

Accounting and Related Services Arbitration Rules and Mediation Procedures



AMERICAN ARBITRATION ASSOCIATION®

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Table of Contents

Introduction..... 6

Standard Arbitration Clause..... 7

Mediation 7

Accounting and Related Services Arbitration Rules..... 8

 A-1. Agreement of Parties 8

 A-2. AAA Administration of the Arbitration..... 8

 A-3. National Panel of Arbitrators 8

 A-4. The Term “Arbitrator”..... 8

 A-5. Mediation 9

 A-6. Regional Offices 9

 A-7. Filing Requirements..... 9

 A-8. Answers and Counterclaims 10

 A-9. Changes of Claim..... 11

 A-10. Jurisdiction..... 11

 A-11. Interpretation and Application of Rules 12

 A-12. Applicable Procedures..... 12

 A-13. Administrative Conference 12

 A-14. Fixing of Locale..... 12

 A-15. Number of Arbitrators 13

 A-16. Appointment from National Panel 13

 A-17. Direct Appointment by a Party..... 14

 A-18. Appointment of Chairperson by Party-Appointed Arbitrators or Parties 14

 A-19. Nationality of Arbitrator..... 15

 A-20. Disclosure..... 15

 A-21. Disqualification of Arbitrator 15

 A-22. Notice of Arbitration Appointment 16

 A-23. Communication with Arbitrator..... 16

 A-24. Vacancies 16

 A-25. Preliminary Hearing..... 17

 A-26. Disclosure and Production of Information 17

 A-27. Enforcement Powers of the Arbitrator..... 17

 A-28. Dispositive Motions..... 18

 A-29. Date, Time, and Place of Hearing..... 18

 A-30. Attendance at Hearings..... 18

A-31. Representation	18
A-32. Stenographic Record	18
A-33. Postponements	19
A-34. Oaths	19
A-35. Conduct of Proceedings	19
A-36. Inspection or Investigation	20
A-37. Majority Decision	21
A-38. Arbitration in the Absence of a Party or Representative	21
A-39. Post-Hearing Filing of Documents or Other Evidence	21
A-40. Closing of Hearing	21
A-41. Reopening of Hearing	22
A-42. Time of Award	22
A-43. Form of Award	22
A-44. Scope of Award	22
A-45. Award Upon Settlement—Consent Award	23
A-46. Delivery of Award to Parties	23
A-47. Modification of Award	23
A-48. Waiver of Rules	23
A-49. Extensions of Time	23
A-50. Serving of Notice and Communications	24
A-51. Release of Documents for Judicial Proceedings	24
A-52. Applications to Court and Exclusion of Liability	24
A-53. Interim Measures	25
A-54. Emergency Measures of Protection	25
A-55. Administrative Fees	26
A-56. Expenses	27
A-57. Neutral Arbitrator’s Compensation	27
A-58. Deposits	27
A-59. Remedies for Nonpayment	27
A-60. Sanctions	28
Expedited Procedures	29
E-1. Limitation on Extensions	29
E-2. Changes of Claim or Counterclaim	29
E-3. Serving of Notices	29
E-4. Appointment and Qualifications of Arbitrator	29

E-5. Exchange of Exhibits	30
E-6. Proceedings on Documents and Procedures for the Resolution of Disputes through Document Submission	30
E-7. Date, Time, and Place of Hearing	31
E-8. The Hearing	31
E-9. Time of Award	31
Preliminary Hearing	32
P-1. Management of the Hearing	32
P-2. Checklist	32
Disclosure and Production of Information	34
D-1. Management of Process	34
D-2. Documents on which a Party Relies	34
D-3. Preservation	34
D-4. Documents in the Possession of Another Party	35
D-5. Electronically Stored Information (ESI)	35
D-6. Inspections	36
D-7. Depositions	36
D-8. Experts	37
D-9. Interrogatories and Other Forms of Written Questions	37
D-10. Privileges, Professional Ethics, and Professional Standards	37
D-11. Costs and Compliance	37
Administrative Fee Schedule	38
Commercial Mediation Procedures	38
M-1. Agreement of Parties	38
M-2. Initiation of Mediation	38
M-3. Representation	39
M-4. Appointment of the Mediator	39
M-5. Mediator's Impartiality and Duty to Disclose	39
M-6. Vacancies	40
M-7. Duties and Responsibilities of the Mediator	40
M-8. Responsibilities of the Parties	41
M-9. Privacy	41
M-10. Confidentiality	41
M-11. No Stenographic Record	42

M-12. Termination of Mediation 42

M-13. Exclusion of Liability 42

M-14. Interpretation and Application of Procedures 42

M-15. Deposits 42

M-16. Expenses 43

M-17. Cost of the Mediation 43

Accounting and Related Services Arbitration Rules and Mediation Procedures



Introduction

Each year thousands of businesses enter into agreements with CPAs and accounting firms that provide accounting, auditing, tax, and consulting services ("Accounting and Related Services"). Occasionally disagreements develop over how these services are performed. Many of these disputes may be resolved by arbitration, the voluntary submission of a dispute to a disinterested person or persons for final and binding determination. Arbitration is an effective way to resolve these disputes privately, promptly, and economically.

The American Arbitration Association® ("AAA®") is a not-for-profit, public service organization offering a broad range of dispute resolution services to business executives, attorneys, individuals, trade associations, unions, management, consumers, families, communities, and all levels of government. Services are available through AAA headquarters in New York City and through offices located in major cities throughout the United States. Hearings may be held at locations convenient for the parties and are not limited to cities with AAA offices. In addition, the AAA serves as a center for education and training, issues specialized publications, and conducts research on all forms of out-of-court dispute settlement.

These rules have been designed in cooperation with the AAA's National Accounting Advisory Committee and will be applied whenever the parties shall have made these rules a part of their arbitration agreement.

The parties can provide for mandatory arbitration of future disputes by inserting the following clause into their contracts or engagement letters ("contracts").

Standard Arbitration Clause

Any controversy or claim arising out of or relating to this contract or the breach thereof shall be settled by arbitration administered by the American Arbitration Association under its Arbitration Rules for Accounting and Related Services and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

Before including the above provision in their contracts and embarking on the arbitration process, firms should consult with their professional liability insurers to ensure that policy provisions permit the use of mandatory arbitration clauses to resolve disputes and with their counsel to ensure that mandatory arbitration clauses to resolve disputes comply with applicable state laws, rules, and regulations.

