

**FRANARB, INC.**

**dba FRANCHISE ARBITRATION AND MEDIATION SERVICES (“FAM”)**

**ARBITRATION GUIDELINES**

Amended and Effective May 17, 2011

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## INTRODUCTION

Since 1988, FranArb, Inc., doing business as Franchise Arbitration and Mediation Services ("FAM"), has specialized in arbitration and mediation referral services in the resolution of disputes between franchisors and franchisees. FAM's executive office is located at 44 Gannet Lane, Newport Beach, California 92660-2960. FAM's operational center and mailing address is 650 Town Center Drive, Suite 1400, Costa Mesa, California 92626-7020. FAM's telephone number is (949) 854-0374 and its fax number is (949) 856-3245. FAM's website is [www.franarb.com](http://www.franarb.com). FAM's e-mail address is [info@franarb.com](mailto:info@franarb.com). FAM's Administrator is Brandi Newell, who may be reached via e-mail at [brandi@franarb.com](mailto:brandi@franarb.com).

The following arbitration guidelines ("Guidelines") provide a standardized method for processing arbitrations referred by FAM. Any questions concerning these Guidelines should be directed to FAM.

By accepting a matter referred to the arbitrator by FAM, a selected arbitrator agrees to conduct the arbitration in accordance with these Guidelines, which should be modified only (i) to comply with specific terms set forth in the arbitration clause of the Franchise Agreement between the parties in dispute, or (ii) as otherwise agreed by all parties in dispute, or (iii) as required by order of a court having jurisdiction over the dispute.

### 1. COMMENCEMENT OF ARBITRATION

#### 1.1 Commencement of Arbitration

In most instances, arbitrations before FAM or arbitrators referred by FAM will be undertaken between franchisors and franchisees pursuant to an arbitration clause contained in a Franchise Agreement between the parties that designates FAM as the provider of arbitration services. The arbitrator must carefully review this clause to determine if there are special arrangements or agreements between the parties concerning the arbitration. An arbitration that is referred to FAM pursuant to a clause in the Franchise Agreement requiring arbitration between the parties will be commenced with the filing of a Demand for Arbitration ("Demand" – this form may be downloaded in an Adobe PDF fill-in format at <http://www.franarb.com/forms.aspx>), together with the requisite filing fee.

If the arbitration clause does not provide for arbitration before FAM or arbitrators referred by FAM, or if there is no arbitration clause in the Franchise Agreement, but the parties nevertheless wish to arbitrate the dispute before a FAM-referred arbitrator, an appropriate *Submission Agreement* must be completed and signed by the parties (the form Submission Agreement approved by FAM may be downloaded in an Adobe PDF fill-in format at <http://www.franarb.com/forms.aspx>) and forwarded to FAM by mail or overnight courier. In such circumstances, both parties will be agreeing in writing to arbitrate their dispute before a FAM-referred arbitrator and to each pay ½ of the authorized initial retainer of the arbitrator ultimately selected.

#### 1.2 Administrative Fee and Billing Procedures

FAM receives a one-time and non-refundable administrative fee to coordinate the arbitration and process the arbitrator referral of (i) \$1,000 for an arbitration involving a single arbitrator and (ii) \$2,750 for an arbitration involving three arbitrators. Services provided by a FAM appointed arbitrator are billed **at a rate not to exceed \$500 per hour**, in hourly increments (nearest .10 or .25 hour) as quoted by FAM to the disputing parties, plus costs.

Except as provided in section 1.4 below, FAM does not provide or offer case management services by its employees. All FAM appointed arbitrators are directly compensated for their arbitration services at their FAM hourly rate by the disputing parties (and not FAM) under a written fee agreement or engagement agreement prepared by the arbitrator (FAM will supply a sample fee agreement to an appointed arbitrator upon request, but FAM does not prepare fee agreements nor negotiate retainers). The appointed arbitrator's engagement agreement with the disputing parties may include a

reasonable retainer at his or her FAM hourly rate. FAM recommends this retainer be sufficient to cover the arbitrator's fees and costs respecting preliminary matters, review of briefs and other documents, and one day of arbitration. If the arbitration is more complex than anticipated or extends for more than one day, the arbitrator may request additional prepayments from the parties in dispute. A copy of the engagement agreement is to be provided to FAM as soon as practicable after it is signed by the parties. The collection of retainers and other fees or costs payable to the arbitrator is the sole responsibility of the selected arbitrator and not FAM.

