



**NATIONAL ARBITRATION AND MEDIATION**

**COMPREHENSIVE DISPUTE  
RESOLUTION RULES AND  
PROCEDURES AS ADAPTED FOR  
SEAFARER/CREW-MEMBER  
EMPLOYMENT ARBITRATIONS**

*(Effective 10/1/15)*

**NAM (National Arbitration and Mediation)**  
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## **SCOPE OF RULES**

### **RULE NO. 1: APPLICATION OF RULES**

All rules set forth herein are NAM's (National Arbitration and Mediation) Comprehensive Dispute Resolution Rules and Procedures as adapted for Seafarer/Crew-Member Employment Arbitrations (hereinafter "Seafarer Rules") and shall govern binding Arbitrations of employment-related disputes that are administered by NAM by the parties' mutual agreement to use these rules or pursuant to any written agreement between the parties.

These rules are designed to secure the most expeditious, private and inexpensive resolution and determination of every case, whether in law or equity.

The parties are free to enter into a mutually executed written agreement at any time to amend or modify any of NAM's Seafarer Rules for the purpose of their case. Such amendments/modifications would be subject to NAM's review and acceptance.

It is within NAM's sole discretion to accept or reject any case for administration.

### **RULE NO. 2: DEFINITIONS**

For purposes of these Rules, the following definitions apply:

- A. **Arbitration Agreement** – any written agreement between the parties to resolve a dispute, claim or controversy through binding Arbitration.
- B. **Arbitration Hearing** – any proceeding in which disputes, claims or controversies are resolved, including:
  - a. **In-Person/Oral Arbitration Hearing** – any proceeding in which an Arbitrator entertains oral testimony or arguments and reviews documents and evidence to render an award or judgment. The hearing may be conducted in-person or via telephone.
  - b. **Arbitration based on Written Submissions** – any proceeding in which the Arbitrator reviews documents, evidence or property and bases his or her decision solely on the documentary evidence presented to him or her.
- C. **Arbitration Notice** – a written notice which the Claimant files and serves upon the Respondent and NAM to initiate the claim and request Arbitration. Also referred to as a Demand For Arbitration.
- D. **Arbitrator** – an individual conducting Arbitration Hearings.

- E. **Award** – any binding award issued by an Arbitrator establishing the final rights and obligations of the parties. A judgment may be entered for enforcement in a public court pursuant to the rules of the relevant jurisdiction for enforcement of arbitral awards.
- F. **Claim** – any claim seeking a remedy or relief submitted by one party against other parties including an initial claim, counter or cross claim.
- G. **Claimant** – any party initiating an Arbitration and making a Claim under these Rules and Procedures.
- H. **Comprehensive Dispute Resolution Rules and Procedures as adapted for Seafarer/Crew-Member Employment Arbitrations** – the rules and procedures administered by NAM to assist parties to resolve disputes that may arise pursuant to the Seafarer Agreement.
- I. **Deposition** – testimony under oath that is written down or recorded for use in legal proceedings at a later time.
- J. **Document** – any writing or data compilation containing evidential information such as facts, opinions, statements, reasons, descriptions, legal arguments or any other information in any form such as an agreement, record, correspondence, tape, disk, request, notice, affidavit, memorandum or other writing. Documents shall include, but not be limited to, all written notifications and communications, pleadings, reports, photographs, bills, receipts, invoices, records maintained in the ordinary course of business, medical reports, contracts and any other written documents.
- K. **Fee Schedule** – the then current NAM Fee Schedule in effect at the time of the filing of the claim which is subject to NAM’s Seafarer Rules and which is made a part of these Rules and incorporated by reference herein.
- L. **Interim Order** – any order providing temporary or preliminary relief pending a final Award.
- M. **Interrogatory**-a formal or written question asked to a witness, usually requiring an answer under oath.
- N. **NAM** – the administrator of NAM’s Seafarer Rules, headquartered at 990 Stewart Avenue, First Floor, Garden City, NY 11530; telephone # 800-358-2550; fax #: 516-794-8518; email address: Seafarerarb@namadr.com.
- O. **NAM Administrator** – the individual or individuals appointed by NAM to administer NAM’s Seafarer Rules. Unless specifically directed to do so by the NAM Administrator or the Arbitrator(s), all communications among the parties and NAM, whether verbal or written, should be addressed to the NAM Administrator at 990 Stewart Avenue, First Floor, Garden City, NY 11530 or to the designated NAM electronic mail address:

Seafarerarb@namadr.com. The NAM Administrator may, in his or her discretion, appoint a NAM employee or employees to assist in the administration of a claim submitted to NAM.

