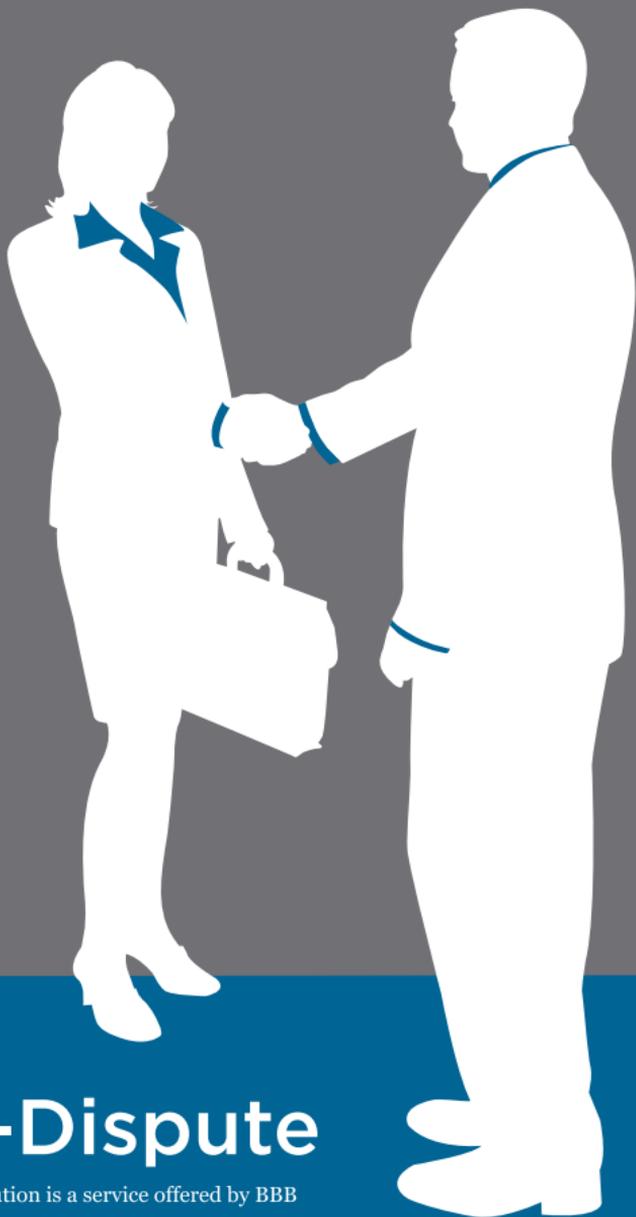


Rules of Arbitration [Binding]



Pre-Dispute

Dispute Resolution is a service offered by BBB

Rules of Arbitration

[Binding]

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BBB® Rules of Binding Arbitration (Pre-Dispute)

BBB ARBITRATION

Your Better Business Bureau® (BBB) is a nonprofit organization supported by local businesses. BBB promotes trust in the marketplace by fostering the highest ethical relationship between businesses and the public.

Your BBB assists in the resolution of disputes between a business and its customers. BBBs have a national reputation for fairness because they remain impartial in a dispute. They do not take sides but work to get the problem settled as quickly as possible.

If you have a marketplace dispute, BBB can offer you several ways to resolve it. Arbitration is one dispute resolution (DR) option: BBB provides a professionally trained arbitrator who will listen to both sides, weigh the evidence and make a decision about the dispute.

What is arbitration?

Arbitration is an informal process in which two parties present their views of a dispute to an impartial third party, an arbitrator, who will decide how to resolve the dispute.

Who is the arbitrator?

BBB arbitrators are individuals from your community who have been approved as arbitrators by BBB. Arbitrators do not necessarily have specific expertise in the matter to be arbitrated, but can call upon the assistance of an expert when

necessary. Arbitrators pledge to make an impartial decision, and do not have any affiliation with either party in the dispute.

