

# EASTERN DISTRICT OF NEW YORK

## Arbitration Program

### **EDNY REMOTE GUIDELINES FOR ARBITRATION PARTICIPANTS**

**Last Revised February 3, 2021**

In response to the Covid-19 Pandemic the EDNY is offering Remote Arbitration Services to all civil litigants. Remote arbitrations will take place via a video conferencing platform offered by each individual arbitrator.

#### **TECHNICAL REQUIREMENTS**

You will need a computer, tablet, or smartphone with the following features:

- Camera
- Microphone
- If you do not have a computer, tablet, or smartphone, the arbitrator will provide you with call-in information to access the arbitration by phone.
- Strong, secured (password protected) internet connection (**DO NOT USE PUBLIC WI-FI**)
- A private, quiet space with a simple background and adequate lighting.

#### **CONFIDENTIALITY/NO RECORDING POLICY**

To ensure confidentiality throughout the arbitration hearing please be sure to do the following:

- Stay in a private space;
- Do not allow third parties to be present in the room with you without the consent of the arbitrator and all parties;
- Use a private, secured internet connection;
- Center the camera so that your entire face is visible.
- Do not record, take photographs, or screenshots of the arbitration hearing;

The arbitrator will begin the hearing by asking each party to disclose any third parties in the room, and or affirm that they are alone. At any time, the arbitrator may ask a party to orient their webcam to provide a 360-degree view of the room in which the party is located to confirm the individual is alone in the room.

#### **TRANSCRIPT**

If one or both parties wish to have a transcript made of the arbitration hearing, the parties

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requesting the transcript must make the arrangements and bear the costs of the court reporting service.

### **PRIOR TO THE ARBITRATION**

Within **14 days** after filing the stipulation of selection of an arbitrator, the arbitrator will schedule a conference call with all parties to discuss the following:

- 1) Remote procedures for arbitration;
- 2) Discovery and outstanding issues;
- 3) Deadlines for pre-hearing submissions;
- 4) Arbitrator preferences regarding exhibit exchange;
- 5) Preferences regarding court reporter. (Counsel are responsible for booking their own court reporter if they wish to have the hearing transcribed.)

Once the arbitration has been scheduled, the arbitrator will send counsel an e-mail with a link as well as meeting ID and a password. Counsel is responsible for circulating this meeting link to all participants and witnesses. To access the arbitration hearing, click the link and enter the ID and password when prompted. After clicking on the link, you may be prompted to download the video platform if you have not done so already. Please download the application.

Please plan on joining the arbitration at least 10-15 minutes prior to the start time to ensure that you are able to connect to the meeting with your device.

(NOTE: If you are on a smartphone, you may be prompted to download the free video conference app. Please do this at least one day prior to the arbitration. Many video conferencing apps require that you grant access to your device's camera and microphone, please do this prior to the arbitration.)

Upon arrival to the video platform you will be placed in a virtual "waiting room." The arbitrator will then admit you into the online meeting. When you are admitted, please be sure to click join with computer audio, when prompted.

### **VIRTUAL BREAK OUT ROOMS:**

The arbitrator will arrange for confidential virtual breakout rooms for each party and their counsel to meet independently of one another and the arbitrator. The arbitrator may also arrange for a virtual breakout room for counsel to confer with one another regarding settlement and other matters.

The arbitrator will also arrange for confidential virtual breakout rooms for any witnesses. Witnesses will not be able to see or hear the arbitration proceedings in the virtual breakout rooms.

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### **WITNESSES AND HEARING PARTICIPANTS:**

Counsel must jointly e-mail the arbitrator with a list of participants (including witnesses and certified court reporters) and their email addresses for the purpose of inviting and admitting them to the virtual arbitration hearing. Counsel is responsible for sending the original hearing invitation to the necessary participants

All non-party witnesses must be sequestered in a breakout room until they testify. Upon joining the meeting at the appointed time, the arbitrator will assign witnesses into individual breakout rooms.

When testifying witnesses should:

- Sit at an empty desk or table;
- Ensure their face is clearly visible and centrally located in the camera;
- Speak directly to the camera;
- Not have a virtual background;
- Sign-off upon completion of their testimony (for non-party witnesses).

Prior to the arbitration, all parties and witnesses should test platform connectivity and that their microphones and cameras are working properly.

Counsel should also ensure that all witnesses are given access to a complete set of unannotated exhibits by hardcopy or via a shared document server.

### **EXHIBITS**

Prior to the hearing Counsel shall provide the Arbitrator and any witnesses with an unannotated set of exhibits. The Arbitrator will instruct counsel whether to send the exhibits as a hard copy or via a shared virtual document repository.

### **SCREENSHARING**

The arbitrator will determine whether to allow parties to use the Screenshot function available through the video conferencing platform. If the arbitrator consents, screensharing may be used to share exhibits with the arbitrator and/or the other parties.

### **PRIVATE CHAT**

The arbitrator will disable the “chat” function within the video conferencing platform. The chat function is not a confidential forum and will not be used for the purposes of EDNY Arbitration.

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### **ARBITRATION AWARD**

The Arbitration Award is a confidential document. At the conclusion of the arbitration hearing, the arbitrator will not share the decision with counsel over the Zoom platform or otherwise. The arbitrator will submit the award to the court's Arbitration Coordinator.

Once the award is issued, a notification will be filed on the docket, and the award will be sent to counsel via e-mail. The arbitration award is a confidential document and will not be entered on the case docket.

### **TECHNOLOGICAL DIFFICULTIES**

In the event you have technical difficulties during the arbitration session please try the following:

- 1) Try to re-enter the arbitration session via the link sent to you by the arbitrator.
- 2) If you are unable to re-enter, please contact the arbitrator or your lawyer directly.
- 3) If you cannot reach the arbitrator, please contact the EDNY ADR Department at 718.613.2578.

If there is a technological failure, the arbitrator will ask all parties to mute themselves as not to engage in any *ex parte* communications while the technological issue is resolved.

If there is a prolonged technological failure, the arbitrator will "pause" the arbitration hearing, and e-mail all counsel of record with instructions for how to proceed.