

Washington Arbitration & Mediation Service

Commercial Arbitration Rules (amended/effective 01/09)

1. Applicability of Rules

When the parties to a dispute provide for arbitration by Washington Arbitration & Mediation Service (hereafter “WAMS”), these Commercial Arbitration Rules are deemed to be part of their arbitration agreement and shall be applicable throughout the arbitration process. These Rules and any amendments or modifications thereof shall apply in the form existing at the time arbitration is initiated, and shall be considered in conjunction with, and not in lieu of, any applicable statutory arbitration provisions. To compute time periods for deadline purposes, utilize the format provided in Rule 16bii.

2. Initiating Arbitration by Agreement

To file for voluntary arbitration with WAMS, one or more parties to a dispute should contact the nearest WAMS office with the names and addresses of all parties and a brief description of the dispute. Written confirmation of the agreement to arbitrate must be provided to WAMS prior to the arbitration hearing, along with payment (or guarantee of payment) of the filing fees required by the WAMS Arbitration Fee Schedule. Where all parties and the arbitrator agree, information may be transmitted via email or other forms of electronic communication throughout the proceeding.

3. Initiating Arbitration by Contract Clause

- a. A party initiates arbitration pursuant to a contract clause (hereafter the “Claimant”) by providing notice of the claim or demand for arbitration to WAMS and all parties involved and paying the filing fee required by Rule 3e. Notice of the demand for arbitration must conform to the requirements of RCW 7.04A.090 and include a description of the dispute, the specific relief sought, the contact information for all arbitration participants, and copy of any applicable court order or arbitration clause. Parties must stipulate to the use of WAMS and its Commercial Arbitration Rules even if other arbitration services or rules are referenced in their contract. Faxed or electronic filing of the initial claim or demand for arbitration is not permitted. The initial demand for arbitration may be supplemented thereafter by filing an expanded brief and explanation of the claim as provided by the arbitration case schedule, so long as any change in the claim occurring after filing and appointment of the arbitrator is approved by the arbitrator.
- b. WAMS is not responsible for providing legal notice of a demand for arbitration to the parties involved in the proceeding. The Claimant must file proof of service within ten (10) days of serving each Respondent with a copy of the claim. Following receipt of a demand for arbitration and proof of service, WAMS will confirm receipt of the demand to the Claimant and opposing party or parties (hereafter the “Respondent”) after assigning a case number.
- c. Within twenty (20) days after receipt of a demand for arbitration, as evidenced by the date shown on the proof of service provided to WAMS, each Respondent shall submit an Answer to the demand for arbitration to WAMS and all other parties, describing its defenses to the claims presented and providing contact information for the Respondent’s representative(s). Faxed or electronic filing of initial Answers is not permitted. The initial Answer to the demand for arbitration may be supplemented thereafter by filing an expanded brief and explanation of the Answer as provided by the arbitration case schedule. If no Answer is filed within the designated time frame, the Respondent will be deemed to have denied the claim. Failure to file an Answer to a demand for arbitration shall not cause a delay in the arbitration process.
- d. A Counterclaim describing the dispute and relief sought may be filed by a Respondent if filed and served on the Claimant within the time for filing Respondent’s Answer and if Respondent remits the appropriate filing fee. Faxed or electronic filing of Counterclaims is not permitted. The initial counterclaim may be supplemented thereafter by filing an expanded brief and explanation of the Counterclaim as provided by the arbitration case schedule.
- e. Payment of the required filing fee by the Claimant, as set forth in the WAMS Arbitration Fee Schedule and Rule 9a, is required to initiate arbitration pursuant to contract clause. Failure to submit the required fee when filing a claim or demand for arbitration will delay commencement of the arbitration process.

