



*Transportation Lawyers Association*

**ARBITRATION RULES  
FOR THE TRANSPORTATION ADR COUNCIL**

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**THE RULES AS PART OF THE ARBITRATION AGREEMENT**

Where parties have agreed in writing that a dispute shall be referred to arbitration under the Rules of the Transportation ADR Council ("TAC"), then such dispute shall be resolved through arbitration in accordance with these Rules, as amended or supplemented to the date of such agreement, except as otherwise agreed in writing.

## 1.2 Scope

These Rules shall govern the arbitration to the extent they are not contrary to mandatory provisions of applicable law, or the applicable arbitration clause or agreement, if any. Absent any contradictory provision of applicable law, arbitration clause or agreement, the arbitrator(s) shall have the sole authority to decide any issues with respect to the administration of the arbitration procedures or hearing.

## **II. TRIBUNALS AND ADMINISTRATION**

### 2.1 Name of the Tribunal

A sole Arbitrator or a panel of Arbitrators constituted for the resolution of disputes under these Rules may be referred to as the "Arbitrator", "Arbitrators", "Arbitral Tribunal" or "Panel of Arbitrators," but no reference to the Arbitrator or Arbitrators by any other name shall affect the validity of the proceedings or any Award. Wherever the term "Arbitrator" may be used in these Rules, it is understood that, in the appropriate case, it may refer to more than one Arbitrator.

### 2.2 Administration

When the parties have agreed to arbitrate under these Rules, they are deemed to have constituted the TAC as the Administrator of the arbitration, having the authority and obligations prescribed in their agreement or if not so prescribed in any particular, as provided by these Rules.

TAC is administered by members of the Transportation Lawyers Association ("TLA"). The duties of the TAC may be executed through such officers, committees or members as the Association may direct.

## 2.3 Register of Arbitrators

TAC shall establish and maintain a Register of persons who are available to be arbitrators with their qualifications as transportation and commercial arbitrators, and parties may select arbitrators therefrom in the manner prescribed in the applicable arbitration clause or agreement, if any, or these Rules. A brief biographical summary of each arbitrator listed in the Register will be made available at the request of any party involved in a dispute which might be resolved through arbitration in accordance with these Rules. Each Arbitrator's biographical summary shall contain a list of the Arbitrator's training and experience and also include the arbitrator's fee schedule, which shall include hourly and daily fees and expenses.

## 2.4 Qualifications of Arbitrators

Any arbitrator listed on the TAC roster shall have complied with the following:

- A. be a member in good standing of the bar of his or her local jurisdiction, and a member of Transportation Lawyers Association or the Canadian Transport Lawyers Association;
- B. have been engaged in the practice of transportation law for a minimum of ten (10) years;
- C. accurately completed and submitted the arbitrator's application form to the Administrator;
- D. has agreed to abide by the administrative rules as set forth herein and as may be amended from time to time; and
- E. has obtained and provided proof to the Administrator of a minimum of eight (8) hours of arbitration training, or certification as an arbitrator by the American Arbitration Association, a local bar association or any court or shall submit a request that the training requirement be waived. Such request shall be accompanied with requisite background information to support

the request. The decision of the Administrator with respect to evidence of the requirements herein or any relief therefrom shall be binding .

### **III. COMMENCEMENT OF ARBITRATION**

#### **3.1 Procedure**

Where the arbitration provision of a contract allows or requires the arbitration to be conducted under the Rules of the TLA as adopted by the TAC, any party shall commence the arbitration by filing a written notice of arbitration with the Executive Director of the TLA. The filing party must serve an electronic copy of the Notice on the Chairperson of the TLA TAC Committee, and on the respondent at the Respondent's principal place of business. Service must be on the Respondent's registered agent, unless otherwise allowed in the contract containing the arbitration clause.

“Any party” means one who:

- (i) is a party to a contract containing the arbitration clause; or
- (ii) has the right to enforce an arbitration requirement and to file an arbitration claim; or
- (iii) is a party to an agreement in which the parties agree to arbitrate a dispute.

