



AMERICAN ARBITRATION ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®

ALTERNATIVE DISPUTE RESOLUTION: CONVERSATION WITH THE AMERICAN ARBITRATION ASSOCIATION (AAA)

June 22, 2023

Small Business Association of Michigan

Bridget Mary McCormack, CEO & President, AAA
Svetlana Gitman, Vice President Commercial Division, AAA



TODAY'S AGENDA:

Part I: What is the American Arbitration Association (AAA)?

Part II: What is alternative dispute resolution (ADR)?

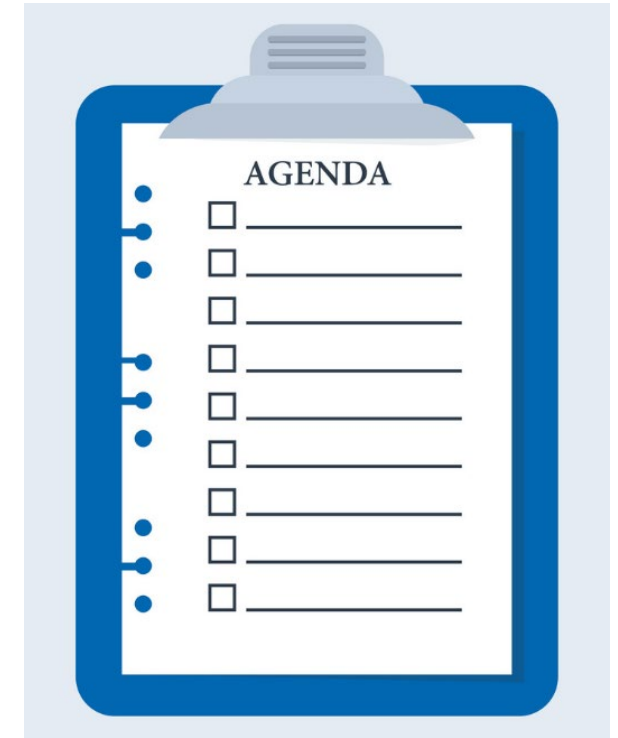
Part III: What is arbitration?

Part IV: Dispelling myths about arbitration

Part V: Why arbitration might be right for you

Part VI: AAA resources available to you

Q & A



PART I:

What is the American Arbitration Association (AAA)?



1926 – ALMOST 100 YEARS OF DISPUTE RESOLUTION



Merger of two early arbitration organizations in NYC – Arbitration Society of America and Arbitration Foundation.

WHAT IS THE AAA?

- Created in 1926 in response to the Federal Arbitration Act – law allowing parties to settle their disputes outside of court
- Non - Profit organization that acts as third party neutral to help parties resolve claims by “administering cases” following time-tested rules
- Headquartered in New York City with 26 offices nationwide & Asia Case Management Center (Singapore)
- Administered over 7.6 million cases since 1926 and *resolved* 271,566 cases just from Jan. 1, 2023 to today
- Maintain a roster of approximately 6000 arbitrators and 1100 mediators
- Provide ADR Services in various practice areas, which have different rules, such as:
 - Commercial, Construction, Consumer, Labor, Employment, International
 - Administer Elections
 - Called upon to help settle disputes in national disaster relief programs like Hurricane Katrina and Super Storm Sandy.



BET YOU DIDN'T KNOW!

- The first President of the AAA in 1926 was Thomas Burchard, President of General Electrics
- Boris Karloff served as an arbitrator on the AAA roster in 1956.
- The smallest commercial award rendered in AAA history is six cents – awarded to actor, choreographer, dancer and director of Cabaret – Bob Fosse
- The AAA-ICDR is the largest provider of ADR services in the world
- The AAA-ICDR Foundation has provided \$8.1 million in funding to projects since 2015



PART II:

What is ADR?



Alternative means of dispute resolution, that can save time and money, and can help to put the dispute behind you while preserving valuable business relationships.



WHAT IS ADR?



Alternatives to litigation (lawsuits), including:

- Conciliation
- Mediation
- Neutral evaluation
- Negotiation
- **ARBITRATION**

WHY SMALL BUSINESSES SHOULD CONSIDER ADR AND AVOID LITIGATION (COURT)?