4. Written Submission Only Option

By contract clause or written agreement of the parties to utilize the procedures set forth in this Rule, WAMS will administer the arbitration process as follows and in lieu of Rules 3, 6, 7, and 10, which shall not apply to this Written Submission Only process:

- a. Parties requesting Arbitration by Written Submission must file their written agreement to proceed under this Rule, providing contact information for all participants, a brief description of the dispute and applicable fee required by the WAMS Arbitration Fee Schedule, in compliance with Rule 4d. This format must be agreed to at the time of claim submission.
- b. Written submissions must conform to the limits and parameters established at the time of case submission. Default awards may be entered in accordance with Rule 15 if a party fails to file a written submission by the applicable deadline.
- c. The arbitrator may be appointed by agreement of the parties, but if a requested arbitrator is unavailable or unwilling to accept an appointment, an arbitrator will be appointed by WAMS. No change in the agreed submission deadline is permissible without the consent of the arbitrator. Such consent shall be provided in emergency situations only. Cases withdrawn from the written submission only process after confirmation shall remain subject to billing for any review time incurred by the arbitrator plus the applicable administrative fee and costs.
- d. Each party shall prepay for a minimum four (4) hours of arbitrator compensation plus the applicable administrative filing fee at the time of case submission, with the arbitration administrator having the authority to determine if any different prepayment amount or allocation is warranted. Arbitration fees are due no later than the deadline established for submission of written materials. Any supplemental fees will be due prior to issuance of the arbitrator's decision. Any excess fees paid will be refunded after issuance of the arbitrator's decision.
- e. Discovery shall be controlled by the parties or as may be ordered by the arbitrator and subject to WAMS Commercial Arbitration Rule 12.
- f. Page limits on briefing shall be determined by the parties and Case Administrator prior to submission of materials. Objections to exhibits shall be filed within three (3) business days after delivery of submissions to the arbitrator.
- g. The written decision of the arbitrator will be issued by facsimile within fifteen (15) business days of the arbitrator's receipt of submissions. A copy of the decision will be provided thereafter to counsel of record by U.S. mail.

5. Conduct of Proceedings

- a. WAMS will provide parties with administrative services prior to and during the arbitration process. This includes, but is not limited to, providing a method of selecting an arbitrator or arbitrators, determining and collecting appropriate fees, communicating information and coordinating documents between parties and the arbitrator(s), and providing scheduling assistance. Thereafter, the case is transferred to the arbitrator, who conducts the arbitration and renders an award.
- b. Upon receipt of a case, the arbitrator has broad authority to conduct the arbitration process in any manner deemed appropriate to reach a just determination and in accordance with RCW 7.04A.150. This includes the authority to resolve pre-hearing matters, order a party to answer reasonable written questions, testify under oath, or produce documents prior to the hearing. Limits on arbitrator authority must be agreed to in writing prior to initiating the arbitration process. Such limits may include restrictions on the arbitrator's authority to award equitable or other relief, so long as such restrictions are allowable by statute or case law in the applicable jurisdiction. The arbitrator has the authority to settle all points of controversy in the dispute and award appropriate relief after hearing the evidence and applying the law to the applicable facts. Judgment may be entered on the award.
- c. WAMS reserves the right to refuse to accept any case referred for arbitration and shall not be required to disclose the reasons for any such refusal. WAMS reserves the right to postpone or reschedule a hearing for good cause and upon receipt of a request by any party or the arbitrator or upon its own initiative.
- d. All arbitration proceedings are confidential to the extent allowed by law. If all parties agree, a record of the proceeding can be made, or if the arbitrator so orders, on motion of one of the parties. Any party requesting a record of the proceeding shall be responsible for making arrangements for the recording and the cost of the record. Any party requiring an interpreter shall be responsible for making arrangements for the interpreter and the cost of the interpreter.

- e. Unless otherwise agreed in writing prior to the hearing, all pleadings, correspondence or documents submitted to or produced by WAMS or the arbitrator become the property of WAMS and shall not be subject to release or duplication. The arbitration administrator may authorize electronic or faxed submission of briefs or other evidentiary pleadings.
- f. The hearing will be held in the place designated in the parties' arbitration agreement. If that agreement is silent as to the place of the hearing, any party may request a site for the hearing. If no other party objects within ten (10) business days of the filing of the request, the hearing will be held at the site requested. The arbitrator or arbitration administrator shall resolve all disputes relating to the location of the hearing and may determine the location in the absence of a request.
- g. Prior to the start of the arbitration hearing, participants will be required to sign a Confirmation of Arbitration Agreement and Disclosure form to acknowledge receipt of arbitrator disclosure information pursuant to RCW 7.04A.120, acceptance of the WAMS Commercial Arbitration Rules and responsibility for arbitrator and administrative hearing costs.

