



**ICDR**  
CANADA

# **CANADIAN DISPUTE RESOLUTION PROCEDURES**

**(Including Mediation and Arbitration Rules)**

*Rules Effective January 1, 2015*

*available online at*  
**[icdrcanada.org](http://icdrcanada.org)**



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# Canadian Dispute Resolution Procedures

(Including Mediation and Arbitration Rules)



## About the International Centre for Dispute Resolution Canada (ICDR Canada)

Established in 2015 under the recommendation and leadership of the ICDR® Canadian Advisory Committee, the International Centre for Dispute Resolution Canada (ICDR Canada) provides dispute resolution services for Canadian domestic disputes nationwide. ICDR Canada operates under the auspices of the International Centre for Dispute Resolution® (ICDR) and the American Arbitration Association® (AAA®).

ICDR Canada provides **full administrative services and support in English and French** for arbitration, mediation, and arbitrator-appointing authority services for parties located throughout Canada's provinces and territories. With ICDR Canada, parties have access to arbitration, mediation, expedited arbitration, and arbitrator-appointing authority **rules specifically tailored for Canadian practice**. Parties from one or more provinces and territories seeking to resolve a dispute have access to a **dedicated administrative team and dozens of independent arbitrators and mediators across Canada**.

The ICDR Canada role in the dispute resolution process is to administer cases from filing to closing. ICDR Canada's administrative services include assisting in the appointment of mediators and arbitrators, managing case financials, arranging hearings, and providing users with information on dispute resolution options—including settlement through mediation. Ultimately, ICDR Canada aims to move cases through arbitration or mediation in an efficient, fair, impartial, and economical manner until completion.

Additional ICDR Canada services include the **design and development of alternative dispute resolution (ADR) systems for corporations, unions, government agencies, law firms, and the courts**. ICDR Canada also provides **elections services** as well as **education, training, and publications** for those seeking a broader or deeper understanding of ADR.

## Introduction

These Canadian dispute resolution rules, created by the ICDR Canadian Advisory Committee of the International Centre for Dispute Resolution (“ICDR”), offer an efficient arbitration and mediation framework for Canadian disputing parties, their counsel, arbitrators, and mediators across all provinces and territories. The committee analyzed the ICDR’s recently-revised International Arbitration Rules and made changes to reflect a national domestic arbitration and mediation rule structure based upon a broad range of Canadian dispute resolution practices, laws, and culture. The result is a set of arbitration rules, expedited arbitration rules, mediation rules, and arbitrator appointing-authority services that allow for party autonomy characteristic of the Canadian dispute resolution community and the need for efficient process management by arbitrators, mediators, and administering institution.

The ICDR Canadian Advisory Committee proposed the creation of the International Centre for Dispute Resolution Canada (“ICDR Canada”) to administer all Canadian arbitrations and mediations. The proceedings under these rules may be conducted in both English and French and reflect best practices designed to deliver efficient, economic, and fair proceedings.

## Mediation

The parties may seek to settle their dispute through mediation. Mediation may be scheduled independently of arbitration or concurrently with the scheduling of the arbitration. In mediation, an impartial and independent mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. The Mediation Rules that follow provide a framework for the mediation.

The following pre-dispute mediation clause may be included in contracts:

*In the event of any controversy or claim arising out of or relating to this contract, or a breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by ICDR Canada under its Canadian Mediation Rules, before resorting to arbitration, litigation, or some other dispute resolution procedure.*

The parties should consider adding:

- a. *The place of mediation shall be (city, [province or territory]); and*
- b. *The language(s) of the mediation shall be (English or French).*

If the parties want to use a mediator to resolve an existing dispute, they may enter into the following submission agreement:

*The parties hereby submit the following dispute to mediation administered by ICDR Canada in accordance with its Canadian Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), the place of mediation, and any other item of concern to the parties.)*

## Arbitration

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

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

*Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by ICDR Canada in accordance with its Canadian Arbitration Rules.*

The parties should consider adding:

- a. *The number of arbitrators shall be (one or three);*
- b. *The place of arbitration shall be (city, [province or territory]); and*
- c. *The language(s) of the arbitration shall be (English or French).*

For more complete clause-drafting guidance, please visit **[www.icdrcanada.org](http://www.icdrcanada.org)**. When writing a clause or agreement for dispute resolution, the parties may choose to confer with ICDR Canada on useful options. Please see the contact information provided in *How to File a Case with ICDR Canada*.

## Expedited Procedures

The Expedited Procedures provide parties with an expedited and simplified arbitration procedure designed to reduce the time and cost of an arbitration. The Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds \$250,000 exclusive of interest and the costs of arbitration. The parties may agree to the application of these Expedited Procedures on matters of any claim size.