- P. **Order** – any order issued by an Arbitrator establishing specific rights and obligations of the parties.
- Q. **Party** – any individual or entity who makes a claim or against whom a claim is made, including Claimants and Respondents.
- R. **Registered Agent**- any individual or entity designated by the cruise line/ship owner as the point of contact and/or service for any claim(s)/Demand(s) for Arbitration filed in accordance with NAM’s Seafarer Rules.
- S. **Representative** – any individual, including an attorney, who is designated to represent a party in an Arbitration.
- T. **Respondent** – any party against whom a claim is made.
- U. **Response** – a written response by the Respondent to an Arbitration Notice/Demand filed by the Claimant.
- V. **Sanctions** – may include the dismissal of the claim or counter-claim, preclusion of evidence, admission of facts, payment of fees, costs or attorney’s fees or the granting of an award. The Arbitrator may impose sanctions against a party, a Representative or both.
- W. **Seafarer/Crew-Member Employment Agreement**- hereinafter the “Seafarer Agreement”-any written employment-agreement between a seafarer/crew-member and the cruise line/ship owner which contains a provision for the arbitration of disputes/claims.
- X. **Service** – the methods of delivery specified herein by which a party may deliver an Arbitration Notice or Reply, or any other documents or written communications to another party or to the NAM Administrator.
- Y. **Signature** or **Signed** – a mark or symbol intended as an attestation, produced by reliable means, intended as a signature.
- Z. **Witness** – an individual who may or may not be a party, who will appear at an Arbitration Hearing and give sworn testimony regarding the dispute, claim or controversy.

### **RULE NO. 3: PRIVACY**

All documents and materials submitted to or filed with NAM shall remain private and are not subject to public scrutiny. All communications, whether oral or written, and all testimony at an Arbitration shall remain confidential and inadmissible in any other judicial or alternative dispute resolution proceeding. The

Arbitrator(s) and the parties shall keep confidential all matters relating to the Arbitration proceeding, including any award rendered in connection therewith, except as required by applicable law or the written consent of all parties.

#### **RULE NO. 4: EXCLUSION OF LIABILITY**

- A. Neither NAM, nor its Officers, Directors, Employees, Representatives and/or Arbitrators shall be liable for any act or omission in connection with any Arbitration conducted under these Rules or any other rules and procedures agreed upon by the parties.
- B. Neither NAM, nor its Officers, Directors, Employees, Representatives and/or Arbitrators is a necessary party in any further alternative dispute resolution or judicial proceeding and shall not be called to testify at any subsequent proceeding.
- C. The parties agree not to make any claims against NAM for damage, loss or injury and hereby waive any cause of action or other remedy against NAM, its employees, Arbitrators, agents and/or representatives.

#### **RULE NO. 5: REPRESENTATION**

Parties may act on their own behalf or may be represented by a person with authorization to act on their behalf. The name, address and contact information of such persons representing Claimant shall be communicated to NAM and all other parties with the initiating Arbitration documents. The name, address, and contact information of such persons representing Respondent shall be communicated to NAM and all other parties with the initial document(s) submitted in response to the claim.

#### **RULE NO. 6: ADJOURNMENTS**

Each party is entitled to one (1) continuance as a matter of right. Other continuances shall be at the sole discretion of the Arbitrator(s) for good cause shown. A continuance of the Arbitration Hearing must be sought at least 15 days before the Arbitration Hearing is scheduled to begin or such continuance may not be granted.

#### **RULE NO. 7: FEES**

The parties shall pay those fees set forth in the then current Fee Schedule in effect at the time of the filing of the claim which is subject to NAM's Seafarer Rules and which is incorporated by reference herein and made part of these Rules. In the event that the administration of a matter extends beyond a one-year period, NAM may, in its sole discretion, charge the most current fees set forth in the most recent Fee Schedule for any time expended on the matter. NAM may, in its sole discretion, modify these fees for specific case types or programs and may refund or waive all or a portion of its fees in cases of extreme economic hardship.

## **RULE NO. 8: MODIFICATION OF RULES**

NAM reserves the right to modify these Seafarer Rules at any time without prior written notice to the parties. The version of the Seafarer Rules in effect at the time any claim is filed with NAM will govern the Arbitration, unless the parties mutually agree to another version. The parties are free at any time to enter into a written agreement to amend or modify any of NAM's Seafarer Rules for the purpose of their case. However, such amendment/modification is subject to NAM's review and acceptance. NAM's Fee Schedule is not subject to such modification or amendment except in the sole discretion of the NAM Administrator.

## **COMMENCEMENT OF CLAIM**

### **RULE NO. 9: INITIATION OF ARBITRATION**

- A. The initiating party (hereinafter the "Claimant") shall serve a Demand for Arbitration by forwarding the fully executed Demand for Arbitration to the Respondent and/or Respondent's Registered Agent, if specified in the Seafarer Agreement, in the manner specified herein for the service of documents. The Demand for Arbitration shall set forth the names, addresses, telephone and fax numbers of each party to the case, the Claimant's representative(s), internal filing or claim numbers.
1. The Demand for Arbitration shall include:
    - i. A detailed description of the nature of the claim, the specific dollar amount in controversy and the remedy sought;
    - ii. A detailed description of the nature of the claim shall include a complete list of all claims to be arbitrated in the matter including all facts supporting same. Failure to provide a detailed statement of all claims at issue may constitute a waiver of any claim(s) not listed;
    - iii. A detailed description of the categories of damages being sought in the Arbitration, including all facts supporting same. Failure to provide detailed categories of all damages at issue may constitute a waiver of any category of damages/damages not listed.
  2. The Demand for Arbitration must state, in part, that if the Respondent fails to respond in writing within 30 days of Service, the Arbitrator(s) may enter an award against the Respondent. The NAM Administrator may, in his/her sole discretion, extend this time limit.
  3. In order for NAM to administrate the claim, the following should be filed with the NAM Administrator following the service of the Demand on the Respondent:
    - i. A copy of the Seafarer Agreement which states that Arbitration can be used to resolve the dispute;
    - ii. Proof of service of the Demand for Arbitration on the Respondent;
    - iii. An original and two (2) copies of the Demand for Arbitration and any accompanying paperwork;
    - iv. The filing fee to be paid by the Claimant, if applicable.

