

# THE WIND RIVER ARBITRATION ACT

---

## TABLE OF CONTENTS

Section 1	Short Title .....	1
Section 2	Purpose.....	1
Section 3	“Court” Defined; Jurisdiction .....	1
Section 4	Written Agreement to Submit Controversy to Arbitration Valid .....	1
Section 5	Duty of Court on Motion of Party to Arbitrate .....	1
Section 6	Provisional Remedies.....	2
Section 7	Initiation of Arbitration.....	2
Section 8	When the Court Must Appoint Arbitrator(s) .....	2
Section 9	Powers of Arbitrator(s) .....	2
Section 10	Notice of Hearing.....	2
Section 11	Right to be Represented by Attorney; Effect of Waiver.....	3
Section 12	Authority of Arbitrator(s) to Issue Subpoenas and Administer Oaths; Service of Subpoenas; Deposition; Compelling Person to Testify; Witness Fees .....	3
Section 13	Award of Arbitrator(s) .....	4
Section 14	Modification of Award .....	4
Section 15	Expenses and Fees for Arbitrator(s) .....	4
Section 16	Confirmation of Award by Court.....	5
Section 17	When the Court Shall Vacate Award.....	5
Section 18	When the Court Shall Modify or Correct Award.....	6
Section 19	Judgment Upon Granting Order Confirming, Modifying, or Correcting Award; Costs .....	7

Section 20 Motion to Court to be by Motion; Notice and Hearing to be in Manner  
Provided by Law .....7

Section 21 Venue Upon Initial and Subsequent Motions .....7

Section 22 Appeals .....7

**Section 1**                    **SHORT TITLE.** Sections 1 through 22 may be cited as the Wind River Arbitration Act.

**Section 2**                    **PURPOSE.**

(1) The Eastern Shoshone Tribe and the Northern Arapaho Tribe (both referred to herein as the “Tribes”) possess inherent sovereign authority to adjudicate matters arising on the Wind River Indian Reservation, including the right and obligation to adjudicate arbitrations. The purpose of the Wind River Arbitration Act is to codify the preexisting authority of the Wind River Tribal Court to adjudicate arbitrations including, as appropriate, compelling arbitration, confirming arbitration awards, and vacating arbitration awards. In addition, this Wind River Arbitration Act sets forth the procedures to adjudicate arbitrations.

**Section 3**                    **“COURT” DEFINED; JURISDICTION.**

(1) “Court” means the Wind River Tribal Court or other tribal court duly authorized by the Tribes, the Northern Arapaho Tribe, or the Eastern Shoshone Tribe.

(2) The above-defined courts shall have exclusive jurisdiction in all proceedings upon motions to confirm, vacate, modify, or correct arbitration awards in which the Tribes, the Northern Arapaho Tribe, the Eastern Shoshone Tribe, or their officers, employees, or agents are parties in their official capacity, unless there is an explicit agreement providing for another court to have jurisdiction over such motions to confirm, vacate, or correct arbitration awards.

(3) Nothing in the Code shall be construed as a waiver of sovereign immunity of the Tribes or their employees, officers, and/or agents.

**Section 4**                    **WRITTEN AGREEMENT TO SUBMIT CONTROVERSY TO ARBITRATION VALID.** A written agreement to submit any existing or future controversy to arbitration shall be enforceable, except upon such grounds that exist at law or in equity for the revocation of the contract.

**Section 5**                    **DUTY OF COURT ON MOTION OF PARTY TO ARBITRATE.**

(1) On motion of a party showing an arbitration agreement, and alleging the opposing party’s refusal to arbitrate, the Court shall order the parties to proceed with arbitration. If the opposing party denies the existence of the agreement to arbitrate, the Court shall proceed summarily to determine the issue raised, and shall order or deny arbitration accordingly.

(2) Any action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or a motion for arbitration has been made, or, if the issue is severable, the stay may be with respect to the issues subject to arbitration. When a motion is made in such action or proceeding, the order for arbitration shall include such a stay.