Where parties intend that the Expedited Procedures shall apply regardless of the amount in dispute, they may consider the following clause:

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by ICDR Canada in accordance with its Canadian Expedited Procedures.

The parties should consider adding:

- a. *The place of arbitration shall be (city, [province or territory]); and*
- b. *The language(s) of the arbitration shall be (English or French).*

Features of the Expedited Procedures:

- Parties may choose to apply the Expedited Procedures to cases of any size;
- Comprehensive filing requirements;
- Expedited arbitrator appointment process with party input;
- Appointment from an experienced pool of arbitrators ready to serve on an expedited basis;
- Early preparatory conference call with the arbitrator requiring participation of parties and their representatives;
- Presumption that cases up to USD \$100,000 will be decided on written submissions only;
- Expedited schedule and limited hearing days, if any; and
- An 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.

Whenever a singular term is used in the Mediation or Arbitration Rules, such as "party," "claimant," or "arbitrator," that term shall include the plural if there is more than one such entity.

## How to File a Case with ICDR Canada

Parties initiating a case with ICDR Canada may file online via WebFile® (File or Access Your Case) at **[www.icdrcanada.org](http://www.icdrcanada.org)** or facsimile (fax). For filing assistance, parties may contact ICDR Canada toll-free at +1.877.495.4185.

**Online WebFile:** **[www.icdrcanada.org](http://www.icdrcanada.org)**

**Email:** **[casefiling@icdrcanada.org](mailto:casefiling@icdrcanada.org)**

**Toll-free Phone:** +1.877.495.4185

**Toll-free Fax:** +1.877.304.8457

For further information about these Rules, visit the ICDR Canada website at **[www.icdrcanada.org](http://www.icdrcanada.org)** or call +1.877.495.4185.

# Canadian Mediation Rules

## 1. Agreement of Parties

1. Whenever parties have agreed to mediate disputes under these Canadian Mediation Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.
2. The parties by mutual agreement may vary any part of these Rules including, but not limited to, agreeing to conduct the mediation via telephone or other electronic or technical means.
3. The International Centre for Dispute Resolution Canada ("ICDR Canada") is the Administrator of these Rules.

## 2. Initiation of Mediation

1. Any party or parties to a dispute may initiate mediation under ICDR Canada's auspices by making a request for mediation to any ICDR Canada office or case management center via telephone, email, regular mail, or fax. Requests for mediation may also be filed online via WebFile at [www.icdrcanada.org](http://www.icdrcanada.org).
2. The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to ICDR Canada and the other party or parties as applicable:
  - a. a copy of the mediation provision of the parties' contract or the parties' stipulation to mediate;
  - b. the names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation;
  - c. a brief statement of the nature of the dispute and the relief requested;
  - d. any specific qualifications the mediator should possess.
3. Where there is no pre-existing agreement or contract by which the parties have provided for mediation of existing or future disputes under the auspices of ICDR Canada, a party may request ICDR Canada to invite another party to participate in "mediation by voluntary submission." Upon receipt of such a request, ICDR Canada will contact the other party or parties involved in the dispute and attempt to obtain a submission to mediation.

## 3. Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the Administrator.

## 4. Appointment of the Mediator

If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:

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

## 5. Mediator's Impartiality and Duty to Disclose

1. ICDR Canada mediators are required to abide by the *Model Standards of Conduct for Mediators* in effect at the time a mediator is appointed to a case. Where there is a conflict between the *Model Standards* and any provision of these Mediation Rules, these Mediation Rules shall govern. The *Model Standards* require mediators to (i) decline a mediation if the mediator cannot conduct it in an impartial manner, and (ii) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.
2. Prior to accepting an appointment, ICDR Canada mediators are required to make a reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. ICDR Canada mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the Administrator shall immediately communicate the disclosures to the parties for their comments.

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

## 6. Vacancies

If any mediator shall become unwilling or unable to serve, the Administrator will appoint another mediator, unless the parties agree otherwise, in accordance with Rule 4.

## 7. Duties and Responsibilities of the Mediator

1. The mediator shall conduct the mediation based on the principle of party self-determination. Self-determination is the act of coming to a voluntary, un-coerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator is authorized to conduct separate or *ex parte* meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation conference. Such communications may be conducted via telephone, in writing, via email, online, in person, or otherwise.
3. The parties are encouraged to exchange all documents pertinent to the relief requested. The mediator may request the exchange of memoranda on issues, including the underlying interests and the history of the parties' negotiations. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
5. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation conference(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
6. The mediator is not a legal representative of any party and has no fiduciary duty to any party.

