

Appendix XXIX-C

Note: Adopted July 27, 2015 to be effective September 1, 2015.

Introductory Note:

The Supreme Court of New Jersey endorses the use of arbitration and other alternative dispute resolution processes for the resolution of disputes.

Parties and their counsel may use this form to develop an agreement or consent order for the resolution of certain family law disputes in a proceeding under the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 to 19, (APDRA) and R. 5:1-5(a) of the Rules of Court. (Please note that N.J.S.A. 2A:23A-20 to 30 do not apply.)

The parties may agree to an alternative procedure for the resolution of certain family law disputes even if there is no pending family law proceeding in the Superior Court of New Jersey, Family Part.

The provisions of this form are acceptable to establish an enforceable agreement under the APDRA.

This form should not be used for proceedings under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq., (UAA) because that act has substantial procedural differences from the APDRA. A sample UAA agreement is in Appendix B.

Parties should understand that adding certain clauses may increase the time and cost of the proceeding. For example, electing to strictly apply the Rules of Evidence, permitting full discovery under the Rules of Court, requiring a full verbatim transcript of the proceeding where not required by case law, can, and likely will, significantly increase the duration and costs of the proceeding.

The explanatory notes in this form note that:

- Certain provisions are required to assure the enforceability of the agreement. (See paragraphs 1, 2 and 4.)
- Certain provisions are required in any agreement for an alternate proceeding for the resolution of family law disputes involving children, including custody, parenting time or child support issues. (See paragraphs 1, 14, 16 and 17.)
- Certain details of the process should be agreed upon to avoid later disputes. (See paragraphs 6, 7, 9, 11, 15, 18, 19, 20, 22 and 29.)

The remaining provisions are offered for consideration by the parties and their counsel in planning the alternate dispute resolution proceeding.

**AGREEMENT TO RESOLVE DISPUTES PURSUANT TO THE NEW JERSEY
ALTERNATIVE PROCEDURE FOR DISPUTE RESOLUTION ACT,
N.J.S.A. 2A: 23A-1 et seq.**

WHEREAS, the parties, fully aware of their rights to have their case heard by the Superior Court of New Jersey, Family Part, or to have their issues in dispute resolved in an alternative procedure, have agreed to resolve their disputes pursuant to the New Jersey Alternative Procedure for Dispute Resolution Act, N.J.S.A. 2A: 23A-1 et seq., (APDRA).

NOW, THEREFORE, in consideration of the mutual promises contained in this agreement, the parties agree as follows:

Knowing Waiver of Certain Rights, Consent to Alternative Procedure, Scope of the Proceeding, Entry of Judgment on the Award

1. The parties acknowledge and agree to the following:

(A) The parties understand their entitlement to a judicial adjudication of their dispute and are willing to waive that right;

(B) The parties are aware of the limited circumstances under which a challenge to the award may be advanced and agree to those limitations;

(C) The parties have had sufficient time to consider the implications of their decision to agree to the alternative procedure; and

(D) The parties have entered into this agreement freely and voluntarily, after due consideration of the consequences of doing so.

Explanatory Note:

Paragraph 1 contains the language required by Fawzy v. Fawzy, 199 N.J. 456 (2009). It assures that parties to an agreement for an alternative procedure for dispute resolution involving family law disputes, including

custody, parenting time or child support issues, freely and voluntarily agree to the alternative procedure for resolving those disputes.

2. The parties agree to submit certain disputes for resolution in a proceeding by an umpire under the APDRA as follows:

(A) All issues that could be raised and adjudicated in the Superior Court of New Jersey, Family Part, except those excluded from such a proceeding by R. 5:1-5(a), including *pendente lite* issues, shall be subject to the jurisdiction of and determination by the umpire pursuant to the terms and procedures of this agreement. The umpire shall determine whether an issue or dispute is within the scope of the umpire’s jurisdiction.

(B) The parties exclude from the proceeding the following issues: (list issues or state “none”) _____.

(C) The parties elect to submit the following issues to the umpire for resolution: (list issues) _____.

The umpire shall determine whether an issue or dispute is within the scope of the umpire’s jurisdiction.

Explanatory Note:

The parties are required to state what issues they agree to submit to the proceeding.

Paragraph 2(A) offers the parties the option of a broad scope of issues to be submitted.