(3) An order for arbitration shall not be refused on the grounds that the claim in issue lacks merit, or that any fault or grounds for the claim sought to be arbitrated have not been shown.

**Section 6**                      **PROVISIONAL REMEDIES BY COURT.**

(1) Before the arbitrator(s) are appointed and authorized and able to act, the Court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action before the Court.

(2) After the arbitrator(s) are appointed and authorized and able to act, the Court, upon motion of a party to an arbitration proceeding, may enter an order for provisional remedies only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(3) A party does not waive a right of arbitration by making a motion described above in subsection (1) or (2).

**Section 7**                      **INITIATION OF ARBITRATION**

(1) A party initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(2) Unless a party objects for lack or insufficiency of notice under Section 10(1) not later than the beginning of the arbitration hearing, the party by appearing at the hearing waives any objection to lack of or insufficiency of notice.

**Section 8**                      **WHEN THE COURT MUST APPOINT ARBITRATOR(S).**

(1) If the arbitration agreement provides a method of appointment of arbitrator(s), this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator fails to or is unable to act and his successor has not been appointed following a reasonable time, the Court on motion of a party shall appoint one (1) or more arbitrator(s). An arbitrator so appointed has all the powers of one specifically provided for in the agreement.

**Section 9**                      **POWERS OF ARBITRATOR(S).** The powers of the arbitrator(s) shall be exercised by a majority unless otherwise provided by the agreement or by applicable law.

**Section 10**                    **NOTICE OF HEARING.**

(1) The arbitrator(s) shall appoint a time and place for hearing and serve the parties with notice either personally or by registered mail not less than ten (10) days before the hearing. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator(s) may adjourn the hearing from time to time as

necessary and/or may postpone the hearing to a time not later than the date fixed by the agreement for making the award, unless the parties consent to a later date. The arbitrator(s) may hear and determine the controversy upon the evidence produced. The Court, on request, may direct the arbitrator(s) to proceed promptly with the hearing and determination of the controversy.

(2) At a hearing under subsection (1), the parties are entitled to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all arbitrator(s), but a majority may determine any question and render a final award.

**Section 11** **RIGHT TO BE REPRESENTED BY ATTORNEY.** A party may be represented by an attorney at any arbitration proceeding or hearing.

**Section 12** **AUTHORITY OF ARBITRATOR(S) TO MANAGE DISCOVERY; ISSUE SUBPOENAS AND ADMINISTER OATHS; SERVICE OF SUBPOENAS; DEPOSITION; COMPELLING PERSON TO TESTIFY; WITNESS FEES.**

(1) The arbitrator(s) may issue subpoenas for the attendance of witnesses, for the production of books, records, documents, and other evidence, and may administer oaths. Subpoenas issued shall be served and, upon motion to the Court by a party or the arbitrator(s), enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(2) On request of a party or a witness in an arbitration proceeding, the arbitrator(s) may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator(s) shall determine the conditions under which the deposition is taken.

(3) The parties to arbitration may engage in discovery regarding any nonprivileged matter relevant to any party's claim or defense, taking into account the needs of the parties and other affected persons and the desirability of making the proceeding fair, expeditious, cost effective, and proportional to the needs of the case.

(4) Upon a motion to the arbitrator(s), the arbitrator(s) may order a party to the arbitration proceeding to comply with discovery, 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 noncomplying party to the extent a court could if the controversy were the subject of a civil action in the Court.

(5) The arbitrator(s) may issue a protective order to prevent the 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 the Court.

(6) The Court may enforce a subpoena or discovery-related order, including for the attendance of a witness, within the Wind River Reservation. The Court may enforce a subpoena or discovery-related order issued by the arbitrator(s) in connection with an arbitration proceeding

in another jurisdiction upon conditions determined by the Court so as to make the arbitration proceeding fair, expeditious, and cost effective; provided that such a subpoena or discovery-related order must first be served in the manner provided for service of subpoenas in a civil action before the Court and, upon motion to the Court by a party to the arbitration proceeding or the arbitrator(s), enforced in the manner provided by law for enforcement of subpoenas in a civil action before the Court.

