

# Professional Accounting and Related Services Dispute Resolution RULES

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## INTRODUCTION

## MEDIATION RULES

1. Agreement of Parties
2. Initiation of Mediation
3. Request for Mediation
4. Appointment of Mediator
5. Qualifications of Mediator
6. Vacancies
7. Representation
8. Date, Time and Place of Mediation
9. Identification of Matters in Dispute
10. Authority of Mediator
11. Privacy
12. Confidentiality
13. No Stenographic Record
14. Termination of Mediation
15. Exclusion of Liability
16. Interpretation and Application of Rules
17. Expenses

## ADMINISTRATIVE FEES

## ARBITRATION RULES

1. Agreement of Parties
2. Name of Tribunal
3. Administrator and Delegation of Duties
4. National Panel of Arbitrators
5. Regional Offices
6. Initiation under an Arbitration Provision
7. Initiation under a Submission
8. Changes of Claim
9. Applicable Procedures
10. Administrative Conference, Preliminary Hearing and Mediation Conference
11. Fixing of Locale
12. Qualifications of an Arbitrator
13. Appointment from National Panel
14. Direct Appointment by a Party
15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties
16. Nationality of Arbitrator in International Arbitration
17. Number of Arbitrators

[18. Notice to Arbitrator of Appointment](#)  
[19. Disclosure and Challenge Procedure](#)  
[20. Vacancies](#)  
[21. Date, Time and Place of Hearing](#)  
[22. Representation](#)  
[23. Stenographic Record](#)  
[24. Interpreters](#)  
[25. Attendance at Hearings](#)  
[26. Postponements](#)  
[27. Oaths](#)  
[28. Majority Decision](#)  
[29. Order of Proceedings and Communication with Arbitrator](#)  
[30. Arbitration in the Absence of a Party or Representative](#)  
[31. Evidence](#)  
[32. Posthearing Filing of Documents or other Evidence](#)  
[33. Inspection or Investigation](#)  
[34. Interim Measures](#)  
[35. Closing of Hearing](#)  
[36. Reopening of Hearing](#)  
[37. Waiver of Oral Hearing](#)  
[38. Waiver of Rules](#)  
[39. Extensions of Time](#)  
[40. Serving of Notice](#)  
[41. Time of Award](#)  
[42. Form of Award](#)  
[43. Scope of Award](#)  
[44. Award upon Settlement](#)  
[45. Delivery of Award to Parties](#)  
[46. Releases of Documents for Judicial Proceedings](#)  
[47. Applications to Court and Exclusion of Liability](#)  
[48. Administrative Fees](#)  
[49. Expenses](#)  
[50. Arbitrator's Compensation](#)  
[51. Deposits](#)  
[52. Interpretation and Application of Rules](#)

#### [EXPEDITED PROCEDURES](#)

[53. Notice by Telephone](#)  
[54. Appointment and Qualification of Arbitrator](#)  
[55. Date, Time and Place of Hearing](#)  
[56. The Hearing](#)  
[57. Time of Award](#)

#### [ADMINISTRATIVE FEES](#)

Introduction

Each year thousands of businesses enter into engagements with CPA's and accounting firms. 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 Industry Dispute Resolution Committee.

In addition, the committee has established panel qualification criteria and training requirements for arbitrators and mediators. Panelists will be drawn from a variety of business and professional areas, and will include accountants and CPAs in the industry as well as nonindustry members including lawyers, business persons and former judges.

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

#### *Standard Arbitration Clause*

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

Firms should consult with their professional liability insurers to ensure that policy provisions permit the use of arbitration clauses to resolve disputes.

#### MEDIATION

The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the AAA in accordance with its mediation rules. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the AAA's auspices.

If the parties want to adopt mediation as a part of their contractual dispute settlement procedure, they can insert the following mediation clause into their contract or engagement letter in

conjunction with a standard arbitration provision.

*If a dispute arises out of or relates to this contract or engagement letter, 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 mediation rules before resorting to arbitration, litigation, or some other dispute-resolution procedure.*

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission.

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

Arbitration Rules for Professional Accounting and Related Services Disputes (Including Mediation)

## MEDIATION RULES

### 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 (AAA) or under these rules, they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.

