



# Construction Mediation and the User Experience: Pathways to Settlement and Satisfaction

November 20, 2014 – 2:00 p.m. – 3:30 p.m. ET

## PROGRAM SUMMARY

**Speakers:** Harold Coleman, Jr. and Dr. Patricia D. Galloway

Construction industry professionals often participate in the mediation process, but somewhat secondarily. Typically, they follow the lead of the company's attorney. Nonetheless, industry executives still are able to - and should - play an oversight role in the process on behalf of their companies. However, only through an in-depth understanding and working knowledge of mediation dynamics can industry professionals be most effective in making sure the process serves their firm's best interests. Get a comprehensive introduction to the mediation process and identify best practices to enhance the user experience.

## AGENDA

<b>2:00 p.m.</b>	<b>Welcome and Introduction of Speakers</b>	(5 minutes)
<b>2:10 p.m.</b>	<b>Pathways to Settlement &amp; Satisfaction</b> <b>Setting the Stage</b> <b>Deciding Whether to Mediate</b> <b>Choosing the Right Mediator</b> <b>Taking Charge: Managing the Players</b> <b>Negotiation Essentials</b> <b>Working Past Impasse</b>	(70 minutes)
<b>3:20 p.m.</b>	<b>Conclusion and Questions</b>	(10 minutes)
<b>3:30 p.m.</b>	<b>Evaluation</b>	(5 minutes)
<b>3:35 p.m.</b>	<b>Adjourn</b>	

## Faculty & Staff

Faculty

Staff

### Harold Coleman Jr.



**Mediation.org, a Division of the American Arbitration Association  
Los Angeles, CA**

Executive Director & Mediator - Mediation.org, a Division of the American Arbitration Association (2013-Present)

Principal - Harold Coleman, Jr. Ltd, a conflict-management firm that delivers alternative dispute resolution (ADR) services in the areas of real estate, construction, commercial, consumer, business and employment law. Mr. Coleman is a licensed attorney and credentialed mediator, arbitrator, educator and former civil litigator with expertise in multi-party, complex technical litigation. Since 1987, he has been a member of the American Arbitration Association's National Panel of Neutrals. Since 2001, he has served as mediator in conjunction with the Superior Court of California's Civil Mediation Program. He also has served as adjunct professor for San Diego State University's conflict resolution certificate program and Distinguished Faculty for the University of Phoenix. In 2011, Mr. Coleman was appointed to the AAA's Board of Directors.

ADR Education and training experience includes: ICDR International Mediation Techniques for Mediators & Advocates, 2011; AAA Spring Construction Conference, Mediation: It's Not New, So What's Next?, 2011; AAA Advanced Mediator Training, 2010; AAA Negotiating Litigated Disputes - From Practical to Tactical, 2009; AAA/ICDR Neutrals Conference, 2009, 2006; AAA Expedited Commercial Panel Arbitrator Training, 2008; AAA Webinar, Attorney Mishaps, Missteps and Mismanagement in Arbitration, 2008; AAA ADR Update, 2007; Faculty, AAA Arbitration Fundamentals and Best Practices for New AAA Arbitrators, 2007-13; AAA Train the Trainer: Arbitration Fundamentals and Best Practices for New AAA Arbitrators, 2007; Dealing with Delay Tactics in Arbitration (ACE004), 2010, 2006, 2005.

Education: Western State University (BS, Laws-1982); Thomas Jefferson School of Law (JD-1984).

#### Courses

Essential Mediation Skills for the New Mediator

Advanced Mediator Training Series: The Extent or Limit of Mediator Influence to Effect Settlement

Advanced Mediator Training Series: Managing the Dynamics of a Multi-Party Case

ACE 7 - Managing the Arbitration Process for Efficiency & Economy Following the Preliminary Hearing

Arbitration Fundamentals and Best Practices for New AAA Arbitrators

Consolidation and Joinder in Issues Construction Arbitration

#### Upcoming Sessions

Course Title	Location	Dates	Format	Status	View
Consolidation and Joinder in Issues Construction Arbitration	-		Self-Paced Online Study	OPEN	
Essential Mediation Skills for the New Mediator	New York, NY	04/07/2014 - 04/11/2014	Classroom	OPEN	
Essential Mediation Skills for the New Mediator	Washington, DC	06/02/2014 - 06/06/2014	Classroom	OPEN	
Advanced Mediator Training Series: The Extent or Limit of Mediator Influence to Effect Settlement	Chicago, IL	07/16/2014	Classroom	OPEN	
Essential Mediation Skills for the New Mediator	New York, NY	09/15/2014 - 09/19/2014	Classroom	OPEN	
Essential Mediation Skills for the New Mediator	Washington, DC	10/20/2014 - 10/24/2014	Classroom	OPEN	
Essential Mediation Skills for the New Mediator	New Orleans, LA	12/01/2014 - 12/05/2014	Classroom	OPEN	



## DR. PATRICIA D. GALLOWAY P.E, CPENG, PMP, MRICS, CFCC

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President and CEO

### Areas of Expertise

- Arbitrator
- Corporate Governance
- Risk Management
- Risk Assessment
- Prudence/Performance Audits
- International Contracting
- Industry Best Practices
- Program / Project Management
- Contract Administration
- Claims Prevention
- Claim Analysis/Negotiation
- Change Management
- Standard of Care
- Project Controls
- Scheduling and Delay
- Disruption / Productivity
- Cumulative Impact
- Damage Calculations

### Professional Experience

As President and Chief Executive Officer of Pegasus Global Holdings, Inc.<sup>®</sup> (Pegasus-Global), Dr. Galloway oversees all aspects of the firm's management consulting services. She has consulted on matters covering the entire project delivery process in the energy and infrastructure industries and has worked on behalf of private and public sector clients globally. She is an international arbitrator and is a member of the Board of Directors of the American Arbitration Association. Dr. Galloway served as a member of the U.S. National Science Board, appointed by U.S. President Bush with Senate confirmation in 2006 for a six-year term, and served as its Vice Chair from 2008 to 2010. She received an honorary Doctor of Science from the South Dakota School of Mines in 2011.

With over 30 years of experience, Dr. Galloway's experience includes: strategic advice to boards and senior management concerning governance, management structures and performance, contracting strategies, contract development and risk reviews, project controls, and contract administration; risk management including developing and evaluating corporate-wide enterprise risk management programs, project risk identification, assessment and analysis, trend evaluations and risk reduction plans; Auditing including performance, prudence, and management audits; Integrity Generally Accepted Processes and Practices G.A.P.P. Analysis<sup>™</sup> of corporate and project specific policies and procedures and benchmarking; and Alternative Dispute Resolution (ADR) services including claims avoidance, non-testifying expert consulting including Testing Expert Evidence<sup>®</sup>, litigation strategy, assistance in legal counsel and arbitrator selection, and serving as an arbitrator. She serves as an arbitrator in both domestic and international arbitrations and has testified as an expert witness in numerous proceedings including public utility rate hearings, federal and state courts, and domestic and international arbitrations (see arbitration experience below). She holds a certificate of Director Education by the National Association of Corporate Directors and has served on a number of private and non-profit boards. She currently serves on the Board of the Pacific Science Center and the Board of Trustees of the Central Washington University Foundation.

Dr. Galloway has extensive global experience in the Energy and Infrastructure industries having worked on some of the world's largest projects including: Vogtle Nuclear Units 1,2,3,4; Iatan Units 1 and 2 super-critical pulverized coal-fired plants; Edwardsport IGCC coal plant; City of Winnipeg, Canada, Capital Improvement Program; Panama Canal; Seattle Sound Transit Light Rail Program; DeKalb County GA School District School Program; London's Crossrail Project; Sakhalin Island, Russia, Oil and Natural Gas Pipeline Project; Venice Lagoon Floodgate Project, Italy; Xiaolangdi Dam, China; Citylink Project, Melbourne, Australia; Princeton

University Capital Building Program; Cadereyta Refinery Project, Mexico; HBJ Pipeline Project, India; Murrin Murrin nickel-cobalt mine, Western Australia; Tsing Ma Bridge, Hong Kong; over 30 nuclear power plant projects, Engineer-Procure-Construct (EPC) power plants and several large scale transmission projects.

She has served as an advisor to multiple owner and contractor clients including board audit and compliance committees and has served as a member of various risk management assessment and independent review panels (IRP), including her appointment by both the Governors of Washington and Oregon to the IRP for the Columbia River Crossing Project, and by the Washington Legislature as Chair to the Expert Review Panel (ERP) for the \$3.1 billion Alaskan Way Viaduct Replacement Project. She serves on the Eastern Washington Governor's Business Advisory Council and is a member of New York Institute of Technology Engineering Dean's Advisory Council. Dr. Galloway has been recognized by her peers and is an elected member to the National Academy of Construction, the Pan American Academy of Engineering, and the position of Fellow in several professional organizations.

Dr. Galloway is an internationally recognized leader in the engineering and construction arena. In 2004, she served as the first woman President of the American Society of Civil Engineers (ASCE). Dr. Galloway is regularly consulted by private and public organizations and government entities on trends in the industry, the media regarding current topics and events, universities seeking input on university curricula, mentor programs, engineering education, research and diversity issues, and professional societies relative to topics of interest to its membership. Her achievements have been highlighted in ADR Perspectives, PM Network, *Time* magazine, CNN Lou Dobbs, Discovery Channel, *Engineering News Record*, and Federal Technology Watch.

Dr. Galloway has been retained as a keynote speaker and lectures and presents seminars on leadership, standard of care, engineering education, women in engineering, risk management, contract administration and project controls. Dr. Galloway was also a blog writer for *Engineering News Record* discussing current trends, challenges and hot topics in the construction industry. She has also served as a facilitator for workshops and as an instructor in several forums such as seminars and courses for private and public entities. Dr. Galloway is currently a visiting professor at the Kochi University of Technology (KUT) in Kochi, Japan and has served as a guest professor lecturer at multiple universities including: the University of Wisconsin; Harbin University of Technology in Harbin, China; the University of Bologna, Italy; the Old Masters Program at Purdue University; University of British Columbia and the West Virginia's University Center for Women's Studies Programs.

