

ARBITRATION RULES
ARBITRATION SERVICE OF PORTLAND, INC. (ASP)

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(Applicability. These rules apply to all ASP arbitrations (including those initiated prior to January 1, 2014), except that those parts of Rules 1, 2, and 15 that relate to the amount of filing fees and arbitrator compensation shall apply only to arbitrations filed after January 1, 2014. This is the first increase in filing fees and arbitrator compensation since 2004.) The other changes are non-substantive clarifications and refinements to ASP's prior (1/1/2005) Rules. ASP was established in 1985.

1. Claim Initiation Arising Out of a Pre-dispute Agreement: If an agreement requires the resolution of any future dispute by arbitration, and if that agreement requires, permits, or the filing party proposes, that the arbitration shall be conducted under the rules of Arbitration Service of Portland ("ASP"), the following claim initiation procedures shall apply for a dispute arising thereafter:

A. Claim Initiation. A party may initiate an arbitration by paying to ASP the required non-refundable filing fee and by filing with ASP a Statement of Claim and serving a copy thereof upon each party against whom relief is sought (and by serving a copy thereof on each party's attorney, if known). ASP may refuse to accept claim initiation, or ASP may suspend, or may order the arbitrator(s) to suspend, the arbitration process until claimant pays the required filing fee.

B. Statement of Claim. The Statement of Claim shall summarize the basis of the claim, the relief sought, the dollar amount of any money demand, whether interest is claimed, whether attorney's fees are claimed (and, if so, whether based on contract or statute), and, to the extent known by the initiating party, the opposing party's denial or defense thereto. The statement of claim shall include the names, addresses, and (if known) the telephone numbers of the parties and (if known) their attorneys, and shall include as an attachment, a copy of the agreement that contains the agreement to arbitrate (or the pertinent portions thereof) that identifies the parties, their signatures, the arbitration clause, and those portions that will help ASP to determine the county or city where the arbitration should be held. (Note: ASP claim forms can be downloaded from ASP's web page: arbserve.com.)

C. Number of Arbitrators. If the amount in controversy does not exceed \$100,000, the dispute shall be decided by a sole arbitrator (unless the parties agreed to a three-person panel). If the amount in controversy exceeds \$100,000 (or if it exceeds \$75,000 and three arbitrators are requested by claimant when initiating the claim), the dispute shall be decided by a panel of three arbitrators (unless the parties agreed to resolution by a sole arbitrator). ASP shall determine the amount in controversy when the Statement of Claim is filed. The claimant may amend the claim but if the amendment adds one or more additional respondents, or if the amendment changes the dispute resolution from a sole arbitrator to a three-person panel, the claimant shall pay ASP a filing fee equal to the difference between the original filing fee and the fee payable to ASP if the amended claim had been initially filed.

If, prior to the commencement of a hearing to be decided by a sole arbitrator, the amount in controversy is increased to exceed \$100,000 (because of an allowed amendment of the claim, a counter-claim, or cross-claim), the dispute shall be resolved by a three-person panel upon the request of any party (unless a pre-dispute arbitration provision or other agreement binds the parties requires resolution by a sole arbitrator), and the party filing the amendment shall immediately pay ASP the applicable filing fee, and ASP will appoint two additional arbitrators pursuant to ASP rules.

At any time prior to the commencement of the arbitration hearing by a three-person panel, the resolution shall instead be heard by a sole arbitrator if all of the parties actively participating in the arbitration so agree. The Claimant (by notice to the other actively participating parties) (or their attorneys) shall give written notice to ASP of the person the parties have agreed to serve as the sole arbitrator or state in the notice that the parties have not agreed on who is to be the sole arbitrator, whereupon ASP will designate the sole arbitrator.

D. Filing Fees. When a claim is filed, the initiating party shall pay ASP a non-refundable administrative filing fee based upon the amount in controversy (at the time the claim is filed) and the number of parties (sides) to the dispute, as follows:

If the amount in controversy does not exceed \$100,000 (and does not require resolution by three arbitrators), the filing fee is:

\$400 (the minimum fee) for a dispute that involves two parties (sides),
plus
\$100 for each additional party (side) to the dispute.

(For example: in a real estate dispute, if the buyers (a husband and wife) file a claim against the sellers (three sisters) the filing fee would be \$400 (for what is deemed to be a dispute between two parties (sides) to the dispute); but if the buyers also include a claim against a real estate agent, the claim would be a three party dispute, and the claimant's filing fee would be \$500.)

If the amount in controversy exceeds \$100,000 (or if it requires resolution by three arbitrators), the filing fee is:

\$600 (the minimum fee) for a dispute that involves two parties (sides) to the dispute,
plus
\$200 for each additional party (side) to the dispute.

E. **Answer Not Required; Answer, Counterclaims and Crossclaims; Claim Changes.** An answering statement is not required, and any claim, counterclaim or crossclaim not answered shall be deemed denied. A party against whom any claim is sought for attorney's fees or costs of arbitration shall be deemed to have counterclaimed for the same attorney's fees/costs against the claiming party without the necessity of filing an answering statement therefor. A responding party (the "Respondent") may file an answering statement setting forth any denial or defense to the initiating party's statement of claim and setting forth any counterclaim against the initiating party or any crossclaim against any other party to the arbitration, which counterclaim or crossclaim shall include a claim summary and statements required of a claimant in subparagraph B above. A party may file an additional claim or amend a claim, answer, counterclaim or crossclaim. None of the filings or amendments itemized in this paragraph requires a filing fee unless it adds a party to the arbitration or causes the claim amount to exceed \$100,000.

Time to File: Any of the matters mentioned in this subparagraph (E) may be filed without the consent of any party if filed prior to the 30th day after the appointment of the arbitrator (provided that the arbitrator has been appointed prior to 30 days before the hearing date); thereafter, no such matter may be filed without the consent of each affected party, unless allowed by the arbitrator (or chief arbitrator), whose decision with respect thereto shall be based upon the timeliness of the matter filed in relation to the scheduled hearing date, the time available for an affected party to prepare therefor, whether the amount asserted would require additional arbitrators, and other pertinent factors. **Where to File:** Such matters shall be filed with ASP if filed before the appointment of the arbitrator; thereafter, such matters shall be filed with the arbitrator(s). **Whom to Serve:** A copy of the answering statement, additional and amended claim, and counterclaim and cross claim shall be served upon all affected parties.

