



INTERNATIONAL CENTRE  
FOR DISPUTE RESOLUTION®

# FINAL OFFER ARBITRATION SUPPLEMENTARY RULES

(Also referred to as Baseball or Last Best Offer  
Arbitration Supplementary Rules)

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[icdr.org](http://icdr.org)

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# Final Offer Arbitration Supplementary Rules

(Also referred to as Baseball or Last Best Offer Arbitration  
Supplementary Rules)



In response to feedback from the international and domestic business community, the International Centre for Dispute Resolution® (ICDR®) and the American Arbitration Association® (AAA®) have created a set of supplementary rules called *Final Offer Arbitration Supplementary Rules*. They can also be referred to as *Baseball Arbitration Supplementary Rules* or *Last Best Offer Arbitration Supplementary Rules*. These rules can be used with the ICDR's International Arbitration Rules or other rules of the AAA.

The reason for formalizing these rules is to provide the parties a better understanding of the process so that the parties can manage and assess the risks and rewards of adopting this arbitration process. Additionally, where the arbitral agreement specifies final offer, baseball, or last best offer arbitration, these rules will provide a framework for the arbitration that does not exist elsewhere in the rules or legal precedent.

Final offer arbitration is premised on the parties' desire to resolve, if possible, their dispute prior to arbitration. This is intended to be accomplished through a series of preliminary settlement offers intended to bring the parties closer together and less polarized in their positions. These settlement offers might be negotiated or exchanged in mediation or another dispute resolution process. The parties will exchange preliminary settlement offers during the arbitration process with the final offer being exchanged shortly before the start of the arbitration hearing.

The required exchange of multiple preliminary offers has two strategic purposes. The first is to require each party to closely examine the real value of the case before engaging in extensive and expensive preparation for the arbitration. The second is to allow the parties to assess at the time of exchange the differences between their respective positions. If these differences are sufficiently reduced such that the cost and risk of proceeding to the arbitration hearing are considered unwarranted, then settlement may be possible.

If, however, such settlement efforts are unavailing, then the “final offer” will be exchanged before the arbitration hearing commences. The arbitral tribunal will select only one of the final offers as its final award after considering all the evidence submitted by the parties in the hearings. Since, in the end, the tribunal must select only one of the final offers submitted, the parties will be further compelled to honestly assess the merits of their case and the potential risks and rewards of proceeding to the hearing when deciding upon their “final offers.” For example, if a Claimant takes an extreme approach of over-valuing its claims, rather than assessing a reasonable value to its claims, it faces significant risk that its “final offer” will not be adopted by the tribunal and that it will receive nothing. Likewise, if a Respondent takes a “pay nothing” approach in the face of claims that may have some merit, it risks an award in favor of a Claimant who puts forward a more reasonable figure. It is this final risk analysis of an “all or nothing” award that compels the parties to consider seriously the benefits of a negotiated settlement and the value submitted in their final offers.

Another key aspect of formalizing these rules was to better define and build a more complete and predictable final offer arbitration process. Many companies could simply insert a phrase that calls for final, baseball, or last best offer arbitration, but such abbreviated language necessarily omits many important considerations that are incorporated into these procedures. For example, these rules provide detail about when and how the final offer exchanges will be made so that no party can gain an unfair negotiating advantage. These rules also describe what the final offers should and should not include and when the tribunal can open the final offers. These rules essentially establish a final offer process framework from the first preliminary offer through final award.

This arbitration process can be adopted at the time the arbitration agreement is entered into or after the dispute has arisen. If parties want to utilize an ICDR standard clause that incorporates both the International Arbitration Rules and the Final Offer Supplementary Rules, then they can reference this language in their contract:

*“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules and the Final Offer Supplementary Arbitration Rules.”*

Parties can also agree to use these supplementary procedures with any other rules of the AAA by inserting this language in their contract:

*“Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be determined by arbitration administered by the American Arbitration Association in accordance with its [Commercial, Construction, or other] Arbitration Rules and the Final Offer Supplementary Arbitration Rules.”*

If parties have an existing arbitration clause, but simply want language to also adopt the Final Offer Supplementary Rules, then they can insert this language:

*“The parties agree to also adopt the Final Offer Supplementary Arbitration Rules to supplement the International Arbitration Rules of the International Centre for Dispute Resolution [or other AAA rules chosen by the parties],”*

The parties may wish to consider adding:

- (a) “The number of arbitrators shall be (one or three)”;
- (b) “The place of arbitration shall be (city and/or country)”;
- (c) “The language(s) of the arbitration shall be \_\_\_\_\_.”