### 2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation by filing with the AAA a submission to mediation or a written request for mediation pursuant to these rules, together with the \$325 nonrefundable case set-up fee. Where there is no submission to mediation or contract providing for mediation, a party may request the AAA to invite another party to join in a submission to mediation. Upon receipt of such a request, the AAA will contact the other parties involved in the dispute and attempt to obtain a submission to mediation.

### 3. Request for Mediation

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall simultaneously file two copies of the request with the AAA and one copy with every other party to the dispute.

### 4. Appointment of Mediator

Upon receipt of a request for mediation, the AAA will appoint a qualified mediator to serve. Normally, a single mediator will be appointed unless the parties agree otherwise or the AAA

determines otherwise. If the agreement of the parties names a mediator or specifies a method of appointing a mediator, that designation or method shall be followed.

## 5. Qualifications of Mediator

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the AAA shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the AAA will appoint another mediator. The AAA is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

## 6. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise.

## 7. Representation

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.

## 8. Date, Time and Place of Mediation

The mediator shall fix the date and the time of each mediation session. The mediation shall be held at the appropriate regional office of the AAA, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.

## 9. Identification of Matters in Dispute

At least ten days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented.

The mediator may require any party to supplement such information.

## 10. Authority of Mediator

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. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning

technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

## 11. Privacy

Mediation sessions are private. 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.

## 12. Confidentiality

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. 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

- a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b. admissions made by another party in the course of the mediation proceedings;
- c. proposals made or views expressed by the mediator; or
- d. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

## 13. No Stenographic Record

There shall be no stenographic record of the mediation process.

## 14. Termination of Mediation

The mediation shall be terminated

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

## 15. 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 act or omission in connection with any mediation conducted under these rules.

## 16. Interpretation and Application of Rules

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

## 17. Expenses

The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of the AAA, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

### ADMINISTRATIVE FEES

The nonrefundable case set-up fee is \$325 per party. In addition, the parties are responsible for compensating the mediator at his or her published rate, for conference and study time (hourly or per diem).

All expenses are generally borne equally by the parties. The parties may adjust this arrangement by agreement.

Before the commencement of the mediation, the AAA shall estimate anticipated total expenses. Each party shall pay its portion of that amount as per the agreed upon arrangement. When the mediation has terminated, the AAA shall render an accounting and return any unexpended balance to the parties.

### ARBITRATION RULES

#### 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 American Arbitration Association (hereinafter AAA) or under its Arbitration Rules for Professional Accounting and Related Services Disputes. These rules and any amendment of them shall apply in the form in effect at the time the demand for arbitration or submission agreement is received by the AAA. The parties, by written agreement, may vary the procedures set forth in 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.

## 2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Professional Accounting and Related Services Arbitration Tribunal.

## 3. Administrator 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.

## 4. National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Accounting and Related Services Arbitrators (hereinafter the National Panel) and shall appoint arbitrators as provided in these rules. The AAA, in consultation with the National Accounting Industry Dispute Resolution Committee, shall establish and maintain eligibility requirements for arbitrators to become and continue as members of the National Panel.

## 5. Regional Offices

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

## 6. Initiation under an Arbitration Provision

Arbitration under an arbitration provision in a contract or engagement letter shall be initiated in the following manner.

- a. The initiating party (hereinafter claimant) shall, within the time period, if any, specified in the contract(s) or engagement letter(s), give written notice to the other party (hereinafter respondent) of its intention to arbitrate (demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and the hearing locale requested, and
- b. shall file at any regional office at the AAA three copies of the notice and three copies of the arbitration provisions of the contract or engagement letter, together with the appropriate filing fee as provided in the schedule on page 32.

The AAA shall give notice of the filing to the respondent or respondents. A respondent may file an answering statement in duplicate with the AAA within 10 days after notice from the AAA, in which event the respondent shall at the same time send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the appropriate fee provided in the schedule on page 32 shall be forwarded to the AAA with the answering statement.



If the respondent does not file an answering claim, within the stated time, it will be deemed to have denied the claim. Failure to file an answering statement shall not operate to delay the arbitration.

