

Summary of Changes to AAA Commercial Arbitration Rules

The American Arbitration Association (“AAA”) issued new Arbitration Rules and Mediation Procedures governing commercial disputes for AAA commercial arbitrations initiated on or after October 1, 2013. Arbitration proceedings filed prior to October 1, 2013 continue to be governed by the Arbitration Rules & Mediation Procedures amended and effective June 1, 2010.

There are a number of significant changes to the Commercial Rules, many of which appear designed to add increased flexibility to the parties and retain arbitration’s promise of a streamlined, cost-effective alternative to traditional litigation.

Foley & Lardner LLP prepared the below chart to assist parties to arbitration agreements navigate the changes by not only identifying the most significant provisions and changes, but explaining the implications and recommending strategic responses to these changes.



Provision	Difference	Takeaway
SUBSTANTIAL CHANGES		
<p>R-9, Mediation</p> <p>Prior comparable provision: R-8</p>	<p>Rule 9 now mandates (rather than merely permits) mediation for all disputes involving claims exceeding \$75,000, pursuant to the AAA Commercial Mediation Procedures. Any party to the arbitration may unilaterally opt out of the mediation.</p>	<p>Any party contemplating filing an arbitration demand should be prepared to make a determination about the utility of mediation, as it will be confronted with the question shortly after filing its demand.</p>
<p>R-21, Preliminary Hearing</p> <p>Prior comparable provision: R-20</p>	<p>As revised, Rule 21 directs arbitrators that a preliminary hearing “should be scheduled as soon as practicable after the arbitrator has been appointed,” rather than “<i>may</i> be scheduled.”</p> <p>The new rule now dictates that the arbitrator should “establish a procedure for the conduct of the arbitration that is appropriate to achieve a fair, efficient, and economical resolution of the dispute.” The new rule further provides a checklist of potential topics to cover at the initial hearing.</p>	<p>Parties should be prepared to discuss both procedural and substantive issues at the preliminary hearing. Among the substantive issues that may be discussed at the preliminary hearing are choice of law questions, the possibility of dispositive motions, and the use of expert witnesses.</p> <p>Parties seeking streamlined or limited discovery will take comfort in the Rule’s direction that the arbitrator should seek an “efficient” and “economical resolution of the dispute” and the Rule’s caution to “avoid importing procedures from court systems” counter to the “simpler, less expensive and more expeditious” arbitration.</p>
<p>R-22, Pre-Hearing Exchange and Production of Information</p> <p>Prior analogous provision: R-21</p>	<p>Revised Rule 22 expands on the prior rule’s authorization of discovery, directing the arbitrator to oversee discovery “with a view to achieving an efficient and economical resolution of the dispute.”</p> <p>The new rule authorizes the arbitrator to require the parties to exchange documents on which they intend to rely.</p> <p>The new rule further advises the parties and arbitrator to set “reasonable search parameters” prior to exchange of electronic documents.</p>	<p>The new rule limits surprise to the parties by requiring each party to produce documents upon which it intends to rely at the hearing.</p> <p>The new rule limits discovery obligations to documents that are “relevant and material to the outcome of the disputed issues.” This standard is more stringent than the lenient standard in FRCP 26(b), which allows discovery regarding “any nonprivileged matter that is relevant to any party’s claim or defense” and need not be admissible at trial to be discoverable.</p>