### **1.3 Payments to FAM Arbitrators**

The Demand requires the plaintiff to agree to pay ½ of the authorized initial retainer of the arbitrator ultimately selected (the amount of the initial retainer is in the discretion of the arbitrator, but should be reasonable and based on the complexity of the matters in dispute).

The Demand requires the respondent/defendant to file a written response to the Demand or acknowledgement of its receipt within 30 days after the respondent/defendant receives the Demand. The respondent will be deemed by FAM to be a non-responsive party subject to a default award and no opportunity to participate in arbitrator selection if it fails to file a written response in a timely manner. The Demand also requires the respondent/defendant to pay ½ of the authorized initial retainer of the arbitrator ultimately selected. The respondent will be deemed by FAM to be a non-responsive party subject to a default award if it fails to pay its share of the authorized initial retainer.

As soon as the arbitration is concluded, the arbitrator will send the disputing parties an itemized statement of fees and costs (and include either a refund check or an invoice requesting additional payment).

### **1.4 FAM Billing Service**

Typically, administrative personnel employed by the arbitrator's law firm bill and collect the arbitrator's fees and costs. However, some FAM arbitrators have expressed concerns about perceived improprieties in doing so. Therefore, if requested by the arbitrator in writing, for a flat fee of \$300 paid in advance, FAM would forward the arbitrator's invoice to the parties in dispute, receive payments from them and then remit the balance to the arbitrator. This billing service is being provided as a convenience for FAM appointed arbitrators and by doing so FAM makes no assurances or guarantees that billed fees and costs will ever be collected, nor will FAM negotiate the amount billed or take any action to collect the amount owing the arbitrator. If a party in dispute objects to the amount of the arbitrator's invoice or contacts FAM respecting the invoice in any manner except in connection with full remitting payment, and if the arbitrator directs FAM to send a response to the applicable party in dispute, FAM will forward the arbitrator's response for an additional flat fee of \$300 for each such arbitrator response sent by FAM.

### **1.5 Agreement of Parties**

Whenever, by stipulation or in their contract, the parties have provided for arbitration of existing or future disputes before an arbitrator referred by FAM, the parties and their representatives, unless agreed otherwise in writing, will be deemed to have made these Guidelines, as amended and in effect as of the date of filing of a request for arbitration, a part of their agreement and designate FAM as the coordinator of their arbitration. By mutual agreement, the disputing parties may vary any part of these procedures including, but not limited to, agreeing to conduct the arbitration via video conference, teleconference or other electronic or technical means.

## **2. SELECTION OF ARBITRATOR**

### **2.1 Qualifications of Arbitrator Nominees**

When a dispute has been properly referred to FAM for resolution, inquiry will be made of FAM recommended and eligible arbitrators (typically trial attorneys with not less than 5 years of experience litigating matters involving franchise law, whose offices are located within a three hour commute of the

general vicinity of the site designated for the arbitration) to determine their availability and eligibility. Nominated arbitrators that receive an availability and eligibility inquiry must carefully review the nature of the matter and the identity of the parties in order to determine that they have no conflicts of interest.

## 2.2 List of Nominated Arbitrators

The names of potential arbitrators who are contacted by FAM, and who indicate they (i) are eligible to serve as a FAM-referred arbitrator in the particular matter and (ii) agree to have their names referred, will be included in a list of *three* eligible and nominated arbitrators provided by FAM to the parties in dispute. Each party in dispute will rank the names in order of preference. No nominee ranked as a *third* choice by a party in dispute will be eligible to serve as an arbitrator for the arbitration in respect of which they have been nominated. A party in dispute may challenge other nominees only by providing written evidence directly to FAM. **Please do not copy the other disputing party or counsel when submitting this information to FAM.** If FAM finds the objection to be valid or otherwise learns of another *bona fide* disqualifying factor, FAM will replace the nominated arbitrator with another eligible candidate.