F. Third Party Claims; Consolidation. A Respondent seeking recovery against a person or entity that is not a party to the arbitration must initiate a separate claim against that person or entity, and may request ASP to consolidate the third-party claim with a pending ASP arbitration. Two or more arbitrations that have been initiated with ASP may be consolidated for hearing upon request by a party if, in the sole and exclusive determination of ASP's administrator, all of the claims involve a common question of law or fact and a consolidation would not unduly inconvenience, delay, or prejudice the rights of any party. The request for consolidation should be made prior to the appointment of arbitrator(s) in any of the claims. ASP shall give written notice of the proposed consolidation to all parties, and each party shall have ten days to file written objections thereto with ASP (with service thereof on all other parties). Consolidation shall be allowed if all parties consent to the proposed consolidation and may be granted by ASP over the objection of one or more parties. If a party objects, ASP's administrator shall rule upon the objection after hearing arguments in a telephone conference call involving all parties who wish to be heard on the matter, which conference call shall be arranged by the party requesting the consolidation. If consolidation is ordered, ASP may add names to the list of arbitrators previously proposed and/or may withdraw one or more such names so that each party shall have an opportunity to participate in the selection process set forth in Rules 5 and 6. If a consolidation requires the replacement of a previously appointed arbitrator, the party proposing the consolidation shall pay a replaced arbitrator for services rendered.

2. **Claim Initiation Arising Out of a Post-dispute (Submission) Agreement:** If the agreement to arbitrate was entered into after the dispute arose, and if the post-dispute arbitration agreement requires, permits, or one of the parties proposes, that the arbitration be conducted under the rules of Arbitration Service of Portland, the following initiation procedures shall apply:

A. Initiation. A party may initiate an arbitration proceeding under these rules by filing with Arbitration Service of Portland, Inc. a submission agreement that has been signed by each party to the dispute (or by such party's attorney), and by paying to ASP the required non-refundable filing fees.

B. Filing Fees. The following non-refundable filing fees are required:

If the amount in controversy does not exceed \$100,000, the filing fee is:
\$400 (the minimum fee) for a dispute that involves two parties (sides),
plus
\$100 for each additional party (side) to the dispute.

(For example: in a real estate dispute, if the buyers (a husband and wife) seek damages against the sellers (three sisters) the filing fee would be \$300 (for what is deemed to be a dispute between two parties (sides) to the dispute); but if the buyers also seek damages against a real estate agent, the dispute would involve three parties, and the filing fee required would be \$400.)

If the amount in controversy exceeds \$100,000 (or if it requires resolution by three arbitrators), the filing fee is:
\$600 (the minimum fee) for a dispute that involves two parties (sides) to the dispute,
plus
\$200 for each additional party (side) to the dispute.

Any party may advance all or a portion of another party's filing fee, and the advancing party shall be entitled to an adjusting offset or reimbursement in the award pursuant to Rule 32 (if the parties themselves have not otherwise adjusted the matter). ASP may suspend, or may order the arbitrator(s) to suspend, all arbitration proceedings until all required filing fees have been paid.

C. Form of Submission Agreement. The submission agreement shall be on a form approved or accepted by ASP and shall contain or have attached thereto a concise statement of claim that summarizes on behalf of each party the basis of the claim, the relief sought, the dollar amount of any money demand, whether interest is claimed, whether attorney's fees are claimed (and, if so, whether based on contract or statute), and any party's denial or defense thereto. (Note: Submission Agreement forms can be downloaded from ASP's web page: arbserve.com.)

3. **Service and Filing.**

A. Service: How Made. (From ORCP 9B) Whenever under these rules service is required or permitted to be made upon a party, and that party is represented by an attorney, the service shall be made upon the attorney (except that service of the statement of claim filed pursuant to Rule 1 shall be made on both the party and the party's attorney (if known)). Service upon the attorney or upon a party shall be made by delivering a copy to such attorney or party or by mailing it, emailing it, or faxing it to such attorney's or party's last known address. Delivery of a copy within this rule means: handing it to the person to be served; or leaving it at such person's office with such person's clerk or person apparently in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at such person's dwelling house or usual place of abode with some person over 14 years of age and residing therein. Service by mail is complete upon mailing.

B. Filing. The filing of any paper occurs when it arrives at the office of ASP or an arbitrator, whether accomplished by mail, fax, or personal delivery. (Note: After the appointment of the arbitrator(s), papers filed by the parties shall be filed with the arbitrator(s), and should not be filed with ASP unless specifically required by an ASP rule.)

4. **Hearing Site; Right to Counsel (and Substitution/Withdrawal).** The arbitration hearing shall be held in the city/locale selected by ASP, unless the parties agree to hold it elsewhere. ASP's determination shall be based upon the venue provision (if any) in the agreement, the location of the parties, their attorneys, witnesses, the subject matter of the dispute, and other relevant factors.

Right to Counsel. A party may be represented by an attorney during all or any part of the arbitration process. An attorney may withdraw as counsel or may replace another attorney, and the act of withdrawal or substitution shall be promptly confirmed in writing by the withdrawing or replacement attorney by serving notice on the client, each opposing party (or such party's attorney), and ASP.

5. **Appointment of Sole Arbitrator.** If the dispute is to be decided by a sole arbitrator and if the parties have not agreed upon an arbitrator, ASP shall appoint an arbitrator pursuant to the following procedure. After the dispute has been filed, ASP shall mail to the Claimant (or Claimant's attorney) and to the Respondent (and Respondent's attorney) an identical list of six or more attorneys (who have been in practice for ten years) or retired judges, with biographical summaries. Each party shall have ten days from the mailing date to strike (cross off) up to two names, number the remaining four (or more) unstruck names in the order of preference, and return the list to ASP. (No copy should be sent to any other party.) If a party does not return the veto/preference indications within said ten-day period, or strikes more than two names, ASP may deem all the names on the list to have been accepted by the party. ASP shall select the arbitrator from among the unstruck names and in accordance (to the extent possible) with the parties' preferences. If none of the selected arbitrators agree to serve, ASP shall mail a new list, and the same veto/preference return procedure shall be repeated until an arbitrator is selected and agrees to serve.

(Note: Nothing in ASP's rules preclude parties from selecting as their arbitrator someone other than on ASP's proposed list, including a person who is not on ASP's panel of arbitrators (provided that the parties should be prepared to pay compensation to a non-ASP arbitrator at a rate higher than ASP's arbitrator compensation rate, and also provided that ASP is allowed to ensure that such arbitrator has no conflicts of interest, by using the verification of impartiality procedures set forth in ASP Rule 11.)