(7) All provisions of law compelling a person under subpoena to testify are applicable.

(8) The same fees for attendance as a witness shall be paid as would be paid for a witness attending a court proceeding.

**Section 13                    AWARD OF ARBITRATOR(S).**

(1) The award shall be in writing and signed by the arbitrator(s) joining in the decision. A copy shall be delivered to each party personally, by registered mail or as provided in the agreement.

(2) Unless otherwise agreed by the parties, an award shall be made within the time fixed by the agreement or, if not so fixed, within such time as the Court orders on motion of a party.

**Section 14                    ARBITRATOR(S)' MODIFICATION OF AWARD.**

(1) On motion to the arbitrator(s) by a party to an arbitration proceeding or an order of the Court, the arbitrator(s) may modify or correct the award:

(A) When there was an evident mathematical miscalculation of figures or evident mistake in the description of a person, thing, or property referred to in the award;

(B) When the arbitrator(s) have made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted;

(C) When the arbitrator(s) have not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding;

(D) When the award is imperfect as to form not affecting the merits of the controversy; or

(E) For the purpose of clarifying the award.

(2) The motion shall be made within twenty (20) days after delivery of the award to the moving party, and any objections must be made within ten (10) days from the motion.

**Section 15                    EXPENSES AND FEES FOR ARBITRATOR(S).** The arbitrator(s)' expenses, fees, and other costs, not including counsel fees, incurred in the arbitration shall be paid as provided in the award, unless otherwise provided in the arbitration agreement.

**Section 16****CONFIRMATION OF AWARD BY COURT.**

(1) Upon motion of a party, the Court shall confirm the award unless, within the time limits allowed, grounds are urged for vacating, modifying, or otherwise challenging the award.

(2) Upon a party's filing of a motion to confirm an award under this section, the Court shall issue a notice of docketing setting forth prescribed directions and timeframes for the moving party to file its opening brief supporting its motion, for any nonmoving party to file a response brief urging any grounds for vacating, modifying the award, or otherwise challenging the award, and for the moving party to file its reply brief. The briefs shall fully set forth the points and authorities supporting each party's position.

(3) A motion to confirm an award under this section shall be filed within one (1) year after delivery of the award to the moving party or within one (1) year after the moving party receives notice of a modified or corrected award pursuant to Section 14, but in no event shall be made after the award is vacated by this Court.

**Section 17****WHEN THE COURT SHALL VACATE AWARD.**

(1) Upon motion of a party, the Court shall vacate an award where:

(A) The award was procured by corruption, fraud, or other undue means;

(B) There was:

(I) evident partiality by an arbitrator appointed as a neutral,

(II) corruption of any of the arbitrator(s), or

(III) misconduct by an arbitrator prejudicing the rights of any party to the arbitration proceedings;

(C) The arbitrator(s) exceeded their powers;

(D) The arbitrator(s) refused to postpone the hearing upon sufficient cause being shown, refused to hear evidence material to the controversy, or otherwise conducted the arbitration proceedings as to substantially prejudice the rights of any party;

(E) There was no agreement to arbitrate, unless the party participated in the arbitration hearing without raising the objection prior to the beginning of the arbitration hearing;

(F) The arbitration was conducted without proper notice of the initiation of an arbitration, as required in Section 7, so as to prejudice the rights of a party to the arbitration proceeding; or

(G) The arbitrator(s) demonstrated manifest disregard of governing law.

(2) The fact that the relief was such that it could not or would not be granted by a court of law or equity is not a ground for vacating or refusing to confirm the award.

(3) To initiate an action to vacate an award under this section, a party shall file with the Court and serve on any other party a motion to vacate describing the nature of the controversy and the remedy sought.

