

## TITLE 2 – RULES OF PROCEDURE

### CHAPTER 2-3 ARBITRATION

#### 2-3-1 Purpose

The purpose of this Code is to authorize the arbitration of disputes in contractual agreements, provide procedures for arbitration and provide for the enforcement of agreements to arbitrate and resulting arbitration awards by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' Tribal Court.

#### 2-3-2 Definitions

- (a) "Arbitrator" - an individual or panel of individuals appointed by the Tribal Court to decide disputes under the provision of this Code.
- (b) "Tribal Court" - the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians' Tribal Court.
- (c) "Tribes" - the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians.

#### 2-3-3 Scope of Code

This Code applies to any written contract or other instrument entered into by the Tribes, by any subdivision, instrumentality or agency of the Tribes, or by any other person in a transaction that is subject to the jurisdiction of the Tribes, in which: (1) the parties thereto agree to settle by arbitration any controversy arising out of such contract or other instrument; and (2) the Tribal Council designates, by resolution, that this Code shall apply.

#### 2-3-4 Choice of Law and Enforceability of Agreements to Arbitrate

- (a) In any written contract or agreement described in CLUSITC 2-3-3 of this Code, the parties may agree upon the jurisdiction whose substantive law shall govern the interpretation of the written contract or agreement. Such choice of law shall be valid and enforceable, and not subject to revocation by one party without the consent of the other party.
- (b) In any proceeding in the Tribal Court relating to a written contract or agreement described in CLUSITC 2-3-3 of this Code, whenever the written contract or agreement does not set forth a choice of law provision, the Tribal Court shall apply the substantive law of the Tribes and apply the provisions of CLUSITC 2-2-4.

#### 2-3-5 Stay of Proceedings in Tribal Court and Order to Proceed with Arbitration

- (a) If any action for legal or equitable relief or other proceeding is brought in the Tribal Court by any party to a written contract or agreement described in CLUSITC 2-3-3 of this Code, the Tribal Court 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 written contract or agreement.

(b) A party to a written contract or agreement described in CLUSITC 2-3-3 of this Code claiming the neglect or refusal of another party thereto to proceed with arbitration, may make application to the Tribal Court for an order directing the parties to proceed with the arbitration in compliance with their written contract or agreement. In such event, the Tribal Court shall order the parties to arbitration in accordance with the provisions of the written contract or agreement and the question of whether an obligation to arbitrate the dispute at issue exists shall be decided by the arbitrator.

#### 2-3-6 Appointment of an Arbitrator by Tribal Court

Upon the application of a party to the arbitration agreement, and upon notice to the other parties thereto, the Tribal court shall appoint an arbitrator:

- (a) When the arbitration agreement does not prescribe a method for the appointment of arbitrators.
- (b) When the arbitration agreement does prescribe a method for the appointment of arbitrators, and the arbitrators, or any of them, have not been appointed and the time within which they should have been appointed has expired.
- (c) When any arbitrator fails or is otherwise unable to act, and a successor has not been duly appointed.
- (d) In any of the foregoing cases where the arbitration agreement is silent as to the number of arbitrators, a single arbitrator shall be appointed by the Tribal Court. Arbitrators appointed by the Tribal Court shall have the same power as though their appointment had been made in accordance with the agreement to arbitrate.

#### 2-3-7 Hearing by Arbitrators

- (a) The arbitrator(s) shall appoint a time and place for the hearing and notify the parties thereof, and may adjourn the hearing from time to time as may be necessary of either party, and for good cause, may postpone the hearing to a time not extending beyond the date fixed for making the award.
- (b) In any proceeding with multiple arbitrators, all arbitrators shall meet and act together during the hearing but a majority of them may determine any question and render a final award.
- (c) The Tribal Court shall have power to direct the arbitrator(s) to proceed promptly with the hearing and determination of controversy.

2-3-8 Failure of Party to Appear No Bar to Hearing and Determination

If any party fails to appear before the arbitrator(s) after reasonable notice of the time and place of hearing, the arbitrator(s) may decide the controversy upon the evidence which is produced before them.

2-3-9 Representation by Attorney

Any party shall have the right, at their own expense, to be represented by a licensed attorney in any arbitration proceeding or any hearing before the arbitrators.

2-3-10 Depositions

Depositions may be taken in the same manner and upon the same grounds as provided for in CLUSITC 1-1 and UTTCR 15 for the taking of depositions in suits pending in Tribal Court.