- Save time and costs
- Avoid publicity; can be confidential
- More control over the process
- Desire to preserve the on-going business relations





PART III:

What is arbitration?

WHAT IS ARBITRATION?

Agreement to Arbitrate: Often begins because the parties previously agreed in a contract to resolve any disputes through arbitration instead of going to court. This is called an "arbitration clause." If there's no prior agreement, both parties can still agree to arbitrate after the dispute arises.

Selection of the Arbitrator(s): The parties choose the arbitrator, who is often an expert in the field relevant to the dispute. Sometimes, parties agree to a panel of three arbitrators.

Presentation of the Case: Each party presents their case to the arbitrator. This usually involves submitting documents and evidence, and sometimes involves oral arguments or witness testimony. The process is less formal than a court trial.

Decision: After hearing both sides, the arbitrator makes a decision, known as an "award". The arbitrator's award is usually final and binding, which means it can be enforced by the courts if necessary.

HOW DOES A CASE GET TO ARBITRATION?

1. There is a *pre-dispute* arbitration clause in the contract
2. Parties have *agreed post-dispute* to submit their dispute to arbitration rather than go to court



AAA® ARBITRATION ROAD MAP

REACHING RESOLUTION



Arbitration is the out-of-court submission of a dispute to an impartial third party or parties for a binding decision. The AAA arbitration administration process comprises a well-defined set of steps by which most commercial cases proceed.

FILING AND INITIATION	ARBITRATOR SELECTION	PRELIMINARY HEARING	INFORMATION EXCHANGE AND PREPARATION	MEDIATION STEP	HEARING	POST-HEARING SUBMISSIONS	THE AWARD
DAY 1 - 15	DAY 15 - 44	DAY 44 - 85	DAY 85 - 222		DAY 222-223	DAY 223 - 258	DAY 258 - 288
<p>The AAA typically commences administration of an arbitration case when one party submits a Demand for Arbitration, a copy of the arbitration provision from the contract between the parties, and the appropriate filing fee to the AAA. The AAA acknowledges receipt to all parties and sets a deadline for the respondent to answer and/or to file a counterclaim. If no arbitration clause exists or the AAA is not named as the resolution provider in the parties' contract, cases may commence with the consent of all parties, a filed Submission to Dispute Resolution, and the appropriate filing fee to the AAA.</p>	<p>Based upon the parties' expressed criteria of qualifications, the AAA identifies arbitrators from the AAA National Roster of Arbitrators and provides their curriculum vitae to the parties. If parties are unable to agree upon the arbitrator(s), the AAA establishes a deadline for each party to independently state its preferences from the list. The AAA invites the most mutually agreeable arbitrator(s) to serve on the case.</p>	<p>Conducted by the arbitrator often via conference call, this management meeting is the first time the parties and arbitrator discuss the substantive issues of the case and procedural matters, such as exchange of information, witness lists, and dates. The Scheduling Order, which serves as the framework for hearing preparations, is established.</p>	<p>The parties work within the time frames set forth at the Preliminary Hearing to exchange information and prepare their presentations. The arbitrator addresses any impasses or challenges related to information sharing.</p>	<p><i>Subject to the right of any party to opt out, in cases where a claim or counterclaim exceeds \$75,000, the rules provide that the parties shall mediate their dispute with the AAA concurrently with arbitration, at no additional fee. The mediator assists parties in reaching a settlement but has no authority to make a binding decision or award.</i></p>	<p>Parties present testimony and evidence to the arbitrator.</p>	<p>If the arbitrator allows, parties may submit additional documentation, usually shortly after the hearing.</p>	<p>The arbitrator closes the record and, no more than 30 days later, issues a decision addressing all claims raised in the arbitration. The award may direct one or more parties to pay another party a monetary amount, or it may direct parties to take specific actions. Aside from any administrative matters unrelated to the merits of the case, the services of the arbitrator and the AAA are completed when the award is issued.</p>
<p>EXPECTED COSTS AT THIS STAGE</p> <p>Filing fees are based on claim amounts and are paid by the party that asserts the claim or counterclaim.</p>	<p>EXPECTED COSTS</p> <p>Partial refunds of filing and counterclaim fees are available under some AAA fee schedules. No refunds are available after an arbitrator has been appointed.</p>	<p>EXPECTED COSTS</p> <p>Parties will incur compensation charges by each arbitrator for time spent before and during the Preliminary Hearing and in preparation of the Scheduling Order.</p>	<p>EXPECTED COSTS</p> <p>The time spent by the arbitrator in this phase is proportional to the number of procedural matters needing resolution. Additionally, the arbitrator will spend time reviewing the parties' pre-hearing submissions, if any.</p>	<p>EXPECTED COSTS</p> <p>The parties are responsible for the mediator's compensation plus an AAA fee of \$75 for each hour charged by the mediator.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator is compensated for time spent in hearings, reviewing evidence, and reasonable expenses, such as mileage and tolls.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator is compensated for reviewing evidence and any post-hearing submissions, as well as drafting the award. Any unused deposits are returned to the parties.</p>	<p>EXPECTED COSTS</p> <p>The arbitrator apportions arbitrator compensation and expenses and AAA fees among the parties.</p>

