

**BENCHMARK RESOLUTION GROUP LLC**  
**ARBITRATION RULES** *(effective 10/2/17)*

Benchmark Resolution Group LLC (“BENCHMARK”), an innovator in the dispute resolution arena, was founded by a core group of highly experienced and respected retired judges/full-time mediators and arbitrators. BENCHMARK’s goal is to offer parties<sup>1</sup> a fair, efficient and expeditious means of resolving their disputes without the cost, expense and delay normally associated with traditional litigation. An integral part of achieving that objective involved the development of relatively simple and straightforward arbitration rules drafted to strike a balance between those rules which were overly-simplistic and those which were procedurally overly-complicated. BENCHMARK’s neutrals, retired judges as well as highly-experienced attorneys, are all dedicated full-time professionals committed to providing competent and ethical dispute resolution, and have, in the aggregate, arbitrated and mediated thousands of controversies, from the tens of thousands to the hundreds of millions of dollars. These cases have involved business, corporate governance, employment, personal injury, probate, professional negligence (legal, medical and other), real estate and construction disputes, among others.

BENCHMARK’s administrative rates, as well as the hourly and per-diem rates set by each of the neutrals affiliated with BENCHMARK, are available by contacting our Los Angeles offices by telephone at (213) 622-1002 or by consulting our website for further information at [www.BenchmarkResolution.com](http://www.BenchmarkResolution.com).

BENCHMARK’s Arbitration Rules, which may be amended by BENCHMARK without notice, may be incorporated into contracts, or may be the subject of stipulation typically entered into after the dispute has arisen and whether or not the matter may already be pending before a state or federal court. Parties may desire to utilize the following language, or, in the case of post-dispute matters, incorporate some or all of the language below:

“Any dispute, claim or controversy arising out of or relating to this Agreement [or the dispute currently the subject of the litigation identified as \_\_\_\_\_ v. \_\_\_\_\_ pending in the \_\_\_\_\_ court, Case No. \_\_\_\_\_] (collectively, the “dispute”) or the breach, termination, enforcement, interpretation or validity thereof, including but not limited to the determination of arbitrability of any the dispute, shall be determined and incorporated into a binding and enforceable Award rendered by a sole arbitrator [or a panel of 3 arbitrators] applying and subject to Benchmark Resolution Group, LLC’s then-current Arbitration Rules and procedures (the “Rules”). Notwithstanding the foregoing, except as may be inconsistent with applicable law or these Rules, the parties shall be entitled to seek provisional remedies incident to the arbitration process. Judgment on the Award of the Arbitrator (or Arbitrators, as applicable) may be entered in any court of competent jurisdiction. The Arbitrator (or Arbitrators, as applicable), may include an award of reasonable attorneys’ fees and costs, which includes arbitrator compensation, payable to the prevailing party by the non-prevailing party or parties.”

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<sup>1</sup> The term “Party” or “Parties” herein refers to the attorneys and the persons or entities on whose behalf the attorneys’ are arbitrating the matter.

**BRG Rule 1:**

Application of the Rules. While arbitrations being administered by BENCHMARK may be subject to the application of rules or procedures agreed upon by the parties, or mandated by the parties' agreements, applicable law or court orders, these Rules shall apply in all instances where the Parties have not specified the application of any other rules or procedures. As such, these Rules are deemed a part of any agreement, including any stipulation, of the Parties providing for administration of their dispute(s) by BENCHMARK. Parties may stipulate to application of these Rules in lieu of any other rules or procedures otherwise provided by contract or earlier agreement. In the event of any conflict between these Rules and any orders pertaining to the underlying case, if any, issued by a court of competent jurisdiction, the Orders of the Court shall govern.