The arbitration hearing

BBB will consult with the parties and the arbitrator(s) in scheduling an arbitration hearing. While most cases require only a single hearing, additional hearings may be scheduled if the arbitrator deems it necessary.

Do I need an attorney?

You may choose to consult with an attorney about arbitration under these Rules. Parties initiating arbitration may choose to consult with an attorney before the demand for arbitration is filed. It is important to consult with an attorney about the remedies that may be awarded in arbitration, and how to best present your case in arbitration. While you do not need to be represented by an attorney in the arbitration process, you may decide that it is in your best interests to do so.

How to prepare for arbitration

Before coming to your arbitration hearing, you should prepare an outline of your argument to help you in your presentation. You may want to use the checklist at the end of this section to assist you in your preparation.

Also before coming to the hearing, you should prepare a list of questions you want to ask the other party.

What will happen at the hearing?

You will have an opportunity to state the facts as you see them. Each party also will have the opportunity to ask questions of the other party.

The arbitrator may also ask questions to clear up uncertain areas and to gain a fuller understanding of the dispute.

After each side has presented its case and the questioning is completed, you should be prepared to give a summary of your position. Deal with any questions that have not been answered and tell the arbitrator exactly what you think the decision should be and why.

Remember that the sole purpose of the hearing is to allow the arbitrator to gather and sort the facts in order to make a fair decision. You should be prepared to convince the arbitrator that your position is right and that it supports the remedies/ outcome you seek from the arbitration process. If you are uncertain about the possible remedies available in arbitration you may want to review your state arbitration laws or consult with an attorney.

A cooperative, good faith approach works best. You are there because a disagreement exists, but keep that disagreement factual and within the bounds of normal courtesy and conventional language. Arbitrators may not have technical expertise, so your presentation may be more productive if you can use layman's terms to describe what happened.

An arbitration checklist

This checklist will help you prepare for your arbitration hearing. Use whichever items are appropriate to your case; some may not apply.

1. Organize your materials in the order you wish to present them. This will help you present your case clearly and logically.
2. Clearly state what the problem is and why you think the arbitrator should rule in your favor.
3. List in chronological order the actions you took to resolve the dispute, including:
 - o individuals with whom you spoke;
 - o when you spoke with them;
 - o what they told you and/or what actions they took;
 - o other business/service persons involved:
 - § Who were they?
 - § When did they get involved?
 - § How did they become involved?
 - § What did they tell you and/or what actions did they take? Written statements or the presence of witnesses can help substantiate the facts of your case.
4. Collect and bring to the hearing all available written information relating to your dispute. Bring original documents, if possible, and bring copies for the arbitrator and the other party. If you do not have certain documents, you may be able to get copies from the business or your repair shop, bank or credit card

company. Documents that might be useful include:

- Any written agreements between you and the other party, including the agreement requiring arbitration of the dispute.
- Any estimates, purchase order, finance/lease agreement, estimates, and proof of payment.
- Any relevant warranty.
- Any repair, service and maintenance records and proof of payment for these services.
- If applicable to your dispute:
 - § Property repair bills or estimates, including the charges for labor and material used or proposed for use in the repair of property.
 - § Bills, records and reports of hospitals, doctors, or other health-care providers, or any other medical expenses.
 - § A report of the rate of earnings and time lost from work or lost compensation prepared by your employer.
- A written statement of any witness or opinion of any expert whose testimony will be presented in writing rather than in person.
- Correspondence between you and the other party.
- Other documents which may support your case, e.g., newspaper/magazine articles, photographs, court decisions and legal documents, consumer group information, brochures and technical information.

5. List any witnesses who may have information about your complaint, such as mechanics or sales personnel. Try to contact them and ask them to testify in person or to submit written statements. You are responsible for your witness' submission of information. If you want them to testify in person, keep them informed about the time and place of the hearing.

The arbitrator will accept all relevant evidence presented at the hearing. The arbitrator will decide the importance of each piece of evidence after the hearing is closed. **It is better to be over prepared than under prepared.**

Evidence will not be accepted after the hearing if it was possible to present that evidence at the hearing, or if the arbitrator has already rendered a decision.