- B. The Arbitration shall be conducted by an In-Person Hearing unless otherwise specified in the Seafarer Agreement or otherwise agreed upon by the parties.

#### **RULE NO. 10: RESPONSE AND COUNTERCLAIM**

- A. The Respondent shall serve and file a Response to the Demand for Arbitration (hereinafter “Response”) with Claimant and NAM within 30 days of service of the Demand for Arbitration. The Response shall include a detailed statement of the basis for Respondent’s defenses to the claim including any counter or cross claims. Service shall be completed pursuant to Rule No. 11 herein.
- B. Any party that receives a counter or cross claim may file and serve a Response to such counter and cross claim within 10 days of service of the counter or cross claim in the Response.
- C. If any party fails to respond to a Demand for Arbitration or counter or cross claim, that party will be deemed to have denied all claims, counter and cross claims asserted against that party.
- D. Amendments or additions to claims and/or counter and cross claims must be made upon mutual agreement of the parties or application to the Arbitrator(s), upon notice to the other party(ies) and will be permitted only upon a showing of good cause and no prejudice to the other party(ies). The other party(ies) shall have an opportunity to oppose the application for such amendment or addition. However, the Arbitrator(s) shall make the final decision regarding amendments or additions to claims and/or counter and cross claims. Amendments or additions, made within 60 days of the Arbitration Hearing may be precluded by the Arbitrator(s).

#### **RULE NO. 11: SERVICE**

- A. Service of initiating documents (Demand, Response and/or Reply to counter or cross-claims) may be completed by any one of the following methods: personal delivery, overnight delivery by a nationally or internationally recognized courier company; regular mail, if applicable; or any other manner designated by the parties in the Seafarer Agreement. The party serving the document must obtain a confirmation/proof of service and file same with NAM. Service by any of the aforementioned means is considered effective upon the date of deposit of the document. Documents shall be served to the last known address of the party(ies) or its representative(s) for whom same are intended, or to the address specified in the Seafarer Agreement for the service of same.
- B. Service of documents other than the initiating documents may be completed by other methods, including e-mail and/or facsimile transmission, or in such other manner as agreed to by the parties and/or permitted by the Arbitrator(s).
- C. The time periods fixed under NAM’s Seafarer Rules shall begin to run on the next day after service is effected by one of the methods described in this Rule. Official holidays and non-business days are included in the calculation of the time period. However, if the last day of a time period is a holiday



or non-business day in the country where the responding party is located, the time period shall expire on the next business day.

- D. The NAM Administrator and/or the Arbitrator(s) may send notices, documents and any other form of written communication to the parties and/or to each other, by any of the means specified herein above and at any time.
- E. The Arbitrator may require the parties to provide proof of service of the Arbitration Notice and Response and/or proof of prior notice of any claim, remedy, counter or cross claim or affirmative defenses prior to or at the Arbitration. The Arbitrator may, in the absence of proof of service and/or prior notice of the other parties, preclude any party from asserting any claim, remedy, counter or cross claim or affirmative defenses at the Arbitration. The parties may agree however, that the Arbitrator should consider such claim, remedy, counter or cross claim or affirmative defenses despite the lack of proof of service or lack of prior notice.

#### **RULE NO. 12: COMMUNICATION BETWEEN PARTIES AND ARBITRATOR(S)**

No party(ies) shall communicate directly with the Arbitrator(s) regarding any issue related to the Arbitration, until such time as the NAM Administrator or the Arbitrator(s) permits such direct communication. Until that time, all communications with the Arbitrator(s) must be directed to NAM as follows: Via mail: 990 Stewart Avenue, 1<sup>st</sup> Flr., Garden City, NY 11530 Attn: Seafarer Arbitration Dept.; Via fax to 516-794-8518; or Via e-mail: Seafarerarb@namadr.com. All communication shall be in English. The NAM Administrator will contact the Arbitrator(s) as soon as practicable and inform the Arbitrator(s) about the party's request to communicate. The Arbitrator(s) shall have the authority and discretion to take any action the Arbitrator(s) deems appropriate under the circumstances.

#### **RULE NO. 13: LOCATION OF ARBITRATION**

The location of the Arbitration Hearing will be at the place of Arbitration as specified in the applicable Seafarer Agreement, unless otherwise agreed to by the parties. If the Seafarer Agreement is silent as to location, the NAM Administrator (if such decision is necessary prior to the appointment of the Arbitrator(s)), or the appointed Arbitrator(s), shall determine the location of the Arbitration Hearing. The Arbitrator(s) may travel to any place deemed necessary during the course of the Arbitration proceeding at the discretion of the Arbitrator(s) and/or the NAM Administrator.