Personal Injury and Medical Malpractice Disputes. In personal injury or medical malpractice disputes, each arbitrator proposed by ASP shall be an attorney who represents (or has represented) both plaintiffs and defendants in personal injury disputes, or a former judge (of the Oregon Circuit Court, Court of Appeals, or Supreme Court).

6. **Appointment of Three-Arbitrator Panel.** If the dispute is to be decided by a three-arbitrator panel, and if the parties have not agreed upon the arbitrators, ASP shall appoint the arbitrators pursuant to the following procedure. After the dispute has been filed, ASP shall mail to the Claimant (or Claimant's attorney) and to the Respondent (and Respondent's attorney) an identical list of ten or more attorneys (who have been in practice for ten years) or retired judges, with biographical summaries. Each party shall have ten days from the mailing date to strike (cross off) up to two names, number the remaining unstruck names in the order of preference, and return the list to ASP. (No copy should be sent to any other party.) If a party does not return the veto/preference indications within said ten-day period, or strikes more than two names, ASP may deem all of the names on the list to have been accepted by that party. ASP shall select the panel of arbitrators from among the unstruck names and in accordance (to the extent possible) with the parties' preferences. If a panel cannot be completed from the selected arbitrators because of insufficient acceptances to serve, ASP shall mail a new list of names, and the same veto/preference return procedure shall be repeated until the panel is completed.

Personal Injury and Medical Malpractice Disputes. In personal injury and medical malpractice disputes, ASP shall mail three identical lists which separately categorize six attorneys who represent (or have represented) primarily plaintiffs, six attorneys who represent (or have represented) primarily defendants, and six attorneys who represent (or have represented) both plaintiffs and defendants in personal injury cases, and/or former judges (from the Oregon Circuit Court, Court of Appeals, or Supreme Court), and the parties shall make said veto and preference selections from each such list, so that the three-arbitrator panel will consist of one arbitrator from each of those three categories.

7. **Real Estate Value/Rental Value Disputes.** If ASP determines that the sole issue to be resolved is the fair rental value or the fair market value of real property located in the Portland metropolitan area, the list of proposed arbitrators shall consist of real estate appraisers and/or real estate brokers.

8. **Chief Arbitrator.** ASP shall promptly designate one member of a three-arbitrator panel to be the Chief Arbitrator, who shall decide such preliminary and other matters as may be required in these rules.

9. **Majority Decision Required.** In a three-arbitrator panel, the chief arbitrator shall decide all preliminary matters prior to any hearing (unless these rules require the matter to be decided by the panel), and after a hearing has begun all decisions on the merits shall be decided by a majority of the arbitrators.

10. **Vacancies.** If any arbitrator resigns, dies, withdraws, declines or becomes disqualified or unable to act as an arbitrator (upon proof satisfactory to ASP), a replacement arbitrator shall be obtained in the manner specified for the selection and appointment of an arbitrator. If such vacancy occurs on a panel of three arbitrators, the remaining arbitrator or arbitrators may, if all of the parties so approve, continue with the arbitration, the hearing, and a determination of the dispute by the rendering of an award agreed to by both remaining arbitrators or by the sole remaining arbitrator.

11. **Impartiality of Arbitrator and Verification (follows ORS 36.650); Conflicts Avoidance Form.** Any arbitrator appointed and serving pursuant to these rules shall sign ASP's form of verification of impartiality, which requires the arbitrator to disclose to all parties and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator, 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, their counsel or representatives, a witness (or any of the other arbitrators, if any).

The arbitrator shall file the signed verification form with ASP and shall serve a copy thereof on each party (and, if any disclosures are made, on the other arbitrators, if any).

After accepting appointment, an arbitrator has a continuing obligation to disclose to all parties (and to the other arbitrators, if any), any facts that the arbitrator thereafter learns that a reasonable person would consider likely to affect the impartiality of the arbitrator.

In order to alert any proposed arbitrator to a potential conflict of interest or close relationship, and to permit the arbitrator to disclose any information that might affect impartiality, each party shall disclose to ASP the name of its principals, witnesses, and attorneys on an ASP conflicts avoidance disclosure form and shall return the form to ASP with its arbitrator veto/preference list. (A copy need not be sent to the other party.) Those disclosures will be included with ASP's request-to-serve letter to the selected arbitrator(s).

- 12. Arbitrator Challenge Procedure.** At any time prior to the rendering of the award, but as soon as practicable after acquiring such information, any party may challenge an arbitrator on the basis of partiality, bias, financial or personal interest in the result of the arbitration, or past or current relationship with any party, a party's representatives, a party's attorney, a witness, or another arbitrator (if any). The challenging party shall inform ASP of such information in writing and serve a copy thereof on the other parties. If the arbitrator denies such information or denies that it would affect the arbitration and therefore declines to resign, ASP shall determine whether the arbitrator should be disqualified, and the decision of ASP shall be conclusive on the parties.
- 13. Conduct and Role of Arbitrator.** In the arbitration proceedings, an arbitrator shall be bound by the same general ethical considerations that apply to a judge and will adhere to the same general standard of conduct prescribed by the Code of Judicial Conduct. (www.osbar.org/rulesregs/toc.html) After the appointment of the arbitrator(s), the arbitration proceeding thereafter shall be conducted by the arbitrator(s), and ASP shall have no further role except as specifically authorized or required in these rules (except to respond to inquiries by a party, an attorney, or an arbitrator about ASP's rules).
- 14. Restrictions on Communication Between Arbitrator and Parties.** No disclosure of any offers of settlement made by any party shall be made to the arbitrator(s) prior to the announcement of the award. Neither counsel nor any party may communicate with the arbitrator regarding the merits of the case except in the presence of, or upon reasonable notice to, all other parties. A request for a postponement or other such peripheral matters may be communicated or discussed directly with the (chief) arbitrator when warranted by necessity and time constraints, but only after unsuccessful attempts to communicate through the secretary or an assistant of the (chief) arbitrator and after unsuccessful attempts to discuss the matter via conference call among all concerned.
- 15. Compensation of Arbitrator(s).**

 - A. Rate of Compensation; Expenses. After being appointed to serve, an arbitrator shall be compensated as follows: at the standard hourly rate routinely charged by such person for his/her office work, or \$250 per hour, whichever hourly rate is the lower. An arbitrator shall be compensated for time expended on preliminary, scheduling, and procedural matters, time spent in research and reading briefs, hearing time, time spent in deliberations and the rendering of the award and any supplemental or amended award, and travel time between the arbitrator's office and the hearing site, and shall be reimbursed for necessary and reasonable out-of-pocket expenses (such as copying charges, postage, and travel costs, but not secretarial or overhead costs).

