



INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

ICDR® INTERNATIONAL ARBITRATION RULES FOR IFTA ARBITRATIONS

Rules Effective January 1, 2022

available online at
[icdr.org](https://www.icdr.org)

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ICDR International Arbitration Rules for IFTA Arbitrations



Introduction

Effective January 1, 2022, the *ICDR International Arbitration Rules for IFTA Arbitrations* have been incorporated into the Independent Film & Television Alliance's (IFTA®) model agreements. IFTA has designated the International Centre for Dispute Resolution® (ICDR) as the administering organization for all arbitrations arising out of agreements that provide for disputes to be resolved pursuant to the ICDR International Arbitration Rules for IFTA Arbitrations ("Rules").

IFTA supports, protects, and advances the global independent film and TV industry, and its Membership includes more than 140 film and television companies from 23 countries. They provide a collective voice for independent production and distribution companies, and sales agents and financiers around the world. IFTA Arbitration™ was founded in 1984 to quickly resolve international production, distribution, financing, sales agency and other related disputes in the motion picture industry. IFTA established an administrative service, rules, and an arbitration panel composed of distinguished attorneys with entertainment, intellectual property, copyright, and entertainment transactional law expertise from jurisdictions worldwide.

The ICDR is the international division of the largest arbitral institution in the world, the American Arbitration Association® (AAA®). A recognized global dispute resolution leader in case filings, rule innovation, and technology, the ICDR provides dispute resolution services around the world and has established an international roster of arbitrators and mediators comprised of highly regarded, and diverse business professionals, attorneys, industry leaders, and former dignitaries. The ICDR is unique among arbitral institutions around the world with its institutional capacity to administer cases under its own AAA and ICDR rules provisions and various other industry and UNCITRAL arbitration rules.

IFTA and the ICDR worked together to promulgate these Rules, that are tailored to resolve disputes within the worldwide independent film and television

industry. These Rules integrate the best and most current international arbitration procedures and entertainment industry practices from ICDR and IFTA to deliver efficient, economic, and fair arbitration proceedings. These Rules are designed to provide a complete dispute resolution framework for parties to a dispute, their counsel, and arbitrators.

Whenever a singular term is used in the International Arbitration Rules, such as “party,” “claimant,” or “arbitrator,” that term shall include the plural if there is more than one such entity. Whenever any party is not participating, the reference to the “parties” shall mean the participating party or parties. The English-language version of these Rules is the official text.

International Arbitration

A dispute can be submitted to an arbitral tribunal for a final and binding decision. In ICDR arbitration, each party is given the opportunity to make a case presentation following the process provided by these Rules and the tribunal.

General Features of the ICDR International Arbitration Rules for IFTA Arbitrations:

- Codify the ICDR’s practice of having the International Administrative Review Council, which is comprised of current and former ICDR executives, decide arbitrator challenges and other administrative disputes;
- Give the arbitral tribunal the authority to decide issues of arbitrability and jurisdiction without any need to refer such matters first to a court;
- Provide that the parties and tribunal shall discuss in the procedural hearing issues related to cybersecurity, privacy, and data protection;
- Create a presumption that parties will mediate during the arbitration, with any party being able to opt out;
- Allow parties to request permission to submit an early disposition application for issues that have a reasonable possibility of success, will dispose of or narrow issues, or add economy;
- Authorize access to a special emergency arbitrator for urgent measures of protection within three (3) business days of filing with a criteria for the filing party to set forth reasoning why relief is likely to be found and what injury will be suffered if relief is not granted;
- Allow tribunal to manage the scope of document and electronic document requests and to manage, limit, or avoid U.S. litigation-style discovery practices;
- Permit a party or the tribunal to request disclosure of third-party funders, financial institutions, producers, distributors, sales agents, insurer, and other non-parties;

- Contain express provisions allowing for “video, audio or other electronic means” during the proceedings;
- Provide that electronically-signed orders and awards can be issued unless law, the administrator, or party agreement provides otherwise; and
- Permit a party to request the tribunal make a separate award for any fees the party pays in advance on behalf of another party.

Expedited Features of the International Arbitration Rules for IFTA Arbitrations:

During the rule revision process IFTA and the ICDR incorporated the timeframes and deadlines like those incorporated from other ICDR rules and IFTA’s rules to maximize a well-established international dispute resolution system that fairly, quickly, and economically resolves disputes involving entertainment-related production, finance, and distribution agreements. These expedited mechanisms will apply in all IFTA arbitrations under these rules.

- Case filings to include detailed submissions on the facts, claims, counterclaims, setoffs and defenses;
- Party input selecting an arbitrator from an experienced pool of arbitrators ready to serve on an expedited basis;
- Call for an early procedural hearing with the arbitrator with the participation of parties and their representatives;
- The arbitrator and parties to produce a procedural order within 14 days of the arbitrator’s appointment;
- Presumption that cases up to \$100,000 USD will be decided on documents due from 60 to 120 days from the procedural order;
- Cases over \$100,000 USD will have their one-day hearing scheduled within 60 to 120 days from the procedural order;
- Requirement for the award within 30 calendar days of the close of the hearing or the date established for the receipt of the parties’ final statements and proofs.

Model IFTA Arbitration Clause

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 Agreement, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with ICDR International Arbitration Rules for IFTA Arbitrations (the “Rules”) effective as of the commencement of the arbitration.

When writing a dispute resolution clause or agreement, the parties may choose to confer with the ICDR on useful options. Please see the contact information provided in How to File a Case with the ICDR.

How to File a Case with the ICDR

Parties initiating a case with the International Centre for Dispute Resolution or the American Arbitration Association may file online via AAA WebFile® (File & Manage a Case) at **www.icdr.org**, by email, mail, courier, or facsimile (fax). For filing assistance, parties may contact the ICDR directly at any ICDR or AAA office.