Prior to joining Pegasus-Global, Dr. Galloway was the Chief Executive Officer and Principal of The Nielsen-Wurster Group Inc. (Nielsen-Wurster), an international management consulting firm which specialized in management consulting, risk management and dispute resolution. Her dispute resolution engagement experience includes projects throughout the world: refineries, offshore platforms, oil depots, LNG facilities, petrochemical plants, gas pipelines and compression modules, power plants (wind, nuclear, fossil fuel, gas-fired, combined-cycle, hydroelectric, waste-to-energy, transmission), hotels, casinos, stadiums, commercial offices, hospitals, universities, civic and convention centers, parking garages, process plants, wastewater treatment plants, landfills, airports, highways, bridges, tunnels, mass transit, railroads, port facilities, dams, bulk pharmaceutical plants, manufacturing and other projects.

She was also the Chief Executive of Nielsen-Wurster Asia-Pacific, a Nielsen-Wurster subsidiary corporation, which was located in Melbourne, Australia. In addition, Dr. Galloway served as President of another Nielsen-Wurster subsidiary Nielsen-Wurster ESB, a joint venture with the Electricity Supply Board of Ireland that specialized in power plant maintenance software.

Before joining Nielsen-Wurster, Dr. Galloway was employed by CH2M Hill assigned to the \$1.6B Milwaukee Water Pollution Abatement Program (MWPAP). Her responsibilities at CH2M Hill on the MWPAP included preparation of project management training courses, project controls including estimating and critical path scheduling and tunnel inspection, being the first woman tunnel inspector in Wisconsin. In her last role at the MWPAP as the Master Program Scheduler her responsibilities included the preparation and updating of the Program Master Schedule, coordination of all project schedules, involvement with cost engineering functions,

preparation of all program / project schedule progress reports for public and client presentations and monitoring compliance with court orders imposed on the Program. Other activities at the MWPAP included authoring a scheduling manual; preparation of bid documents, on-site tunnel inspection and coordination of a project manager's training series.

**Registrations / Certifications**

- Professional Engineer in the following U.S. locations:
  - Arizona #16978
  - Colorado #28566
  - Florida #44498
  - Georgia #031939
  - Kansas #19495
  - Kentucky #17690
  - New Hampshire #12184
  - New Jersey #GE-29321
  - New York #060684-1
  - Ohio #72520
  - Pennsylvania #PE-046146-R
  - Washington #28262
  - Wisconsin #21786-006
  - Wyoming #PE-4974
- Professional Engineer in the following global locations:
  - Australia, Institute of Engineers, CPEng #1194740
  - Canada, Province of Manitoba #15061
- International Registry of Professional Engineers in the discipline of Civil Engineering, Construction Management by the United States Council for International Engineering Practice (USCIEP) #131
- Certified Examiner, National Council of Examiners for Engineering and Surveying (NCEES) #12046
- Certificate of Director Education, NACD
- Certified Project Management Professional (PMP) #0012-84
- Certified Forensic Claims Consultant (CFCC), AACEI
- Professional Member of the Royal Institution of Chartered Surveyors, Faculties of Project Management and Risk Management (MRICS)

**Arbitration Experience/ DRB Panel Memberships**

Dr. Galloway serves as an arbitrator with the American Arbitration Association (AAA) and serves on the following AAA panels: Energy; Commercial; Construction; Large Complex Case; and the International Center for Dispute Resolution (ICDR) Panel. She is Chair of the AAA National Construction Dispute Resolution Committee (NCDRC) and serves as a member of the AAA Board of Directors. She also serves on the Energy, Construction and Cross-Border International Institute for Conflict Prevention & Resolution (CPR) Panel of Arbitrators and the United States Council for International Business (USCIB) ICC panel. She is also a member of the Association for International Arbitration (AIA) and Arbitral Women (UK). She serves on the Caltrans DRB Panel, the Idaho DOT DRB Panel, and is a member of the Dispute Resolution Board Foundation (DRBF). She has served as a sole arbitrator, Chair and member of three-member panels arbitrating a large number of disputes involving commercial, construction and energy issues of private and governmental facilities in the energy, process, and building industries with claims ranging from US \$100,000 to US\$100 million. Dr. Galloway has also served as both a consulting and testifying expert in numerous domestic (AAA) and international arbitration forums: International Chamber of Commerce (ICC), UNCITRAL, Singapore International Arbitration Center (SIAC), and the London Court of International Arbitration (LCIA), with disputes ranging from US\$1 million to US\$6 billion.

**Directorships**

**For-Profit Boards**

- Pegasus Global Holdings, Inc., 2000-Present
- Bergmann and Associates, 2012-Present
  - Future Leader Development Committee, 2013
- Unionville Vineyards (Partner), 1986-2008
- The Nielsen-Wurster Group, Inc., 1984-2008
- Nielsen-Wurster Asia-Pacific Pty. Ltd., 2001-2008
- Unionville Aviation, 1987-2005
- Nielsen-Wurster ESB 1986-1989

**Non-Profit Boards**

- Central Washington University Foundation Board of Trustees, 2012-Present
  - Treasurer, 2013-Present
- Pacific Science Center, 2012-Present
  - Development Committee, 2013-Present
  - Finance and Audit Committee, 2012
  - Science & Education Advisory Committee, 2012-Present
- Life Support, 2010-Present
- The Patricia Galloway and Kris Nielsen Foundation, 2009-Present
- American Arbitration Association, 2009-Present
- National Science Board, 2006-2012
  - Vice Chair, 2008-2010
  - Executive Committee, 2010-2011
  - Chair, 60<sup>th</sup> Anniversary Committee, 2008-2010
  - Sustainable Energy Task Force Committee, 2007-2009
  - Audit & Oversight Committee, 2006-2012
  - Polar Research Committee, 2006-2012
  - Committee on Strategy & Budget, 2006-2012
  - International Task Force Committee, 2006-2008
- Pan American Academy of Engineering, 2006-2011
- Order of the Engineer, National Board of Governors, 2004-2008
- Project Management Institute, College of Scheduling, 2003-2006
- American Society of Civil Engineers, 1992-1995, 2002-2005
- American Society of Civil Engineers Foundation, 2002-2005
- Construction Institute, 2004-2005
- Civil Engineering Research Foundation (CERF), 2002-2004
- Purdue University Engineering Alumni Board, 1991-2001
- Hoover Medal Award Board, 1996-1999

**Advisory Boards / Committees**

- Central Washington University President's Advisory Board, 2013-Present
- Roebling Global Technical School, 2012-Present
- Expert Review Panel for Alaskan Way Viaduct Replacement Project, 2011-Present
- SR520 Strategic & Technical Advisory Panel (STAT), 2011-Present
- New York Institute of Technology (NYIT) Engineering Dean's Advisory Council, 2011-Present

## DR. PATRICIA D. GALLOWAY

- Eastern Washington Governor's Business Advisory Council, 2007-Present
- Initiative for Sustainable Infrastructure, 2007-Present
- Major Science Initiatives International Advisory Committee, Canadian Foundation for Innovation, 2011-2012
- Discovery Channel, Science Channel Board of Advisors, 2009-2012
- Independent Review Panel for Columbia River Crossing Bridge Project, 2010
- Construction Industry Institute Advisory Board, 2006-2010
- Construction Superconference Advisory Board, 2007-2010
- American Society of Civil Engineers Industry Leadership Council, 2008-2010
- University of Nebraska Charles W. Durham School of Architectural Engineering and Construction Academic Review Team, 2009
- Purdue University Engineering Dean's Advisory Council, 2004-2007
- Engineers for a Sustainable World, Member of Advisory Board, 2003-2007
- National Science Foundation Engineering Directorate Advisory Committee, 2004-2006
- National Science Foundation International Directorate Advisory Committee, 2006
- Civil Engineering Research Foundation (CERF), Member of Corporate Advisory Board, 2001-2005
- Project Management Institute, Publications Advisory Board, 1991-1993
- Extraordinary Women in Engineering Project, 2004-2009

### Editorial Boards

- ASCE Journal of Legal Affairs and Dispute Resolution in Engineering and Practice Board, 2009-2013

### Awards and Honors

- The Center for Computer-Assisted Legal Instruction CALI Excellence for the Future Award for Excellence in Arbitration and Advocacy, Pepperdine Law School, March, 2013
- Honorary Doctor of Science, South Dakota School of Mines, December 2011
- Women's Enews.org, 21 Leaders for 21<sup>st</sup> Century Honoree for, "Architect of Spaces for Women in Engineering and Science," May, 2011
- ASCE 2010 *Journal of Legal Affairs and Dispute Resolution in Engineering and Practice* Best Scholarly, Feature, Case Study Paper Award for "Design Build/EPC Contractor's Heightened Risk – Changes in a Changing World," July, 2010
- National Association of Professional Executive Women (NAPEW) "Woman of the Year" in Prudence Audit Consultation, 2008
- G. Brooks Ernest Award, Cleveland (Ohio) Chapter of ASCE, 2007
- Engineering Excellence and Leadership Award, George Mason University, 2007
- CSI Michelangelo Award Panel of Judges, 2006 - 2007
- Pan American Academy of Engineering, 2006
- Sigma Kappa Colby Award, 2006
- "Who's Who in America," Edition 59, 2005-Present
- Key Women in Energy-Global Awards, Energy Leaders Council, 2005
- National Academy of Construction, 2005
- "Who's Who of American Women," 2004 – Present (listed since 1983)
- "Who's Who in the World," 2004- Present
- "Who's Who in Science and Engineering," 2002-Present (listed since 2002)
- YWCA Tribute to Women Honoree, 2004
- Society of Women Engineers' Upward Mobility Award, 2003