Provision	Difference	Takeaway
<p>R-23, Enforcement Powers of the Arbitrator</p> <p>Prior analogous provision: None</p>	<p>This is a new provision that authorizes the arbitrator to issue any orders necessary to enforce R-21 and R-22, including:</p> <ol style="list-style-type: none"> 1. Conditioning any exchange of information on the entry of a protective order; 2. Imposing reasonable search parameters if the parties are unable to reach agreement; 3. Allocate costs of discovery among the parties; and 4. Penalizing willful non-compliance with the arbitrator’s orders, including drawing adverse inferences, excluding evidence, and allocating costs on the disobeying party. 	<p>This new rule codifies the enforcement powers of the arbitrator to manage his or her own proceedings, providing “teeth” to the arbitrator’s orders to ensure compliance therewith.</p> <p>Although arbitration promises streamlined and efficient discovery, and many of the new rules are aimed at preserving that promise, R-23 is a reminder that parties are no more able to disregard their discovery obligations or the orders of the arbitrator than they are disregard orders by a presiding trial court.</p>
<p>R-33, Dispositive Motions</p> <p>Prior analogous provision: None</p>	<p>This is a new provision that expressly permits the filing of a dispositive motion, but “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.”</p>	<p>Parties can limit the number of issues addressed at the hearing by filing a dispositive motion to “narrow the issues in the case.”</p> <p>However, parties to an arbitration should think carefully whether a dispositive motion is warranted and worth the expense, as the rule disfavors bringing such motions as a matter of course.</p>
<p>R-38, Emergency Measures of Protection</p> <p>Prior analogous provision: Optional Rules of Emergency Measures</p>	<p>The new Emergency Measures of Protection largely codifies the old rules’ Optional Rules of Emergency Measures, which had to be agreed upon by the parties or incorporated in the parties’ arbitration agreement.</p> <p>The new rule permits a party to seek emergency relief by notifying the AAA and other parties to the arbitration; the AAA will then appoint an emergency arbitrator upon one day’s notice to resolve a request for emergency protection.</p>	<p>Parties to an arbitration agreement can now seek the equivalent of a temporary restraining order or preliminary injunction through arbitration. Under old rules, where parties had not agreed to Optional Rules of Emergency Measures, parties often filed state or federal court actions seeking an injunction in aid of arbitration to obtain immediate injunctive relief.</p>
<p>R-57, Remedies for Nonpayment</p> <p>Prior analogous provision: None.</p>	<p>This new rule addresses a party’s nonpayment of fees. The rule authorizes the arbitrator to take “specific measures,” upon request, for a party’s failure to pay required fees, including limiting a</p>	<p>A claimant’s failure to pay the required AAA fees may limit, and potentially preclude entirely, its ability to pursue its claim in AAA arbitration.</p>



Provision	Difference	Takeaway
	party's ability to assert its claims or suspending the arbitration. In no event, however, may an arbitrator prevent a non-paying party to defend against a claim or counterclaim.	
<p>R-58, Sanctions</p> <p>Prior analogous provision: None.</p>	<p>This new rule authorizes an arbitrator, upon request, to order "appropriate sanctions" on account of a party's failure to comply with AAA rules or an order of the arbitration. The rule requires that the arbitrator give the party against whom sanctions the opportunity to respond to a request for sanctions, and specifically prohibits the arbitrator from entering a default as a sanction.</p>	<p>R-58 should be read in tandem with R-23, which likewise authorizes the arbitrator to issue sanctions and penalties necessary to ensure compliance with its orders, the AAA rules, and the parties' discovery obligations.</p>
MINOR CHANGES		
<p>R-1, Agreement of Parties</p> <p>Prior analogous provision: R-1.</p>	<p>Subsection (a) has been modified to empower the arbitrator to resolve disputes among the parties as to which AAA rules apply.</p> <p>Subsection (b) now specifies that attorney's fees are not counted for purposes of computing the amount in controversy.</p> <p>Subsection (d) has been added, which provides the parties may agree to apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission to any dispute.</p>	<p>The revisions to R-1 clarify what expenses are considered for determining the applicable rules to the dispute, and provide additional flexibility to the parties to choose from among a series of different rules to govern their dispute.</p>
<p>R-2, AAA and Delegation of Duties</p> <p>Prior Analogous provision: R-2.</p>	<p>Rule 2 has been amended to provide that "Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so."</p>	<p>If parties seek the protection and stability of AAA rules, they will have to incur the costs associated with an AAA arbitration.</p>
<p>R-4, Filing Requirements</p> <p>Prior Analogous provision: R-4.</p>	<p>The rule has been revised to provide increased clarity as to a party's obligations when initiating arbitration proceedings.</p> <p>Subsection (b) states that where arbitration commences pursuant to court order, the party initiating arbitration must attach a copy of the relevant court order to the demand and pay the</p>	<p>Parties seeking to initiate arbitration proceedings must ensure that all conditions precedent to filing have been satisfied and should consult R-4's filing requirements in detail.</p>