AAA WebFile: www.icdr.org

Email: casefiling@adr.org

Mail:

International Centre for Dispute Resolution Case Filing Services
1101 Laurel Oak Road, Suite 100
Voorhees, NJ, 08043
United States AAA

Phone: +1.856.435.6401

Fax: +1.212.484.4178

Toll-free phone in the U.S. and Canada: +1.877.495.4185

Toll-free fax in the U.S. and Canada: +1.877.304.8457

For further information about these Rules, visit the ICDR website at **www.icdr.org** or call +1.212.484.4181.

ICDR International Arbitration Rules for IFTA Arbitrations

Article 1: Scope of These Rules

1. The Independent Film & Television Alliance ("IFTA") was formerly known as AFMA and the American Film Marketing Association. The International Centre for Dispute Resolution ("ICDR"), is the international division of the American Arbitration Association ("AAA"). Where parties have agreed to arbitrate disputes under these ICDR International Arbitration Rules for IFTA Arbitrations ("Rules"), the arbitration shall take place in accordance with these Rules as in effect at the date of commencement of the arbitration, subject to modifications that the parties may adopt in writing. The ICDR is the Administrator of these Rules.
2. These Rules govern the arbitration, except that, where any such rule is in conflict with any provision of the law applicable to the arbitration from which the parties cannot derogate, that provision shall prevail.
3. These Rules specify the duties and responsibilities of the ICDR as the Administrator. The Administrator may provide services through any of the ICDR's case management offices or through the facilities of the AAA. Arbitrations administered under these Rules shall be administered only by the ICDR or by an individual or organization authorized by the ICDR to do so.

Commencing the Arbitration

Article 2: Notice of Arbitration and Statement of Claim

1. The party initiating arbitration ("Claimant") shall, in compliance with Article 11, give written Notice of Arbitration to the Administrator and at the same time to the party against whom a claim is being made ("Respondent"). The Claimant may also initiate the arbitration through the Administrator's AAA Webfile at **www.icdr.org** or via email at **casefiling@adr.org**.
2. The arbitration shall be deemed to commence on the date on which the Administrator receives the Notice of Arbitration.
3. The Notice of Arbitration shall contain the following information:
 - a. a demand that the dispute be referred to arbitration;
 - b. the names, addresses, telephone numbers, fax numbers, and email addresses of the parties and, if known, of their representatives;
 - c. a copy of the entire arbitration clause or agreement being invoked, and, where claims are made under more than one arbitration agreement, a copy of the arbitration agreement under which each claim is made;
 - d. a reference to any contract out of or in relation to which the dispute arises;
 - e. a description of the claim and of the facts supporting it;
 - f. the relief or remedy sought and any amount claimed;

- g. detailed submissions on the facts, claims, counterclaims, setoffs and defenses, together with all of the evidence then available on which such party intends to rely, and
 - h. optionally, proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the place of arbitration, the language of the arbitration, and whether the party filing the Notice of Arbitration is willing to mediate the dispute prior to or concurrently with the arbitration.
- 4. The Notice of Arbitration shall be accompanied by the appropriate filing fee.
- 5. Upon receipt of the Notice of Arbitration, the Administrator shall communicate with all parties with respect to the arbitration and shall acknowledge the commencement of the arbitration.

Article 3: Answer and Counterclaim

- 1. Within 30 days after the Administrator confirms receipt of the Notice of Arbitration, Respondent shall submit to Claimant, to any other parties, and to the Administrator a written Answer to the Notice of Arbitration.
- 2. At the time Respondent submits its Answer, Respondent may make any counterclaims covered by the agreement to arbitrate or assert any setoffs and Claimant shall within 30 days submit to Respondent, to any other parties, and to the Administrator a written Answer to the counterclaim or setoffs.
- 3. The Answer, counterclaim or setoff shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.
- 4. Respondent shall within 30 days after the Administrator confirms receipt of the Notice of Arbitration submit to Claimant, to any other parties, and to the Administrator a response to any proposals by Claimant not previously agreed upon, or submit its own proposals, consistent with any prior agreement between or among the parties that varies from the IFTA model agreement including the means of designating the arbitrators, the place of the arbitration, the language of the arbitration, and whether Respondent is willing to mediate the dispute prior to or concurrently with the arbitration.
- 5. The arbitral tribunal, or the Administrator if the tribunal has not yet been constituted, may extend any of the time limits established in this Article if it considers such an extension justified.
- 6. Failure of Respondent to submit an Answer shall not preclude the arbitration from proceeding.
- 7. In arbitrations with multiple parties, Respondent may make claims or assert setoffs against another Respondent and Claimant may make claims or assert setoffs against another Claimant in accordance with the provisions of this Article 3.

Article 4: Administrative Conference

The Administrator may conduct an administrative conference before the arbitrator is appointed to facilitate party discussion and agreement on issues such as arbitrator selection, mediating the dispute, process efficiencies, and any other administrative matters.

Article 5: International Administrative Review Council

When the Administrator is called upon to act under these Rules, the Administrator may act through its International Administrative Review Council (IARC) to take any action. Such actions may include determining challenges to the appointment or continuing service of an arbitrator, deciding disputes regarding the number of arbitrators to be appointed, or determining whether a party has met the administrative requirements to initiate or file an arbitration contained in the Rules. If the parties do not agree on the place of arbitration, the IARC may make an initial determination as to the place of arbitration, subject to the power of the arbitrator to make a final determination.

