The Importance, Utilization, and Drafting of Dispute Arbitration and Mediation Clauses in Business, Commercial, Real Estate, Construction, and Other Agreements

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THE IMPORTANCE, UTILIZATION, AND DRAFTING OF DISPUTE ARBITRATION AND MEDIATION CLAUSES IN BUSINESS, COMMERCIAL, REAL ESTATE, CONSTRUCTION, AND OTHER AGREEMENTS

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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Faculty</th>
<th>v</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>1. Private Arbitration: A Brief Description</td>
<td>2</td>
</tr>
<tr>
<td>2. The Advantages of Private Arbitration</td>
<td>2</td>
</tr>
<tr>
<td>3. The Disadvantages of Private Arbitration</td>
<td>3</td>
</tr>
<tr>
<td>4. The Revised Uniform Arbitration Act (RUAA)</td>
<td>3</td>
</tr>
<tr>
<td>5. Three Requirements for a Good Arbitration</td>
<td>4</td>
</tr>
<tr>
<td>6. The Importance of All-Encompassing Procedural Rules</td>
<td>4</td>
</tr>
<tr>
<td>7. The Arbitrators(s): Qualifications and Selection</td>
<td>5</td>
</tr>
<tr>
<td>8. The Costs: Administrative Fees—Arbitrator Compensation</td>
<td>5</td>
</tr>
<tr>
<td>9. The Benefits That Only an Arbitration Service Can Provide</td>
<td>6</td>
</tr>
<tr>
<td>10. Risks, Burdens, and Costs of Non-Administered Arbitrations</td>
<td>7</td>
</tr>
<tr>
<td>11. Modifying the Rules of an Arbitration Service</td>
<td>7</td>
</tr>
<tr>
<td>12. Predispute Arbitration Clauses: Why, When, and How to Use</td>
<td>8</td>
</tr>
<tr>
<td>13. Post-Dispute Agreements and Modifications</td>
<td>10</td>
</tr>
<tr>
<td>14. Conclusion</td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Attachments</th>
<th>12</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Index of ASP’s Rules</td>
<td>12</td>
</tr>
<tr>
<td>B. Sampling of ASP’s Arbitrators</td>
<td>13</td>
</tr>
<tr>
<td>C. Fees of ASP and AAA</td>
<td>16</td>
</tr>
<tr>
<td>D. Predispute Clauses Designating an Arbitration Service</td>
<td>17</td>
</tr>
<tr>
<td>E. Predispute Arbitration Clause (Not Designating an Arbitration Organization)</td>
<td>19</td>
</tr>
<tr>
<td>F. Submission Agreement (Designating ASP)</td>
<td>21</td>
</tr>
<tr>
<td>G. Submission Agreement (Not Designating an Arbitration Organization)</td>
<td>24</td>
</tr>
</tbody>
</table>
FACULTY

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INTRODUCTION

This paper and CLE set forth the advantages and disadvantages of using private arbitration (as compared with court litigation or court-annexed arbitration) to resolve disputes, the benefits of using an arbitration service, the use of predispute arbitration clauses to control future disputes, and the types of agreements suitable for such clauses. Private arbitration is an effective and efficient method of dispute resolution that almost always is preferable to litigation.
1. **PRIVATE ARBITRATION: A BRIEF DESCRIPTION.**

   A. **Definition.** Private arbitration is the referral of a dispute to an impartial third person chosen by the parties who agree in advance to be bound by the arbitrator's decision after a hearing in which both parties have an opportunity to be heard. In essence, the parties agree to substitute their own form of dispute resolution process in place of a jury or court trial.

   B. **Validity and Enforceability.** A written agreement to arbitrate is expressly authorized by the Uniform Arbitration Act (ORS 36.600 to 36.740; RCW 7.04A.010 to 7.04A.903) and the Federal Arbitration Act (9 USC §1-14). An arbitration award may be submitted to the court for confirmation as a judgment of the court. (ORS 36.715; RCW 7.04A.250; 9 USC §9,13.)

   C. **Agreement Required.** Private arbitration requires an agreement to resolve the dispute through arbitration. If the agreement to arbitrate is made before any dispute has arisen, it is called a "predispute arbitration agreement." If the agreement is made after a dispute arises, it is called a "submission agreement." Although an oral agreement to arbitrate is enforceable on common law principles (see Halvorson-Mason v. Emerick Const. Co., 304 Or. 407 (1987)), the practical importance of a written agreement cannot be overemphasized.

   D. **The Arbitration Procedure.** After the parties select an arbitrator (or panel of arbitrators), a hearing date is set. The hearing usually takes place in a conference room and is conducted in an informal but dignified manner. The arbitrator usually is an attorney (or other professional person experienced in the subject area of the dispute, such as an architect or engineer in construction disputes or a real estate appraiser in property value disputes). The decision of the arbitrator is called an award.

   E. **Comparison with Court-Annexed Arbitration.** Private arbitration takes place outside of the court system and is binding on the parties (unless the parties agree to make it non-binding and advisory only). Court-annexed arbitration is mandated by statute (for claims up to $50,000) and takes place within the court system under statutory and court imposed rules after a lawsuit is filed, and any party unhappy with the arbitrator's decision can receive a trial de novo just as if the arbitration had never occurred (ORS 36.400-36.425).

2. **THE ADVANTAGES OF PRIVATE ARBITRATION.**

   Compared with litigation, arbitration has the following advantages:

   A. **Principal Benefit:** The single most important benefit is the opportunity of the parties to select, as the trier of fact and decider of law, a person who is smart, experienced, impartial, conscientious and who also has common sense and legal expertise in the subject area of the dispute.

   B. **Safety:** An arbitrator (or panel of arbitrators) with the above attributes is better able to correctly decide factual and legal issues than is a jury or an inexperienced trial judge struggling in an unfamiliar area. Extreme results are rare.

   C. **Speed:** An arbitration hearing usually occurs several months sooner than a court trial.

   D. **Economy:** The informality and streamlined procedures of arbitration result in significantly reduced attorney's fees and other costs (including reduced discovery).

   E. **Efficiency:** Arbitration eliminates elaborate pleadings, motion practice, case status appearances, and similar litigation mandated procedures.
F. Convenient Hearing Dates: Because arbitration hearings are scheduled according to the availability of their attorneys and the parties, the hearing dates are convenient and conflict-free.

G. Certainty of Hearing Dates: Because an arbitration hearing date has been set with the consent of all concerned, the hearing almost always takes place as scheduled.

H. Privacy: Most laypersons are generally frightened of a courtroom, and prefer the privacy and informal setting of arbitration.

I. Finality (“binding” arbitration): The exceptions that can be made to an arbitrator's award are limited by statute and difficult to prove: corruption, fraud, evident partiality, arbitrator misconduct, etc. (ORS 36.705; 9 USC §10). An award cannot be challenged for an error in law or because of an unreasonable fact-finding. (See ADR in Oregon §14.6 (Oregon CLE 2019).) Although this practical finality is admittedly a two-edged sword, most commentators agree that the finality of an arbitration award is one of the benefits of arbitration.

