The remedy for a party and/or counsel to seek compensation for costs and expenses related to a court-ordered mediation shall be in accordance with Guideline 17 of Appendix XXVI.

(c) Evidentiary Privilege. A mediation communication is not subject to discovery or admissible in evidence in any subsequent proceeding except as provided by the New Jersey Uniform Mediation Act, N.J.S.A. 2A:23C-1 to -13. A party may, however, establish the substance of the mediation communication in any such proceeding by independent evidence.

(d) Confidentiality. Unless the participants in a mediation agree otherwise or to the extent disclosure is permitted by this rule, no party, mediator, or other participant in a mediation may disclose any mediation communication to anyone who was not a participant in the mediation. A mediator may disclose a mediation communication to prevent harm to others to the extent such mediation communication would be admissible in a court proceeding. A mediator has the duty to disclose to a proper authority information obtained at a mediation session if required by law or if the mediator has a reasonable belief that such disclosure will prevent a participant from committing a criminal or illegal act likely to result in death or serious bodily harm. No mediator may appear as counsel for any person in the same or any related matter. A lawyer representing a client at a mediation session shall be governed by the provisions of RPC 1.6.

(e) Limitations on Service as a Mediator

(1) No one holding a public office or position or any candidate for a public office or position shall serve as a mediator in a matter directly or indirectly involving the governmental entity in which that individual serves or is seeking to serve.

(2) The approval of the Assignment Judge is required for service as a mediator by any of the following: (A) police or other law enforcement officers employed by the State or by any local unit of government; (B) employees of any court; or (C) government officials or employees whose duties involve regular contact with the court in which they serve.

(3) The Assignment Judge and the Administrative Office of the Courts shall also have the discretion to request prior review and approval of the Supreme Court of prospective mediators whose employment or position appears to either the Assignment Judge or the Administrative Office of the Courts to require such review and approval.

(f) Mediator Disclosure of Conflict of Interest.

(1) Before accepting a mediation, a mediator shall:

(A) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable person would consider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation or an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(B) disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

(2) f a mediator learns any fact described in subparagraph (f)(1)(A) after accepting a mediation, the mediator shall disclose it as soon as is practicable.

(3) After entry of the order of referral to mediation, if the court is advised by the mediator, counsel, or one of the parties that a conflict of interest exists, the parties shall have the opportunity to select a replacement mediator or the court may appoint one. An amended order of referral shall then be prepared and provided to the parties. All data shall be entered into the appropriate Judiciary case management system.

(g) Conduct of Mediation Proceedings. Mediation proceedings shall commence with an opening statement by the mediator describing the purpose and procedures of the process. Mediators may require the participation of persons with negotiating authority. An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded. Non-party participants shall be permitted to attend and participate in the mediation only with the consent of the parties and the mediator. Multiple sessions may be scheduled. Attorneys and parties have an obligation to participate in the mediation process in good faith and with a sense of urgency in accordance with program guidelines.

(h) Termination of Mediation.

(1) The mediator or a party may adjourn or terminate the session if (A) a party challenges the impartiality of the mediator, (B) a party continuously resists the mediation process or the mediator, (C) there is a failure of communication that seriously impedes effective discussion, or (D) the mediator believes a party is under the influence of drugs or alcohol.

(2) The mediator shall terminate the session if (A) there is an imbalance of power between the parties that the mediator cannot overcome, (B) there is abusive behavior that the mediator cannot control, or (C) the mediator believes continued mediation is inappropriate or inadvisable for any reason.

(i) Final Disposition. If the mediation results in the parties' total or partial agreement, said agreement must be reduced to writing, signed by each party, and furnished to each party. The agreement need not be filed with the court, but both roster and non-roster mediators shall report the status of the matter to the court by submission of the Completion of Mediation form. If an agreement is not reached, the matter shall be referred back to court for formal disposition.

Note: Adopted July 14, 1992 to be effective September 1, 1992; paragraph (c)(3) amended and paragraph (c)(4) adopted June 28, 1996 to be effective September 1, 1996; paragraphs (a) and (c)(2) amended and paragraph (c)(3)(v) adopted July 10, 1998 to be effective September 1, 1998; caption amended, paragraph (a) amended and redesignated as paragraphs (a) and (b), paragraphs (b), (c), (d), (e), and (f) amended and redesignated as paragraphs (c), (d), (e), (f), and (g) July 5, 2000 to be effective September 5, 2000; paragraphs (d)(2) and (d)(3) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 27, 2006 to be effective September 1, 2006; new paragraph (c) adopted, former paragraph (c) redesignated as paragraph (d) and amended, former paragraph (d) redesignated as paragraph (e), new paragraph (f) adopted, former paragraph (e) redesignated as paragraph (g) and amended, former paragraph (f) redesignated as paragraph (h), and former paragraph (g) redesignated as paragraph (i) June 15, 2007 to be effective September 1, 2007; paragraph (b) amended and new subparagraph (f)(3) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) amended, subparagraph (e)(1) deleted, subparagraphs (e)(2), (e)(3) and (e)(4) amended and redesignated as subparagraphs (e)(1), (e)(2) and (e)(3), subparagraphs (f)(1) and (f)(3) amended, paragraph (g) amended, subparagraphs (h)(1) and (h)(2) amended, and paragraph (i) amended July 27, 2105 to be effective September 1, 2015; paragraph (b) amended July 28, 2017 to be effective September 1, 2017.

1:40-5. Mediation in Family Part Matters

(a) Mediation of Custody and Parenting Time Actions.

(1) Screening and Referral. All complaints or motions involving a custody or parenting time issue shall be screened to determine whether the issue is genuine and substantial, and if such a determination is made, the matter shall be referred to mediation for resolution in the child's best interests. However, no matter shall be referred to mediation if there is in effect a preliminary or final order of domestic violence entered pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.). In matters involving domestic violence in which no order has been entered or in cases involving child abuse or sexual abuse, the custody or parenting time issues shall be

referred to mediation provided that the issues of domestic violence, child abuse or sexual abuse shall not be mediated in the custody mediation process. The mediator or either party may petition the court for removal of the case from mediation based upon a determination of good cause.

(2) Conduct of Mediation. In addition to the general requirements of Rule 1:40-4, the parties shall be required to attend a mediation orientation program and may be required to attend an initial mediation session. Mediation sessions shall be closed to the public. The mediator and the parties should consider whether it is appropriate to involve the child in the mediation process. The mediator or either party may terminate a mediation session in accordance with the provisions of R. 1:40-4(h).

(3) Mediator Not to Act as Evaluator. The mediator may not subsequently act as an evaluator for any court-ordered report nor make any recommendation to the court respecting custody and parenting time.

(b) Mediation of Economic Aspects of Dissolution Actions.

(1) Referral to ESP. The CDR program of each vicinage shall include a post-Early Settlement Panel (ESP) program for the mediation of the economic aspects of dissolution actions or for the conduct of a post-ESP alternate Complementary Dispute Resolution (CDR) event consistent with the provisions of this rule and R. 5:5-6. However, no matter shall be referred to mediation if a temporary or final restraining order is in effect in the matter pursuant to the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.).

(2) Designation of Mediator of Economic Aspects of Family Law Matters. A credentials committee comprised of representatives from the Supreme Court Committee on Complementary Dispute Resolution shall be responsible for reviewing and approving all mediator applications. Applicants must complete an application form posted on the Judiciary's Internet web site (www.judiciary.state.nj.us or www.njcourtsonline.com). Mediators who meet the training requirements set forth in this rule, and any other approved criteria developed by the Family Court Programs Subcommittee of the Committee on Complementary Dispute Resolution shall be added to the Roster of Approved Mediators. The roster shall be maintained by the Administrative Office of the Courts and shall be posted on the Judiciary's Internet web site.

(3) Exchange of Information. In mediation of economic aspects of Family actions, parties are required to provide accurate and complete information to the mediator and to each other, including but not limited to tax returns, Case Information Statements, and appraisal reports. The court may, in the Mediation Referral Order, stay discovery and set specific times for completion of mediation.

(4) Timing of Referral. Parties shall be referred to economic mediation or other alternate CDR event following the unsuccessful attempt to resolve their issues through ESP. At the conclusion of the ESP process, parties shall be directed to confer

with appropriate court staff to expedite the referral to economic mediation in accordance with the following procedures:

A. Parties may conference with the judge or the judge's designee.

B. Court staff shall explain the program to the parties and/or their attorneys.

C. Parties shall be provided with the roster of approved mediators for selection.

D. after a mediator has been selected, court staff shall attempt immediate contact to secure the mediator's acceptance and the date of initial appointment. If court staff is unable to contact the mediator for confirmation, the order of referral shall state that the mediator and the date of initial appointment remain tentative until confirmation is secured. Staff will attempt to confirm within 24 hours and send an amended order to the parties and/or their attorneys.