#### **RULE NO. 14: LANGUAGE OF THE ARBITRATION PROCESS**

- A. Unless the parties have agreed otherwise in the applicable Seafarer Agreement, the Arbitration shall be conducted in English. If the Seafarer Agreement is silent as to the language and a language other than English is requested by one of the parties and the other party(ies) objects or does not respond to such a request, the Arbitrator(s) shall decide the language(s) of the Arbitration.



- B. All communication and/or correspondence with NAM, including any documents submitted to NAM, shall be in English.
- C. If any document is presented in a language other than the language(s) established for the Arbitration Hearing and no translation of such document is submitted by the party(ies) relying upon the document, the Arbitrator(s) and/or the NAM Administrator (if no Arbitrator has been appointed), may order that party to submit a translation in the language of the Arbitration Hearing. In such event, the party(ies) ordered to provide the translation shall bear the cost of such translation. If any document is presented in a language other than the language utilized at the Arbitration Hearing and no translation of such document is submitted by the party relying upon the document, the Arbitrator(s) may choose not to consider it.
- D. A party to the Arbitration proceeding may request translation of documents or interpreters at any stage of the process. The requesting party(ies) shall bear the costs of the translation or interpreters. Any dispute that arises due to an objection to the request shall be determined by the Arbitrator(s).

#### **RULE NO. 15: APPLICABLE RULES OF LAW**

- 1. The Arbitrator(s) shall apply the substantive laws as set forth in the applicable Seafarer Agreement, if specified. If the Seafarer Agreement is silent, the Arbitrator(s) shall have broad discretion to rule upon all arbitrable issues under the applicable substantive law.
- 2. Unless the parties agree otherwise, the parties waive any right to exemplary, punitive or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner.

#### **RULE NO. 16: EXCHANGE OF INFORMATION**

Taking into consideration that Arbitration is designed to streamline proceedings, reduce expense and cost, and provide a fair and expeditious resolution to all parties, the exchange of information shall occur on a limited basis. **The Arbitrator(s) shall have the discretion to allow the further exchange of information between the parties for good cause shown.** In doing so, the Arbitrator(s) may consider the Seafarer Agreement and its provisions relating to pre-hearing Exchange of Information, and any other agreement(s) reached by the parties with respect to same.

- A. Depositions:
  - 1. Each party is allowed one deposition. The maximum allowable time for any deposition is three (3) hours. The Arbitrator(s) shall determine the order in which the depositions shall proceed.
    - i. If the representative of a party is deposed, the depositions shall be limited to the issues framed by the Claimant's initiating documents.
- B. Documents:
  - 1. The parties agree there will be no written discovery such as interrogatories, request for admissions, or requests for production.

2. The parties will simultaneously exchange all medical records in their possession within 30 days after service of the Respondent's statement of defenses. Any medical records submitted after 30 days may be excluded by the Arbitrator.
3. The parties will exchange all documentation to be relied upon at the Arbitration Hearing in accordance with Rule 11 (above).

C. Medical Examinations:

1. If Claimant puts his mental/physical health at issue in the Arbitration proceeding(s), Claimant shall submit to medical examination(s) by health care providers of Respondent's choosing for each condition complained of by Claimant at Respondent's expense.
2. The examination(s) shall not be taped or recorded in any way by the representative(s) of either the Claimant or the Respondent.
3. Any party retaining an expert witness shall pay for any and all costs associated with such experts.
4. Expert reports shall be provided in accordance with Rule 11 (above) and shall contain:
  - i. the full name and address of the Party-Appointed Expert, a statement regarding his or her present and past relationship (if any) with any of the Parties, their legal advisors and NAM, and a description of his or her background, qualifications, training and experience;
  - ii. a description of the instructions pursuant to which he or she is providing his or her opinions and conclusions;
  - iii. a statement of his or her independence from the Parties, their legal advisors and NAM;
  - iv. a statement of the facts on which he or she is basing his or her expert opinions and conclusions;
  - v. his or her expert opinions and conclusions, including a description of the methods, evidence and information used in arriving at the conclusions. Documents on which the Party-Appointed Expert relies that have not already been submitted shall be provided;
  - vi. if the Expert Report has been translated, a statement as to the language in which it was originally prepared, and the language in which the Party-Appointed Expert anticipates giving testimony at the Evidentiary Hearing;
  - vii. an affirmation of his or her genuine belief in the opinions expressed in the Expert Report;
  - viii. the signature of the Party-Appointed Expert and its date and place; and
  - ix. If the Expert Report has been signed by more than one person, an attribution of the entirety or specific parts of the Expert Report to each author.

D. Witness Statements: See Rule 29 herein.

**RULE NO. 17: INTERIM ORDER**

At the request of either party by motion or application, the Arbitrator(s) may issue an Interim Order regarding the subject matter of the dispute. The Arbitrator(s) may exercise his/her discretionary powers and order the apportionment of costs associated with applications for Interim Orders.

**RULE NO. 18: NUMBER OF ARBITRATORS**

Unless otherwise agreed to by the parties, the number of Arbitrators will be in accordance with the applicable Seafarer Agreement. If the Seafarer Agreement is silent and there is no other agreement by the parties, the matter will be heard by one (1) Arbitrator.