## 2.3 Selection of Arbitrator

Any person selected or to be selected as an arbitrator must notify FAM before selection and the parties in dispute after selection (i) of any circumstance likely to cause justifiable doubt as to the arbitrator's impartiality or independence, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their representatives, (ii) if the arbitrator has acted as an arbitrator, any prior arbitration involving one of the disputed parties or (iii) if an immediate family member of the arbitrator has a relationship with a party in dispute, counsel for a disputed party or a material witness, and if so the nature of the relationship. These disclosure obligations remain in effect throughout the course of the arbitration proceedings. If FAM receives any such information from the arbitrator or another source, FAM will communicate the information to the parties in dispute and, if FAM deems it appropriate to do so, to the arbitrator and others. The arbitrator must remain independent of the parties in dispute throughout the course of the arbitration proceedings.

The arbitrator selected for the matter based on the responses of the parties in dispute will be promptly notified by FAM of his or her selection and will be forwarded all information then in the possession of FAM respecting the dispute, including a copy of the Demand (or Submission Agreement), and related correspondence between the parties in dispute. Concurrently, the parties in dispute will be notified of the arbitrator's selection.

## 2.4 Arbitrations Requiring a Panel of Three Arbitrators

If the Franchise Agreement calls for a panel of three arbitrators, a list of *seven* eligible and nominated arbitrators will be provided by FAM to the parties in dispute. Each party in dispute will rank the names in order of preference. No nominee ranked as a *sixth or seventh* choice by a party in dispute will be eligible to serve as an arbitrator for the arbitration in respect of which they have been nominated. A party in dispute may challenge other nominees only by providing written evidence directly to FAM. **Please do not copy the other disputing party or counsel when submitting this information to FAM.** If FAM finds the objection to be valid or otherwise learns of another *bona fide* disqualifying factor, FAM will replace the nominated arbitrator with another eligible candidate. Immediately after the final selection of panel arbitrators, FAM will coordinate directly with the arbitrators selected the prompt nomination of a Chairman of the panel, who will then be primarily responsible for corresponding with the disputing parties and their counsel.

## 2.5 Arbitration Appeal Based on Franchise Agreement or Mutual Agreement

Although arbitration awards are typically final and non-appealable, if the Franchise Agreement provides for the right of one party to appeal a FAM arbitration award or if both parties in dispute agree to appeal a FAM arbitration award, FAM is prepared to handle such an appellate procedure in the same manner as a new FAM arbitration involving three arbitrators and subject to these Arbitration Guidelines. A party intending to appeal a final award must contact FAM directly for a

Demand for Arbitration (Appeal) form and complete and file this form not later than 45 days after the date the arbitrator issues his or her final award.

### **3. POST SELECTION PRELIMINARY PROCEDURES**

#### **3.1 Arbitrator's Initial Telephone Conference**

Within 7 business days after the arbitrator's notification he or she has been selected, the arbitrator must contact the parties (this may be done by telephone conference call) to (i) arrange for completion of the appointed arbitrator's engagement agreement with the disputing parties and payment of the initial retainer (and subsequent additional prepayments, if necessary), (ii) to schedule the hearing and (iii) make other initial inquiries concerning the proceedings. *(FAM recommends that notice of the scheduling of any hearing be neither less than seven nor more than 60 days prior to the hearing and notice be sent by reliable overnight courier within 30 days of the arbitrator's appointment as arbitrator.)*

In its preliminary in-person or telephonic meeting with the parties in dispute and their counsel, the arbitrator must discuss with the parties and determine answers to the following:

(i) When will the retainer be paid?

(ii) Will there be expert consultants or adversarial experts?

(iii) Will discovery be allowed, and if so what will the scope of discovery be? (If discovery is not permitted in the Franchise Agreement or other written agreement between the parties, or otherwise agreed to by the parties in dispute at the preliminary hearing, neither party in dispute should be allowed to conduct discovery.)