#### **3.2 Notice Requirements**

The Notice of Arbitration shall contain the following:

- (a) The name, address, email address(es) and contact information of the Petitioner and the representative of the Petitioner filing the claim;
- (b) Specify the contractual clause, provision, or law that permits or requires arbitration of the dispute;



- (c) A statement of the general nature of the dispute to be submitted to arbitration;
- (d) A statement of the relief or remedy sought; and
- (e) Nomination of a proposed arbitrator or panel under the procedures provided in Section IV of these Rules.

The party submitting the Arbitration claim shall submit the Notice specified above, a claim or petition providing a detailed statement of the facts supporting the claim pursuant to Section V of these Rules, and all supporting materials specified in Section V of these Rules. The claim or petition may be filed after the Notice has been filed if there is agreement of the parties, or at the discretion of the arbitrator, or at the discretion of the TLA TAC Committee Chairperson if an arbitrator has yet to be appointed. The claim or petition may be filed after the Notice of Arbitration has been filed by agreement of the parties or the grant of additional time by the TLA TAC Committee Chairperson if the arbitrator has not been appointed, or by the arbitrator if one has been appointed or selected.

The Respondent shall file an entry by sending the entry to the TLA TAC Chairperson and serve a copy of the following on the representative of the Petitioner within 15 days after service of the Notice:

- (a) The name, address, email address(es) and contact information of the respondent and the representative of the respondent;
- (b) Whether arbitration is objected to and the general nature of the objection;
- (c) A statement of the general nature of the defense to the dispute to be submitted to the arbitrator; and
- (d) Nomination of a proposed arbitrator or panel under the procedures provided in Section IV of these Rules.

The Respondent shall submit an answer or response to the arbitration claim or petition as provided for in Section V of these Rules.

The statement of the general nature of the dispute submitted by the Petitioner and the statement of the general nature of the defenses submitted by the Respondent should have sufficient detail so that the arbitrator can make a preliminary determination of whether a conflict exists.

3.3 The party submitting the claim in arbitration shall also deposit, as directed by the Chairperson of the TLA TAC Committee, a sum sufficient to pay any costs of the arbitrators or the arbitration hearing location. Commencement Date

Arbitration shall be deemed to have commenced on the date the notice is served upon the other party as required in the contract, or if there is no contractual requirement, personally, or at the place of business, habitual residence, or mailing address of the other party or its agent, authorized to accept the notice on its behalf.

3.4 Amendment of Claims and Counterclaims

The parties shall be free to amend or add to their claims and counterclaims until the time designated by the Arbitrator or until the written submissions or hearings are declared closed by the Arbitrator as provided in these Rules.

3.5 Place of Arbitration

The place of arbitration under these Rules shall be the location designated in the agreement to arbitrate, or if none is designated, the city of residence or principal place of business of the respondent, or such other place as the parties agree, either before or after commencement of the proceedings. Unless the parties have agreed upon a location within the city where the arbitration will take place, the arbitrator will determine the location. The location chosen by the Arbitrator shall be final and shall be communicated to the parties as

soon as possible, but not less than a period sufficiently in advance to constitute reasonable notice for attendance at any hearing at such location.

Notwithstanding the foregoing provision, either party may request that the arbitrator determine that the arbitration hearing will occur electronically by video conference, regardless of where the respondent is located, in any matter with less than \$100,000 in controversy.

The parties and the arbitrator may agree that the arbitration hearing will occur electronically by video conference, regardless of where the respondent is located, in any matter with more than \$100,000 in controversy.

### 3.6 Communications Among the Arbitrator and the Parties

Upon commencement of the arbitration, all subsequent communications with the Arbitrator shall be copied to all other parties by the same means or by means calculated to be received in the same time frame. The Arbitrator's communications must go to all parties.

## **IV. SELECTION OF THE ARBITRATOR**

### 4.1 Procedure

The Arbitrator or Panel shall be selected using the procedure specified in the arbitration clause or agreement or, if no procedure is specified, the procedure under these Rules. If the arbitration clause or agreement does not specify the number of Arbitrators, the dispute shall be heard and determined by one Arbitrator. Wherever appropriate, these rules shall favor arbitration by a sole Arbitrator as a more efficient, less costly and quicker means for the resolution of disputes.