Mediation

If the parties want to adopt mediation as the first step in their contractual dispute settlement process, they can insert the following mediation clause into their contract in conjunction with or instead of a standard arbitration provision.

If a dispute arises out of or relates to this contract or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.

If they have not already agreed to do so, the parties can also use a mediator before commencing arbitration by making the following submission.

The parties hereby submit the following dispute to mediation administered by the American Arbitration Association under its Commercial Mediation Procedures (the clause may also provide for the qualifications of and the process for selection of the mediator(s), the method of payment, the locale of meetings, and any other item of concern to the parties).

Accounting and Related Services Arbitration Rules

A-1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the AAA under its Accounting and Related Services Arbitration Rules. These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a Demand for Arbitration or Submission Agreement received by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. Before the appointment of an arbitrator, any dispute over whether these rules or other AAA rules apply shall be decided by the AAA. After the appointment of the arbitrator, the arbitrator shall make such decision.

A-2. AAA Administration of the Arbitration

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and arbitration is initiated under these rules, they thereby authorize the AAA to administer the arbitration. The authority and duties of the AAA are prescribed in the agreement of the parties and in these rules and may be carried out through such of the AAA's representatives as it may direct. Arbitrations administered under these rules shall be administered only by the AAA or by an individual or organization authorized by the AAA to do so.

A-3. National Panel of Arbitrators

The AAA has established and will maintain a National Panel of Accounting and Related Services Arbitrators ("National Panel") and shall appoint and remove arbitrators as provided in these rules. The AAA, in consultation with the National Accounting Advisory Committee, shall establish and maintain eligibility requirements for arbitrators to become and continue as members of the National Panel. An arbitrator may be appointed either from the National Panel of Arbitrators or another AAA Panel in accordance with A-16 or the parties may make a direct appointment of an arbitrator in accordance with A-17.

A-4. The Term "Arbitrator"

The term "arbitrator" in these rules refers to the arbitration panel, whether composed of one or more arbitrators and whether the arbitrators are neutral or non-neutral appointed directly by a party.

A-5. Mediation

Once the arbitration process has been initiated, in all cases where a claim or counterclaim exceeds \$75,000 the parties shall mediate their dispute pursuant to the applicable provisions of the AAA's Commercial Mediation Procedures, or as otherwise agreed by the parties. Absent an agreement of the parties to the contrary, the mediation shall take place concurrently with the arbitration and shall not serve to delay the arbitration proceedings. However, any party to an arbitration may unilaterally opt out of such mediation upon notification to the AAA and the other parties to the arbitration. The parties shall confirm the completion of any mediation or any decision to opt out of such mediation to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator in the case.

A-6. Regional Offices

The AAA may, in its discretion, assign the administration of an arbitration to any of its regional offices.

A-7. Filing Requirements

- (a) Arbitration under an arbitration provision in a contract shall be initiated by the initiating party ("claimant") filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of the applicable arbitration agreement from the parties' contract that provides for arbitration.
- (b) Arbitration pursuant to a court order shall be initiated by the initiating party filing with the AAA a Demand for Arbitration, the administrative filing fee, and a copy of any applicable arbitration agreement from the parties' contract that provides for arbitration.
 - (i) The filing party shall include a copy of the court order.
 - (ii) The filing fee must be paid before a matter is considered properly filed. If the court order directs that a specific party is responsible for the filing fee, it is the responsibility of the filing party either to make such payment to the AAA and seek reimbursement as directed in the court order or to make other such arrangements so that the filing fee is submitted to the AAA with the Demand.
 - (iii) The party filing the Demand with the AAA is the claimant and the opposing party is the respondent regardless of which party initiated the court action. Parties may request that the arbitrator alter the order of proceedings if necessary pursuant to A-35.
- (c) It is the responsibility of the filing party to ensure that any conditions precedent to the filing of a case are met prior to filing for an arbitration, as well as any time requirements associated with the filing. Any dispute regarding whether a condition precedent has been met may be raised to the arbitrator for determination.

- (d) Parties to any existing dispute who have not previously agreed to use these rules may commence an arbitration under these rules by filing a written Submission Agreement and the administrative filing fee. To the extent that the parties' Submission Agreement contains any variances from these rules, such variances should be clearly stated in the Submission Agreement.
- (e) Information to be included with any arbitration filing includes:
 - (i) the name of each party;
 - (ii) the address for each party, including telephone and facsimile (fax) numbers and electronic (email) addresses; if applicable, the names, addresses, telephone and fax numbers, and email addresses of any known representative for each party;
 - (iii) a statement setting forth the nature of the claim, including the relief sought and the amount involved; and
 - (iv) the locale requested if the arbitration agreement does not specify one.
- (f) The initiating party may file or submit a dispute to the AAA in the following manner:
 - (i) through AAA WebFile, located at **www.adr.org**; or
 - (ii) by filing the complete Demand or Submission with any AAA office, regardless of the intended locale of hearing.
- (g) The filing party shall simultaneously provide a copy of the Demand and any supporting documents to the opposing party.
- (h) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a Demand or Submission when the administrative filing requirements have been satisfied. The date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration. However, all disputes in connection with the AAA's determination of the date of filing may be decided by the arbitrator.
- (i) If the filing does not satisfy the filing requirements set forth above, the AAA shall acknowledge to all named parties receipt of the incomplete filing and inform the parties of the filing deficiencies. If the deficiencies are not cured by the date specified by the AAA, the filing may be returned to the initiating party.

A-8. Answers and Counterclaims

- (a) A respondent may file an answering statement with the AAA within 14 calendar days after notice of the filing of the Demand is sent by the AAA. The respondent shall, at the time of any such filing, send a copy of any answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, the respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.

- (b)** A respondent may file a counterclaim at any time after notice of the filing of the Demand is sent by the AAA, subject to the limitations set forth in A-9. The respondent shall send a copy of the counterclaim to the claimant and all other parties to the arbitration. If a counterclaim is asserted, it shall include a statement setting forth the nature of the counterclaim including the relief sought and the amount involved. The filing fee as specified in the applicable AAA Fee Schedule must be paid at the time of the filing of any counterclaim.
- (c)** If the respondent alleges that a different arbitration provision is controlling, the matter will be administered in accordance with the arbitration provision submitted by the initiating party subject to a final determination by the arbitrator.
- (d)** If the counterclaim does not meet the requirements for filing a claim and the deficiency is not cured by the date specified by the AAA, it may be returned to the filing party.