B. Minimum Compensation if Hearing is Cancelled. If an arbitration scheduled for hearing is terminated prior to hearing or concludes during or after a brief hearing, as compensation for such matters as scheduling, preliminary work, and hearing attendance, an arbitrator (and each arbitrator on a panel) may charge the following minimum fees:

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| If canceled after the scheduling of a hearing but prior to the day of the hearing | \$250 |
| If canceled on the day of the hearing but prior to the commencement thereof | \$350 |
| After the hearing commences | \$500 |

The above fees are in lieu of the hourly rates, and each party shall pay an equal share of said minimum fee. If an arbitrator expended time that would result in compensation exceeding the above minimum fees, the arbitrator shall be compensated therefor upon preparing and serving a Statement of Time Expended, and the above minimum fees shall not apply.

C. Deposit Required; Placement in Arbitrator's Trust Account. The parties shall estimate the time that the arbitrator(s) will be required to expend in the arbitration proceeding. Each party shall pay to the arbitrator(s) an equally proportionate share of such estimated compensation and estimated expenses reimbursable under paragraph A. Based upon the estimates submitted by the parties, the (chief) arbitrator shall determine the total estimated compensation. If at any time thereafter (prior to the hearing, during the hearing, or prior to the issuance of an award) the (chief) arbitrator determines that the existing deposit(s) will not be sufficient to cover the compensation of the arbitrator(s), each party shall pay to the arbitrator(s) an equally proportionate share of such additional estimated compensation as determined by the (chief) arbitrator. In the event there is more than one arbitrator, each party shall pay its equally proportionate share to each of the arbitrators. (Because of greater administrative duties, or if it is anticipated that the chief arbitrator will be required to rule on preliminary matters, the estimated compensation for the chief arbitrator may be higher.)

An arbitrator shall place all compensation deposits received in the arbitrator's trust account and shall not compensate himself/herself until the arbitrator has submitted the required Statement of Time Expended to each party (as required in subparagraph G below).

Illustrated below is an example of the determination "equally proportionate share" in a real estate dispute:

| <u>The parties</u> | <u>Such Party's Share</u> |
|--|---------------------------|
| Claimant (Buyer), an individual: | 20% |
| Respondents (Sellers) who are three brothers and represented by the same attorney: | 20% |
| Respondents (Buyer's realtors, who are a broker and the brokers' sales persons, all represented by the same attorney): | 20% |
| Respondents: the seller's broker and that broker's sales person, who are not represented by the same attorney: | 20% each |

D. Time of Deposit. Each party shall mail its compensation deposit(s) to the arbitrator(s) within fourteen days after receiving notice of the hearing date. However, if the time between the notice date and the scheduled hearing date exceeds four months and if the required compensation deposit exceeds \$1,000 (per arbitrator), the party may either send all of the required deposit to the arbitrator(s) within the fourteen day period or, alternatively, send \$500 to the arbitrator(s) within that fourteen day period and send the balance not less than thirty days prior to the hearing date.

E. Suspension of Proceedings Pending Payment of Deposit. The arbitrator(s) may decline to begin a hearing or to continue with a hearing or to render an award until the necessary deposits are made. An arbitrator shall notify all parties prior to the hearing if any party's compensation deposit has not been paid or if, during the course of the proceedings, an additional deposit is necessary because it appears that the deposit will not be sufficient to compensate for the time necessary to complete the arbitration.

F. Payment by One Party of Another's Deposit. If a party has not timely paid, or has indicated its inability to timely pay, part or all of an arbitrator's compensation deposit, the other party or parties may advance such compensation deposit in order to continue the arbitration, and the advancing party shall be entitled to an adjusting offset or reimbursement in the award pursuant to Rule 32 (if the parties have not otherwise adjusted the matter between themselves).

G. Statement of Time Expended and Expenses. An arbitrator shall serve a detailed Statement of Time Expended on each party within 14 days after the award or supplemental award (with or without retention of jurisdiction) or any earlier termination of the arbitration by settlement, abandonment, ruling, agreement or otherwise, or within 14 days after the arbitration process has been suspended or continued for longer than 60 days, accompanied by any refund due to each party who paid the compensation deposit. The Statement of Time Expended shall itemize (on an ASP form) the dates, tasks performed, and time spent by the arbitrator on the arbitration, or shall indicate the minimum fee charge, and shall also list expenses reimbursable under paragraph A.

H. Payment of Compensation If Deposit Inadequate; Attorney Fees. If the Statement of Time Expended results in any compensation balance owing to an arbitrator, each party shall pay its required share thereof to such arbitrator within thirty days after the date of service. In the event an arbitrator commences an action to recover said balance, the prevailing party therein shall be entitled to recover reasonable attorney fees awarded by the court, including any appellate court.

I. Compensation Disputes. Within 14 days of receipt of an arbitrator's Statement of Time Expended, any party may challenge an arbitrator's Statement of Time Expended by filing with ASP a statement detailing the objections, and simultaneously mailing, emailing, faxing, or delivering a copy thereof to the arbitrator, who shall respond within fourteen days from the date of the objector's letter. The decision of ASP on the dispute shall be final and binding on the arbitrator and the objecting party.

16. Summary Disposition of Claim or Issue (follows ORS 36.665(2)). An arbitrator, or panel of arbitrators, may allow a request for the summary disposition of a claim or a particular issue:

- a. If all interested parties agree; or
- b. Upon a ruling by the arbitrator(s) to decide the claim or issue in a summary manner.

If all interested parties have not agreed to a summary disposition, the requesting party shall file the request with the arbitrator(s) and serve it upon all interested parties. The request shall state whether the entire claim should be decided in a summary manner or set forth one or more specific issues that should be so decided. The request shall also explain why the matter should be decided in a summary manner and the request shall include a summary of the dispositive facts and the controlling law. The signature of the requesting party or the party's attorney shall constitute a verification of a sincere belief that there is no genuine issue as to any material fact and that the requesting party is entitled to prevail as a matter of law.

(Note: This rule 16 is not the same as a summary judgment procedure pursuant to ORCP 47 because: a wrong summary judgment ruling in circuit court can be corrected by the Court of Appeals but an award by the arbitrator(s) is not reversible by the circuit court (or an appellate court) on the basis of a wrong finding of fact or an error at law. Therefore, knowing this, the arbitrator(s) presumably will have a greater reluctance in deciding to allow the request for a summary determination or to thereafter render a summary award. Some examples of the type of claims or issues suitable for utilizing this ASP rule are: a defense that the claim is barred by the statute of limitations, or a defense that a party did not agree to arbitrate, or that the dispute (or portion thereof) is not encompassed within the agreement to arbitrate.)