**BRG Rule 2:**

Provisional Relief/Extraordinary Relief Arbitrator. Where not inconsistent with the Parties' agreement and applicable law, any Party shall be entitled to seek provisional relief (e.g., temporary restraining orders, preliminary injunctions, etc.) from a court of competent jurisdiction. In the event any Party requires emergency relief from one or more arbitrators prior to the appointment of same as otherwise provided in these Rules, BENCHMARK may, where not prohibited by law from doing so, appoint an Extraordinary Relief Arbitrator to consider and rule on any emergency request. It is BENCHMARK's stated objective to appoint an Extraordinary Relief Arbitrator within 1 full business day of a written request to do so. The request shall include all essential facts and applicable authority. An advance deposit shall be made by the requesting party at the time of the request for such appointment in an amount determined by BENCHMARK. In no event shall the Extraordinary Relief Arbitrator serve as the arbitrator or a panel arbitrator, if applicable, with regard to the underlying matter. Once considered for appointment by BENCHMARK, the Extraordinary Relief Arbitrator shall disclose, in writing, any known basis for objection to his or her appointment and the Parties shall have 24 hours within which to object in

writing whether founded upon the bases disclosed or otherwise. A failure to timely do so shall be deemed consent to the appointment. BENCHMARK shall consider and decide any such objection and its determination shall be final and binding upon the PARTIES. The Extraordinary Relief Arbitrator shall render his or her decision on the sufficiency of the immediate and irreparable damage claimed, as soon as reasonably practicable given the complexity of the issues presented and the exigency of the circumstances. Once the Arbitrator(s) is/are appointed to hear the Parties' disputes on the merits, such Arbitrator(s) shall then have jurisdiction over the disputes subject to extraordinary relief including the prior orders of the Extraordinary Relief Arbitrator.

**BRG Rule 3:**

Commencement of the Arbitration Process. The arbitration process shall be deemed to have commenced when BENCHMARK advises the Parties in writing that it has received the Demand or Claim, that to its knowledge all Parties have been served with the Demand or Claim, the filing fees associated therewith such commencement and all other conditions precedent have, to BENCHMARK's knowledge, been satisfied. Once commenced, an arbitration may not be terminated by a Party without agreement of all Parties or Order of the Arbitrator(s). If BENCHMARK determines that a Party has failed or refused to participate in arbitration, BENCHMARK, or the Arbitrator(s), shall advise all Parties accordingly. Where a Party obligated to participate by agreement or Court Order fails to do so, the Arbitrator(s) shall nevertheless have the authority to render appropriate relief. In the event any Party fails to timely satisfy its financial obligations owing to BENCHMARK, including making required advance deposits, the proceedings may be suspended or terminated by BENCHMARK and any time limitations shall be tolled during the interim period. The Arbitrator(s) may consider, in rendering the Award, the amounts so paid or advanced by one Party on behalf of another.

**BRG Rule 4:**

Pleadings. The Claimant shall initiate an arbitration proceeding by the filing of a Claim or Demand. The responding Party shall file an Answering Statement (setting forth affirmative defenses, if any), and Counter-Claim, if any, within 30 days of that Party's receipt of notice of commencement of the arbitration process. Any Claim or Counter-Claim to which no responsive pleading has been asserted, shall be deemed denied. The Arbitrator(s) may extend the foregoing time periods for good cause. The appointed Arbitrator(s) shall have the authority to determine the arbitrability of any dispute submitted to BENCHMARK. No claims shall be amended after appointment of the Arbitrator(s) without a finding of good cause by the appointed Arbitrator(s).

**BRG Rule 5:**

Preliminary Conference. As soon as practical after selection of the Arbitrator(s), a Preliminary Conference shall be scheduled. The Preliminary Conference shall, unless otherwise ordered by the Arbitrator(s), be telephonic. The Preliminary Conference shall include discussion of scheduling and other matters with the objective of ensuring that the arbitration shall be both fair and expedient. Matters discussed at the Preliminary Conference typically include (a) document exchanges; (b) discovery; (c) further specification of claims or defenses; (d) dispositive motion deadlines; (e) evidentiary hearing dates and applicable procedures, Final Status Conference and Further Status Conference dates; (f) briefing schedules; (g) expert designations and reports; and (h) form of the Award, etc.