Paragraph 2(B) is to be used if the parties desire to exclude certain specified issues from the proceeding. For example, some issues may be addressed in a separate mediation process or by the court after the disposition of the arbitration.

Paragraph 2(C) may be used to designate specific issues that the parties agree to submit to the proceeding. For example, some issues already may be settled and the proceeding will be limited to the remaining issues.

3. The parties agree that the provisions of this agreement govern the proceeding if there is a conflict between the APDRA and this agreement but only if the conflicting provisions of the APDRA may be waived.

Explanatory Note:

The parties may change some provisions of the APDRA, and may not change others. Paragraph 3 confirms the parties' intent to change only those provisions of the statute that may be changed.

4. Judgment on the award rendered by the umpire may be entered in any court having jurisdiction thereof.

Explanatory Note:

Paragraph 4 is to assure that the award is enforceable.

5. Neither party shall have the right or power to expand, narrow, amend or revoke this agreement without the consent in writing of the other party.

Explanatory Note:

Paragraph 5 is to make clear to the parties the irrevocability of their agreement.

Appointment of Umpire; Location of the Proceeding

6. The parties appoint (name(s)) _____ as the umpire. If the parties appoint more than one umpire, the word “umpire” in this agreement shall refer to the panel. The umpire has made full disclosures as required by the APDRA as detailed within Rider A to this agreement. The parties have made full disclosure of any known facts that a reasonable person would consider likely to affect the impartiality of the umpire. The parties waive any objections to the service of the umpire.

Explanatory Note:

Disclosures by both the umpire and the parties are necessary to assure there is no later objection to the umpire based on information known to anyone at the time the umpire is selected.

If the parties do not name an umpire, or a panel of umpires, or do not agree on a process for selecting an umpire, the court will need to be involved to appoint an umpire under the APDRA, N.J.S.A. 2A: 23A-9(a). The appointment of a panel of umpires will increase the cost and likely extend the duration of the proceeding.

7. The umpire’s compensation and other expenses of the proceeding shall be borne by the parties as follows:

(A) Equally;

(B) In the following proportion: (state percentages borne by each party)

_____.

8. In any interim or final award, the umpire (A) may (B) may not reallocate the parties’ percentage contribution to the umpire’s compensation and other expenses of the proceeding.

9. Unless otherwise agreed, ordered, or awarded, the parties shall be responsible for paying their own attorney’s fees and expenses.

10. In any interim or final award, the umpire (A) may (B) may not award reasonable attorney's fees and other reasonable expenses of the proceeding.

Explanatory Note:

Parties should agree on certain details of the process, such as the allocation of the responsibility for umpire compensation, including the source of payment, to avoid later disputes about those details.

Paragraphs 8 and 10 confirm what the statute provides (N.J.S.A. 2A:23A-17 and 23) and offers the parties the option to bar the umpire from reallocating umpire compensation and other expenses or from awarding attorney's fees and costs.

11. The proceeding shall be conducted at (designate place) _____, or such other location as the parties agree or as selected by the umpire.

Explanatory Note:

Parties should agree on certain details of the process to avoid later disputes about those details.

12. The parties confirm the following role or roles for the umpire:

(A) The umpire has not served, and shall not serve, in another capacity in the proceeding, in particular, the umpire has not served, and shall not serve in the dual capacity as mediator, settlement facilitator, parenting coordinator, or *guardian ad litem*; or

(B) The parties shall participate in a mediation process before or during the proceeding with an independent mediator who is not serving, and shall not serve, as umpire for the parties; or

(C) The parties may jointly ask the umpire at any time during the course of the proceeding to serve also as a settlement facilitator, during which time the umpire shall meet with the parties and their representatives all together, at the same time, and discuss with them various options for resolution of their disputes.

(D) The parties may jointly ask the umpire at any time during the course of the proceeding to serve also as a mediator, during which time the umpire may meet with the parties and their representatives all together, at the same time, or in caucus or in any other manner that a mediator would employ, and discuss with them various options for resolution of their disputes. By electing this option, paragraph 12(D), the parties also incorporate by reference all of paragraph 13 below.