Article 6: Mediation

Subject to (a) any agreement of the parties otherwise or (b) the right of any party to elect not to participate in mediation, the parties shall mediate their dispute pursuant to the ICDR's International Mediation Rules concurrently with the arbitration, provided that the designated arbitrator does not serve as the mediator.

Article 7: Emergency and Preliminary Injunctive and Interim Measures of Protection

1. A party may apply for emergency or preliminary injunctive and interim relief before the appointment of the arbitrator by submitting a written application to the Administrator and to all other parties setting forth:
 - a. the nature of the relief sought;
 - b. the reasons why such relief is required on an emergency basis before the arbitrator is appointed;
 - c. the reasons why the party is likely to be found to be entitled to such relief; and
 - d. what injury or prejudice the party will suffer if relief is not provided.

The application shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such application may be filed by email, or as otherwise

permitted by Article 11, and must include payment of any applicable fees and a statement certifying that all parties have been notified or an explanation of the steps taken in good faith to notify all parties.

2. Within one business day of receipt of the application for emergency relief as provided in Article 7(1), and upon being satisfied that the requirements of Article 7(1) have been met, the Administrator shall appoint a single emergency arbitrator. Upon accepting appointment, a prospective emergency arbitrator shall, in accordance with Article 14, disclose to the Administrator any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence. Any challenge to the appointment of the emergency arbitrator must be made within one business day of the communication by the Administrator to the parties of the appointment of the emergency arbitrator and the circumstances disclosed.
3. The emergency arbitrator shall as soon as possible, and in any event within two business days of appointment, establish a schedule for consideration of the application for emergency relief. Such schedule shall provide a reasonable opportunity to all parties to be heard and may provide for proceedings by telephone, video, written submissions, or other suitable means, as alternatives to an in-person hearing. The emergency arbitrator shall have the authority vested under Article 21, including the authority to rule on the emergency arbitrator's jurisdiction, and shall resolve any disputes over the applicability of this Article.
4. The emergency arbitrator shall have the power to order or award any interim or conservatory measures that the emergency arbitrator deems necessary, including injunctive relief and measures for the protection or conservation of property. Any such measures may take the form of an interim award or an order. The emergency arbitrator shall give reasons in either case. The emergency arbitrator may modify or vacate the interim award or order. Any interim award or order shall have the same effect as an interim measure made pursuant to Article 27 and shall be binding on the parties when rendered. The parties shall undertake to comply with such an interim award or order without delay.
5. The emergency arbitrator shall have no further power to act after the arbitrator is appointed. Once the tribunal has been constituted, the tribunal may affirm, reconsider, modify, or vacate the interim award or order of emergency relief issued by the emergency arbitrator. The emergency arbitrator may not serve as a member of the tribunal unless the parties agree otherwise.
6. Any interim award or order of emergency relief may be conditioned on provision of appropriate security by the party seeking such relief.
7. A request for interim measures addressed by a party to a judicial authority shall not be deemed incompatible with this Article 7 or with the agreement to arbitrate or a waiver of the right to arbitrate.
8. The costs associated with applications for emergency relief shall be addressed by the emergency arbitrator, subject to the power of the arbitrator to determine finally the allocation of such costs.

Article 8: Joinder

1. A party wishing to join an additional party to the arbitration shall submit to the Administrator a Notice of Arbitration against the additional party. No additional party may be joined after the appointment of any arbitrator, unless (a) all parties, including the additional party, otherwise agree, or (b) the arbitrator once appointed determines that the joinder of an additional party is appropriate, and the additional party consents to such joinder. The party wishing to join the additional party shall, at that same time, send the Notice of Arbitration to the additional party and all other parties. The date on which such Notice of Arbitration is received by the Administrator shall be deemed to be the date of the commencement of arbitration against the additional party. Any joinder shall be subject to the provisions of Articles 13 and 21.
2. The request for joinder shall contain the same information required of a Notice of Arbitration under Article 2(3) and shall be accompanied by the appropriate filing fee.
3. The additional party shall submit an Answer in accordance with the provisions of Article 3.

Article 9: Consolidation

1. At the request of a party or on its own initiative, the Administrator may appoint a consolidation arbitrator, who will have the power to consolidate two or more arbitrations pending under these Rules, or these and other arbitration rules administered by the AAA or ICDR, into a single arbitration where:
 - e. the parties have expressly agreed to appoint a consolidation arbitrator; or
 - f. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
 - g. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same or related parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the arbitration agreements may be compatible.
2. A consolidation arbitrator shall be appointed as follows:
 - a. The Administrator shall notify the parties in writing of its intention to appoint a consolidation arbitrator and invite the parties to agree upon a procedure for the appointment of a consolidation arbitrator.
 - b. If the parties have not within 15 days of such notice agreed upon a procedure for appointment of a consolidation arbitrator, the Administrator shall appoint the consolidation arbitrator.
 - c. Absent the agreement of all parties, the consolidation arbitrator shall not be an arbitrator who is appointed to any pending arbitration subject to potential consolidation under this Article.
 - d. The provisions of Articles 14-16 of these Rules shall apply to the appointment of the consolidation arbitrator.

3. In deciding whether to consolidate, the consolidation arbitrator shall consult the parties, may consult the arbitral tribunal(s), and may take into account all relevant circumstances, including:
 - a. applicable law;
 - b. whether one or more arbitrators have been appointed in more than one of the arbitrations and, if so, whether the same or different persons have been appointed;
 - c. the progress already made in the arbitrations;
 - d. whether the arbitrations raise common issues of law and/or facts; and
 - e. whether the consolidation of the arbitrations would serve the interests of justice and efficiency.
4. The consolidation arbitrator may order that any or all arbitrations subject to potential consolidation be stayed pending a ruling on a request for consolidation.
5. When arbitrations are consolidated, they shall be consolidated into the arbitration that commenced first, unless otherwise agreed by all parties or the consolidation arbitrator decides otherwise.
6. Where the consolidation arbitrator decides to consolidate an arbitration with one or more other arbitrations, each party in those arbitrations shall be deemed to have waived its right to appoint an arbitrator. The consolidation arbitrator may revoke the appointment of any arbitrators and may select one of the previously appointed arbitrators to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the arbitrator in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceedings.
7. The decision as to consolidation, which need not include a statement of reasons, shall be rendered within 15 days of the date for final submissions on consolidation.