**BRG Rule 6:**

Documents. It is the Parties' exclusive obligation to maintain documents pertaining to the arbitration. Other than electronic copies of pleadings (e.g., Claim or Demand, Answering Statements, etc.) which may be maintained electronically for 60 days following rendering of the Award, BENCHMARK does not maintain copies of documents served upon it. The Parties should

not provide BENCHMARK with hard or electronic copies of documents exchanged between Parties. Within 30 days following the rendering of the Award, the Parties shall have made arrangements to pick up any arbitration documents which might have been provided to the Arbitrator(s) or BENCHMARK. If no such arrangements have been made, BENCHMARK shall be entitled to destroy any such documents without further notice or liability. All Parties subject to the Rules are automatically deemed to have stipulated to electronic transmission of communications and documents from BENCHMARK. Electronic service upon a Party's counsel is deemed service upon the Party.

**BRG Rule 7:**

Consolidation or Joinder. Consolidation or joinder of pending arbitrations shall be within BENCHMARK's sole and absolute discretion. Once the Arbitrator(s) have been appointed, no consolidation or joinder shall be permitted without a finding of good cause by the appointed Arbitrator(s). If consolidation and/or joinder is permitted under these Rules, the Arbitrator(s) shall have the sole authority to determine whether or not the appointed Arbitrator(s) shall hear the consolidated or joined proceeding. Furthermore, the situs of the proceedings shall, unless otherwise ordered by the Arbitrator(s), be at the locale determined for the hearings as to the first-filed BENCHMARK arbitration.

**BRG Rule 8:**

Number of Arbitrators. Unless otherwise stipulated to or agreed upon by the Parties, the arbitration shall be heard by a sole, neutral Arbitrator. In any matter in which there is to be a panel of Arbitrators by contract or stipulation of the Parties, BENCHMARK shall determine who shall be the Panel Chair. Except in cases in which there are Party-Appointed Arbitrators, the Panel Chair may determine if, and appoint, a single Arbitrator on the Panel who shall have the authority to decide matters pertaining to discovery and pre-evidentiary hearing procedure. If any Party objects to any decision by the sole Panel member so selected, if any, the matter shall be referred

to the entire Panel for a decision. A majority decision of the Panel shall govern as to those disputes. Disputes regarding the interpretation and applicability of the Rules, and determining who are appropriate Parties to the arbitration, shall be determined by the Arbitrator(s).

**BRG Rule 9:**

Scheduling. Matters pertaining to the scheduling of arbitrations and arbitration-related matters are the province of the Arbitrator(s) taking into account the objectives of arbitration. As with all of the within Rules, where the Rules conflict with the Orders of any Court of competent jurisdiction, the Orders of the Court shall prevail and control.

**BRG Rule 10:**

Party Representatives. A Party shall be entitled to select its own counsel or representative. Parties are obligated to promptly provide BENCHMARK with the names and contact information, including email addresses, for their counsel or representatives, including with respect to any change in counsel or other representative.

**BRG Rule 11:**

Selection of Arbitrator(s). Unless the Parties have already agreed upon the Arbitrator(s), the Arbitrator(s) shall be selected by BENCHMARK providing the names to the Parties of a suitable number of qualified candidates as determined by BENCHMARK. In no event shall the suitable number be less than three times the number of Arbitrators to be selected. The biographical information pertaining to each proposed Arbitrator shall be posted on BENCHMARK's website. Within 10 days (subject to extension as determined by BENCHMARK) of service of the list upon the Parties, each side (Parties with interests not adverse to one another as to the issues to be determined) shall be entitled to strike the names of two proposed Arbitrators and the remaining proposed Arbitrators shall be ranked in order of preference. The remaining Arbitrator(s) with

the highest collective ranking of preference shall be selected to serve. If the foregoing process fails to yield sufficient selected panelists, BENCHMARK shall designate the Arbitrator(s). Absent contrary agreement among the Parties, the foregoing process shall also apply in the event any selected Arbitrator is unwilling or unable to serve as determined by BENCHMARK in its sole and absolute discretion. An Arbitrator may be challenged for cause in writing, setting forth the facts relied upon, and the remaining Party or Parties shall have seven days within which to respond to the challenge. BENCHMARK's determination as to challenges for cause shall be final.

