

## Appendix XXIX-B [new]

Note: Adopted July 27, 2015 to be effective September 1, 2015.

### Introductory Note:

The Supreme Court of New Jersey endorses the use of arbitration and other alternative dispute resolution processes for the resolution of disputes.

Parties and their counsel may use this form to develop an arbitration agreement or consent order for the arbitration of certain family law disputes under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq., (UAA) and R. 5:1-5(a) of the Rules of Court.

The parties may agree to arbitrate certain family law disputes even if there is no pending family law proceeding in the Superior Court of New Jersey, Family Part.

The provisions of this form are acceptable to establish an enforceable arbitration agreement under the UAA.

This form should not be used for proceedings under the Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 et seq., (APDRA) because that act has substantial procedural differences from the UAA. A sample APDRA agreement is in Appendix C.

Parties should understand that adding certain clauses may increase the time and cost of arbitration. For example, electing to strictly apply the Rules of Evidence, permitting full discovery under the Rules of Court, requiring a full verbatim transcript of the proceeding where not required by case law, or requiring full findings of fact and conclusions of law where not required by case law, can and likely will significantly increase the duration and costs of arbitration.

The explanatory notes in this form note that:

- Certain provisions are required to assure the enforceability of the arbitration agreement. (See paragraphs 1, 2, and 4.)
- Certain provisions are required in any arbitration agreement for family law disputes involving children, including custody, parenting time or child support issues. (See paragraphs 1, 14, 16 and 17.)
- Certain details of the arbitration process should be agreed upon to avoid later disputes. (See paragraphs 6, 7, 9, 11, 15, 18, 19, 20, 22, and 29)

The remaining provisions are offered for consideration by the parties and their counsel in planning the arbitration proceeding.

**AGREEMENT TO ARBITRATE  
PURSUANT TO THE UNIFORM ARBITRATION ACT, N.J.S.A. 2A: 23B-1 et seq.**

WHEREAS, the parties, fully aware of their rights to have their case heard by the Superior Court of New Jersey, Family Part, or to have their issues in dispute resolved in arbitration, have agreed to arbitrate pursuant to the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq., (UAA).

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, the parties agree as follows:

**Knowing Waiver of Certain Rights, Consent to Arbitrate, Scope of Arbitration, Entry of Judgment on the Arbitration Award**

1. The parties acknowledge and agree to the following:
  - (A) The parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;
  - (B) The parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;
  - (C) The parties have had sufficient time to consider the implications of their decision to arbitrate; and
  - (D) The parties have entered into this arbitration agreement freely and voluntarily, after due consideration of the consequences of doing so.

**Explanatory Note:**

***Paragraph 1 contains the language required by Fawzy v. Fawzy, 199 N.J. 456 (2009). It assures that parties to an arbitration agreement involving family law disputes, including custody, parenting time or child support issues, freely and voluntarily agree to arbitrate those disputes.***

2. The parties agree to arbitrate certain disputes as provided in this agreement as follows:

(A) All issues that could be raised and adjudicated in the Superior Court of New Jersey, Family Part, including *pendente lite* issues, except those excluded from arbitration by R. 5:1-5(a) shall be subject to the jurisdiction of and determination by the arbitrator pursuant to the terms and procedures of this agreement.

(B) The parties exclude from arbitration the following issues: (list issues or state “none”) \_\_\_\_\_.

(C) The parties elect to arbitrate the following issues: (list issues) \_\_\_\_\_.

The arbitrator shall determine whether an issue or dispute is within the scope of the arbitrator’s jurisdiction.

**Explanatory Note:**

*The parties are required to state what issues they agree to arbitrate.*

*Paragraph 2(A) offers the parties the option of a broad scope of issues to be arbitrated.*

*Paragraph 2(B) is to be used if the parties desire to exclude certain specified issues from arbitration. For example, some issues may be addressed in a separate mediation process or by the court after the disposition of the arbitration.*

*Paragraph 2(C) may be used to designate specific issues that the parties agree to arbitrate. For example, some issues already may be settled and the arbitration will be limited to the remaining issues.*

3. The parties agree that the provisions of this agreement govern the arbitration proceeding if there is a conflict between the UAA and this agreement but only if the conflicting provisions of the UAA may be waived.