E. If a mediator notifies the court that he or she cannot take on any additional cases, court staff will so advise the parties at the time of selection so that an alternate mediator can be selected.

F. The court shall enter an Economic Mediation Referral Order stating the name of the mediator, listing the financial documents to be shared between the parties and with the mediator, indicating the allocation of compensation by each party if mediation extends beyond the initial two hours, stating the court's expectation that the parties will mediate in good faith, defining the mediation time frame, and identifying the next court event and the date of that event.

G. The referral order, signed by the judge, shall be provided to the parties before they leave the courthouse. Amended orders with confirmed appointments shall be faxed to the parties and/or their attorneys the next day, replacing the tentative orders.

H. If the parties are unable to agree upon and select a mediator, the judge will appoint one. Staff shall then follow the above procedures as applicable.

I. Referral to economic mediation shall be recorded in the Family Automated Case Tracking System (FACTS).

(5) Adjournments. Adjournment of events in the mediation process shall be determined by the mediator after conferring with the parties and/or attorneys, provided that any such adjournment will not result in the case exceeding the return date to the court. If an adjournment would cause delay of the return date to the court, a written adjournment request must be made to the judge who has responsibility for the case or the judge's designee.

Note: Adopted July 14, 1992 to be effective September 1, 1992; new paragraph (c) adopted January 21, 1999 to be effective April 5, 1999; caption and paragraphs (a) and (b) amended July 5, 2000 to be effective September 5, 2000; caption amended, former paragraphs (a), (b), and (c) redesignated as paragraphs (a)(1), (a)(2), and (a)(3), new paragraph (a) caption adopted, and new paragraph (b) adopted July 27, 2006 to be effective September 1, 2006; paragraph (a)(2) amended July 31, 2007 to be effective September 1, 2007; paragraph (b) amended and redesignated as paragraph (b)(1), caption for paragraph (b)(1) added, and new paragraphs (b)(2), (b)(3), (b)(4), and (b)(5) adopted July 16, 2009 to be effective September 1, 2009; paragraph (b) caption amended, subparagraph (b)(1) caption and text amended, and subparagraph (b)(4) amended July 21, 2011 to be effective September 1, 2011.

1:40-6. Mediation of Civil, Probate, and General Equity Matters

The CDR program of each vicinage shall include mediation of civil, probate, and general equity matters, pursuant to rules and guidelines approved by the Supreme Court.

(a) Referral to Mediation. The court may, sua sponte and by written order, refer any civil, general equity, or probate action to mediation for an initial two hours, which shall include an organizational telephone conference, preparation by the mediator, and the first mediation session. In addition, the parties to an action may request an order of referral to mediation and may either select the mediator or request the court to designate a mediator from the court-approved roster.

(b) Designation of Mediator. Within 14 days after entry of the mediation referral order, the parties may select a mediator, who may, but need not, be listed on the court's Roster of Civil Mediators. Lead plaintiff's counsel must in writing provide the CDR Point Person in the county, as well as the individual designated by the court in the mediation referral order, with the name of the selected mediator. If the parties do not timely select a mediator, the individual designated by the court in the mediation referral order shall serve. All roster and non-roster mediators, whether party-selected or court-designated, shall comply with the terms and conditions set forth in the mediation referral order.

(c) Stay of Proceedings. The court may, in the mediation referral order, stay discovery for a specific or an indeterminate period.

(d) Withdrawal and Removal from Mediation. A motion for removal from mediation shall be filed and served upon all parties within 10 days after the entry of the mediation referral order and shall be granted only for good cause. Any party may withdraw from mediation after the initial two hours provided for by paragraph (a) of this rule. The mediation may, however, continue with the consent of the mediator and the remaining parties if they determine that it may be productive even without participation by the withdrawing party.

(e) Mediation Statement. The mediator shall fix a date following the telephonic conference for the exchange by the parties and service upon the mediator of a brief statement of facts and proposals for settlement not exceeding ten pages. At the discretion

of the mediator, each party's statement of facts may be prepared and submitted to the mediator for review without service of the statement of facts on the other party. All documents prepared for mediation shall be confidential and subject to Rule 1:40-4(c) and (d).

(f) Procedure Following Mediation. Promptly upon termination of the mediation process, the mediator shall report to the court in writing as to whether or not the action or any severable claim therein has been settled.

(g) Compensation of Mediators. Mediators shall be compensated as provided by Rule 1:40-4(b) and Appendix XXVI ("Guidelines for the Compensation of Mediators Serving in the Civil Mediation Program").

Note: Adopted July 5, 2000 to be effective September 5, 2000 (and former Rule 1:40-6 redesignated as Rule 1:40-7); paragraph (b) amended July 12, 2002 to be effective September 3, 2002; paragraphs (e) and (g) amended July 27, 2006 to be effective September 1, 2006; paragraph (a) amended September 11, 2006 to be effective immediately; paragraph (e) amended July 31, 2007 to be effective September 1, 2007; paragraph (d) amended July 9, 2008 to be effective September 1, 2008; paragraph (e) amended July 16, 2009 to be effective September 1, 2009; paragraph (b) amended July 21, 2011 to be effective September 1, 2011; paragraph (b) amended July 27, 2015 to be effective September 1, 2011.

1:40-7. Complementary Dispute Resolution Programs in the Special Civil Part

(a) Small Claims. Each vicinage shall provide a small claims settlement program in which (1) law clerks from all the divisions who have been trained in complementary dispute resolution settlement negotiation techniques pursuant to R. 1:40-12(b)(6), and other employees and volunteers who have been trained in complementary dispute resolution settlement negotiation techniques and as mediators pursuant to R. 1:40-12(b)(1), serve as trained settlors, not mediators, who help litigants settle their cases, and (2) cases that are not settled are tried on the same day, if possible. The training requirements apply to law clerks but not to other attorneys.

(b) Tenancy Actions. If complementary dispute resolution programs are used for tenancy actions, cases that are not settled shall be tried on the same day, if possible.

(c) Other Actions for Damages. For other Special Civil Part actions for damages each vicinage shall establish a settlement program that does not include arbitration in which there is one settlement event scheduled to occur on the trial date.

Note: Adopted July 14, 1992 as Rule 1:40-6 to be effective September 1, 1992; amended and redesignated as Rule 1:40-7 July 5, 2000 to be effective September 5, 2000; caption and text deleted, new caption and new paragraphs (a), (b), and (c) adopted July 12, 2002 to be effective September 3, 2002; paragraph (a) amended July 16, 2009 to be effective September 1, 2009; paragraph (a) amended July 27, 2015 to be effective September 1, 2015; paragraph (a) text amended July 29, 2019 to be effective September 1, 2019.

1:40-8. Mediation of Minor Disputes in Municipal Court Actions

(a) Referral. A mediation notice may issue pursuant to R. 7:8-1 requiring the parties to appear at a mediation session to determine whether mediation pursuant to these rules is an appropriate method for resolving the minor dispute. No referral to mediation shall be made if the complaint involves (1) serious injury, (2) repeated acts of violence between the parties, (3) incidents involving the same persons who are already parties to a Superior Court action between them, (4) matters arising under the Prevention of Domestic Violence Act (N.J.S.A. 2C:25-17 et seq.), (5) a violation of the New Jersey Motor Vehicle Code (Title 39), or (6) matters involving penalty enforcement actions.

(b) Appointment of Mediators. A municipal court mediator shall be appointed by the Assignment Judge or a designee. The municipal mediator must comply with the requirements of R. 1:40-12. The Assignment Judge or a designee may, either sua sponte or on request of the municipal court judge, remove a mediator upon the determination that the individual is unable to perform the mediator's functions.

Note: Adopted July 14, 1992 as Rule 1:40-7 to be effective September 1, 1992; paragraph (a) amended January 5, 1998 to be effective February 1, 1998; redesignated as Rule 1:40-8, paragraph (a) amended, and caption and text of paragraph (b) amended July 5, 2000 to be effective September 5, 2000; paragraphs (a) and (b) amended July 27, 2015 to be effective September 1, 2015; subparagraph (a)(3) deleted and subparagraphs (a)(4) through (a)(7) resdesignated as subparagraphs (a)(3) through (a)(6) July 29, 2019 to be effective September 1, 2019.

1:40-9. Civil Arbitration

The CDR program of each vicinage shall include arbitration of civil actions in accordance with Rule 4:21A.

Note: Adopted July 5, 2000 to be effective September 5, 2000 (and former Rule 1:40-9 redesignated as Rule 1:40-11).

