



ARIAS • U.S. Virtual Arbitration Hearing Guidelines

The following guidelines have been created by ARIAS • U.S to aid private parties conducting virtual arbitration hearings. They are intended to be flexible guidelines applicable to ARIAS • U.S. arbitrations.

The Guidelines are written to apply where the parties agree or are ordered to hold a virtual hearing. They do not address the handling of a dispute over *whether* to hold a virtual hearing.¹ If the parties agree regarding the threshold issue of whether to hold a virtual hearing or are ordered to hold one, but disagree about how the virtual hearing will be conducted, the Guidelines contemplate that such disagreements will be resolved by the arbitration panel.

1. Platform, Equipment, and Support Personnel

- a. **Platform selection.** The current market offers various videoconferencing platforms (e.g., Zoom, Webex, Microsoft Teams, GoToMeeting (“virtual platform(s)”) that may suit the needs of the panel and parties. Many court reporter agencies have their own platform or use one of the platforms mentioned above. Parties may wish to discuss this with the court reporter for the hearing. Nevertheless, the parties should confer among themselves and, in consultation with the panel, select a virtual platform. In making this selection, the parties should consider:
 - i. whether the virtual platform provides the parties with sufficient due process, including fair and reasonable rights to present evidence;
 - ii. whether the virtual platform and its various settings and features adequately protect the confidentiality of the arbitration;
 - iii. whether the virtual platform and its various settings and features adequately protects the privacy of the data exchanged during the arbitration on the platform;
 - iv. whether the parties and the panel are proficient, or may become proficient after reasonable preparation, in the use of the virtual platform; and
 - v. whether the virtual platform has a function that permits certain groups of participants² to confer privately during the arbitration.
- b. **Third-party support provider.** The parties, in consultation with the panel, should determine whether they will contract with a third-party support provider (e.g. Opus 2,

¹ It is also possible that there could be non-party witnesses who do not agree to participate in a virtual hearing, and this also should be considered by the parties and the panel.

² Participants means any individuals who appear live via the virtual platform, such as party representatives, outside and inside counsel, panel members, witnesses, interpreters, and court reporters.



Arbitration Place Virtual). Among other offerings, third-party support providers can assign one of their employees to assist with managing the display of exhibits, transcript pages, presentations, and other documents during the arbitration. The third-party support provider's employee may also manage the virtual platform itself, relieving parties of that responsibility. If the parties decide not to contract with such a third-party support provider, each party should designate someone who will have responsibility for displaying documents on the virtual platform during each session³ of the arbitration in which the party is presenting an argument or examining a witness, and the parties will cooperate in transitioning responsibility for operating the platform. Whether neutral or party-designated, the person managing the virtual platform should not have the ability to monitor activity or conversations that are deemed confidential, nor should any other participant.

- c. **Equipment.** Each participant should use equipment for the proceeding according to the following specifications:
- i. Each participant must be able to view the proceeding on a device with a screen of at least 12 inches (approximately 30 centimeters), measured diagonally. A smartphone alone is insufficient.
 - ii. Each participant must have audio equipment that allows them to clearly and easily hear and be heard by all other participants. This equipment could be a set of headphones with a built-in microphone, or it could be the microphone and speakers that come standard with most computers or laptops.
 - iii. Each participant must be able to mute their microphone either through the device itself or through the virtual platform.
 - iv. Each participant must arrange to have any devices connected with adequate internet bandwidth. Most virtual platforms publish network specifications to ensure optimal network connection. (See, e.g., <https://support.zoom.us/hc/en-us/articles/204003179-System-Requirements-for-Zoom-Rooms>)
 - v. Each participant must make a good faith effort to appear well-lit and in front of a neutral background. The use of virtual backgrounds is not permitted.

Additionally, each participant is encouraged to consider the following specifications for his or her equipment:

³ A session is a virtual meeting of the participants where the panel is formally convened. A virtual hearing could be composed of one or more sessions.