(iv) Should there be depositions to preserve testimony if a witness is not available or appropriate?

(v) Will a formal recording of the proceedings be made by a court reporter or will an interpreter be needed? (These will be additional expenses to be paid for by the party requesting the service, or shared by the parties in dispute if they agree to do so.)

(vi) Will individuals with unilateral authority to settle the dispute be present at the hearing?

#### **3.2 Other Preliminary Matters**

After the preliminary in-person or telephonic meeting with the parties in dispute and their counsel is completed, the arbitrator will set or confirm a hearing time and place and obtain time estimates from each party. The arbitrator will also set a deadline for the submission of briefs.

After these preliminary matters are completed and prior to the initial hearing, the arbitrator will review all documents jointly submitted by the parties. Absent extraordinary situations, preliminary preparation and coordination should not exceed three hours of the arbitrator's time.

#### **3.3 Subsequent Requests of Disputing Parties**

After selection of the arbitrator, any requests of the parties in dispute for alternate dispute resolution mechanisms other than binding arbitration, mediation or supervised settlement discussions will be subject to the arbitrator's discretion unless a dispute resolution clause between the disputants authorizes one or both disputant to undertake such other procedures

#### **3.4 Validity of Demand**

Unless a court of competent jurisdiction rules otherwise, FAM does not recommend the arbitrator determine the validity of a demand to arbitrate or the enforceability of arbitration, if waiver questions are involved. These matters should be referred to an appropriate court.

## **4. FEE AGREEMENTS WITH PARTIES IN DISPUTE**

### **4.1 Retainers**

Although the Demand (and any authorized Submission Agreement if applicable) requires the plaintiff and respondent to each pay ½ of the authorized initial retainer, FAM recommends that the arbitrator have the parties in dispute sign an engagement agreement providing a mechanism for billing and collecting any additional fees due the arbitrator for services rendered. Except for the requirement that the authorized initial retainer should be reasonable and relevant to the complexity of the issues in dispute, the amount of and collection procedures respecting payments for the arbitrator's services are in the arbitrator's sole discretion. Except as provided in section 1.4 above, FAM neither invoices nor collects fees for arbitrator services.

### **4.2 Fees and Costs**

FAM arbitrators will charge the parties in dispute their hourly rate, in hourly increments (nearest .10 or .25 hour) that they communicated to FAM as their billing rate for FAM referred matters, plus costs.

## **5. NOTICE TO RESPONDENT**

### **5.1 Notices**

The plaintiff must forward to the respondent (this may be done by a process server or overnight courier) a copy of the Demand, and provide evidence to FAM that the respondent has received the Demand (or that every reasonable effort has been made to notify the respondent about the Demand).

### **5.2 Counterclaims**

The respondent will have 30 days in which to file a response, which may include counterclaims. There are no fees to file an answer or counterclaim respecting a pending Demand for Arbitration. The respondent must also provide evidence to FAM (and the arbitrator if one has been appointed) that the plaintiff has received the answer or counterclaim (or that every reasonable effort has been made to notify the plaintiff about the answer or counterclaim).

## **6. LOCATION OF ARBITRATION**

### **6.1 Time and Location of Hearing**

The time and location of the arbitration hearing is in the arbitrator's discretion, subject to approval of the disputants. Typically the arbitrator uses conference room facilities at his or her law office as the location of the arbitration hearing.

### **6.2 Venue Conflicts**

If the location of the arbitrator's conference facilities causes a conflict with geographic references in the arbitration clause, and the parties are unwilling to waive the geographic reference in order that the arbitrator's conference facilities can be used, the arbitrator must make alternative arrangements with the disputants (for example renting an executive office or hotel room).