1:40-10. Relaxation of Court Rules and Program Guidelines

These rules, and any program guidelines may be relaxed or modified by the court in its discretion if it determines that injustice or inequity would otherwise result. Factors to be considered in making that determination include but are not limited to (1) the incapacity of one or more parties to participate in the process, (2) the unwillingness of one or more parties to participate in good faith, (3) the previous participation by the parties in a CDR program involving the same issue, and (4) any factor warranting termination of the program pursuant to Rule 1:40-4(h).

Note: Adopted July 14, 1992 as Rule 1:40-8 to be effective September 1, 1992; caption and text amended and redesignated as Rule 1:40-10 July 5, 2000 to be effective September 5, 2000; amended July 31, 2007 to be effective September 1, 2007.

1:40-11. Non-Court Dispute Resolution

With the approval of the Assignment Judge or the Assignment Judge's designee, the court, while retaining jurisdiction, may refer a matter to a non-court administered dispute resolution process on the condition that any such mediation process will be subject to the privilege and confidentiality provisions of Rule 1:40-4(c) and (d). The Assignment Judge or designee may approve such referral upon the finding that it will not prejudice the interests of the parties.

Note: Adopted July 14, 1992 as Rule 1:40-9 to be effective September 1, 1992; redesignated as Rule 1:40-11 July 5, 2000 to be effective September 5, 2000; amended July 12, 2002 to be effective September 3, 2002; amended July 31, 2007 to be effective September 1, 2007.

1:40-12. Mediators and Arbitrators in Court-Annexed Programs

(a) Mediator Qualifications.

(1) Generally. Unless otherwise specified by these rules, no special occupational status or educational degree is required for mediator service and mediation training. An applicant for listing on a roster of mediators maintained by either the Administrative Office of the Courts or the Assignment Judge shall, however, certify to good professional standing. An applicant whose professional license has been revoked shall not be placed on the roster, or if already on the roster shall be removed therefrom.

(2) Custody and Parenting Time Mediators. The Assignment Judge, upon recommendation of the Presiding Judge of the Family Part, may approve persons or agencies to provide mediation services in custody and parenting time disputes if the mediator meets the following minimum qualifications: (A) a graduate degree or certification of advanced training in a behavioral or social science; (B) training in mediation techniques and practice as prescribed by these rules; and (C) supervised clinical experience in mediation, preferably with families. In the discretion of the Assignment Judge relevant experience may be substituted for either a graduate degree or certification, or clinical experience, or both.

(3) Civil, General Equity, and Probate Action Roster Mediators. Mediator applicants to be on the roster for civil, general equity, and probate actions shall have: (A) at least a bachelor’s degree; (B) at least five years of professional experience in the field of their expertise in which they will mediate; (C) completed the required mediation training as defined in subparagraph (b)(5) within the last five years; and (D)

except for retired or former New Jersey Supreme Court justices, retired Superior Court judges, retired Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, evidence of completed mediation or co-mediation of a minimum of two civil, general equity or probate cases within the last year. Applicants who had the required training over five years prior to their application to the roster must complete the six-hour family or civil supplemental mediation course as defined in subparagraph (b)(8) of this rule.

(4) Special Civil Part Settlors. In addition to mediators on the civil roster, those judicial law clerks who have been trained in complementary dispute resolution (CDR) settlement techniques pursuant to R. 1:40-12(b)(6), court staff and volunteers who have completed the 18-hour course of mediation training approved by the Administrative Office of the Courts may settle Small Claims actions. In the discretion of the Assignment Judge, such persons may also settle landlord-tenant disputes and other Special Civil Part actions, provided that they complete additional substantive and procedural training in landlord-tenant law of at least five hours, with such training to be approved by the Administrative Office of the Courts.

(5) Municipal Court Volunteer Mediators. Individuals may serve as volunteer mediators in municipal court mediation programs. To serve as municipal court mediators and volunteer their time, effort and skill to mediate minor disputes in municipal court actions, such individuals (A) must be approved by the Assignment Judge or designee in the vicinage in which they intend to serve, (B) must meet the basic dispute resolution training required by R. 1:40-12(b)(1), and (C) must have satisfied any continuing training requirements under R. 1:40-12(b)(2).

(6) Family Part Economic Mediators. To be listed on the approved roster, mediators of economic issues in family disputes shall meet the applicable requirements set forth below for attorneys and non-attorneys and shall complete the required training set forth in paragraph (b) of this Rule:

(i) Attorneys

a. Juris Doctor (or equivalent law degree)

b. Admission to the bar for at least seven years

c. Licensed to practice law in the state of New Jersey

d. Practice substantially devoted to matrimonial law

(ii) Non-Attorneys

a. Advanced degree in psychology, psychiatry, social work, business, finance, or accounting, or a CPA or other relevant advanced degree deemed appropriate by the credentials committee,

b. At least seven years of experience in the field of expertise, and

c. Licensed in New Jersey if required in the field of expertise

(iii) Any retired Superior Court judge with experience in handling dissolution matters.

(b) Mediator Training Requirements.

(1) General Provisions. All persons serving as mediators shall have completed the basic dispute resolution training course as prescribed by these rules and approved by the Administrative Office of the Courts. Volunteer mediators in the Special Civil Part and Municipal Court mediators shall have completed 18 classroom hours of basic mediation skills complying with the requirements of subparagraph (b)(3) of this rule. Mediators on the civil, general equity, and probate roster of the Superior Court shall have completed 40 classroom hours of basic mediation skills complying with the requirements of subparagraph (b)(5) of this rule and shall be mentored in at least two cases in the Law Division – Civil Part of Chancery Division – General Equity or Probate Part of the Superior Court for a minimum of five hours by a civil roster mentor mediator who has been approved in accordance with the “Guidelines for the Civil Mediation Mentoring Program” promulgated by the Administrative Office of the Courts. Family Part mediators shall have completed a 40-hour training program complying with the requirements of subparagraph (b)(4) of this rule; and unless otherwise exempted in this rule, at least five hours being mentored by a family roster mentor mediator in at least two cases in the Family Part. In all cases it is the obligation of the mentor mediator to inform the litigants prior to mediation that a second mediator will be in attendance and why. If either party objects to the presence of the second mediator, the second mediator may not attend the mediation. In all cases, the mentor mediator conducts the mediation, while the second mediator observes. Mentored mediators are provided with the same protections as the primary mediator under the Uniform Mediation Act. Retired or former New Jersey Supreme Court justices and Superior Court judges, retired or former Administrative Law judges, retired or former federal court judges, and retired judges from other states who presided over a court of general jurisdiction or appellate court, child welfare mediators, and staff/law clerk mediators are exempted from the mentoring requirements except as required to do so for remedial reasons. Mediators already serving on the Civil mediator roster prior to September 1, 2015 are exempted from the updated training requirements. Family Roster mediators who wish to serve on the Civil Roster, must complete the six-hour supplemental Civil Mediation training and must comply with the Civil roster mentoring requirement of five hours and two cases in the Civil Part.

(2) Continuing Training. Commencing in the year following admission to one of the court's mediator rosters, all mediators shall annually attend four hours of

continuing education and shall file with the Administrative Office of the Courts or the Assignment Judge, as appropriate, an annual certification of compliance. To meet the requirement, this continuing education shall include instruction in ethical issues associated with mediation practice, program guidelines and/or case management and should cover at least one of the following: (A) case management skills; and (B) mediation and negotiation concepts and skills.

(3) Mediation Course Content - Basic Skills. The 18-hour classroom course in basic mediation skills and complementary dispute resolution (CDR) settlement techniques, shall, by lectures, demonstrations, exercises and role plays, teach the skills necessary for mediation practice, including but not limited to conflict management, communication and negotiation skills, the mediation process, and addressing problems encountered in mediation and other CDR resolution processes.

(4) Mediation Course Content – Family Part Actions. The 40-hour classroom course for family action mediators shall include basic mediation skills as well as at least 22 hours of specialized family mediation training, which should cover family and child development, family law, dissolution procedures, family finances, and community resources. In special circumstances and at the request of the Assignment Judge, the Administrative Office of the Courts may temporarily approve for a one-year period an applicant who has not yet completed the specialized family mediation training, provided the applicant has at least three years of experience as a mediator or a combination of mediation experience and service in the Family Part, has co-mediated in a CDR program with an experienced family mediator, and certifies to the intention to complete the specialized training within one year following the temporary approval. Economic mediators in family disputes shall have completed 40 hours of training in family mediation in accordance with this rule.

(5) Mediation Course Content – Civil, General Equity, and Probate Actions. The 40-hour classroom course for civil, general equity and probate action mediators shall include basic and advanced mediation skills as well as specialized civil mediation training as approved by the Administrative Director of the Courts.

