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May 13, 2020

RE: Remote Hearing, Union XXXXX v. Employer XXXXX (XXXX Arbitration)

Dear Ms. XXXXX and Mr. XXXXX,

This letter is to confirm that the arbitration hearing in the above matter is scheduled for [Month] XX and XX, 2020. The hearing is scheduled to be conducted remotely. The following guidelines reflect our conversation on XXXXX and subsequent emails, and are intended to apply to the proceeding.

Selection of Videoconferencing Platform and Virtual Hearing Support Functions

1. Platform Selection: Webex meetings. The Arbitrator will initiate and host the meeting.
2. Use of Hearing Support Provider: initial troubleshooting of technical issue will be attempted by the Parties and the Arbitrator. As a back-up plan, an IT staff member employed by XXXX will be on standby to provide assistance. The parties have confirmed that this arrangement does not cause concerns regarding confidentiality.
3. Costs: absent good cause, the Parties will share the cost of virtual hearing support functions.

Preparatory Activities

4. Equipment: each participant in the proceeding – arbitrators, counsel, party representatives, witnesses, and if applicable, court reporters, interpreters, representatives of the pertinent arbitral institution, and any separate litigation support vendors retained by a party (each a “Participant”) - shall be required to test the compatibility of that participant’s equipment (e.g., laptop, desktop computer, webcam, headphones) with the selected Platform, reasonably in advance of the group test session described below. Each Participant is responsible for ensuring the compatibility and functioning of that Participant’s equipment.
5. No Participant shall use a device with a screen size, measured diagonally, of less than 12.5 inches (i.e., smartphones are not permitted except with the approval of the Arbitrator for exigent circumstances). It is preferable for each Participant to have two screens available, so that one may be used to display the videoconference proceeding and the other may be used to display documentary and demonstrative exhibits. The second screen, used for exhibits, need not meet

the minimum size requirement set out above. Participants are encouraged, but not obligated, to use headphones to maximize audibility in lieu of the laptop's/desktop's sound system.

6. Each Participant is responsible for ensuring that the remote location in which the Participant is located has adequate internet bandwidth to support the use of the Platform without interruption.

7. Participants must locate their webcams so that the Participant appears, well lit, against a neutral and not-distracting background, with only head and shoulders visible. Backlighting is not permitted.

8. Orientation Program: each Participant shall participate in an on-line orientation or training program offered by the Platform to familiarize themselves with the Platform's features and operation, unless the Participant represents to the Tribunal that the Participant has substantial and successful prior experience with the Platform.

9. Witness Familiarity: counsel shall be responsible for ensuring that all witnesses called by the Party whom counsel represents are familiar with the Platform and have suitable equipment to participate in the proceeding without delays attributable to inadequate familiarity with the Platform or inappropriate equipment. If necessary, the Party calling a witness shall take reasonable steps to ensure that the witness is able to participate in the videoconference with one device and review exhibits on the other; such steps may include lending sufficient equipment to the witness, e.g. two laptops or equivalent, for use in the proceeding. Counsel for the Party calling the witness shall conduct a test session with the witness in advance of the proceeding in which the witness practices use of both the Platform and the process to view any electronic exhibits.

10. Test Session: at least 48 hours before the scheduled start of the proceeding, or such shorter time as the Parties agree to, all Participants other than non-party witnesses shall participate in a **non-substantive** test session devoted solely to the operation of the Platform. The test session shall enable each Participant to conduct all activities that Participants are expected to take part in during the proceeding. For example, all counsel who will be examining a witness, or representing a witness during cross-examination, shall engage in a short "mock" examination during the test session (on a subject unrelated to the proceeding); such mock examinations shall include the use of documentary exhibits and include objections by defending counsel and the use of an interpreter, if applicable. Counsel who will address the Arbitrator shall practice doing so, without any reference to the factual or legal issues in the proceeding. The test session will include the exclusion of all Participants, except for the Arbitrator and Counsel to test the 'break-out' room function. Counsel is responsible for organizing a 'break-out' process to privately caucus with appropriate participants.

11. The test session shall include each Participant accessing the electronic exhibit files that each Participant has downloaded into the Participant's own device in advance of the test session. For

that purpose, the Parties shall each include at least one non-substantive “test” document in the electronic document files they have made available to Participants for use in the proceeding.

