



## Order and Procedures for a Virtual Hearing via Videoconference

AAA® is providing this document as a model or template which the arbitrator and the parties can modify to fit the specific needs of their specific case. The model order may not be a good fit for every AAA case, but even in those situations it may provide guidance as to issues the arbitrator and parties could consider. Based on the circumstances of the specific case before them, an arbitrator or parties may make decisions or take actions different from those noted below.

### 1a. Agreement to Videoconference: [if it's been agreed to]

- A. The parties and the panel/arbitrator agree that the hearing in this case will be conducted via [Platform Name] videoconference. This confirms that the hearing will be deemed to have taken place in [locale/place of arbitration].
- B. The parties acknowledge that they have made their own investigation as to the suitability and adequacy of [Platform Name] for its proposed use for the videoconferenced hearing and of any risks of using [Platform Name], including any risks regarding its security, privacy or confidentiality, and they agree to use [Platform Name] for the hearing.

[or]

### 1b. Order for Videoconference Hearing: [if ordered by the arb/panel & not agreed to by all Ps]

- A. The arbitrator/panel hereby orders that the hearing in this case be conducted via [Platform Name] videoconference in accordance with the procedures set forth below. This confirms that the hearing will be deemed to have taken place in [locale/place of arbitration].
- B. The arbitrator/panel notes the [claimant's/respondent's/other parties'] objections to holding the hearing via [Platform Name]. The arbitrator/panel finds, however, that conducting the hearing via videoconference is a reasonable alternative to an in-person hearing in light of the COVID-19 pandemic, stay-at-home orders, and travel limitations. Videoconferencing technology will provide the parties a fair and reasonable opportunity to present their case and will allow the hearing to move forward on the dates previously scheduled instead of postponing the hearing to a future date.

### 2. Hearing Record and Recording:

- A. The parties and panel/arbitrator agree that the hearing [will/will not] be transcribed by a court reporter. [If yes – The parties and panel/arbitrator agree that the court reporter's transcript will be the official record of the hearing. Regardless of physical or remote attendance, the court reporter may interrupt attorneys, witnesses, or the arbitrator/panel as needed to clarify items for the record.]
- B. The parties and panel/arbitrator agree that the hearing's audio and video [will/will not] be recorded through [Platform Name]. [If yes – The parties and panel/arbitrator agree that the video conferencing platform's recording [will/will not] be the official record of the hearing [if a court reporter is not transcribing the hearing]. The



parties and panel/arbitrator agree that the recording [will/will not] be made available to all counsel and panel members after the hearing concludes [on request/and the Chair/host will send a link to the recording as soon as is practicable after each hearing day concludes/after the hearing concludes]. The panel/arbitrator will control when the hearing is on and off the record.]

- C. The parties and counsel agree that they will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it, except as is provided for in this Order. The parties and counsel will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges and agrees to this prohibition on recording.

**3. Technical Aspects:**

- A. Invitations to Access Hearing: The [AAA case manager/arbitrator/one of the panel members] will invite attendees via email to join the [Platform Name] hearing. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.

In order to facilitate e-mail invitations for the hearing, no later than XX, the parties shall circulate to the AAA a list of each attendee's name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).

**B. Advance Testing of System:**

- i. At least one week before the hearing, counsel and the panel/arbitrator will test the videoconferencing system to ensure that all arbitrators and counsel can connect and that their video and audio systems work (and noting camera settings, lighting, delays/time lags, clarity, volume, feedback, and other sound disruptions).
- ii. Each party will be responsible for testing the videoconferencing system with each of their witnesses, including any third-party witnesses that party has subpoenaed, who will be attending virtually (as opposed to in counsel's offices). Each party also is responsible for ensuring that all logistical requirements of this Order are satisfied.
- iii. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants.
- iv. Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.

**C. Back-Up Conference Call Line:**

The parties/AAA shall reserve an optional dial-in conference call number in case one or more participants has poor quality computer audio (after trying the audio connection through the computer-- with and without a headset – and by phone).

**D. Hearing Participants:**

- i. Each party will inform the panel/arbitrator and all other parties/counsel [XX] days before the hearing the names of all persons who will attend, participate in or will be able to hear any communications in the



hearing using [Platform Name], including any technicians assisting the party or counsel. The parties agree that no persons will attend, participate or be allowed to listen in on the hearing without the prior consent of all parties and the panel/arbitrator.

- ii. If the arbitrator/any panel member plans to have a technician present with them or available to assist them in person, they will communicate to counsel [and the other panel members] the technician's name and affiliation at least [XX] days before the hearing.
  - iii. Each attendee of the virtual hearing shall disclose at the start of each hearing session all people in the room with the attendee. Should an individual join the attendee after the hearing session has begun, that individual should be identified to counsel and the panel/arbitrator at the earliest opportunity.
  - iv. During the videoconference, the participants [or the witness] shall always be in view of the camera. If two or more people are attending the hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.
  - v. At the Chair's/arbitrator's request, unknown participants shall identify themselves by showing a piece of identification to the camera or by responding to the panel's/arbitrator's questions regarding their identity.
- E. Ensuring Good Audio/Video:** Hearing participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should:
- i. consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
  - ii. use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the platform (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
  - iii. eliminate any background noise;
  - iv. consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);
  - v. access [Platform Name] via desktop or laptop rather than by smartphone or tablet;
  - vi. ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
  - vii. not join the hearing from a public setting or using unsecured, public wifi to ensure the privacy and security of the hearing.
- F.** All counsel shall endeavor to speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
- G.** All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to opening statements, closing arguments, or other arguments, shall maintain their audio on mute to limit potential interruptions. The video hearing host and co-host [if any] also will have the ability to mute and unmute any participant if needed.