A-9. Changes of Claim

- (a)** A party may at any time prior to the close of the hearing or by the date established by the arbitrator increase or decrease the amount of its claim or counterclaim. Written notice of the change of claim amount must be provided to the AAA and all parties. If the change of claim amount results in an increase in the administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.
- (b)** Any new or different claim or counterclaim, as opposed to an increase or decrease in the amount of a pending claim or counterclaim, shall be made in writing and filed with the AAA, and a copy shall be provided to the other party, who shall have a period of 14 calendar days from the date of such transmittal within which to file an answer to the proposed change of claim or counterclaim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

A-10. Jurisdiction

- (a)** The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.
- (b)** The arbitrator shall have the power to determine the existence or validity of a contract of which an arbitration clause forms a part. Such an arbitration clause shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitrator that the contract is null and void shall not for that reason alone render invalid the arbitration clause.
- (c)** A party must object to the jurisdiction of the arbitrator or to the arbitrability of a claim or counterclaim no later than the filing of the answering statement to the claim or counterclaim that gives rise to the objection. The arbitrator may rule on such objections as a preliminary matter or as part of the final award.

A-11. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of these rules, it shall be decided by a majority vote. If that is not possible, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

A-12. Applicable Procedures

Unless the AAA in its discretion determines otherwise or the parties agree otherwise, the Expedited Procedures provided for herein shall be applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs. Parties may also agree to use the Expedited Procedures in cases involving claims in excess of \$75,000. The Expedited Procedures shall be applied as described in E-1 through E-9 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

All other cases shall be administered in accordance with Sections A-1 through A-60 of these rules.

A-13. Administrative Conference

At the request of any party or upon the AAA's own initiative, the AAA may conduct an administrative conference, in person or by telephone, with the parties and/or their attorneys or other representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchanges of information, a timetable for hearing, and any other administrative matters.

A-14. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. Any disputes regarding the locale that are to be decided by the AAA must be submitted to the AAA and all other parties within 14 calendar days from the date of the AAA's initiation of the case or the date established by the AAA. Disputes regarding locale shall be determined in the following manner:

- (a) When the parties' arbitration agreement is silent with respect to locale, and if the parties disagree as to the locale, the AAA may initially determine the place of

arbitration, subject to the power of the arbitrator after appointment to make a final determination on the locale.

- (b)** When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, or a determination by the arbitrator upon appointment that applicable law requires a different locale, the locale shall be that specified in the arbitration agreement.
- (c)** If the reference to a locale in the arbitration agreement is ambiguous, and the parties are unable to agree to a specific locale, the AAA shall determine the locale, subject to the power of the arbitrator to finally determine the locale.

The arbitrator, at the arbitrator's sole discretion, shall have the authority to conduct special hearings for document production purposes or otherwise at other locations if reasonably necessary and beneficial to the process.

A-15. Number of Arbitrators

- (a)** If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that three arbitrators be appointed. A party may request three arbitrators in the Demand or Answer, which request the AAA will consider in exercising its discretion regarding the number of arbitrators appointed to the dispute.
- (b)** Any request for a change in the number of arbitrators as a result of an increase or decrease in the amount of a claim or a new or different claim must be made to the AAA and other parties to the arbitration no later than seven calendar days after receipt of the A-9 required notice of change of claim amount. If the parties are unable to agree with respect to the request for a change in the number of arbitrators, the AAA shall make that determination.

A-16. Appointment from National Panel

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner:

- (a)** The AAA shall send simultaneously to each party to the dispute an identical list of 10 names of persons chosen from the National Panel or other AAA Panels. The parties are encouraged to agree to an arbitrator from the submitted list and to advise the AAA of their agreement.
- (b)** If the parties are unable to agree upon an arbitrator, each party to the dispute shall have 14 calendar days from the transmittal date in which to strike names objected to, number the remaining names in order of preference, and return the list to the AAA. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall

be deemed acceptable to that party. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the National Panel or other AAA Panels without the submission of additional lists.

- (c) Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators.

A-17. Direct Appointment by a Party

- (a) If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any appointing party, the AAA shall submit a list of members of the National Panel or other AAA Panels from which the party may, if it so desires, make the appointment.
- (b) Where the parties have agreed that each party is to name one arbitrator, the arbitrators so named must meet the standards of A-21(a) with respect to impartiality and independence unless the parties have specifically agreed pursuant to A-21(b) that the party-appointed arbitrators are to be non-neutral and need not meet those standards.
- (c) If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make the appointment within that period, the AAA shall make the appointment.
- (d) If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If within 14 calendar days after such notice has been sent, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

A-18. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to A-17, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by the AAA, and the parties have authorized them to appoint a chairperson within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint the chairperson.
- (b) If no period of time is specified for appointment of the chairperson, and the party-appointed arbitrators or the parties do not make the appointment within 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the chairperson.

- (c) If the parties have agreed that their party-appointed arbitrators shall appoint the chairperson from the National Panel or other AAA Panels, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in A-16, a list selected from the National Panel or other AAA Panels, and the appointment of the chairperson shall be made as provided in that Section.

A-19. Nationality of Arbitrator

Where the parties are nationals of different countries, the AAA, at the request of any party or on its own initiative, may appoint as arbitrator a national of a country other than that of any of the parties. The request must be made before the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

A-20. Disclosure

- (a) Any person appointed or to be appointed as an arbitrator, as well as the parties and their representatives, shall disclose to the AAA any circumstance likely to give rise to 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. Such obligation shall remain in effect throughout the arbitration. Failure on the part of a party or a representative to comply with the requirements of this rule may result in the waiver of the right to object to an arbitrator in accordance with A-48.
- (b) Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to the parties and, if it deems it appropriate to do so, to the arbitrator and others.
- (c) Disclosure of information pursuant to this Section A-20 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

A-21. Disqualification of Arbitrator

- (a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for:
- (i) partiality or lack of independence,
 - (ii) inability or refusal to perform his or her duties with diligence and in good faith, and
 - (iii) any grounds for disqualification provided by applicable law.
- (b) The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section A-17 shall be non-neutral, in which case such arbitrators need not be impartial or independent and shall not be subject to disqualification for partiality or lack of independence.

- (c) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, the AAA shall determine whether the arbitrator should be disqualified under the grounds set out above, and shall inform the parties of its decision, which decision shall be conclusive.

A-22. Notice of Arbitration Appointment

Notice of the appointment of any arbitrator, whether appointed unilaterally by a party, mutually by the parties, or by the AAA, shall be sent to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed with the AAA prior to the opening of the first hearing.