Explanatory Note:

Paragraphs 12(A), (B) and (C) define the role the parties expect of the umpire. It is intended to avoid the problem that arises if, during the course of the proceeding, the parties ask the umpire to assist in settlement discussions as mediator and the umpire conducts private meetings with one party and then the other. While that is permissible, it would not then be permissible for the umpire, after unsuccessfully mediating the disputes, to resume the role of umpire and to decide disputed issues unless the parties have elected paragraph 12 (D) .

Otherwise, such dual roles may result in awards being vacated and the parties being required to start the process again before a new neutral.

Paragraph 13 is required if the parties elect paragraph 12(D) above where the umpire will serve in the dual roles of umpire and mediator at any time and in any order during the process. It makes clear the risks inherent in having an umpire assume the role of mediator and then resume the role of umpire. Failure to object to the mediator resuming the role of umpire is deemed a waiver of the right to object.

Further, the dual role of umpire and guardian ad litem is not permitted. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

13. The parties acknowledge that the law does not favor an umpire also serving in the role of mediator in the same proceeding unless the parties are advised of the benefits and risks and expressly agree in writing to such a process. The parties have been advised of the holding in Minkowitz v. Israeli, 433 N.J. Super. 111 (App. Div. 2013). That case addressed some of the issues that arise when one person acts in the dual capacities of arbitrator (or umpire) and

mediator and concluded that dual roles are to be avoided unless the parties consent in writing.

Issues include:

(a) The mediator meets separately with the parties and their counsel and learns information that in mediation is both confidential and privileged and that the mediator is required under section 7 of the Uniform Mediation Act, N.J.S.A. 2A: 23C-7, (UMA) not to disclose to the other party without the consent of the disclosing party;

(b) If the umpire is required by the parties to disclose such confidential and privileged information to the other party, the willingness of the parties to engage in a meaningful exchange of private confidential information during the mediation process is likely to be compromised, thereby making the mediation process itself less likely to be effective in resolving the disputes because successful mediation depends on confidentiality;

(c) The party to whom the umpire is required to disclose such confidential and privileged information can never be completely sure that they received a complete and accurate report of the information conveyed between the other party and the umpire during the confidential mediation process;

(d) Such confidential and privileged information is inadmissible in another proceeding (*see* UMA, N.J.S.A. 2A: 23C-4(c) and 7(c)), including the proceeding before the umpire;

(e) Such inadmissible, confidential and privileged information is likely to influence the decision of the umpire if the mediation is unsuccessful and the umpire is then called on to decide the disputed issues;

(f) These issues can lead to grounds for vacating an award and would require the parties to engage in a second proceeding before a different umpire.

Notwithstanding these issues, the parties have been advised that they may consent in writing to the umpire acting as mediator and then resuming the role of umpire. The parties intend this agreement to constitute such consent in writing.

Therefore, each party hereby consents to the umpire acting as a mediator for any issues (or only for certain issues) identified in writing by the parties.

Each of the parties waives all claims of confidentiality and privilege under the UMA and the common law for all communications, including private *ex parte* and otherwise confidential and privileged communications that the parties may have with the umpire while the umpire is serving as mediator.

The parties instruct the umpire to waive the mediator privilege under the UMA. Upon beginning or resuming the proceeding, the parties consent to and instruct the umpire to disclose fully and completely to the other party all otherwise confidential and privileged communications between the parties and the umpire while serving as mediator.

The parties waive any objection to the umpire considering as admissible evidence any confidential or privileged information received from the other party. Upon beginning or resuming the proceeding, the parties shall require the umpire to put all confidential and privileged information on the record, insofar as the issues in the proceeding relate to custody and parenting time.

The umpire may also serve as mediator at any time during the proceeding in any order and may thereafter resume the role of umpire, free of any objection from any party.

The parties acknowledge that the umpire is not exceeding the umpire's authority by acting as mediator and then resuming the role of umpire.

If a party proceeds with the next hearing in the proceeding without an objection to the umpire resuming the role of umpire, the party will be held to have waived any right to object.

Explanatory Note:

Paragraph 13 is optional unless the parties selected paragraph 12(D), in which case Paragraph 13 is required. It makes clear the risks inherent in having an umpire assume the role of mediator and then resume the role of umpire. Failure to object to the umpire resuming the role of umpire is deemed a waiver of the right to object.

