P-2. Checklist

(a) The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute, and are subject to the discretion of the arbitrator:

(i) the possibility of other non-adjudicative methods of dispute resolution, including mediation pursuant to R-9;

(ii) whether all necessary or appropriate parties are included in the arbitration;

(iii) whether a party will seek a more detailed statement of claims, counterclaims or defenses;

(iv) whether there are any anticipated amendments to the parties’ claims, counterclaims, or defenses;

(v) which:

(a) arbitration rules;

(b) procedural law; and

(c) substantive law govern the arbitration;

(vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation:

(a) any preconditions that must be satisfied before proceeding with the arbitration;

(b) whether any claim or counterclaim falls outside the arbitrator’s jurisdiction or is otherwise not arbitrable;

(c) consolidation of the claims or counterclaims with another arbitration; or

(d) bifurcation of the proceeding.

(vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;

(viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;

(ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;

(x) whether any measures are required to protect confidential information;

(xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;

(xii) whether, according to a schedule set by the arbitrator, the parties will:

(a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;

(b) exchange and pre-mark documents that each party intends to submit; and

(c) exchange pre-hearing submissions, including exhibits;

(xiii) the date, time and place of the arbitration hearing;

(xiv) whether, at the arbitration hearing:

(a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;

(b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
whether any procedure needs to be established for the issuance of subpoenas;
the identification of any ongoing, related litigation or arbitration;
whether post-hearing submissions will be filed;
the form of the arbitration award; and
any other matter the arbitrator considers appropriate or a party wishes to raise.

The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.