In summary

- Organize your case.
- Back up your position with evidence.
- A clear, concise and well-organized presentation supported by relevant facts and good documentation will help the arbitrator fulfill his or her responsibility.

BBB Rules of Binding Arbitration (Pre-Dispute)

1. DEFINITIONS

The following list defines key words as they are used in these Rules.

- A. **Arbitration** is a process in which two or more parties agree to let an impartial person or panel decide their dispute.
- B. **Arbitrator** refers to the individual or panel selected to conduct your arbitration and make a decision in your dispute. Any action taken or decision made by a panel shall be by majority vote.
- C. **BBB** refers to the Better Business Bureau that is administering the arbitration.
- D. **Days** refers to calendar days.
- E. **Decision** refers to the written document signed by the arbitrator and mailed to the parties.
- F. **Parties** refers to a business and its customer who have agreed in writing to arbitrate future disputes through BBB or under BBB binding rules.
- G. **Shall** and **must** are mandatory; **may** is discretionary.
- H. **You** refers to one or both of the parties.

2. SCOPE OF BBB ARBITRATION

These *Rules* apply to any dispute that the parties are required to arbitrate under a written agreement, signed by the parties prior to the time that the dispute arose, in which the parties have agreed to arbitrate future disputes through BBB or under BBB binding rules.

The arbitrator shall decide any dispute about whether a particular issue falls within the parties' arbitration agreement.

3. REMEDIES

The arbitrator may award any remedy that is permitted under applicable law; provided, however, that the arbitrator may not award any remedies that the parties have agreed in writing may not be awarded in arbitration.

4. FEES

BBB shall inform the parties of the fee schedule for handling the arbitration, and of the process for requesting a waiver or deferral of such fees in cases of hardship. BBB may decline to schedule an arbitration hearing if the parties do not pay administration fees when due.

5. DEMAND FOR ARBITRATION

- A. In order to initiate arbitration, a party shall submit to BBB a written demand for arbitration that includes the following:
- The name and address of the other party;
 - A concise statement of the issues to be arbitrated;
 - A statement of the remedies sought in arbitration; and

- A copy of any written agreement between the parties to arbitrate disputes under BBB binding rules.
- B. Unless otherwise provided by an agreement between the parties, the demand for arbitration must be received by BBB within the statute of limitations that would otherwise apply to a judicial action relating to the claim.

6. ANSWER AND COUNTERCLAIM

- A. BBB shall send the written demand for arbitration to the other party, who may submit a concise answer and a counterclaim in response. A counterclaim shall include:
- A concise statement of the issues to be arbitrated; and
 - A statement of the remedies sought in arbitration.
- B. Any answer and/or counterclaim must be sent to BBB, with a copy to the other party, within 14 days after receipt of the demand for arbitration. BBB may, for good cause, extend this time period.
- C. If a counterclaim is filed, the party against whom the counterclaim is filed may submit a concise answer to the counterclaim. The answer to the counterclaim must be sent to BBB, with a copy to the other party, within 14 days after receipt of the counterclaim. BBB may, for good cause, extend this time period.
- D. It is not required that the parties submit an answer to a demand for arbitration or a counterclaim. If a party does not submit an answer, that party will be deemed to have denied all of the claims made by the other party.

7. AMENDING THE DEMAND FOR ARBITRATION OR COUNTERCLAIM

At any time prior to the scheduling of the hearing, a party may amend in writing that party's demand for arbitration, answer, or counterclaim.

Once the hearing has been scheduled, amendments to a party's demand for arbitration or counterclaim may only be made at the discretion of the arbitrator.

8. SELECTING YOUR ARBITRATOR

BBB shall select the arbitrator in a procedure designed to avoid any conflict of interest and to provide the parties with an impartial arbitrator to hear their case.