Required Record Keeping

14. In any proceeding involving custody or parenting time issues, the parties shall have a record made of the proceeding as to those issues. Such record shall include: (i) a record of all documentary evidence; and (ii) all testimony shall be recorded verbatim. A record of testimony may be made by one of the following: (i) certified shorthand reporter; (ii) electronic recording; or (iii) audio or video recording. Absent agreement of the parties, the umpire shall decide the proper allocation of the costs of the record.

15. In any proceeding that does not involve custody or parenting time issues, the parties:

(A) Shall not require a record to be kept of the proceeding; or

(B) Shall require a record to be kept of the proceeding relating to certain issues as follows: (list issues) _____; or

(C) Shall require a record to be kept of the entire proceeding.

Explanatory Note:

The parties may choose whether or not to have a record made of the proceeding as noted in the optional parts (A), (B) and (C) of paragraph 15. The parties may choose to have a verbatim record made in child support cases that deviate from the guidelines to assure that the court may properly review any resulting award if there is an appropriate objection to it.

Requiring a formal record to be kept, depending on the nature of the record, may increase the cost of the proceeding.

16. All documentary evidence introduced at the hearing shall be maintained by the umpire until the issuance of the award and the parties shall either keep a copy of all such evidence or obtain the evidence from the umpire after issuance of the award and retain it until the expiration of the time for the filing of any appeal from an order or judgment confirming, vacating or modifying the award, or from the expiration of the time to apply for an order or judgment to vacate or modify the award.

Explanatory Note:

Paragraphs 14 and 16 are required in any agreement in which issues involving children, including custody or parenting time, will be determined. This assures that the court may properly review any resulting award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

Required Findings; Form of Award

17. In any proceeding involving custody, parenting time or child support issues, the parties shall require the umpire to make findings of fact and conclusions of law with respect to child-custody, parenting-time or child support issues. As to those issues, the umpire shall state in writing or otherwise record findings of fact and conclusions of law with a focus on the best-interests standard.

Explanatory Note:

Paragraph 17 is required in any agreement in which issues involving children, including custody, parenting time or child support, will be addressed. This assures that the court may properly review any resulting award if there is an appropriate objection to it. See, Fawzy v. Fawzy, 199 N.J. 456 (2009).

18. In any proceeding that does not involve custody, parenting time or child support issues, the parties shall require the umpire to prepare an award stating findings of fact and conclusions of law.

Explanatory Note:

Paragraph 18 confirms what the statute provides under N.J.S.A. 2A: 23A-12(a). It requires the umpire to make findings of fact and conclusions of law. A detailed award is needed under the APDRA since the APDRA permits a court to review an award for errors of fact or law committed by the umpire.

If the parties do not desire or need that level of review or that detailed an award, they should consider instead an agreement to arbitrate under the Uniform Arbitration Act, N.J.S.A. 2A: 23B-1 et seq. (UAA). Under the UAA there is more limited court review and the parties may opt for a simple award or an award with a brief explanation of the arbitrator's reasons. This may reduce the cost of the proceeding. See UAA Arbitration Agreement form at Appendix B.

Law to Be Applied

19. This agreement shall be interpreted according to the laws of the State of New Jersey.

Explanatory Note:

Paragraph 19 gives guidance to the umpire about what rules of construction are to be used in interpreting the agreement (i.e., New Jersey law).

20. The issues in this proceeding shall be determined in accordance with applicable principles of substantive law of the State of New Jersey.

Explanatory Note

Paragraph 20 confirms what the statute provides, N.J.S.A. 2A: 23A-12(e).

21. The proceeding shall be conducted pursuant to rules of procedure as determined in the discretion of the umpire, consistent with this agreement and the applicable statute(s).

Explanatory Note:

Paragraph 21 confirms what the statute provides. See generally N.J.S.A. 2A:23A-11. Note that parties remain free in their agreement to provide for whether there is to be a hearing, and for specific aspects of the conduct of the hearing including when and where a hearing is held. N.J.S.A. 2A:23A-11(g) (1), (2) and (3).

Confidentiality

22. Except as may be required by law, the parties and the umpire shall keep the existence, content (including all testimony and documentary evidence presented) and the results of the proceeding confidential. Neither the parties nor the umpire may disclose the existence, content, or results of any proceeding under this agreement without the prior written consent of the parties.