3. THE DISADVANTAGES OF PRIVATE ARBITRATION.

Arbitration has disadvantages in the following circumstances:

A. Arbitration is not a good forum for a weak case (factually or legally) because an experienced arbitrator is difficult to fool.

B. Arbitration is not a good forum in those rare cases where success may depend upon excluding crucial evidence (which could be admitted under the less stringent evidentiary rules of arbitration).

C. Setting legal precedent through appellate review is not available in arbitration.

D. The inability to force into the arbitration a "third party defendant" who is not contractually bound to arbitrate.

E. The inability of a party to use its financial superiority to wear down an opponent through protracted litigation, or the threat thereof, in order to improve its bargaining position for settlement purposes.

4. THE REVISED UNIFORM ARBITRATION ACT (RUAA).

The RUAA (ORS 36.300 - 36.365) replaced Oregon’s version of the original Uniform Arbitration Act, which was one of the most successful Acts of the National Conference of Commissioners on Uniform State Laws. The dramatic growth in the number of arbitrations spurred the need for revisions necessary to incorporate principles and concepts based on current case law. Also, the RUAA provides more complete procedures for arbitrations in which the parties themselves did not adopt their own rules to govern the process.

Compared with the prior Uniform Arbitration Act, the RUAA made these changes: allows an arbitrator to issue provisional remedies and interim awards (such as attachment and restraining orders); requires arbitrators to disclose any facts that might affect impartiality; grants the same immunity to arbitrators and arbitration organizations that protects judges; grants limited discretion to an arbitrator to order discovery; specifically allows the award of punitive damages and other exemplary relief to the same extent allowable in civil litigation; provides certain rights that cannot be waived in pre-dispute agreements, and enumerates other rights that can never be waived.
The RUAA's greatest practical importance to practitioners is in the area of discovery: Although witnesses and records could be subpoenaed for the arbitration hearing, Oregon’s private arbitration statute did not (and the Federal Arbitration Act still does not) provide for discovery. The parties could agree to discovery between themselves, but a party could not force discovery against a non-party. The RUAA corrected this deficiency by empowering the arbitrator to “permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective.” (ORS 36.675 (3)). The arbitrator is also empowered “to issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding . . “ (ORS 36.675 (4)).

5. THREE REQUIREMENTS FOR A GOOD ARBITRATION

There are three major requirements necessary to achieve the maximum benefits of private arbitration:

A. Complete and self-executing procedural rules that balance fairness with efficiency;

B. High quality arbitrator(s) with expertise in the subject area of the dispute;

C. Reasonable costs;

These components are discussed in the following sections, which also explain why and how an arbitration service can fulfill those requirements.

6. THE IMPORTANCE OF ALL-ENCOMPASSING PROCEDURAL RULES

It is important to remember that private arbitration is a substitute for formal litigation’s vast array of procedural rules. Using an arbitration service ensures an efficient beginning-to-end processing of the dispute, and an arbitration service acts as a supervising procedural umpire. In creating procedural rules for arbitration, the drafter must assume that the opposing party, or its attorney, or (God forbid) both of them might be stubborn, unreasonable, contentious, irrational, and/or procrastinating. Because of this possibility, procedural rules must be designed so that in spite of such human frailties the arbitration process will move forward promptly and fairly.

To illustrate the full extent of the procedural rules of an arbitration service, and by way of example, Attachment A is an index of ASP’s procedural rules. The full set of ASP’s procedural rules (16 pages) can be found on ASP’s web page: www.arbserve.com. AAA’s procedural rules can be found on AAA’s web page at: www.adr.org

The procedural rule of arbitration organization should balance efficiency with fairness and must be all encompassing and (to the extent possible) self-executing. An arbitration service performs many tasks and functions (which otherwise would have to be performed by the parties). By way of example, ASP’s procedural rules provide for:

- A veto/preference method to select the arbitrator(s) from a list (proposed by ASP) of arbitrators who have legal expertise in the subject area of the dispute.

- A disclosures process to preclude arbitrator conflicts of interest.

- Full discovery between parties (equivalent to ORCP), plus discovery from a non-party (to the extent approved by the arbitrator).

- Hearing date determination through a calendar availability procedure.
- Consolidation of hearings (for related disputes).
- 14-day pre-hearing statement of proof (to preclude “trial by ambush”).
- Hearing procedures and evidentiary rules.
- Presumed admissibility of certain documents and affidavits.
- Testimony by telephone (under certain conditions).
- Provisional process is preserved (to allow interim injunctive relief and other provisional remedies from a court pending final resolution by arbitration).
- Modification of procedural rules by stipulation.

7. THE ARBITRATOR(S): QUALIFICATIONS AND SELECTION

The second critical component in private arbitration is to select a high quality arbitrator, and one of the principal benefits of an administered arbitration is (and should be) to assist the parties in selecting the arbitrator(s). One of the greatest advantages of arbitration over courthouse litigation is the ability of the parties to select (as the trier of fact and decider of law), a person with expertise in the subject area of the dispute and who is also smart, experienced, conscientious, fair, and has common sense. Thus, a crucial role of an arbitration service is:

- to create panels of lawyers in different areas of law who possess the above qualities, and
- to provide an efficient procedure for the parties to promptly select a qualified arbitrator, and
- to ensure that the arbitrator has no conflict of interest.

Arbitration services usually allow (and should allow) the parties to pre-select an arbitrator (even though not connected with the arbitration service), but the parties should permit the arbitration service to ensure that their chosen arbitrator has no conflicts of interest.

In deciding whether to use an arbitration service, and in deciding which arbitration service to select, an important consideration is the level of quality on the organization’s panel of arbitrators. An arbitration organization should be able to provide you with a representative sampling of its arbitrators. As an example, Attachment B is a sample of ASP’s business arbitrators from its Portland panel.

An arbitration service will provide a procedure for promptly selecting the arbitrator(s), which should allow each party to exercise vetoes and to denote preferences.

8. THE COST: ADMINISTRATIVE FEES - ARBITRATOR COMPENSATION

Compared with courthouse litigation, there are two out of pocket costs: The administrative fee for a service that administers the arbitration and the compensation paid to the arbitrator(s).