A-23. Communication with Arbitrator

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator or a candidate for arbitrator concerning the arbitration, except that a party, or someone acting on behalf of a party, may communicate *ex parte* with a candidate for direct appointment pursuant to A-17 in order to advise the candidate of the general nature of the controversy and of the anticipated proceedings and to discuss the candidate's qualifications, availability, or independence in relation to the parties or to discuss the suitability of candidates for selection as a third arbitrator where the parties or party-designated arbitrators are to participate in that selection.
- (b) Section A-23(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section A-21(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed under A-21(b), the AAA shall as an administrative practice suggest to the parties that they further agree that Section A-23(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA may initiate communications with each party or anyone acting on behalf of the parties either jointly or individually.
- (d) As set forth in A-50(c), unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.

A-24. Vacancies

- (a) If for any reason an arbitrator is unable or unwilling to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.
- (b) In the event of a vacancy in a panel of neutral arbitrators after the hearings have commenced, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

- (c) In the event of the appointment of a substitute arbitrator, the panel of arbitrators shall determine in its sole discretion whether it is necessary to repeat all or part of any prior hearings.

A-25. Preliminary Hearing

As promptly as practical after the selection of the arbitrator, a preliminary hearing shall be scheduled. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone. At the preliminary hearing, the parties should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute and that safeguards each party's opportunity to fairly present its claims and defenses. Sections P-1 and P-2 and D-1 through D-11 of these rules address the issues to be considered at the preliminary hearing.

A-26. Disclosure and Production of Information

All exchanges of information prior to the hearing shall be carried out pursuant to D-1 through D-11 herein.

A-27. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of A-26 and sections P-1 and P-2 and D-1 through D-11 and to otherwise achieve a fair, efficient, and economical resolution of the case, including, without limitation:

- (a) conditioning any exchange or production of confidential documents and information, and the admission of confidential evidence at the hearing, on appropriate orders to preserve such confidentiality;
- (b) imposing reasonable search parameters for electronic and other documents if the parties are unable to agree;
- (c) allocating costs of producing documentation, including electronically stored documentation;
- (d) in the case of willful non-compliance with any order issued by the arbitrator, drawing adverse inferences, excluding evidence and other submissions, and/or making special allocations of costs or an interim award of costs arising from such non-compliance; and
- (e) issuing any other enforcement orders that the arbitrator is empowered to issue under applicable law.

A-28. Dispositive Motions

The arbitrator may allow the filing of and make rulings upon a dispositive motion only if the arbitrator determines that the moving party has shown that the motion is likely to succeed and dispose of or narrow the issues in the case.

A-29. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place of each hearing, including the preliminary hearing. The parties shall respond to requests for hearing dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established hearing schedule. The AAA shall send a notice of hearing to the parties at least 10 calendar days in advance of the hearing date, unless otherwise agreed by the parties.

A-30. Attendance at Hearings

The arbitrator and the AAA shall maintain the privacy of the hearings unless the law provides to the contrary. Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

A-31. Representation

Any party may participate without representation (pro se) or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the AAA of the name, telephone number and address, and email address if available, of the representative at least seven calendar days prior to the date set for the hearing at which that person is first to appear. When such a representative initiates an arbitration or responds for a party, notice is deemed to have been given.

A-32. Stenographic Record

- (a) Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three calendar days in advance of the hearing. The requesting party or parties shall pay the cost of the record.

- (b)** No other means of recording the proceedings will be permitted absent the agreement of the parties or per the direction of the arbitrator.
- (c)** If the transcript or any other recording is agreed by the parties or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.
- (d)** The arbitrator may resolve any disputes with regard to apportionment of the costs of the stenographic record or other recording.

A-33. Postponements

The arbitrator may postpone any hearing upon agreement of the parties, upon request of a party for good cause shown, or upon the arbitrator's own initiative.

A-34. Oaths

Before proceeding with the first hearing, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator may require witnesses to testify under an oath administered by any duly qualified person and if it is required by law or requested by any party, shall do so.

A-35. Conduct of Proceedings

- (a)** The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.
- (b)** The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings, and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.
- (c)** The parties may offer evidence that is relevant and material to the dispute and shall produce evidence that the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.
- (d)** The arbitrator shall determine the admissibility, relevance, materiality, credibility, and weight of the evidence offered, and conformity to legal rules of evidence shall not be necessary. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, irrelevant, unreliable, unnecessary, or of slight value compared to the time and expense involved. All

evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default, or has waived the right to be present.

- (e) The arbitrator(s) may receive and consider the evidence of witnesses by affidavit or deposition testimony, giving it such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.
- (f) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.
- (g) When deemed appropriate, the arbitrator may also allow for the presentation of evidence by alternative means, including video conferencing, internet communication, telephonic conferences, and means other than an in-person presentation. Such alternative means must afford a full opportunity for all parties to present any evidence that the arbitrator deems material and relevant to the resolution of the dispute and, when involving witnesses, provide an opportunity for cross-examination.
- (h) At a date agreed upon by the parties or ordered by the arbitrator, the parties shall give written notice for any witness or expert witness who has provided a written witness statement to appear in person at the arbitration hearing for examination. If such notice is given, and the witness fails to appear, the arbitrator may disregard the written witness statement and/or expert report of the witness or make such other order as the arbitrator may consider just and reasonable.
- (i) If a witness whose testimony is represented by a party to be essential is unable or unwilling to testify at the hearing, either in person or through electronic or other means, either party may request that the arbitrator order the witness to appear in person for examination before the arbitrator at a time and location where the witness is willing and able to appear voluntarily or can legally be compelled to do so. Any such order may be conditioned upon payment by the requesting party of all reasonable costs associated with such examination.
- (j) The parties may agree to waive oral hearings in any case and may also agree to utilize the *Procedures for Resolution of Disputes through Document Submission*, found in E-6.

A-36. Inspection or Investigation

An arbitrator finding it necessary to make an inspection or investigation in connection with the arbitration shall direct the AAA to so advise the parties. The arbitrator shall set the date and time, and the AAA 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 and afford them an opportunity to comment.

A-37. Majority Decision

- (a) When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement or section (b) of this rule, a majority of the arbitrators must make all decisions.
- (b) Where there is a panel of three arbitrators, absent an objection of a party or another member of the panel, the chairperson of the panel is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.