**Explanatory Note:**

*The parties may change some provisions of the UAA, and may not change others. See N.J.S.A. 2A: 23B-4(c). Paragraph 3 confirms the parties' intent to change only those provisions of the statute that may be changed.*

4. Judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

**Explanatory Note:**

*Paragraph 4 is to assure that the arbitration award is enforceable.*

5. Neither party shall have the right or power to expand, narrow, amend or revoke this agreement without the consent, in writing, of the other party.

**Explanatory Note:**

*Paragraph 5 is to make clear to the parties the irrevocability of their agreement to arbitrate.*

**Appointment of Arbitrator; Location of the Arbitration**

6. The parties appoint (names(s)) \_\_\_\_\_ as the arbitrator(s). If the parties appoint more than one arbitrator, the word “arbitrator” in this agreement shall refer to the panel. The arbitrator has made full disclosures as required by the UAA as detailed in Rider A to this agreement. The parties have made full disclosure of any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator. The parties waive any objections to the service of the arbitrator.

**Explanatory Note:**

*Disclosures by both the arbitrator and the parties are necessary to assure there is no later objection to the arbitrator based on information known to anyone at the time the arbitrator is selected.*

*If the parties do not name an arbitrator, or a panel of arbitrators, or do not agree on a process for selecting an arbitrator, the court will need to be involved to appoint an arbitrator under the UAA, N.J.S.A. 2A: 23B-11. The appointment of a panel of arbitrators will increase the cost and likely extend the duration of the arbitration proceeding.*

7. The arbitrator’s compensation and other expenses of the arbitration proceeding shall be borne by the parties as follows:

(A) Equally;

(B) In the following proportion: (state percentages borne by each party)

\_\_\_\_\_.

8. In any interim or final award, the arbitrator  (A) may  (B) may not reallocate the parties’ percentage contribution to the arbitrator’s compensation and other expenses of the arbitration proceeding.

9. Unless otherwise agreed, ordered, or awarded, the parties shall be responsible for paying their own attorney’s fees and expenses.

10. In any interim or final award, the arbitrator  (A) may  (B) may not award reasonable attorney's fees and other reasonable expenses of arbitration.

**Explanatory Note:**

*Parties should agree on certain details of the arbitration process, such as the allocation of the responsibility for arbitrator compensation, including the source of payment, to avoid later disputes about those details.*

*Paragraphs 8 and 10 confirm what the statute provides (N.J.S.A. 2A:23B-21(b) and (d)) and offer the parties the option to bar the arbitrator from reallocating arbitrator compensation and other expenses or from awarding attorney's fees and costs.*

11. The arbitration shall be conducted at (designate place) \_\_\_\_\_, or such other location as the parties agree or as selected by the arbitrator.

**Explanatory Note:**

*Parties should agree on certain details of the arbitration process to avoid later disputes about those details.*

12. The parties confirm the following role or roles for the arbitrator:

(A) The arbitrator has not served, and shall not serve, in another capacity in the matter being arbitrated. In particular, the arbitrator has not served, and shall not serve in the dual capacity as mediator, settlement facilitator, parenting coordinator, or *guardian ad litem*; or

(B) The parties shall participate in a mediation process before or during the arbitration proceeding with an independent mediator who is not serving, and shall not serve, as arbitrator for the parties; or

(C) The parties may jointly ask the arbitrator at any time during the course of the arbitration proceeding to serve also as a settlement facilitator, during which time the arbitrator shall meet with the parties and their representatives all together, at the same time, and discuss with them various options for resolution of their disputes.

(D) The parties may jointly ask the arbitrator at any time during the course of the arbitration proceeding to serve also as a mediator, during which time the arbitrator may meet with the parties and their representatives all together, at the same time, or in caucus, or in any other manner that a mediator would employ, and discuss with them various options for resolution of their disputes. By electing this option, paragraph 12(D), the parties also incorporate by reference all of paragraph 13 below.

**Explanatory Note:**

*Paragraphs 12(A), (B) and (C) define the role the parties expect of the arbitrator. Each of these paragraphs is intended to avoid the problem that arises if, during the course of the arbitration proceeding, the parties ask the arbitrator to assist in settlement discussions as mediator and the arbitrator conducts private meetings with one party and then the other. While that is permissible, it would not then be permissible for the arbitrator, after unsuccessfully mediating the disputes, to resume the role of arbitrator and to decide disputed issues unless the parties have elected paragraph 12 (D).*

*Otherwise, such dual roles may result in arbitration awards being vacated and the parties being required to start the arbitration process again before a new arbitrator.*

