

## **GUIDELINES FOR VIRTUAL ARBITRATION PROCEEDINGS**

*These guidelines address circumstances that are unique to a virtual arbitration proceeding. They are intended to assist the Tribunal and Parties in an arbitration by supplementing procedural terms that otherwise govern the conduct of the proceeding. They can also be readily adapted for use where some participants are together in a location and others, such as a witness, appear remotely. While these guidelines are intended for use with the Zoom cloud conference facility, they can be adapted for use with other similar platforms.*

### **1. Videoconferencing Platform and Virtual Hearing Support Functions**

**1.1 Platform.** Utah ADR Services has selected the Zoom platform for enabling virtual arbitration proceedings. This is not intended to be, nor shall it constitute, an endorsement of Zoom, nor a warranty or guarantee that the Zoom platform will perform as intended, provide adequate security, privacy, or functionality. It is a measure taken, in light of the unusual circumstances facing the legal profession and the world at this time, to be able to move forward with the administration of justice and the resolution of disputes in a practical manner. The use of Zoom will require the consent of all parties and counsel and a waiver of any liability of Utah ADR Services and the Arbitrator(s) for the performance of the Zoom technology.

**1.2 Download Zoom App.** Well ahead of the arbitration, each participant shall download the free Zoom app to the device(s) that will be used for the arbitration. For desktops and laptops, go to [www.zoom.us](http://www.zoom.us), sign up and download the app to your desktop or laptop. It's free and download time is minimal. If you plan to use a tablet or iPad, go to your app store and search on "Zoom Cloud Meetings" and download the app to your device. Downloading ahead of time will save time when joining Zoom meetings originated by any other "Host." It will also enable you to use the Zoom conferencing app yourself for free, with certain limitations.

**1.3 Assistance of Hearing Support Provider.** The Utah ADR Services Case Manager, who is trained in Zoom, will be available at all times during the proceeding to assist with technical issues that may come up. All Participants and the Case Manager will exchange contact information in advance of the hearing so immediate attention can be given off-line to any technical problems that may arise.

**1.4 Costs.** Utah ADR Services is providing hearing support at no cost to the Parties. Administrative costs and neutral fees are incurred at the same level as traditional proceedings. Unless advised otherwise in writing by the parties, costs shall be borne equally by the parties.

**1.5 Venue.** Although Participants may be located in different places, the venue for this proceeding shall be deemed to be that venue specified in the agreement between the Parties. If no venue is specified, the venue shall be Utah.

### **2. Preparation by Participants**

**2.1 Equipment.** Each participant in the proceeding – arbitrators, counsel, party witnesses and representatives, and if applicable, court reporters, and interpreters, (each

a “Participant”) -- shall be required to test the compatibility of that Participant’s equipment (e.g., laptop, desktop computer, webcam, headphones) with the Zoom platform, reasonably in advance of the group test session described below. Each Participant is responsible for ensuring the compatibility and functioning of that Participant’s equipment.

2.1.1 **Screen Size.** No Participant shall use a device with a screen size, measured diagonally, of less than 11 inches (*i.e.*, smartphones are not permitted except with the approval of the Tribunal for exigent circumstances).

2.1.2 **Two Screens.** It is preferable for each Participant to have two screens available, so that one may be used to display the videoconference proceeding and the other may be used to display documentary and demonstrative exhibits (loaded onto the second device in advance). See the instructions on management of exhibits below.

2.1.3 **Bandwidth.** Each Participant is responsible for ensuring that each Participant’s physical location for the hearing has adequate internet bandwidth available during the hearings to support the use of the Zoom platform without interruption. Other users of the Participant’s LAN should be instructed to avoid computer processes that will use substantial bandwidth during the Participant’s involvement in the proceeding.

2.1.4 **Camera.** Participants must locate their webcams so that the Participant appears, well lit, against a not-distracting background, with only head and shoulders visible. Backlighting should be avoided.