BBB maintains a pool of qualified, experienced arbitrators. BBB shall select the arbitrator, or arbitrators if applicable. BBB shall inform the arbitrator(s) of the identities of the parties and attorneys, if any. If an arbitrator finds that he or she has a conflict of interest with any party or attorney, the arbitrator(s) shall recuse himself or herself.

At BBB's option, or by agreement of the parties or when required by law, BBB may appoint a panel of three arbitrators. BBB shall determine which arbitrator will serve as the chair of the panel to preside over the hearing.

BBB may use variations of this selection process, provided that the alternative procedure shall also result in the appointment of an impartial arbitrator.

9. QUALIFYING THE ARBITRATOR

The arbitrator shall sign an oath pledging to make an impartial decision in your dispute. If the arbitrator believes that he or she cannot make an impartial decision, the arbitrator shall refuse to serve.

If a financial, competitive, professional, family or social relationship exists between the arbitrator and one of the parties (even if the arbitrator believes the relationship is so minor as to have no effect on the decision), it shall be revealed to all parties, and you may decide that this arbitrator should not serve in your case.

BBB reserves the right to reject an arbitrator for any reason that it believes will affect the credibility of the arbitration process.

10. COMMUNICATING WITH THE ARBITRATOR

You or anyone representing you shall not communicate in any way with the arbitrator about your dispute except a) at an inspection or hearing for which the other party has received notice but does not appear, or b) when all other parties are present or have given their written permission.

All other communication with the arbitrator must be sent through BBB.

Violation of this rule may result in your case being discontinued.

11. WHO MAY PRESENT YOUR CASE?

You may present your own case or have someone represent you.

If your representative is a lawyer, you must give the lawyer's name and address to BBB at least 21 days before the hearing. BBB shall notify the other parties to give them an opportunity to obtain a lawyer if they want. Your failure to give BBB advance notice of legal representation may result in a rescheduling of your hearing.

12. HEARING NOTICE

BBB shall set a date, time (during normal business hours) and place for your arbitration hearing. The hearing will be set with due regard for the schedule of the parties and the arbitrator. Notice of the date, time and place of the hearing will be sent to you at least 10 days in advance of the hearing unless the parties agree otherwise.

Contact BBB immediately if you object to the date, time or place stated in your notice. If an unforeseen emergency arises that prevents you from attending a hearing, call BBB before the scheduled hearing time. The arbitrator shall decide whether to reschedule the arbitration hearing or maintain the current hearing date permitting the absent party to present the case in accordance with Rule 14.

To the extent practical, BBB will arrange for the hearing to be held at a BBB location convenient to the customer.

BBB shall make the final decision as to the date, time and place for the arbitration hearing.

13. MANNER IN WHICH THE HEARING IS CONDUCTED

Most arbitrations involve in-person hearings. However, BBB, at a party's request or at BBB's option, may arrange to have one or both parties participate by telephone, in writing, or by electronic communication.

14. YOUR ABSENCE FROM THE HEARING

If one party does not attend a hearing after receiving proper notice from BBB, the arbitrator shall proceed with the hearing and receive evidence from the other party.

One party's absence will not result in an automatic decision against that party. The party who did not attend the hearing shall be given the opportunity to present its position in writing within time limits set by BBB. Any written testimony will be sent to other party for comments.

If the absent party does not submit its position within the specified time limits, the arbitrator shall make a decision without that party's position.

15. ATTENDANCE AT HEARING

BBB staff may attend the hearing in an administrative capacity.

The parties, any representatives, and their witnesses may attend the hearing, although the arbitrator may determine that one or more non-party witnesses should be present in the hearing room only while that witness is giving testimony.

For any observer to attend a hearing, BBB will first determine that reasonable accommodations exist and then make sure that the parties and the arbitrator have no objection to the presence of an

observer. If there is room and no objection, the observer shall be permitted to attend the hearing subject to BBB's directions regarding proper conduct.