## 8. Date, Time, and Place of the Mediation

The mediator shall set the date, time, and place for each session of the mediation conference. The parties shall respond to requests for conference dates in a timely manner, be cooperative in scheduling the earliest practicable date, and adhere to the established conference schedule.

## 9. Language of Mediation

If the parties have not agreed otherwise, the language(s) of the mediation shall be that of the documents containing the mediation agreement.

## 10. Responsibilities of the Parties

1. The parties shall ensure that appropriate representatives of each party having authority to consummate a settlement attend the mediation conference.
2. Prior to and during the scheduled mediation conference(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.

## 11. Privacy

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

## 12. Confidentiality

1. Subject to applicable law or the parties' agreement, confidential information disclosed to a mediator by the parties or by other participants (witnesses) in the course of the mediation shall not be divulged by the mediator. The mediator shall maintain the confidentiality of all information obtained in the mediation, and all records, reports, or other documents received by a mediator while serving in that capacity shall be confidential.
2. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversarial proceeding or judicial forum.
3. The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding, the following, unless agreed to by the parties or required by applicable law:
  - a. views expressed or suggestions made by a party or other participant with respect to a possible settlement of the dispute;

- b.** admissions made by a party or other participant in the course of the mediation proceedings;
- c.** proposals made or views expressed by the mediator; or
- d.** the fact that a party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

### 13. No Stenographic Record

There shall be no stenographic record of the mediation process.

### 14. Termination of Mediation

The mediation shall be terminated:

- a.** by the execution of a settlement agreement by the parties; or
- b.** by a written or oral declaration of the mediator to the effect that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- c.** by a written or oral declaration of all parties to the effect that the mediation proceedings are terminated; or
- d.** when there has been no communication between the mediator and any party or party's representative for 21 days following the conclusion of the mediation conference.

### 15. Exclusion of Liability

Without their express consent, neither ICDR Canada nor any mediator shall be a party to any judicial proceedings relating to the mediation. Neither ICDR Canada nor any mediator shall be liable to any party for any error, act, or omission in connection with any mediation conducted under these Rules. The mediator shall have the same immunity from legal proceedings as a judge of the Superior Court of the Province in which the mediation takes place, in which case such judicial immunity shall supplement, but not supplant, any immunity provided under other applicable laws or this Rule 15.

### 16. Interpretation and Application of Rules

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

## 17. Deposits

Unless otherwise directed by the mediator, the Administrator will require the parties to deposit in advance of the mediation conference such sums of money as it, in consultation with the mediator, deems necessary to cover the costs and expenses of the mediation and shall render an accounting to the parties and return any unexpended balance at the conclusion of the mediation.

## 18. Expenses

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

### Costs of the Mediation

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT **[icdrcanada.org](http://icdrcanada.org)**.*

# Canadian Arbitration Rules

## Scope of these Rules

### Article 1

1. Where parties have agreed to arbitrate disputes under these Canadian Arbitration Rules ("Rules"), or have provided for arbitration by the International Centre for Dispute Resolution (ICDR) or the American Arbitration Association (AAA) of a Canadian domestic dispute as determined by the ICDR, 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. ICDR Canada 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 to which the parties must adhere, that provision shall prevail.
3. When parties agree to arbitrate under these Rules, or when they are otherwise determined to apply, they thereby authorize ICDR Canada to administer the arbitration. These Rules specify the duties and responsibilities of ICDR Canada as the Administrator. The Administrator may provide services through any of the ICDR's case management offices or through the facilities of the AAA or arbitral institutions with which the ICDR or the AAA has agreements of cooperation. Arbitrations administered under these Rules shall be administered only by ICDR Canada or by an individual or organization authorized by the ICDR to do so.
4. Unless the parties agree or the Administrator determines otherwise, the Canadian Expedited Procedures shall apply in any case in which no disclosed claim or counterclaim exceeds USD \$250,000 exclusive of interest and the costs of arbitration. The parties may also agree to use the Canadian Expedited Procedures in other cases. The Canadian Expedited Procedures shall be applied as described in Articles E-1 through E-10 of these Rules, in addition to any other portion of these Rules not in conflict with the Expedited Procedures. Where no party's claim or counterclaim exceeds USD \$100,000 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.

## Commencing the Arbitration

### Notice of Arbitration

#### Article 2

1. The party initiating arbitration ("Claimant") shall, in compliance with Article 10, give written Notice of Arbitration to the Administrator and at the same time to each party against whom a claim is being made ("Respondent(s)"). The Claimant may also initiate the arbitration through the Administrator's online filing system located at **[www.icdrcanada.org](http://www.icdrcanada.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; and
  - g. optionally, proposals, consistent with any prior agreement between or among the parties, as to the means of designating the arbitrators, the number of arbitrators, the place of arbitration, and the language(s) of the arbitration, and any interest in mediating the dispute.
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.