### 4.2 Appointment of an Arbitrator Other than by Parties Directly

Unless otherwise provided for in the arbitration clause or agreement, where one or more Arbitrators are to be appointed other than by a party directly, the appointment shall be made

from the Register of Arbitrators maintained by TAC. No person shall serve as an Arbitrator who has a financial or personal interest in the outcome of the arbitration or who has acquired prior detailed knowledge of the matter in dispute.

#### 4.3 Disclosure Required of an Arbitrator

##### 4.3.1 When Disclosure Must be Made

A person who has been contacted for possible appointment or designation as an Arbitrator or who has been appointed or designated should, within fourteen (14) days after the date of the contact, appointment, or designation, disclose to the parties any information that might cause the person's impartiality or independence to be questioned. If there is more than one Arbitrator, then disclosure should take place within twenty-one (21) days after completion of the panel, so that disclosure of the relationships with the other Arbitrators may also be provided.

##### 4.3.2 Subsequent Disclosure

After appointment, and throughout the arbitration proceedings, an Arbitrator, without delay, shall disclose to the parties any circumstance required to be disclosed under Rule 4.3.1 that was not previously disclosed.

#### 4.4 Challenges to an Arbitrator

Within fourteen (14) days from receipt of the disclosure by an Arbitrator, the parties shall confirm their acceptance of, request clarification from, or issue a challenge to the Arbitrator. The confirmation, request or challenge shall be in writing addressed to all other parties and the TAC. Any challenge shall clearly state the reasons therefor. A party which does not confirm, request clarification, or challenge an Arbitrator as specified above is conclusively presumed to have accepted the Arbitrator. If subsequent information is disclosed or discovered, which raises issues as to disclosure, a party may seek clarification or issue a challenge to that Arbitrator. Upon a

showing of good cause, as determined within the sole discretion of the TAC, the TAC shall appoint a replacement arbitrator.

#### 4.5 Methods of Appointment

##### 4.5.1 Default Method

If the Parties have not appointed an Arbitrator and have not provided for any other method of appointment, the Arbitrator shall be appointed in the following manner: Upon receipt of a request for assistance accompanied by a complete copy of the Notice of Arbitration, the TAC shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the Register of Arbitrators, together with a copy of each person's biographical summary, including fee schedule. Each party to the dispute shall have seven working days from the transmittal date in which to strike any names objected to, number the remaining names to indicate the order of preference and return the list to the TAC. If a party does not return the list within the time specified, all persons therein named shall be deemed acceptable. A party may strike up to five names throughout the Selection of the Arbitrator process as described in Section IV of these rules.

##### 4.5.2 Determining the Selection

From among the arbitrators who have been approved on all lists, the TAC will select and invite an arbitrator to serve. If the arbitrator selected cannot serve for any reason, TAC shall appoint a replacement arbitrator from the list.

##### 4.5.3 Repeating the Procedure

If the parties fail to agree upon any of the persons named, or if an acceptable arbitrator is unable to act, or if for any other reason the appointment cannot be made from the submitted list, then the steps set forth above, starting with a new list of Arbitrators, shall be repeated.

##### 4.5.4 Selection by the TAC

If, after the submission of the lists, the parties still fail to agree upon any of the persons named or if acceptable Arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the TAC shall have the power to make administrative appointments from among other arbitrators named on the Register without the submission of any additional list.

#### 4.6 Time for Appointment of Arbitrators

##### 4.6.1 Where there is a Specified Time

If the parties have a specified time, and if such appointment is not made within such time or any agreed extension thereof, any party may invoke the procedures of Rule 4.5.

##### 4.6.2 Where no Time is Specified

If no period of time is specified by the parties, and no such appointment has been made within forty-five days after the demand for arbitration, then any party may request that the TAC make the appointment, under Rule 4.5.

#### 4.7 Replacement of an Arbitrator

If an Arbitrator dies, becomes unable to perform, or otherwise fails to fulfill the duties required of an Arbitrator without undue delay, the mandate of such Arbitrator shall terminate upon death, withdrawal of the Arbitrator, termination by the TAC or upon agreement of termination by all parties. Promptly upon termination of the mandate of an Arbitrator during the course of arbitration proceedings, a substitute Arbitrator shall be appointed in the manner specified in the arbitration clause or agreement, failing which the appointment shall be made under these Rules. The appointment of a substitute Arbitrator shall not cancel or otherwise invalidate the previous appointment of a presiding Arbitrator, if any, nor any prior proceedings.