16. CAMERAS AND RECORDING DEVICES

Unless there is approval of all parties and the arbitrator, no one is permitted to bring cameras, lights, recording devices or any other equipment into the hearing. However, BBB may make an audio recording of the hearing if requested by the arbitrator, and any such audio recording may only be used by the arbitrator for the sole purpose of assisting the arbitrator in writing his/her decision and reasons, or by BBB for training and administrative purposes.

17. INSPECTION BY THE ARBITRATOR

The arbitrator may request an inspection of the product or service involved in your dispute.

If possible, the inspection will be performed as part of the hearing; otherwise, the inspection will be scheduled for a later date and all parties will receive at least three days notice unless such notice is waived by all parties. In accordance with BBB's arbitration fee schedule, in some cases an inspection by the arbitrator may incur additional costs to the parties.

18. TECHNICAL EXPERTS

At the request of the arbitrator, BBB shall make reasonable efforts to obtain a volunteer impartial technical expert to inspect the product involved or the service performed. If BBB is unable to obtain a volunteer technical expert, BBB shall

inform the parties and may give them the opportunity to incur the additional cost of a compensated technical expert.

The expert's findings shall be presented in writing or in person, at BBB's option, either before, during or after the hearing. In any case, you shall have an opportunity to evaluate and comment on the qualifications and findings of the expert.

You also have the right to have your own technical expert serve as a witness at your own expense.

19. SUBPOENAS

You may send BBB a request that the arbitrator subpoena witnesses or evidence that are relevant to your case. Any request shall include a statement as to why the witness or evidence is relevant, and why you believe a subpoena is necessary. If the arbitrator agrees with your request, a subpoena shall be signed by the arbitrator.

The party requesting a subpoena shall be responsible for serving the subpoena, including any expenses involved, and also for enforcement of the subpoena in court if necessary. BBB and the arbitrator do not have power to enforce a subpoena, but the arbitrator may consider any failure to produce subpoenaed evidence in the decision.

20. PRE-HEARING EXCHANGE OF INFORMATION

The arbitrator, at his or her discretion, may direct that the parties exchange documents or other information prior to the hearing. A copy of any such documents or information shall also be sent to BBB.

21. OATH OF PARTICIPANTS

You and your witnesses shall be placed under oath at the hearing by the arbitrator or BBB staff administering the hearing.

22. HEARING PROCEDURES

The arbitrator shall decide on the order and the procedures to follow for you to present your side of the dispute.

You shall be given an opportunity to make a personal presentation of your case, and you may present witnesses and evidence in support of your case. You shall also be given the opportunity to question the other parties, their witnesses and their evidence. After everyone has presented his or her case, each party shall be given the opportunity to make a closing statement.

In accordance with BBB's arbitration fee schedule, initial fees and costs may cover a limited hearing time, and additional time may incur additional costs to the parties.

If the arbitrator determines that additional information is necessary in order to make a fair decision, the arbitrator may direct that this additional evidence be submitted at a subsequent hearing or in any manner deemed appropriate by the arbitrator. If the arbitrator directs that written evidence be submitted after the initial hearing, the evidence shall be sent to BBB within the time frame specified by the arbitrator. BBB shall send a copy to the other party and solicit a response. Both the written evidence and any response shall be submitted by BBB to the arbitrator.

23. ADMISSION OF EVIDENCE AT HEARING

You may present your case without being restricted by courtroom rules of evidence. However, you should be sure your evidence is relevant to your case.

The arbitrator may limit your presentation if it is repetitious or irrelevant.

24. WRITTEN STATEMENTS/ DOCUMENTS

If you have a witness who cannot attend the hearing, you may present that person's written statement to the arbitrator. You must make a copy for the other party to read and use for response.

If you present your case by telephone, you should submit to BBB at least seven days before your hearing any written documents on which you will rely. BBB will provide these documents to the other party before the hearing.

25. ADMISSION OF EVIDENCE AFTER INITIAL HEARING

During the hearing, you may ask the arbitrator to give you a reasonable number of days to respond to evidence presented by the other party at the hearing. The arbitrator may grant your request at his or her discretion. If granted, BBB shall send your response to the other party for comment and then forward all information to the arbitrator.