**RULE NO. 19: PAYMENTS/DEPOSITS AS TO COSTS**

- A. In accordance with the NAM Fee Schedule, initial fees are due and payable by the Claimant, if applicable, when a Demand for Arbitration is filed, and by the Respondent when a Response to the Demand is due. In any event, all such fees must be paid before a hearing is scheduled.
- B. To the extent that additional Arbitrator time is required beyond that which was originally anticipated or if other circumstances arise whereby additional fees are incurred, NAM may direct the parties to make one or several advances, interim or final payments for the costs associated with the Arbitration process. Such deposits shall be made to NAM. The Arbitrator(s) may not proceed with the Arbitration until receiving confirmation that all outstanding payments have been made to NAM by the parties.
- C. In the event that a party fails or refuses to provide any deposit as directed by NAM, NAM may direct the other party or parties to effect a substitute payment to allow the Arbitration to proceed (subject to any Award for costs). In such circumstances, the party(ies) paying the substitute payment(s) may be entitled to recover that amount from the defaulting party.
- D. Each party is responsible to pay the fees billed to them by NAM directly to NAM. If, as part of the award, the Arbitrator(s) awards the total cost of the Arbitration to one party or apportions such costs between the parties, such reimbursement is to be made between/among the parties after NAM has been paid in full and without the involvement of NAM.
- E. Failure by a Claimant or Respondent to provide prompt and full payment of the required deposit may be treated by NAM and the Arbitrator(s) as a cancellation of the claim or counterclaim.

**RULE NO. 20: ARBITRATOR(S) SELECTION AND APPOINTMENT PROCESS**

NAM shall appoint the Arbitrator(s) as promptly as possible.

- A. NAM shall forward to the parties identical lists containing the names of possible Arbitrators, together with their bios.

- B. After receipt of this list, each party may strike one (1) name from the list. The parties shall number the remaining names on the list in the order of their preference and return the list to the NAM Administrator within fifteen (15) days of service of the document;
- C. The NAM Administrator shall appoint the Arbitrator(s) from among the names remaining on the list and in accordance with the order of preference indicated by the parties;
- D. If, for any reason, the appointment cannot be made according to this procedure, the NAM Administrator may exercise his/her discretion in appointing the Arbitrator(s). In making the appointment, NAM shall secure the appointment of independent and impartial Arbitrator(s).
- E. NAM has emphasized the importance of neutrality and impartiality in the Arbitration process to its Arbitrator(s). NAM may, in its sole discretion, disqualify an Arbitrator(s) if circumstances exist that create a conflict of interest or cause the Arbitrator(s) to be unfair or biased, unless the parties agree to permit the Arbitrator(s) to preside over the matter. Examples of such circumstances include:
  - i. the Arbitrator(s) has a personal bias or prejudice concerning a party or has personal knowledge of disputed facts;
  - ii. the Arbitrator(s) has served as an attorney to any party;
  - iii. the Arbitrator(s) is a material witness regarding the dispute or the Arbitrator(s) or a member of the Arbitrator's family has a direct financial interest in the outcome of the case;
  - iv. the Arbitrator(s) or a member of the Arbitrator's family is a party to the case or is appearing as a representative for one of the parties to the case.
- F. The Arbitrator(s) shall disclose immediately to NAM circumstances that create a conflict of interest or that may cause the Arbitrator(s) to be biased or unfair. If an Arbitrator is disqualified, a new Arbitrator shall be selected in the manner described in Rule 22 herein.

#### **RULE NO. 21: CHALLENGE OF ARBITRATOR(S)**

- A. A party may challenge the nomination of an Arbitrator if circumstances exist that give rise to justifiable doubts as to the Arbitrator's impartiality or independence. Such a challenge shall be made in writing to the NAM Administrator, specifying the facts and circumstances on which the challenge is based.
- B. As set forth in Rule No. 20, the Arbitrator(s) has a duty to disclose immediately to NAM circumstances that create a conflict of interest or that may cause an Arbitrator to be unfair or biased. Notwithstanding the foregoing, the parties and their Representatives have a duty to perform conflict checks upon the nominated Arbitrator(s) and to communicate any potential conflicts of interest between the parties and/or their Representatives and the Arbitrator(s) to the NAM Administrator as soon as they are discovered. The parties and their Representatives are requested to make inquiries of their officers, directors, agents, trustees, witnesses, immediate and extended families and the attorneys in their respective practices/firms to ascertain any potential conflicts or associations concerning the Arbitrator(s) and to disclose any such information as soon as it is discovered. The parties and their Representatives and the Arbitrator(s) understand and agree that NAM shall make no efforts to investigate potential conflicts of interest until such conflicts are disclosed by the