The requesting party shall arrange a telephone conference among the affected parties (or their attorneys) and the arbitrator(s) during which the parties can argue their position on whether or not the matter should be decided in a summary fashion. Prior to the telephone conference, a party opposing the request may file with the arbitrator(s) an opposition statement (with or without supporting documents) and serve it on the requesting party and all other interested parties or their attorneys.

The arbitrator(s) must then rule on whether it is appropriate to hold a summary disposition hearing, and in making that decision the arbitrator(s) shall assess and balance the customary bifurcation versus single hearing factors and shall also consider the apparent merits of any party's position based upon any statement, affidavits or briefs filed by the parties or at oral argument. A ruling by the arbitrator(s) on the appropriateness of a summary resolution shall be determined after a telephone conference call involving the arbitrator(s) and all parties desiring to be heard, which conference call shall be arranged by the requesting party. The ruling shall be documented by a letter to the parties (copy to ASP).

Upon a ruling to hear the claim or issue in a summary manner (or upon agreement of all interested parties), the (chief) arbitrator may either set a date/time (upon consulting with the parties) for a summary hearing to resolve the claim or issue or, alternatively, instruct ASP to mail calendars pursuant to the calendaring method set forth in ASP rule 17. The (chief) arbitrator shall decide whether or not the hearing shall consist of a telephone conference call. At least 20 days before the hearing date, the requesting party shall file with the arbitrator(s) and serve on the opposing parties documents to support its position, and at least 10 days before the hearing date the opposing party shall similarly file and serve opposing documents. The supporting and opposing documents may be those that are presumed admissible under ASP rule 22B, and may also include depositions. If the underlying facts of a claim or an issue are not in dispute, the hearing shall consist of a telephone conference call to permit the parties to argue their legal positions. If the hearing results in the defeat or allowance of all of a party's claim, the arbitrator(s) shall render an appropriate award with respect thereto.

- 17. Scheduling the Hearing; Available Dates Calendar.** When the arbitrator (or panel of arbitrators) has been appointed, ASP shall serve upon each party a calendar upon which each party shall indicate all of the dates that are available to the party and the party's attorney for the arbitration hearing. Each party shall mail or deliver the completed availability calendar to the arbitrator or chief arbitrator within fourteen days of the service date. If a party fails to return a completed availability calendar within the required time, the arbitrator (or chief arbitrator) may assume that the party and attorney are available on all of the calendar dates (excluding weekends and holidays).

The arbitrator (or the chief arbitrator) shall promptly set the date and time of the hearing as soon as practicable according to the availability schedules submitted by the parties (and the other arbitrators). If all the parties request an expedited setting of the hearing, or if the arbitrator or chief arbitrator believes that it will be difficult to set a date by using the available dates calendar procedure, or if the arbitrator or chief arbitrator believes that one of the parties is not using good faith efforts to schedule a time for the hearing, the arbitrator or chief arbitrator may set the hearing date via a telephone conference call or in any manner reasonably calculated to overcome the apparent obstacles.

The arbitrator (or chief arbitrator) shall determine the office or premises where the hearing is to be held. If the hearing cannot be conveniently held in the office of the arbitrator (or one of the arbitrators), it shall be held in the offices of an attorney for one of the parties if the parties so agree and, if not, the arbitrator (or chief arbitrator) shall obtain a different location.

The arbitrator (or chief arbitrator) shall mail to each party (and the other arbitrators) a notice of the time and place of the hearing (in the locale agreed upon by the parties or determined by ASP pursuant to Rule 4).

- 18. Postponements.** A hearing date may be postponed at any time only upon just and sufficient cause by the arbitrator(s), or upon the application of any party to the arbitrator or chief arbitrator (whose decision shall be final). The hearing date shall be postponed if all the parties so agree.
- 19. Discovery Procedures.** (Note: ASP's rules can and do govern discovery between/among parties, because those parties have agreed to abide by ASP's rules. But, non-parties are not bound by ASP's rules, and the right to obtain discovery from non-parties (in private arbitration) rests solely upon ORS 36.675 (Oregon's version of the Revised Uniform Arbitration Act). Discovery from a non-party requires the approval of the arbitrator, who is more likely to grant discovery requests that are accompanied by a statement that the opposing party consents or has not objected.)
- A. Obtaining Discovery From Another Party. (follows U.T.C.R. 13.140) Each party is entitled to discovery from another party to the arbitration to the same full extent as if the case were then pending in the circuit court and governed by the Oregon Rules of Civil Procedure (except as modified by ASP's rules), except that motions or objections relating to discovery shall be determined by the arbitrator or chief arbitrator. A written report of a non-medical expert is discoverable, but the expert cannot be deposed or be required to respond to interrogatories. The (chief) arbitrator shall balance the benefits of discovery against the burdens and expenses, and shall consider the nature and complexity of the case, the amount in controversy, and the possibility of unfair surprise that may result if discovery is restricted. The (chief) arbitrator is empowered to render any sanction available to a judge pursuant to ORCP Rule 46, except the rendering of a default award .
- B. Obtaining Discovery From A Non-Party (authorized by ORS 36.675). In order to make the proceedings fair, expeditious, and cost-effective, upon request of a party, the (chief) arbitrator may permit document production from, and the deposition of, any witness for use as evidence at the hearing, including a witness who cannot be subpoenaed for, or is unavailable to attend, the hearing. The arbitrator shall determine the conditions under which the document production or deposition is to occur. The arbitrator may 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.
- C. Enforcement. If the (chief) arbitrator permits discovery against a non-party, such arbitrator may issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a non-complying party to the extent a court could if the controversy were the subject of a civil action in Oregon.
- D. Protective Orders. The (chief) arbitrator may issue a protective order to prevent disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in Oregon. (Note: ORS 36.675(6) and (7) grant authority to a court to enforce the subpoena and discovery related orders of an arbitrator.)
- E. Filings Relating to Discovery. Notices of depositions, production and inspection requests, and objection and responses thereto, shall not be filed with ASP (similar to ORCP 9D), nor shall those be filed with the (chief) arbitrator unless a ruling on an objection or motion is required. Requests for admissions and responses to such requests, and the effect thereof, shall follow the form and procedures described in ORCP 45, and shall not be filed with ASP, nor shall those be filed with the (chief) arbitrator prior to the arbitration hearing unless a prehearing ruling is required on an objection or motion.