A-38. Arbitration in the Absence of a Party or Representative

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement. An award shall not be made solely on the default of a party. The arbitrator shall determine that proper notice of the hearing was given to the defaulting party. The arbitrator shall require the party who is present to submit evidence that the arbitrator requires for the making of an award.

A-39. Post-Hearing Filing of Documents or Other Evidence

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 shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents or other evidence.

A-40. Closing of Hearing

- (a) The arbitrator 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 arbitrator shall declare the hearing closed.
- (b) If documents or responses are to be filed as provided in A-39, or if briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If no documents, responses, or briefs are to be filed, the arbitrator shall declare the hearings closed as of the date of the last hearing (including telephonic hearings). If the case was heard without any oral hearings, the arbitrator shall close the hearings upon the due date established for receipt of the final submission.
- (c) The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing. The AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.

A-41. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by the direction of the arbitrator upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed to by the parties in the arbitration agreement, the matter may not be reopened unless the parties agree to an extension of time. When no specific date is fixed by agreement of the parties, the arbitrator shall have 30 calendar days from the closing of the reopened hearing within which to make an award (14 calendar days if the case is governed by the Expedited Procedures).

A-42. Time of Award

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than 30 days from the date of closing the hearing, or if oral hearings have been waived, from the date of the AAA's transmittal of the final statements and proofs to the arbitrator.

A-43. Form of Award

The award shall be in writing and shall be signed by a majority of the arbitrators. The award shall be executed in the manner required by law. The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

A-44. Scope of Award

- (a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract; except that the arbitrator may not compel an accounting firm to either complete a professional engagement or to issue a specified form of opinion or report.
- (b) In addition to a final award, the arbitrator may make other decisions, including 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.
- (c) In the final award, the arbitrator shall assess the fees, expenses, and compensation provided in Sections A-55, A-56, and A-57. The arbitrator may apportion such fees, expenses, and compensation among the parties in such amounts as the arbitrator determines is appropriate.

- (d) The award of the arbitrator(s) may include:
 - (i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and
 - (ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

A-45. Award Upon Settlement—Consent Award

- (a) If the parties settle their dispute during the course of the arbitration 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 allocation of arbitration costs, including administrative fees and expenses as well as arbitrator fees and expenses.
- (b) The consent award shall not be released to the parties until all administrative fees and all arbitrator compensation have been paid in full.

A-46. Delivery of Award to Parties

Parties shall accept as notice and delivery of the award the placing of the award or a true copy thereof in the mail addressed to the parties or their representatives at their last known addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

A-47. Modification of Award

Within 20 calendar days after the transmittal of an award, any party, upon notice to the other parties, may request the arbitrator, through the AAA, to correct any clerical, typographical, or computational errors in the award. The arbitrator is not empowered to redetermine the merits of any claim already decided. The other parties shall be given 10 calendar days to respond to the request. The arbitrator shall dispose of the request within 20 calendar days after transmittal by the AAA to the arbitrator of the request and any response thereto.

A-48. Waiver of Rules

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state an objection in writing shall be deemed to have waived the right to object.

A-49. Extensions of Time

The parties may modify any period of time by mutual agreement. The AAA or the arbitrator may for good cause extend any period of time established by these

rules, except the time for making the award. The AAA shall notify the parties of any extension.

A-50. Serving of Notice and Communications

- (a) Any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules, for any court action in connection therewith, or for the entry of judgment on any award made under these rules, may be served on a party by mail addressed to the party or its representative at the last known address or by personal service, in or outside the state where the arbitration is to be held, provided that reasonable opportunity to be heard with regard to the dispute is or has been granted to the party.
- (b) The AAA, the arbitrator, and the parties may also use overnight delivery, fax, or email to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by email or other methods of communication.
- (c) Unless otherwise instructed by the AAA or by the arbitrator, any documents submitted by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (d) Unless otherwise instructed by the AAA or by the arbitrator, all written communications made by any party to the AAA or to the arbitrator shall simultaneously be provided to the other party or parties to the arbitration.
- (e) Failure to provide the other party with copies of communications made to the AAA or to the arbitrator may prevent the AAA or the arbitrator from acting on any requests or objections contained therein.
- (f) The AAA may direct that any oral or written communications that are sent by a party or their representative shall be sent in a particular manner. The failure of a party or its representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

A-51. Release of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to the arbitration, furnish to the party, at its expense, copies or certified copies of any papers in the AAA's possession that are not determined by the AAA to be privileged or confidential.

A-52. Applications to Court and Exclusion of Liability

- (a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

- (b)** Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.
- (c)** Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.
- (d)** Parties to an arbitration under these rules shall be deemed to have consented that neither the AAA nor any arbitrator shall 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 rules.
- (e)** Parties to an arbitration under these rules may not call the arbitrator, the AAA, or AAA employees as witnesses in litigation or any other proceeding relating to the arbitration. The arbitrator, the AAA, and AAA employees are not competent to testify as witnesses in any such proceeding.

A-53. Interim Measures

- (a)** The arbitrator may take whatever interim measures he or she deems necessary, including providing injunctive relief and measures for the protection or conservation of property and disposition of perishable goods; except that the arbitrator may not compel an accounting firm to either complete a professional engagement or to issue a specified form of opinion or report.
- (b)** Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.
- (c)** A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

A-54. Emergency Measures of Protection

- (a)** Unless the parties agree otherwise, the provisions of this rule shall apply to arbitrations conducted under arbitration clauses or agreements entered on or after February 1, 2015. A party in need of emergency relief prior to the constitution of the panel shall notify the AAA and all other parties in writing of the nature of the relief sought and the reasons why such relief is required on an emergency basis. The application shall also set forth the reasons why the party is entitled to such relief. Such notice may be given by fax or email or other reliable means but must include a statement certifying that all other parties have been notified or an explanation of the steps taken in good faith to notify other parties.
- (b)** Within one business day of receipt of notice as provided in section (a), the AAA shall appoint a single emergency arbitrator designated to rule on emergency applications. The emergency arbitrator shall immediately disclose any circumstance likely, on the basis of the facts disclosed on the application, to affect such arbitrator's impartiality or independence. Any challenge to the appointment

of the emergency arbitrator must be made within one business day of the communication by the AAA to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.