##### 4.7.1 Effect of Replacement

If an Arbitrator is replaced, any hearings previously held may be repeated at the discretion of the Arbitrators, or of the substitute Arbitrator, in the case of a sole Arbitrator. Otherwise, the arbitration shall proceed as before.

## **V. ARBITRATION PROCEEDINGS**

### **5.1 Submission of Statements of Claim and Defense**

Within the period agreed by the parties or determined by the Arbitrator, the claimant shall provide a detailed statement of the facts supporting the claim, together with supporting documents, the points in issue, and the relief or remedy sought. When the Arbitrator is satisfied that the claimant has complied with this requirement, the respondent shall be directed to similarly state the defense. The Statement of Claim and the Statement of Defense shall be in writing delivered to all parties and the Arbitrator, unless the Arbitrator determines that other methods are to be used.

#### **5.1.1 Supporting Documents**

The Statements of Claim and Defense should include copies of documents regarded as relevant to the dispute, or references to such documents, and the Statement of Defense may include a counterclaim or claim for set-off arising out of the same contract, transaction or occurrence. The claimant may but need not submit a written Statement of Defense to any Counterclaim unless required by the Arbitrator.

#### **5.1.2 When the Claimant May Demand Discovery**

The Claimant is not entitled to demand discovery from an opposing party until a sufficiently documented claim is provided in accordance with Rule 5.1, unless there are extraordinary circumstances as determined by the Arbitrator.

#### 5.1.3 Motions

An opposing party may make a motion to the Arbitrator to dismiss or limit the claim at any time, and the claimant may request discovery relevant to the issues presented by the motion. The claimant may make a motion for rulings on specific issues at any time after it has provided a sufficiently documented claim.

#### 5.1.4 Expedited Hearings

In an emergency situation, as agreed by the parties or determined by the Arbitrator, expedited submissions and hearings shall be used to obtain an immediate and/or partial determination. When a party invokes this procedure, all time limits, including the selection of the Arbitrator, are suspended in favor of immediate actions, until such time as the Arbitrator shall determine otherwise.

#### 5.1.5 Amending the Statements

With leave from the Arbitrator, the Statements of Claim and Defense may be amended or supplemented from time to time until the hearings are formally closed pursuant to these Rules or, if the arbitration is conducted solely on the basis of documents and other materials without hearing, until the date of closing as notified to the parties by the Arbitrator reasonably in advance of such date.

#### 5.2 Prehearing Conferences

The Arbitrator, after being appointed, or after review of the Statements of Claim and Defense, may convene a preliminary conference with the parties to discuss appropriate means to expedite arbitration of the dispute. Such conference may be conducted by telephone if all



parties and the Arbitrator participate, and the topics of discussion may include without limitation the identification or clarification of issues in dispute, admission of facts or documents by agreement, and the exchange of information necessary for resolution of the matters in dispute, such as documents, witnesses, and physical evidence of whatever nature, as well as scheduling and time requirements. Any agreements reached as to the preliminary matters discussed may be confirmed in correspondence between the parties copied to the Arbitrator. Any such agreement may later be modified in the discretion of the Arbitrator to the extent deemed necessary to avoid injustice to a party which participated in the preliminary conference in good faith. The Arbitrator shall have the authority to convene similar conferences at any time during the proceedings for purposes of this Rule.

### 5.3 Procedure for Oral Hearings

#### 5.3.1 Representation

Any party may participate personally, or through an authorized representative, or be represented in the arbitration proceedings by counsel.

#### 5.3.2 Taking of a Stenographic Record

If a party or parties requests a stenographic record, it shall make the necessary arrangements for the taking of a stenographic record of the proceedings. The cost of such record, absent agreement between the parties, should be borne by the party making the request or as determined in the Arbitrator's discretion.

#### 5.3.3 Interpreters

The party or parties requesting a hearing shall make the necessary arrangements for the services of an interpreter, if needed. The requesting party or parties shall pay the cost of such service. Unless otherwise agreed, the interpreter shall be independent of both parties, and shall not have been used to prepare the witness to testify.