## 7. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office of the AAA three copies of a written submission to arbitrate under these rules, signed by the parties. It shall contain a statement of the matter in dispute, the amount involved, if any, the remedy sought, and the hearing locale requested together with the appropriate filing fee as provided in the schedule on page 32.

## 8. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with the AAA, and a copy shall be mailed to the other party, who shall have a period of 10 days from the date of mailing within which to file an answering claim with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

## 9. Applicable Procedures

Unless the AAA in its discretion determines otherwise or the parties agree otherwise, the Expedited Procedures 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 Section 53 through 57 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 1 through 52 of these rules.

## 10. Administrative Conference, Preliminary Hearing and Mediation Conference

At the request of any party or at the discretion of the AAA, an administrative conference with the AAA and the parties and/or their representatives will be scheduled in appropriate cases to expedite the arbitration proceedings.

At the request of any party or at the discretion of the arbitrator or the AAA, a preliminary hearing with the parties and/or their representatives and the arbitrator may be scheduled by the arbitrator to specify the issues to be resolved, to stipulate to uncontested facts and to consider any other matters that will expedite the arbitration proceedings. Consistent with the expedited nature of arbitration, the arbitrator may, at the preliminary hearing, establish (i) whether discovery is required and, if so, the extent of production of relevant documents and other information, (ii) the identification of witnesses to be called, and (iii) a schedule for further hearings to resolve the dispute. Any information or material exchanged during the course of discovery, or the arbitration, shall be confidential unless the parties specifically agree otherwise. With the consent of the parties, the AAA at any stage of the proceeding may arrange a mediation

conference under its mediation rules, in order to facilitate settlement. The selected mediator shall not be an arbitrator previously appointed to the case. Where the parties to a pending arbitration agree to mediate under the AAA's mediation rules, no additional administrative fee is required to initiate the mediation.

## 11. Fixing of Locale

The parties may mutually agree on the locale where the arbitration is to be held. If any party requests that the hearings be held in a specific locale and the other party files no objection thereto, within 10 days after notice of the request has been sent to it by the AAA, the locale shall be the one requested. If a party objects to the locale requested by the other party, the AAA shall have the power to determine the locale and its decision shall be final and binding.

## 12. Qualifications of an 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 appointed directly by a party (party-appointed). Unless otherwise agreed, any arbitrator acting under these rules, including party-appointed arbitrators, shall be impartial and independent and shall be subject to disqualification pursuant to Section 19.

Unless the parties agree otherwise or if the arbitration is conducted in accordance with the Expedited Procedures, all arbitrations shall be conducted before a panel of three arbitrators selected from the National Panel in accordance with Section 13. The AAA shall establish and maintain eligibility requirements for arbitrators to become members of the National Panel.

## 13. Appointment from National Panel

If the parties have not provided for any other method of appointment and the arbitration is not conducted in accordance with the Expedited Procedures, the arbitrator shall be appointed in the following manner: immediately after the filing of the demand or submission, the AAA shall send simultaneously to each party to the dispute an identical list of not less than 15 names of members of the National Panel. Each party to the dispute shall have 10 days from the transmittal date in which to select an arbitrator from that list, and report the selection to the AAA. If a party does not make a selection within the time specified, all persons named therein shall be deemed acceptable, and the AAA shall make the selection on behalf of that party. If both parties select the same arbitrator, the AAA shall so advise both parties and afford them both the opportunity to make an alternate selection. The AAA shall invite the acceptance of the two arbitrators selected by the parties to serve as arbitrators.

Within 10 days of notice from the AAA that the two arbitrators selected by the parties have agreed to serve, those two arbitrators shall select a third arbitrator from among the remaining persons on the list to serve as the third arbitrator and chair-person. The AAA shall invite the acceptance of the person selected to serve as an arbitrator and chair-person, and shall convene an arbitration panel composed of three arbitrators.

If the arbitrators selected by the parties fail to agree on the selection of the third arbitrator, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be

made from the list submitted to the parties, the AAA shall have the power to make the appointment from other members of the National Panel without the submission of additional lists.

#### 14. Direct Appointment by a Party

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 from which the party may, if it so desires, make the appointment.

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.

If no period of time is specified in the agreement, the AAA shall notify the party to make the appointment. If, within 10 days thereafter, an arbitrator has not been appointed by a party, the AAA shall make the appointment.