- parties, their Representatives or the Arbitrator(s) to NAM. The burden is upon the parties and their Representatives to notify the NAM Administrator of any potential conflict or association or potential for same that will or may affect the Arbitrator's(s) ability to be impartial in the case.
- C. A party who intends to challenge an Arbitrator shall send notice of the challenge to NAM and the other parties within fifteen (15) days after the appointment of the challenged Arbitrator or from the date the alleged circumstances giving rise to the challenge first becomes known to that party, whichever is first.
- D. If one party has challenged an Arbitrator, the other party(ies) may agree to the challenge. The Arbitrator may also agree to withdraw from the case. In neither case does this imply acceptance of the validity of the grounds for the challenge. In all cases, the procedure for the replacement of the Arbitrator set forth in Rule No. 22 shall be followed.
- E. If the other party(ies) does not agree to the challenge and the challenged Arbitrator does not withdraw, then NAM shall decide on the admissibility and merits of the challenge. NAM shall provide an opportunity for the Arbitrator concerned and the other party or parties to comment in writing within a suitable period of time. Such comments shall be communicated to the parties and to the Arbitrator(s). Absent fraud or misrepresentation by the Arbitrator, the parties shall be responsible to pay any fees or expenses incurred by NAM and/or the Arbitrator prior to the challenge.

#### **RULE NO. 22: REPLACEMENT OF ARBITRATOR(S)**

- A. An Arbitrator shall be replaced under the following circumstances:
- i. his/her death;
  - ii. the acceptance by the NAM Administrator of the Arbitrator's resignation;
  - iii. the acceptance by the NAM Administrator of a challenge by one of the parties, or
  - iv. upon the request of all the parties.
- B. The NAM Administrator may, in his/her sole discretion, replace an Arbitrator by his/her own initiative if he/she decides that the Arbitrator is prevented de jure or de facto from fulfilling his or her functions, or that the Arbitrator is not fulfilling his or her functions in accordance with NAM's Rules or within the prescribed time limits.
- C. If an Arbitrator is to be replaced, the NAM Administrator, in his/her sole discretion, can decide whether or not to follow the original nominating process in naming the new Arbitrator. Once the nomination process is complete, the Arbitrator shall determine if and to what extent prior proceedings shall be repeated before the new Arbitrator.
- D. Prior to the closing of the proceedings, instead of replacing an Arbitrator who has died or has been removed by NAM pursuant to these Rules, NAM may decide that the remaining Arbitrator(s) (if there was a three-Arbitrator panel deciding the case) shall continue the Arbitration. In making its determination, NAM shall consider the views of the remaining Arbitrator(s) and of the parties and such other matters that it considers appropriate.

### **RULE NO. 23: PRESIDING CHAIRPERSON FOR A THREE-ARBITRATOR PANEL**

If the applicable Seafarer Agreement requires a three-Arbitrator panel, one of the panel members shall be elected to chair the Arbitration. The Arbitrator(s) shall elect a presiding Chairperson within five (5) days after the panel has been notified of their appointment. If the appointed Arbitrators are unable to agree on such a choice within the time frame allowed, the NAM Administrator shall make such selection.

### **RULE NO. 24: CONSOLIDATION**

- A. **Parties.** The Arbitrator(s) shall not consolidate claims of different Claimants into one proceeding unless the parties have agreed to the consolidation and the Arbitrator(s) has approved same. This provision does not apply to class actions. For class actions, see Rule 24 (B) immediately following.
- B. **Class Actions.** A class action involves an Arbitration or lawsuit where representative members of a large group (or “class”) claim to share a common interest and seek relief on behalf of the group (or “class”). It is NAM’s policy to administer class action Arbitrations if the underlying Arbitration agreement allows for the submission of class actions to Arbitration. If the Arbitration Agreement is silent with respect to class actions, NAM will **NOT** administrate the case as such, unless the parties agree to same and authorize NAM, in writing, to do so. NAM will **NOT** administer a class action Arbitration if prohibited by: (1) the underlying Arbitration agreement, (2) court order or (3) applicable law, unless a court orders the matter to Arbitration as a class action.

### **RULE NO. 25: ARBITRATION BASED ON WRITTEN SUBMISSIONS**

Subject to the provisions of the Seafarer Agreement, if applicable, or if agreed upon in writing by the parties, the Arbitrator(s) may decide the dispute based on the written submissions of the parties. In such a case, the Arbitrator(s) shall not entertain oral testimony or arguments. All written submissions and documentary evidence must be filed with the NAM Administrator and/or the Arbitrator(s) and served upon all parties prior to the date fixed by the NAM Administrator or the Arbitrator(s). Any such written submission not received within the specified time frame may be excluded by the Arbitrator(s). The NAM Administrator may elect to have the parties send such information directly to the Arbitrator(s) (in lieu of having the information sent to the NAM Administrator) by notifying the parties accordingly.

### **RULE NO. 26: IN-PERSON/ORAL ARBITRATION HEARING**

Unless otherwise specified in the Seafarer Agreement, or otherwise agreed upon in writing by the parties, the Arbitrator(s) shall decide the dispute at an In-Person/Oral Arbitration Hearing.

The Arbitrator shall conduct the Arbitration Hearing as follows:

- A. Subject to the provisions of the Seafarer Agreement, the NAM Administrator or the Arbitrator(s) shall fix the date, time and physical location of any meetings, conferences or hearings and shall give the parties reasonable notice thereof.