#### 5.3.4 Attendance at Hearings

Persons having a direct interest in the arbitration are entitled to attend the hearings. It shall be within the discretion of the Arbitrator whether to permit attendance of any other persons. The Arbitrator shall have the power to require any fact witnesses to leave the hearing during the testimony of the other witnesses. In addition, either by agreement between the parties or as ordered by the Arbitrator, the hearing may be held telephonically or by other electronic means in lieu of an in person hearing.

#### 5.3.5 Adjournments

The Arbitrator, upon a showing of good cause, may grant adjournment at the request of a party. A request by all parties jointly for an adjournment should be granted.

#### 5.3.6 Oaths

After the Arbitrator has been appointed, the Arbitrator shall take the oath set forth in Appendix hereto and return a copy to the TAC with a copy to the parties. The Arbitrator shall require witnesses to testify under oath as set forth in the Appendix hereto, and administered by the Arbitrator or the Chair of the Panel. The form of the oath may be amended within the discretion of the Arbitrator.

#### 5.3.7 Arbitration in the Absence of a Party

After a default has been established as a result of the absence of a party, the arbitration may proceed in the absence of the defaulting party, who, after sufficient notice, failed to be present or failed to obtain an adjournment. The defaulting party shall continue to be sent all communications and submissions thereafter to the last known address or as may be determined by the Arbitrator.

#### 5.3.8 Conduct of the Proceedings

The arbitration proceedings shall be conducted in an orderly and dignified manner appropriate to a judicial proceeding; however, conformity to legal rules of evidence shall not be required other than as specifically mandated by these Rules or the Arbitrator.

#### 5.3.9 Summary Dismissal

At the time the claimant has closed its final presentation of its case, the Arbitrator may, at the request of any party, but need not, consider whether the relief or remedy sought can be afforded viewing the case most favorably to the claimant. If the sole Arbitrator, or a majority of Arbitrators, elect to so consider the case, and conclude that the claimant has failed to establish its right to the relief or remedy sought, it shall not be necessary to hear the case of the respondent unless that respondent is asserting a counterclaim. Absent any outstanding issues, the Arbitrator may summarily declare the hearings closed.

### 5.4 Evidence

#### 5.4.1 Providing Exhibits Prior to a Hearing

Any party intending to introduce exhibits at a hearing, shall, unless otherwise directed by the Arbitrator, supply all other parties with legible copies of all proposed exhibits in reasonable time prior to the hearing at which they are to be introduced.

#### 5.4.2 The Submission and the Obtaining of Evidence

The parties may offer for admission such evidence as they consider relevant and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the dispute. Similarly, the Arbitrator shall have the discretion to obtain the testimony or assistance of expert witnesses. Upon the Arbitrator's own initiative, or at the request of any party, witnesses or documents may be summoned by subpoena under such conditions as may be prescribed by the Arbitrator. Upon the agreement of the parties, or upon the Arbitrator's own initiative, testimony, documents, evidence, or other submissions may be

made by telephone video or other electronic means where such means do not compromise the accuracy of such submissions so transmitted and are fair to the parties.

#### 5.4.3 Relevancy, Materiality, and Admissibility

The Arbitrator shall determine the relevancy, materiality and admissibility of the evidence offered.

#### 5.4.4 Depositions

In the absence of agreement by the parties, the Arbitrator shall have the power and discretion to direct the taking of depositions of witnesses or parties under such conditions as may be prescribed by the Arbitrator. Depositions should only be taken for the preservation of testimony, to obtain discovery or evidence that would be otherwise unavailable to a party, where it would expedite the overall proceedings, or for other reasons, at the Arbitrator's discretion.

#### 5.4.5 Weight of the Evidence

The Arbitrator may receive the evidence of witnesses by affidavit and shall give such evidence, if admitted, appropriate weight considering any objections made by any party, the circumstances in which the affidavit is submitted, and other relevant circumstances.

#### 5.5 Modification of Rules

The parties may agree, and the arbitrator shall have the power to rule, for any modification of these Arbitration Rules consistent with the principles of due process and as necessary for a fair and just adjudication of the matter.

