



*Results Beyond Dispute*SM

GUIDELINES FOR VIRTUAL ARBITRATION PROCEEDINGS

These guidelines (last updated 8/18/2021) address circumstances that are unique to a virtual arbitration proceeding. They can be applied to both partially virtual (“hybrid”) or fully virtual sessions of an arbitration proceeding, including the arbitration hearing itself. They are intended to assist the Arbitrator(s) and Parties in an arbitration by supplementing procedural terms that otherwise govern the conduct of the proceeding.

1. Videoconferencing Platform and Virtual Hearing Support Functions

1.1 **Platform.** Judicate West has selected the Zoom Pro platform for enabling virtual arbitration proceedings. This is not intended as, nor does it constitute, an endorsement of Zoom. Nor is it a warranty or guarantee that the Zoom Pro platform will perform as intended or provide adequate security, privacy, or functionality. However, if all counsel and the Arbitrator(s) agree, an alternative virtual platform may be used. Counsel will be required to sign a waiver document on behalf of themselves and their clients before they may move forward with hybrid or virtual management of a dispute.

1.2 **Download Zoom App.** In advance of any hybrid or virtual session in a matter, each virtual Participant must download the free Zoom app to the device(s) that will be used for the session.

1.3 **Assistance of Hearing Support Provider.** A Judicate West Moderator who is trained in Zoom will be available at all times during virtual sessions to assist with technical issues that may come up. All counsel will provide Judicate West with contact information in advance that can be provided to the Moderator, preferably cell phone numbers for all virtual Participants.

1.4 **Venue.** Although virtual Participants may be located in different places, the venue for this proceeding shall be deemed to be the venue specified in the agreement between the Parties. If no venue is specified for a fully virtual proceeding, the venue shall be the Arbitrator(s)’ primary Judicate West office location in California. If no venue is specified for a hybrid proceeding, the venue shall be the Judicate West office location in California where the Arbitrator(s) and some of the Participants have gathered for the session.

2. Preparation by Virtual Participants

2.1 **Equipment.** Each virtual Participant in the proceeding – Arbitrator(s), counsel, party witnesses, party representatives, and, if applicable, court reporters and interpreters – must test the compatibility of their equipment (e.g., laptop, desktop computer, webcam, headphones) with the video conference platform. Each virtual Participant is responsible for ensuring the compatibility and functioning of their equipment.

2.1.1 **Screen Size.** No virtual Participant may use a device with a screen size measured diagonally of less than 11 inches (such as a smartphone) except with the advance approval of the Arbitrator(s).

2.1.2 **Number of Screens.** Ideally, each virtual Participant should have two screens available. The virtual Participant may use one screen to display and participate in the proceeding and the other screen to display electronic exhibits, if any. See Virtual Guideline § 7 for more information regarding exhibit management.

2.1.3 **Bandwidth.** Each virtual Participant must be in a physical location for the proceeding that has adequate internet bandwidth to support the use of the virtual platform. Virtual Participants should instruct other users of their LAN to avoid computer processes that will use substantial bandwidth while the virtual Participant is involved in the proceeding.

2.1.4 **Camera.** Virtual Participants must situate their webcams so as to appear well lit against a not-distracting background. Virtual witnesses giving testimony should sit back from the camera so that their hands are visible on the table in front of them. Their cell phones should also be face-down on the table and visible. All other virtual Participants should sit so that only their head and shoulders are visible.

2.2 **Orientation Program.** Any virtual Participant who does not have substantial and successful experience with the Zoom platform should participate in one or more online orientation or training programs offered by Zoom (www.support.zoom.us) to become familiar with the Zoom platform's features and operation. If another virtual platform is being used, the virtual Participant should participate in a similar orientation program for that platform.

2.3 **Witness Familiarity.** Counsel is responsible for ensuring that all non-adverse virtual witnesses called by the Party whom counsel represents are familiar with the virtual platform being employed. Counsel are also responsible for ensuring that each of these virtual witnesses has suitable equipment to participate in the proceeding. Counsel must conduct a test session with each of these virtual witnesses in advance of the proceeding and direct them to practice use of both the virtual platform and the process to view any electronic exhibits.