- (c) The emergency arbitrator shall as soon as possible, but in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such a schedule shall provide a reasonable opportunity to all parties to be heard, but may provide for proceeding by telephone or video conference or on written submissions as alternatives to a formal hearing. The emergency arbitrator shall have the authority vested in the panel under A-10, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule A-54.
- (d) If after consideration the emergency arbitrator is satisfied that the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief, and that such party is entitled to such relief, the emergency arbitrator may enter an interim order or award granting the relief and stating the reason therefore.
- (e) Any application to modify an interim award of emergency relief must be based on changed circumstances and may be made to the emergency arbitrator until the panel is constituted; thereafter, such a request shall be addressed to the panel. The emergency arbitrator shall have no further power to act after the panel is constituted unless the parties agree that the emergency arbitrator is named as a member of the panel.
- (f) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.
- (g) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this rule, the agreement to arbitrate or a waiver of the right to arbitrate. If the AAA is directed by a judicial authority to nominate a special master to consider and report on an application for emergency relief, the AAA shall proceed as provided in this rule and the references to the emergency arbitrator shall be read to mean the special master, except that the special master shall issue a report rather than an interim award.
- (h) The costs associated with applications for emergency relief shall initially be apportioned by the emergency arbitrator or special master, subject to the power of the tribunal to determine finally the apportionment of such costs.
- (i) Interim relief shall not include compelling an accounting firm to either complete a professional engagement or to issue a specified form of opinion or report.

A-55. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe administrative fees to compensate it for the cost of providing administrative services. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim, subject to final

apportionment by the arbitrator in the award. The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fees.

A-56. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. Any party or parties desiring an interpreter shall make all arrangements directly with the interpreter and shall assume and/or share the costs of the service. All other expenses of the arbitration, including required travel and other expenses of the arbitrator, AAA representatives, and any witness and the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator in the award assesses such expenses or any part thereof against any specified party or parties.

A-57. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at a rate consistent with the arbitrator's stated rate of compensation.
- (b) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the AAA and confirmed to the parties.
- (c) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

A-58. Deposits

- (a) The AAA may require the parties to deposit in advance of any hearings such sums of money as it deems necessary to cover the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.
- (b) Other than in cases where the arbitrator serves for a flat fee, deposit amounts requested will be based on estimates provided by the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation for the arbitrator's request for deposits.

A-59. Remedies for Nonpayment

If arbitrator compensation or administrative charges have not been paid in full, the AAA may so inform the parties in order that one of them may advance the required payment.

- (a) Upon receipt of information from the AAA that payment for administrative charges or deposits for arbitrator compensation have not been paid in full, to the extent the law allows, a party may request that the arbitrator take specific measures relating to a party's non-payment.
- (b) Such measures may include, but are not limited to, limiting a party's ability to assert or pursue its claim. In no event, however, shall a party be precluded from defending a claim or counterclaim.
- (c) The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any ruling regarding the same.
- (d) In the event that the arbitrator grants any request for relief that limits any party's participation in the arbitration, the arbitrator shall require the party who is making a claim and who has made appropriate payments to submit such evidence as the arbitrator may require for the making of an award.
- (e) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own initiative or at the request of the AAA or a party, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.
- (f) If the arbitration has been suspended by either the AAA or the arbitrator and the parties have failed to make the full deposits requested within the time provided after the suspension, the arbitrator, or the AAA if an arbitrator has not been appointed, may terminate the proceedings.

A-60. Sanctions

- (a) The arbitrator may, upon a party's request, order appropriate sanctions where a party fails to comply with its obligations under these rules or with an order of the arbitrator. In the event that the arbitrator enters a sanction that limits any party's participation in the arbitration or results in an adverse determination of an issue or issues, the arbitrator shall explain that order in writing and shall require the submission of evidence and legal argument prior to the making of an award. The arbitrator may not enter a default award as a sanction.
- (b) The arbitrator must provide a party that is subject to a sanction request with the opportunity to respond prior to making any determination regarding the sanction application.

Expedited Procedures

E-1. Limitation on Extensions

Except in extraordinary circumstances, the AAA or the arbitrator may grant a party no more than one seven-day extension of time to respond to the Demand for Arbitration or counterclaim as provided in A-8.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$75,000, the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by A-50, the parties shall also accept notice by telephone. Telephonic notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

- (a) The AAA shall simultaneously submit to each party an identical list of five proposed arbitrators drawn from the National Panel from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list and to advise the AAA of their agreement. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the AAA within seven days from the date of the AAA's mailing to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other members of the National Panel without the submission of additional lists.
- (c) The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in A-21. The parties shall notify the AAA within seven calendar days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.

E-6. Proceedings on Documents and Procedures for the Resolution of Disputes through Document Submission

Where no party's claim exceeds \$25,000, exclusive of interest, attorneys' fees, and arbitration costs, and other cases in which the parties agree, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Where cases are resolved by submission of documents, the following procedures may be utilized at the agreement of the parties or the discretion of the arbitrator:

- (a) Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator may convene a preliminary management hearing, via conference call, video conference, or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.
- (b) The arbitrator has the discretion to remove the case from the documents-only process if the arbitrator determines that an in-person hearing is necessary.
- (c) If the parties agree to in-person hearings after a previous agreement to proceed under this rule, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearings after agreeing to this rule, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.
- (d) The arbitrator shall establish the date for either written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (e) Unless the parties have agreed to a form of award other than that set forth in A-43 when the parties have agreed to resolve their dispute by use of these Expedited Procedures, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (f) If the parties agree to a form of award other than that described in rule A-43, the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (g) The award is subject to all other provisions of these rules that pertain to awards.

E-7. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing, to be scheduled to take place within 30 calendar days of confirmation of the arbitrator's appointment. The AAA will notify the parties in advance of the hearing date.

E-8. The Hearing

- (a)** Generally, the hearing shall not exceed one day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing and may require further submission of documents within two business days after the hearing. For good cause shown, the arbitrator may schedule additional hearings within seven business days after the initial day of hearings.
- (b)** Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section A-32.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than 14 calendar days from the date of the closing of the hearing or, if oral hearings have been waived, from the due date established for the receipt of the parties' final statements and proofs.

Preliminary Hearing

P-1. Management of the Hearing

- (a) To ensure appropriate management of the process, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. In all but the simplest cases, holding a preliminary hearing as early in the process as possible will help the parties and the arbitrator organize the proceeding in a manner that will maximize efficiency and economy, and will provide each party a fair opportunity to present its case. The parties should be invited to attend the preliminary hearing along with their representatives. The preliminary hearing may be conducted in person or by telephone.
- (b) At the preliminary hearing, the parties and the arbitrator should be prepared to discuss and establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute.
- (c) Care must be taken to avoid importing procedures from court systems, as such procedures may not be appropriate to the conduct of arbitrations as an alternative form of dispute resolution that is designed to be simpler, less expensive, and more expeditious.