Before a decision is made, an arbitrator may schedule new or additional hearings or otherwise request new or additional evidence to get all possible facts relating to your dispute.

Before a decision is made, you may send BBB new information that was impossible

to present at your original hearing and request that it be considered. BBB shall send it to the other parties for their response and then forward the information and any response to the arbitrator.

After the arbitrator has made a decision in your case, no more arguments or evidence may be presented, even if newly discovered or not available at the time of the hearing.

26. CLOSING THE HEARING

The arbitrator shall close the hearing when he or she determines that the parties have had sufficient opportunity to present all relevant evidence. The arbitrator will normally render a decision within five days after the hearing is closed.

27. SETTLEMENT

If all parties voluntarily decide to settle the dispute before the hearing, the settlement will end the dispute and no hearing will be held.

If a voluntary settlement is reached during the hearing, the arbitrator shall include the settlement in a final or interim consent decision. If a settlement is reached after the hearing but before the arbitrator's final decision, be sure to notify BBB at once.

28. TIME LIMITS

BBB shall make reasonable efforts to obtain a resolution of the dispute within 60 days, unless state or federal law provides otherwise. BBB or the arbitrator may extend this time at their sole discretion.

29. THE DECISION

When the arbitrator has reached a decision in your case, BBB shall send to all parties a written decision accompanied by the arbitrator's brief statement of reasons for

the decision. BBB will not read a decision to you over the phone.

A. Scope of decision

A decision shall be one that:

the arbitrator considers fair;

is limited to the issues raised in the demand for arbitration and any counterclaim; and

falls within the scope of these Rules.

Unless otherwise provided by agreement of the parties, the arbitrator is not bound to apply legal principles in reaching what the arbitrator considers to be a fair resolution of the dispute.

The decision may order an action to be performed, money to be paid, or a combination of these remedies. The arbitrator may award all or part of what you seek or may decide to award no payment or performance at all.

B. Types of decisions

The arbitrator shall render either a final or an interim decision.

If the arbitrator renders a final decision, the arbitrator has no further authority over the decision unless a valid request is made pursuant to Rule 28(C), Clarifying the decision; Rule 28(D), Correcting the decision or reasons for decision; or Rule 28(E), Decision is impossible to perform or to perform timely.

An interim decision may be written when the decision requires some action to be taken. If the arbitrator renders an interim decision, the arbitrator maintains continuing authority over the execution of the decision in accordance with the specific terms set out in the decision.

An interim decision shall state a time within which the consumer must notify BBB if the action ordered in the interim decision was not performed or was performed unsatisfactorily. If an interim decision has been rendered and a reconvening is requested in accordance with the terms of the decision, BBB shall schedule a further hearing. In addition to the evidence presented at that hearing, the arbitrator may request additional evidence from the parties or from an impartial technical expert. The arbitrator will normally render a decision within five days after the hearing is closed.

C. Clarifying the decision

You may request that the arbitrator clarify a decision if you do not understand the decision, or if you and the other parties disagree about the specific action required by the decision. Requests for clarification must be in writing and must be received by BBB prior to the time that performance is required under the decision.

BBB will not accept a clarification request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

BBB shall have sole discretion to determine if your written statement is an appropriate request for clarification of the decision. BBB shall send the request to the other parties, solicit their views, and send the request and any response to the arbitrator. The arbitrator may either clarify the decision or reject the request for clarification and let the decision stand as written.

You may not ask the arbitrator to clarify the reasons for decision.

D. Correcting the decision or reasons for decision

You may request correction of the decision or the reasons for decision if you believe the decision or reasons contain a mistake of fact, a miscalculation of figures, or exceed the arbitrator's authority. Requests for correction of a decision or reasons must be in writing and must be received by BBB prior to the time that performance is required under the decision.

A mistake of fact is not a conclusion of the arbitrator with which you disagree; it is a true error in such things as a date, time, place or name, and may justify a correction only if it concerns the essence of the decision.

