

Title 2

Arbitration

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Chapter 2.01

General Provisions

Sections:

2.01.01 Title

Section 2.01.01 Title

This Title shall be known as the Jamestown S' Klallam Arbitration Code.

Chapter 2.02

Scope of Code

Sections:

2.02.01 Scope of Code

Section 2.02.01 Scope of Code

This Title applies to any written contract, agreement or other instrument entered into by the Jamestown S' Klallam Tribe (the 'Tribe'), or by any other person or entity, in a transaction that is subject to the jurisdiction of the Tribe, in which the parties thereto agree to settle by arbitration any claim, dispute or controversy arising out of such contract, agreement or other instrument, or any other claim, dispute or controversy existing between them at the time of the agreement.

Chapter 2.03

Agreements

Sections:

2.03.01 Agreements to Arbitrate are Enforceable

Section 2.03.01 Agreements to Arbitrate are Enforceable

With the express consent of the Tribal Council in each instance, an agreement in any written contract, agreement or other instrument, or in a separate writing executed by the parties to any written contract, agreement or other instrument, to settle by arbitration any claim, dispute or controversy thereafter arising out of such contract, agreement or other instrument, or any other transaction contemplated there under, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two (2) or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid and enforceable, and shall be irrevocable except by written agreement by all parties.

Chapter 2.04

Applicable Law

Sections:

2.04.01 Law to be Applied

Section 2.04.01 Law to be Applied

- A. In any contract, agreement or instrument described in Section 2.02.01 of this Title, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation and enforcement of the contract, agreement, instrument or claim, dispute or controversy. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party or parties thereto, provided that the subject matter of the contract, agreement, instrument or claim, dispute or controversy, or at least one of the parties thereto, shall have some contact with the jurisdiction so selected;
- B. In any proceeding under this Arbitration Title, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Tribal Court shall apply the procedural rules of the Tribal Court and the substantive law of the jurisdiction selected in such choice of law provision; provided that no procedural rule of the Tribal Court shall bar, delay or impair any action, proceeding or remedy where such action, proceeding or remedy would not be barred, delayed or impaired by the procedural rules of the courts of the jurisdiction whose substantive law applies;
- C. In any proceeding under this Arbitration Title, whenever the contract, agreement or other instrument does not set forth a choice of law provision, the Tribal Court shall first apply the substantive law of the Tribe, including any applicable choice of law principles, and then the substantive law of the State of Washington, including any applicable choice of law principles, provided that such law does not conflict with this Arbitration Title or other applicable Tribal law.

Chapter 2.05

Stay of Proceedings

Sections:

2.05.01 Stay of Proceedings and Order to Proceed with Arbitration

Section 2.05.01 Stay of Proceedings and Order to Proceed with Arbitration

- A. If any action for legal or equitable relief or other proceeding is brought by any party to any contract, agreement or instrument described in Section 2.02.01 of this Arbitration Title, the Tribal Court Judge who is presiding over the pending action or proceeding shall not review the merits of the pending action or proceeding, but shall stay the action or proceeding until an arbitration has been had in compliance with the agreement;
- B. A party to any contract, agreement or instrument described in Section 2.03 of this Arbitration Title claiming the neglect or refusal of another party thereto to proceed with an arbitration there under may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the contract, agreement or instrument and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by

the arbitrator(s).

Chapter 2.06

Advice of the Court

Sections:

2.06.01 Advice of the Court

Section 2.06.01 Advice of the Court

At any time during an arbitration, upon request of all the parties to the arbitration, the arbitrator(s) may make application to the Tribal Court for advice on any question of Tribal or state law arising in the course of the arbitration, provided that such parties shall agree in writing that the advice of the Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

Chapter 2.07

Time Within Which Award Shall be Rendered

Sections:

2.07.01 Time Within Which Award Shall be Rendered

2.07.02 Application for Order Confirming Award; Record to be filed with Clerk of Court; Effect and Enforcement of Judgment

2.07.03 Arbitration Award Not Appealable

Section 2.07.01 Time Within Which Award Shall be Rendered

If the time within which an award is rendered has not been fixed in the arbitration agreement, the arbitrator(s) shall render the award within thirty (30) days from the date the arbitration has been completed. The parties may expressly agree to extend the time in which the award may be made by an extension or ratification thereof in writing.

An arbitration award shall be in writing and signed by the arbitrator(s). The arbitrator(s) shall provide written notice of the award to each party by certified or registered mail, return receipt requested.

Section 2.07.02 Application for Order Confirming Award; Record to be filed with Clerk of Court; Effect and Enforcement of Judgment

At any time within one (1) year after an arbitration award has been rendered and the parties thereto notified thereof, any party to the arbitration may make application to the Tribal Court for an order confirming the award.

- A. Any party applying for an order confirming an arbitration award shall, at the time the order is filed with the Clerk of the Tribal Court for entry of judgment thereon, file the following papers with the Clerk:
 - (1) The agreement to arbitrate;
 - (2) The selection or appointment, if any, of the arbitrator(s);

- (3) Any written agreement requiring the reference of any question as provided in Section 2.06;
 - (4) Each written extension of the time, if any, within which to make the award;
 - (5) The award;
 - (6) Each notice and other paper used upon an application to confirm; and
 - (7) A copy of each order of the Tribal Court upon such an application.
- B. An arbitration award shall not be subject to review or modification by the Tribal Court, but shall be confirmed strictly as provided by the arbitrator(s). The judgment confirming an award shall be docketed as if it were rendered in a civil action. The judgment so entered shall have the same force and effect in all respects as, and be subject to all the provisions of law relating to, a judgment in a civil action, and it may be enforced as if it has been rendered in a civil action in the Tribal Court. When the award requires the performance of any other act than the payment of money, the Tribal Court may direct the enforcement thereon in the manner provided by law.

Section 2.07.03 Arbitration Award Not Appealable

No further appeal may be taken from an order issued by the Tribal Court pursuant to this Title enforcing an agreement to arbitrate or an award issued by an arbitrator.

Chapter 2.08

Jurisdiction of Tribal Court

Sections:

2.08.01 Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party; Qualification of Judges

Section 2.08.01 Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party; Qualification of Judges

The Tribal Court shall have exclusive Tribal Court jurisdiction over any action to enforce an agreement to arbitrate, to compel arbitration pursuant to such an agreement to arbitrate and to enforce an award made by an arbitrator pursuant to such agreement to arbitrate, contained in any contract, agreement or other instrument described in Section 2.02 of this Arbitration Title to which the Tribe is a party; provided that the Tribal Council (‘ Council’) has explicitly granted a limited waiver of the defense of Tribal sovereign immunity, pursuant to the provisions of the Tribe’ s Waiver of Sovereign Immunity Title, in the contract, agreement or other instrument; and provided further that the said contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction there under.

The jurisdiction of the Tribal Court under this Arbitration Title shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council may have explicitly consented in such contract, agreement or other instrument. Any consent to the jurisdiction of a state or federal court contained in a contract, agreement or other instrument described in Section 1.04 of this Arbitration Title to which the Tribe is a party shall be valid and enforceable in accordance with its terms.

Chapter 2.09

Codification

Sections:

2.09.01 Date of Codification and Amendment

Section 2.09.01 Date of Codification and Amendment

The Arbitration Ordinance was created with Resolution #33-02 and codified as a Title in this code on March 30, 2004 with Resolution #15-04.