Explanatory Note:

The umpire must keep confidential the umpire's knowledge of the proceeding. However, the parties are not required to keep anything about the proceeding confidential unless they agree to do so. An important reason some parties agree to such a proceeding is to maintain certain information confidential and this optional paragraph 22 provides that.

Discovery and Rules of Evidence

23. The parties agree that the following discovery procedures shall apply to the proceeding:

- (A) Depositions, inspection and copying of documents and interrogatories when authorized by leave of the umpire in accordance with the New Jersey Rules of Court; or
- (B) Limited discovery as follows: (specify agreed upon discovery) _____; or
- (C) No discovery.

Explanatory Note:

The APDRA provides for relatively broad discovery subject to extension of time to complete it or termination of it by the umpire, and the decision of the umpire is subject to summary review by the Superior Court when the umpire is shown to have exceeded the umpire's discretion, under N.J.S.A. 2A: 23A-10(a) and (b).

The parties may choose paragraph 23(A), which confirms that the scope of discovery is as provided under the APDRA.

Choosing to do expansive discovery such as that provided under the APDRA may substantially increase the cost of the proceeding, and may not be necessary to a full and fair presentation of the issues to the umpire.

The parties may choose paragraph 23(B) to specify what discovery is needed (e.g., disclosure of closely held business records).

The parties may choose paragraph 23(C) for no discovery if the issue to be resolved is one where no discovery is necessary and all information to be presented to the umpire is already in the hands of the parties or if the parties choose to save legal costs of formal discovery requests and responses by agreeing to work cooperatively to exchange necessary information.

24. The parties agree that the following shall govern the admissibility of evidence in the proceeding:

(A) Such evidence shall be admitted in the discretion of the umpire pursuant to the APDRA; or

(B) The New Jersey Rules of Evidence shall apply; or

(C) The (specify source of other rules) _____ Rules of Evidence shall apply.

Notwithstanding the foregoing, all statutes and common law rules relating to privilege shall remain in effect.

Explanatory Note:

The parties may choose paragraph 24(A), which confirms that the admissibility of evidence is left to the discretion of the umpire, who is not bound to the statutory and common law rules of evidence. N.J.S.A. 2A: 23A-11(d).

The parties may choose paragraphs (B) or (C) to designate particular rules of evidence. However, applying any rules of evidence may require the services of a lawyer as the umpire, whereas an accountant or social services professional may be the more suitable selection as umpire, depending on the issues to be resolved. Also, applying rules of evidence in the hearing may increase the time and expense of the hearing.

Proceedings at the Hearing and Witnesses/Experts

25. The umpire may hold conferences with the parties. The umpire may require the attendance of any person as a witness and the production of any book or written instrument or document. The fees for the attendance of the witness shall be those allowed witnesses in a civil action. Subpoenas shall issue in the name of and be signed by the umpire, and shall be directed to the person therein named and served in accordance with R. 1:9-3 of the Rules of Court.

Parties may enforce subpoenas as provided by the APDRA.

Explanatory Note:

Paragraph 25 confirms what the statute provides. N.J.S.A. 2A: 23A-11(b) and (c) and 24.

26. If the umpire is of the opinion that evidence by impartial experts would be of assistance, the umpire may direct that expert evidence be obtained. The fees and expenses of expert witnesses shall be paid by the parties as directed by the umpire. The parties remain free to retain their own experts to challenge the report of the impartial expert and to cross-examine the impartial expert.

Explanatory Note:

Paragraph 26 confirms what the statute provides. N.J.S.A. 2A: 23A-11(f). It also confirms the right of the parties to retain their own experts and to cross-examine the impartial experts.

Pendente Lite (Interim) Relief

27. Any determination reached before a final award that is an intermediate ruling shall be considered *pendente lite* (interim) relief.

28. Any party may seek *pendente lite* (interim) relief from the umpire to the same extent as such relief could be requested in the Superior Court of New Jersey, Family Part. Any

party may then ask the court to confirm, enforce, modify, correct, or vacate the intermediate ruling in accordance with the APDRA, N.J.S.A. 2A: 23A-6(a) and R. 5:3-8(a) or (b).

29. The proceeding shall not be abated, stayed or delayed by the court's review or enforcement of a *pendente lite* (interim) award unless the umpire or the court so determines.

Explanatory Note:

Paragraph 28 confirms what the statute provides. N.J.S.A. 2A: 23A-6(a).

