



Arts Arbitration and Mediation Services

a program of California Lawyers for the Arts

Wells Fargo Building

2140 Shattuck Avenue, Suite 310

Berkeley, CA 94704-1210

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AAMS Arbitration Rules and Procedures

R-1. Agreement of Parties

(a) The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by Arts Arbitration and Mediation Services (hereinafter AAMS) These rules and any amendment of them shall apply in the form in effect at the time the administrative requirements are met for a demand for arbitration or submission agreement received by AAMS. The parties, by written agreement, may vary the procedures set forth in these rules. After appointment of the arbitrator, such modifications may be made only with the consent of the arbitrator.

(b) As described in sections E-1 through E-9 of these rules, Expedited Procedures shall apply in any case in which disclosed claims or counterclaims are \$25,000 or less, exclusive of interest and arbitration fees and costs. The Expedited Procedures shall be applied in addition to any other portion of these rules that is not in conflict with the Expedited Procedures. Parties may also agree to use Expedited Procedures in cases with claims or counterclaims exceeding \$25,000. Unless the parties agree otherwise, Expedited Procedures will not apply in cases involving more than two (2) parties.

R-2. AAMS and Delegation of Duties

When parties agree to arbitrate under these rules, or when they provide for arbitration by AAMS, and arbitration is initiated under these rules, they thereby authorize AAMS to administer the arbitration. The authority and duties of AAMS are prescribed in the agreement of the parties and in these rules, and may be carried out through such of AAMS' representatives as it may direct. AAMS may, in its discretion, assign the administration of the arbitration to any of its offices.

R-3. Panel of Arbitrators

AAMS shall establish and maintain a panel of Arbitrators 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.



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R-4. Initiation under an Arbitration Provision in a Contract

(a) 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), give to the other party (the "respondent") written notice of its intention to arbitrate (the "demand"), which demand shall contain a statement setting forth the nature of the dispute, the names and addresses of all other parties, the amount involved, if any, and the remedy sought.

(ii) The claimant shall file at any office of AAMS two (2) copies of the demand and two (2) copies of the arbitration provisions of the contract, together with the appropriate filing fee as provided in the AAMS fee schedule.

(iii) AAMS shall confirm notice of such filing to the parties.

(b) A respondent may file an answering statement in duplicate with AAMS within fifteen (15) days after confirmation of notice of filing of the demand is sent by AAMS. The respondent shall, at the time of any such filing, send a copy of the answering statement to the claimant. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a counterclaim is made, the party making the counterclaim shall forward to AAMS with the answering statement the appropriate filing fee provided in the AAMS fee schedule.

(c) 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.

(d) When filing any statement pursuant to this section, the parties are encouraged to provide descriptions of their claims in sufficient detail to make the circumstances of the dispute clear to the arbitrator.

R-5. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any office of AAMS two (2) copies of a written submission agreement to arbitrate under these rules, signed by the parties, together with the appropriate filing fee as provided in the AAMS fee



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schedule. Once AAMS has received the signed submission agreements of the parties, the claimant shall initiate the arbitration process by submitting their demand as outlined above under R-4(a).

R-6. Changes of Claim

After filing of a claim, if either party desires to make any new or different claim or counterclaim, it shall be made in writing and filed with AAMS. The party asserting such a claim or counterclaim shall provide a copy to the other party, who shall have fifteen (15) days from the date of such transmission within which to file an answering statement with AAMS. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

R-7. 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-8. Mediation

If the parties and the arbitrator agree, the arbitrator may mediate the dispute in order to facilitate settlement. At that time, the parties will be presented with a written agreement to participate in mediation that will be thoroughly reviewed and must be signed by the parties and the arbitrator prior to the start of mediation. If after mediating the dispute, the parties are unable to reach agreement and wish to proceed to arbitration of the dispute, AAMS shall have the power to make the appointment of a new arbitrator from among other members of the Panel without the



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submission of additional lists. The appointed arbitrator shall not be an individual who mediated the dispute.

R-9. Administrative Conference

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

R-10. Appointment from AAMS Panel

(a) The arbitrator shall be appointed in the following manner: AAMS shall send simultaneously to each party to the dispute an identical list of a minimum of three (3) arbitrators.

(b) Each party to the dispute shall have fifteen (15) 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 AAMS. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, AAMS shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, or if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, AAMS shall have the power to make the appointment from among other members of the Panel without the submission of additional lists.

R-11. Disclosure

(a) Any person appointed or to be appointed as an arbitrator shall disclose to AAMS 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.



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(b) Upon receipt of such information from the arbitrator or another source, AAMS 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 is not to be construed as an indication that the arbitrator considers that the disclosed circumstance is likely to affect impartiality or independence.