- B. Arbitrations are binding upon the parties. The Arbitrator(s) will conduct the Arbitration hearing in the manner set forth in these rules. However, an Arbitrator has the discretion to vary these procedures if it is reasonable and appropriate to do so.
- C. The Arbitrator(s) will consider evidence that the Arbitrator(s) deems relevant and material to the dispute and will accord such weight to the evidence as the Arbitrator(s) deems appropriate.
- D. The Arbitrator(s) shall have the authority to make rulings on motions.
- E. If any of the parties, although duly summoned, fails to appear without valid excuse, the Arbitrator(s) shall have the power to proceed with the hearing despite that party's absence.
- F. The Arbitrator(s) may limit testimony or exclude witnesses or evidence that the Arbitrators considers immaterial or unduly repetitive.
- G. The appointed Arbitrator(s) may hold status conferences at varying intervals throughout the course of the proceedings. At the status conference(s), the Arbitrator(s) shall only hear matters that have been brought to the attention of the parties in writing at least three (3) days prior to any scheduled conference. It is incumbent upon the parties to bring any dispute that arises to the attention of the Arbitrator(s) at those conferences.
- H. The Arbitrator(s) will accept and consider witnesses' deposition testimony provided that the other party(ies) had the opportunity to attend the deposition and cross-examine the witness. In the event the other party(ies) does(do) not have the opportunity to attend the deposition(s) and cross-examine the witness(es), the Arbitrator(s) may exclude such witnesses' deposition testimony.
- I. The hearing will conclude only after all parties have had an opportunity to present all relevant and material evidence and witness testimony to the Arbitrator(s).
- J. All meetings and hearings shall be in private unless the parties agree otherwise.
- K. The Arbitrator(s) shall be in full charge of the hearings, at which all the parties shall be entitled to be present. Except with the approval of the Arbitrator(s) and the parties, persons not involved in the proceedings shall not be admitted.
- L. In all cases, the Arbitrator(s) shall act fairly and impartially and ensure that each party has a reasonable opportunity to present his/her case.
- M. At the conclusion of the Arbitration Hearing, the Arbitrator(s) may require the parties to submit post-hearing briefs, including legal memorandum, prior to issuing a decision regarding the case. The Arbitrator(s), with the assistance of the parties, will determine the schedule for the submission of post-hearing briefs.
- N. Any party(ies) requesting a court reporter shall bear the entire cost of the court reporter, including any costs associated with transcribing the proceedings, costs of the transcripts and any other expenses associated with same.



**RULE NO. 27: PRE-HEARING CONFERENCE**

The Arbitrator(s) may conduct a telephone conference no later than twenty (20) days after NAM has appointed the Arbitrator(s), or as soon thereafter as possible. The Arbitrator(s) may discuss some or all of the following matters with the parties at the Pre-Hearing Conference:

- A. depositions to be taken;
- B. the scheduling and completion of the exchange of information;
- C. the laws that the Arbitrator(s) will apply at the hearing;
- D. the scheduling and procedure of the Arbitration;
- E. the approximate duration of the Arbitration;
- F. the physical location of the Arbitration;
- G. possible expenses of the Arbitrator(s) (such as travel costs, accommodations, etc.);
- H. the need for translators;
- I. the timing and filing of any documents the Arbitrator(s) considers necessary;
- J. the filing of pre-hearing briefs;
- K. the filing of stipulations of uncontested facts;
- L. the filing of witness lists;
- M. the identity of the Presiding Chairperson, if applicable;
- N. any other matters that the Arbitrator(s) considers necessary.

**RULE NO. 28: NON-PARTICIPATING OR DEFAULTING PARTIES**

- A. If the Respondent fails to file a Response to the Demand for Arbitration with NAM, or any party fails to file a response to a counter-claim or cross-claim; or if any party fails to file and serve written submissions by the date fixed by the Arbitrator(s) where the Arbitration is based on Written Submissions, or when a party fails to appear at an In-Person/Oral Arbitration Hearing after receiving due notice thereof, then the Arbitrator(s) may conduct the Arbitration in that party's absence.

- B. The Arbitrator(s) shall not base the Award solely on the failure of the defaulting party to comply in the above circumstances. The Arbitrator(s) shall require the submitting or attending party(ies) to present such evidence as the Arbitrator(s) deems necessary for the making of the Award and the attending party(ies) must demonstrate that the non-participating party(ies) were properly served with the Arbitration Notice.

## **RULE NO. 29: WITNESSES**

- A. The Arbitrator(s) may determine the order and manner in which witnesses testify at the hearing.
1. Witnesses
    - i. Any person may present evidence as a witness, including a party or party's officer, employee, or other representative.
    - ii. All witness testimony is to be in the language of the Arbitration in accordance with Rule 14. If the language of the Arbitration is not the first language of the witness, a certified translator must provide a translation.
    - iii. Parties will identify their witnesses and experts and produce the witness statements along with the documentary evidence as set forth herein. Witness statements shall be signed and dated by the witness.
    - iv. Each witness statement shall contain:
      - (a) the full name and address of the witness, a statement regarding his or her present and past relationship (if any) with any of the parties, and a description of his or her background, qualifications, training and experience, if such a description may be relevant to the dispute or to the contents of the statements;
      - (b) a full and detailed description of the facts, and the source of the witness's information as to those facts, sufficient to serve as that witness's evidence in the matter in dispute. Documents on which the witness relies that have not already been submitted shall be provided;
      - (c) a statement as to the language in which the witness statement was originally prepared and the language in which the witness anticipates giving testimony at the Evidentiary Hearing;
      - (d) an affirmation of the truth of the witness statement; and
      - (e) the signature of the witness and its date and place.
  2. Witnesses who do not testify in the language of the Arbitration will submit their witness statement in their own language. That witness statement will be accompanied by a full translation into the language of the Arbitration.