(6) Training Requirements for Judicial Law Clerks. Judicial law clerks serving as third-party neutral settlors, shall first have completed a six-hour complementary dispute resolution (CDR) settlement techniques training course prescribed by the Administrative Office of the Courts.

(7) Co-mediation; mentoring; training evaluation. In order to reinforce mediator training, the vicinage CDR coordinator shall, insofar as practical and for a reasonable period following initial training, assign any new mediator who is either an employee or a volunteer to co-mediate with an experienced mediator and shall assign an experienced mediator to mentor a new mediator. Using evaluation forms prescribed by the Administrative Office of the Courts, the vicinage CDR coordinator shall also evaluate the training needs of each new mediator during the first year of the mediator's qualifications and shall periodically assess the training needs of all mediators.

(8) Mediation Course Content – Supplemental Mediation Training for Civil and Family Mediators. Applicants to the roster who have been trained in a 40-hour out-of-state mediation training or who took the 40-hour New Jersey mediation training more than five years prior to applying to the roster, and who otherwise qualify under this rule, must further attend a six-hour supplemental course approved by the Administrative Office of the Courts. There shall be two distinct supplemental courses, one for family mediators and one for civil mediators. The courses shall include, but are not limited to, training in facilitative methods, case management techniques, procedural requirements for an enforceable mediated settlement, NJ Rules and mediator ethics, Guidelines for Mediator Compensation (see Appendix XXVI to these Rules), the Uniform Mediation Act (N.J.S.A. 2A:23C-1 to -13), and mediation case law.

(c) Arbitrator Qualification and Training. Arbitrators serving in judicial arbitration programs shall have the minimum qualifications prescribed by Rule 4:21A-2. All arbitrators shall attend initial training of at least three classroom hours and continuing training of at least two hours in courses approved by the Administrative Office of the Courts.

(1) New Arbitrators. After attending the initial training, a new arbitrator shall attend continuing training after two years. Thereafter, an arbitrator shall attend continuing training every four years.

(2) Roster Arbitrators. Arbitrators who have already attended the initial training and at least one continuing training shall attend continuing training every four years.

(3) Arbitration Course Content – Initial Training. The three-hour classroom course shall teach the skills necessary for arbitration, including applicable statutes, court rules and administrative directives and policies, the standards of conduct, applicable uniform procedures as reflected in the approved procedures manual and other relevant information.

(4) Arbitration Course Content – Continuing Training. The two-hour continuing training course should cover at least one of the following: (a) reinforcing and enhancing relevant arbitration skills and procedures, (b) ethical issues associated with arbitration, or (c) other matters related to court-annexed arbitration as recommended by the Arbitration Advisory Committee.

(d) Training Program Evaluation. The Administrative Office of the Courts shall conduct periodic assessments and evaluations of the CDR training programs to ensure their continued effectiveness and to identify any needed improvements.

Note: Adopted July 14, 1992 as Rule 1:40-10 to be effective September 1, 1992; caption amended, former text redesignated as paragraphs (a) and (b), paragraphs (a)3.1 and (b)4.1 amended June 28, 1996 to be effective September 1, 1996; redesignated as Rule 1:40-12, caption amended and first sentence deleted, paragraph (a)1.1 amended and redesignated as paragraph (a)(1), paragraph (a)2.1

amended and redesignated as paragraph (a)(2), paragraph (a)2.2 amended and redesignated as paragraph (b)(5), new paragraphs (a)(3) and (a)(4) adopted, paragraph (a)3.1 redesignated as paragraph (a)(5), paragraph (a)3.2 amended and incorporated in paragraph (b)(1), paragraph (a)4.1 amended and redesignated as paragraph (b)(6), paragraph (b)1.1 amended and redesignated as paragraph (b)(1), paragraphs (b)2.1 and (b)3.1 amended and redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)4.1 redesignated as paragraph (b)(4) with caption amended, paragraph (b)5.1 amended and redesignated as paragraph (b)(7) with caption amended, new section (c) adopted, and paragraph (b)5.1(d) amended and redesignated as new section (d) with caption amended July 5, 2000 to be effective September 5, 2000; paragraphs (a)(3) and (b)(1) amended July 12, 2002 to be effective September 3, 2002; paragraphs (b)(1), (b)(3), and (c) amended July 28, 2004 to be effective September 1, 2004; caption amended and paragraph (a)(4) caption and text amended June 15, 2007 to be effective September 1, 2007; new paragraph (a)(6) caption and text adopted, paragraph (b)(1) amended, paragraph (b)(2) deleted, paragraphs (b)(3) and (b)(4) redesignated as paragraphs (b)(2) and (b)(3), paragraph (b)(5) amended and redesignated as paragraph (b)(4), and paragraphs (b)(6) and (b)(7) redesignated as paragraphs (b)(5) and (b)(6) July 16, 2009 to be effective September 1, 2009; subparagraphs (b)(2) and (b)(4) amended July 21, 2011 to be effective September 1, 2011; subparagraph (a)(3) caption and text amended, subparagraphs (a)(4), (a)(6), (b)(1), (b)(2) and (b)(4) amended, former subparagraph (b)(5) redesignated as subparagraph (b)(6), former subparagraph (b)(6) redesignated as subparagraph (b)(7), new subparagraphs (b)(5) and (b)(8) adopted July 27, 2015 to be effective September 1, 2015; subparagraphs (a)(3) text, (a)(5) caption and text, and (b)(1) text and paragraph (c) amended July 28, 2017 to be effective September 1, 2017; paragraph (a)(3) amended, paragraph (a)(4) caption and text amended, and paragraphs (b)(1), (b)(3), and (b)(6) amended July 29, 2019 to be effective September 1, 2019; paragraph (c) amended July 31, 2020 to be effective September 1, 2020.

N.J. Uniform Mediation Act

N.J. Stat. § 2A:23C-1 (2012)

§ 2A:23C-1. Short title

This Act shall be known and may be cited as the "Uniform Mediation Act."

HISTORY: L. 2004, c. 157, § 1, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-2 (2012)

§ 2A:23C-2. Definitions

As used in this act:

"**Mediation**" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

"**Mediation communication**" means a statement, whether verbal or nonverbal or in a record, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator. A mediation communication shall not be deemed to be a public record under P.L. 1963, c. 73 (*C. 47:1A-1* et seq.) as amended and supplemented by P.L. 2001, c.4 04 (*C. 47:1A-5* et seq.).

"**Mediator**" means an individual who conducts a mediation.

"**Nonparty participant**" means a person, other than a party or mediator, who participates in a mediation.

"**Mediation party**" means a person who participates in a mediation and whose agreement is necessary to resolve the dispute.

"**Person**" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

"**Proceeding**" means a judicial, administrative, arbitral, or other adjudicative process, including related pre-hearing and post-hearing motions, conferences, and discovery; or a legislative hearing or similar process.

"**Record**" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"**Sign**" means to execute or adopt a tangible symbol with the present intent to authenticate a record, or to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate a record.

HISTORY: L. 2004, c. 157, § 2, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-3 (2012)

§ 2A:23C-3. Scope

a. Except as otherwise provided in subsection b. or c., this act shall apply to a mediation in which:

(1) the mediation parties are required to mediate by statute, court rule or administrative agency rule, or are referred to mediation by a court, administrative agency, or arbitrator;

(2) the mediation parties and the mediator agree to mediate in a record that demonstrates an expectation that mediation communications will be privileged against disclosure; or

(3) the mediation parties use as a mediator an individual who holds himself out as a mediator, or the mediation is provided by a person who holds itself out as providing mediation.

b. The act shall not apply to a mediation:

(1) relating to the establishment, negotiation, administration, or termination of a collective bargaining relationship or to any mediation conducted by the Public Employment Relations Commission or the State Board of Mediation;

(2) relating to a dispute that is pending under or is part of the processes established by a collective bargaining agreement, except that the act applies to a mediation arising out of a dispute that has been filed with a court or an administrative agency other than the Public Employment Relations Commission or the State Board of Mediation;

(3) conducted by a judge who may make a ruling on the case; or

(4) conducted under the auspices of:

(a) a primary or secondary school if all the parties are students; or
(b) a juvenile detention facility or shelter if all the parties are residents of that facility or shelter.

c. If the parties agree in advance in a signed record, or a record of proceeding so reflects, that all or part of a mediation is not privileged, the privileges under sections 4 through 6 of P.L. 2004, c. 157 (*C. 2A:23C-4* through *C. 2A:23C-6*) shall not apply to the mediation or part agreed upon. Sections 4 through 6 of P.L. 2004, c. 157 (*C. 2A:23C-4* through *C. 2A:23C-6*) shall apply to a mediation communication made by a person who has not received actual notice of the agreement before the communication is made.