*Paragraph 29 confirms what the statute provides. N.J.S.A. 2A: 23A-7(a) provides that a motion/application to the court to address a *pendente lite* (interim) award does not affect the ongoing proceeding on other issues.*

Final Determination

30. An award shall be made within (state number) ____ days following the close of evidence or submission of summations, whichever is later. The umpire, with the consent of the parties, may extend the time for making the award.

Explanatory Note:

Paragraph 30 is desirable to assure a timely completion of the award. A 30-day time limit, or slightly longer, is typical.

Post-Award Review, Modification or Correction of the Award by the Umpire

31. On application to the umpire by a party to the proceeding, the umpire may modify or correct the award:

(1) If there was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) If the umpire has made an award based on a matter not submitted to the umpire and the award may be corrected without affecting the merits of the decision on the issues submitted;

(3) If the award is imperfect in a matter of form, not affecting the merits of the controversy; or

(4) If the rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

Explanatory Note:

Paragraph 31 confirms what the statute provides. N.J.S.A. 2A: 23A-12(d) and 13(e). The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when an umpire may be asked to review the award but they may not vary these four standards governing the umpire's review.

32. A written application to the umpire for modification or correction shall be made to the umpire and written notice given to all parties within 20 days after delivery of the award to the applicant. Written objection to modification must be served on the umpire and other parties to the proceeding within 10 days of receipt of the notice. Any reply shall be made and notice given to all parties within 7 days. The umpire shall dispose of any application, in writing, signed and acknowledged by the umpire, within 30 days after either the reply is made or the time for serving an objection or a reply has expired, whichever is earlier.

Explanatory Note:

Paragraph 32 confirms what the statute provides about the timing of an application to the umpire and the opposition. N.J.S.A. 2A: 23A-12(d). This paragraph further provides for the option of a reply.

33. There shall be no further jurisdiction of the umpire to consider any further applications of the parties, absent written consent of the parties to expand the scope of the proceeding.

Explanatory Note:

Paragraph 33 confirms that the umpire's authority ends completely upon the issuance of a final award and the expiration of the short time within which to seek modification or clarification of the award from the umpire. However, parties, in writing, may expand the scope of the umpire's jurisdiction. Such expansion may include agreement that the umpire may continue to exercise jurisdiction over issues beyond those addressed in the final award.

34. The parties agree that the umpire has jurisdiction after the issuance of any award in order to be able to reconsider the award based upon any factor set forth in R. 4:49-2 or R. 4:50-1 of the Rules of Court. Any reconsideration application under this paragraph shall be made and notice given to all parties within 20 days of receipt of the award. Objection to the reconsideration application and notice to all parties shall be made within 10 days of receipt of the application. Any reply shall be made and notice given to all parties within 7 days. The umpire shall render a decision within 30 days following receipt of the reply or the time for filing an objection or a reply has expired, whichever first occurs.

Explanatory Note:

Paragraph 34 expands the umpire's jurisdiction beyond that in paragraph 31 and allows a short, 20-day continuation of the jurisdiction of the umpire in order to hear applications to change the award on various grounds beyond the limited grounds described in the statute. Continuing the jurisdiction of the umpire may increase the cost of the process.

Confirmation of the Award

35. The court shall confirm an award upon application of a party made within one year after its delivery to the party, unless the award is vacated or modified as provided under the APDRA.

Explanatory Note:

Paragraph 35 confirms what the statute provides. N.J.S.A. 2A: 23A-12(f) and 14.

Modification of the Award by the Court

36. On motion/application to the court by a party to the proceeding within 45 days after the award is delivered to the applicant or within 30 days after receipt of an award modified by the umpire pursuant to paragraph 31 above and N.J.S.A. 2A: 23A-12(d) the court shall modify the award if:

(1) There was a miscalculation of figures or a mistake in the description of any person, thing or property referred to in the award;

(2) The umpire has made an award on a matter not submitted to the umpire and the award may be corrected without affecting the merits of the decision upon the issues submitted;

(3) The award is imperfect in a matter of form not affecting the merits of the controversy; or

(4) The rights of the party applying for the modification were prejudiced by the umpire erroneously applying law to the issues and facts presented for alternative resolution.