A miscalculation of figures is not a dollar figure you consider to be unfair; it is a mathematical error.

The arbitrator's authority is limited to the scope of these Rules.

BBB will not accept a correction request that attempts only to reargue your case or that is based solely upon your disagreement or disappointment with the decision.

If your written statement to BBB is an appropriate request for correction, BBB shall send the request to the other parties, solicit their views, and send the request and any response to the arbitrator. The arbitrator may either correct the decision or reasons or reject the request for correction and let the decision or reasons stand as written.

E. Decision is impossible to perform or to perform timely

Unless otherwise specified in the decision, the time for performance shall generally be

no longer than 30 days from the date BBB forwards the award to the parties. If you believe in good faith you cannot perform the arbitrator's decision at all or within the established time limit, you should immediately inform BBB in writing. BBB shall process your submission in the same manner as a request for correction.

The arbitrator may request additional evidence, request another hearing, or do anything necessary to confirm or deny your claim of impossibility of performance. If the arbitrator confirms such impossibility, the original decision may then be changed to include any remedy falling within the scope of these Rules.

If a party has exceeded the time for performance, the other party should notify BBB in writing.

F. Suspending the time to perform

If you submit to BBB a written statement relating to correction, clarification or impossibility of performing the decision, the time performance of the decision shall be suspended until the issue is resolved by the arbitrator or by BBB.

G. After decision is issued

Once a decision in your case has been issued:

The parties will be legally bound to abide by the decision and must comply with the decision's terms (subject to modification/correction under these Rules or to any limited right of review that may be provided by state or federal law).

Each party gives up any right to sue the other party in court on any claim that has been resolved at the arbitration

hearing, unless a party fails to perform according to the arbitrator's decision.

If a party fails to perform the decision, notify BBB and it will try to resolve the matter. In addition, you may have the right to enforce the decision in court or pursue other legal remedies under state or federal law.

H. Verification of performance

All parties must do what the decision requires within the time limits set by the arbitrator.

Unless otherwise stated in the decision, the time for performance shall begin when you receive the decision. Approximately two weeks after the performance date, BBB shall contact the parties to see if the decision has been performed.

30. TIMELY OBJECTIONS

Any failure to follow these Rules that may significantly affect the independence, impartiality or fairness of the arbitration process must be raised with BBB at the earliest opportunity. BBB shall make a final decision on the appropriate action to be taken if BBB determines that a failure to follow these Rules has significantly affected the independence, impartiality or fairness of the arbitration process.

31. CHANGE OF TIME

You and the other parties to the arbitration may jointly agree in writing to change any period of time stated in these Rules.

32. CONFIDENTIALITY

The dispute resolution process and any records of that process are private and confidential.

If the dispute originated as a complaint filed with BBB, BBB may include in its report on the business an indication of the business's failure to arbitrate or to perform an award in your individual case, excluding personally identifying information about any individual. Otherwise, BBB shall not release the terms of the arbitration decision to any person or group that is not a party to the arbitration unless all parties agree or unless such release is required by law or pertinent to judicial or governmental administrative proceedings.

33. JUDICIAL PROCEEDINGS/ EXCLUSION OF LIABILITY

In submitting to arbitration under these Rules, the parties agree that, other than for purposes of authentication by staff of BBB, BBB and the arbitrator shall not be subpoenaed by either party in any subsequent legal proceeding. The parties further agree that BBB (including its staff), Council of Better Business Bureaus (including its staff) and/or the arbitrator shall not be liable for any act or omission in connection with your arbitration.

34. INTERPRETATION OF RULES/RIGHT TO DISCONTINUE ARBITRATION

BBB shall make the final decision on procedural questions and on any other question concerning the application and interpretation of these Rules.

BBB at all times reserves the right to decline or discontinue administration of arbitration for any case(s) due to a conflict with any BBB Policy or state/federal law or regulation, the conduct of a party, or failure to pay any fees required by BBB.

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