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## CHAPTER EIGHT – ARBITRATION AND GRIEVANCE PROCEDURES, ASSESSMENTS

### SECTION 8.1 Filing a Complaint

Each Participant shall cooperate with each other Participant in attempting to resolve complaints or disputes regarding Transactions or compliance with these Rules. If such efforts are unsuccessful a Participant that is party to a complaint or dispute (the "complainant") may initiate an arbitration proceeding by filing a complaint with NACHA stating that all reasonable attempts to reconcile the difference have failed and requesting arbitration under these Rules. NACHA may itself initiate a complaint on its own behalf or on behalf of other Participants. A complaint shall contain the following:

- a. **Identification of Parties.** The names, addresses and telephone numbers of the complainant and the other party or parties involved in the dispute (each, a "respondent").
- b. **Summary of Facts.** A summary of the facts of the dispute as well as the Section(s) of the Rules violated. The summary shall also include information permitting identification of the particular Transaction(s) and the sequence of events involved, and the precise nature of the violation(s).
- c. **Statement of Damages.** A statement of the dollar amount of damages claimed by the complainant and an explanation of how damages in the amount claimed resulted from the violation(s) asserted. An arbitration claim under this Chapter shall be processed only if the amount of the damages claimed is \$100 or more.
- d. **Additional Documents and Fees.** The complaint shall be accompanied by the following:
  - (i) copies of the documents available to the complainant necessary to resolve the dispute, and of any written communications by the complainant and the respondent relating to the violations asserted; and
  - (ii) a \$250 non-refundable application fee to be used for administrative expenses.
- e. **Authorization for Submitting a Claim.** The complaint shall be signed by an officer of the complainant and be submitted to NACHA within one (1) year of the violations asserted.
- f. **Complaints Involving Multiple Participants.** If the complainant is involved in related disputes with more than one Participant, a separate complaint shall be filed with respect to each such Participant.

NACHA may reject any complaint which does not meet the requirements of this Section 8.1.

### SECTION 8.2 Classification of Disputes

- a. **Complaints with Damages of Less than \$10,000 (Arbitration Procedure A).** All complaints in which the amount of damages claimed is \$100 or more but less than \$10,000 shall be processed under Arbitration Procedure A set forth in these Rules. Under Arbitration Procedure A:
  - (i) Arbitration is not mandatory. Before the complaint is filed, both parties must agree to submit the dispute to binding arbitration. If both parties so agree, one of them shall submit a complaint to NACHA, as set forth in Section 8.1, which complies with the requirements of that Section;
  - (ii) A hearing shall not be held;
  - (iii) One arbitrator shall decide the case; and



(iv) The arbitrator's stipend shall be 3% of the arbitrator's decision with a \$100 minimum stipend.

b. **Complaints with Damages of \$10,000 or More (Arbitration Procedure B).** All complaints in which the amount of damages claimed is \$10,000 and above shall be processed under Arbitration Procedure B set forth in these Rules. Under Arbitration Procedure B:

(i) Arbitration is not mandatory. Before the complaint is filed, both parties must agree to submit the dispute to binding arbitration. If both parties so agree, one of them shall submit a complaint to NACHA, as set forth in Section 8.1, which complies with the requirements of that Section;

(ii) A hearing shall be held unless the parties otherwise agree and so notify NACHA at the time the complaint is filed. If the parties do so otherwise agree, the procedures set forth in Section 8.2(a) (Arbitration Procedure A) rather than as provided for in this Section 8.2(b) (Arbitration Procedure B) shall be followed;

(iii) At its discretion, a party may be represented at the hearing by legal counsel;

(iv) Three arbitrators shall decide the case; and

(v) The stipend for each arbitrator shall be set according to the following scale:

Amount of Claim	Stipend per Arbitrator
\$10,000 to \$40,000	\$300 plus 2% of excess over \$10,000
\$40,001 and up	\$900 plus 1/2% of excess over \$40,001

**SECTION 8.3 Selection of Arbitrators**

NACHA shall maintain a list of arbitrators to serve as the pool from which arbitrators will be selected in accordance with the procedures set forth below. Each such arbitrator must have at least five (5) years of experience in a position with responsibility for electronic payments processing. (Amended December 16, 2008)

a. **Arbitration Procedure A.** For claims subject to Arbitration Procedure A, arbitrators will be selected by the following method:

(i) NACHA shall mail each party the same list of five (5) arbitrators from among those nominated as provided herein who are not affiliated with either party to the dispute;

(ii) Each party shall be given ten (10) days from the date the list is mailed to review the list, delete two (2) names, and mail or deliver the remaining names to NACHA;

(iii) NACHA shall then compare the two lists and select one (1) arbitrator not deleted from either list to decide the case; and

(iv) If either list is not returned within the time limit specified above, NACHA shall then select the arbitrator to decide the case from among the names not deleted on the list returned, or, if neither list is returned within the time limit, from among the names on the lists as mailed to each party.