## **DR. PATRICIA D. GALLOWAY**

- Kentucky Governor's Award-Kentucky Colonel, 2004
- Lafayette High School Hall of Fame, Inducted 2001
- National Academy of Engineering: Celebration of Women, 2000
- White House Commission: 2000 Design Award, 1999
- Professional Leadership Award, National Professional Women in Construction, 1995
- Purdue University Distinguished Engineering Alumni Award, 1991
- Mercer County Engineer of the Year Award, 1990
- White House Fellowship Regional Finalist, 1990
- Glamour Magazine's Ten Outstanding Young Working Women for 1988
- Somerset County's Outstanding Women in Business and Industry, October 1987
- "Who's Who in America's Emerging Leaders," 1987 - Present
- Engineering News Record, "Top Women in Construction," October 1986
- "Distinguished New Engineer," Society of Women Engineers, 1980

### **Education and Courses**

#### **Education**

- Certificate in Dispute Resolution, Straus Institute, Pepperdine University School of Law, Malibu, California (in progress)
- Ph.D., Infrastructure Systems (Civil) Engineering, Kochi University of Technology, Kochi, Japan, 2005
- M.B.A., New York Institute of Technology, New York, Magna cum Laude, 1984
- B.S., Civil Engineering (double major in Structures and Construction Management), Purdue University, West Lafayette, Indiana, 1978

#### **Arbitration Training**

- Construction Professionals Guide to Conducting an AAA Arbitration, (AAA)
- 42-hour training in Mediating the Litigated Case, Straus Institute of Dispute Resolution, Pepperdine University School of Law, Malibu, California
- ADR & Tribal Contract Disputes Symposium, Seattle University School of Law
- Construction Dispute Resolution in the US: International Techniques That Can be used Domestically, (AAA)
- Expectations in International Arbitration Part I and II, (ICDR)
- How to Properly Manage a Construction Case, (AAA)
- Making Disclosure and Preventing Disclosure Problems, (AAA)
- Managing the ICDR Guidelines on Information Exchange, (ICDR)
- Chairing the ICDR International Arbitration Tribunal, (ICDR)
- Pro Se: Managing Cases Involving Self-Represented Parties, (AAA)
- Arbitrator Ethics and Disclosure, (AAA)
- Chairing an Arbitration Panel: Managing Procedures, Process & Dynamics, (AAA)
- Arbitration Awards: Safeguarding, Deciding & Writing Awards, (AAA)
- International Training for Dispute Resolution, International Symposium in Advanced Case Management Issues, (AAA)
- Arbitrator II Training: Advanced Case Management Techniques, (AAA)
- Construction Industry Arbitrator Workshop, (AAA)
- The Dispute Review Board Administration and Practice Workshop, The Dispute Review Board Foundation
- Caltrans, CA Dispute Review Board Administration and Practice Workshop



Languages

Spanish - conversational / good understanding of written word

Industry/Academic Research

- Member of Research Team, *CII Guide to Reimbursable Contracting, Implementation Resource 260-2*, Construction Industry Institute, The University of Texas at Austin, 2011
- Member of Research Team, *CII Construction Industry Institute Reimbursable Contracts, Research Summary 260-1*, Construction Industry Institute, The University of Texas at Austin, 2011
- National Research Council (NRC) Committee for Advancing the Productivity and Competitiveness of the U.S. Construction Industry Workshop, 2008 – 2009
- Construction Industry Institute Research Team RT 260-Reimbursable Contract –Co-Chair, 2008 – 2010
- Kochi University of Technology, Doctorial Dissertation, Engineering Education Reform, 2005

Webinar Instructor

- American Arbitration Association
- Project Management Institute College of Scheduling
- Engineer Your Life

Authored Books/Forwards/Chapters

- “Dodd-Frank’s Impact on the Utility Industry and the “Utility” of the Integrity Index in Assessing Counterparty Risk,” co-authored with William Riggins and Lynn Brewer, Chapter, *Business & Corporate Integrity*, ABC-CLIO Publishing, (expected 2014)
- Galloway, Patricia D., Nielsen, Kris R., Dignum, Jack L., *Managing Gigaprojects-Advice From Those Who Have Been There, Done That*, ASCE Press, Reston, VA American Society of Civil Engineers, 2013
- Galloway, Patricia D., *The 21st Century Engineer: A Proposal for Engineering Education Reform*, ASCE Press, Reston, VA American Society of Civil Engineers, 2007
- “Interview: Patricia Galloway,” *Connecting Students to STEM Careers, Social Networking Strategies*, Camille Cole, International Society for Technology in Education, ISBN 978-1-56484-291-6, published 2011
- Foreward to Lunsden, Reese, *The View From Here, Optimize Your Engineering Career From the Start*, Illumina Publishing, 2011
- “Engineering in Government and Public Policy,” Section 4.5.3, UNESCO Report, Engineering: Issues, Challenges and Opportunities for Development, United Nations, UNESCO Publishing, 2010 Paris, France
- Galloway’s 21<sup>st</sup> Century Engineer: An Essay Review, , Volume 12 Number 14, October 8, 2009, Robert Calfee, University of California, Riverside, Stanford University, Thomas Stahovich, University of California, Riverside, <http://www.edrevv.info/essays/v12n14index.html>
- Foreward to Kusayanagi, S.; Niraula, R.; and Hirota, Y., *Principles and Practice of International Construction Project Management*, EIKO-SHA, Tokyo, Japan, 2009
- Foreward to Williams, F. Mary and Emerson Carolyn J. , *Becoming Leaders*, ASCE Press, Reston, VA, American Society of Civil Engineers, 2008
- Foreward to Hatch, Sybil E., *Changing our World: True Stories of Women Engineers*, ASCE Press, Reston, VA, American Society of Civil Engineers, 2006

# Construction Industry Arbitration Rules and Mediation Procedures

Including Procedures for  
Large, Complex Construction Disputes

Rules Amended and Effective October 1, 2009  
Fee Schedule Amended and Effective June 1, 2010



American Arbitration Association  
*Dispute Resolution Services Worldwide*

[www.adr.org](http://www.adr.org)



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Construction Industry Arbitration Rules and Mediation Procedures

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## National Construction Dispute Resolution Committee

Representatives of the organizations listed below constitute the National Construction Dispute Resolution Committee (NCDRC). This Committee serves as an advisory body to the American Arbitration Association concerning construction dispute resolution services.

American Association of Airport Executives  
American Bar Association – Forum on the Construction Industry  
American Bar Association – Construction Litigation Committee  
American Bar Association – Public Contract Law Section  
American College of Construction Lawyers  
American College of Real Estate Lawyers  
American Council of Engineering Companies  
American Institute of Architects  
American Road and Transportation Builders Association  
American Society of Civil Engineers  
American Subcontractors Association  
Associated Builders & Contractors, Inc.  
Associated General Contractors of America  
American Specialty Contractors, Inc.  
Construction Financial Management Association  
Construction Management Association of America  
Construction Owners Association of America  
Construction Specifications Institute  
Design Build Institute of America  
Dispute Review Board Foundation  
Engineers Joint Contract Documents Committee  
National Association of Home Builders  
National Association of Minority Contractors  
National Association of State Facilities Administrators  
National Association of Surety Bond Producers  
National Society of Professional Engineers  
National Utility Contractors Association Surety Association of America  
Victor O. Schinnerer  
Women Construction Owners & Executives, USA

## Important Notice

These Rules and any amendment of them shall apply in the form in effect at the time the administrative filing requirements are met for a demand for arbitration or submission agreement received by the American Arbitration Association. To insure that you have the most current information, visit **[www.adr.org](http://www.adr.org)**. If an agreement for mediation or arbitration specifies that Rules in effect at the time the agreement was executed be used, then absent the parties' agreement otherwise, the AAA shall apply the Rules as required by the agreement. We encourage parties to use the most current, state of the art, AAA Rules available.

## Introduction

Each year, many thousands of construction-related transactions take place. Occasionally, disagreements in connection with these transactions develop. Often, these disputes are resolved by arbitration, the voluntary submission of a dispute to a disinterested person or persons for final and binding determination. Arbitration has been proven to be an effective way to resolve disputes fairly, privately, promptly, and economically.

The American Arbitration Association (AAA) is a public-service, not-for-profit 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. The AAA is headquartered in New York and has offices located in many major cities throughout the United States and around the world, including Dublin, Mexico City and Singapore. Parties may hold hearings at local AAA offices or at other locations convenient for them. The AAA also provides education and training, publications, and conducts research on all forms of out-of-court dispute resolution.

Generally, the AAA's services are concluded with the transmittal of the award. Although there is voluntary compliance with the majority of awards, judgment on the award can be entered in a court having appropriate jurisdiction if necessary.

## Mediation

By agreement, the parties may submit their dispute to mediation before arbitration under the mediation procedures herein. Mediation involves the services of one or more individuals to assist parties in settling a controversy or claim by direct negotiations between or among themselves. The mediator or mediators participate(s) impartially in the negotiations, guiding and consulting the various parties involved. The result of the mediation should be an agreement that the parties find acceptable. The mediator cannot impose a settlement and can only guide the parties toward achieving their own settlement.

The AAA will administer the mediation process to achieve orderly, economical, and expeditious mediation, utilizing to the greatest possible extent the competence and acceptability of the mediators on the AAA's Construction Mediation Panel. Depending on the expertise needed for a given dispute, the parties can obtain the services of one or more individuals who are willing to serve as mediators and who are trained in mediation skills. In identifying those persons most qualified to mediate, the AAA is assisted by the National Construction Dispute Resolution Committee.

The AAA itself does not act as mediator. Its function is to administer the mediation process in accordance with the agreement of the parties, to teach mediation skills to members of the construction industry, and to maintain the National Panel from which mediators can be chosen.

Procedures for mediation cases are described in Sections M-1 through M-18.

## Arbitration

The arbitration Rules contain four procedural tracks: the Regular Track Procedures (Section R), the Procedures for the Resolution of Disputes through Document Submission (Section D), the Fast Track Procedures (Section F) and the Procedures for Large, Complex Construction Disputes (Section L). The Regular Track Procedures are applied to the administration of all arbitration cases, unless they conflict with any portion of Section D, Section F or Section L whenever these Sections apply. In the event of a conflict, the Fast Track Procedures, Procedures for the Resolution of Disputes through Document Submission, or the Procedures for Large, Complex Construction Disputes apply.