A. Administrative Fees. Most private arbitrations are administered by an arbitration service pursuant to its rules and its administrative fee is a cost that must be considered. However, because of the dramatic escalation of court filing fees that took effect October 1, 2009, those court fees may be significantly higher than the administrative fees charged by an arbitration service. Also, when comparing administrative fees of an arbitration service with a do-it-yourself, non-administered arbitration, it is important to consider the additional attorney fees that each side would otherwise incur to perform the work done by an arbitration service.
service. (For example, compared with ASP’s filing fee of $400 to administer a sole arbitrator, two-party
dispute, it is likely that the attorney fees would exceed $400 for the time an attorney would expend to
propose and agree upon an arbitrator, to request the arbitrator to serve, to establish the arbitrator’s
compensation, to conduct a conflict-of-interest check, to oversee the signing of an arbitrator’s oath, to
formulate/negotiate procedural and discovery rules, and to agree upon a hearing date. And, if the other party
is uncooperative, consider the additional attorney fees in petitioning a court to appoint an arbitrator or to
enforce an open-ended arbitration clause.)

Attachment C shows the administrative fees charged by the two arbitration services most commonly used

B. Arbitrator Compensation. Attorneys and retired judges who serve as arbitrators in private
arbitration are paid for their services. In an administered arbitration, the service’s procedural rules control
the compensation payable to the arbitrator. For example, under ASP’s rules arbitrators are compensated at
their customary hourly rates (but not to exceed $300 per hour). The AAA allows its arbitrators to set their
own compensation rates. In a non-administered arbitration, the arbitrator compensation is controlled by the
agreement between the arbitrator and the parties, and the usual expectation is for arbitrators to charge their
normal hourly rates.

9. THE BENEFITS THAT ONLY AN ARBITRATION SERVICE CAN PROVIDE
Listed below are the benefits and services of an administered arbitration, and the following list underlines
those items that can be performed only by an arbitration organization:

A. Procedural rules that are self-executing (which means that an arbitration may be initiated,
conducted, and concluded in spite of the non-participation, stubbornness, or non-cooperation
of the other party and without the necessity of petitioning a court for assistance);

B. Creating and submitting a list of proposed arbitrators (prescreened for expertise in the
subject area of the dispute) and a method for selecting the arbitrator;

C. Monitoring and supervising the arbitrator selection process to ensure a timely appointment;

D. Establishing a procedure to ensure (to the extent possible) that the arbitrator has no conflict
of interest;

E. Preparing/overseeing the execution of an oath or impartiality verification by the arbitrator;

F. Establishing rules to consolidate cases, and resolving objections thereto;

G. Answering questions about procedure and discovery, and supplying subpoena forms, which
avoids the risk of the potential taint of ex parte contacts with the arbitrator on such matters;

H. Providing a procedure to set the hearing date;

I. Determining the place (city for the hearing);

J. Deciding challenges against the arbitrator, including removal requests made during a hearing
or prior to issuing an award;

K. Establishing a procedure to replace an arbitrator (especially on short notice) in the event of
death, illness, or sudden unavailability to conduct a hearing or in the event of self-recusal
or a successful challenge to the arbitrator;

L. Setting the arbitrator’s compensation and deciding any compensation disputes between the
arbitrator and the parties.
10. **Risks, Burdens and Costs of Non-Administered Arbitrations**

A do-it-yourself arbitration imposes the following burdens and creates the following risks and costs, which become even greater if one of the parties is (or becomes) uncooperative, unreasonable, or dilatory:

A. Establishing the criteria/qualifications of the arbitrator(s);

B. Agreeing upon the arbitrator(s);

C. If the parties cannot agree on an arbitrator, the stalemate will require petitioning a court (under ORS 36.645) and being forced to accept a judge’s like-it-or-lump-it selection.

D. Some do-it-yourself arbitration clauses sometimes require each side to select its own non-neutral arbitrator, with those two non-neutrals then selecting a third arbitrator, but that procedure has the following defects:
   - Problems when one side delays or fails to select its arbitrator.
   - Selecting the third arbitrator can be time-consuming.
   - Using three arbitrators, only one of whom is neutral is unnecessarily expensive and often distasteful to the two non-neutrals.

E. Agreeing upon and carrying out a procedure to ensure that the arbitrator has no conflicts of interest that would preclude serving as the neutral;

F. Establishing the arbitrator’s compensation;

G. Agreeing upon a procedure for setting the arbitration hearing date;

H. Agreeing upon the city where the hearing shall be held;

I. Agreeing upon procedural rules for the hearing (as a necessary supplement to the nearly-nonexistent rules in the statute (ORS 36.665)).

Also, note that resolving/preforming the above tasks often causes these negative consequences:

J. Increased delay;

K. Additional costs because of attorney time/fee in dealing with these administering/procedural functions;

L. Greater delay and costs if court intervention becomes necessary;

And, also note that in a non-administered arbitration:

M. None of the time and expense incurred in dealing with the above procedural issues directly help to resolve the underlying dispute.

11. **Modifying the Rules of an Arbitration Service**

The procedural rules of an arbitration service are default rules, which means that any procedure in the pre-dispute agreement of the parties will override an arbitration service’s procedural rules, and (post-dispute) the parties may modify or override the service’s rules.

For example, the parties may desire to have a sole arbitrator (rather than a panel of three) to decide all disputes under a specified dollar amount, or the parties may require (as a qualification for the arbitrator) a lawyer with not less than 20 years of expertise in the practice of a specific area of law, or the parties may designate the city where the hearing will occur. These superseding modifications can be added to the predispute arbitration clause or by stipulation after a dispute has arisen.
12. **PREDISPUTE ARBITRATION CLAUSES: WHY, WHEN AND HOW TO USE**

A. **The Importance of a Predispute Arbitration Clause.** In drafting or reviewing any written agreement, one of the most important and practical decisions an attorney makes is determining whether to include a predispute arbitration clause. Experience shows that without a predispute clause, no matter how favorably both parties may view arbitration generally, once a dispute arises the prospective defendant is usually content with the status quo and adopts an uncooperative attitude when arbitration is suggested. Your client can control its litigational destinies with a predispute arbitration clause that permits your client to preselect the forum and procedures for resolving future disputes.

B. **Sample Predispute Arbitration Clause.** The following is an example of a single sentence predispute arbitration clause permitting a choice of arbitration services:

> Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

C. **Why use a pre-dispute arbitration clause.** For any business, employer, or contracting party who desires the benefits provided by arbitration, the importance of a pre-dispute arbitration clause cannot be over-emphasized, because a properly drafted arbitration clause provides the greatest assurance that arbitration will be used to resolve all future disputes. A predispute arbitration clause has both offensive and defensive advantages:

   **As a Sword.** Offensively, your client can use the clause to obtain money or relief from the other side more quickly, more economically, and more conveniently, especially in contested matters. Your client need not worry about non-meritorious, jury-appeal type defenses and counterclaims.

   **As a Shield.** Defensively, a predispute arbitration clause discourages frivolous suits against your client (by removing the tantalizing attraction to claimants for juries prejudicially predisposed against business and employers). Arbitration also greatly increases the likelihood of a predictable result by having the matter decided by an objective person with high expertise in the subject area of the dispute.