P-2. Checklist

- (a) The following checklist suggests subjects that the parties and the arbitrator should address at the preliminary hearing, in addition to any others that the parties or the arbitrator believe to be appropriate to the particular case. The items to be addressed in a particular case will depend on the size, subject matter, and complexity of the dispute and are subject to the discretion of the arbitrator:
 - (i) the possibility of other non-adjudicative methods of dispute resolution, including mediation;
 - (ii) whether all necessary or appropriate parties are included in the arbitration;
 - (iii) whether a party will seek a more detailed statement of claims, counterclaims, or defenses;
 - (iv) whether there are any anticipated amendments to the parties' claims, counterclaims, or defenses;
 - (v) which:
 - (a) arbitration rules;
 - (b) procedural law; and
 - (c) substantive law govern the arbitration;
 - (vi) whether there are any threshold or dispositive issues that can efficiently be decided without considering the entire case, including without limitation:
 - (a) any preconditions that must be satisfied before proceeding with the arbitration;

- (b) whether any claim or counterclaim falls outside the arbitrator's jurisdiction or is otherwise not arbitrable;
- (c) consolidation of the claims or counterclaims with another arbitration; or
- (d) bifurcation of the proceeding;
- (vii) whether the parties will exchange documents, including electronically stored documents, on which they intend to rely in the arbitration, and/or make written requests for production of documents within defined parameters;
- (viii) whether to establish any additional procedures to obtain information that is relevant and material to the outcome of disputed issues;
- (ix) how costs of any searches for requested information or documents that would result in substantial costs should be borne;
- (x) whether any measures are required to protect confidential information;
- (xi) whether the parties intend to present evidence from expert witnesses, and if so, whether to establish a schedule for the parties to identify their experts and exchange expert reports;
- (xii) whether, according to a schedule set by the arbitrator, the parties will:
 - (a) identify all witnesses, the subject matter of their anticipated testimonies, exchange written witness statements, and determine whether written witness statements will replace direct testimony at the hearing;
 - (b) exchange and pre-mark documents that each party intends to submit; and
 - (c) exchange pre-hearing submissions, including exhibits;
- (xiii) the date, time, and place of the arbitration hearing;
- (xiv) whether at the arbitration hearing:
 - (a) testimony may be presented in person, in writing, by videoconference, via the internet, telephonically, or by other reasonable means;
 - (b) there will be a stenographic transcript or other record of the proceeding and, if so, who will make arrangements to provide it;
- (xv) whether any procedure needs to be established for the issuance of subpoenas;
- (xvi) the identification of any ongoing, related litigation or arbitration;
- (xvii) whether post-hearing submissions will be filed;
- (xviii) the form of the arbitration award; and
- (xix) any other matter the arbitrator considers appropriate or a party wishes to raise.
- (b) The arbitrator shall issue a written order memorializing decisions made and agreements reached during or following the preliminary hearing.

Disclosure and Production of Information

D-1. Management of Process

The AAA is committed to the principle that commercial arbitration should provide a simpler, less expensive, and more expeditious form of dispute resolution than resorting to the courts.

The arbitrator has the authority, the responsibility, and the duty to manage arbitration proceedings, including the disclosure and production of information, so as to achieve the goal of providing a simpler, less expensive, and more expeditious process.

- a. The arbitrator is to manage the exchange of information among the parties in advance of the hearing with due consideration for proportionality both as to the scope of any request for information in relation to the likely relevance and materiality of the information sought and the amount at stake in the arbitration. The arbitrator and the parties should endeavor to avoid unnecessary delay and expense while at the same time balancing the goals of avoiding surprise, promoting equality of treatment, and safeguarding each party's opportunity to fairly present its claims and defenses.
- b. The parties may provide the arbitrator with their views on the appropriate level of information exchange for each case, but the arbitrator retains final authority to apply the above standard. To the extent that the parties wish to depart from this standard, they may do so only on the basis of an express agreement between or among them in writing and in consultation with the arbitrator.
- c. To the extent possible, a client representative from each party should participate in all hearings concerning the exchange of information.

D-2. Documents on which a Party Relies

Parties shall produce early and update at set intervals, the production of all documents upon which each intends to rely.

D-3. Preservation

Parties are responsible for preservation of all files and documents including Electronically Stored Information ("ESI") that are relevant and material to the parties' claims and defenses. To avoid uncertainty and undue burden, the scope of preservation should be discussed with the arbitrator at the first preliminary hearing or as soon as practicable.

D-4. Documents in the Possession of Another Party

- a. In addition to any disclosure pursuant to D-2, the arbitrator may, upon application, require one party to make available to another party documents in the party's possession or under its control, not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be both relevant and material to the parties' claims and defenses. Requests for such documents shall contain a description of the specific documents, classes of documents, or discrete sections of documents thought by the requesting party to be both relevant and material, along with an explanation of their relevance and materiality to the parties' claims and defenses. Such requests should not include broad language such as "all documents directly or indirectly related to."
- b. Where a party is not familiar with the contents of a large body of documents in another party's possession or under its control—such as accounting records or auditors' working papers—and an index or description of such documents is available, the arbitrator may direct that such an index be produced to facilitate the required focused description for a request for production.
- c. Requests for documents should be appropriately limited so that they are confined to files that are directly relevant and material to the parties' claims and defenses. If the search required is for files of individuals, or portions thereof, it should be limited to the files of those who spent time of significance (not measured alone by the number of hours spent) working on matters relevant and material to the parties' claims and defenses. Blanket requests for drafts of documents should be denied. A request for production of any draft should be denied unless (i) the draft was circulated to third parties, or (ii) the arbitrator determines on good cause shown that a draft, if any, would likely be material to an identified, significant issue raised by the claims and defenses of the parties. The fact that a document is not in the possession of the requesting party is not in itself sufficient to establish that there is good cause for its production.
- d. The arbitrator may condition any exchange of documents in order to appropriately protect confidentiality or proprietary information.