6. Mediation Option or Waiver

Parties requesting arbitration services may be offered the option, by the arbitration administrator, to participate in a pre-hearing mediation session or settlement conference, if no such settlement effort has previously occurred. Parties may request a waiver of any proposed mediation session upon a showing that settlement efforts would be unproductive.

7. Selection of Arbitrators

- a. If an arbitrator selection process is not specifically addressed in the parties' contract or agreement, the following will apply. Unless the parties agree otherwise, only one arbitrator is to be assigned to each case. The parties are to be sent a strike list of arbitrators (at least twice as many as the number of parties plus one and subject to a minimum of five) from which they make their selection. Parties may stipulate to an arbitrator, but if they are unable to agree, each party may cross off a maximum of two names on the list and rank the remaining names in order of preference. The arbitration administrator will then choose the arbitrator based on the remaining names. Ties in ranking are resolved by the arbitration administrator.
- b. If a three-member panel of arbitrators is called for in the parties' contract or agreement and no process of selection is specified, the parties shall select arbitrators from an expanded list provided by WAMS. WAMS will then appoint three mutually acceptable arbitrators based on the parties' selection. The arbitration administrator will designate which arbitrator will chair the panel. The decision of the arbitrators shall be based on a majority vote.
- c. The strike list of arbitrators to be sent to the parties is to be compiled by the arbitration administrator. The arbitration administrator may impose a time limit for the parties to return the strike list, and, if a party fails to comply with the time limit, that party will be deemed to have no preference among the arbitrators on the list.
- d. As required by RCW 7.04A.120, an arbitrator may be disqualified from service based upon the filing of an objection by or on behalf of a party.

8. Disclosure and Qualification of Arbitrators

- a. Prior to accepting an appointment to serve, an arbitrator must disclose to WAMS and the arbitration participants any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:
 - i. Any financial or personal interest in the outcome of the arbitration proceeding;
 - ii. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel, representatives, witnesses, or any other arbitrators.
- b. Disclosure of information pursuant to this Rule is no indication that WAMS or the arbitrator considers that the disclosed circumstance is likely to affect the arbitrator's impartiality or independence.
- c. Arbitrators are independent contractors and not agents or employees of WAMS. Arbitrators are responsible for complying with all disclosure obligations pertaining to their service as neutrals.
- d. Arbitrators may decline an appointment without cause and remove their names from the WAMS panel or change biographical information provided to WAMS at any time.