2-3-11 Advice of the Court on Tribal, State or Federal Law

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 law or state or federal law arising in the course of the arbitration so long as such parties agree in writing that the advice of the Tribal Court shall be final as to the question presented and that it shall bind the arbitrator(s) in rendering any award.

2-3-12 Time Within Which Award Shall be Rendered; Notice to the Parties

(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 (30) days from the date the arbitration has been completed. The parties may, by written agreement, agree to extend the time in which the award may be made.

(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.

2-3-13 Application for Order Confirming Award; Record to be Filed with Clerk of Court; Effect and Enforcement of Judgment

(a) 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.

(b) Any party applying to the Tribal Court for an order confirming an arbitration award shall, at the time the award is filed with the Clerk of the Tribal Court for entry of judgment thereon, file true and correct copies of the following papers with the Clerk:

- (1) The agreement to arbitrate;

- (2) If applicable, the Tribal Council resolution approving application of this Code;
- (3) Written identification of the arbitrator(s) and any material documenting the selection or appointment of the arbitrator(s);
- (4) Any written agreement requiring the reference of any question as provided in CLUSITC 2-3-11;
- (5) Each written extension of the time, if any, within which to make the award;
- (6) The award; and
- (7) Evidence that all parties to the arbitration have received notice of the filing or the intent to file an application to the Tribal Court for confirmation of the arbitration award.

(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; *provided*, that the Tribal Court may nevertheless decline to enforce any arbitration award if it finds that any of the following occurred:

- (1) The award was procured by corruption, fraud, or undue means;
- (2) There was evident partiality or corruption in the arbitrator(s);
- (3) The arbitrator(s) were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
- (4) The arbitrator(s) exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an arbitration award is so vacated, the Tribal Court may, in its discretion, direct a rehearing by the arbitrator(s). If an arbitration award is vacated under Subsection (c)(1) or (c)(2) above, the Tribal Court may order that a rehearing be held before a different arbitrator or arbitrators.

(d) In any of the following cases where the Tribal Court is authorized to make an order regarding arbitration, the Tribal Court may make an order modifying or correcting the arbitration award upon the application of any party to the arbitration:

- (1) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award;
- (2) Where the arbitrator(s) have awarded upon a matter not submitted to

them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or

- (3) Where the arbitration award is imperfect in matter of form not affecting the merits of the controversy.

The order may modify and correct the award, so as to effect the intent thereof and promote justice between the parties.

(e) 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.

#### 2-3-14 Arbitration Award Shall Not Be 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.

#### 2-3-15 Jurisdiction of the Tribal Court

(a) The Tribal Court shall have jurisdiction over an 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 written contract or agreement described in CLUSITC 2-3-3 of this Code.

(b) The parties consent to the jurisdiction of a state or federal court contained in a written contract or agreement described in CLUSITC 2-3-3 of this Code, and any waiver of the obligation of the parties to exhaust Tribal Court remedies shall be valid and enforceable in accordance with its terms only when approved in writing by the Tribal Council.

#### 2-3-16 Police Powers and Judgment Enforcement Remedies

The Tribes' police powers shall be available to secure and support any arbitration award under this Code, and all police or other law enforcement officials of the Tribes shall carry out any orders that may be entered by the Tribal Court pursuant to this Code within the jurisdiction of the Tribal Police.

#### 2-3-17 Costs of Arbitration

Unless the written contract or agreement provides otherwise, the costs of arbitration shall be borne equally by the parties.

2-3-18 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 the Tribal Court, the remainder of the relevant section or part of this Code shall not be affected thereby and shall remain in full force and effect.

2-3-19 No Waiver of Sovereign Immunity

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

APPENDIX A  
LEGISLATIVE HISTORY AND EDITORIAL CHANGES

## ARBITRATION

### LEGISLATIVE HISTORY AND EDITORIAL CHANGES

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the revisions to Chapter 2-2 Arbitration by Ordinance No. 079A, at a Tribal Council meeting on October 24, 2012. Vote was 4 (for), 0 (against), 2 (absent), and 0 (abstaining).

On May 13, 2011, tribal administration made technical updates to Tribal Code Chapter 2-3 to correct typos, citations to the Code and formatting issues.

The Tribal Council of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians enacted the "Arbitration" Ordinance, Resolution No. 07-004, Ordinance No. 079, at a regular Tribal Council meeting on January 14, 2007. Vote was 6 (for), 0 (against), and 0 (abstaining).

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