### Regular Track Procedures

The highlights of the Regular Track Procedures are that they enable:

- > opportunities for an administrative conference to help structure the dispute resolution process from the starting point;
- > party input into the AAA's preparation of lists of proposed arbitrators;
- > checklists for parties and arbitrators to organize the management hearing to address the needs associated with each dispute;
- > express arbitrator authority to control the discovery process;
- > broad arbitrator authority to control the hearing;
- > award format choices;
- > a Demand Form and an Answer Form, both of which seek information that will help the AAA to better serve the parties.

## Procedures for the Resolution of Disputes through Document Submission

The highlights of the Procedures for the Resolution of Disputes through Document Submissions are that they provide:

- > a simple process for resolution of disputes where a face-to-face hearing is not necessary;
- > flexibility to take advantage of technology options;
- > the ability to be applied to any size dispute by party agreement.

## Fast Track Procedures

The Fast Track Procedures are designed for cases involving claims between two parties where no party's disclosed claim or counterclaim exceeds \$75,000, exclusive of claimed interest, attorneys' fees, arbitration fees and costs. The highlights of these Procedures are:

- > a 45-day "time standard" for hearing process completion;
- > the establishment of a special pool of arbitrators who are pre-qualified to serve on an expedited basis;
- > an expedited arbitrator appointment process, with party input;
- > a conference call with the arbitrator within 10 days of confirmation of the arbitrator;
- > the presumption that cases involving \$10,000 or less will be decided on a documents only basis;
- > a single day of hearing in most cases;
- > an award in no more than 14 calendar days after completion of the hearing.

## Procedures for Large, Complex Construction Disputes

Unless the parties agree otherwise, the Procedures for Large, Complex Construction Disputes will be applied to all cases administered by the AAA under the Construction Arbitration Rules in which the disclosed claim or counterclaim of any party is at least \$1,000,000 exclusive of claimed interest, attorneys' fees, arbitration fees and costs.

The key features of these Procedures include:

- > a highly qualified, trained Panel of Neutrals, compensated at their customary rates;
- > a mandatory preliminary hearing with the arbitrators, which may be conducted by telephone;
- > broad arbitrator authority to order and control discovery, including depositions;
- > the presumption that hearings will proceed on a consecutive or block basis;
- > a reasoned award unless the parties agree otherwise.

## The National Construction Panel

The AAA maintains a national panel of individuals competent to hear and decide disputes administered under the Construction Industry Arbitration Rules. The AAA considers for appointment to the Construction Industry Panel persons recommended by the National Construction Dispute Resolution Committee, regional advisory committees and customers. These individuals are qualified to serve by virtue of their experience in the construction field. The majority of these neutrals are actively engaged in the construction industry with attorney neutrals generally devoting at least half of their practice to construction matters. Neutrals serving on the Panel and under these Rules must also attend periodic training.

## Administrative Fees

The AAA charges a filing fee based on the amount of claim or counterclaim. This fee information, which is contained with these Rules, allows the parties to exercise control over their administrative fees and costs.

The fees cover AAA administrative services; they do not cover arbitrator compensation or expenses, if any, nor do the fees cover reporting services, hearing room rental or any post-award charges incurred by the parties in enforcing the award.

## Alternative Dispute Resolution (ADR) Clauses

### Mediation

If the parties elect to adopt mediation as a part of their contractual dispute settlement procedure, the following mediation clause can be inserted into the contract in conjunction with a standard arbitration provision:

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

If the parties choose to use a mediator to resolve an existing dispute, the following language may accompany the submission:

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



## Arbitration

Parties can provide for arbitration of future disputes by inserting the following clause into their contracts:

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

Arbitration of existing disputes may be accomplished by use of the following:

*We, the undersigned parties, hereby agree to submit to arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules the following controversy: (cite briefly). We further agree that the above controversy be submitted to (one)(three) arbitrator(s). We further agree that we will faithfully observe this agreement and the Rules, that we will abide by and perform any award rendered by the arbitrator(s), and that a judgment of the court having jurisdiction may be entered on the award.*

The AAA's *Guide to Drafting Dispute Resolution Clauses for Construction Contracts* ([www.aaauonline.org/construction\\_clauses.pdf](http://www.aaauonline.org/construction_clauses.pdf)) offers additional information about dispute resolution options available for construction disputes. For more information about the AAA's Construction Dispute Avoidance and Resolution Services, as well as the full range of other AAA services, contact the nearest AAA office or visit [www.adr.org](http://www.adr.org).

# Construction Industry Mediation Procedures

## M-1. Agreement of Parties

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

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

## M-2. Initiation of Mediation

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

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

- (i) A copy of the mediation provision of the parties' contract or the parties' stipulation to mediate.
- (ii) The names, regular mail addresses, email addresses (if available), and telephone numbers of all parties to the dispute and representatives, if any, in the mediation.

- (iii) A brief statement of the nature of the dispute and the relief requested.
- (iv) Any specific qualifications the mediator should possess.

Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AAA, a party may request the AAA to invite another party to participate in “mediation by voluntary submission”. Upon receipt of such a request, the AAA will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

### M-3. Fixing of Locale (the city, county, state, territory and, if applicable, country of the Mediation)

- (a) When the parties’ agreement to mediate is silent with respect to locale and the parties are unable to agree upon a locale, the locale shall be the city nearest to the site of the project in construction disputes as determined by the AAA.
- (b) When the parties’ agreement to mediate requires a specific locale, absent the parties’ agreement to change it, the locale shall be that specified in the agreement to mediate.
- (c) If the reference to a locale in the agreement to mediate is ambiguous, the AAA shall have the authority to consider the parties’ arguments and determine the locale.

### M-4. Representation

Any party may participate without representation (pro-se), or by any representative of that party’s choosing, or by counsel, unless such choice is prohibited by applicable law. A party intending to have representation shall notify the other party and the AAA of the name, telephone number and address, and email address if available of the representative.

## M-5. Appointment of the Mediator

Parties may search the online profiles of the AAA's Panel of Mediators at [www.aaamediation.com](http://www.aaamediation.com) in an effort to agree on a mediator. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

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

## M-6. Mediator's Impartiality and Duty to Disclose

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

Prior to accepting an appointment, AAA mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AAA mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time-frame desired by the parties. Upon receipt of such disclosures, the AAA shall immediately communicate the disclosures to the parties for their comments.

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

## M-7. Vacancies

If any mediator shall become unwilling or unable to serve, the AAA will appoint another mediator, unless the parties agree otherwise, in accordance with section M-5.

## M-8. Duties and Responsibilities of the Mediator

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

- (vi) The mediator is not a legal representative of any party and has no fiduciary duty to any party.
- (vii) The mediator shall set the date, time, and place for each session of the mediation conference. The parties shall respond to requests for conference dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established conference schedule. The AAA shall provide notice of the conference to the parties in advance of the conference date, when timing permits.

#### M-9. Responsibilities of the Parties

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

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

#### M-10. Privacy

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

#### M-11. Confidentiality

Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other

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

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

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

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

### M-12. No Stenographic Record

There shall be no stenographic record of the mediation process.

### M-13. Termination of Mediation

The mediation shall be terminated:

- (i) By the execution of a settlement agreement by the parties; or



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

#### M-14. Exclusion of Liability

Neither the AAA nor any mediator is a necessary party in judicial proceedings relating to the mediation. Neither the AAA nor any mediator shall be liable to any party for any error, act or omission in connection with any mediation conducted under these procedures. Parties to a mediation under these procedures may not call the mediator, the AAA or AAA employees as a witness in litigation or any other proceeding relating to the mediation. The mediator, the AAA and AAA employees are not competent to testify as witnesses in any such proceeding.

#### M-15. Interpretation and Application of Procedures

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

#### M-16. Deposits

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

to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

### M-17. Expenses

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

### M-18. Cost of the Mediation

There is no filing fee to initiate a mediation or a fee to request the AAA to invite parties to mediate.

The cost of mediation is based on the hourly or daily mediation rate published on the mediator's AAA profile. This rate covers both mediator compensation and an allocated portion for the AAA's services. There is a four-hour, or one half-day, minimum charge for a mediation conference. Expenses referenced in Section M-17 may also apply.

If a matter submitted for mediation is withdrawn or cancelled or results in a settlement after the request to initiate mediation is filed but prior to the mediation conference the cost is \$200 plus any mediator time and charges incurred. These costs shall be borne by the initiating party unless the parties agree otherwise.

If you have questions about mediation costs or services visit **[www.aaamediation.com](http://www.aaamediation.com)** or contact your local AAA office.

## Construction Industry Arbitration Rules

### Regular Track Procedures

#### R-1. Agreement of Parties and Designation of Applicable AAA Rules

- (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 Construction Industry Arbitration Rules or whenever they have provided for arbitration of a construction dispute pursuant to the Rules of the AAA without designating particular AAA Rules.
- (b) Unless the parties or the AAA determines otherwise, the Fast Track Procedures shall apply in any case involving no more than two parties in which no disclosed claim or counterclaim exceeds \$75,000, exclusive of claimed interest, attorneys' fees and arbitration fees and costs. Parties may also agree to use these procedures in larger cases. The Fast Track Procedures shall be applied as described in Section F of these Rules, in addition to any other portion of these Rules that is not in conflict with the Fast Track Procedures.
- (c) Unless the parties agree otherwise, the Procedures for Large, Complex Construction Disputes shall apply to all cases in which the disclosed claim or counterclaim of any party is \$1,000,000 or more, exclusive of claimed interest, attorneys' fees, and arbitration fees and costs. The Procedures for Large, Complex Construction Disputes shall be applied as described in Section L of these Rules, in addition to any other portion of these Rules that is not in conflict with the Procedures for Large, Complex Construction Disputes.

- (d) Parties may, by agreement, apply the Fast Track Procedures, the Procedures for Large, Complex Construction Disputes or Procedures for the Resolution of Disputes through Document Submission (Section D of these Rules) to any dispute.
- (e) All other cases shall be administered in accordance with Regular Track Procedures of these Rules.