Provision	Difference	Takeaway
	<p>filing fees.</p> <p>Subsection (c) requires the party initiating the arbitration to ensure that any conditions precedent to a filing be met prior to the arbitration. Any dispute regarding whether the condition precedent was satisfied shall be resolved by the arbitrator.</p> <p>Subsection (h) specifies that the “date on which the filing requirements are satisfied shall establish the date of filing the dispute for administration.”</p>	
<p>R-5, Answers and Counterclaims</p> <p>Prior analogous provision: R-4.</p>	<p>Subsection (a) changes the deadline to file an answering statement from 15 days to 14 calendar days.</p> <p>Subsection (b) clarifies that the filing of counterclaims is subject to R-6.</p> <p>Subsection (c) states that any dispute as to the controlling arbitration provision will be determined by the arbitrator.</p>	<p>The key change here is reducing, by one day, the time to file an answering statement. The rule continues to provide that if no answering statement is filed, the respondent will be deemed to deny the claim.</p>
<p>R-6, Changes of Claim</p> <p>Prior analogous provision: R-6</p>	<p>Subsection (a) specifies that if the change of a claim amount results in an increase in administrative fee, the balance of the fee is due before the change of claim amount may be accepted by the arbitrator.</p> <p>Subsection (b) changes the deadline to file a response to a new claim or counterclaim from 15 to 14 calendar days.</p>	<p>The key change here is reducing, by one day, the time to file a response to a new claim or counterclaim.</p>
<p>R-11, Fixing of Locale</p> <p>Prior analogous provision: R-10</p>	<p>The rule has been revised to add clarity where the parties do not agree on the locale of the arbitration proceedings. The deadline to file an objection to the locale of the arbitration has been shortened from 15 to 14 calendar days. Subsection (b) provides that the arbitration agreement’s designation of a specific locale will control, unless the parties agree otherwise or the arbitrator determines that applicable law requires a different locale. Subsection (c) states that if the</p>	<p>The rule confirms that the parties can agree to change the locale of the arbitration proceedings, regardless of the arbitration agreement’s designation. Where the parties cannot agree on a locale, and where the arbitration agreement is ambiguous, the arbitrator will determine the locale of the proceedings.</p>



Provision	Difference	Takeaway
	arbitration agreement’s designation of the locale is ambiguous, the arbitrator will determine the locale of the proceedings, absent agreement by the parties.	
<p>R-12. Appointment from the National Roster</p> <p>Prior analogous provision: R-11</p>	The rule has been revised to shorten the time to return the arbitrator selection list from 15 to 14 calendar days from the transmittal date. The revised rule further specifies that the “parties are not required to exchange selection lists.”	The key change here is reducing, by one day, the time to file an arbitrator selection list.
<p>R-13. Direct Appointment by a Party</p> <p>Prior analogous provision: R-12</p>	The rule has been revised to shorten, from 15 to 14 calendar days, the time for a party to file its notification of arbitrator appointment.	The sole substantive change is reducing, by one day, the time to file its notice of arbitrator appointment. If no such notice is filed, the AAA shall make the appointment.
<p>R-14. Appointment of Chairperson by Party-Appointed Arbitrators or Parties.</p> <p>Prior analogous provision: R-13.</p>	Subsection (b) has been revised to shorten, from 15 to 14 calendar days from the date of the appointment of the last party-appointed arbitrator, the time for the parties to make an appointment of arbitrator chairperson.	The sole substantive change is reducing, by one day, the time for the parties to appoint the arbitrator chairperson.
<p>R-16. Number of Arbitrators</p> <p>Prior analogous provision: R-15</p>	The rule has been revised to include subsection (b), which provides that any request for a change in the number of arbitrators on account of an increase or decrease in the amount of a claim or new claim must be made within “seven calendar days” after receipt of the notice of change.	Parties in receipt of a notice of change of a claim must act quickly if they seek to increase or decrease the number of arbitrators as a result. The 7-day deadline is notably shorter than the 14-day timeline associated with other rules.
<p>R-17. Disclosure</p> <p>Prior analogous provision: R-16</p>	Subsection (a) places a new obligation on the parties—and not just the arbitrators—to disclose to the AAA “any circumstances likely to give rise to justifiable doubt as to the arbitrator’s impartiality or independence.” The rule further provides that the failure to comply with this disclosure requirement “may result in the waiver of the right to object to an arbitrator.”	The parties’ obligation to disclose conflicts of interest remains in effect throughout the arbitration.
<p>R-19. Communication with Arbitrator</p> <p>Prior analogous provision: R-18</p>	The rule was amended to add subsection (c), which provides that the AAA may initiate communications with either party either jointly or individually.	While simultaneous communications with opposing parties was always good practice, it is now mandated by the AAA rules.