**BRG Rule 12:**

Ex Parte Communications. Except as permitted by applicable law and subject to all applicable ethical guidelines, no Party shall have ex parte communications with any neutral Arbitrator(s).

**BRG Rule 13:**

Motions for Summary Judgment or Adjudication. The Arbitrator may permit any Party to file a Motion for Summary Judgment, Adjudication or Dismissal as to any claim or issue. Timing and scheduling shall be determined by the Arbitrator(s).

**BRG Rule 14:**

Evidentiary Hearings. The Arbitrator(s) shall determine the dates and times of the evidentiary hearings reasonably taking into account Party, counsel and witness availability keeping in mind the objectives of arbitration. The Arbitrator(s) and anyone else permitted by law, shall be entitled to compel the attendance of witnesses at any hearing by subpoena. BENCHMARK's offices shall be designated as the hearing location for all proceedings other than those which are telephonic, absent mutual agreement of the Parties and consent of the Arbitrator(s). At least five days prior to the commencement of the evidentiary hearings, the Parties shall exchange, and transmit to the Arbitrator(s) the following: pre-hearing briefs (which may be in letter format but shall in any

event specify the specific relief sought); witness (including experts) and exhibit lists. Except as otherwise agreed or ordered, the Parties shall exchange expert witness reports at that time as well. Parties are to meet and confer at least fifteen days prior to the evidentiary hearing dates in order to discuss and hopefully resolve, disputes as to admissibility of exhibits.

**BRG Rule 15:**

Subpoenas. Upon written request of a Party, all other Parties shall cause their officers and employees and others within their control to appear for evidentiary hearings without necessity of issuance of any subpoenas. The Arbitrator(s), and any Party authorized to do so by applicable law, shall have authority to issue subpoenas, not only for the evidentiary hearings themselves, but also for pre-evidentiary hearing matters including, as applicable, depositions. Subpoenas may issue for personal attendance and/or for production of documents. The Arbitrator(s) shall be empowered to decide objections and shall do so as quickly as reasonably possible in order to avoid delaying proceedings whenever possible.

**BRG Rule 16:**

Conduct of Evidentiary Hearings. The order of proof and other issues pertaining to the evidentiary hearings, including whether to conduct all or some of them via remote means, shall be determined by the Arbitrator(s) consistent with these Rules. The Arbitrator(s) shall have the authority to vary from these Rules in order to ensure the hearings are fairly administered with the objective of achieving substantial justice. It is the intent of these Rules that relevant, material evidence should be considered. However, the Arbitrator(s) may limit or exclude cumulative testimony and/or other evidence if the probative value of same would be outweighed by confusion of issues or if such evidence would result in an undue consumption of time. The decision of the Arbitrator(s) may be based upon broad principles of justice and equity, and in doing so may expressly or impliedly reject a claim that a Party might successfully have asserted in a judicial action. The Arbitrator(s) shall decide issues of privilege, including attorney-client and



work product, consistent with applicable law irrespective of the fact that the rules of evidence need not be strictly followed in arbitration. The Arbitrator(s) shall not consider matters subject to mediation confidentiality however where participation in mediation is a condition precedent to an award of fees or costs, the Arbitrator(s) shall be entitled to consider the fact, but not the quality, of participation in mediation. Witnesses shall testify under oath or by affirmation. The Arbitrator(s) may permit testimony by way of video conference or similar means provided other Parties have had, or shall have, the opportunity to attend and/or cross-examine those witnesses. In all instances, the Arbitrator(s) shall have the authority to admit testimony or other evidence, subject to the weight the Arbitrator(s) deem(s) appropriate. The Arbitrator(s) may exclude persons from attending some or all of the proceedings including for example, party-affiliated witnesses, before testifying. Generally, each Party shall be entitled to have one Party representative attend the proceedings irrespective of whether or not that representative may be a testifying witness.