### 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 Panel of Construction Neutrals

The AAA shall establish and maintain a National Panel of Construction Arbitrators ("National Panel") 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 Under an Arbitration Agreement in a Contract

- (a) Filing of a Demand: Arbitration under an arbitration provision in a contract shall be initiated in the following manner:
  - (i) The initiating party (“the claimant”) shall, within the time period, if any, specified in the contract(s), file 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. Filing may be accomplished through use of AAA WebFile, located at **www.adr.org**, or by filing the demand with any AAA office.
  - (ii) The claimant shall simultaneously provide a copy of the demand and the applicable arbitration agreement to the opposing party (“the respondent”).
  - (iii) The demand shall include:
    - (a) The name of each party;
    - (b) The address for each party, including, if known, telephone and fax numbers and email addresses;
    - (c) If applicable, the names, addresses, telephone and fax numbers and, if known, email address of the known representative for each party;
    - (d) A statement setting forth the nature of the claim including the relief sought and the amount involved;
    - (f) The locale requested, if the arbitration agreement does not specify one.
- (b) The AAA shall provide notice to the parties (or their representatives if so named) of the receipt of a demand 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, any disputes in connection with the AAA's determination may be decided by the arbitrator.

If a 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 due date specified by the AAA, the filing may be returned to the filing party.

(c) Answers and Counterclaims

- (i) **Answering Statement:** 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 the answering statement to the claimant and to all other parties to the arbitration. If no answering statement is filed within the stated time, respondent will be deemed to deny the claim. Failure to file an answering statement shall not operate to delay the arbitration.
- (ii) **Counterclaim:** A respondent may file a counterclaim 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 the counterclaim to the claimant and to 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.

If the counterclaim filing is deficient, and not cured by the date specified by the AAA, it may be returned to the filing party.

- (d) Parties are encouraged to provide descriptions of their claims, in any document filed pursuant to this section, in sufficient detail to make the circumstances of the dispute clear to the arbitrator.

#### R-5. Filing Requirements Under a Submission Agreement

Parties to any existing dispute, who have not previously agreed to use these Rules, may commence arbitration under these Rules by either filing online through AAA WebFile or by filing at any office of the AAA a written submission to arbitrate under these Rules, signed by the parties. The submission shall contain:

- (a) The names and addresses for each party and their representatives, including, if known, telephone and fax numbers and email addresses;
- (b) A statement setting forth the nature of the dispute including the relief sought, the amount involved and the claims and counterclaims asserted by the parties. Unless the parties state otherwise in the submission, all claims and counterclaims will be deemed to be denied by the other party;
- (c) The hearing locale, if agreed upon by the parties;
- (d) The appropriate filing fee for each claim or counterclaim as provided in the AAA Fee Schedule applicable at the time of filing.

Parties are encouraged to provide descriptions of their claims in sufficient detail to make the circumstances of their dispute clear to the arbitrator.

#### R-6. Changes of Claim or Counterclaim

- (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.

- (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 no new or different claim or counterclaim may be submitted without the arbitrator's consent.

#### R-7. Consolidation or Joinder

- (a) If the parties are unable to agree to consolidate related arbitrations or to the joinder of parties to an ongoing arbitration, the AAA shall directly appoint a single arbitrator (hereinafter referred to as the R-7 arbitrator) for the limited purpose of deciding whether related arbitrations should be consolidated or parties joined.
  - (i) To request consolidation of arbitrations, the requesting party must have filed a demand for arbitration, including the applicable arbitration provision(s) from the parties' contract(s) and must provide a written request for consolidation which outlines the reasons for such request. It is the requesting party's responsibility to provide a copy of the request to all parties.
  - (ii) To request joinder of parties, the requesting party must file a written request to join parties to an existing arbitration which provides the names and contact information for such parties, names and contact information for the parties' representatives, if known and the reasons for such request. It is the requesting party's responsibility to provide a copy of the request to all parties.



- (b) Absent agreement of all parties, the R-7 arbitrator appointed under this Rule shall not be an arbitrator who is appointed to any pending case involved in the consolidation request at issue.
- (c) If the R-7 arbitrator determines that separate arbitrations shall be consolidated or that the joinder of additional parties is permissible, that arbitrator may also establish a process for selecting arbitrators for any ongoing or newly constituted case and, unless agreed otherwise by the parties, the allocation of responsibility for arbitrator compensation among the parties, subject to reapportionment by the arbitrator(s) appointed to the newly constituted case in the final arbitration award.
- (d) The AAA may take reasonable administrative action to accomplish the consolidation or joinder as directed by the arbitrator.
- (e) The AAA shall maintain a panel of construction attorneys who have experience with consolidation or joinder issues. All arbitrators appointed to hear requests under this Rule shall be appointed from that panel, unless the parties agree otherwise.

## 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. Jurisdiction

- (a) The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.

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

#### R-10. Mediation

- (a) At any stage of the proceedings, the parties may agree to conduct a mediation conference under the AAA Construction Industry Mediation Procedures in order to facilitate settlement. Unless requested by all parties, the mediator shall not be an arbitrator appointed to the case. Should the parties jointly request that the arbitrator serve as a mediator, the arbitrator's consent to do so is also required.
- (b) If the case is initially filed for arbitration and the parties subsequently agree to mediate, unless the parties agree otherwise, or in the absence of party agreement, by the decision of the arbitrator, the arbitration process shall not be stayed while the mediation is pending.

#### R-11. Administrative Conference

- (a) Before the appointment of the arbitrator, any party may request, or the AAA in its discretion, may schedule an administrative conference with a representative of the AAA and the parties and/or their representatives.

- (b) The purpose of the administrative conference is to organize and expedite the arbitration, explore administrative details, establish an efficient means of selecting an arbitrator, ascertain the parties' preferred arbitrator qualifications and to consider mediation as a dispute resolution option and to address other appropriate concerns of the parties, including but not limited to joinder of parties, consolidation of related cases, changes to claims and the possibility of proceeding through the submission of documents only as set out in optional Section D of the Rules, may also be explored.
- (c) Administrative conferences may be convened, at the AAA's discretion or at the request of any party, at other times during the case to address case management matters that do not require the arbitrator's involvement.

#### R-12. Fixing of Locale (the city, county, state, territory and, if applicable, country of the arbitration)

The parties may mutually agree to the locale where the arbitration is to be held. Any disputes regarding the locale 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 the parties are unable to agree upon a locale, the locale shall be the city nearest to the site of the project in dispute, as determined by the AAA, subject to the power of the arbitrator to finally determine the locale within 14 calendar days after the date of the preliminary hearing.
- (b) When the parties' arbitration agreement requires a specific locale, absent the parties' agreement to change it, 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 within 14 calendar days after the date of the preliminary hearing.

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-13. Date, Time, and Place of Hearing

The arbitrator shall set the date, time, and place for each hearing and/or conference. 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 provide notice of hearing to the parties at least 7 calendar days in advance of the hearing date, unless otherwise agreed by the parties or so directed by the arbitrator.

### R-14. Arbitrator Appointment from National Construction Panel

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

- (a) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, 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 Construction Panel. The parties are encouraged to agree on 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 shall not exchange arbitrator selection lists. If a party does not return the list within the time specified by the AAA, all persons named therein shall be deemed acceptable by 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.

- (c) 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 authority to make the appointment from among other members of the National Construction Panel without the submission of additional lists.
- (d) Unless the parties agree otherwise, when there are two or more claimants or two or more respondents, the AAA may appoint all the arbitrators without the submission of lists.
- (e) In a three-arbitrator case, the parties shall first attempt to agree on the professional backgrounds of the composition of the arbitration panel. If the parties are unable to agree, then the AAA shall determine the professional composition of the panel, taking into account any preferences expressed by the parties.

The AAA may provide the parties with lists, separated by industry, in order for the parties to select arbitrators from different professional background. If separate lists are used, the total number of names will be no less than 15, unless the AAA determines otherwise.

## R-15. 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, address and telephone number and fax number and email, if known, 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 Construction Panel 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 R-20 with respect to impartiality and independence unless the parties have specifically agreed pursuant to R-20(a) 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-16. Appointment of Chairperson by Party-Appointed Arbitrators or Parties

- (a) If, pursuant to Section R-15, either the parties have directly appointed arbitrators, or the arbitrators have been appointed by AAA and the parties have authorized those arbitrators 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 Construction Panel, the AAA shall furnish to the party-appointed arbitrators, in the manner provided in Section R-14, a list selected from the National Construction Panel, and the appointment of the chairperson shall be made as provided in that Section.

#### R-17. Nationality of Arbitrator in International Arbitration

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-18. Number of Arbitrators

- (a) If the parties have not agreed on 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 must be made to

the AAA and the other parties to the arbitration no later than 7 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-19. 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, as promptly as practicable, 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.
- (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) In order to encourage disclosure by arbitrators, disclosure of information pursuant to this Section R-19 is not to be construed as an indication that the arbitrator considers that the disclosed circumstances is likely to affect impartiality or independence.

#### R-20. 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 may 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.

The parties may agree in writing, however, that arbitrators directly appointed by a party pursuant to Section R-15 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.

- (b) 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-21. Communication with Arbitrator and the AAA

- (a) No party and no one acting on behalf of any party shall communicate *ex parte* with an arbitrator except as follows: A party or anyone acting on behalf of a party may communicate *ex parte* with a candidate for direct appointment pursuant to Section R-15 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) R-21(a) does not apply to arbitrators directly appointed by the parties who, pursuant to R-20(a), the parties have agreed in writing are non-neutral. Where the parties have so agreed under R-20(a), the AAA shall as an administrative practice suggest to the parties that they agree further that R-21(a) should nonetheless apply prospectively.
- (c) In the course of administering an arbitration, the AAA and the parties or anyone acting on behalf of any of the parties may communicate with each other either jointly or individually.

- (d) As set forth in R-41, 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.

## R-22. Vacancies

- (a) 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 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-23. Preliminary Management Hearing

As promptly as practicable after the selection of the arbitrator(s), a preliminary management hearing shall be held among the parties and/or their attorneys or other authorized representatives and the arbitrator(s). Unless the parties agree otherwise or the arbitrator specifically directs otherwise, the preliminary management hearing will be conducted by telephone rather than in person.