## Answer and Counterclaim

### Article 3

1. Within 30 days after the commencement of the 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. A 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. All amounts are denominated in U.S dollars (USD).
4. Respondent shall within 30 days after the commencement of the 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, as to the means of designating the arbitrators, the number of arbitrators, the place of the arbitration, the language(s) of the arbitration, and any interest in mediating the dispute.

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, a Respondent may make claims or assert setoffs against another Respondent in accordance with the provisions of this Article 3.

## Administrative Conference Article 4

The Administrator may conduct an administrative conference with the parties and their representatives before the arbitral tribunal is constituted to facilitate party discussion and agreement on issues such as arbitrator selection, mediating the dispute, process efficiencies, and any other administrative matters.

## Mediation Article 5

Following the time for submission of an Answer, the Administrator may invite the parties to mediate in accordance with ICDR Canada's Canadian Mediation Rules. At any stage of the proceedings, the parties may agree to mediate in accordance with ICDR Canada's Canadian Mediation Rules. Unless the parties agree otherwise, the mediation shall proceed concurrently with arbitration, and the mediator shall not be an arbitrator appointed to the case.

## Emergency Measures of Protection Article 6

1. A party may apply for emergency relief before the constitution of the arbitral tribunal by submitting a written notice to the Administrator and to all other parties setting forth the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the reasons why the party is entitled to such relief. The notice shall be submitted concurrent with or following the submission of a Notice of Arbitration. Such notice may be given by email, or as otherwise permitted by Article 10, and must include 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 notice, as provided in Article 6(1), the Administrator shall appoint a single emergency arbitrator. Prior to accepting appointment, a prospective emergency arbitrator shall 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 in the arbitral tribunal under Article 19, including the authority to rule on her/his own 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 conservancy 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 of 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 24 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 arbitral tribunal is constituted. Once the tribunal has been constituted, the tribunal may 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 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 arbitral tribunal to determine finally the allocation of such costs.

## Joinder Article 7

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 all parties, including the additional party, otherwise agree. The party wishing to join the additional party shall, at that same time, submit 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 12 and 19.

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.
4. The additional party may make claims, counterclaims, or assert setoffs against any other party in accordance with the provisions of Article 3.

## Consolidation

### Article 8

1. At the request of a party, 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 ICDR Canada, the AAA, or ICDR, into a single arbitration where:
  - a. the parties have expressly agreed to consolidation;
  - b. all of the claims and counterclaims in the arbitrations are made under the same arbitration agreement; or
  - c. the claims, counterclaims, or setoffs in the arbitrations are made under more than one arbitration agreement; the arbitrations involve the same parties; the disputes in the arbitrations arise in connection with the same legal relationship; and the consolidation arbitrator finds the arbitration agreements to 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 13-15 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 and 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 finds 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 tribunals to serve in the consolidated proceeding. The Administrator shall, as necessary, complete the appointment of the tribunal in the consolidated proceeding. Absent the agreement of all parties, the consolidation arbitrator shall not be appointed in the consolidated proceeding.
- 7. The decision as to consolidation shall be rendered within 15 days of the date for final submissions on consolidation.

## Amendment or Supplement of Claim, Counterclaim, or Answer

### Article 9

Any party may amend or supplement its claim, counterclaim, setoff, or answer unless the arbitral tribunal 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 tribunal may permit an amendment or supplement subject to an award of costs and/or payment of filing fees as determined by the Administrator.

## Notices

### Article 10

- 1. Unless otherwise agreed by the parties or ordered by the arbitral tribunal, all notices and written communications may be transmitted by any means of communication that allows for a record of its transmission including 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

### Number of Arbitrators Article 11

If the parties have not agreed on the number of arbitrators, one arbitrator shall be appointed unless the Administrator determines in its discretion that three arbitrators are appropriate because of the size, complexity, or other circumstances of the case.

### Appointment of Arbitrators Article 12

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 Canada list method as provided in Article 12(6).
2. The parties may agree to select arbitrators with or without the assistance of the Administrator. When such selections are made, the parties shall take into account the arbitrators' availability to serve and shall notify the Administrator so that a Notice of Appointment can be communicated to the arbitrators, together with a copy of these Rules.
3. If within 30 days after the commencement of the arbitration, all parties have not agreed on a procedure for appointing the arbitrator(s) or have not agreed on the selection of the arbitrator(s), the Administrator shall, at the written request of any party, appoint the arbitrator(s). Where the parties have agreed upon a procedure for selecting the arbitrator(s), but all appointments have not been made within the time limits provided by that procedure, the Administrator shall, at the written request of any party, perform all functions provided for in that procedure that remain to be performed.
4. In making appointments, the Administrator shall, after inviting consultation with the parties, 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 nationals of a country other than that of any of the parties.
5. 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.

