
A program of the Intermodal Association of North America

April 7, 2021

Transmitted Via E-mail

TO: UIIA Participants
FROM: Debbie Sasko
AVP, Information Services
RE: Modifications to UII Agreement

A memo was sent to all UIIA participants on February 18, 2021 advising that the Intermodal Interchange Executive Committee (IIEC) had proposed revisions to the following sections of the UIIA:

- **Section H. Default Dispute Resolution, Binding Arbitration Process, Item H.2.**
- **Exhibit D, Binding Arbitration Guidelines, Items D.9, D.10 and D.11.**
- **Section II. of the Administrative Procedures – Review Procedures for New/Revised Providers' Addenda, Item B.**

In addition, the Notice of Intent to Seek Binding Arbitration form that is utilized for submitting arbitration claims will also be modified to be consistent with the revisions made to Item D.9. under Exhibit D. Binding Arbitration Guidelines.

In accordance with Appendix I, Section V. of the Agreement, all UIIA participants were provided with a thirty-day comment period on the proposed revisions during which time no comments were received. Consequently, the Committee has unanimously voted to move forward with the proposed revisions as approved at the February 10th IIEC meeting. **The revisions will become effective on April 23, 2021.** For your convenience, the revisions are shown on the following page.

A full copy of the revised UIIA, which includes the above revisions is available at www.uiia.org. Questions regarding the above information should be directed to Debbie Sasko via e-mail at debbie.sasko@intermodal.org. Thank you.

Attachment

cc: Joni Casey, IIEC Chair and President/CEO, IANA
Marc Blubaugh, IANA General Counsel

Approved Modifications to the UIIA – Effective April 23, 2021

Revisions noted in “red”/deletions with strikethroughs

1. **Section H. Default Dispute Resolution, Binding Arbitration Process, Item H.2.** – Adds language to certify Parties have made reasonable efforts to resolve dispute prior to arbitration. Also modifies the language re: what information the arbitration panel will use to render its decision in cases to be consistent with the change proposed in Exhibit D.10.

*“Should no resolution be reached between the Parties for charges disputed within the applicable dispute resolution process, then the Parties will have the ability to submit the disputed charges for binding arbitration in accordance with Exhibit D of the Agreement. **Prior to the commencement of binding arbitration, both Parties are expected to take every reasonable effort to resolve the dispute. Following the initiation of binding arbitration, the arbitration panel will determine the Party responsible for payment based on the specific facts and circumstances associated with the claim, the terms and conditions of the Agreement and the Provider’s Addendum along with the supporting documentation presented by the involved Parties.***

If a Provider’s Addendum contains a dispute resolution process that does not include an arbitration provision, then the terms under Exhibit D to the UIIA will apply.”

2. **Exhibit D, Binding Arbitration Guidelines, Item D.9.** – Clarifies process for sharing arbitration information between the Parties.

*“The arbitration process will be commenced by IANA’s transmittal of the Notice of Intent to Seek Arbitration and the required information and arguments to the appropriate individual in the Invoicing Party or Invoiced Party (Responding Party) organization designated to receive such Notice and information. The Responding Party will have 15 calendar days from the date of transmittal of the arbitration documents from IANA to respond. Upon receipt of the Responding Party’s documents, **a copy will be provided to the Moving Party. Upon receipt of the Responding Party’s initial response, the Moving Party will have five (5) business days to submit any additional comments. Such comments will be provided to the Responding Party, and the Responding Party will have five (5) business days to provide a final response. A copy of the Responding Party’s final response will be provided to the Moving Party, after which, no further comments will be accepted unless additional information is requested by the arbitration panel in accordance with Section D.11. The complete record will then be transmitted by IANA to the arbitrators. Failure of either Party to submit comments or information pursuant to the timelines above will not preclude the claim from being forwarded to the arbitration panel for review and determination. Failure of the Responding Party to respond to the claim(s) within this timeframe will result in the arbitration panel rendering its decision based solely on the supporting documentation submitted by the Moving Party, along with the terms and conditions of the UIIA and/or the Providers’ Addenda.***

3. **Exhibit D, Binding Arbitration Guidelines, Item D.10.** – Clarifies the discretion the arbitration panel has when rendering a determination in a binding arbitration case.

*“The arbitration panel will have 45 days from the date the information and arguments submitted by the Parties are sent by IANA to render a written decision indicating the basis for its conclusions. **Its findings Arbitrators have broad discretion, and their findings will address the validity of the claims and the Party responsible for payment or satisfaction thereof. The determinations are to be based solely on the specific facts and circumstances associated with the claim, the documentation provided by the Parties, the rules in the UIIA, and the rules and charges in the Provider’s Addendum.***

4. **Exhibit D, Binding Arbitration Guidelines, Item D.11.** – Clarifies the process for the arbitration panel to request additional information in a case.

*“If during an arbitration panel’s deliberations, it appears that further clarification or explanation is needed from a Party or the Parties, **the panel may request that IANA obtain such additional information from the Parties via e-mail. The Party to whom the panel’s request is directed will have five (5) business days to respond. Upon receipt of the response, any additional information will be forwarded to the other Party, and that Party will have five (5) business days to provide additional comments, after which no further comments will be accepted, and IANA will transmit the information submitted by both Parties to the arbitration panel. Requests for additional information may extend the arbitration panel’s decision for up to ten (10) business days. a conference call may be conducted with both Parties in the arbitration process participating on the call.***

5. **Binding Arbitration Notice of Intent Form** – Notice of Intent form used for submitting binding arbitration claims modified to be consistent with proposed revision to Exhibit D, Item D.9.

Moving Party and Responding Party agrees that prior to seeking arbitration under the DRP process that all established timelines for standard dispute resolution processes under the UIIA/Equipment Provider addenda regarding this matter have been met and that the Party has taken reasonable efforts to resolve the dispute.

6. **Administrative Procedures, Section II. Review Procedures for New or Revised Providers Addenda, Item B.** - Adds an interim step to the EP addenda review process prior to a conference call with the EP submitting an addendum change, should concerns be raised by any of the modal Committee members. This additional step provides an opportunity for the modal IIEC members to discuss the concerns raised.

“The receiving modal Committee members shall review the proposed Addendum language to determine whether the language is inconsistent with or conflicts with the existing provisions of the Agreement. The Addendum language is approved unless a modal Committee member notifies the Chairperson of the Committee in writing, within fifteen (15) business days of receiving the Addendum language, that the condition above exists. If such notice is provided, an initial conference call of the modal IIEC members will be scheduled within ten (10) business days of the close of the comment period. The purpose of the conference call will be for the modal IIEC members to discuss the concerns raised during the modal review of the proposed language and prior to a summary of these comments being provided to the Provider.

After the conference call of the modal IIEC members concludes, a subsequent ~~if such notice is provided, a~~ conference call among all modal Committee members conducting the review, the Provider submitting the Addendum language in question, and a designated IANA staff member shall be held within ~~ten (10) fifteen (15)~~ business days. ~~after the timeframe for modal Committee review has expired.~~ The purpose of ~~this~~ subsequent conference call shall be to discuss whether the condition above exists.”