At the Preliminary Management Hearing the matters to be discussed may include:

- (a) The issues to be arbitrated, including:
  - (i) review of claims as set forth in the parties' claims and counterclaims;

- (ii) the schedule for specification of any undisclosed claims or counterclaims;
  - (iii) deadlines for amending claims, if the arbitrator deems appropriate;
  - (iv) whether claims for attorneys' fees, costs, interest or any other similar claims exist;
  - (v) if any limitations exist on the arbitrator's authority to award any of the remedies sought.
- (b) The identification of any ongoing, related litigation or other dispute resolution.
- (c) The procedures for maintaining an efficient and cost effective dispute resolution process, including:
- (i) the extent to which testimony may be admitted at the hearing telephonically, over the internet, by affidavit, or by any other means;
  - (ii) the overall cost of the dispute resolution process as structured through this management hearing;
  - (iii) exhibit management;
  - (iv) a review of possible cost- and time-saving steps.
- (d) The date, time, place, and estimated duration of the hearings.
- (e) The scope and timing of exchange of information
- (f) The need for pre- or post-hearing submissions and schedules for the same if applicable.
- (g) The schedule for submission of witness lists.
- (h) The form of award.
- (i) Any other matters the arbitrator deems appropriate.

The arbitrator shall promptly issue written orders reflecting his or her decisions on the above matters and may conduct additional conferences when the need arises.

#### R-24. Exchange of Information

- (a) At the request of any party or at the discretion of the arbitrator, consistent with the expedited nature of arbitration, the arbitrator may direct
  - (i) the production of documents and other information, and
  - (ii) the identification of any witnesses to be called.
- (b) At least 7 calendar days prior to the hearing, or by the date established by the arbitrator, the parties shall exchange copies of all exhibits they intend to submit at the hearing.
- (c) The arbitrator is authorized to resolve any disputes concerning the exchange of information.
- (d) There shall be no other discovery, except as indicated herein, unless so ordered by the arbitrator in exceptional cases.

#### 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 person other than a party and its representative.

## R-26. Representation

Any party may participate without representation (pro-se), or by counsel or any other representative of that party's choosing, unless such choice is prohibited by applicable law. A party intending to have representation 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 7 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 7 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 and 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 of Hearings

The arbitrator for good cause shown may postpone any hearing upon agreement of the parties, upon request of a party, 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 supporting 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 toward 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.

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 still 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 that such witness submit to examination.

- (c) The arbitrator may entertain motions, including motions that dispose of all or part of a claim, or that may expedite the proceedings, and may also make preliminary rulings and enter interlocutory orders.
- (d) The parties may agree to waive oral hearings in any case.

### R-33. 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.
- (b) The arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered. The arbitrator may request offers of proof and may reject evidence deemed by the arbitrator to be cumulative, unreliable, unnecessary, or of slight value

compared to the time and expense involved. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where 1) any of the parties is absent, in default, or has waived the right to be present, or 2) the parties and the arbitrators agree otherwise.

- (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. Parties who request that an arbitrator sign a subpoena shall provide a copy of the request and proposed subpoena to the other parties to the arbitration simultaneously upon making the request to the arbitrator.

#### R-34. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

- (a) The arbitrator may receive and consider the evidence of witnesses by declaration or affidavit, and shall give it such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.
- (b) 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, unless otherwise agreed by the parties and the arbitrator, 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-35. Inspection or Investigation

An arbitrator finding it necessary to make a site inspection or other investigation in connection with the arbitration shall set the date and time for such inspection or investigation and shall direct the AAA to so notify the parties. Any party who so desires may be present at such an inspection or investigation. Absent agreement of the parties, the arbitrator shall not undertake a site inspection unless all parties are present. In the event of a case proceeding in the absence of a party pursuant to Section R- 31 of these Rules, agreement of the parties for the arbitrator to proceed without all parties' present is not necessary so long as sufficient notice of the inspection or investigation is provided.

### R-36. 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 be taken in the form of an interim award, and the arbitrator may require security for the costs of such measures. If it has been determined that an interim award is needed, the arbitrator shall establish a reasonable due date for issuing the interim award. In the event an arbitrator does not promptly establish such a due date, the AAA shall set the due date.
- (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.
- (d) The arbitrator shall have the discretion to apportion costs associated with the application for any interim relief in the interim award or in the final award.

### R-37. 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 Section R-34 (b), or if briefs are to be filed, the hearing shall be declared closed as of the final due date set by the arbitrator for the receipt of documents, responses, or 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 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 the rendering of the award only in unusual and extreme circumstances.

### R-38. Reopening of Hearing

The hearing may be reopened on the arbitrator's initiative, or by 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 Fast Track Procedures).

### R-39. 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-40. Extensions of Time

- (a) The parties may modify any period of time by mutual agreement, provided that any such modification that adversely affects the efficient resolution of the dispute is subject to review and approval by the arbitrator. The AAA or the arbitrator may for good cause extend any period of time established by these Rules, except as set forth in R-37 (c).
- (b) The AAA shall notify the parties of any extension.

### R-41. Serving of Notice

- (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 thereto has been granted to the party.
- (b) The AAA, the arbitrator and the parties may also use overnight delivery, electronic fax transmission (fax) or electronic mail (email) to give the notices required by these rules. Where all parties and the arbitrator agree, notices may be transmitted by 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.

#### R-42. Majority Decision

When the panel consists of more than one arbitrator, unless required by law or by the arbitration agreement, a majority of the arbitrators must make all decisions; however, in a multi-arbitrator case, if all parties and all arbitrators agree, the chair of the panel may make procedural decisions.

#### R-43. 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-44. 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) In all cases, unless waived by agreement of the parties, the arbitrator shall provide a concise written financial breakdown of any monetary awards and, if there are non-monetary components of the claims or counterclaims, the arbitrator shall include a line item disposition of each non-monetary claim or counterclaim.
- (c) The parties may request a specific form of award, including a reasoned opinion, an abbreviated opinion, findings of fact

or conclusions of law no later than the conclusion of the first Preliminary Management Hearing. If the parties agree on a form of award other than that specified in R-44 (b) of these Rules, the arbitrator shall provide the form of award agreed upon. If the parties disagree with respect to the form of the award, the arbitrator shall determine the form of award. After the conclusion of the Preliminary Management Hearing, the parties may not change the form of the award without the arbitrator's express consent. In such event, the arbitrator shall confirm the nature of the change to the form of award.

#### R-45. 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, equitable relief and specific performance of a contract.
- (b) In addition to the 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 fees, expenses, and compensation as provided in Sections R-52, R-53, and R-54. 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 may include:
  - (i) interest at such rate and from such date as the arbitrator 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-46. Award Upon Settlement

- (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 amounts have been paid in full.

#### R-47. 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 the last known address, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

#### R-48. Modification of Award

- (a) Within 20 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any clerical, typographical, technical or computational errors in the award. The arbitrator is not empowered to re-determine the merits of any claim already decided.

- (b) If the modification request is made by a party, 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.
- (c) If applicable law provides a different procedural time frame, that procedure shall be followed.

#### R-49. Release of Documents

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

#### R-50. Withdrawal of Claims or Counterclaims

- (a) Once the AAA has provided notice to the parties that the filing requirements for a claim or counterclaim have been met, no claim or counterclaim may be withdrawn unless the parties agree or the arbitrator consents.
- (b) Disputes regarding whether a claim or counterclaim is withdrawn with or without prejudice may be decided by the arbitrator.

#### R-51. 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 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, injunctive or declaratory 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-52. Administrative Fees

As a not-for-profit organization, the AAA shall prescribe filing and other administrative fees and service charges 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, 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-53. 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-54. Neutral Arbitrator's Compensation

- (a) Arbitrators shall be compensated at rate consistent with the arbitrator's stated rate of compensation.
- (b) Absent an agreement of the parties otherwise, or as determined by an arbitrator appointed under the auspices of Section R-7, each party shall share equally in the compensation of the arbitrator, subject to reapportionment in the final award. In the event that multiple parties are participating in the arbitration through a single representative, the AAA may consider them a single party for the purposes of allocating arbitrator compensation.
- (c) If there is disagreement concerning the terms of compensation, an appropriate rate shall be established with the arbitrator by the Association and confirmed to the parties.
- (d) Any arrangement for the compensation of a neutral arbitrator shall be made through the AAA and not directly between the parties and the arbitrator.
- (e) The arbitrator's requests for payment shall be made available to the parties upon request.

#### R-55. 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 from the arbitrator. The arbitrator will determine the estimated amount of deposits using the information provided by the parties with respect to the complexity or length of each case.
- (c) Upon the request of any party, the AAA shall request from the arbitrator an itemization or explanation of the arbitrator's request for deposits.

#### R-56. Remedies for Nonpayment

- (a) 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.
- (b) 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 issue an order directing what measures might be taken in light of a party's non-payment.

Such measures may include 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. The arbitrator must provide the party opposing a request for such measures with the opportunity to respond prior to making any such determination. 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.

- (c) Upon receipt of information from the AAA that full payments have not been received, the arbitrator, on the arbitrator's own

initiative, may order the suspension of the arbitration. If no arbitrator has yet been appointed, the AAA may suspend the proceedings.

- (d) If arbitrator's compensation or administrative fees remain unpaid after a determination to suspend an arbitration due to non payment, the arbitrator has the authority to terminate the proceedings. Such an order shall be in writing and signed by the arbitrator.

# Procedures for the Resolution of Disputes through Document Submission

## D-1. Applicability

- (a) In any case, regardless of claim size, the parties may agree to waive in-person hearings and resolve the dispute through submission of documents to one arbitrator. Such agreement should be confirmed in writing no later than the deadline for the filing of an answer.
- (b) If one party makes a request to use the Procedures for the Resolution of Disputes through Document Submission (D-Procedures) and the opposing party is unresponsive, the arbitrator shall have the power to determine whether to proceed under the D-Procedures. If both parties seek to use the D-Procedures after the appointment of an arbitrator, the arbitrator must also consent to the process.
- (c) When parties agree to the D-Procedures, the procedures in Sections D-1 through D-4 of these Rules shall supplement other portions of these Rules which are not in conflict with the D-Procedures.