3. **Platform Test Session**

3.1 **Process.** At the discretion of the Arbitrator(s), a non-substantive test session devoted solely to the operation of the virtual platform may be ordered with Participants (not including non-party witnesses or experts) and either the Arbitrator(s), the Judicate West Moderator, a Judicate West Client Experience Specialist, or a Judicate West Case Manager. The test session should take place at least two days before the scheduled start of the proceeding. The test session should enable each virtual Participant to practice the activities the virtual Participant will likely need to employ during the proceeding. No substantive argument should be presented during the test session unless otherwise permitted in advance by the Arbitrator(s).

3.2 **Equipment.** The test session should enable review of the camera angle, background, and lighting that each virtual Participant will use during the proceeding.

3.3 Exhibit Management. If electronic exhibits will be used during the proceeding, they should be downloaded by virtual Participants in advance of the test session. Each Party should include at least one non-substantive “test” document in the electronic document files that will be available to Participants for use in the proceeding. The test session should permit each virtual Participant to practice accessing the electronic exhibit files, including accessing and reviewing the “test” document.

4. Oaths

The Arbitrator(s) are satisfied that they have the legal authority to administer the Oath in connection with hybrid and virtual proceedings, and that the Oath will be fully binding upon all who take it. The Arbitrator(s) may also seek to employ an expanded Oath addressing considerations specific to virtual proceedings. If any Party wishes to challenge the Arbitrator(s)’ authority to administer the Oath, they must do so within 10 calendar days of receiving these Guidelines by advising the Arbitrator(s) and all Parties thereof. The Arbitrator(s) will schedule briefing and a hearing, as appropriate, to resolve any issues well ahead of the hearing.

5. Interpreters

If any witness or other Participant requires the use of an interpreter, the Parties must notify the Arbitrator(s) and create a plan for the interpreter’s participation in the proceedings.

6. Requirements During the Proceeding

6.1 Advance Log-On. All virtual Participants other than witnesses must log on to the virtual platform at least 10 minutes in advance of the proceeding start time. The proceeding will not begin until all necessary Participants are adequately connected to the virtual platform.

6.2 Emergencies During Hearing. Virtual Participants should notify the Arbitrator(s) by phone of any emergency arising out of technical difficulties during the hearing. Logging off and back on again will often solve a problem. In the event the problem cannot be resolved in a reasonable time, the Arbitrator(s) will confer with the Parties via conference call 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.

6.3 No Multi-Tasking. All Participants must devote their full attention to the proceeding. Multi-tasking is not permitted, except to the extent the Arbitrator(s) give advance permission for counsel to work as appropriate on matters related to the proceeding. See also Virtual Guideline § 7.7 (“No Coaching or Consultation of Witnesses”).

6.4 Disclosure of Other Persons. At the beginning of the proceeding, the Arbitrator(s) will ask each virtual Participant under oath to identify any other persons present at the Participant’s location. Each virtual Participant has an ongoing obligation to alert the Arbitrator(s) and other Parties if any additional person joins the Participant. At the beginning and end of each session, each virtual Participant must disclose any persons who have or had access to any portion of the proceeding.

6.5 Confidentiality. The Parties must take all steps necessary to ensure the confidentiality of the conduct of the proceedings. No person may have access to the live video and/or audio feed of the proceeding other than disclosed Participants. Recording and chat features will be disabled unless authorized under Virtual Guideline § 6.6.

6.6 Recording and Transcription. Without the advance written authorization of the Arbitrator(s), no Participant may record, broadcast, take screen shots of, or copy any part of the proceeding. Zoom and other virtual platforms may offer a recording and transcription functionality to the Arbitrator(s) in appropriate cases. The Parties must confer with the Arbitrator(s) in advance of the hearing to determine whether recording, transcription, or both, will be utilized in the proceeding. It is counsel's responsibility to ensure the virtual proceeding is actually recorded as desired. JW is not responsible for any failure to record and JW cannot guarantee that any recording made by means other than through a certified court reporter will be considered admissible in other proceedings. Any issues regarding the accuracy of a transcript will be resolved by the Arbitrator(s).