#### 15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators or Parties

If the parties have selected party-appointed arbitrators, or if such arbitrators have been appointed as provided in Section 14, and the parties have authorized them to appoint a neutral arbitrator within a specified time and no appointment is made within that time or any agreed extension, the AAA may appoint a neutral arbitrator from the National Panel, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the party-appointed arbitrators or the parties do not make the appointment within 10 days from the date of the appointment of the last party-appointed arbitrator, the AAA may appoint the neutral arbitrator from the National Panel, who shall act as chairperson.

If the parties have agreed that their party-appointed arbitrators shall appoint the neutral arbitrator from the National Panel, the AAA shall transmit to the party-appointed arbitrators a list of arbitrators selected from the National Panel, and the appointment of the neutral arbitrator shall be made by the party-appointed arbitrators' striking from the list the names objected to, numbering the remaining names in order of preference, and returning the list to the AAA within 10 days from the transmittal date. From 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 a neutral arbitrator to serve. If the parties fail to agree on any of the persons named, if acceptable arbitrators are unable to act, or if, for any other reason, the appointment cannot be made from the lists submitted to the party-appointed arbitrators, the AAA shall have the power to make the appointment from other members of the National Panel without the submission of additional lists.

#### 16. Nationality of Arbitrator in International Arbitration

Where the parties are nationals or residents of different countries, any neutral arbitrator shall, upon the request of either party, be appointed from the nationals of a country other than that of

any of the parties. The request must be made prior to the time set for the appointment of the arbitrator as agreed by the parties or set by these rules.

#### 17. Number of Arbitrators

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by a panel composed of three arbitrators selected in accordance with Section 13, unless the parties agree otherwise or the AAA, in its discretion, directs that a different number of arbitrators be appointed, or unless the Expedited Procedures are applicable as provided in Section 9.

#### 18. Notice to Arbitrator of 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.

#### 19. Disclosure and Challenge Procedure

Any person appointed as an arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, 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. Any party to the arbitration having similar knowledge about an arbitrator shall also disclose such information to the AAA as soon as practicable. 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.

Unless the parties agree otherwise, any arbitrator serving under these rules is subject to disqualification if he or she has any material financial or other personal interest in the result of the arbitration.

Upon objection of a party to the continued service of any arbitrator, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

#### 20. Vacancies

If, for any reason, an arbitrator is unable 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 these rules.

In the event of a vacancy of any arbitrator prior to the commencement of the arbitration hearings, a replacement arbitrator shall be selected in the same manner and in accordance with the rules under which the original arbitrator was selected.

In the event of a vacancy of a neutral arbitrator 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.

In the event of a vacancy of a party-appointed arbitrator after the hearings have commenced, the party that appointed that arbitrator shall select a successor arbitrator in accordance with the rules under which the original arbitrator was selected, and the arbitration shall continue as if the successor had been selected in the first instance.

#### 21. Date, Time and Place of Hearing

The arbitrator shall set the date, time and place for each hearing. The AAA shall send a notice of hearing to the parties at least 10 days in advance of the hearing date, unless otherwise agreed by the parties.

#### 22. Representation

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

#### 23. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements in advance of the hearing. The requesting party or parties shall pay the costs of the record. If the transcript is agreed by the parties to be, or determined by the arbitrator to be the official record of the proceeding, it must be made available to the arbitrator and to the other parties for inspection, at a date, time and place determined by the arbitrator.

#### 24. Interpreters

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

#### 25. Attendance at Hearings

The arbitrator 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.

#### 26. Postponements

The arbitrator for good cause shown may postpone any hearing upon the request of a party or upon the arbitrator's own initiative, and shall also grant such postponement when all of the

parties agree.

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

## 28. Majority Decision

All decisions of the arbitrators must be by a majority. The award must also be made by a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

## 29. Order of Proceedings and Communication with Arbitrator

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the date, time and place of the hearing, and the presence of the arbitrator, the parties and their representatives, if any; and by the receipt by the arbitrator of the statement of the claim and the answering statement, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved. In some cases, part or all of the above will have been accomplished at a preliminary hearing conducted by the arbitrator pursuant to Section 10.