Article 10: Amendment or Supplement of Claim, Counterclaim, or Defense

Any party may amend or supplement its claim, counterclaim, setoff, or defense unless the arbitrator considers it inappropriate to allow such amendment or supplement because of the party's delay in making it, prejudice to the other parties, or any other circumstances. A party may not amend or supplement a claim or counterclaim if the amendment or supplement would fall outside the scope of the agreement to arbitrate. The arbitrator may permit an amendment or supplement subject to an award of costs and/or the payment of filing fees as determined by the Administrator.

Article 11: Notices

1. Unless otherwise agreed by the parties or ordered by the arbitrator, all notices and written communications may be transmitted by any means of communication that

allows for a record of its transmission, including email, mail, courier, fax, or other written forms of electronic communication addressed to the party or its representative at its last- known address, or by personal service.

2. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is made. If the last day of such period is an official holiday at the place received, the period is extended until the first business day that follows. Official holidays occurring during the running of the period of time are included in calculating the period.

The Tribunal

Article 12: The Panel and Number of Arbitrators

1. A panel of Arbitrators composed of lawyers qualified by experience to deal in matters relating to the entertainment industry shall be established by the ICDR from countries around the world. Arbitrators hereunder shall be appointed from among the members of the panel unless to do so is impractical under these Rules. In the latter event, the Administrator shall appoint Arbitrators similarly qualified by experience from other ICDR or AAA panels.
2. If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

Article 13: Appointment of Arbitrators

1. The parties may agree upon any procedure for appointing arbitrators and shall inform the Administrator as to such procedure. In the absence of party agreement as to the method of appointment, the Administrator may use the ICDR list method as provided in this Article. In making appointments, the Administrator shall endeavor to appoint suitable arbitrators, taking into account their availability to serve. At the request of any party or on its own initiative, the Administrator may appoint or submit a list(s) including nationals of a country other than that of any of the parties.
2. A sole arbitrator shall be appointed as follows. The Administrator shall simultaneously submit to each party an identical list of five proposed arbitrators. The parties may agree to an arbitrator from this list and shall so advise the Administrator. If the parties are unable to agree upon an arbitrator, each party may strike two names from the list and return it to the Administrator within 10 days from the transmittal date of the list to the parties. The parties are not required to exchange selection lists. If the parties fail to agree on any of the arbitrators or if acceptable arbitrators are unable or unavailable to act, or if for any other reason the appointment cannot be made from the submitted lists, the Administrator may make the appointment without the circulation of additional lists. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

3. If there are more than two parties to the arbitration, the Administrator may appoint all arbitrators unless the parties have agreed otherwise no later than 45 days after the commencement of the arbitration. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.
4. The appointment of an arbitrator is effective upon receipt by the Administrator of the Administrator's Notice of Appointment completed and signed by the arbitrator.

Article 14: Impartiality and Independence of Arbitrator

1. Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with these Rules, the terms of the Notice of Appointment provided by the Administrator, and with *The Code of Ethics for Arbitrators in Commercial Disputes*.
2. Upon accepting appointment, an arbitrator shall sign the Notice of Appointment provided by the Administrator affirming that the arbitrator is available to serve and is independent and impartial. The arbitrator shall disclose any circumstances that may give rise to justifiable doubts as to the arbitrator's impartiality or independence and any other relevant facts the arbitrator wishes to bring to the attention of the parties.
3. If, at any stage during the arbitration, circumstances arise that may give rise to such doubts, an arbitrator or party shall promptly disclose such information to all parties and to the Administrator. Upon receipt of such information from an arbitrator or a party, the Administrator shall communicate it to all parties and to the arbitrator.
4. Disclosure by an arbitrator or party does not necessarily indicate belief by the arbitrator or party that the disclosed information gives rise to justifiable doubts as to the arbitrator's impartiality or independence.
5. Failure of a party to disclose any circumstances that may give rise to justifiable doubts as to an arbitrator's impartiality or independence within a reasonable period after the party becomes aware of such information constitutes a waiver of the right to challenge an arbitrator based on those circumstances.
6. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any arbitrator, or with any candidate for party-appointed arbitrator, except 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 impartiality and independence in relation to the parties, or to discuss the suitability of candidates for selection as a presiding arbitrator where the parties or party-appointed arbitrators are to participate in that selection. No party or anyone acting on its behalf shall have any *ex parte* communication relating to the case with any candidate for presiding arbitrator.

7. On the application of a party, or on its own initiative after consulting the parties, the tribunal may require the parties to disclose:
 - a. Whether any non-party (such as a third-party funder, financial institution, producer, distributor, sales agent, or an insurer) has undertaken to pay or to contribute to the cost of a party's participation in the arbitration, and if so, to identify the person or entity concerned and to describe the nature of the undertaking.
 - b. Whether any non-party (such as a funder, financial institution, producer, distributor, sales agent, insurer, parent company, or ultimate beneficial owner) has an economic interest in the outcome of the arbitration, and if so, to identify the person or entity concerned and to describe the nature of the interest.