20. Pre-Hearing Statement of Proof. (Similar to U.T.C.R. 13.170) At least fourteen days prior to the date of the arbitration hearing, each party shall file with the arbitrator(s) and serve upon all other parties 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 (see Rule 22). 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 affiant, 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), who may consider the relief provisions in Rule 40.

21. Conduct of Hearing. (Similar to U.T.C.R. 13.180)

A. Procedure. The arbitrator(s) shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

1. Make the interrogation and presentation effective for the ascertainment of the facts,
2. Avoid needless consumption of time, and
3. Protect witnesses from harassment or undue embarrassment.

B. Oaths and Testimony. A witness shall be placed under oath or affirmation by the arbitrator prior to presenting testimony, but the accidental failure to give the oath or affirmation shall not preclude the arbitrator(s) from considering such testimony. The arbitrator(s) may question any witness. When not testifying, witnesses (other than a party) may be excluded by the arbitrator(s).

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

D. Recording. The hearing may be recorded electronically or otherwise by any party or the arbitrator(s). The cost of such recording is not a recoverable item of cost.

E. Evidence.

1. The parties may offer such evidence as is relevant and material to the dispute and shall produce such evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. Adherence to the evidentiary rules governing a court trial is not required. All evidence shall be taken in the presence of the arbitrator(s) and all of the parties who attend the hearing.

2. The (chief) arbitrator shall determine the admissibility, relevance, and materiality of the evidence offered and may exclude evidence that is not material to the controversy or deemed by the (chief) arbitrator to be cumulative or irrelevant (and in deciding such matters, the chief arbitrator may consult with the other arbitrators).

3. The (chief) arbitrator shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client.

4. Any arbitrator may subpoena witnesses or documents upon the request of any party or a party's attorney may issue such subpoenas. (ORS 36.675(1))

5. The parties should stipulate to the admission of evidence when there is no genuine issue as to its authenticity and materiality.

F. Privacy. Unless otherwise specifically provided by law, the hearing shall be private except to the parties, their attorneys, the principals of the parties, and persons who (in the determination of the (chief) arbitrator) have a direct interest in the arbitration.

G. Exhibit/Witness List. The (chief) arbitrator shall make a record of the names and addresses of the witnesses and the exhibits offered and received.

22. Certain Documents Presumed Admissible. (Follows U.T.C.R. 13.190)

A. The documents listed herein, if relevant, are presumed admissible at an arbitration hearing, but only if:

1. The party offering the document has included in the prehearing statement of proof a description of the document and the name, address and telephone number of its author or maker, at least fourteen days prior to hearing; and
2. The party offering the document similarly has made available, after request, to all other parties all other related documents from the same author or maker.

B. This rule does not restrict argument or proof relating to the weight of the evidence admitted, nor does it restrict the arbitrator's authority to determine the weight of the evidence after hearing all of the evidence and the arguments of opposing parties.

The Documents Presumed Admissible Under this Rule Are:

1. A bill, report, chart or record of a hospital, doctor, dentist, registered nurse, licensed practical nurse, physical therapist, psychologist or other health care provider, on a letterhead or billhead.
2. A bill for drugs, medical appliances or other related expenses on a letterhead or billhead.
3. A bill for, or an estimate of, property damage on a letterhead or billhead. In the case of an estimate, the party intending to offer the estimate shall forward with the notice to the adverse party a statement indicating whether or not the property was repaired, and if it was, whether the estimated repairs were made in full or in part, attaching a copy to the receipted bill showing the items of repair and the amount paid.
4. A police, weather, wage loss, or traffic signal report or standard life expectancy table to the extent it is admissible under the rules of evidence, but without the need for formal proof or authentication or identification.
5. A photograph, x-ray, drawing, map, blueprint or similar documentary evidence, to the extent it is admissible under the rules of evidence, but without the need for formal proof of authentication or identification.
6. The written statement of any other witnesses, including the written report of an expert witness, which may include a statement of the expert's qualifications and including a statement of opinion that the witness would be allowed to express if testifying in person, if it is made by affidavit or by declaration under penalty of perjury.
7. A document not specifically covered by any of the foregoing provisions, but having equivalent circumstantial guarantees of trustworthiness, the admission of which would serve the policies, purposes, and interests of justice.

C. Right to Subpoena Author or Maker of Any Document as Witness. Any other party may subpoena the author or maker of a document admissible under this rule, at that party's expense, and examine the author or maker as if under cross-examination.

23. **Sanction for Failure to Comply with Arbitration Order.** (Follows U.T.C.R. 13.100(9)) The arbitrator(s) shall have the authority to require a party, an attorney advising each party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure of such party or attorney, or both, to obey an order of the arbitrator(s).
24. **Subpoena and Contempt Power.** The arbitrator(s) or an attorney shall have the power granted in ORS 36.675 and 9 USC Sec. 7 to compel by subpoena the attendance at a hearing of a witness and to require a witness to bring to a hearing the books, papers and documents identified in the subpoena. (Subpoena forms for attendance at a hearing are available from ASP.) The arbitrator(s) or a party shall have the right granted in ORS 36.675(1), (6), and (7) and 9 USC Sec. 7 to initiate contempt proceedings in court against any witness or party refusing to answer a subpoena or obey any lawful order of the arbitrator(s).
25. **Failure or Refusal of a Party to Participate; Prima Facie Hearing, Defaults not Authorized.** The failure, refusal, or inability of any party to participate in the arbitration process or to attend the hearing, or any portion thereof, or a party's failure to obtain an adjournment or postponement of the hearing or any portion thereof, after due notice pursuant to ASP's rules, shall not prevent the appointment of the arbitrator(s) and shall not prevent the arbitration process from continuing or prevent the hearing being scheduled or from taking place as scheduled nor shall it prevent a prima facie hearing from occurring or prevent an award from being rendered. However, the arbitrator(s) shall not render an award except upon evidence stipulated to or made at the hearing sufficient to support the award rendered. The failure of a party to pay all or any portion of compensation of the arbitrator(s) shall not preclude the party's participation in the arbitration process or at the hearing, and such non-payment or non-participation shall not cause such party to be in default or constitute a reason for an award to be rendered against the party.
26. **Adjournments.** Upon the request of any party and at the discretion of the arbitrator(s), the hearing may be adjourned from time to time. The hearing shall be adjourned upon the joint request of all parties.
27. **Closing of Hearing.** After each party has stated that it has no further evidence to present, the arbitrator(s) shall declare the hearing closed and may thereupon, at the discretion of the arbitrator(s), hear oral arguments of the parties. Any party desiring the opportunity to file a post hearing brief shall so state at the conclusion of the hearing and shall file such brief within the time determined by the arbitrator(s) if permission to submit a brief is granted by the arbitrator(s).
28. **Reopening of Hearing.** A hearing may be reopened prior to the rendering of the award upon the motion of the arbitrator(s) or by the arbitrator(s) upon the application of any party if, in the discretion of the arbitrator(s), it appears just and proper to do so.
29. **When Award Due.** The arbitrator(s) shall render an award promptly and shall make every reasonable effort to render the award within fourteen days from the close of the hearing or from the date when any post hearing briefs are due.
30. **Scope of the Award.** The arbitrator(s) may grant any relief or remedy deemed by the arbitrator(s) to be just and equitable and which is within the scope of the agreement of the parties, including, but not limited to, equitable relief and the specific performance of a contract, punitive damages (if such are claimed and would be recoverable in an Oregon court), and costs and attorney fees as authorized in these rules.