HISTORY: L. 2004, c. 157, § 3, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-4 (2012)

§ 2A:23C-4. Privilege against disclosure; admissibility; discovery

a. Except as otherwise provided in section 6 of P.L. 2004, c. 157 (*C. 2A:23C-6*), a mediation communication is privileged as provided in subsection b. of this section and shall not be subject to discovery or admissible in evidence in a proceeding unless waived or precluded as provided by section 5 of P.L. 2004, c. 157 (*C. 2A:23C-5*).

b. In a proceeding, the following privileges shall apply:

(1) a mediation party may refuse to disclose, and may prevent any other person from disclosing, a mediation communication.

(2) a mediator may refuse to disclose a mediation communication, and may prevent any other person from disclosing a mediation communication of the mediator.

(3) a nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a mediation communication of the nonparty participant.

c. Evidence or information that is otherwise admissible or subject to discovery shall not become inadmissible or protected from discovery solely by reason of its disclosure or use in a mediation.

HISTORY: L. 2004, c. 157, § 4, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-5 (2012)

§ 2A:23C-5. Waiver and preclusion of privilege

a. A privilege under section 4 of P.L. 2004, c. 157 (*C. 2A:23C-4*) may be waived in a record or orally during a proceeding if it is expressly waived by all parties to the mediation and:

(1) in the case of the privilege of a mediator, it is expressly waived by the mediator; and

(2) in the case of the privilege of a nonparty participant, it is expressly waived by the nonparty participant.

b. A person who discloses or makes a representation about a mediation communication that prejudices another person in a proceeding is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (*C. 2A:23C-4*), but only to the extent necessary for the person prejudiced to respond to the representation or disclosure.

c. A person who intentionally uses a mediation to plan, attempt to commit or commit a crime, or to conceal an ongoing crime or ongoing criminal activity is precluded from asserting a privilege under section 4 of P.L. 2004, c. 157 (*C. 2A:23C-4*).

HISTORY: L. 2004, c. 157, § 5, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-6 (2012)

§ 2A:23C-6. Exceptions to privilege

a. There is no privilege under section 4 of P.L.2004, c.157 (*C.2A:23C-4*) for a mediation communication that is:

(1) in an agreement evidenced by a record signed by all parties to the agreement;

(2) made during a session of a mediation that is open, or is required by law to be open, to the public;

(3) a threat or statement of a plan to inflict bodily injury or commit a crime;

(4) intentionally used to plan a crime, attempt to commit a crime, or to conceal an ongoing crime or ongoing criminal activity;

(5) sought or offered to prove or disprove a claim or complaint filed against a mediator arising out of a mediation;

(6) except as otherwise provided in subsection c., sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediation party, nonparty participant, or representative of a party based on conduct occurring during a mediation; or

(7) sought or offered to prove or disprove child abuse or neglect in a proceeding in which the Division of Youth and Family Services in the Department of Children and Families is a party, unless the Division of Youth and Family Services participates in the mediation.

b. There is no privilege under section 4 of P.L.2004, c.157 (*C.2A:23C-4*) if a court, administrative agency, or arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, that there is a need for the evidence that substantially outweighs the interest in protecting confidentiality, and that the mediation communication is sought or offered in:

(1) a court proceeding involving a crime as defined in the "New Jersey Code of Criminal Justice," *N.J.S. 2C:1-1* et seq.; or

(2) except as otherwise provided in subsection c., a proceeding to prove a claim to rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

c. A mediator may not be compelled to provide evidence of a mediation communication referred to in paragraph (6) of subsection a. or paragraph (2) of subsection b.

d. If a mediation communication is not privileged under subsection a. or b., only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted. Admission of evidence under subsection a. or b. does not render the evidence, or any other mediation communication, discoverable or admissible for any other purpose.

HISTORY: L. 2004, c. 157, § 6, eff. Nov. 22, 2004; amended 2006, c. 47, § 22, eff. July 1, 2006.

N.J. Stat. § 2A:23C-7 (2012)

§ 2A:23C-7. Prohibited mediator reports

a. Except as required in subsection b., a mediator may not make a report, assessment, evaluation, recommendation, finding, or other oral or written communication regarding a mediation to a court, administrative agency, or other authority that may make a ruling on the dispute that is the subject of the mediation.

b. A mediator may disclose:

(1) whether the mediation occurred or has terminated, whether a settlement was reached, and attendance; or

(2) a mediation communication as permitted under section 6 of P.L. 2004, c. 157 (*C. 2A:23C-6*);

c. A communication made in violation of subsection a. may not be considered by a court, administrative agency, or arbitrator.

HISTORY: L. 2004, c. 157, § 7, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-8 (2012)

§ 2A:23C-8. Confidentiality

Unless made during a session of a mediation which is open, or is required by law to be open, to the public, mediation communications are confidential to the extent agreed by the parties or provided by other law or rule of this State.

HISTORY: L. 2004, c. 157, § 8, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-9 (2012)

§ 2A:23C-9. Mediator's disclosure of conflicts of interest; background

a. Before accepting a mediation, an individual who is requested to serve as a mediator shall:

(1) make an inquiry that is reasonable under the circumstances to determine whether there are any known facts that a reasonable individual would con-

sider likely to affect the impartiality of the mediator, including a financial or personal interest in the outcome of the mediation and an existing or past relationship with a mediation party or foreseeable participant in the mediation; and

(2) disclose any such known fact to the mediation parties as soon as is practicable before accepting a mediation.

b. If a mediator learns any fact described in paragraph (1) of subsection a. after accepting a mediation, the mediator shall disclose it as soon as is practicable.

c. At the request of a mediation party, an individual who is requested to serve as a mediator shall disclose the mediator's qualifications to mediate a dispute.

d. A person who violates subsection a., b., or g. shall be precluded by the violation from asserting a privilege under section 4 of P.L. 2004, c. 157 (*C. 2A:23C-4*), but only to the extent necessary to prove the violation.

e. Subsections a, b., c., and g. do not apply to a judge of any court of this State acting as a mediator.

f. This act does not require that a mediator have a special qualification by background or profession.

g. A mediator shall be impartial, notwithstanding disclosure of the facts required in subsections a. and b.

HISTORY: L. 2004, c. 157, § 9, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-10 (2012)

§ 2A:23C-10. Participation in mediation

An attorney or other individual designated by a party may accompany the party to and participate in a mediation. A waiver of representation or participation given before the mediation may be rescinded.

HISTORY: L. 2004, c. 157, § 10, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-11 (2012)

§ 2A:23C-11. Relation to Electronic Signatures in Global and National Commerce Act

This act modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, *15 U.S.C. § 7001* et seq., but this act does not modify, limit, or supersede § 101(c) of that act or authorize electronic delivery of any of the notices described in § 103(b) of that act.

HISTORY: L. 2004, c. 157, § 11, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-12 (2012)

§ 2A:23C-12. Uniformity of application and construction

In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

HISTORY: L. 2004, c. 157, § 12, eff. Nov. 22, 2004.

N.J. Stat. § 2A:23C-13 (2012)

§ 2A:23C-13. Severability clause

If any provision of P.L. 2004, c. 157 (*C. 2A:23C-1* et seq.) or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

HISTORY: L. 2004, c. 157, § 13, eff. Nov. 22, 2004.

New Jersey International Arbitration, Mediation, and Conciliation Act

Laws of 2017, Chapter 1

AN ACT concerning international arbitration and supplementing Title 2A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

C.2A:23E-1 **Short title**.

1. This act shall be known and may be cited as the "**New Jersey International Arbitration, Mediation, and Conciliation Act**."

C.2A:23E-2 **Findings, declarations relative to international arbitration**.

2. The Legislature finds and declares that:

a. The State of New Jersey is in a unique position to benefit from the growth of international trade, and the State's position in the region provides important opportunities for the State to participate in international business, trade, and commerce;

b. There will inevitably arise, from time to time, disagreements and disputes arising from international commercial transactions that are amenable to resolution through international arbitration, mediation, conciliation, and other forms of dispute resolution in lieu of international litigation;

c. It is the policy of this State to encourage the use of arbitration, mediation, and conciliation to reduce disputes arising out of international business, trade, commercial, and other relationships; and

d. It is declared that the objective of encouraging the development of New Jersey as an international center for the resolution of international business, commercial, trade, and other disputes be supported through the establishment of certain legal authorities, as set forth in this act.

C.2A:23E-3 **Definitions relative to international arbitration.**

3. As used in this act:

"**Arbitral award**" means an award signed by an arbitrator that may be the result of a settlement in arbitration, mediation, conciliation or other form of dispute resolution that involves the assistance of a neutral.