Article 15: Challenge of an Arbitrator

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality, or independence, or for failing to perform the arbitrator's duties. Unless a shorter time period is otherwise agreed by the parties, specified by law, or determined by the Administrator, a party shall send a written notice of the challenge to the Administrator within 15 days after being notified of the appointment of the arbitrator or within 15 days after the circumstances giving rise to the challenge become known to that party. The challenge shall state in writing the reasons for the challenge. The party shall not send this notice to any arbitrator.
2. Upon receipt of such a challenge, the Administrator shall notify the other party of the challenge and give such party an opportunity to respond. The Administrator shall not send the notice of challenge but shall notify the arbitrator that a challenge has been received without identifying the party challenging. When an arbitrator has been challenged by a party, the other party may agree to the acceptance of the challenge and, if there is agreement, the arbitrator shall be removed. The Administrator may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. The challenged arbitrator, after consultation with the Administrator, also may withdraw in the absence of such agreement. In neither case does withdrawal imply acceptance of the validity of the grounds for the challenge.
3. If the other party does not agree to the challenge or the challenged arbitrator does not withdraw, the Administrator shall make the decision on the challenge.
4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform or if the arbitrator becomes incapable of performing the duties of an arbitrator.

Article 16: Replacement of an Arbitrator

1. If an arbitrator withdraws, is incapable of performing the duties of an arbitrator, or is removed for any reason, and the office becomes vacant, a substitute arbitrator,

if needed, shall be appointed pursuant to the provisions of Article 13, unless the parties otherwise agree.

2. If a substitute arbitrator is appointed under this Article, unless the parties otherwise agree the arbitrator shall determine at its sole discretion whether all or part of the case shall be repeated.
3. If an arbitrator on a three-person arbitral tribunal fails to participate in the arbitration for any reason, and unless otherwise agreed to by the parties, the two other arbitrators shall have the power in their sole discretion to continue the arbitration and to make any decision, ruling, order, or award, notwithstanding the failure of the third arbitrator to participate. In determining whether to continue the arbitration or to render any decision, ruling, order, or award without the participation of an arbitrator, the two other arbitrators shall take into account the stage of the arbitration, the reason, if any, expressed by the third arbitrator for such non-participation and such other matters as they consider appropriate in the circumstances of the case.
4. In the event that the two other arbitrators do not agree to continue the arbitration without the participation of the third arbitrator, the Administrator on proof satisfactory to it shall declare the office vacant, and a substitute arbitrator shall be appointed pursuant to the provisions of Article 13, unless the parties otherwise agree.

Article 17: Arbitral Tribunal Secretary

The arbitrator may, with the consent of the parties, appoint an arbitral tribunal secretary, who will serve in accordance with ICDR guidelines.

General Conditions

Article 18: Party Representation

Any party may be represented in the arbitration. The names, addresses, telephone numbers, fax numbers, and email addresses of representatives shall be communicated in writing to the other party and to the Administrator. Unless instructed otherwise by the Administrator, once the arbitrator has been appointed, the parties or their representatives may communicate in writing directly with the tribunal with simultaneous copies to the other party and, unless otherwise instructed by the Administrator, to the Administrator. The conduct of party representatives shall be in accordance with such guidelines as the ICDR may issue on the subject.

Article 19: Place of Arbitration

1. All arbitrations under these Rules shall take place in the forum specified by the agreement or if none, in Los Angeles County, California. The parties, by mutual

agreement, may determine that the arbitration shall take place at a different location, but such designation of an alternate location must be by mutual agreement in writing with a copy of such agreement filed with the Administrator prior to the appointment of the Arbitrator.

2. The arbitrator may meet at any location it deems appropriate for any purpose, including to conduct hearings, hold conferences, hear witnesses, inspect property or documents, or deliberate, and, if done elsewhere than the place of arbitration, the arbitration shall be deemed conducted at the place of arbitration and any award shall be deemed made at the place of arbitration.

Article 20: Language

If the parties have not agreed otherwise, the language(s) of the arbitration shall be the language(s) of the documents containing the arbitration agreement, subject to the power of the arbitral tribunal to determine otherwise. The tribunal may order that any documents delivered in another language shall be accompanied by a translation into the language(s) of the arbitration.

Article 21: Arbitral Jurisdiction

1. The arbitrator shall have the power to rule on their own jurisdiction, including any objections with respect to arbitrability, to the existence, scope, or validity of the arbitration agreement(s), or with respect to whether all of the claims, counterclaims, and setoffs made in the arbitration may be determined in a single arbitration, without any need to refer such matters first to a court.
2. 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.
3. A party must object to the jurisdiction of the arbitrator or to arbitral jurisdiction respecting the admissibility of a claim, counterclaim, or setoff no later than the filing of the Answer, as provided in Article 3, to the claim, counterclaim, or setoff that gives rise to the objection. The arbitrator may extend such time limit and may rule on any objection under this Article as a preliminary matter or as part of the final award.
4. Issues regarding arbitral jurisdiction raised prior to the appointment of the arbitrator shall not preclude the Administrator from proceeding with administration and shall be referred to the arbitrator once appointed for determination.
5. All arbitrations shall be conducted under, shall be subject to and shall be enforceable under the governing law in the agreement, unless the parties agree otherwise in writing and transmit a copy of said written agreement to the Arbitrator and the Administrator or unless otherwise designated by the arbitrator pursuant to Rules.