In dissolution and equity cases, the arbitrator(s) may direct one of the parties to prepare and submit a form of "decree," a copy of which shall be served on all affected parties. Thereafter, the arbitrator(s), upon request of any party, shall give the parties an opportunity to be heard on the form of the decree. Such hearing may take the form of a telephone conference call to be arranged by the (chief) arbitrator. The arbitrator(s) shall then approve a form of decree which, when approved, shall be part of the award.

31. **Form of Award and Delivery.** The award shall be in writing and signed by the sole arbitrator or by a majority of the arbitrators. A signed original of the award shall be served upon each party and a copy of the award shall be filed with ASP. If the determination of an award of attorney fees will require a determination pursuant to Rule 34, the arbitrator(s) may render a preliminary award, the body of which can be incorporated into a final award that includes the allowance of costs and attorney fees. If the award is for money, the form of the award shall comply with the requirements of ORS 36.685, which requires the same information itemized in ORS 18.042 for judgments that include the payment of money. (To assist its arbitrators, ASP provides a form of award, with editorial comment.)

32. **Adjustment of Fees or Compensation Advanced by Another Party.** Except to the extent that the parties may have otherwise provided by agreement or stipulation, the award of the arbitrator(s) shall acknowledge (to the extent known) the dollar amount of any filing fee or arbitrator's compensation that any party advanced on behalf of another party and shall adjust the award accordingly by an offsetting credit or reimbursing charge.

33. **Costs and Attorney Fees; Offers of Compromise.**

A. Items Recoverable. Unless the agreement of the parties or a statute provides differently, the award of the arbitrator(s) may require a party to pay or reimburse any other party for all or any portion of

- 1) any ASP filing fee paid or incurred,
- 2) any arbitrator compensation or arbitrator incurred costs paid or incurred through the date of the award, and/or
- 3) reasonable attorney fees, if authorized by contract, or by law, or ordered under Rule 23 (Sanction for Failure to Comply with Arbitration Order).

(Note: Proof of the right to attorney's fees shall be made at the hearing. If allowed, proof of the amount shall be made after the hearing in accordance with Rule 34. Nothing in ASP's rules are intended to supersede, replace, or diminish a right to attorney fees or costs created or allowable by the agreement of the parties or by statute or that could be allowed by a court if the dispute were being resolved by litigation rather than arbitration.)

Each party shall bear its own costs of discovery, deposition, and witness fees, unless allowable by the agreement of the parties or statute.

B. Initial Allowance. The award of the arbitrator(s) shall indicate whether any party is being awarded costs and, if so, the award shall state the recoverable dollar amount of the filing fee if the dollar amount thereof is known, and/or the recoverable dollar amount of the compensation of the arbitrator(s). If the dollar amount of the recoverable filing fee is not known, the award shall state the recoverable cost in percentage form.

The award shall also state whether any party is being awarded reasonable attorney fees against any other party.

C. Offers of Compromise. At any time prior to the initiation of an arbitration, or at any time during the arbitration process, a party may submit to any other party a written offer to compromise or settle all or any portion of a dispute that becomes or is a part of an ASP arbitration, and the offer may specifically refer to ASP Rule 34(C), which sets forth the criteria for the determination by the arbitrator(s) of the dollar amount of costs and attorney's fees, and the written offer may warn that any non-acceptance of the offer may or will be submitted to the arbitrator(s) by the offering party on the issue of the amount of costs and/or attorney fees to be awarded.

34. Method of Determining Amount of Costs and Attorney's Fees; Supplemental Award. (Determination of dollar amount is modeled after ORCP 68C(4).)

A. Cost Bill. If the primary award indicates that attorney's fees are awarded or that a stated percentage of one party's cost shall be paid by another party, the party being benefitted by that portion of the award shall:

- 1) serve a verified and detailed statement of the amount of attorney's fees and costs upon the party required to pay them, if such party attended the hearing, not later than fourteen days after the award was served on the parties by the arbitrator(s), and
- 2) file promptly thereafter with the arbitrator(s) the original statement (with proof of service on all parties attending the hearing).

B. Objections. A party may object to the amount of attorney's fees and costs or any part thereof by mailing to the arbitrator(s) and serving upon the other party written objections to such statement together with any supporting affidavit(s), not later than fourteen days after the service of such statement. Objections shall be specific and may be founded in law or in fact and shall be deemed controverted by the other party. Statements and objections may be amended if the amendment is timely made in the opinion of the arbitrator.

C. Determination of Dollar Amount; Criteria; Hearing. Unless the agreement of the parties or a statute requires a different determination of the dollar amount or sets forth different criteria, the amount of costs and attorney's fees is in the sole discretion of the arbitrator(s), who may consider such factors as: whether and when a settlement offer was made and the value of the settlement offer compared to the award granted; whether and the extent to which the party succeeded in a claim or a defense, and the time reasonably expended thereon; the reasonableness of the time expended in relation to the dollar amount of the claim or defense; whether the factual or legal disputes represented close questions; whether the attorney refused to concede matters that ought to have been conceded, resisted matters that should not have been resisted, refused to stipulate to matters that should have and are customarily stipulated to, if such conduct affected the expenditure of attorney time.

The arbitrator(s) shall determine all issues of law or fact raised by the statement and objections and affidavits (if any). Such determination shall be made without a hearing unless a party files with the arbitrator(s) and serves upon the other party a request for a hearing stating why a hearing is necessary and whether it is necessary to present evidence which cannot be submitted in affidavit form. If it is determined by the arbitrator(s) that a hearing is necessary, the hearing shall be scheduled by the arbitrator or chief arbitrator and, if feasible, shall consist of a telephone conference call among those concerned.