"**Center**" means any center organized as a non-profit entity, whose principal purpose is to facilitate the resolution of international business, trade, commercial, and other disputes between persons by means of arbitration, mediation, conciliation, and other means as an alternative to litigation.

"**Person**" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, public corporation, or any other legal or commercial entity, including any government subdivision, agency, or instrumentality.

"**Resident of the United States**" means a person who maintains sole residence within a state, possession, commonwealth, or territory of the United States or within the District of Columbia.

"**Written undertaking to arbitrate**" means a writing in which a person undertakes to submit a dispute to arbitration, without regard to whether that undertaking is sufficient to sustain a valid and enforceable contract or is subject to defenses. A written undertaking may be part of a contract, may be a separate writing, and may be contained in correspondence, telegrams, telexes, or any other form of written communication.

C.2A:23E-4 **Applicability of act**.

4. a. This act shall apply only to the arbitration of disputes between:

(1) two or more persons at least one of whom is a nonresident of the United States; or

(2) two or more persons all of whom are residents of the United States if the dispute:

(a) involves property located outside the United States;

(b) relates to a contract which envisages enforcement or performance in whole or in part outside the United States; or

(c) bears some other relation to one or more foreign countries.

b. Notwithstanding subsection a. of this section, this act shall not apply to the arbitration of:

(1) any dispute pertaining to the ownership, use, development, or possession of, or a lien of record upon, real property located in this

State, unless the parties expressly submit the resolution of that dispute to this act; or

(2) any dispute involving family or domestic relations law.

c. If, in any arbitration within the scope of this act, reference must be made, under applicable conflict of laws principles, to the arbitration law of this State, that reference shall be to this act.

d. This act shall apply to any arbitration within the scope of this act, without regard to whether the place of arbitration is within or without this State:

(1) if the written undertaking to arbitrate expressly provides that the laws of this State shall apply;

(2) in the absence of a choice of law provision applicable to the written undertaking to arbitrate, if that undertaking forms part of a contract the interpretation of which is to be governed by the laws of this State; or

(3) in any other case, any arbitral tribunal or other panel established pursuant to this act that decides under applicable conflict of laws principles that the arbitration shall be conducted in accordance with the laws of this State.

C.2A:23E-5 **Consent by parties to arbitration**.

5. Conducting arbitration in this State, or making a written agreement to arbitrate which provides for arbitration within this State subject to this act, shall constitute a consent by the parties to that arbitration or undertaking to the exercise of in personam jurisdiction by the courts of this State, but only for the purposes of that arbitration.

C.2A:23E-6 **Authority of center**.

6. a. A center shall not be considered a department, agency, or public instrumentality of this State, and shall not be subject to the laws of this State applying to departments, agencies, or public instrumentalities of this State.

b. A center shall permit the participants to an arbitration to select any body of rules and procedures for the conduct, administration, and facilitation of that proceeding, whether those rules and procedures have been prepared by private arbitral organizations, created by the participants themselves, or by the center.

c. A center shall have the authority to establish rules and procedures for the conduct, administration, and facilitation of the resolution of all disputes subject to this act.

d. A center shall have the authority to adopt rules providing, without limitation and by way of illustration only, for the establishment of arbitral tribunals or other panels, which shall provide that arbitral tribunals or other panels may:

(1) determine the relevance and materiality of the evidence without the need to follow formal rules of evidence;

(2) be able to utilize any lawful methods that it deems appropriate to obtain evidence additional to that produced by the parties;

(3) issue subpoenas or other requests for the attendance of witnesses or for the production of books, records, documents, and other evidence;

(4) be empowered to administer oaths, order depositions to be taken or other discovery obtained or produced, without regard to the place where the witness or other evidence is located, and appoint one or more experts to report to it;

(5) fix any fees for the attendance of witnesses it deems appropriate; and

(6) make awards of interest, reasonable attorney's fees and costs of arbitration as agreed to in writing by the parties, or in the absence of an agreement, as it deems appropriate.

e. In assuring the exercise of the powers conferred by this act, the participants to an arbitration may apply for assistance from any court of competent jurisdiction. Any application to a court hereunder shall be made and heard in a summary way in the manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

C.2A:23E-7 **Subpoena power of arbitral tribunal or panel.**

7. An arbitral tribunal or panel established pursuant to section 6 of this act may subpoena in writing any person to attend before it as a witness and to bring books, papers, records, and documents. The subpoena shall issue in the name of the arbitral tribunal or panel and be signed by a majority of the tribunal or panel, shall be directed to the person being summoned, and shall be served in the same manner as subpoenas to testify before a court of this State. If any person subpoenaed to testify refuses or neglects to obey the subpoena, upon petition a court of competent jurisdiction may compel the attendance of that person before the arbitral tribunal or panel, or punish that person for contempt in the same manner now provided for the attendance of witnesses or punishment in a court of

this State. The arbitral panel may also consider and take action within the arbitration, as deemed appropriate by the arbitral tribunal, in response to non-attendance by any subpoenaed person.

C.2A:23E-8 **Enforcement of arbitral awards issued by center**.

8. a. Arbitral awards issued pursuant to this act by a center shall be enforced by any court of competent jurisdiction as permitted by law and consistent with the Federal Arbitration Act (9 U.S.C. s.1 et seq.), and the enforcement provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by the Federal Arbitration Act, except as provided in subsection b. of this section.

b. If the parties specifically submit to jurisdiction under this act pursuant to section 4 of this act, the center may require those parties residing in countries not signatories to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, as implemented by the Federal Arbitration Act, and not having sufficient assets otherwise within the jurisdiction of the courts of this State, to post any bonds or other security as the center shall deem appropriate to assure reasonable likelihood of enforcement of any award or other relief ultimately ordered by the center in the proceeding.

9. This act shall take effect on the 90th day next following enactment.

Approved February 6, 2017.

ISSUES FOR CONSIDERATION WHEN DRAFTING AN ARBITRATION CONTRACT/CLAUSE

This list of issues originated from The New Jersey Arbitration Handbook, 2020, by Hon. William A. Dreier and Robert E. Bartkus. It was supplemented with suggestions from panelists John Holsinger and Lea Haber Kuck.

Scope of issues to be arbitrated, emergent relief, carve-outs, dollar limits, niche waiver requirements (jury, statutory rights)

Who decides if issue is arbitrated?

Administered or Non-Administered

Forum Rules – adopting, differences, alternatives, UNCITRAL

Governing Law – for arbitration, for contract

Location of arbitration, hearings – in person or virtual

Parties to be bound

Severability

Arbitrators -- number, selection, and qualifications, diversity

Confidentiality

Timing – expedited, standard, complex

Discovery

Hearings -- motions, evidence rules, bifurcation

Class Actions

Remedies -- prejudgment interest, treble damages, punitive damages

Notice and service – demand through award

Location of arbitration, hearings

Allocation/Shifting of Fees and Costs

Administrative and Arbitrator's Fees and Costs

Attorneys' Fees and Costs

Award

Form -- standard, reasoned, findings of fact and conclusions of law

Continuing jurisdiction, interlocutory award review

Appeals – expanded review (law, manifest disregard)

Enforcement, including venue

Amendments to Agreement to Arbitrate

AAA Standard Arbitration Clauses

Commercial (U.S. domestic) - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Construction - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

International - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules.

Healthcare payor provider - Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association pursuant to its Healthcare Payor Provider Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Employment (employment plan) - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Employment (individually negotiated employment contracts) - Any controversy or claim arising out of or relating to this [employment application; employment ADR program; employment contract] shall be settled by arbitration administered by the American Arbitration Association under its Employment Arbitration Rules and Mediation Procedures and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Labor - Any dispute, claim, or grievance arising from or relating to the interpretation or application of this agreement shall be submitted to arbitration administered by the American Arbitration Association under its Labor Arbitration Rules. The parties further agree to accept the arbitrator’s award as final and binding on them.

CPR Arbitration Clauses

Administered Arbitration

Agreement to Arbitrate: Administered Arbitration

A. **Pre-Dispute Clause for Administered Arbitration**

"Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules") by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state)."

B. **Existing Dispute Submission Agreement for Administered Arbitration**

"We, the undersigned parties, hereby agree to submit to arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules") the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). [We further agree that we shall faithfully observe this agreement and the Administered Rules and that we shall abide by and perform any award rendered by the arbitrator(s).] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state)."