- vi. The simultaneous use of two monitors. This will enable the participant to view, e.g., documents and the live feed of the hearing transcript simultaneously.
- vii. The use of a standalone microphone.
- d. **Interpreting.** If a party, witness, or any other participant requires interpreting services, the parties should decide whether the interpreter will translate consecutively or simultaneously. The party responsible for procuring the interpreting service should be responsible for ensuring that the interpreter is able to comply with these Guidelines.
- e. **Court reporter.** The parties should agree on whether to hire a court reporter for the proceeding. If the parties require the use of a court reporter, they should agree upon a method for ensuring that the court reporter is able to comply with these Guidelines.
- f. **Virtual platform, equipment, and third-party support provider costs.** The parties should agree that either one party or representatives from all parties will transact with the company providing the virtual platform and any third-party support providers. The parties should negotiate in good faith to reach agreement on whether and how to share the costs of the virtual platform, any equipment that may be needed, and any third-party support providers. If the parties cannot agree, they may ask the panel for assistance in resolving any disputes about cost.

2. Security and Confidentiality

- a. **Meeting ID.** Whoever is managing the virtual platform should generate a new meeting identification number or password for each session of the arbitration. This is meant to limit access to only those participants invited to each session.
- b. **Physical locations.** Although all members of the panel may participate in the arbitration from the same physical location, at no time may a member of the panel participate from the same physical location as a party or person affiliated with a party. The panel members may not participate from the same physical location unless all members of the panel are physically present there.
- c. **Inter-participant communications.**
 - i. *Parties and Their Counsel.* The virtual platform's settings should be set to allow each party and its counsel to communicate privately through channels such as instant messaging or private break-out "rooms."



- ii. *Panel.* The virtual platform’s settings should be set to allow the members of the panel to communicate privately through channels such as instant messaging or private break-out “rooms.”
 - iii. *Control.* The person responsible for managing the virtual platform during the arbitration should not have the ability to monitor the attendance or content of any such private conferencing.
- d. **Confidentiality.** Each participant should take appropriate measures to ensure that the arbitration remains confidential. Each participant should be in a secure location where the arbitration content cannot be viewed or heard by non-participants, and each participant should take steps to ensure that other individuals present at the premises of a participant’s physical location cannot access the arbitration’s content. If a participant no longer believes that confidentiality is possible, the participant should promptly inform the other participants.
- e. **Recording.** Prior to the arbitration hearing, the parties should review the virtual platform’s terms of service and confer regarding whether to make an audio or video recording of the arbitration (in addition to any stenographic means that are being used). The parties should inform the panel of their decision, in writing, no later than fourteen (14) days prior to the arbitration’s first session. If the parties decide to record the arbitration, they should:
- i. advise all participants of that decision, in writing, no later than seven (7) days prior to the arbitration’s first session and, if required under applicable law, obtain the written consent of all participants;
 - ii. advise, at the start of each arbitration session, that the session is being recorded;
 - iii. make the recording of each session available for download, by a secure file transfer system, within seven (7) days to all parties and the panel; and
 - iv. research applicable law to ensure that any video or audio recording will be made, stored, and distributed in full compliance with applicable state and federal law.

3. Preparation for the Hearing

- a. **Agreement to virtual hearing.** Prior to the proceeding, the parties and panel should sign a written agreement to conduct the proceedings via videoconference technology. Or, if the parties cannot agree to hold a virtual hearing and the arbitration agreement



grants the panel the authority to order a virtual hearing, the panel should issue a written order. This agreement or order should identify the videoconferencing platform to be used for the hearing as well as the agreed upon locale(s) where the hearing will be considered to have taken place. The agreement or order should:

- i. to the extent possible, accommodate or address any provisions in the parties' arbitration agreement regarding the conduct of the hearings.
 - ii. to the extent possible, describe all issues relating to the conduct of and preparation for the virtual hearing about which the parties have agreed.
 - iii. if there are any parameters of the virtual hearing on which the parties disagree, the panel shall address any such disputes.
- b. **Test session.** Prior to the proceedings, some or all of the participants should schedule a time for a group test session or sessions to familiarize everyone with the technology and lessen the possibility of technological problems during the proceedings. (It could be impractical and/or undesirable to have all participants involved in a single test session. Accordingly, the number, timing, and parameters of any test sessions should be subject to meet and confer.)
- i. **Timing of test session.** The test session should occur sufficiently in advance of the virtual hearing to allow enough time for technology vendors and/or IT departments to address any technological issues encountered during the test. As a general rule of thumb, if possible, the test session should occur at least two weeks prior to the hearing.
 1. **List of features to cover.** Typically, a test session should be segmented and cover the issues specific to each participant.
 - a. **For all participants,** the test session should address issues such as:
 - i. camera logistics, including placement (e.g., issues regarding each participant's space, such as camera angle and visible background);
 - ii. audio issues, ensuring each participant can hear and be heard;
 - iii. ensuring everyone has access to the technology used (e.g., screen sharing technology),