## D-2. Preliminary Management Hearing

Within 14 calendar days of confirmation of the arbitrator's appointment, the arbitrator shall convene a preliminary management hearing, via conference call, video conference or internet, to establish a fair and equitable procedure for the submission of documents, and, if the arbitrator deems appropriate, a schedule for one or more telephonic or electronic conferences.

### D-3. Removal from the D Procedures

- (a) The arbitrator has the discretion to remove the case from the D-Procedures if the arbitrator determines that an in-person hearing is necessary.
- (b) If the parties agree to in-person hearings after a previous agreement to proceed under the D-Procedures, the arbitrator shall conduct such hearings. If a party seeks to have in-person hearing after agreeing to the D-Procedures, but there is not agreement among the parties to proceed with in-person hearings, the arbitrator shall resolve the issue after the parties have been given the opportunity to provide their respective positions on the issue.

### D-4. Time of Award

- (a) The arbitrator shall establish the date for either final written submissions or a final telephonic or electronic conference. Such date shall operate to close the hearing and the time for the rendering of the award shall commence.
- (b) Unless the parties have agreed to a form of award other than that set forth in Rule R-44 (b), when the parties have agreed to resolve their dispute by the D-Procedures, the arbitrator shall render the award within 14 calendar days from the date the hearing is closed.
- (c) If the parties agree to a form of award other than that described in Rule R-44 (b), the arbitrator shall have 30 calendar days from the date the hearing is declared closed in which to render the award.
- (d) The award is subject to all other provisions of the Regular Track of these Rules which pertain to awards.

# Fast Track Procedures

## F-1. Fast Track Applicability

The Fast Track Procedures shall apply to all two-party cases where no party's disclosed claim or counterclaim exceeds \$75,000.

If a claim or counterclaim is amended to exceed \$75,000, the case will be administered under the Regular Track Procedures (or Large Complex Case Procedures, if applicable) unless all parties agree that the case may continue to be processed under the Fast Track Procedures.

The AAA, in its discretion, may reassign a matter to the Regular Track Procedures or, if applicable, Large Complex Case Procedures, upon the occurrence of any of the following events:

- (a) The case is to be decided by more than one arbitrator;
- (b) The parties agree to any information exchange beyond that permitted by Section F-8;
- (c) The timing of the case exceeds the Time Standards set forth in Section F-12; or
- (d) Hearing time exceeds what is allowable under Section F-11.

Where no party's claim exceeds \$10,000, exclusive of interest, attorneys' fees and arbitration costs, the dispute shall be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing or conference call is necessary. The arbitrator shall establish a fair and equitable procedure for the submission of documents, as set forth in the D-Procedures of these Rules.

## F-2. Answers and Counterclaims

If an answer or counterclaim is to be filed, it shall be filed within 7 calendar days after notice of the filing of the demand is sent by the AAA. All other requirements of Section R-4 apply.

## F- 3. Limitation on Extensions

- (a) In the absence of extraordinary circumstances, the AAA may grant no more than one 7 calendar day extension of the time in which to respond to a demand for arbitration or a counterclaim as provided in F-2.
- (b) All other requests for extensions of time are subject to Sections F-12 and R-40 of these Rules, as applicable.

## F-4. Changes of Claim or Counterclaim

- (a) A party may increase or decrease the amount of its claim or counterclaim up to 7 calendar days prior to the first scheduled hearing, subject to the provisions of F-1. Such changes must be made in writing and provided to the AAA and the opposing party.
- (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 7 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 no new or different claim or counterclaim may be submitted without with the arbitrator's consent.

## F-5. Appointment and Qualification of Arbitrator

- (a) Immediately after the filing of the submission or the answering statement or the expiration of the time within which the answering statement is to be filed, the AAA shall simultaneously submit to each party an identical list of 5 names from the Construction Panel from which one arbitrator shall be appointed.
- (b) The parties are encouraged to agree to an arbitrator from this list, and to advise the Association of their agreement.
- (c) If the parties cannot agree upon an arbitrator, each party may strike up to two names from the list and rank the remaining names in order of preference. The list shall be returned to the AAA within 7 calendar days of the AAA's transmission of the list. If a party does not return the list by the due date, all names shall be deemed acceptable to that party.
- (d) The AAA will appoint the agreed-upon arbitrator, or in the event the parties cannot agree on an arbitrator, will designate the arbitrator from among those names not stricken. The parties will be given notice by the AAA of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in R-20.
- (e) Within the time period established by the AAA, the parties shall notify the AAA of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be for cause and shall be confirmed in writing to the AAA with a copy to the other party or parties.
- (f) Absent agreement of the parties, the arbitrator shall not have served as the mediator in the mediation phase of the instant proceeding.
- (g) In the event the AAA is unable to appoint an arbitrator from the first list submitted, the AAA is empowered to appoint an arbitrator without the submission of additional lists.



#### F-6. Serving of Notice for Hearing

In addition to notice being provided according to the means specified in R-41, parties shall accept notice of hearings, including preliminary hearings, by telephone, email, AAA WebFile, fax or mail.

#### F-7. Preliminary Telephone Management Hearing

- (a) A preliminary telephone conference shall be held among the parties, or their representatives, and the arbitrator within 10 business days from the confirmation of the arbitrator's appointment.
- (b) During this conference, the arbitrator shall direct the parties' preparations and presentations so that Fast Track F-12 Time Standard can be met. Arrangements made during the Preliminary Management Hearing shall be confirmed in writing to the parties.

#### F-8. Exchange of Information

At least 5 business days prior to the hearing, or no later than the date established by the arbitrator, the parties shall (a) exchange directly between themselves copies of all exhibits, affidavits and any other information they intend to submit at the hearing, and (b) identify all witnesses they intend to call at the hearing. The arbitrator is authorized to resolve any disputes concerning the exchange of information.

#### F-9. Discovery

There shall be no discovery, except as provided in F-8 or as ordered by the arbitrator in exceptional cases.

#### F-10. Date, Time, and Place of Hearing

In cases in which a hearing is to be held, the arbitrator shall set the date, time, and place of the hearing. The hearing shall be set so that

the time standards in F-12 will be satisfied. The AAA will notify the parties in advance of the hearing date.

### F-11. The Hearing

The hearing should not exceed one day. For good cause shown, the arbitrator may schedule additional time, which shall not exceed the equivalent of one day. The arbitrator shall schedule any additional time so as to comply with the F-12 Time Standards. At the discretion of the arbitrator, this additional time can take the form of an in-person meeting, a conference call, or some other means of taking testimony, provided that each party has the right to be heard and is given a fair opportunity to present its case.

### F-12. Time Standards

The hearing shall be closed no later than 45 calendar days after of the date of the preliminary telephone conference, unless all parties and the arbitrator agree otherwise and such agreement is memorialized by the arbitrator prior to the expiration of the initial 45 day period. Such report shall include the reason for the extension of the Time Standards. The AAA may extend the Time Standards in the event the parties agree to AAA mediation.

### F-13. Time of Award

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

### F-14. Neutral Arbitrator's Compensation

Arbitrators serving on Fast Track cases will receive compensation at rates established by the AAA.

## Procedures for Large, Complex Construction Disputes

### L-1. Applicability

Unless the parties agree otherwise, the Procedures for Large, Complex Construction Disputes (hereinafter LCC) shall apply to all cases administered by the AAA under the Construction Industry Arbitration Rules in which the disclosed claim or counterclaim of any party is \$1,000,000 or more, exclusive of claimed interest, attorneys' fees and arbitration fees and costs. Parties may agree to use these Procedures in cases involving claims or counterclaims under \$1,000,000 or in cases involving non-monetary claims. The LCC Procedures are designed to complement the Regular Track of these Rules. To the extent there is any conflict between the Regular Track and the LCC procedures, the LCC Procedures shall control.

### L-2. Administrative Conference

Prior to the dissemination of a list of potential arbitrators, the AAA shall, unless the parties agree otherwise, conduct an administrative conference with the parties and/or their attorneys or other representatives by conference call. The conference call will take place within 14 calendar days after the notice that the administrative filing requirements have been satisfied. In the event the parties are unable to agree on a mutually acceptable time for the conference, the AAA may contact the parties individually to discuss the issues contemplated herein. Such administrative conference shall be conducted for the following purposes and for such additional purposes as the parties or the AAA may deem appropriate:

- (a) to obtain additional information about the nature and magnitude of the dispute and the anticipated length of hearing and scheduling;

- (b) to discuss the views of the parties about the technical and other qualifications of the arbitrator as well as an efficient method for selecting the arbitrator;
- (c) to obtain conflicts statements from the parties;
- (d) to consider, with the parties, whether mediation or other non-adjudicative methods of dispute resolution might be appropriate;
- (e) to identify whether there are other related arbitrations or parties which may requested to consolidate or join the arbitration;
- (f) to discuss means and methods for cost effective case management;  
and
- (g) to discuss any other items which may facilitate the management of a complex arbitration.

### L-3. Arbitrators

- (a) Large, Complex Construction Cases shall be heard and determined by either one or three arbitrators, as may be agreed upon by the parties. If the parties are unable to agree, three arbitrators shall hear the case.
- (b) The parties are encouraged to agree upon a method for selection of the arbitrator(s). The AAA shall appoint arbitrator(s) by the method agreed upon by the parties.
- (c) If the parties are unable to agree on a method of appointment, the AAA shall appoint arbitrator from the Large, Complex Construction Case Panel, in the manner provided in the Regular Construction Industry Arbitration Rules. The AAA shall determine the number of names on the list(s).
- (d) Absent agreement of the parties, the arbitrator shall not have served as the mediator in the mediation phase of the instant proceeding.