b. **Arbitration Procedure B.** For claims subject to Arbitration Procedure B, arbitrators will be selected by the following method:



- (i) NACHA shall mail each party the same list of ten (10) arbitrators from among those nominated as provided herein who are not affiliated with either party to the dispute;
- (ii) Each party will have ten (10) days from the date the list is mailed to review the list, delete three (3) names, and mail or deliver the remaining names to NACHA;
- (iii) NACHA shall then compare the two lists and select three (3) arbitrators not deleted from either list to decide the case; and
- (iv) If either list is not returned within the time limit specified above, NACHA shall then select the arbitrators to decide the case from among the names not deleted on the list returned, or, if neither list is returned within that time limit, from among the names on the list as mailed to each party.

#### **SECTION 8.4 Presentation of the Case and the Decision**

- a. **Arbitration Procedure A.** Cases subject to Arbitration Procedure A will be presented and the decisions reached according to the following requirements:
  - (i) After a party has received notification of the selection of the arbitrator, it will have fourteen (14) days to submit to the arbitrator in writing, with a copy to the other party, for consideration in such proceeding any matter it deems appropriate;
  - (ii) In the event the respondent, in the judgment of the arbitrator, fails to cooperate in the proceeding within fourteen (14) days of a request for information by the arbitrator, the facts as stated in the complaint shall be assumed to be true for purposes of the arbitration;
  - (iii) Once the arbitrator has received all information he or she deems relevant or necessary, the arbitrator shall have thirty (30) days to render his or her decision. The amount of the award of damages may not exceed the amount of damages claimed in the complaint;
  - (iv) The arbitrator may adopt such rules and procedures with respect to evidence and other procedural and substantive matters as he or she may deem appropriate; provided, however, such rules and procedures shall not be inconsistent with these Rules;
  - (v) The decision of the arbitrator shall be based upon these Rules insofar as they are applicable;
  - (vi) Neither party shall initiate contact with the arbitrator concerning the subject matter of the dispute unless the other party is present;
  - (vii) The arbitrator shall be entitled to recover all of the arbitrator's stipend from the party determined by the arbitrator to have been at fault in the dispute; and
  - (viii) The arbitrator shall pay his or her expenses and each party shall pay its own expenses, including attorneys' fees, in connection with the arbitration.
- b. **Arbitration Procedure B.** Cases subject to Arbitration Procedure B will be presented and the decisions reached according to the following requirements:
  - (i) If a hearing is to be held, the arbitrators shall set a hearing date which shall not be less than ninety (90) days after each party has received notification of the selection of the arbitrators;



- (ii) NACHA shall provide both parties with at least thirty (30) days prior notice of the hearing;
- (iii) Following the hearing, the arbitrators shall have thirty (30) days to render their decision to the parties to the dispute. The amount of the award of damages may not exceed the amount of damages claimed in the complaint;
- (iv) The arbitrators may adopt such rules and procedures with respect to evidence and other procedural and substantive matters as they may deem appropriate; provided, however, such rules and procedures shall not be inconsistent with these Rules;
- (v) The decision of the arbitrators shall be based upon these Rules insofar as they are applicable;
- (vi) Neither party shall initiate contact with any arbitrator concerning the subject matter of the dispute unless the other party is present;
- (vii) Each party shall pay its own expenses, including attorneys' fees, in connection with the arbitration; and
- (viii) The arbitrators shall be entitled to recover all of their travel and other expenses in connection with the arbitration and the arbitrators' stipend from the party determined by the arbitrators to be a fault in the dispute.

#### **SECTION 8.5 Payment and Appeal**

- a. **Arbitration Procedure A.** Payments of awards and appeals of decisions will be subject to the following requirements:
  - (i) The party against which such amount has been assessed shall have fourteen (14) days after receiving notice of the decision in which to pay the damage award or other amount assessed against it as provided in these Rules;
  - (ii) The arbitrator's decision shall be final and binding on the parties to the dispute, and judgment thereon may be entered in any court having jurisdiction. Except to the extent such a prohibition is unlawful under the laws of the State in which the party against which damages have been awarded by the arbitrator is domiciled, such decision shall not be appealable to the courts.
- b. **Arbitration Procedure B.** Payments of awards and appeals of decisions will be subject to the following requirements:
  - (i) In the absence of an appeal to the courts, the party against which such amount has been assessed shall have fourteen (14) days after receiving notice of the decision in which to pay the damage award or other amount assessed against it as provided in these Rules;
  - (ii) The arbitrators' decision shall be binding on the parties to the dispute, and judgment thereon may be entered by any court having jurisdiction. Except to the extent the parties have entered into an enforceable agreement to the contrary, either party may appeal the arbitrators' decision to the courts. In the absence of such an appeal, the arbitrators' decision shall be final.