Article 22: Conduct of Proceedings

1. Subject to these Rules, the arbitrator may conduct the arbitration in whatever manner it considers appropriate, 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.
2. The arbitrator shall conduct the proceedings with a view to expediting the resolution of the dispute. The arbitrator may, promptly after being constituted, conduct a procedural hearing with the parties for the purpose of organizing, scheduling, and agreeing to procedures, including the setting of deadlines for any submissions by the parties. In establishing procedures for the case, the arbitrator and the parties may consider how technology, including video, audio, or other electronic means, could be used to increase the efficiency and economy of the proceedings.
3. At the procedural hearing, the arbitrator shall discuss with the parties cybersecurity, privacy, and data protection to provide for an appropriate level of security and compliance in connection with the proceeding.
4. The arbitrator may decide preliminary issues, bifurcate proceedings, direct the order of proof, exclude cumulative or irrelevant testimony or other evidence, and direct the parties to focus their presentations on issues whose resolution could dispose of all or part of the case.
5. At any time during the proceedings, the arbitrator may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate. Unless the parties agree otherwise in writing, the arbitrator shall apply Article 24.
6. Documents or information submitted to the arbitrator by one party shall at the same time be transmitted by that party to all parties and, unless instructed otherwise by the Administrator, to the Administrator.
7. The arbitrator shall determine the admissibility, relevance, materiality, and weight of the evidence.
8. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitrator may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.
9. After the arbitrator's appointment, the arbitrator may schedule a procedural conference call with the parties, their representatives, and the Administrator to discuss the procedure and schedule for the case. Within 14 days of appointment, the arbitrator shall issue a procedural order.

Article 23: Early Disposition

1. A party may request leave from the arbitrator to submit an application for disposition of any issue presented by any claim or counterclaim in advance of the hearing on the merits ("early disposition"). The arbitrator shall allow a party to submit an application for early disposition if it determines that the application (a) has a

reasonable possibility of succeeding, (b) will dispose of, or narrow, one or more issues in the case, and (c) that consideration of the application is likely to be more efficient or economical than leaving the issue to be determined with the merits.

2. Each party shall have the right to be heard and a fair opportunity to present its case regarding whether or not such application should be heard and, if permission to make the application is given, whether early disposition should be granted.
3. The arbitrator shall have the power to make any order or award in connection with the early disposition of any issue presented by any claim or counterclaim that the tribunal deems necessary or appropriate. The arbitrator shall provide reasoning for any award.

Article 24: Exchange of Information

1. The arbitrator shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The arbitrator and the parties should endeavor to avoid unnecessary delay and expense while at the same time avoiding surprise, assuring equality of treatment, and safeguarding each party's opportunity to present its claims and defenses fairly.
2. The parties may provide the arbitrator with their views on the appropriate level of information exchange for each case, but the arbitrator retains final authority. To the extent that the parties wish to depart from this Article, they may do so only by written agreement and in consultation with the arbitrator.
3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the arbitrator.
4. The arbitrator may, upon application, require a party to make available to another party documents in that party's possession not otherwise available to the party seeking the documents, that are reasonably believed to exist and to be relevant and material to the outcome of the case. Requests for documents shall contain a description of specific documents or classes of documents, along with an explanation of their relevance and materiality to the outcome of the case.
5. The arbitrator may condition any exchange of information subject to claims of commercial or technical confidentiality on appropriate measures to protect such confidentiality.
6. When documents to be exchanged are maintained in electronic form, the party in possession of such documents may make them available in the form (which may be paper copies) most convenient and economical for it, unless the arbitrator determines, on application, that there is a compelling need for access to the documents in a different form. Requests for documents maintained in electronic form should be narrowly focused and structured to make searching for them as economical as possible. The arbitrator may direct testing or other means of focusing and limiting any search.
7. The arbitrator may, on application, require a party to permit inspection on reasonable notice of relevant premises or objects.

8. In resolving any dispute about pre-hearing exchanges of information, the arbitrator shall require a requesting party to justify the time and expense that its request may involve and may condition granting such a request on the payment of part or all of the cost by the party seeking the information. The arbitrator may also allocate the costs of providing information among the parties, either in an interim order or in an award.
9. In the event a party fails to comply with an order for information exchange, the arbitrator may draw adverse inferences and may take such failure into account in allocating costs.
10. Depositions, interrogatories, and requests to admit as developed for use in U.S. court procedures generally are not appropriate procedures for obtaining information in an arbitration under these Rules.

Article 25: Privilege

The arbitrator shall take into account applicable principles of privilege, such as those involving the confidentiality of communications between a lawyer and client. When the parties, their counsel, or their documents would be subject under applicable law to different rules, the arbitrator should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

Article 26: Proceedings by Written Submissions

1. Where no party's claim or counterclaim exceeds \$100,000 USD exclusive of interest, attorneys' fees, and other arbitration costs, the dispute shall be resolved by written submissions only unless the Arbitrator determines that an oral hearing is necessary. The Arbitrator shall give the parties reasonable notice of the date, and time of any written submission.
2. In proceedings based on written submissions, the all submissions are due within 60 days of the date of the procedural order. However, the Arbitrator may designate a later date for such submissions for good cause, but such date shall not be later than 120 days of the date of the procedural order unless the parties and the Arbitrator collectively agree to extend such date or the Arbitrator extends the date for good cause.

Article 27: Hearing

1. The arbitrator shall give the parties reasonable notice of the date, time, and place of any oral hearing.
2. The oral hearing shall take place within 60 days of the date of the procedural order. However, the arbitrator may designate a later day for such proceedings for good cause, but such date shall not be later than one hundred twenty days of the date of the procedural order unless the parties and the arbitrator collectively

agree to extend such date or the arbitrator extends the date for good cause. Generally, there will be no transcript or stenographic record. Any party desiring a stenographic record may arrange for one. The oral hearing shall not exceed one day unless the arbitrator determines otherwise. The Administrator will notify the parties in advance of the hearing date.