Provision	Difference	Takeaway
	<p>Subsection (d) also confirms that, unless directed otherwise, any documents submitted by a party to the arbitrator must also be provided simultaneously to the opposing party.</p>	
<p>R-26, Representation Prior analogous provision: R-24</p>	<p>The revised rule confirms that a party may appear <i>pro se</i> in AAA proceedings. The rule has further been revised to require a party to provide the arbitrator and opposing counsel seven—rather than three, as specified under the former rule—days notice of the contact information for a party’s representative prior to the first hearing at which the representative will appear.</p>	<p>A party appearing <i>pro se</i> may retain representation, and must provide adequate notice that it has retained representation.</p>
<p>R-28, Stenographic Record Prior analogous provision: R-26</p>	<p>Subsection (b) has been added to the rule, to provide that no means, other than stenographic record, shall be permitted absent agreement by the parties or per the direction of the arbitrator.</p> <p>Subsection (c) has been added to require the parties to provide the arbitrator the official record of the proceeding for inspection.</p>	<p>A party wishing to record the arbitration proceedings through any means other than a stenographic record must seek agreement of the opposing party or an order by the arbitrator.</p>
<p>R-32, Conduct of Proceedings Prior analogous provision: R-30</p>	<p>Subsection (c) has been inserted, which authorizes the arbitrator to present evidence through video conferencing, internet communication, telephonic conferences, and other alternatives to in-person presentation. However, such an alternative method must afford a full opportunity for cross-examination.</p>	<p>The alternative methods of evidence presentation permitted by Rule 32 are consistent with arbitration’s objectives to provide a cost-effective alternative to traditional litigation. A party considering alternative methods of evidence presentation should consider, however, whether the method will result in a persuasive and effective presentation.</p>
<p>R-35, Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence Prior analogous provision: R-32</p>	<p>The rule has been revised to include subsection (b), which authorizes the arbitrator, at the request of either party, to order an essential witness who is unavailable at the time of the hearing to appear for examination at a location where the witness is either willing to appear or can be compelled to appear legally.</p> <p>Subsection (a) has also been revised to provide that the arbitrator may disregard the written statements of a witness who fails to appear for examination on a date ordered by the arbitrator or</p>	<p>The rule provides additional flexibility to the parties dealing with reticent or unavailable witnesses.</p>



Provision	Difference	Takeaway
	agreed upon by the parties.	
<p>R-39, Closing of Hearing</p> <p>Prior analogous provision: R-35</p>	<p>The rule has been revised to provide that the “AAA may extend the time limit for rendering of the award only in unusual and extreme circumstances.”</p> <p>Subsection (b) has been further revised to add clarity as to the date on which the arbitration is considered to be closed.</p>	<p>A party seeking to delay the issuance of an award must meet a high standard, demonstrating “unusual and extreme circumstances.”</p>
<p>R-43, Serving of Notice and Communications</p> <p>Prior analogous provision: R-39</p>	<p>Subsection (d) has been added to require that, unless instructed otherwise, all communications to the AAA or the arbitrator shall be simultaneously provided to opposing counsel.</p> <p>The rule further provides, in subsection (f), that the AAA may direct that any oral or written communications sent by a party be made in a particular manner.</p>	<p>New subsection (e) adds “teeth” to the notice and communications requirements, providing that failure to provide the opposing party with copies of communications to the AAA or arbitrator may result in the AAA or arbitrator from acting on any requests or objections in the communication.</p>
<p>R-44, Majority Decision</p> <p>Prior analogous provision: R-40</p>	<p>Subsection (b) has been added to the rule, which provides that where there is a three-person panel of arbitrators, absent an objection of a party or other member of the panel, the chairperson is authorized to resolve any disputes related to the exchange of information or procedural matters without the need to consult the full panel.</p>	<p>The revised rule streamlines discovery disputes by facilitating their resolution without the need to consult the three members of the arbitration panel.</p>
<p>R-48, Award Upon Settlement</p> <p>Prior analogous provision: R-44</p>	<p>Subsection (b) has been added, which provides that a consent award shall not be released to the parties until all administrative fees and all arbitrator compensation has been paid.</p>	<p>Parties to a settlement agreement should specify the obligations of the parties to pay any outstanding debts owed to the AAA or the arbitrator.</p>



Commercial Arbitration Rules

R-1. Agreement of Parties*+

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association (hereinafter AAA) under its Commercial Arbitration Rules or for arbitration by the AAA of a domestic commercial dispute without specifying particular 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. Any disputes regarding which AAA rules shall apply shall be decided by the AAA. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) Unless the parties or the AAA determines otherwise, the Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest, attorneys' fees, and arbitration fees and costs.