### **VI. CLOSING OF HEARINGS**

#### 6.1 Completion of the Submission of the Evidence

Following the completion of the submission of evidence for each party, the Arbitrator shall ask the parties whether they have further evidence to offer or witnesses to be heard. Upon

receiving negative responses from all parties, the Arbitrator shall declare the hearings formally closed.

#### 6.2 Post Hearing Memoranda

After the hearings have been closed, the parties may submit, or the Arbitrator may require the parties to submit, memoranda to the Arbitrator either on an agreed schedule or, if the parties cannot agree, on a schedule established by the Arbitrator. Following the submission of memoranda, the Arbitrator may request written clarification from the parties concerning their claims and defenses within appropriate periods of time.

#### 6.3 Reopening of the Hearings

Following the closing of the hearings and at any time up to the issuance of an Award, the hearings may be reopened by the Arbitrator's own initiative or at the discretion of the arbitrator upon the request of any party for good cause shown.

### **VII. PROCEDURE FOR ARBITRATION ON DOCUMENTS ONLY**

#### 7.1 Procedure on Documents Only

If the amount in controversy, including any counterclaims, is less than Twenty-five Thousand Dollars (\$25,000.00), the dispute shall be heard on the submission of documents alone. In cases exceeding \$25,000.00 the parties, by written agreement, also may submit the dispute to arbitration on documents alone. Thereafter the parties shall make their submission of documents and briefs, if they desire, on such schedule as the Arbitrator shall establish.

#### 7.2 Closing of the Procedure

After all written submissions and documents have been delivered, or the time for the last of such deliveries has expired, the Arbitrator may close the presentation of evidence. Leave to provide further submissions or documents may be granted by the Arbitrator, if promptly requested after such notice, and good cause is shown. Nothing herein shall restrict the

Arbitrator's authority to reopen the hearing to receive additional evidence or request additional briefing of the issues.

## **VIII. THE AWARD**

### **8.1 Time**

The Arbitrator shall render the Award in writing no later than thirty (30) days after the hearing is closed unless there are circumstances beyond the Arbitrator's control, or by agreement of the parties. If a reasoned Award is required by the arbitration clause or agreement, or has been agreed to be provided by the Arbitrator, then the time shall be sixty (60) days for rendering the Award, which may also be extended by agreement of the parties.

### **8.2 Form and Content**

- (a) An arbitral Award must be in writing and signed by all of the Arbitrators. In arbitral proceedings with more than one Arbitrator, any partial or total dissent shall be signed by the dissenter and included with the majority Award.
- (b) For the purposes of Subsection (a), in arbitral proceedings with more than one Arbitrator, the signatures of the majority of all of the Arbitrators are sufficient if the reason for any omitted signature is stated.
- (c) The Award shall not state the reasons on which it is based, unless required by the arbitration clause or agreement, or the parties and the Arbitrator have agreed in advance of any Award that a reasoned Award is to be provided.
- (d) The Award must state the date it is made, and the place of arbitration.
- (e) After the Award is made, a signed copy shall be delivered to each party and the TAC. Parties shall accept as legal delivery of the Award by placing the

Award or a true copy thereof in the mail by the Arbitrator or TAC addressed to such party or to its attorney, at its last known address.

- (f) The Arbitrator may, at any time during the proceedings, make an Interim Award on any matter with respect to which the Arbitrator may make a Final Award. The Interim Award may be enforced in the same manner as a Final Award.
- (g) The Parties shall not communicate directly with the Arbitrator following the Award. Any post-award communications shall be directed to the case administrator of TAC.

### 8.3 Scope

If in the judgment of the Arbitrator, justice and equity require, in addition to or in the place of an award of damages, the granting of certain remedies or relief, including, but not limited to the remedy of specific performance, the Award may so provide.

- (a) If provided by any applicable agreement between the parties or by any applicable law, the Arbitrator may award reasonable attorney's fees and legal expenses and pre-award and post-award interest to any party so entitled. These Rules do not create an independent basis to award attorney's fees or interest.
- (b) Unless otherwise agreed by the parties, the costs of the arbitration are to be awarded at the discretion of the Arbitrator. In such an Award, the Arbitrator may include as costs: the fees and expenses of the Arbitrator and expert witnesses; any other expenses incurred in connection with the arbitral proceedings.