D. **When to use a Predispute Arbitration Clause:** It is during contract formation (prior to the existence of any dispute) that your clients have the opportunity to control their dispute resolution destinies by preselecting the forum and procedures to resolve future disputes. The attorney should analyze the type of future disputes that are most likely to arise between the parties in connection with the proposed agreement. If the overall benefits to a client favor the use of arbitration, whatever bargaining power is available should be used to insist upon a predispute arbitration clause.

E. **How to use a Predispute Arbitration Clause.** The most succinct and foolproof method is to designate an arbitration service in the pre-dispute arbitration clause, because doing so ensures that a party can easily and quickly reap the benefits of arbitration and because the proposed arbitration clause is far more likely to be accepted if framed in a single sentence or a brief paragraph that encompasses a complete procedure by designating the rules of an arbitration service. Attachment D contains some sample predispute clauses, and these and other forms of specialized arbitration clauses (for construction, leases, employment), can be downloaded from an arbitration organization’s website (such as: Arbitration Service of Portland: www.arbserve.com; and American Arbitration Association: www.adr.org.).

A do-it-yourself predispute provision that does not use an arbitration service is shown in Attachment E.
F. Types of Agreements Suitable for Predispute Clauses. Some examples of agreements in which arbitration should be considered are:

- **Commercial and Consumer Agreements**: To resolve the great variety of disputes that arise in the business world.
- **Sales of Businesses and Property**: To resolve disputes between buyers and sellers (and real estate agents), including disputes over who gets the earnest money when the deal fails.
- **Leases**: To resolve the many disputes which can arise between landlord and tenant, including the establishment of "reasonable rent" during a renewal period.
- **Joint Ventures, LLP’s, LLC’s, Corporate Buy/Sell and other shareholder/member control agreements**: To resolve "partner" type disputes.
- **Construction Contracts**: To resolve disputes between owner, design professionals, contractor and subs.
- **Employment Agreements**: To resolve employee claims, including wrongful termination, discrimination, sexual harassment, civil rights violations, etc.
- **Loan Agreements**: Especially to resolve misrepresentations and "lender liability" type claims.
- **Trusts and Estate Planning Documents**: To resolve disputes between trustee and beneficiaries and beneficiary vs. beneficiary.
- **Settlement Agreements**: To resolve post-settlement disputes (such as non-performance or conduct violations).

G. Adhesive Contracts: Avoiding Unconscionability. Numerically, most agreements are contracts of adhesion created by parties with superior bargaining power on pre-printed, like-it-or-lump-it forms. But, adhesiveness alone does not render a contract unenforceable. *Best v. U.S. National Bank*, 303 Or 557, 560 (1987). A practitioner drafting an arbitration provision in an adhesive contract may jeopardize its enforcement by precluding or curtailing substantive or procedural rights that make the contract unconscionable, for example, by forbidding punitive damages or class actions or claims of fraudulent conduct, or claims based on statute (e.g., unlawful trade practices), or requiring unreasonable venues or claim filing deadlines, or by a disproportionate sharing of costs. If your client insists on precluding or diminishing procedural or substantive rights, place those strictures elsewhere in the contract (and not in the arbitration provision) and add a provision empowering the court or arbitrator to sever any provision found to be unreasonable: (Note: A legal challenge that the contract as a whole is unreasonable is to be decided by the arbitrator, but a challenge directed solely to the reasonableness of an arbitration clause is to be decided by the court. *Vasquez-Lopez v. Beneficial Oregon, Inc.*, 210 Or App 553, 560-566 (2007).

H. Adhesive Contracts: Unconscionability Based on Administrative Fees and Arbitrator Compensation. Adhesive contracts involving consumers and employees deserve special attention. Lawyers representing consumers and employees seek to escape arbitration because they know juries will be biased in favor of their clients and prejudiced against businesses and employers. Oregon (in *The Hays Group, Inc. v. Biege*, 220 Or App 347, 351 (2008)) and the Supreme Court have decided that arbitration’s inherent denial of a jury is not unfair. Referring to claims based on a statute, the Court noted: “By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.” *Mitsubishi Motors Corp v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985). In this context, it is important for practitioners to remember that state law is preempted by the Federal Arbitration Act (9 USC Sections 1-15).
If the contract or its arbitration provision does not curtail procedural or substantive rights, the only remaining challenge for jury-seeking employees and consumers is to argue that arbitration is unconscionable because it is prohibitively expensive compared to the costs of litigation: i.e., arbitration’s administrative fee compared with the court filing fee, and (especially) the arbitrator’s compensation compared with the “free” trial judge/ per diem trial fee. In *Vasquez-Lopez* (supra), although the high cost of arbitration to the consumer was by itself unpersuasive, the arbitration provision as a whole was sufficiently “infected with serious procedural and substantive unfairness” (210 Or App at 576) to render it unconscionable and thereby unenforceable. In *Motsinger v. Lithia Rose-FT, Inc.* 211 Or Ap 610, 618 (2007), the court rejected the employee’s claim that the potential cost of arbitration rendered the arbitration provision unconscionable. Until the courts give a more definitive answer on this specific issue, those challenges will continue to be decided on a fact-specific case by case basis. In employment agreements, one way to avoid this challenge at the outset is to require the employer to pay all or most of the costs of arbitration (see the employment arbitration clause in attachment D). In consumer contracts, a business should consider a provision that limits the consumer’s share of the cost of arbitration to the fees that the consumer would have paid if the claim were brought in the trial court where the consumer resides (a cost-cap provision frequently used by credit card companies in the arbitration clauses in credit card agreements).

I. Modification of Attorney’s Fees Clause Necessary. The attorney fees clause (if desired) should be modified if an arbitration clause is used, in order to permit attorney’s fees to a prevailing party in an arbitration proceeding:

*Attorney Fees:* In the event suit or action is brought, or an arbitration proceeding is initiated, to enforce or interpret any of the provisions of this agreement, or which is based thereon, the prevailing party shall be entitled to reasonable attorney’s fees in connection therewith. The determination of who is the prevailing party and the amount of reasonable attorney's fees to be paid to the prevailing party shall be decided by the arbitrator(s) (with respect to attorney's fees incurred prior to and during the arbitration proceedings) and by the court or courts, including any appellate court, in which such matter is tried, heard, or decided, including a court that hears a request to stay litigation or to enjoin arbitration or to confirm, modify, correct, or vacate an arbitration award (with respect to attorney's fees incurred in such court proceedings).

13. POST DISPUTE AGREEMENTS AND MODIFICATIONS

A. The post-dispute submission agreement. In the absence of a pre-dispute arbitration clause, the time to propose arbitration of a dispute is when the settlement negotiations are stalemated and mediation has failed. Because the cost of litigation is usually far greater and riskier than arbitration, parties will often recognize the wisdom of substituting arbitration for courthouse litigation, and will execute a post-dispute arbitration agreement (usually called a “submission agreement”).