## **7. CONDUCT OF THE ARBITRATION PROCEEDING**

### **7.1 Preliminary Telephonic Hearing**

As described in section 3 of these Guidelines, the arbitrator initially conducts a preliminary hearing (may be done by telephone conference call) where he or she provides an explanation to the disputants of the procedures to be followed, including the order of witnesses. At this preliminary hearing, the arbitrator will also discuss scheduling procedures including advice to the parties that upon mutual agreement, the proceedings can be suspended any time for the parties to engage in mediation or other supervised settlement negotiations, without prejudice to the arbitration proceedings, which can always be reconvened.

## **7.2 Summary of Arguments and Production of Documents**

At least *five* business days before the hearing commences, each party in dispute must (i) submit a summary of its arguments (or brief) in support of its claim or response and declarations of persons having knowledge of facts relevant to the dispute and (ii) exchange copies with the other parties in dispute of all exhibits it intends to submit at the hearing. At the request of a party in dispute or in the discretion of the arbitrator, consistent with the expedited nature of the proceedings, the arbitrator will determine matters involving the production of documents and other information and the identification of witnesses to be called (all witnesses should be relevant to the actual matter in dispute). Any person making a declaration must be available to be cross-examined by the other parties in dispute.

## **7.3 Presentation of Evidence**

Once these preliminary matters are concluded, the arbitrator will proceed as soon as practicable to initiate and complete the proceedings. First, plaintiff will present evidence to support its claims. Then, the respondent may present evidence to support its defense against the claims of plaintiff. Then, the respondent may present evidence to support its counterclaims. Then, the plaintiff may present evidence to support its defense against the counterclaims of respondent. The arbitrator may vary this procedure in his or her reasonable discretion, provided that the parties are treated in an equitable manner and that each party has the right to be heard and be given a fair opportunity to present its case.

## **7.4 Witnesses**

Witnesses for each party will also be required to answer questions from the arbitrator and the adverse party. It is in the arbitrator's discretion whether any person giving testimony to be considered in rendering the decision must make an oath or affirmation. Although witnesses are not required to give testimony under oath except on the request of a party, it is good practice to suggest this.

## **7.5 Counsel or Other Authorized Representative**

Any party in dispute may be represented by counsel or other authorized representative, provided the name and address of said counsel or representative is provided to the arbitrator and the other parties at least five business days before the date set for the hearing at which that person is to appear.

## **7.6 Limitation to Actual Claims and Counterclaims**

**In the interests of expediency and to permit the FAM arbitrator to focus on the actual matters in dispute, the binding arbitration WILL BE LIMITED to the actual claims and counterclaims made by the parties in dispute unless good cause exists in the opinion of the arbitrator for considering additional claims or issues in order for the arbitrator in his or her reasonable discretion to properly render a decision and make an award.**

## **7.7 Amendment of Claims and Counterclaims**

The amendment of claims and counterclaims after the arbitrator has been selected are permitted, in the arbitrator's discretion, only after opposing parties are granted a reasonable period of time (should be not less than 10 business days) to respond and the arbitrator considers any response in opposition.

## **7.8 Hours of Proceedings**

Subject to the agreement of the parties in dispute and the arbitrator to provide for different hours, FAM recommends that each day of arbitration proceedings commence at 9:00 a.m. and conclude at 5:00 p.m.

## **7.9 Arbitrator's Discretion**

During the course of the arbitration, the arbitrator has considerable discretion in controlling the nature of the proceedings, including any continuance or bifurcation of the proceedings. However, the arbitrator should be careful about reconvening sessions after considerable periods of time have elapsed, especially if no formal record of the proceedings is being made.

## **7.10 Written Record or Reporter**

A written record of the proceedings should be maintained by the arbitrator (or a reporter, if employed by the disputants), included in which should be (i) a list of all parties, representatives and witnesses presented, (ii) the date and location of the hearing, and (iii) a summary of testimony.

If a party in dispute desires a stenographic record of the proceedings, it should make arrangements directly with a stenographer and notify the other parties of these arrangements at least three days in advance of the hearing. If both parties in dispute agree to share the cost of the stenographer, the record will be deemed the official record of the proceedings and made available to the arbitrator and all parties in dispute. If only the party in dispute requesting stenographic services pays the applicable costs, it will be in its sole discretion whether to share the stenographic record with the arbitrator or the other parties in dispute.