#### L-4. Preliminary Management Hearing

As promptly as practicable after the confirmation of the appointment of the arbitrator, a preliminary management hearing shall be held among the parties and/or their attorneys or other representatives and the arbitrator. Unless the parties agree otherwise, or unless the arbitrator determines that an in-person hearing is necessary, the preliminary hearing will be conducted by telephone conference call.

In addition to the items enumerated in R-23, at the preliminary management hearing for LCC cases, the matters to be considered shall include, without limitation:

- (a) service of a detailed statement of claims, damages and defenses, a statement of the issues asserted by each party and positions with respect thereto, and any legal authorities the parties may wish to bring to the attention of the arbitrator;
- (b) stipulations to uncontested facts;
- (c) the extent to which discovery shall be conducted;
- (d) exchange and pre-marking of those documents which each party believes may be offered at the hearing;
- (e) the identification and availability of witnesses, including experts, and such matters with respect to witnesses including their biographies and expected testimony as may be appropriate;
- (f) whether, and the extent to which, any sworn statements and/or depositions may be introduced;
- (g) the extent to which hearings will proceed on consecutive days;
- (h) whether a stenographic or other official record of the proceedings shall be maintained;
- (i) the possibility of utilizing mediation or other non-adjudicative methods of dispute resolution;
- (j) the procedure for the issuance of subpoenas; and

- (k) such other items which may facilitate the efficient and cost effective management of the arbitration.

The arbitrator may issue an agenda in advance of the preliminary management hearing outlining the scope of the hearing in effort to efficiently manage the process and eliminate superfluous issues.

By agreement of the parties and/or order of the arbitrator, the pre-hearing activities and the hearing procedures that will govern the arbitration will be memorialized in a Scheduling and Procedure Order.

#### L-5. Management of Proceedings

- (a) The arbitrator shall take such steps as the arbitrator may deem necessary or desirable to avoid delay and to achieve a just, efficient and cost-effective resolution of Large, Complex Construction Cases.
- (b) Parties shall cooperate in the exchange of documents, exhibits and information within such party's control if the arbitrator considers such production to be consistent with the goal of achieving a just, efficient and cost effective resolution of a Large, Complex Construction Case.
- (c) The parties may conduct such discovery as may be agreed to by all the parties provided, however, that the arbitrator may place such limitations on the conduct of such discovery as the arbitrator shall deem appropriate. If the parties cannot agree on production of document and other information, the arbitrator, consistent with the expedited nature of arbitration, may establish the extent of the discovery.
- (d) At the discretion of the arbitrator, upon good cause shown and consistent with the expedited nature of arbitration, the arbitrator may order depositions of, or the propounding of interrogatories to such persons who may possess information determined by the arbitrator to be necessary to a determination of the matter.

- (e) The parties shall exchange copies of all exhibits they intend to submit at the hearing 10 calendar days prior to the hearing unless the arbitrator determines otherwise.
- (f) The exchange of information pursuant to this Rule, as agreed by the parties and/or directed by the arbitrator, shall be included within the Scheduling and Procedure Order.
- (g) The arbitrator is authorized to resolve any disputes concerning the exchange of information.
- (h) Generally, hearings will be scheduled on consecutive days or in blocks of consecutive days in order to maximize efficiency and minimize costs.

#### L-6. Form of Award

In addition to the award requirements set forth in R-44 (a) and (b), unless the parties agree otherwise, the arbitrator shall issue a reasoned award.

## Administrative Fee Schedules (Standard and Flexible Fee)

The AAA has two administrative fee options for parties filing claims or counterclaims, the Standard Fee Schedule and Flexible Fee Schedule. The Standard Fee Schedule has a two payment schedule, and the Flexible Fee Schedule has a three payment schedule which offers lower initial filing fees, but potentially higher total administrative fees of approximately 12% to 19% for cases that proceed to a hearing. 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.

**Fees for incomplete or deficient filings:** Where the applicable arbitration agreement does not reference the AAA, the AAA will attempt to obtain the agreement of the other parties to the dispute to have the arbitration administered by the AAA. However, where the AAA is unable to obtain the agreement of the parties to have the AAA administer the arbitration, the AAA will administratively close the case and will not proceed with the administration of the arbitration. In these cases, the AAA will return the filing fees to the filing party, less the amount specified in the fee schedule below for deficient filings.

Parties that file demands for arbitration that are incomplete or otherwise do not meet the filing requirements contained in these Rules shall also be charged the amount specified below for deficient filings if they fail or are unable to respond to the AAA's request to correct the deficiency.

**Fees for additional services:** The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules which may be required by the parties' agreement or stipulation.



### Standard Fee Schedule

An Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. A Final 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 Final 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	Final Fee
Above \$0 to \$10,000	\$775	\$200
Above \$10,000 to \$75,000	\$975	\$300
Above \$75,000 to \$150,000	\$1,850	\$750
Above \$150,000 to \$300,000	\$2,800	\$1,250
Above \$300,000 to \$500,000	\$4,350	\$1,750
Above \$500,000 to \$1,000,000	\$6,200	\$2,500
Above \$1,000,000 to \$5,000,000	\$8,200	\$3,250
Above \$5,000,000 to \$10,000,000	\$10,200	\$4,000
Above \$10,000,000	Base fee of \$12,800 plus .01% of the amount above \$10,000,000 Fee Capped at \$65,000	\$6,000
Nonmonetary Claims <sup>1</sup>	\$3,350	\$1,250
Deficient Claim Filing Fee <sup>2</sup>	\$350	
Additional Services <sup>3</sup>		

<sup>1</sup>This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$10,200.

<sup>2</sup>The Deficient Claim Filing Fee shall not be charged in cases filed by a consumer in an arbitration governed by the Supplementary Procedures for the Resolution of Consumer-Related Disputes, or in cases filed by an Employee who is submitting their dispute to arbitration pursuant to an employer promulgated plan.

<sup>3</sup>*The AAA may assess additional fees where procedures or services outside the Rules sections are required under the parties' agreement or by stipulation.*

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 \$2,800 for the Initial Filing Fee, plus a \$1,250 Final Fee. Expedited Procedures are applied in any case where no disclosed claim or counterclaim exceeds \$75,000, exclusive of interest and arbitration costs.

Parties on cases filed under either the Flexible Fee Schedule or the Standard Fee Schedule that are held in abeyance for one year 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 administratively closed.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879.

### [Refund Schedule for Standard Fee Schedule](#)

The AAA offers a refund schedule on filing fees connected with the Standard Fee Schedule. For cases with claims up to \$75,000, a minimum filing fee of \$350 will not be refunded. For all other cases, a minimum fee of \$600 will not be refunded. Subject to the minimum fee requirements, refunds will be calculated as follows:

## Construction Industry Arbitration Rules and Mediation Procedures

- > 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, will be refunded if the case is settled or withdrawn between six and 30 calendar days of filing.
- > 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.

### Flexible Fee Schedule

A non-refundable Initial Filing Fee is payable in full by a filing party when a claim, counterclaim, or additional claim is filed. Upon receipt of the Demand for Arbitration, the AAA will promptly initiate the case and notify all parties as well as establish the due date for filing of an Answer, which may include a Counterclaim. In order to proceed with the further administration of the arbitration and appointment of the arbitrator(s), the appropriate, non-refundable Proceed Fee outlined below must be paid.

If a Proceed Fee is not submitted within ninety (90) days of the filing of the Claimant's Demand for Arbitration, the Association will administratively close the file and notify all parties.

***No refunds or refund schedule will apply to the Filing or Proceed Fees once received.***

The Flexible Fee Schedule below also may be utilized for the filing of counterclaims. However, as with the Claimant's claim, the counterclaim will not be presented to the arbitrator until the Proceed Fee is paid.

A Final Fee will be incurred for all claims and/or counterclaims that proceed to their first hearing. This fee will be payable in advance when the first hearing is scheduled, but will be refunded at the conclusion of the case if no hearings have occurred. However, if the Association is not notified of a cancellation at least 24 hours before the time of the scheduled hearing, the Final Fee will remain due and will not be refunded.

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

Amount of Claim	Initial Filing Fee	Proceed Fee	Final Fee
Above \$0 to \$10,000	\$400	\$475	\$200
Above \$10,000 to \$75,000	\$625	\$500	\$300
Above \$75,000 to \$150,000	\$850	\$1250	\$750
Above \$150,000 to \$300,000	\$1,000	\$2125	\$1,250
Above \$300,000 to \$500,000	\$1,500	\$3,400	\$1,750
Above \$500,000 to \$1,000,000	\$2,500	\$4,500	\$2,500
Above \$1,000,000 to \$5,000,000	\$2,500	\$6,700	\$3,250
Above \$5,000,000 to \$10,000,000	\$3,500	\$8,200	\$4,000
Above \$10,000,000	\$4,500	\$10,300 plus .01% of claim amount over \$10,000,000 up to \$65,000	\$6,000
Nonmonetary <sup>1</sup>	\$2,000	\$2,000	\$1,250
Deficient Claim Filing Fee	\$350		
Additional Services <sup>2</sup>			

<sup>1</sup> This fee is applicable when a claim or counterclaim is not for a monetary amount. Where a monetary claim amount is not known, parties will be required to state a range of claims or be subject to a filing fee of \$3,500 and a proceed fee of \$8,200.

<sup>2</sup> The AAA reserves the right to assess additional administrative fees for services performed by the AAA beyond those provided for in these Rules and which may be required by the parties' agreement or stipulation.

For more information, please contact your local AAA office, case management center, or our Customer Service desk at 1-800-778-7879. All 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 \$1,000 for the Initial Filing Fee; \$2,125 for the Proceed Fee; and \$1,250 for the Final Fee.

Under the Flexible Fee Schedule, a party's obligation to pay the Proceed Fee shall remain in effect regardless of any agreement of the parties to stay, postpone or otherwise modify the arbitration proceedings. Parties that, through mutual agreement, have held their case in abeyance for one year 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.

Note: The date of receipt by the AAA of the demand for arbitration will be used to calculate the ninety (90) day time limit for payment of the Proceed Fee.

There is no Refund Schedule in the Flexible Fee Schedule.

## Hearing Room Rental

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

## Notes

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