7. Documents and Witness Examinations

7.1 Advance Disclosure of Participants. Arbitrators have an obligation to disclose any work history or other past or current relationship with Participants. To avoid a delay in commencing the hearing, it is imperative that the names of ALL Participants, particularly counsel, are provided to Judicate West at least 30 days before the hearing, unless otherwise ordered by the Arbitrator(s). Judicate West will request information regarding parties and counsel well ahead of time, but this duty of counsel to provide the names of all arbitration Participants is a continuing responsibility until the proceeding is concluded.

7.2 Advance Distribution of Exhibits. For any proceeding where documentary or demonstrative exhibits will be used, the Parties must confer and report to the Arbitrator(s). Absent exigent circumstances and unless another timeline is ordered by the Arbitrator(s), the Parties must provide their report to the Arbitrator(s) at least 30 days in advance of the hearing, including by stating how they propose to enable virtual Participants to see and review exhibits. Preferably, this report can take place at the final Arbitration Readiness Conference. The Parties must make a good-faith effort to stipulate to the admissibility of as many of the exhibits as reasonably possible in advance of the hearing, so they can be used efficiently at the time of the hearing. Counsel must take reasonable steps to protect the privacy of personal information in the exhibits.

7.3 Management of Electronically Stored Information. If electronic access to documents will be necessary during the hearing, the Parties, at their own expense, will use Case Anywhere or another similarly secure electronic document storage system to make the exhibits available to all Participants who will need them. Each virtual Participant must download any necessary files, including exhibits, onto the device(s) that will be used for the proceeding. The Parties should preferably provide the relevant exhibits to virtual witnesses for download in advance of the proceeding. However, they 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 must have devised a reasonable method of revealing the exhibit at the hearing that will not cause unreasonable delay.

7.4 Hard-Copy Exhibits. The Arbitrator(s) may request, preferably with at least 14 days' notice to the Parties, to receive some or all exhibits in hard copy. If hard copies will be used 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, unless, in the good-faith opinion of counsel proffering the evidence, advance notice would risk jeopardizing the full and fair presentation of a Party's case. One suggestion for the latter case is to deliver the documents in a sealed container to be opened "on camera" in full view of the Parties at the hearing.

7.5 Counsel Responsibility. It is counsel's responsibility to ensure that any witness examined by that counsel, whether on direct or cross-examination, has full and fair access to any exhibits counsel may use to examine the witness, or to which reference is made during the witness' examination.

7.6 Telephone Testimony. The Arbitrator(s) may permit a witness to testify by telephone in exceptional circumstances. Before doing so, the Arbitrator(s) must be satisfied that in view of the nature of the witness and the subject of the testimony, a telephonic examination will be fair and will not prejudice the presentation of the case of any Party. Any Party considering offering testimony by telephone or affidavit shall disclose that intent at least 30 days in advance of the proceeding and preferably at the Arbitration Readiness Conference so the issue can be appropriately managed before the hearing.

7.7 No Coaching or Consultation of Witnesses. Virtual witnesses should preferably be alone in the room from which they are testifying. If others are present, they must be disclosed as provided in Virtual Guideline § 6.4. No one other than the attorneys actually conducting examination may communicate with the witness during his or her testimony. If a witness refers to notes, documents, or other things during testimony, that fact and the item referenced must be disclosed to all counsel. Communicating, coaching, or suggesting answers in any form is unlawful and may constitute witness tampering, a crime. Counsel shall carefully inform witnesses of these requirements in advance of the proceeding and reasonably assure that they are followed.

8. Enforcement

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

9. Modifications to These Guidelines

The parties, with the approval of the Arbitrator(s), may establish changes or modifications to these Guidelines. Preferably, the Parties should request a conference call with the Arbitrator(s) within 10 calendar days of receiving the Guidelines to discuss the Parties' proposed changes. The Arbitrator(s) may also modify any of the Guidelines after consultation with the parties.