3. The arbitrator may set a hearing date within 21 days after the Respondent's failure to provide its response to the Notice of Arbitration.
4. A hearing or a portion of a hearing may be held by video, audio, or other electronic means when: (a) the parties so agree; or (b) the arbitrator determines, after allowing the parties to comment, that doing so would be appropriate and would not compromise the rights of any party to a fair process. The arbitrator may at any hearing direct that witnesses be examined through means that do not require their physical presence.
5. The arbitrator shall determine the manner in which witnesses are examined and who shall be present during witness examination.
6. Unless otherwise agreed by the parties or directed by the arbitrator, evidence of witnesses should be presented in the form of written statements signed by them. In accordance with a schedule set by the arbitrator, each party shall notify the tribunal and the other parties of the names of any witnesses who have presented a witness statement whom it requests to examine. The arbitrator may require any witness to appear at a hearing. If a witness whose appearance has been requested fails to appear without valid excuse as determined by the arbitrator, the arbitrator may make such order it deems appropriate, which may include reducing the weight to be given to the statement(s) or disregarding such statement(s).
7. At least 15 days before the hearings, each party shall give the arbitrator and the other parties the names and contact information of any witnesses it intends to present, the subject of their testimony, and the languages in which such witnesses will give their testimony.
8. Hearings are private unless the parties agree otherwise or the law provides to the contrary.

Article 28: Interim Measures

1. At the request of any party, the arbitrator may order or award any interim or conservatory measures it deems necessary, including injunctive relief and measures for the protection or conservation of property.
2. Such interim measures may take the form of an interim order or award, and the arbitrator may require security for the costs of such measures.
3. 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.
4. The arbitrator may allocate costs associated with applications for interim relief in any interim order or award or in the final award.

5. An application for emergency, preliminary, injunctive or interim relief prior to the constitution of the arbitrator may be made as provided for in Article 7.

Article 29: Tribunal-Appointed Expert

1. The arbitrator, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the arbitrator and communicated to the parties.
2. The parties shall provide such an expert with any relevant information or produce for inspection any relevant documents or goods that the expert may require. Any dispute between a party and the expert as to the relevance of the requested information or goods shall be referred to the arbitrator for decision.
3. Upon receipt of an expert's report, the arbitrator shall send a copy of the report to all parties and shall give the parties an opportunity to express, in writing, their opinion of the report. A party may examine any document on which the expert has relied in such a report.
4. At the request of any party, the arbitrator shall give the parties an opportunity to question the expert at a hearing. At this hearing, parties may present expert witnesses to testify on the points at issue.

Article 30: Default

1. If a party fails to submit an Answer in accordance with Article 3, the arbitrator may proceed with the arbitration.
2. If a party, duly notified under these Rules, fails to appear at a hearing without showing sufficient cause for such failure, the arbitrator may proceed with the hearing.
3. If a party, duly invited or ordered to produce evidence or take any other steps in the proceedings, fails to do so within the time established by the arbitrator without showing sufficient cause for such failure, the arbitrator may make the award on the evidence before it.

Article 31: Closure of Hearing

1. The arbitrator may ask the parties if they have any further submissions and upon receiving negative replies or if satisfied that the record is complete, the arbitrator may declare the arbitral hearing closed.
2. The arbitrator on its own motion, or upon application of a party, may reopen the arbitral hearing at any time before the award is made.

Article 32: Waiver

A party who knows of any non-compliance with any provision or requirement of the Rules or the arbitration agreement, and proceeds with the arbitration without promptly stating an objection in writing, waives the right to object.

Article 33: Awards, Orders, Decisions and Rulings

1. In addition to making a final award, the arbitrator may make interim, interlocutory, or partial awards, orders, decisions, and rulings.
2. When there is more than one arbitrator, any award, order, decision, or ruling shall be made by a majority of the arbitrators.
3. When the parties or the arbitrator so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the arbitral tribunal.
4. An order or award may be signed electronically, unless (a) the applicable law requires a physical signature, (b) the parties agree otherwise, or (c) the arbitrator or Administrator determines otherwise.

Article 34: Time, Form, and Effect of the Award

1. Awards shall be made in writing by the arbitrator and shall be final and binding on the parties. The arbitrator shall make every effort to deliberate and prepare the award as quickly as possible after the hearing. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the final award shall be made no later than 30 days from the date of the closing of the hearing pursuant to Article 31. The parties shall carry out any such award without delay and, absent agreement otherwise, waive irrevocably their right to any form of appeal, review, or recourse to any court or other judicial authority, insofar as such waiver can validly be made. The arbitrator shall state the reasons upon which an award is based, unless the parties have agreed that no reasons need be given.
2. An award shall be signed by the arbitrator(s) and shall state the date on which the award was made and the place of arbitration pursuant to Article 19. Where there is more than one arbitrator and any of them fails to sign an award, the award shall include or be accompanied by a statement of the reason for the absence of such signature.
3. The award shall be transmitted in draft form by the arbitrator to the Administrator. The award shall be communicated to the parties by the Administrator.
4. If applicable law requires an award to be filed or registered, the arbitrator shall cause such requirement to be satisfied. It is the responsibility of the parties to bring such requirements or any other procedural requirements of the place of arbitration to the attention of the arbitrator.

Article 35: Applicable Laws and Remedies

1. The arbitrator shall apply the governing law in the agreement, unless the parties agree otherwise in writing and transmit a copy of said written agreement to the arbitrator and the Administrator or unless otherwise designated by the Arbitrator pursuant to Rules. Failing such an agreement by the parties, the arbitrator shall apply such law(s) or rules of law as it determines to be appropriate.
2. In arbitrations involving the application of contracts, the arbitrator shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the arbitrator may award such pre-award and post-award interest, simple or compound, as it considers appropriate, taking into consideration the contract and applicable law(s).
4. Unless the parties agree otherwise, the parties expressly waive and forego any right to punitive, exemplary, or similar damages unless any applicable law(s) requires that compensatory damages be increased in a specified manner. This provision shall not apply to an award of arbitration costs to a party to compensate for misconduct in the arbitration.