For an administered arbitration, see the submission agreement in Attachment E, which can be downloaded at [www.arbserve.com](http://www.arbserve.com). For a do-it-yourself (non-administered) submission agreement, see Attachment F.

Alternatively, if opposing counsel consents to an administered arbitration, the claimant’s attorney may decide to file the claim with the agreed-upon arbitration service with a statement that the parties have agreed to “submit the claim to arbitration in accordance with the rules of (name of arbitration service).”

B. The post-dispute modification of a pre-dispute arbitration procedure. It is important to remember that parties to a contract can always change their agreement, which may be helpful in the following circumstances:

1. **When an arbitration clause is procedurally deficient or not self-executing.** Some clauses merely declare dispute resolution “by arbitration”, or a clause may specify how to select the arbitrator but have no other procedural rules. In these instances, attorneys often stipulate to arbitrate under the rules of an arbitration service to ensure a complete procedure.
2. When the parties desire to substitute the rules of a different organization. When the parties desire to arbitrate under the rules of a different organization (whether to reduce administrative costs, or for some other reason), the claiming party will often file a claim with a different arbitration organization, either pursuant to a stipulation to do so or in the assumption that the opposing party will accept the substituted organization.

3. When the parties desire to change a pre-dispute term. When the parties desire (for example) to use a sole arbitrator rather than a panel of three arbitrators, or vice versa, they may stipulate post-dispute to alter the prescribed method in the pre-dispute clause.

14. CONCLUSION

When one considers the overall benefits of private arbitration, and considering that an administered arbitration will provide:

- self-executing procedural rules that ensure a beginning-to-end processing,
- the prompt appointment of a high-quality arbitrator,
- a supervising umpire,

and remembering that the parties may change or modify any of the default rules of an arbitration service (and pre-select their arbitrator),

and calculating that the cost for administering a two-party dispute by a sole arbitrator administrative fee can be as low as $400,

resolving disputes by private arbitration administered by an arbitration service is a logical, appropriate, and wise decision.
ARBITRATION RULES
ARBITRATION SERVICE OF PORTLAND, INC. (ASP)
(Revised January 1, 2019)

Rule | Page
--- | ---
Applicability | 1
1. Claim Initiation Under Predispute Agreements: Filing Fees; Answers; Counterclaims; Third Party Claims; Claim Changes; Consolidation | 1
2. Claim Initiation Under Submission Agreements: Filing Fees | 3
3. Service and Filing of Documents | 4
4. Hearing Site; Right to Counsel (and Substitution/Withdrawal) | 4
5. Appointment of Sole Arbitrator | 4
6. Appointment of Three-Arbitrator Panel | 5
7. Real Estate Value/Rental Value Disputes | 5
8. Chief Arbitrator | 5
9. Majority Decision Required | 5
10. Vacancies (Replacement of Arbitrator) | 5
11. Verification of Impartiality of Arbitrator; Conflicts Avoidance Form | 5
12. Arbitrator Challenge Procedure | 6
13. Conduct and Role of Arbitrator | 6
14. Restrictions on Communication Between Arbitrator and Parties | 6
15. Compensation of Arbitrator(s) | 6
16. Summary Disposition of Claim or Issue | 8
17. Scheduling the Hearing; Available Dates Calendar | 9
18. Postponements | 10
19. Discovery; Filings Related to Discovery | 10
20. Pre-Hearing Statement of Proof | 11
21. Conduct of Hearing | 11
22. Certain Documents Presumed Admissible | 12
23. Sanction for Failure to Comply with Arbitration Order | 13
24. Subpoena and Contempt Power | 13
25. Failure or Refusal of a Party to Proceed; Prima Facie Hearing; Defaults not Authorized | 13
26. Adjournments | 13
27. Closing of Hearing | 13
28. Reopening of Hearing | 13
29. When Award Due | 13
30. Scope of the Award | 13
31. Form of Award and Delivery | 14
32. Adjustment of Fees or Compensation Advanced by Another Party | 14
33. Costs and Attorney Fees; Offers of Compromise | 14
34. Method of Determining Amount of Costs and Attorney Fees; Supplemental Award | 15
35. Correcting an Award | 15
36. Confirming an Award as Judgment of a Court | 16
37. Return of Exhibits | 16
38. Interpretation and Application of Rules | 16
39. Modification of Rules by Stipulation | 16
40. Relief from Rules/Acquiescence to Non-Compliance with Rules | 16
41. Application of Oregon and Federal Arbitration Acts; Litigation | 16
42. Non-Liability of ASP and Arbitrator(s) | 17
43. Provisional Remedies/Construction Lien Rights Preserved | 17

Attachment A: Index of ASP’s Rules
Attachment B: Sampling of ASP’s arbitrators
EDELSON, JEFFREY M.  
College: Lafayette; Law School: Villanova  
Markowitz, Herbold, Glade & Mehlhaf, PC  
Areas of expertise: business, construction, corporate, partnerships, real property, employer/employee (both), complex litigation, including employment, business torts, competitive injury, contract disputes, real estate disputes, securities laws  
1211 SW 5th Avenue, Suite 3000, Portland, OR 97204  
(503) 295-3085; FAX (503) 323-9105; OSB No. 88040

EGGUM, SUSAN K.  
b. 1953; admitted 1982  
College: California (Berkeley); Law School: Georgetown  
Lane Powell PC  
(formerly with Cosgrave Vergeer Kester, six years from 6/06)  
Areas of expertise: breach of contract, business, business fraud, corporate, employer/employee (both), legal malpractice, partnerships.  
601 SW 2nd Avenue, Ste 2100, Portland, OR 97204  
(503) 778-2175; FAX (503)778-2200; OSB No. 82457

FORAKER, PEGGY S.  
b. 1949; admitted 1978  
College: U. of Kentucky; Law School: U. of Kentucky  
Sole Practitioner  
Areas of expertise: antitrust, business, corporate, employer/employee (both), foreclosures, land use, legal, medical, accountant malpractice, personal injury (both), probate, real property, securities.  
Advanced mediator training at Harvard and at Center for Dispute settlement in Washington DC.  
1500 NE Irving, Suite 370, Portland OR 97232  
(503) 232-3753; FAX (503) 229-0614; OSB No. 780486

GARDNER, MARK  
b. 1949; admitted 1974  
College: Pacific; Law School: California (Hastings)  
Washington County Court judge (28 years, retired March, 2010)  
Areas of expertise: business, construction, domestic relations, employment, partnerships, personal injury, probate, real property.  
15965 SW Cormorant Dr., Beaverton, OR 97007  
(503) 590-0290; FAX (503) 579-2823; OSB No. 74111

HARRIS, DANIEL L.  
b. 1952; admitted 1983  
College: BYU; Law School: Oregon  
(Jackson County Circuit Court Judge (1997-2013); Harrang Long Gary Rudnick PC (2013-2015); Harris Mediation & Arbitration (2015-present); partner in Davis, Gilstrap, Harris, Heam in Ashland (1986-1999))  
Areas of expertise: construction (and pre-law experience in construction), business, real property, employer/employee, personal injury, domestic relations.  
mailing address: P.O. Box 687, Wilsonville, OR 97070  
(503) 349-2917; harrismediator@gmail.com; OSB No. 832263

