

ORDINANCE NO. 19  
YAVAPAI-APACHE NATION  
ARBITRATION CODE

Section 1. Scope of Code.

This Code applies to any written contract, agreement or other instrument entered into by the Yavapai-Apache Nation (the "Tribe"), or any other person 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. Any prior legislation or other Tribal laws which are inconsistent with the purpose and procedures established by this Code are hereby repealed to the extent of any such inconsistency.

Section 2. Agreements to Arbitrate are Enforceable.

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 thereunder, including the failure or refusal to perform the whole or any part thereof, or a written agreement between two or more persons to submit to arbitration any claim, dispute or controversy existing between them at the time of the agreement, shall be valid, irrevocable and enforceable.

Section 3. Law to be Applied.

a. In any contract, agreement or instrument described in Section 1 of this Code, 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 Code, whenever the contract, agreement or other instrument sets forth a choice of law provision, the Yavapai-Apache 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 Code, 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 Arizona, including any applicable choice of law principles, provided that such law does not conflict with this Code or other applicable tribal law.

Section 4. 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 1 of this Code, 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 1 of this Code claiming the neglect or refusal of another party thereto to proceed with an arbitration thereunder 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).

Section 5. 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 so long as such parties 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.

Section 6. Time Within Which Award Shall be Rendered.

a. 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 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.

b. 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 7. Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment.

a. At any time within one 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.

b. 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 5; (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.

c. 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); provided, however, that the Tribal Court shall decline to enforce any arbitration award if it finds (i) the award was procured by corruption, fraud or other undue means, (ii) there was evident partiality of an arbitrator appointed as a neutral, (iii) the arbitrator(s) exceeded their powers, or (iv) the arbitrators refused to hear evidence material to the controversy or otherwise conducted the hearing so as to substantially prejudice the rights of one party. 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 8. Arbitration Award Not Appealable.

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

Section 9. Jurisdiction of the Tribal Court in Actions to which the Tribe is a Party.

a. The Tribal Court shall have 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 1 of this Code to which the Tribe is a party; provided that in any such actions brought against the Tribe, the Tribal Council (the "Council") shall have explicitly waived the defense of tribal sovereign immunity in the contract, agreement or other instrument; and provided further that such contract, agreement, or other instrument does not expressly prohibit the Tribal Court from exercising jurisdiction thereunder.

b. To the extent allowed by federal law, the jurisdiction of the Tribal Court under this Code shall be concurrent with the jurisdiction of any state or federal court to the jurisdiction of which the Council shall 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 of this Code to which the Tribe is a party shall be valid and enforceable in accordance with its terms.

Section 10. Severability.

If any section or part thereof of this Code or the application thereof to any party shall be held invalid for any reason whatsoever by a court of competent jurisdiction or by federal legislative action, the remainder of the relevant section or part of this Code shall not be affected thereby and shall remain in full force and effect.

Section 11. No Waiver of Sovereign Immunity.

Nothing in this Code shall be interpreted to provide a waiver of the sovereign immunity of the Tribe or any of its officers, employees or agents acting within the scope of their authority.