- iv. connectivity issues, as each party will be responsible for its own connectivity.
- b. **For the panel**, the test sessions should address questions such as:
- i. Does the panel have access to a universal mute system or kill switch to halt proceedings and prevent *ex parte* communications in the event of a technological failure?
 - ii. Can they create or access a separate “side bar” chatroom to communicate privately with one another and address objections and other issues?
 - iii. Can the panel access all documents presented by the parties?
- c. **For the parties**, the test sessions should address questions such as:
- i. Can the parties access and mark all documents they need to present their case?
 - ii. If private communications are enabled, are the parties able to control public communications for the record versus their private “attorney note pad” communications amongst themselves?
 - iii. Can they create or access separate and confidential “side bar” discussions between, for example, clients and outside counsel?
- d. **For witnesses**, the test sessions should address questions such as:
- i. Are witnesses able to sign in and off of the proceedings?
 - ii. When witnesses are participating, are they able to view and access only documents and other materials that the parties’ have made available to them? (e.g., when using screen sharing or document viewing technology, can



the witnesses see materials other than those the attorneys have made available to them?)

- e. **For court reporters (where applicable)**, the test sessions should address questions such as:
 - i. If using video capture technology, can the reporter accurately capture video of all participants as needed?
 - ii. Test whether the reporter's methods of recording will accurately reflect the proceedings.
- ii. **Identify and resolve technical issues.** The test session should include IT department representatives, vendor technology experts where applicable, and all other parties responsible for identifying and resolving any technical issues.
- c. **Oaths.** The parties should consider who amongst the panel and participating court reporters can administer virtual oaths. The parties and panel should consider whether it is necessary for the virtual hearing agreement or order to indicate that the participants will be bound by the authority of any virtual oaths administered during the proceedings.
- d. **Technical failure.** The participants should establish contingency plans in case technical failures occur during the virtual proceedings, including:
 - i. a process for handling failures of audio or video, such as a process for the panel to temporarily pause proceedings in the event that a party disconnects or is dropped from the proceedings;
 - ii. a system for the participants to send emergency notifications to other participants in the event of a disconnection or other technical failure – this could include a group email, a back-up call-in audio line, or another method of notifying the wider group of any technical issues.
- e. **Special considerations.** The parties and panel should determine how witnesses will handle exhibits. Using a shared virtual document repository and screen-sharing technology may be the most efficient method of presenting exhibits. To do this, the parties must ensure that witnesses have access to the necessary hardware and software. Hardcopy documents are discouraged because of the difficulty of ensuring that all parties are looking at the same document. If it is absolutely necessary to use hardcopy documents, any hardcopy exhibits sent should be clean, unmarked copies, and the parties must establish a method for ensuring that the witness is referring to the



correct hardcopy exhibits while providing virtual testimony, such as using Bates stamps and having the witness display each hardcopy exhibit via their webcam.

- f. **Conditions for witness participation.** The parties and panel should have a clear understanding of the conditions for witness participation. This includes the location at which each witness will testify, whether any other participants or individuals will be present, and, if so, visible, at the witness's location, what materials the witness will have access to, and whether and how the witness should be sequestered from participating in other aspects of the proceeding.
- g. **Invitations to hearing.** The parties and panel should identify the person who will send invitations to the virtual hearing. To protect the security of the hearing, the invitation should be password protected and limited to authorized participants.

4. Hearing

- a. **Advance logon.** The parties should login to the virtual hearing in advance and complete pre-hearing preparations prior to the scheduled start time.
- b. **Participant identification.** The panel should direct all participants to identify themselves at the beginning of the hearing. Participants should verify that internet connectivity is adequate and that the features of the virtual platform are functioning properly, including public and private messaging, if enabled, and break-out rooms.
- c. **Good hearing habits.** The participants should practice good virtual hearing habits, which include:
 - i. identifying oneself, at least initially, before speaking;
 - ii. where applicable, using the "raise hand" feature before interrupting another Participant (this feature, available in most if not all virtual platforms, identifies a person who wishes to speak to avoid participants talking over one another);
 - iii. keeping non-speaking persons on mute;
 - iv. avoiding multi-tasking.
- d. **Termination.** As with an in-person hearing, the panel will be responsible for terminating the proceedings on the record. The panel should work with the parties to ensure that the virtual platform is properly ended after the panel has ruled that the hearing is terminated.