Parties may also agree to use these procedures in larger cases. Unless the parties agree otherwise, these procedures will not apply in cases involving more than two parties. The Expedited Procedures shall be applied as described in Sections E-1 through E-10 of these rules, in addition to any other portion of these rules that is not in conflict with the Expedited Procedures.

(c) Unless the parties agree otherwise, the Procedures for Large, Complex Commercial Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is at least \$500,000 or more, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. Parties may also agree to use the procedures in cases involving claims or counterclaims under \$500,000, or in nonmonetary

cases. The Procedures for Large, Complex Commercial Disputes shall be applied as described in Sections L-1 through L-3 of these rules, in addition to any other portion of these rules that is not in conflict with the Procedures for Large, Complex Commercial Disputes.

(d) Parties may, by agreement, apply the Expedited Procedures, the Procedures for Large, Complex Commercial Disputes, or the Procedures for the Resolution of Disputes through Document Submission (Rule E-6) to any dispute.

(e) All other cases shall be administered in accordance with Sections R-1 through R-58 of these rules.

* The AAA applies the Supplementary Procedures for Consumer-Related Disputes to arbitration clauses in agreements between individual consumers and businesses where the business has a standardized, systematic application of arbitration clauses with customers and where the terms and conditions of the purchase of standardized, consumable goods or services are non-negotiable or primarily non-negotiable in most or all of its terms, conditions, features, or choices. The product or service must be for personal or household use. The AAA will have the discretion to apply or not to apply the supplementary procedures and the parties will be able to bring any disputes concerning the application or non-application to the attention of the arbitrator. Consumers are not prohibited from seeking relief in a small claims court for disputes or claims within the scope of its jurisdiction, even in consumer arbitration cases filed by the business.

+ A dispute arising out of an employer promulgated plan will be administered under the AAA's Employment Arbitration Rules and Mediation Procedures.

R-2. AAA and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by the AAA and an 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. The AAA may, in its



discretion, assign the administration of an arbitration to any of its offices. Arbitrations administered under these rules shall only be administered by the AAA or by an individual or organization authorized by the AAA to do so.

R-3. National Roster of Arbitrators

The AAA shall establish and maintain a National Roster of Arbitrators (“National Roster”) and shall appoint arbitrators as provided in these rules. The term “arbitrator” in these rules refers to the arbitration panel, constituted for a particular case, whether composed of one or more arbitrators, or to an individual arbitrator, as the context requires.

R-4. 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 which 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 which 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 to either 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 R-32.

(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 fax numbers and e-mail addresses;
- iii. if applicable, the names, addresses, telephone and fax numbers, and e-mail addresses of any known representative for each party;
- iv. a statement setting forth the nature of the claim including the relief sought and the amount involved; and
- v. 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.

R-5. 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 Rule R-6. 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.

R-6. 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 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.

R-7. Jurisdiction

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.

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.



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.

R-8. 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.

R-9. Mediation

In all cases where a claim or counterclaim exceeds \$75,000, upon the AAA's administration of the arbitration or at any time while the arbitration is pending, 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 this rule 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 this rule to the AAA. Unless agreed to by all parties and the mediator, the mediator shall not be appointed as an arbitrator to the case.

R-10. 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 representatives. The conference may address such issues as arbitrator selection, mediation of the dispute, potential exchange of information, a timetable for hearings, and any other administrative matters.

R-11. 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.

R-12. Appointment from National Roster

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 (unless the AAA decides that a different number is appropriate) names of persons chosen from the National Roster. 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 Roster 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.

R-13. 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 Roster 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 Section R-18 with respect to impartiality and independence unless the parties have specifically agreed pursuant to Section R-18(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.

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

(a) If, pursuant to Section R-13, 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 Roster, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-12, a list selected from the National Roster, and the appointment of the chairperson shall be made as provided in that Section.

R-15. 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.



R-16. 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 R-6 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.

R-17. 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 Rule R-41.

(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 R-17 is not an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-18. 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 R-13 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.

R-19. 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 R-13 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 R-19(a) does not apply to arbitrators directly appointed by the parties who, pursuant to Section R-18(b), the parties have agreed in writing are non-neutral. Where the parties have so agreed



under Section R-18(b), the AAA shall as an administrative practice suggest to the parties that they agree further that Section R-19(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 R-43, 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.