## **7.11 Closing of Proceedings**

After considering all of the evidence at the hearing, and specifically inquiring of all parties whether they have any further evidence to offer, it will be in the arbitrator's discretion to determine when the proceedings are closed.

## **7.12 Length of Time**

The parties in dispute may agree to shorten or lengthen the time limits set forth in these Guidelines. In his or her reasonable discretion, the arbitrator may extend any time limit which has been shortened by agreement of the parties in dispute if the arbitrator decides that it is necessary to do so in order for the arbitrator to fulfill his or her responsibilities in accordance with these Guidelines.

## **7.13 Timely Objections**

A party in dispute which proceeds with the arbitration without raising a timely objection to (i) a failure to comply with any provision of these Guidelines, (ii) any other rules applicable to the proceedings, or (iii) any decision of the arbitrator, is deemed to have waived its right to make such objection. For purposes of this section 6.13, "timely" means immediately in response to testimony or other evidence offered during the course of the hearing or not later than two business days with respect to other matters.

# **8. AWARD WHEN A PARTY IN DISPUTE IS NOT PRESENT**

## **8.1 Failure to Respond to Demand**

If a party in dispute fails to respond to a Demand or other written communication from the arbitrator respecting an arbitration proceeding, or fails to pay its ½ share of the Arbitrator's authorized initial retainer, or fails to appear at the arbitration without obtaining an appropriate postponement of appearance, the arbitration proceeding may proceed anyway provided that the party that is present and participating in compliance with these Guidelines will be responsible for paying all of the arbitrator's fees, subject to possible reimbursement of these fees in the ensuing award. In such circumstances, the arbitrator may require the party in dispute that is present to submit evidence necessary for the arbitrator to be able to make an award. At the conclusion of the presentation by the party in dispute that is present, the arbitrator may make an award in favor of the plaintiff or the respondent.

## **9. SCOPE OF PERMITTED EVIDENCE**

### **9.1 Permissible Evidence**

The plaintiff and respondent must only offer evidence that is **relevant and material** to the dispute. Conformity to the rules of evidence of the state or court having jurisdiction over the location where the arbitration is being conducted is recommended. However, the arbitrator will determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant or impermissible under federal or state law.

### **9.2 Compliance with Franchise Laws and Regulations**

The arbitrator is bound to apply any applicable (i) franchise laws or regulations, including laws or regulations respecting termination or non-renewal of a franchise agreement, (ii) statutes of limitation, and (iii) principles of legal privilege (such as attorney-client communications), in determining the admissibility of evidence provided by the plaintiff or respondent. **The arbitrator must consider and apply as appropriate applicable franchise laws or regulations (including those respecting termination or non-renewal) and statutes of limitation to each claim and counterclaim made by the plaintiff or respondent in determining the award.**

### **9.3 Subpoena of Witnesses or Documents**

The arbitrator or other person authorized by law to *subpoena* witnesses or documents may do so upon the request of any party or independently. Either party in dispute may object to the relevance to the matter in dispute of witnesses and documents requested by the other party in dispute, and after giving the other party in dispute an opportunity to respond, the arbitrator must sustain the objection or overrule it.

### **9.4 Evidence of Witnesses by Declaration or Affidavit**

The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, but will give such evidence only such weight as the arbitrator deems it is entitled to, after considering any objection made to its admission.

### **9.5 Treatment of Physical Evidence**

Any physical evidence submitted for consideration should be labeled and appropriate arrangements for the custody of the items should be made. In the case of documents, the parties in dispute should stipulate to the use of copies for further private deliberation by the arbitrator, rather than originals.

### **9.6 Post Hearing Submission of Documents**

If the parties agree or the arbitrator directs that documents or other evidence be submitted to the arbitrator after the hearing, the documents or other evidence must be filed with the arbitrator, and all parties must be afforded an opportunity to examine and respond within 10 business days to such documents or other evidence.