REASONS WHY A SMALL BUSINESS MIGHT PREFER ARBITRATION OVER LITIGATION (COURT)

Cost-Effective: Arbitration can often be less expensive than litigation. Court trials can be costly due to attorney fees, court fees, and the potential for multiple appeals. Arbitration, while not free, is often more streamlined and may result in lower total costs.

Time-Efficient: Arbitration is usually faster than litigation. Arbitration can shave years off the life of a dispute. This can be a significant advantage for a small business that can't afford the time and uncertainty of a drawn-out court battle.

Simplicity and Flexibility: Arbitration proceedings are typically less formal than court trials. The process can be adjusted to suit the needs of the parties, making it easier for small businesses to navigate.

Expertise: Arbitrators often have specific expertise in the area in dispute. For example, if a small business is involved in a technical contract dispute, they might prefer an arbitrator who understands the industry, rather than a judge or jury who may not.

Confidentiality: Unlike court trials, which are generally public, arbitration is usually private. This can protect the small business from unwanted publicity or disclosure of sensitive business information.

Finality: An arbitrator's decision is usually final and binding, meaning it can be enforced by the courts if necessary. Unlike court judgments, arbitration awards are typically not subject to appeal, which can provide finality and certainty for the small business.

PART IV:

Dispelling myths about arbitration





MYTH

Ad Hoc Arbitration is Cheaper Than Administered Arbitration



AD HOC V. ADMINISTERED ARBITRATION

AD HOC ARBITRATION:

The arbitrator administers the case in all regards such as:

- Legal issues
- Administrative tasks
- Finances
- Conflict of interest issues

VERSUS



ADMINISTERED ARBITRATION:

Administrative body handles all of the below according to their institutional rules:

- Administrative tasks
- procedural issues (before and after arbitrator appointment)
- Finances
- Conflict of interest issues

While the arbitrator focuses on the legal issues

ARGUMENT FOR AD HOC ARBITRATION

- Avoids up-front administrative fees
- Many arbitrators will agree to take ad hoc cases
- While you're not supposed to technically use AAA rules unless AAA is administering cases, we know it happens



The “Hidden” Costs of Ad Hoc Arbitration

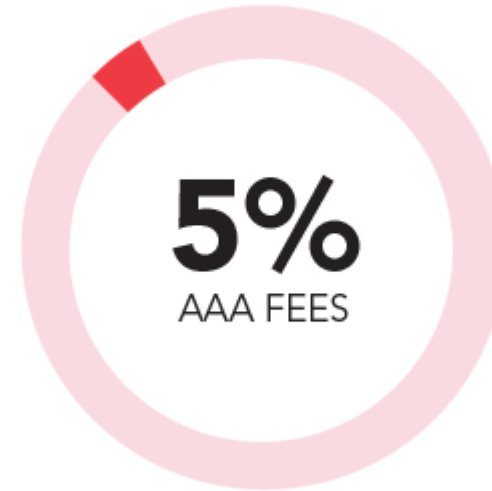
Administered arbitration is an **insurance policy** against:

- Court involvement when parties cannot come to an agreement and an arbitrator has not been appointed yet
- Uncomfortable situations with the decision-maker relating to finances or disclosures
- Decision-makers charging their hourly rates for administrative tasks
- Delay tactics or the dispute “falling off the radar”

AAA Administrative Fees as a Percent of Overall Arbitration Costs by Caseload



CONSTRUCTION



COMMERCIAL

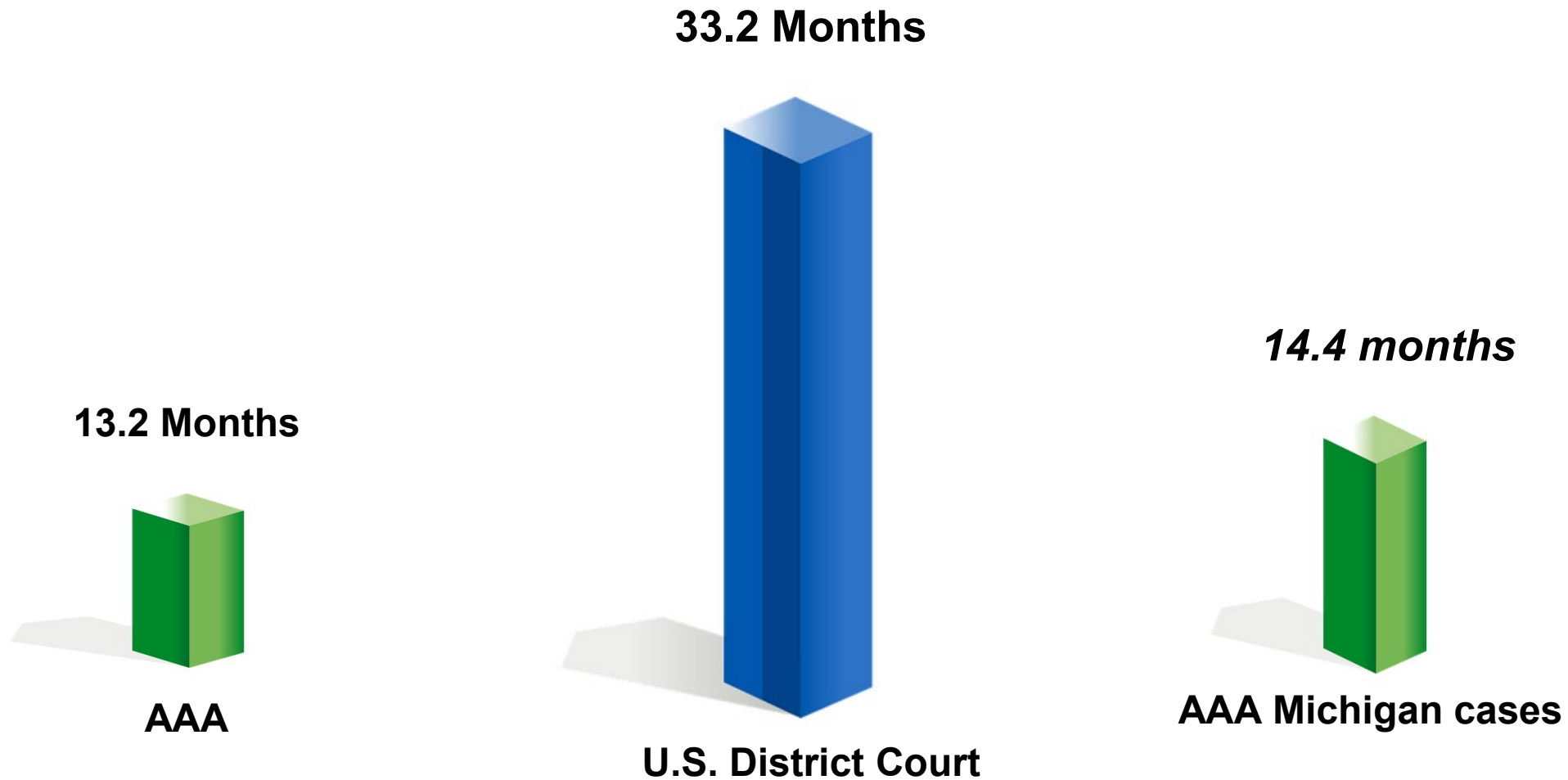


MYTH

Arbitration Takes as Long as Litigation



MEDIAN TIME FROM FILING TO TRIAL – 2022 CASES





MYTH

Mediation is not available if you file an arbitration demand



What is Mediation?