12. Interpreters: if any witness or other Participant requires the use of an interpreter, the Arbitrator, in consultation with the Parties, shall determine whether interpretation shall be consecutive or simultaneous.

Requirements During the Proceeding

13. Advance Log-On: all Participants shall log on to the Platform at least 10 minutes in advance of the scheduled start time of the proceeding. The proceeding shall not begin until the Arbitrator is satisfied that all necessary Participants are adequately connected to the Platform.

14. Time Zones. All reference to time is assumed to be correct for Saskatchewan.

15. Emergency Notifications/Back-up Plan: the Arbitrator has designated the use of private text messaging/voice calls as a back-up plan in the event of a failure of the platform. The Arbitrator and Counsel have exchanged cell numbers for this purpose. Counsel is responsible for establishing a back-up plan to communicate with appropriate participants.

16. No Multi-tasking: all Participants shall devote their full attention to the proceeding. Multitasking is not permitted, except counsel may work as appropriate on matters related to the proceeding.

17. Termination: the Arbitrator shall terminate the proceeding if he determines that the video-conferencing format is not working as anticipated, is otherwise inadequate, or is prejudicial to any Party or to the integrity of the proceeding.

18. Disclosure of Participants: at the outset of the proceeding each Participant shall identify any other persons present at the Participant’s location. Each Participant has an ongoing obligation to alert the Arbitrator and other Parties if any additional person joins the Participant, and shall represent at the beginning and end of each session that the Participant has fully disclosed all persons who have or had access to the proceeding or any portion of it.

19. Confidentiality: the Parties shall take all steps necessary to ensure the confidentiality of the proceeding. No person shall have access to the live video and/or audio feed of the proceeding other than disclosed Participants.

20. Recording. No Participant may record any part of the proceeding without the advance, written authorization of the Arbitrator. The Arbitrator may record any or all of the proceeding provided it alerts the Parties in advance that it will do so.

Documents and Witness Examinations

21. For any proceeding in which documentary or demonstrative exhibits will be used, the Parties shall confer and report to the Arbitrator at least 48 hours in advance of the proceeding, absent exigent circumstances warranting a shorter time period approved by the Arbitrator, how they propose to enable Participants to see and review such exhibits. It is recommended that, as much as possible, the Parties submit an agreed upon package of exhibits in the form of separate pdf

documents (where possible), labelled with U1 (Union 1), U2, U3, etc., and ER1 (Employer 1), ER2, ER3, etc., and J1 (Joint 1), J2, J3, etc.. The list of exhibits should be constructed in the following fashion and provided as a separate document titled, 'List of Exhibits'.

List of Exhibits

- U1: Grievance Form (example only)
- U2: Medical Note January 1, 2020
- ER1: Discipline Form
- ER2: Termination Letter
- J1: Collective Agreement, Clause 12
- J2: Picture of Workspace

22. The Parties are encouraged to place all exhibits in the form of electronic files in a secure, accessible web-based document repository available for the Arbitrator and the Parties or exchange documents via email, as determined by the Parties. Such Participants shall download such files into the Participants' own devices before the test session required by Point 10 above. The Parties are also encouraged to share such files with witnesses in advance of the proceeding but are not obligated to do so if 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.

23. Counsel shall be responsible for arranging for any witness to be examined by that counsel, on direct or cross-examination, to have full and fair access to any exhibits upon which the witness may be examined or to which reference is made during the witness' examination. If such access is to be effected through displaying the document on a screen, counsel for the Party on whose behalf the witness has been called shall use best efforts to ensure that the witness has two screens available so that the witness can see the Participants on one screen and review exhibits on the other and is reasonably proficient in accessing electronic exhibits.

24. In exceptional circumstances the Arbitrator may permit a witness to testify by telephone, provided he is satisfied that in view of the nature of the witness and the subject of the testimony, a telephonic examination will be fair and not prejudice the presentation of the case of any Party.

Other

25. The Parties may seek modification of any of the foregoing requirements by submission of a brief explanatory email to the Arbitrator. The Arbitrator may modify any of the foregoing requirements on its own initiative after consultation with the Parties.

Yours truly,



Scott Walsworth