Article 36: Settlement or Other Reasons for Termination

1. If the parties settle the dispute before a final award is made, the arbitrator shall terminate the arbitration and, if requested by all parties, may record the settlement in the form of a consent award on agreed terms. The arbitrator is not obliged to give reasons for such an award.
2. If continuation of the arbitration becomes unnecessary or impossible due to the non-payment of deposits required by the Administrator, the arbitration may be suspended or terminated as provided in Article 40(3).
3. If continuation of the arbitration becomes unnecessary or impossible for any reason other than as stated in Sections 1 and 2 of this Article, the arbitrator shall inform the parties of its intention to terminate the arbitration. The arbitrator shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

Article 37: Interpretation and Correction of Award

1. Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitrator to interpret the award or correct any clerical, typographical, or computational errors or make an additional award as to claims, counterclaims, or setoffs presented but omitted from the award.
2. If the arbitrator considers such a request justified after considering the contentions of the parties, it shall comply with such a request within 30 days after receipt of the parties' last submissions respecting the requested interpretation, correction, or

additional award. Any interpretation, correction, or additional award made by the arbitrator shall contain reasoning and shall form part of the award.

3. The arbitrator on its own initiative may, within 30 days of the date of the award, correct any clerical, typographical, or computational errors or make an additional award as to claims presented but omitted from the award.
4. The parties shall be responsible for all costs associated with any request for interpretation, correction, or an additional award, and the arbitrator may allocate such costs.

Article 38: Costs of Arbitration

The arbitrator shall fix the costs of arbitration in its award(s). The arbitrator may allocate such costs among the parties if it determines that allocation is reasonable, taking into account the circumstances of the case.

Such costs may include:

- a. the fees and expenses of the arbitrators, including applicable taxes;
- b. the costs of any assistance required by the arbitrator;
- c. the fees and expenses of the Administrator;
- d. the reasonable legal and other costs incurred by the parties; [A1]
- e. any costs incurred in connection with a request for interim or emergency relief pursuant to Articles 7 or 28;
- f. any costs incurred in connection with a request for consolidation pursuant to Article 9; and
- g. any costs associated with information exchange pursuant to Article 24.

Article 39: Fees and Expenses of the Arbitrator

1. The fees and expenses of the arbitrators shall be reasonable in amount, taking into account the time spent by the arbitrators, the size and complexity of the case, and any other relevant circumstances.
2. As soon as practicable after the commencement of the arbitration, the Administrator shall designate an appropriate daily or hourly rate of compensation in consultation with the parties and all arbitrators, taking into account the arbitrators' stated rate of compensation and the size and complexity of the case.
3. Any dispute regarding the fees and expenses of the arbitrators shall be determined by the Administrator.

Article 40: Deposits

1. The Administrator may request that the parties deposit appropriate amounts as an advance for the costs referred to in Article 38.
2. During the course of the arbitration, the Administrator may request supplementary deposits from the parties.
3. Failure of a party asserting a claim or counterclaim to pay the required fees or deposits shall be deemed a withdrawal of the claim or counterclaim. In no event, however, shall a party be precluded from defending a claim or counterclaim.
4. If the deposits requested as referred to in Article 38(a) and 38(b) are not paid promptly and in full, the Administrator shall so inform the parties in order that one or more of them may make the required deposits. If any such deposit is made by one or more of the parties, the arbitrator may, upon request, make a separate award in favor of the paying party(s) for recovery of the deposit, together with any interest.
5. If no party is willing to make the requested deposits, the arbitral tribunal may order the suspension or termination of the proceedings. If the arbitrator has not yet been appointed, the Administrator may suspend or terminate the proceedings.
6. After the final award has been made, the Administrator shall render an accounting to the parties of the deposits received and return any unexpended balance to the parties.

Article 41: Confidentiality

1. Confidential information disclosed during the arbitration by the parties or by witnesses shall not be divulged by an arbitrator or by the Administrator. Except as provided in Article 41.3, unless otherwise agreed by the parties or required by applicable law, the arbitrator and the Administrator shall keep confidential all matters relating to the arbitration or the award.
2. Unless the parties agree otherwise, the arbitrator may make orders concerning the confidentiality of the arbitration or any matters in connection with the arbitration and may take measures for protecting trade secrets and confidential information.
3. An award may be made public only with the consent of all parties or as required by law, except that the Administrator may publish or otherwise make publicly available selected awards, orders, decisions, and rulings that have become public in the course of enforcement or otherwise.
4. The ICDR may also publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details unless a party has objected in writing to publication within 6 months from the date of the award.

Article 42: Exclusion of Liability

The arbitrators, any emergency arbitrator appointed under Article 7, any consolidation arbitrator appointed under Article 9, any arbitral tribunal secretary, and the Administrator shall not be liable to any party for any act or omission in connection with any arbitration under these Rules, except to the extent that such a limitation of liability is prohibited by applicable law. The parties agree that no arbitrator, emergency arbitrator, consolidation arbitrator, or arbitral tribunal secretary, nor the Administrator shall be under any obligation to make any statement about the arbitration, and no party shall seek to make any of these persons a party or witness in any judicial or other proceedings relating to the arbitration.

Article 43: Interpretation of Rules

The arbitrators tribunal, any emergency arbitrator appointed under Article 7, and any consolidation arbitrator appointed under Article 9, shall interpret and apply these Rules insofar as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.