An **informal** negotiation assisted by a **neutral** third party (the mediator) that **encourages** disputing parties to craft their own **solutions**, therefore enhancing the likelihood of continuing the business relationship.



Reality: AAA rules offer the parties the ability to mediate their disputes before or during their arbitration.



AAA Fixed Rate Mediation program

Q: What is Fixed-Rate Mediation?

A: The Fixed-Rate Mediation Program is designed to provide parties with a cost-effective approach to resolving two-party disputes where claim amount(s) are \$100,000, or less by submitting a dispute to a neutral third party - the Mediator.

Q: What are the benefits of Fixed-Rate Mediation?

A:

- Mediation at a flat rate (fixed, up-front disclosed cost) with expedited timeframes.
Administrative Fee: \$300
- Access to AAA® Mediators from the AAA National Roster who are industry professionals and/or attorneys that are versed in the law and/or subject matter experience.
- Potential to reduce the transactional costs (time, money, emotions) while achieving an amicable resolution of the dispute. *The cost is only \$600/side.*
- Considerable cost savings when compared to hourly or ad-hoc Mediators.
- One day of mediation conference, intended to be scheduled within 30 days of the Mediator's appointment.

PART V:

Why AAA arbitration might be right for you



COST-SAVING PROCEDURES

Commercial Rules Expedited Procedures

- Cases under \$100,000
- Reduced administrative fees (\$925); flat-rate arbitrator compensation (\$1,350)
- Award 14 days following close of hearing

Large, Complex Commercial cases

- Streamlined Panel Option

Alternative Fee Arrangements (AFA) - Single arbitrator cases

- AAA-ICDR is the first national arbitral organization to offer AFA options
- How it works: Prior to appointment parties select one of two options:
 - Fixed Fee Arrangement: parties and selected arbitrator agree to set overall fee for the case, divided into fee segments for the pre-hearing, hearing and post-hearing phases of arbitration.
 - Capped Fee Arrangement: parties and selected arbitrator agree to a maximum fee for the entire process; the arbitrator's hourly rate is billed and paid until the cap is reached.

OTHER BENEFITS TO AAA ARBITRATION

- **Furtheres Diversity Initiatives** → signatory to Ray Corollary
- **Further ESG Initiatives** (paperless exhibit hearing platforms, signatory to Greener Arbitration Pledge)
- **Cybersecurity** – constantly training to staff and arbitrators to protect your most important private information
- **Flexibility** of virtual/hybrid hearings → huge cost savings



SUMMARY

HOW THE AAA CAN HELP SMALL BUSINESS OWNERS WITH THEIR DISPUTES

Cost Structure: Fee schedule based on the amount in dispute, which provides predictability in terms of costs. Also have special rules and fee structures for disputes involving smaller amounts, which expedite the dispute resolution process for small businesses.

Streamlined Process: Set of Commercial Arbitration Rules that provide a clear, streamlined process covering everything from initiating the arbitration to the final award.

Roster of Arbitrators: Large roster of arbitrators with a wide range of expertise; arbitrators trained and experienced in resolving business disputes.

Administrative Services: The AAA provides a case manager who can answer any questions and help with the process.

Neutrality: The AAA is a neutral third party. It doesn't represent either side in a dispute and is committed to ensuring a fair and impartial process.

Education and Resources: Free educational resources to help small businesses understand the arbitration process. These resources include guidebooks, webinars, and video tutorials.

Enforceability: Arbitration awards made under the AAA's rules are enforceable in court, both in the U.S. and internationally.



PART VI:

AAA resources available to you



AAA RULES, RESOURCES & REMINDERS



Free

on-demand online tool created to help parties draft efficient and **enforceable** arbitration clauses with **clear, concise language**.