If the motion/application is granted, the court shall modify the award. A decision of the umpire on the facts shall be final if there is substantial evidence to support that decision. If it

appears to the court that the umpire committed prejudicial error in applying applicable law to the issues and facts presented, the court, after modifying the erroneous determination of the umpire, shall appropriately set forth the applicable law and arrive at an appropriate determination under the applicable facts determined by the umpire and then confirm the award as modified.

Explanatory Note:

Paragraph 36 confirms what the statute provides. N.J.S.A. 2A: 23A-13(b) and (e). The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when a court may be asked to modify the award, but they may not vary these standards governing the court's review.

Vacating an Award

37. A party to the proceeding may apply to the court to vacate the award within 45 days after the award is delivered to the party or within 30 days after receipt of an award modified by the umpire as provided in paragraphs 31 and 32 above and the provisions of the APDRA, N.J.S.A. 2A: 23A-12. Upon the filing of such application, the court shall vacate an award if the rights of the party were prejudiced by:

- (1) Corruption, fraud or misconduct in procuring the award;
- (2) Partiality of an umpire appointed as a neutral;
- (3) In making the award, the umpire's exceeding the umpire's power or so imperfectly executing that power that a final and definite award was not made;
- (4) Failure to follow the procedures set forth in the APDRA, unless the party applying to vacate the award continued with the proceeding with notice of the defect and without objection; or
- (5) The umpire's committing prejudicial error by erroneously applying law to the issues and facts presented for alternative resolution;

(6) The award, pertaining to the issues of custody, parenting time or child support:

a. Does not contain detailed findings of fact and conclusions of law; or

b. Is not in compliance with the provisions of R. 5:1-5 of the Rules of

Court; or

c. There is evidential support that establishes a *prima facie* claim of harm

to the child.

A decision of the umpire on the facts shall be final if there is substantial evidence to support that decision. However, when the application to the court is to vacate the award pursuant to subparagraphs (1) through (4) above, the court shall make an independent determination of any relevant facts thereto *de novo*.

Explanatory Note:

Paragraph 37 confirms what the statute provides. N.J.S.A. 2A: 23A-13(b) and (c).

Part 6 of Paragraph 37 includes the standards for the court to use to review an award involving issues affecting children, including custody, parenting time and child support. These provisions are consistent with provisions required in an agreement involving such issues (see paragraphs 14, 16, and 17 above.)

The parties may include this paragraph in their agreement if the parties want to incorporate for reference the standards for when a court may be asked to vacate the award but they may not vary these standards.

Expanding the Scope of Judicial Review

38. The scope of judicial review is defined by the statute itself at N.J.S.A. 2A: 23A-5(b). The APDRA does not provide for expansion of the scope of judicial review.

Explanatory Note:

N.J.S.A. 2A:23A-5(b) provides that there shall be no review of any intermediate ruling or determination made by the umpire, except as

provided in the APDRA at N.J.S.A. 2A:23A-7. An appeal from a final award decision may be obtained only as provided in N.J.S.A. 2A:23A-13.

Other Review

39. The parties agree to permit an appeal of the final award to a panel of one or more private appellate umpires to be agreed upon by the parties or provided by a third party, such as the American Arbitration Association. Such appeal shall be filed within 30 days of receipt of the final or corrected, modified award. The parties agree that the standard of review shall be as follows: (state a standard of review) _____. If an appeal is filed, the award shall not be deemed final for purposes of confirmation pending the appeal. The appellate panel may adopt the original award, modify the original award or substitute its own award. The decision of the appellate panel shall be final and binding and judgment may be entered by any court having jurisdiction thereof. The appellate panel shall consist of:

- (A) One umpire (arbitrator);
- (B) A panel of umpires (arbitrators); or
- (C) The following umpires (arbitrator(s)): (name(s)) _____.

Explanatory Note:

Various third party alternate dispute resolution provider organizations, including the American Arbitration Association, offer parties the option under a set of appellate rules to take an appeal to a panel of arbitrators (umpires) of an award issued by another arbitrator (umpire.) Parties may want to consider this option if they desire to have an appeal from an award rather than being limited to the statutory grounds for vacating an award but, for confidentiality reasons or otherwise, do not desire to provide for review by the court under paragraph 37 above.

Attorney for Plaintiff

Plaintiff

Attorney for Defendant

Defendant

Date