*Paragraph 13 is required if the parties elect paragraph 12(D) above where the arbitrator will serve in the dual roles of arbitrator and mediator at any time and in any order during the process. It makes clear the risks inherent in having an arbitrator assume the role of mediator and then resume the role of arbitrator. Failure to object to the mediator resuming the role of arbitrator is deemed a waiver of the right to object.*

*Further, the dual role of arbitrator and guardian ad litem is not permitted. Fawzy v. Fawzy, 199 N.J. 456 (2009).*

13. The parties acknowledge that the law does not favor an arbitrator also serving in the role of mediator in the same proceeding unless the parties are advised of the benefits and risks and expressly agree in writing to such a process. The parties have been advised of the holding in Minkowitz v. Israeli, 433 N.J. Super. 111 (App. Div. 2013). That case addressed some of the issues that arise when one person acts in the dual capacities of arbitrator and

mediator and concluded that dual roles are to be avoided unless the parties consent in writing.

Issues include:

(a) The mediator meets separately with the parties and their counsel and learns information that in mediation is both confidential and privileged and that the mediator is required under section 7 of the Uniform Mediation Act, N.J.S.A. 2A: 23C-7, (UMA) not to disclose to the other party without the consent of the disclosing party;

(b) If the arbitrator is required by the parties to disclose such confidential and privileged information to the other party, the willingness of the parties to engage in a meaningful exchange of private confidential information during the mediation process is likely to be compromised, thereby making the mediation process itself less likely to be effective in resolving the disputes because successful mediation depends on confidentiality;

(c) The party to whom the arbitrator is required to disclose such confidential and privileged information can never be completely sure that he/she received a complete and accurate report of the information conveyed between the other party and the arbitrator during the confidential mediation process;

(d) Such confidential and privileged information is inadmissible in another proceeding (see UMA, N.J.S.A. 2A: 23C-4(c) and 7(c)), including the proceeding before the arbitrator;

(e) Such inadmissible, confidential and privileged information is likely to influence the decision of the arbitrator if the mediation is unsuccessful and the arbitrator is then called on to decide the disputed issues;

(f) These issues can lead to grounds for vacating an arbitration award and would require the parties to engage in a second arbitration before a different arbitrator.

Notwithstanding these issues, the parties have been advised that they may consent in writing to the arbitrator acting as mediator and then resuming the role of arbitrator. The parties intend this agreement to constitute such consent in writing.

Therefore, each party hereby consents to the arbitrator acting as a mediator for any issues (or only for certain issues) identified in writing by the parties.

Each of the parties waives all claims of confidentiality and privilege under the UMA and the common law for all communications, including private *ex parte* and otherwise confidential and privileged communications that the parties may have with the arbitrator while the arbitrator is serving as mediator.

The parties instruct the arbitrator to waive the mediator privilege under the UMA. Upon beginning or resuming the arbitration, the parties consent to and instruct the arbitrator to disclose fully and completely to the other party all otherwise confidential and privileged communications that the parties had with the arbitrator while the arbitrator was serving as mediator.

The parties waive any objection to the arbitrator considering as admissible evidence any confidential or privileged information received from the other party. Upon beginning or resuming the arbitration, the parties shall require the arbitrator to put all confidential and privileged information on the record, insofar as the issues in the proceeding relate to custody and parenting time.

The arbitrator may also serve as mediator at any time during the proceeding in any order and may thereafter resume the role of arbitrator, free of any objection from either party.

The parties acknowledge that the arbitrator is not exceeding the arbitrator's authority by acting as mediator and then resuming the role of arbitrator.

If a party proceeds with the next arbitration hearing without an objection to the arbitrator resuming the role of arbitrator, the party will be held to have waived any right to object.

**Explanatory Note:**

***Paragraph 13 is optional unless the parties selected paragraph 12(D), in which case paragraph 13 is required. It makes clear the risks inherent in having an arbitrator assume the role of mediator and then resume the role of arbitrator. Failure to object to the mediator resuming the role of arbitrator is deemed a waiver of the right to object.***

**Required Record Keeping**

14. In any arbitration proceeding involving custody or parenting time issues, the parties shall have a record made of the arbitration proceeding as to those issues. Such record shall include: (i) a record of all documentary evidence; and (ii) all testimony shall be recorded verbatim. A record of testimony may be made by one of the following: (i) certified shorthand reporter; (ii) electronic recording; or (iii) audio or video recording. Absent agreement of the parties, the arbitrator shall decide the proper allocation of the costs of the record.