Industry- specific versions:

- Commercial
- Construction
- Employment (both Executive and Employer Plan)
- International
- Healthcare

WWW.CLAUSEBUILDER.ORG



The Standard Arbitration Clause

The Standard AAA arbitration clause is often the best choice for ease in contract drafting and negotiation. By invoking the AAA's rules, the standard AAA clause provides a complete set of rules and procedures and eliminates the need to spell out each contingency and procedural matter. When combined with the AAA's case management, the standard AAA arbitration clause provides a simple, time-tested means of resolving disputes that has proven highly effective in hundreds of thousands of disputes.

To use the Standard AAA Clause without viewing a variety of optional clause provisions, please click on the "Finish and Choose this Clause" below.

To be guided through a selection of optional issues that many parties address in arbitration agreements, including the location of the arbitration, the applicable law, the number of arbitrators to be appointed, and others, please select the "Proceed to Other Options" button below. Many parties use the Standard AAA clause as their "foundation" clause, and then modify it to address the additional provisions described on the following screens.

Standard Arbitration Clause Options

- ▶ Number of Arbitrators
 - Method of Arbitrator Selection: AAA Commercial Arbitration Rules
- ▶ Arbitrator Qualifications
- ▶ Locale Provisions
- ▶ Governing Law
- ▶ Discovery
- ▶ E-Discovery
- ▶ Documents Only Hearing
- ▶ Duration of Arbitration Proceedings
- ▶ Remedies
- ▶ Assessment of Forum Fees and Attorneys' Fees
- ▶ Opinion Accompanying the Award
- ▶ Confidentiality
- ▶ Non-Payment of Arbitration Expenses
- ▶ Appeal

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

← Previous

Finish and Choose this Clause →

Proceed to Other Options →

CLAUSEBUILDER®

Selections Include:

- Number of Arbitrators
- Method of Arbitration Selection
- Arbitrator Qualifications
- Locale Provisions
- Governing Law
- Discovery
- Documents Only Hearing
- Duration
- Remedies
- Attorneys' Fees
- And more.....



HELPFUL TIPS FOR DRAFTING AN ARBITRATION CLAUSE FOR A BUSINESS CONTRACT

Mutuality: Make sure the clause applies equally to both parties. Courts are often skeptical of arbitration clauses that are seen as unfairly benefiting one party over the other.

Scope of Arbitration: Be clear on what types of disputes are subject to arbitration. You could state that all disputes relating to the contract will be arbitrated, or you could limit it to specific types of disputes.

Selection of Arbitrators: The clause should specify how the arbitrator(s) will be selected. This could be as simple as stating that the parties will mutually agree on an arbitrator, or it could involve more complex processes.

Arbitration Rules: Specify which set of arbitration rules will apply.

Location of Arbitration: Define where the arbitration will take place. This is important for practical reasons and can have legal implications as well.

Governing Law: Specify which jurisdiction's laws will govern the arbitration proceedings. This might be the same as the law governing the contract, but not necessarily.

Confidentiality: If confidentiality is important, include a provision that the arbitration proceedings and decision will be confidential.

Costs: Address how the cost of the arbitrator(s) will be split if the rules don't address that.

Award: State that the arbitrator's decision will be final and binding, and can be enforced by a court if necessary.

Appeals: Normally, arbitration decisions are final and not subject to appeal. If you want the ability to appeal, you should expressly include the AAA Optional Appellate Process in the clause.

OUR MISSION

To support the prevention and resolution of conflicts by expanding access to alternative dispute resolution.



PRIORITIES



Prevent and reduce violence



Bridge community conflict



Support diversity, Equity & Inclusion

PROGRAMS



Annual Grant Cycle



Rapid Response Grants



Diversity Scholarship Grants



Special Initiatives Grants

IMPACT

\$8.1M+

In grants funded since 2015

\$229K+

Annual grant cycle average grant 2023

146

Projects funded

FUNDING

\$13.5M+

To date, the Foundation has received over \$13.5M in donations.

Over \$9.7M from the AAA-ICDR

Over \$3.8M from AAA-ICDR Arbitrators and Mediators





Svetlana Gitman

Vice President

(773) 820 - 7801

GitmanS@adr.org



AMERICAN
ARBITRATION
ASSOCIATION®

INTERNATIONAL CENTRE
FOR DISPUTE RESOLUTION®