9. The Amount and Collection of Fees

- a. Each party who files a claim or counterclaim will pay WAMS an administrative filing fee for its services as set forth in the WAMS Arbitration Fee Schedule. The Claimant will pay this fee upon the filing of its claim. The Respondent will pay this fee upon the filing of any Counterclaim or other response.
- b. Arbitrators charge for their time on an hourly basis and each arbitrator designates his or her hourly fee. Arbitrators are entitled to compensation for any time they spend on a case, including but not limited to, time for such activities as the resolution of pre-hearing disputes, arbitration hearing, legal research, travel, and deliberation. Arbitrators are also entitled to compensation for any extraordinary costs they incur, such as telephone or travel expenses. A portion of the arbitrator's hourly fee will be retained by WAMS as part of its compensation for hearing services overhead.
- c. Prior to service by an arbitrator, WAMS estimates the amount of arbitrator time to be required in the proceeding, including pre-hearing, hearing and decision time. Both the administrative fee and the estimated hours of arbitrator time are collected by WAMS prior to any service by the arbitrator. Failure by any party to pre-pay these fees will constitute a failure to proceed pursuant to Rule 14 and may result in the entry of a default award pursuant to Rule 15 or postponement or cancellation of the arbitration proceedings, at the discretion of the arbitration administrator.
- d. At the conclusion of the arbitration proceeding, the arbitrator executes a Time & Cost Affidavit setting forth how much arbitrator time was involved in the proceeding plus any billable costs. The total number of hours actually spent on the case by the arbitrator multiplied by the arbitrator's hourly fee determines the actual fee to be charged for the arbitrator. If the amount of time actually spent is less than the estimated time, the excess fees on deposit will be refunded to the parties. If the amount of time actually spent is more than the estimated time, the parties will be required to pay WAMS any extra fees due prior to finalization of the award by the arbitrator.
- e. Unless the parties agree or a court order indicates otherwise, when a case is submitted to arbitration by court order or by agreement of the parties, and there is no underlying arbitration clause in a contract, each party is responsible for paying its proportionate share of the WAMS administrative filing fee and estimated arbitrator fee, with the arbitrator having the authority to assess, as part of the award and against any party, all or part of the total fees of the arbitration proceeding. If the hearing costs are included as part of the arbitration award, the party against who fees are assessed will be responsible for paying the assessment to WAMS or to the other party, as determined by the arbitration administrator.
- f. Unless the parties agree otherwise, when an arbitration is initiated under an arbitration clause in a contract, the initiating party is responsible for the total fees and costs of the arbitration, with the arbitrator having the authority to assess as part of the award, all or part of the total costs and fees of the arbitration proceeding against any party. However, if the non-initiating party also asks for affirmative relief of any kind, the parties are to share the fees and costs of the arbitration. The arbitrator has the authority to assess, as part of the award, all or part of the total fees of the arbitration proceeding against any party to the arbitration.
- g. If the parties do not proceed to arbitration after initiating a case into arbitration, WAMS remains entitled to its entire administrative fee and any applicable late cancellation fee. Arbitrators are entitled to fees for any time spent on the case.
- h. For minor disputes, arbitrators and WAMS may offer their services on a pro bono or reduced fee basis. WAMS may also charge a supplemental hourly fee for extraordinary administrative services, such as repeated rescheduling requests and late or weekend staffing.

10. Determination of Length of Hearing

- a. Based on documentation received and conversations with the parties, the arbitration administrator determines the approximate length of the arbitration hearing. The time necessary to consider extraordinary documentation or any other time-consuming circumstances shall be part of the arbitration administrator's determination.
- b. Requests for hearings include acceptance of the WAMS arbitration cancellation policy as set forth in the WAMS Arbitration Fee Schedule and case scheduling information. The estimated length of the hearing is used as the basis for determining any late cancellation fee that may be applicable. Objections to the estimated length of the hearing and associated costs must be raised prior to the cancellation deadline.

11. Communication with the Arbitrator

- a. No party or representative of any party shall have ex parte communication with the arbitrator regarding any issue related to the arbitration except during oral hearings. Any communication from the parties or representatives of the parties that is intended for the arbitrator must be directed to the arbitration administrator for delivery to the arbitrator.
- b. By agreement of the parties and WAMS, initial inquiries regarding the arbitrator's willingness to serve as an arbitrator or availability on a specific date may be directed to WAMS or to the arbitrator directly, as agreed by the parties.

12. Discovery

- a. Where the parties' arbitration clause or agreement is silent or ambiguous as to discovery, the following procedures apply:
 - i. Following appointment of the arbitrator, parties may engage in discovery deemed reasonably necessary;
 - ii. Reasonably necessary discovery will generally include depositions, requests for examination, requests for admission, no more than 25 interrogatories (counting sub-parts as separate interrogatories) and any other discovery tools allowable under any applicable local Civil Rules of Superior Court;
 - iii. Unless the arbitrator orders otherwise, no additional discovery shall be requested or authorized. In determining when additional discovery is reasonably necessary, the arbitrator shall consider the nature of the case, amount in controversy, timing of the request and balance between the benefits of discovery and its burden and expense.
- b. Attorneys of record for the parties may issue subpoena to require attendance of a witness or production of documents or tangible evidence.
- c. The parties will act in good faith in the exchange of discovery. Parties will voluntarily exchange all non-privileged documents and information relevant to the dispute.
- d. In the absence of an alternative written stipulation or WAMS case schedule provisions, the following discovery timetable will apply:
 - i. Witnesses shall be disclosed at least forty (40) business days prior to the hearing date;
 - ii. Documents and exhibits to be utilized at the hearing must be exchanged and submitted at least ten (10) business days prior to the hearing date;
 - iii. Objections to the use of any documents or exhibits must be filed with WAMS and served on the other parties at least five (5) business days prior to the hearing date.
- e. The arbitration administrator will attempt to facilitate the resolution of any dispute regarding discovery issues. If a discovery dispute cannot be resolved, the arbitrator will decide and rule on any discovery issues.