R-20. 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.

R-21. Preliminary Hearing

(a) At the discretion of the arbitrator, and depending on the size and complexity of the arbitration, a preliminary hearing should be scheduled as soon as practicable after the arbitrator has been appointed. 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. Sections P-1 and P-2 of these rules address the issues to be considered at the preliminary hearing.

R-22. Pre-Hearing Exchange and Production of Information

(a) Authority of arbitrator. The arbitrator shall manage any necessary exchange of information among the parties with a view to achieving an efficient and economical resolution of the dispute, while at the same time promoting equality of treatment and safeguarding each party's opportunity to fairly present its claims and defenses.

(b) Documents. The arbitrator may, on application of a party or on the arbitrator's own initiative:

- i. require the parties to exchange documents in their possession or custody on which they intend to rely;
- ii. require the parties to update their exchanges of the documents on which they intend to rely as such documents become known to them;
- iii. require the parties, in response to reasonable document requests, to make available to the other party documents, in the responding party's possession or custody, not otherwise readily available to the party seeking the documents, reasonably believed by the party seeking the documents to exist and to be relevant and material to the outcome of disputed issues; and
- iv. require the parties, when documents to be exchanged or produced are maintained in electronic form, to make such documents available in the form most convenient and economical for the party in possession of such documents, unless the arbitrator determines that there is good cause for requiring the documents to be produced in a different form. The parties should attempt to agree in advance upon, and the arbitrator may determine, reasonable search parameters to balance the need for production of electronically stored documents relevant and material to the outcome of disputed issues against the cost of locating and producing them.



R-23. Enforcement Powers of the Arbitrator

The arbitrator shall have the authority to issue any orders necessary to enforce the provisions of rules R-21 and R-22 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 which the arbitrator is empowered to issue under applicable law.

R-24. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each 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.

R-25. 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.

R-26. 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.

R-27. 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 oath administered by any duly qualified person and, if it is required by law or requested by any party, shall do so.

R-28. 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.



R-29. Interpreters

Any party wishing an interpreter shall make all arrangements directly with the interpreter and shall assume the costs of the service.

R-30. 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.

R-31. 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 require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

R-32. 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) 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.

(d) 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 Rule E-6.

R-33. 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.

R-34. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. 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.

(b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence deemed by the arbitrator to be cumulative or irrelevant.

(c) The arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

(d) An arbitrator or other person authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.



R-35. Evidence by Written Statements and Post-Hearing Filing of Documents or Other Evidence

(a) 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 to be just and reasonable.

(b) 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.

(c) 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 and respond to such documents or other evidence.

R-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 an oral or written report to the parties and afford them an opportunity to comment.

R-37. Interim Measures

(a) The arbitrator may take whatever interim measures he or she deems necessary, including injunctive relief and measures for the protection or conservation of property and disposition of perishable goods.

(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.

R-38. 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 October 1, 2013.

(b) 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 facsimile or e-mail 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.

(c) Within one business day of receipt of notice as provided in section (b), 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.



(d) 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 tribunal under Rule 7, including the authority to rule on her/his own jurisdiction, and shall resolve any disputes over the applicability of this Rule 38.

(e) 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.

(f) 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.

(g) Any interim award of emergency relief may be conditioned on provision by the party seeking such relief for appropriate security.

(h) 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.

(i) 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.

R-39. 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 Rule R-35, 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.

R-40. 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).



R-41. 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.

R-42. 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.

R-43. 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 or electronic facsimile transmission (fax), or electronic (e-mail) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by e-mail 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 their representative to do so may result in the AAA's refusal to consider the issue raised in the communication.

R-44. 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.

R-45. 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 calendar days from the date of closing the hearing, or, if oral hearings have been waived, from the due date set for receipt of the parties' final statements and proofs.

R-46. Form of Award

(a) Any award shall be in writing and signed by a majority of the arbitrators. It shall be executed in the form and manner required by law.

(b) 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.

R-47. 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.

(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 R-53, R-54, and R-55. 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.

R-48. 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.

R-49. 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.

R-50. 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.

R-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.

R-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 a witness 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.

R-53. 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.

R-54. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. 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.

R-55. 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.

R-56. 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.

R-57. 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 their 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 which 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.

R-58. 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 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 sanctions application.