The complaining party shall then present evidence to support its claim. The defending party shall then present evidence supporting its defense. Witnesses for each party shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure, but shall afford a full and equal opportunity to all parties for the presentation of any material and relevant evidence.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and a description of the exhibits in the order received shall be made a part of the record.

There shall be no direct communication between the parties and any arbitrator including party-appointed arbitrators, other than at oral hearing, unless the parties and the arbitrator agree otherwise. Any other oral or written communication from the parties to any arbitrator shall be directed to the AAA for transmittal to the arbitrator.

## 30. 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.

### 31. Evidence

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.

The arbitrator shall be the judge of the relevance, materiality, credibility and weight of the evidence offered, and 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.

The arbitrator may receive and consider the evidence of witnesses by affidavit, giving it such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

### 32. Posthearing 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.

### 33. 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.

### 34. Interim Measures

The arbitrator may issue such orders for interim relief other than those proscribed in Section 43 as may be deemed necessary to safeguard the property that is the subject matter of the arbitration, without prejudice to the rights of the parties or to the final determination of the dispute.

### 35. Closing of Hearing

The arbitrator shall specifically inquire of all parties whether they have 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.

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 documents are to be filed as provided in Section 32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearing. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearing.

### 36. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or 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 on by the parties in the contract(s) or engagement letter(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time. When no specific date is fixed in the contract or engagement letter, the arbitrator may reopen the hearing and shall have thirty days from the closing of the reopened hearing within which to make an award.

### 37. Waiver of Oral Hearing

The parties may provide, by written agreement, for the waiver of oral hearings in any case. If the parties are unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

### 38. 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.

### 39. 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.

### 40. Serving of Notice

Each party shall be deemed to have consented that 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 or by a commercial delivery service, 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 thereto has been granted to the party.

The AAA and the parties may also use facsimile transmission, telex, telegram or other written forms of electronic communication to give the notices required by these rules.

### 41. 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 thirty 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.

#### 42. 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.

#### 43. Scope of Award

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, 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 without the consent of the parties. The arbitrator shall, in the award, assess arbitration fees, expenses and compensation as provided in Sections 48, 49 and 50 in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

#### 44. Award upon Settlement

If the parties settle their dispute during the course of the arbitration, the arbitrator may set forth the terms of the agreed settlement in an award. Such an award is referred to as a consent award.

#### 45. Delivery of Award to Parties

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail addressed to a party or its representative at the last known address, personal service of the award, or the filing of the award in any other manner that is permitted by law.

#### 46. Releases of Documents for Judicial Proceedings

The AAA shall, upon the written request of a party to an arbitration proceeding, furnish to the party, at its expense, certified copies of papers in the AAA's possession that are required in judicial proceedings relating to the arbitration.

#### 47. 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 party in judicial proceedings relating to the arbitration.
- c. Parties to 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. Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

#### 48. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe an initial filing fee and a case service fee 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 claimant, subject to final apportionment by the arbitrator in the award.

#### 49. Expenses

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

#### 50. Arbitrator's Compensation

Arbitrators shall charge a rate consistent with the arbitrator's stated rate of compensation, beginning with the first day of hearing in all cases.

If there is a disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Association and confirmed to the parties.

Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.

#### 51. Deposits

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 fees, if any, and shall render an accounting to the parties and return any unexpended balance at the conclusion of the case.

#### 52. 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, any arbitrator may refer the questions to the AAA for a final decision. All other rules shall be interpreted and applied by the AAA.

#### EXPEDITED PROCEDURES

#### 53. Notice by Telephone

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any notice hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

#### 54. Appointment and Qualification of Arbitrator

The AAA shall submit simultaneously to each party an identical list of five proposed arbitrators drawn from the National Panel, from which one arbitrator shall be appointed.

Each party may strike two names from the list on a peremptory basis. The list is returnable to the AAA within seven days from the date of the AAA's mailing to the parties. The AAA shall select one person from the names that have not been struck by the parties, and that person shall serve as the arbitrator.

If, for any reason, the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from among other members of the National Panel without the submission of additional lists.

The parties will be given notice by telephone by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section 19. Within seven days, the parties shall notify the AAA, by telephone, of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party or parties.