- (c) In making an order for costs, the Arbitrator may specify: (i) the party entitled to costs; (ii) the party who shall pay the costs; (iii) the amount of costs or method of determining that amount; and (iv) the manner in which the costs shall be paid.

#### 8.4 Award Upon Settlement

If the parties settle their dispute during the course of the arbitration, the Arbitrator, upon request of the parties, may set forth the terms of the agreed settlement in an Award. The Arbitrator may include in that Award, or issue a separate Award, any unpaid costs of the Arbitration.

### **IX. SPECIAL PROVISIONS**

#### 9.1 Waiver of the Rights

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Rules has not been complied with, and who fails to state his objection thereto in writing or on the record, may be deemed to have waived his right to object.

#### 9.2 Time Periods

The parties may modify any period of time by mutual agreement and consent of the Arbitrator. The Arbitrator may extend or shorten any period of time established by the Rules and shall notify the parties of any such extension or shortening of time and reason therefor.

#### 9.3 Liability and Indemnity

##### 9.3.1 Liability

Neither TAC nor any member, director, officer, agent, or servant of TAC or the Transportation Lawyer's Association, nor any Arbitrator appointed to serve in an arbitration



conducted under these Rules, shall be liable to any party for any act or omission (including negligence) in connection with the arbitration.

#### 9.3.2 Indemnity

**By their agreement to arbitrate under these Rules, the parties have agreed to indemnify TAC or the TLA and each of its members, servants and agents, and any Arbitrator appointed to serve in an arbitration conducted under these Rules, against all claims for loss or damage arising out of the acts or omissions (including negligence) of any Arbitrator. This indemnity shall not apply to such Arbitrator in case of willful misrepresentation or intentional misconduct.**

#### 9.4 Publication

All rulings, awards, orders or similar result of any proceeding under these rules is considered to be confidential and proprietary and may not be disseminated to any party that is not a part of the proceedings hereunder. Unless otherwise agreed by the parties and the TAC and Arbitrator, or otherwise disseminated, except as necessary for enforcement of the award in any judicial proceeding or otherwise subject to judicial process.

A TLA arbitrator, as appointed within these rules, shall have the exclusive jurisdiction to determine any controversy alleging a breach of any of the Arbitration Rules for the Transportation ADR Council.

#### 9.5 Consolidation of Proceedings

##### 9.5.1 Full Consolidation

With the consent of all parties, the Arbitrator shall have the power to direct that arbitration proceedings arising out of two or more arbitration agreements be consolidated on such terms as the Arbitrator deems appropriate. If the several agreements for arbitration each incorporate these Rules, and the same Arbitrator has been appointed to each matter, the

Arbitrator shall have the power to consolidate such matters with or without the consent of all of the parties. These Rules shall apply to any party so joined in the same manner as they apply to the parties commencing the proceeding.

#### 9.5.2 Concurrent Arbitrations

Where two or more disputes arising out of the same transaction or series of transactions, having some similarity of facts, have been referred to the same Arbitrator, the Arbitrator shall have the power to direct that the disputes be heard concurrently under these Rules.

### **X. INTERIM EXPENSES OF ARBITRATION**

#### 10.1 Witness Expenses

The expenses of witnesses, including expert witnesses, for either side shall, in the first instance, be paid by the party producing or requiring the production of such witnesses. Such expenses may be claimed as part of a party's costs in the matter.

#### 10.2 Other Expenses

All other expenses of the arbitration including required travel and other expenses of the Arbitrator shall, in the first instance, be borne equally by the parties, unless they agree otherwise, or unless the Arbitrator should direct otherwise. The Arbitrator may, in the Award, assess such expenses or any part thereof against a specified party or parties. The Arbitrator may require an advance of any sums they may reasonably be called upon to expend before incurring them.

#### 10.3 Expenses of an Out-of-Town Arbitrator

The travel and living expenses of an Arbitrator who resides outside the hearing venue shall be borne by the parties unless the arbitrator is a non-neutral party-appointed Arbitrator. If a sole or neutral Arbitrator resides outside the hearing venue, travel and living expenses shall be borne equally by the parties. In each case the Award may assess a different proportion, if justice and equity require.