C. **Multi-Step Administered Clause**

Negotiation Between Executives (A) The parties shall attempt to resolve any dispute arising out of or relating to this [Agreement][Contract] promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of

management than the persons with direct responsibility for administration of this contract. To initiate a negotiation, a party shall give the other party written notice of any dispute not resolved in the normal course of business. Within [30] days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Mediation (B) If the dispute has not been resolved by negotiation as provided herein within[45] days after delivery of the initial notice of negotiation, [or if the parties failed to meet within [20] days,] the parties shall endeavor to settle the dispute by mediation under the International Institute for Conflict Prevention & Resolution ("CPR") Mediation Procedure [currently in effect OR in effect on the date of this Agreement], [provided, however, that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the [45] days.] Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

Concurrent Mediation-Arbitration (C)(1) "Following the commencement of any arbitration, the parties shall endeavor to settle the dispute by confidential mediation under the CPR Mediation Procedure in effect on the date of this Agreement (the "CPR Mediation Procedure"). Unless they otherwise agree, the parties shall select a mediator from the CPR Panels of Distinguished Neutrals. If a mediation has already been initiated prior to the commencement of the arbitration pursuant to a CPR Mediation Model Clause, and if all parties consent, the previously appointed mediator may serve as the mediator under this Concurrent Mediation-Arbitration Clause. The mediation initiated under this Clause will continue until a written settlement agreement is reached, an award is delivered to the parties, or the procedure is terminated by agreement of the parties. Notwithstanding the foregoing, any party may withdraw at any time after attending the first substantive mediation conference, as provided in paragraph 3(b) of the CPR Mediation Procedure. The mediation shall be conducted in accordance with the CPR Protocol for Concurrent Mediation-Arbitration (CMA)l [currently in effect OR in effect on the date of this Agreement] (the "CMA Protocol") and the CPR Mediation Procedure, to the extent that Procedure is not inconsistent with this Clause or the CMA Protocol. Any settlement reached in the course of the mediation and before an award is made, shall be referred to the Arbitral Tribunal and, if the parties so agree, may be reflected in a consent award under Rule 21.5 of the CPR Rules for Administered Arbitration."

OR

Optional Clause for Use with CPR Negotiation-Mediation Clause (C)(2) "In the event the parties have also adopted the CPR Negotiation-Mediation Clause, and if the dispute has not been resolved by negotiation within the period specified therein, the parties shall confer to determine whether they consent to conducting a mediation prior to the commencement of the arbitration. Absent the consent of all parties within 7 days after the end of the period specified for negotiation, the mediation shall occur after, and not before, the commencement of the arbitration."

Arbitration (D) Any dispute arising out of or relating to this [Agreement] [Contract], including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein [within [45] days after initiation of the mediation procedure] [within [30] days after appointment of a mediator], shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Administered Arbitration [currently in effect OR in effect on the date of this Agreement], by [a sole arbitrator] [three independent and impartial arbitrators, of whom each party shall designate one] [three arbitrators of whom each party shall appoint one in accordance with the 'screened' appointment procedure provided in Rule 5.4] [three independent and impartial arbitrators, none of whom shall be appointed by either party]; [provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above.] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).

D. **Arbitration Clause with Appellate Option**

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution ("CPR") Rules for Administered Arbitration (the "Administered Rules" or "Rules") by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).

An appeal may be taken under the CPR Arbitration Appeal Procedure from any final award of an arbitral panel in any arbitration arising out of or related to this agreement that is conducted in accordance with the requirements of such Appeal Procedure. Unless otherwise agreed by the parties and the appeal tribunal, the appeal shall be conducted at the place of the original arbitration.

Non Administered

A. Pre-Dispute Clause

“Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration by (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, of whom each party shall designate one in accordance with the “screened" appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be appointed by either party). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).”

B. Existing Dispute Submission Agreement

“We, the undersigned parties, hereby agree to submitto arbitration in accordance with the International Institute for Conflict Prevention and Resolution Rules for Non-Administered Arbitration (the “Rules”) the following dispute:

[Describe briefly]

We further agree that the above dispute shall be submitted to (a sole arbitrator) (three arbitrators, of whom each party shall appoint one) (three arbitrators, of whom each party shall designate one in accordance with the “screened” appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be appointed by either party). We further agree that we shall faithfully observe this agreement and the Rules and that we shall abide by and perform any award rendered by thearbitrator(s). The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).”

C. Multi-Step Non-Administered Clause

Negotiation Between Executives (A) The parties shall attempt to resolve any dispute arising out of or relating to this [Agreement][Contract] promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this contract. To initiate a negotiation, a party shall give the other party written notice of any dispute not resolved in the normal course of business. Within [30] days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

Mediation (B) If the dispute has not been resolved by negotiation as provided herein within [45] days after delivery of the initial notice of negotiation, [or if the parties failed to meet within [20] days,] the parties shall endeavor to settle the dispute by mediation under the International Institute for Conflict Prevention & Resolution ("CPR") Mediation Procedure [currently in effect OR in effect on the date of this Agreement], [provided, however, that if one party fails to participate in the negotiation as provided herein, the other party can initiate mediation prior to the expiration of the [45] days.] Unless otherwise agreed, the parties will select a mediator from the CPR Panels of Distinguished Neutrals.

Arbitration (C) Any dispute arising out of or relating to this [Agreement] [Contract], including the breach, termination or validity thereof, which has not been resolved by mediation as provided herein [within [45] days after initiation of the mediation procedure] [within [30] days after appointment of a mediator], shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention & Resolution Rules for Non-Administered Arbitration [currently in effect OR in effect on the date of this Agreement], by [a sole arbitrator] [three independent and impartial arbitrators, of whom each party shall designate one] [three arbitrators of whom each party shall appoint one in accordance with the 'screened' appointment procedure provided in Rule 5.4] [three independent and impartial arbitrators, none of whom shall be appointed by either party]; [provided, however, that if one party fails to participate in either the negotiation or mediation as agreed herein, the other party can commence arbitration prior to the expiration of the time periods set forth above.] The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of arbitration shall be (city, state).

Diversity Focus

Any dispute arising out of or relating to this contract, including the breach, termination or validity thereof, shall be finally resolved by arbitration in accordance with the International Institute for Conflict Prevention and Resolution (“CPR”) Rules for Administered Arbitration (the “Administered Rules” or “Rules”) by (a sole arbitrator) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be appointed by CPR) (three arbitrators, of whom each party shall designate one, with the third arbitrator to be designated by the two party-appointed arbitrators) (three arbitrators, of whom each party shall designate one in accordance with the screened appointment procedure provided in Rule 5.4) (three arbitrators, none of whom shall be designated by either party). The parties agree that however the arbitrators are designated or selected, at least one member of any tribunal of three arbitrators shall be a member of a diverse group, such as women, persons of color, members of the LGBTQ community, disabled persons, or as otherwise agreed to by the parties to this Agreement at any time prior to appointment of the tribunal. Where CPR is to nominate or select the arbitrators, CPR will convene the parties to discuss the selection. In the event the parties desire multiple qualifications, if CPR is unable to accommodate a qualification specified by the parties and diversity, CPR may use its discretion to nominate or appoint a diverse candidate or candidates to serve on the tribunal. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The place of the arbitration shall be (city, state).

Other Arbitration Clauses

Final Offer or Baseball Arbitration

This variation of arbitration entails each party providing a proposed monetary amount for the claim to the arbitrator(s) prior to the close of the hearings. At the conclusion of the hearing, the arbitrator(s) will adopt one of the proposed amounts in the award. This form of arbitration is used in baseball salary negotiations.

A related variation, often referred to as “Night Baseball” arbitration, occurs when the arbitrator(s) is not informed of the written proposals. Instead, the arbitrator(s) renders the award, which is then adjusted to conform to the closest of the parties’ proposals. Both variations eliminate an arbitrator’s ability to render compromise awards.

High-Low or Bounded Arbitration

Under this variation, the parties set a range for the award. An award over the high amount is reduced to that amount; an award under the low amount is increased to that amount; and any award within the range is not adjusted. High-low arbitration has been used in third-party insurance claims where liability is admitted, but damages are in issue.

Optional Clause to Protect Rights

Provisional Remedies and Interim Relief

The procedures specified in this Article 00 shall be the sole and exclusive procedures for the resolution of disputes between the parties arising out of or relating to this Agreement; provided, however, that a party may file a complaint [for statute of limitations or venue reasons,] [to seek a preliminary injunction or other provisional judicial relief,] if in its sole judgment such action is necessary. Despite such action, the parties will continue to participate in the procedures specified in this Article 00.

Tolling Statute of Limitations

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedure(s) specified in this Article 00 is pending. The parties will take such action, if any, required to effectuate such tolling.

Performance to Continue

Each party is required to continue to perform its obligations under this contract pending final resolution of any dispute arising out of or relating to this contract, [unless to do so would be impossible or impracticable under the circumstances].