- H. For each person participating in the video conference, there shall be sufficient microphones to allow for the amplification of the individual's voice, as well as sufficient microphones to allow for the accurate transcription or recording of the participant's speech as appropriate.
  - I. Each participant in the hearing shall have accessible a computer or other device with email [and a printer to which the device can print exhibits or other documents if needed].
4. Witnesses and Exhibits:
- A. With the exception of the parties' corporate representatives and expert witnesses, who may attend the entirety of the hearing, all witnesses are to be sequestered until they testify. [If recording video - Witnesses shall be advised in advance by the party calling them that their testimony will be recorded.]
  - B. Witnesses should follow the below practices:
    - i. A witness shall give evidence sitting at an empty desk or table, and the witness' face shall be clearly visible in the video.
    - ii. To the extent possible, the webcam should be positioned at face level, relatively close to the witness (e.g., by positioning a laptop on a stack of books).
    - iii. Witnesses may not use a "virtual background." Instead, the remote venue from which they are testifying must be visible.
    - iv. Witnesses should speak directly to the camera while testifying.
    - v. Witnesses should avoid making quick movements.
    - vi. All non-party or expert witnesses shall sign-off from the [Platform Name] session at the conclusion of their testimony.
  - C. At any time, the Chair may ask a witness to orient his or her webcam to provide a 360-degree view of the remote venue in order to confirm that no unauthorized persons are present; any authorized persons (counsel, etc.) in the room with the witness must be identified at the start of the witness' testimony.
  - D. In accordance with the provisions of this Order, the Chair shall instruct each witness about: (i) what to do in the event of a disconnection or other technical failure; and (ii) the impermissibility of any unauthorized observers or recordings of the hearing.
  - E. Hearing exhibits:
    - i. Before the hearing, counsel shall provide each witness with a clean, unannotated hard copy set of exhibits to be referred to during the witness' evidence, as well as a clean, unannotated copy of his or her witness statement [if any]. At any time, the Chair/arbitrator may ask a witness to display the set of exhibits and/or witness statement and verify that they do not bear any annotations. Witnesses shall not be aided by any notes, unless permitted by the Panel/arbitrator upon motion for good cause.
    - ii. The parties may agree on utilizing a shared virtual document repository (*i.e.*, document server) to be made available via computers at all participants' locations, provided that the parties use best efforts to ensure the security of the documents (*i.e.*, from unlawful interception or retention by third parties). If available, a



separate display screen/window (other than the screen/window used to display the video transmission) shall be used to show and display the relevant documents to the witness during the course of questioning.

**5. Hearing Schedule & Logistics:**

- A.** The hearing shall commence on \_\_\_\_\_, 2020, and it will be begin at 9 a.m. [time zone], with morning, lunch, and afternoon recesses at such times as the Panel determines in its discretion are appropriate, and the hearing shall continue on \_\_\_\_\_ as may be necessary. It is recommended that all participants access the virtual hearing room early [each day of hearing]. The Panel may take additional recesses and adjust the hearing schedule, in its discretion, to facilitate a smooth and efficient hearing.
- B.** The hearing schedule, and the daily schedule, will take into account that extra time may be needed if there are technical problems that cause delays.
- C.** Upon joining the [Platform Name] hearing, participants will be admitted to a virtual Waiting Room [if offered by the platform]. The panel/arbitrator will admit all participants to the hearing at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the [Platform Name] meeting during any recess. However, lines may be muted during this time, and the Panel may move participants to “break-out” and/or the virtual Waiting Room.
- D.** The panel/arbitrator will disable the private “chat” function in [Platform Name]. The arbitrator/panel may use a virtual “break-out” room to confer privately. The arbitrator/panel may also use virtual break-out rooms to facilitate private conversations between other case participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the arbitrator/panel and witnesses).

**6. Technical Failure:**

- A.** Should one party’s or participant’s videoconferencing connection fail, the panel/arbitrator will ask the counsel remaining on the videoconference to mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications. Once the panel/arbitrator sees that the dropped participant has rejoined the videoconference, the remaining counsel should unmute their audio and turn on their video.
- B.** If a participant is disconnected from the videoconference or experiences some other technical failure and connection cannot be re-established within a 5-minute interval:
  - i.** the arbitrator/panel may take steps to “pause” the hearing, which may include moving participants into a virtual waiting room or one or more separate break-out rooms, and the parties agree to pause proceedings as needed to accommodate any reconnections or technical issues;
  - ii.** such participant shall e-mail all hearing attendees, by replying all to the [Platform Name] invitation circulated by the arbitrator/panel, and shall monitor e-mail for any further instructions from the arbitrator/panel [or – The parties and participants shall use telephone communication to indicate if any party, attorney, or witness has been dropped from the hearing due to a connection problem or other technical issue. Unless agreed otherwise, \_\_\_\_\_ [name and number] \_\_\_\_\_ is the designated person and number to contact in the event that parties, counsel, or witnesses are disconnected.]



- C. If the videoconferencing system fails to work such that the hearing cannot take place as scheduled, or if the panel/arbitrator determines that the videoconferencing system otherwise does not allow the parties to adequately present their case or that it would be unfair to any party to continue the hearing via videoconference, the panel/arbitrator may reschedule the hearing or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.
7. Costs of Videoconferencing: The parties agree that the costs of using [Platform Name] for the hearing will in the first instance be borne equally between them, 50% to Claimant and 50% to Respondent [if not equally split, or if more than 2 parties, need to specify how to allocate costs]. [For Consumer or Employment cases – The parties agree that the costs of using [Platform Name] for the hearing will in the first instance be borne 100% by the business/employer.]

For the avoidance of doubt, the parties agree that those costs are included in the costs of the arbitration, as specified in the applicable Rules and are subject to allocation by the panel/arbitrator in any final award.