(4) Upon a party's filing of a motion to vacate an award under this section, the Court shall issue a notice of docketing setting forth prescribed directions and timeframes for the moving party to file its opening brief supporting its motion, for any nonmoving party to file a response brief, and for the moving party to file its reply brief. The briefs shall fully set forth the points and authorities supporting each party's position.

(5) A motion for vacating an award under this section shall be filed within one (1) year after delivery of the award to the moving party or within one (1) year after the moving party receives notice of a modified or corrected award pursuant to Section 14, but in no event shall be made after the award is confirmed by this Court, unless the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within one (1) year after such grounds for vacating the award are known or by the exercise of reasonable care would have been known by the moving party.

(6) In vacating the award, the Court may order a rehearing before new arbitrator(s) chosen as provided in the agreement or by the Court in accordance with Section 8 of this Act.

(7) If the motion to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

**Section 18**                      **WHEN THE COURT SHALL MODIFY OR CORRECT AWARD.**

(1) Upon motion of a party, the Court shall modify or correct the award where:

(A) There was an evident mathematical miscalculation of figures, or an evident mistake in the description of any person, thing, or property referred to in the award;

(B) The arbitrator(s) made an award on a claim not submitted to them and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(C) The award is imperfect in a matter of form, not affecting the merits of the decision on the claims submitted.

(2) If the motion under subsection (1) is granted, the Court shall modify or correct and confirm the award as so modified and corrected.

(3) A motion to modify or correct an award under this section may be joined with a motion to vacate the award.



(4) To initiate an action to modify or correct an award under this section, a party shall file with the Court and serve on any other party a motion to modify or correct an award describing the nature of the controversy and the remedy sought.

(5) Upon a party's filing of a motion to modify or correct an award under this section, the Court shall issue a notice of docketing setting forth prescribed directions and timeframes for the moving party to file its opening brief supporting its motion, for any nonmoving party to file a response brief, and for the moving party to file its reply brief. The briefs shall fully set forth the points and authorities supporting each party's position.

(6) A motion to modify or correct an award under this section shall be filed within one (1) year after delivery of the award to the moving party or within one (1) year after the moving party receives notice of a modified or corrected award pursuant to Section 14, but in no event shall be made after the award is confirmed by this Court, unless the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within one (1) year after such grounds for vacating the award are known or by the exercise of reasonable care would have been known by the moving party.

**Section 19 JUDGMENT UPON GRANTING ORDER CONFIRMING, MODIFYING, OR CORRECTING AWARD; COSTS .** Upon the granting of an order confirming, vacating without directing a rehearing, modifying, or correcting an award, the Court shall enter a judgment in conformity therewith. Reasonable costs may be awarded by the Court.

**Section 20 MOTION TO COURT TO BE BY MOTION; NOTICE AND HEARING TO BE IN MANNER PROVIDED BY LAW.** Except as otherwise provided in Section 22, an application to the Court for judicial relief under this Act shall be by motion to the Court and shall be heard in the manner provided by law or rule of the Court. Notice of an initial motion for an order shall be served in the manner provided by law for the service of a summons in an action unless otherwise specified by the parties.

**Section 21 VENUE UPON INITIAL AND SUBSEQUENT MOTIONS.** A motion made pursuant to Section 20 shall be made in the Wind River Tribal Court or other tribal court duly authorized by the Tribes, the Northern Arapaho Tribe, or the Eastern Shoshone Tribe, unless another venue is specifically agreed upon. All subsequent motions shall be made to the Court hearing the initial motion unless the Court otherwise directs.

**Section 22 APPEALS.**

- (1) An appeal may be taken from:
  - (A) An order denying a motion to compel arbitration;
  - (B) An order granting an motion to stay arbitration;
  - (C) An order confirming or denying confirmation of an award;
  - (D) An order modifying or correcting an award;

- (E) An order vacating an award with or without directing a rehearing; or
  - (F) A final judgment or decree entered by the Court.
- (2) The appeal shall be taken as from an order or a judgment in a civil action.