

Revised February 28, 2023

Arbitration Procedures DFA of California

In accordance with the California Arbitration Act, Sections 1280 *et seq.* of the Code of Civil Procedure (the "California Arbitration Act"), the Board of Directors of DFA of California ("DFA") has adopted the following procedures for the arbitration of disputes:

Article I Procedure to Initiate Arbitration

Section 1. Any member of DFA, or any non-member who has a written agreement with a member of DFA to arbitrate disputes pursuant to DFA arbitration procedures,¹ may deliver to the Secretary of DFA a "Request for Arbitration," which shall be in substantially the form of Attachment A to these procedures, and which shall include but not be limited to the following:

- a. The name and contact person of the entity requesting the arbitration ("Applicant"), and whether the Applicant is a member of DFA.
- b. The name and contact person of the entity with whom the Applicant has a dispute, and whether that entity is a member of DFA.
- c. A copy of the contract which requires the Applicant or the other party to submit to arbitration pursuant to these procedures.
- d. A detailed description of the nature of the dispute to be arbitrated.

Section 2. The DFA shall decide, in its sole discretion, whether the controversy and the parties are properly subject to a DFA arbitration. Among other things, DFA shall consider the provisions of the arbitration agreement, the Arbitration section (Section 30) of the "DFA Contract Terms and Conditions for Dried Fruit, Tree Nuts and Kindred Products" (if applicable), and the ability of DFA to administer the arbitration in an expeditious and economical manner.

- a. If DFA decides that the controversy and/or the parties are not properly subject to a DFA arbitration, DFA shall so notify the Applicant. An Applicant who believes that DFA has incorrectly denied arbitration may appeal to the DFA Board of Directors by sending a letter to the Secretary of DFA within twenty (20) calendar days of

¹ A "written agreement to arbitrate" includes but is not necessarily limited to 1) a hardcopy paper agreement signed by both parties, 2) an electronic agreement in which electronic signatures are inserted, or 3) an email exchange in which it is clear to a reasonable person that the parties have agreed to be subject to the DFA Arbitration Procedures.

notification outlining the reasons why the request for arbitration should be reconsidered. The DFA Board will consider and vote on the appeal as soon as practicable.

b. If DFA decides that the controversy and the parties appear properly subject to a DFA arbitration, DFA shall so notify the Applicant. At the same time, DFA shall notify in writing the other party of its decision to proceed with the arbitration and include with the notification a copy of the Request for Arbitration.

c. If the other party believes that DFA has incorrectly determined that the controversy is subject to a DFA arbitration, the other party may appeal to the DFA Board of Directors within twenty (20) calendar days after being notified of the decision to proceed with the arbitration, by sending a letter to the Secretary of DFA outlining the reasons why the request for arbitration should be denied. The DFA Board will consider and vote on the appeal as soon as practicable. If DFA decides that the controversy and/or the parties are not properly subject to a DFA arbitration, DFA shall so notify both parties of its decision.

d. If, after an appeal by the other party, DFA determines that the arbitration should go forward, or if the other party does not make a timely appeal of DFA's decision to proceed with the arbitration, DFA shall transmit a written notification to the other party to respond in writing to the Request for Arbitration within twenty (20) calendar days.

e. In the event either party refuses to accept a notification from DFA, or has changed addresses without notifying DFA, the notice shall be deemed to have been delivered and the response period shall begin from the date delivery of notice was first attempted by DFA.

Section 3. Applicant and the other party shall pay an Initial Filing Fee to DFA in the amount of \$2,500 each. Applicant shall pay this amount at the time Applicant submits the Request for Arbitration, pursuant to Section 1 above. The other party shall pay this amount at the time the other party responds in writing to the Request for Arbitration, pursuant to Section 2(d) above.

Section 4. Subject to DFA's decision to proceed with the arbitration, if a member or non-member of DFA has signed an agreement with the Applicant to arbitrate disputes pursuant to DFA procedures but refuses to consent to arbitration or fails to respond to a notice from DFA, the arbitration will proceed, and an award will be issued. Additionally, if any member of DFA refuses to arbitrate, that member may be subject to suspension or expulsion proceedings pursuant to the Bylaws of DFA.

Section 5. Whether or not the other party responds to the notification from DFA in Section 2(d) above within the 20-day deadline, DFA will send written notice to each party within a reasonable time after that deadline passes requesting that both parties provide any documentation or evidence they would like considered in the arbitration. DFA shall request that

both parties respond in writing within thirty (30) calendar days after receipt of the request for documents/evidence.

Section 6. Upon receipt of the documentation/evidence provided by the parties, DFA will assemble the information provided and send copies to each party so that each party can prepare their response to the other party's arguments for the arbitration. After consulting with both parties, DFA shall notify them of the date by which their respective responses should be sent to DFA. After receiving each party's response (or if a party does not submit a response, after the date by which responses were to be provided), DFA will proceed with the selection of arbitrators.

Article II **Selection of Arbitrators**

Section 1. For any arbitration conducted pursuant to these procedures, DFA shall select and appoint three disinterested members of DFA to act as neutral arbitrators, in compliance with the California Arbitration Act, including without limitation the mandatory disclosure and disqualification provisions of Sections 1281.5, 1291.9, and 1291.91 of the Code of Civil Procedure. It shall be the duty of any member so appointed to serve as arbitrator. In addition to the requirements imposed by law, "disinterested" means that no person shall serve as an arbitrator in any controversy in which he/she or any firm with which he/she is connected has any interest, or in any controversy in which their past or present connections with either party are such as to imperil the impartiality of their decision. In the event a question should arise concerning the disqualification of any arbitrator, DFA shall make the disqualification determination. If any person appointed to act as an arbitrator shall for any reason be disqualified, fail or be unable to act, DFA shall select another qualified, disinterested member to act in his/her place.