HARNDEN, EDWIN A.  
b. 1946; admitted 1972  
College: Columbia; Law School: Columbia  
Barran Liebman  
Areas of expertise: business, corporate, employer/employee (mostly employer; discrimination, wrongful termination), personal injury (mostly defendant).  
601 SW Second Avenue, Suite 2300, Portland, OR 97204  
(503) 276-2101; FAX (503) 274-1212; OSB No. 72112
HELMER, M. CHRISTIE  
b. 1949; admitted 1974  
College: Washington State; Law School: Lewis and Clark; Columbia (LL.M in international law)  
Miller Nash  
Areas of expertise: business disputes, partnership and corporate dissolutions, international sales and joint ventures, commercial finance, real property.  
111 SW Fifth Avenue, Suite 3400, Portland, OR  97204  
(503) 224-5858; FAX (503) 224-0155; OSB No. 74340

KENT, CHRISTOPHER H.  
b. 1955; admitted 1985  
College: Virginia Commonwealth University; Law School: Oregon Kent Mediation & Arbitration  
Areas of expertise: business, construction, corporate, employer/employee (discrimination, wrongful termination), partnerships; securities, franchise.  
205 SE Spokane St, Ste 300, Portland, OR  97202  
(503) 220-0717; ckent@kentadr.com, OSB No. 852530

ROY, DAVID P.  
b. 1951; admitted 1976  
College: Washington State; Law School: Harvard Black Helterline  
Areas of expertise: appeals, business, commercial financing, construction, corporate, employer/employee (mostly employer), real property.  
805 SW Broadway, Suite 1900, Portland, OR  97205  
(503) 224-5560; FAX (503) 224-6148; OSB No. 76317

SHLACHTER, ROBERT A.  
b. 1947; admitted: 1974 (California)  
College: Yale; Law School: Georgetown Stoll Stoll Berne Lokting & Shlachter  
Areas of expertise: business, corporate, partnerships, real property, employer/employee (both), personal injury (both), securities, patents, trade secrets, intellectual property. Mediation training at Pepperdine University.  
209 SW Oak St, #500, Portland OR 97204  
(503) 227-1600; fax (503) 227-6840; OSB No. 911718

VACURA, JULIE R.  
b. 1959; admitted 1984  
College: Santa Clara; Law School: Willamette Larkins Vacura LLP  
Areas of expertise: business, construction, corporate, foreclosures, real property.  
621 SW Morrison Street, Suite 1450, Portland, OR  97205  
(503) 222-4424; FAX (503) 827-7600; OSB No. 84369
Comparison of Arbitration Services of:
Arbitration Service of Portland (ASP) and American Arbitration Association (AAA)

ASP is an Oregon corporation with an office in Portland that administers arbitrations throughout the state. The AAA is headquartered in New York, provides arbitrations throughout the state, and administers Oregon arbitrations from Fresno. Some of the features of the two organizations with respect to the arbitration of commercial and construction disputes are summarized below:

<table>
<thead>
<tr>
<th>Filing Fees: (for two-party dispute)</th>
<th>ASP</th>
<th>AAA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sole arbitrator:</td>
<td>$400</td>
<td>$ 925 plus</td>
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<tr>
<td>(claims up to $75,000)</td>
<td></td>
<td>$ 800 (hearing fee)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$1,725</td>
</tr>
<tr>
<td>3-person panel:</td>
<td>$600</td>
<td>$2,900 plus</td>
</tr>
<tr>
<td>(claims between $150,000 and $300,000)</td>
<td></td>
<td>$2,200 (hearing fee)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$5,100</td>
</tr>
<tr>
<td>3-person panel:</td>
<td>$600</td>
<td>$4,400 plus</td>
</tr>
<tr>
<td>(claims between $300,000 and $500,000)</td>
<td></td>
<td>$3,850 (hearing fee)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$8,250</td>
</tr>
</tbody>
</table>

| Arbitrator Fees:                          | $300/hour            | Set by arbitrator    |

| Procedural Rules:                         |                      |                      |
| Full discovery rights (tracks ORCP)       | Yes                  | No                   |
| 14-day prehearing statement of proof required | Yes                  | No                   |
| Presumed admissibility of certain documents (tracks UTCR 13.190) | Yes                  | No                   |
| Attorney-administrator in local office    | Yes                  | No                   |
| Conducts conflicts-of-interest check prior to appointing arbitrator | Yes                  | No                   |
| Arbitrators throughout Oregon            | Yes                  | Yes                  |

Attachment C: Fees of ASP and AAA
Basic Predispute Arbitration Clause

Arbitration Required. Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc., and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

Basic Predispute Arbitration Clause
Designating ASP and AAA
(for a party with Oregon and non-Oregon transactions)

Any dispute or claim which arises out of or which relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. or the then effective commercial arbitration rules of the American Arbitration Association, whichever organization is selected by the party which first initiates arbitration by filing a claim in accordance with the filing rules of the organization selected, and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

Basic Predispute Arbitration/Mediation Clause

Arbitration Required/Mediation First Option. Any dispute or claim that arises out of or that relates to this agreement, or to the interpretation or breach thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the then effective arbitration rules of (and by filing a claim with) Arbitration Service of Portland, Inc. and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. The parties acknowledge that mediation helps parties settle their dispute and any party may propose mediation whenever appropriate through Arbitration Service of Portland or any mediator selected by the parties.

(Note on arbitration’s interface with mediation. Mediation is a very effective dispute resolution mechanism, but it is inherently a voluntary and cooperative process that cannot be forced upon any party. A dispute resolution clause should avoid language that seeks to mandate mediation and which (arguably) could be construed as a legal condition precedent to arbitration or litigation, because a defendant in bad faith may use a “mediation first” requirement as a delay tactic.)

See next page for Employment Clauses.

Attachment D: Predispute Arbitration Clauses Designation an Arbitration Service
Arbitration clause in Employment Agreement  
(including a provision requiring employer to pay arbitration costs for certain employees)

**Arbitration of Disputes Required (in lieu of litigation).** Any dispute or claim that arises out of or that relates to this employment agreement, or that relates to the breach of this agreement, or to the existence, validity, or scope of this agreement or the arbitration agreement, or that arises out of or that is based upon the employment relationship (including any wage claim, any claim for wrongful termination, or any claim based upon any statute, regulation, or law, including those dealing with employment discrimination, sexual harassment, or civil rights, age, or disabilities), including tort claims (except a tort that is a "compensable injury" under Workers' Compensation Law), or a dispute between the parties that arose/aris before, during, or after employment, shall be resolved by arbitration in accordance with the then effective arbitration rules of Arbitration Service of Portland, Inc. and by filing a claim therewith, and judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof.