6. If the parties have not selected an arbitrator(s) and have not agreed upon any other method of appointment, the Administrator, at its discretion, may appoint the arbitrator(s) in the following manner using the ICDR Canada list method. The Administrator shall send simultaneously to each party an identical list of names of persons for consideration as arbitrator(s). The parties are encouraged to agree to an arbitrator(s) from the submitted list and shall advise the Administrator of their agreement. If, after receipt of the list, the parties are unable to agree upon an arbitrator(s), each party shall have 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 the Administrator. The parties are not required to exchange selection lists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on the parties' lists, and in accordance with the designated order of mutual preference, the Administrator shall invite an arbitrator(s) to serve. If the parties fail to agree on any of the persons listed 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 shall have the power to make the appointment without the submission of additional lists. The Administrator shall, if necessary, designate the presiding arbitrator in consultation with the tribunal.
7. The appointment of an arbitrator is effective upon receipt by the Administrator of the Notice of Appointment completed and signed by the arbitrator.

## Impartiality and Independence of Arbitrator

### Article 13

1. Arbitrators acting under these Rules shall be impartial and independent and shall act in accordance with the terms of the Notice of Appointment provided by the Administrator.
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 tribunal.
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; to discuss the candidate's qualifications, availability, 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.

## Challenge of an Arbitrator

### Article 14

1. A party may challenge an arbitrator whenever circumstances exist that give rise to justifiable doubts as to the arbitrator's impartiality or independence. 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 member of the arbitral tribunal.
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 to any member of the tribunal but shall notify the tribunal that a challenge has been received, without identifying the party challenging. The Administrator may advise the challenged arbitrator of the challenge and request information from the challenged arbitrator relating to the challenge. 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 withdraw. 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 in its sole discretion shall make the decision on the challenge.
4. The Administrator, on its own initiative, may remove an arbitrator for failing to perform his or her duties.

## Replacement of an Arbitrator

### Article 15

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

shall be appointed pursuant to the provisions of Article 12, unless the parties otherwise agree.

2. If a substitute arbitrator is appointed under this Article, unless the parties otherwise agree, the arbitral tribunal 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 reasons other than those identified in Article 15(1), 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. In the event that the two other arbitrators determine not 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 12, unless the parties otherwise agree.

## General Conditions

### Representation

#### Article 16

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 arbitral tribunal has been established, 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.

### Place of Arbitration

#### Article 17

1. If the parties do not agree on the place of arbitration by a date established by the Administrator, the Administrator may initially determine the place of arbitration, subject to the power of the arbitral tribunal to determine finally the place of arbitration within 45 days after its constitution.

2. The tribunal may meet at any place 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.

## Language of Arbitration

### Article 18

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.

## Arbitral Jurisdiction

### Article 19

1. The arbitral tribunal shall have the power to rule on its own jurisdiction, including any objections with respect 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.
2. The tribunal 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 tribunal 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 tribunal 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 tribunal 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 constitution of the tribunal shall not preclude the Administrator from proceeding with administration and shall be referred to the tribunal for determination once constituted.

## Conduct of Proceedings

### Article 20

1. Subject to these Rules, the arbitral tribunal 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 tribunal shall conduct the proceedings with a view to expediting the resolution of the dispute. The tribunal may, promptly after being constituted, conduct a preparatory conference 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 tribunal and the parties may consider how technology, including electronic communications, could be used to increase the efficiency and economy of the proceedings.
3. The tribunal 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.
4. At any time during the proceedings, the tribunal may order the parties to produce documents, exhibits, or other evidence it deems necessary or appropriate. Unless the parties agree otherwise in writing, the tribunal shall apply Article 21.
5. Documents or information submitted to the tribunal 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.
6. The tribunal shall determine the admissibility, relevance, materiality, and weight of the evidence.
7. The parties shall make every effort to avoid unnecessary delay and expense in the arbitration. The arbitral tribunal may allocate costs, draw adverse inferences, and take such additional steps as are necessary to protect the efficiency and integrity of the arbitration.

## Exchange of Information

### Article 21

1. The arbitral tribunal shall manage the exchange of information between the parties with a view to maintaining efficiency and economy. The tribunal 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 tribunal with their views on the appropriate level of information exchange for each case, but the tribunal 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 tribunal.
3. The parties shall exchange all documents upon which each intends to rely on a schedule set by the tribunal.
4. The tribunal 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 tribunal 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 tribunal 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 tribunal may direct testing or other means of focusing and limiting any search.
7. The tribunal 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 tribunal 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 tribunal 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 tribunal may draw adverse inferences and may take such failure into account in allocating costs.
10. Oral and documentary discovery as developed for use in domestic court procedures are not necessarily appropriate procedures for obtaining information in an arbitration under these Rules and, subject to the express agreement of the parties, will be established by the tribunal taking into account Articles 21.1 and 21.2.