D-5. Electronically Stored Information (ESI)

- a. When documents to be exchanged are stored in electronic form, the party in possession of such documents may make them available in a readable form most convenient and economical for it, unless the arbitrator determines, on application and for good cause, that there is a compelling need for access to the documents in a different form.
- b. Requests for ESI should be focused and structured to assure that a search will not be unduly burdensome.
- c. Production of categories of ESI such as those below should not be allowed

unless the arbitrator determines, on application and for good cause shown, that there is a compelling need for such access:

- (i) "deleted," "slack," "fragmented," or "unallocated" data on hard drives;
- (ii) random access memory (RAM) or other ephemeral data;
- (iii) online access data such as temporary internet files, history, cache, cookies, etc.;
- (iv) metadata, with the exception of header fields for email correspondence, including fields that are frequently updated automatically, such as last-opened dates;
- (v) backup servers, tapes, backup data that is substantially duplicative of data that is more accessible elsewhere or not reasonably accessible, or other media data;
- (vi) other forms of electronically stored documents that would require extraordinary affirmative measures that are not utilized in the ordinary course of business;
- (vii) archives, except as that term may be used by the accounting firm to refer to the filing of its final electronic and manual working papers;
- (viii) obsolete media or legacy data.

The fact that a document is not in the possession of the requesting party is not in itself sufficient to establish a compelling need.

- d. If the arbitrator would benefit from technical assistance or if one of the parties makes application to compel production of ESI and the request is opposed as too burdensome, before deciding the motion, the panel should hear the parties and require the attendance of an individual who is knowledgeable about the party's electronic systems and capabilities, including electronic document storage, organization, format issues, relevant information-retrieval technology, and search methodology in order to explain those systems and address any questions that the arbitrator may have.

D-6. Inspections

The arbitrator may, on application and for good cause, require a party to permit inspection on reasonable notice of relevant premises or objects.

D-7. Depositions

- a. Absent an agreement of the parties with respect to depositions or good cause shown, the arbitrator may direct that no more than three depositions per party be taken. Any such depositions should be limited to witnesses able to testify as to matters that are relevant and material to the parties' claims and defenses. Such depositions should be limited to no more than two days

per deponent with seven hours per day, not including breaks. Any order with respect to depositions should generally include a statement that, except to preserve privilege, no speaking objections should be made.

- b.** Limited depositions may serve to decrease the time of the hearing by, among other things, shortening cross-examination of key witnesses and better focusing the issues. Such limited depositions in advance of document requests may also serve to focus and restrict the scope of document discovery. Depositions taken to facilitate the focusing of discovery requests shall not count against the number of merits-related depositions allowed for each party.

D-8. Experts

Absent agreement or a showing of good cause, expert testimony should be submitted by written report, with cross-examination reserved for the hearing.

D-9. Interrogatories and Other Forms of Written Questions

Absent a showing that it is highly likely that they will significantly narrow the issues or permit necessary clarification, interrogatories or other forms of written questions, including requests for admission, should not be employed.

D-10. Privileges, Professional Ethics, and Professional Standards

The arbitrator should respect applicable rules of privilege or professional ethics and other legal impediments. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the arbitrator should, to the extent possible, apply the same rules to both sides, giving preference to the rule that provides the highest level of protection.

D-11. Costs and Compliance

- a.** In resolving any dispute about pre-hearing exchanges of information, the arbitrator shall require a party requesting burdensome discovery to justify the time and expense that its request may involve, and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The arbitrator may also allocate the costs of providing information among the parties, either in an interim order or in an award.
- b.** In the event any party fails to comply with an order for information exchange, the arbitrator may draw adverse inferences and may take such failure into account in allocating cost.

Administrative Fee Schedule

FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT www.adr.org/feeschedule.

Commercial Mediation Procedures

M-1. Agreement of Parties

Whenever, by stipulation or in their contract, the parties have provided for mediation or conciliation of existing or future disputes under the auspices of the American Arbitration Association or under these procedures, the parties and their representatives, unless agreed otherwise in writing, shall be deemed to have made these procedural guidelines, as amended and in effect as of the date of filing of a request for mediation, a part of their agreement and designate the AAA as the administrator of their mediation.

The parties by mutual agreement may vary any part of these procedures including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.

M-2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation under the AAA's auspices by making a request for mediation to any of the AAA's regional offices or case management centers via telephone, email, regular mail, or fax. Requests for mediation may also be filed online via WebFile at www.adr.org.

The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AAA and the other party or parties as applicable:

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.
- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

M-3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AAA.

M-4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

- (i) Upon receipt of a request for mediation, the AAA will send to each party a list of mediators from the AAA's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AAA of their agreement.
- (ii) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all mediators on the list shall be deemed acceptable. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AAA shall invite a mediator to serve.
- (iii) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AAA shall have the authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

M-5. Mediator's Impartiality and Duty to Disclose

AAA mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Procedures, these Mediation Procedures shall govern. The Standards require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable

individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the mediator shall be replaced.

M-6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-4.

M-7. Duties and Responsibilities of the Mediator

- (i) The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
- (ii) The mediator is authorized to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person, or otherwise.
- (iii) The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
- (iv) The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.

- (v) In the event a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties, for a period of time, in an ongoing effort to facilitate a complete settlement.
- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.

M-8. Responsibilities of the Parties

The parties shall ensure that appropriate representatives of each party, having authority to consummate a settlement, attend the mediation conference.

Prior to and during the scheduled mediation conference session(s) the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

M-9. Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

M-10. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.

The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding the following, unless agreed to by the parties or required by applicable law:

- (i) Views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;

- (ii) Admissions made by a party or other participant in the course of the mediation proceedings;
- (iii) Proposals made or views expressed by the mediator; or
- (iv) The fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

M-11. No Stenographic Record

There shall be no stenographic record of the mediation process.

M-12. Termination of Mediation

The mediation shall be terminated:

- (i) by the execution of a settlement agreement by the parties; or
- (ii) by a written or verbal declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- (iii) by a written or verbal declaration of all parties to the effect that the mediation proceedings are terminated; or
- (iv) when there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

M-13. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act, or omission in connection with any mediation conducted under these procedures.

M-14. Interpretation and Application of Procedures

The mediator shall interpret and apply these procedures insofar as they relate to the mediator's duties and responsibilities. All other procedures shall be interpreted and applied by the AAA.

M-15. Deposits

Unless otherwise directed by the mediator, the AAA will require the parties to deposit in advance of the mediation conference such sums of money as it, in

consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

M-16. Expenses

All expenses of the mediation, including required traveling and other expenses or charges of the mediator, shall be borne equally by the parties unless they agree otherwise. The expenses of participants for either side shall be paid by the party requesting the attendance of such participants.

M-17. Cost of the Mediation

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www.adr.org/feeschedule.