15. In any arbitration proceeding that does not involve custody or parenting time issues, the parties:

(A) Shall not require a record to be kept of the arbitration proceeding; or

(B) Shall require a record to be kept of the arbitration proceeding relating to certain issues as follows: (list issues) \_\_\_\_\_; or

(C) Shall require a record to be kept of the entire arbitration proceeding.

**Explanatory Note:**

***The parties may choose whether or not to have a record made of the arbitration proceeding as noted in the optional parts (A), (B) and (C) of paragraph 15. The parties may consider having a verbatim record made in all child support cases in which a deviation from the guidelines is sought to assure that the court may properly review the arbitrator's award. Requiring***

*a formal record to be kept, depending on the nature of the record, may increase the cost of the arbitration.*

16. All documentary evidence introduced at the hearing shall be maintained by the arbitrator until the issuance of the award and the parties shall either keep a copy of all such evidence or obtain the evidence from the arbitrator after issuance of the award and retain it until the expiration of the time for the filing of any appeal from an order or judgment confirming, vacating or modifying the award, or from the expiration of the time to apply for an order or judgment to vacate or modify the award.

**Explanatory Note:**

*Paragraphs 14 and 16 are required in any arbitration agreement involving custody or parenting time issues. This assures that the court may properly review any resulting arbitration award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).*

**Required Findings; Form of Award**

17. In any proceeding involving custody, parenting time or child support issues, the parties shall require the arbitrator to make findings of fact and conclusions of law with respect to child-custody, parenting-time, or child support issues. As to those issues, the arbitrator shall state in writing or otherwise record findings of fact and conclusions of law with a focus on the best-interests standard.

**Explanatory Note:**

*Paragraph 17 is required in any arbitration agreement in which issues involving children, including custody, parenting time or child support issues, will be addressed. This assures that the court may properly review any resulting arbitration award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).*

18. In any arbitration proceeding that does not involve custody, parenting time or child support issues, the parties:

(A) Shall require the arbitrator to prepare an award stating no reasons; or

(B) Shall require the arbitrator to prepare an award briefly stating the reasons for the decision of the arbitrator; or

(C) Shall require the arbitrator to prepare an award stating findings of fact and conclusions of law.

**Explanatory Note:**

*Absent agreement of the parties or requirements under the law, the arbitrator will decide the form of the award. If the parties desire an explanation of the award because of the particular issues involved, they may select option (B). If the parties want to expand the scope of judicial review under N.J.S.A. 2A: 23B – 4(c), they should consider selecting option (C). However, if the parties decide to ask the arbitrator to state the reasons for the award or to make findings of fact and conclusions of law, it may increase the cost of the arbitration.*

**Law to Be Applied**

19. This agreement shall be interpreted according to the laws of the State of New Jersey.

**Explanatory Note:**

*Paragraph 19 gives guidance to the arbitrator about what rules of construction are to be used in interpreting the agreement (i.e., New Jersey law).*

20. In all cases involving custody, parenting time, or child support issues, the arbitrator shall be bound to apply the substantive laws and remedies of the State of New Jersey. All other issues in this arbitration shall be determined by:

(A) The substantive laws and remedies of the State of New Jersey or the State of (identify governing law) \_\_\_\_\_ which the arbitrator shall be bound to apply; or

(B) The substantive law of the State of New Jersey or the State of (identify governing law) \_\_\_\_\_, but the arbitrator may award such remedies as the arbitrator considers just and appropriate under the circumstances. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award or for vacating an award.

**Explanatory Note:**

*Paragraph 20 gives guidance as to which law to apply to the particular issues in dispute. The parties may require the arbitrator to be bound to apply the substantive law and remedies as stated in Paragraph 20(A). Alternatively, Paragraph 20 (B) allows the parties to select the substantive law and grant the arbitrator broad discretion in fashioning remedies that may be outside of the remedies available under the substantive law. For example, the parties may ask the arbitrator to award a lump sum of alimony.*

*See also paragraph 10, offering the parties the option to limit the arbitrator's authority to reallocate or award attorney's fees and expenses.*

21. The arbitration shall be conducted pursuant to rules of procedure as determined in the discretion of the arbitrator, consistent with this agreement and the applicable statute.