Right of Termination

The requirements of this Article 00 shall not be deemed a waiver of any right of termination under this contract.

JAMS Arbitration Clauses

JAMS Standard Arbitration Clause for Domestic Commercial Contracts

Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration in [insert the desired place of arbitration] before [one/three] arbitrator(s). The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures [and in accordance with the Expedited Procedures in those Rules] [or pursuant to JAMS' Streamlined Arbitration Rules and Procedures]. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction.

Clause Providing for Negotiation in Advance of Arbitration

The parties shall attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 15 days after delivery of the notice, the receiving party shall submit to the other a written response. The notice and response shall include with reasonable particularity (a) a statement of each party's position and a summary of arguments supporting that position, and (b) the name and title of the executive who will represent that party and of any other person who will accompany the executive. Within 30 days after delivery of the notice, the executives of both parties shall meet at a mutually acceptable time and place.

Unless otherwise agreed in writing by the negotiating parties, the above-described negotiation shall end at the close of the first meeting of executives described above ("First Meeting"). Such closure shall not preclude continuing or later negotiations, if desired.

All offers, promises, conduct and statements, whether oral or written, made in the course of the negotiation by any of the parties, their agents, employees, experts and attorneys are confidential, privileged and inadmissible for any purpose, including impeachment, in arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the negotiation.

At no time prior to the First Meeting shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is

inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 1 above.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled while the procedures specified in Paragraphs 1 and 2 above are pending and for 15 calendar days thereafter. The parties will take such action, if any, required to effectuate such tolling.

Clause Providing for Mediation in Advance of Arbitration

If the matter is not resolved by negotiation pursuant to paragraphs___above, then the matter will proceed to mediation as set forth below.

Or in the Alternative

If the parties do not wish to negotiate in advance of arbitration, but do wish to mediate before proceeding to arbitration, they may accomplish this through use of the following language:

The parties agree that any and all disputes, claims or controversies arising out of or relating to this Agreement shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the clause set forth in Paragraph 5 below.

Either party may commence mediation by providing to JAMS and the other party a written request for mediation, setting forth the subject of the dispute and the relief requested.

The parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

Either party may initiate arbitration with respect to the matters submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation, whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the parties so desire.

At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this Agreement except to pursue a provisional remedy that is authorized by law or by JAMS Rules or by agreement of the parties. However, this limitation is inapplicable to a party if the other party refuses to comply with the requirements of Paragraph 3 above.

All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The parties will take such action, if any, required to effectuate such tolling.

DIVERSITY AND INCLUSION

The parties agree that, wherever practicable, they will seek to appoint a fair representation of diverse arbitrators (considering gender, ethnicity and sexual orientation), and will request administering institutions to include a fair representation of diverse candidates on their rosters and list of potential arbitrator appointees.

NAM Arbitration Clauses

Sample Arbitration Clause

The parties agree that any claim, dispute or controversy arising out of, or relating to, this agreement, or the breach thereof, shall be resolved through final and binding Arbitration to be administrated by ("NAM") National Arbitration and Mediation and governed by NAM's Comprehensive Dispute Resolution Rules and Procedures in effect at the time such claim is filed. Any award of the Arbitrator is final and binding and may be entered as a judgment in any court having jurisdiction.

Sample Construction Clause

The parties agree that any claim or dispute relating to this agreement, as well as any other matters, disputes, or claims between them, shall first be Mediated and/or Arbitrated in an attempt to resolve any and all issues. Initially, the parties agree to consider mediating the dispute. The parties agree that any claim or dispute between the parties that arises out of this contract or the relationship or obligations contemplated under this contract, including the validity of this Mediation and Arbitration clause, if not resolved through Mediation, shall be resolved through final and binding Arbitration to be administrated by National Arbitration and Mediation ("NAM"). The parties agree that all Mediations and Arbitrations shall be governed by NAM's Comprehensive Rules and Procedures and the fee schedule in effect at the time such claim is filed. Any award of the Arbitrator is final and binding and may be entered as a judgment in any court having jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective, and the remainder of the agreement shall remain effective. NAM can be contacted at 800-358-2550 Att: Construction Claims Dept., to file a claim for Mediation or Arbitration, respond to any questions regarding the dispute resolution process, or to request a copy of NAM's current Comprehensive Rules and Procedures and fee schedule. This agreement shall be governed by and interpreted under the Federal Arbitration Act, 9 U.S.C. §1-16.

Sample Employment Arbitration Clause

Should any dispute between Employee and Employer arise at any time out of any aspect of the employment relationship, including, but not limited to, the hiring, performance or termination of employment and/or cessation of employment with the Employer and/or against any employee, officer, alleged agent, director, affiliate, subsidiary or sister company relationship, or relating to an application or candidacy for employment, Employee and Employer will confer in, good faith, to resolve promptly such dispute. In the event that Employer and Employee are unable to resolve their dispute and should either desire to

pursue a claim against the other party, both Employer and Employee agree to have the dispute resolved by final and binding Arbitration. The Employee and Employer agree that the Arbitration shall be held in the county and state where Employee currently works for Employer or most recently worked for Employer.

The arbitration shall be conducted by an arbitrator(s) provided by an impartial third-party Arbitration provider, National Arbitration and Mediation (“NAM”), and be subject to NAM’s Employment Rules and Procedures and the Fee Schedule in effect at the time the claim is filed with NAM. To obtain a copy of NAM’s Employment Rules and Procedures and the Fee Schedule in effect, or for general inquiries regarding the dispute resolution process, NAM can be contacted at 1-800-358-2550, Att: Employment Division.

All previously unasserted claims arising under federal, state or local statutory or common law and all disputes relating to the validity of this contract, as well this arbitration provision, shall be decided by final and binding arbitration. Any award of the arbitrator(s) is final and binding and may be entered as a judgment in any court of competent jurisdiction. In the event a court having jurisdiction finds any portion of this agreement unenforceable, that portion shall not be effective, and the remainder of the agreement shall remain in effect.

RESOURCES & LINKS

American Arbitration Association (AAA)
- www.adr.org
  - Commercial Arbitration Rules and Mediation Procedures
  - Construction Industry Rules and Mediation Procedures
  - Consumer Arbitration Rules
  - Employment Arbitration Rules and Mediation Procedures
  - Labor Arbitration Rules
  - International Dispute Resolution Procedures
  - Optional Appellate Rules

International Institute for Conflict Prevention & Resolution (CPR)
- www.cprador.org
  - Administered Arbitration Rules
  - Non-Administered Arbitration Rules
  - Appellate Arbitration Procedure
  - Employment Dispute Arbitration Procedure
  - Fast Track Administered Arbitration Rules
  - Fast Track Non-Administered Arbitration Rules
  - Patent & Trade Secret Arbitration Rules
  - CPR Rules for Expedited Arbitration of Construction Disputes

JAMS Mediation, Arbitration ADR Services (JAMS)
- www.jamsadr.com
  - Arbitration Rules & Procedures
    - Comprehensive
    - Streamlined
    - Discovery Protocols
    - Appeal Procedures
    - Class Action Procedures
    - Consumer Minimum Standards
  - International Mediation Rules
  - International Arbitration Rules
  - Construction Arbitration Rules
  - Expedited Construction Arbitration Rules
  - Surety Adjudication Rules
  - Employment Arbitration Rules
  - Employment Minimal Standards

National Arbitration Mediation (NAM)
- www.namadr.com
  - Appellate Dispute Resolution Rules and Procedures
  - Comprehensive Dispute Resolution Rules and Procedures
  - Employment Rules, Procedures and Related Documents

American Arbitration Association, Drafting Dispute Resolution Clauses – A Practical Guide. https://www.adr.org/sites/default/files/document_repository/Drafting%20Dispute%20Resolution%20Clauses%20A%20Practical%20Guide.pdf

JAMS, JAMS Clause Workbook https://www.jamsadr.com/files/Uploads/Documents/JAMS-Rules/JAMS-ADR-Clauses.pdf

Sherby, Eric S. A Checklist for Drafting an International Arbitration Clause. Business Law Today, September, 2010. https://www.sherby.co.il/pdf/BLT_A_Checklist_For_Drafting.pdf

Certilman, Stven A. Comparison of Selected International Arbitration Rules, 2018 Edition, Alternatives, May, 2018. https://www.ccarbitrators.org/wp-content/uploads/SelectedInternationalArbitrationRules2018_Certilman.pdf

Kramer, Liz. Comparison of AAA, JAMS, CPR Commercial Rules (7th Blogiversary!). ArbitrationNation, August 11, 2018. https://www.arbitrationnation.com/?s=JAMS+AAA+rules