## **10. DISQUALIFICATION AND REPLACEMENT OF ARBITRATOR**

### **10.1 Impartiality and Independence of Arbitrator**

Every FAM arbitrator must be impartial and independent and must perform his or her duties with diligence and in good faith, and is subject to disqualification as determined by a court of competent jurisdiction and replacement in the arbitration proceedings by FAM for:

- (i) Partiality or lack of independence,
- (ii) Inability or refusal to perform his or her duties with diligence and in good faith, or
- (iii) Any grounds for disqualification provided by applicable law.

## **10.2 Death or Incapacity of Arbitrator**

An arbitrator must be replaced upon (i) his or her death or incapacity to continue, (ii) his or her resignation as arbitrator, (iii) upon the finding by a court of competent jurisdiction that the arbitrator is biased or has a financial or personal interest in the result of the arbitration, or (iv) upon the request of all of the parties in dispute.

## **10.3 Replacement of Arbitrator**

If an arbitrator is replaced, FAM will nominate potential successor arbitrators for selection based on input of the disputing parties, in accordance with section 1 of these Guidelines.

# **11. THE ARBITRATION AWARD**

## **11.1 Arbitrator's Final Invoice**

The arbitrator should send his or her final invoice for the arbitrator's hourly services and costs as soon as the arbitrator has prepared the written decision (this should be not later than 20 business days after conclusion of the arbitration). The disputing parties have *five business days* in which to pay the final invoice. After receipt of final payment from the parties for the arbitrator's services, a written award, signed by the arbitrator, should be sent to the parties in dispute by reliable overnight courier. No decision or summary will be released to the parties in dispute until all fees for the arbitrator's services and related costs have been paid in full.

## **11.2 Arbitrator's Written Decision**

The arbitrator must advise the parties in dispute that anything beyond a summary written decision will be provided only if the parties agree to the estimated length of the arbitrator's time to do so. A copy of the final award or other disposition must be sent to FAM for its records.

## **11.3 Scope of Possible Award by Arbitrator**

With the exception of procedural matters specifically addressed in the arbitration clause or other submission agreement, and subject to limitations imposed by applicable state law, the arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the Franchise Agreement. The arbitrator will be able to award a wide range of remedies in addition to monetary damages, with costs and attorneys fees where appropriate. The arbitrator may be empowered to award specific performance and certain prospective relief such as injunction (subject to confirmation by a court of competent jurisdiction in the form of a judgment), interim, interlocutory or partial rulings, orders and awards. In any interim, interlocutory or partial award, the arbitrator may assess and apportion the fees, expenses and compensation related to such award as the arbitrator determines is appropriate.

## **11.4 Reimbursement of Legal Fees**

The award may also include the reimbursement to the prevailing party of its reasonable legal fees if all parties have requested such reimbursement to the prevailing party, or it is authorized by the Franchise Agreement or otherwise under the law of the state where the arbitration is being conducted.

## **11.5 Settlement and Consent Award**

If the parties settle their dispute during the course of the arbitration proceedings and if the parties so request, the arbitrator may set forth the terms of the settlement in a "consent award". A consent award must include an appropriate allocation of arbitration costs, including arbitrator's fees and expenses.

### **11.6 Transmittal of Award**

Within 20 days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator to correct any clerical, typographical or computational errors in the award. The arbitrator must give the other parties 10 days to respond to this request, and if no objections are received, the arbitrator must make the appropriate corrections. However, the arbitrator is not thereby empowered to reconsider the merits of any claim already decided.

### **11.7 Consent of Parties to Entry of Judgment upon the Arbitration Award**

By submitting the dispute to resolution by arbitration conducted under these Guidelines before the arbitrator nominated by FAM and selected by input from the parties in dispute, the parties in dispute are deemed to have consented (i) that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction and (ii) neither the arbitrator nor FAM are or will be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these Guidelines.

### **11.8 Sending a Copy of the Award to FAM**

Concurrently upon sending the award or other written disposition of the matter to the parties in dispute, the arbitrator must also send a copy of the award or other written disposition of the matter to FAM.