**BRG Rule 17:**

Reporters. Any Party may utilize the services of a court reporter for any proceedings. If a reporter is to be utilized for telephonic proceedings, the Arbitrator(s) and all Parties shall be given reasonable advance written notice of same. Parties are encouraged to discuss a sharing of costs associated with a stenographic record. If the Parties agree to share the cost of a stenographic record, it shall be provided to the Parties and the Arbitrator(s). Absent such agreement, or the agreement of the Party paying the costs of same to share the stenographic record with all other Parties (but in compliance with the rules of the reporter), the stenographic record may not be provided to the Arbitrator(s) or otherwise utilized in the proceedings for any purpose. No sound recording of any proceedings, whether in person or telephonic, shall be made without the express, written, prior consent of the Arbitrator(s) and only after notice to the Parties so they may object to or comment on the request.

**BRG Rule 18:**

Confidentiality. Arbitration proceedings are intended to be confidential and shall remain so subject only to applicable law as well as pertaining to any court or other public proceedings to enforce, confirm, modify or vacate an Award. The Arbitrator(s) shall have authority to enforce the confidentiality of arbitration proceedings. The Arbitrator(s) shall also have authority to protect privacy rights including those pertaining to trade secrets and other non-public information.

**BRG Rule 19:**

Evidentiary Hearings on Papers. The Parties may, subject to agreement of the Arbitrator(s), waive in-person or telephonic evidentiary hearings and have some or all of the matter to be decided based solely on submissions by the Parties. The terms of any such proceeding shall be agreed upon by the Parties, with the involvement of the Arbitrator(s).

**BRG Rule 20:**

Awards. At the time the Arbitrator(s) determine(s) the evidentiary hearings have been completed, including final submission of all additional material to be provided, the Arbitrator(s) shall declare the hearings "closed". In the event the Parties are to engage in post-closing briefing or there are other matters which are to be considered before the matter is deemed submitted, the Arbitrator(s) may defer closing until those conditions have been satisfied. The Arbitrator(s) shall have authority to reopen hearings, whether at the request of a Party or not, provided there is a finding of good cause to do so. Such finding need not be in writing but shall be presumed if the hearings are so reopened. Any deadlines pertaining to the preparation of an Award based on the closing of hearings shall be calculated utilizing the date the Arbitrator(s) deem(s) the hearing finally closing. Nothing in these Rules prevents the taking of testimony by affidavit if determined appropriate by the Arbitrator(s) consistent with the objectives of arbitration.

**BRG Rule 21:**

Form of Award. The Arbitrator(s) should render a Final or Interim Award within 30 calendar days following closing of the evidentiary hearings. All Awards are to be in writing and signed by the Arbitrator(s). Electronic signature of the Arbitrator(s) shall suffice. An Award shall be either simple or reasoned in form, or, as otherwise agreed upon by the Parties subject to the reasonable consent of the Arbitrator(s). In the event there are matters requiring further determination (e.g., attorneys' fees to be awarded), an Interim Award, followed by the Final Award, shall issue. In the event of multiple arbitrators, the majority of the Panel shall render the Award. Whether or not part of the Award, the Arbitrator(s) shall have the authority to grant interim or provisional relief as necessary including temporary restraining orders and injunctions. Such relief may be conditioned on the posting of security or other actions as deemed appropriate by the Arbitrator(s). Consistent with the Parties' agreement or applicable law, the Arbitrator(s) may allocate costs as well as reasonable attorneys' fees. Awards need be served only by first class mail. Furthermore, the Parties may agree in writing to limit an Award (e.g., "high-low recoveries") or to other conditions with respect to the amount or other relief to be awarded. In such event, the Parties shall provide such agreements in writing to BENCHMARK but not to the Arbitrator(s). The Final Award shall thereafter be corrected in accordance with the Parties' agreement and all Parties consent to such correction.

**BRG Rule 22:**

Correction of Award. Within 10 days of issuance of the Award any Party may request the Arbitrator(s) correct an Award whether based upon computational or other errors in calculation. Other Parties may object to any proposed correction requested by a Party by doing so within 5 days of notice of the request. In addition, the Arbitrator(s) shall have the authority to correct any Award on any basis by advising the Parties of not less than 10 days of any such intention to do so. The Arbitrator(s) may extend the time for corrections upon a finding of good cause.