13. Admissibility of Evidence

- a. Relevant documents, including affidavits in lieu of live testimony, submitted to the arbitrator and served on all parties at least ten (10) business days prior to the arbitration hearing (or in accordance with the applicable case schedule), shall be presumed admissible unless objection is timely filed in accordance with Rule 12diii or the applicable case schedule.
- b. This Rule does not restrict argument or proof concerning the weight of the evidence admitted, nor does it restrict the arbitrator's authority to evaluate the evidence.

14. Failure to Proceed

- a. Whenever an arbitration clause, an arbitration contract, or these Rules call for a party to proceed with arbitration, a party shall be deemed to have failed to proceed with arbitration when:
 - i. The party repeatedly fails to respond to communications from WAMS or deadlines imposed by WAMS;
 - ii. The party fails to proceed to the next step of arbitration after being properly informed to so proceed;
 - iii. The party fails to comply with an arbitrator's order; or
 - iv. The party otherwise indicates an intent not to proceed.
- b. The arbitration administrator will determine when a party has failed to proceed with arbitration.

15. Default

An arbitration award shall not be made solely on the default of a party. Such an award may be made in the absence of a party upon a proper showing by the other party(ies).

16. Internal Appeal

- a. **The Internal Appeal Rule does not apply unless the parties have agreed to use it.** To use the Internal Appeal procedure, the parties must agree, in writing prior to the hearing and issuance of an arbitration award, that the WAMS Internal Appeal Rule shall apply. Unless the parties agree otherwise, the provisions of the Internal Appeal Rule apply only to arbitration proceedings involving an award by a single arbitrator. If the WAMS Internal Appeal Rule applies, parties must use the procedure as outlined below instead of challenging the arbitration award in court.
- b. A party may appeal the award of an arbitrator and obtain a new hearing before a three member panel of arbitrators by doing the following:
 - i. WAMS must receive, within ten (10) business days of the receipt of the award by the appealing party, a written document that includes the name and number of the case and a statement that the party wishes to file an internal appeal from the award. Payment of an additional administrative fee will be required to cover the costs of administering the appeal.
 - ii. To compute the ten- (10) business day period, the date the award was received is not included. Saturdays, Sundays and the following legal holidays are not counted: New Year's Day, MLK Day, Presidents Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving and Day After Thanksgiving, Christmas Day. A party is deemed to have received an award on the date the party is served personally or by certified or registered mail, or on the date the award is first transmitted to the party via facsimile, e-mail or personal service, if the written award is thereafter mailed to the party, or three (3) business days after the award is mailed, excluding holidays.
 - iii. The appealing party is responsible for all arbitrator fees and costs involved in the appeal proceedings. After arbitrators are selected in accordance with these Rules, the appealing party must promptly pay all estimated fees and costs to be charged by WAMS for the appeal proceeding.
 - iv. The appealing party must proceed with each step for the new arbitration proceeding in a timely manner.
 - v. Upon compliance with the above requirements, enforcement of the single arbitrator's decision is stayed, pending completion of the three-member arbitration. Issuance of a decision by the three-member panel of arbitrators supersedes and voids the decision of the prior single arbitrator.
- c. The hearing before the three-member panel of arbitrators shall be a completely new hearing, with parties not bound by their presentations at the single arbitrator hearing. The decision of the single arbitrator and any explanatory documents written by the single arbitrator may not be used as evidence and shall not be considered by the three-member panel of arbitrators in the new proceeding except for the following purposes:
 - i. If the relief sought by the appealing party is not awarded on appeal, the arbitrators may award the non-appealing party(ies) compensatory costs for the appellate arbitration proceedings. Such costs may include compensation for appeal expenses, including attorneys' fees, time spent and legal interest for the time between the first and second award.
 - ii. If the relief sought by the appealing party is awarded on appeal, the arbitrators may apportion the costs of the arbitration proceedings between the parties, as the arbitrators deem appropriate.