## Privilege Article 22

The arbitral tribunal 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 tribunal should, to the extent possible, apply the same rule to all parties, giving preference to the rule that provides the highest level of protection.

## Hearing Article 23

1. The arbitral tribunal shall give the parties reasonable notice of the date, time, and place of any oral hearing.

2. Unless previously provided for in a procedural order, at least 15 days before the hearings, each party shall give the tribunal and the other parties the names and addresses of any witnesses it intends to present, the subject of their testimony, and the languages in which such witnesses will give their testimony.
3. The tribunal shall determine the manner in which witnesses are examined and who shall be present during witness examination.
4. Unless otherwise agreed by the parties or directed by the tribunal, evidence of witnesses shall be presented in the form of written statements or affidavits signed by them. In accordance with a schedule set by the tribunal, each party shall notify the tribunal and the other parties of the names of any witnesses who have presented a witness statement and whom it requests to examine. The tribunal 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 tribunal, the tribunal may disregard any written statement by that witness.
5. The tribunal may direct that witnesses be examined through means that do not require physical presence.
6. Hearings are private unless the parties agree otherwise or the law provides to the contrary.

## Interim Measures

### Article 24

1. At the request of any party, the arbitral tribunal 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 tribunal 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 arbitral tribunal may in its discretion allocate costs associated with applications for interim relief in any interim order or award or in the final award.
5. An application for emergency relief prior to the constitution of the arbitral tribunal may be made as provided for in Article 6.

## Tribunal-Appointed Expert

### Article 25

1. The arbitral tribunal, after consultation with the parties, may appoint one or more independent experts to report to it, in writing, on issues designated by the tribunal 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 tribunal for decision.
3. Upon receipt of an expert's report, the tribunal 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 tribunal 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.

## Default Article 26

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

## Closure of Hearing Article 27

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

## Waiver Article 28

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.

## Awards, Orders, Decisions, and Rulings

### Article 29

1. In addition to making a final award, the arbitral tribunal 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 of the tribunal shall be made by a majority of the arbitrators.
3. When the parties or the tribunal so authorize, the presiding arbitrator may make orders, decisions, or rulings on questions of procedure, including exchanges of information, subject to revision by the tribunal.

## Time, Form, and Effect of Award

### Article 30

1. Awards shall be made in writing by the arbitral tribunal and shall be final and binding on the parties. The tribunal 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. The parties shall carry out any such award without delay. The tribunal 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 17. 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. 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 and, unless otherwise agreed by the parties, may publish selected awards, orders, decisions, and rulings that have been edited to conceal the names of the parties and other identifying details.
4. The award shall be transmitted in draft form by the tribunal to the Administrator. The award shall be communicated to the parties by the Administrator.

## Applicable Laws and Remedies

### Article 31

1. The arbitral tribunal shall apply the substantive law(s) or rules of law agreed by the parties as applicable to the dispute. Failing such agreement by the parties, the tribunal shall apply such law(s) or rules of law as it determines to be appropriate.

2. In arbitrations involving the application of contracts, the tribunal shall decide in accordance with the terms of the contract and shall take into account usages of the trade applicable to the contract.
3. The tribunal shall not decide as *amiable compositeur* or *ex aequo et bono* unless the parties have expressly authorized it to do so.
4. A monetary award shall be in the currency or currencies of the contract unless the tribunal considers another currency more appropriate, and the tribunal 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).

## Settlement or Other Reasons for Termination

### Article 32

1. If the parties settle the dispute before a final award is made, the arbitral tribunal 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 tribunal 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 36(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 tribunal shall inform the parties of its intention to terminate the arbitration. The tribunal shall thereafter issue an order terminating the arbitration, unless a party raises justifiable grounds for objection.

## Interpretation and Correction of Award

### Article 33

1. Within 30 days after the receipt of an award, any party, with notice to the other party, may request the arbitral tribunal 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 tribunal 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 tribunal shall contain reasoning and shall form part of the award.
3. The tribunal 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 tribunal may allocate such costs.

## Costs of Arbitration

### Article 34

The arbitral tribunal may fix the costs of arbitration in an award(s). The tribunal 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;
- b. the costs of assistance required by the tribunal, including its experts;
- c. the fees and expenses of the Administrator;
- d. the reasonable legal and other costs incurred by the parties;
- e. any costs incurred in connection with a notice for interim or emergency relief pursuant to Article 6 or 24;
- f. any costs incurred in connection with a request for consolidation pursuant to Article 8; and
- g. any costs associated with information exchange pursuant to Article 21.