Article III **Payment of Estimated Costs of the Arbitration**

Section 1. In addition to the Initial Filing Fee, the parties shall also each pay one-half of the estimated remaining cost of the arbitration, including arbitrator compensation and DFA staff time ("Arbitration Costs"). After the arbitrators have been appointed and DFA has assessed the complexity of the dispute, DFA shall make an estimate of the Arbitration Costs. DFA shall notify each party of the amount of their respective one-half share of the Arbitration Costs, and each party shall deposit that amount with DFA prior to the beginning of the arbitration hearing. The arbitration hearing will begin after the Arbitration Costs have been deposited with DFA.

Article IV **Evidence and Procedure**

The arbitration shall be conducted in accordance with the California Arbitration Act and pursuant to the following procedures:

Section 1. The arbitrators may request, receive, and consider any evidence they deem material and proper. Evidence may be submitted in the form of statements, affidavits, or any other form deemed acceptable by the arbitrators. The arbitrators may require that any unverified statements be verified by the parties making them or that the accuracy or authenticity of any documents or other papers submitted be verified by affidavit. The arbitrators may receive oral testimony if in their opinion it is necessary or desirable to obtain a full and complete understanding of the facts. The arbitrators may determine what personal appearances shall be made by the parties and regulate the holding of hearings. Except under extraordinary circumstances, as determined by the arbitrators, copies of all evidence received from any party shall be provided to the other party for its review.

Section 2. The arbitrators, in consultation with the DFA, shall set the date, time, and place for any meeting of the arbitrators or, if necessary, any hearing involving the parties, in accordance with the California Arbitration Act. All hearings shall be held in the State of California, USA, in whatever specific location is chosen by the arbitrators. Parties to the arbitration shall be provided at least ten (10) days' notice of any hearing at which their appearance is requested.

Section 3. Any party may be represented by counsel or other authorized representative at a hearing. A party intending to be so represented shall notify the other party and the arbitrators of the name and address of the representative at least three (3) days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates arbitration or responds for a party, notice is deemed to have been given.

Section 4. Any party desiring a stenographic record of a hearing shall make arrangements directly with a certified shorthand reporter and shall notify the DFA of these arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the transcript. The transcript shall be the official record of the proceeding, and it must be made available to the arbitrators and to the other parties for inspection, at a date, time, and place determined by the arbitrators.

Section 5. Meetings between the arbitrators shall be closed except for persons deemed necessary by the arbitrators. The arbitrators shall also maintain the privacy of any hearing unless the law provides to the contrary. The arbitrators shall have the power to require the exclusion of any person from a hearing during the testimony of any other witness. The arbitrators may, in their sole discretion, determine the propriety of the attendance of any other person. A representative of DFA may attend to assist with the administration of the arbitration.

Section 6. The arbitrators for good cause shown may postpone any hearing upon the request of a party, or upon the arbitrators' own initiative, or when all of the parties agree to it.

Section 7. An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the DFA to so advise the parties. The arbitrators shall set the date and time and the Secretary shall notify the parties. Any party who so desires

may be present at such an inspection or investigation. In the event that one or all parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties at the hearing and afford them an opportunity to comment.

Section 8. A party desiring the testimony of an expert witness, either by declaration or at a hearing, shall be solely responsible for arranging any appearance by the expert and for the payment of said expert's fees and costs.

Section 9. The arbitrators may issue such orders for interim relief as may be deemed necessary to safeguard the property that is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

Section 10. There shall be no direct communication between the parties and the arbitrators other than at official hearings, unless both parties and the arbitrators agree otherwise in writing. Any other oral or written communication from the parties to the arbitrators shall be directed to the DFA for transmittal to the arbitrators.

Section 11. At the close of any hearing, the arbitrators shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies or if satisfied that the record is complete, the arbitrators shall declare the hearing closed. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrators for the receipt of briefs. If additional documents are to be filed, and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing.

Section 12. A hearing may be reopened on the arbitrators' initiative, or upon application of a party with approval of the arbitrators, at any time before the award is made.

Section 13. A party who agrees to arbitrate a dispute pursuant to these Procedures shall not be allowed to withdraw from the arbitration except with the written agreement of the other party. Failure of one party to cooperate with the arbitration process after agreeing to participate (*e.g.*, failure to submit requested evidence or appear at a hearing) shall not terminate the arbitration. In that event, the arbitrators shall simply make their decision based on the information or testimony received from the other party. Provided however, that if neither party to the arbitration cooperates after agreeing to do so, the arbitrators may deem the arbitration terminated and notify the parties in writing that no decision will be rendered.

Section 14. By unanimous agreement of the arbitrators, their powers and duties may be delegated to one of them but the power to make or correct an award may not be so delegated.

Article V
Award

Section 1. The award, if any, shall be made as soon as practical after the evidence is presented and considered. The award must be made by a majority of the arbitrators unless the concurrence of all is expressly required by the arbitration agreement or otherwise by law. The award shall be in writing and shall be signed by the arbitrators supporting the award. Any award so signed shall be valid and binding. A copy of the award shall be delivered to each of the parties to the controversy as soon as practicable after it is made.

Article VI
Enforcement and Fees

Section 1. Judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Failure of a member of the DFA to comply with an award shall be grounds for suspension or expulsion pursuant to Sections 2.09 and 2.10 of DFA's Bylaws.

Section 2. The arbitrators may in their award assess the total costs of the arbitration, including the Initial Filing Fee and the Arbitration Costs, against either party, in any proportion, in which case one or both parties may be refunded some or all of the amounts previously paid.

Section 3. Each arbitrator shall receive, out of the Arbitration Costs, an amount set by the DFA for their services.

Article VII
No Liability

Section 1. Neither DFA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these procedures.