**BRG Rule 23:**

Challenging an Arbitrator After Appointment. Any basis for challenge of an Arbitrator is to be asserted at the earliest possible time and shall be communicated to the Arbitrator(s) or BENCHMARK in writing with a copy to all other Parties. The basis for the challenge shall include all relevant details sufficient for assessment and response, if a response or objection is deemed necessary. A failure to provide prompt, detailed notice of challenge shall be deemed a waiver by the challenging party as to the continued service by such Arbitrator(s).

**BRG Rule 24:**

Arbitrator as Settlement Officer. Upon consent of all Parties in writing, an Arbitrator may act as mediator or other settlement officer of the case. Such consent shall provide that the Arbitrator's service with regard to settlement shall not constitute a basis to disqualify or challenge the Arbitrator from serving as Arbitrator or as a basis to vacate or modify an Award. With the consent of all Parties, the Arbitrator(s) may, but shall not be required to enter a Consent Award. If the Arbitrator(s) object(s) to entry of a Consent Award (e.g., due to concerns of illegality or other impropriety), the Parties shall be notified of the reasons and the Arbitrator shall be entitled to withdraw as Arbitrator at that time without consequence or penalty.

**BRG Rule 25:**

Arbitrator Disqualification and Exclusion of Liability. No Arbitrator or BENCHMARK staff member, member or principal, shall be compelled to appear and/or testify, whether as expert or percipient witness, regarding an arbitration, whether or not completed, or as to any arbitration proceedings, in any subsequent litigation or proceeding in which the Parties or any of them, or any of their successors or assigns, are involved whether directly or indirectly. The Parties shall defend any such Arbitrator, or BENCHMARK staff member, member or principal, and shall be responsible for payment of all fees and costs, including attorneys' fees incurred in objecting

and/or defending such persons. Nor shall any Arbitrator or BENCHMARK staff member or member or principal be deemed a necessary party to any litigation or proceeding relating to any Arbitration or arbitration proceeding. By utilizing these Rules, the Parties and each of them, for themselves and all others claiming by or through them, agree that neither the Arbitrator(s) nor any staff member, member or principal of BENCHMARK shall be liable to any Party (including any person or entity claiming by or through any of them), for any loss, cost, expense, damage or other injury in connection with or arising from any arbitration conducted pursuant to these Rules. Such exclusion of liability shall include but not be limited to any liability associated with disqualification or recusal of an Arbitrator.

**BRG Rule 26:**

Sanctions. The Arbitrator(s) shall have the authority to impose monetary and/or other sanctions as deemed by the Arbitrator(s) as appropriate. These may include an assessment of costs of opposing Party's counsel's fees and of arbitration fees including Arbitrator's compensation. Such sanctions may result from, for example and without limitation, the failure to comply with discovery or other obligations or to comply with orders of the Arbitrator(s). Non-monetary sanctions which may be imposed include exclusion of evidence, drawing inferences adverse to a Party, and/or determining issues adversely to a Party.

**BRG Rule 27:**

Responsibility for Payment of Fees, etc. Absent agreement to the contrary, or as otherwise required by law, each Party shall be responsible for its pro rata share of BENCHMARK's fees, costs and charges as set forth in the most current schedule. BENCHMARK's agreement to participate as the provider of arbitration services is made with the Parties and their counsel. Parties who share interests which are not adverse to one another shall be jointly and severally liable for the fees and costs associated with their non-adverse Parties. In the event of any delinquency in payment of amounts due BENCHMARK, BENCHMARK may immediately suspend the proceedings

(i.e., an “administrative hold”). An unresolved administrative hold may result in dismissal of the arbitration matter following notice to the Parties. At any time, a Party may agree to advance the amounts due BENCHMARK otherwise due from another Party. In such event, any Award may include reimbursement to the advancing Party of all such sums so advanced, irrespective of any entitlement to fees and costs otherwise. Furthermore, any Party who has failed to pay sums due BENCHMARK, including deposits, may be precluded from offering evidence in support of any affirmative claim of that Party during the proceedings.

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# BENCHMARK

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