## 2.2 **Orientation Program.**

Each Participant shall participate in one or more on-line orientation or training programs offered by Zoom ([www.support.zoom.us](http://www.support.zoom.us)) to familiarize themselves with the Zoom platform’s features and operation, unless the Participant represents to the Tribunal that the Participant has substantial and successful prior experience with the Zoom platform.

## 2.3 **Witness Familiarity.**

Counsel shall be responsible for ensuring that all witnesses called by the Party whom counsel represents are familiar with the Zoom platform and have suitable equipment to participate in the proceeding without delays attributable to inadequate familiarity with the Zoom platform or inappropriate equipment. The Party calling a witness shall take reasonable steps to ensure that the witness is able to participate in the videoconference with one device and review exhibits on the other. Counsel for the Party calling the witness shall conduct a test session with the witness in advance of the proceeding in which the witness practices use of both the Zoom platform and the process to view any electronic exhibits.

## 2.4 **Test Session.**

2.4.1 **Process.** At least 48 hours before the scheduled start of the proceeding, or such shorter time as the Tribunal approves in light of exigent circumstances, all Participants (not including non-party witnesses) shall participate in a non-substantive test session devoted solely to the operation of the Zoom platform. The test session shall enable each

Participant to conduct all activities that Participant is expected to take part in during the proceeding. For example, all counsel who will be examining a witness, or representing a witness during cross-examination, shall engage in a short “mock” examination during the test session (on a subject unrelated to the proceeding); such mock examinations shall include the use of documentary exhibits and include objections by defending counsel and the use of an interpreter, if applicable. Counsel who will address the Tribunal shall practice doing so, without any reference to the factual or legal issues in the proceeding.

**2.4.2 Breakout Rooms.** The test session shall briefly include use of the Breakout Room function, including by the Tribunal and counsel for each side.

**2.4.3 Equipment.** The test session shall enable the Tribunal to review the camera angle, background, and lighting used by each Participant to ensure that they are acceptable. Participants shall use the same attributes during the proceeding as they used during the test session.

**2.4.4 Exhibit Management.** The test session shall include each Participant accessing the electronic exhibit files that each Participant has downloaded into the Participant’s own device in advance of the test session. For that purpose, the Parties shall each include at least one non-substantive “test” document in the electronic document files they have made available to Participants for use in the proceeding.

### **3. Oaths.**

The Tribunal has satisfied itself that it has the legal authority to administer the Oath in connection with this proceeding, and that the Oath will be fully binding upon all who take it. If any Party wishes to challenge this position, they are to do so within 10 calendar days of receiving these Guidelines by advising the Tribunal and all Parties thereof. The Tribunal will schedule briefing and a hearing, as appropriate, to resolve this issue well ahead of the hearing.

### **4. Interpreters.**

If any witness or other Participant requires the use of an interpreter, the Tribunal, in consultation with the Parties, shall determine whether interpretation shall be consecutive or simultaneous and appropriate technical arrangements made and tested for interpreter participation.

### **5. Requirements During the Proceeding**

**5.1 Advance Log-On.** All Participants shall log on to the Zoom platform at least 10 minutes in advance of the scheduled start time of the proceeding. The proceeding shall not begin until the Tribunal has satisfied itself that all necessary Participants are adequately connected to the Zoom platform.

**5.2 Emergencies During Hearing.** The Case Administrator shall be notified off-line, in accordance with previously exchanged contact information, of any emergency arising out of technical difficulties during the hearing. Logging off and back in again will often solve a problem. In the event the problem cannot be resolved in a reasonable time, the Tribunal shall confer with the Parties off-line, in a conference telephone call arranged

by the Case Administrator, to provide a reasonable solution to the problem in terms of scheduling, format, timing, etc., consistent with the interests of justice and practicality. Other emergencies will be managed in a similar manner by the Tribunal.

**5.3 No Multi-Tasking.** All Participants shall devote their full attention to the proceeding. Multi-tasking is not permitted, except counsel may work as appropriate on matters related to the proceeding.

**5.4 Disclosure of Participants.** At the outset of the proceeding each Participant shall identify any other persons present at the Participant's location. Each Participant has an ongoing obligation to alert the Tribunal and other Parties if any additional person joins the Participant, and shall represent at the beginning and end of each session that the Participant has fully disclosed all persons who have or had access to the proceeding or any portion of it.