R-12. Disqualification of Arbitrator

(a) Any arbitrator shall be impartial and independent and shall perform his or her duties with diligence and in good faith, and shall be subject to disqualification for

(i) partiality or lack of independence,

(ii) inability or refusal to perform his or her duties with diligence and in good faith, and

(b) Upon objection of a party to the continued service of an arbitrator, or on its own initiative, AAMS 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-13. Communication with Arbitrator

(a) No party and no one acting on behalf of any party shall communicate ex parte with an arbitrator or a candidate for arbitrator concerning the arbitration.

R-14. Vacancies

(a) If for any reason an arbitrator is unable to perform the duties of the office, AAMS 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 the appointment of a substitute arbitrator, the substitute arbitrator shall determine whether it is necessary to repeat all or part of any prior hearings.



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R-15. Preliminary Hearing

(a) At the request of any party or at the discretion of the arbitrator or AAMS, AAMS may schedule a preliminary hearing as soon as practicable with the arbitrator, the parties and/or their representatives. The preliminary hearing may be conducted by telephone.

(b) During the preliminary hearing, the parties and the arbitrator may discuss the future conduct of the case, including clarification of the issues and claims, and any other preliminary matters.

R-16. 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 (through AAMS)

i) the production of documents and other information, and

ii) the identification of any witnesses to be called.

(b) At least five (5) business days prior to the hearing, 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.

R-17. Date, Time, and Place of Hearing

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

R-18. Attendance at Hearings

The arbitrator and AAMS 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



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a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person other than a party and its representatives.

R-19. Representation

Any party may be represented by counsel or other authorized representative. A party intending to be so represented shall notify the other party and AAMS of the name and address of the representative at least five (5) 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-20. Oaths

Before proceeding with the first hearing, each arbitrator shall take an oath of office. 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-21. Stenographic Record

Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three (3) days in advance of the hearing. The requesting party or parties shall pay the cost of the record. If the transcript is agreed by the parties, or determined by the arbitrator to be the official record of the proceeding, it must be provided to the arbitrator and made available to the other parties for inspection, at a date, time, and place determined by the arbitrator.

R-22. Interpreters

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

R-23. Postponements

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



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R-24. 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-25. Conduct of Proceedings

(a) The claimant shall present evidence to support its claim. The respondent shall then present evidence to support its defense. Witnesses for each party shall also submit to questions from the arbitrator and the adverse party. The arbitrator has the discretion to vary this procedure, provided that the parties are treated with equality and that each party has the right to be heard and is given a fair opportunity to present its case.

(b) The arbitrator, exercising his or her discretion, shall conduct the proceedings with a view to expediting the resolution of the dispute and may direct the order of proof, bifurcate proceedings and direct the parties to focus their presentations on issues the decision of which could dispose of all or part of the case.

(c) The parties may agree to waive oral hearings in any case.

R-26. Evidence

(a) The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent, in default or has waived the right to be present.

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

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



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

R-27. Evidence by Affidavit and Post-hearing Filing of Documents or Other Evidence

(a) The arbitrator may consider the evidence of witnesses by declaration or affidavit, but shall give it only 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 after the hearing, the documents or other evidence shall be filed with AAMS for transmission to the arbitrator. All parties shall be afforded an opportunity to examine and respond to such documents or other evidence.

R-28. Interim Measures

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

(b) Such interim measures may take the form of an interim award, and the arbitrator may require security for the costs of such measures.

(c) A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

R-29. Closing of Hearing

The arbitrator may 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. If briefs are to be filed, the hearing shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided in Section R-27(b) and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the closing date of the hearing. The time limit within which the arbitrator is required to make the award shall commence, in the absence of other agreements by the parties, upon the closing of the hearing.



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R-30. Reopening of Hearing

The hearing may be reopened on the arbitrator's request, or upon application of a party, at any time before the award is made. If reopening the hearing would prevent the making of the award within the specific time agreed on by the parties in the contract(s) out of which the controversy has arisen, the matter may not be reopened unless the parties agree on an extension of time.

When no specific date is fixed in the contract, the arbitrator may reopen the hearing and shall have thirty (30) days from the closing of the reopened hearing within which to make an award.

R-31. 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-32. Extensions of Time

The parties may modify any period of time by mutual agreement. AAMS or the arbitrator may for good cause extend any period of time established by these rules, except the time for making the award. AAMS shall notify the parties of any extension.

R-33. 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 to the dispute is or has been granted to the party.

(b) AAMS and the parties may also use overnight delivery, electronic facsimile transmission (fax), or electronic mail (E-mail), to give the notices required by these rules.

(c) Unless otherwise instructed by AAMS or by the arbitrator, any documents submitted by any party to AAMS shall simultaneously be provided to the other party or parties to the arbitration.



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R-34. Time of Award

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

R-35. Form of Award

(a) Any award shall be in writing and signed by the arbitrator.

(b) The arbitrator need not render a reasoned award unless the parties request such an award in writing prior to appointment of the arbitrator or unless the arbitrator determines that a reasoned award is appropriate.