**Explanatory Note:**

*Paragraph 21 confirms what the statute provides under N.J.S.A. 2A: 23B-15. The parties remain free to choose another set of procedural rules to govern the arbitration process.*

## **Confidentiality**

22. Except as may be required by law, the parties and the arbitrator shall keep the existence, content (including all testimony and documentary evidence presented) and the results of the arbitration proceeding confidential. Neither the parties nor the arbitrator may disclose the existence, content, or results of any arbitration under this agreement without the prior written consent of the parties.

### **Explanatory Note:**

*The arbitrator must keep confidential the arbitrator's knowledge of the arbitration proceeding. However, the parties are not required to keep anything about the arbitration proceeding confidential unless they agree to do so. An important reason some parties agree to arbitrate is to maintain certain information as confidential and this optional paragraph 22 provides that.*

**Discovery and Rules of Evidence**

23. The parties agree that the following discovery procedures shall apply to the arbitration proceeding:

- (A) Such discovery as the arbitrator determines appropriate under the UAA; or
- (B) Discovery conducted in accordance with the New Jersey Rules of Court; or
- (C) Limited discovery as follows: (specify the agreed discovery) \_\_\_\_\_; or
- (D) No discovery.

**Explanatory Note:**

*The parties have various options ranging from full discovery under the Rules of Court to no discovery at all.*

*The parties may choose paragraph 23(A), which confirms that the scope of discovery is left to the discretion of the arbitrator as provided under N.J.S.A. 2A: 23B-17.*

*The parties may also choose to do expansive discovery such as that under the New Jersey Rules of Court as provided in paragraph 23(B). However, one of the advantages of arbitration is the limited and expedited scope of discovery. Choosing paragraph 23(B) will substantially increase the cost of the arbitration proceeding, and may not be necessary to a full and fair presentation of the issues to the arbitrator.*

*The parties may choose paragraph 23(C) to specify what discovery is needed (e.g., disclosure of closely-held business records).*

*The parties may choose paragraph 23(D) for no discovery if the issue to be arbitrated is one where no discovery is necessary and all information to be presented to the arbitrator is already in the hands of the parties or if the parties choose to save legal costs of formal discovery requests and responses by agreeing to work cooperatively to exchange necessary information.*

24. The parties agree that the following shall govern the admissibility of evidence in the arbitration proceeding:

- (A) Such evidence shall be admitted in the discretion of the arbitrator pursuant to the UAA; or

(B) The New Jersey Rules of Evidence shall apply; or

(C) The (specify source of other rules) \_\_\_\_\_ Rules of Evidence shall apply.

Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

**Explanatory Note:**

*The parties may choose paragraph 24(A), which confirms that absent agreement of the parties, the admissibility of evidence is left to the discretion of the arbitrator, who is not bound to apply any rules of evidence. N.J.S.A. 2A: 23B-15(a).*

*The parties may choose paragraphs (B) or (C) to designate particular rules of evidence. However, applying any rules of evidence may require the services of a lawyer as the arbitrator, whereas an accountant or social services professional may be the more suitable selection as arbitrator, depending on the issues to be arbitrated. Also, applying rules of evidence in the arbitration hearing may increase the time and expense of the arbitration hearing.*

**Arbitration Proceedings and Witnesses/Experts**

25. The arbitrator may hold conferences with the parties. The arbitrator may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action. Subpoenas shall issue in the name of and be signed by the arbitrator, and shall be directed to the person therein named and served in accordance with R. 1:9-3 of the Rules of Court. Parties may enforce subpoenas as provided by the UAA.

**Explanatory Note:**

*Paragraph 25 confirms what the statute provides. N.J.S.A. 2A: 23B-15(a) and 17(g).*

26. If the arbitrator is of the opinion that evidence by impartial expert(s) would be of assistance, the arbitrator may direct that expert evidence be obtained. The fees and expenses of

expert witnesses shall be paid by the parties as directed by the arbitrator. The parties remain free to retain their own experts to challenge the report(s) of the impartial expert(s) and to cross-examine the impartial expert(s).

**Explanatory Note:**

***Paragraph 26 assures that the arbitrator may direct that expert evidence be obtained and confirms the right of the parties to retain their own expert(s) and to cross-examine the impartial expert(s).***

**Pendente Lite (Interim) Relief**

27. Any determination reached before a final award shall be considered *pendente lite* (interim) relief.

28. Any party may seek *pendente lite* (interim) relief from the arbitrator, to the same extent as such relief could be requested in the Superior Court of New Jersey, Family Part. Any party may request that the ruling be incorporated into an award. Any party may then ask the court to confirm, enforce, modify, correct, or vacate the award in accordance with R. 5:3-8(a) or (b).