## Fees and Expenses of Arbitral Tribunal

### Article 35

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.

## Deposits

### Article 36

1. The Administrator may request that the parties deposit appropriate amounts as an advance for the costs referred to in Article 34.
2. During the course of the arbitration, the Administrator may request supplementary deposits from the parties.
3. If the deposits requested 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 payment. If such payment is not made, the arbitral tribunal may order the suspension or termination of the proceedings. If the tribunal has not yet been appointed, the Administrator may suspend or terminate the proceedings.

4. Failure of a party asserting a claim or counterclaim to pay the required deposits shall be deemed a withdrawal of the claim or counterclaim.
5. 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.

## Confidentiality

### Article 37

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 30, unless otherwise agreed by the parties or required by applicable law, the members of the arbitral tribunal and the Administrator shall keep confidential all matters relating to the arbitration or the award.
2. Unless the parties agree otherwise, the tribunal 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.

## Exclusion of Liability

### Article 38

The members of the arbitral tribunal, any emergency arbitrator appointed under Article 6, any consolidation arbitrator appointed under Article 8, 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 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 without their express written permission. All arbitrators shall have the same immunity as a judge of the Superior Court of the Province in which the arbitration takes place, in which case such judicial immunity shall supplement, but not supplant, any immunity provided under other applicable laws or this Article 38.

## Interpretation of Rules

### Article 39

The arbitral tribunal, any emergency arbitrator appointed under Article 6, and any consolidation arbitrator appointed under Article 8, shall interpret and apply these Rules insofar as they relate to their powers and duties. The Administrator shall interpret and apply all other Rules.

# Canadian Expedited Procedures

## Scope of Expedited Procedures Article E-1

These Canadian Expedited Procedures supplement the Canadian Arbitration Rules as provided in Article 1(4).

## Detailed Submissions Article E-2

Parties are to present 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, in the Notice of Arbitration and the Answer. The arbitrator, in consultation with the parties, shall establish a procedural order, including a timetable, for completion of any written submissions.

## Administrative Conference Article E-3

The Administrator may conduct an administrative conference with the parties and their representatives to discuss the application of these procedures, arbitrator selection, mediating the dispute, and any other administrative matters.

## Objection to the Applicability of the Expedited Procedures Article E-4

If an objection is submitted before the arbitrator is appointed, the Administrator may initially determine the applicability of these Canadian Expedited Procedures, subject to the power of the arbitrator to make a final determination. The arbitrator shall take into account the amount in dispute and any other relevant circumstances.

## Changes of Claim or Counterclaim Article E-5

If, after filing of the initial claims and counterclaims, a party amends its claim or counterclaim to exceed USD \$250,000 exclusive of interest and the costs of arbitration, the case will continue to be administered pursuant to these Canadian Expedited Procedures unless the parties agree otherwise, or the Administrator or the arbitrator determines otherwise. After the arbitrator is appointed, no new or different claim, counterclaim or setoff, and no change in amount may be submitted except with the arbitrator's consent.

## Appointment and Qualifications of the Arbitrator

### Article E-6

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.

## Procedural Conference and Order

### Article E-7

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.

## Proceedings by Written Submission

### Article E-8

In expedited proceedings based on written submissions, all submissions are due within 60 days of the date of the procedural order, unless the arbitrator determines otherwise. The arbitrator may require an oral hearing if deemed necessary.

## Proceedings with an Oral Hearing

### Article E-9

In expedited proceedings in which an oral hearing is to be held, the arbitrator shall set the date, time, and location of the hearing. The oral hearing shall take place within 60 days of the date of the procedural order unless the arbitrator deems it necessary to extend that period. Hearings may take place in person or via video conference or other suitable means, at the discretion of the arbitrator. 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.

## The Award Article E-10

Awards shall be made in writing and shall be final and binding on the parties. Unless otherwise agreed by the parties, specified by law, or determined by the Administrator, the award shall be made not later than 30 days from the date of the closing of the hearing or from the time established for final written submissions.

## Administrative Fee Schedule

*FOR THE CURRENT ADMINISTRATIVE FEE SCHEDULE, PLEASE VISIT ***icdrcanada.org***.*

## ICDR Canada Arbitrator Appointing Authority

ICDR Canada recognizes that there are circumstances where, due to the nature of the case, the rules being applied, or the relationship between the parties, more or less flexibility may be available pertaining to case management. ICDR Canada can provide assistance, resources, and options that can help move parties toward resolution of their dispute even without full case administration service. At any time, parties may also agree to submit their matter to ICDR Canada for full-service case administration.