**Payment of arbitration costs of an employee earning less than $75,000 per year.** The Employer shall reimburse the Employee for any portion of the filing or other administrative arbitration fees paid by Employee that exceeds $200. The reimbursement by the Employer shall be made within thirty days after the Employer receives notice of the claim and a written notice of the demand for reimbursement that cites this rule. The Employer shall promptly pay when due the other required arbitration administrative fees and the required compensation and compensation deposits of the arbitrator(s) in the amount(s) and within the required deadlines so as not to delay the arbitration proceeding, the scheduling of the hearing, or the arbitration hearing, and no arbitrator compensation shall be required from the Employee. If the Employer fails to timely reimburse the filing fee or pay the arbitration administrative fees or the arbitrator compensation or deposits, the arbitrator(s) may enter such sanctions as deemed appropriate to enforce payment, or may terminate the right of the Employer to enforce the agreement to arbitrate and to allow the employee to commence civil litigation against the Employer. The reimbursement and payment obligations imposed on Employer in this paragraph shall apply only if the Employee was paid (or to be paid) at a rate that did not exceed $75,000 per year (by extrapolation of the Employee’s hourly, weekly, monthly, or other periodic, rate of pay (including commissions, bonuses, and all other compensation)), and the arbitrator shall make a preliminary determination of any dispute over whether the rate exceeded $75,000.
The Importance, Utilization, and Drafting of Dispute Arbitration and Mediation Clauses in . . . Agreements

PREDISPUTE ARBITRATION CLAUSE
(Not designating an arbitration organization)

A dispute or claim that arises out of or that relates to this agreement, or to the breach or interpretation thereof, or to the existence, validity, or scope of this agreement or the arbitration agreement, shall be resolved by arbitration in accordance with the procedures specified herein. The party desiring dispute resolution shall send written notice to the other summarizing the dispute to be arbitrated and advising the other party of the neutral arbitrator it has selected. Within fourteen days of the receipt thereof, the other party shall also select a neutral arbitrator and advise the initiating party of such selection and any additional controversies, claims or defenses that it wishes to include as a part of the arbitration. (If the other party fails or refuses to designate its arbitrator within the initial fourteen-day period above provided, upon the request of the initiating party, and after a five-day notice of the request to the other party, the presiding judge of _______ County, State of ______________, shall designate such arbitrator.) The two arbitrators thus selected shall select a third arbitrator, but if those two are unable within fourteen days to agree upon such third arbitrator, the presiding judge of _______ County, State of ______________, upon the request of either party, and after a five-day notice of the request to the other party, shall designate a third arbitrator. Each of the arbitrators shall be an attorney who has been in practice not less than ten years with expertise in the area of ___________________ law or a retired judge.

The "third" arbitrator shall act as the chief arbitrator and shall set the time and place of hearing.

Each arbitrator shall be paid at the rate of $____ per hour and shall have the right to demand as a condition for beginning or continuing with the arbitration a sufficient compensation deposit to cover the estimated compensation of the arbitrator.

In order to ensure an impartial panel, each arbitrator (including each party-selected arbitrator) shall be capable of signing, and shall sign, the Arbitrator’s Oath that appears at the end of this arbitration clause.

The hearing shall be held in the city of _____________________.

Each party shall be entitled to discovery from the other party (or parties), which shall be conducted in accordance with the procedural rules of the State of ______________________ that govern discovery in the highest trial court level, except that motions requesting or restricting discovery shall be decided by the (chief) arbitrator.

At least fourteen days prior to the date of the arbitration hearing, each party shall mail or fax to all other parties (or such party’s attorney) a statement containing a list of witnesses whom the party intends to call at the arbitration hearing, and a list of exhibits and documentary evidence it intends to introduce. The statement shall contain a brief description of the matters about which each witness will be called to testify, the address and telephone number of each such witness, and whether the witness will testify by telephone. Each party, upon request, shall make the exhibits and other documentary evidence available for inspection and copying by other parties or, if less than 40 pages in total, shall mail copies thereof to the requesting party. A party failing to comply with this rule, or failing to comply with a discovery order may not present at the hearing a witness, exhibit, or documentary evidence required to be disclosed or made available, except with the permission of the arbitrator(s).

If the hearing room has a speaker phone, a witness may testify by telephone, unless the arbitrator(s) finds that this method would be unfair.

The failure, refusal, or inability of any party to cooperate with the arbitration proceedings or to attend the hearing shall not preclude the arbitrator(s) from rendering an award based upon the evidence presented at the hearing.

The arbitrator(s) shall strive to render an award within 14 days after the hearing terminates (and agreement by any two arbitrators on a three-person panel shall be sufficient to render an award).

The cost of the arbitration shall be borne equally by the parties, but the arbitrators shall have the power to award to one party any compensation deposit advanced by it on behalf of the other in order to fund the continuation of the arbitration proceedings.

If the matter in controversy is less than $________________, or if the parties stipulate that the dispute shall be resolved by a sole arbitrator, then the arbitration shall be conducted by the "third" arbitrator selected by the procedure set forth above, and the two neutral arbitrators shall have no further duties in connection with the arbitration proceeding after the "third" arbitrator has been selected, and the "third" arbitrator, as sole arbitrator, shall conduct the arbitration and render an award.

Attachment E: Predispute Arbitration Clause
(Not designating an arbitration organization)
ARBITRATOR'S VERIFICATION OF IMPARTIALITY

Submitted for an arbitration under the rules of Arbitration Service of Portland and involving the following parties:

I, the undersigned arbitrator, hereby accept my appointment as arbitrator in this dispute and declare that I will faithfully and fairly hear and examine the matters in controversy, in accordance with the agreement of the parties and the arbitration rules of Arbitration Service of Portland, and I will make a just award according to the best of my understanding.

I declare that I know of no facts or circumstances that would affect my ability to render an unbiased and impartial award, and I declare that I will disclose to the parties (and to my co-arbitrators, if any) and set forth below any facts known to me that a reasonable person would consider likely to affect my impartiality, including:

a. A financial or personal interest in the outcome of the arbitration proceeding; and
b. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, or the principals of any party, or any party’s attorney or representative, or a witness (or any of the other arbitrators, if any)

except for the occasional incidental contacts that arise between individuals living within the same community, and among professionals practicing in the same city, and that are not likely to influence or prejudice me in any way.

_____________________________/______________ __________________________________________
(signature)                                       (date) (print name of arbitrator)

(State any disclosures below and continue on reverse if more room is needed. You must mail, fax, or email this Verification to Arbitration Service of Portland (aspdx@hotmail.com). Also, you must mail, fax, or email a copy of it to the attorney for each party, or to the party (if not represented). If you make any disclosures, you must also mail, fax or email a copy of this Verification to your co-arbitrators, if any.)
SUBMISSION AGREEMENT
AGREEMENT TO RESOLVE A DISPUTE BY SUBMITTING IT TO ARBITRATION UNDER THE RULES OF ARBITRATION SERVICE OF PORTLAND, INC.