29. The arbitration proceeding shall not be abated, stayed or delayed by the court's review or enforcement of a *pendente lite* (interim) award unless the arbitrator or the court so determines.

**Explanatory Note:**

***Paragraph 28 confirms what the statute provides. N.J.S.A. 2A: 23B-18.***

***Paragraph 29 provides that a motion/application to the court to address a *pendente lite* (interim) award does not affect the ongoing arbitration proceeding on other issues.***

### **Final Determination**

30. An award shall be made within (state number) \_\_\_\_ days following the close of evidence or submission of summations, whichever is later. The arbitrator, with the consent of the parties, may extend the time for making the award.

#### **Explanatory Note:**

*Paragraph 30 is desirable to assure a timely completion of the award by the arbitrator. A 30-day time limit, or slightly longer, is typical.*

### **Post-Award Review, Modification or Correction of the Arbitration Award by the Arbitrator**

31. On application to the arbitrator by a party to the arbitration proceeding, the arbitrator may modify or correct the award:

(1) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

(2) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted; or

(3) If the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(4) To clarify the award.

#### **Explanatory Note:**

*Paragraph 31 confirms what the statute provides. N.J.S.A. 2A: 23B-20 and 24 (a)(1) and (3). The parties may include this paragraph in their agreement if the parties want to incorporate, for reference, the standards for when an arbitrator may be asked to review the award but they may not vary these four standards governing the arbitrator's review. N.J.S.A. 2A: 23B-4(c).*

32. An application shall be made and notice given to all parties within 20 days after the aggrieved party receives notice of the award. Objection to the application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given to all parties within 7 days. The arbitrator shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

**Explanatory Note:**

***Paragraph 32 confirms what the statute provides about the timing of an application to the arbitrator and the opposition. N.J.S.A. 2A: 23B-20. This paragraph further provides for the option of a reply.***

33. There shall be no further jurisdiction of the arbitrator to consider any further applications of the parties, absent written consent of the parties to expand the scope of the arbitration.

**Explanatory Note:**

***Paragraph 33 confirms that the arbitrator's authority ends completely upon the issuance of a final award and the expiration of the short time within which to seek modification or clarification of the award from the arbitrator. However, the parties, in writing, may expand the scope of the arbitrator's jurisdiction. Such expansion may include agreement that the arbitrator may continue to exercise jurisdiction over issues beyond those addressed in the final award.***

34. The parties agree that the arbitrator has jurisdiction after the issuance of any award in order to be able to reconsider the award based upon mistake of fact or mistake of law or any factor set forth in R. 4:49-2 or R. 4:50-1 of the Rules of Court. Any reconsideration application under this paragraph shall be made and notice given to all parties within 20 days of receipt of the award. Objection to the reconsideration application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given

to all parties within 7 days. The arbitrator shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

**Explanatory Note:**

*Paragraph 34 expands the arbitrator's jurisdiction beyond that in paragraph 31 and allows a short, 20-day continuation of the jurisdiction of the arbitrator in order to hear applications to change the award on various grounds beyond the limited grounds described in the statute. Continuing the jurisdiction of the arbitrator may increase the cost of the arbitration process.*

**Confirmation of the Arbitration Award**

35. After a party to the arbitration proceeding receives notice of an award, the party may apply under R. 5:3-8 to the Superior Court or New Jersey, Family Part for an order confirming the award. The court shall issue a confirming order unless the arbitration award is modified, corrected or vacated.

**Explanatory Note:**

*Paragraph 35 confirms what the statute provides. N.J.S.A. 2A: 23B-22. The procedure for confirming the award may not be changed by the parties. N.J.S.A. 2A: 23B-4(c).*

**Modification or Correction of the Arbitration Award by the Court**

36. On motion/application to the court by a party to the arbitration proceeding within 120 days after the party receives notice of the award or of a modified or corrected award, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) The arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

If the motion/application is granted, the court shall modify or correct and confirm the award as modified or corrected, unless a motion/application to vacate the award is pending.