17. High-Low Agreement

- a. The parties may agree in writing, as part of their contract to arbitrate, that the arbitrator's award (decision) shall not be above a certain figure or below a certain figure.
- b. The language of the High-Low Agreement may be part of the parties' contract to arbitrate or may be contained in a supplement to the contract to arbitrate. WAMS can provide parties with a special High-Low Agreement form to be completed and signed prior to the hearing in accordance with the parties' agreement.
- c. In the event that the amount of the arbitrator's award is below the low figure of the parties' high-low agreement, the parties stipulate that the award shall be entered in the amount of the low figure. In the event that the amount of the arbitrator's award is above the high figure of the parties' high-low agreement, the parties stipulate that the award shall be entered in the amount of the high figure.

- d. The terms of the high-low agreement may or may not be disclosed to the arbitrator(s) prior to the award, depending on the agreement of the parties. If the parties do not agree if the high-low terms should be disclosed to the arbitrator(s), the arbitration administrator shall disclose the high-low amounts to the arbitrator. If the parties agree that the high-low agreement should not be disclosed to the arbitrator prior to the award and it is disclosed, inadvertently or otherwise, to the arbitrator(s) prior to or at the arbitration, the non-disclosing party has the right to request that the arbitration be re-scheduled with a different arbitrator. In the event the disclosure occurs during the arbitration, the non-disclosing party is entitled, upon immediate request, to a hearing de novo before a different arbitrator. In either instance, the WAMS Commercial Arbitration Rules shall govern the new arbitrator's selection. The disclosing party shall be responsible for any additional attorneys' fees and other expenses incurred by the non-disclosing party (ies) as a result of the disclosure. After the new arbitrator has rendered an award, evidence of such fees and expenses shall be presented to the arbitrator in the form of affidavits from all parties, and the arbitrator shall render a separate award on that issue.

18. Agreed Settlement Award

If the parties settle their dispute during the course of the arbitration process, the parties may request and the arbitrator may set forth the agreed settlement in an award.

19. Waiver of Rules or Applicable Laws

Any party who knowingly proceeds with the arbitration process after discovering that a provision or requirement of these Rules or applicable laws have not been complied with in a significant manner, and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

20. Rules May be Amended or Modified

These Rules may be amended or modified by WAMS at any time without notice or for use in specific circumstances as deemed necessary by the arbitration administrator.

21. Award

- a. All arbitration awards shall be made in writing.
- b. Unless the parties agree otherwise, arbitrators are not required to provide written opinions or explanations with their awards.
- c. The timing and scope of the award will be governed by the parties' arbitration clause or contract and applicable law.

22. Severability

In the event that any of these Rules or procedures are ruled unlawful or made unlawful by statute, the remaining Rules and procedures are to continue in effect.

23. Immunity of the Arbitrator and Arbitration Administrator

Arbitrators and arbitration administrators are entitled to a qualified, good faith immunity from civil liability pursuant to RCW 7.04A.140. Neither WAMS nor the arbitrator is a necessary party in judicial proceedings related to the arbitration.

24. Matters Not Addressed and Authority of the Arbitration Administrator

The arbitration administrator may alter any of the above procedures to fit the circumstances of a particular case. The arbitration administrator may decide any matter not specifically addressed by these Rules, including any conflict or ambiguity in these Rules. The arbitration administrator has the authority to prepare forms, resolve procedural disputes, impose time limits, and otherwise require parties to take or refrain from taking action.