After considering the statement, objections, and any affidavits presented (and after the hearing, if any), the arbitrator(s) shall render a supplemental award, following the same form and procedure for the entry of an award pursuant to Rule 31, or may issue a final award that incorporates the determination of costs and attorney fees into a previously issued preliminary award. The supplemental award may be confirmed as a judgment pursuant to Rule 36 either separately or (preferably) together with the primary award.

35. Correcting an Award.

A. Purpose. An award or supplemental award may be amended by the arbitrator(s) to correct an inadvertent miscalculation, description, designation, etc., or a typographical error or misplaced decimal point, or to complete an award that is silent as to an issue that the statement of claim requires the resolution of. An amended award shall not change any decision on its merits.

B. Procedure. A request by a party to correct an award or supplemental award shall be filed with the arbitrator(s) and a copy thereof served upon the other party prior to the entry of a judgment based thereon. If initiated by the arbitrator(s), the proposed correction shall be served upon all parties by the arbitrator(s). The other party shall have ten days after service of the proposed correction to file with the arbitrator and serve upon the adverse party any comments with respect thereto.

C. **Determination.** The arbitrator(s) may, at the discretion of the arbitrator(s), arrange a telephone conference call concerning the matter, but shall determine the matter without a formal hearing and shall either serve upon each party (and mail a copy thereof to ASP) a denial of the proposed correction or shall render an amended award or amended supplemental award which includes the proposed correction or any portion thereof and which is complete on its face as an award, following the same form and procedure for the entry of an award pursuant to Rule 31.

- 36. Confirming an Award as a Judgment of a court.** Ten days after the rendering of an award, amended award, supplemental award, or amended supplemental award, any party may apply to any federal or state court having jurisdiction thereof for the confirmation of the award as a judgment of such court. (See ORS 36.700, 36.715 and 9 USC Sec. 9. ASP has forms to assist in this process.) The purpose of the ten-day delay is to allow a party to seek correction of the award pursuant to Rule 35.
- 37. Return of Exhibits.** After the arbitration proceeding has been concluded, the arbitrator or chief arbitrator shall return the exhibits to the party offering them. If it is too expensive or inconvenient to return the exhibits by mail, a party shall have the duty of reclaiming them within thirty days after written notice from the arbitrator or chief arbitrator. (A party should authorize the destruction of all exhibits that are copies of originals.)
- 38. Interpretation and Application of Rules.** Rules that relate to the procedure to be followed prior to the appointment of the arbitrator(s) or rules that expressly require a decision by ASP shall be interpreted and applied by ASP, and all other rules shall be interpreted and applied by the arbitrator(s).
- 39. Modification of Rules by Stipulation.** The parties may by stipulation or prior agreement agree to waive or modify any of these rules except to the extent precluded by law and except that no stipulation shall reduce the fees or compensation payable to ASP or the arbitrator(s), nor restrict the times allotted for the doing of any act by ASP or the arbitrator(s) without the consent thereof. Any such stipulation shall be in writing and signed by the parties or their attorneys or it shall be stated orally by the parties or their attorneys during the hearing.
- 40. Relief from Rules/Acquiescence to Non-Compliance with Rules.** The purpose of these procedural rules is to ensure the prompt and efficient resolution of disputes, but these rules are not intended to elevate form over fairness. The failure of a party to strictly comply with an ASP rule (including the time deadlines imposed by any ASP rule) may be excused (wholly or partially) if the interests of justice so require after assessing and balancing all relevant factors, including: whether and the extent to which a party would be unfairly prejudiced if strict compliance was excused or required; whether such failure has or would impose an unfair delay, burden, or expense upon another party; whether the failure arose because of excusable neglect, inadvertence, surprise, or inexperience; whether excusing a non-compliance should require a payment that will fairly compensate a party for any expense incurred because of the non-compliance. If any party knows that any of these rules are not being complied with, such party shall be deemed to have waived any objection to such non-compliance unless such party notifies the arbitrator(s) in writing as soon as practicable after acquiring such knowledge.
- 41. Application of Oregon and Federal Arbitration Acts; Litigation.** Any arbitration conducted under these rules is subject to the provisions of Oregon's version of the Revised Uniform Arbitration Act (ORS 36.600 through ORS 36.740) and the Federal Arbitration Act (9 USC Sections 1-14), whichever statute applies, except that these rules shall govern in the event of any conflict between these rules and such statute. A party shall have the right to file in the proper court exceptions to the award for the limited reasons enumerated in such statute, and to seek the modification, correction, or vacation of the award to the extent authorized in such statutes, and the right to appeal any judgment entered after such objection to the extent authorized by such statutes. Neither ASP nor any arbitrator in any proceeding under these rules is a necessary party in judicial proceedings that relate to the arbitration.

42. Non-Liability of ASP and Arbitrator(s). Neither ASP nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules, and ASP (in its role as an arbitration organization) and the arbitrator(s) are protected by the immunities from civil liability provided in ORS 36.660 “to the same extent as a judge” acting in a judicial capacity, and cannot be required to testify or produce records (except to the limited extent required by that statute), and a court may award attorney fees against a person who sues an arbitration organization or an arbitrator in contravention of the protections accorded by ORS 36.660.

43. Provisional Remedies/Construction Lien Rights Preserved. Prior to the appointment of an arbitrator, a party may petition a court for provisional remedies as authorized in ORS 36.630(1). Accordingly, nothing in these rules shall preclude a party from seeking or utilizing any provisional process remedy or protective device described in Rules 79 through 85 of the Oregon Rules of Civil Procedure (or their federal statutory equivalents), including a restraining order, attachment, or appointment of receiver, to the extent any such remedy is allowed in the agreement upon which the party relies or is otherwise permitted by law, in order to permit such party to preserve property or to protect such party's interest pending the initiation and/or outcome of the arbitration, nor shall these rules preclude a party from filing a statutory construction lien or from commencing suit to foreclose such lien (provided that the trial of such foreclosure suit shall be stayed until the rendering of the arbitration award, which shall be binding in such foreclosure suit as to all matters determined in arbitration, and the lien may then be foreclosed to the extent permitted by law).

After the appointment of the arbitrator(s) (and as authorized in ORS 36.630(2):

a) The (chief) arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

b) A party to an arbitration proceeding may petition a court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

Any conduct described in this Rule 43 (whether exercised before or after filing an arbitration) shall not be deemed a waiver of such party's rights to arbitrate pursuant to an arbitration agreement.

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