R-36. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

(b) In addition to a final award, the arbitrator may make other decisions, including interim, interlocutory, or partial rulings, orders, and awards. In any interim, interlocutory, or partial award, the arbitrator may assess and apportion the fees, expenses, and compensation related to such award as the arbitrator determines is appropriate.

(c) The award of the arbitrator may include:

(i) interest at such rate and from such date as the arbitrator(s) may deem appropriate; and

(ii) an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement.

R-37. Award upon Settlement

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."



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R-38. 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 addresses, personal or electronic service of the award, or the filing of the award in any other manner that is permitted by law.

R-39. Modification of Award

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

R-40. 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 AAMS nor any arbitrator in a proceeding under these rules is a necessary or proper party in judicial proceedings relating to the arbitration.

(c) Parties to an arbitration under these rules shall be deemed to have consented that judgment upon the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Parties to an arbitration under these rules shall be deemed to have consented that neither AAMS nor any arbitrator shall be liable to any party in any action for damages or injunctive relief for any act or omission in connection with any arbitration under these rules.



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R-41. Fees

AAMS shall prescribe an initial filing fee and hearing fees based on the AAMS fee schedule. The fees in effect when the fee or charge is incurred shall be applicable. The filing fee shall be advanced by the party or parties making a claim or counterclaim. AAMS, in the event of hardship on the part of any party, may defer or reduce the fees.

R-42. Deposits

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

R-43. Interpretation and Application of Rules

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. All other rules shall be interpreted and applied by AAMS.

R-44. Suspension for Nonpayment

If, at any time, fees have not been paid in full, AAMS may order suspension of the proceedings. AAMS may so inform the parties in order that one of them may advance the required payment.

EXPEDITED PROCEDURES

E-1. Limitation on Extensions

Except in extraordinary circumstances, AAMS or the arbitrator may grant a party no more than one (1) seven (7) day extension of time to respond to the demand for arbitration or counterclaim as provided in Section R-4.

E-2. Changes of Claim or Counterclaim

A claim or counterclaim may be increased in amount, or a new or different claim or counterclaim added, upon the agreement of the other party, or the consent of the arbitrator. After the arbitrator



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is appointed, however, no new or different claim or counterclaim may be submitted except with the arbitrator's consent. If an increased claim or counterclaim exceeds \$25,000 the case will be administered under the regular procedures unless all parties and the arbitrator agree that the case may continue to be processed under the Expedited Procedures.

E-3. Serving of Notices

In addition to notice provided by Section R-33(b), the parties shall also accept notice by telephone. Telephonic notices by AAMS shall subsequently be confirmed in writing to the parties. Should there be a failure to confirm in writing any such oral notice, the proceeding shall nevertheless be valid if notice has, in fact, been given by telephone.

E-4. Appointment and Qualifications of Arbitrator

(a) AAMS shall simultaneously submit to each party an identical list of proposed arbitrators drawn from its Panel from which one arbitrator shall be appointed.

(b) Each party may strike names objected to, number the remaining names in order of preference, and return the list to AAMS within seven (7) days from the date of AAMS' transmittal to the parties. If for any reason the appointment of an arbitrator cannot be made from the list, AAMS may make the appointment from other members of the panel without the submission of additional lists.

(c) The parties will be given notice by AAMS of the appointment of the arbitrator, who shall be subject to disqualification for the reasons specified in Section R-12. The parties shall notify AAMS within seven (7) days of any objection to the arbitrator appointed. Any such objection shall be for cause and shall be confirmed in writing to AAMS with a copy to the other party or parties.

E-5. Exchange of Exhibits

At least two (2) business days prior to the hearing, the parties shall exchange copies of all exhibits they intend to submit at the hearing. The arbitrator shall resolve disputes concerning the exchange of exhibits.



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E-6. Proceedings on Documents

Where no party's claim exceeds \$25,000, exclusive of interest and arbitration costs, and other cases in which the parties agree, the dispute may be resolved by submission of documents, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. The arbitrator shall establish a fair and equitable procedure for the submission of documents.

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

In cases in which a hearing is to be held, AAMS shall set the date, time, and place of the hearing. AAMS will notify the parties in advance of the hearing date.

E-8. The Hearing

(a) Generally, the hearing shall not exceed one (1) day. Each party shall have equal opportunity to submit its proofs and complete its case. The arbitrator shall determine the order of the hearing, and may require further submission of documents within two days after the hearing.

(b) Generally, there will be no stenographic record. Any party desiring a stenographic record may arrange for one pursuant to the provisions of Section R-21.

E-9. Time of Award

Unless otherwise agreed by the parties, the award shall be rendered not later than fourteen (14) days from the date of the closing of the hearing or, if oral hearings have been waived, from the date of AAMS transmittal of the final statements and proofs.