Parties filing a case or in need of further information about these supplementary rules can contact the ICDR at 212.484.4181, or by visiting the ICDR’s Web site at **[www.icdr.org](http://www.icdr.org)**.

## Final Offer Arbitration Supplementary Rules (Also referred to as Baseball or Last Best Offer Supplementary Arbitration Procedures)

### 1. Applicability

These *Final Offer Arbitration Supplementary Rules* (“Supplementary Rules”) shall apply to any dispute arising out of an agreement that provides for arbitration pursuant to these Supplementary Rules, or where the parties have agreed to arbitrate their disputes pursuant to any other rules of the International Centre for Dispute Resolution (ICDR) or the American Arbitration Association (AAA) where the parties have provided that their arbitration shall take place as a “final offer,” “baseball,” or “last best offer” arbitration.

The ICDR and AAA shall have the discretion to apply or not to apply these Supplementary Rules to a particular case, and the parties will be able to bring any disputes concerning the application or non-application to the appointed arbitrator for a final determination. Where inconsistencies exist between these Supplementary Rules and other ICDR or AAA rules that apply to the dispute, these Supplementary Rules shall govern. The arbitrators shall have final authority to resolve any inconsistency between any agreement of the parties and these Supplementary Rules.

### 2. Exchange of Settlement Offers

Each party shall directly exchange with the other party or parties at least two (2) settlement offers after the commencement of the arbitration and prior to the arbitration hearing. The first of the two settlement offers shall be exchanged between the parties (in the manner set forth in Paragraph 3 below) not more than 45 days after the commencement of the arbitration. The second of the two settlement offers shall be exchanged between the parties (in the manner set forth in Paragraph 3 below) not less than 45 days prior to the arbitration hearing. Such settlement offers will not be shared with the arbitral tribunal.

### 3. Exchange of Final Offers

At least two (2) weeks prior to the commencement of the arbitration hearing, each party shall submit to the other party or parties and arbitral tribunal its final offer. In order to ensure simultaneous exchange of final offers, the parties shall submit their offers to the tribunal, which shall hold the offers until all offers are received

(but without reading them) and then distribute them to all parties as nearly simultaneously as practicable. The parties (but not the tribunal) may view the final offers at that time.

The tribunal shall not open the final offers until the arbitration hearings have been closed. The tribunal may, in its discretion, require an earlier or later exchange of final offers prior to the commencement of the arbitration hearing, but in no event later than the commencement of the arbitration hearing. In rendering its award, the tribunal shall give consideration only to the final offer submitted by each party.

If a party fails to file a settlement or final offer, the tribunal may proceed with the arbitration.

#### 4. Amendments to Final Offers

Absent mutual agreement of the parties, there is no right to amend final offers once submitted to the arbitral tribunal. If any such amendments to the final offers are submitted, they shall be exchanged in accordance with the procedures set forth in Rule 3 above, except that they may be submitted, if necessary, within two weeks prior to the commencement of the arbitration hearing.

#### 5. Scope of Final Offer

Each party's final offer shall be a single monetary amount that includes all breaches, controversies and claims arising out of or relating to the contract or transaction between the parties to the arbitration, including without limitation all affirmative claims, defenses, setoffs/offsets, counterclaims and/or cross-claims that are at issue in the arbitration. The offer shall identify the currency applicable to such amount, as well as which party is responsible for the payment of such amount and to whom such payment is to be made. The arbitral tribunal may prescribe the form of final offer submissions.

Each final offer shall exclude prejudgment and/or post-judgment interest, which may be added by the tribunal to its final award as applicable and appropriate. Such final offers shall also exclude the costs associated with the arbitration, which shall be awarded in accordance with the governing arbitration rules as determined and allocated by the tribunal.

## 6. Award

The arbitral tribunal shall be limited to choosing only one of the final offers submitted by the parties. The tribunal's award shall be based solely thereon, plus any interest, costs, or fees to be awarded pursuant to the governing arbitration rules, applicable law, or the agreement of the parties.

The tribunal's award shall be reasoned, stating the rationale for its selection of one party's final offer over that of the other party or parties.

## 7. Modifications by Agreement of the Parties

The parties may modify these procedures by written agreement.