**Explanatory Note:**

*Paragraph 36 confirms what the statute provides. N.J.S.A. 2A: 23B-24. The parties may include this paragraph in their agreement if the parties want to incorporate, for reference, the standards for when a court may be asked to modify or correct the award but they may not vary these three standards governing the court's review. N.J.S.A. 2A: 23B-4(c).*

**Vacating an Arbitration Award**

37. A party to the arbitration proceeding may apply to the court to vacate the award within 120 days after receiving notice of the award or the modified or corrected award, unless the aggrieved party alleges that the award was procured by corruption, fraud or other undue means, in which case the application to the court shall be made within 120 days after the ground is known or by the exercise of reasonable care would have been known by the aggrieved party. Upon filing of such application, the court shall vacate an award made in the arbitration proceeding if:

- (1) The award was procured by corruption, fraud, or other undue means;
- (2) The court finds evident partiality by an arbitrator, corruption by an arbitrator, or misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) The arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing in a manner so as to substantially prejudice the rights of a party to the arbitration proceeding;

(4) The arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection not later than the beginning of the arbitration hearing;

(6) The arbitration was conducted without proper notice of the initiation of the arbitration so as to substantially prejudice the rights of a party to the arbitration proceeding;

(7) The award, pertaining to the issues of custody, parenting time or child support:

a. Does not contain detailed findings of fact and conclusions of law; or

b. Is not in compliance with the provisions of R. 5:1-5 of the Rules of

Court; or

c. There is evidential support that establishes a *prima facie* claim of harm

to the child.

**Explanatory Note:**

*Paragraph 37 confirms what the statute provides. N.J.S.A. 2A: 23B-23.*

*Part 7 of Paragraph 37 includes the standards for the court to use to review an award involving issues affecting children, including custody, parenting time and child support. These provisions are consistent with provisions required in an arbitration agreement involving such issues (see paragraphs 14, 16, and 17 above.)*

*The parties may include this paragraph in their agreement if the parties want to reference the standards for when a court may be asked to vacate the award but they may not vary these standards. N.J.S.A. 2A: 23B-4(c).*

*However, the parties may expand the scope of judicial review under that section of the UAA. See sample paragraph 38 below.*

**Expanding the Scope of Judicial Review**

38. The parties agree to expand the scope of review by the Superior Court of New Jersey, Family Part under the UAA to require the court to review any award on the following standards:

- (A) Errors of law; or
- (B) Substantial evidence; or
- (C) Abuse of discretion; or
- (D) Such other standard as the parties may agree: (state a standard of review)

\_\_\_\_\_.

**Explanatory Note:**

*N.J.S.A. 2A: 23B-4(c) provides the parties the option of expanding the scope of judicial review of an arbitration award according to standards they define. Based on such an agreement, the court may modify, correct or vacate the award using the agreed standard. However, such review may require that a record be made of all testimony in order to permit such review by the court, and that may substantially increase the cost of the arbitration and adversely affect the finality of the arbitration award. Expanding the scope of judicial review can also adversely impact the confidentiality of the arbitration proceeding itself because of the need to file the record of the arbitration proceeding with the court. However, note that the parties may not confer jurisdiction on the Appellate Division to review errors of law or fact.*

**Other Review**

39. The parties agree to permit an appeal of the final award to a panel of one or more private appellate arbitrators to be agreed upon by the parties or provided by a third party, such as the American Arbitration Association. Such appeal shall be filed within 30 days of receipt of the

final or corrected, modified award. The parties agree that the standard of review shall be as follows: (state a standard of review) \_\_\_\_\_. If an appeal is filed, the award shall not be deemed final for purposes of confirmation pending the appeal. The appellate panel may adopt the original award, modify the original award or substitute its own award. The decision of the appellate panel shall be final and binding and judgment may be entered by any court having jurisdiction thereof. The appellate panel shall consist of:

- (A) One arbitrator;
- (B) A panel of arbitrators; or
- (C) The following arbitrator(s): (name(s)) \_\_\_\_\_.

**Explanatory Note:**

*Various third party arbitration provider organizations, including the American Arbitration Association, offer parties the option, under a set of appellate rules, to take an appeal to a panel of arbitrators of an arbitration award issued by another arbitrator. Parties may want to consider this option if they desire to have an appeal from an award rather than being limited to the statutory grounds for vacating an award but, for confidentiality reasons or otherwise, do not desire to provide for review by the court or expanded review by the court under paragraphs 37 and 38 above.*

\_\_\_\_\_  
Attorney for Plaintiff

\_\_\_\_\_  
Plaintiff

\_\_\_\_\_  
Attorney for Defendant

\_\_\_\_\_  
Defendant

\_\_\_\_\_  
Date