#### 55. Date, Time and Place of Hearing

The arbitrator shall set the date, time and place of the hearing. The AAA will notify the parties by telephone, at least seven days in advance of the hearing date. A formal notice of hearing will also be sent by the AAA to the parties.

#### 56. The Hearing

Generally, the hearing shall be completed within one day, unless the dispute is resolved by submission of documents under Section 37. The arbitrator, for good cause shown, may schedule an additional hearing to be held within seven days.

#### 57. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than fourteen days from the date of the closing of the hearing.

#### ADMINISTRATIVE FEES

The administrative fees of the AAA are based on the amount of the claim or counterclaim. Arbitrator compensation is not included in this schedule. Unless the parties agree otherwise, arbitrator compensation and administrative fees are subject to allocation by the arbitrator in the

award.

In an effort to make arbitration costs reasonable for consumers, the AAA has a separate fee schedule for consumer-related disputes. Please refer to Section C-8 of the *Supplementary Procedures for Consumer-Related Disputes* when filing a consumer-related claim.

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.

#### Fees

An initial filing fee is payable in full by a filing party when a claim, counterclaim or additional claim is filed.

A case service fee will be incurred for all cases that proceed to their first hearing. This fee will be payable in advance at the time that the first hearing is scheduled. This fee will be refunded at the conclusion of the case if no hearings have occurred.

However, if the Association is not notified at least 24 hours before the time of the scheduled hearing, the case service fee will remain due and will not be refunded.

These fees will be billed in accordance with the following schedule:

| Amount of Claim              | Initial Filing Fee | Case Service Fee |
|------------------------------|--------------------|------------------|
| Above \$0 to \$10,000        | \$500              | \$200            |
| Above \$10,000 to \$75,000   | \$750              | \$300            |
| Above \$75,000 to \$150,000  | \$1,500            | \$750            |
| Above \$150,000 to \$300,000 | \$2,750            | \$1,250          |
| Above \$300,000 to \$500,000 | \$4,250            | \$1,750          |

|                                   |          |         |
|-----------------------------------|----------|---------|
| Above \$500,000 to \$1,000,000    | \$6,000  | \$2,500 |
| Above \$1,000,000 to \$5,000,000  | \$8,000  | \$3,250 |
| Above \$5,000,000 to \$10,000,000 | \$10,000 | \$4,000 |
| Above \$10,000,000                | *        | *       |
| Nonmonetary Claims **             | \$3,250  | \$1,250 |

\*Contact your local AAA office for fees for claims in excess of \$10 million.

\*\* This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim is not known, parties will be required to state a range of claims or be subject to the highest possible filing fee.

Fees are subject to increase if the amount of a claim or counterclaim is modified after the initial filing date. Fees are subject to decrease if the amount of a claim or counterclaim is modified before the first hearing.

The minimum fees for any case having three or more arbitrators are \$2,750 for the filing fee, plus a \$1,250 case service fee.

Parties on cases held in abeyance for one year by agreement, will be assessed an annual abeyance fee of \$300. If a party refuses to pay the assessed fee, the other party or parties may pay the entire fee on behalf of all parties, otherwise the matter will be closed.

### Refund Schedule

The AAA offers a refund schedule on filing fees. For cases with claims up to \$75,000, a minimum filing fee of \$300 will not be refunded. For all other cases, a minimum fee of \$500 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

- 100% of the filing fee, above the minimum fee, will be refunded if the case is settled or withdrawn within five calendar days of filing.
- 50% of the filing fee, in any case with filing fees in excess of \$500, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing. Where the filing fee is \$500, the refund will be \$200.
- 25% of the filing fee will be refunded if the case is settled or withdrawn between 31 and 60 calendar days of filing.

No refund will be made once an arbitrator has been appointed (this includes one arbitrator on a three arbitrator panel). No refunds will be granted on awarded cases.

Note: the date of receipt of the demand for arbitration with the AAA will be used to calculate

refunds of filing fees for both claims and counterclaims.

### Hearing Room Rental

The fees described above do not cover the rental of hearing rooms, which are available on a rental basis. Check with the AAA for availability and rates.

Rules forms, procedures and guidelines, as well as information about applying for a fee reduction or deferral, are subject to periodic change and updating. To ensure that you have the most current information, visit our website.

AAA-190