**5.5 Confidentiality.** The Parties shall take all steps necessary to ensure the confidentiality of the proceeding. No person shall have access to the live video and/or audio feed of the proceeding other than disclosed Participants.

**5.6 Recording and Transcription.** Without the advance written authorization of the Tribunal, no Participant may record, broadcast, take screen shots of, or copy any part of the proceeding. Zoom offers a recording and transcription facility available to the Tribunal in appropriate cases. The Tribunal and the Parties shall confer in advance of the hearing to determine whether recording, transcription, or both, will be utilized in the proceeding. Any issues regarding the accuracy of a transcript will be resolved by the Tribunal.

## **6. Documents and Witness Examinations**

**6.1 Advance Distribution of Exhibits.** For any proceeding in which documentary or demonstrative exhibits will be used, the Parties shall confer and report to the Tribunal at the final Case Management Conference, approximately 30 days in advance of the hearing, absent exigent circumstances warranting a shorter time period approved by the Tribunal, how they propose to enable Participants to see and review such exhibits. The Parties shall make a good-faith effort to stipulate to the admissibility of as many of the exhibits as reasonably possible, so they can be utilized efficiently at the time of the hearing. While assembling and sharing exhibits, counsel and self-represented parties are reminded of their responsibility to protect the privacy of individuals, such as social security numbers, taxpayer identification numbers, and the like. See generally F.R.C.P. 5.2(a) and (b), and, if needed, seek guidance from the Tribunal early in the proceedings about procedures to be followed.

**6.2 Management of Electronically Stored Information.** If electronic access to documents is to be utilized during the hearing, the Parties shall agree upon a method of making the exhibits available to all Participants who will need them. Such Participants shall download such files into the Participants' own second devices before the test session required above. The Parties shall provide the relevant exhibits to the witnesses in advance of the proceeding, but are not obligated to do so to the extent such advance

disclosure would, in the good-faith opinion of the Parties' counsel, risk jeopardizing the full and fair presentation of a Party's case. If any exhibit is withheld for presentation at the time of the hearing, the Party withholding that exhibit shall have devised a reasonable method of revealing the exhibit at the hearing that will not cause unreasonable delay.

**6.3 Hard-Copy Exhibits.** Any member of the Tribunal may request, upon at least 10 days' notice to the Parties, to receive some or all exhibits in hard copy. If hard-copies are to be utilized during the hearing for the presentation of evidence, they shall be made available to the applicable witness and all Parties at least 10 calendar days before the hearing.

**6.4 Counsel Responsibility.** Counsel shall be responsible for arranging for any witness to be examined by that counsel, on direct or cross-examination, to have full and fair access to any exhibits upon which the witness may be examined or to which reference is made during the witness' examination.

**6.5 Telephone Testimony.** In exceptional circumstances the Tribunal may permit a witness to testify by telephone, provided the Tribunal is satisfied that in view of the nature of the witness and the subject of the testimony, a telephonic examination will be fair and not prejudice the presentation of the case of any Party. Any Party considering offering testimony by telephone or affidavit shall disclose that intent at the final Case Management Conference so the issue can be appropriately managed ahead of the hearing.

## **7. Enforcement.**

The Parties, by participating in this proceeding, agree that the award and any orders made by the Tribunal shall have the same force and effect as if they were the result of an in-person arbitration proceeding. No Party will seek to vacate or oppose enforcement of any order or award on the basis that the arbitral hearing was conducted by remote videoconference.

## **8. Management of Objections to These Guidelines**

In the event any Party takes issue with any of these Guidelines, that Party shall so indicate, without substance of the objection, in an email to the Tribunal and all other Parties within 10 calendar date of receiving these Guidelines. The Tribunal will thereupon promptly set a telephone conference to decide upon a process for dealing with the objection or objections so a prompt decision can be made concerning the Guidelines that will be applicable. Upon ruling, or if there are no timely objections, these Guidelines will govern the management of the proceeding.

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