3. Witness statement(s) may not be recognized as evidence if the opposing party(ies) does (do) not have the opportunity to cross-examine the witness during the hearing, unless the opposing party(ies) decides not to examine the witness.
4. The Claimant is to provide Respondent with its full statement of claim(s), including all documentary evidence to be relied upon, witness statements, expert witness reports, and any other document(s) that are to be relied upon at the Arbitration Hearing at least one hundred and eighty (180) days prior to the date of the Arbitration Hearing or it may be excluded by the Arbitrator(s).
5. The Respondent is to provide Claimant with its full statement of defense, including all documentary evidence to be relied upon, witness statements, expert witness reports, and any other document(s) that are to be relied upon at the final hearing date ninety (90) days prior to the date of the Arbitration Hearing or it may be excluded by the Arbitrator(s).
6. Any document not provided or any witness not identified in accordance with these Rules shall be allowed to testify only upon good cause shown and only after a witness statement has been executed.
7. The Arbitrator(s) shall have discretion to modify these time frames and/or consider any evidence not provided in accordance with these Rules upon application by either party.

**RULE NO. 30: SETTLEMENT OR OTHER REASONS FOR TERMINATION**

- A. If the parties agree on a settlement of the dispute before the Arbitrator(s) renders an award, the Arbitrator(s) shall either issue an order for the termination of the Arbitration proceedings or, if requested by the parties, indicate that a settlement has been reached. In the event of a settlement, the Arbitrator(s) may provide the parties with a settlement contract indicating the agreed upon terms. In the event of a settlement, the Arbitrator(s) is not obligated to give reasons for such a settlement.
- B. If, before the Arbitrator(s) renders an Award, the continuation of the Arbitration proceeding becomes unnecessary or impossible for any reason not mentioned in paragraph A, the Arbitrator(s) may issue an order for the termination of the proceedings.
- C. Copies of the order for termination of the Arbitration proceedings or of the settlement contract on agreed-upon terms shall be signed by the Arbitrator(s) and forwarded to the NAM Administrator and to the parties.

**RULE NO. 31: CLOSURE OF HEARING AND TIME LIMITS FOR THE AWARD**

The Arbitrator(s) will communicate with the NAM Administrator as to the status of the Arbitration. The Arbitrator(s) will attempt to render the final Award within thirty (30) days from the date the Arbitration is

declared closed by the Arbitrator(s). Upon request from the Arbitrator(s), the NAM Administrator may extend this time limit if it becomes necessary to do so.

**RULE NO. 32: DRAFTING OF THE AWARD**

- A. The Award shall be made in writing and shall be final and binding on the parties. The parties agree to carry out the Award without delay.
- B. The obligation of the party(ies) as stated in the Award shall be binding upon each such party, his/her heirs or its successors or those who are its assigns.
- C. The Arbitrator(s) shall sign an Award and it shall contain the date on which the Award was rendered. Where there are three Arbitrators and one of them fails to sign, the Award shall state the reason for the absence of the signature.
- D. Copies of the Award signed by the Arbitrator(s) shall be forwarded to the NAM Administrator by the Arbitrator(s). The NAM Administrator shall forward copies of the decision to all parties once all outstanding fees are paid.
- E. If the Arbitration law of the country where the Award is made requires the Arbitrator(s) to file or register the Award, the parties shall be responsible for notifying the Arbitrator(s) of such requirement and the Arbitrator(s) shall comply with this requirement within the period of time required by law. In such event, a fee for such service will be determined by the NAM Administrator at his/her sole discretion at the time such services are requested. If the law of the country where the Award is made does not require it to be filed or registered, the Arbitrator(s) and the parties shall keep confidential all matters relating to the Award, except as required by applicable law or the written consent of all parties.
- F. Parties to these Rules and Procedures shall be deemed to have consented that judgment upon the Arbitration Award may be entered in any court having jurisdiction thereof.
- G. In addition to making a final Award, the Arbitrator(s) shall be entitled to render interim, interlocutory, or partial Awards.
- H. For Arbitration Hearings before a Tri-panel of Arbitrators, an Award must be made by a majority of the Arbitrators. If no majority exists or if the Arbitrators so authorize, the Chairperson Arbitrator may decide an issue on his/her own.

**RULE NO. 33: CORRECTION OF THE AWARD**

Within fifteen (15) days after the receipt of the Award, a party, with written notice to the other party(ies), may request the Arbitrator(s) to correct the Award regarding any clerical, typographical or mathematical error in the computation of the Award. The Arbitrator(s) may make such corrections on their own initiative within thirty (30) days after rendering the Award. Such correction shall form part of the Award and shall be in writing.