Definitions:

Dispute shall mean the controversy described in the Statement of Claim on page 2 (which summarizes the claim and position of each Party).

Party shall mean each person, partnership, corporation, or other entity who has executed (or whose attorney has executed) this Submission Agreement.

ASP Rules shall mean the arbitration rules of Arbitration Service of Portland, Inc. that are in effect when this Submission Agreement is filed with ASP and that set forth the arbitration procedures to be followed and the rights and obligations of each Party in connection with the arbitration.

1. Submission Agreement. Each Party hereby agrees to and does submit the Dispute to arbitration under the ASP Rules, which are incorporated as a part of this Submission Agreement as if fully set forth herein.

2. Compliance with ASP Rules. Each Party agrees to abide by the ASP Rules and agrees that a judgment may be entered upon the award as provided in the ASP Rules and as permitted by law.

3. Number of Arbitrators. The Parties specify that their Dispute is to be resolved by:
   a sole arbitrator (or) a panel of three arbitrators. (circle one of these choices)

4. Prior Arbitration Clause Superseded. If the Parties have heretofore agreed to resolve any controversy between them by arbitration, the Parties agree that with respect to this Dispute (and this Dispute only) this Submission Agreement and any arbitration proceeding pursuant hereto is intended to comply with and shall supersede and replace any arbitration provision or procedure required in any such prior agreement.

5. Miscellaneous. (If the Parties have agreed upon the arbitrator(s), so state in this paragraph and identify the arbitrator(s) agreed upon. If a hearing site other than metropolitan Portland is desired, so state below.)

Hearing site:________________________________________________________________________
Arbitrator(s): _________________________________________________________________________

Attachment F: Submission Agreement (designating ASP)
Arbitration Service
of Portland, Inc.

STATEMENT OF CLAIM:

Note: Set forth in concise language a summary of the claim of each Party, the dollar amount or other relief sought, whether interest is claimed, and the denial or defense of the adverse party. State whether attorney's fees are claimed and, if so, state whether those are allowed pursuant to an agreement or cite the specific statute that allows those attorney fees. Use additional pages if necessary.

If pleadings have already been filed in court that adequately describe the Dispute, simply attach the pleadings and indicate that the Dispute is set forth in the attached pleadings.

The scope of the award of the arbitrator(s) is limited to the controversy submitted by the parties. Therefore, the Statement of Claim should clearly delineate what the controversy encompasses (and, if necessary, what matters the parties intend to exclude).
**Arbitration Service of Portland, Inc.**

**SIGNATURE PAGE**

This Submission Agreement is dated for reference this ______ day of ____________________, 20____.

<table>
<thead>
<tr>
<th>Name of Party:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Signature of Party or Attorney:</td>
<td></td>
</tr>
<tr>
<td>Print Signer's Name:</td>
<td></td>
</tr>
<tr>
<td>Representative Capacity:</td>
<td>(Attorney, President, Partner, etc.)</td>
</tr>
<tr>
<td>Name of Party's Attorney and Law firm (if any):</td>
<td></td>
</tr>
<tr>
<td>Address and Telephone Number of Attorney (or Party, if not represented by attorney):</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of Party:</th>
<th></th>
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</tr>
<tr>
<td>Representative Capacity:</td>
<td>(Attorney, President, Partner, etc.)</td>
</tr>
<tr>
<td>Name of Party's Attorney and Law firm (if any):</td>
<td></td>
</tr>
<tr>
<td>Address and Telephone Number of Attorney (or Party, if not represented by attorney):</td>
<td></td>
</tr>
</tbody>
</table>

An attorney who signs on behalf of a Party acknowledges by such signature that the attorney has explained this Submission Agreement and the effect thereof to the Party and that the attorney has been authorized and directed to sign on behalf of such Party.
Post Dispute Arbitration Submission Agreement
(Sole Arbitrator - No Arbitration Organization Designated)

The parties signing below hereby agree to resolve by the method of arbitration set forth in this agreement the Dispute hereinafter described and agree that a judgment upon the arbitration award rendered may be entered in any court having jurisdiction thereof. The Dispute to be resolved by this arbitration (is as follows:) (is summarized on the attachment hereto.)

If the parties are unable to agree upon a sole arbitrator within 10 days of the date hereof, then either party may initiate the selection process by written notification to the other party of the name, address, and telephone number of a neutral arbitrator-designator, and the other party shall then have 14 days to give written reply to the initiating party of the name, address, and telephone number of the neutral arbitrator-designator it has selected. The two arbitrator-designators thus selected shall select the sole arbitrator, but if they are unable within 10 days to agree upon the sole arbitrator, the presiding judge of _________ County, upon request of either party, shall designate the sole arbitrator (from among the names submitted by each arbitrator-designator, with a limit of six names to be submitted by each arbitrator-designator). If the non-initiating party fails or refuses to designate its arbitrator-designator within said 14-day period, the initiating party may request the presiding judge of said county to designate the sole arbitrator and the judge may consider the arbitrators proposed by the initiating party.

In order to insure an impartial arbitrator, and the impartial selection thereof, there shall not exist any past or present business or social relationship of significance between the arbitrator or any arbitrator-designator and 1) any of the parties, or 2) any principal, officer, or representative of any party, or 3) any attorney of any party, except for the occasional incidental contacts which arise between individuals living within the same community and among attorneys practicing in the same city and which are not likely to influence or prejudice the arbitrator or an arbitrator-designator in any way, and the arbitrator and each arbitrator-designator shall sign an oath so affirming and making appropriate disclosures. (The arbitrator and each arbitrator-designator shall be an attorney.)

The arbitrator shall set the time and place of hearing.

Each party shall be entitled to discovery, which shall be conducted in accordance with ORS Rules of Civil Procedures, except that motions requesting or restricting discovery shall be decided by the arbitrator.

The arbitrator shall strive to render an award within 14 days after the hearing terminates.

The arbitrator shall (be paid a reasonable compensation) (be paid at the rate of $_______ per hour) and shall have the right to demand as a condition for beginning or continuing with the arbitration a sufficient compensation deposit to cover the estimated compensation of the arbitrator.

The failure, refusal, or inability of any party to cooperate with the arbitration proceedings or to attend the hearing shall not preclude the arbitrator from rendering an award based upon the evidence presented at the hearing.

The cost of the arbitration shall be borne equally by the parties, but the arbitrator shall have the power to award to one party any compensation deposit advanced by it on behalf of the other in order to fund the continuation of the arbitration proceedings.

Dated this ______ day of __________, 20____.

(Typewritten identity and signatures of the parties.)

Attachment G: Submission Agreement (No Arbitration Organization Designated)