Parties can use the ICDR Canada Arbitrator Appointing Authority to help them appoint a single or a panel of three arbitrators in an ad hoc, court-ordered, or UNCITRAL arbitration process. ICDR Canada can act as an appointing authority when parties need assistance in having arbitrator(s) appointed in their case. This service includes:

- Administrative Conference Call to discuss arbitrator preferences;
- Notice of Appointment Documentation;
- Arbitrator Disclosure Process;
- Confirmation of Arbitrator Availability;
- Confirmation of Arbitrator Payment Compensation Rates;
- Facilitation of Arbitrator Compensation Payments.

### Appointing Authority Options

#### Single or Three-Member Arbitral Tribunal Administrative Appointment

Parties can use an administrative appointment to help them appoint a single arbitrator or a panel of three arbitrators for their case. The parties participate in an administrative conference call with a representative from ICDR Canada to discuss their arbitrator preferences in terms of expertise, industry experience, professional background, geographic location, language preferences, and other nuances important to the appointment of an arbitrator. After the discussion, ICDR Canada will administratively appoint the arbitrator(s) that best suits the needs of the case. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

## Single or Three-Member ICDR Canada List Arbitrator Appointment

When parties use the ICDR Canada list method, they participate in an administrative conference call to discuss their arbitrator selection preferences. After the call, the Administrator will simultaneously submit to each party an identical list of proposed arbitrators. The parties may agree to an arbitrator from this list, or each party may strike names from the list and return it to the Administrator. The Administrator will then appoint an arbitrator based upon the parties' rankings on the returned lists. The parties will be given notice by the Administrator of the appointment of the arbitrator, together with any disclosures.

## Three-Member Party-Appointed Arbitrator Appointment

The Administrator will initially have a conference call with the parties to discuss process details and arbitrator preferences when parties want to use a party-appointed selection process. Each party submits their own party-appointed arbitrator with or without the use of an ICDR Canada list of arbitrators. The party-appointed arbitrators agree on the selection of the presiding arbitrator with or without the use of an ICDR Canada list of arbitrators. ICDR Canada will help complete any appointments necessary to complete the appointment of the arbitral tribunal. The parties will be given notice by the Administrator of the appointment of the arbitrators, together with any disclosures.

## Single Emergency Arbitrator Appointment

Parties may agree to have an emergency arbitrator appointed who will have the power to order or award emergency relief in the form of injunctive relief, measures of protection, or conservation of property. The parties' agreement to ICDR Canada should set forth the nature of the relief sought, the reasons why such relief is required on an emergency basis, and the reasons for and against such relief being granted. ICDR Canada will appoint a single emergency arbitrator within one business day and then the emergency arbitrator will establish a schedule to consider the application within two business days of appointment. The parties and arbitrator will otherwise follow Article 6 of the Canadian Arbitration Rules.

Canadian Arbitrator Appointing Authority Rules and Fees

- 1. Where parties have agreed to have ICDR Canada act as the appointing authority for disputes, the appointment shall take place in accordance with Rules Articles 11-15 of the Canadian Arbitration Rules.
- 2. The parties may agree upon any procedure, including the party-appointed method, for the appointing arbitrators and shall inform ICDR Canada as to such procedure. In the absence of party agreement as to the method of appointment, ICDR Canada may use the ICDR Canada list method as provided in Article 12(6).
- 3. Where parties have agreed to have ICDR Canada act as the appointing authority for an emergency measure of protection dispute, the appointment shall take place in accordance with Rule 6 of the Canadian Arbitration Rules.
- 4. ICDR Canada's Appointing Authority services terminate upon receipt by the Administrator of the Administrator's Notice of Appointment completed and signed by the arbitrator(s).

Canadian Arbitrator Appointing Authority Fees

*(payable in USD at the time of submission)*

|                                                                |         |
|----------------------------------------------------------------|---------|
| Single Arbitrator Administrative Appointment:                  | \$2,500 |
| Single Arbitrator Using ICDR List Method:                      | \$3,500 |
| Three-Arbitrator Tribunal Administrative Appointment:          | \$5,000 |
| Three-Arbitrator Tribunal ICDR List or Party-Appointed Method: | \$7,500 |
| Single Emergency or Consolidation Arbitrator Appointment:      | \$5,000 |

If the parties decide to request full-service case management services during or after the Appointing Authority service, they may file a case under the ICDR Canada Fee Schedule. The fees paid for the Appointing Authority service will be credited to the ICDR Canada Fee Schedule. This credit will be reflected in the reduced filing fee paid at the time of case submission.

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