## **XI. FEES FOR AN ARBITRATION**

### **11.1 The Arbitrator's Fee and Lien**

As part of the Award, the Arbitrator shall determine the amount of an Arbitrator's compensation, and include the fees and expenses as part of the Award. When fixing this fee, the Arbitrator may demand the fees and expenses be paid in full before releasing the Award, and shall retain a lien on the Award for all fees and expenses. In the event that the matter is concluded by settlement or otherwise, prior to the issuance of an Award, the Arbitrator shall determine the Arbitrator's compensation for which the parties will be jointly and severally liable.

### **11.2 Security for the Arbitrator's Fees**

TAC or the Arbitrator shall assess the anticipated fees and expenses of the arbitration, including but not limited to the arbitrator's fees and expenses and forum expenses. The parties shall provide the Arbitrator's fees and expenses as determined by the Arbitrator, in advance of any fees being determined by an Award. Nothing herein shall prevent an Arbitrator or TAC from requiring a deposit of anticipated fees and expenses prior to any hearing or award.

### **11.3 Security for Costs**

The claimant may be required to provide security for an opposing party's costs. In the appropriate circumstances, the Arbitrator may require such opposing party to provide counter-security for the claimant.

### **11.4 The Administrative Fee**

The administrative fee to administer the arbitration shall be \$250.00 or as otherwise posted on the Transportation Lawyers Association website ([www.translaw.org](http://www.translaw.org)) or such amount as provided by the current TAC administrator. The fee shall be paid by the claimant at the time of requesting the arbitration. Unless otherwise specified in the agreement between the parties,

the administrative fee may be allocated by Arbitrator in the final Award. The administrative fee shall be payable to the "Transportation Lawyers Association".

## **XII. ENFORCEMENT OF AN AWARD**

By their agreement to arbitrate under these Rules, the parties have agreed that judgment upon the Award may be entered in any court of competent jurisdiction.

## **XIII. FAST TRACK ARBITRATION RULES**

13.1. Fast Track Arbitration is available upon agreement of the parties for those claims in which the amount in controversy, excluding interest and attorney fees, does not exceed the amount of Fifty Thousand Dollars U.S. (\$50,000.00), or otherwise for good cause shown including but not limited the age or infirmity of one of the parties.

13.2. Upon giving notice of a claim under these rules, TAC shall appoint an arbitrator from the roster to act as the sole arbitrator. The arbitrator so nominated shall become the sole arbitrator. The arbitrator shall promptly disclose to the parties any information that might cause the person's impartiality or independence to be questioned.

13.3. Within 15 days of appointment, the arbitrator shall establish a written schedule for the prompt submission of the claimant's initial statement of claim with all supporting documents. The respondent shall submit its response and any counterclaim with all supporting documents within 20 days of receipt of claimant's submissions. In the event of a counterclaim, the first moving party shall respond to the counterclaim within 20 days. At the arbitrator's discretion, the parties may also be permitted to issue short replies to each other's submissions either consecutively or simultaneously. The arbitrator always retains discretion to vary the schedule by a few days.

13.4. The arbitration shall proceed on documents alone.

13.5. There shall be no discovery except as approved by the arbitrator.

13.6. The parties may be represented by themselves, attorneys or commercial advocates.

13.7. Non-reasoned awards only shall be issued, and shall be issued within 30 days of the arbitrator's declaration that the proceeding is closed.

13.8. The fee and expenses of the arbitrator shall be a flat rate fee of \$1,500.00, unless otherwise increased by an agreement of the parties. The flat rate may be increased by TAC as it deems necessary. If increased, TAC shall so advise an inquiring party prior to the commencement of the fast-track arbitration.

## APPENDIX

### A. The Arbitrator's Oath:

"Do you solemnly swear that you will faithfully hear and examine the matter in controversy and make a just Award, according to the best of your understanding?"

### B. The Witness' Oath:

"Do you solemnly swear that the testimony you are about to give is the whole truth, and nothing but the truth?"

### C. The Interpreter's Oath:

"Do You Solemnly swear that you will faithfully perform your duties as an interpreter in these proceedings, and that you will interpret and translate from English to \_\_\_\_\_, and from \_\_\_\_\_ to English to the best of your ability?"